Texas Historical Statutes Project

1928 Complete Texas Statutes

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1928 COMPLETE TEXAS STATUTES

COVERING THE

REVISED CIVIL AND CRIMINAL STATUTES 1925

TOGETHER WITH

THE STATUTES OF A GENERAL NATURE ENACTED SUBSEQUENT TO 1925 AT THE REGULAR AND SPECIAL SESSIONS OF THE 38th 39th AND 40th LEGISLATURES

TABLE OF SESSION LAWS

TABLES OF CORRESPONDING ARTICLES FROM REVISED STATUTES 1879, 1895, AND 1911 TO PRESENT COMPILATION

KANSAS CITY, MO.
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PREFACE

The 1928 Complete Texas Statutes present the statutory law of Texas as embodied in the Revised Civil and Criminal Statutes 1925, together with subsequent legislation of a general nature down to and including the Regular and First Called Sessions of the Fortieth Legislature. Confined within the limits of one volume, and classified in accordance with the official arrangement of the Revised Statutes of 1925, the profession has conveniently before it the effective law of the state of Texas as it exists to-day. The 1928 Complete Texas Statutes is, in effect, a recompilation based upon the Revised Statutes of 1925, in which repeals and amendments by legislation subsequent to 1925 have been given full effect in arranging the text. This also means that the arrangement of this work conforms to the arrangement and article numbering of Vernon's Annotated Revised Civil and Criminal Statutes 1925.

The method adopted by the Legislature of inserting statutory references at the end of articles in the Revised Civil and Criminal Statutes of 1925, whereby successive sections from the same act or acts were designated by use of the word "Id.," has been disturbed only where the act or acts referred to could be definitely fixed; that is, where an article from an act subsequent to 1925 has been inserted between two earlier articles, and the statutory reference to the last article is designated by the word "Id.," it should be understood that in this compilation this word refers to the same article as in the 1925 Revised Statutes. In other words, if an article preceding an article with an "Id." citation in this work is of a date subsequent to 1925, the reader must go back until he finds an article with a statutory citation not later than the year 1925 in order to get the correct antecedent. For example, on page 294, the word "Id." occurring at the end of article 2294 refers back to article 2293, and does not refer to article 2293a; that is, article 2294 is not from the act of 1927 cited at the end of article 2293a, but is from one or more of the acts cited at the end of article 2293.

A comprehensive subject-matter index is provided, which should serve as a valuable and practical means of approach to the statutes. The Constitution of the United States, as well as the Constitution of the state of Texas, the latter completely indexed, are included.

Tables of Session Laws 1923 to 1927, as well as tables of corresponding articles from the Revised Civil and Criminal Statutes of 1879, 1895, and 1911, are among additional features which will commend the 1928 Complete Texas Statutes to the bench and bar of the state of Texas as an indispensable instrument in their professional labors.

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CONSTITUTION OF THE UNITED STATES—1787*

WE THE PEOPLE of the United States, in Order to form a more pertect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I

Section. 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section. 2. [1] The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

[2] No Person shall be a representative who shall not have attained to the Age of twenty-five Years and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[3] [Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

The clause of this paragraph inclosed in brackets was amended, as to the mode of apportionment of representatives among the several states, by the fourteenth amendment, § 2, post, and as to taxes on incomes without apportionment, by the sixteenth amendment, post.

[4] When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

[5] The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section. 3. [1] [The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.]

This paragraph and the clause of paragraph 2 of this section next following, inclosed in brackets, were superseded by the seventeenth amendment, post.

[2] Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one-third may be chosen every second Year; [and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]

See note to preceding paragraph of this section.

[3] No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

[4] The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

[5] The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

*In May, 1785, a Committee of Congress made a report recommending an alteration in the Articles of Confederation, but no action was taken on it, and it was left to the State Legislatures to proceed in the matter. In January, 1786, the Legislature of Virginia passed a resolution providing for the appointment of five commissioners, who, or any three of them, should meet such commissioners as might be appointed in the other States of the Union, at a time and place to be agreed upon, to take into consideration the trade of the United States; to consider how far a uniform system in their commercial regulations may be necessary to their common interest and their permanent harmony; and to report to the several States such an act, relative to this great object, as, when ratified by them, will enable the United States in Congress effectually to provide for the same. The Virginia commissioners, after some correspondence, fixed the first Monday in September as the time, and the city of Annapolis as the place for the meeting, but only four other States were represented, viz.: Delaware, New York, New Jersey, and Pennsylvania; the commissioners appointed by Massachusetts, New Hampshire, North Carolina, and Rhode Island failed to attend. Under the circumstances of so partial a representation, the commissioners present agreed upon a report, (drawn by Mr. Hamilton, of New York,) expressing their unanimous conviction that it might essentially tend to advance the interests of the Union if the States by which they were respectively delegated would concur, and use their endeavors to procure the concurrence of the other States, in the appointment of commissioners to meet at Philadelphia on the second Monday of May following, to take into consideration the situation of the United States; to devise such further provisions as should appear to them necessary to render the Constitution of the Federal Government adequate to the exigencies of the Union; and to report such an act for that purpose to the United States in Congress assembled as, when agreed to by them, and afterwards confirmed by the Legislatures of every State, would effectually provide for the same.

Congress, on the 21st of February, 1787, adopted a resolution in favor of a convention, and the Legislatures of those States which had not already done so (with the exception of Rhode Island) promptly appointed delegates. On the 25th of May, seven States having convened, George Washington, of Virginia, was unanimously elected President, and the consideration of the proposed constitution was commenced. On the 17th of September, 1787, the Constitution as engrossed and agreed upon was signed by all the members present, except Mr. Gerry, of Massachusetts, and Messrs. Mason and Randolph, of Virginia. The president of the convention transmitted it to Congress, with a resolution stating how the proposed Federal Government should be put in operation, and an explanatory letter. Congress, on the 28th of September, 1787, directed the Constitution so framed, with the resolutions and letter concerning the same, to "be transmitted to the several Legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the convention."

On the 4th of March, 1789, the day which had been fixed for commencing the operations of Government under the new Constitution, it had been ratified by the conventions chosen in each State to consider it, as follows: Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; and New York, July 26, 1788.

The President informed Congress, on the 28th of January, 1790, that North Carolina had ratified the Constitution November 21, 1789; and he informed Congress on the 1st of June, 1790, that Rhode Island had ratified the Constitution May 29, 1789. Vermont, in convention, ratified the Constitution January 10, 1789, and was, by an act of Congress approved February 19, 1791, "received and admitted into this Union as a new and entire member of the United States."

[6] The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

[7] Judgment in Cases of Impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Section. 4. [1] The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[2] The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Section. 5. [1] Each House shall be the Judge of the Elections, Returns, and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

[2] Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and, with the Concurrence of two thirds, expel a Member.

[3] Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy, and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those present, be entered on the Journal.

[4] Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Section. 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Section. 7. [1] All bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by Yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section. 8. [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[2] To borrow Money on the credit of the United States;

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7] To establish Post Offices and post Roads;

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Section. 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3] No Bill of Attainder or expost facto Law shall be passed.

[4] No Capitation, or other direct, tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

[5] No Tax or Duty shall be laid on Articles exported from any State.

[6] No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

[7] No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

[8] No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title of any kind whatever from any King, Prince, or foreign State.

Section. 10. [1] No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, expost facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

[2] No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Controul of the Congress.

[3] No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

ARTICLE II

Section. 1. [1] The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

[2] Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The electors shall meet in their respective States, and vote by ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and of the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from such State having one Vote; A quorum for this Purpose shall consist of a Member or Members from two-thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse *from* them by Ballot the Vice-President.]

This paragraph, inclosed in brackets, was superseded by the twelfth amendment, post.

[3] The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

[4] No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any Person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

[5] In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation, or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.

[6] The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be encreased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

[7] Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."

Section. 2. [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

[2] He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

[3] The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Section. 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section. 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, *or other high Crimes and Misdemeanors.*

ARTICLE III

Section. 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section. 2. [1] The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States,—between citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

[2] In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be

Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

[3] The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section. 3. [1] Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

[2] The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

ARTICLE IV

Section. 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section. 2. [1] The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

[2] A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up to be removed to the State having Jurisdiction of the Crime.

[3] No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

Section. 3. [1] New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

[2] The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

ARTICLE V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

ARTICLE VI

[1] All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

[2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

[3] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

ARTICLE VII

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same.

Articles in Addition to, and Amendment of, the Constitution of the United States of America, Proposed by Congress, and Ratified by the Legislatures of the Several States Pursuant to the Fifth Article of the Original Constitution.

[ARTICLE I]*

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

[ARTICLE II]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

[ARTICLE III]

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

[ARTICLE IV]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

[ARTICLE V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

[ARTICLE VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses

*The first ten amendments to the Constitution of the United States were proposed to the legislatures of the several States by the First Congress, on the 25th of September, 1789. They were ratified by the following States, and the notifications of ratification by the governors thereof were successively communicated by the President to Congress: New Jersey, November 20, 1789; Maryland, December 19, 1789; North Carolina, December 22, 1789; South Carolina, January 19, 1790; New Hampshire, January 25, 1790; Delaware, January 28, 1790; Pennsylvania, March 10, 1790; New York, March 27, 1790; Rhode Island, June 15, 1790; Vermont, November 3, 1791, and Virginia, December 15, 1791. There is no evidence on the journals of Congress that the legislatures of Connecticut, Georgia, and Massachusetts ratified them.

against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

[ARTICLE VII]

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

[ARTICLE VIII]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

[ARTICLE IX]

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

[ARTICLE X]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

[ARTICLE XI]

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State or by Citizens or Subjects of any Foreign State.

The eleventh amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Third Congress, on the 5th September, 1794, and was declared in a message from the President to Congress, dated the 8th of January, 1798, to have been ratified by the legislatures of three-fourths of the States.

[ARTICLE XII]

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

The twelfth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Eighth Congress, on the 12th of December, 1803, in lieu of the original third paragraph of the first section of the second article, and was declared in a proclamation of the Secretary of State, dated the 25th of September, 1804, to have been ratified by the legislatures of three-fourths of the States.

[ARTICLE XIII]

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

The thirteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-eighth Congress, on the 1st of February, 1865, and was declared, in a proclamation of the Secretary of State, dated the 18th of December, 1865, to have been ratified by the legislatures of twenty-seven of the thirty-six States, viz: Illinois, Rhode Island, Michigan, Maryland, New York, West Virginia, Maine, Kansas, Massachusetts, Pennsylvania, Virginia, Ohio, Missouri, Nevada, Indiana, Louisiana, Minnesota, Wisconsin, Vermont, Tennessee, Arkansas, Connecticut, New Hampshire, South Carolina, Alabama, North Carolina, and Georgia.

[ARTICLE XIV]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The fourteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Thirty-ninth Congress, on the 16th of June, 1866. On the 21st of July, 1868, Congress adopted and transmitted to the Department of State a concurrent resolution, declaring that "the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, New Hampshire, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the fourteenth article of amendment to the Constitution of the United States, duly proposed by two-thirds of each

House of the Thirty-ninth Congress: Therefore, Resolved, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State." The Secretary of State accordingly issued a proclamation, dated the 28th of July, 1868, declaring that the proposed fourteenth amendment had been ratified, in the manner hereafter mentioned, by the legislatures of thirty of the thirty-six States, viz: Connecticut, June 30, 1866; New Hampshire, July 7, 1866; Tennessee, July 19, 1866; New Jersey, September 11, 1866, (and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it;) Oregon, September 19, 1866; Vermont, November 9, 1866; Georgia rejected it November 13, 1866, and ratified it July 21, 1868; North Carolina rejected it December 4, 1866, and ratified it July 4, 1868; South Carolina rejected it December 20, 1866, and ratified it July 9, 1868; New York ratified it January 10, 1867; Ohio ratified it January 11, 1867, (and the legislature of the same State passed a resolution in January, 1868, to withdraw its consent to it;) Illinois ratified it January 15, 1867; West Virginia, January 16, 1867; Kansas, January 18, 1867; Maine, January 19, 1867; Nevada, January 22, 1867; Missouri, January 26, 1867; Indiana, January 29, 1867; Minnesota, February 1, 1867; Rhode Island, February 7, 1867; Wisconsin, February 13, 1867; Pennsylvania, February 13, 1867; Michigan, February 15, 1867; Massachusetts, March 20, 1867; Nebraska, June 15, 1867; Iowa, April 3, 1868; Arkansas, April 6, 1868; Florida, June 9, 1868; Louisiana, July 9, 1868; and Alabama, July 13, 1868. Georgia again ratified the amendment February 2, 1870. Texas rejected it November 1, 1866, and ratified it February 18, 1870. Virginia rejected it January 19, 1867, and ratified October 8, 1869. The amendment was rejected by Kentucky January 10, 1867; by Delaware February 8, 1867; by Maryland March 23, 1867, and was not afterward ratified by either State.

[ARTICLE XV]

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

The fifteenth amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Fortieth Congress, on the 27th of February, 1869, and was declared, in a proclamation of the Secretary of State, dated March 30, 1870, to have been ratified by the legislatures of twenty-nine of the thirty-seven States. The dates of these ratifications (arranged in the order of their reception at the Department of State) were: from North Carolina, March 5, 1869; West Virginia, March 3, 1869; Massachusetts, March 9-12, 1869; Wisconsin, March 9, 1869; Maine, March 12, 1869; Louisiana, March 5, 1869; Michigan, March 8, 1869; South Carolina, March 16, 1869; Pennsylvania, March 26, 1869; Arkansas, March 30, 1869; Connecticut, May 19, 1869; Florida, June 15, 1869; Illinois, March 5, 1869; Indiana, May 13-14, 1869; New York, March 17-April 14, 1869, (and the legislature of the same State passed a resolution January 5, 1870, to withdraw its consent to it;) New Hampshire, July 7, 1869; Nevada, March 1, 1869; Vermont, October 21, 1869; Virginia, October 8, 1869; Missouri, January 10, 1870; Mississippi, January 15-17, 1870; Ohio, January 27, 1870; Iowa, February 3, 1870; Kansas, January 18-19, 1870; Minnesota, February 19, 1870; Rhode Island, January 18, 1870; Nebraska, February 17, 1870; Texas, February 18, 1870. The State of Georgia also ratified the amendment February 2, 1870.

[ARTICLE XVI]

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

The sixteenth amendment to the Constitution of the United States was proposed to the legislatures of the several states by the Sixty-First Congress, on the 31st of July, 1909, and was declared, in a proclamation by the Secretary of State, dated the 25th of February, 1913, to have been ratified by the legislatures of the states of Alabama, Kentucky, South Carolina, Illinois, Mississippi, Oklahoma, Maryland, Georgia, Texas, Ohio, Idaho, Oregon, Washington, California, Montana, Indiana, Nevada, North Carolina, Nebraska, Kansas, Colorado, North Dakota, Michigan, Iowa, Missouri, Maine, Tennessee, Arkansas, Wisconsin, New York, South Dakota, Arizona, Minnesota, Louisiana, Delaware, and Wyoming, in all thirty-six, said states constituting three-fourths of the whole number of states. The legislatures of New Jersey and New Mexico also passed resolutions ratifying the said proposed amendment.

[ARTICLE XVII]

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

The seventeenth amendment to the Constitution of the United States was proposed to the legislatures of the several states by the Sixty-Second Congress, on the 15th of May, 1912, in lieu of the original first paragraph of section 3 of article I, and in lieu of so much of paragraph 2 of the same section as related to the filling of vacancies, and was declared, in a proclamation by the Secretary of State, dated the 31st of May, 1913, to have been ratified by the legislatures of the states of Massachusetts, Arizona, Minnesota, New York, Kansas, Oregon, North Carolina, California, Michigan, Idaho, West Virginia, Nebraska, Iowa, Montana, Texas, Washington, Wyoming, Colorado, Illinois, North Dakota, Nevada, Vermont, Maine, New Hampshire, Oklahoma, Ohio, South Dakota, Indiana, Missouri, New Mexico, New Jersey, Tennessee, Arkansas, Connecticut, Pennsylvania, and Wisconsin, said states constituting three-fourths of the whole number of states.

[ARTICLE XVIII]

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

Section 2. The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

This amendment was proposed to the legislatures of the several states by the Sixty-Fifth Congress, on the 19th day of December, 1917, and was declared, in a proclamation by the Acting Secretary of State, dated on the 29th day of January, 1919, to have been ratified by the legislatures of the state of Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nebraska, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, South Carolina, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming; said states constituting three-fourths of the whole number of states in the United States, and certified as valid to all intents and purposes as a part of the Constitution of the United States.

[ARTICLE XIX]

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

This amendment was proposed to the legislatures of the several states by the Sixty-Sixth Congress, on the 5th day of June, 1919, and was declared, in a proclamation by the Secretary of State, dated on the 26th day of August, 1920, to have been ratified by the legislatures of the states of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin and Wyoming—said states constituting three-fourths of the whole number of states in the United States, and certified as valid to all intents and purposes as a part of the Constitution of the United States.

CONSTITUTION OF THE STATE OF TEXAS

NOTE—The following is the complete text of the Constitution of Texas, together with amendments adopted to November 2, 1926.

PREAMBLE

Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution.

ARTICLE I

BILL OF RIGHTS

That the general, great and essential principles of liberty and free government may be recognized and established, we declare:

Section 1. Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States.

Sec. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient.

Sec. 3. All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive separate public emoluments, or privileges, but in consideration of public services.

Sec. 4. No religious test shall ever be required as a qualification to any office, or public trust, in this State; nor shall any one be excluded from holding office on account of his religious sentiments, provided he acknowledge the existence of a Supreme Being.

Sec. 5. No person shall be disqualified to give evidence in any of the Courts of this State on account of his religious opinions, or for the want of any religious belief, but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury.

Sec. 6. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Sec. 7. No money shall be appropriated, or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary; nor shall property belonging to the State be appropriated for any such purposes.

Sec. 8. Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers, investigating the conduct of officers, or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. And in all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases.

Sec. 9. The people shall be secure in their persons, houses, papers and possessions, from all unreasonable seizures or searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause, supported by oath or affirmation.

Sec. 10. In all criminal prosecutions, the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself or counsel or both, shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. And no person shall be held to answer for a criminal offence, unless on indictment of a grand jury, except in cases in which the punishment is by fine, or imprisonment otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. (Const. 1876.)

Sec. 10. In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself, and shall have the right of being heard by himself or counsel, or both, shall be confronted by the witnesses against him and shall have compulsory process for obtaining witnesses in his favor, except that when the witness resides out of the State and the offense charged is a violation of any of the anti-trust laws of this State, the defendant and the State shall have the right to produce and have the evidence admitted by deposition, under such rules and laws as the Legislature may hereafter provide; and no person shall be held to answer for a criminal offense, unless on an indictment of a grand jury, except in cases in which the punishment is by fine or imprisonment, otherwise than in the penitentiary, in cases of impeachment, and in cases arising in the army or navy, or in the militia, when in actual service in time of war or public danger. (Sec. 10, Art. 1, adopted election Nov. 5, 1918.)

Sec. 11. All prisoners shall be bailable by sufficient sureties, unless for capital offenses, when the proof is evident; but this provision shall not be so construed as to prevent bail after indictment found upon examination of the evidence, in such manner as may be prescribed by law.

Sec. 12. The writ of habeas corpus is a writ of right, and shall never be suspended. The Legislature shall enact laws to render the remedy speedy and effectual.

Sec. 13. Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

Sec. 14. No person, for the same offense, shall be twice put in jeopardy of life or liberty, nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction.

Sec. 15. The right of trial by jury shall remain inviolate. The Legislature shall pass such laws as may be needed to regulate the same, and to maintain its purity and efficiency.

Sec. 16. No bill of attainder, ex post facto law, retroactive law, or any law impairing the obligation of contracts, shall be made.

Sec. 17. No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made, unless by the consent of such person; and, when taken, except for the use of the State, such compensation shall be first made, or secured by a deposit of money; and no irrevocable or uncontrollable grant of special privileges or immunities, shall be made; but all privileges and franchises granted by the Legislature, or created under its authority shall be subject to the control thereof.

Sec. 18. No person shall ever be imprisoned for debt.

Sec. 19. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Sec. 20. No citizen shall be outlawed, nor shall any person be transported out of the State for any offence committed within the same.

Sec. 21. No conviction shall work corruption of blood, or forfeiture of estate, and the estates of those who destroy their own lives shall descend or vest as in case of natural death.

Sec. 22. Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and no person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

Sec. 23. Every citizen shall have the right to keep and bear arms in the lawful defence of himself or the State; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.

Sec. 24. The military shall at all times be subordinate to the civil authority.

Sec. 25. No soldier shall in time of peace be quartered in the house of any citizen without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 26. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this State.

Sec. 27. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.

Sec. 28. No power of suspending laws in this State shall be exercised except by the Legislature.

Sec. 29. To guard against transgressions of the high powers herein delegated, we declare that everything in this "Bill of Rights" is excepted out of the general powers of government, and shall forever remain inviolate, and all laws contrary thereto, or to the following provisions, shall be void.

ARTICLE II

THE POWERS OF GOVERNMENT

Section 1. The powers of the Government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit: Those which are Legislative to one; those which are Executive to another, and those which are Judicial to another; and no person, or collection of persons, being of one of these departments, shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted.

ARTICLE III

LEGISLATIVE DEPARTMENT

Section 1. The Legislative power of this State shall be vested in a Senate and House of Representatives, which together shall be styled "The Legislature of the State of Texas."

Sec. 2. The Senate shall consist of thirty-one members, and shall never be increased above this number. The House of Representatives shall consist of ninety-three members until the first apportionment after the adoption of this Constitution, when or at any apportionment thereafter, the number of Representatives may be increased by the Legislature, upon the ratio of not more than one Representative for every fifteen thousand inhabitants; provided, the number of Representatives shall never exceed one hundred and fifty.

Sec. 3. The Senators shall be chosen by the qualified electors for the term of four years; but a new Senate shall be chosen after every apportionment, and the Senators elected after each apportionment shall be divided by lot into two classes. The seats of the Senators of the first class shall be vacated at the expiration of the first two years, and those of the second class at the expiration of four years, so that one half of the Senators shall be chosen biennially thereafter.

Sec. 4. The members of the House of Representatives shall be chosen by the qualified electors, and their term of office shall be two years from the day of their election.

Sec. 5. The Legislature shall meet every two years, at such time as may be provided by law, and at other times when convened by the Governor.

Sec. 6. No person shall be a Senator, unless he be a citizen of the United States, and, at the time of his election a qualified elector of this State, and shall have been a resident of this State five years next preceding his election, and the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-six years.

Sec. 7. No person shall be a Representative, unless he be a citizen of the United States, and, at the time of his election, a qualified elector of this State, and shall have been a resident of this State two years next preceding his election, the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-one years.

Sec. 8. Each House shall be the judge of the qualifications and election of its own members; but contested elections shall be determined in such manner as shall be provided by law.

Sec. 9. The Senate shall, at the beginning and close of each session, and at such other times as may be necessary, elect one of its members President pro tempore, who shall perform the duties of the Lieutenant Governor in any case of absence or disability of that officer, and whenever the said office of Lieutenant Governor shall be vacant. The House of Representatives shall, when it first assembles, organize temporarily, and thereupon proceed to the election of a Speaker from its own members; and each House shall choose its other officers.

Sec. 10. Two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Sec. 11. Each House may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offence.

Sec. 12. Each House shall keep a journal of its proceedings, and publish the same; and the yeas and nays of the members of either House on any question shall, at the desire of any three members present, be entered on the journals.

Sec. 13. When vacancies occur in either House, the Governor, or the person exercising the power of the Governor, shall issue writs of election to fill such vacancies; and should the Governor fail to issue a writ of election to fill any such vacancy within twenty days after it occurs, the returning officer of the district in which such vacancy may have happened, shall be authorized to order an election for that purpose.

Sec. 14. Senators and Representatives shall, except in cases of treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the Legislature is convened.

Sec. 15. Each House may punish, by imprisonment, during its sessions, any person not a member, for disrespectful or disorderly conduct in its presence, or for obstructing any of its proceedings; provided, such imprisonment shall not, at any one time, exceed forty-eight hours.

Sec. 16. The sessions of each House shall be open, except the Senate when in Executive session.

Sec. 17. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that where the Legislature may be sitting.

Sec. 18. No Senator or Representative shall, during the term for which he may be elected, be eligible to any civil office of profit under this State, which shall have been created, or the emoluments of which may have been increased

during such term; no member of either House shall, during the term for which he is elected, be eligible to any office or place, the appointment to which may be made, in whole or in part, by either branch of the Legislature; and no member of either House shall vote for any other member for any office whatever, which may be filled by a vote of the Legislature, except in such cases as are in this Constitution provided. Nor shall any member of the Legislature be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the term for which he shall have been elected.

Sec. 19. No judge of any court, Secretary of State, Attorney General, clerk of any court of record, or any person holding a lucrative office under the United States, or this State, or any foreign government shall during the term for which he is elected or appointed, be eligible to the Legislature.

Sec. 20. No person who at any time may have been a collector of taxes, or who may have been otherwise entrusted with public money, shall be eligible to the Legislature, or to any office of profit or trust under the State government, until he shall have obtained a discharge for the amount of such collections, or for all public moneys with which he may have been entrusted.

Sec. 21. No member shall be questioned in any other place for words spoken in debate in either House.

Sec. 22. A member who has a personal or private interest in any measure or bill, proposed, or pending before the Legislature, shall disclose the fact to the House, of which he is a member, and shall not vote thereon.

Sec. 23. If any Senator or Representative remove his residence from the district or county for which he was elected, his office shall thereby become vacant, and the vacancy shall be filled as provided in section 13 of this article.

Sec. 24. The members of the Legislature shall receive from the public treasury such compensation for their services, as may, from time to time, be provided by law, not exceeding five dollars per day for the first sixty days of each session; and after that not exceeding two dollars per day for the remainder of the session; except the first session held under this Constitution, when they may receive not exceeding five dollars per day for the first ninety days, and after that not exceeding two dollars per day for the remainder of the session. In addition to the per diem the members of each House shall be entitled to mileage in going to and returning from the seat of government; which mileage shall not exceed five dollars for every twenty-five miles, the distance to be computed by the nearest and most direct route of travel by land, regardless of railways or water-routes; and the Comptroller of the State shall prepare and preserve a table of distances to each county seat, now or hereafter to be established, and by such table the mileage of each member shall be paid; but no member shall be entitled to mileage for any extra session that may be called within one day after the adjournment of a regular or called session.

Sec. 25. The State shall be divided into Senatorial Districts of contiguous territory according to the number of qualified electors, as nearly as may be, and each district shall be entitled to elect one Senator; and no single county shall be entitled to more than one Senator.

Sec. 26. The members of the House of Representatives shall be apportioned among the several counties, according to the number of population in each, as nearly as may be, on a ratio obtained by dividing the population of the State, as ascertained by the most recent United States census, by the number of members of which the House is composed; provided, that whenever a single county has sufficient population to be entitled to a Representative, such county shall be formed into a separate Representative District, and when two or more counties are required to make up the ratio of representation, such counties shall be contiguous to each other; and when any one county has more than sufficient population to be entitled to one or more Representatives, such Representative or Representatives shall be apportioned to such county, and for any surplus of population it may be joined in a Representative District with any other contiguous county or counties.

Sec. 27. Elections for Senators and Representatives shall be general throughout the State, and shall be regulated by law.

Sec. 28. The Legislature shall, at its first session after the publication of each United States decennial census, apportion the State into Senatorial and Representative districts, agreeably to the provisions of sections 25 and 26 of this Article; and until the next decennial census, when the first apportionment shall be made by the Legislature, the State shall be, and it is hereby divided into Senatorial and Representative districts as provided by an ordinance of the Convention on that subject.

Proceedings

Sec. 29. The enacting clause of all laws shall be: "Be it enacted by the Legislature of the State of Texas."

Sec. 30. No law shall be passed, except by bill, and no bill shall be so amended in its passage through either House, as to change its original purpose.

Sec. 31. Bills may originate in either House, and, when passed by such House, may be amended altered or rejected by the other.

Sec. 32. No bill shall have the force of a law, until it has been read on three several days in each House, and free discussion allowed thereon; but in cases of imperative public necessity (which necessity shall be stated in a preamble or in the body of the bill) four-fifths of the House, in which the bill may be pending, may suspend this rule, the yeas and nays being taken on the question of suspension, and entered upon the journals.

Sec. 33. All bills for raising revenue shall originate in the House of Representatives, but the Senate may amend or reject them as other bills.

Sec. 34. After a bill has been considered and defeated by either House of the Legislature, no bill containing the same substance, shall be passed into a law during the same session. After a resolution has been acted on and defeated, no resolution containing the same substance, shall be considered at the same session.

Sec. 35. No bill, (except general appropriation bills, which may embrace the various subjects and accounts, for and on account of which moneys are appropriated) shall contain more than one subject, which shall be expressed in its title. But if any subject shall be embraced in an act, which shall not be expressed in the title, such act shall be void only as to so much thereof, as shall not be so expressed.

Sec. 36. No law shall be revived or amended by reference to its title; but in such case the act revived, or the section or sections amended, shall be re-enacted and published at length.

Sec. 37. No bill shall be considered, unless it has been first referred to a committee and reported thereon, and no bill shall be passed which has not been presented and referred to and reported from a committee at least three days before the final adjournment of the Legislature.

Sec. 38. The presiding officer of each House shall, in the presence of the House over which he presides, sign all bills and joint resolutions passed by the Legislature, after their titles have been publicly read before signing; and the fact of signing shall be entered on the journals.

Sec. 39. No law passed by the Legislature, except the general appropriation act, shall take effect or go into force until ninety days after the adjournment of the session at which it was enacted, unless in case of an emergency, which emergency must be expressed in a preamble or in the body of the act, the Legislature shall, by a vote of two-thirds of all the members elected to each House, otherwise direct; said vote to be taken by yeas and nays, and entered upon the journals.

Sec. 40. When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, or presented to them by the Governor; and no such session shall be of longer duration than thirty days.

Sec. 41. In all elections by the Senate and House of Representatives, jointly or separately, the vote shall be given viva voce, except in the election of their officers.

Requirements and Limitations

Sec. 42. The Legislature shall pass such laws as may be necessary to carry into effect the provisions of this Constitution.

Sec. 43. The first session of the Legislature under this Constitution shall provide for revising, digesting and publishing the laws, civil and criminal; and a like revision, digest and publication may be made every ten years thereafter; provided, that in the adoption of and giving effect to any such digest or revision, the Legislature shall not be limited by sections 35 and 36 of this Article.

Sec. 44. The Legislature shall provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution, but shall not grant extra compensation to any officer, agent, servant, or public contractors, after such public service shall have been performed or contract entered into, for the performance of the same; nor grant, by appropriation or otherwise, any amount of money out of the Treasury of the State, to any individual, on a claim, real or pretended, when the same shall not have been provided for by pre-existing law; nor employ any one in the name of the State, unless authorized by pre-existing law.

Sec. 45. The power to change the venue in civil and criminal cases shall be vested in the courts, to be exercised in such manner as shall be provided by law; and the Legislature shall pass laws for that purpose.

Sec. 46. The Legislature shall, at its first session after the adoption of this Constitution, enact effective vagrant laws.

Sec. 47. The Legislature shall pass laws prohibiting the establishment of lotteries and gift enterprises in this State, as well as the sale of tickets in lotteries, gift enterprises or other evasions involving the lottery principle, established or existing in other States.

Sec. 48. The Legislature shall not have the right to levy taxes or impose burdens upon the people, except to raise revenue sufficient for the economical administration of the government, in which may be included the following purposes:

The payment of all interest upon the bonded debt of the State;

The erection and repairs of Public Buildings;

The benefit of the sinking fund, which shall not be more than two per centum of the public debt; and for the payment of the present floating debt of the State, including matured bonds for the payment of which the sinking fund is inadequate.

The support of public schools, in which shall be included colleges and universities established by the State; and the maintenance and support of the Agricultural and Mechanical College of Texas.

The payment of the cost of assessing and collecting the revenue; and the payment of all officers, agents and employees of the State Government, and all incidental expenses connected therewith.

The support of the Blind Asylum, the Deaf and Dumb Asylum and the Insane Asylum; the State Cemetery and the public grounds of the State:

The enforcement of quarantine regulations on the coast of Texas;

The protection of the frontier.

Sec. 49. No debt shall be created by or on behalf of the State, except to supply casual deficiencies of revenue, repel invasion, suppress insurrection, defend the State in war, or pay existing debt; and the debt created to supply deficiencies in the revenue, shall never exceed in the aggregate at any one time two hundred thousand dollars.

Sec. 50. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State in aid of, or to any person, association or corporation, whether municipal or other, or to pledge the credit of the State in any manner whatsoever, for the payment of the liabilities, present or prospective, of any individual, association of individuals, municipal or other corporation whatsoever.

Sec. 51. The Legislature shall have no power to make any grant, or authorize the making of any grant, of public money to any individual, association of individuals, municipal or other corporation whatsoever; provided, that this shall not be so construed as to prevent the grant of aid in case of public calamity. (Const. 1876.)

Sec. 51. The Legislature shall have no power to make any grant, or authorize the making of any grant, of public money to any individual, association of individuals, municipal, or other corporation whatsoever; provided, however, the Legislature may grant aid to the establishment and maintenance of a home for indigent and disabled Confederate soldiers or sailors who are or may be bona fide residents of the State of Texas, under such regulations and limitations as may be provided by law; provided, that such grant shall not exceed the sum of $100,000 for any one year; and provided, further, that the provisions of this section shall not be construed so as to prevent the grant of aid in case of public calamity. (Sec. 51, Art. 3, adopted election November 6, 1894; proclamation December 21, 1894.)

Sec. 51. The Legislature shall have no power to make any grant, or authorize the making of any grant, of public money to any individual, associations of individuals, municipal or other corporations whatsoever; provided, however, the Legislature may grant aid to indigent and disabled Confederate soldiers and sailors who came to Texas prior to January 1st, 1880, and who are either over sixty years of age, or whose disability is the proximate result of actual service in the Confederate army for a period of at least three months, their widows in indigent circumstances who have never remarried, and who have been bona fide residents of the State of Texas since March 1, 1880, and who were married to such soldiers or sailors anterior to March 1, 1866; provided, said aid shall not exceed eight dollars per month; and provided, further, that no appropriation shall ever be made for the purpose hereinbefore specified, in excess of two hundred and fifty thousand dollars for any one year.

And also grant aid to the establishment and maintenance of a home for said soldiers and sailors, under such regulations and limitations as may be provided by law; provided, the grant to aid said home shall not exceed one hundred thousand dollars for any one year; and no inmate of said home shall be entitled to any other aid from the State; and provided, further, that the provisions of this section shall not be construed to prevent the grant of aid in case of public calamity. (Sec. 51, Art. 3, adopted election November 1, 1898; proclamation December 22, 1898.)

Sec. 51. The Legislature shall have no power to make any grant, or authorize the making of any grant, of public money to any individual associations or individuals, municipal or other corporations whatsoever; provided, however, the Legislature may grant aid to indigent and disabled Confederate soldiers and sailors, who came to Texas prior to January 1, 1880, and who are either over sixty years of age or whose disability is the proximate result of actual service in the Confederate army for a period of at least three months, their widows in indigent circumstances, who have never remarried and who have been bona fide residents of the State of Texas since March 1, 1880, and who were married to such soldiers or sailors anterior to March 1, 1880; provided, said aid shall not exceed eight dollars per month and provided further, that no appropriation shall ever be made for the purpose hereinbefore specified in excess of five hundred thousand dollars for any one year. And also grant aid to the establishment and maintenance of a home for said soldiers and sailors, under such regulations and limitations as may be provided by law; provided, the grant to aid said home shall not exceed one hundred thousand dollars for any one year; and no inmate of said home shall be entitled to any other aid from the State, and provided, further, that the provisions of this section shall not be construed to prevent the grant of aid in case of public calamity. (Sec. 51, Art. 3, adopted election November 8, 1904; proclamation December 29, 1904.)

Sec. 51. The Legislature shall have no power to make any grant, or authorize the making of any grant, of public money to any individual, associations of individuals, municipal or other corporations whatsoever; provided, however, the Legislature may grant aid to indigent and disabled Confederate soldiers and sailors who came to Texas prior to January 1, 1880, and who are either over sixty years of age or whose disability is the proximate result of actual service in the Confederate army for a period of at least three months, their widows in indigent circumstances who have never remarried and who have been bona fide residents of the State of Texas since March 1, 1880, and who were married to such soldiers or sailors anterior to March 1, 1880; provided, said aid shall not exceed eight dollars per month and provided, further, that no appropriations shall ever be made for the purpose hereinbefore specified in excess of five hundred thousand dollars for any one year. And also grant aid to the establishment and maintenance of a home for said soldiers and sailors, their wives and widows and women who aided in the Confederacy, under such regulations and limitations as may be provided by law; provided, the grant to aid said home shall not exceed one hundred and fifty thousand dollars for any one year, and no inmate of said homes shall be entitled to any other aid from the State; the Legislature may provide for husband and wife to remain together in the home; and provided, further, that the provisions of this section shall not be construed to prevent the grant of aid in case of public calamity. (Sec. 51, Art. 3, adopted election November 8, 1910; proclamation December 31, 1910.)

Sec. 51. The Legislature shall have no power to make any grant, or authorize the making of any grant of public money to any individual, association of individuals, municipal or oth-

er corporation whatsoever; provided, however, the Legislature may grant aid to indigent and disabled Confederate soldiers and sailors who came to Texas prior to January 1, 1900, and their widows in indigent circumstances, and who have been bona fide residents of the State of Texas since January 1, 1900 and who were married to such soldiers and sailors anterior to January 1, 1900; to indigent and disabled soldiers, who under special laws of the State of Texas, during the war between the States served for a period of at least six months in organizations for the protection of the frontier against Indian raids or Mexican marauders, and to indigent and disabled soldiers of the militia of the State of Texas, who were in active service for a period of at least six months during the war between the States, to the widows of such soldiers who are in indigent circumstances, and who were married to such soldiers prior to January 1, 1900, provided that the word "widow" in the preceding lines of this section shall not apply to women born since 1861, and also to grant aid for the establishment and maintenance of a home for said soldiers and sailors, their wives and widows, and women who aided in the Confederacy under such regulations and limitations as may be provided for by law; provided, the Legislature may provide for husband and wife to remain together in the home.

The Legislature shall have the power to levy and collect, in addition to all other taxes heretofore permitted by the Constitution of Texas, a State ad valorem tax on property not exceeding five cents on the one hundred dollars valuation for the purpose of creating a special fund for the payment of pensions for services in the Confederate army and navy, frontier organizations and the militia of the State of Texas, and for the widows of such soldiers serving in said armies, navies, organizations, or militia. (Sec. 51, Art. 3, adopted election November 5, 1912; proclamation December 30, 1912.)

Sec. 51. The Legislature shall have no power to make any grant or authorize the making of any grant of public money to any individual, association of individuals, municipal or other corporations whatsoever, provided, however, the Legislature may grant aid to indigent or disabled Confederate soldiers and sailors, who came to Texas prior to January 1, 1910, and to their widows, in indigent circumstances and who have been bona fide residents of this State since January 1, 1910, and who were married to such soldiers or sailors prior to January 1, 1910, and to indigent and disabled soldiers who under special laws of the State of Texas during the war between the States served in organizations for the protection of the frontier against Indian raiders or Mexican marauders and to indigent and disabled soldiers of the militia of the State of Texas who were in active service during the war between the States and to the widows of such soldiers who are in indigent circumstances and who were married to such soldiers prior to January 1, 1910, provided that the word "widow" in the preceding lines of this section shall not apply to women born since the year 1861, and all soldiers and sailors and widows of soldiers and sailors eligible under the above conditions shall be entitled to be placed upon the pension rolls and participate in the distribution of the pension fund of this State under any existing law or laws hereafter passed by the Legislature, and also to grant aid for the establishment and maintenance of a home for said soldiers and sailors, their wives and widows and women who aided in the Confederacy under such regulations and limitations as may be provided by law, provided the Legislature may provide for husband and wife to remain together in the home. There is hereby levied in addition to all other taxes heretofore permitted by the Constitution of Texas a State ad valorem tax on property of seven ($.07) cents on the one hundred ($100) dollars valuation for the purpose of creating a special fund for the payment of pensions for services in the Confederate army and navy, frontier organizations and the militia of the State of Texas, and for the widows of such soldiers serving in said armies, navies, organizations or militia; provided that the Legislature may reduce the tax rate herein levied, and provided further that the provisions of this section shall not be construed so as to prevent the grant of aid in cases of public calamity. (Sec. 51, Art. 3, adopted election November 4, 1924).

Sec. 52. The Legislature shall have no power to authorize any county, city, town, or other political corporation, or subdivision of the state, to lend its credit or to grant public money or thing of value in aid of, or to, any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company. (Const. 1876.)

Sec. 52. The Legislature shall have no power to authorize any county, city, town or other political corporation or subdivision of the State to lend its credit or to grant public money or thing of vatue [value] in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in such corporation, association or company; provided, however, that under legislative provision any county, any political subdivision of a county, any number of adjoining counties, or any political subdivision of the State, or any defined district now or hereafter to be described and defined within the State of Texas, and which may or may not include, towns, villages or municipal corporations, upon a vote of a two thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district or territory to be affected thereby, in addition to all other debts, may issue bonds or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such district or territory, except that the total bonded indebtedness of any city or town shall never exceed the limits imposed by other provisions of this Constitution, and levy and collect such taxes to pay the interest thereon and provide a sinking fund for the redemption thereof, as the Legislature may authorize, and in such manner as it may authorize the same, for the following purposes to wit:

(a) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof or irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purposes of irrigation, drainage or navigation, or in aid thereof.

(c) The construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof. (Sec. 52, Art. 3, adopted election November 8, 1904; proclamation December 29, 1904.)

Sec. 53. The Legislature shall have no power to grant, or to authorize any county or municipal authority to grant, any extra compensation, fee or allowance to a public officer, agent, servant or contractor, after service has been rendered, or a contract has been entered into, and performed in whole or in part; nor pay, nor authorize the payment of, any claim created against any county or municipality of the State, under any agreement or contract, made without authority of law.

Sec. 54. The Legislature shall have no power to release or alienate any lien held by the State upon any railroad, or in any wise change the tenor or meaning, or pass any act explanatory thereof; but the same shall be enforced in accordance with the original terms upon which it was acquired.

Sec. 55. The Legislature shall have no power to release or extinguish, or to authorize the releasing or extinguishing, in whole or in part, the indebtedness, liability or obligation of any incorporation or individual, to this State, or to any county or other municipal corporation therein.

Sec. 56. The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law, authorizing:

The creation, extension or impairing of liens;

Regulating the affairs of counties, cities, towns, wards or school districts;

Changing the names of persons or places;

Changing the venue in civil or criminal cases;

Authorizing the laying out, opening, altering or maintaining of roads, highways, streets or alleys;

Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other State;

Vacating roads, town plats, streets or alleys;

Relating to cemeteries, grave-yards or public grounds not of the State;

Authorizing the adoption or legitimation of children;

Locating or changing county seats;

Incorporating cities, towns or villages, or changing their charters;

For the opening and conducting of elections, or fixing or changing the places of voting;

Granting divorces;

Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;

Changing the law of descent or succession;

Regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before courts, justices of the peace, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for the collection of debts, or the enforcing of judgments, or prescribing the effect of judicial sales of real estate;

Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, magistrates or constables;

Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

Fixing the rate of interest;

Affecting the estates of minors, or persons under disability;

Remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

Exempting property from taxation;

Regulating labor, trade, mining and manufacturing;

Declaring any named person of age;

Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from the due performance of his official duties, or his securities from liability;

Giving effect to informal or invalid wills or deeds;

Summoning or empannelling grand or petit juries;

For limitation of civil or criminal actions;

For incorporating railroads or other works of internal improvements;

And in all other cases where a general law can be made applicable, no local or special law shall be enacted; provided, that nothing herein contained shall be construed to prohibit the Legislature from passing special laws for the preservation of the game and fish of this State in certain localities.

Sec. 57. No local or special law shall be passed, unless notice of the intention to apply therefor shall have been published in the locality where the matter or thing to be affected may be situated, which notice shall state the substance of the contemplated law, and shall be published at least thirty days prior to the introduction into the Legislature of such bill and in the manner to be provided by law. The evidence of such notice having been published, shall be exhibited in the Legislature, before such act shall be passed.

Sec. 58. The Legislature shall hold its sessions at the City of Austin, which is hereby declared to be the seat of government.

ARTICLE IV

EXECUTIVE DEPARTMENT

Section 1. The Executive Department of the State shall consist of a Governor, who shall be the Chief Executive Officer of the State, a Lieutenant Governor, Secretary of State, Comptroller of Public Accounts, Treasurer, Commissioner of the General Land Office, and Attorney General.

Sec. 2. All the above officers of the Executive Department (except Secretary of State) shall be elected by the qualified voters of the State at the time and places of election for members of the Legislature.

Sec. 3. The returns of every election for said executive officers, until otherwise provided by law, shall be made out, sealed up, and transmitted by the returning officers prescribed by law, to the seat of Government, directed to the Secretary of State, who shall deliver the same to the Speaker of the House of Representatives, as soon as the Speaker shall be chosen, and the said Speaker shall, during the first week of the session of the Legislature, open and publish them in the presence of both Houses of the Legislature. The person, voted for at said election, having the highest number of votes for each of said offices respectively, and being constitutionally eligible, shall be declared by the Speaker, under sanction of the Legislature, to be elected to said office. But, if two or more persons shall have the highest and an equal number of votes for either of said offices, one of them shall be immediately chosen to such office by joint vote of both Houses of the Legislature. Contested elections for either of said offices, shall be determined by both Houses of the Legislature in joint session.

Sec. 4. The Governor shall be installed on the first Tuesday after the organization of the Legislature, or as soon thereafter as practicable, and shall hold his office for the term of two years, or until his successor shall be duly installed. He shall be at least thirty years of age, a citizen of the United States, and shall have resided in this State at least five years immediately preceding his election.

Sec. 5. He shall, at stated times, receive as compensation for his services an annual salary of four thousand dollars and no more, and shall have the use and occupation of the Governor's mansion, fixtures and furniture.

Sec. 6. During the time he holds the office of Governor, he shall not hold any other office: civil, military or corporate; nor shall he practice any profession, and receive compensation, reward, fee, or the promise thereof for the same; nor receive any salary, reward or compensation or the promise thereof from any person or corporation, for any service rendered or performed during the time he is Governor, or to be thereafter rendered or performed.

Sec. 7. He shall be Commander-in-Chief of the military forces of the State, except when they are called into actual service of the United States. He shall have power to call forth the militia to execute the laws of the State, to suppress insurrections, repel invasions, and protect the frontier from hostile incursions by Indians or other predatory bands.

Sec. 8. The Governor may, on extraordinary occasions, convene the Legislature at the seat of Government, or at a different place, in case that should be in possession of the public enemy or in case of the prevalence of disease thereat. His proclamation therefor shall state specifically the purpose for which the Legislature is convened.

Sec. 9. The Governor shall, at the commencement of each session of the Legislature, and at the close of his term of office, give to the Legislature information, by message, of the condition of the State; and he shall recommend to the Legislature such measures as he may deem expedient. He shall account to the Legislature for all public moneys received and paid out by him, from any funds subject to his order, with vouchers; and shall accompany his message with a statement of the same. And at the commencement of each regular session, he shall present estimates of the amount of money required to be raised by taxation for all purposes.

Sec. 10. He shall cause the laws to be faithfully executed and shall conduct, in person, or in such manner as shall be prescribed by law, all intercourse and business of the State with other States and with the United States.

Sec. 11. In all criminal cases, except treason and impeachment, he shall have power after conviction, to grant reprieves, commutations of punishment and pardons; and under such rules as the Legislature may prescribe, he shall have power to remit fines and forfeitures. With the advice and consent of the Senate, he may grant pardons in cases of treason; and to this end he may respite a sentence therefor, until the close of the succeeding session of the Legislature; provided, that in all cases of remissions of fines and forfeitures, or grants of reprieve, commutation of punishment or pardon, he shall file in the office of the Secretary of State his reasons therefor.

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

Sec. 13. During the session of the Legislature the Governor shall reside where its sessions are held, and at all other times at the seat of Government, except when by act of the Legislature, he may be required or authorized to reside elsewhere.

Sec. 14. Every bill which shall have passed both houses of the Legislature shall be presented to the Governor for his approval. If he approve he shall sign it; but if he disapprove it, he shall return it, with his objections, to the House in which it originated, which House shall enter the objections at large upon its journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members present agree to pass the bill, it shall be sent, with the objections, to the other House, by which likewise it shall be reconsidered; and, if approved by two-thirds of the members of that House, it shall become a law; but in such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each House respectively. If any bill shall not be returned by the Governor with his objections within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Legislature, by its adjournment, prevent its return, in which case it shall be a law, unless he shall file the same, with his objections, in the office of the Secretary of State and give notice thereof by public proclamation within twenty days after such adjournment. If any bill presented to the Governor contains several items of appropriation he may object to one or more of such items, and approve the other portion of the bill. In such case he shall append to the bill, at the time of signing it, a statement of the items to which he objects, and no item so objected to shall take effect. If the Legislature be in session, he shall transmit to the House in which the bill originated a copy of such statement and the items objected to shall be separately considered. If, on reconsideration, one or more of such items be approved by two-thirds of the members present of each House, the same shall be part of the law, notwithstanding the objections of the Governor. If any such bill, containing several items of appropriation, not having been presented to the Governor ten days (Sundays excepted) prior to adjournment, be in the hands of the Governor at the time of adjournment, he shall have twenty days from such adjournment within which to file objections to any items thereof and make proclamation of the same, and such item or items shall not take effect.

Sec. 15. Every order, resolution or vote to which the concurrence of both Houses of the Legislature may be necessary, except on questions of adjournment, shall be presented to the Governor, and, before it shall take effect, shall be approved by him; or, being disapproved, shall be repassed by both Houses, and all the rules, provisions and limitations shall apply thereto as prescribed in the last preceding section in the case of a bill.

Sec. 16. There shall also be a Lieutenant Governor, who shall be chosen at every election for Governor by the same electors, in the same manner, continue in office for the same time, and possess the same qualifications. The electors shall distinguish for whom they vote as Governor and for whom as Lieutenant Governor. The Lieutenant Governor, shall by virtue of his office, be President of the Senate, and shall have, when in Committee of the Whole, a right to debate and vote on all questions; and when the Senate is equally divided to give the casting vote. In case of the death, resignation, removal from office, inability or refusal of the Governor to serve, or of his impeachment or absence from the State, the Lieutenant Governor shall exercise the powers and authority appertaining to the office of Governor until another be chosen at the periodical election, and be duly qualified; or until the Governor impeached, absent or disabled, shall be acquitted, return, or his disability be removed.

Sec. 17. If, during the vacancy in the office of Governor, the Lieutenant Governor should die, resign, refuse to serve, or be removed from office, or be unable to serve; or if he shall be impeached or absent from the State, the President of the Senate, for the time being, shall, in like manner, administer the Government until he shall be superseded by a Governor or Lieutenant Governor. The Lieutenant Governor shall, while he acts as President of the Senate, receive for his services the same compensation and mileage which shall be allowed to the members of the Senate, and no more; and during the time he administers the Government, as Governor, he shall receive in like manner the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. The President, for the time being, of the Senate, shall, during the time he administers the Government, receive in like manner the same compensation, which the Governor would have received had he been employed in the duties of his office.

Sec. 18. The Lieutenant Governor or President of the Senate succeeding to the office of Governor, shall, during the entire term to which he may succeed, be under all the restrictions and inhibitions imposed in this Constitution on the Governor.

Sec. 19. There shall be a Seal of the State which shall be kept by the Secretary of State, and used by him officially under the direction of the Governor. The Seal of the State shall be a star of five points encircled by olive and live oak branches, and the words "The State of Texas."

Sec. 20. All commissions shall be in the name and by the authority of the State of Texas, sealed with the State Seal, signed by the Governor and attested by the Secretary of State.

Sec. 21. There shall be a Secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall continue in office during the term of service of the Governor. He shall authenticate the publication of the laws, and keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the Legislature, or either House thereof, and shall perform such other duties as may be required of him by law. He shall receive for his services an annual salary of two thousand dollars and no more.

Sec. 22. The Attorney General shall hold his office for two years and until his successor is duly qualified. He shall represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party, and shall especially inquire into the charter rights of all private corporations, and, from time to time, in the name of the State, take such action in the courts as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage, not authorized by law. He shall, whenever sufficient cause exists, seek a judicial forfeiture of such charters, unless otherwise expressly directed by law, and give legal advice in writing to the Governor and other executive officers, when requested by them, and perform such other duties as may be required by law. He shall reside at the seat of the Government during his continuance in office. He shall receive for his services an annual salary of two thousand dollars, and no more, besides such fees as may be prescribed by law; provided, that the fees which he may receive shall not amount to more than two thousand dollars annually.

Sec. 23. The Comptroller of Public Accounts, the Treasurer and the Commissioner of the General Land Office shall each hold office for the term of two years, and until his successor is qualified; receive an annual salary of two-thousand and five hundred dollars, and no more; reside at the capital of the State during his continuance in office, and perform such duties as are or may be required of him by law. They and the Secretary of State shall not receive to their own use any fees, costs or perquisites of office. All fees that may be payable by law for any service performed by any officer specified in this section, or in his office, shall be paid, when received, into the State Treasury.

Sec. 24. An account shall be kept by the officers of the Executive Department, and by all officers and managers of State institutions, of all moneys and choses in action received and disbursed or otherwise disposed of by them, severally, from all sources, and for every service performed; and a semi-annual report thereof shall be made to the Governor under oath. The Governor may, at any time, require information in writing from any and all of said officers or managers, upon any subject relating to the duties, condition, management and expenses of their respective offices and institutions, which information shall be required by the Governor under oath, and the Governor may also inspect their books, accounts, vouchers and public funds; and any officer or manager who, at any time, shall wilfully make a false report or give false information,

shall be guilty of perjury, and so adjudged, and punished accordingly, and removed from office.

Sec. 25. The Legislature shall pass efficient laws facilitating the investigation of breaches of trust and duty by all custodians of public funds and providing for their suspension from office on reasonable cause shown, and for the appointment of temporary incumbents of their offices during such suspension.

Sec. 26. The Governor, by and with the advice and consent of two-thirds of the Senate, shall appoint a convenient number of Notaries Public for each county who shall perform such duties as now are or may be prescribed by law.

ARTICLE V

JUDICIAL DEPARTMENT

Section 1. The judicial power of this State shall be vested in one supreme court, in a court of appeals, in district courts, in county courts, in commissioners' courts, in courts of justices of the peace, and in such other courts as may be established by law. The Legislature may establish criminal district courts with such jurisdiction as it may prescribe, but no such court shall be established unless the district includes a city containing at least thirty thousand inhabitants, as ascertained by the census of the United States or other official census; provided, such town or city shall support said criminal district courts when established. The criminal district court of Galveston and Harris counties shall continue with the district, jurisdiction and organization now existing by law, until otherwise provided by law.

Section 1. The judicial power of this State shall be vested in one Supreme Court, in Courts of Civil Appeals, in a Court of Criminal Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

The Criminal District Court of Galveston and Harris Counties shall continue with the district jurisdiction and organization now existing by law until otherwise provided by law.

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto. (Sec. 1, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to the decision of a case. No person shall be eligible to the office of Chief Justice or Associate Justice of the Supreme Court unless he be at the time of his election a citizen of the United States and of this State, and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a court in this State, or such lawyer and judge together, at least seven years. Said Chief Justice and Associate Justices shall be elected by the qualified voters of the State at a general election, shall hold their offices for six years, and shall each receive an annual salary of not more than three thousand five hundred and fifty dollars. In case of a vacancy in the office of Chief Justice or Associate Justice of the Supreme Court, the Governor shall fill the vacancy until the next general election for State officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the State.

Sec. 2. The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall constitute a quorum, and the concurrence of two Judges shall be necessary to the decision of a case. No person shall be eligible to the office of Chief Justice or Associate Justice of the Supreme Court unless he be, at the time of his election, a citizen of the United States and of this State and unless he shall have attained the age of thirty years, and shall have been a practicing lawyer or a judge of a court, or such lawyer and judge together at least seven years. Said Chief Justice and Associate Justices shall be elected by the qualified voters of the State at a general election, shall hold their offices six years, or until their successors are elected and qualified, and shall each receive an annual salary of four thousand dollars until otherwise provided by law. In case of a vacancy in the office of Chief Justice of the Supreme Court the Governor shall fill the vacancy until the next general election for State officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the State. The Judges of the Supreme Court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution, and until their successors are elected and qualified. (Sec. 2, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 3. The Supreme Court shall have appellate jurisdiction only, which shall be co-extensive with the limits of the state; but shall only extend to civil cases of which the district courts have original or appellate jurisdiction. Appeals may be allowed from interlocutory judgments of the district courts, in such cases and under such regulations as may be provided by law. The Supreme Court and the judges thereof shall have power to issue, under such regulations as may be prescribed by law, the writ of mandamus, and all other writs necessary to enforce the jurisdiction of said court. The Supreme Court shall have power, upon affidavit or otherwise, as by the court may be thought proper, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. The Supreme Court shall sit for the transaction of business from the first Monday in October until the last Saturday of June of every year, at the seat of government, and at not more than two other places in the State. (Const. 1876.)

Sec. 4. The Supreme Court shall appoint a clerk for each place at which it may sit, and each of said clerks shall give bond in such manner as is now or may hereafter be required by law; shall hold his office for four years, and shall be subject to removal by the said Court for good cause entered of record on the minutes of said Court. (Const. 1876.)

Sec. 3. The Supreme Court shall have appellate jurisdiction only except as herein specified, which shall be co-extensive with the limits of the State. Its appellate jurisdiction shall extend to questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction under such restrictions and regulations as the Legislature may prescribe. Until otherwise provided by law the appellate jurisdiction of the Supreme Court shall extend to questions of law arising in the cases in the Courts of Civil Appeals in which the Judges of any Court of Civil Appeals may disagree, or where the several Courts of Civil Appeals may hold differently on the same question of law or where a statute of the State is held void. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. The Supreme Court shall sit for the transaction of business from the first Monday in October of each year until the last Saturday of June in the next year, inclusive, at the capital of the State.

The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may hereafter, be required by law, and he may hold his office for four years and shall be subject to removal by said court for good cause entered of record on the minutes of said court who shall receive such compensation as the Legislature may provide (Sec. 3, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Explanatory

Sections 3 and 4 of the Constitution of 1876 are arranged to precede section 3, adopted August 11, 1891, because of the subject matter of the amended sections.

Sec. 5. The Court of Appeals shall consist of three judges, any two of whom shall constitute a quorum, and the concurrence of two judges shall be necessary to a decision of said court. They shall be elected by the qualified voters of the State at a general election. They shall be citizens of the United States and of this State; shall have arrived at the age of thirty years at the time of election; each shall have been a practicing lawyer, or a judge of a Court in this State, or such lawyer and judge together, for at least seven years. Said judges shall hold their offices for a term of six years, and each of them shall receive an annual salary of three thousand five hundred and fifty dollars, which shall not be increased or diminished during their term of office. (Const. 1876.)

Sec. 4. The Court of Criminal Appeals shall consist of three Judges, any two of whom shall constitute a quorum, and the concurrence of two Judges shall be necessary to a decision of said court. Said Judges shall have the same

qualifications and receive the same salaries as the Judges of the Supreme Court. They shall be elected by the qualified voters of the State at a general election and shall hold their offices for a term of six years. In case of a vacancy in the office of a Judge of the Court of Criminal Appeals, the Governor shall fill such vacancy by appointment for the unexpired term.

The Judges of the Court of Appeals who may be in office at the time when this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution and laws as Judges of the Court of Criminal Appeals. (Sec. 4, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Explanatory

Section 5 of the Constitution of 1876 is arranged to precede section 4, adopted August 11, 1891, because of the subject matter of the amended section.

Sec. 6. The Court of Appeals shall have appellate jurisdiction, co-extensive with the limits of the State, in all criminal cases, of whatever grade, and in all civil cases, unless hereafter otherwise provided by law, of which the county courts have original or appellate jurisdiction. In civil cases its opinions shall not be published unless the publication of such opinions be required by law. The Court of Appeals and the judges thereof shall have power to issue the writ of habeas corpus; and under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. The Court of Appeals shall have power upon affidavits, or otherwise, as by the court may be thought proper to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. The Court of Appeals shall sit for the transaction of business from the first Monday of October until the last Saturday of June of every year, at the capitol, and at not more than two other places in the State, at which the Supreme Court shall hold its sessions. The court shall appoint a clerk for each place at which it may sit, and each of said clerks shall give bond in such manner as is now or may hereafter be required by law; shall hold his office for four years, and shall be subject to removal by the said Court for good cause, entered of record on the minutes of said Court. (Const. 1876.)

Sec. 5. The Court of Criminal Appeals shall have appellate jurisdiction co-extensive with the limits of the State in all criminal cases of whatever grade, with such exceptions and under such regulations as may be prescribed by law.

The Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ of habeas corpus, and under such regulations as may be prescribed by law, issue such writs as may be necessary to enforce its own jurisdiction. The Court of Criminal Appeals shall have power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction. The Court of Criminal Appeals shall sit for the transaction of business **from the first Monday in October to the** last Saturday of June **in each year, at the State capital and** two other places (or the capital city) if the Legislature **shall** hereafter so provide. **The Court of Criminal Appeals shall** appoint a clerk for each place at which it may sit and each clerk shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for four years unless sooner removed by the court for good cause entered of record on the minutes of said court. (Sec. 5, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Explanatory

Section 6 of the Constitution of 1876 is arranged to precede section 5, adopted August 11, 1891, because of the subject matter of the amended section.

Sec. 6. The Legislature shall as soon as practicable after the adoption of this amendment divide the State into not less than two nor more than three Supreme judicial districts and thereafter into such additional districts as the increase of population and business may require, and shall establish a Court of Civil Appeals in each of said districts, which shall consist of a Chief Justice and two Associate Justices, who shall have the qualifications as herein prescribed for Justices of the Supreme Court. Said Court of Civil Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all civil cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error.

Each of said Courts of Civil Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law. Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a [a] term of six years and shall receive for their services the sum of three thousand five hundred dollars per annum, until otherwise provided by law. Said courts shall have such other jurisdiction, original and appellate as may be prescribed by law. Each Court of Civil Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law.

Until the organization of the Courts of Civil Appeals and Criminal Appeals, as herein provided for, the jurisdiction, power and organization and location of the Supreme Court, the Court of Appeals and the Commission of Appeals shall continue as they were before the adoption of this amendment.

All civil cases which may be pending in the Court of Appeals shall as soon as practicable after the organization of the Courts of Civil Appeals be certified to, and the records thereof transmitted to the proper Courts of Civil Appeals to be decided by said courts. At the first session of the Supreme Court the Court of Criminal Appeals and such of [of] the Courts of Civil Appeals which may be hereafter created under this article after the first election of the Judges of such courts under this amendment. The terms of office of the Judges of each court shall be divided into three classes and the Justices thereof shall draw for the different classes. Those who shall draw class No. 1 shall hold their offices two years, those drawing class No. 2 shall hold their offices for four years and those who may draw class No. 3 shall hold their offices for six years, from the date of their election and until their successors are elected and qualified, and thereafter each of the said Judges shall hold his office for six years, as provided in this Constitution. (Sec. 6, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Explanatory

In the resolution proposing the above Amendment, Acts 1891, p. 197, the second and third sentences of the fourth paragraph were joined and read as follows: "At the first session of the Supreme Court, the Court of Criminal Appeals, and such of the Courts of Civil Appeals which may be hereafter created under this article after the first election of the Judges of such Courts under this amendment, the terms of office of the Judges of each Court shall be divided into three classes, and the Justices thereof shall draw for the different classes."

Sec. 7. The State shall be divided into twenty-six judicial districts, which may be increased or diminished by the Legislature. For each district there shall be elected, by the qualified voters thereof, at a general election for members of the Legislature, a judge, who shall be at least twenty-five years of age, shall be a citizen of the United States, shall have been a practicing attorney or a judge of a court in this State for the period of four years, and shall have resided in the district in which he is elected for two years next before his election; shall reside in his district during his term of office; shall hold his office for the term of four years; shall receive an annual salary of twenty-five hundred dollars, which shall not be increased or diminished during his term of service; and shall hold the regular terms of court at one place in each county in the district twice in each year, in such manner as may be prescribed by law. The Legislature shall have power by general act to authorize the holding of special terms, when necessary and to provide for holding more than two terms of the court in any county, for the dispatch of business; and shall provide for the holding of district courts when the judge thereof is absent, or is from any cause disabled or disqualified from presiding. (Const. 1876.)

Sec. 7. The State shall be divided into as many judicial districts as may now or hereafter be provided by law, which may be increased or diminished by law. For each district there shall be elected by the qualified voters thereof, at a general election, a judge, who shall be a citizen of the United States and of this State, who shall have been a practicing lawyer of this State or a judge of a court in this State, for four years next preceding his election, who shall have resided in the district in which he was elected for two years next preceding his election, who shall reside in his district during his term of office, who shall hold his office for the period of four years, and shall receive for his services an annual salary of two thousand five hundred dollars, until otherwise changed by law. He shall hold the regular terms of his court at the county seat of each county in his district at least twice in each year in such manner as may be pre-

scribed by law. The Legislature shall have power by general or special laws to authorize the holding of special terms of the court or the holding of more than two terms in any county for the dispatch of business.

The Legislature shall also provide for the holding of District Court when the judge thereof is absent, or is from any cause disabled or disqualified from presiding.

The District Judges who may be in office when this amendment takes effect shall hold their offices until their respective terms shall expire under their present election or appointment. (Sec. 7, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 8. The District Court shall have original jurisdiction in criminal cases of the grade of felony; of all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; in cases of misdemeanors, involving official misconduct; of all suits to recover damages for slander or defamation of character; of all suits for the trial of title to land; and for the enforcement of liens thereon; of all suits for trial of right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars; and of all suits, complaints, or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at, or amount to, five hundred dollars exclusive of interest; and the said courts and the judges thereof shall have power to issue writs of habeas corpus in felony cases, mandamus, injunction, certiorari, and all writs necessary to enforce their jurisdiction. The District Court shall have appellate jurisdiction and general control in probate matters over the county court, established in each county, for appointing guardians, granting letters testamentary and of administration, for settling the accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians and minors, under such regulations as may be prescribed by the Legislature. All cases now pending in the Supreme Court, of which the Court of Appeals has appellate jurisdiction under the provisions of this Article, shall, as soon as practicable after the establishment of said Court of Appeals, be certified, and the records transmitted to the Court of Appeals, and shall be decided by such Court of Appeals as if the same had been originally appealed to such court. (Const. 1876.)

Sec. 8. The District Court shall have original jurisdiction in all criminal cases of the grade of felony; in all suits in behalf of the State to recover penalties, forfeitures and escheats; of all cases of divorce; of all misdemeanors involving official misconduct; of all suits to recover damages for slander or defamation of character; of all suits for trial of title to land and for the enforcement of liens thereon; of all suits for the trial of the right of property levied upon by virtue of any writ of execution, sequestration or attachment when the property levied on shall be equal to or exceed in value five hundred dollars; of all suits, complaints or pleas whatever, without regard to any distinction between law and equity, when the matter in controversy shall be valued at or amount to five hundred dollars exclusive of interest; of contested elections, and said court and the judges thereof, shall have power to issue writs of habeas corpus, mandamus, injunction and certiorari, and all writs necessary to enforce their jurisdiction.

The District Court shall have appellate jurisdiction and general control in probate matters, over the County Court established in each county, for appointing guardians, granting letters testamentary and of administration, probating wills, for settling the accounts of executors, administrators and guardians, and for the transaction of all business appertaining to estates; and original jurisdiction and general control over executors, administrators, guardians and minors under such regulations as may be prescribed by law. The District Court shall have appellate jurisdiction and general supervisory control over the County Commissioners Court, with such exceptions and under such regulations as may be prescribed by law; and shall have general original jurisdiction over all causes of action whatever for which a remedy or jurisdiction is not provided by law or this Constitution, and such other jurisdiction, original and appellate, as may be provided by law. (Sec. 8, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 9. There shall be a clerk for the District Court of each county, who shall be elected by the qualified voters for the State and county officers, and who shall hold his office for two years, subject to removal by information, or by indictment of a grand jury, and conviction by a petit jury. In case of vacancy, the judge of the District Court shall have the power to appoint a clerk, who shall hold until the office can be filled by election.

Sec. 10. In the trial of all causes in the District Courts, the plaintiff or defendant shall, upon application made in open court, have the right of trial by jury; but no jury shall be empaneled in any civil case unless demanded by a party to the case, and a jury fee be paid by the party demanding a jury, for such sum, and with such exceptions as may be prescribed by the Legislature.

Sec. 11. No Judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him by affinity or consanguinity, within such degree as may be prescribed by law, or where he shall have been counsel in the case. When the Supreme Court, or the Appellate Court, or any two of the members of either, shall be thus disqualified to hear and determine any case or cases in said Court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law, for the trial and determination of said cause or causes. When a Judge of the District Court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or, upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law. And the District Judges may exchange districts, or hold courts for each other, when they may deem it expedient, and shall do so when directed by law. The disqualification of Judges of inferior tribunals shall be remedied, and vacancies in their offices shall be filled, as prescribed by law. (Const. 1876.)

Sec. 11. No judge shall sit in any case wherein he may be interested, or where either of the parties may be connected with him, either by affinity or consanguinity, within such a degree as may be prescribed by law, or when he shall have been counsel in the case. When the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals, or any member of either, shall be thus disqualified to hear and determine any case or cases in said court, the same shall be certified to the Governor of the State, who shall immediately commission the requisite number of persons learned in the law for the trial and determination of such cause or causes. When a judge of the District Court is disqualified by any of the causes above stated, the parties may, by consent, appoint a proper person to try said case; or upon their failing to do so, a competent person may be appointed to try the same in the county where it is pending, in such manner as may be prescribed by law.

And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient, and shall do so when required by law. This disqualification of judges of inferior tribunals shall be remedied and vacancies in their offices filled as may be prescribed by law. (Sec. 11, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 12. All judges of the Supreme Court, Court of Appeals and district courts, shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all writs and process shall be, "The State of Texas." All prosecutions shall be carried on in the name and by the authority of "The State of Texas," and conclude "Against the peace and dignity of the state." (Const. 1876.)

Sec. 12. All judges of courts of this State, by virtue of their office, be conservators of the peace throughout the State. The style of all writs and process shall be, "The State of Texas." All prosecutions shall be carried on in the name and by authority of the State of Texas, and shall conclude: "Against the peace and dignity of the State." (Sec. 12, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Explanatory

The resolution proposing this section, Acts 22d Leg., 1891, p. 197, read as above. It is apparent that the word "shall" should be read into the first sentence making it read: "All Judges of Courts of this State, by virtue of their office, shall be conservators of the peace throughout the State."

Sec. 13. Grand and petit juries in the District Courts shall be composed of twelve men; but nine members of a grand jury shall be a quorum to transact business and present bills. In trials of civil cases, and in trials of criminal cases below the grade of felony in the District Courts, nine members of the jury, concurring, may render a verdict, but when the verdict shall be rendered by less than the whole number, it shall be signed by every member of the jury concurring in it. When, pending the trial of any case, one or more jurors not exceeding three, may die, or

be disabled from sitting, the remainder of the jury shall have the power to render the verdict; provided, that the Legislature may change or modify the rule authorizing less than the whole number of the jury to render a verdict.

Sec. 14. The Judicial Districts in this State and the time of holding the Courts therein are fixed by ordinance forming part of this Constitution, until otherwise provided by law.

Sec. 15. There shall be established in each county in this State a County Court, which shall be a court of record; and there shall be elected in each county, by the qualified voters, a County Judge, who shall be well informed in the law of the State; shall be a conservator of the peace, and shall hold his office for two years, and until his successor shall be elected and qualified. He shall receive as a compensation for his services such fees and perquisites as may be prescribed by law.

Sec. 16. The County Court shall have original jurisdiction of all misdemeanors, of which exclusive original jurisdiction is not given to the justices' court, as the same are now or may be hereafter prescribed by law, and when the fine to be imposed shall exceed two hundred dollars; and they shall have exclusive original jurisdiction in all civil cases when the matter in controversy shall exceed in value two hundred dollars, and not exceed five hundred dollars, exclusive of interest; and concurrent jurisdiction with the district courts, when the matter in controversy shall exceed five hundred and not exceed one thousand dollars, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases, civil and criminal, of which justices' courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed twenty dollars, exclusive of costs, under such regulations as may be prescribed by law. In all appeals from justice's courts, there shall be a trial de novo in the county court, and when the judgment rendered or fine imposed by the county court shall not exceed one hundred dollars such trial shall be final; but if the judgment rendered or fine imposed shall exceed one hundred dollars, as well as in all cases, civil and criminal, of which the county court has exclusive or concurrent original jurisdiction, an appeal shall lie to the Court of Appeals under such regulations as may be prescribed by law. The county courts shall have the general jurisdiction of a probate court. They shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law. And the county courts, or judges thereof, shall have power to issue writs of mandamus, injunction, and all other writs necessary to the enforcement of the jurisdiction of said courts; and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the county court, or any other court or tribunal inferior to said court. The county court shall not have criminal jurisdiction in any county, where there is a criminal district court, unless expressly conferred by law; and in such counties, appeals from justice's courts and other inferior courts and tribunals, in criminal cases, shall be to the criminal district courts, under such regulations as may be prescribed by law, and in all such cases an appeal shall lie from such district courts to the court of appeals. Any case pending in the county court, which the county judge may be disqualified to try, shall be transferred to the district court of the same county for trial; and where there exists any cause disqualifying the county judge for the trial of a cause of which the county court has jurisdiction, the district court of such county shall have original jurisdiction of such cause. (Const. 1876.)

Sec. 16. The County Court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices Court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed $200, and they shall have exclusive jurisdiction in all civil cases when the matter in controversy shall exceed in value $200, and not exceed $500, exclusive of interest, and concurrent jurisdiction with the District Court when the matter in controversy shall exceed $500, and not exceed $1,000, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases civil and criminal of which Justices Courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed $20, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from Justices Courts there shall be a trial de novo in the County Court, and appeals may be prosecuted from the final judgment rendered in such cases by the County Court, as well as all cases civil and criminal of which the County Court has exclusive or concurrent or original jurisdiction of civil appeals in civil cases to the Court of Civil Appeals and in such criminal cases to the Court of Criminal Appeals, with such exceptions and under such regulations as may be prescribed by law.

The County Court shall have the general jurisdiction of a Probate Court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law; and the County Court, or judge thereof, shall have power to issue writs of injunctions, mandamus and all writs necessary to the enforcement of the jurisdiction of said Court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the County Court, or any other Court or tribunal inferior to said Court. The County Court shall not have criminal jurisdiction in any county where there is a Criminal District Court, unless expressly conferred by law, and in such counties appeals from Justices Courts and other inferior courts and tribunals in criminal cases shall be to the Criminal District Court, under such regulations as may be prescribed by law; and in all such cases an appeal shall lie from such District Court to the Court of Criminal Appeals. When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law. (Sec. 16, Art. 5, adopted election August 11, 1891: proclamation September 22, 1891.)

Sec. 17. The County Court shall hold a term for civil business at least once in every two months, and shall dispose of probate business, either in term time or vacation as may be provided by law, and said court shall hold a term for criminal business once in every month as may be provided by law. Prosecutions may be commenced in said court by information filed by the county attorney, or by affidavit, as may be provided by law. Grand juries empanneled in the District Courts shall enquire into misdemeanors, and all indictments therefor returned into the District Courts shall forthwith be certified to the County Courts or other inferior courts, having jurisdiction to try them for trial; and if such indictment be quashed in the County, or other inferior court, the person charged, shall not be discharged if there is probable cause of guilt, but may be held by such court or magistrate to answer an information or affidavit. A jury in the County Court shall consist of six men; but no jury shall be empanneled to try a civil case unless demanded by one of the parties, who shall pay such jury fee therefor, in advance, as may be prescribed by law, unless he makes affidavit that he is unable to pay the same.

Sec. 18. Each organized county in the State now or hereafter existing, shall be divided from time to time, for the convenience of the people, into precincts, not less than four and not more than eight. The present County Courts shall make the first division. Subsequent divisions shall be made by the Commissioner's Court, provided for by this Constitution. In each such precinct there shall be elected at each biennial election, one justice of the peace and one constable, each of whom shall hold his office for two years and until his successor shall be elected and qualified; provided that in any precinct in which there may be a city of 8000 or more inhabitants, there shall be elected two justices of the peace. Each county shall in like manner be divided into four commissioners' precincts in each of which there shall be elected by the qualified voters thereof one county commissioner, who shall hold his office for two years and until his successor shall be elected and qualified. The county commissioners so chosen, with the county judge, as presiding officer, shall compose the County Commissioners Court, which shall exercise such powers and jurisdiction over all county business, as is conferred

by this Constitution and the laws of the State, or as may be hereafter prescribed.

Explanatory

The phrase "Commissioners' Court," in the third sentence of this section is as printed above in the original document.

Sec. 19. Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for two hundred dollars, and in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, of which exclusive original jurisdiction is not given to the District or County Courts; and such other jurisdiction, criminal and civil, as may be provided by law, under such regulations as may be prescribed by law; and appeals to the County Courts shall be allowed in all cases decided in Justices' Courts where the judgment is for more than twenty dollars exclusive of costs; and in all criminal cases under such regulations as may be prescribed by law. And the justices of the peace shall be ex officio notaries public. And they shall hold their courts at such times and places as may be provided by law.

Sec. 20. There shall be elected for each county, by the qualified voters, a county clerk, who shall hold his office for two years, who shall be clerk of the County and Commissioners' Courts and recorder of the county, whose duties, perquisites and fees of office shall be prescribed by the Legislature, and a vacancy in whose office shall be filled by the Commissioners' Court, until the next general election for county and State officers; provided, that in counties having a population of less than eight thousand persons there may be an election of a single clerk, who shall perform the duties of district and county clerks.

Sec. 21. A county attorney, for counties in which there is not a resident criminal district attorney, shall be elected by the qualified voters of each county, who shall be commissioned by the Governor, and hold his office for the term of two years. In case of vacancy the Commissioners' Court of the county shall have power to appoint a county attorney until the next general election. The county attorneys shall represent the State in all cases in the District and inferior courts in their respective counties; but if any county shall be included in a district in which there shall be a district attorney, the respective duties of district attorneys and county attorneys shall in such counties be regulated by the Legislature. The Legislature may provide for the election of district attorneys in such districts, as may be deemed necessary, and make provision for the compensation of district attorneys, and county attorneys; provided, district attorneys shall receive an annual salary of five hundred dollars, to be paid by the State, and such fees, commissions and perquisites as may be provided by law. County attorneys shall receive as compensation only such fees, commissions and perquisites as may be prescribed by law.

Sec. 22. The Legislature shall have power, by local or general law, to increase, diminish or change the civil and criminal jurisdiction of County Courts; and in cases of any such change of jurisdiction, the Legislature shall also conform the jurisdiction of the other courts to such change.

Sec. 23. There shall be elected by the qualified voters of each county a sheriff, who shall hold his office for the term of two years, whose duties, and perquisites, and fees of office, shall be prescribed by the Legislature, and vacancies in whose office shall be filled by the Commissioners' Court until the next general election for county or State officers.

Sec. 24. County Judges, county attorneys, clerks of the District and County Courts, justices of the peace, constables, and other county officers, may be removed by the Judges of the District Courts for incompetency, official misconduct, habitual drunkenness, or other causes defined by law, upon the cause therefor being set forth in writing and the finding of its truth by a jury.

Sec. 25. The Supreme Court shall have power to make rules and regulations for the government of said court, and the other courts of the State, to regulate proceedings and expedite the dispatch of business therein. (Const. 1876.)

Sec. 25. The Supreme Court shall have power to make and establish rules of procedure not inconsistent with the laws of the State for the government of said court and the other courts of this State to expedite the dispatch of business therein. (Sec. 25, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 26. The State shall have no right of appeal in criminal cases.

Sec. 27. The Legislature shall, at its first session, provide for the transfer of all business, civil and criminal, pending in District Courts, over which jurisdiction is given by this Constitution to the County Courts, or other inferior courts, to such County or inferior courts, and for the trial or disposition of all such causes by such County or other inferior courts.

Sec. 28. Vacancies in the office of judges in the Supreme Court, of the Court of Appeals, and District Court shall be filled by the Governor until the next succeeding general election; and vacancies in the office of county judge and justices of the peace shall be filled by the commissioners' court, until the next general election for such offices. (Const. 1876.)

Sec. 28. Vacancies in the office of Judges of the Supreme Court, the Court of Criminal Appeals, the Court of Civil Appeals and District Courts shall be filled by the Governor until the next succeeding general election; and vacancies in the office of County Judge and justices of the peace shall be filled by the Commissioners Court until the next general election for such offices. (Sec. 28, Art. 5, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 29. The County Court shall hold at least four terms for both civil and criminal business annually, as may be provided by the Legislature, or by the Commissioners' Court of the county under authority of law, and such other terms each year as may be fixed by the Commissioners' Court; provided, the Commissioners' Court of any county having fixed the times and number of terms of the County Court, shall not change the same again until the expiration of one year. Said court shall dispose of probate business either in term time or vacation, under such regulation as may be prescribed by law. Prosecutions may be commenced in said courts in such manner as is or may be provided by law, and a jury therein shall consist of six men. Until otherwise provided, the terms of the County Court shall be held on the first Mondays in February, May, August and November, and may remain in session three weeks. (Sec. 29, Art. 5, adopted election August 14, 1883; proclamation September 25, 1883.)

ARTICLE VI

SUFFRAGE

Section 1. The following classes of persons shall not be allowed to vote in this State; to wit:

First: Persons under twenty-one years of age.

Second: Idiots and lunatics.

Third: All paupers supported by any county.

Fourth: All persons convicted of any felony, subject to such exceptions as the Legislature may make.

Fifth: All soldiers, marines and seamen, employed in the service of the Army or Navy of the United States.

Sec. 2. Every male person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, and who shall have resided in this state one year next preceding an election, and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector; and every male person of foreign birth, subject to none of the foregoing disqualifications, who at any time before an election, shall have declared his intention to become a citizen of the United States, in accordance with the Federal naturalization laws, and shall have resided in this State one year next preceding such election, and the last six months in the county in which he offers to vote, shall also be deemed a qualified elector, and all electors shall vote in the election precinct of their residence; provided, that electors living in any unorganized county may vote at any election precinct in the county, to which such county is attached for judicial purposes. (Const. 1876.)

Sec. 2. Every male person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years, and who shall be a citizen of the United States, and who shall have resided in this state one year next preceding an election, and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector. And every male person of foreign birth, subject to none of the foregoing disqualifications, who, not less than six months before any election at which he offers to vote, shall have declared his intention to become a citizen of the United States in accordance with the Federal naturalization laws, and shall have

resided in this state one year next preceding such election, and the last six months in the county in which he offers to vote, shall also be deemed a qualified elector; and all electors shall vote in the election precinct of their residence; provided, that electors living in any unorganized county may vote at any election precinct in the county to which such county is attached for judicial purposes. (Sec. 2, Art. 6, adopted election November 3, 1896; proclamation December 18, 1896.)

Sec. 2. Every male person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years and who shall be a citizen of the United States and who shall have resided in this State one year next preceding an election and the last six months within the district or county in which he offers to vote, shall be deemed a qualified elector and every male person of foreign birth subject to none of the foregoing disqualifications who not less than six months before any election at which he offers to vote, shall have declared his intention to become a citizen of the United States in accordance with the Federal Naturalization Laws, and shall have resided in this State one year next preceding such election and the last six months in the county in which he offers to vote, shall also be deemed a qualified elector; and all electors shall vote in the election precinct of their residence; provided, that electors living in any unorganized county may vote at any election precinct in the county to which such county is attached for judicial purposes; and provided further, that any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before he offers to vote at any election in this State and hold a receipt showing his poll tax paid before the first day of February next preceding such election. Or if said voter shall have lost or misplaced said tax receipt, he shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. And this provision of the Constitution shall be self enacting without the necessity of further legislation. (Sec. 2, Art. 6, adopted election November 4, 1902; proclamation December 26, 1902.)

Sec. 2. Every person subject to none of the foregoing disqualifications, who shall have attained the age of twenty-one years and who shall be a citizen of the United States and who shall have resided in this State one year next preceding an election and the last six months within the district or county in which such person offers to vote, shall be deemed a qualified elector; provided, that electors living in any unorganized county may vote at any election precinct in the county to which such county is attached for judicial purposes; and provided further, that any voter who is subject to pay a poll tax under the laws of the State of Texas shall have paid said tax before offering to vote at any election in this State and hold a receipt showing that said poll tax was paid before the first day of February next preceding such election. Or if said voter shall have lost or misplaced said tax receipt, he or she, as the case may be, shall be entitled to vote upon making affidavit before any officer authorized to administer oaths that such tax receipt has been lost. Such affidavit shall be made in writing and left with the judge of the election. The husband may pay the poll tax of his wife and receive the receipt therefor. In like manner the wife may pay the poll tax of her husband and receive the receipt therefor. The Legislature may authorize absentee voting. And this provision of the Constitution shall be self-enacting without the necessity of further legislation. (Sec. 2, Art. 6, adopted election November 4, 1902; proclamation Dec. 26, 1902; Amendment adopted election fourth Saturday in July, 1921.)

Sec. 3. All qualified electors of the State, as herein described, who shall have resided for six months immediately preceding an election, within the limits of any city or corporate town, shall have the right to vote for Mayor and all other elective officers; but in all elections to determine expenditure of money or assumption of debt, only those shall be qualified to vote who pay taxes on property in said city or incorporated town; provided, that no poll tax for the payment of debts thus incurred, shall be levied upon the persons debarred from voting in relation thereto.

Sec. 4. In all elections by the people the vote shall be by ballot, and the Legislature shall provide for the numbering of tickets, and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot-box; but no law shall ever be enacted requiring a registration of the voters of this State. (Const. 1876.)

Sec. 4. In all elections by the people the vote shall be by ballot and the Legislature shall provide for the numbering of tickets and make such other regulations as may be necessary to detect and punish fraud and preserve the purity of the ballot box and the Legislature may provide by law for the registration of all voters in all cities containing a population of ten thousand inhabitants or more. (Sec. 4, Art. 6, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 5. Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom.

ARTICLE VII

EDUCATION

The Public Free Schools

Section 1. A general diffusion of knowledge being essential to the preservation of the liberties and rights of the people, it shall be the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools.

Sec. 2. All funds, lands and other property heretofore set apart and appropriated for the support of public schools; all the alternate sections of land reserved by the State out of grants heretofore made or that may hereafter be made to railroads or other corporations of any nature whatsoever; one half of the public domain of the State; and all sums of money that may come to the State from the sale of any portion of the same, shall constitute a perpetual public school fund.

Sec. 3. There shall be set apart annually not more than one-fourth of the general revenue of the State, and a poll tax of one dollar on all male inhabitants in this State between the ages of twenty-one and sixty years, for the benefit of the public free schools. (Const. 1876.)

Sec. 3. One-fourth of the revenue derived from the state occupation taxes, and a poll tax of one dollar on every male inhabitant of this state, between the ages of twenty-one and sixty years shall be set apart annually for the benefit of the public free schools, and, in addition thereto, there shall be levied and collected an annual ad valorem state tax of such an amount, not to exceed twenty cents on the one hundred dollars valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public free schools of this state for a period of not less than six months in each year; and the Legislature may also provide for the formation of school districts within all or any of the counties of this state, by general or special law, without the local notice required in other cases of special legislation, and may authorize an additional annual ad valorem tax to be levied and collected within such school districts for the further maintenance of public free schools and the erection of school buildings therein; provided, that two-thirds of the qualified property taxpaying voters of the district, voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts. (Sec. 3, Art. 7, adopted election August 14, 1883; proclamation September 25, 1883.)

Sec. 3. One-fourth of the revenue derived from the state occupation taxes, and a poll tax of one dollar on every male inhabitant of this state, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools, and, in addition thereto, there shall be levied and collected an annual ad valorem state tax of such an amount, not to exceed twenty cents on the one hundred dollars valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public free schools of this State for a period of not less than six months in each year, and the Legislature may also provide for the formation of school districts within all or any of the counties of this state, by general or special law, without the local notice required in other cases of special legislation, and may authorize an additional ad valorem tax to be levied and collected within such school districts for the further maintenance of public free schools, and the erection and equipment of school buildings therein; provided, that a majority of the qualified property taxpaying voters of the district, voting at an election to be held for that purpose, shall vote for such tax, not to exceed in any one year fifty cents on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts. (Sec. 3, Art. 7, adopted election November 3, 1908; proclamation February 2, 1909.)

Sec. 3. One-fourth of the revenue derived from the state occupation taxes and a poll tax of $1 on every male inhabitant of this state, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free

school and in addition thereto, there shall be levied and collected an annual ad valorem state tax of such an amount, not to exceed twenty cents on the $100 valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public free schools of this state for a period of not less than six months in each year, and the Legislature may also provide for the formation of school districts by general or special law, without the local notice required in other cases of special legislation, and all such school districts, whether created by general or special law, may embrace parts of two or more counties. And the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts, and for the management and control of the public school or schools of such districts, whether such districts are composed of territory wholly within a county or in parts of two or more counties. And the legislature may authorize an additional ad valorem tax to be levied and collected within all school districts, heretofore formed or hereafter formed, for the further maintenance of public free schools, and the erection and equipment of school buildings therein, provided, that a majority of the qualified property taxpaying voters of the district, voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year fifty cents on the $100 valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns, constituting separate and independent school districts. (Sec. 3, Art. 7, adopted election August 3, 1909; proclamation September 24, 1909.)

Sec. 3. One-fourth of the revenue derived from the State occupation taxes and a poll tax of one ($1.00) dollar on every male inhabitant of this State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and, in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred ($100.00) dollar valuation, as, with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient, the deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school districts by general or special law, without the local notice required in other cases of special legislation; and all such school districts, whether created by general or special law, may embrace parts of two or more counties. And the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts, and for the management and control of the public school or schools of such district, whether such districts are composed of territory wholly within a county or in parts of two or more counties. And the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and the erection and equipment of school buildings therein; provided, that a majority of the qualified property tax-paying voters of the district, voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year fifty cents on the one hundred dollar valuation of the property subject to taxation in such district but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns, constituting separate and independent school districts. (Sec. 3, Art. 7, adopted November 5, 1918.)

Sec. 3. One-fourth of the revenue derived from the State occupation taxes and a poll tax of one ($1.00) dollar on every inhabitant of this state, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected an annual ad valorem state tax of such an amount not to exceed thirty-five cents on the one hundred ($100.00) dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this state for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school districts by general or special law without the local notice required in other cases of special legislation; and all such school districts, whether created by general or special law may embrace parts of two or more counties. And the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public school or schools of such districts, whether such districts are composed of territory wholly within a county or in parts of two or more counties. And the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and the erection and equipment of school buildings therein; provided, that a majority of the qualified property taxpaying voters of the district voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year one dollar on the on [one] hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law. (Sec. 3, Art. 7, adopted election November 2, 1920.)

Sec. 3. One-fourth of the revenue derived from the State occupation taxes and poll tax of one dollar on every inhabitant of the State, between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools; and in addition thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed thirty-five cents on the one hundred ($100.00) dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public schools of this State for a period of not less than six months in each year, and it shall be the duty of the State Board of Education to set aside a sufficient amount out of the said tax to provide free text books for the use of children attending the public free schools of this State; provided, however, that should the limit of taxation herein named be insufficient the deficit may be met by appropriation from the general funds of the State and the Legislature may also provide for the formation of school district[s] by general laws; and all such school districts may embrace parts of two or more counties, and the Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public school or schools of such districts, whether such districts are [are] composed of territory wholly within a county or in parts of two or more counties, and the Legislature may authorize an additional ad valorem tax to be levied and collected within all school districts heretofore formed or hereafter formed, for the further maintenance of public free schools, and for the erection and equipment of school buildings therein; provided that a majority of the qualified property tax paying voters of the district voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year one ($1.00) dollar on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of school district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts, nor to independent or common school districts created by general or special law. (Sec. 3, Art. 7, adopted election November 2, 1926; proclamation January 20, 1927.)

Sec. 3a. Every school district heretofore formed, whether formed under the general law or by special act, and whether the territory embraced within its boundaries lies wholly within a single county or partly in two or more counties, is hereby declared to be, and from its formation to have been, a valid and lawful district.

All bonds heretofore issued by any such districts which have been approved by the Attorney General and registered by the Comptroller are hereby declared to be, and at the time of their issuance to have been, issued in conformity with the Constitution and laws of this State, and any and all such bonds are hereby in all things validated and declared to be valid and binding obligations upon the district or districts issuing the same.

Each such district is hereby authorized to, and shall, annually levy and collect an ad valorem tax sufficient to pay the interest on all such bonds and to provide a sinking fund sufficient to redeem the same at maturity, not to exceed such a rate as may be provided by law under other provisions of this Constitution.

And all trustees heretofore elected in districts made up from more than one county are hereby declared to have been duly elected, and shall be and are hereby named as trustees of their respective districts, with power to levy the taxes herein authorized until their successor shall be duly elected and qualified as is or may be provided by law. (Sec. 3a, Art. 7, adopted election August 3, 1909, proclamation September 24, 1909.)

Sec. 4. The lands herein set apart to the public free school fund shall be sold under such regulations, at such times and on such terms as may be prescribed by law; and the Legisla-

ture shall not have power to grant any relief to the purchasers thereof. The Comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the Board of Education herein provided for, in the bonds of this State, if the same can be obtained, otherwise in United States bonds; and the United States bonds now belonging to said fund shall likewise be invested in State bonds, if the same can be obtained on terms advantageous to the school fund. (Const. 1876.)

Sec. 4. The lands herein set apart to the Public Free School fund, shall be sold under such regulations, at such times, and on such terms as may be prescribed by law; and the Legislature shall not have power to grant any relief to purchasers thereof. The Comptroller shall invest the proceeds of such sales, and of those heretofore made, as may be directed by the Board of Education herein provided for, in the bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the State shall be responsible for all investments. (Sec. 4, Art. 7, adopted election August 14, 1883; proclamation September 25, 1883.)

Sec. 5. The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund; and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund which shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same, or any part thereof, ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in manner as may be provided by law. (Const. 1876.)

Sec. 5. The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and levied shall be the available school fund, to which the Legislature may add not exceeding one per cent annually of the total value of the permanent school fund, such value to be ascertained by the Board of Education until otherwise provided by law, and the available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same, or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law. (Sec. 5, Art. 7, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 6. All lands heretofore or hereafter granted to the several counties of this State for Education, or schools, are of right the property of said counties respectively to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners' court of the county. Actual settlers residing on said lands shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein. Said proceeds to be invested in bonds of the State of Texas, or of the United States, and only the interest thereon to be used and expended annually. (Const. 1876.)

Sec. 6. All lands heretofore, or hereafter granted to the several counties of this State for educational purposes, are of right the property of said counties respectively, to which they were granted, and title thereto is vested in said counties, and no adverse possession or limitation shall ever be available against the title of any county. Each county may sell or dispose of its lands in whole or in part, in manner to be provided by the Commissioners' Court of the county. Actual settlers residing on said lands, shall be protected in the prior right of purchasing the same to the extent of their settlement, not to exceed one hundred and sixty acres, at the price fixed by said court, which price shall not include the value of existing improvements made thereon by such settlers. Said lands, and the proceeds thereof, when sold, shall be held by said counties alone as a trust for the benefit of public schools therein; said proceeds to be invested in bonds of the United States, the State of Texas, or counties in said State, or in such other securities, and under such restrictions as may be prescribed by law; and the counties shall be responsible for all investments; the interest thereon, and other revenue, except the principal shall be available fund. (Sec. 6, Art. 7, adopted election August 14, 1883; proclamation September 25, 1883.)

Sec. 6a. All agriculture or grazing school land mentioned in section 6 of this article owned by any county shall be subject to taxation except for State purposes to the same extent as lands privately owned. (Sec. 6a, Art. 7, adopted election November 2, 1926; proclamation January 20, 1927.)

Sec. 7. Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both.

Sec. 8. The Governor, Comptroller and Secretary of State shall constitute a Board of Education, who shall distribute said funds to the several counties and perform such other duties concerning public schools as may be prescribed by law.

Asylums

Sec. 9. All lands heretofore granted for the benefit the Lunatic, Blind, Deaf and Dumb, and Orphan Asylums, together with such donations as may have been or may hereafter be made to either of them, respectively, as indicated in the several grants, are hereby set apart to provide a permanent fund for the support, maintenance and improvement of said Asylums. And the Legislature may provide for the sale of the lands and the investment of the proceeds in manner as provided for the sale and investment of school lands in section 4 of this Article.

University

Sec. 10. The Legislature shall as soon as practicable establish, organize and provide for the maintenance, support and direction of a University of the first class, to be located by a vote of the people of this State, and styled, "The University of Texas", for the promotion of literature, and the arts and sciences, including an Agricultural, and Mechanical department.

Sec. 11. In order to enable the Legislature to perform the duties set forth in the foregoing Section, it is hereby declared that all lands and other property heretofore set apart, and appropriated, for the establishment and maintenance of "The University of Texas", together with all the proceeds of sales of the same, heretofore made or hereafter to be made, and all grants, donations and appropriations that may hereafter be made by the State of Texas, or from any other source, shall constitute and become a permanent University fund.

And the same as realized and received into the Treasury of the State, (together with such sum, belonging to the fund, as may now be in the Treasury) shall be invested in Bonds of the State of Texas, if the same can be obtained, if not, then in United States Bonds and the interest accruing thereon, shall be subject to appropriation by the Legislature to accomplish the purpose declared in the foregoing Section,

Provided, that the one tenth of the alternate sections of the lands granted to rail roads, reserved by the state, which were set apart and appropriated to the establishment of the "University of Texas" by an act of the Legislature of February 11th, 1858, entitled "An Act to establish "The University of Texas", shall not be included in, or constitute a part of the permanent University fund.

Sec. 12. The land herein set apart to the University fund shall be sold under such regulations, at such times, and on such terms as may be provided by law; and the Legislature shall provide for the prompt collection, at maturity, of all debts due on account of University lands, heretofore sold, or that may hereafter be sold, and shall in neither event have the power to grant relief to the purchasers.

Sec. 13. The Agricultural and Mechanical College of Texas, established by an Act of the Legislature passed April 17th, 1871, located in the county of Brazos, is hereby made, and constituted a Branch of the University of Texas, for

instruction in Agriculture, the Mechanic Arts, and the Natural Sciences connected therewith. And the Legislature shall at its next session, make an appropriation, not to exceed forty thousand dollars, for the construction and completion of the buildings and improvements, and for providing the furniture necessary to put said College in immediate and successful operation.

Sec. 14. The Legislature shall also when deemed practicable, establish and provide for the maintenance of a College or Branch University for the instruction of the colored youths of the State, to be located by a vote of the people: Provided, that no tax shall be levied, and no money appropriated, out of the general revenue, either for this purpose or for the establishment, and erection of the buildings of the University of Texas.

Sec. 15. In addition to the lands heretofore granted to the University of Texas, there is hereby set apart, and appropriated, for the endowment maintenance, and support of said University and its branches, one million acres of the unappropriated public domain of the State, to be designated, and surveyed as may be provided by law; and said lands shall be sold under the same regulations, and the proceeds invested in the same manner, as is provided for the sale and investment of the permanent University fund; and the Legislature shall not have power to grant any relief to the purchasers of said lands.

ARTICLE VIII

TAXATION AND REVENUE

Section 1. Taxation shall be equal and uniform. All property in this State, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as may be provided by law. The Legislature may impose a poll tax. It may also impose occupation taxes, both upon natural persons and upon corporations, other than municipal, doing any business in this State. It may also tax incomes of both natural persons and corporations other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; Provided, that two hundred and fifty dollars worth of household and kitchen furniture, belonging to each family in this State shall be exempt from taxation, and provided further that the occupation tax levied by any county, city or town for any year on persons or corporations pursuing any profession or business, shall not exceed one half of the tax levied by the State for the same period on such profession or business.

Sec. 2. All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the Legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes, (and the necessary furniture of all schools), and institutions of purely public charity; and all laws exempting property from taxation, other than the property above mentioned, shall be void. (Const. 1876.)

Sec. 2. All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the Legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship; places of burial not held for private or corporate profit; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools, also the endowment funds of such institutions of learning and religion not used with a view to profit and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages; that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property above mentioned shall be null and void. (Sec. 2, Art. 8, adopted election November 6, 1906; proclamation January 7, 1907.)

Sec. 3. Taxes shall be levied and collected by general laws and for public purposes only.

Sec. 4. The power to tax corporations and corporate property shall not be surrendered or suspended by act of the Legislature, by any contract or grant to which the State shall be a party.

Sec. 5. All property of railroad companies, of whatever description, lying or being within the limits of any city or incorporated town within this State, shall bear its proportionate share of municipal taxation, and if any such property shall not have been heretofore rendered, the authorities of the city or town within which it lies, shall have power to require its rendition, and collect the usual municipal tax thereon, as on other property lying within said municipality.

Sec. 6. No money shall be drawn from the Treasury but in pursuance of specific appropriations made by law; nor shall any appropriation of money be made for a longer term than two years, except by the first Legislature to assemble under this Constitution, which may make the necessary appropriations to carry on the government until the assemblage of the sixteenth Legislature.

Sec. 7. The Legislature shall not have power to borrow, or in any manner divert from its purpose, any special fund that may, or ought to, come into the Treasury; and shall make it penal for any person or persons to borrow, withhold or in any manner to divert from its purpose any special fund, or any part thereof.

Sec. 8. All property of railroad companies shall be assessed, and the taxes collected in the several counties in which said property is situated, including so much of the roadbed and fixtures as shall be in each county. The rolling stock may be assessed in gross in the county where the principal office of the company is located, and the county tax paid upon it, shall be apportioned by the Comptroller, in proportion to the distance such road may run through any such county, among the several counties through which the road passes, as a part of their tax assets.

Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, shall never exceed fifty cents on the one hundred dollars valuation, and no county, city or town shall levy more than one half of said State tax, except for the payment of debts already incurred, and for the erection of public buildings, not to exceed fifty cents on the one hundred dollars in any one year, and except as in this Constitution is otherwise provided. (Const. 1876.)

Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of public free schools, shall never exceed thirty-five cents on the one hundred dollars valuation; and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not to exceed fifteen cents, for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of this amendment, and for the erection of public buildings, street, sewer and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as is in this Constitution otherwise provided. (Section 9, Art. 8, adopted election August 14, 1883; proclamation September 25, 1883.)

Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of public free schools, shall never exceed thirty five cents on the one hundred dollars valuation, and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceed fifteen cents for roads and bridges on the one hundred dollars, valuation, except for the payment of debts incurred prior to the adoption of the amendment, September 25, A. D. 1883, and for the erection of public buildings, streets, sewers, waterworks and other permanent improvements, not to exceed twenty five cents on the one hundred dollars valuation in any one year, and except as is in this constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads; provided, that a majority of the qualified property tax-paying voters of the county, voting at an election to be held for that purpose, shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of public roads and highways without the local notice required for special or local laws. (Sec. 9, Art. 8, adopted election November 4, 1890; proclamation December 19, 1890.)

Sec. 9. The State tax on property, exclusive of the tax necessary to pay the public debt, and of the taxes provided for the benefit of the public free schools, shall never exceed thirty-five cents on the one hundred dollars valua-

tion: and no county, city or town shall levy more than twenty-five cents for city or county purposes, and not exceeding fifteen cents for roads and bridges, and not exceeding fifteen cents to pay jurors, on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment September 25th, 1883; and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation, in any one year, and except as is in this Constitution otherwise provided; and the Legislature may also authorize an additional annual ad valorem tax to be levied and collected for the further maintenance of the public roads: provided, that a majority of the qualified property tax-paying voters of the county voting at an election to be held for that purpose shall vote such tax, not to exceed fifteen cents on the one hundred dollars valuation of the property subject to taxation in such county. And the Legislature may pass local laws for the maintenance of the public roads and highways, without the local notice required for special or local laws. (Sec. 9, Art. 8, adopted election November 6, 1906; proclamation January 7, 1907.)

Sec. 10. The Legislature shall have no power to release the inhabitants of, or property in, any county, city or town from the payment of taxes levied for State or county purposes, unless in case of great public calamity in any such county, city or town, when such release may be made by a vote of two-thirds of each House of the Legislature.

Sec. 11. All property, whether owned by persons or corporations shall be assessed for taxation, and the taxes paid in the county where situated, but the Legislature may, by a two-thirds vote, authorize the payment of taxes of non-residents of counties to be made at the office of the Comptroller of Public Accounts. And all lands and other property not rendered for taxation by the owner thereof shall be assessed at its fair value by the proper officer.

Sec. 12. All property subject to taxation in, and owned by residents of unorganized counties, shall be assessed and the taxes thereon paid in the counties, to which such unorganized counties shall be attached for judicial purposes; and lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties shall be assessed and the taxes thereon collected at the office of the Comptroller of the State.

Sec. 13. Provision shall be made by the first Legislature for the speedy sale of a sufficient portion of all lands and other property for the taxes due thereon, and every year thereafter for the sale of [a] all lands and other property, upon which the taxes have not been paid, and the deed of conveyance to the purchaser for all lands and other property thus sold shall be held to vest a good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud; provided that the former owner shall, within two years from date of purchaser's deed, have the right to redeem the land upon the payment of double the amount of money paid for the land.

Sec. 14. There shall be elected by the qualified electors of each county at the same time and under the same law regulating the election of State and county officers, an Assessor of Taxes, who shall hold his office for two years and until his successor is elected and qualified.

Sec. 15. The annual assessment made upon landed property shall be a special lien thereon; and all property, both real and personal, belonging to any delinquent taxpayer shall be liable to seizure and sale for the payment of all the taxes and penalties due by such delinquent; and such property may be sold for the payment of the taxes and penalties due by such delinquent, under such regulations as the Legislature may provide.

Sec. 16. The Sheriff of each county, in addition to his other duties, shall be the collector of taxes therefor. But in counties having ten thousand inhabitants, to be determined by the last preceding census of the United States, a Collector of taxes shall be elected to hold office for two years and until his successor shall be elected and qualified.

Sec. 17. The specification of the objects and subjects of taxation shall not deprive the Legislature of the power to require other subjects or objects to be taxed in such manner as may be, consistent with the principles of taxation fixed in this Constitution.

Sec. 18. The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, (the County Commissioner's Court to constitute a board of equalization); and may also provide for the classification of all lands with reference to their value in the several counties.

Explanatory

It is evident that "Commissioner's" should have been "Commissioners'."

Sec. 19. Farm products in the hands of the producer, and family supplies for home and farm use, are exempt from all taxation until otherwise directed by a two-thirds vote of all the members elect to both houses of the Legislature. (Sec. 19, Art. 8, adopted election first Tuesday in September, 1879; proclamation October 14, 1879.)

ARTICLE IX

COUNTIES

Section 1. The Legislature shall have power to create counties for the convenience of the people subject to the following provisions:

First. In the territory of the State exterior to all counties now existing, no new counties shall be created with a less area than nine hundred square miles, in a square form, unless prevented by pre-existing boundary lines. Should the State lines render this impracticable in border counties, the area may be less. The territory referred to may, at any time, in whole or in part, be divided into counties in advance of population and attached, for judicial and land surveying purposes, to the most convenient organized county or counties.

Second. Within the territory of any county or counties now existing, no new county shall be created with a less area than seven hundred square miles, nor shall any such county now existing be reduced to a less area than seven hundred square miles. No new counties shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may in whole or in part be taken. Counties of a less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each House of the Legislature, taken by yeas and nays and entered on the journals. Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote. When any part of a county is stricken off and attached to, or created into another county, the part stricken off shall be holden for and obliged to pay its proportion of all the liabilities then existing, of the county from which it was taken, in such manner as may be prescribed by law.

Third. No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change shall have been submitted, in such manner as may be provided by law, to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each.

County Seats

Sec. 2. The Legislature shall pass laws regulating the manner of removing county seats, but no county seat situated within five miles of the geographical centre of the county shall be removed, except by a vote of two-thirds of all the electors voting on the subject. A majority of such electors, however, voting at such election, may remove a county seat from a point more than five miles from the geographical centre of the county to a point within five miles of such centre, in either case the centre to be determined by a certificate from the Commissioner of the General Land Office.

ARTICLE X

RAILROADS

Section 1. Any railroad corporation or association, organized under the law for the purpose, shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. Every railroad company shall have the right, with its road, to intersect, connect with or cross any other railroad; and shall receive and transport each the other's passengers, tonnage and cars, loaded

or empty, without delay or discrimination, under such regulations as shall be prescribed by law.

Sec. 2. Railroads heretofore constructed, or that may hereafter be constructed in this State, are hereby declared public highways and railroad companies common carriers. The Legislature shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State; and shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on said railroads, and enforce all such laws by adequate penalties. (Const. 1876.)

Article [Sec.] 2. Railroads heretofore constructed or which may hereafter be constructed in this state are hereby declared public highways, and railroad companies, common carriers. The Legislature shall pass laws to regulate railroad, freight and passenger tariffs, to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes, may provide and establish all requisite means and agencies invested with such powers as may be deemed adequate and advisable. (Sec. 2, Art. 10, adopted election November 4, 1890; proclamation December 19, 1890.)

Explanatory

The resolution proposing this amendment has the word "Article" instead of "Sec." in first line.

Sec. 3. Every railroad or other corporation, organized or doing business in this State under the laws or authority thereof, shall have and maintain a public office or place in this State for the transaction of its business, where transfers of stock shall be made and where shall be kept for inspection by the stockholders of such corporations, books, in which shall be recorded the amount of capital stock subscribed, the names of the owners of the stock, the amounts owned by them respectively, the amount of stock paid, and by whom, the transfer of said stock, with the date of the transfer, the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad company shall hold one meeting annually in this State, public notice of which shall be given thirty days previously, and the President or Superintendent shall report annually, under oath, to the Comptroller or Governor, their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. The Legislature shall pass laws enforcing by suitable penalties the provisions of this Section.

Sec. 4. The rolling stock and all other movable property belonging to any railroad company or corporation in this State shall be considered personal property, and its real and personal property, or any part thereof, shall be liable to execution and sale in the same manner as the property of individuals; and the Legislature shall pass no laws exempting any such property from execution and sale.

Sec. 5. No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation, with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

Sec. 6. No railroad company organized under the laws of this State, shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other State or of the United States.

Sec. 7. No law shall be passed by the Legislature granting the right to construct and operate a street railroad within any city, town, or village or upon any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad.

Sec. 8. No railroad corporation in existence at the time of the adoption of this Constitution, shall have the benefit of any future legislation, except on condition of complete acceptance of all the provisions of this Constitution applicable to railroads.

Sec. 9. No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat, without passing through the same, and establishing and maintaining a depot therein unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes.

ARTICLE XI

MUNICIPAL CORPORATIONS

Section 1. The several counties of this State are hereby recognized as legal subdivisions of the State.

Sec. 2. The construction of jails, court-houses and bridges and the establishment of county poor houses and farms, and the laying out, construction and repairing of county roads shall be provided for by general laws.

Sec. 3. No county, city, or other municipal corporation shall hereafter become a subscriber to the capital of any private corporation or association, or make any appropriation or donation to the same, or in anywise loan its credit; but this shall not be construed to in any way effect any obligation heretofore undertaken pursuant to law.

Sec. 4. Cities and towns, having a population of ten thousand inhabitants or less, may be chartered alone by general law. They may levy, assess and collect an annual tax to defray the current expenses of their local government, but such tax shall never exceed, for any one year, one-fourth of one per cent. and shall be collectible only in current money. And all license and occupation tax levied, and all fines, forfeitures, penalties and other dues accruing to cities and towns, shall be collectible only in current money. (Const. 1876.)

Sec. 4. Cities and towns having a population of five thousand or less may be chartered alone by general law. They may levy, assess and collect an annual tax to defray the current expenses of their local government, but such tax shall never exceed for any one year one-fourth of one per cent. and shall be collectible only in current money, and all licenses and occupation taxes levied and all fines, forfeitures, penalties and other dues accruing to cities and towns shall be collectible only in current money. (Sec. 4, Art. 11, adopted election August 3, 1909; proclamation September 24, 1909.)

Sec. 4. Cities and towns having a population of five thousand or less may be chartered alone by general law. They may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful for any one year which shall exceed one and one-half per cent of the taxable property of such city; and all taxes shall be collectible only in current money, and all licenses and occupation taxes levied, and all fines, forfeitures and penalties accruing to said cities and towns shall be collectible only in current money. (As amended election November 2, 1920.)

Sec. 5. Cities having more than ten thousand inhabitants may have their charters granted or amended by special act of the Legislature, and may levy, assess and collect such taxes as may be authorized by law, but no tax for any purpose shall ever be lawful, for any one year, which shall exceed two and one half per cent of the taxable property of such City, and no debt shall ever be created by any City, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent thereon. (Const. 1876.)

Sec. 5. Cities having more than five thousand inhabitants may have their charters granted or amended by special act of the Legislature, and may levy, assess and collect such taxes as may be authorized by law, but no tax for any purposes shall ever be lawful, for any one year, which shall exceed two and one-half per cent. of the taxable property of such city; and no debt shall ever be created by any city or town, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent. thereon. (Sec. 5, Art. 11, adopted election August 3, 1909; proclamation September 24, 1909.)

Sec. 5. Cities having more than five thousand (5000) inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature, and providing that no charter or any ordinance passed under said charter shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State; said cities may levy, assess and collect such taxes as may be authorized by law or by their charters; but no tax for any purpose shall ever be lawful for any one year, which shall exceed two and one-half per cent. of the

taxable property of such city, and no debt shall ever be created by any city, unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and creating a sinking fund of at least two per cent. thereon; and provided further, that no city charter shall be altered, amended or repealed oftener than every two years. (Sec. 5, Art. 11, adopted election November 5, 1912; proclamation December 30, 1912.)

Sec. 6. Counties cities and towns are authorized in such mode as may now or may hereafter be provided by law, to levy, assess and collect the taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken; but all such taxes shall be assessed and collected separately from that levied, assessed and collected for current expenses of municipal government, and shall when levied specify in the act of levying the purpose therefor, and such taxes may be paid in the coupons bonds or other indebtedness for the payment of which such tax may have been levied.

Sec. 7. All counties and cities bordering on the coast of the Gulf of Mexico are hereby authorized upon a vote of two thirds of the taxpayers therein (to be ascertained as may be provided by law) to levy and collect such tax for construction of sea walls, breakwaters, or sanitary purposes as may be authorized by law, and may create a debt for such works and issue bonds in evidence thereof. But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent. as a sinking fund; and the condemnation of the right of way for the erection of such works shall be fully provided for.

Sec. 8. The counties and cities on the Gulf Coast being subject to calamitous overflows, and a very large proportion of the general revenue being derived from those otherwise prosperous localities. The Legislature is especially authorized to aid by donation of such portion of the public domain as may be deemed proper, and in such mode as may be provided by law, the construction of sea walls, or breakwaters, such aid to be proportioned to the extent and value of the works constructed, or to be constructed, in any locality.

Explanatory
It is evident that the word "The" before "Legislature" in the fourth line, should be "the" with a comma after "localities," making the paragraph a single sentence.

Sec. 9. The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor. Fire engines and the furniture thereof, and all property used, or intended for extinguishing fires, public grounds and all other property devoted exclusively to the use and benefit of the public shall be exempt from forced sale and from taxation, provided, nothing herein shall prevent the enforcement of the vendors lien, the mechanics or builders lien, or other liens now existing.

Explanatory
It is evident that the word "Fire" in the third line should read "fire," and the period after "therefor" in the same line should be a comma, making the paragraph one sentence.

Sec. 10. The Legislature may constitute any city or town a separate and independent school district. And when the citizens of any city or town have a charter, authorizing the city authorities to levy and collect a tax for the support and maintenance of a public institution of learning, such tax may hereafter be levied and collected, if at an election, held for that purpose, two thirds of the taxpayers of such city or town shall vote for such tax.

ARTICLE XII

PRIVATE CORPORATIONS

Section 1. No private corporation shall be created except by general laws.

Sec. 2. General laws shall be enacted providing for the creation of private corporations, and shall therein provide fully for the adequate protection of the public and of the individual stockholders.

Sec. 3. The right to authorize and regulate freights, tolls, wharfage or fares levied and collected or proposed to be levied and collected by individuals, companies or corporations for the use of highways, landings, wharves, bridges and ferries, devoted to public use, has never been and shall never be relinquished or abandoned by the State, but shall always be under Legislative control and depend upon Legislative authority.

Sec. 4. The first Legislature assembled after the adoption of this Constitution shall provide a mode of procedure by the Attorney General and District or County Attorneys in the name and behalf of the State to prevent and punish the demanding and receiving or collection of any and all charges, as freight, wharfage, fares, or tolls, for the use of property devoted to the public, unless the same shall have been specially authorized by law.

Sec. 5. All laws granting the right to demand and collect freights, fares, tolls or wharfage, shall at all times be subject to amendment, modification or repeal by the Legislature.

Sec. 6. No corporation shall issue stock or bonds except for money paid, labor done or property actually received, and all fictitious increase of stock or indebtedness shall be void.

Sec. 7. Nothing in this Article shall be construed to divest or effect rights guaranteed by any existing grant or statute, of this State, or of the Republic of Texas.

ARTICLE XIII

SPANISH AND MEXICAN LAND TITLES

Section 1. All fines, penalties, forfeitures and escheats, which have heretofore accrued to the Republic and State of Texas, under their constitutions and laws, shall accrue to the State under this Constitution; and the Legislature shall provide a method for determining what lands have been forfeited, and for giving effect to escheats; and all such rights of forfeiture and escheat to the State shall, ipso facto, enure to the protection of the innocent holders of junior titles, as provided in sections two, three and four of this Article.

Sec. 2. Any claim of title or right to land in Texas, issued prior to the 13th day of November, 1835, not duly recorded in the county where the land was situated at the time of such record, or not duly archived in the General Land Office; or not in the actual possession of the grantee thereof, or some person claiming under him, prior to the accruing of junior title thereto from the sovereignty of the soil, under circumstances reasonably calculated to give notice to said junior grantee, has never had, and shall not have, standing or effect against such junior title, or color of title, acquired without such or actual notice of such prior claim of title or right; and no condition annexed to such grants, not archived, or recorded, or occupied, as aforesaid, has been, or ever shall be released or waived, but actual performance of all such conditions shall be proved by the person or persons claiming under such title or claim of right in order to maintain action thereon, and the holder of such junior title, or color of title, shall have all the rights of the government which have heretofore existed, or now exist, arising from the nonperformance of all such conditions.

Sec. 3. Non-payment of taxes on any claim of title to land, dated prior to the 13th day of November, 1835, not recorded, or archived, as provided in Section 2, by the person or persons so claiming, or those under whom he or they so claim, from that date up to the date of the adoption of this Constitution, shall be held to be a presumption that the right thereto has reverted to the State, and that said claim is a stale demand, which presumption shall only be rebutted by payment of all taxes on said lands, State, county, and city, or town, to be assessed on the fair value of such lands by the Comptroller, and paid to him, without commutation or deduction for any part of the above period.

Sec. 4. No claim of title or right to land, which issued prior to the thirteenth day of November, 1835, which has not been duly recorded in the county where the land was situated at the time of such record, or which has not been duly archived in the General Land Office, shall ever hereafter be deposited in the General Land Office, or recorded in this State, or delineated on the maps, or used as evidence in any of the courts of this State, and the same are stale claims; but this shall not affect such rights or pre-

sumptions as arise from actual possession. By the words "duly recorded" as used in Sections two and four of this Article, it is meant that such claim of title or right to land shall have been recorded in the proper office, and that mere errors in the certificate of registration; or informality, not affecting the fairness and good faith of the holder thereof, with which the record was made, shall not be held to vitiate such record.

Sec. 5. All claims, locations, surveys, grants and titles, of any kind, which are declared null and void by the Constitution of the Republic or State of Texas, are, and the same shall remain forever null and void.

Sec. 6. The Legislature shall pass stringent laws for the detection and conviction of all forgers of land titles, and may make such appropriations of money for that purpose as may be necessary.

Sec. 7. Sections two, three, four and five of this Article, shall not be so construed as to set aside or repeal any law or laws of the Republic or State of Texas, releasing the claimants of head-rights of colonists of a league of land, or less, from compliance with the conditions on which their grants were made.

ARTICLE XIV

PUBLIC LANDS AND LAND OFFICE

Section 1. There shall be one General Land Office in the State, which shall be at the seat of government, where all land titles which have emanated or may hereafter emanate from the State shall be registered, except those titles the registration of which may be prohibited by this Constitution. It shall be the duty of the Legislature at the earliest practicable time to make the Land Office self sustaining, and from time to time the Legislature may establish such subordinate offices as may be deemed necessary.

Sec. 2. All unsatisfied genuine land certificates barred by section four, Article ten, of the Constitution of 1869, by reason of the holders or owners thereof failing to have them surveyed and returned to the Land Office by the first day of January, 1875, are hereby revived. All unsatisfied genuine land certificates now in existence shall be surveyed and returned to the General Land Office within five years after the adoption of this Constitution, or be forever barred; and all genuine land certificates hereafter issued by the State shall be surveyed and returned to the General Land Office within five years after issuance, or be forever barred; Provided, that all genuine land certificates heretofore or hereafter issued shall be located, surveyed or patented, only upon vacant and unappropriated public domain and not upon any land titled or equitably owned under color of title from the sovereignty of the State, evidence of the appropriation of which is on the county records or in the General Land Office; or when the appropriation is evidenced by the occupation of the owner, or of some person holding for him.

Sec. 3. The Legislature shall have no power to grant any of the lands of this State to any railway company except upon the following restrictions and conditions.

First. That there shall never be granted to any such corporation more than sixteen sections to the mile, and no reservation of any part of the public domain for the purpose of satisfying such grant shall ever be made.

Second. That no land certificate shall be issued to such company, until they have equipped, constructed and in running order at least ten miles of road, and on the failure of such company to comply with the terms of its charter, or to alienate its land at a period to be fixed by law, in no event to exceed twelve years from the issuance of the patent, all said land shall be forfeited to the State and become a portion of the public domain and liable to location and survey. The Legislature shall pass general laws, only, to give effect to the provisions of this section.

Sec. 4. No certificate for land shall be sold at the Land Office except to actual settlers upon the same, and in lots not to exceed one hundred and sixty acres.

Sec. 5. All lands heretofore or hereafter granted to railway companies where the charter or law of the State required or shall hereafter require their alienation within a certain period on pain of forfeiture, or is silent on the subject of forfeiture, and which lands have not been or shall not hereafter be alienated, in conformity with the terms of their charters, and the laws under which the grants were made, are hereby declared forfeited to the State and subject to pre-emption, location and survey, as other vacant lands. All lands heretofore granted to said railroad companies to which no forfeiture was attached, on their failure to alienate, are not included in the foregoing clause, but in all such last named cases it shall be the duty of the Attorney General in every instance where alienations have been or hereafter may be made, to inquire into the same, and if such alienation has been made in fraud of the rights of the State and is colorable only, the real and beneficial interest being still in such corporation, to institute legal proceedings in the county where the seat of government is situated to forfeit such lands to the State, and if such alienation be judicially ascertained to be fraudulent and colorable as aforesaid, such lands shall be forfeited to the State and become a part of the vacant public domain, liable to pre-emption, location and survey.

Sec. 6. To every head of a family without a homestead there shall be donated one hundred and sixty acres of public land, upon condition that he will select and locate said land, and occupy the same three years and pay the Office fees due thereon. To all single men of eighteen years of age and upwards shall be donated eighty acres of public land, upon the terms and conditions prescribed for heads of families.

Sec. 7. The State of Texas hereby releases to the owner or owners of the soil all mines and minerals that may be on the same, subject to taxation as other property.

Sec. 8. Persons residing between the Nueces river and the Rio Grande, and owning grants for lands which emanated from the Government of Spain, or that of Mexico which grants have been recognized and validated by the State by acts of the Legislature, approved February 10th, 1852, August 15th, 1870, and other acts, and who have been prevented from complying with the requirements of said acts by the unsettled condition of the country, shall be allowed until the first day of January 1880, to complete their surveys, and the plots thereof, and to return their field notes to the General Land Office; and all claimants failing to do so shall be forever barred; provided, nothing in this section shall be so construed as to validate any titles not already valid, or to interfere with the rights of third persons.

ARTICLE XV

IMPEACHMENT

Section 1. The power of impeachment shall be vested in the House of Representatives.

Sec. 2. Impeachment of the Governor, Lieutenant Governor, Attorney General, Treasurer, Commissioner of the General Land Office, Comptroller and the Judges of the Supreme Court, Court of Appeals and District Court shall be tried by the Senate.

Sec. 3. When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present.

Sec. 4. Judgment in cases of impeachment shall extend only to removal from office, and disqualification from holding any office of honor trust or profit under this State. A party convicted on impeachment shall also be subject to indictment trial and punishment according to law.

Sec. 5. All officers against whom articles of impeachment may be preferred shall be suspended from the exercise of the duties of their office, during the pendency of such impeachment. The Governor may make a provisional appointment to fill the vacancy occasioned by the suspension of an officer until the decision on the impeachment.

Sec. 6. Any judge of the District Courts of the State who is incompetent to discharge the duties of his office, or who shall be guilty of partiality, or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge; or who shall fail to execute in a reasonable measure the business in his courts may be removed by the Supreme Court. The Supreme Court shall have original jurisdiction to hear and determine the causes aforesaid when presented in writing upon the oaths taken before some judge of a court of record of not less

than ten lawyers, practicing in the courts held by such judge, and licensed to practice in the Supreme Court; said presentment to be founded either upon the knowledge of the persons making it or upon the written oaths as to the facts of creditable witnesses. The Supreme Court may issue all needful process and prescribe all needful rules to give effect to this section. Causes of this kind shall have precedence and be tried as soon as practicable.

Sec. 7. The Legislature shall provide by law for the trial and removal from office of all officers of this State, the modes for which have not been provided in this Constitution.

Address

Sec. 8. The Judges of the Supreme Court, Court of Appeals and District Courts, shall be removed by the Governor on the address of two-thirds of each House of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, or other reasonable cause which shall not be sufficient ground for impeachment; provided however, that the cause or causes for which such removal, shall be required, shall be stated at length in such address and entered on the journals of each House; and provided further, that the cause or causes shall be notified to the judge so intended to be removed, and he shall be admitted to a hearing in his own defense before any vote for such address shall pass, and in all such cases, the vote shall be taken by yeas and nays and entered on the journals of each House respectively.

ARTICLE XVI

GENERAL PROVISIONS

Section 1. Members of the Legislature, and all officers, before they enter upon the duties of their offices, shall take the following oath or affirmation: I, (————) do solemnly swear, (or affirm), that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ————, according to the best of my skill and ability, agreeably to the Constitution and laws of the United States and of this State; and I do further solemnly swear, (or affirm), that since the adoption of the Constitution of this State, I, being a citizen of this State, have not fought a duel with deadly weapons, within this State nor out of it, nor have I sent or accepted a challenge to fight a duel with deadly weapons, nor have I acted as second in carrying a challenge, or aided, advised or assisted any person thus offending. And I furthermore solemnly swear, (or affirm), that I have not directly, nor indirectly paid, offered or promised to pay, contributed, nor promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward for the giving or withholding a vote at the election at which I was elected, (or if the office is one of appointment, to secure my appointment.) So help me God.

Sec. 2. Laws shall be made to exclude from office, serving on juries, and from the right of suffrage, those who may have been or shall hereafter be convicted of bribery, perjury, forgery, or other high crimes. The privilege of free suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence therein from power, bribery, tumult or other improper practice.

Sec. 3. The Legislature shall make provision whereby persons convicted of misdemeanors and committed to the county jails in default of payment of fines and costs, shall be required to discharge such fines and costs by manual labor, under such regulations as may be prescribed by law.

Sec. 4. Any citizen of this State who shall, after the adoption of this Constitution, fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within this State or out of it, or who shall act as second, or knowingly assist in any manner those thus offending, shall be deprived of the right of suffrage, or of holding any office of trust or profit under this State.

Sec. 5. Every person shall be disqualified from holding any office of profit, or trust, in this State, who shall have been convicted of having given or offered a bribe to procure his election or appointment.

Sec. 6. No appropriation for private or individual purposes shall be made. A regular statement, under oath, and an account of the receipts and expenditures of all public money shall be published annually, in such manner as shall be prescribed by law.

Sec. 7. The Legislature shall, in no case, have power to issue "Treasury Warrants," "Treasury Notes," or paper of any description intended to circulate as money.

Sec. 8. Each county in the State may provide, in such manner as may be prescribed by law, a Manual Labor Poor House and Farm, for taking care of, managing, employing and supplying the wants of its indigent and poor inhabitants.

Sec. 9. Absence on business of the State, or of the United States, shall not forfeit a residence once obtained, so as to deprive any one of the right of suffrage, or of being elected or appointed to any office under the exceptions contained in this Constitution.

Sec. 10. The Legislature shall provide for deductions from the salaries of public officers who may neglect the performance of any duty that may be assigned them by law.

Sec. 11. The legal rate of interest shall not exceed eight per cent. per annum, in the absence of any contract as to the rate of interest; and by contract parties may agree upon any rate not to exceed twelve per cent. per annum. All interest charged above this last named rate, shall be deemed usurious, and the Legislature shall, at its first session, provide appropriate pains and penalties to prevent and punish usury. (Const. 1876.)

Sec. 11. All contracts for a greater rate of interest than ten per centum per annum, shall be deemed usurious, and the first Legislature after this amendment is adopted, shall provide appropriate pains and penalties to prevent the same; but when no rate of interest is agreed upon, the rate shall not exceed six per centum per annum. (Sec. 11, Art. 16, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 12. No member of Congress, nor person holding or exercising any office of profit or trust, under the United States, or either of them, or under any foreign power, shall be eligible as a member of the Legislature, or hold or exercise any office of profit or trust under this State.

Sec. 13. It shall be the duty of the Legislature to pass such laws as may be necessary and proper to decide differences by arbitration, when the parties shall elect that method of trial.

Sec. 14. All civil officers shall reside within the State; and all district or county officers within their districts or counties, and shall keep their offices at such places as may be required by law; and failure to comply with this condition shall vacate the office so held.

Sec. 15. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, shall be her separate property; and laws shall be passed more clearly defining the rights of the wife, in relation as well to her separate property as that held in common with her husband. Laws shall also be passed providing for the registration of the wife's separate property.

Sec. 16. No corporate body shall hereafter be created, renewed or extended with banking or discounting privileges. (Const. 1876.)

Sec. 16. The Legislature shall by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof.

Each shareholder of such corporate body incorporated in this State, so long as he owns shares therein, and for twelve months after the date of any bona fide transfer thereof shall be personally liable for all debts of such corporate body existing at the date of such transfer, to an amount additional to the par value of such shares so owned or transferred, equal to the par value of such shares so owned or transferred.

No such corporate body shall be chartered until all of the authorized capital stock has been subscribed and paid for in full in cash. Such body corporate shall not be authorized

to engage in business at more than one place which shall be designated in its charter.

No foreign corporation, other than the national banks of the United States, shall be permitted to exercise banking or discounting privileges in this State. (Sec. 16, Art. 16, adopted election November 8, 1904; proclamation December 29, 1904.)

Sec. 17. All officers within this State shall continue to perform the duties of their offices until their successors shall be duly qualified.

Sec. 18. The rights of property and of action, which have been acquired under the Constitution and laws of the Republic and State, shall not be divested; nor shall any rights or actions which have been divested, barred or declared null and void by the Constitution of the Republic and State, be re-invested, renewed, or re-instated by this Constitution; but the same shall remain precisely in the situation which they were before the adoption of this Constitution, unless otherwise herein provided; and provided further, that no cause of action heretofore barred shall be revived.

Sec. 19. The Legislature shall prescribe by law the qualification of grand and petit jurors.

Sec. 20. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, justice's precinct, town or city, by a majority vote, from time to time, may determine whether the sale of intoxicating liquors, shall be prohibited within the prescribed limits. (Const. 1876.)

Sec. 20. The Legislature shall, at its first session, enact a law whereby the qualified voters of any county, justice's precinct, town, city (or such subdivision of a county as may be designated by the Commissioners' Court of said county) may, by a majority vote, determine from time to time whether the sale of intoxicating liquors shall be prohibited within the prescribed limits. (Sec. 20, Art. 16, adopted election August 11, 1891; proclamation September 22, 1891.)

Sec. 20. (a) The manufacture, sale, barter and exchange in the State of Texas, of spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, or any other intoxicant whatever except for medicinal, mechanical, scientific or sacramental purposes, are each and all hereby prohibited.

The Legislature shall enact laws to enforce this section.

(b) Until the Legislature shall prescribe other or different regulations on the subject, the sale of spirituous, vinous or malt liquors, or medicated bitters, capable of producing intoxication, or any other intoxicant whatever, for medicinal purposes shall be made only in cases of actual sickness and then only upon the prescription of a regular practicing physician, subject to the regulations applicable to sales under prescriptions in prohibited territory by virtue of Article 598, Chapter 7, Title 11 of the Penal Code of the State of Texas.

(c) This amendment is self-operative and until the Legislature shall prescribe other or different penalties, any person acting for himself or in behalf of another, or in behalf of any partnership, corporation or association of persons, who shall, after the adoption of this amendment violate any part of this constitutional provision, shall be deemed guilty of a felony, and shall, upon conviction in a prosecution commenced, carried on and concluded in the manner prescribed by law in cases of felonies, be punished by confinement in the penitentiary for a period of time not less than one year nor more than five years, without the benefit of any law providing for suspended sentence. And the district courts and the judges thereof, under their equity powers, shall have the authority to issue, upon suit of the Attorney General, injunctions against infractions or threatened infractions of any part of this constitutional provision.

(d) Without affecting the provisions herein, intoxicating liquors are declared to be subject to the general police power of the State; and the Legislature shall have the power to pass any additional prohibitory laws, or laws in aid thereof, which it may deem advisable.

(e) Liability for violating any liquor laws in force at the time of the adoption of this amendment shall not be affected by this amendment, and all remedies, civil and criminal, for such violations shall be preserved. (Sec. 20, Art. 16, adopted election May 24, 1919.)

Explanatory

It is very evident that this section is section 20, with five lettered subdivisions; as resolution proposing such section, Acts 36th Leg., 1919, p. 337, provided "that Article 16 of the Constitution be amended by striking out and repealing section 20 thereof and substituting in lieu of said section 20 the following."

Sec. 21. All stationery, and printing, except proclamations and such printing as may be done at the Deaf and Dumb Asylum, paper, and fuel used in the Legislative and other departments of the government, except the Judicial Department, shall be furnished, and the printing and binding of the laws, journals, and department reports, and all other printing and binding and the repairing and furnishing the halls and rooms used for the meetings of the Legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price, and under such regulations, as shall be prescribed by law. No member or officer of any department of the government shall be in any way interested in such contracts; and all such contracts shall be subject to the approval of the Governor, Secretary of State and Comptroller.

Sec. 22. The Legislature shall have the power to pass such fence laws, applicable to any sub-division of the State, or counties, as may be needed to meet the wants of the people.

Sec. 23. The Legislature may pass laws for the regulation of live stock and the protection of stock raisers in the stock raising portion of the State, and exempt from the operation of such laws other portions, sections, or counties; and shall have power to pass general and special laws for the inspection of cattle, stock and hides and for the regulation of brands; provided, that any local law thus passed shall be submitted to the free holders of the section to be affected thereby, and approved by them, before it shall go into effect.

Sec. 24. The Legislature shall make provision for laying out and working public roads, for the building of bridges, and for utilizing fines, forfeitures, and convict labor to all these purposes.

Sec. 25. That all drawbacks and rebatement of insurance, freight, transportation, carriage, wharfage, storage, compressing, baling, repairing, or for any other kind of labor or service of, or to any cotton, grain, or any other produce or article of commerce in this State, paid or allowed or contracted for, to any common carrier, shipper, merchant, commission merchant, factor, agent, or middleman of any kind, not the true and absolute owner thereof, are forever prohibited, and it shall be the duty of the Legislature to pass effective laws punishing all persons in this State who pay, receive or contract for, or respecting the same.

Sec. 26. Every person, corporation, or company, that may commit a homicide, through wilful act, or omission, or gross neglect, shall be responsible, in exemplary damages, to the surviving husband, widow, heirs of his or her body, or such of them as there may be, without regard to any criminal proceeding that may or may not be had in relation to the homicide.

Sec. 27. In all elections to fill vacancies of office in this State, it shall be to fill the unexpired term only.

Sec. 28. No current wages for personal service shall ever be subject to garnishment.

Sec. 29. The Legislature shall provide by law for defining and punishing barretry.

Sec. 30. The duration of all offices not fixed by this Constitution shall never exceed two years. (Const. 1876.)

Sec. 30. The duration of all offices not fixed by this Constitution shall never exceed two years; provided, that when a Railroad Commission is created by law it shall be composed of three Commissioners who shall be elected by the people at a general election for State officers, and their terms of office shall be six years; provided, Railroad Commissioners first elected after this amendment goes into effect shall hold office as follows: One shall serve two years, and one four years, and one six years; their terms to be decided by lot immediately after they shall have qualified. And one Railroad Commissioner shall be elected every two years thereafter. In case of vacancy in said office the Governor of the State shall fill said vacancy by appointment until the next general election. (Sec. 30, Art. 16, adopted election November 6, 1894; proclamation December 21, 1894.)

Sec. 30a. The Legislature may provide by law that the members of the Board of Regents of the State University and boards of trustees or managers of the educational, eleemosynary, and penal institutions of the State, and such boards as have been, or may hereafter be established by law, may hold their respective offices for the term of six (6) years, one-third of the members of such boards to be elected or appointed every two (2) years in such manner as the Legislature may determine; vacancies in such offices to be filled as may be provided by law,["] and the Legislature shall enact suitable laws to give effect to this section. (Sec. 30a, Art. 16, adopted election Nov. 5, 1912, proclamation, Dec. 30, 1912.)

Sec. 31. The Legislature may pass laws prescribing the qualifications of practitioners of medicine in this State, and to punish persons for mal-practice, but no preference shall ever be given by law to any schools of medicine.

Sec. 32. The Legislature may provide by law for the establishment of a Board of Health and Vital Statistics, under such rules and regulations as it may deem proper.

Sec. 33. The accounting officers of this State shall neither draw nor pay a warrant upon the treasury in favor of any person, for salary or compensation as agent, officer, or appointee, who holds at the same time any other office or position of honor, trust, or profit, under this State or the United States, except as prescribed in this Constitution.

Sec. 33. The accounting officers of this State shall neither draw nor pay a warrant upon the treasury in favor of any person, for salary or compensation as agent, officer or appointee, who holds at the same time any other office or position of honor, trust or profit, under this State or the United States, except as prescribed in this Constitution. Provided, that this restriction as to the drawing and paying of warrants upon the treasury shall not apply to officers of the National Guard of Texas, the National Guard Reserve, the Officers Reserve Corps of the United States, nor to enlisted men of the National Guard, the National Guard Reserve, and the Organized Reserves of the United States. (Sec. 33, Art. 16, adopted election November 2, 1926; proclamation January 20, 1927.)

Explanatory

Section 3 of the joint resolution proposing this Amendment, and also Amendment to Article 16, § 40 (Acts 1925, 39th Leg., p. 680); read as follows:

"The foregoing constitutional amendment shall be submitted to a vote of the qualified electors of this State at an election to be held on the first Tuesday in November, A. D., 1926, at which all ballots shall have printed thereon:

" 'For the constitutional amendment permitting officers and enlisted men of the National Guard, and the National Guard Reserve, and officers of the Officers Reserve Corps of the United States, and enlisted men of the Organized Reserves of the United States, to hold other offices or positions of honor, trust or profit under this State or the United States,' and:

" 'Against the constitutional amendment permitting officers and enlisted men of the National Guard, and the National Guard Reserve, and officers of the Officers Reserve Corps of the United States, and enlisted men of the Organized Reserve of the United States, to hold other offices or positions of honor, trust or profit under this State or the United States.'

"Each voter shall scratch out one of said clauses on the ballots, leaving the one expressing his vote on the proposed amendment."

Sec. 34. The Legislature shall pass laws authorizing the Governor to lease, or sell to the Government of the United States, a sufficient quantity of the public domain of the State necessary for the erection of forts, barracks, arsenals, and military stations, or camps, and for other needful military purposes; and the action of the Governor therein shall be subject to the approval of the Legislature.

Sec. 35. The Legislature shall, at its first session pass laws to protect laborers on public buildings, streets, roads, railroads, canals, and other similar public works, against the failure of contractors, and sub-contractors to pay their current wages when due, and to make the corporation, company or individual for whose benefit the work is done responsible for their ultimate payment.

Sec. 36. The Legislature shall, at its first session, provide for the payment, or funding, as they may deem best, of the amounts found to be justly due to the teachers in the public schools, by the State, for service rendered prior to the first day of July 1873 and for the payment by the school districts in the State, of amounts justly due teachers of public schools by such district to January 1876.

Sec. 37. Mechanics, artisans and material men, of every class, shall have a lien upon the buildings and articles made or repaired by them for the value of their labor done thereon, or material furnished therefor; and the Legislature shall provide by law for the speedy and efficient enforcement of said liens.

Sec. 38. The Legislature may, at such time as the public interest may require, provide for the office of Commissioner of Insurance, Statistics and History, whose term of office duties and salary shall be prescribed by law.

Sec. 39. The Legislature may, from time to time, make appropriations for preserving and perpetuating memorials of the history of Texas, by means of monuments, statutes, paintings and documents of historical value.

Sec. 40. No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of justice of the peace, county commissioner, notary public, and post master, unless otherwise specially provided herein.

Sec. 40. No person shall hold or exercise, at the same time, more than one civil office of emolument, except that of justice of peace, county commissioner, notary public and postmaster, officer of the National Guard, the National Guard Reserve, and the Officers Reserve Corps of the United States, and enlisted men of the National Guard, the National Guard Reserve, and the organized Reserves of the United States, unless otherwise specially provided herein. Provided, that nothing in this Constitution shall be construed to prohibit an officer, or enlisted man of the National Guard, and the National Guard Reserve, or an officer in the Officers Reserve Corps of the United States, or an enlisted man in the Organized Reserves of the United States from holding in conjunction with such office any other office or position of honor, trust or profit, under this State or the United States. (Sec. 40, Art. 16, adopted election November 2, 1926; proclamation January 20, 1927.)

Sec. 41. Any person who shall, directly or indirectly, offer, give, or promise, any money or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the Legislature to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law. And any member of the Legislature or executive or judicial officer who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself, or for another, from any company, corporation or person, any money, appointment, employment, testimonial, reward, thing of value or employment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same, or with any understanding, expressed or implied, that his vote or official action shall be in any way influenced thereby, or who shall solicit, demand and receive any such money or other advantage matter or thing aforesaid for another, as the consideration of his vote or official influence, in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be held guilty of bribery, within the meaning of the Constitution, and shall incur the disabilities provided for said offenses, with a forfeiture of the office they may hold, and such other additional punishment as is or shall be provided by law.

Sec. 42. The Legislature may establish an Inebriate Asylum, for the cure of drunkenness and reform of inebriates.

Sec. 43. No man, or set of men, shall ever be exempted, relieved or discharged, from the performance of any public duty or service imposed by general law, by any special law. Exemptions from the performance of such public duty or service shall only be made by general law.

Sec. 44. The Legislature shall prescribe the duties and provide for the election by the qualified voters of each county in this State, of a county treasurer and a county surveyor, who shall have an office at the county seat, and hold their office for two years, and until their successors are qualified; and shall have such compensation as may be provided by law.

Sec. 45. It shall be the duty of the Legislature to provide for collecting, arranging and safely keeping such records, rolls, correspondence, and other documents, civil and military, relating to the history of Texas, as may be now in the possession of parties willing to confide them to the care and preservation of the State.

Sec. 46. The Legislature shall provide by law for organizing and disciplining the militia of the State, in such manner as they shall deem expedient, not incompatible with the Constitution and Laws of the United States.

Sec. 47. Any person who conscientiously scruples to bear arms, shall not be compelled to do so, but shall pay an equivalent for personal service.

Sec. 48. All laws and parts of laws now in force in the State of Texas, which are not repugnant to the Constitution of the United States, or to this Constitution, shall continue and remain in force as the laws of this State, until they expire by their own limitation or shall be amended or repealed by the Legislature.

Sec. 49. The Legislature shall have power, and it shall be its duty, to protect by law from forced sale a certain portion of the personal property of all heads of families, and also of unmarried adults, male and female.

Sec. 50. The homestead of a family shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of the wife given in the same manner as is required in making a sale and conveyance of the homestead; nor shall the owner, if a married man, sell the homestead without the consent of the wife, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the husband alone, or together with his wife; and all pretended sales of the homestead involving any condition of defeasance shall be void.

Sec. 51. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot, or lots, not to exceed in value five thousand dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired.

Sec. 52. On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.

Sec. 53. That no inconvenience may arise from the adoption of this Constitution, it is declared that all process and writs of all kinds which have been or may be issued and not returned or executed when this Constitution is adopted, shall remain valid, and shall not be, in any way, affected by the adoption of this Constitution.

Sec. 54. It shall be the duty of the Legislature to provide for the custody and maintenance of indigent lunatics, at the expense of the State, under such regulations and restrictions as the Legislature may prescribe.

Sec. 55. The Legislature may provide annual pensions, not to exceed one hundred and fifty dollars per annum, to surviving soldiers or volunteers in the war between Texas and Mexico, from the commencement of the Revolution in 1835, until the first of January, 1837; and also to the surviving signers of the Declaration of Independence of Texas, and to the surviving widows continuing unmarried of such soldiers and signers; provided, that, no such pension be granted except to those in indigent circumstances, proof of which shall be made before the County Court of the County where the applicant resides, in such manner as may be provided by law.

Sec. 56. The Legislature shall have no power to appropriate any of the public money for the establishment and maintenance of a Bureau of Immigration, or for any purpose of bringing immigrants to this State.

Sec. 57. Three millions acres of the public domain are hereby appropriated and set apart for the purpose of erecting a new State Capitol and other necessary public building at the seat of government, said lands to be sold under the direction of the Legislature; and the Legislature shall pass suitable laws to carry this section into effect.

Sec. 58. The Board of Prison Commissioners charged by law with the control and management of the State prisons, shall be composed of three members appointed by the Governor, by and with the consent of the Senate, and whose terms of office shall be six years, or until their successors are appointed and qualified; provided that the terms of office of the Board of Prison Commissioners first appointed after the adoption of this amendment shall begin on January 20th, of the year following the adoption of this amendment, and shall hold office as follows: One shall serve two years, one four years, and one six years. Their terms to be decided by lot after they shall have qualified, and one Prison Commissioner shall be appointed every two years thereafter. In case of a vacancy in said office the Governor of this State shall fill said vacancy by appointment for the unexpired term thereof. (Sec. 58, Art. 16, adopted election Nov. 5, 1912; proclamation Dec. 30, 1912.)

Sec. 58. The Legislature shall have full power and authority to provide by law for the management and control of the prison system of Texas; and to this end shall have power and authority to place the prison system under the supervision, management and control of such trained and experienced officer, or officers, as the Legislature may from time to time provide for by law. (Sec. 58, Art. 16, adopted election November 2, 1926; proclamation January 20, 1927.)

Explanatory

Section 2 of the resolution proposing this amendment (Acts 1925, 39th Leg., p. 683), provided that it be submitted at a general election to be held November 3, 1926.

Sec. 59a. The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its over-flowed lands, and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties; and the Legislature shall pass all such laws as may be appropriate thereto.

(b) There may be created within the State of Texas, or the State may be divided into, such number of conservation and reclamation districts as may be determined to be essential to the accomplishment of the purposes of this amendment to the constitution, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law.

(c) The Legislature shall authorize all such indebtedness as may be necessary to provide all improvements and the maintenance thereof requisite to the achievement of the purposes of this amendment, and all such indebtedness may be evidenced by bonds of such conservation and reclamation districts, to be issued under such regulations as amy [may] be prescribed by law and shall also, authorize the levy and collection within such districts of all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment of such bonds; and also for the maintenance of such districts and improvements, and such indebtedness shall be a lien upon the property assessed for the payment thereof; provided the Legislature shall not authorize the issuance of any bonds or provide for any indebtedness against any reclamation district unless such proposition shall first be submitted to the qualified property tax-paying voters of such district and the proposition adopted. (Sec. 59, Art. 16, adopted election Aug. 21, 1917; proclamation October 2, 1917.)

Explanatory

The resolution proposing this section (Acts 1917, 35th Leg., p. 500), read as above. The express purpose, however, was, "That

Article 16 of the Constitution of the State of Texas be amended by adding thereto at the end thereof another section to be known as section 59." It is apparent that the intention was to add section 59 with three lettered subdivisions.

ARTICLE XVII

MODE OF AMENDING THE CONSTITUTION OF THIS STATE

Section 1. The Legislature, at any biennial session, by a vote of two-thirds of all the members elected to each House, to be entered by yeas and nays on the journals, may propose amendments to the Constitution, to be voted upon by the qualified electors for members of the Legislature, which proposed amendments shall be duly published once a week for four weeks, commencing at least three months before an election, the time of which shall be specified by the Legislature, in one weekly newspaper of each county, in which such a newspaper may be published; and it shall be the duty of the several returning officers of said election, to open a poll for, and make returns to the Secretary of State, of the number of legal votes cast at said election for and against said amendments; and if more than one be proposed, then the number of votes cast for and against each of them; and if it shall appear from said return, that a majority of the votes cast, have been cast in favor of any amendment, the said amendment so receiving a majority of the votes cast, shall become a part of this Constitution, and proclamation shall be made by the Governor thereof.

CERTIFICATE OF SECRETARY OF STATE

THE STATE OF TEXAS, DEPARTMENT OF STATE

I, Emma Grigsby Meharg, Secretary of State of the State of Texas, do hereby certify that the attached and foregoing is a true and correct copy of the Constitution of the State of Texas, which was submitted to the voters on February 15th, A. D. 1876, and adopted by them. Also, all Amendments to the Constitution that have been adopted since that date.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in the City of Austin, this 8th day of March, A. D. 1926.

(Signed) EMMA GRIGSBY MEHARG,
Secretary of State.

[Official Seal,
State of Texas.]

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†

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

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

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

That the following titles, chapters, subdivisions and articles shall hereafter constitute THE REVISED CIVIL STATUTES of the State of Texas.

THE REVISED CIVIL STATUTES OF THE STATE OF TEXAS

TITLE 1

GENERAL PROVISIONS

Art.
1. Common law.

SPECIAL LAWS

2. Special laws; notice.
3. If no newspaper is published.
4. Notice for each county.
5. Affecting persons.
6. Where applicant is a non-resident.
7. Details unnecessary.
8. Proof of publication.
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CONSTRUCTION OF LAWS

10. General rules.
11. Grammatical errors.

MISCELLANEOUS

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

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

SPECIAL LAWS

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

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

Rev. Civ. St. 1911, art. 5495, required notices to be posted *on* the court house door.

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

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

The gist of this article is from Const. art. 3, sec. 57.

Art. 6. [5498] [3264] Where applicant is a non-resident.—If the applicant is a non-resident of this State, said publication need only be made in a newspaper published at the Capital, in like manner as if such person resided at the seat of government. [Id.]

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

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

Art. 9. [5501] [3267] Proof of posting.—The posting above provided for may be shown by the return of the sheriff or constable, or by the affidavit of any credible person made on a written copy of the notice so posted, showing the fact of such posting, and such proof or other competent proof of the giving of said notice shall accompany the introduction of every local or special law. [As amended Acts 1927, 40th Leg., p. 42, ch. 29, § 1.]

CONSTRUCTION OF LAWS

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

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

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

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

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

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

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

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

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

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

MISCELLANEOUS

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

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

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

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

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

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

Art. 18. Term of office.—Each officer, whether elected or appointed under the laws of this State, and each Commissioner, or member of any board or commission created by the laws of this State, shall hold his office for the term provided by law and until his successor is elected or appointed and qualifies; and each, on retiring from office, shall deliver to his successor all books, papers and documents relating to his office.

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

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

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

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

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

1. "Property" includes real and personal property.
2. "Person" includes a corporation.
3. "Written" or "in writing" includes any representation of words, letters or figures, whether by writing, printing or otherwise.
4. "Oath" includes affirmation.
5. "Swear" or "sworn" includes affirm.
6. "Signature" or "subscribe" includes the mark of a person unable to write.
7. "Justice" when applied to a magistrate, means justice of the peace.
8. "Preceding Federal census" shall be construed to mean the United States census of date preceding the action in question and each such subsequent census as it occurs.
9. "Governing body," the governing or legislative body of any incorporated town, city or village, whether known as a council, commission, board of commissions, common council, board of aldermen, city council or by whatever name such bodies may be known or designated.
10. "Official oath" means the oath required by Article 16, Section 1, of the Constitution of Texas.
11. "Comptroller" means the Comptroller of Public Accounts of the State of Texas.
12. "Land Commissioner" means the Commissioner of the General Land Office of Texas.
13. "Preceding" when used by way of reference to title, chapter or article, means the next preceding.
14. "Succeeding" in like manner, means the next succeeding.
15. "Month" means a calendar month.
16. "Year" means a calendar year.
17. "Effects" includes all personal property and all interest therein.

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

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

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

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

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

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

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

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

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

Art. 28. Legal notices.—Whenever by law notice is required to be given of any act or proceeding, whether public or private, or relating to a judicial, executive or legislative matter, which notice is now authorized by law or by contract to be made by posting notices in one or more public places, such notices shall be given by publication thereof in a newspaper of general circulation which has been continuously and regularly published for a period of not less than one year, in the county in which said act or proceeding is to occur. Nothing in this article shall be construed to require the publication of any general election notice, public road notice or probate notice when the appraised value of the estate in which same is issued is less than one thousand dollars, nor shall this article apply to sales made under a written contract wherein it is provided that notice of sale thereunder may be posted. All notices published hereunder shall be printed at least once each week for the period of time now required for posting such notices. If no paper should be published in the county where such notice is required to be given, then such notice may be posted as now provided by law. The price to be paid for all publications hereunder shall be not more than one dollar per square of one hundred words for first insertion, and not more than fifty cents per one hundred words for each subsequent insertion, said publication fee to be taxed as other costs in the case. [Acts 1917, p. 391.]

Acts 1927, 40th Leg., ch. 232, p. 346, read as follows: "In all cases where guardians have been appointed by the Probate Courts of the several counties of this State after citation was published as provided in Chapter 179, Acts, Regular Session, 1917, being now Article 28 of the Revised Civil Statutes of Texas, 1925, and without service of citation or notice by posting as provided in Article 4115, Revised Civil Statutes of Texas, 1925, such service of citation and appointment of guardian by any Probate Court in this State are hereby validated, and any such guardianship heretofore granted and closed or now pending are held to be legal guardianships, and the order appointing any guardian made on an application and after notice published as provided in said Chapter 179, Acts, Regular Session, 1917, are hereby declared to be legal guardianships and valid for all purposes."

Art. 29. Official publications.—All proclamations of the Executive Department and all other notices required to be published by the State, or any department or institution thereof, or the Board of Control, and all publications or advertising of any department, institution, board, district, county, or subdivision thereof, which are to be paid for out of State, district, or county funds, or that are required to be published under any law of this State and charged as costs or fees, shall be published in the newspaper selected by the Secretary of State if from the Executive Department, or in the newspaper selected by the department or institution or Board of Control or district or county official issuing such notice or charged with the publication thereof. The rate charged for such official publication shall not exceed the lowest rate accorded commercial advertisers for a like amount of space. Within ten days after a request therefor by said officer, department or official, any newspaper carrying any such publication shall file with such official a schedule of rates showing the rate then charged by such newspaper for space therein; and said official may at any time require any further or additional information or proof necessary to insure the rigid compliance with the terms of this article. All bills for publication shall be accompanied by a certificate of the publisher, under oath, certifying the number of publications and the dates thereof, together with the clipping of said publication from an issue of said newspaper, and said bill shall be audited by said official. The Board of Control, or any district or county official charged with the publication of any notice required by law to be published, is hereby fully authorized and empowered to cancel any contract made by them, or either of them, in the event said Board or official may ascertain or determine that a higher rate is being charged by said newspaper for similar space for like or advertising purposes. All political advertising shall be done at the same rate as legal notices, and under the same supervision and regulations. Political advertising shall include the announcements for public office. [Acts 1923, p. 97.]

Art. 29a. Political advertisements.—For the purpose of this Act the word "Publication" shall mean any proclamation, publication, notice, citation, advertisement or matter required or authorized by law to be printed in a newspaper or newspapers which the law directs shall be inserted or caused to be inserted in such newspaper or newspapers by any institution, board, commission, department, officer, agent, representative or employee of the State or of any subdivision or department of the State, or of any county, political subdivision, or district, whether to be paid for out of public funds or charged as costs or fees. [Acts 1925, p. 372.] [39th Leg., ch. 161.]

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

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

It is the purpose of this Act to provide a legal rate of charge for publications aforesaid regardless of the source of the fund out of which it is to be paid or the purpose of such publications, whether herein

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

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

The reference to article 3757 in the fourth paragraph of this article is to Rev. Civ. St. 1911, art. 3757, which is art. 3808 of these statutes.

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

TITLE 2

ACCOUNTANTS—PUBLIC AND CERTIFIED

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

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

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

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

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

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

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

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

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

Art. 39. Expenses.—Each member of said board shall receive from the secretary-treasurer of the board, out of the funds in the hands of the board, if there be sufficient thereof, all of his necessary railroad and

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

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

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

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

TITLE 3

ADOPTION

Art.
42. Mode of adoption.
43. Rights of adopted heir.
44. Authority transferred.
45. Authority of court.
46. Adoptions prohibited.

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

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

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

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

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

TITLE 4

AGRICULTURE AND HORTICULTURE

Chap.
1. Commissioner of Agriculture.
2. Plant Breeder Examiners.
3. Pink Bollworm.
4. Agricultural Seeds.
5. Commercial Fertilizers.
6. Fruits and Vegetables.
7. Nursery Stock.
7A. Plant Diseases and Pests.
8. Experiment Stations.

CHAPTER ONE

COMMISSIONER OF AGRICULTURE

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

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

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

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

Art. 50. [4440–1] Chief clerk.—The chief clerk shall possess all the powers and perform such duties as may be prescribed by the commissioner, and all duties attached by law to the office of commissioner during the necessary or unavoidable absence of the commissioner, or his inability to act for any cause. The commissioner shall be responsible for the acts of his chief clerk, who shall, before entering upon the duties of his position, take the oath required of the commissioner, and enter into bond in the sum of three thousand dollars with two or more

sureties to be approved by the Governor, and payable to the State of Texas, conditioned for the faithful performance of his duties. His expenses while traveling on the business of the office, under the direction of the commissioner, shall be paid by the State. [Id.]

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

1. He shall cause to be executed all laws in relation to agriculture.

2. He shall encourage the proper development of agriculture, horticulture and kindred industries.

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

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

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

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

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

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

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

10. He shall correspond with the department of agriculture at Washington, and with such departments of the several states and territories of the United States, and, at his option, with those of foreign countries, and with the representatives of the United States in foreign countries, with the view of gathering information that will advance the interests of agriculture in Texas. He may also, for the same purpose, correspond with such organizations, societies, associations and individuals in the State as he may choose, having for their object the promotion of agriculture in any of its branches.

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

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

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

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

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

Art. 54. [4446] Report printed and distributed.—Under the direction of the Commissioner, the Board of Control shall cause to be printed annually not to exceed ten thousand copies of the annual report of said commissioner, said report to be distributed to the farmers through the farmers' institutes and other agricultural organizations or otherwise, at the discretion of the commissioner. [Id. sec. 14.]

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

CHAPTER TWO

PLANT BREEDER EXAMINERS

Art.

56. State Register.
57. Appointment.
58. Fees.
59. May register as breeder.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art.
60. Certificate as breeder.
61. May register as grower.
62. Certificate as grower.
63. Form of application.
64. Tags and labels.
65. Inspection fee.
66. Fund.
67. Cancelling registration.

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

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

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

Art. 59. May register as breeder.—Any cotton breeder in the State, or any person, firm or corporation engaged in breeding cotton, who produces and offers for sale cotton seed for planting purposes, and who has in his or its employ experienced and competent cotton breeder or breeders shall be eligible to registration as a Registered Cotton Seed Breeder, when he or it has satisfied the State Board of Plant Breeder Examiners herein provided for:

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

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

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

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

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

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

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

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

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

Art. 62. Certificate as grower.—When the application of a cotton seed grower made under the provisions of this law has been approved by the said Board, said applicant shall be registered as a "Certified Cotton Seed Grower" and shall be issued a certificate to that effect and shall be entitled to use the title "Certified Cotton Seed Grower," and to advertise and sell cotton seed produced in conformity with the provisions of this law and the rules and regulations established in pursuance thereof as "Certified Cotton Seed." Said certificate shall expire one year from date of issuance unless otherwise revoked as herein provided for. [Id.]

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

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

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

Art. 66. Fund.—All money so collected shall belong to a special fund of this State and shall be paid over by the Commissioner of Agriculture to the State Treasurer, during the first week of each month, and shall be credited to the "Special Pure Bred Cotton Seed Inspection Fund," and such funds shall be ex-

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

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

CHAPTER THREE

PINK BOLLWORM

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

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

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

Art. 70. Policy and methods.—It is hereby declared the policy of the State in endeavoring to control and eradicate the pink bollworm to employ all such methods as scientific research demonstrates to be successful and as may be sanctioned by constitutional warrant, including inspection of cotton plants in the fields, or of cotton products wherever stored; the quarantine and fumigation of cotton and cotton products found to be contaminated; supervision of the growing of cotton in areas known to be contaminated; destruction of infested fields of cotton, or cotton products; and the prevention of planting of cotton in areas where infestation has been found. [Id.]

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

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

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

Art. 74. Examination of area.—Whenever the Commissioner of Agriculture shall deem it necessary to the protection of the cotton industry of Texas that the growing cotton within any area within the State, except as provided for in the preceding articles hereof, be placed under supervision, or that cotton growing be prohibited as a means of aiding in the control and eradication of the pink bollworm, he shall cause to be made a thorough examination of such area by a competent and experienced entomologist, who shall, after going upon the premises and after making an examination in person, report the result thereof to the Commissioner of Agriculture. Should this report express the conclusion that the pink bollworm exists within the territory under investigation, the Commissioner of Agriculture shall certify this report to the Governor, who shall cause the Pink Bollworm Commission, hereinafter provided for, to hold a hearing at some central and easily accessible point within the area under investigation; due notice of the time and place of such hearing shall be published in some newspaper in or near the county or counties under investigation, at least ten days before such hearing. The Commissioner of Agriculture shall present to the Commission a statement setting forth the following facts:

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

Such statement shall be verified by oath of the person making the same and shall be filed and preserved in the office of the Commissioner of Agriculture and be open to the inspection of the public. Said Pink Bollworm Commission shall make a report to the Governor immediately after the hearing. Should this report and recommendation be for the prevention of the planting of cotton in any area and for the establishment of a non-cotton zone, such recommendation shall specify the area to be embraced in the proposed non-cotton zone. Upon receipt of this report, the Governor shall declare the growing of cotton within such area as may be recommended by the Pink Bollworm Commission a public menace, and thereafter it shall be unlawful to plant, cultivate or grow cotton, or to allow cotton to grow within such zone, such proclamation of the Governor to remain in effect until the Pink Bollworm Commission, herein provided for, shall have certified that the condition of menace no longer exists. In the event of the establishment of any non-cotton zone as authorized by this chapter, all persons prevented from producing cotton in the non-cotton zones shall be entitled to receive compensation from the State in the measure of the actual and necessary losses sustained thereby. The Compensation Claim Board, herein provided for, shall have full power and authority to determine the amount of compensation to such persons. In determining the actual and necessary losses, the Compensation Claim Board shall take into consideration the value of the average yield of cotton and other crops second in economic importance thereto in that vicinity; the total amount of land planted to crops during the year for which compensation is claimed; the percentage of such land customarily planted in cotton in that vicinity, and such other factors as they deem essential. The words "cultivated crops" as used above shall not be construed to include any small grain crops, hay or pasture crops which are not cultivated during the growing season. No person shall be entitled to compensation who does not in good faith obey the proclamation of the Governor establishing such non-cotton zone. Should the report of the Pink Bollworm Commission express the conclusion that it will not be dangerous to the cotton industry of Texas to permit the growing of cotton within such district under such rules and regulations as it shall be deemed adequate to prevent the spread of the pink bollworm, the Governor shall proclaim such area as may be set out in the report of the Pink Bollworm Commission a regulated zone, in which it shall be unlawful to plant, cultivate and market cotton under such rules and regulations as shall be promulgated therefor by the Commissioner of Agriculture, which may include the planting of seed from non-infested territory, ginning at designated gins, milling or disinfecting of all seed produced within such zone, marketing, cleaning of fields, and such other rules as may be found necessary; provided that no ginner shall be authorized to gin cotton from regulated zones unless he shall disinfect all seed under such rules as the Commissioner of Agriculture shall prescribe. Such proclamation of the Governor, establishing such regulated zone shall remain in effect until the Pink Bollworm Commission shall have certified that the menace no longer exists. [Id.]

Art. 75. Compensation Claim Board.—The Governor shall appoint a Compensation Claim Board for the State, who shall serve until relieved therefrom by the Governor, whose duty it shall be to determine in the manner herein provided the measure of compensation due persons prevented from growing cotton and the damages sustained by persons having cotton condemned and destroyed as provided for herein. The said board shall be composed of three citizens of the State residing outside any area under quarantine under the provisions of this law, at least two of whom are actually engaged in the production of cotton. Before entering upon their duties, the members of the Board shall take the official oath, and shall organize by electing one of its members chairman and the Commissioner of Agriculture shall act as ex-officio secretary. The concurrence of two members of the Board shall constitute legal action. The Compensation Claim Board shall conduct a public hearing in the county or counties from which the claims for compensation have been filed, due notice of which hearing shall be given by publication in some newspaper published in or near the county or counties in which the claimant resides, not less than ten days before the date of such hearing, and by mailing from the office of the Commissioner of Agriculture a letter to each claimant, not less than ten days before the date of such hearing, which notices shall state the time and place of each hearing. Every such claim for compensation from the State shall be made under oath, attested by two citizens of the county in which the claimant resides, upon blanks to be furnished by the Commissioner of Agriculture, and except when the claim is for compensation for losses under previous acts, shall be filed in the office of the Commissioner of Agriculture not later than November 15 of the year for which claim for compensation is made. Every such claim shall state:

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

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

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

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

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

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

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

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

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

CHAPTER FOUR

AGRICULTURAL SEEDS

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

Article 83. "Agricultural seeds" defined.—For the purpose of this chapter, agricultural seeds are defined as the seeds of alfalfa, Irish potatoes, sweet potatoes, clovers, corn, cotton, saccharine sorghums, nonsaccharine sorghums, broomcorn, small grains, (including rice), cow peas, soy beans, velvet beans, peanuts, vetch, rape, millet, Johnson grass, Bermuda grass, Kentucky blue grass, orchard grass, sudan grass, onion and Rhodes grass, which are to be used for sowing or seeding purposes. [Acts 2nd C. S. 1919, p. 158.]

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

(a) Commonly accepted name of agricultural seed.
(b) Correct weight in pounds and ounces.
(c) Name of State where seed was grown, and if unknown, a statement that the locality where grown is unknown.
(d) Approximate percentage of germible seed as determined by germination test and date on which germination test was made. Name and address of person, firm or party or agency making the germination test, provided however, that the statement shall not be a basis for prosecution under this chapter.
(e) Name and address of vendor.
(f) The approximate percentage, by weight, or purity, meaning freedom of such agricultural seed from foreign matter and from other seed distinguishable by their appearance.
(g) The approximate total percentage, by weight, of weed seeds or other foreign matter.
(h) The name and approximate number per pound of each kind of the seed of the following named noxious weeds which are present at the rate of, or in excess of, one such noxious weed seed in five grams of agricultural seed. Such noxious weed seed are defined as

seeds of dodder (cascuta, various species), bind weed or wild morning glory (convolvulus, various species), blue weed (helianthus cilistus), wire grass (pasplum distinchum), Bermuda grass, Johnson grass, and all other seeds of foreign matter known by science to be noxious, are hereby defined as noxious weed seeds. [Id.]

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

(a) That such seed is a mixture.

(b) The approximate percentage, by weight of inert matter.

(c) The requirements provided in paragraphs (c) (g) and (h) of the preceding article. [Id.]

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

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

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

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

Art. 90. Liability for damages.—No action for the recovery of damages or any liability whatsoever for any violation of any provision of this chapter, or for the breach of any legal duty or obligation in the sale of the agricultural seeds defined in the first article of this chapter, or the sale of mixtures defined in the third article of this chapter, shall be maintained by the buyer and against the vendor of such seeds, unless the claim or claims of such buyer are based upon properly drawn samples of such seed, from the bulk thereof, and examined in the way provided in this law. Nothing in this chapter shall be construed as preventing one farmer from selling to another farmer such seed grown on his own farm as covered by the provisions of this chapter without having such seed tested and labeled as provided for herein. [Id.]

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

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

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

CHAPTER FIVE

COMMERCIAL FERTILIZERS

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

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

branding or labeling must be durable and legible, and so placed as to be easily read. [Acts 1911, p. 218.]

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

Art. 96. Words prohibited on tag.—The words "high grade" shall not appear upon any bag or other package of any complete fertilizer which complete fertilizer contains, by its guaranteed analysis, less than ten per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag or other package of any complete fertilizer which contains, by its guaranteed analysis, less than eight per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any acid phosphate with potash, which shall contain, by its guaranteed analysis, less than thirteen per cent available phosphoric acid, and one per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag or other package of any acid phosphate with potash which shall contain by its guaranteed analysis, less than eleven per cent available phosphoric acid, and one per cent potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis, less than fourteen per cent available phosphoric acid; and the word "standard" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis less than twelve per cent. available phosphoric acid. The word "standard" shall not appear upon any bag or other package of acid phosphate with nitrogen which shall contain, by its guaranteed analysis, less than nine per cent of available phosphoric acid and two per cent nitrogen, or a grade or analysis of equal total commercial value. No commercial fertilizer shall be sold, offered or exposed for sale for use within this State, upon which the use of the words "high grade" or "standard" is prohibited by this article, unless the words "low grade" is printed in two inch letters in a conspicuous place upon the package of said commercial fertilizer. No claim or guarantee for less than one per cent of phosphoric acid or of potash, or for less than a 0.82 per cent of nitrogen, shall be allowed in any commercial fertilizer. [Id.]

Art. 97. Tax tags.—To defray the expenses connected with the inspection of commercial fertilizer sold, or exposed, or offered for sale in this State, and experiments relative to the value thereof, all firms, corporations or persons engaged in the manufacture or sale of commercial fertilizers shall pay to the State Chemist an inspection tax of twenty-five cents per ton (2000 pounds) for such commercial fertilizers sold or exposed, or offered for sale in this State in order to entitle the same to inspection and delivery, and shall attach a tag furnished by the State Chemist as evidence that said tax is paid, and goods so tagged shall not be liable to any further tax. But nothing in this article shall interfere with fertilizers passing through the State in transit; nor apply to the delivery of fertilizing materials in bulk, to fertilizing factories for manufacturing purposes. The fees received by the State Chemist and all the penalties collected under this chapter shall be deposited with the treasurer of the Agricultural and Mechanical College of Texas, and shall be expended under the direction of the Board of Trustees of said College in defraying the expenses of inspecting and analyzing commercial fertilizers, the preparation of tags, and bulletins, experiments relative to the value of fertilizers, and for such other purposes as the Board of Trustees of said College shall allow or direct. Firms, corporations or persons, or agents representing them, who have registered their brands in compliance with this law, shall forward to the State Chemist a request for tax tags, stating that the said tags are to be used upon the brands of commercial fertilizers registered and sold in accordance with this chapter, and said request shall be accompanied with the inspection tax, whereupon the State Chemist shall issue tags to parties applying, who shall attach said tags to each bag, barrel or package thereof. All firms, corporations or persons are hereby forbidden to attach the tag prescribed by this article to any bag, barrel or package of any commercial fertilizer which has not been previously registered as required in this chapter, and which is not in accordance with all other provisions of this chapter. No tags shall be used after the end of the fiscal year for which they are issued, and they shall not be redeemed by the State Chemist. The fiscal year shall be comprised between the dates of September first and August thirty-first, inclusive. The State Chemist is hereby empowered to adopt a form for said tags. [Id.]

Art. 98. Analysis and publication.—The State Chemist shall cause one analysis or more to be made annually of such commercial fertilizer sold or offered for sale under the provisions of this Act as may be sampled under his direction. The State Chemist, in person or by deputy, shall have power to enter into any car, warehouse, store, building, boat, vessel, steamboat, or place, supposed to contain fertilizers for the purpose of inspection or sampling, and shall have the power to take a sample for analysis, not exceeding two pounds, from any package or lot of fertilizer found within the State. Said sample shall be drawn by means of a sampling tube of uniform diameter and at least eighteen inches long, placed in a jar or can, sealed and labeled by the inspector. Said sample shall be taken from not less than five bags, but in lots of 100 and over, from not less than 5 per cent of the entire number. All analyses shall be made by the official methods of the Association of Official Agricultural Chemists of North America. In the trial of any suit or action wherein is called in question the value or

composition of any fertilizer, a certificate signed by the State Chemist and attested with his seal, setting forth the analysis made by the State Chemist, or under his direction, of the sample of said fertilizer analyzed by him under the provisions of this chapter, shall be prima facie proof that the fertilizer was of the value and consistency shown by his said analysis. And the said certificate of the State Chemist shall be admissible in evidence to the same extent as if it were his deposition taken in said action in the manner prescribed by law for the taking of depositions. The State Chemist shall issue at least one bulletin annually, setting forth the analyses of fertilizers made under the provisions of this chapter, the operations of the law, and such other information concerning violations or operations of this chapter, or otherwise pertaining to the sale of fertilizers as may be considered necessary. The State Chemist shall also investigate the composition, properties and agricultural values of fertilizers or of fertilizer materials or ingredients of fertilizers sold or offered for sale within the State of Texas, and shall publish his results as he may find. [Id.]

Art. 99. Sale of inferior fertilizer.—Whenever the State Chemist shall be satisfied that any lot or shipment of fertilizer is four per cent or more below the guaranteed value in plant food, he shall assess such deficiency against the manufacturer or guarantor of the fertilizer, and require that the value of the deficiency be made good to all persons who have purchased said fertilizer; and the State Chemist may seize any fertilizer belonging to such manufacturer or guarantor if the deficiency shall not be paid within thirty days after notice to such manufacturer. Any person, firm or corporation who shall intentionally or knowingly sell or offer for sale any commercial fertilizer for use within this State which is materially below the guaranteed value in plant food, shall refund to all purchasers of said commercial fertilizer twice the value of the deficiency in plant food. [Id.]

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

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

Art. 102. Statement of sales.—Every firm, corporation or person who has registered fertilizers for sale within this State, shall mail to the State chemist, on forms provided by the State chemist, within three days of each sale, shipment or delivery, a statement showing the official name of fertilizer, the quantity and the name and address of the person to whom the fertilizer is sold, and if such fertilizer is to be used for manufacturing purposes, the fact must be so stated, and also the composition of said fertilizer. Every corporation, firm or person registered to sell fertilizers within this State according to this chapter, shall annually on the first day of May, submit to the State chemist a statement of their sales of said fertilizer since September 1, preceding, and the State chemist is hereby authorized to require other statements of sales, if necessary, in such form as he may prescribe. The sales or shipments of any individual, corporation, firm, or person shall not be disclosed. [Id.]

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

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

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

provided in this chapter. But if such bulk fertilizer is offered for sale or distribution it must be tagged and branded and otherwise accord with the provisions of this chapter. [Id.]

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

Art. 107. Analysis by purchaser.—Any person not a dealer in, or agent for the sale of any fertilizer, who may purchase any commercial fertilizer for his own use within this State and not for sale, may take a sample of same for analysis, which analysis shall be made free of charge by or under the direction of the State chemist. Said sample or samples of fertilizer shall be taken in the presence of both purchaser and seller. One cupful of the fertilizer shall be taken from the top and one cupful from the bottom of each sack, provided that there are not more than five sacks in the lot, but in lots of 10 to 100 sacks, from not less than five sacks; in lots of 100 and over, from not less than five per cent of the entire number. The samples so taken shall be intermixed upon some surface so as not to mix dirt or any other substance with the fertilizer. After thorough mixing, at least one pound of the material must be put into each of two cans or jars, one of which securely sealed and marked in such a way as to surely identify the sample and show by whom it was sent, but the name of the fertilizer or of the person from whom it was purchased need not be given, and must be forwarded by express, all charges prepaid, to the State chemist; the other sample, securely sealed, shall be turned over to the company or agent selling same. The purchaser shall also send with the sample a certificate signed by himself and two disinterested witnesses, stating that the sender has purchased the fertilizer for his own use and not for sale and that the sample was taken in the manner prescribed in this article, and that the sender has in his possession a certificate signed by himself and the two witnesses, giving the name of the fertilizer and manufacturer thereof as tagged or branded on the packages and will forward this certificate to the State chemist on receipt of the analysis. If the person, company or agent shall refuse, decline or neglect to witness the taking of samples, after having been requested or notified by the purchaser in writing six days before so to do, then the sample may be taken in the manner already described in the presence of two disinterested witnesses. Any person having sent a sample for analysis under the provisions of this article, who shall, after having received the report of analysis of same, refuse to furnish the required certificate, shall thereafter forfeit the privilege of analysis of fertilizers under this article. [Id.]

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

CHAPTER SIX

FRUITS AND VEGETABLES

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

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

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

2. Standard Four Basket Crate. The basket in said crates shall hold not less than three quarts dry measure, and the dimensions of such baskets shall be 5x8 inches at the bottom, 6x10 inches at the top, and 4 inches deep, and shall contain not less than 201.6 cubic inches. The heads of the crates holding said baskets shall be 4½ inches wide by 11 inches at the bottom, and 13 inches at the top in length and not less than 7/16 of an inch thick. The veneer or boards for the bottoms, sides and tops shall be not less than 4½, 4, and 5½ inches wide respectively, and not less than 1/7 of an inch thick and 22 inches long. Both crates and baskets shall be made of good, substantial material, sufficiently strong to withstand the ordinary strain incident to transportation and handling.

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

4. Standard Folding Onion Crate. The standard folding onion crate shall not be less than 19⅝ inches long, 11 3/16 wide and 9 13/16 inches deep, inside measurements, containing not less than 2154.4 cubic inches.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Choice:

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

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

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

Texas Standard Four Basket Crate: Fancy:

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

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

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

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

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

Choice:

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

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

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

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

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

(c) Texas Standard Orange Grades.

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

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

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

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

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

Texas Standard Orange Packs. The Standard orange packs shall be 8 in number; namely, 96's, 126's, 150's, 176's, 200's, 216's, 252's, and 288's.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Art. 112. Texas Bermuda Onion Grades.—Grade No. 1.—This grade shall consist of onions which are sound, mature, bright, well-shaped, of one variety, free from doubles, splits, bottle necks, and seed stems, and practically free from damage caused by dirt or other foreign matter, moisture, sunburn, cuts, disease, insects, or mechanical means. The minimum diameter shall be two inches. In order to allow for variation incident to commercial grading and handling, six per centum, by weight, of any lot need not meet the foregoing requirements of this grade. In the case of yellow onions, not more than five per centum, by weight, of any lot may be noticeably pink.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Art. 113. Texas Cabbage Grades.—Grade No. 1.—This grade shall consist of sound, green colored, partially trimmed, and reasonably hard heads, weighing not less than one and one-half pounds nor more than eight pounds each; which are free from cracked or over-ripe heads, stem rot and other diseases, and practically free from dirt, worm holes and lice.

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

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

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

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

Art. 114. Snap Beans.—Grade No. 1.—This grade shall consist of sound, bright, clean beans of one variety and color, from one-half to full grown; which are free from leaves, stems, spots, insect damage, rust, or other diseases, and over-ripe pods.

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

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

All beans are to be packed in hamper weighing, when packed, not less than 17 pounds net weight for

one-half bushel hamper, and 34 net weight for one bushel.

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

Art. 115. Texas Bartlett Pear Grades.—Extra Fancy. Shall consist of Bartlett Pears clean, bright, natural color and shape, sound, free from worms, specks, blemishes, bruises or limb scar red fruit.

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

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

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

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

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

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

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

Art. 116. Texas Irish Potato Grades.—Grade No. 1.—This grade shall consist of sound potatoes of similar varietal characteristics, which are practically free from dirt or foreign matter, frost injury, sunburn, second growth, cuts, scab, blight, dry rot, and damage caused by disease, insects, or mechanical means. The minimum diameter shall be one and three-fourth inches. In order to allow for variation incident to commercial grading and handling, five per centum, by weight, of any lot, may be under the prescribed size, and, in addition, three per centum by weight of any such lot may be below the remaining requirements for quality of this grade.

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

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

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

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

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

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

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

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

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

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

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

CHAPTER SEVEN

NURSERY STOCK

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

Article 119. [4458–68] Control.—The protection of fruit trees, shrubs, and plants shall be under the supervision and control of the Commissioner of Agriculture. The Commissioner shall prepare and enforce suitable rules and regulations for the traffic and shipment of cape jasmine, cut flowers, and such greenhouse and floral shipments as may require control, and for the inspection of nurseries, greenhouses, orchards, forest trees, and all products originating from the same, within the meaning of this chapter. He shall enforce the provisions of this chapter and make and enforce such other rules and regulations not inconsistent herewith as may be deemed necessary to carry the

same into effect. He shall also provide such rules and regulations concerning city, private or public parks, avenues of shade trees, shrubbery and ornamentals along the streets of cities, for city residences, and city property generally, as will secure a protection and immunity from insect pests and contagious diseases intended to be provided for by this law. [Acts 1909, p. 316.]

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

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

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

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

Art. 124. [4459] Appeal.—In case of objections to the findings of the chief inspector, employé or representative of the commissioner, an appeal may be made to the Commissioner, whose decision shall be final. An appeal must be taken within five days from the service of said notice, and shall act as a stay of proceedings until it is heard and decided. If the decision on such appeal be against such owner, he shall be ordered to forthwith proceed with such treatment or destruction, and upon his refusal or neglect to do so, then the Commissioner, or chief inspector or employé or representative appointed by him, may employ all necessary assistance for that purpose and such representative or representatives, agent or agents, employé or employés, may enter upon any or all premises necessary for the purpose of such treatment or destruction, and shall forthwith treat or destroy such trees, shrubs, or plants. [Id.]

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

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

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

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

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

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

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

Art. 131. [4463] Unlawful shipments.—The Commissioner shall inspect shipments of nursery stock into this State, or originating within this State without tags or proper certificates as above provided for,

for diseases or pests, and if infected, the same shall be dealt with as infected nursery stock. [Id.]

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

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

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

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

CHAPTER SEVEN A

PLANT DISEASES AND PESTS

Art.
135a. Insect pests and plant diseases.
135b. Quarantine and pest free zones.
135c. Investigations, hearings, and reports.
135d. Commissioners' court orders and regulations.

Article 135a. Insect pests and plant diseases.—If the Commissioner of Agriculture of this State, hereinafter called the "Commissioner," determines the fact, as provided in Section 3 hereof [Art. 135c], that any dangerous insect pest or plant disease new to and not heretofore widely distributed in this State exists outside of Texas, or if such pest be introduced into this State, he is hereby authorized and it is made his duty to establish, maintain and enforce a quarantine against such infested area and shall prevent the movement from such quarantined areas into areas in this State not infested of any such plants and plant products as are liable to disseminate the pest under consideration. If such plants or plant products as shall be quarantined, as provided for herein, can be so disinfected or treated as to not endanger the agricultural interests of this State, then the Commissioner shall promulgate rules and regulations governing such disinfection or treatment before allowing such products to be shipped out of such quarantined area. The Commissioner shall have authority and it is hereby made his duty to promulgate rules and regulations governing the inspection and certification of seed beds or propagation grounds where plants are produced for sale and transplanting, when such plants as may be produced and offered for sale are known carriers of the sweet potato weevil, nematode gall worms or any dangerous fungus or bacterial disease of valuable agricultural or horticultural crops. As soon as practicable after the passage of this Act [Arts. 135a–135d; P. C. Art. 1700a] he shall publish a list of such plants, and thereafter it shall be unlawful for any person or persons to transport or sell any such plants that may be infested with sweet potato weevil, nematode gall worms or dangerous fungus or bacterial disease of valuable agricultural and horticultural crops. [Acts 1927, 40th Leg., p. 97, ch. 69, § 1.]

Art. 135b. Quarantine and pest free zones.—When the Commissioner determines the fact that any insect pest or plant disease of general distribution in the State does not exist in any particular area, he is hereby authorized to publish such fact, and he shall have full power and authority to place a quarantine around such "free area" and prevent the introduction therein of any plants, plant products, things or substances liable to be infested with such insect pest or plant disease. Venue in cases arising under the provisions of this section shall be in courts of competent jurisdiction in the county in which such "pest-free" zones are established. [Acts 1927, 40th Leg., p. 97, ch. 69, § 2.]

Art. 135c. Investigations, hearings, and reports.—Before any quarantine shall be established, as provided for in Sections 1 and 2 herein [Arts. 135a, 135b] the said Commissioner shall cause the Chief Entomologist of the Department of Agriculture and, if he deems it advisable, one or more other persons designated and appointed by the said Commissioner, to make an investigation and hold a public hearing at some convenient and accessible point, due notice of which shall have been given at least ten (10) days prior to the day of such hearing by publication in a newspaper of general circulation in the area or areas to be considered. Such notice shall state the pests or plant diseases and the area to be considered, at which hearing all persons interested shall have the right to be heard. The Chief Entomologist and other persons appointed to conduct such hearing, if any, shall take the constitutional oath of office and be empowered to administer oaths for the purpose of taking testimony and shall record the proceedings had, and shall investigate whether or not the particular pests or plant diseases under consideration constitute a menace to any valuable plant or plant product and shall make a written report to the Commissioner of the findings thereof as to whether or not such pests or plant diseases as may be considered are in fact a menace to any valuable agricultural or horticultural crop and the reasons for such conclusions. Such report shall also indicate whether or not any quarantine action is necessary or desirable; and if so, the best known means of circumscribing, controlling, preventing the spread of or exterminating such pests or plant diseases. After receiving such report, the said Commissioner is authorized to promulgate such quarantine regulations as may be indicated to be necessary for the protection of the agricultural or horticultural interests of this state. Provided that in the event any person or persons are aggrieved, and will be injuriously affected by the said quarantine, or whose property is to be destroyed by any such quarantine or orders of the Commissioner, shall have the right to appeal such matter to the District Court of any Judicial District in which such quarantine or orders are promulgated by giving written notice thereof to the commissioner, stating to what District Court said application is made, such notice to be by registered mail within ten (10) days from the date of the Commissioner's proclamation. Immediately upon receipt of such notice the said Commissioner shall make a certified copy of his orders and proclamations in said cause and transmit same to the District Court named in the notice. Upon receipt of said papers by the Clerk of said Court, said cause shall be docketed ———, Commissioner of Agriculture vs. ———, defendant, on the Civil Docket of said Court, and tried in said Court in the manner provided for the trial of civil cases, and the judgment of the said court upon final hearing shall be "that the orders and proclamations of the said Commissioner be approved and enforced, or that said orders and proclamations be and are vacated and held for naught," as the Court or Jury may determine. Provided however that the Commissioner of Agriculture shall have no power under this Act to enforce a local quarantine in any County or a part thereof in this State until the Commissioner's Court of the County to be quarantined shall have passed an order entered upon the Minutes of said Court, requesting quarantine of such County or a part thereof. [Acts 1927, 40th Leg., p. 97, ch. 69, § 3.]

Art. 135d. Commissioners' court orders and regulations.—When so requested by the Commissioners' Court of any county in this state, the Commissioner shall cause an investigation to be made to determine whether or not any certain insect pest or pests or plant disease or diseases exist in such county or in any part thereof, and shall cause a written report to be made to the said Commissioners' Court which shall contain a statement as to the nature of the infestation, if any, the best known means or method of circumscribing, eradicating, controlling or exterminating the same, and shall state therein specifically what treatment or method is necessary to be applied in each case, as the matter may require, with detailed statement or description as to the method of making or procuring and of applying any preparation or treatment so recommended therefor and the time and duration for such treatment. Upon receipt of such statement, the Commissioners' Court of such county is hereby authorized to cause the same to be published two (2) consecutive weeks in some newspaper of general circulation in the area or areas under consideration, together with notice of hearing to be held by said Commissioners' Court, which hearing shall be held not less than twenty (20) days after the first notice shall have been published, at which hearing all persons interested shall have the right to be heard. After such hearing, the said Commissioners' Court shall make a report to the Commissioner, giving its conclusions. If such report approves the recommendations that shall have been made and the Commissioners' Court of such county believes that such measures as shall have been recommended should be applied in such area or areas that may be under consideration; then the said Commissioners' Court shall, by an order duly entered in its minutes, request the said Commissioner to establish a "control" or "eradication" zone, as the matter may require, in said area, and the Commissioner shall issue a proclamation creating such area or areas as may be designated an "eradication" zone or "control" zone, as the case may be, and shall prescribe rules and regulations governing the circumscribing, control, eradication or extermination of such pest or disease, and thereafter it shall be unlawful for any person to do any act prohibited by such rules and regulations, or refuse to do anything commanded to be done by such rules and regulations. The Commissioners' Courts of the several counties shall have full power and authority to appropriate funds from the general revenue of the county and to employ such aid as may be necessary to carry into effect this provision. [Acts 1927, 40th Leg., p. 97, ch. 69, § 4.]

Section 6 of Acts 1927, 40th Leg., p. 97, ch. 69, provides that the Act shall be cumulative of all laws providing for quarantine and insect and plant disease control and shall not repeal any law or part of law except when in direct conflict.

CHAPTER EIGHT

EXPERIMENT STATIONS

1. STATE EXPERIMENT STATIONS

Art.
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141. Valley Citrus Station.
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3. RAILWAY FARMS AND STATIONS

165. Powers.

1. STATE EXPERIMENT STATIONS

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

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

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

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

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

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

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

Art. 140. Sale of stations.—In the event of any such sale, the title to said property shall not pass from this State until a deed of conveyance therefor is made to the purchaser duly signed by the Governor and attested by the Secretary of State under his official seal. All funds received from the sale of station lands or property shall be deposited in the State Treasury and shall be paid out in accordance with the provisions of this chapter. [Id.]

Art. 141. Valley Citrus Station.—The Board is authorized to establish and maintain a horticultural and agricultural experiment station in the citrus belt of Cameron or Hidalgo County for the purpose of making scientific investigations and experiments in the production of citrus fruits and in determining the best methods of eradicating insect pests and dangerous diseases that infect citrus trees, and for the purpose of studying the other horticultural and agricultural problems of that region. For such purposes, the Board is empowered to secure a suitable site for the location of said station in either of said counties con-

taining a sufficient amount of land not exceeding one hundred acres well adapted to the growing of citrus fruits and supplied with water for irrigation purposes. Said station shall be subject to all the provisions of this chapter applicable to its operation, maintenance and control. [Acts 1923, p. 69.]

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

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

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

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

Art. 146. Director of Stations.—All sub-stations embraced within this subdivision shall be subject to the provisions of this law and shall be under the supervision, control, management and direction of the Director of the Texas Agricultural Experiment Station at the Agricultural and Mechanical College. Such director shall reside at College Station. The board is authorized to pay a part of the director's salary from the funds appropriated by the Legislature for the maintenance and support of said experiment stations, in such proportion as in its judgment may be just and proper; taking into consideration the division of his time between said sub-stations and the Main Station, and the sum appropriated for such purposes by the Federal Government. The director may employ such assistants and labor and may purchase such live stock, farming implements, tools, seed, and such other materials and supplies as he shall deem necessary to the successful management of any or all of such experiment stations, subject to the approval of the Board. [Id.]

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

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

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

2. COUNTY FARMS AND STATIONS

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

Art. 151. Petition and election.—On petition of not less than ten per cent of the legal voters of such county who voted for Governor in the preceding election, the commissioners court shall submit the question of the adoption of the provisions of this subdivision to the qualified voters of said county; and said court shall order an election to be held not less than thirty nor more than sixty days from the date of the election order, which shall be signed by the county judge. Such election shall be held at the usual voting places and by the usual election officers, and as near as may be shall be conducted in accordance with the general election laws of Texas. Notice of such order shall be given by posting copies thereof at all the post offices within such county and at the court house door of such county. At such election those favoring a county experiment farm and station under the provisions of this subdivision shall vote a ticket on which shall be written or printed the words, "For a County Experiment Farm and Station," and those who are opposed shall vote a ticket on which shall be written or printed the words, "Against a County Experiment Farm and Station." Both tickets may be written or printed on the same piece of paper, and the voter may vote by erasing or drawing a line through the one he does not favor. [Id.]

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

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

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

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

Art. 156. Director.—The said station shall be in charge of and under the direction of a director who shall be appointed by the commissioners court. He shall be a practical farmer, and shall pass a satisfactory examination touching his general knowledge, information, education, and his knowledge of farming, stock raising and other affairs incident to successful farm life. Such examination shall be prescribed by and taken under the Director of State Experiment stations or some one designated by him for such pur-

pose. The said director shall be furnished a residence on said farm, free of cost for himself and family, as a part of his compensation, and shall receive such salary as the commissioners court may fix, not less than seventy-five dollars per month. The commissioners shall not rent or lease said farm to any one, nor permit it to be done by any one. [Id.]

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

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

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

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

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

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

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

Art. 164. Demonstration work.—The Commissioner's Court of any county of this state is authorized to establish and conduct co-operative demonstration work in Agriculture and Home Economics in co-operation with the Agricultural and Mechanical College of Texas, upon such terms and conditions as may be agreed upon by the Commissioners' Court and the Agents of the Agricultural and Mechanical College of Texas; and may employ such means, and may appropriate and expend such sums of money as may be necessary to effectively establish and carry on such demonstration work in Agriculture and Home Economics in their respective counties. [Acts 1911, p. 105; Acts 1st C. S. 1917, p. 56; Acts 1927, 40th Leg., p. 9, ch. 6, § 1.]

3. RAILWAY FARMS AND STATIONS

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

TITLE 5

ALIENS

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

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

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

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

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

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

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

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

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

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

Art. 171. [19] [13] May sell before escheat.—Any alien who shall hereafter acquire lands in Texas, in contravention of the provisions of this title, may, nevertheless, convey the fee simple title thereof at any time before the institution of escheat proceedings as hereinafter provided. If any such conveyance shall

be made by such alien either to an alien or to a citizen of the United States, in trust, and for the purpose and with the intention of evading the provisions of this title, such conveyance shall be null and void; and any such land so conveyed shall be forfeited and escheated to the State. [Id.]

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

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

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

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

Art. 176. Report and record of ownership.—All alien[s] and all alien corporations now owning lands in this State shall on or before the last day of January 1926 file a written report under oath, with the clerk of the county court of the county in which such land is located, giving the name, age, occupation, personal description, place of birth, last foreign residence and allegiance, the date and place of arrival of said alien in the United States, and his or her present residence and post-office address, and the length of time of residence in Texas, the foreign prince, potentate, State or sovereignty, of which the alien may at the time be a citizen or subject, and the number of acres of land owned by such alien in such county, the name and number of the survey, the abstract and certificate number, the name of the person or persons, from whom acquired, and shall either describe said land by metes and bounds, or refer to recorded deed in which same is so described, which report shall be known as "REPORT OF ALIEN OWNERSHIP." All aliens and all alien corporations hereafter purchasing, or in any manner acquiring lands located in Texas, shall, within six months after such purchase, or acquisition, file with the county clerk of the county in which such land is located, a "Report of Alien Ownership," in terms as above required. Any alien or alien corporation who may now own land in Texas, or who may hereafter acquire any land in Texas, by purchase or otherwise, who does not within the time prescribed in this article, file the reports herein provided for, shall be subject to have such land forfeited and escheated to the State of Texas. The reports herein required shall, when the alien is a minor or insane person, be filed by the parent or guardian of such alien. The county clerk of each county shall file and record the reports above provided for in a separate volume, to be entitled "RECORD OF ALIEN OWNED LANDS," for said county. The recording of such reports shall be paid by the alien owner. [Id.]

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

TITLE 6

AMUSEMENTS—PUBLIC HOUSES OF

Art.
178. "Public houses of amusement."
179. Leases.

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

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

TITLE 7

ANIMALS

1. CRUELTY TO ANIMALS

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

2. DESTRUCTION OF ANIMALS

190. By poison.
190a. Bounty for destruction of predatory animals in certain counties.
191. Prairie dogs.
192. Bounties.
192a. Co-operation between state and federal agencies in destruction of predatory animals.

1. CRUELTY TO ANIMALS

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

Art. 181. Cruelty to fowls.—Whoever receives live fowls, poultry or other birds for transportation or to be confined on wagons or stands, or by the owners of grocery stores, commission houses or other market houses, or by other persons when to be closely confined, shall place same immediately in coops, crates or cages made of open slats or wire on at least three sides and of such height that the fowls can stand upright without touching the top, have troughs or other receptacle easy of access at all times by the birds confined therein, and so placed that their contents shall not be defiled by them, in which troughs or other receptacles clean water and suitable food shall be constantly kept;

keep such coops, crates or cages in a clean and wholesome condition; place only such numbers in each coop, crate or cage as can stand without crowding one another, but have room to move around; not expose same to undue heat or cold, and remove immediately all injured, diseased or dead fowls or other birds. [Id.]

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

Art. 183. May take animal.—When any person arrested under any provision of this law is, at the time of such arrest, in charge of any vehicle drawn by or containing any animal cruelly treated, any agent of the State Humane Society, having been authorized by the sheriff of the county to make arrests in such cases, may take charge of such animal and such vehicle and its contents, and the animal or animals drawing same, and shall give notice thereof to the owner, if known, and shall care and provide for them until their owner shall take charge of the same; and such agent shall have a lien on said animals and on said vehicle and its contents for the expense of such care and provision, or the said expense or any part thereof remaining unpaid may be recovered by such agent in a civil action. [Id.]

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

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

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

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

Art. 188. Badge.—Officers and agents of said humane society shall be provided with a certificate by said society stating that they are such officers or agents, or with a badge bearing the name and seal of said society; and shall on request show such certificate or badge when acting officially. [Id.]

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

2. DESTRUCTION OF ANIMALS

Art. 190. By poison.—1. May buy poison.—The commissioners court of each county may purchase the necessary poisons and accessories required by the citizens of such county for the purpose of destroying prairie dogs, wild cats, gophers, ground squirrels, wolves, coyotes, rats, English sparrows and ravens, and pay for the same out of the general fund of the county, and may furnish the same at cost or free to such citizens. If the court shall elect to sell the same, the proceeds shall be turned into the treasury to the credit of the general fund.

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

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

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

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

Art. 190a. Bounty for destruction of predatory animals in certain counties.—It shall hereafter be lawful for the Commissioners' Court of McCulloch, San Saba, Lampasas, Burnet and Llano Counties to pay out of the general fund of said counties, bounties for the destruction of wolves, wildcats and other predatory animals within said counties, as hereinafter provided.

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

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

The amounts paid as bounties for the destruction of predatory animals in said counties shall be paid by warrant drawn upon the general fund of the county by the judge of such county on the filing with him of such proof as the commissioners' court may require. [Acts 1925, p. 179.] [39th Leg., ch. 44, §§ 1–3; Acts 1927, 40th Leg., p. 151, ch. 100, § 1.]

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

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

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

3. Suit to recover assessment.—If the owner of any land against which costs and expenses have been assessed by the commissioners court shall fail to pay the same within thirty days after notice of such assessment, the county attorney of such county shall bring suit to enforce the payment thereof. The county attorney shall, in each suit brought by him for said purpose, be allowed a reasonable fee to be fixed by the court trying the cause, to be taxed as costs in the case, and upon the rendition of any judgment for such costs and expenses, execution and order of sale shall issue and be executed as in other cases. [Acts 1st C. S. 1915, p. 26.]

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

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

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

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

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

Art. 192a. Co-operation between state and federal agencies in destruction of predatory animals.—Sec. 1. That the State of Texas will co-operate through the Livestock Sanitary Commission of Texas with the United States Department of Agriculture, Bureau of Biological Survey, in destroying coyotes, wolves, mountain lions, bobcats and other predatory animals, and through the Agricultural and Mechanical College of Texas will co-operate with the United States Department of Agriculture, Bureau of Biological Survey, in destroying prairie dogs, salamander, jack rabbits, pocket gophers, ground squirrels and other rodent pests, in the State of Texas in the interest of the protection of livestock, crops and ranges.

Sec. 2. There is hereby appropriated out of any sum in the State Treasury not otherwise appropriated the sum of $——— for the fiscal year ending August 31st, 1928, for said purpose, and the sum of $——— is hereby appropriated from any sum in the State Treasury not otherwise appropriated for the fiscal year ending August 31st, 1929, for the same purpose, provided that such moneys so appropriated shall not be expended as hereinafter provided unless the Federal Congress shall appropriate adequate funds from the United States Treasury for each.

Sec. 3. The funds hereby appropriated shall be apportioned each year between the two divisions of predatory animal control and rodent control as follows: $——— for predatory animal control and $——— for rodent control. Such funds shall be expended in amounts as authorized by the Chairman of the Livestock Sanitary Commission of Texas and disbursed by warrants issued by the State Comptroller upon vouchers or pay rolls certified by the Chairman of the Livestock Sanitary Commission of Texas for the predatory animal control division of the work, and in amounts as authorized by the President of the Agricultural and Mechanical College of Texas, and disbursed by warrants issued by the State Comptroller upon vouchers or pay rolls certified by the Director of Rodent Control for the rodent control division of the work. The work of destroying predatory animals and rodent pests is to be carried on under the direction of the Bureau of Biological Survey of the United States Department of Agriculture.

Sec. 4. The Chairman of the Livestock Sanitary Commission of Texas is hereby authorized and directed to execute a co-operative agreement with the Secretary of Agriculture of the United States of America or the Bureau of Biological Survey of the United

States of America for carrying out such co-operative work in predatory animal control in such manner and under such regulations as may be stated in said agreement. The President of the Agricultural and Mechanical College of Texas is hereby authorized and directed to execute a co-operative agreement with the Secretary of Agriculture or the Bureau of Biological Survey for carrying out such co-operative work in rodent control in such manner and under such regulations as may be stated in said agreement.

Sec. 5. That the Commissioners' Court of any county within the State or the governing body of any incorporated city or town within the State upon request of ten or more freeholders is empowered and authorized at its discretion to appropriate money out of the general fund not otherwise appropriated, or to levy taxes at a rate of not to exceed one-fourth of one mill on total assessed valuation of the county or incorporated city or town, to provide funds for the prosecution of the predatory animal and rodent work contemplated by this Act, and in co-operation with State and Federal authorities to purchase and provide supplies required for the effective prosecution of the predatory animal and rodent work, to employ labor and, whereever necessary for the eradication of these pests, to enter upon state and private owned lands for the purpose of destroying injurious rodents or predatory animals thereon and to assess the actual cost of rodent eradication work against such private lands.

Sec. 6. All furs, skins and specimens taken by hunters or trappers paid from State funds shall be sold under rules prescribed by the Livestock Sanitary Commission of Texas and the proceeds of such sales shall be paid into the State Treasury to be credited and added to said predatory animal fund. All furs, skins and specimens taken by hunters or trappers paid from county funds shall be sold as prescribed by the commissioners' court of the county, and the proceeds of such sale shall be paid into the county treasury to be credited and added to such predatory animal fund, provided that any specimen so taken may be presented free of charge to the Agricultural and Mechanical College or any other State institution or to the United States National Museum.

Sec. 7. No bounty is to be collected from any county or other source for animals taken by hunters or trappers operating under this Act. Scalps of all animals taken are to be destroyed and all skins of commercial value sold, and every precaution taken to prohibit the collection of bounty by any person herein mentioned.

Sec. 8. Any person working under the direction of the Bureau of Biological Survey, United States Department of Agriculture, the Agricultural and Mechanical College of Texas, or the Livestock Sanitary Commission of Texas, shall be authorized to enter upon public or private lands within this State for the purpose of carrying on the work of extermination of predatory animals and injurious rodents named in this Act. [Acts 1927, 40th Leg., p. 278, ch. 195.]

TITLE 8

APPORTIONMENT

SENATORIAL DISTRICTS

Art.
193. Senatorial districts.
194. Returns made to whom.

REPRESENTATIVE DISTRICTS

195. Representative Districts.
196. Returns made to whom.

CONGRESSIONAL DISTRICTS

197. Congressional Districts.

SUPREME JUDICIAL DISTRICTS

198. Supreme Judicial Districts.

JUDICIAL DISTRICTS

199. Judicial Districts.
200. Amendments affecting Judicial Districts.

ADMINISTRATIVE JUDICIAL DISTRICTS

Art.
200a. Administrative Judicial Districts.

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.
Anderson	6	55	7	3	1
Andrews	30	88	16	70	8
Angelina	3	12	2	2	9
Aransas	18	70	14	36	4
Archer	23	110	13	30	2
Armstrong	31	123	18	47	7
Atascosa	18	76	15	81	4
Austin	15	25	10	22	1
Bailey	30	120	18	64	7
Bandera	26	86	16	38	4
Bastrop	14	127	10	21	3
Baylor	23	113	13	50	11
Bee	18	70	14	36	4
Bell	21	95, 96	11	27	3
Bexar	26	78	14	37, 45, 57, 73, 94	4
Blanco	19	85	14	33	3
Borden	30	118	18	32	8
Bosque	21	98	11	18	10
Bowie	1	3, 1	1	102	6
Brazoria	17	21	9	23	1
Brazos	14	26	6	85	10
Brewster	29	87	16	83	8
Briscoe	31	120	18	64	7
Brooks	27	74	15	79	4
Brown	25	125	17	35	3
Burleson	14	65	10	21	1
Burnet	20	84	17	33	3
Caldwell	19	81	10	22	3
Calhoun	18	69	9	24	4
Callahan	24	107	17	42	11
Cameron	27	72	15	103	4
Camp	7	4	1	76	6
Carson	31	123	18	31, 84	7
Cass	1	2, 3	1	5	6
Castro	31	120	18	64	7
Chambers	17	17	7	75	1
Cherokee	3	31	2	2	6
Childress	31	121	18	100	7
Clay	23	110	13	97	2
Cochran	30	119	18	72	7
Coke	25	92	16	51	3
Coleman	25	125	17	35	3
Collin	10	43, 45	4	59	5
Collingsworth	31	122	18	100	7
Colorado	15	25	9	25	1
Comal	19	80	14	22	3
Comanche	25	104	17	52	11
Concho	25	92	17	35	3
Cooke	9	46	13	16	2
Coryell	21	94	11	52	10
Cottle	30	121	18	50	7
Crane	29	88	16	70	8
Crockett	29	86	16	83	8
Crosby	30	119	18	72	7
Culberson	29	90	16	34	8
Dallam	31	124	18	69	7
Dallas	11	50, 51	5	14, 44, 68, 95	5
Dawson	30	119	18	106	8
Deaf Smith	31	123	18	69	7
Delta	8	126	1	8, 62	6
Denton	22	49, 102	13	16	2
DeWitt	18	68	9	24	1
Dickens	30	118	18	50	7
Dimmit	27	77	15	49	4
Donley	31	122	18	100	7
Duval	27	71	15	79	4
Eastland	24	106, 107	17	88, 91	11
Ector	29	88	16	70	8
Edwards	29	86	16	63	4
Ellis	12	100	5	40	5
El Paso	29	89, 90	16	34, 41, 65	8
Erath	21	105	12	29	11
Falls	13	62, 96	11	82	10

APPORTIONMENT

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.
Fannin	9	38, 41	4	6	6
Fayette	15	66	9	22	3
Fisher	24	117	18	104	11
Floyd	30	120	18	64	7
Foard	23	114	18	46	7
Fort Bend	17	20	8	23	1
Franklin	8	126	1	76	6
Freestone	6	57	6	77, 87	10
Frio	27	76	15	81	4
Gaines	30	119	18	106	8
Galveston	17	17, 18	7	10, 56	1
Garza	30	118	18	106	7
Gillespie	25	85	16	33	4
Glasscock	29	91	16	70	8
Goliad	18	69	9	24	4
Gonzales	19	67	9	25	4
Gray	31	122	18	31, 84	7
Grayson	9	44, 45	4	15, 59	5
Gregg	2	6, 33	3	71	6
Grimes	5	26, 27	8	12	1
Guadalupe	19	80	14	25	4
Hale	30	120	18	64	7
Hall	31	121	18	100	7
Hamilton	21	94	11	52	10
Hansford	31	124	18	31, 84	7
Hardeman	23	114	18	46	7
Hardin	4	14	2	9, 75	9
Harris	16	19	8	11, 55, 61, 80	1
Harrison	2	5, 6	2	71	6
Hartley	31	124	18	69	7
Haskell	24	113	18	39	11
Hays	19	81	10	22	3
Hemphill	31	124	18	31, 84	7
Henderson	6	54	3	3	5
Hidalgo	27	73	15	79, 93	4
Hill	12	59, 60	6	66	10
Hockley	30	119	18	72	7
Hood	12	105	12	29	10
Hopkins	8	39, 126	1	8	6
Houston	5	30	7	3	1
Howard	30	91	16	32	8
Hudspeth	29	90	16	34	8
Hunt	10	40, 42	4	8, 62	6
Hutchinson	31	124	18	31, 84	7
Irion	25	91	16	51	3
Jack	22	109	13	43	2
Jackson	18	22	9	24	1
Jasper	3	13	2	1	9
Jefferson	4	15, 16	2	58, 60	9
Jeff Davis	29	88	16	83	8
Jim Hogg	27	74	15	49	4
Jim Wells	27	71	15	79	4
Johnson	12	98, 99	12	18	10
Jones	24	115	17	104	11
Karnes	18	79	14	81	4
Kaufman	6	51, 52	3	86	5
Kendall	26	85	14	38	4
Kenedy	27	74	15	28	4
Kent	30	118	18	39	7
Kerr	26	86	16	38	4
Kimble	25	86	16	33	4
King	30	114	18	50	7
Kinney	29	87	15	63	4
Kleberg	27	74	15	28	4
Knox	23	114	18	50	11
Lamar	8	37, 38	1	6, 62	6
Lamb	30	120	18	64	7
Lampasas	20	93	17	27	3
LaSalle	27	76	15	81	4
Lavaca	15	23	9	25	1
Lee	14	65	10	21	3
Leon	5	56	6	12	10
Liberty	4	14	7	75	9
Limestone	13	61	6	77, 87	10
Lipscomb	31	124	18	31, 84	7
Live Oak	18	76	15	36	4
Llano	20	85	17	33	3
Loving	29	88	16	70	8
Lubbock	30	119	18	72, 99	7
Lynn	30	119	18	106	7
Madison	5	56	6	12	10
Marion	1	3	1	76	6
Martin	30	88	16	70	8
Mason	25	86	16	33	4
Matagorda	17	21	9	23	1
Maverick	29	87	15	63	4
McCulloch	25	93	17	35	3
McLennan	13	96, 97	11	19, 54, 74	10
McMullen	27	76	15	36	4
Medina	29	77	15	38	4
Menard	25	86	16	33	4
Midland	29	88	16	70	8
Milam	13	64, 65	6	20	3
Mills	25	104	17	27	3
Mitchell	24	117	16	32	11
Montague	22	47	13	97	2
Montgomery	5	27	7	9	9
Moore	31	124	18	69	7
Morris	1	35	1	76	6
Motley	30	121	18	50	7
Nacogdoches	3	9	2	2	9
Navarro	6	58, 60	6	13	10
Newton	3	13	2	1	9
Nolan	24	117	17	32	11
Nueces	27	71	14	28	4
Ochiltree	31	124	18	31, 84	7
Oldham	31	123	18	69	7
Orange	4	15	2	1	9
Palo Pinto	22	108	17	29	11
Panola	2	7	2	4	6
Parker	22	103	12	43	2
Parmer	31	120	18	69	7
Pecos	29	88	16	83	8
Polk	5	28	7	9	9
Potter	31	123	18	47, 108	7
Presidio	29	88	16	83	8
Raines	10	42	4	8	6
Randall	31	123	18	47	7
Reagan	29	91	16	83	8
Real	29	86	16	38	4
Red River	8	36	1	102	6
Reeves	29	88	16	70	8
Refugio	18	70	9	24	4
Roberts	31	124	18	31, 84	7
Robertson	14	63	6	85	10
Rockwall	10	51	5	86	5
Runnels	25	92	17	35	3
Rusk	2	8	3	4	6
Sabine	3	11	2	1	9
San Augustine	3	11	2	1	9
San Jacinto	5	29	7	9	9
San Patricio	18	70	14	36	4
San Saba	20	93	17	33	3
Schleicher	25	86	16	51	3
Scurry	24	118	18	32	11
Shackelford	24	115	17	42	11
Shelby	2	10	2	4	9
Sherman	31	124	18	69	7
Smith	7	32, 33	3	7	6
Somervell	12	98	12	18	10
Starr	27	74	15	79	4
Stephens	24	108	17	90	11
Sterling	25	91	16	51	3
Stonewall	30	118	18	39	11
Sutton	29	86	16	83	4
Swisher	31	120	18	64	7
Tarrant	28	101, 102	12	17, 48, 67, 96	2
Taylor	24	116	17	42, 104	11
Terrell	29	87	16	63	8
Terry	30	119	18	106	7
Throckmorton	24	113	13	39	11
Titus	1	35	1	76	6
Tom Green	25	91	16	51	3
Travis	20	82	10	53	3

	Senatorial District.	Representative District.	Congressional District.	Judicial District.	Sup. Judicial District.
Trinity	5	28	7	12	1
Tyler	3	12	2	75	9
Upshur	7	4	3	7	6
Upton	29	88	16	38	8
Uvalde	29	77	15	38	4
Val Verde.....	29	87	16	63	4
Van Zandt.....	7	53	3	86	5
Victoria	18	69	9	24	4
Walker	5	29	7	12	1
Waller	15	20	8	9	1
Ward	29	88	16	70	8
Washington	14	24	10	21	1
Webb	27	75	15	49	4
Wharton	17	22	9	23	1
Wheeler	31	122	18	31, 84	7
Wichita	23	112	13	30, 78, 89	2
Wilbarger	23	112	13	46	7
Willacy	27	74	15	103	4
Williamson	20	83, 84	10	26	3
Wilson	18	79	14	81	4
Winkler	29	88	16	70	8
Wise	22	48	13	43	2
Wood	7	34	3	7	6
Yoakum	30	119	18	106	7
Young	23	109	13	30	2
Zapata	27	75	15	49	4
Zavala	27	77	15	38	4

SENATORIAL DISTRICTS

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

No. 1. Bowie, Marion, Cass, Morris and Titus.

No. 2. Harrison, Gregg, Rusk, Panola and Shelby.

No. 3. Cherokee, Nacogdoches, San Augustine, Angelina, Sabine, Newton, Jasper and Tyler.

No. 4. Orange, Jefferson, Hardin and Liberty.

No. 5. Grimes, Montgomery, Trinity, Leon, Houston, Polk, Madison, Walker and San Jacinto.

No. 6. Navarro, Henderson, Anderson, Freestone and Kaufman.

No. 7. Camp, Wood, Upshur, Smith and Van Zandt.

No. 8. Lamar, Delta, Franklin, Hopkins and Red River.

No. 9. Cooke, Grayson and Fannin.

No. 10. Rockwall, Collin, Hunt and Rains.

No. 11. Dallas.

No. 12. Johnson, Hill, Ellis, Hood and Somervell.

No. 13. McLennan, Falls, Limestone and Milam.

No. 14. Bastrop, Lee, Burleson, Washington, Brazos and Robertson.

No. 15. Fayette, Lavaca, Colorado, Austin and Waller.

No. 16. Harris.

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

No. 18. Wilson, Atascosa, Karnes, DeWitt, Victoria, Goliad, Live Oak, San Patricio, Bee, Refugio, Aransas, Calhoun and Jackson.

No. 19. Blanco, Hays, Comal, Caldwell, Guadalupe and Gonzales.

No. 20. San Saba, Lampasas, Llano, Burnet, Williamson and Travis.

No. 21. Bell, Erath, Bosque, Hamilton and Coryell.

No. 22. Montague, Jack, Wise, Denton, Palo Pinto and Parker.

No. 23. Hardeman, Foard, Knox, Wilbarger, Baylor, Wichita, Archer, Young and Clay.

No. 24. Scurry, Fisher, Jones, Shackelford, Stephens, Eastland, Callahan, Taylor, Nolan, Mitchell, Throckmorton and Haskell.

No. 25. Comanche, Mills, Brown, Coleman, McCulloch, Mason, Menard, Concho, Runnels, Coke, Tom Green, Schleicher, Irion, Sterling, Gillespie and Kimble.

No. 26. Kerr, Kendall, Bexar and Bandera.

No. 27. Zavalla, Frio, McMullen, La Salle, Dimmit, Webb, Duval, Jim Wells, Kenedy, Nueces, Kleberg, Willacy, Brooks, Jim Hogg, Zapata, Starr, Hidalgo and Cameron.

No. 28. Tarrant.

No. 29. El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ward, Ector, Midland, Glasscock, Reagan, Upton, Crane, Crockett, Sutton, Edwards, Real, Kinney, Val Verde, Terrell, Brewster, Presidio, Jeff Davis, Pecos, Uvalde, Medina and Maverick.

No. 30. Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Dawson, Borden, Andrews, Martin and Howard.

No. 31. Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley, Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Parmer, Castro, Swisher, Briscoe, Hall and Childress. [Acts 1901, S. S. p. 10; Acts 1st C. S. 1921, p. 230.]

Art. 194. [25] [17] [12] Returns made to whom.—The County Judges of the following counties shall receive returns and count the votes, and issue certificates of election to persons receiving the highest number for Senator at any election in their respective districts, to-wit:

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

REPRESENTATIVE DISTRICTS

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

No. 1. Bowie.
No. 2. Cass.
No. 3. Bowie, Cass and Marion.
No. 4. Camp and Upshur.
No. 5. Harrison.
No. 6. Harrison and Gregg.
No. 7. Panola.
No. 8. Rusk.
No. 9. Nacogdoches.
No. 10. Shelby.
No. 11. San Augustine and Sabine.
No. 12. Angelina and Tyler.
No. 13. Jasper and Newton.
No. 14. Hardin and Liberty.
No. 15. Orange and Jefferson.

No. 16. Jefferson—two Representatives.
No. 17. Chambers and Galveston.
No. 18. Galveston.
No. 19. Harris—five Representatives.
No. 20. Waller and Fort Bend.
No. 21. Brazoria and Matagorda.
No. 22. Wharton and Jackson.
No. 23. Lavaca.
No. 24. Washington.
No. 25. Austin and Colorado.
No. 26. Brazos and Grimes.
No. 27. Grimes and Montgomery.
No. 28. Polk and Trinity.
No. 29. Walker and San Jacinto.
No. 30. Houston.
No. 31. Cherokee.
No. 32. Smith.
No. 33. Smith and Gregg.
No. 34. Wood.
No. 35. Morris and Titus.
No. 36. Red River.
No. 37. Lamar.
No. 38. Lamar and Fannin.
No. 39. Hopkins.
No. 40. Hunt.
No. 41. Fannin.
No. 42. Rains and Hunt.
No. 43. Collin.
No. 44. Grayson—two Representatives.
No. 45. Grayson and Collin.
No. 46. Cooke.
No. 47. Montague.
No. 48. Wise.
No. 49. Denton.
No. 50. Dallas—five Representatives.
No. 51. Dallas, Rockwall and Kaufman.
No. 52. Kaufman.
No. 53. Van Zandt.
No. 54. Henderson.
No. 55. Anderson.
No. 56. Leon and Madison.
No. 57. Freestone.
No. 58. Navarro.
No. 59. Hill.
No. 60. Navarro and Hill.
No. 61. Limestone.
No. 62. Falls.
No. 63. Robertson.
No. 64. Milam.
No. 65. Milam, Burleson and Lee.
No. 66. Fayette.
No. 67. Gonzales.
No. 68. DeWitt.
No. 69. Victoria, Goliad and Calhoun.
No. 70. Aransas, Refugio, Bee and San Patricio.
No. 71. Nueces, Jim Wells and Duval.
No. 72. Cameron.
No. 73. Hidalgo.
No. 74. Kleberg, Willacy, Kenedy, Jim Hogg, Brooks and Starr.
No. 75. Zapata and Webb.
No. 76. LaSalle, McMullen, Live Oak, Atascosa and Frio.
No. 77. Dimmit, Zavalla, Uvalde and Medina.
No. 78. Bexar—five Representatives.
No. 79. Wilson and Karnes.
No. 80. Guadalupe and Comal.
No. 81. Hays and Caldwell—two Representatives.
No. 82. Travis—two Representatives.
No. 83. Williamson.
No. 84. Williamson and Burnet.
No. 85. Blanco, Llano, Kendall and Gillespie.
No. 86. Mason, Menard, Schleicher, Crockett, Sutton, Kimble, Kerr, Bandera, Real and Edwards.
No. 87. Maverick, Kinney, Val Verde, Terrell and Brewster.
No. 88. Presidio, Jeff Davis, Reeves, Loving, Winkler, Ward, Ector, Crane, Pecos, Upton, Midland, Martin and Andrews.
No. 89. El Paso—two Representatives.
No. 90. El Paso, Hudspeth and Culberson.
No. 91. Glasscock, Howard, Sterling, Reagan, Irion and Tom Green.
No. 92. Coke, Runnels and Concho.
No. 93. McCulloch, San Saba and Lampasas.
No. 94. Hamilton and Coryell.
No. 95. Bell.
No. 96. Bell, Falls and McLennan.
No. 97. McLennan—two Representatives.
No. 98. Johnson, Somervell and Bosque.
No. 99. Johnson.
No. 100. Ellis—two Representatives.
No. 101. Tarrant—four Representatives.
No. 102. Tarrant and Denton.
No. 103. Parker.
No. 104. Comanche and Mills.
No. 105. Erath and Hood.
No. 106. Eastland.
No. 107. Eastland and Callahan.
No. 108. Palo Pinto and Stephens.
No. 109. Young and Jack.
No. 110. Archer and Clay.
No. 111. Wichita—two Representatives.
No. 112. Wichita and Wilbarger.
No. 113. Baylor, Haskell and Throckmorton.
No. 114. Hardeman, Foard, Knox and King.
No. 115. Jones and Shackelford.
No. 116. Taylor.
No. 117. Nolan, Fisher and Mitchell.
No. 118. Dickens, Stonewall, Kent, Scurry, Borden and Garza.
No. 119. Gaines, Dawson, Yoakum, Terry, Lynn, Cochran, Hockley, Lubbock and Crosby.
No. 120. Bailey, Parmer, Castro, Lamb, Hale, Swisher, Briscoe and Floyd.
No. 121. Motley, Cottle, Hall and Childress.
No. 122. Donley, Collingsworth, Wheeler and Gray.
No. 123. Carson, Armstrong, Randall, Potter, Deaf Smith and Oldham.
No. 124. Hartley, Dallam, Sherman, Moore, Hutchinson, Hansford, Ochiltree, Roberts, Hemphill and Lipscomb.
No. 125. Brown and Coleman.
No. 126. Delta, Hopkins and Franklin.
No. 127. Bastrop. [Id.; Acts 2nd C. S. 1921, p. 264.]

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

Third District—Marion County.
Sixth District—Harrison County.
Eleventh District—San Augustine County.
Twelfth District—Angelina County.
Thirteenth District—Newton County.
Fourteenth District—Liberty County.
Fifteenth District—Jefferson County.
Seventeenth District—Galveston County.
Twentieth District—Fort Bend County.
Twenty-first District—Brazoria County.
Twenty-second District.—Wharton County.
Twenty-fifth District—Colorado County.
Twenty-sixth District—Brazos County.
Twenty-seventh District—Montgomery County.
Twenty-eighth District—Polk County.
Twenty-ninth District—Walker County.
Thirty-third District—Gregg County.
Thirty-fourth District—Wood County.
Thirty-fifth District—Titus County.
Forty-second District—Hunt County.
Forty-fifth District—Grayson County.
Fifty-first District—Rockwall County.
Fifty-sixth District—Leon County.
Sixtieth District—Navarro County.
Sixty-fifth District—Burleson County.
Sixty-ninth District—Goliad County.

Seventieth District—Bee County.
Seventy-first District—Nueces County.
Seventy-fourth District—Starr County.
Seventy-fifth District—Webb County.
Seventy-sixth District—Atascosa County.
Seventy-seventh District—Uvalde County.
Seventy-ninth District—Karnes County.
Eightieth District—Guadalupe County.
Eighty-first District—Caldwell County.
Eighty-fourth District—Burnet County.
Eighty-fifth District—Blanco County.
Eighty-sixth District—Kerr County.
Eighty-seventh District—Val Verde County.
Eighty-eighth District—Reeves County.
Ninetieth District—El Paso County.
Ninety-first District—Tom Green County.
Ninety-second District—Runnels County.
Ninety-third District—McCulloch County.
Ninety-fourth District—Coryell County.
Ninety-sixth District—McLennan County.
Ninety-eighth District—Bosque County.
One Hundred and Second District—Denton County.
One Hundred and Fourth District—Comanche County.
One Hundred and Fifth District—Erath County.
One Hundred and Seventh District—Eastland County.
One Hundred and Eighth District—Palo Pinto County.
One Hundred and Ninth District—Young County.
One Hundred and Tenth District—Clay County.
One Hundred and Twelfth District—Wilbarger County.
One Hundred and Thirteenth District—Haskell County.
One Hundred and Fourteenth District—Hardeman County.
One Hundred and Fifteenth District—Jones County.
One Hundred and Seventeenth District—Mitchell County.
One Hundred and Eighteenth District—Scurry County.
One Hundred and Nineteenth District—Lubbock County.
One Hundred and Twentieth District—Hale County.
One Hundred and Twenty-first District—Hall County.
One Hundred and Twenty-second District—Donley County.
One Hundred and Twenty-third District—Potter County.
One Hundred and Twenty-fourth District—Dallam County.
One Hundred and Twenty-fifth District—Brown County.
One Hundred and Twenty-sixth District—Hopkins County. [Id.]

CONGRESSIONAL DISTRICTS

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

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

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

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

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

Fifth—Dallas, Ellis and Rockwall.

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

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

Eighth—Harris, Fort Bend, Waller and Grimes.

Ninth—Brazoria, Fayette, Colorado, Wharton, Matagorda, Jackson, Lavaca, Gonzales, DeWitt, Victoria, Calhoun, Goliad and Refugio.

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

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

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

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

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

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

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

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

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

SUPREME JUDICIAL DISTRICTS

Art. 198. [29] [21] [16] Supreme Judicial Districts.—This State shall be divided into eleven supreme judicial districts composed of the following named counties for the purpose of constituting and organizing a court of civil appeals in each of the several supreme judicial districts as follows, to-wit:

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

Second: Wichita, Clay, Montague, Wise, Tarrant, Cooke, Denton, Parker, Archer, Young, Jack.

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

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

Fifth: Grayson, Collin, Dallas, Rockwell, Henderson, Kaufman, Van Zandt, Ellis.

Sixth: Fannin, Lamar, Red River, Bowie, Delta, Hopkins, Franklin, Titus, Morris, Cass, Raines, Wood, Upshur, Marion, Harrison, Gregg, Smith, Cherokee, Rusk, Panola, Camp, Hunt.

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

Eighth: Dawson, Borden, Howard, Crockett, Gaines,

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

Ninth: Shelby, Nacogdoches, Angelina, San Jacinto, Montgomery, Liberty, Jefferson, Orange, Hardin, Newton, Jasper, Tyler, Polk, Sabine, San Augustine.

Tenth: McLennan, Freestone, Coryell, Hamilton, Bosque, Navarro, Johnson, Somervell, Hood, Falls, Limestone, Hill, Brazos, Leon, Madison, Robertson.

Eleventh: Mitchell, Scurry, Nolan, Fisher, Stonewall, Taylor, Jones, Haskell, Knox, Callahan, Shackelford, Throckmorton, Baylor, Comanche, Eastland, Stephens, Erath, Palo Pinto. [Acts 1925, p. 258.] [39th Leg., ch. 87, § 1; Acts 1927, 40th Leg., p. 378, ch. 255, § 1.]

Acts 1927, 40th Leg., p. 50, ch. 36, §§ 1-5, created the Twelfth Supreme Judicial District to include the counties of Wichita, Montague, Clay, Archer, Young, Baylor and Knox, from the Second Supreme Judicial District and Foard, Hardeman, and Wilbarger counties from the Seventh Supreme Judicial District, provided for the holding of the sessions of the Court of Civil Appeals for such district at Wichita Falls, for the appointment of judges, and made appropriations for the salaries and expenses for the maintenance of the court, which the Governor did not approve. Acts 1927, 40th Leg., p. 378, ch. 255, § 1, restores such counties in the eleven districts thereby abolishing the Twelfth Supreme Judicial District.

JUDICIAL DISTRICTS

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

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

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

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

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

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

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

2. Angelina, Cherokee and Nacogdoches.

Sec. 1. Cherokee County. On the first Monday in January and may continue eight weeks; on the 26th Monday after the first Monday in January and may continue nine weeks.

Nacogdoches County. On the eighth Monday after the first Monday in January and may continue nine weeks; on the thirty-fifth Monday after the first Monday in January and may continue eight weeks.

Angelina County. On the seventeenth Monday after the first Monday in January and may continue nine weeks; on the forty-third Monday after the first Monday in January and may continue eight weeks.

Sec. 2. All processes, all writs and bonds, civil and criminal, issued or executed prior or subsequent to the taking effect of this Act and returnable to the terms of said Court as heretofore fixed by law in the several Counties composing the said Second Judicial District, as well as all grand and petit jurors, are hereby made returnable to the terms of said Courts, as said terms are here now fixed by this Act, and in conformity with the change herein made, and all bonds executed and recognizances entered into in said Courts, shall bind the parties for their appearances or to fulfill the obligations of such bonds and recognizances at the terms of said Courts as they are fixed by this Act, and all process of every kind heretofore returned to, as well as all bonds and recognizances heretofore taken or hereafter entered into after this Act takes effect in any of said Courts, in said District, shall be as valid and as binding as if no change had been made in the time of holding said Court. [Acts 1911, p. 93; Acts 1927, 40th Leg., p. 196, ch. 128.]

Section 3 of Acts 1927, 40th Leg., p. 196, ch. 128, repeals all conflicting laws and parts of laws.

3.—Houston, Henderson and Anderson.

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

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

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

4.—Rusk, Panola and Shelby.

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

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

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

In Panola County beginning on the fourth Monday in March and continuing for five weeks; on the fourth Monday in September and continuing for five weeks. [Acts 1925, p. 266.] [39th Leg., ch. 93, § 1.]

Acts 1925, 39th Leg., H. C. R. No. 52, p. 706, approved March 19, 1925, required the enrolling clerk of the House to correct Acts 1925, 39th Leg., ch. 93, p. 266, by "adding an additional week to the November term of court in Shelby County."

5.—Cass.

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

Bowie County is made a part of the 102nd judicial district by Acts 1925, 39th Leg., ch. 16, p. 41, § 1. By § 9 of said acts, the judge of the 5th Judicial District is authorized, either in term time or vacation, to transfer civil or criminal cases pending in the 5th Judicial District to the 102nd Judicial District, and the judge of the 102nd Judicial District is authorized to transfer such cases to the 5th Judicial District. See 102d District.

6.—Fannin and Lamar.

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

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

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

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

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

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

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

Sec. 2. The judge of the Sixth Judicial District shall convene a grand jury in Lamar County at only two terms of court in each year unless in his judgment it be necessary for a grand jury the third term. [Acts 1925, p. 254.] [39th Leg., ch. 84, §§ 1, 2.]

The Judges of the 6th Judicial District Court of Lamar County and of the 62nd Judicial District Court of Lamar County are hereby authorized to transfer any and all civil cases from their respective dockets in Lamar County to that of the other court, either by general order at the close of the term of each court or by order made with reference to any case on the civil docket either in term time or vacation. [Acts 1925, p. 254.] [39th Leg., ch. 84, §§ 1, 2; Acts 1927, 40th Leg., p. 225, ch. 154, § 1.]

Red River County is placed in the 102d judicial district by Acts 1925, 39th Leg., ch. 16, p. 41, § 1; and see § 5 of said ch. 16. See 102d district.

7.—Upshur, Wood and Smith.

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

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

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

8.—Hunt, Hopkins, Delta and Rains.

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

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

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

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

The District Courts of the Eighth and Sixty-second Judicial Districts in Hunt County, shall have concurrent jurisdiction with each other in said county throughout the limits thereof, of all matters, civil and criminal, of which jurisdiction is given to the district courts by the Constitution and laws of the State; and the District Courts of the Eighth and Sixty-second Judicial Districts in the county of Delta shall have concurrent jurisdiction with each other in said county, throughout the limits thereof, of all matters civil and criminal, of which jurisdiction is given to the district courts by the Constitution and laws of the State; provided that the judge of the Sixty-second Judicial District shall never impanel the grand jury in said court in the counties of Lamar, Hunt and Delta, unless in his judgment he thinks it necessary. Either of the judges of the District Court of Hunt County may, in their discretion, either in term time or vacation, transfer any case or cases, civil or criminal, that may at any time be pending in his court, to the other district court in said county of Hunt, by order or orders entered upon the minutes of the court making such transfer; and, where such transfer or transfers are made, the clerk of said court shall enter such case or cases upon the dockets of the court to which such transfer or transfers are made, and when so entered upon the docket, the judge of said court shall try and dispose of said cases in the same manner as if such cases were originally filed in said court. Either of the judges of the District Courts of the County of Delta may, in their discretion, either in term time or vacation, transfer any case or cases of a civil or criminal nature that may at any time be pending in his court, to the other district court in said Delta County, by order or orders entered upon the minutes of the court making such transfer; and, when such transfer or transfers are made, and when so entered upon the docket, the judge of said court shall try and dispose of said case or cases in the same manner as if such cases were originally filed in said court. The clerks of the District Courts of Delta and Hunt counties respectively, as heretofore constituted, and their successors in office, shall be the clerks of both the Eighth and Sixty-second District Courts in said counties respectively. [Acts 1897, p. 111; Acts 1905, p. 75.]

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

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

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

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

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

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

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

10, 56.—Galveston County:

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

In all suits, actions or proceedings, it shall be sufficient for the address or designation to be merely the "District Court of Galveston County;" and the clerk of said courts shall file and docket the even numbers thereof in the Court of the Tenth Judicial District, and the odd numbers thereof in the Court of the Fifty-sixth Judicial District; but any case pending in either of said courts may, in the discretion of the judge thereof, be transferred from one of said district courts to the other, and so from time to time; and in case of the disqualification of the judge of either of said courts in any case, such case, on his suggestion of disqualification, shall stand transferred to the other of said courts, and be docketed by the clerk accordingly. The clerk of the court of the Tenth Judicial District shall perform the duties of the clerk of the Court of the Fifty-sixth Judicial District; in case of vacancy in said office of said clerk, the same shall be filled by appointment by the judge of the Tenth Judicial District. [Acts 1909, p. 116; Acts 1911, p. 111.]

11, [55, 61].—Harris County shall constitute the Eleventh, Fifty-fifth, Sixty-first and Eightieth Judicial Districts. None of said four district courts shall have nor exercise any criminal jurisdiction in Harris County. Said district courts of the Eleventh, Fifty-fifth, Sixty-first and Eightieth Judicial Districts shall have and exercise concurrent jurisdiction co-extensive within the limits of Harris County in all civil cases, proceedings and matters of which district courts are given jurisdiction by the Constitution and laws of this State. There shall be two terms of each of said four civil courts in Harris County in each year, and the first term, which shall be known as the January-June term, shall be begun on the first Monday in January and shall continue until and including Sunday next before the first Monday in July; and the second term, which shall be known as the July-December term, shall begin on the first Monday in July and shall continue until and including Sunday next before the first Monday in the following January.

In all suits, actions or proceedings in said courts it shall be sufficient for the address or designation to be merely "District Court of Harris County." The clerk of the civil district courts in Harris County shall be known as "Clerk of the District Court of Harris County, Texas." The clerk of said four civil district

courts shall docket alternately on the dockets of the district courts of the Eleventh, Fifty-fifth, Sixty-first and Eightieth Judicial Districts in Harris County, all cases, actions, petitions, applications and other proceedings filed in the district courts of Harris County, so that the first case or proceedings filed after the first day of July 1927 and every fourth case or proceedings thereafter filed shall be docketed in the Eleventh Judicial District Court, and the second case or proceeding filed and every fourth case or proceeding thereafter filed shall be docketed in the Fifty-fifth Judicial District Court, and the third case or proceeding filed and every fourth case or proceeding thereafter filed shall be docketed in the Sixty-first Judicial District Court, and the fourth case or proceeding and every fourth case or proceeding thereafter filed shall be docketed in the Eightieth Judicial District Court, and so on seriatim, and all cases and proceedings shall in this manner be docketed in and divided and distributed among said four civil courts, one-fourth to each of them when first filed. All suits shall be filed by the clerk in the order in which the petitions are presented to or deposited with him and immediately after being so presented or deposited. In case of the disqualification of the judge of any of said four civil courts in any case or proceeding, such case or proceeding, on his suggestion of disqualification, shall be transferred to another of said courts, and the order of transfer may be made by any judge of another of said courts and may be transferred to any other of said courts, or instead of transferring the case the judge of any other of said courts may sit in the court in which the case is then pending and there try the same, and all transferred cases or proceedings shall be docketed by the clerk accordingly. The judges of said four civil courts shall sign the minutes of each term of the courts in Harris County within thirty days after the end of the term, and shall also sign the minutes at the end of each volume of the minutes, and each judge sitting in said courts shall sign the minutes of such proceedings as were had before him.

Each judge of said courts may take a vacation and not attend court for six weeks between the first day of July and the first day of October in each year, during which time the term of the court of which he is judge shall remain open, and the judge of any other civil district court in Harris County may hold such court during the vacation of the judges thereof. During the period of such vacation it shall not be lawful for a special judge of such court to be elected by the practicing lawyers of such court because of the absence of the judge on his vacation, unless no judge of said civil district courts is in the county. The judges of said courts shall, by agreement among themselves, take their vacations alternately so that there shall at all times be at least one of said judges in the county; and [on] the absence, sickness or disqualification of the judge of any of said civil district courts, any of the other judges of the said district courts may act and preside, or any regular practicing lawyers of the bar of Harris County, Texas, may be elected who have all the qualifications of a district judge to act and preside over any of the said courts during such absence, sickness or inability of any of the regular judges to act and preside therein; such special judge shall be elected according to Title 40 of the Revised Civil Statutes of the State of Texas of 1925. [Acts 1903, p. 22; Acts 1923, p. 203; Acts 1927, 40th Leg., p. 135, ch. 88, § 1.]

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

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

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

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

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

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

13.—Navarro. On the first Mondays in January, April, July and October. The January, April and October terms shall each continue twelve weeks or until all the business be disposed of, and the July term shall continue six weeks or until the business be disposed of. Jury trials may be had at each and all of said terms of court. There shall be organized grand juries at the April and October terms of said court, and at such other terms thereof as may be determined and ordered by the Judge thereof. The office of District Attorney for the Thirteenth Judicial District is hereby abolished; the County Attorney of Navarro County shall hereafter perform all the duties heretofore performed by said District Attorney. [Acts 1899, p. 38; Acts 1915, p. 11; Acts 1923, p. 45.]

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

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

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

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

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

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

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

The respective judges of the district courts of Dallas County shall, from time to time as occasion may require, transfer cases from any one of such courts to any other such court in order that the business may be equally distributed among them, that the judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the judge in whose court it is pending; provided, however, no case shall be transferred from one court to another without the consent of the judge of the court

to which it is transferred. When any transfer is made, proper order shall be entered on the minutes of the court as evidence thereof, and notice of the transfer shall be given in writing by the clerk to the attorneys of record of all parties to the cause. [Acts 1913, p. 171; Acts 1917, p. 130; Acts 1923, p. 118.] Acts 1925, p. 210, gives District 101 concurrent jurisdiction except as to criminal matters with other district courts in Dallas County.

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

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

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

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

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

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

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

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

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

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

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

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

The clerk of the district courts of Tarrant County shall make up dockets for each of said Courts. All cases, prosecutions and proceedings filed with the clerk shall by him be entered upon the dockets of said courts alternately, so that the business may be equally distributed between them; provided, that all garnishment cases shall follow the cases in which they are sued out, and that such garnishment cases shall not be estimated by the clerk in dividing business. In all injunctions granted by said judges, the suits wherein granted shall be docketed in the court of the judge who granted such injunctions; and in all cases wherein receivers may be appointed by said judges, the suit wherein such receivers shall be appointed shall be docketed in the court of the judge who appointed such receivers. [Acts 1907, p. 338; Acts 1923, p. 104.]

18.—Johnson, Bosque and Somervell.

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

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

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

19, 54, 74.—McLennan.

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

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

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

The said three courts shall have concurrent jurisdiction throughout the limits of McLennan County in all civil and criminal cases and proceedings of which

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

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

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

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

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

21.—Washington, Burleson, Lee and Bastrop.

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

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

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

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

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

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

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

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

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

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

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

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

The Twenty-third Judicial District of Texas shall be composed of the Counties of Brazoria, Fort Bend, Wharton and Matagorda and the terms of the district court in said counties shall be held therein in each year as follows:

In the County of Matagorda beginning on the first Monday in October of each year and may continue in session for five weeks.

In the County of Fort Bend beginning on the fifth Monday after the first Monday in October of each year and may continue in session five weeks.

In the County of Wharton beginning on the tenth Monday after the first Monday in October of each year and may continue in session seven weeks.

In the County of Brazoria beginning on the seventeenth Monday after the first Monday in October of each year and may continue in session five weeks.

In the County of Matagorda beginning on the first Monday in March of each year and may continue in session five weeks.

In the County of Fort Bend on the fifth Monday after the first Monday in March of each year, and may continue in session for five weeks.

In the County of Wharton on the tenth Monday after the first Monday in March of each year and may continue in session for five weeks.

In the County of Brazoria on the fifteenth Monday after the first Monday in March of each year and may continue in session for five weeks. [Acts 1905, p. 80; Acts 1915, 1st C. S. p. 37; Acts 1917, p. 73; Acts 1927, 40th Leg., p. 12, ch. 8, § 1.]

That all process issued or served before this Act takes effect, including recognizances and bonds returnable to the District Court of any of the Counties of the Twenty-third Judicial District, shall be considered as returnable to said Court, in accordance with the terms as prescribed in this Act, and all such process is hereby legalized, and grand and petit juries drawn and selected under existing laws in any of the counties of said Judicial District shall be considered lawfully drawn and selected by the term of the Court of their respective counties held after this Act takes effect, as herein provided. All such process is hereby legalized and validated.

It is further provided that if any court in any county of said district shall be in session at the time this Act takes effect such court or courts affected hereby shall continue in session until the term thereof shall expire under the provisions of existing laws, but thereafter the court in such county shall conform to the requirements of this Act. [Acts 1927, 40th Leg., p. 12, ch. 8, § 2.]

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

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

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

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

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

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

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

25.—Colorado, Gonzales, Guadalupe and Lavaca.

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

Lavaca County: On the fifth Monday after the second Monday in September and on the tenth Monday

after the first Monday in January and may continue five weeks.

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

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

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

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

27.—Bell, Lampasas and Mills.

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

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

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

28.—Nueces, Kleberg and Kenedy.

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

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

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

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

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

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

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

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

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

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

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

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

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

8. A grand jury shall be drawn and selected for each term of said criminal district court held in Nueces, Kleberg, Kenedy, Willacy and Cameron Counties in the manner now provided by law, and all grand and petit jurors for criminal cases drawn and selected for the said criminal district court under existing laws at the time this Act takes effect, shall be as valid as if no change had been made, and the persons constituting such juries shall be required to appear and serve at the next ensuing terms of said courts as fixed by this Act, and their acts shall be as if they had served as jurors in the court for which they were originally drawn, and all laws regulating the selection, summoning and impaneling of grand and petit jurors in the district court shall govern said criminal district court, and jury commissioners shall be appointed for drawing juries for said court as is now or may hereafter be required by law in district courts, and under like rules and regulations. [Acts 1925, p. 244.] [39th Leg., ch. 79, § 1.]

28.—The 28th Judicial District of the State of Texas shall be composed of the Counties of Kenedy, Nueces, and Kleberg, and the terms of the District Court shall be held therein as follows:

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

In the County of Kenedy on the second Monday after the first Monday in January, and may continue in session one week; and on the twenty-ninth Monday after the first Monday in January of each year, and may continue in session two weeks.

In the County of Nueces on the third Monday after the first Monday in January of each year, and may continue in session eight weeks.

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

On the twenty-first Monday after the first Monday in January of each year, and may continue in session eight weeks.

On the second Monday in September of each year, and may continue in session eight weeks.

On the eighth Monday after the second Monday in September, and may continue in session eight weeks. [Acts 1925, p. 244.] [39th Leg., ch. 79, § 1; Acts 1927, 40th Leg., p. 89, ch. 64, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 89, ch. 64, repeals all conflicting laws or parts of laws excepting the provisions relating to the criminal district court for the counties of Nueces, Kleberg, Kenedy, Willacy and Cameron, the intent being only to change the times of holding the terms of the court of the 28th judicial district.

29.—Hood, Palo Pinto and Erath.

That the Twenty-ninth Judicial District of Texas shall be composed of the Counties of Hood, Palo Pinto and Erath, as now constituted and the terms of the District Court shall be held therein as follows:

In Palo Pinto County beginning on the first Monday of March and September, each year and may continue in session for eight weeks.

In Hood County beginning on the eighth Monday after the first Monday in March and September, and may continue in session for five weeks.

In Erath County beginning on the thirteenth Monday after the first Monday in March and September and may continue in session until all business is disposed of. [Acts 1909, 2nd C. S. p. 390; Acts 1917, p. 75; Acts 1920, 3rd C. S. p. 5; Acts 1927, 40th Leg., p. 70, ch. 46, § 1.]

All process issued or served before this Act goes into effect, including all recognizances and bonds returnable to the District Court of any of the said counties in said Judicial District shall be considered as returnable to said court in accordance with the terms as prescribed in this Act, and all such process is hereby legalized, and grand and petit juries drawn and selected under existing laws in any of the counties of said Judicial District shall be considered lawfully drawn and selected for the next term of the District Court of their respective counties held in accordance with this Act and after this Act takes effect. All such process is hereby legalized and validated; provided that said court in any county in said Judicial District shall be in session at the time this Act takes effect such court affected thereby shall continue in session until the term thereof shall expire under the provisions of existing laws, and thereafter the terms of said court of said county shall conform to the requirements of this Act. [Acts 1909, 2nd C. S. p. 390; Acts 1917, p. 75; Acts 1920, 3rd C. S. p. 5; Acts 1927, 40th Leg., p. 70, ch. 46, § 1.]

Section 4 of Acts 1927, 40th Leg., p. 70, ch. 46, repeals all conflicting laws and parts of laws.

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

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

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

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

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

"All process issued, bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the district courts of the several counties, as herein fixed as though issued and served for such terms and returnable to and drawn for the same." [Acts 1925, p. 171.] [39th Leg., ch. 39, § 1.]

31.—

Sec. 1. The 31st Judicial District of the State of Texas shall be composed of the Counties of Gray, Hutchinson, Hansford, Ochiltree, Lipscomb, Hemphill, Carson, Wheeler and Roberts.

Sec. 2. The terms of district court for the 31st Judicial District of the State of Texas shall for and during the year A. D. 1927 be held as follows:

Beginning in Gray County on the fourth Monday in February and may continue in session one week;

Beginning in Hutchinson County on the first Monday after the fourth Monday in February, and may continue in session one week;

Beginning in Hansford County on the second Monday after the fourth Monday in February, and may continue in session two weeks;

Beginning in Ochiltree County on the fourth Monday after the fourth Monday in February, and may continue in session two weeks;

Beginning in Lipscomb County on the sixth Monday after the fourth Monday in February, and may continue in session two weeks;

Beginning in Hemphill County on the eighth Monday after the fourth Monday in February, and may continue in session four weeks;

Beginning in Carson County on the twelfth Monday after the fourth Monday in February, and may continue in session one week;

Beginning in Wheeler County on the thirteenth

Monday after the fourth Monday in February, and may continue in session one week;

Beginning in Roberts County on the fourteenth Monday after the fourth Monday in February, and may continue in session one week;

And beginning in Roberts County on the second Monday in August and may continue in session two weeks;

And beginning in Wheeler County on the second Monday after the second Monday in August and may continue in session five weeks;

And beginning in Carson County on the seventh Monday after the second Monday in August and may continue in session one week;

And beginning in Gray County on the eighth Monday after the second Monday in August and may continue in session one week;

And beginning in Hutchinson County on the ninth Monday after the second Monday in August and may continue in session one week;

And beginning in Hansford County on the tenth Monday after the second Monday in August and may continue in session two weeks;

And beginning in Ochiltree County on the twelfth Monday after the second Monday in August and may continue in session two weeks;

And beginning in Lipscomb County on the fourteenth Monday after the second Monday in August and may continue in session two weeks;

And beginning in Hemphill County on the sixteenth Monday after the second Monday in August and may continue in session until the business of the court is disposed of.

Sec. 3. The terms of the district court for the 31st Judicial District of the State of Texas for and during the year A. D. 1928 and thereafter shall be held in said district for the said year 1928 and each year thereafter as follows:

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

Beginning in Wheeler County on the second Monday after the second Monday in January and August and may continue in session five weeks;

Beginning in Carson County on the seventh Monday after the second Monday in January and August and may continue in session one week;

Beginning in Gray County on the eighth Monday after the second Monday in January and August and may continue in session one week;

Beginning in Hutchinson County on the ninth Monday after the second Monday in January and August and may continue in session one week;

Beginning in Hansford County on the tenth Monday after the second Monday in January and August and may continue in session two weeks;

Beginning in Ochiltree County on the twelfth Monday after the second Monday in January and August and may continue in session two weeks;

Beginning in Lipscomb County on the fourteenth Monday after the second Monday in January and August and may continue in session two weeks;

Beginning in Hemphill County on the sixteenth Monday after the second Monday in January and August and may continue in session until the business of the court is disposed of.

Sec. 7. There shall be no grand jury nor petit jury drawn for the said 31st District Court in the Counties of Hutchinson, Carson and Gray, except such as the judge of said court may in his discretion from time to time order.

Sec. 9. Inasmuch as the 84th Judicial District of Texas and the 31st Judicial District of Texas are composed of the same counties the District Clerk of the respective counties of the 31st Judicial District shall also be and act as clerk of the District Court of the 84th Judicial District Court in their respective counties.

Sec. 10. The 31st Judicial District of Texas and the 84th Judicial District of Texas and the Courts of said Judicial Districts in the various counties composing same shall have concurrent jurisdiction with each other in said counties in all matters over which jurisdiction is given or shall hereafter be given by the Constitution and laws of this State to District Courts. Either of the judges of the said District Courts for said counties may in their discretion in term time or in vacation transfer a case or cases, civil or criminal, to said other District Court by order entered on the minutes of his court from which said case is transferred or minutes or orders made in chambers as the case may be, which orders, when made shall be copied and certified to by the District Clerk of the County in which said transfer is made together with all orders made in said case and such certified copies of such orders together with the original papers shall be filed among the papers of any case thus transferred and the fees thereof shall be taxed as a part of the costs of said suit, and the Clerk of said Court shall docket any such case in the court to which it shall have been transferred and when so entered the court to which same shall have been thus transferred shall have like jurisdiction therein as in cases originally filed in said court and the same shall be dropped from the docket of the said court from which it was transferred, provided that all process and writs issued out of the District Court from which any such transfer is made shall be returnable to the term of court to which said transfer is made according to the terms of the District Court of said respective courts as fixed by this Act, and that all bonds executed and recognizances entered into in any District Court from which any such transfer is made shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said court to which said transfer is made as said terms are fixed by this Act in the respective counties.

Sec. 11. The District Attorney of the 31st Judicial District may upon request of the District Attorney of the 84th Judicial District assist the said District Attorney in the trial of any criminal case or habeas corpus case pending in the District Court of said 84th Judicial District in any of the counties therein, and likewise the District Attorney of the 84th Judicial District may upon request of the District Attorney of the 31st Judicial District assist said District Attorney in the trial of any criminal case or habeas corpus case pending in the District Court of said 31st Judicial District in any of the counties therein, and in all such cases the District Attorney so assisting shall receive the same compensation for such services as is now provided by law for such services in the District for which he is appointed or has been elected, but nothing herein shall be construed as limiting the authority of the District Attorneys of the two districts from having absolute control and management of criminal cases and habeas corpus cases which are tried in their respective counties. [Acts 1925, p. 256.] [39th Leg., ch. 86, §§ 1-3; Acts 1927, 40th Leg., p. 60, ch. 42.]

Section 12 of Acts 1927, 40th Leg., p. 60, ch. 42, provides that if a section, paragraph or provision thereof be held invalid, it shall not affect the remainder, which shall remain in force. Section 13 provides that said Act in so far as it pertains to the 84th judicial district shall expire in two years after it takes effect and all cases, matters and things pending shall by operation of law be transferred to the 31st judicial district, and section 14 repeals all laws and parts of laws in conflict therewith.

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

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

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

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

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

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

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

Sec. 1. The Thirty-third Judicial District of Texas shall be composed of the counties of Kimble, Gillespie, Mason, Blanco, Menard, San Saba, Llano, and Burnet, and the terms of the district court shall be held therein as follows:

In Kimble County, beginning on the first Monday in February and August, and may continue in session two weeks;

In Gillespie County, beginning on the second Monday after the first Monday in February and August, and may continue in session three weeks;

In Mason County, beginning on the fifth Monday after the first Monday in February and August, and may continue in session two weeks;

In Blanco County, beginning on the seventh Monday after the first Monday in February and August, and may continue in session two weeks;

In Menard County, beginning on the ninth Monday after the first Monday in February and August, and may continue in session two weeks;

In San Saba County, beginning on the eleventh Monday after the first Monday in February and August, and may continue in session three weeks;

In Llano County, beginning on the fourteenth Monday after the first Monday in February and August and may continue in session three weeks; and

In Burnet County, beginning on the seventeenth Monday after the first Monday in February and August, and may continue in session three weeks.

Sec. 2. That all process and writs heretofore issued out of the district courts of said respective counties, and returnable to terms of court in said counties under existing law, are hereby made returnable to the terms of the district courts of said respective counties as said terms are fixed by this Act, and all bonds executed and recognizances entered into in said courts shall bind the parties for their appearance, or to fulfill the obligations of such bonds and recognizances at the terms of said courts as they are fixed by this Act, and all process heretofore returned, as well as all bonds and recognizances heretofore taken in the district courts of said respective counties shall be as valid as though no change had been made in the time of holding said courts, and all grand and petit jurors drawn and elected under existing laws for any of the counties of said district are hereby declared lawfully drawn and selected for the first term of the district courts of such respective counties held in conformity with this Act.

Sec. 3. Should any district court of the Thirty-third Judicial District be in session in any of the counties of said district, under existing laws, when this Act takes effect, such court shall continue and end its term under such existing laws as if no change in the time of holding courts in said district had been made, and all process, writs, judgments, decrees, and other proceedings in said court during such time shall be valid to all intents and purposes, and shall not be affected by the changes in the time of holding court therein made by this Act, but after the period provided for in the above contingency, the district courts, of the respective counties herein mentioned, shall be held in conformity with the terms as herein prescribed. [Acts 1913, p. 68; Acts 1915, 1st C. S. p. 33; Acts 1923, p. 74; Acts 1927, 40th Leg., p. 15, ch. 10.]

Section 4 of Acts 1927, 40th Leg., p. 15, ch. 10, repeals all conflicting laws and parts of laws.

Change in jurisdiction of Menard county court affecting Menard District Court, see article 1970-302.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A term beginning the ninth Monday after the first Monday in January of each year and may continue in

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

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

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

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

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

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

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

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

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

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

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

37, 45, 57, 73, 94.—Bexar.

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

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

The said courts of Bexar County shall have concurrent jurisdiction throughout the limits of said county over all cases, proceedings and matters of which district courts are given jurisdiction by the Constitution and laws of the State, except, and as hereinafter provided, the courts of the Thirty-seventh and Ninety-fourth Judicial Districts shall give preference to the trial of criminal cases, and the Ninety-fourth District Court shall also, next to the trial and determination of criminal causes, try and determine causes for divorce between husband and wife, the custody of children, and the adjudication of property rights in connection therewith, have power to issue writs of habeas corpus, mandamus, injunctions and certiorari and all writs necessary to enforce its jurisdiction, and may appoint receivers, and shall try and determine no other causes; and the said Thirty-seventh district court and the Ninety-fourth district court shall impanel grand juries alternately for each term of court in said two districts, and the grand jury shall return their indictments into the court by which they were impaneled.

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

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

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

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

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

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

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

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

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

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

Changing jurisdiction of County Court affecting District Court of Kerr County, see Article 1970-307.

39.—That the following counties, to-wit: Haskell, Stonewall, Kent and Throckmorton shall hereafter constitute the 39th Judicial District of Texas, and the terms of court shall be held in said counties as follows: to-wit:

In Haskell County: On the first Monday in January, and may continue in session six weeks; on the fifteenth Monday after the first Monday in January and may continue in session five weeks; on the third Monday after the first Monday in September, and may continue in session six weeks.

In Stonewall County: On the sixth Monday after the first Monday in January, and may continue in session three weeks; on the twentieth Monday after the first Monday in January and may continue in session three weeks; on the ninth Monday after the first Monday in September and may continue in session three weeks.

In Kent County: On the ninth Monday after the first Monday in January, and may continue in session three weeks, on the first Monday in September, and may continue in session three weeks.

In Throckmorton County: On the twelfth Monday after the first Monday in January, and may continue in session three weeks; on the twenty-third Monday after the first Monday in January, and may continue in session three weeks; on the twelfth Monday after the first Monday in September, and may continue in session three weeks. [Acts 1917, chs. 4, 12; Acts 1927, 40th Leg., p. 44, ch. 32, § 1.]

Section 10 of Acts 1927, 40th Leg., p. 44, ch. 32, declared that the invalidity of any part of the Act would not affect the remaining parts thereof. See, also, art. 199-104.

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

41.—See 34th District.

42.—Taylor, Callahan and Shackelford.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

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

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

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

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

Acts 1927, 40th Leg., p. 44, ch. 32, also includes Taylor County in the 104th Judicial District.

43.—Jack, Parker and Wise.

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

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

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

44.—See 14th District.

45.—See 37th District.

46.—Wilbarger, Hardeman and Foard.

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

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

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

47.—Randall, Potter and Armstrong.

Sec. 1. The 47th Judicial District of Texas shall be composed of the counties of Randall, Potter and Armstrong, and the terms of said Court shall be held in said counties as follows:

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

In the county of Potter on the fourth Monday in January and may continue in session ten weeks; and on the thirteenth Monday after the fourth Monday in January and may continue in session ten weeks; and on the fourth Monday in August and may continue in session eight weeks; and on the eleventh Monday after the fourth Monday in August and may continue in session until business is disposed of.

In the county of Armstrong on the tenth Monday after the fourth Monday in January and may continue in session three weeks; and on the eighth Monday after the fourth Monday in August and may continue in session three weeks.

Sec. 3. The Clerk of the District Court of Potter County as heretofore constituted, and his successors in office, shall be the Clerk of the 47th and 108th Judicial Districts in Potter County, and shall perform all duties pertaining to the Clerkship of both courts.

Sec. 4. The District Court of the 108th Judicial District shall have jurisdiction only of civil business, and the District Court of the 47th Judicial District in Potter County shall have jurisdiction only of criminal matters, but said District Court of the 47th Judicial District in and for the counties of Randall and Armstrong shall exercise general jurisdiction of District Courts as conferred by law in all civil and criminal matters.

Sec. 5. All civil cases pending in the District Court of Potter County, as heretofore constituted, shall, upon the taking effect of this Act, be immediately transferred by the Clerk of said Court to the docket of the District Court of the 108th Judicial District, and shall thereafter be disposed of by the District Court of the 108th Judicial District as though such cases had been originally filed therein.

Sec. 6. All process issued, bonds and recognizances made, all grand and petit jurors drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the District Courts of the several counties as herein fixed, respectively, as though issued and served for such terms and courts and returnable to and drawn for the same.

Sec. 7. The Governor shall appoint, as soon as this Act takes effect, a person to act as Judge for the 108th Judicial District who shall have the qualifications prescribed by law.

Sec. 8. The judge and District Attorney of the 47th Judicial District as heretofore constituted, shall be the Judge and District Attorney of the 47th Judicial District as constituted and reorganized by this Act during the terms for which they each respectively were elected. [Acts 1913, S. S. p. 19; Acts 1923, p. 148; Acts 1927, 40th Leg., p. 10, ch. 7.]

Section 9 of Acts 1927, 40th Leg., p. 10, ch. 7, repeals all conflicting laws and parts of laws.

48.—See 17th District.

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

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

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

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

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

In Webb County as follows:

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

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

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

One term beginning on the fourteenth Monday after the first Monday in February and may continue in session eight weeks. [Acts 1925, p. 181.] [39th Leg., ch. 45, § 1.]

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

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

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

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

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

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

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

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

Sec. 1. The Fifty-first Judicial District of the State of Texas shall be composed of the counties of Tom Green, Irion, Schleicher, Coke and Sterling; and the terms of the District Court shall be held therein each year as follows:

Beginning in Tom Green County on the first Monday in January in each year, and may continue in session seven weeks; and on the fifteenth Monday after the first Monday in January in each year, and may continue in session eight weeks; and on the twenty-third Monday after the first Monday in January in each year and may continue in session until all business is disposed of; and on the eighth Monday after the first Monday in September in each year and may continue in session eight weeks.

Beginning in Irion County on the seventh Monday after the first Monday in January in each year; and on the first Monday in September in each year and each of said terms may continue in session two weeks.

Beginning in Schleicher County on the ninth Monday after the first Monday in January each year; and on the second Monday after the first Monday in September in each year and each of said terms may continue in session two weeks.

Beginning in Coke County on the eleventh Monday after the first Monday in January each year; and on the fourth Monday after the first Monday in September in each year, and each of said terms may continue in session two weeks.

Beginning in Sterling County on the thirteenth Monday after the first Monday in January each year; and on the sixth Monday after the first Monday in September in each year and each of said terms may continue in session two weeks.

Sec. 2. That all process and writs heretofore issued out of the District Courts of said respective Counties and returnable to terms of Court in said counties according to existing laws, are hereby made returnable to the terms of the District Courts of said respective Counties as said terms are fixed by this Act, and all bonds executed and recognizances entered in said Court shall bind the parties for their appearance, or to fulfill the obligations of such bonds and recognizances at the terms of said Courts as they are fixed by this Act, and all process heretofore returned, as well as all bonds and recognizances heretofore taken in the District Courts of said respective Counties, shall be as valid as though no change was made in the time of holding Courts herein, and all grand and petit jurors drawn and selected under existing laws for any of the Counties of said Districts are hereby declared lawfully drawn and selected for the first term of the District Courts of such respective Counties held in conformity with this Act.

Sec. 3. Should any District Court of the Fifty-first Judicial District be in session in any of the Counties of said District under existing laws when this Act takes effect, such court shall continue and end its term under such existing law as if no change in the time of holding court in said district had been made and all process, writs, judgments, decrees and other proceedings in said court during such time, shall be valid to all intents and purposes, and shall not be affected by the changes in the times of holding court therein made by this Act but after the period provided in the above contingency the District Courts of the respective counties herein mentioned shall be held in conformity with the terms as herein prescribed. Acts 1909, p. 56; Acts 1917, p. 125; Acts 1927, 40th Leg., 1st C. S., p. 22, ch. 12.]

Section 4 of Acts 1927, 40th Leg., 1st C. S., p. 22, ch. 12, repeals all conflicting laws and parts of laws.

Change in jurisdiction of Irion and Sterling county courts affecting district courts, see articles 1970-303, 1970-304.

52.—The Fifty-second Judicial District of Texas shall be composed of the counties of Coryell, Hamilton and Comanche, and the terms of district court shall be held therein as follows: In Coryell County, on the second Monday in January and July, and may continue in session seven weeks; in Hamilton County, on the seventh Monday after the second Monday in January and July, and may continue in session seven weeks; in Comanche County on the fourteenth Monday after the second Monday in January and July, and may continue until business is disposed of. [Acts 1925, p. 6.] [39th Leg., ch. 4, § 1.]

53.—Travis.

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

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

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

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

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

54.—See 19th District.

55.—See 11th District.

56.—See 10th District.

57.—See 37th District.

58, 60.—Jefferson.

Fifty-eighth District: On the third Monday in September and may continue eleven weeks; on the second Monday in December and may continue ten weeks;

on the first Monday in March and may continue eight weeks; and on the first Monday in May and may continue until the first Saturday before the third Monday in September.

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

The clerk of the district court of Jefferson County shall perform the duties of the clerk of the courts of both the Fifty-eighth and the Sixtieth Judicial Districts, and in case of vacancy in said office of said clerk, the same shall be filled by appointment by the judge of the Fifty-eighth Judicial District.

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

59.—See 15th District.

60.—See 58th District.

61.—See 11th District.

62.—Hunt, Delta and Lamar.

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

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

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

Acts 1927, 40th Leg., p. 225, ch. 154, § 1, authorizes the judges of the 6th judicial district and the 62nd judicial district to transfer civil cases from their respective dockets in Lamar county to the other court. See Art. 199, subd. 6.

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

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

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

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

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

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

Section 1 of Acts 1927, 40th Leg., p. 225, ch. 154, transfers the civil and criminal jurisdiction of the county court of Edwards county to the district court of said county.

64. The 64th Judicial District shall be composed of the counties of Hale, Floyd, Briscoe, Castro, Lamb, Swisher and Bailey, and the terms of court in said district shall be held therein as follows:

Hale County: On the second Monday in January and first Monday in August and may continue seven weeks.

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

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

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

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

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

Bailey County: On the twenty-first Monday after the second Monday in January and may continue in session three weeks, and on the twenty-first Monday after the first Monday in August and may continue one week. [Acts 1911, 1st C. S. p. 102; Acts 1917, p. 309; Acts 1919, p. 132; Acts 1919, 2nd C. S. p. 26; Acts 1927, 40th Leg., p. 224, ch. 153, § 1.]

65.—See 34th District.

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

67.—See 17th District.

68.—See 14th District.

69. The 69th Judicial District of the State of Texas shall be composed of the counties of Parmer, Deaf Smith, Oldham, Moore, Hartley, Sherman and Dallam, and from and after July 1st, 1927, the terms of the District Courts therein shall be held as follows:

In the County of Parmer on the second Monday in January and July, and may continue in session three weeks;

In the County of Deaf Smith on the third Monday after the second Monday in January and July, and may continue in session five weeks;

In the County of Oldham on the eighth Monday after the second Monday in January and July, and may continue in session two weeks;

In the County of Moore on the tenth Monday after the second Monday in January and July, and may continue in session two weeks;

In the County of Hartley on the twelfth Monday after the second Monday in January and July, and may continue in session two weeks;

In the County of Sherman on the fourteenth Monday after the second Monday in January and July and may continue in session two weeks;

In the County of Dallam on the sixteenth Monday after the second Monday in January and July, and may continue in session six weeks.

All process, writs and bonds issued, served or executed prior to the taking effect of this Act and returnable to the terms of said court in each of said counties, comprising the said Judicial District, and all process heretofore returnable, as well as all bonds and recognizances heretofore entered into, in any of said counties in said Judicial District, shall be valid and binding.

All process issued or served before this Act goes into effect, including recognizances and bonds, returnable after July 1st, 1927, to the District Courts of any of said counties, shall be considered as returnable

to said courts in accordance with the terms prescribed by this Act, and all such process is hereby legalized and all grand and petit jurors, drawn and selected under existing laws in any of the counties in said Judicial District for a term of court after July 1st, 1927, shall be considered lawfully drawn and [and] selected for the next term of the District Court for their respective counties held in accordance with this Act; provided, however, that if there should be a term of court being held at the time this Act goes into effect, said term of court shall remain and continue in session until said term shall have ended and terminated under the law, as it now exists, for holding terms of court in the said 69th Judicial District. [Acts 1909, pp. 16, 69; Acts 1927, 40th Leg., p. 226, ch. 155.]

70.—

The Seventieth Judicial District of Texas shall be composed of the Counties of Midland, Ector, Winkler, Andrews, Martin, Glasscock, Reeves, Ward and the unorganized counties of Crane and Loving.

Midland County: On the first Monday in February and September and may continue three weeks; on the tenth Monday after the first Monday in February and September and may continue one week.

Ector County: On the third Monday after the first Monday in February and September and may continue two weeks; on the eleventh Monday after the first Monday in February and September and may continue one week.

Winkler County: On the fifth Monday after the first Monday in February and September and may continue one week.

Andrews County: On the sixth Monday after the first Monday in February and September and may continue one week.

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

Glasscock County: On the ninth Monday after the first Monday in February and September and may continue one week.

Reeves County: On the twelfth Monday after the first Monday in February and September and may continue six weeks.

Ward County: On the second Monday in January and on the eighteenth Monday after the first Monday in February and may continue two weeks.

For Judicial and other purposes, the unorganized county of Loving is hereby attached to Reeves County, and the unorganized county of Crane is hereby attached to Ector County. [Acts 1917, pp. 4, 20, 125; Acts 1917, 3rd C. S. p. 51; Acts 1927, 40th Leg., p. 134, ch. 87, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 134, ch. 87, repeals all conflicting laws and parts of laws.

71.—Harrison and Gregg.

Harrison County: On the first Monday in January and continue until the second Monday in February; on the second Monday in March and continue until the first Monday in June; on the fourth Monday in June and continue until the first Monday in September unless sooner adjourned by the court; on the first Monday in September and continue until the first Monday in October; and on the first Monday in November and continue until the first Monday in January.

Gregg County: On the second Monday in February and continue until the second Monday in March; on the first Monday in June and continue three weeks; and on the first Monday in October and continue until the first Monday in November.

The District Court of the Seventy-first Judicial District shall have such jurisdiction and power as is conferred on district courts under the Constitution and laws, and in addition thereto, shall have jurisdiction of all matters of a civil nature over which the county court of Harrison County has jurisdiction, original or concurrent, and over all appeals of a civil nature from justice courts of Harrison County appealable to the county court of said county under existing laws.

The county attorney of Harrison County and the county attorney of Gregg County shall each have and perform all the duties and prerogatives of a district attorney in attendance upon the district court for each of their respective counties. [Acts 1911, p. 93; Acts 1921, p. 80; Acts 1923, p. 113.]

Acts 1927, 40th Leg., p. 150, ch. 99, changes the jurisdiction of the County Court of Harrison county and the jurisdiction of the District Court of the 71st Judicial District to conform thereto. See Art. 1970-299.

72.—

The 72nd Judicial District of this State shall be composed of Crosby, Lubbock, Hockley and Cochran Counties, and the terms of district court in said counties shall be held as follows:

In the County of Crosby on the second Monday in January, and may continue in session four weeks; and on the fifteenth Monday after the second Monday in January and continue in session four weeks; and on the third Monday after the first Monday in September, and may continue in session four weeks.

In the County of Lubbock on the fourth Monday after the second Monday in January, and may continue in session six weeks; on the nineteenth Monday after the second Monday in January, and may continue in session five weeks; and on the ninth Monday after the first Monday in September, and may continue in session seven weeks.

In the County of Hockley on the tenth Monday after the second Monday in January, and may continue in session three weeks; and on the first Monday in September, and may continue in session three weeks.

In the County of Cochran on the thirteenth Monday after the second Monday in January, and may continue in session two weeks; and on the third Monday after the first Monday in September, and may continue in session two weeks.

Sec. 3. All process issued, bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the district courts of the several counties as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

Sec. 4. The 72nd Judicial District of Texas and the 90th Judicial District of Texas and the courts of said judicial districts in Lubbock County shall have concurrent jurisdiction with each other in said county in all matters over which jurisdiction is given or shall hereafter be given by the Constitution and laws of this State to district courts. Either of the judges of the said district courts for said county may in their discretion in term time or in vacation transfer a case or cases, civil or criminal, to said other district court, with the consent of the judge of said other district court, by order entered on the minutes of his court from which said case is transferred or minutes or orders made in chambers as the case may be, which orders when made shall be copied and certified to by the district clerk of said Lubbock County, together with all orders made in said case and such certified copies of such orders together with the original papers shall be filed among the papers of any case thus transferred and the fees thereof shall be taxed as a part of the costs of said suit, and the Clerk of said court shall docket any such case in the court to which it shall have been transferred and when so entered the court to which same shall have been thus transferred shall have like jurisdiction therein as in cases originally filed in said court and the same shall be dropped from the docket of the said court from which it was transferred, provided that all process and writs issued out of the district court from which any such transfer is made shall be returnable to the term of court to which said transfer is made according to the terms of the district court of said respective courts as fixed by this Act, and that all bonds executed and recognizances entered into in any district court from which any such transfer is made shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said court to which said transfer is made as said terms are fixed by this Act in the respective counties. [Acts 1925, p. 250.] [39th

Leg., ch. 80, § 1.] [Acts 1927, 40th Leg., 1st C. S., p. 72, ch. 22, §§ 1, 3, 4.]

The final paragraph of section 4 of said Acts 1927, 40th Leg., 1st C. S., p. 72, ch. 22, provides that if any provision thereof be held invalid, such holding shall not affect the remainder, and that the act shall not prevent the holding under present laws of any court in session when it takes effect.

Acts 1927, 40th Leg., p. 85, ch. 61, creates the 99th Judicial District, composed of Lubbock county.

73.—See 37th District.

74.—See 19th District.

75.—Hardin, Liberty, Tyler and Chambers.

In the county of Hardin on the first Monday in January and on the nineteenth and thirty-third Mondays after the first Monday in January of each year, and may continue in session for four weeks.

In the county of Liberty on the fourth, twenty-third and thirty-seventh Mondays after the first Monday in January of each year, and may continue in session for six weeks.

In the county of Tyler on the tenth and forty-third Mondays after the first Monday in January of each year, and may continue in session for five weeks.

In the county of Chambers on the fifteenth and forty-eighth Mondays after the first Monday in January of each year, and may continue in session for four weeks. [Acts 1925, p. 379.] [39th Leg., ch. 166, § 2.]

76.—Titus, Franklin, Camp, Morris and Marion.

Titus County: On the first Monday in January and may continue six weeks and on the twenty-second Monday after the first Monday in January and may continue six weeks.

Franklin County: On the sixth Monday after the first Monday in January and may continue four weeks; and on the fourth Monday in August and may continue four weeks.

Camp County: On the tenth Monday after the first Monday in January and may continue four weeks; and on the fourth Monday after the fourth Monday in August and may continue four weeks.

Morris County: On the fourteenth Monday after the first Monday in January and may continue four weeks; and on the eighth Monday after the fourth Monday in August and may continue four weeks.

Marion County: On the eighteenth Monday after the first Monday in January and may continue four weeks; and on the twelfth Monday after the fourth Monday in August and may continue four weeks. [Acts 1915, p. 6; Acts 1917, p. 68.]

77, 87.—Limestone and Freestone.

Seventy-seventh District: (a) Limestone County: On the first Monday in December, March, June and September and shall continue eight weeks. (b) Freestone County: On the first Mondays in February, May, August and November and shall continue four weeks.

Eighty-seventh District: (a) Limestone County: On the first Monday in February, May, August and November and shall continue eight weeks. (b) Freestone County: On the first Mondays in January, April, July and October and shall continue four weeks.

The said district courts shall have concurrent jurisdiction of all cases, civil and criminal and appellate, over which the district courts of this State have jurisdiction under the Constitution and laws of this State, co-extensive with the limits of Limestone County and Freestone County, respectively, and grand juries shall be drawn for the Eighty-seventh District Court in Limestone County at the May and November terms and grand juries shall be drawn for said court in Freestone County for the January and July terms, and at such other terms of said court, both in Limestone and Freestone Counties, as the judge of said court may, from time to time, so order. There shall be organized grand juries at the March and September terms of the Seventy-seventh District Court in Limestone County, and at the May and November terms of said court in Freestone County, and at such other terms of said court in each county, as may be determined and ordered by the judge thereof.

The judges of the Seventy-seventh and Eighty-seventh Districts for the counties of Limestone and Freestone shall each, in his discretion, either in term time or vacation, on motion of any party, or on agreement of the parties, or in his own motion, where he thinks the administration of justice may be facilitated thereby, or for the purpose of equalizing the dockets of said court, transfer any cause, civil or criminal, from the dockets of their respective courts to the docket of the other district court of said county, and shall cause said transfer to be entered of record upon the minutes of his court, whereupon the clerk of the district court to which said cause has been transferred shall docket same and the same shall be tried and disposed of as if it had been originally filed in said court, and no transcript of the record shall be necessary to the jurisdiction of the court to which such case has been transferred and no formal proceedings shall be necessary to such transfer; provided that in any cause pending on any of the dockets of said district courts in either of said counties in which the judge of said court may be disqualified, recused or otherwise unable to try, he shall transfer said cause as above provided, to the other district court in the county where such cause is pending.

The clerks of the said district courts shall make up the dockets of the district courts of said counties, respectively, and shall file the new cases in the courts to which he may be directed to file same by the party filing them; and all criminal cases shall be originally filed in the court to which the indictment or information is returned, and all appeals in probate cases shall be to the court beginning the first term after such appeal is filed. The clerks of said courts shall respectively prepare civil, divorce, criminal and tax dockets as may now be customary or provided by law for the Seventy-seventh and the Eighty-seventh District Courts in their respective counties, and shall place letters on the envelope containing the file papers in each case after the number of said case, designating by the letter "A" causes pending in the Seventy-seventh District Court, and by the letter "B" causes pending in the Eighty-seventh District Court.

The clerk of the Seventy-seventh District Court in Limestone County and the clerk of the Seventy-seventh District Court in Freestone County shall be the clerk of the Eighty-seventh District Court of said counties, respectively; and the district attorney of the Seventy-seventh Judicial District shall be district attorney of said district in both Limestone and Freestone Counties and shall represent the State in all criminal causes in said court in said counties. The office of district attorney for the Eighty-seventh District is hereby abolished, and the duties enjoined by law upon said attorney shall be performed by the respective county attorneys of said district. [Acts 1923, pp. 47–52.]

78.—See 30th District.

79.—Starr, Hidalgo, Brooks, Duval and Jim Wells:

In Starr County on the eighth Monday after the first Monday in January of each year and may continue in session two weeks, and on the first Monday in September of each year and may continue in session two weeks.

In Hidalgo County on the tenth Monday after the first Monday in January of each year and may continue in session seven weeks, and on the second Monday after the first Monday in September of each year and may continue in session nine weeks.

In Brooks County on the seventeenth Monday after the first Monday in January of each year and may continue in session four weeks, and on the eleventh Monday after the first Monday in September of each year and may continue in session four weeks.

In Duval County on the twenty-first Monday after the first Monday in January of each year and may continue in session four weeks, and on the first Monday in January of each year and may continue in session four weeks.

In Jim Wells County on the twenty-fifth Monday after the first Monday in January of each year and may continue in session four weeks, and on the fourth Monday after the first Monday in January of each year and may continue in session four weeks. [Acts 1925, p. 182.] [39th Leg., ch. 45, § 2.]

80.—The Eightieth District shall be composed of Harris County.

Section 1. There shall be two terms of the district court of the Eightieth Judicial District in each year, and the first term in each year, which shall be knows [known] as the January-June term, shall be begun on the first Monday in January in each year and shall continue until and including Sunday next before the first Monday in July of the same year, and the second term in each year, which shall be known as the July-December term, shall be begun on the first Monday in July in each year and shall continue until and including Sunday next before the first Monday in the following January.

Sec. 2. All cases and proceedings pending in the district court of Waller County when this law takes effect, shall be and are hereby transferred from the Eightieth Judicial District as now constituted by said county, to the Ninth Judicial District Court as constituted by this Act; and all cases and proceedings pending in the district court of the Seventy-fifth Judicial District in Montgomery County when this law takes effect, shall be and are hereby transferred from the docket of the Seventy-fifth Judicial District Court as the same is now constituted in said county, to the docket of the Ninth Judicial District Court as the same is constituted by this Act; and all cases and proceedings pending on the docket of the Ninth Judicial District Courts in the counties of Hardin and Liberty when this Act takes effect, shall be and the same are hereby transferred from the Ninth Judicial District as now constituted in said counties, to the dockets of the Seventy-fifth Judicial District Courts of said Hardin and Liberty Counties as the same are constituted by this Act, and the judges of said Ninth and Seventy-fifth Judicial Districts as created by this Act shall carry into effect these provisions.

Sec. 3. The present judges of the Ninth and Seventy-fifth Judicial Districts as the same now exists, shall remain the district judges of their respective districts as reorganized under the provisions of this Act, and shall hold their offices until the next general election and until their successors are appointed or elected and duly qualified, and they shall receive the same compensation as is now, or may hereafter be provided by law for district judges, and a vacancy in either of said offices shall be filed as is now, or may hereafter be provided by law, and the present judge of the district court for the Eightieth Judicial District shall hold his office until his term expires and until his successor is elected and qualified, and a judge of said court shall hereafter be elected at the time and in the manner provided by law by the qualified voters of Harris County.

Sec. 4. The district attorneys of the Ninth and Seventy-fifth Judicial Districts as the same now exists, shall be and continue to remain as the district attorneys of said Ninth and Seventy-fifth Judicial Districts as the same are hereby reorganized, unless disqualified under the law to hold such offices hereunder, in which event the Governor shall appoint a district attorney for one or both of said districts with the qualifications required by law and he shall receive the salary as provided by law for such officers.

Sec. 5. All process and writs issued out of the district courts of the Seventy-fifth Judicial District in Montgomery County and out of the district court of the Ninth Judicial District in Hardin and Liberty Counties, and out of the district court of the Eightieth Judicial District in Waller County and all jurors selected prior to the taking effect of this Act are hereby made returnable to the terms of the Ninth Judicial District Court in Waller County and Montgomery County and the Seventy-fifth Judicial District Courts in Hardin and Liberty Counties, as said terms are fixed by this Act; and all bonds executed and recognizances entered in said courts shall bind the parties for their appearances or to fulfill the obligations of such bonds and recognizances at the terms of said courts as they are fixed by this Act; and all processes heretofore returned, as well as all bonds and recognizances heretofore taken in any of the district courts of said counties shall be as valid as though no change had been made in said districts and the times of holding courts therein.

Sec. 6. Should a district court be in session under the existing law in any county affected by this Act, the same shall continue and end its term under such existing law as if no change in the district had been made, and all process writs, judgments and decrees issued and rendered therein shall be valid and shall not be affected by the change of said districts and the time of holding courts therein made by this Act. [Acts 1925, p. 379.] [39th Leg., ch. 166, §§ 3–8.]

81.—Frio, LaSalle, Atascosa, Wilson and Karnes.

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

LaSalle County: On the third Monday after the last Monday in August and on the third Monday after the first Monday in February and may continue three weeks.

Atascosa County: On the sixth Monday after the last Monday in August and on the sixth Monday after the first Monday in February and may continue three weeks, at each of which terms a grand jury shall be impaneled. On the fifteenth Monday after the last Monday in August and on the fifteenth Monday after the first Monday in February and may continue three weeks.

Wilson County: On the ninth Monday after the last Monday in August and on the ninth Monday after the first Monday in February and may continue six weeks.

Karnes County: On the eighteenth Monday after the last Monday in August and on the eighteenth Monday after the first Monday in February and may continue five weeks. [Acts 1917, p. 247; Acts 1921, p. 32.]

82.—Falls County: On the first Monday in the months of January, March, May, September and November and each term may continue until and including the Saturday next preceding the beginning of the next succeeding term. Grand juries shall be organized at the May and November terms of said court, and at such other terms as the judge of said district may determine and order.

83.—Jeff Davis, Presidio, Brewster, Pecos, Upton, Reagan, Sutton and Crockett.

In the county of Jeff Davis on the second Monday in January and July and may continue in session two weeks.

In the county of Presidio on the third Monday after the first Monday in January and July and may continue in session three weeks.

In the county of Brewster on the sixth Monday after the first Monday in January and July and may continue in session three weeks.

In the county of Pecos on the ninth Monday after the first Monday in January and July and may continue in session three weeks.

In the county of Upton on the twelfth Monday after the first Monday in January and July and may continue in session two weeks.

In the county of Reagan on the fourteenth Monday after the first Monday in January and July and may continue in session two weeks.

In the county of Crockett on the sixteenth Monday after the first Monday in January and July and may continue in session two weeks.

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

That all process, writs and bonds issued, served or executed prior to the taking effect of this Act and returnable to the terms of said court in each of said counties, comprising said judicial district, and all processes heretofore returnable, as well as all bonds and recognizances heretofore entered into, in any of said counties in said judicial district shall be valid and binding.

Sec. 2. All process issued or served before this Act goes into effect, including recognizances and bonds, returnable to the district court of any of said counties, shall be considered as returnable to said courts.

in accordance with the terms prescribed by this Act, and all such process is hereby legalized and all grand and petit juries drawn and selected under existing laws in any of the counties in said judicial district shall be considered lawfully drawn and selected for the next term of the district court for their respective counties held in accordance with this Act; provided, that if any court in any county of said judicial district shall be in session at the time this Act takes effect, said court shall continue in session until the term thereof shall expire under the terms of the existing law. Thereafter the courts of said counties shall conform to the requirements of this Act. [Acts 1925, p. 84.] [39th Leg., ch. 24, §§ 1, 2.]

84.—

Sec. 4. The 84th Judicial District of the State of Texas shall be composed of the Counties of Gray, Hutchinson, Hansford, Ochiltree, Lipscomb, Hemphill, Carson, Wheeler, and Roberts and the terms of the district court therein for the year A. D. 1927 shall be held as follows:

Beginning in Gray County on the first Monday in March and on the 13th Monday after the first Monday in March, and on the first Monday in August and on the 14th Monday after the first Monday in August, and may continue in session two weeks;

Beginning in Carson County on the second Monday after the first Monday in March and on the 15th Monday after the first Monday in March, and on the second Monday after the first Monday in August and on the sixteenth Monday after the first Monday in August, and may continue in session two weeks;

Beginning in Hutchinson County on the fourth Monday after the first Monday in March and may continue in session three weeks, and on the seventeenth Monday after the first Monday in March and may continue in session until the business of the court is disposed of; and on the fourth Monday after the first Monday in August and may continue in session four weeks, and on the eighteenth Monday after the first Monday in August, and may continue in session until the business of the court is disposed of;

Beginning in Hansford County on the seventh Monday after the first Monday in March and on the eighth Monday after the first Monday in August and may continue in session one week;

Beginning in Wheeler County on the eighth Monday after the first Monday in March and on the ninth Monday after the first Monday in August and may continue in session one week;

Beginning in Lipscomb County on the ninth Monday after the first Monday in March and on the tenth Monday after the first Monday in August and may continue in session one week;

Beginning in Ochiltree County on the tenth Monday after the first Monday in March and on the eleventh Monday after the first Monday in August and may continue in session one week;

Beginning in Roberts County on the eleventh Monday after the first Monday in March and on the twelfth Monday after the first Monday in August and may continue in session one week;

Beginning in Hemphill County on the twelfth Monday after the first Monday in March and on the thirteenth Monday after the first Monday in August and may continue in session one week.

Sec. 5. The terms of the district court of the said 84th Judicial District of the State of Texas, for and during the year A. D. 1928 and thereafter shall be held as follows:

Beginning in Hutchinson County on the first Monday in January and on the sixteenth Monday after the first Monday in January and on the first Monday in July and on the sixteenth Monday after the first Monday in July, and may continue in session four weeks;

Beginning in Carson County on the fourth Monday after the first Monday in January and on the twentieth Monday after the first Monday in January and on the fourth Monday after the first Monday in July and on the twentieth Monday after the first Monday in July, and may continue in session three weeks;

Beginning in Gray County on the seventh Monday after the first Monday in January and may continue in session three weeks, and on the twenty-third Monday after the first Monday in January and may continue in session until the business of the court is disposed of, and on the seventh Monday after the first Monday in July and may continue in session three weeks; and on the twenty-third Monday after the first Monday in July, and may continue in session until the business of the court is disposed of;

Beginning in Hemphill County on the tenth Monday after the first Monday in January and July and may continue in session one week;

Beginning in Lipscomb County on the eleventh Monday after the first Monday in January and July and may continue in session one week;

Beginning in Wheeler County on the twelfth Monday after the first Monday in January and July and may continue in session one week;

Beginning in Roberts County on the thirteenth Monday after the first Monday in January and July and may continue in session one week;

Beginning in Hansford County on the fourteenth Monday after the first Monday in January and July and may continue in session one week;

Beginning in Ochiltree County on the fifteenth Monday after the first Monday in January and July and may continue in session one week.

Sec. 6. There shall be no grand jury nor petit jury drawn for the 84th District Court in the Counties of Hemphill, Lipscomb, Wheeler, Roberts, Hansford and Ochiltree except such as the judge of said court may in his discretion from time to time order.

Sec. 8. The governor shall appoint as soon as this Act takes effect a person to act as judge of the 84th Judicial District and a person to act as District Attorney of such 84th Judicial District, such persons to have the qualifications as prescribed by law, which said appointees may hold their said respective offices until the next general election in this State, their successor to be elected as now provided by law. [Acts 1927, 40th Leg., p. 60, ch. 42.]

Section 12 of Acts 1927, 40th Leg., p. 60, ch. 42, provides that if a section, paragraph or provision thereof be held invalid, it shall not affect the remainder, which shall remain in force. Section 13 provides that said act in so far as it pertains to the 84th Judicial District shall expire in two years after it takes effect, and all cases and things pending shall by operation of law be transferred to the 31st Judicial District, and section 14 repeals all laws and parts of laws in conflict therewith.

85.—Robertson and Brazos.

Robertson County: On the first Monday in January, April and July, and the second Monday in November and may continue five weeks.

Brazos County: On the second Monday in February and May, and third Monday in September and may continue six weeks.

There shall be organized grand juries at the January and July terms of said court in Robertson County, and at the February and September terms of said court in Brazos County, and at such other terms of the said court of each county as may be determined and ordered by the judge thereof.

The District Court of said Eighty-fifth Judicial District shall have all the powers and jurisdiction as district courts by and under the Constitution and laws of this State, and in addition thereto shall have and exercise jurisdiction in all civil and criminal matters and causes over which by the laws of this State the respective county courts of Robertson and Brazos Counties shall have jurisdiction, original or appellate, except as provided by law, and the same are hereby transferred to the District Court of said counties. [Acts 1917, p. 256.]

86.—Kaufman, Van Zandt and Rockwall.

Van Zandt County: On the first Monday in January and continue six weeks; on the thirteenth Monday after the first Monday in January and continue six

weeks; and on the first Monday in September and continue six weeks.

Kaufman County: On the sixth Monday after the first Monday in January and continue seven weeks; on the twenty-third Monday after the first Monday in January and continue until the last Saturday in August; and on the tenth Monday after the first Monday in September and continue until the last Saturday in December.

Rockwall County: On the nineteenth Monday after the first Monday in January and continue four weeks; and on the sixth Monday after the first Monday in September and continue four weeks.

The county attorney of Van Zandt County shall represent the State in criminal cases in said county and receive the same fees and compensation as is now provided by law for the County Attorney of Kaufman County. [Acts 1917, p. 130.]

87.—See 77th District.

88, 91.—Eastland.

Eighty-eighth District: On the first Mondays in January, March, May, July, September and November, and may continue until the business is disposed of.

Ninety-first District: On the first Mondays in February, April, June, August, October and December, and may continue until the business of the court is disposed of.

The District Courts of Eastland County shall have concurrent civil and criminal jurisdiction with each other in said county in matters over which the jurisdiction is given or shall be given by the Constitution and laws of Texas to district courts; provided, that no grand jury shall be impaneled in the Ninety-first District Court, except that by the special order of the judge of said court, a grand jury shall be called for said court.

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

The district clerk of Eastland County shall be the clerk of the district court of said Ninety-first Judicial District, sitting in Eastland County.

The county attorney of Eastland County shall perform all the duties of county attorney and district attorney in both of said district courts and shall receive the same compensation for his services as is or may be fixed by law for a district attorney acting in judicial districts composed of two or more counties.

The clerk of the District Court of Eastland County shall file all suits in his office alternately in said Eighty-eighth and Ninety-first District Courts. [Acts 1919, p. 256; Acts 3rd C. S. 1920, p. 57; Acts 1923, p. 143.]

89.—See 30th District.

90.—Stephens: On the first Monday in January, March, May, July, September and November and may continue eight weeks, and the judge of said court may, in his discretion, have a grand jury drawn for and organized at any of said terms of court. [Acts 1921, p. 111; Acts 1923, p. 346.]

91.—See 88th District.

92.—(Expired. Acts 1923, p. 162.)

Acts 1925, 39th Leg., ch. 160, p. 371, § 1, reads as follows: "There is hereby created the Ninety-second Judicial District of Texas, which shall be composed of Stephens and Young Counties, in each of which counties there shall be an additional district court, the duration and existence of which shall cease and terminate on March 15, 1925; provided, that in Stephens County said district court and said judicial district shall not expire or terminate until April 15, 1925, and as to said Stephens County this Act shall remain in full force and effect until said time."

93.—Hidalgo: On the first Monday in January and may continue nine weeks; on the ninth Monday after the first Monday in January and may continue twelve weeks; on the twenty-first Monday after the first Monday in January, and may continue eight weeks; on the first Monday in September and may continue eight weeks; and on the eighth Monday after the first Monday in September and may continue to and including the last Saturday in December. [Acts 1923, p. 107.] See 79th District.

Acts 1925, 39th Leg., ch. 45, p. 182, § 3, reads as follows: "This Act shall not in any manner repeal or change Chapter 55 of the Acts of the Regular Session of the Thirty-eighth Legislature creating the Ninety-third Judicial District of Texas and fixing the terms of holding district courts in the counties composing the Seventy-ninth Judicial District of Texas except to take Jim Hogg County out of said Seventy-ninth Judicial District and place it in said Forty-ninth Judicial District and to add two weeks each year to each of the two terms of the district courts to be held in Brooks County, and in all other respects the said Chapter 55 of said Acts of the Regular Session of the Thirty-eighth Legislature shall remain in force as originally enacted."

94.—See 37th District.

95.—See 14th District.

96.—See 17th District.

97.—Montague and Clay.

Montague County: On the first Monday in January and may continue six weeks; on the thirteenth Monday after the first Monday in January and may continue six weeks; on the twenty-fifth Monday after the first Monday in January and may continue six weeks; and on the forty-first Monday after the first Monday in January and may continue six weeks.

Clay County: On the seventh Monday after the first Monday in January and may continue six weeks; on the nineteenth Monday after the first Monday in January and may continue six weeks; on the thirty-fifth Monday after the first Monday in January and may continue six weeks; and on the forty-seventh Monday after the first Monday in January and may continue six weeks. [Acts 1923, p. 145.]

98.—(No. 98th Judicial District.)

99.—

Sec. 1. There is hereby created the 99th Judicial District of the State of Texas to be composed of the County of Lubbock, and the district court therein shall have the jurisdiction of a district court under the Constitution and General Laws of this State.

Sec. 2. The terms of said Court shall be held in said County as follows:

On the second Monday in January and may continue in session twelve weeks; on the twelfth Monday after the second Monday in January and may continue in session twelve weeks; and on the first Monday in September and may continue in session eight weeks; and on the eighth Monday after the first Monday in September, and may continue in session eight weeks.

Sec. 3. The District Clerk of Lubbock County shall act as the District Clerk for the court herein created. Immediately upon this Act taking effect the District Judge of the 72nd Judicial District shall enter an order transferring a portion of the cases on the docket in said 72nd Judicial District Court in Lubbock County to the District Court of the 99th Judicial District herein created, and said District Clerk shall thereupon transfer such cases accordingly and enter the same upon the docket of said court created by this Act, together with all records and papers relating thereto.

Sec. 4. In all cases transferred under this Act, all process and writs issued out of the 72nd Judicial Dis-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

trict Court of said county and jurors selected prior to the taking effect of this Act, are hereby made returnable to the terms of the District Court of the 99th Judicial District as herein created and fixed, and all bonds executed and recognizances entered in any such transferred cases shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said court as they are fixed by this Act, and all process heretofore returned to, as well as all bonds and recognizances theretofore taken in said transferred cases, shall be as valid as though no change had been made in the district court and the times of holding court therein.

Sec. 5. All process issued or served before this Act goes into effect and returnable to the district court of the 72nd Judicial District of Lubbock County shall be considered as returnable to the district court of the 99th Judicial District of Lubbock County as established and created hereby and in accordance with the terms as established by this Act, and all such process is hereby validated and all juries heretofore drawn and selected in any case transferred under this Act shall be considered lawfully drawn for the next term of the district court to which it was transferred.

Sec. 6. The Governor shall appoint a judge for the district court of said district created by this Act possessing the qualifications prescribed by the Constitution and laws of this State, who shall hold said office until the next general election and until his successor shall have been elected and qualified and thereafter the judge of said court shall be selected as prescribed by the Constitution and laws of this State.

Sec. 7. The district attorney in and for the 72nd Judicial District shall act also as the district attorney for the district court herein established and created.

Sec. 8. The sheriff of Lubbock County shall perform the duties in connection with the court herein created as provided by law for sheriffs to perform in connection with district courts. [Acts 1927, 40th Leg., p. 85, ch. 61; Acts 1927, 40th Leg., 1st C. S., p. 72, ch. 22, § 2.]

100.—Childress, Hall, Donley and Collingsworth.

In Childress County:

On the first Monday in January and on the twenty-first Monday after the first Monday in January and may continue in session five weeks.

In Hall County:

On the fifth Monday after the first Monday in January and on the first Monday in September and may continue in session six weeks.

In Donley County:

On the eleventh Monday after the first Monday in January and on the sixth Monday after the first Monday in September and may continue in session five weeks.

In Collingsworth County:

On the sixteenth Monday after the first Monday in January and on the eleventh Monday after the first Monday in September and may continue in session five weeks.

Sec. 2. That all process and writs heretofore issued out of the district courts of the respective counties constituting the One Hundredth Judicial District and returnable to terms of court in said counties according to existing law are hereby made returnable to the terms of the district courts of said respective counties as said terms are fixed by this Act.

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

Sec. 3. Should district court be in session under existing laws in any of the counties of said district, when this Act takes effect, such court, shall continue and end its term under such existing laws as if no change had been made in the time for holding such term, and all process, writs, judgments, decrees and other proceedings of said court during such time shall be valid to all intents and purposes and shall not be affected by the changes in the time of holding court therein made by this Act, but after the period provided in the above contingency the district courts of the respective counties herein mentioned shall be held in conformity with the terms herein prescribed. [Acts 1925, p. 178.] [39th Leg., ch. 43, §§ 1–3.]

101.—An additional district court is hereby created in and for Dallas County, the limits of which shall be coextensive with the limits of the county. The district shall be known as the One Hundred and First Judicial District.

Sec. 2. The One Hundred and First District Court shall not have or exercise any criminal jurisdiction, but in all other respects it shall have and exercise the jurisdiction prescribed by the Constitution and laws of the State for district courts in general, and the judge thereof shall have and exercise the powers conferred by the Constitution and laws of the State on the judges of district courts. Its jurisdiction shall be concurrent with that of the existing district courts of Dallas County.

Sec. 3. The terms of the One Hundred and First District Court shall begin on the first Mondays, respectively, in March ———— June ———— ———, September ———— and December ———— ——— of each year, and each term shall continue until the Sunday immediately preceding the date set for the beginning of the next term thereof.

Sec. 4. The Governor shall appoint a suitable person as judge for said One Hundred and First District Court, who shall hold his office until the next general election until his successor shall have been elected and qualified. Thereafter the judge of said court shall be elected as provided by the Constitution and laws of the State for the election of district judges.

Sec. 5. The clerk of the district courts of Dallas County shall, upon the taking effect of this Act, assume the duties of clerk of the One Hundred and First District Court and shall thereafter perform the duties of such position as if the court had existed at the time of his election. He shall promptly prepare a docket for the One Hundred and First District Court, placing thereon every fifth pending case on the respective dockets of the Fourteenth, Forty-fourth, sixty-eighth and Ninety-fifth District Courts, continuing in this manner through said dockets until all the cases thereon are exhausted and the dockets of the five courts are equalized as near as may be; provided, that no case then on trial in any of the existing district courts nor any case pending on appeal therefrom shall be transferred to the docket of the court created hereby. The cases so transferred shall bear the same docket numbers as in the court from which they are transferred, and the judges of the existing district courts, respectively, shall make proper orders transferring from said courts to the One Hundred and First District Court the cases which shall have been placed upon the docket of the latter court in pursuance of this Act.

Sec. 6. The letters A, B, C, D, and E shall be placed on the dockets and court papers in the respective district courts of Dallas County to distinguish them, A being used in connection with the Fourteenth District Court, B, the Forty-fourth District Court, C the Sixty-eighth District Court, D the Ninety-fifth District Court and E the One Hundred and First District Court.

Sec. 7. All suits, prosecutions and proceedings hereafter instituted in the district courts of Dallas County shall be numbered consecutively, beginning with the next number after the last file number on the dockets of the existing courts, and shall be entered by the district clerk upon the dockets of said courts alternately, beginning with the Fourteenth District

Court; next, the Forty-fourth District Court, third, the Sixty-eighth District Court, fourth, the Ninety-fifth District Court and fifth, the One Hundred and First District Court.

Sec. 8. The respective judges of the district courts of Dallas County shall from time to time, as occasion may require, transfer cases from any one of such courts to any other such court in order that the business may be equally distributed among them, that the judges thereof may at all times be provided with cases to be tried or otherwise considered, and that the trial of no case need be delayed because of the disqualification of the judge in whose court it is pending; provided, however, no case shall be transferred from one court to another without the consent of the judge of the court to which it is transferred. When any transfer is made, proper order shall be entered on the minutes of the court as evidence thereof and notice of the transfer shall be given in writing by the clerk to the attorneys of record of all parties to the cause.

102.—Red River and Bowie.

In the county of Red River on the first Monday in January of each year and may continue in session for ten weeks;

In the county of Bowie on the eleventh Monday after the first Monday in January of each year and may continue in session for seven weeks;

In the county of Red River on the eighteenth Monday after the first Monday in January of each year and may continue in session until the first Monday in September;

In the county of Bowie on the first Monday in September of each year and may continue in session for seven weeks;

In the county of Red River on the eighth Monday after the first Monday in September of each year and may continue in session until the first Monday in January of the following year.

Sec. 2. Immediately after this Act takes effect the Governor shall appoint some suitable person as judge of the One Hundred and Second Judicial District Court who shall hold said office until the next general election for State and county officers, and until the election and qualification of his successor in office.

Sec. 3. The clerk of the district court of Bowie County, Texas, as heretofore constituted, and his successors in office, shall be the clerk of both the Fifth Judicial District Court and of the One Hundred and Second Judicial District Court in Bowie County hereby created, and shall perform all the duties of the clerk of both courts in Bowie County.

Sec. 4. The clerk of the district court of Red River County, Texas, as heretofore constituted, and his successors in office, shall be the clerk of the One Hundred and Second Judicial District Court in Red River County hereby created, and shall perform all the duties of the clerk of said One Hundred and Second Judicial District Court in Red River County.

Changing jurisdiction of county court affecting District Court of Bowie County, see article 1970-306.

103.—Cameron and Willacy.

In the county of Cameron, on the third Monday in February of each year, and may continue in session eight weeks; on the third Monday in April of each year, and may continue in session eight weeks; on the third Monday in July of each year, and may continue in session eight weeks; on the third Monday in September of each year, and may continue in session eight weeks; on the third Monday in December of each year, and may continue in session eight weeks.

In the county of Willacy, on the third Monday in June of each year, and may continue in session four weeks; on the third Monday in November of each year, and may continue in session four weeks.

The Governor shall appoint a suitable person possessing qualifications prescribed by the constitution and laws of this State, as judge of the 103rd Judicial District Court, as herein constituted, and such person shall hold said office until the next general election and until his successor shall have been elected and qualified and thereafterwards the judges of said 103rd Judicial District of Texas shall be elected as prescribed by the constitution and laws of this State for the election of district judges.

Immediately upon taking effect of this Act, all civil cases now pending in the Twenty-eighth Judicial District Court in the respective counties of Willacy and Cameron, together with all records and papers relating thereto, shall be transferred to said 103rd Judicial District Court in each said respective counties of Willacy and Cameron.

All process and writs issued out of the district court of said counties and jurors selected prior to the taking effect of this Act are hereby made returnable to the terms of said courts, as said terms are fixed by this Act and all bonds executed and recognizances entered in said courts shall bind the parties for their appearance or to fulfill the obligations of such bonds and recognizances at the terms of said courts as they are fixed by this Act, and all process heretofore returned to, as well as all bonds and recognizances, theretofore taken in any of said courts of said counties shall be as valid as though no change had been made in the said districts and the times of holding courts therein. [Id., p. 247.]

[Note.—The above applies also to the Twenty-eighth Criminal District Court and the Twenty-eighth Judicial District as created by this Act.]

104.—

Sec. 2. The 104th Judicial District of Texas is hereby created by this Act and said Judicial District shall be composed of the following counties, to-wit: Jones, Fisher and Taylor; and the terms of court in said counties shall convene and be held as follows, to-wit:

In Jones County: On the first Monday in January and may continue in session seven weeks; on the fifteenth Monday after the first Monday in January and may continue in session six weeks; on the first Monday in September and may continue in session five weeks.

In Fisher County: On the seventh Monday after the first Monday in January and may continue in session four weeks; on the twenty-first Monday after the first Monday in January and may continue in session three weeks; on the fifth Monday after the first Monday in September and may continue in session four weeks.

In Taylor County: On the eleventh Monday after the first Monday in January and may continue in session four weeks; on the twenty-fourth Monday after the first Monday in January and may continue in session until the last Saturday in July; on the ninth Monday after the first Monday in September and may continue in session until the last Saturday in December.

Sec. 3. The Judge of the 39th Judicial District of Texas, who resides in Haskell County, shall be the judge of said 39th Judicial District of Texas, until the expiration of the term for which he was elected and until his successor is duly elected and qualified as provided by law. The district attorney of the 39th Judicial District who resides in Jones County, shall be district attorney of the newly created 104th Judicial District of Texas, until the next general election when his successor shall have been elected and qualified as provided by law.

Sec. 4. Immediately after this Act shall have gone into effect, it shall be the duty of the Governor of this State to appoint a person qualified by law to act as judge of said 104th Judicial District of Texas, and to appoint a person qualified by law to act as district attorney of the 39th Judicial District of Texas, which said appointees may hold their said respective offices until the next general election in this State, their successors to be elected as now provided by law.

Sec. 5. It shall be the duty of the Commissioners' Court of Taylor County to provide in the county courthouse of said county, suitable quarters for holding the terms of court of said 104th Judicial District of Texas, in Taylor County, as well as suitable quarters for the officers of said court.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Sec. 6. All process and writs issued out of, and bonds and recognizances made and entered into, and all grand and petit juries drawn before this Act takes effect, shall be valid for and returnable to the next succeeding term of the district court in and for the several counties as herein fixed, as though issued and served for such terms, and returnable to and drawn for the same, and all such process, writs, bonds and recognizances taken before or issued in the various counties affected by this Act, shall be as valid as though no change had been made in the various districts or in the time of holding the terms of court therein.

Sec. 7. The District Clerk of Taylor County shall act as clerk of the newly created 104th Judicial District of Texas, in Taylor County, as well as the 42nd Judicial District of Texas, and in filing civil suits, said clerk shall file same alternately in said two district courts and in numbering all suits in each of said courts, said clerk shall place after all numbers of all suits which are filed after this Act takes effect; the letters A or B, so as to distinguish causes pending in said two courts, placing after the number of all suits filed in said 42nd District Court the capital letter A, and placing after the number of all suits filed in said 104th District Court the capital letter B.

Sec. 8. The 42nd Judicial District of Texas and the 104th Judicial District of Texas, and the courts of said Judicial Districts in and for Taylor County, shall have concurrent civil and criminal jurisdiction with each other in said county in all matters over which jurisdiction is given or shall be hereafter given by the Constitution and laws of this State to district courts. Either of the judges of said district courts for Taylor County may in their discretion, in term time or in vacation transfer any case or cases, civil or criminal, to said other district court by order entered on the minutes of his court from which said case is transferred or minutes or orders made in chambers as the case may be, which orders, when made, shall be copied and certified to by the district clerk of Taylor County together with all orders made in said case and such certified copies of such orders, together with the original papers, shall be filed among the papers of any case thus transferred, and the fees thereof shall be taxed as a part of the costs of said suit, and the clerk of said court shall docket any such case in the court to which it shall have been transferred, and when so entered the court to which same shall have been thus transferred shall have like jurisdiction therein as in cases originally brought in said court, and the same shall be dropped from the docket of the said court from which it was transferred.

Sec. 9. In Taylor County, the District Attorney of the 42nd Judicial District shall represent the State in all criminal cases, including habeas corpus cases, which are tried by the Judge of said 42nd Judicial District, or by any regular or special judge presiding for him in said county. Likewise in said county of Taylor, the District Attorney of the 104th Judicial District shall represent the State in all criminal cases, including habeas corpus cases, which are tried by the Judge of said 104th Judicial District, or by any regular or special judge presiding for him in said county. Provided that the District Attorney of the 42nd Judicial District may, upon request of the District Attorney of the 104th District assist the said district attorney in the trial of any criminal case or habeas corpus case pending in the District Court of said 104th Judicial District in Taylor County, and likewise the District Attorney of the 104th Judicial District may upon request of the District Attorney for the 42nd Judicial District assist said district attorney in the trial of any criminal case, or habeas corpus case, pending in the District Court of said 104th Judicial District in Taylor County, and in all such cases the district attorney assisting shall receive the same compensation for such services as is now provided by law for such services in the district for which he was elected, but nothing herein shall be construed as limiting the authority of the district attorneys of the two districts from having absolute control and management of criminal cases and habeas corpus cases which are tried in their respective courts. [Acts 1927, 40th Leg., p. 44, ch. 32.]

Section 10 of Acts 1927, 40th Leg., p. 44, ch. 32, declares that the invalidity of any part of the act shall not affect the remaining parts thereof.

105.—(No. 105th Judicial District.)

106.—Terry, Lynn, Garza, Dawson, Gaines and Yoakum.

In the County of Terry, on the third Monday in January, and on the fourth Monday in August, and may continue in session four weeks.

In the County of Lynn, on the fourth Monday after the third Monday in January, and the fourth Monday after the fourth Monday in August, and may continue in session four weeks.

In the County of Garza, on the eighth Monday after the third Monday in January, and on the eighth Monday after the fourth Monday in August, and may continue in session four weeks.

In the County of Dawson, on the twelfth Monday after the third Monday in January, and may continue in session for five weeks, and on the twelfth Monday after the fourth Monday in August, and may continue in session four weeks.

In the County of Gaines, on the seventeenth Monday after the third Monday in January, and may continue in session three weeks, and on the sixteenth Monday after the fourth Monday in August and may continue in session two weeks.

In the County of Yoakum, on the twentieth Monday after the third Monday in January, and on the eighteenth Monday after the fourth Monday in August, and may continue in session two weeks.

Sec. 3. The Governor shall appoint, as soon as this Act takes effect, a person to act as judge of the One Hundred and Sixth Judicial District, and a person to act as a district attorney of such judicial district such persons to have the qualification as prescribed by law.

Sec. 4. All process issued, bonds and recognizances made, and all grand and petit juries drawn before this Act takes effect shall be valid for and returnable to the next succeeding terms of the district courts of the several counties, as herein fixed as though issued and served for such terms and returnable to and drawn for the same.

Sec. 5. This Act shall take effect, and be in force from and after the first day of August, 1925. [Acts 1925, p. 250.] [39th Leg., ch. 80, §§ 2–5.]

108.—

The 108th Judicial District of Texas shall be composed of the county of Potter and the terms thereof shall be held as follows:

On the first Monday in February and may continue in session ten weeks.

On the tenth Monday after the first Monday in February and may continue in session twelve weeks.

On the second Monday in August and may continue in session twelve weeks.

On the twelfth Monday after the second Monday in August and may continue in session until business is disposed of. [Acts 1927, 40th Leg., p. 10, ch. 7, § 2.]

Section 9 of Acts 1927, 40th Leg., p. 10, ch. 7, repeals all conflicting laws and parts of laws.

Art. 200. [31] Amendments affecting Judicial Districts.—Wherever the law declaring what counties shall compose a judicial district, or the law prescribing the time or places for holding the terms of the district court of any judicial district shall have been or may hereafter be amended, in every such case all process and writs theretofore issued from any such district court and made returnable to a term of such court as fixed by law at the time of such issuance, shall be returnable to the next ensuing term of such court as prescribed by such amended law; and all such writs and process shall be as legal and valid as if the same had been made returnable to the term of such court as fixed by such amendment. All grand and petit jurors selected and drawn under theretofore existing laws in any county of any such judicial district shall be considered lawfully drawn and selected for the next term of the district court of such county as fixed by the amended law; and the obligees in all

appearance bonds and recognizances taken in and for any such district court, as well as all witnesses summoned to appear before such district court under pre-existing law, shall be required to appear at the next term of such court as fixed by the amended law.

ADMINISTRATIVE JUDICIAL DISTRICTS

Art. 200a. Administrative judicial districts.— Sec. 1. The State of Texas is hereby divided into nine Administrative Judicial Districts, which districts shall be numbered and composed of counties as follows:

First—Bowie, Red River, Lamar, Fannin, Grayson, Collin, Hunt, Delta, Hopkins, Franklin, Titus, Morris, Camp, Cass, Marion, Harrison, Gregg, Upshur, Wood, Raines, Kaufman, Van Zandt, Dallas, Ellis, Henderson, Anderson, Houston, Cherokee, Nacogdoches, Angelina, Panola, Shelby, Smith, Rusk.

Second—San Augustine, Sabine, Jasper, Newton, Orange, Jefferson, Tyler, Hardin, Liberty, Chambers, Galveston, Harris, Brazoria, Matagorda, Wharton, Fort Bend, Waller, Montgomery, San Jacinto, Polk, Walker, Trinity, Grimes, Madison, Leon, Brazos, Freestone, Limestone, Burleson, Washington, Bastrop, Robertson, Lee.

Third—Johnson, Somervell, Bosque, Hill, Navarro, McLennan, Falls, Milam, Williamson, Travis, Austin, Fayette, Caldwell, Comal, Hays, Colorado, Lavaca, Gonzales, Guadalupe, Blanco, Burnet, San Saba, Llano, Gillespie, Mason, Kimble, Menard, Bell, Lampasas, Mills, Coryell, Hamilton, Comanche.

Fourth—Jackson, Calhoun, Aransas, Refugio, San Patricio, Bee, Live Oak, McMullen, Goliad, Victoria, DeWitt, Karnes, Wilson, Atascosa, Frio, LaSalle, Dimmit, Webb, Zapata, Jim Hogg, Bexar.

Fifth—Nueces, Kleberg, Kennedy, Jim Wells, Duval, Brooks, Star, Hidalgo, Willacy, Cameron.

Sixth—Maverick, Kinney, Edwards, Val Verde, Terrell, Kerr, Kendall, Bandera, Real, Medina, Uvalde, Zavalla, Sutton, Crockett, Pecos, Brewster, Jeff Davis, Presidio, Culberson, Hudspeth, El Paso, Upton, Reagan.

Seventh—Yoakum, Terry, Lynn, Garza, Gaines, Dawson, Andrews, Martin, Loving, Winkler, Ector, Midland, Glasscock, Reeves, Ward, Crane, Sterling, Coke, Irion, Tom Green, Schleicher, Borden, Scurry, Howard, Mitchell, Nolan, Taylor, Callahan, Shackelford, Throckmorton, Haskell, Jones, Fisher, Stonewall, Kent, Runnels, Coleman, Brown, McCullich [McCulloch], Concho.

Eighth—Cooke, Denton, Montague, Clay, Wichita, Archer, Jack, Wise, Young, Stephens, Eastland, Erath, Hood, Palo Pinto, Parker, Tarrant.

Ninth—Wilbarger, Baylor, Knox, King, Dickens, Motley, Cottle, Crosby, Lubbock, Hockley, Cochran, Bailey, Lamb, Hale, Floyd, Castro, Swisher, Briscoe, Parmer, Deaf Smith, Oldham, Hartley, Dallam, Sherman, Moore, Potter, Randall, Armstrong, Handsford, Ochiltree, Lipscomb, Hutchinson, Roberts, Hemphill, Carson, Gray, Wheeler, Donley, Collingsworth, Hall, Childress, Hardeman, Foard.

Sec. 2. Immediately after this Act becomes effective it shall be the duty of the Governor, with the advice and consent of the Senate, to designate one of the regularly elected and commissioned district judges of each of said districts as Presiding Judge of the Administrative Judicial District. Upon the death, resignation or the expiration of the term of office of such Presiding Judge, the Governor shall thereafter immediately designate a new Presiding Judge of the Administrative District, as in the first instance.

Sec. 3. The Clerk of the District Court of the district from which the judge has been designated as the Presiding Judge of the Administrative District, and of the county of the residence of the judge, in addition to his regular duties as clerk of the district court, shall perform the duties of the clerk of the Administrative District.

Sec. 4. It shall be the duty of the Presiding Judge of such Administrative District, once each year, to call a regular conference, and, at such times as may be necessary, a special conference, of the several district judges of the several judicial districts composing the Administrative District, at a time and place to be designated by the Presiding Judge, for consultation and counsel as to the state of business, civil and criminal, in the several district courts of the Administrative District, and to arrange for the disposition of the business pending on the dockets of the several district courts of the District. At the time of such consultation, or at any time thereafter, with or without an additional meeting of the judges, it shall be the duty of the Presiding Judge, from time to time, to assign any of the judges of the Administrative District to hold special or regular terms of court in any county of the Administrative District in order to try and dispose of accumulated business, under such rules as may be prescribed by the session, or sessions, of the district judges of the Administrative District. Such meeting or council of judges shall have the power to prescribe rules regulating and facilitating the order of trials, the keeping of records in the various counties of the district where judges are sent from one district into another to facilitate the disposition of cases, and to make such other rules and regulations as may be necessary to carry this Act into practical operation. When it is deemed necessary, the Presiding Judge of the Administrative District may call special or additional meetings of the conference of judges during the year. The District Judges shall lay before each conference of judges a list of all cases pending, and the exact status of their dockets, together, with such other information as may be required by the rules and regulations of the conference.

Sec. 5. Judges may be assigned in the manner herein provided for the holding of district court when the regular judge thereof is absent or is from any cause disabled or disqualified from presiding, and in instances where the regular district judge is present or himself trying cases where authorized or permitted by the Constitution and laws of the State.

Sec. 6. It shall be the duty of any district judge of any district within the Administrative District to extend the regular terms of his court, and to call special terms, when necessary to carry out the purposes of this Act and dispose of pending litigation. If the term be extended as herein provided no other term of the court in such district shall fail because of said extension, but such other terms may be opened and held as usual. The Presiding Judge of one Administrative District may call upon the Presiding Judge of another Administrative District to furnish judges to aid in the disposition of litigation pending in any judicial district within the Administrative District in which such judge so making the request has been designated as the Presiding Judge. For the trial of cases and the entry of orders and the disposition of other business necessary, the judge of any district in this State, or any District Judge sent to any district in this State by the Presiding Judge of an Administrative District, shall have power, by entering an order on the minutes, to convene a special term of the court for the disposition of the business coming before the district court.

Sec. 7. The district clerk performing the duties of clerk for the Administrative District shall conduct the correspondence for the Presiding Judge of the Administrative District, keep a record of all its proceedings, and a complete and accurate record of all cases pending in the several courts of the Administrative District, the time of their filing, the style and purposes of the causes, and their final disposition, and such other matters as may be prescribed by the council of judges herein referred to. For such purposes he is authorized, with the approval of the Presiding Judge, to purchase the necessary office equipment, stamps, stationery and supplies, and to employ one additional deputy clerk, under the direction of the council of judges or such rules as they may promulgate. Such cost shall be divided pro rata among the counties and paid by the counties on the certificate of the Presiding Judge. He shall, under the direction of the Presiding Judge of the Administrative District, make an annual report, and such special reports as may be directed by the Presiding Judge of the District, to the Attorney General. Such reports shall be there filed and open

to public inspection, and shall be condensed and tabulated in the biennial reports of the Attorney General.

Sec. 8. The several district judges of the District, when required to attend the annual or special sessions of the judges herein prescribed, shall, in addition to all other compensation allowed them by law, receive their actual traveling expenses going to and returning from the place of meeting, and their actual expenses while in attendance on the meeting.

Sec. 9. All of the aforesaid salaries, compensation and expenses, and all other expenses authorized and incurred herein for the purpose of administering this law, shall be paid in equal portions by the several counties composing the Administrative District, out of the general funds of said counties. Said salaries, compensation, expenses and expenditures herein authorized are to be paid on certificates of approval of the Presiding Judge of the Administrative District.

Sec. 10. When the district judges are assigned under the provisions of this Act to districts other than their own district and out of their own counties, they shall, in addition to all other compensation permitted or authorized by law, receive their actual expenses in going to and returning from their several assignments, and their actual living expenses while in the performance of their duties under assignments, which expenses shall be paid out of the General Fund of the county in which their duties under assignments are performed, upon accounts certified and approved by the Presiding Judge of the Administrative District. [Acts 1927, 40th Leg., p. 228, ch. 156.]

Section 11 of Acts 1927, 40th Leg., p. 228, ch. 156, provides that if any part thereof is held invalid, such holding shall not affect the remainder.

TITLE 9

APPRENTICES

Art.
201. When minor may be apprenticed.
202. Minor not apprenticed to whom.
203. Duration of apprenticeship.
204. Shall not be apprenticed without notice.
205. In what county shall be apprenticed.
206. Obligation entered into.
207. Obligation approved and recorded.
208. Minor over 14 years of age may select.
209. Order of court apprenticing.
210. Evidence of authority.
211. Rights of master.
212. Residence of apprentice.
213. Removal from county.
214. When apprentice runs away.
215. Apprentice discharged when.
216. Citation to master.
217. Master released.
218. Inquiry into treatment.
219. Minor again apprenticed.
220. Proceedings may be had.
221. Suit upon obligation.
222. Costs paid by whom.
223. Guardian of person.

Article 201. [32] [23] [18] When minor may be apprenticed.—The county court may bind a minor as an apprentice—

1. When such minor is an orphan and without sufficient estate for his maintenance and education.
2. When the parents of such minor have suffered him to become a charge upon the county.
3. When the parents of such minor, not being a charge on the county, shall consent in writing to such apprenticeship, which consent shall be signed by them, and filed and entered of record in such court.

Art. 202. [33] [24] [19] Minor not apprenticed to whom.—A minor shall in no case be apprenticed to any one who is not legally competent to act as the guardian of such minor.

Art. 203. [34] [25] [20] Duration of apprenticeship.—The duration of apprenticeship shall be until the minor, if a male, arrives at the age of twenty-one years; if a female, until she arrives at the age of eighteen years, or until she marries if she marries before that age.

Art. 204. [35] [26] [21] Shall not be apprenticed without notice.—A minor shall not be apprenticed without citation in the same manner as is provided in the case of an application for the guardianship of a minor.

Art. 205. [36] [27] [22] In what county minor shall be apprenticed.—A minor shall be apprenticed in the county in which he resides, and shall not be apprenticed to any person who is not at the time a resident of such county.

Art. 206. [37] [28] [23] Obligation entered into.—The person to whom such minor is apprenticed shall enter into an obligation in writing, payable to such minor, in the sum to be fixed by the county judge, not less than one thousand dollars, and to be approved by such county judge, conditioned:

1. That he will furnish said minor sufficient food and clothing.
2. That he will treat said minor humanely.
3. That he will teach, or cause to be taught, to said minor some trade or occupation, the same to be specified in such obligation.
4. That he will furnish said minor medicine and medical attention when necessary.
5. That he will send said minor to school for the full term of the public free school in the community in which he resides.
6. That he will not remove said minor out of the county without the leave of the court.
7. That he will not remove said minor out of the State.

Art. 207. [39] [30] [25] Obligation approved and recorded.—The obligation provided for by the preceding article when approved by the court, shall be filed in the office of the clerk of the county court and recorded upon the minutes of the court.

Art. 208. [38] [29] [24] Minor over 14 years of age may select.—A minor who is fourteen years, or over, may select the person to whom he desires to be apprenticed; and the court shall if such person be competent, apprentice the minor to the person so selected.

Art. 209. [40] [31] [26] Order of court apprenticing.—When such obligation has been approved and filed, the court shall enter an order upon the minutes, reciting such facts and directing that the same be recorded in the minutes, and authorizing the person to whom such minor is apprenticed to take charge and control of the person of such minor, and to retain the same until such minor arrives at the age of twenty-one years; or, if a female, until she arrives at the age of eighteen years, or until she marries, and the age of such minor at the time of entering such order shall be distinctly stated therein.

Art. 210. [41] [32] [27] Evidence of authority.—A certified copy of such order, under the seal of the court, shall be sufficient evidence of the authority of the person named therein to control the person of such minor.

Art. 211. [42–43] Rights of master.—The person to whom a minor has been apprenticed shall have the right, in the management and control of such minor, to inflict such moderate corporal chastisement as may be necessary and proper, and shall have the right to control the person of such minor, and shall be entitled to his services, and to all the profits arising from any such service during the continuance of such apprenticeship.

Art. 212. [44] [35] [30] Residence of apprentice.—It shall not be lawful for any apprentice to reside out of the county in which he has been apprenticed without the order of the county judge of such county, entered upon the minutes of the court. When such leave is obtained, a certified copy of the order granting the same shall be filed in the office of the clerk of the county court of the county in which the future residence of the minor is to be, together with a certified copy of the obligation and order apprenticing such minor; and the same shall be filed and recorded upon the minutes of the county court of such last named county; and thereafter such court shall have the same power and control over the case as if it had been originally commenced therein.

Art. 213. [45] [36] [31] Removal from county.—When an apprentice has been removed out of the county in which he was apprenticed, by the person to whom he was apprenticed, or with the knowledge or consent of such person, and without an order authorizing such removal, as provided in the preceding article, and shall be detained out of said county for more than thirty days, such apprentice shall not be held bound for a further compliance with his apprenticeship, and can only be retained at the pleasure of such apprentice.

Art. 214. [46] [37] [32] When apprentice runs away.—If any apprentice shall run away from or leave the employment of the person to whom he is apprenticed without permission, such person may pursue and recapture such apprentice and bring him before the county judge having jurisdiction of the case, who shall investigate the case; and if satisfied that said apprentice ran away or left the employment of such person without good and sufficient cause, he shall order such apprentice to return to his service; and upon his failure or refusal to do so the court may punish him as for contempt of court.

Art. 215 [47] [38] [33] Apprentice discharged when.—Upon the investigation provided for in the preceding article, if the court be satisfied that such apprentice has good and sufficient cause for running away from or leaving the employment of the person to whom he was apprenticed, the court shall discharge said apprentice and revoke all authority granted to the person to whom such minor was apprenticed, and shall enter an order to that effect upon the minutes.

Art. 216. [48] [39] [34] Citation to master.—The county judge may, upon the complaint of the minor or any other person, or without complaint, cause the person to whom a minor has been apprenticed, to be cited to appear before him at any time and place mentioned in such citation, and show cause why his authority over such minor should not be revoked and the minor discharged from his apprenticeship. And upon the return of such citation served, the judge, if satisfied that such person is incompetent from any cause to properly control such minor, or that such person has in any material respect violated the obligation entered into by him, shall enter an order upon the minutes revoking such authority granted to such person over such minor, and discharging such minor from such apprenticeship.

Art. 217. [49] [40] [35] Master released.—A person to whom a minor has been apprenticed may at any time, upon good cause shown to the county judge, be released from future liability upon his obligation of apprenticeship; and in such case an order shall be entered upon the minutes revoking the authority of such person over such minor, and declaring such apprenticeship at an end.

Art. 218. [50] [41] [36] Inquiry into treatment.—The county judge shall, from time to time, inquire into the treatment of the minors apprenticed by him, or by his predecessors in office, and shall defend them from all cruelty, neglect, breach of contract or misconduct on the part of the persons to whom they were apprenticed.

Art. 219. [51] [42] [37] Minor again apprenticed.—When the person to whom a minor has been apprenticed dies, or when his authority has been revoked, the minor may be again apprenticed as in the first instance.

Art. 220. [52] [43] [38] Proceedings may be had.—The proceedings provided for in the preceding articles of this title may be had either in term time or in vacation, except that a minor shall be apprenticed only at a regular term of the court for probate business, and after notice as in the case of the appointment of a guardian.

Art. 221. [53] [44] [39] Suit upon obligation.—In case of a breach of the obligation on the part of the person to whom a minor has been apprenticed, the minor, or the county judge, or any person for the use of the minor, may sue upon such obligation in any court of the county where such obligation, or certified copy thereof, has been filed and recorded, and shall be entitled to recover such damages as the minor may have sustained by reason of such breach; and all such damages shall be the property of such minor.

Art. 222. [54] [45] [40] Costs paid by whom.—In all proceedings apprenticing a minor, or discharging him from apprenticeship, and in all other proceedings connected with such apprenticeship, the person to whom such minor was apprenticed shall pay the costs of such proceedings, and the same shall be adjudged against him and collected as in other cases, except in a suit brought under the preceding article, in which case the costs shall be adjudged as in other civil suits.

Art. 223. [55] [46] [41] Guardian of person.—When a minor is apprenticed, the person to whom such minor is apprenticed supplies the place of the guardian of the person of such minor, and in such case there shall be no guardian of the person of such minor.

TITLE 10

ARBITRATION

1. ARBITRATION IN GENERAL

Art.
224. Right to arbitrate.
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1. ARBITRATION IN GENERAL

Article 224. [56] [47] [42] Right to arbitrate.—All persons desiring to submit any dispute, controversy, or right of action supposed to have accrued to either party, to arbitration, shall have the right so to do in accordance with the provisions of this title. [Const., art. 16, sec. 13.]

Art. 225. [57] [48] [43] Agreement.—Such persons shall sign an agreement in writing, as plaintiff and defendant, to arbitrate their differences or matters in dispute, and in such agreement each party shall name for himself one arbitrator, who shall be over the age of twenty-one years, not related to either party by consanguinity or affinity, possessing the qualifications of a juror, and who is not interested in the result of the cause to be submitted for his decision. [Act April 25, 1846, p. 127. G. L. vol. 2, p. 1433.]

Art. 226. [58] [49] [44] Agreement filed.—If the amount in dispute is two hundred dollars or less, exclusive of interest, such agreement shall be filed with some justice of the peace of the county in which the defendant resides or in which the controversy arose. If the matter in dispute exceeds two hundred dollars, exclusive of interest, then such agreement shall be filed with the clerk of the district or county court of the county in which the controversy arose, according as the amount involved, or matter in dispute.

may come within the jurisdiction of one court or the other. [Id.]

Art. 227. [59] [50] [45] Day of trial designated.—When such agreement is filed, the justice of the peace or the clerk of county or district court, as the case may be, shall forthwith designate a day for the trial of the cause, not less than two days thereafter, and shall issue process for such witnesses as either party may desire, returnable on the day fixed for trial. [Id.]

Art. 228. [60] [51] [46] Oath of arbitrators.—On the assembling of the arbitrators on the day of trial, the justice or clerk shall administer an oath to each, substantially as follows: "You do solemnly swear that you will fairly and impartially decide the matter in dispute between the parties, according to the evidence adduced and the law and equity applicable to the facts proved. So help you God." [Id.]

Art. 229. [61] [52] [47] Continuances permissible.—After being sworn, the arbitrators may, for good cause shown, continue the hearing to some other day, and during the progress of any trial, for good cause, may adjourn the same over to some other time.

Art. 230. [62] [53] [48] Procedure on trial.—Any arbitrator shall administer the necessary oath to the witnesses, and the trial of the cause shall proceed in like manner with trials in the courts of this State, the plaintiff holding the affirmative, and entitled to open and conclude the argument.

Art. 231. [63] [54] [49] Award entered as judgment.—After hearing the evidence and arguments, if any, the arbitrators shall agree upon their award and reduce the same to writing, specifying plainly their decision, which award they shall file with the justice or clerk as the case may be, and at the succeeding term of the court if no appeal is applied for such award shall be entered and recorded as the judgment of the court, with like effect as other judgments of said court.

Art. 232. [64] [55] [50] Umpire selected.—If the arbitrators chosen as aforesaid cannot agree, they shall select an umpire with like qualifications as themselves, or in case they disagree in the choice of an umpire, the justice or clerk shall select such umpire, and he shall be sworn in like manner as the arbitrators; and the cause may be tried anew at such time as the board of arbitration thus constituted may designate, with like proceedings as are prescribed in the preceding article.

Art. 233. [65] [56] [51] Appeal from award.—If a right of appeal is not expressly reserved in the original agreement to arbitrate, no such right shall exist, but the decision of the arbitrators shall be final. If such right of appeal is reserved, and either party desires to appeal from such decision or award, he shall file his written application to that effect with the justice or clerk, as the case may be, on or before the return day of the term of the court next thereafter. [Id.]

Art. 234. [66] [57] [52] In case of appeal.—When an application for appeal is filed, as prescribed in the preceding article the same shall be noted on the docket of the court, and the opposite party served with a citation, as in ordinary cases of suit by petition. Upon return of service upon the opposite party, the cause shall stand for trial de novo as in ordinary cases.

Art. 235. [67] [58] [53] Costs.—The arbitrators may award the costs to either party; and, if their decision or award is silent as to costs, the same shall be taxed equally against both parties.

Art. 236. [68] [59] [54] Refusing to proceed.—After an agreement to arbitrate is filed, the parties thereto shall be bound to that mode of trial under the following penalties, to-wit: Such agreement may be pleaded in bar to any suit thereafter brought by a plaintiff in such agreement for the same cause of action, when such plaintiff has refused to proceed under such agreement; and said agreement may be pleaded in bar to any right claimed or defense set up by defendant in such agreement who has refused to proceed thereunder, where such right or defense existed at the time of filing such agreement. [Act 1846, p. 127.]

Art. 237. [69] [60] [55] Corporation, etc., may arbitrate.—The provisions of this title shall apply to corporations as well as natural persons; and executors, administrators and guardians may also consent to an arbitration of any controversy or matter of dispute relating to or affecting their respective trusts, with the consent of the court in which such administration or guardianship is pending.

Art. 238. [70] [61] [56] Mode not exclusive.—Nothing herein shall be construed as affecting the existing right of parties to arbitrate their differences in such mode as they may select.

2. ARBITRATION BETWEEN EMPLOYER AND EMPLOYED

Art. 239. [71] Board of arbitration authorized. Whenever any grievance or dispute of any nature, growing out of the relation of employer and employés, shall arise or exist between employer and employés, it shall be lawful, upon mutual consent of all parties, to submit all matters respecting such grievance or dispute in writing to a board of arbitrators to hear, adjudicate, and determine the same. Said board shall consist of five persons. When the employés concerned in such grievance or dispute, as the aforesaid, are members in good standing of any labor organization which is represented by one or more delegates in a central body, the said central body shall have power to designate two of said arbitrators, and the employer shall have the power to designate two others of said arbitrators; and the said four arbitrators shall designate a fifth person as arbitrator, who shall be chairman of the board. In case the employés concerned in any such grievance or dispute, as aforesaid, are members in good standing of a labor organization which is not represented in a central body, then the organization of which they are members shall designate two members of said board; and said board shall be organized as hereinbefore provided; and in case the employés concerned in any such grievance or dispute, as aforesaid, are not members of any labor organization, then a majority of said employés, at a meeting duly held for that purpose, shall designate two arbitrators for said board; and said board shall be organized as hereinbefore provided; provided, that when the two arbitrators shall have been selected by each of the respective parties to the controversy, the district judge of the district having jurisdiction of the subject matter shall, upon notice from either of said arbitrators that they have failed to agree upon the fifth arbitrator, appoint said fifth arbitrator. [Acts 1895, p. 85, G. L. vol. 10, p. 815.]

Art. 240. [72] District judge to establish board, etc.—Any board, as aforesaid selected, may present a written petition to the district judge of the county where such grievance or dispute to be arbitrated may arise, signed by a majority of said board, setting forth in brief terms the facts showing their due and regular appointment, and the nature of the grievance or dispute between the parties to said arbitration, and praying the license or order of such judge establishing and approving of said board of arbitration. Upon the presentation of said petition, said judge, if it appear that all requirements of this law have been complied with, shall make an order establishing such board of arbitration and referring the matters in dispute to it for hearing, adjudication and determination. The said petition and order, or a copy thereof, shall be filed in the office of the district clerk of the county in which the arbitration is sought. [Id.]

Art. 241. [73] Controversy involving labor organizations.—When a controversy involves and affects the interests of two or more classes or grades of employés belonging to different labor organizations, or of individuals who are not members of a labor organization, then the two arbitrators selected by the employés shall be agreed upon and selected by the concurrent action of all such labor organizations, and a

majority of such individuals who are not members of a labor organization. [Id.]

Art. 242. [74] Submission in writing.—The submission shall be in writing, shall be signed by the employer or receiver and the labor organization representing the employés, or any laborer or laborers to be affected by such arbitration who may not belong to any labor organization, shall state the question to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate as follows:

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

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

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

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

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

Art. 243. [75] Arbitrators to take oath, etc.—The arbitrators so selected shall sign a consent to act as such and shall take and subscribe an oath before some officer authorized to administer the same, to faithfully and impartially discharge his duties as such arbitrator, which consent and oath shall be immediately filed in the office of the clerk of the district court wherein such arbitrators are to act. When said board is ready for the transaction of business, it shall select one of its members to act as secretary, and the parties to the dispute shall receive notice of a time and place of hearing, which shall be not more than ten days after such agreement to arbitrate has been filed. [Id.]

Art. 244. Powers and duties of chairman and board.—The chairman shall have power to administer oaths and to issue subpœnas for the production of books and papers and for the attendance of witnesses, to the same extent that such power is possessed by a court of record, or the judge thereof, in this State. The board may make and enforce the rules for its government and transaction of the business before it and fix its sessions and adjournment, and shall hear and examine such witnesses as may be brought before the board, and such other proof as may be given relative to the matter in dispute. [Id.]

Art. 245. [77] Adjucation [Adjudication] terminates powers.—When said board shall have rendered its adjudication and determination, its powers shall cease, unless there may be at the time in existence other similar grievances or disputes between the same class of persons mentioned in the first article of this subdivision, and in such case such persons may submit their differences to said board, which shall have power to act and adjudicate and determine the same as fully as if said board were originally created for the settlement of such difference or differences. [Id.]

Art. 246. [78] Status quo preserved.—During the pendency of such arbitration it shall not be lawful for the employer or receiver party to such arbitration, nor his agent, to discharge the employés parties thereto, except for inefficiency, violation of law, or neglect of duty, or where reduction of force is necessary, nor for the organization representing such employés to order, nor for the employés to unite in, aid or abet strikes or boycots [boycotts] against such employer or receiver. [Id.]

Art. 247. [79] Compensation.—Each of the said board of arbitrators shall receive three dollars per day for every day in actual service, not to exceed ten days, and traveling expenses not to exceed five cents per mile actually traveled in getting to, or returning from, the place where the board is in session. The fees of witnesses of the aforesaid board shall be fifty cents for each day's attendance and five cents per mile traveled by the nearest route to, and returning from, the place where attendance is required by the board. All subpœnas shall be signed by the secretary of the board and may be served by any person of full age authorized by the board to serve the same. And the fees and mileage of witnesses and the per diem and traveling expenses of said arbitrators shall be taxed as costs against either or all of the parties to said arbitration, as the board of arbitrators may deem just, and shall constitute part of their award; and each of the parties to said arbitration shall, before the arbitrators proceed to consider the matters submitted to them, give a bond, with two or more good and sufficient sureties, in an amount to be fixed by the board of arbitration, conditioned for the payment of all expenses connected with the said arbitration. [Id.]

Art. 248. [80] Award to take effect when.—The award shall be made in triplicate. One copy shall be filed in the district clerk's office, one copy shall be given to the employer or receiver, and one copy to the employés or their duly authorized representative. The award, being filed in the District Clerk's office, as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly, at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent on the record; in which case said award shall go into practical operation, and judgment shall be rendered accordingly, when such exceptions shall have been fully disposed of by either said district court or on appeal therefrom. [Id.]

Art. 249. [81] Judgment entered.—At the expiration of ten days from the decision of the district court, upon exceptions taken to said award as aforesaid, judgment shall be entered in accordance with said decision, unless during the said ten days either party shall appeal therefrom to the court of civil appeals holding jurisdiction thereof. In such case, only such portions of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided. The determination of said court of civil appeals, upon said questions shall be final, and being certified by the clerk of said court of civil appeals, judgment pursuant thereto shall thereupon be entered by said district court. If exceptions to an award are finally sustained, judgment shall be entered setting aside the award; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment, when entered, shall have the same force and effect as judgment entered upon an award. [Id.]

TITLE 11

ARCHIVES

1. ARCHIVES OF THE GENERAL LAND OFFICE

Art.
250. Enumeration.
251. Effect given to archives.
252. Deeds, etc.
253. Withdrawal.

2. OTHER PUBLIC ARCHIVES

254. Of State Department.
255. Archives of Republic.
256. Historical archives.
257. Of Comptroller's Office.
258. Other archives.
259. University archives.
260. Loan of archives.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

1. ARCHIVES OF THE GENERAL LAND OFFICE

Article 250. [82] [62] [57] Enumeration.—The following shall be deemed the records, books, and papers of the general land office and constitute a part of the archives of the same:

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

(2) All books, papers, records, documents and archives pertaining to the lands of the Republic or State of Texas that have heretofore been delivered by the Commissioner of the Court of Claims to the Comptroller and by him turned over to the Land Commissioner in pursuance and by authority of law.

(3) All other books, records, papers and archives of the colony of Martin de Leon heretofore delivered by the Secretary of State, in accordance with law, to the Land Commissioner.

(4) The duly certified copy of the book or register of land certificates, usually known as the "Lost Book of Harris County," transmitted to the Land Commissioner by the clerk of the county court, in accordance with law.

(5) All other books, transfers, powers of attorney, field-notes, maps, plats, legal proceedings, official reports, original documents and other papers appertaining to the land of the Republic or State of Texas that have been deposited or filed in the general land office in accordance with any law of the Republic or of this State. [Act Dec. 22, 1836, p. 216; Act June 12, 1837, p. 263; Act Dec. 14, 1837, pp. 44, 62; Act Dec. 2, 1850, p. 32; G. L. vol. 1, pp. 1276, 1323, 1386; G. L. vol. 3, p. 860.]

(6) All owners of land between the Nueces and Rio Grande rivers, under grants or titles from the former government which grants or titles are such as are described in Section 4 of Article 13 of the present Constitution, and have been, previous to the adoption of his [this] Constitution, recorded in the respective counties where the land is situated, but have not yet been deposited or archived in the general land office of this State, be and they are hereby authorized and required to deposit and archive said grants or titles in said general land office. Such titles when so archived, shall be subject to all defenses and objections to which they would have been subject if not so archived; and said act of archiving shall invest said titles with no greater validity than they before had as titles recorded in the proper county; and the Land Commissioner is hereby authorized and required to receive the same as archives of said office. [Acts 1881, p. 37; G. L. vol. 9, p. 129.]

Art. 251. [83] [63] [58] Effect given to archives.—Nothing in the preceding article shall be construed to give any of the said books, records or other papers named in said article any greater force or validity by reason of their being so recognized as archives of the general land office than was accorded them by the laws in force at the date of their execution and deposit in the general land office. [Id.]

Art. 252. [84] [64] [59] Deeds, etc.—Deeds and other instruments of writing which were executed or issued prior to the second day of March A. D. 1836, upon stamped paper of the second or third seal, and which deeds or instruments of writing are not original documents in the general land office, nor expressly declared by law to be archives of the said office, are hereby declared to constitute no part of the archives of said office. [Act Feb. 11, 1850, p. 200; Act Jan. 11, 1862, p. 36; G. L. vol. 3, p. 638; G. L. vol. 5, p. 480.]

Art. 253. [85] [65] [60] Withdrawal.—The owners of any land to which the deeds or other instruments of writing named in the preceding article relate, may withdraw the same from the general land office on making a written sworn application therefor, to the Land Commissioner, setting forth the fact of such ownership; and, if the commissioner shall be satisfied that the person applying is in fact the owner of the land to which such deed or instrument of writing relates, he may deliver the same to such applicant, taking his receipt therefor, and describing in such receipt the deed or instrument of writing delivered, with a summary of its contents and the name of the original grantee of the land to which such deed or instrument of writing may relate or refer. [Id.]

2. OTHER PUBLIC ARCHIVES

Art. 254. [86] [66] [61] Of State Department.—The Secretary of State is authorized to take possession of rooms in the basement of the capitol for the use of the State Department and the better preservation of archives. [Acts 1856, p. 3; G. L. vol. 4, p. 421.]

Art. 255. [87] [67] [62] Archives of Republic.—The entire archives of the Congress of the Republic of Texas, and of the several Legislatures of this State, arranged and filed according to law, together with the records, books and journals of said Congress and Legislatures, prepared in accordance with law, and heretofore, or hereafter, deposited in the office of the Secretary of State are declared to be archives of said office. [Acts 1854, p. 113; Acts 1887, p. 47; G. L. vol. 3, p. 1557.]

Art. 256. [88] [68] [63] Historical archives.—All books, pictures, papers, maps, documents, manuscripts, memoranda and data which relate to the history of Texas as a province, colony, Republic or State, which have been or may be delivered to the State Librarian by the Secretary of State, Comptroller, Land Commissioner or by any head of any department, or by any person or officer, in pursuance of law, shall be deemed books and papers of the State Library and shall constitute a part of the archives of said State Library; and copies therefrom shall be made and certified by the State Librarian upon application of any person interested, which certificate shall have the same force and effect as if made by the officer originally in custody of them. [Acts 1907, p. 283.]

Art. 257. [89] [69] [64] Of Comptroller's office.—All books, papers, records and archives, that were heretofore archives of the auditor's office, or of the office of the Commissioner of the Court of Claims, and which have heretofore, in pursuance of law, been delivered to the Comptroller, shall be deemed papers and records of the Comptroller's office, and shall constitute a part of the archives of his office. [Acts 1858, p. 40; Acts 1860, p. 48; G. L. vol. 4, pp. 912, 1412.]

Art. 258. [90] [70] [65] Other archives.—All books, papers, records, rolls, documents, returns, reports, lists and all other papers that have been, are now, or that may be, required by law to be kept, filed or deposited in any office of the executive departments of this State, shall constitute a part of the archives of the offices in which the same are so kept, filed or deposited.

Art. 259. University archives.—The librarian of the University of Texas and the archivist of the Department of History of said University are hereby authorized to make certified copies of all public records in the custody of the University of Texas, and said certified copies shall be valid in law and shall have the same force and effect for all purposes as if certified to by the county clerk or other custodian as now provided for by law. In making the certificate to the said certified copies, either by the librarian or by the archivist of the Department of History, the said officer shall certify that the foregoing is a true and correct copy of said document, and after signing the said certificate shall swear to the same before any officer authorized to take oaths under the laws of this State. [Acts 1921, p. 94.]

Art. 260. Loan of archives.—County Commissioners and other custodians of public records are

hereby authorized, in their discretion, to lend to the Library of the University of Texas, for such length of time and on such conditions as they may determine, such parts of their archives and records as have become mainly of historical value, taking a receipt therefor from the librarian of such University; and the librarian of said University is hereby authorized to receipt for such records as may be transferred to the said Library, and to make copies thereof for historical study. [Id.]

TITLE 12

ASSIGNMENTS FOR CREDITORS

Art.
261. General assignment.
262. Details of assignment.
263. Discharge of liability.
264. Notice of assignee's appointment.
265. Acceptance of creditors.
266. Qualifications and bond of assignee.
267. Fraud will not defeat assignment.
268. Fraudulent sale of assignor.
269. Proof of claim, etc.
270. Dividend and allowance.
271. Surplus.
272. Examination of assignor, etc.
273. May discount claims.
274. Final report of assignee.

Article 261. [91] General assignment.—Every assignment made by a debtor for the benefit of his creditors shall provide for a distribution of all of his real and personal estate among all of his creditors consenting thereto, in proportion to their respective claims, and however made or expressed shall have the effect aforesaid and shall be construed to pass all such estate, whether specified therein or not. The term "real and personal estate" shall not include property exempt by law from execution. [Acts 1879, p. 57; G. L. vol. 8, p. 1357.]

Art. 262. [92] Details of assignment.—Assignments shall be in writing and proved or acknowledged and recorded in the manner provided by law for conveyances of real estate, and the debtor shall annex to such assignment an inventory containing the following statement:

1. A list of all the creditors of such debtor or debtors;

2. The place of residence of each creditor, if known;

3. The sum owing to each creditor, and the nature of the debt or demand;

4. The consideration of such indebtedness in each case, and the place where such indebtedness arose;

5. A statement of any existing judgment or security for the payment of any such debt;

6. An inventory of all such debtor's estate at the date of such assignment, both real and personal, and any incumbrances existing thereon, and of all vouchers and securities relating thereto, and the value of such estate.

Such inventory shall be signed and sworn to by the assignor or assignors that the same is just and true. [Id.]

Art. 263. [93] Discharge of liability.—A debtor may make such assignment and shall thereupon stand discharged from all further liability to such consenting creditors on account of their respective claims. Such debtor shall not be discharged from liability to such creditor who does not receive as much as one-third of the amount due and allowed in his favor as a valid claim against the estate of such debtor. [Acts 1883, p. 46; G. L. vol. 9, p. 352.]

Art. 264. [94] Notice of assigneee's appointment. Every assignee shall, within thirty days after the execution of an assignment, give public notice of his appointment in some newspaper printed in the county where the assignor resides or where his principal business was conducted. If no newspaper be printed therein, then such notice shall be published in the newspaper nearest to such place of residence or business. Such notice shall be published for three successive weeks. The assignee shall also give notice by mail to each of the listed creditors of the assignor. [Acts 1879, p. 57; G. L. vol. 8, p. 1357.]

Art. 265. [95] Acceptance of creditors.—The creditors of the assignor consenting to such assignment shall make their written consent known to the assignee within four months after the notice provided in the preceding article. No creditor not assenting shall receive or take any benefit under the assignment. Any creditor who had no actual notice of such assignment may assent before any distribution of assets under the assignment. The receipt by a creditor of any portion of his claim from the assignee, shall be conclusive evidence of the assent of such creditor to the assignment. [Id.]

Art. 266. [96] [104] Qualifications and bond of assignee.—Every such assignee shall be a resident of this State and of the county in which the assignor resides, or in which his principal business was conducted, and he shall forthwith after the execution and delivery of the assignment, cause the same to be recorded in the county of such assignee's residence and in every county in which there is any real property conveyed to him by such assignment; and shall execute a bond with sureties to be approved by either the judge of the county or district court in the county of residence of said assignee, in such sum as may be fixed by said judge, conditioned that he will faithfully discharge his duties as such assignee, and that he will make proportional distribution of the net proceeds of the assigned estate among the creditors entitled thereto. Such bond shall be payable to the State of Texas and shall be filed with the county clerk of the county in which such assignee resides, and shall inure to the benefit of the assignor and creditors. Upon filing said bond, the assignee shall take possession of the assigned property and proceed to execute the assignment; and if such assignee shall not within five days after the delivery of the assignment, execute an approved bond and file the same as herein provided, such assignment shall nevertheless take effect as against the assignor and his creditors. It shall be the duty of the county judge or judge of the district court of the county in which the assignee resides, either in term time or vacation, upon the application of the assignor or any creditor, and being satisfied that such bond has not been given, approved and filed, to appoint in writing another competent assignee who shall, upon the execution of such bond approved and filed as herein provided, take possession of the assigned property and proceed to execute the assignment. In case of vacancy by death or otherwise of any assignee, or upon removal of any assignee by the district or county judge for just cause, such judge shall appoint another in his place. [Acts 1883, p. 46; Id.; G. L. vol. 8, p. 352.]

Art. 267. [97] Fraud will not defeat assignment.—No fraudulent act, intent or purpose of the assignor or assignee shall have the effect to defeat the assignment or to deprive the creditors consenting thereto from the benefits thereof; and any consenting creditor may be or become a party to prosecute or defend in any suit or proceeding necessary or proper for the enforcement of his rights under such assignments, or for the protection of his interests in the assigned property. [Id.]

Art. 268. [100] Fraudulent sale by assignor.—Except as to innocent purchasers for value, all property conveyed or transferred by the assignor previous to and in contemplation of assignment with the intent or design to defeat, delay or defraud creditors, or give preference to one creditor over another, shall pass to the assignee by the assignment, notwithstanding such transfer; and the assignee, or in case of his neglect or refusal, any creditor or creditors may in his name, upon securing such assignee against cost or liability, sue for, recover and collect the same, and cause the same to be applied for the benefit of creditors as other property belonging to the debtor's estate in the hands of the assignee. [Acts 1879, p. 57; G. L. vol. 8, p. 1357.]

Art. 269. [98] [102] Proof of claim, etc.—Every creditor consenting to an assignment shall, within six months from the time of the first publication of the notice of the appointment of the assignee,

file with such assignee a distinct statement of the particular nature and amount of his claim against the debtor, which shall be supported by an affidavit of the creditor, his agent or attorney, that the statement is true, that the debt is just and that all proper credits or offsets have been allowed, and the assignee shall allow such claim as a valid claim against the estate unless he has good reason to believe it is not just and true. No creditor shall take any benefit under any assignment who neglects to file such statement within such time. The assignor or any creditor disputing such claim may, within eight months after such first publication, sue to set aside any allowance made by the assignee, and to restrain the payment thereof, and such action shall be tried as in other cases. The assignee shall furnish to any creditor upon request a copy of any statement of a claim that has been filed with such assignee. [Id.]

Art. 270. [105] Dividend and allowance.—Whenever any assignee shall have in his hands funds sufficient to pay ten per cent. of the debts due by the assignor, he shall make a pro rata distribution of the same among said creditors entitled thereto; and the assignee shall be entitled to reasonable compensation for his services and his necessary costs and expenses, including also his attorney's fees, to be allowed by the county or district judge. [Id.]

Art. 271. [99] Surplus.—Any creditor not consenting to the assignment may garnishee the assignee for any excess of such estate remaining in his hands after the payment to the consenting creditors [of] the amount of their debts and the costs and expenses of executing the assignment. [Id.]

Art. 272. [101] Examination of assignor, etc.—The judge of the court in which any proceedings shall have been filed may, on the application of the assignee, or of any creditor of the assignor, or without such application if the judge see fit, at all times require, upon such reasonable notice as the judge may direct, the assignor or any other person to attend and submit to a sworn examination upon all matters relating to the disposition made, or status of the property of the estate assigned, including all transactions in the past bearing upon the rights of the assignee or creditors with respect to the estate in assignment, as contemplated in law. The judge may enforce attendance and obedience to such orders so made by a writ or order as in other cases. Such examination shall be in writing, signed by the persons examined, and attested or sworn to before and filed with the clerk of the court wherein the proceedings are pending, for the use of those interested in the estate. No assignor or debtor shall be prosecuted or punished for any matter or thing disclosed by him on such examination as had above. The costs of such proceedings to be paid out of the estate assigned, or by the applicant for the examination, as the judge in each case may deem proper. [Id.]

Art. 273. [103] May discount claims.—Claims not due may be allowed at their present value by discounting them at the legal rate. If any creditor holds collateral security of less value than his debt, the value thereof may be estimated by the assignee, and only the difference between such sum and the debt shall be allowed. [Id.]

Art. 274. [106] Final report of assignee.—If any assignee shall desire to be finally discharged, he may make a sworn report of his proceedings under the assignment, showing the moneys and assets that have come into his hands, and how the same have been disbursed and disposed of. Such report shall thereupon be filed and recorded in the office of the county clerk of the county in which the assignment is recorded. No action shall be brought against such assignee by reason of anything done by him under the assignment as shown by his report, unless the same be brought within twelve months from the time of the filing thereof, as aforesaid; and any moneys or funds on hand shall be deposited in the district court subject to be paid out upon the decree of said court. [Id.]

TITLE 13

ATTACHMENT

Art.
275. Who may issue.
276. What facts must further appear.
277. Not to issue until suit begun.
278. May issue on debt not yet due.
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280. Form of bond.
281. Attachment in tort or unliquidated demand.
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288. Property subject to attachment.
289. Levy, how made.
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291. Claimant's bond and affidavit.
292. Replevy by defendant.
293. Sale of perishable property.
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295. Procedure for sale.
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298. Return of writ.
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300. Attachment creates a lien.
301. Judgment and foreclosure.
302. Judgment when property is replevied.
303. Order of court when attachment quashed.

Article 275. [240] [186] [152] Who may issue.—The judges and clerks of the district and county courts and justices of the peace may issue writs of original attachment, returnable to their respective courts, upon the plaintiff, his agent or attorney, making an affidavit stating:

(1) That the defendant is justly indebted to the plaintiff, and the amount of the demand; and

(2) That the defendant is not a resident of the State, or is a foreign corporation, or is acting as such; or

(3) That he is about to remove permanently out of the State, and has refused to pay or secure the debt due the plaintiff; or

(4) That he secretes himself so that the ordinary process of law can not be served on him; or

(5) That he has secreted his property for the purpose of defrauding his creditors; or

(6) That he is about to secrete his property for the purpose of defrauding his creditors; or

(7) That he is about to remove his property out of the State, without leaving sufficient remaining for the payment of his debts; or

(8) That he is about to remove his property, or a part thereof, out of the county where the suit is brought, with intent to defraud his creditors; or

(9) That he has disposed of his property, in whole or in part, with intent to defraud his creditors; or

(10) That he is about to dispose of his property with intent to defraud his creditors; or

(11) That he is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or

(12) That the debt is due for property obtained under false pretenses. [Acts 1864, p. 37; G. L. vol. 5, p. 691.]

Art. 276. [241] [187] [153] What facts must further appear.—The affidavit shall further state that the attachment is not sued out for the purpose of injuring or harassing the defendant; and that the plaintiff will probably lose his debt unless such attachment is issued. [Id.]

Art. 277. [242] [188] [154] Not to issue until suit begun.—No such attachment shall issue until the suit has been duly instituted; but it may be issued in a proper cause either at the commencement of the suit or at any time during its progress. [Acts 1848, p. 65; G. L. vol. 3, p. 65.]

Art. 278. [243] [189] [155] May issue on debt not yet due.—The writ of attachment above provided for may issue, although the plaintiff's debt or demand be not due, and the same proceedings shall be had thereon as in other cases, except that no final

judgment shall be rendered against the defendant until such debt or demand shall become due. [Id.]

Art. 279. [244-5] Plaintiff must give bond.—Before the issuance of any writ of attachment, the plaintiff must execute a bond, with two or more good and sufficient sureties, payable to the defendant in a sum not less than double the debt sworn to be due, conditioned that the plaintiff will prosecute his suit to effect, and will pay all such damages and costs as shall be adjudged against him for wrongfully suing out such attachment. Such bond shall be delivered to and approved by the officer issuing the writ, and shall, together with the affidavit, be filed with the papers of the cause. [Id.]

Art. 280. [246] [192] [158] Form of bond.—The following form of bond may be used:

"The State of Texas,
County of.....

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

Art. 281. Attachment in tort or unliquidated demand.—Nothing in this title shall prevent the issuance of attachments in suits founded in tort or upon unliquidated demands against persons, co-partnerships, associations or corporations upon whom personal service cannot be obtained within this State. Where the demand is unliquidated, the amount of the bond to be made by the plaintiff shall be fixed by the judge or clerk of the court or by the justice of the peace issuing the attachment. The bond shall be made in the sum so fixed and upon the approval and filing of same the attachment shall issue as in other cases. [Acts 1st C. S. 1913, p. 31.]

Art. 282. [248] [194] [160] Writ to issue instanter.—Upon the execution of such affidavit and bond, it shall be the duty of the judge or clerk, or justice of the peace, as the case may be, immediately to issue a writ of attachment, directed to the sheriff or any constable of any county where property of the defendant is supposed to be, commanding him to attach so much of the property of the defendant as shall be sufficient to satisfy the demand of the plaintiff and the probable costs of the suit. [Id.]

Art. 283. [249] [195] [161] Several writs.—Several writs of attachment may, at the option of the plaintiff, be issued at the same time, or in succession, and sent to different counties, until sufficient property shall be attached to satisfy the writ.

Art. 284. [250] [196] [162] Form of writ.—The following form of writ may be issued:

"The State of Texas,
To the sheriff or any constable of ..... county, greeting:

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

Art. 285. [251] [197] [163] Delivery of writ.—The writ of attachment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer issuing it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Art. 286. [252] [198] [164] Duty of officer.—The sheriff or constable receiving the writ shall immediately proceed to execute the same by levying upon so much of the property of the defendant subject to the writ, and found within his county, as may be sufficient to satisfy the command of the writ.

Art. 287. [253] [199] [165] May demand indemnity.—Whenever an officer shall levy an attachment, it shall be at his own risk. Such officer may, for his own indemnification, require the plaintiff in attachment to execute and deliver to him a bond of indemnity to secure him if it should afterward appear that the property levied upon by him does not belong to the defendant.

Art. 288. [254] [200] [166] Property subject to attachment.—The writ of attachment may be levied upon such property, and none other, as is, or may be, by law subject to levy under the writ of execution.

Art. 289. [255] [201] [167] Levy, how made.—The writ of attachment shall be levied in the same manner as is, or may be, the writ of execution upon similar property.

Art. 290. [256] [202] [168] Attachment of personal property.—When personal property is attached, the same shall remain in the hands of the officer attaching until final judgment, unless a claim be made thereto and bond be given to try the right to the same, or unless the same be replevied or be sold as provided by law.

Art. 291. [257] [203] [169] Claimant's bond and affidavit.—Any person other than the defendant may claim the personal property so levied on, or any part thereof, upon making the affidavit and giving bond required by the provisions of the title relating to the trial of the right of property.

Art. 292. [258] [204] [170] Replevy by defendant.—At any time before judgment, should the property not have been previously claimed or sold, the defendant may replevy the same, or any part thereof, by giving bond, with two or more good and sufficient sureties, to be approved by the officer who levied the writ, payable to the plaintiff, in double the amount of the plaintiff's debt, or, at the defendant's option, for the value of the property replevied, to be estimated by the officer, conditioned that should the defendant be condemned in the action, he shall satisfy the judgment which may be rendered therein, or shall pay the estimated value of the property with lawful interest thereon from the date of the bond.

Art. 293. [259] [205] [171] Sale of perishable property.—Whenever personal property which has been attached shall [have] not have been claimed or replevied, the judge, or justice of the peace, out of whose court the writ was issued, may, either in term time or in vacation, order the same to be sold, when it shall be made to appear that such property is in danger of serious and immediate waste or decay, or that the keeping of the same until the trial will necessarily be attended with such expense or deterioration in value as greatly to lessen the amount likely to be realized therefrom.

Art. 294. [260] [206] [172] To protect interests.—In ascertaining the facts which authorize the making of such order of sale under the preceding article, the judge, or justice of the peace, may require or dispense with notice to the parties, and may act upon such information, by affidavit, certificate of the attaching officer, or other proof as may seem to him necessary to protect the interest of the parties.

Art. 295. [261] [207] [173] Procedure for sale.—Such sale shall be conducted in the same manner as sales of personal property under execution, except as to the time of advertisement, which may be fixed by the judge, or the justice, for a shorter period, according to the exigency of the case.

Art. 296. [262] [208] [174] Return of sale.—The proceeds of such sale shall, within five days thereafter, be paid over by the officer making the sale to the clerk of the court, or justice of the peace, as the case may be, accompanied by a state-

ment in writing, signed by such officer officially, to be filed with the papers, stating the time and place of the sale, the name of the purchaser, and the amount received, with an itemized account of the expenses attending the sale.

Art. 297. [263] [209] [175] Judge may make necessary orders.—If the personal property be not replevied or claimed or sold under the provisions of this title, the judge, or justice of the peace, as the case may be, may either in term time or in vacation, make such order for the preservation or use of the same as appears to be to the interest of the parties.

Art. 298. [264–5] Return of writ.—The officer executing the writ of attachment shall return the writ, with his action endorsed thereon or attached thereto, signed by him officially, to the court from which it issued, on or before the first day of the next term thereof. Such return shall describe the property attached with sufficient certainty to identify it, and shall state when the same was attached, and whether any personal property attached remains still in his hands, and, if not, the disposition made of the same. When property has been replevied he shall deliver the replevy bond to the clerk to be filed with the papers of the cause.

Art. 299. [266] [212] [178] Report of disposition of property.—When the property levied on is claimed, replevied or sold, or otherwise disposed of after the writ has been returned, the officer having the custody of the same shall immediately make a report in writing, signed by him officially, to the clerk, or justice of the peace, as the case may be, showing such disposition of the property. Such report shall be filed among the papers of the cause.

Art. 300. [267] [213] [179] Attachment creates a lien.—The execution of the writ of attachment upon any property of the defendant subject thereto, unless the writ should be quashed or otherwise vacated, shall create a lien from the date of such levy on the real estate levied on and on such personal property as remains in the hands of the attaching officer, and on the proceeds of such personal property as may have been sold.

Art. 301. [268] [214] [180] Judgment and foreclosure.—Should the plaintiff recover in the suit, such attachment lien shall be foreclosed as in case of other liens, and the court shall direct the proceeds of the personal property sold to be applied to the satisfaction of the judgment, and the sale of personal property remaining in the hands of the officer and of the real estate levied on, to satisfy the judgment. When an attachment issued from a county or justice court has been levied upon land, no order or decree foreclosing the lien thereby acquired shall be necessary, but the judgment shall briefly recite the issuance and levy of such attachment, and such recital shall be sufficient to preserve such lien. The land so attached may be sold under execution after judgment, and the sale thereof shall vest in the purchaser all the estate of the defendant in attachment in such land, at the time of the levy of such writ of attachment. [Acts 1885, p. 73; G. L. vol. 9, p. 693.]

Art. 302. [269] [215] [181] Judgment when property is replevied.—When personal property has been levied on, as hereinbefore provided, the judgment shall also be against the defendant and his sureties on his replevy bond for the amount of the judgment, interest and costs, or for the value of the property replevied and interest, according to the terms of such replevy bond.

Art. 303. [270] [216] [182] Order of court when attachment quashed.—If the attachment be quashed or otherwise vacated by interlocutory judgment or order of the court, the court shall make the proper order making disposition of the property, or the proceeds of the sale thereof, if the same has been sold under order of the court, directing that it be turned over to the defendant. The property or the proceeds of the sale thereof, if the same has not been replevied, shall remain in the hands of the officers pending the final disposition of the main case and until it shall be finally disposed of, or until the time for perfecting an appeal has elapsed and no appeal has been perfected, when said order disposing of the property shall be carried into effect. Pending the final disposition of the main case, the defendant shall have the right at any time to replevy the property in the same manner as is provided for in cases of replevy before judgment. If the property has been sold, he may replevy the proceeds of such sale by giving bond in double the amount of the money arising from such sale, with like conditions as when replevied before judgment. Any replevy bond given in such case, whether before or after the quashing or vacating such attachment, shall be as valid and binding as if such attachment had never been quashed or vacated. [Acts 1891, p. 29; G. L. vol. 10, p. 31.]

TITLE 14

ATTORNEY AT LAW

Art.
304. Board of examiners.
305. Duties of board.
306. Authority of Supreme Court.
307. Graduates exempt.
308. Foreign attorneys.
309. Oath of attorney.
310. Fees.
311. Convicts barred.
312. Misbehavior or contempt.
313. Disbarment.
314. Complaint.
315. Citation to issue.
316. Trial.
317. Retention of client's money.
318. May inspect papers.
319. Officers not to appear.
320. Attorney to show authority.

Article 304. [317] [257] Board of Examiners.—The Board of Law Examiners shall consist of five lawyers having the qualifications required of members of the Supreme Court. They shall be biennially appointed by the Supreme Court and shall each hold office for two years and be subject to removal by the Supreme Court for incompetency or inattention to duty. [Acts 1919, p. 63.]

Art. 305. Duties of Board.—Such Board, acting under instructions of the Supreme Court as hereinafter provided, shall pass upon the eligibility of all candidates for examination for license to practice law within this State, and examine such of these as may show themselves eligible therefor, as to their qualifications to practice law. Such Board shall not recommend any person for license to practice law unless such person shall show to the Board, in the manner to be prescribed by the Supreme Court, that he is of such moral character and of such capacity and attainment that it would be proper for him to be licensed. [Id.]

Art. 306. Authority of Supreme Court.—The Supreme Court is hereby authorized to make such rules as in its judgment may be proper to govern eligibility for such examination and the manner of conducting the same, covering, among other points, proper guarantee to insure:

1. Good moral character on the part of each candidate for license.
2. Adequate pre-legal study and attainment.
3. Adequate study of the law for at least two years, covering the course of study prescribed by the Supreme Court, or the equivalent of such course.
4. The legal topics to be covered by such study and by the examination given.
5. The time and place for holding the examinations, the manner of conducting same and the grades to be made by the candidates to entitle them to be licensed.

Whenever as many as five applicants shall request the Board to conduct an examination in any particular town or city convenient to their place of residence, the examination of such applicants shall be conducted at such town or city at some suitable time, to be determined by the Board.

6. Any other such matters as shall be desirable in order to make the issuance of a license to practice law evidence of good character, and fair capacity and real attainment and proficiency in the knowledge of law.

No license to practice law in this State shall be issued by any court or authority, except by the Supreme Court of this State, under the provisions of this title. [Id.]

Art. 307. Graduates exempt.—The Supreme Court by general order shall exempt graduates of such law schools as may be approved by such Court from taking any examination as to pre-legal or legal studies and attainments, but such graduates must in all instances furnish evidence as to moral character required of candidates. Every law school in this State shall be approved for this purpose which maintains the following standards:

1. Admission requirements of law equivalent to successful completion of the four years' high school course.

2. A law curriculum extending over at least three scholastic years, with not less than ten hours class room work in law a week for each of the three classes respectively.

3. Standards for credit based upon written examination satisfactory to the Supreme Court.

4. A library of not fewer than twenty-five hundred well selected law books. [Id.]

Art. 308. Foreign attorneys.—The Supreme Court shall make such rules and regulations as to admitting attorneys from other jurisdictions to practice law in this State as it shall deem proper and just. All such attorneys shall be required to furnish satisfactory proof as to good moral character. [Id.]

Art. 309. [322] [260] [225] Oath of attorney.—Every person admitted to practice law shall, before receiving license, take an oath that he will support the Constitution of the United States and of this State; that he will honestly demean himself in the practice of law, and will discharge his duty to his client to the best of his ability; which oath shall be indorsed upon his license, subscribed by him and attested by the officer administering the same. [Acts 1860, p. 23; G. L. vol. 4, p. 1385.]

Art. 310. Fees.—The fee for any examination given by the Board shall be fixed by the Supreme Court, not to exceed twenty dollars for each candidate, which shall be paid to the clerk of said court at the time the application for examination is made. The money thus obtained shall be used to pay all legitimate expenses incurred in holding the examination; and as compensation to the members of the Board, under such regulations as shall be agreed upon by the Board, or determined by the Supreme Court. [Acts 1919, p. 64.]

Art. 311. [323] [261] [226] Convicts barred.—No person convicted of a felony shall receive license as an attorney at law; or, if licensed, any court of record in which such person may practice shall, on proof of a conviction of any felony, revoke his license and strike his name from the roll of attorneys. [Acts 1846, p. 247; G. L. vol. 2, p. 1553.]

Art. 312. [324] [262] [227] Misbehavior or contempt.—An attorney at law may be fined or imprisoned by any court for misbehavior or for contempt of such court. No attorney shall be suspended or stricken from the rolls for contempt unless it involve fraudulent or dishonorable misconduct or malpractice. [Acts 1860, p. 23; G. L. vol. 4, p. 1385.]

Art. 313. [325] [331] Disbarment.—Any attorney at law who shall be guilty of barratry or any fraudulent or dishonorable conduct or malpractice, may be suspended from practice, or his license may be revoked by the district court of the county in which such attorney resides or where the act complained of occurred, regardless of the fact that such act may constitute an offense under the Penal Code of Texas, and regardless of whether he is being prosecuted or has been convicted for the violation of such penal provision. [Acts 1921, p. 127.]

Art. 314. [326] [327] [229] Complaint.—The judge of any court, a practicing attorney, a county commissioner or justice of the peace may file with the clerk of the district court a sworn complaint of fraudulent or dishonorable conduct or malpractice on the part of any attorney at law.

Art. 315. [328] [266] [231] Citation to issue.—Upon the filing of such complaint, or upon its own observance of such conduct, such district court shall order the attorney to be cited to show cause why his license shall not be suspended or revoked. If the citation be ordered upon the observation of the court, the charge and the grounds thereof shall be set out distinctly in the order of the court. Such citation shall be served upon defendant at least five days before the trial day.

Art. 316. [329–30] Trial.—Upon the return of said citation executed, if the defendant appear and deny the charge, the cause shall be docketed for trial and conducted in the name of the State of Texas against the defendant. The county or district attorney shall represent the State. A jury of twelve men shall be impaneled, unless waived by the defendant. If the attorney be found guilty, or if he fail to appear and deny the charge after being duly cited, the said court, by proper order entered on the minutes, may suspend his license for a time, or revoke it entirely, and may also give proper judgment for costs.

Art. 317. [332] [269] [234] Retention of client's money.—Each attorney who receives or collects money for his client and refuses to pay over the same when demanded, may be proceeded against by motion of the party injured or his attorney before the district court of the county in which such attorney usually resides or in which he resided when he collected or received the money; notice of which motion with a copy thereof shall be served on such party at least five days before the trial. In case the motion be sustained, judgment shall be rendered against the defendant, for the amount by him collected or received and not less than ten nor more than twenty per cent. damages on the principal sum. [Acts 1846, p. 245; G. L. vol. 2, p. 1551.]

Art. 318. [333] [270] [235] May inspect papers.—Each attorney at law practicing in any court, shall be allowed at all reasonable times to inspect the papers and records relating to any suit or other matter in which he may be interested. Any party withdrawing any papers shall leave a descriptive receipt for the same. [Id.]

Art. 319. [334] [271] [236] Officers not to appear.—No judge of the Supreme Court, Courts of Civil or Criminal Appeals or district court, or clerk of any court, or deputy, or sheriff or deputy or constable shall be allowed to appear and plead as an attorney at law in any court of record in this State. No county judge shall be allowed to appear and practice as an attorney at law in any county or justice court, except in cases where the court over which he presides has neither original or [nor] appellate jurisdiction. [Acts 1876, p. 216; Acts 1st C. S. 1879, p. 12; G. L. vol. 8, pp. 1052, 1312.]

Art. 320. [335–6–7] Attorney to show authority.—Any defendant in any suit or proceeding pending in any court of this State may, by sworn written motion stating that such defendant believes that such suit or proceeding was instituted against him or is being prosecuted against him without authority on the part of the plaintiff's attorney, cause such attorney to be cited to appear before such court and show his authority for same, notice of which motion shall be served upon such attorney before the trial of such motion. Upon the hearing of such motion, the burden of proof shall be upon the defendant therein to show sufficient authority from the plaintiff in such suit or proceeding to institute or prosecute the same. Upon his failure to show such authority, the court shall refuse to permit such attorney to appear in said cause, and shall dismiss the same if no person who is authorized to prosecute said cause appears. Such motion may be heard and determined at any

time before the parties have announced ready for trial, but the trial shall not be unnecessarily continued or delayed for the hearing thereof.

TITLE 15

ATTORNEYS—DISTRICT AND COUNTY

1. DISTRICT ATTORNEYS

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2. COUNTY ATTORNEYS

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1. DISTRICT ATTORNEYS

Article 321. [338] [275] [240] Term of office.—District Attorneys and criminal district attorneys shall hold office for the term of two years. [Const. art. 5, sec. 21.]

Art. 322. [339] [276] [241] Districts may elect.—The following Judicial Districts in this State shall each respectively elect a district attorney, viz.: first, second, third, fourth, fifth, seventh, eighth, ninth, twelfth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-seventh, twenty-ninth, thirtieth, thirty-first, thirty-second, thirty-third, thirty-fourth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-second, forty-sixth, forty-seventh, forty-ninth, fiftieth, fifty-first, fifty-second, fifty-third, sixty-third, sixty-fourth, sixty-ninth, seventieth, seventy-second, seventy-fifth, seventy-sixth, seventy-seventh, seventy-ninth, eighty-first, eighty-third, ninetieth, hundredth, hundred and sixth. There shall also be elected a criminal district attorney for Harris County, a criminal district attorney for Dallas County, a criminal district attorney for Tarrant County, and one criminal district attorney for the counties of Nueces, Kleberg, Kennedy, Willacy and Cameron. [Acts 1901, p. 127; Acts 1915, p. 259; Acts 1927, 40th Leg., p. 222, ch. 151.]

Art. 322a. Travis and Williamson County.—The office of district attorney of Travis and Williamson Counties from and after the first day of January, 1927, shall cease to exist, and there shall be elected a district attorney for the Fifty-third Judicial District at the next general election after the passage of this Act, and at each general election thereafter. He shall represent the State in all criminal cases in all of the district courts of Travis County, and perform such other duties as are or may be provided by law governing district attorneys; and he shall receive, in addition to the five hundred ($500.00) dollars per annum allowed by law to district attorneys, the same per diem and compensation provided by law for district attorneys in judicial districts of this State composed of two or more counties.

After the taking effect of this Act it shall be the duty of the county attorney of Williamson County to represent the State of Texas in all courts in Williamson County, in all matters and cases pertaining to the duties of county attorney and district attorney; and his fees and compensation shall be governed by the General Laws now existing, or hereafter enacted, pertaining to such matters and cases. [Acts 1925, p. 355.] [39th Leg., ch. 147, §§ 1, 2.]

Art. 322b. Fannin and Lamar Counties.—The office of District Attorney in the Sixth Judicial District of Texas is hereby abolished and the County Attorney of each county composing said District, to-wit: Fannin and Lamar Counties, shall represent the State of Texas in all matters wherein the State of Texas is a party in his respective county and shall receive such fees and compensation for his services as is now, or may hereafter, be provided by general laws of the State of Texas. [Acts 1926, 39th Leg., 1st C. S., p. 11, ch. 6, § 1.]

Art. 323. [340] [277] [242] Bond.—Each district attorney, before entering on the duties of his office, shall give bond, payable to the Governor in the sum of five thousand dollars, with two or more good and sufficient sureties, to be approved by the district judge of their respective districts, conditioned that such district attorney will faithfully pay over, in the manner prescribed by law, all money which he may collect or which may come to his hands for the State or for any county. Such bond shall be deposited in the office of the Comptroller.

Art. 324. Assistants in certain counties.—The district attorney shall appoint one assistant district attorney in districts consisting of more than one county in which there is situated a city of twenty-eight thousand population or over according to the last preceding United States census, or any United States census which may hereafter be taken; provided the district attorney shall furnish data to the district judge of his district that he is in need of an assistant and is himself unable to attend to all the duties required of him by law, and that it is necessary to the best interests of the State that an assistant district attorney be appointed. Each person so appointed shall be a qualified resident attorney of the district in which said appointment is made, and shall give bond and take the official oath and shall have authority to perform all the acts and duties of district attorneys under the laws of this state. Said appointment shall be for such time as the district attorney shall deem best in the enforcement of the law, not to be less than one month. Said assistant district attorney shall be paid by the Comptroller for the time of actual service rendered at the rate of twenty-five hundred dollars per annum. Said sum shall be paid monthly upon certificate of the district clerk and the district judge of said district that said assistant district attorney has performed his duties and is entitled to pay. The district attorney of any such district at any time he deems said assistant unnecessary or finds that he is not attending to his duties as required by law, may remove said person from office by merely writing to said district judge to that effect. [Acts 1925, p. 212.] [39th Leg., ch. 62, § 1; Acts 1927, 40th Leg., p. 32, ch. 23, § 1.]

Section 1a, of Acts 1927, 40th Leg., p. 32, ch. 23, made an appropriation for the salary of such assistant district attorney for the year ending Aug. 31, 1927.

This article in so far as it applied to the 34th Judicial District, consisting of El Paso, Hudspeth, and Culberson counties, was amended by Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, arts. 326a–326e, which see.

Art. 324a. Deputy district and county attorneys. The provision of this Act relating to the appointment and payment of deputies, or assistants, by the county attorneys and the district attorneys, in counties having a population in excess of one hundred thousand inhabitants, shall also apply to counties where one county composes a judicial district, and the population of the county is more than thirty-seven thousand five hundred, and less than one hundred thousand inhabitants, as shown by the last United States Census, and counties where the county attorney performs the duties of the county attorney and district attorney, as provided by law. [Acts 1925, p. 352.] [39th Leg., ch. 144, § 1.]

Acts 1917, 35th Leg., p. 94, ch. 55, in so far as applicable to the 34th Judicial District, consisting of El Paso, Hudspeth, and Culberson counties, was amended by Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, arts. 326a–326e, which see.

Art. 324b. Assistant district attorneys and investigators.—In any judicial district in this State consisting of more than one county in which there may be a county having a population in excess of 70,000 inhabitants, according to the last census of the United States, and according to any United States census which may hereafter be taken, the district attorney of each district in connection with and for the purpose of conducting his office in such county shall be and is hereby authorized, with the approval of the county commissioners court of such county to appoint one assistant district attorney, who shall receive a salary to be fixed by said commissioners court of such county, not to exceed $2,400.00 per annum. Such district attorney shall likewise be authorized, with the approval of such county commissioners court of such county, to appoint one special investigator, at a salary to be fixed by said commissioners court, not to exceed $2,400.00 per annum. The salary of such assistant and special investigator, above provided for, shall be paid by the county having a population of more than 70,000, by warrant drawn on the general funds thereof, all salaries payable monthly.

The assistant district attorney above provided for, when appointed, shall take the oath of office and be authorized to represent the State in any court or proceeding in said county in which such district attorney is, or shall be authorized to represent the State, such authority to be exercised under the direction of said district attorney, and such assistants and special investigators shall be subject to removal at the will of said district attorney. Said assistant district attorney shall be authorized to perform any official act devolving upon or authorized to be performed by such district attorney in said county, this Article is not intended to repeal any other law now existing, but is cumulative thereof.

This article in so far as it applied to the 34th Judicial District, consisting of El Paso, Hudspeth, and Culberson counties, was amended by Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, arts. 326a–326e, which see.

Art. 325. Assistant for Sixth District.—The district attorney of the Sixth Judicial District of Texas is hereby authorized to appoint an assistant district attorney, whose qualifications and authority shall be the same as now required by law for district attorneys, and he shall take the oath and execute the bond required by law. Said assistant shall receive a salary of not exceeding two thousand dollars per year to be paid out of excess fees of said office as the same accrue under the law. [Acts 1917, p. 268.]

Art. 326. Hudspeth and Culberson Counties.—The commissioners court of Hudspeth and Culberson Counties are hereby authorized to pay to the district attorney for the Thirty-fourth Judicial District of Texas a sum not to exceed seventy-five dollars each per month as specially provided by law. [Acts 1923, p. 382.]

Art. 326a. El Paso, Hudspeth, and Culberson Counties.—The District Attorney in and for the 34th Judicial District of Texas, composed of El Paso, Hudspeth and Culberson Counties, from and after January 1st, 1927, shall receive from the state as pay for his services the sum of $500.00 per annum, as provided for in the Constitution, and in addition thereto shall receive the sum of $5,500.00, said salary to be paid in monthly installments in the same manner as now provided for the payment of the $500.00 as fixed by the Constitution. All commissions and fees allowed District Attorneys by law, except in escheat cases shall, when collected, be paid to the District Clerk of El Paso County, who shall pay the same over to the State Treasurer. [Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, § 2.]

Section 1 of Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, read as follows: "That Chapter 64 of the Acts of the Regular Session of the Thirty-fifth Legislature, page 123 thereof, and chapter 55 of the Acts of the Regular Session of the Thirty-fifth Legislature, page 94 thereof, and Article 1021 Code of Criminal Procedure, and Articles 324 and 324-B of Rev. Civ. Statutes be amended so as the following provisions will apply to the 34th Judicial District of Texas, and are not amended, qualified, or repealed in any other manner, nor as to affect any other Judicial District in this State." Section 7, of such chapter, read as follows: "The provisions of this Act shall apply only to the 34th Judicial District of Texas, and all laws and parts of laws in conflict herewith are hereby amended only as to this particular Judicial District, and it is not intended hereby to repeal, amend, or qualify any law in this State relative to District Attorneys other than the District in and for the 34th Judicial District of Texas, and the Legislature shall make due provision for the payment of the said District Attorney and the two assistants provided for above."

Art. 326b. Assistant district attorneys in such counties.—Said District Attorney in connection with, and for the purpose of conducting his office in said 34th Judicial District shall be, and is hereby, authorized to appoint two Assistant District Attorneys, one of whom shall receive from and after January 1st, 1927, as salary $3,600.00 per annum, and one of whom shall receive from and after January 1st, 1927, as salary $3,200.00 per annum, both such salaries payable by the State monthly. [Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, § 3.]

Art. 326c. Additional assistant district attorneys in such counties. Said District Attorney, in connection with and for the purpose of conducting his office in said District, shall be and is hereby authorized to appoint two additional Assistant District Attorneys, with the consent of the County Judge of El Paso County, Texas, one of whom shall receive a salary not to exceed $3,000.00, and one of whom shall receive a salary not to exceed $2,500.00. He shall also be authorized to employ a stenographer who shall receive a salary not to exceed $2,000.00 per annum, payable monthly, and two investigators, one of whom shall receive a salary not to exceed $2,400.00 and one of whom to receive a salary not to exceed $2,000.00, payable monthly. The salaries of the two last named assistants, investigators and stenographer, above provided for, shall be paid by said El Paso County by warrant drawn upon the general funds thereof. [Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, § 4.]

Art. 326d. Qualifications and duties of assistant district attorneys in such counties.—Each of said Assistant District Attorneys in said 34th Judicial District of Texas shall have all the qualifications that are now required by law of District Attorneys, and each of said assistants shall take an oath of office before the District Judge in and for said Judicial District, and said Assistant District Attorneys shall be authorized to represent the State in any Court or proceeding in which such District Attorney is or shall be authorized to so represent the State, such authority to be exercised under the direction of said District Attorney, such assistants, investigators, and stenographer, whether paid by the State or the County, shall be subject to removal at the will of said District Attorney, and each of such Assistant District Attorneys shall be authorized to perform any official act devolving upon or authorized to be performed by said District Attorney in said Judicial District. [Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, § 5.]

Art. 326e. Funds for use of district attorney in such counties.—El Paso County is hereby authorized to set aside each year a sum not to exceed $1,500.00 to be expended by said District Attorney in preparation and conduct of criminal affairs of said office and all sums of money now authorized by Art.

326 Civil Statutes to be paid by Hudspeth and Culberson Counties to the District Attorney shall by him be paid into the fund provided for in this Article and shall be used as directed and not as any part of salary of the District Attorney. This fund to be expended upon sworn claims of said District Attorney and approved by the County Judge of El Paso County. [Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, § 6.]

Art. 326f. District attorneys in large counties having county attorney.—Sec. 1. That in any county having a population in excess of 150,000 inhabitants, according to the last census of the United States and according to any United States census which may hereafter be taken and having a county attorney, the district attorney of such county shall receive a salary of five hundred dollars from the State of Texas, as provided in the Constitution of the State of Texas, and all fees, commissions and perquisites earned by such office; provided, that the amount of said salary, fees, commissions and perquisites to be so received and retained by him, shall not exceed the sum of ten thousand dollars in any one year, and provided further, that all salaries, fees, commissions and perquisites so earned and received by such office in excess of said salary during each and every fiscal year shall be paid into the county treasury of said county in accordance with the terms and provisions of the Maximum Fee Bill, except as to such portion of such excess as shall be used and expended in the payment of salaries to deputies, assistants, stenographers, investigators or other employees and incidental expenses of such office, as hereinafter provided.

Sec. 2. Such district attorney, in connection with and for the purpose of conducting his office in such county, shall be and is hereby authorized to appoint seven assistant district attorneys, one of whom shall receive a salary not to exceed forty-eight hundred dollars per annum, three of whom shall receive a salary not to exceed thirty-six hundred dollars per annum each; two of whom shall receive a salary not to exceed three thousand dollars per annum each, one of whom shall receive a salary not to exceed twenty-eight hundred dollars per annum, all salaries payable monthly. He shall also be authorized to employ one stenographer, who shall receive a salary not to exceed two thousand five hundred dollars per annum, and one stenographer who shall receive a salary not to exceed two thousand dollars per annum, payable monthly. He shall also be authorized to employ four investigators, one of whom shall receive a salary not to exceed three thousand dollars per annum, and the others shall receive a salary of not to exceed twenty-two hundred dollars per annum, payable monthly. Said investigators shall have the power and shall be authorized to make arrests and to execute all processes in criminal cases. The salaries of assistants, deputies, stenographers, and investigators, and other employés above provided for, shall be paid by said county by warrant drawn from the general funds thereof.

Sec. 3. Should such district attorney be of the opinion that the number of deputies, assistants, stenographers, investigators or other employés above provided for are insufficient or inadequate for the proper investigation of crime and the efficient performance of the duties of said office, he may appoint such additional assistants and employés, and fix their salaries, provided such salaries shall in no event exceed the maximum provided herein to be paid to such assistants or other employés, but such additional assistants and employés, so appointed, before qualifying and entering upon the duties of such office and employment, shall be confirmed by the commissioners' court of the county court in which such appointments are made.

Sec. 4. The salaries for the additional assistants and employés, as hereinabove provided for herein, shall be paid monthly out of the excess fees collected by such district attorney and his office, which would otherwise go to said county, a detailed itemized statement under oath of which he shall include in his annual report, as provided to be made in the Maximum Fee Bill; and in no event shall said county be liable for the salaries of such additional assistants or employés.

Sec. 5. The assistant district attorneys above provided for, when appointed, shall take the oath of office and be authorized to represent the State in any court or proceeding in which such district attorney is or shall be authorized to represent the State, such authority to be exercised under the direction of said district attorney, and such assistants, deputies, stenographers, investigators and employés, whether regular or additional, shall be subject to removal at the will of said district attorney. Each of said assistant district attorneys shall be authorized to perform any official act devolving upon or authorized to be performed by such district attorney in said county.

Sec. 7. The provisions of this Act shall apply to every district attorney within the State of Texas, within counties of a population of more than 150,000 inhabitants and having a county attorney, to be determined as above provided, whether the said district attorney be of and for a judicial district called and known by number, or whether called and known as a criminal judicial district, or whether of and for any court called or known as a criminal district court; and whether such district attorney be called and known as a district attorney or a criminal district attorney, or a criminal district attorney of any named county or court. [Acts 1927, 40th Leg., p. 93, ch. 67.]

Section 8 of Acts 1927, 40th Leg., p. 93, ch. 67, repeals all conflicting laws or parts of laws excepting Acts 1917, 35th Leg., p. 315, ch. 121, Acts 1917, 35th Leg., p. 378, ch. 167, Acts 1923, 38th Leg., 3rd C. S., ch. 21, and provides that it shall be cumulative therewith and with all laws not in conflict, and excepts, also, from repeal, any law regulating grand jury bailiffs except the appointment by the court, which it expressly repeals.

Art. 326g. Assistant district attorneys in counties having no county attorney. Sec. 1. That in any county having a population in excess of 150,000 inhabitants, according to the last census of the U. S. and according to any U. S. census which may hereafter be taken, and in which there is no county attorney, the district attorney or criminal district attorney may appoint 7 assistant district attorneys, one of whom shall receive a salary not to exceed forty-eight hundred dollars per annum; two of whom shall receive a salary not to exceed thirty-six hundred dollars per annum, each; two of whom shall receive a salary not to exceed three thousand dollars per annum, each; two of whom shall receive a salary not to exceed twenty-four hundred dollars per annum each. He may employ one stenographer who shall receive a salary not to exceed two thousand four hundred dollars per annum, and one stenographer who shall receive a salary not to exceed one thousand eight hundred dollars per annum. He may employ three investigators who shall receive a salary not to exceed two thousand four hundred dollars per annum each. The salaries of assistants, stenographers and investigators, and other employees, above provided for, shall be paid monthly by said county by warrant drawn from the general funds thereof.

Sec. 2. Should such district attorney be of the opinion that the number of deputies, assistants, stenographers, investigators or other employees above provided for are inadequate for the proper investigation of crime and the efficient performance of the duties of said office, he may appoint such additional assistants and employees, and fix their salaries, provided such salaries shall in no event exceed the maximum provided herein to be paid to such assistants or other employees, but such additional assistants and employees, so appointed, before qualifying and entering upon the duties of such office and employment, shall be confirmed by the commissioners court of the county in which such appointments are made.

Sec. 3. The salaries of such additional assistants and employees shall be paid monthly out of the excess fees collected by such district attorney and his office, which would otherwise go to said county, a detailed sworn itemized statement of which he shall include in his annual report, as provided to be made in the Maximum Fee Bill. In no event shall said county be lia-

ble for the salaries of such additional assistants or employees.

Sec. 4. The assistant district attorneys above provided for, when appointed, shall take the oath of office and be authorized to represent the State in any court or proceeding in which such district attorney is or shall be authorized to represent the State, such authority to be exercised under the direction of said district attorney. Any such assistant, stenographer, investigator, or employee, whether regular or additional, shall be subject to removal at the will of said district attorney or criminal district attorney.

Sec. 5. The commissioners' court of the county of the district attorney's or criminal district attorney's residence may, upon the written sworn application of the district attorney or criminal district attorney, stating the necessity therefor, allow one or more automobiles to be used by the district attorney or criminal district attorney in the discharge of his official duties, which if purchased shall be bought by the county in the manner prescribed by law for the purchase of supplies, and paid out of the general fund, and they shall be and remain the property of the county. The amount to be expended for the purchase of an automobile or automobiles shall not exceed the sum of twelve hundred dollars for the first year, and shall not exceed the sum of five hundred dollars for any year thereafter. The expense of the maintenance and operation of such automobile or automobiles as may be allowed shall be paid for by the district attorney or the criminal district attorney from the fees of office, and the amount thereof shall be reported in detail by the district attorney or the criminal district attorney on a monthly report, as is now required by law in reporting expenses incurred by him in the conduct of his office, and shall be deducted by him from the amount due by him to the county in the same manner as the other expenses are deducted which are provided for by law. Such expense account for the maintenance and operation of such automobile or automobiles shall be subject to the audit of the county auditor, and if it appears that any item of such expense was not incurred by such officer, or that such item was not necessary thereto, such item may be by such auditor or court rejected, in which case the correctness or necessity of such item may be adjudicated in any court of competent jurisdiction.

Sec. 6. The provisions of this Act shall apply to every district attorney within the State of Texas within counties of a population of more than one hundred and fifty thousand inhabitants, and in which there is no county attorney to be determined as above provided, whether the said district attorney be of and for a judicial district called and known by number, or whether called and known as a criminal judicial district, or whether of and for any court called or known as a criminal district court; and whether such district attorney be called and known as a district attorney, or a criminal district attorney, or a criminal district attorney of any named county or court. [Acts 1927, 40th Leg., p. 111, ch. 74.]

Section 7 of Acts 1927, 40th Leg., p. 111, ch. 74, repeals all conflicting laws and parts of laws.

Art. 326h. Assistant district attorneys in counties with city of 50,000.—Sec. 1. In any judicial district in this State composed of more than one county and in which there is a city having an actual population of 50,000 inhabitants or more, the district attorney shall have authority, with the approval of the commissioners' court of such county in which said city is situated, to appoint not more than two assistants, who shall be licensed to practice law in this State, and shall perform such duties as shall be required of them by the district attorney; and under the direction of the district attorney shall have all the authority that may be exercised by the district attorney. The district attorney shall use one of said assistants as an investigator to assist in the performance of the duties of his office, in addition to whatever other duties may be required of such assistant. Said assistants shall take the constitutional oath of office and serve at the will of the district attorney, not to exceed under any one appointment the maximum time fixed by the Constitution for such officers.

Sec. 2. The salary of each of said assistants shall not exceed three thousand dollars ($3,000 00) per year, to be paid by the county in which said city is situated by warrant drawn on the general fund thereof, all salaries payable monthly. The district attorney shall ascertain the population of any city in his district necessary to be ascertained under this Act by making application to the mayor of any such city for a certificate as to the population of such city. It shall be the duty of any such mayor to ascertain by some reasonable accurate estimate the population of any such city, and his certificate to same under oath shall authorize the district attorney to assume its correctness and act upon the information contained in such certificate in making any appointment of an assistant or assistants under this Act. [Acts 1927, 40th Leg., p. 82, ch. 58.]

Art. 326i. Assistant district attorneys, criminal district courts.—Sec. 1. The district attorney of any criminal district court only for more than one county may appoint one assistant district attorney for each county containing a population of 22,000 or more as shown by the last preceding census of the United States, provided said district attorney shall furnish data to the judge of said criminal district court that he is in need of said assistants and it is necessary for the investigation and prosecution of crime and the efficient enforcement of law and to the best interest of the State that such assistant district attorneys be appointed. And when said data is furnished to said judge of said criminal district court he shall forthwith certify the same to the commissioners' court of the county in which such appointment is to be made.

And said district attorney is hereby authorized, with the approval of the commissioners' court of such county, to appoint one assistant district attorney for each county, as provided above, who shall receive a salary to be fixed by said commissioners' court in such county not to exceed $2,400.00 per annum. The salary of such assistant district attorneys above provided for shall be paid by the county for which said assistant is appointed, by warrant drawn on the general funds thereof, all salaries payable monthly.

Every person so appointed shall be a qualified resident attorney of the county and district in which such appointment is made, and shall give bond and take the oath of office required of district attorneys of this State, and shall have the power and authority to perform all the acts and duties of district attorneys under the law of this State, and said appointments shall be for such time as the district attorney shall deem best in the enforcement of the law, not to be less than one month.

Sec. 2. The assistant district attorneys, above provided for when appointed and qualified, shall be authorized to represent the State in any court or proceeding in said district in which such district attorney is or shall be authorized to represent the State, such authority to be exercised under the direction of said district attorney, and said assistant district attorneys shall be authorized to perform any official act devolving upon or authorized by said district attorney in said district.

Sec. 3. Said district attorney may likewise be, and he is hereby authorized, with the approval of such county commissioners' court of each county wherein an assistant district attorney may be appointed as provided by this Act, to appoint one special investigator for each of said counties wherein an assistant district attorney may be appointed as provided by this Act, at a salary to be fixed by said commissioners' court not to exceed $2,400.00 per annum. The salary of such special investigator above provided for shall be paid by each county in which a special investigator is appointed, by warrant drawn on the general funds thereof, all such salaries to be payable monthly. Said assistant district attorneys and special investigators shall be subject to removal at the will of said district attorney. This article is not intended to repeal any

other law now existing, but is cumulative thereof. [Acts 1927, 40th Leg., p. 95, ch. 68.]

Art. 326j. District attorney abolished in certain counties.—The office of District Attorney in the Second Judicial District of Texas is hereby abolished and the County Attorney of each county composing said district, to-wit: Angelina, Cherokee, and Nacogdoches Counties, shall represent the State of Texas in all matters wherein the State of Texas is a party in his respective county, and shall receive such fees and compensation for his services as is now, or may hereafter, be provided by the General Laws of the State of Texas. [Acts 1927, 40th Leg., p. 195, ch. 127, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 195, ch. 127, repeals all conflicting laws or parts of laws and section 3 makes it effective Jan. 1, 1929.

Art. 326k. District Attorney and Assistant Ninetieth Judicial District.—Sec. 1. The office of district attorney for the 90th Judicial District of Texas is hereby created, and the person now holding said office and acting as such district attorney shall continue to hold and exercise the duties of such office for the remainder of the term for which he was elected and until his successor is duly elected and qualified, and he shall receive such salary as now or hereafter provided by law for district attorneys in districts containing two or more counties.

Sec. 2. Said district attorney may appoint an assistant district attorney for said Judicial district whose salary shall not exceed three thousand dollars per annum, and which shall be paid out of the general fund of Stephens County at such times and on such terms and conditions as may be prescribed by the commissioners court of Stephens County. [Acts 1927, 40th Leg., 1st C. S., p. 171, ch. 60.]

Section 3 of Acts 1927, 40th Leg., 1st C. S., p. 171, ch. 60, validates all acts previously performed by such district attorney or his assistant and all payments of compensation made to them, and section 4 provides that if any provision of the act is held invalid, such holding shall not affect the remainder.

Art. 327. Failure to attend court.—When any district attorney shall fail to attend any term of the district court of any county in his district, the district clerk of such county shall certify the fact of such failure under his official seal to the Comptroller, and unless some satisfactory reason for such failure is shown to the comptroller, such district attorney shall receive no salary for the time that he has so failed to attend. [Acts 1846, p. 295; G. L. vol. 2, p. 1601.]

Art. 328. Vacancy in office.—When a vacancy occurs in the office of district attorney, the Governor shall appoint a qualified person, resident of the district, to fill the same.

2. COUNTY ATTORNEYS

Art. 329. [346] [280] [245] Election.—A county attorney for counties in which there is not a resident criminal district attorney, shall be biennially elected for a term of two years by the qualified voters of each county. [Acts 1883, p. 2; G. L., vol. 9, p. 308; Const., art. 5, sec. 21.]

Art. 330. [351] [285] [248] Bond.—Each county attorney shall execute a bond payable to the Governor in the sum of twenty-five hundred dollars, with at least two good and sufficient sureties to be approved by the commissioners court of his county, conditioned that he will faithfully pay over in the manner prescribed by law all moneys which he may collect or which may come to his hands for the State or any county. [Acts 1876, p. 86; G. L. vol. 8, p. 922.]

Art. 331. [347] [281] Assistants.—County attorneys, by consent of the commissioners court, shall have power to appoint in writing one or more assistants, not to exceed three, for their respective counties who shall have the same powers, authority and qualifications as their principals, at whose will they shall hold office. Before entering on the duties of their offices, they shall each take the official oath which shall be indorsed upon their appointment, which oaths and appointments shall be recorded and deposited in the county clerk's office. [Acts 1891, p. 91.]

3. GENERAL PROVISIONS

Art. 332. [352] [354] [355] Qualifications.—No person who is not a duly licensed attorney at law shall be eligible to the office of district or county attorney. District and county attorneys shall reside in the district and county, respectively, for which they were elected; and they shall, as soon as practicable after their election and qualification, notify the Attorney General and Comptroller of their post-office address. [Acts 1876, p. 85.]

Art. 333. To report to Attorney General.—District and County Attorneys shall, when required by the Attorney General, report to him at such times and in such form as he may direct, such information as he may desire in relation to criminal matters and the interests of the State, in their districts and counties.

Art. 334. [356] [290] [253] Shall advise officers.—The district and county attorneys, upon request, shall give an opinion or advice in writing to any county or precinct officer of their district or county, touching their official duties. [Acts 1913, p. 48.]

Art. 335. [363] [297] [257] Collection and fees.—Whenever a district or county attorney has collected money for the State or for any county, he shall within thirty days after receiving the same, pay it into the treasury of the State or of the county in which it belongs, after deducting therefrom and retaining the commissions allowed him thereon by law. Such district or county attorney shall be entitled to ten per cent. commissions on the first thousand dollars collected by him in any one case for the State or county from any individual or company, and five per cent on all sums over one thousand dollars, to be retained out of the money when collected, and he shall also be entitled to retain the same commissions on all collections made for the State or for any county. This article shall also apply to money realized for the State under the escheat law. [Acts 1876, p. 86; G. L. vol. 8, p. 922.]

Art. 336. [365] [299] [259] Accepting reward.—No district or county attorney shall take any fee, article of value, compensation, reward or gift or any promise thereof, from any person whomsoever, to prosecute any case which he is required by law to prosecute, or consideration of or as a testimonial for his services in any case which he is required by law to prosecute, either before or after such case has been tried and finally determined. [Id.]

Art. 337. [361] [362] Collection reports.—On or before the last day of August of each year, each district or county attorney shall file in the office of the Comptroller or of the county treasurer, as the case may be, a sworn account of all money received by him by virtue of his office during the preceding year, payable into the State or county treasury. [Id.]

Art. 338. [364] [298] [258] Register.—Each district and county attorney shall keep in proper books, to be procured by them for that purpose at their own expense, a register of all their official acts and reports, and all actions or demands prosecuted or defended by them as such attorneys, and of all proceedings had in relation thereto, and shall deliver such books to their successors in office; and the same shall at all times be open to the inspection of any person appointed by the Governor or by the county commissioners court of a county, to examine the same. [Id.]

Art. 339. [366] [300] [260] To prosecute officers.—When it shall come to the knowledge of any district or county attorney that any officer in his district or county entrusted with the collection or safe keeping of any public funds is in any manner whatsoever neglecting or abusing the trust confided in him, or in any way failing to discharge his duties under the law, he shall institute such proceedings as are necessary to compel the performance of such duties by such officer and to preserve and protect the public interests. [Id.]

Art. 340. [369] [303] [261] Admissions.—No admissions made by the district or county attorney

in any suit or action in which the State is a party shall operate to prejudice the rights of the State.

Art. 341. Population determined.—The preceding Federal census shall be the basis for determining population under any provisions of this title.

TITLE 16

BANKS AND BANKING

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CHAPTER ONE

BANKING COMMISSIONER OF TEXAS

Art.

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366. Illegal practices.
367. Investigation of fraud.
368. Unsafe bank.
369. Shall close bank.
370. Inspection.
371. Liquidating officer.
372. [Repealed.]
373. Insolvency of reserve bank.
374. Liquidation of savings banks.
375. Report to Legislature.

Article 342. Appointment.—By and with the advice and consent of the Senate, the Governor shall bienally [biennially] appoint a "Banking Commissioner of Texas" for a term of two years. The term "Commissioner" as used in this title shall mean the Banking Commissioner of Texas. [Acts 2nd C. S. 1923, p. 107.]

Art. 343. Vacancy.—Any vacancy in said office shall be filled by the Governor and he shall report the name of the person so appointed to the Senate, if in session, or at the next succeeding session of the Legislature. Should the Senate fail to confirm the appointment made by the Governor within ten days after being advised thereof, then the said office shall be deemed vacant and a new appointment shall be made until the office is filled. [Id.]

Art. 344. Bond.—Within fifteen days after the notice of his appointment and before entering upon the duties of his office, said Commissioner shall give bond to the State for ten thousand dollars to be approved by the Governor, and conditioned for the faithful discharge of the duties of his office. [Id.]

Art. 345. Qualifications.—The Banking Commissioner shall be a practical banker having had not less than five years actual experience in the banking business holding a position not lower than the grade of cashier. Experience as Deputy Banking Commissioner shall be deemed as that of a practical banker for the purposes of this law. [Id.]

Art. 346. Deputy.—The Commissioner may appoint a competent Deputy Commissioner who shall possess all the powers and perform all the duties attached by law to the office of Banking Commissioner during the necessary or unavoidable absence of the Commissioner, or his inability from any cause to act. The Commissioner shall be responsible for the acts of his Deputy, who shall, before entering upon the duties of his position, take the oath required of the Commissioner; he may also be required by the Commissioner to enter into bond with security payable to the said Commissioner, conditioned for the faithful performance of the duties of his office. [Id.]

Art. 347. General powers.—The Commissioner shall be superintendent and Instructor of the State Banking System of Texas and of all corporations incorporated under the provisions of this title.

Art. 348. Repealed by Acts 1927, 40th Leg., p. 388, ch. 263, § 1.]

Art. 349. [460–1–2] Special Agents, etc.—The Commissioner may, under his hand and official seal, appoint one or more special liquidating agents to assist him to perform his duties, and the certificate of their appointment shall be filed in the office of the Commissioner, and a certified copy thereof in the office of the clerk of the county in which the bank in process of liquidation was located. The Commissioner may employ counsel and procure such expert assistance as may be necessary in the liquidating and distribution of the assets of such insolvent bank. The Commissioner shall require from such special agents and assistants such security for the faithful performance of their duties as he may deem proper. [Acts 1909, 2nd C. S. p. 406.]

Art. 350. Examiners.—The Commissioner from time to time shall appoint such number of State Bank Examiners as may be necessary to make the examination of banking corporations required by law, which number shall at no time exceed one for each thirty banking corporations then subject to examination under the law. One departmental examiner may be appointed by the Commissioner in addition to the field examiners. [Acts 2nd C. S. 1923, p. 107; Acts 1927, 40th Leg., p. 423, ch. 282, § 1.]

Art. 351. Examiners' salaries.—The departmental examiner shall receive an annual salary of five thousand dollars; and the Field Examiners shall receive $3,000.00 for the first year's service; $3,500.00 for the second year's service, and $4,000.00 for the third year's service, $4,500.00 for the fourth year and $5,000.00 for the fifth year, and subsequent years. The examiners shall receive all necessary traveling expenses, a sworn itemized account of which shall be rendered monthly by each examiner and approved by the Commissioner. In determining the years of service, it is not necessary that the number of years shall have been served consecutively. [Id.; Acts 1927, 40th Leg., p. 434, ch. 289, § 1.]

Art. 352. [520] Examiner's bond, etc.—Each examiner, before entering upon the duties of his appointment, shall take and file in the office of the Secretary of State an oath to support the Constitution of this State, to faithfully demean himself in office, to make fair and impartial examinations, and that he will not accept as presents or emoluments any pay, directly or indirectly for the discharge of any act in the line of his duty other than remuneration fixed and accorded him by law, and that he will not reveal the condition of any bank or bank and trust company examined by him, or any information secured in the course of any examination of any bank or bank and trust company to any one except the Commissioner. Every such examiner shall enter into a bond payable to the State in the sum of ten thousand dollars to be approved by the Commissioner and deposited in the office of the State Comptroller, conditioned that he will faithfully perform his duties as such examiner. In case any such examiner shall knowingly report any such financial company in an insolvent condition, or in case he shall report any such financial company to be solvent, knowing the same to be otherwise, and any person be injured thereby, such person shall have

a right of action on such bond for his injuries. Such action shall be brought in the name of the State on the relation of the injured party. [Acts 1905, S. S. p. 501.]

Art. 353. [520] Examiner's qualifications.—Every examiner appointed by the Banking Commissioner shall be an expert bookkeeper and bank accountant. No such examiner shall be appointed who has not had practical experience in the banking business for at least five years. No such examiner shall be appointed who is an officer or stockholder in any bank organized under the laws of this State. No such examiner shall be appointed receiver of any bank whose books, papers and affairs he shall have examined pursuant to his appointment. [Id.]

Art. 354. Examiner disqualified.—Upon indictment of any such examiner for any violation of any provision of chapter seven of this title, he shall be disqualified from further discharging the duties of such office until such indictment is fully disposed of. [Id.]

Art. 355. [572] Interest in bank.—Neither the Commissioner nor any regularly appointed clerks or employés of the Banking Department, nor any State bank examiner shall at any time during his incumbency be financially interested directly or indirectly in any State bank or bank and trust company subject to the provisions of this title, or knowingly be or become indebted, either directly or indirectly, to any such bank. A violation of any provision of this article by any officer or employé named herein shall work a forfeiture of his office or position. [Acts 1909, 2nd C. S. p. 423.]

Art. 356. [527] Commissioner disqualified.—The Commissioner, not less than twice during any one year or oftener in his discretion, shall call upon each banking corporation organized under or subject to the provisions of this title, for a statement of its assets and liabilities as provided in articles 494 and 495. The Commissioner shall not inform any person of the day on which he will call for such statement. For a violation of this requirement, or of any other duty imposed upon him by this title, he shall be deemed to have committed a misdemeanor in office, and upon conviction shall be removed from office. [Acts 1905, S. S. p. 502.]

Art. 357. [Repealed by Acts 1927, 40th Leg., p. 18, ch. 12, § 1.]

Art. 358. Examinations.—The Commissioner shall cause each banking corporation incorporated under the laws of this State, subject by law to examination, to be thoroughly and fully examined at least every four months and at such other times as the Commissioner may deem necessary. [Acts 1923, 2nd C. S. p. 107.]

Art. 359. Examination of Reserve banks.—Such banking corporations as shall become members of a Federal Reserve bank, should the Federal Reserve Board or the Comptroller of the Currency insist upon making examinations of such corporations by National bank examiners, shall be examined by or under the direction of the Commissioner semiannually or oftener in his discretion. The Commissioner or any State bank examiner, at his discretion, shall be authorized at any time to forward to the Comptroller of the Currency or the Federal Reserve Board, copies or certified copies of a State bank examiner's report of any regular or special examination made of any such member bank. [Acts 1914, 3rd C. S. p. 46.]

Art. 360. [429] Examination of savings banks.—The Commissioner shall examine or cause to be examined every savings bank organized under this title once in every two years, or oftener in his discretion. The expense of every such special examination, if any, shall be paid by the corporation examined in such manner as the Commissioner shall certify to be just and reasonable. Only actual and traveling expenses of the Commissioner or his examiners incident to such examinations shall be paid by such corporation. [Acts 1905, S. S. p. 489.]

Art. 361. May take oaths.—The Commissioner and all State bank examiners shall have the power to administer oaths to any person whose testimony may be desired for the purpose of any such examinations. [Acts 1923, 2nd C. S. p. 107.]

Art. 362. Examination fees.—Except as to savings banks, the expense of every general and special examination shall be paid by the corporation examined in such amount as the Commissioner shall certify to be just and reasonable, and assessments therefor shall be made by the Commissioner upon the banks examined in proportion to assets or resources held by the banks upon the dates of the examination of the various banks. [Id.]

Art. 363. Disposition of fees.—All sums collected as examination fees shall be paid by the Commissioner directly into the State Treasury to the credit of the General Revenue Fund. The expenses of examination and of the Commissioner in enforcing the provisions of this title shall be paid upon the certificate of the Commissioner by warrant of the Comptroller upon the State Treasury. [Id.]

Art. 364. [524] Hindering examination, etc.—If any banking corporation subject to the provisions of this title shall refuse to submit to the inspection of the Commissioner or any of his examiners, or if any officer or director thereof shall refuse to submit to be examined an oath touching the affairs of said corporation, or if it shall be found to have violated its charter, or any law of this State binding upon it, the Commissioner shall report the fact to the Attorney General, who shall institute such action or proceedings against such corporation as is authorized in cases of insolvent banks. [Acts 1905, S. S. p. 502.]

Art. 365. [523] Impairment of capital.—Whenever the Commissioner shall have reason to believe that the capital stock of any banking corporation subject to the provisions of this title is reduced by impairment or otherwise below the amount required by law or by its certificates or articles of association, he shall require such corporation to make good the deficiency. [Id.]

Art. 366. [523] Illegal practices.—Whenever it shall appear to the Commissioner from any examination made by him or any of his examiners that any such banking corporation is conducting its business in an unsafe or unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such illegal, unsafe and unauthorized practices, and require a strict conformity with the provisions of the law, and if wrong entries or unlawful uses of the funds of such corporation have been made, he or they shall require that such entries shall be corrected and such sums unlawfully paid out shall be restored by the person or persons responsible for the wrongful or illegal payment thereof. [Id.]

Art. 367. Investigation of fraud.—If it should be brought to the knowledge of the Commissioner that any officer of a bank or bank and trust company organized and doing business under the laws of Texas is engaging in fraudulent business enterprises, or in any line of business reasonably calculated to bring discredit upon such corporation, the Commissioner shall call together the directors of said corporation and lay before them the facts and demand a discontinuance of such practices. [Acts 1923, p. 323.]

Art. 368. [523] Unsafe bank.—Should any banking corporation refuse or neglect to make any report as required by law, or to comply with any orders made by any official of the Banking Department, or whenever it shall appear to the Commissioner that it is unsafe or inexpedient for such corporation to continue to transact business, or that extraordinary withdrawals of money are jeopardizing the interest of remaining depositors, or that any director or officer has abused his trust, or been guilty of misconduct or malversation in his official position injurious to the institution, or that it has suffered a serious loss by fire, burglary, repudiation or otherwise, he shall communicate the facts to the Attorney General, who shall there-

upon institute such proceedings as the nature of the case may require. Such proceedings may be for any character of relief or any remedy suggested by the conditions disclosed. The court, or the judge thereof in vacation, before whom such proceedings shall be instituted, shall have power forthwith to grant such orders, and in its or his discretion, from time to time to modify or revoke the same, and to grant such relief as the evidence, situation of the parties and the interests involved, shall seem to require. [Acts 1905, S. S. p. 502.]

Art. 369. [513–523] Shall close bank.—If an examination made by the Commissioner or by one of his examiners shall disclose that any banking corporation organized under the provisions of this title is insolvent, or that its continuance in business will seriously jeopardize the safety of its depositors or other creditors; or if any such corporation shall make or undertake to make a voluntary assignment of its assets; or if the Banking Board shall disapprove any such bank and shall determine that it is not entitled under this title to conduct a banking business unless such bank goes into voluntary liquidation, then the Commissioner, acting himself or by one of his examiners, shall immediately close said banking corporation and take charge of all the property and effects thereof. [Id.]

Art. 369a. Forfeiture of charter of closed bank.—Sec. 1. Upon the closing of a liquidation of any State bank the Banking Commissioner shall file with the district court of the county in which such bank was located, or with the judge if in vacation, a final report of such liquidation, for the approval of the court or judge; and upon the approval thereof the charter of such bank shall thereupon be forfeited, without the necessity of judicial ascertainment.

Sec. 2. In every case of forfeiture of charter of an insolvent State bank, as above provided, the Banking Commissioner shall prepare an appropriate certificate of facts and shall file one copy of same with the clerk of the county in which such bank was located, one copy in the archives of the Banking Department, and one copy with the Secretary of State. Such certificates shall be filed and recorded by the respective officers in an appropriate book kept for that purpose. [Acts 1927, 40th Leg., p. 295, ch. 209.]

Art. 370. [523] Inspection.—The Commissioner, as soon as practicable after taking charge of such bank, shall ascertain by a thorough examination into the affairs its actual financial condition. If he is satisfied that it cannot resume business or liquidate its indebtedness to the satisfaction of all its creditors, he shall report the fact of its insolvency to the Attorney General. [Acts 1905, S. S. p. 502.]

Art. 371. [453–523] Liquidating officer.—Immediately upon the receipt of such notice, the Attorney General shall institute proceedings for the appointment of a receiver to take charge of such bank and to wind up the affairs and business thereof for the benefit of its depositors, creditors and stockholders. The court, or the judge thereof in vacation, shall immediately appoint said receiver. Complaint or opposition of the bank or its officers subsequently may be heard in open court. Until a receiver is appointed, the Commissioner may appoint a competent person to take charge of the affairs of such insolvent bank. If a State bank or bank and trust company comes voluntarily into the hands of the Commissioner, no receiver shall be appointed, and the Commissioner shall appoint a competent person in lieu thereof. [Id.; Acts 2nd C. S. 1909, p. 408.]

Art. 372. [Repealed by Acts 1927, 40th Leg., p. 429, ch. 284, § 1.]

Art. 373. Insolvency of Reserve bank.—If any State bank which is a member of a Federal Reserve bank shall be declared insolvent and taken over by the Banking Commissioner of Texas for the purpose of liquidation as provided by law, the stock held by it in the said Federal Reserve bank may be cancelled without impairment of its liability and all cash paid subscriptions on said stock with one-half of one per cent per month interest from the period of the last dividend, not to exceed the book value thereof, may be first applied to all the debts of said member bank to the Federal Reserve bank, and the balance, if any, paid to the Banking Commissioner, in charge of the liquidation of such insolvent bank. [Acts 1914, 3rd C. S. p. 46; Acts 1927, 40th Leg., p. 291, ch. 204, § 1.]

Art. 374. Liquidation of savings banks.—If any savings bank incorporated under the laws of Texas shall become insolvent, its liquidation shall be accomplished by the Commissioner in the manner provided for other State banks.

Art. 375. [430] Report to Legislature.—The Banking Commissioner shall communicate to the Legislature at its regular sessions on or before February first, a statement of the condition of each savings bank from which a report has been received for the past preceding two years; also the name and location of the savings banks and institutions for savings authorized by him during the previous two years with the date of their corporation. [Acts 1905, S. S. p. 489.]

CHAPTER TWO

INCORPORATION

Art.
376. May incorporate.
377. Articles of association.
378. To be signed, etc.
379. Application for charter.
380. Board to investigate.
381. Issuance of charter.
381a. Amendment of charter.
382. Certificate of authority.
383. Form of certificate.
384. Tax and filing fee.
385. Oath of directors.
386. Disqualification.
387. Election of directors.
387a. By-laws and penalty for failure to adopt.
387b. Annual election of directors.

Article 376. [370] May incorporate.—Five or more persons, a majority of whom shall be residents of this State, who have associated themselves by written articles of agreement as provided by the general corporation law, may be incorporated for the purpose of establishing: (a) a bank of deposit or discount, or both of deposit and discount; (b) a banking and trust company; or (c) a savings bank. The name or title designating such business shall not be the name of any corporation heretofore incorporated in this State for similar purposes, or any imitation of such name, and in the case of banks, the word "bank" or "banking" shall be included as a part of the name of such corporation. All titles shall be submitted to the Banking Commissioner for approval. [Acts 1905, S. S. p. 489.]

Art. 377. [371] Articles of association.—The articles of association shall state:

1. The corporate name of the proposed corporation.
2. The purpose for which the corporation is formed.
3. The name of the city or town and county in which the corporation is to be located.
4. The amount of the capital stock of the corporation, which shall be divided into shares of one hundred dollars each; that the same has been bona fide subscribed and actually paid up in lawful money of the United States, and is in the custody of the persons named as the first board of directors.
5. The name and place of residence of each shareholder, and the number of shares subscribed by each.
6. The number of directors, and the names of those agreed upon for the first year.
7. The number of years the corporation is to continue, which in no case shall exceed fifty. [Id.]

Art. 378. To be signed, etc.—Such articles of association shall be signed and acknowledged by the parties thereto. No certificate of incorporation under this title shall be valid unless at the time the articles of agreement were acknowledged the capital stock therein mentioned shall have been bona fide subscribed and paid up in lawful money. [Id.]

Art. 379. Application for charter.—The incorporators of any proposed State bank, savings bank or

bank and trust company shall make application to the State Banking Board for a charter in such form as said Board may prescribe and submit and present to said Board articles of incorporation or association, as prescribed by law. [Acts 1913, p. 211.]

Art. 380. Board to investigate.—The Board shall carefully examine the articles of association, and each such incorporator shall show to the satisfaction of said Board, by affidavit or otherwise as may be required by said Board, that he is worth over and above exemptions and liabilities at least double the amount of the par value of the stock subscribed by him. The said Board shall also inform itself as to the public necessity of the business of the community in which it is sought to establish the same, and determine whether its capital is commensurate with the requirements of law, and the location of the business, and that the applicants are acting in good faith. [Id.]

Art. 381. Issuance of charter.—If the Board determines any requirement unfavorably to the applicants, the charter shall be refused; but if favorably, then the charter shall be granted, and the articles of incorporation or association shall be filed with the Commissioner who shall deliver a certified copy thereof to the incorporators which shall be filed in the office of the county clerk of the county in which the corporation may be located. [Id.]

Art. 381a. Amendment of charter.—That hereafter any State Bank or State Bank and Trust Company may amend its charter to increase or decrease its capital stock, to change its name, to adopt trust company powers, and for any other lawful purpose. Such amendments shall be in force and take effect when adopted by a vote of the stockholders holding two-thirds interest of the capital stock, and when approved by the Banking Commissioner of Texas and filed in the archives of his office. Stockholders shall be given notice of the intention to make such amendments by publication for not less than four consecutive weeks in a newspaper published in the town or county where the bank is located, and also by notice mailed to each stockholder not less than thirty days next preceding the date of the stockholders' meeting. [Acts 1927, 40th Leg., p. 289, ch. 202, § 1.]

Art. 382. [511] Certificate of authority.—All State banks transacting business in Texas shall be required to hold a certificate of authority to transact a banking business issued by the Commissioner as provided in the succeeding article, and to keep same conspicuously posted at all times in the banking house where such business is transacted. [Acts 1909, 2nd C. S. p. 406.]

Art. 383. [512] Form of certificate.—The Commissioner shall issue to each State bank which the State Banking Board shall have approved and certified to him as being entitled to transact a banking business, a certificate of authority in such form as the Board shall approve, to be signed by him under his official seal, certifying that such bank is authorized under the laws of this State to engage in the banking business. Such certificate, when issued to guaranty fund banks shall contain the following statement on the face thereof in bold type. "The noninterest bearing and unsecured deposits of this bank are protected by the State bank guaranty fund." And, when issued to bond security banks shall contain the following statement on the face thereof in bold type: "All deposits of this bank are protected by security bond under the laws of the State of Texas." When issued to the State banks other than guaranty fund and bond security banks, it shall contain neither of these, nor any similar statement. [Id.]

Art. 384. Tax and filing fee.—At the time the articles of incorporation aforesaid are submitted to the State Banking Board, the applicants for charter shall deposit with the Commissioner the fee required by law for the charter they seek to have granted. If the charter is refused by said Board, then the charter fee shall be returned to the applicants. A certified copy of the articles of incorporation shall not be delivered to the incorporators until they present to the Banking Commissioner a receipt from the Secretary of State showing that they have paid to the latter officer the required franchise tax. [Acts 1913, p. 211.]

Art. 385. Oath of directors.—Each person elected director of a State banking institution shall make oath that he will diligently and honestly administer the affairs of such corporation and will not knowingly violate or willingly permit to be violated any provision of the banking laws of this State; that he is the owner in good faith and in his own right of his legal quota of the stock of such corporation; and that same is not hypothecated or pledged for debt. Such oath when subscribed and duly certified, shall be filed permanently in the minutes of the corporation. [Acts 1917, p. 469.]

Art. 386. Disqualification.—Any director of such corporation who shall hypothecate or pledge his legal quota of the stock of such corporation shall automatically forfeit his position. [Id.]

Art. 387. Election of directors.—The charter of any such corporation need not be amended in order to increase or decrease the number of directors. The stockholders may at any regular annual election of directors elect such number as they may see fit, not less than five nor more than twenty-five, and such number so elected shall be the full number of directors for the ensuing year for which they are elected. When the number of directors is changed under this article, a certified copy of the resolution changing the number shall be forwarded at once to the Commissioner to be filed by him free of charge in the charter file of the corporation. [Id.]

Art. 387a. By-laws and penalty for failure to adopt.—Sec. 1. Hereafter all State Banks, Savings Banks and Bank and Trust Companies shall adopt by-laws and every such corporation shall file a certified copy of said by-laws with the Banking Commissioner and if said by-laws shall at any time be amended a certified copy of said amendment shall be filed with the Banking Commissioner.

Sec. 2. The failure of any State Bank to comply with the above provisions shall render it liable for a penalty of twenty-five dollars per day for each and every day such Bank may be delinquent, to be recovered in an action by the Attorney General. [Acts 1927, 40th Leg., p. 201, ch. 132.]

Art. 387b. Annual election of directors.—Hereafter, Directors of State Banks, Bank and Trust Companies and Banking Corporations, organized and doing business under the laws of this State, shall be elected annually. Should any State Bank or Bank and Trust Company, organized and doing business under the laws of this State, fail or refuse to hold an annual meeting of its stockholders and elect directors as hereby provided, upon the date fixed by law, or by the by-laws of such bank or bank and trust company or within sixty days after such date, then it shall be the duty of the Banking Commissioner to close such institution and liquidate same according to law. [Acts 1927, 40th Leg., p. 296, ch. 210, § 1.]

CHAPTER THREE

BANKS

Art.
388. Board of directors.
389. Qualification.
390. Vacancy.
391. Capital stock.
392. Powers of corporation.

Article 388. [374] Board of directors.—The business of every banking corporation shall be managed by a board of directors, a majority of whom shall be bona fide resident citizens of this State, and each of whom shall be a bona fide owner of at least five shares of the capital stock thereof, unless the capital stock of the corporation exceeds seventeen thousand five hundred dollars, in which case each director shall be a bona fide owner of at least ten shares of the capital stock. No person shall be a director in any bank

against whom such bank holds a judgment. [Acts 1905, S. S. p. 489.]

Art. 389. [374] Qualification.—Every person who shall be elected a director of a bank shall within thirty days after said election, qualify as such director by filing with the officers of such bank a written acceptance of the position, a copy of which shall be spread upon the records of the acts of the directors. Failure to comply with this provision within the time specified shall work a forfeiture of the position. [Id.]

Art. 390. [374] Vacancy.—When any vacancy occurs by such failure, the board of directors shall at the next regular meeting thereafter enter the fact of such vacancy upon their records and immediately proceed to elect some competent person to fill the unexpired term. A vacancy in the board from any cause, previous to the annual election, may be filled by the remaining members. [Id.]

Art. 391. [375] Capital stock.—When a bank is located in a town having less than eight hundred inhabitants, its capital stock shall not be less than seventeen thousand five hundred dollars, nor less than twenty-five thousand dollars for banks located in towns and cities having eight hundred inhabitants and less than ten thousand inhabitants, nor less than fifty thousand dollars for banks located in towns and cities having ten thousand inhabitants and less than twenty thousand inhabitants, nor less than one hundred thousand dollars in towns and cities having twenty thousand inhabitants or more. No bank shall have a capital stock of more than ten million dollars. The population of all towns and cities for the purpose of fixing the minimum capital stock of banks under this title shall be ascertained by reference to the last preceding Federal census. [Acts 1923, p. 93.]

Art. 392. [376] Powers of corporation.—Banking corporations shall be authorized to conduct the business of receiving money on deposit, allowing interest thereon, and of buying and selling exchange, gold and silver coins of all kinds; of lending money upon real estate and personal property and upon collateral and personal securities at a rate of interest not exceeding that allowed by law; and of buying, selling and discounting negotiable and non-negotiable commercial paper of all kinds. No such bank shall lend more than fifty per cent of its securities upon real estate, nor make a loan on real estate to an amount greater than half the reasonable cash value thereof. [Acts 1905, S. S. p. 489.]

CHAPTER FOUR

BANK AND TRUST COMPANIES

Art.
393. Board of directors.
394. Term of office.
395. Capital stock.
396. Powers of corporation.

Article 393. [383] Board of directors.—Bank and trust companies shall be controlled and managed by directors who shall be stockholders of such corporation, and a majority of whom shall be bona fide citizens of Texas. They shall be elected by the shareholders of such corporation who shall meet at such time and place as shall be directed by the by-laws of such corporation. At least two weeks notice of such time and place shall be published in some daily or weekly newspaper which circulates in the county or city in which the corporation is located. The election shall be by ballot only, and only those shareholders who shall attend the meeting in person or by proxy in writing, shall vote at such election. All directors shall hold office until their successors are elected and qualified. [Acts 1st C. S. 1905, p. 489.]

Art. 394. [383] Term of office.—If the board of directors of such corporation shall exceed five in number, they shall as soon as practicable after their organization, divide themselves by ballot into three classes of equal number as near as may be, designated the first, second, and third class, of which the first class shall remain in office one year, the second class two years, and the third class three years; and at each annual election directors shall be elected for the term of three years to fill the vacancies created by the retiring class. If one or more directors dies or resigns, the survivors shall fill the vacancy until the next election. [Id.]

See article 387b.

Art. 395. [384] Capital stock.—The amount of capital stock of a bank and trust company shall not be less than fifty thousand nor more than ten million dollars. No bank and trust company shall be incorporated in a town or city having twenty thousand inhabitants or more with a capital stock of less than one hundred thousand dollars. [Id.; Acts 1913, p. 207.]

Art. 396. [385] Powers of corporation.—Bank and trust companies may be created for the purpose of establishing a bank of deposit or discount, or both of deposit and discount, with the powers set out in article 392, and any one or more of the following purposes:

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

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

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

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

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

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

7. To take, accept and execute any and all such legal trusts, duties and powers in regard to the holding, management and disposition of any estate, real or personal, and the rents and profits thereof, or the sale thereof, as may be granted or confided to it by any court of record, or by any person, corporation, municipality, or other authority; and it shall be accountable to all parties in interest for the faithful discharge of every such trust, duty or power which it may so accept.

8. To take, accept and execute any and all such trusts and powers of whatever nature or description, as may be conferred upon or intrusted or committed to it by any person or persons, or any body politic, corporation or other authority by grant, assignment, transfer, devise, bequest or otherwise, or which may be intrusted or committed or transferred to it or vested in it by order of any court of record, and to receive, take and hold any property or estate, real or personal, which may be the subject of any such trust.

9. To purchase, invest in, guarantee and sell stocks, bills of exchange, bonds and mortgages and other securities; and when moneys or securities for moneys are borrowed or received on deposit, or for investment, the bonds or obligation of the company may be given

therefor, but it shall have no right to issue bills, to circulate as money.

10. To act as executor under the last will or as administrator of the estate of any deceased person, or as guardian of any infant, insane person, idiot or habitual drunkard, or trustee for any convict in the penitentiary, under appointment of any court of record having jurisdiction of the estate of such deceased person, infant, insane person, idiot, habitual drunkard or convict. [Acts 1905, S. S. p. 492.]

CHAPTER FIVE

SAVINGS BANKS

Art.
397. Board of directors.
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410. Deposit in trust.
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412. Capital stock.
413. Powers of corporation.
414. Powers as to real estate.
415. May limit deposits.
416. Investment of savings.
417. Cash reserve.
418. Guaranty fund.
419. Indemnity fund.
420. Valuation of securities.
421. Payment of interest.
422. Interest rate.
423. Dividends.
424. Net profits.
425. Extra interest.
426. Annual report: assets.
427. Report: liabilities.
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429. Penalty.

Article 397. [390] Board of directors.—Savings banks shall be controlled and managed by a board of directors, not less than five nor more than thirteen in number, who shall be stockholders of the corporation, and a majority of whom shall be bona fide citizens of Texas. Their election, term of office and the filling of vacancies on the board shall be governed by the provisions of articles 393 and 394. The directors shall elect from their number a president, one or more vice presidents, a secretary and treasurer, and may appoint such other officers and agents as they may deem necessary for the proper conducting of the business of the corporation, and may allow them reasonable compensation for services rendered. The vote of a majority of the full board shall be requisite for the appointment of any officer receiving a salary therefrom, or to fix or increase the salary of any officer. No person shall be disqualified from being a director by reason of his being a director or officer of a bank or savings institution organized under the laws of this State. [Acts 1905, S. S. p. 489.]

Art. 398. [391] Meetings of board.—Regular meetings of the board of directors shall be held at least once in each month for the transaction of the business of the bank, at which meeting all the officers and committees shall report to the board. A quorum at any regular, special or adjourned meeting shall consist of not less than a majority of directors. Less than a quorum may adjourn from time to time, until the next regular meeting. [Id.]

Art. 399. [418–419–422] Compensation of directors.—It shall be lawful for directors, acting as officers of savings banks whose duties may require their regular and faithful attendance at the institution, to receive such compensation as the majority of the board of directors shall deem just and reasonable; such majority shall be exclusive of any director to whom such compensation shall be voted. It shall not be lawful to pay the directors, as such, for attendance at the meetings of the board. No director shall, directly or indirectly receive any payment or emolument for his services as such of any savings bank, except as herein provided. All sums paid for services, fees or otherwise to a member of the board shall be reported in detail at such regular meeting of the directors. [Id.]

Art. 400. [420] Fees restricted.—No such corporation, or any person acting in its behalf shall negotiate, take or receive a fee, brokerage, commission or gift or other consideration for or on account of the loan made by and in behalf of such corporation, other than appears on the face of the note or contract by which such loan purports to be made. Nothing herein shall apply to any reasonable charge for services in the examination of title and the preparation of conveyance to such corporation as security for its loan. [Id.]

Art. 401. [405] Application for loans.—All applications for loans shall be made in writing to the treasurer of the corporation, who shall keep a record thereof showing the date, name of applicant, amount asked for, and security offered, and shall cause the same to be presented to the board of directors. [Id.]

Art. 402. [421] Officers not to borrow.—No director or officer of such corporation shall, directly or indirectly, for himself or as agent or partner of others, borrow any of the funds of the corporation, or funds in its custody, or in any manner use the same, except to make necessary current payments for the corporation, or to make investments, or to deposit for safety under the direction and authority of the board of directors; nor shall any director or officer of such corporation be an indorser or surety or in any way be an obligor for moneys loaned or borrowed of the corporation. [Id.]

Art. 403. [423] Penalty for borrowing, etc.—If a director violates any provision of the preceding article; or fails to attend regular meetings of the board, or fails to perform any duty devolved upon him as such director for three successive months without having been excused by the board for such failure, the office of such director shall become vacant. Such director may, in the discretion of the board, be eligible to re-election. [Id.]

Art. 404. [424] Security from officers.—The board of directors may, from time to time, require from each officer, employé and agent of such corporation, such security for their fidelity and good conduct as may be necessary. [Id.]

Art. 405. [416] Powers of directors.—The board of directors of any such corporations shall have power from time to time to make such laws, rules and regulations as they may think proper for the election of officers, for prescribing their respective powers and duties, and the manner of discharging them; for the appointment of committees, and generally for transacting, managing and directing the affairs of the corporation. Such by-laws, rules and regulations shall not be repugnant to nor inconsistent with the provisions of this title, nor the Constitution of this State, nor of the United States. [Id.]

Art. 406. [397] Payment of deposits.—The board of directors may regulate the payment of deposits and require sixty days notice of the withdrawal of any deposit. Such regulations shall not be retroactive nor in conflict with any provision of this chapter, and shall be printed and conspicuously posted at the place of deposit. Upon notice to the depositor, any account may be closed whereupon it shall cease to draw interest. [Id.]

Art. 407. [417] Effect of notice.—Notices and rules posted conspicuously by savings banks in the room where such business is transacted, shall be equivalent to a personal notice to any party interested. [Id.]

Art. 408. [398] Pass book.—A pass book containing the rules and regulations adopted by the board of directors governing deposits shall be issued to each depositor, and all payments to and withdrawals by such depositor shall be entered therein. No payment or check against any such savings account shall be

made unless accompanied by and entered in the pass book issued therefor, except for good cause and on assurance satisfactory to the officers of the bank. At least once in every three years all pass books shall be called in and verified in such manner as the board of directors shall elect. [Id.]

Art. 409. [399] Deposit of minor or female.—Whenever any deposit shall be made by or in the name of any minor, or a female being or thereafter becoming a married woman, the same shall be held for the exclusive right and benefit of such depositor, and shall be paid, together with the interest thereon upon the production of and proper entry in the pass book at the time of such payment, and in accordance with the by-laws of the corporation, to the person in whose name the deposit shall have been made, and the receipt or acquittance of such minor or female shall be a valid and sufficient release and discharge for such deposit or any part thereof to the corporation. [Id.]

Art. 410. [400] Deposit in trust.—Whenever any deposit shall be made by any person in trust for another, and no other or further notice of the existence and terms of a legal and valid trust shall have been given in writing to the bank, in the event of the death of the trustee, the same or any part thereof together with the interest thereon may be paid to the person for whom the said deposit was made. [Id.]

Art. 411. [413] Safety deposit box rent.—Any corporation which has been authorized or may hereafter be authorized to own or control a safety vault and rent the boxes therein may, if the amount due for the use of any safe or box in the vault of such corporation shall not have been paid for two years, at the expiration thereof cause to be sent to the person in whose name such safe or box stands on its books, a written notice in a securely closed, postpaid registered letter directed to such person at his postoffice address as recorded upon the books of the corporation, notifying such person that if the amount then due for the use of such safe or box is not paid within sixty days from the date of such notice, the corporation will then cause such safe or box to be opened in the presence of its president or vice president, secretary or treasurer, and of a notary public not an officer or in the employ of the corporation, and the contents thereof, if any, to be sealed up by such notary public in a package, upon which such notary public shall distinctly mark the name and address of the person in whose name such safe or box stands upon the books of the corporation, and the estimated value thereof. And the package so sealed and addressed and marked for identification will be placed by such notary public in one of the general safes or boxes of the corporation and retained by the corporation subject to the payment of all rent that may be unpaid, and of all expenses incurred in opening the safe or box, and also of a reasonable compensation for the safekeeping of the contents after their removal from the safe or box. [Id.]

Art. 412. [392–393] Capital stock.—The capital stock of a savings bank shall not be less than ten thousand dollars in cities having a population of fifty thousand inhabitants or under, and not less than fifty thousand dollars in cities having a population of more than fifty thousand. Such corporation may increase its capital stock in the manner provided by law to an amount not greater than five million dollars. Stockholders shall have the first right to subscribe to such increase in proportion to the amount of stock held by each. [Id.]

Art. 413. [395] Powers of corporation.—Savings banks shall have authority:

1. To receive, accumulate and safely keep any deposits of money from any persons, corporations or societies, and to invest, hold and repay the same, crediting and paying interest thereon as in this chapter authorized and provided, and not otherwise;

2. To issue certificates of deposit payable on demand or such other time as may be agreed upon by the depositor and the bank;

3. At its option, to take and receive as bailee for safe keeping and storage, any character of acceptable valuable articles, guaranteeing their safety upon such terms and for such compensation as may be agreed upon with the owner, and to let out vaults, safes and other receptacles for the use, benefit and purposes of such corporations. [Id.; Acts 1907, p. 305.]

Art. 414. [414] Powers as to real estate.—It shall be lawful for any savings bank to purchase, hold, sell and convey real estate as follows:

1. The house and lot, not to exceed in value twenty per cent of the capital stock of such bank, on which is the domicile of such corporation, and from portions of which not required for its own use any revenue may be derived;

2. Such as shall be purchased by it at sales upon foreclosure of mortgages or deeds of trust owned by such corporations, or upon judgments or decrees rendered for debts due to it or purchased or taken in settlement to secure such debts, and all such interest shall be sold to some person other than some one interested in the bank within five years after same shall be vested in it, unless the Commissioner shall extend the time within which such sale shall be made. [Acts 1905, S. S. p. 489.]

Art. 415. [396] May limit deposits.—Every such corporation shall have the right to limit, refuse or return any deposit at its discretion. No individual or corporation may deposit more than four thousand dollars inclusive of dividends. Sums in any amount arising from judicial sales or trust funds or received pursuant to the order of a court of record may be received for deposit. [Id.]

Art. 416. [403–432] Investment of savings.—Such corporations shall invest not more than eighty-five per cent of the total amount of its savings deposits in any of the following classes of securities, and not otherwise:

1. In bonds or interest bearing notes or obligations of the United States or of those for which the faith of the United States is pledged for the payment of principal and interest;

2. In bonds, interest bearing notes, or other obligations issued under due authority of law in payment for permanent improvements made; bearing a fixed rate of interest and payable within a definite number of years or over a series of years; of any city, county, town or school district or other subdivision in this State, now organized or which may hereafter be organized, and which is now or may hereafter be authorized to issue bonds under the Constitution and laws of this State, which has not defaulted in the payment of any part of either principal or interest thereof within five years previous to making such investments;

3. In bonds of this State, or of any State of the Union that has not within the last five years previous to making such investment, defaulted in the payment of any part of either principal or interest thereof;

4. In the first mortgage bonds of any steam or electric railroad, which has its domicile in this State, or other public utility corporations domiciled in this State, the average annual net earnings of which, for a period of five years next previous to the purchase of such bonds, have amounted at least to twice the annual interest charges on the entire funded debt of such railroad or public service corporation;

5. In bonds or notes secured by first mortgage, first deed of trust or other first lien on improved real estate in Texas worth at least twice the amount loaned thereon, such bonds or notes to run for a term of not longer than ten years, and to be always accompanied by a complete abstract of title to the property mortgaged and an attorney's certificate or title insurance policy in some company incorporated under the laws of Texas, certifying said bonds or notes to be the first lien on the land mortgaged; and further provided that the value of the real estate, exclusive of mineral leases or other mineral estate, shall be at least twice the amount loaned thereon; and in addition thereto, in assignable certificates issued by any city, town, or village

for street paving the payments of which are secured by first liens fixed on the abutting properties by assessments levied in accordance with law and thereby made the personal obligations of the abutting property owners. It shall be the duty of the directors of such corporation as soon as practicable, to invest the moneys and funds of such savings accounts by purchase or otherwise, in the securities above described. Such directors, from time to time shall sell and invest the proceeds of such investments, and for the purpose of meeting current demands and expenses in excess of the receipts, any of the securities may be sold or pledged. [Id.; Acts 1909, 2nd C. S. p. 406; Acts 1927, 40th Leg., p. 371, ch. 252, § 1.]

Art. 417. [406] Cash reserve.—There shall be kept an available cash fund of not less than fifteen per cent of the whole amount of its assets, and the same, or any part thereof, may be kept on hand or on deposit payable on demand in any bank or banking association of Texas, or under the laws of the United States approved by the Banking Commissioner, and having a paid up capital stock of fifty thousand dollars or more. The deposits in any one bank or trust company shall not exceed twenty per cent of the total deposits, capital and surplus of such savings bank. [Acts 1905, S. S. p. 489.]

Art. 418. [394–397] Guarantee fund.—The capital stock shall be regarded as a guarantee fund for the security of depositors, and shall be invested as provided in article 416. [Id.]

Art. 419. [407] Indemnity fund.—When the guarantee fund of any savings bank amounts to a sum equal to the capital stock of the corporation, and after interest on the deposits and dividends on the capital stock have been paid as provided herein, the board of directors shall at the time of making the regular semi-annual dividends, set aside and reserve from the remaining net profits which have accumulated during the preceding six months, a sum not exceeding one-fourth of one per cent of the total deposits on such interest day, to be known as indemnity fund, until such fund amounts to ten per cent of the whole deposits, and such fund shall thereafter be maintained and held to meet any contingency or loss from depreciation of securities or otherwise. [Id.]

Art. 420. [408] Valuation of securities.—In determining the per cent of the guarantee and indemnity funds so held by savings banks, the interest-bearing notes and bonds shall not be estimated above their par value, or above their market value if below par; its bonds and mortgages and deeds of trust not in arrears of interest for a period longer than one year, at their face value; its real estate at not above cost. All debts due any savings bank or institution on which the interest is past due for a period of twelve months, unless well secured and in process of collection, shall be considered as bad debts, and shall be charged to profit and loss account at the expiration of that time. [Id.]

Art. 421. [401] Payment of interest.—No interest shall be paid or declared by savings banks until its board of directors cause an examination to be made of the assets and securities, and find the amount of such interest and dividend has been actually earned and accrued. No interest or dividend shall be paid or declared unless authorized by a vote of the board of directors and duly entered on the minutes at a regular meeting. [Id.]

Art. 422. [402] Interest rate.—The board of directors shall regulate from time to time the rate of interest to be allowed to depositors out of the net profits, and pay or credit the same on semi-annual interest dates to be fixed by the directors. The directors may classify the depositors according to character, amount and duration of their dealings with the corporation and regulate the interest allowed in such manner that each depositor shall receive the ratable portion of interest as all others of the same class. [Id.]

Art. 423. [409] Dividends.—No dividend exceeding ten per cent per annum shall be paid on its capital stock in any event, and no dividend shall be paid except as herein provided. Whenever interest at a rate of not less than three per cent per annum shall have been paid or credited by savings banks out of the net profits of the current six months on all savings or trust funds which may be entitled thereto, the board of directors may, out of the remaining net earnings of such six months, if any there be, declare and pay a dividend on the capital stock of the corporation not exceeding ten per cent of its par value. No such dividends shall be declared or paid until at least one-tenth of the profits of the corporation for such period of six months shall be carried to the credit of the guarantee fund until such fund equals the amount of the capital stock, which sum shall be invested as provided herein for the investment of the capital fund. [Id.]

Art. 424. [411] Net profits.—If for any period of six months, the net profits shall not be sufficient to pay a dividend on the capital stock of any savings bank amounting to three per cent for such six months, then, if there are any net profits in any succeeding six months period or periods and the amount required to be carried to the guarantee fund, such excess or net profits shall be applied to the arrears of the dividend on the capital stock, until such arrears of dividend are paid in full; and no part of the net profit shall be credited on the indemnity fund as provided in article 419, nor to the payment of the extra interest to the depositors as provided in the succeeding article. [Id.]

Art. 425. [412] Extra interest.—Once in every term of three years, if the net profits of savings banks which have accumulated over and above the guarantee and indemnity funds amount to one per cent of the deposits which have remained with such corporation for at least one year next preceding, such net profits shall be divided among the depositors whose deposits shall have remained therein at least one year next preceding, in proportion to the amount of interest which has been paid on their deposits during the three years then next preceding. Nothing herein shall be construed to require the payment of any interest on money or property received as bailee for safe keeping and storage only. [Id.]

Art. 426. [425] Annual report: assets.—Every savings bank organized under the provisions of this title shall, on or before the first day of November in each year make a written report to the Commissioner in such form as he may prescribe, of its condition on the first day of September preceding. Such report shall state the amount loaned on bonds and mortgages, together with a list thereof; the par value and the estimated market value of all bond investments, designating each particular kind, and the amount invested in each; the amount loaned upon pledge of deposits, with a statement of the amount held as collateral for such loans; the amount of cash on hand and on deposit with other banks or institutions, with their names and amount deposited in each; the amount of all assets, including interest accrued and not enumerated above. [Id.]

Art. 427. [426] Report: liabilities.—Such reports shall also state all liabilities of such savings bank on the morning of the first day of September, the amount due depositors, which shall include any dividend to be created to them for six months on that day, and any other claims against the corporation which are or may be charged against its assets; the amount of all deposits made during the fiscal year ending that day, and the amount drawn out during the same period; the whole amount of interest received and earned, and the amount of interest paid and credited to depositors, together with the amount of each semi-annual credit of interest; the number of accounts opened and re-opened, the number closed during the year, and the number of open accounts at the end of such year, and such other information as the Commissioner may require. [Id.]

Art. 428. [427] Report: verification.—Such report shall be verified by the oath of the two principal officers of such savings bank; and the statement of the assets shall be verified by the oath of at least

three of the board of directors who shall have thoroughly examined the same. On or about the first day of September of each year such directors shall examine the books, vouchers, and assets of such institution, and its affairs generally; and the statement of assets and liabilities reported to the Commissioner on the first day of November of each year shall be based upon such examination. Nothing herein shall prohibit the directors from requiring such examination at such other times as they shall prescribe. [Id.]

Art. 429. [427] Penalty.—Any such corporation failing to furnish to the Commissioner any report or statement required in this chapter shall forfeit the sum of one hundred dollars per day for every day such report or statement shall be so withheld; and the Commissioner may maintain an action [in the name of his office] in his name of his office to recover such penalty, and when collected, the same shall be paid into the State Treasury and be applied to the school fund. The Commissioner may, for sufficient cause, extend the time for making such report, not exceeding thirty days. [Id.]

CHAPTER SIX

SAVINGS DEPARTMENTS

Art.
430. Adoption by bank.
431. Rules and regulations.
432. Reserve deposits.
433. Depositors' prior lien.
434. Payment of interest.
435. Accumulated earnings.
436. Statement of assets, etc.

Article 430. [431] Adoption by bank.—Any State bank or bank and trust company incorporated under the laws of this State desiring to maintain a savings department or to use or continue to use the word "savings" as part of its corporate name, or in or as part of any sign or advertisement, or in or upon any stationery used or to be used by it, shall establish and maintain a savings department in compliance with the provisions of this chapter, and shall, except as otherwise herein provided, be governed in the conduct of such savings department by the provisions of Chapter Five pertaining to savings banks when such provisions are not in conflict herewith. Such savings department may be established by a resolution to that effect adopted by the board of directors at a regular meeting, and shall contain a copy of this chapter. A certified copy of such resolution shall be filed in the office of the Commissioner, and also recorded in the office of the county clerk of the county in which such bank or bank and trust company is located. The business of such savings department shall be kept entirely separate and distinct from the general business of such bank or bank and trust company, and all moneys received as such savings deposits and the funds and securities in which the same may be invested shall be kept at all times segregated from and unmingled with the other moneys and funds of the bank or bank and trust company. [Acts 1909, 2nd C. S., p. 406.]

Art. 431. [442] Rules and regulations.—The board of directors, at any regular meeting of the stockholders, may adopt reasonable rules and regulations for the control of such savings department, to become effective when approved by the Commissioner. [Id.]

Art. 432. [435] Reserve deposits.—There shall be kept on hand at all times not less than fifteen (15%) per cent. of the whole amount of such deposits in such savings departments, two-thirds of which shall be kept with reserve agents designated and approved for such purposes by the Commissioner, and one-third of which shall be kept in actual cash in such savings departments, or the same, or any part thereof, may be invested in United States bonds or other direct obligations of United States Government. [Acts 1909, 2nd C. S., p. 406; Acts 1927, 40th Leg., 1st C. S., p. 252, ch. 94, § 1.]

Art. 433. [437] Depositors' prior lien.—In case of the insolvency or liquidation of any such State bank or bank and trust company, its savings depositors shall have an exclusive prior lien upon all the assets, including cash of such savings department, and after such depositors have been paid in full, the remainder shall be applied to the payment of claims of general creditors. [Id.]

Art. 434. [439] Payment of interest.—The directors of any such State bank or bank and trust company may provide that such rate of interest shall be paid on the savings deposits as it may see fit, payable at such periods and upon such terms and conditions as may be reasonable. If the earnings of such savings department are insufficient to pay any interest due upon any savings deposits, such interest or the deficiency therein, shall be paid by the bank or bank and trust company out of its general funds. [Id.]

Art. 435. [440] Accumulated earnings.—At the end of any period for which such bank or bank and trust company may lawfully declare a dividend upon its stock, it shall be proper to transfer to the general fund of such bank or bank and trust company all accumulated earnings of said savings department after the payment or credit of all interest due on the accrued savings deposits and the legitimate expenses of such department have been provided for. [Id.]

Art. 436. [438] Statement of assets, etc.—The president of each State bank or bank and trust company maintaining a savings department, shall file with the Commissioner, not less than ten days after the first day of each calendar month, a statement of the assets and liabilities of such savings department, upon a form to be prescribed by the Commissioner. It shall be unlawful for any officer of such bank or bank and trust company to receive or assent to the receiving of any savings deposits when the last preceding monthly statement as herein provided for is not conspicuously posted in the office where such business is transacted. [Id.]

CHAPTER SEVEN

BANK DEPOSIT GUARANTY LAW

Art.
437. [Repealed.]
438. False advertising.
439. State Banking Board.
440. [Repealed.]

GUARANTY FUND PLAN

441–449. [Repealed.]
450. Voluntary surrender.
451. Notice of insolvency.
452. May resume business.
453. Powers of Commissioner.
454. May sell property.
455. Liability of stockholders.
456. Notice to creditors.
457. Delayed claims.
458. Objections to claims.
459. May reject claim.
460. Inventory of assets and claims.
461. Disposition of moneys.
462. Expenses of liquidation.
463. Dividends declared.
464. [Repealed.]
465. Unclaimed deposits.
466. [Repealed.]
467. Payment of trust moneys.
468. Rights of stockholders.
469. Liquidation continued.
470. [Repealed.]
471. Stockholders' agent.
472. Transfer of assets.
473. Duties of new agent.
474. Death, etc., of agent.

BOND SECURITY SYSTEM

475–489. [Repealed.]

Article 437. [Repealed by Acts 1927, 40th Leg., p. 18, ch. 12, § 1.]

Acts 1927, 40th Leg., p. 18, ch. 12, § 1, provided: "That bonds executed and securities deposited by state banks before the passage of this Act, under the statutes hereby repealed, as members of the Bond Security System, shall not be affected by this repeal until the lapse of one year from the time of the approval of said bond by, or deposit of said securities with, the Banking Commissioner, under existing statutes; and upon the anniversary date of the deposit of said securities with said commissioner next following the passage of this Act, said securities shall be returned by said Commissioner to the bank depositing same, provided the depositing bank shall not have failed and no suits are

pending against it involving its said securities. Any action against the principal or securities of any bond, or other guaranty of indemnity, shall be brought within one year from the date of the expiration of such bond or other guaranty of indemnity; and not thereafter.

"And provided further, that the repeal of any statute or any portion thereof by this Act shall not affect or impair any act done, or right vested or accrued, or any proceeding, suit or prosecution commenced before or after this act shall take effect, to enforce rights vested or accrued prior to the passage of this act; and provided further, that no offense committed, and no liability, penalty or forfeiture, either civil or criminal, incurred prior to the time this Act takes effect shall be discharged or affected hereby; and provided further, that the statutes hereby repealed shall remain in full force and effect for the purpose of liquidating all failed banks in the hands of the Banking Commissioner of Texas at the time this Act shall take effect; and provided further, that the passage of this Act shall not affect the liability of state banks for assessments to the Guaranty Fund as such liability existed at the time this Act takes effect; nor shall any state bank be permitted to withdraw its interest in the Guaranty Fund until all lawful demands against such interest existing at the time this Act takes effect have been fully satisfied and discharged."

Art. 438. [515] False advertising.—All banks or bank and trust companies provided for in this chapter are authorized and empowered to use any truthful method of advertising, and in their advertisement to make any truthful statements as to the Guaranty Fund System or the Bond Security System of the State Banks of Texas, but if any State bank or bank and trust company shall advertise any untruthful statement as to either of said systems, the Banking Commissioner is hereby empowered to demand that said bank or bank and trust company immediately discontinue such untruthful advertising. The Commissioner shall be empowered to enforce said demand by removing any officer of such bank or bank and trust company who is found to be responsible for such untruthful advertising. [Acts 1923, p. 92.]

Art. 439. [446–7] State Banking Board.—The State Banking Board shall consist of the Attorney General, the Banking Commissioner and State Treasurer. Said Board shall have the power of regulation, control and supervision of all State Banking Corporations and Bank and Trust Companies, in conformity to law, and shall adopt all necessary rules and regulations in harmony with the law affecting the regulation of the same. [Acts 2nd C. S. 1909, p. 406; Acts 1927, 40th Leg., p. 18, ch. 12, § 1a.]

Art. 440. [Repealed by Acts 1927, 40th Leg., p. 18, ch. 12, § 1.]

GUARANTY FUND PLAN

Arts. 441–449. [Repealed by Acts 1927, 40th Leg., p. 18, ch. 12, § 1.]

Art. 450. [484–485] Voluntary surrender.—Any incorporated bank or bank and trust company doing business in this State under the provisions of this title may place its affairs and assets under the control of the Commissioner by posting a notice on its front door as follows: "This institution is in the hands of the Banking Commissioner of Texas." The posting of this notice or of any notice by the Commissioner that he has taken possession of any banking institution shall be sufficient to place all its assets and property, of whatever nature, in the possession of the Commissioner, and shall operate as a bar to any attachment proceedings whatever. [Acts 2nd C. S. 1909, p. 406.]

Art. 451. [454] Notice of insolvency.—After the Commissioner has taken possession of an insolvent bank or bank and trust company, he shall give notice thereof to each bank, bank and trust company, corporation and individual holding or in possession of any assets of such insolvent bank or bank and trust company, and no lien or charge for any payment, advance or clearance thereafter made, or liability thereafter incurred shall exist in favor of any person, firm or corporation against any of the assets of such bank. [Id.]

Art. 452. [455] May resume business.—Such bank may, with the consent of the State Banking Board, resume business upon such condition as may be approved by the Board. Such consent shall be evidenced by a written statement from the Commissioner. [Id.]

Art. 453. [456] Powers of Commissioner.—The Commissioner is authorized to collect moneys, claims and debts due to such insolvent bank and to perform such other acts as are necessary to conserve its assets and business, and to liquidate the affairs of such insolvent bank. [Id.]

Art. 454. [458] May sell property.—Upon the order of the district court of the county in which such bank was located, if in session, or the judge thereof if in vacation, the Commissioner may sell or compound all bad or doubtful debts, and may sell the real or personal property of such State bank on such terms as the court shall direct. [Id.]

Art. 455. [459] Liability of stockholders.—The Commissioner may, if necessary to pay the debts of such bank, enforce the individual liability of the stockholders. Suits to enforce such liability may be brought against the stockholders either in the county of the bank's domicile or in the county of the defendant's residence. [Acts 2nd C. S. 1909, p. 406; Acts 1927, 40th Leg., p. 292, ch. 205, § 1.]

Art. 456. [463] Notice to creditors.—The Commissioner shall cause weekly notice to be given in one or more newspapers for three consecutive months, calling on all persons who may have claims against such bank to present the same to the Commissioner and make legal proof thereof at a designated place within ninety days after the date of the first insertion of such notice. The notice shall, in larger type than that in which the body of the notice is printed, specifically state that no claim of guaranteed depositors presented after such time shall be entitled to payment in whole or in part out of the Depositors' Guaranty Fund. The Commissioner shall mail a similar notice to all persons whose names appear as creditors upon the books of the bank. Provided, however, that the Commissioner shall have the discretion to approve any claim against insolvent banks and bank trust companies filed by depositors as claims against the Depositors' Guaranty Fund after the expiration of the time herein provided for the filing of such claim, provided such claim be filed before the declaring of the first dividend to creditors of such bank or bank and trust company; and provided further that claimant shows to the satisfaction of the Banking Commissioner that he did not receive the notice herein provided for or a reasonable excuse for not having filed his claim within the time prescribed by this article. (Acts 1909 [2nd Called Sess.] p. 406, § 9; Acts 1917, p. 469; Acts 1926, 39th Leg., 1st C. S., p. 2, ch. 2, § 1.)

Art. 457. [465] Delayed claims.—Claims presented after the expiration of the time fixed in the preceding article shall be entitled to share in the distribution only to the extent of the assets remaining in the hands of the Commissioner equitably applicable thereto. [Acts 2nd C. S. 1909, p. 406.]

Art. 458. [471] Objections to claims.—Objections to any claim not rejected by the Commissioner may be made by any party interested, by filing such objections with the Commissioner, who shall present the same to the district court, if in session, or to the judge thereof, if in vacation, at the time of the next application to declare a dividend. [Id.]

Art. 459. [464] May reject claim.—The Commissioner may in his discretion reject any doubtful claim presented for allowance. He shall serve notice of such rejection upon the claimant, either by mail or by written notice personally served. An affidavit of the service of such notice shall be filed with the Commissioner. Action upon a claim so rejected must be brought within six months after service. [Id.]

Art. 460. [466] Inventory of assets and claims.—The Commissioner shall make an inventory in duplicate of the assets of such insolvent bank, one to be filed in the office of the Commissioner, and one in the office of the county clerk of the county in which such bank was located. Upon the expiration of the time fixed for the presentation of claims, the Commissioner shall make a full and complete list of all claims presented, specifying such claims as have been

rejected by him, and showing all amounts paid to guaranteed depositors out of the Depositors' Guaranty Fund. The statement shall show the amount to which said fund is entitled by reason of its subrogation to the rights of such paid guaranteed depositors, and each amount retained by him on account of rejected claims of guaranteed depositors and those in dispute. One copy shall be filed in the office of the county clerk of the county in which such State bank was located and one in the office of the Commissioner. Such inventory and list of claims shall be open at all reasonable times to inspection. [Id.]

Art. 461. [468] Disposition of moneys.—Moneys collected by the Commissioners shall be, from time to time, deposited in one or more State banks, and in case of the suspension or insolvency of the depository, such deposits shall be preferred. [Id.]

Art. 462. [467] Expenses of liquidation.—Compensation of counsel, employés and assistants, and all expenses of supervision and liquidation shall be fixed by the Commissioner, subject to the approval of the district court of the county in which said bank was located, if in session, or the judge thereof if in vacation. The compensation of special liquidation agents shall be the same as is provided by law for State bank examiners, and shall, upon the certificate of the Commissioner, be paid out of the fund of such insolvent bank in the hands of the Commissioner. [Id.]

Art. 463. [469] Dividends declared.—After the expiration of the date fixed for the presentation of claims, the Commissioner may declare one or more dividends, and after the expiration of one year from the first publication of a notice to creditors, he may declare a final dividend under the direction of the district court of the county in which such bank was located, if in session, or the judge thereof if in vacation. [Id.]

Art. 464. [Repealed by Acts 1927, 40th Leg., p. 18, ch. 12, § 1.]

Art. 465. [480] Unclaimed deposits.—Dividends and unclaimed deposits remaining in the hands of the Commissioner for six months after the order for final distribution shall be by him deposited in some State bank to be designated by the Banking Board, to the credit of the Commissioner in his official name, in trust for the bona fide depositors and creditors of the liquidated bank. [Id.]

Art. 466. [Repealed by Acts 1927, 40th Leg., p. 18, ch. 12, § 1.]

Art. 467. [482] Payment of trust moneys.—The Commissioner shall pay over the moneys so held by him to the persons respectively entitled thereto upon the order of the Banking Board, which shall direct such payment to such persons upon being furnished satisfactory evidence of their right to the same. In case of doubt or conflicting claims, the Banking Board may require an order of the district court, if in session, or the judge thereof, if in vacation, authorizing and directing the payment thereof. [Id.]

Art. 468. [474] Rights of stockholders.—Whenever the Commissioner shall have paid in full each depositor and creditor of such insolvent bank whose claim shall have been duly proved and allowed, and shall have fully reimbursed the Depositors' Guaranty Fund with interest as hereinbefore provided, and shall have made provision for unclaimed and unpaid deposits or dividends, and shall have paid all the expenses of the liquidation, he shall call a meeting of the stockholders of such bank by giving notice thereof for thirty days in one or more newspapers in the county where such bank was located. At such meeting, the stockholders shall determine whether the Commissioner shall be continued as liquidator and shall wind up the affairs of the bank, or whether an agent or agents shall be elected for that purpose. In so determining, the said stockholders shall vote by ballot in person or by proxy, each share of stock entitling the holder to one vote. A majority of the stock shall be necessary to a determination. [Id.]

Art. 469. [475] Liquidation continued.—If so decided by the stockholders, the Commissioner shall complete the liquidation of the bank, and after paying the expenses thereof, shall distribute the proceeds among the stockholders in proportion to the several holdings of stock, in such manner and upon such notice as may be directed by the district court. [Id.]

Art. 470. [Repealed by Acts 1927, 40th Leg., p. 18, ch. 12, § 1.]

Art. 471. [476] Stockholders' agent.—In case it is determined to appoint an agent or agents to liquidate, the stockholders shall thereupon select such agent or agents. Such agent or agents shall execute and file with the Commissioner such bond as shall be approved by him, conditioned for the faithful performance of all the duties of his or their trust. [Id.]

Art. 472. [477] Transfer of assets.—Upon the filing and approval of such bond, the Commissioner shall transfer and deliver to such agent or agents all the assets of such bank remaining in his hands, whereupon the Commissioner shall be discharged from any further liability to such bank and its creditors and stockholders. [Id.]

Art. 473. [478] Duties of new agent.—Such agent or agents shall convert the assets into cash, and shall account for and make distribution of the property of said bank as herein provided in the case of distribution by the Commissioner, subject to the approval of the district court. [Id.]

Art. 474. [479] Death, etc., of agent.—In case of the death, or removal of such agent or agents, or their refusal to act, the stockholders may, upon giving notice and proof of such fact to the Commissioner, select a successor in the manner hereinbefore provided. [Id.]

BOND SECURITY SYSTEM

Arts. 475–478. [Repealed by Acts 1927, 40th Leg., p. 18, ch. 12, § 1.]

Art. 479. [Repealed by Act of Thirty-Ninth Legislature, p. 26; Acts 1927, 40th Leg., p. 18, ch. 12, § 1.]

Arts. 480–489. [Repealed by Acts 1927, 40th Leg., p. 18, ch. 12, § 1.]

CHAPTER EIGHT

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Article 490. [557] Foreign corporations.—No foreign corporation other than the national banks of the United States shall be permitted to do a business of banking and discount in this State. [Acts 1905, S. S. p. 511.]

Art. 491. [557] Misuse of banking titles.—It shall be unlawful for any incorporated bank other than State banking corporations and national banks to advertise or put forth any sign as a bank, bank and trust company or savings bank, or in any way solicit or receive business as such or as any such, or to use as their name or part of their name, or in or upon any sign, advertising, letterhead or envelope the word "bank," "banker," "banking," "trust," "trust company," "savings bank," "savings," or any other term which may be confused with the name of corporations organized under this title. Corporations heretofore organized under the general laws of this State, and foreign corporations heretofore or hereafter authorized to do business in this State, authorized by their charters to use such name or parts of names as are hereby prohibited, may continue to use the same by using thereafter the words "without banking privileges." Any corporation violating any provision of this article shall forfeit its charter, or if a foreign corporation, its permit to do business within this State. The Attorney General shall, upon information lodged with him to that effect, bring an action against such corporation to wind up its affairs as now provided by law for insolvent corporations, and in addition thereto, any corporation or officer or agent thereof who shall offend against these provisions, shall forfeit and pay the sum of one hundred dollars per day for every day such offense shall be continued, to be sued for and recovered in the name of the State, by prosecuting attorneys of the several counties for the use of the school fund in any county in which such offense shall be committed. [Id.]

Art. 492. [558] State control.—All corporations created under this title are hereby declared to be charged with the public use, and shall be under State control and be subject to such legislation as the Legislature may enact for the government and regulation of such banking institutions in this State. The rights, privileges and powers conferred by the terms of this title to corporations taking advantage thereof or incorporating hereunder are to be held subject to the right of the Legislature to amend, alter or reform the same. Every corporation operating a banking business in Texas under a charter authorized by this State prior to the adoption of the Constitution of 1876, shall be subject to all the provisions of this title. Id.; Acts 1923, p. 424.]

Art. 493. [529] Inspection of records.—The books and records of the proceedings of all banking corporations shall be kept open for inspection of all persons interested. [Acts 1905, S. S. p. 511.]

Art. 494. [525] Directors' statement.—Within ten days from the date of any call issued by the Banking Commissioner requiring a statement of the actual condition of the affairs of any State bank, bank and trust company or savings bank at the close of business on a day prior to such call, the board of directors of such corporation shall furnish such statement sworn to before a notary public by the president and cashier or secretary and attested by three of the directors. Each such corporation which fails to make and transmit any report required in this article within ten days from the date of such call shall be subject to a penalty of not less than five nor more than one hundred dollars for each day after the expiration of said ten days, which penalty may be recovered by the Commissioner in the name of this State in a suit in Travis County against such corporation. Such penalty, when collected, shall be paid into the State Treasury for the benefit of the general school fund. [Id.; Acts 1913, p. 207.]

Art. 495. [526] Form of statement.—The statement required by the preceding article shall be in the following form, to wit:

"Official statement of the financial condition of the .....(here insert name of bank), at ....., State of Texas, at the close of business on the ..... day of ....., 19..., published in the ....., a newspaper printed and published at ....., State of Texas, on the ..... day of ....., 19....

RESOURCES

Loans and discounts, undoubtedly good on personal security or collateral	$.....
Loans, real estate	.....
Overdrafts	.....
Bonds and stocks	.....
Real estate (banking house)	.....
Other real estate	.....
Furniture and fixtures	.....
Due from other banks and bankers, subject to check	.....
Cash items	.....
Currency	.....
Specie	.....
Other resources as follows:	
.....	$.....
.....	.....
Total	$.....

LIABILITIES

Capital stock paid in	$.....
Surplus fund	.....
Undivided profits, net	.....
Due to banks and bankers, subject to check	.....
Individual deposits subject to check	.....
Time certificates of deposit	.....
Demand certificates of deposit	.....
Cashiers checks	.....
Bills payable and rediscounts	.....
Other liabilities as follows:	
.....	$.....
.....	.....
Total	$.....

State of Texas, County of .....

We ..... as president, and ..... as cashier of said bank, each of us do solemnly swear that the above statement is true to the best of our knowledge and belief.

.....President.

.....Cashier.

Subscribed and sworn to before me this ..... day of ..... A. D. nineteen hundred and .....

Witness my hand and seal on the date last aforesaid.

[Seal]

.....
Notary Public.

Correct—attest:

.....
.....
.....
Directors. ["]
[Id.]

Art. 496. [528] Publication of statement.—Publication of the foregoing statement shall be made by banking institutions in one or more newspapers published in the town, city or county where it is located, if there is one so published. If said town or city has a population exceeding ten thousand inhabitants, then such publication must be in a daily newspaper,

if such is published, otherwise it shall be made in a weekly newspaper. If such town or city has a population of ten thousand inhabitants or less, then said publication may be in either a daily or weekly newspaper published in said city or town as aforesaid. In all cases, a copy of the said statement shall be posted in the banking house, accessible to all. [Id.]

Art. 497. [573] Change of statements.—The Banking Commissioner shall have the power, from time to time, to require statements and to make such changes in the form of the statements required of each banking corporation as he may deem advisable, and to require any additional statements which he may deem necessary as to average daily deposits, capital stock, surplus, character of deposits and such other matters as he may deem necessary to the enforcement of this title. Every such corporation which fails to make and transmit any statement covered in this Article, within ten days from the date of demand therefor, shall be subject to a penalty of not less than five nor more than one hundred dollars for each day after the expiration of said ten days, which penalty may be recovered by the Commissioner in the name of the State, in a suit in Travis County, against such corporation. Such penalty, when collected, shall be paid into the State Treasury for the benefit of the general school fund. [Acts 1909, 2nd C. S., p. 423; Acts 1927, 40th Leg., p. 293, ch. 207, §§ 1, 2.]

Art. 498. [574] Bonds of officers.—All active or salaried officers and employés of State banking institutions whose duties permit or require the handling of any of the funds of the bank shall, before entering upon the discharge of their duties, give a good and sufficient bond in such sum as may be fixed by the board of directors of any such institution, conditioned for the faithful performance of their duties and such pecuniary loss as the bank may sustain for money or other valuable securities embezzled, wrongfully abstracted or willfully misapplied by any such officer or employé in the course of his employment as such or in the course of his employment in any other position in such bank, whether he be assigned, appointed, elected, re-elected or temporarily assigned to said position. The amount of such bond and the solvency of the sureties shall be subject to the approval of the Banking Commissioner, and such bonds shall be upon forms prepared by the Commissioner. All such bonds shall immediately after their execution be forwarded to the Commissioner and be filed by him as an archive in his office and a certified copy thereof shall be returned to the board of directors of such bank and be kept in their custody. The board of directors may require any other bond or bonds in addition to that herein required, at their discretion. Officers of banks who do not handle bank's money or draw a salary, shall not be required to give bond. [Id.; Acts 1917, p. 469.]

Art. 499. [530] Authority of officers.—The directors of any banking corporation organized under this title may appoint and remove any officer or other employé at pleasure. No officer or employé shall have power to endorse, sell, pledge or hypothecate any note, bond or other obligation received by such corporation for money loaned, until such power and authority shall have been given such officer or employé by the board of directors in a regular meeting of the board, a written record of which proceeding shall have first been made upon the minutes of the corporation; and all such acts done by any officer or employé without such authority shall be null and void. [Acts 1905, S. S. p. 502; Acts 1909, 2nd C. S. p. 425.]

Art. 500. [531] Reduction of capital stock.—Any banking corporation doing business in this State may at any time reduce its capital stock to any sum not less than the minimum sum provided by law. No reduction of such stock shall be made except upon the written consent of the owners of not less than two-thirds of the stock of such corporation. Notice of the intention to reduce the capital stock shall be published for thirty days in some daily newspaper in the city or county where such bank is located, or in a weekly paper for four insertions before the time when such reduction shall be effected, and the last insertion of such notice shall be at least ten days before the date of the reduction. A statement of such reduction of the capital stock duly acknowledged by the officers of the corporation shall be recorded and filed in the same manner as provided for the original articles of agreement. [Acts 1905, S. S. p. 508.]

Art. 501. [532] Increase of capital stock.—Any banking corporation doing business in this State may at any time increase its capital stock to any amount not exceeding the maximum provided by law, with the consent of the persons holding a majority of the stock of such corporation which shall be obtained at a meeting of the shareholders called for that purpose. Upon the presentation of a petition signed by the owners of a majority of the stock, asking for such increase, the board of directors shall call a meeting for the purpose of voting on such proposition, at least sixty days notice of which meeting shall be published by eight consecutive insertions in some daily or weekly newspaper printed and published in the city or town in which the corporation is located, the last insertion to be not less than five days before the day fixed for such meeting, giving the time and place of said meeting, and the amount of the proposed increase. If upon a canvass of the votes at such meeting it is ascertained that the proposition has carried, it shall be so declared by the chairman of the meeting, and the proceedings entered of record. When the full amount of said proposed increase has been bona fide subscribed and paid in cash to the board of directors of said corporation, then a statement of the proceedings, showing a compliance with the provisions of this chapter, and the increase of capital actually subscribed and paid up, shall be made out, signed and verified by the affidavit of the president and countersigned by the secretary, and such statement shall be acknowledged by the president and recorded and filed as provided for the original articles of agreement. [Id.]

Art. 502. Change in organization.—If any bank or bank and trust company organized under the general laws of this State wishes to convert such corporation into any other system of banking, its officers shall give notice of said change by publishing its intention to make the same by four insertions in some daily or weekly newspaper published in the town where it is domiciled or adjacent thereto, for at least thirty days before making such change. Such notice shall state under what system of banking said corporation shall be operated after its conversion. Said corporation shall notify the Banking Commissioner of such proposed change under the seal of said bank at least thirty days before said conversion shall be consummated. Such conversion shall be effected by the written consent or a vote of the owners of not less than a majority of the stock of such corporation, and a statement of such conversion duly acknowledged by the officers of the corporation shall be recorded and filed in the same manner as provided for the original articles of agreement. No fund or deposits of any kind that shall have been deposited in a State bank or bank and trust company, shall be protected by the Guaranty Fund Law or Bond Security Law of this State, after such corporation shall have converted to some other system of banking. [Acts 1923, p. 322.]

Art. 503. Power to vote.—In the elections of directors, and in deciding all questions at meetings of shareholders of any Texas banking institution, each shareholder shall be entitled to one vote on each share of stock held by him. Shareholders may vote by proxy duly authorized in writing. [Acts 1905, S. S. p. 502.]

Art. 504. [537] Executor, etc., may vote.—Every executor, administrator, guardian or trustee shall represent the shares of stock in his hands at all meetings of the corporation, and may vote as a shareholder; and every person who shall pledge his stock in such corporation, may nevertheless represent the same at all such meetings and may vote accordingly as a shareholder.

Art. 505. [536] Certificate of approval.—Upon filing in the office of the Commissioner a state-

ment of the proceedings duly executed by the officers of such corporation which has increased or diminished its capital stock or converted its organization as provided in the preceding articles, the Commissioner shall issue a certificate that such corporation has complied with the law provided in such cases, and the amount to which said capital stock is increased or decreased, or the system of banking to which such corporation has converted; and thereupon the capital stock of such corporation shall be increased or diminished to the amount specified in such certificate, or the system of banking converted. Such certificate shall be taken in all courts of this State as evidence of such increase or decrease of stock or conversion of system. [Id.]

Art. 506. [564] Ratio of capital to deposits.—Each State Bank or State Bank and Trust Company organized and operating under the laws of this State shall annually on the first day of January file with the Banking Commissioner a statement of the total average daily deposits of every kind of such Bank or Bank and Trust Company for the preceding year, sworn to by the President and Cashier of such Bank or Bank and Trust Company. If from such statement it shall appear that the average daily deposits of any Bank or Bank and Trust Company having a capital stock not exceeding $20,000.00 shall have exceeded five times the capital stock and surplus of such Bank, or the average daily deposits of any such Bank or Bank and Trust Company having a capital stock exceeding $20,000.00 and not exceeding $30,000.00 exceeds six times such capital and surplus, and where any such Bank or Bank and Trust Company with a capital stock exceeding $30,000.00 and not exceeding $50,000.00 has average daily deposits exceeding seven times said capital and surplus; and any such Bank or Bank and Trust Company having a capital stock exceeding $50,000.00 and not exceeding $75,000.00 shall show average daily deposits exceeding eight times such capital stock and surplus, and any such Bank or Bank and Trust Company having a capital stock in excess of $75,000.00 and not exceeding $100,000.00 shall show average daily deposits exceeding nine times the capital stock and surplus thereof, and any such Bank or Bank and Trust Company having a capital stock of $100,000.00 or more shall show average daily deposits in excess of ten times such capital and surplus, then in such event the Banking Commissioner may in his discretion, if he deems it necessary for the protection of the depositors require such Bank or Bank and Trust Company to increase its capital stock by twenty-five per cent of the then existing capital stock of said Bank or Bank and Trust Company; and for the purpose of maintaining the ratio between capital stock and surplus and deposits herein fixed, the Commissioner may, in his discretion, require a further increase of such capital stock in an amount not exceeding twenty-five per cent, if deemed necessary for the protection of the depositors; and upon receipt by any such Bank or Bank and Trust Company of an order under the hand and seal of office of the Banking Commissioner, the directors thereof shall within ninety days after said receipt of such order cause such increase to be made in the capital stock as hereinbefore set out, and if the same is not done within such time it shall be unlawful for such Bank or Bank and Trust Company to thereafter receive any deposits at any time when its total deposits of all kinds shall in the aggregate amount to more than the ratio herein placed upon said deposits, and in the event any such Bank or Bank and Trust Company does receive deposits in violation of this provision, the directors thereof shall become and be personally liable to the depositors owning and holding such deposits. [Acts 1921, p. 114; Acts 1927, 40th Leg., p. 204, ch. 136, § 1.]

Art. 507. [548] Regulation of dividends.—No bank or bank and trust company or any member of either, during the time it shall continue its operations, shall withdraw or permit to be withdrawn any part of its capital, either in the form of dividends or otherwise. If losses have at any time been sustained by any such bank equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividend shall ever be made by such bank while it continues its operations, to an amount greater than its net profits then on hand, deducting therefrom its losses and bad debts. All debts due to any State bank, on which interest is past due and unpaid for a period of six months, unless the same are well secured or in process of collection, shall be considered bad debts within the meaning of this article. The board of directors of any such bank may declare a semi-annual or quarterly dividend if such dividend has been earned, if the corporation be fully solvent without such earnings proposed to be divided. But they shall not declare a dividend at any time when the capital of such corporation shall have become impaired to such an extent that it is not worth in good resources the full amount paid in after the payment of all liabilities. [Acts 1905, S. S. p. 507; Acts 1909, 2nd C. S. p. 425.]

Art. 508. [548–549] Liability of officers.—Any officer or director of such corporation who shall assent to declaring and paying dividends when the capital stock is so impaired shall be personally liable to the creditors of the corporation to the amount of his proportion of the proposed dividend, if any loss occur by reason of the payment of such dividend. If any of the directors shall object to the declaring of such dividend, or to the payment of the same, and shall at any time before the time fixed for the payment thereof, file a certificate of his objections in writing with the clerk of the corporation and with the county clerk of the county, he shall be exempt from the said liability. [Id.]

Art. 509. [550] Surplus fund.—When the board of directors shall declare a dividend, they shall first set apart to the surplus fund ten per cent of the net profits of the bank for the period covered by the dividend until the same shall amount to fifty per cent of its capital stock; and said surplus shall not be diminished except for the payment of losses which may occur. If there are undivided profits, these shall first be used in payment of such losses. [Acts 1905, S. S. p. 511.]

Art. 510. [546] Powers limited.—No corporation organized under this title shall employ its moneys, directly or indirectly, in trade or commerce, by buying and selling ordinary goods, chattels, wares and merchandise, or by owning or operating industrial plants, but may sell all kinds of property which may come into its possession as security for loans, or in the ordinary collection of debts. [Acts 1909, 2nd C. S. p. 425.]

Art. 511. [538] Investments.—The directors of banks and bank and trust companies created under this title shall have power to invest the moneys placed in their charge in loans secured by real estate or other sufficient collateral, in public bonds of the United States or of this State, or in the bonds of any incorporated city, county or independent school district in this State. [Acts 1905, S. S. p. 508.]

Art. 512. Domicile and fixtures.—No State bank or bank and trust company shall invest more than fifty per cent of its capital stock and permanent surplus in its banking house, nor more than fifteen per cent of its capital stock and permanent surplus in the furniture and fixtures to be used in its said banking house, unless said corporation shall have first applied to the State Banking Board and received written permission to make a larger investment than is allowed hereunder, which written permission shall be entered upon the minutes of a regular meeting of said banking corporation. [Acts 1923, p. 322.]

Art. 512a. Charging off depreciation.—Hereafter all State Banks must charge off for depreciation each year ten per cent of the cost of furniture and fixtures until fifty per cent of the original cost thereof shall have been charged off; provided that the Banking Commissioner may in his discretion permit a lesser percentage to be charged off in any one year for good cause shown. No State Bank shall hereafter carry its bank building as an asset at an amount or value greater than its reasonable market value; which

shall be shown in its annual report to the Banking Commissioner. [Acts 1927, 40th Leg., p. 292, ch. 206, § 1.]

Art. 513. [565–567] Interest in other bank.—Any State bank or bank and trust company which purchases the assets of any other bank shall, before the purchase of the assets of such other bank, increase its capital to such an amount that the same will have the ratio to the total deposits of the bank, the assets of which it has purchased, as defined and required in Article 506. It shall be unlawful for any State bank or bank and trust company to own more than ten per cent of the capital stock of any other banking corporation, or to make a loan secured by the stock of any other banking corporation, if by the making of such loan the total stock of such other banking corporation held by it as collateral will exceed, in the aggregate, ten per cent of the capital stock of such other banking corporation, unless the ownership or the taking of a greater percentage of such capital stock as collateral shall be necessary to prevent loss upon a debt previously contracted in good faith; and any such excess so taken as collateral or owned by such bank shall not be held as collateral nor owned by it for a longer period than six months. [Acts 1909, 2nd C. S. 423.]

Art. 514. [547] Real estate.—Banks and bank and trust companies created under this title shall own only such real estate as may be required for the transaction of their business, and such as they may acquire in the enforcement and collection of debts or liabilities due to them, which lands so acquired by any such corporation shall be alienated by it within five years after its acquisition to some one not interested, directly or indirectly, in said company. [Id.]

Art. 515. Limitation of indebtedness.—No State banking corporation shall at any time be indebted or in any way liable to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

1. Moneys deposited with or collected by it;
2. Bills of exchange or drafts drawn against money actually on deposit to the credit of the corporation or due thereto;
3. Liabilities to the stockholders of the association for dividends and reserve profits;
4. Liabilities incurred under the provisions of the Federal Reserve Act;
5. Liabilities incurred under the provisions of the Federal "Agricultural Credits Act of 1923."
6. This article shall not apply to any guaranty executed by any bank and trust company whose demand deposits are not in excess of its interest bearing deposits, provided such company is not a member of a Federal Reserve bank.
7. Upon a written permit obtained from the Commissioner, any bank may borrow a sum not in excess of its unimpaired surplus in addition to its capital stock. [Id.; Acts 1923, 2nd C. S. p. 86.]

Art. 516. Agricultural obligations.—State banks and bank and trust companies, with the permission and under the direction and control of the Banking Commissioner, may borrow or make discounts individually or collectively, or enter into any agreement or association for the purpose of obtaining funds to finance the movement of agricultural and farm products only; and when so doing, paper endorsed by them for such purpose shall not be considered as within the limitation prescribed in the preceding article. [Acts 1914, 3rd C. S. p. 46.]

Art. 517. [570] Pledge of securities.—It shall be unlawful for any bank or bank and trust company to hypothecate or pledge as collateral its securities to an amount greater than fifty per cent in excess of the amount borrowed upon bills payable, certificates of deposit or otherwise, or for any banking corporation to issue and execute any notes, bills or other evidence of indebtedness secured, or to be secured by the pledge or hypothecation of any of its securities, which shall not contain a provision that in the event such banking corporation shall for any cause have its property and business taken possession of by the Commissioner at any time before such pledge or hypothecation shall have been actually foreclosed, a grace of thirty days after date of such taking possession shall be allowed in which such bank or the Commissioner shall be permitted to redeem such securities so hypothecated or pledged by the payment of the amount due as principal and interest on such indebtedness. No attorney's fee shall be collectible on notes or other evidence of indebtedness executed by a State Bank in the hands of the Commissioner for liquidation, where such notes or other evidence of debt are placed with an attorney for collection within thirty days after such bank is taken over by the Commissioner for liquidation. [Acts 1909, 2nd C. S. p. 423; Id.] [Acts 1927, 40th Leg., p. 200, ch. 130, § 1.]

Art. 518. [570] Reserve bank excepted.—Banking corporations incorporated under the laws of this State, upon becoming members of a Federal Reserve Bank, shall not be required to insert the thirty days grace clause in their notes, bills or certificates of deposit made to a Federal Reserve bank, should a Federal Reserve bank decline to permit the insertion thereof. Collateral in excess of fifty per cent of the amount borrowed thereon may be hypothecated or pledged to secure money borrowed from a Federal Reserve bank, should it so require, in which case it shall be the duty of the officers of such member bank to immediately notify the Commissioner, giving the amount of money borrowed, and amount of securities hypothecated or pledged to secure same. [Id.]

Art. 519. Requirements of Reserve banks.—All banks or bank and trust companies incorporated under the laws of Texas shall have authority to become members of Federal Reserve Banks under such terms and limitations as may be prescribed by the laws of the United States and such rules and regulations relative thereto as may be promulgated by lawful authority. Such member bank shall be required to conform to the provisions of law imposed upon national banks respecting the limitations of liability which may be incurred by any person, firm or corporation to such banks, the prohibition against making purchases of or loans on stock of such bank, and the withdrawal or impairment of capital, and the payment of unearned dividends. [Acts 1914, 3rd C. S. p. 46.]

Art. 520. Powers of Reserve bank.—Such member bank shall have the right to discount to a Federal Reserve bank, notes, drafts, and bills of exchange arising out of actual commercial transactions and to endorse the same with a waiver of demand, notice and protest and to do any other thing necessary under the Federal Reserve Act or rules and regulations relative thereto promulgated by lawful authority, in order to obtain all the benefits and privileges of membership in a Federal Reserve bank. The lien and rights obtained by a Federal Reserve bank upon the discount to it of any such notes, drafts and bills of exchange shall be a first and preference lien. [Id.]

Art. 521. Cash reserve.—All banks and bank and trust companies chartered by the laws of this State which become members of a Federal Reserve bank under the Federal Reserve Act shall as to their reserves, be governed as follows:

1. A bank not in a reserve or central reserve city shall hold and maintain reserves equal to twelve per cent of the aggregate amount of its demand deposits and five per cent of its time deposits, as follows:

In its vaults for a period of thirty-six months after the Secretary of the Treasury of the United States has officially announced the establishment of a Federal Reserve bank in the district of which is located the subscribing bank, five-twelfths thereof and permanently thereafter four-twelfths;

In the Federal Reserve bank of its district for a period of twelve months after said date, two-twelfths, and for each succeeding six months an additional one-twelfth until five-twelfths have been so deposited, which shall be the amount permanently required;

For a period of thirty-six months after said date,

the balance of the reserve may be held in its own vaults or in the Federal Reserve bank or in national banks in reserve or central reserve cities.

After said thirty-six months period, said reserve other than those hereinbefore required to be held in the vaults of the member bank and in the Federal Reserve bank, shall be held in the vaults of the member bank or in the Federal Reserve bank, or in both, at the option of the member bank.

2. A bank in a reserve city shall hold and maintain reserves equal to fifteen per cent of the aggregate amount of its demand deposits, and five per cent of its time deposits, as follows:

In its vaults for a period of thirty-six months after the date of the establishment of the Federal Reserve bank of which any bank chartered under the laws of this State may become a member, six-fifteenths thereof and permanently thereafter five-fifteenths;

In the Federal Reserve bank of its district for a period of twelve months after the date aforesaid, at least three-fifteenths, and for each succeeding six months an additional one-fifteenth until six-fifteenths have been so deposited, which shall be the amount permanently required;

For a period of thirty-six months after said date, the balance of the reserve may be held in its own vaults, or in the Federal Reserve bank, or in national banks in reserve or central reserve cities;

After said thirty-six months period all of said reserves, except those hereinbefore required to be held permanently in the vaults of the member bank and in the Federal Reserve bank, shall be held in its vaults or in the Federal Reserve bank, or in both, at the option of the member bank.

3. Notwithstanding the limitations in the two preceding paragraphs, State banks becoming members of a Federal Reserve bank shall have all the rights permitted them under the Federal Reserve Act as to reserve deposits with State banks and bank and trust companies.

4. The kind of money which may be held as reserve by such member banks shall be the same as that required of national banks under the laws of the United States. [Id.]

Art. 522. [377] Reserve of non-members.—Every banking corporation chartered under the laws of this State with a capital stock of less than twenty-five thousand dollars, and which does not become a member of a Federal Reserve bank, shall at all times have an amount of cash on hand and cash due from other banks equal to at least twenty per cent of the aggregate amount of its demand deposits; and all banks not located in a Central Reserve City, having a capital stock of twenty-five thousand dollars or more, and which do not become members of a Federal Reserve bank, shall at all times have an amount of cash on hand and cash due from other banks equal to at least fifteen per cent of the aggregate amount of its demand deposits. Such reserve fund, or any part thereof, together with the current receipts, may be kept on hand or on deposit payable on demand in any bank or banking association of this State, or any bank, banking association or trust company regularly chartered and operating under the laws of any State or under the laws of the United States approved by the Banking Commissioner, having a paid up capital stock of fifty thousand dollars or more; but the deposit in any one bank or trust company shall not exceed twenty per cent of the total deposits, capital and surplus of the bank making the deposit. Whenever the reserve herein required shall fall below the amount specified for its class, such bank shall not make any new loans or discounts until it shall by collection restore its lawful reserve. [Acts 1907, p. 60; Id.; Acts 3rd C. S. 1920, p. 70.]

Art. 523. Definitions.—Demand deposits, within the meaning of this title, shall comprise all deposits payable within thirty days; and time deposits shall comprise all deposits payable after thirty days, and all savings accounts and certificates of deposit which are subject to not less than thirty days notice before payment; and a reserve or central reserve city is one defined by the laws of the United States or designated by the Comptroller of the Currency of the United States. [Acts 1914, 3rd C. S., p. 46.]

Art. 524. [569] Loans on own stock.—No State bank or bank and trust company shall make any loan or discount on the security of the shares of its own capital stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired shall, within six months after its purchase, be sold or disposed of at public or private sale; or, in default thereof, such bank shall be considered to have its capital stock impaired to the extent of the par value of such shares. [Acts 1909, 2nd C. S., p. 423.]

Art. 525. [568] Loans on cotton.—All State banks and bank and trust companies shall be permitted to loan upon or discount commercial or business paper secured by lien upon cotton and cotton seed products to the same extent and upon the same conditions as is now or may be provided for national banks under the laws of the United States. [Id.]

Art. 526. Loans to officers.—No director of a bank in this State shall be permitted to borrow any of the money of the bank of which he is a director, in excess of ten per cent of the capital and surplus, without the consent of a majority of the directors of the bank (other than the borrower) first having been obtained at a regular meeting of the board; said consent to be made a matter of record before the loan is made. No officer, whether a director or not, shall be indebted to such bank in any sum whatever without the consent of the board, obtained and recorded in like manner. [Acts 1905, p. 491.]

Art. 527. [378] Approval of loans.—The board of directors of each bank organized under this title shall meet at least once per month and pass upon the business of the bank back to their previous meeting, and shall keep a written record of its approval or disapproval of each loan. At each monthly meeting the records shall show the aggregate of the then existing indebtedness and liability of each of the directors and officers of the bank. [Id.]

Art. 528. [378] Bills payable and discounts.—No bank organized under the laws of this State shall ever make any bills payable, and no bills shall ever be rediscounted by such bank, except with the consent of the board of directors, said consent to be a matter of record. [Id.]

Art. 529. [571] Loans to Commissioner.—No State bank or bank and trust company shall directly or indirectly make a loan to the Banking Commissioner or any other person interested in or employed by the Banking Department, and a violation of this article shall render such corporation liable to a penalty of not less than one hundred nor more than one thousand dollars to be recovered for the benefit of this State. [Acts 1909, 2nd C. S., p. 428.]

Art. 530. Non-interest certificates.—No State bank or bank and trust company organized and doing business under the provisions of this title shall be allowed to issue any non-interest bearing certificates of deposit. Such certificates, if issued, shall not be protected under Chapter 7 of this title. [Acts 1923, p. 322.]

Art. 531. [551] Voluntary assignments.—It shall be unlawful for any banking corporation organized under this title to make a voluntary general assignment. [Acts 1905, S. S., p. 511.]

Art. 532. [551] Transfers prohibited.—All transfers of the notes, bonds, bills of exchange or other evidence of debt owing to any bank or bank and trust company organized under this title, or of deposits to its credit, all assignments of mortgages, securities on real estate or of judgment or decrees in its favor, all deposits of money, bullion or other valuable thing for its use, or for the use of any of its shareholders or creditors, and all payments of money to it made after the commission of an act of insolvency, or in contem-

plation thereof, made with a view to prevent the application of its assets in the manner prescribed by this title, or with a view to the preference of one creditor to another, shall be null and void. No attachment, injunction or execution shall be issued against such bank or its property before final judgment in any suit, action or proceedings in any court. [Id.]

Art. 533. [554] Debts created in insolvency.—No president, director, manager, cashier or other officer or agent of any bank or banking institution organized and doing business under the provisions of this article shall receive or assent to the reception of deposits, or create or assent to the creation of any debts by such bank after he shall have knowledge of the fact that it is insolvent or in failing circumstances. Every person violating the provisions of this article shall be individually responsible for such deposits so received and all debts so contracted. Any director who may have paid more than his share of the liabilities mentioned in this article may have the proper remedy at law against such other persons as shall not have paid their full share of such liabilities. In case of the insolvency of one or more of such officers, agents or managers, the same shall be paid for the time being by those who are solvent, in equal proportion. [Id.]

Art. 534. [555] Recovery of deposits.—In all suits brought for the recovery of the amount of any deposits received or debts created, all officers, agents or managers of any bank, savings bank or bank and trust company charged with having so assented to the reception of such deposits or the creation of such debt, may be joined as defendants or proceeded against severally; and the fact that such banking institution was so insolvent or in failing circumstances at the time of the reception of the deposit charged to have been received, or the creation of the debt charged to have been created, shall be prima facie evidence of such knowledge and assent to such deposit, or creation of such debt on the part of such officer, agent or manager so charged therewith. [Id.]

Art. 535. [552] Stockholder's liability.—If default shall be made in the payment of any debt or liability contracted by any bank, savings bank or bank and trust company, each stockholder of such corporation, as long as he owns shares therein, and for twelve months after the date of a transfer thereof, shall be personally liable for all debts of such corporation existing at the date of such transfer, or at the date of such default, to an amount double the par value of such shares. [Id.]

Art. 536. [553] Director's liability.—For any losses of money which the capital stock shall not be sufficient to satisfy, the directors of such corporations shall be responsible in the same manner and to the same extent that directors are now responsible in law or equity. [Id.]

Art. 537. [556] Liability of executor, etc.—No person holding stock in such corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stockholder in such corporation; but the person pledging such stock shall be considered as holding the same, and shall be liable as stockholder accordingly. The estate and funds in the hands of such executors, administrators, guardians or trustees shall be liable in like manner and to the same extent as the testator or intestate or the ward or person interested in such trust fund would have been if he had been living and competent to act and hold the same stock in his own name. [Id.]

Art. 538. [379] Branch banks.—No banking corporation organized under the laws of this State shall ever engage in business at more than one place, which shall be designated in its charter. No such corporation shall maintain a branch bank, receive deposits or pay checks except in its own banking house. County or State depositories or county depositories not located at the county seat, and ordinary clearing house transactions between banks, are not affected by this article. [Acts 1905, p. 491.]

Art. 539. [561] Solvent bank may close.—Whenever the board of directors of any solvent banking corporation organized under or subject to the provisions of this title shall deem it necessary, expedient or desirable to close the business of the corporation, they shall call a meeting of the stockholders to vote upon such proposition by giving sixty days notice thereof by publication once every week in a newspaper published in the county or city in which such corporation is located, and by mailing notices at least sixty days prior to the day fixed for such meeting, addressed to the stockholders at their usual place of business or residence. The vote upon such proposition shall be taken by ballot, and the resolution and vote thereon shall be recorded in the minutes of the board of directors. If at such meeting at least two-thirds of the shares of the corporation are voted in favor of such proposition, the board of directors shall proceed to wind up the business of such corporation as in the succeeding article provided; and a copy of such proceedings shall be certified by the president and secretary of such corporation and filed with the Banking Commissioner. [Acts 1905, S. S., p. 511.]

Art. 540. [561] Final settlement.—The board of directors shall thereupon give notice to all depositors, creditors and stockholders of the adoption of such resolution by publication thereof once a week in a daily or weekly newspaper for three months thereafter, and by a written or printed notice personally served upon or mailed to every depositor, creditor or stockholder of such corporation at his last known residence, postage fully paid. Within six months after the filing of such certificate, the corporation shall pay all sums due depositors and creditors whom they can discover and who claim the moneys due them; and upon the expiration of said six months, it shall be the duty of the corporation to make a statement from the books of said corporation, certified by the president and secretary, of the names of all depositors and creditors who have not claimed or have not received the balances to their credit or due them respectively, and to file the same with the State Treasurer and to pay the said State Treasurer all such unclaimed deposits, moneys and credits for the use and benefit of such depositors and creditors. The board of directors shall then divide the capital stock, guaranty and indemnity fund and all other assets or the proceeds thereof among the stockholders ratably; and the board of directors shall thereupon file in the office of the Banking Commissioner a certificate surrendering the corporate franchise. [Id.]

Art. 541. [558] Private banks.—It is hereby declared to be the public policy of this State that no additional private banking institution or business shall be organized or established, and it shall be unlawful for any person, association of persons, partnerships or trustees acting under any common law declaration of trust to hereafter organize or establish, begin or resume the operation of any banking institution or business within this State. It shall be the duty of private individuals or firms engaging in the banking business to use after the name under which the business is conducted, the word in parenthesis "unincorporated," and failure to do so shall subject the offender to a penalty of one hundred dollars to be collected in the manner provided in Article 491. [Acts 1905, S. S., p. 11; Acts 1923, p. 422.]

Art. 541a. Advertising.—It shall be unlawful for any person, association of persons, partnerships or any trustee or trustees acting under any common law declaration of trust, to hereafter use, advertise or put forth any sign as a bank, trust company, bank and trust company or savings bank, or to in any way solicit or receive business as such, or to use as their name or part of their name on any sign, advertising or letter head or envelope the word bank, banker, banking, banking company, trust, trust company, bank and trust company, savings bank, savings, or any other term which may or might be confused with the name of a corporation organized under the general provisions of the banking laws of this State.

Art. 541b. Name.—It shall be unlawful for any such person, association of persons, partnership or any trustee or trustees acting under any common law declaration of trust to adopt or use any artificial name or business title or to use any other than the name of the person or one or more of the persons, or a member or one or more of the members of the association of persons or partnership, or a member or one or more of the members of such common law trust association, in the management, conduct or operation of any private banking institution or bank of deposit within the State of Texas; provided, however, that the provisions of this Act shall not apply to any person, association of persons, partnerships or trustees, or trustees acting under any common law declaration of trust, who, at the time this Act becomes effective, are actively engaged in the operation of any bank, trust company, bank and trust company or savings bank within this State, nor to any bank which may have been in successful operation in this State for twenty years and shall have suspended operation prior to the passage of this Act, but which shall resume operation within twelve months after the passage of this Act. The right to continue such business of such bank, trust company, bank and trust company or savings bank so engaged, or which shall resume business as provided in this Act, or by their heirs, legal representatives, assigns and successors, is hereby expressly recognized, confirmed and fixed.

Art. 541c. Exception.—The provisions of the private bank law shall not apply to any person, association of persons, partnerships or trustee, or trustees acting under any common law declaration of trust, who has for a period of one year next preceding the date that this Act becomes effective, and who, as such, in the course of the liquidation of any bank or trust company or bank and trust company within this State, has acquired the assets, or any part thereof, including the real estate used as its banking house or place of business and has assumed the liabilities, or a part thereof, of such liquidation bank or trust company or bank and trust company. [Acts 1925, p. 356.] [39th Leg., ch. 148, § 1.]

CHAPTER NINE

MORRIS PLAN BANKS

Art.
542. Term defined.
543. How organized.
544. Capital stock.
545. Powers.
546. Acts prohibited.
547. Borrowed money.
548. Provisions applicable.

Article 542. Term defined.—The term "loan and investment company" as used in this chapter means any corporation formed under the provisions of this law. [Acts 1st C. S., 1917, p. 59.]

Art. 543. How organized.—Corporations may be organized under and by virtue of this chapter in the same manner as corporations for profit under the laws of this State, except as otherwise herein provided. [Id.]

Art. 544. Capital stock.—The aggregate amount of the capital stock of a loan and investment company shall not be less than $25,000 in any city having a population of less than 50,000 inhabitants, and shall not be less than $50,000 in any city having 50,000 or more inhabitants, and shall not be less than $100,000 in any city having 150,000 inhabitants or more, according to the preceding Federal census. The capital stock of any such corporation shall be divided into shares of the par value of $100 each. No corporation organized hereunder shall create more than one class of stock. [Id.]

Art. 545. Powers.—Every loan and investment company, in addition to the powers conferred upon corporations by the general corporation law, shall have the following powers:

1. To lend money and to deduct interest therefor in advance at a rate not to exceed six per cent per annum, and in addition to require and receive uniform weekly or monthly installments on its certificates of indebtedness purchased by the borrower simultaneously with the said loan transaction, or otherwise, and pledged with the corporation as security for the said loan, with or without an allowance of interest on such installments.

2. To sell or negotiate bonds, notes, certificates of investment and choses in action for the payment of money at the time, either fixed or uncertain, and to receive payments therefor in installments or otherwise, with or without an allowance of interest upon such installments.

3. To charge for a loan made pursuant to this article one dollar for each fifty dollars or fraction thereof loaned, for expenses, including any examination or investigation of the character and circumstances of the borrower, co-maker or surety, and the drawing and taking acknowledgment of necessary papers or other expenses incurred in making the loan; no charge shall be collected unless a loan shall have been made as a result of such examination or investigation. [Id.]

Art. 546. Acts prohibited.—No loan and investment company shall:

1. Hold at any one time the obligation of any one person, firm or corporation for more than two and one-half per cent of the amount of capital and surplus of such loan and investment company.

2. Make any loan under the provisions of this law for a longer period than one year from the date thereof.

3. Deposit any of its funds with any bank or trust company, unless such bank or trust company has been designated as such depository by a vote of the majority of the directors or of the executive committee, exclusive of any director who is an officer, director or trustee of the depository so designated. [Id.]

Art. 547. Borrowed money.—Issuing certificates of investment and the like in the transaction of the business of corporations organized hereunder, shall not be construed to be borrowed money. [Id.]

Art. 548. Provisions applicable.—The provisions of this title relating to the examination, supervision and liquidation of State banks by the Banking Commissioner, and statement of assets and liabilities required of such banks, so far as applicable, shall apply to corporations organized under this law. The provisions of law relating to bond investment companies shall not apply to corporations organized hereunder. [Id.]

TITLE 17

BEES

Art.
549. State Entomologist.
550. Power and authority.
551. Certificate of inspection.
552. Common carrier accepting shipment.
553. Seizure.
554. May enter premises.
555. Protective quarantine.
556. Restrictive quarantine.
557. Sale and shipment.
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559. Bulletins.
560. Duty to report diseased bees.
561. Transfer of bees.
562. Inspection and eradication.
563. Cost of destruction.
564. No bond required.
565. Experimental apiary.

Article 549. State Entomologist.—The entomologist of the Agricultural Experiment Station of the Agricultural and Mechanical College of Texas, shall be the State Entomologist of this State, and as such it shall be his duty to enforce the provisions of this title. As State Entomologist he shall receive no fees or remuneration other than his regular salary as Entomologist of such Experiment Station, provided, that he may be reimbursed for the necessary expenses incurred in discharge of his duties as State Entomologist. He shall employ such assistants and inspectors as may be necessary, subject to the approval

of the Director and Governing Board of the Texas Agricultural Experiment Station. He shall make an annual report to such Director and Governing Board giving a detailed account of all funds received and disbursed, and for what purpose, as well as a full report upon all prosecutions, etc., made under the provisions of this title. [Acts 1913, p. 96.]

Art. 550. Power and authority.—The State Entomologist shall have power to deal with all contagious or infectious diseases of honey bees, which in his opinion, may be prevented, controlled or eradicated, and to do and perform such acts as, in his judgment, may be necessary to control, eradicate or prevent the introduction, spread or dissemination of any and all contagious diseases of honey bees as far as may be possible, and to make such rules and regulations, not inconsistent with law, as may be necessary to enforce this law. The State Entomologist shall have authority to prohibit the shipment or bringing into this State of any honey bees, honey, honey-comb, or articles or things capable of transmitting contagious or infectious diseases of bees from any State, territory or foreign country except under such rules and regulations as may be adopted and promulgated by said State Entomologist. [Id.]

Art. 551. Certificate of inspection.—All honey bees shipped or moved into this State shall be accompanied by a certificate of inspection signed by the State Entomologist or State Foul Brood Inspector of the State or county from which shipped. Such certificate shall certify to the apparent freedom of the bees, and their combs and hives, from contagious and infectious diseases and must be based upon an actual inspection of the bees themselves within a period of sixty days preceding date of shipment. The shipper of such bees is hereby required to file with the State Entomologist at College Station, at least ten days in advance of such shipment, a certified copy of said certificate, together with the names and addresses of both consignor and consignee. When honey bees are to be shipped into this State from other States or countries wherein no official apiary inspector or State entomologist is available, the State Entomologist of Texas may issue a permit for such shipment upon presentation of suitable evidence showing such bees to be free from diseases. Shipments of bees arriving at points within this State, not accompanied by the certificate herein described, shall be subject to confiscation and destruction by the State Entomologist or his assistants. This requirement shall not apply to shipments of live bees in wire cages, when without combs or honey. [Id.]

Art. 552. Common carrier accepting shipment.—No railroad company, express company, or other common carrier shall accept for intrastate shipment, any honey bees, used honey combs, used bee hives or fixtures, except under such regulations as the State Entomologist shall prescribe. [Id.]

Art. 553. Seizure.—The State Entomologist, through himself, assistants or inspectors, shall have authority to seize and confiscate any shipment of diseased bees found in transit in this State, or found in any depot, express office, store room, car, warehouse or premises awaiting transportation or delivery, and the State Entomologist, through himself or assistants, shall have authority to enter, during ordinary business hours, any depot, express office, store room, car, warehouse, or premises for the purpose of inspecting any shipment of honey bees therein which he may have reason to believe are or may be infected with a contagious or infectious disease or which he may have reason to believe are being transported or have been or are about to be transported in violation of any provision of this title. [Id.]

Art. 554. May enter premises.—The State Entomologist, and his assistants and inspectors, shall have authority to enter, during ordinary business hours, any premises, public or private, wherein may be located any honey bees, or wherein he or they may have reason to believe any honey bees are kept or located, for the purpose of examining said bees and determining whether or not they are infected with any contagious or infectious disease. [Id.]

Art. 555. Protective quarantine.—The State Entomologist shall have authority to declare a protective quarantine in any district, county, precinct or other defined area wherein foul brood or other contagious disease of bees is not known to exist, or wherein any disease of bees is being eradicated in accordance with the provisions of this chapter, said quarantine to prohibit the movement or shipment, into said district, county, precinct or other area, of any bees, honey, appliances or other things capable of transmitting the disease or infection, except under such rules and regulations as he shall prescribe. [Id.]

Art. 556. Restrictive quarantine.—The State Entomologist shall have authority when, in his opinion, public welfare and necessity require it, to place a restrictive quarantine upon any district, county, precinct or other defined area wherein are located any honey bees infected with contagious or infectious disease, said quarantine to prohibit the movement or shipment therefrom of any bees, honey, appliances or other things capable of transmitting the infection, except under such rules and regulations as he shall prescribe. [Id.]

Art. 557. Sale and shipment.—Queen bees and their attendant bees shall not be sold or offered for sale in this State unless accompanied by a copy of a certificate from a State or Government entomologist or apiary inspector to the effect that the apiary from which said queen bees are shipped have been inspected within the preceding twelve months and found apparently free from contagious or infectious diseases, or by a copy of an affidavit made by the bee-keeper that the bees are not diseased, to the best belief of affiant, and that the honey used in making the candy contained in the queen cage has been diluted and boiled for at least thirty minutes in a closed vessel. [Id.]

Art. 558. Legal remedies.—All prosecutions under this title shall be begun and carried on in any county affected by the violation of said orders, quarantines, rules or regulations. The State Entomologist may enjoin any threatened or attempted violation of his orders, quarantines, rules or regulations in any court of competent jurisdiction, or take any other civil proceedings necessary to carry out and enforce the provisions of this title. It shall be the duty of the Attorney General and the various county and district attorneys to represent said State Entomologist whenever called on to do so. The State Entomologist, in the discharge and enforcement of the duties and powers herein delegated, shall have the authority to compel the production for examination by said State Entomologist, or any one designated by him, of all books, papers and documents in the possession of any person; to take testimony and compel the attendance and examination under oath of witnesses; the various sheriffs and constables throughout the State shall serve all papers, orders, summons and writs that may be delivered to them by said State Entomologist and protect the State Entomologist or his assistants or inspectors in the discharge of their duties, as herein defined, whenever called upon to do so. [Id.]

Art. 559. Bulletins.—The State Entomologist shall publish methods and directions for treating, eradicating or suppressing contagious or infectious diseases of honey bees, including the rules and regulations above provided for, and such other information as he shall deem of value or necessity to the bee-keeping interests of the State. [Id.]

Art. 560. Duty to report diseased bees.—If the owner of, or any person having control or possession of, any honey bees in this State, knows that any bees so owned or controlled are affected with American foul brood, or any other contagious or infectious disease, or knows of any other bees so diseased, it shall be his duty to at once report such fact to the State Entomologist at College Station, setting out in his said report all the facts known with reference to said infection. [Id.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 561. Transfer of bees.—The State Entomologist may order any owner or possessor of bees dwelling in hives without movable frames, or not permitting of ready examination, to transfer such bees to a movable frame hive within a specified time. In default of such transfer such Entomologist may destroy, or order destroyed, such hives, together with the honey, frames, combs and bees contained therein, without recompense to the owner, lessee or agent thereof. [Id.]

Art. 562. Inspection and eradication.—If the State Entomologist finds, or has reason to believe, that the owner or keeper of any bees or the owner of any apiary has refused or is refusing to comply with any rule or regulation hereinbefore provided for, then in that event such entomologist is hereby authorized to inspect or cause to be inspected said bees, and, if necessary, burn diseased colonies, appliances and honey and do any and all things necessary to eradicate foul brood or any other contagious or infectious disease of bees. [Id.]

Art. 563. Cost of destruction.—When any owner or possessor of bees shall fail to carry out the instructions of the State Entomologist as hereinbefore set forth, such entomologist or his assistants or inspectors shall carry out such destruction or treatment and shall present to the owner or possessor of said bees a bill for the actual cost of such destruction or treatment, including the cost of such hives, foundation, etc., as may be necessary for the proper treatment of the disease. On the failure of the owner or possessor of such bees to pay said bill within thirty days after the delivery of same to himself, tenant, or agent, or within thirty days after mailing same to his usual post-office address, such Entomologist shall certify to the county attorney of the county where such bees were located the amount and items of such bill; and the county attorney shall file suit for the recovery of said account. All moneys recovered by the county attorney for such destruction or treatment shall be paid to the State Treasurer. [Id.]

Art. 564. No bond required.—The State Entomologist, his assistants and inspectors, shall not be required to give any bond or security in any legal proceedings which he or they may institute or defend in any court in this State. [Id.]

Art. 565. Experimental apiary.—The Director of the Texas Agricultural Experiment Stations of the Agricultural and Mechanical College shall have power to establish and maintain experimental apiaries for the purpose of experimenting with the culture of honey, and studying honey yield conditions, and other bee-keeping problems confronting the bee-keepers and the bee-keeping industry of this State; such experimental apiaries to be under the care, control, management and direction of the director of the experimental stations, and to be maintained and operated at such places in Texas as said director may direct. In the location of such experimental apiaries, said director may take into consideration any donation of money or other property to be used in the operation and management of such apiaries and may accept any lease of lands upon which to locate such apiaries. The director shall have authority to employ such assistants as may be needed, and to purchase from time to time, such supplies, equipment and bees as may be necessary in the successful management thereof. The receipts from the sales of any products or old equipment, shall be deposited in the experiment station treasury, in a fund to be known as the "Experimental Apiaries Sales Fund," to be expended by said director for the purpose of said experimental apiaries. [Acts 1919, p. 102.]

TITLE 18

BILLS AND NOTES

Art.
566. Fixing liability.
567. Drawer of bill liable.
568. Assignee may sue.
569. Instruments may be assigned.
570. Assignee may sue in his own name.
571. Assignor liable to assignee.
572. Parties to suit.
573. Plea of forgery.
574. Failure of consideration.
575. Liability fixed by protest.
576. Protest, how made.
577. Damages on protested bill.
578. Patent rights.

Article 566. [579] [580] Fixing liability.—The holder of any bill of exchange or promissory note, assignable or negotiable by law, may secure and fix the liability of any drawer or endorser of such bill of exchange and every endorser of such note, without protest or notice, by bringing suit against the acceptor of such bill of exchange, or against the maker of such note, before the first term of the district or county court to which suit can be brought after the right of action accrues, or before the second term with a showing of good cause for the delay; or when the justice court has jurisdiction by bringing such suit within sixty days after the right of action accrues. [Acts 1848, p. 187; G. L. vol. 3, p. 187.]

Art. 567. [581] [306] [264] Drawer of bill liable.—The drawer of any bill of exchange not accepted when presented for acceptance, shall be immediately liable for the payment thereof. The holders of such bill may secure and fix the liability of any endorser thereof by bringing suit against such drawer, within the time and in the manner prescribed by this title. [Id.]

Art. 568. [582] [307] [265] Assignee may sue.—The assignee of any negotiable instrument may maintain any suit in his own name which the original obligee or payee might have brought. He shall allow all just discounts against himself, and if he obtained the same after it became due, he shall also allow all just discounts against the assignor before notice of the assignment was given to the defendant. If he obtains such instrument before its maturity by giving for it a valuable consideration without notice of any discount or defense against it, he shall be compelled to allow only the just discounts against himself. [Acts 1840, p. 144; G. L. vol. 2, p. 318.]

Art. 569. [583] [308] [266] Instruments may be assigned.—The obligee or assignee of any written instrument not negotiable by the law merchant, may by assignment transfer all his interest therein to another. [Id.]

Art. 570. [584] [585] Assignee may sue in his own name.—The assignee of any instrument mentioned in the preceding article may sue thereon in his own name. He shall allow every discount and defense against the same which it would have been subject to in the hands of any previous owner before notice of the assignment was given to the defendant. In order to hold the assignor, drawer or endorser as surety for the payment of the instrument, the assignee shall use due diligence to collect the same. Such diligence can only be waived in writing. [Id.]

Art. 571. [586] [311] [269] Assignor liable to assignee.—The assignee of any instrument not negotiable by the law merchant, shall be entitled to recover from any previous assignor thereof. In any suit against a remote assignor of such instrument, he shall be subject only to such recovery and shall have the benefit of all defenses which he would have been entitled to had the suit been instituted by any intermediate assignee. [Id.]

Art. 572. [587] [312] [270] Parties to suit.—Assignors, indorsers and other parties not primarily liable upon any instrument named in this title, may be jointly sued with their principal obligors, or may be sued alone in the cases provided for in the laws relating to parties to suits. [Id.]

Art. 573. [588] [313] [271] Plea of forgery.—When suit is brought by an assignee or indorsee of a written instrument, the assignment or endorsement thereof shall be held as fully proved, unless the defendant shall file with the papers in the cause

an affidavit stating that he has good cause to believe, and does believe that such assignment or endorsement is forged. [Id.]

Art. 574. [589] [314] [272] Failure of consideration.—The defendant in any suit upon a written instrument may plead want or failure, or partial failure of consideration, where such written instrument shall remain in the possession of the original payee or obligee or when it has been transferred or assigned after the maturity thereof, or when the defendant proves a knowledge of such want or failure of consideration on the part of the holder prior to such transfer. [Id.]

Art. 575. [590] [315] [273] Liability fixed by protest.—The holder of any bill of exchange or promissory note assignable or negotiable by the law merchant may also secure and fix the liability of any drawer or indorser of such bill of exchange or promissory note for the payment thereof, without suit against the acceptor, drawer or maker, by procuring such bill or note to be regularly protested by a notary public for non-acceptance or non-payment, and giving notice of such protest to such drawer or endorser, according to the usage and custom of merchants. [Acts 1848, p. 187; G. L. vol. 3, p. 187.]

Art. 576. [591] [316] [274] Protest, how made.—It shall be the duty of any notary public who shall protest any bill of exchange or promissory note for non-acceptance or non-payment, to set forth in his protest and in his notarial record a full and true statement of what was done by him in relation thereto by specifying therein whether demand was made of the sum of money in such bill or note specified, of whom, and when and where such demand was made, and to make the requisite notices of protest for the drawers and indorsers who are sought to be made liable. When such notice shall be served by him, he shall note in his protest and notarial record on whom and when such notice was served. If such notice is mailed by him, he shall specify when and where mailed, and to whom and where directed. Such protest, or a copy of such notarial record, certified under the hand and seal of such notary public, shall be admitted in any court of this State as evidence of the facts therein set forth. [Id.]

Art. 577. [592] [317] [275] Damages on protested bill.—The holder of any protested draft or bill of exchange, drawn by a merchant within the limits of this State upon his agent or factor living beyond the limits of this State shall, after having fixed the liability of the drawer or indorser of any such draft or bill of exchange, be entitled to recover and receive ten per cent on the amount of such draft or bill of exchange as damages, together with interest[s] and costs of suit thereon accruing. [Acts 1851, p. 23; G. L. vol. 3, p. 901.]

Art. 578. Patent rights.—All notes and liens given for a patent right consideration or patent right territory shall state on their face that the same were given for a patent right. Such statement shall be notice to all subsequent purchasers of said notes or liens of all equities existing between the parties to the original transaction, and the same shall be subject to all defenses against subsequent owners and holders that they would if the same had remained in the hands of the original owner. [Acts 1915, p. 138.]

TITLE 19

BLUE SKY LAW

Art.
579. Definitions.
580. Prerequisites of sale.
581. Affidavit.
582. Value of securities.
583. Permit.
584. Foreign permit.
585. Escrow permit.
586. Escrow bond.
587. Escrow fund; release.
588. Stock of solvent concerns.
589. Changing documents.
590. Suit to issue permit.
591. Using mail, etc., without permit.
592. Violations of Federal Laws.
593. Merger.
594. Unlawfully paying dividends.
595. Publication of records.
596. Powers of Secretary of State.
597. Disbursements.
598. State officers to assist.
599. Exemptions.
600. Name of law.

Article 579. Definitions.—The term "stock" as used in this title shall include the certificates of stock of every corporation, as well as the certificates of any other written instruments evidencing ownership or membership in any joint stock association, common law trust, or any other organization, association or concern of whatsoever nature, which is organized, formed or created, or intended to be organized, formed or created, which may, or which is designed to own property of any character.

The terms "person," "company," or "concern," shall refer to and include any such concern, or individual, or person who may issue such stock, and whose stock or certificate shall represent or evidence ownership or membership therein, which ownership or membership may be designed to be transferred, assigned or negotiated by the transfer, assignment or negotiation of such instrument. [Acts 2d C. S. 1923, p. 114.]

Art. 580. Prerequisites of sale.—Every concern which shall hereafter be formed or created or which shall hereafter attempt to increase its capital stock or commence the transaction of business in this State, shall before offering for sale, directly or indirectly, through itself, its agents or employés, or through any holding company, sales company or any character of person or association, whether herein defined or not, any stock as defined in the preceding article, and before transacting any business in this State, except the preparation of instruments hereinafter mentioned and other instruments relative to the organization and transaction of business thereof, file in the office of the Secretary of State, together with a fee equal in amount to the filing fee of a private corporation having capital and surplus of like amount, the following: (This requirement as to fees shall not apply to corporations, by reason of the existing requirement as to the payment of filing fees upon obtaining charters and permits from the Secretary of State.)

1. An application for a permit to sell any of the securities mentioned herein, or any other securities offered, or to be offered for sale, and for the transaction of any and all other business in this State. Said application must show the name under which such business is to be conducted, its location and general purpose, the age, occupation and general qualifications of such trustees or managing officers, and also fully the business in which each has been engaged for the last five years immediately preceding the filing of such application.

2. A copy of its articles of association, partnership agreement, constitution, by-laws, or any other contract, agreement or other form of organization under which business is to be transacted, and all amendments thereto, showing the county or counties in which such instruments are filed, or to be filed for record.

3. Copies of stock certificates, bonds, debentures, or other securities offered, or to be offered for sale, or other disposition, together with copies of application blank for such securities. Such application must show the capital stock, par value of such stock, the price at which the same is to be sold, the commissions to be paid for the sale thereof, the amount of such stock or other interest therein issued, or to be issued for promotion, compensation or other purposes.

4. A detailed statement showing the assets and liabilities of such issuer, together with a profit and loss statement. [Id.]

Art. 581. Affidavit.—Before being filed with the Secretary of State, all documents mentioned in the preceding article must be subscribed and sworn to

by a managing officer or other executive of the issuer. [Id.]

Art. 582. Value of securities.—In any case wherein the values of the securities hereinbefore mentioned are in any way dependent upon the present, or proposed development of the land or mines, oil or gas wells, the Secretary of State may cause such investigation thereof, as he may desire, to be made at the expense of the applicant. [Id.]

Art. 583. Permit.—The Secretary of State, upon receipt and proper investigation of the information herein provided for, shall grant or refuse such permit. If he decides that values warrant and that the sale of stock, or other securities, and the business of the issuer will be conducted honestly and fairly in compliance with this law and the general laws of Texas, such permit shall be granted. Commissions for the sale of stock and other securities, promotion, and all other incidental expenses shall not, in the aggregate, exceed twenty per cent of the price at which the stock or other securities are to be sold, as shown by the application or amended application. Stock issued for property or other things of its equivalent value shall not be classed as promotion stock, the value at which such property is accepted to be approved by the Secretary of State. [Id.]

Art. 584. Foreign permit.—No permit hereunder shall be granted to a non-resident or foreign concern until it shall file in the office of the Secretary of State, an instrument constituting and appointing him its true and lawful attorney, upon whom process may be served in any action that may be brought against it. [Id.]

Art. 585. Escrow permit.—Where the promoter or promoters of any development proposition, or the originator or originators of any patent process, own no assets but a meritorious proposition, he or they, upon the presentation of the proper facts to the Secretary of State and securing his approval, and filing a bond as herein required may, in the discretion of said officer, secure a permit, conditioned that all moneys received for the sale of stock or units of interest shall be placed in escrow with the Secretary of State until the proposed amount of stock necessary to finance such undertaking has been sold and the money paid in therefor. [Id.]

Art. 586. Escrow bond.—Such bond shall be executed by such promoter or promoters for the use and benefit of all prospective holders of stock or units. It shall be in amount equal to the amount of stock or units whose sale is permitted, and shall be conditioned that all moneys paid for such stock or units shall be deposited in escrow as herein required, and thereafter faithfully applied. Such bond may be sued upon successively and severally in any county in Texas where plaintiff may reside, and if the whereabouts of any defendant be out of the State or unknown, such suit may be instituted against the sureties only upon such bond. A certified copy of such bond made by the Secretary of State shall be admissible in evidence in all courts in like manner as the original. [Id.]

Art. 587. Escrow fund; release.—On failure to dispose of sufficient stock or units to raise the proposed and necessary amount of money, all money so raised shall be returned by the Secretary of State to the investors, less the actual lawful expenses of selling such stock or units. All expenses incident to selling such stock or units, whether all or part thereof have been sold, shall be submitted to the Secretary of State by an itemized affidavit of the duly authorized agent of such concern, who shall be personally cognizant of the facts therein set forth. Such affidavit shall be accompanied by vouchers showing all such expenditures. [Id.]

Art. 588. Stock of solvent concerns.—Any concern which has been a solvent going concern for a period of two years next preceding the date of any application named in this article, may submit to the Secretary of State satisfactory evidence of such fact and of its present sound solvent condition; whereupon the Secretary of State shall consider the same and shall require such further evidence, and may make such independent investigation as he may deem proper, concerning such matter. If upon full consideration thereof he shall conclude that such concern has been a solvent going concern for a period of two years and is at present solvent, he shall enter such finding upon his record, whereupon the proposed issue and sale of such stock, debentures or other securities, as defined in this title, of such concern, shall be exempt from the general requirements of this title. [Id.]

Art. 589. Changing documents.—Any original document under which a permit has been granted shall not be changed or amended without permission to do so being granted by the Secretary of State. [Id.]

Art. 590. Suit to issue permit.—If a permit be refused by the Secretary of State, the parties applying therefor may bring suit in the district court of Travis County to determine the right of the applicant to have said officer to issue such permit. [Id.]

Art. 591. Using mail, etc., without permit.—Any person, broker, agent, joint stock company, co-partnership or other company, individual or organization, domestic or foreign, sending advertising matter through the mails, by express, telegram or otherwise wholly within this State, offering for sale or selling any of the securities enumerated in the second article of this title, without first having been issued a permit as provided herein, shall be deemed guilty of having violated the provisions of this title. It shall be the duty of the Secretary of State, immediately after discovering such violation, to seek to have a fraud order issued as provided by the laws of the United States affecting the postal service, covering all letters or other matter sent by mail by any such offender. [Id.]

Art. 592. Violations of Federal Laws.—It shall be the duty of the Secretary of State to co-operate with the United States District Attorney, and the United States Department of Justice, and the United States postal authorities, in furnishing them with such information, data and evidence as may come to his knowledge of violations of the Federal laws by any of the persons, brokers, agents, joint stock companies, co-partnerships or other companies, individuals or organizations mentioned in the preceding article. [Id.]

Art. 593. Merger.—The merger, absorption or transfer of property of any company, association, joint stock company, co-partnership or other company, individual or organization by another coming under the provisions of the first article of this title, is declared to be unlawful, unless same is approved by the Secretary of State, after notice to all stockholders of the interested companies, mailed thirty days in advance of said merger, and approved by the holders of a majority in amount of the outstanding and issued stock. [Id.]

Art. 594. Unlawfully paying dividends.—It shall be unlawful for any concern included in this title to declare, issue, or pay a cash dividend to its stockholders or any of them, out of any funds other than the actual earnings of such company in the course of its operations, except upon the lawful liquidation thereof. [Id.]

Art. 595. Publication of records.—All papers, documents, instruments and affidavits of any and every nature, whatsoever, which may be filed with the Secretary of State by any person or concern in connection with matters provided in this title, shall be deemed public records of this State, and the Secretary of State is required to give out any information applied for concerning any such matter, or any such instrument, and to give certified copies of any and all such instruments. The Secretary of State shall at least as often as quarterly, publish bulletins summarizing the applications for permits to sell stock under this title and the conclusions of the Secretary of State in respect thereto as to whether such concern was solvent and whether or not it was or is fraudulent, and whether or not such permit was granted. No action

at law for damages shall lie against the Secretary of State or any employé thereof or any periodical on account of any publication or information herein permitted or required to be given. [Id.]

Art. 596. Powers of Secretary of State.—The power and authority is hereby vested in the Secretary of State, and it is hereby made his duty to perform the powers and authority granted herein, and he shall in all things carry out the provisions of this title. He shall have power and authority to appoint such employés and clerks as may be necessary to perform the duties herein imposed upon him. [Id.].

Art. 597. Disbursements.—Expenses incident to the enforcement of this law shall be paid by warrants drawn by the Comptroller upon the State Treasurer, issued upon a verified statement of the persons entitled thereto, and with the approval of the Secretary of State indorsed thereon. [Id.]

Art. 598. State officers to assist.—Upon the request of the Secretary of State, the Attorney General, or any district or county attorney shall aid in any investigation, trial or proceeding provided for in this title, and shall institute and prosecute all such actions or proceedings for the enforcement thereof. The Attorney General shall act as the attorney for the Secretary of State in all actions and proceedings brought by or against them under or pursuant to any provision of this title. [Id.]

Art. 599. Exemptions.—This title shall not apply to banking corporations or private banks, railroad, or building and loan corporations, nor to the stock thereof, nor be construed to in any manner affect the existing laws of this State, relating to the regulation of any corporation or concern, whatsoever, but in all respects shall be cumulative thereof. [Id.]

Art. 600. Name of law.—This law shall be known and cited as the "Blue Sky Law of Texas." [Id.]

TITLE 20

BOARD OF CONTROL

Chap.

1. General Provisions.
2. Division of Public Printing.
3. Purchasing Division.
4. Public Buildings and Grounds Division.
5. Division of Design and Construction.
6. Division of Estimates and Appropriations.
7. Division of Eleemosynary Institutions.

CHAPTER ONE

GENERAL PROVISIONS

Art.

601. Appointment.
602. Organization of Board.
603. General duties.
604. New divisions.
605. Qualifications and salary.
606. Suits and injunctions.

Article 601. Appointment.—The State Board of Control shall consist of three citizens of this State, one to be biennially appointed for a term of six years by the Governor with the advice of the Senate, the classification to remain as now constituted by law. Any member of the Board may at any time be dismissed by the Governor for good cause, the reasons for such dismissal to be specified and filed with the Secretary of State. The members of the Board shall be public officers and shall take the official oath, and each shall give bond in form prescribed by the Attorney General in the sum of fifty thousand dollars payable to and to be approved by the Governor, conditioned for the faithful performance of his duties. [Acts 1919, p. 323.]

Art. 602. Organization of Board.—The Board shall elect one of its number Chairman, and two members shall always be necessary for the consideration of any question. They shall keep minutes of their proceedings recorded in a book provided for that purpose. They may employ a secretary and such other clerks, stenographers, auditors, book-keepers and clerical help as may be necessary in the administration of their department, within the limits of the appropriations that may be made for the work of the Board, which shall in no case be exceeded. They shall occupy appropriate rooms in the Capitol, and may purchase such equipment and stationery as may be necessary. The Board shall be entitled to traveling expenses when absent from Austin on official business. [Id.]

Art. 603. General duties.—The Board shall administer the laws relating to the various departments, boards, institutions and public officers of the government herein named, and perform the additional duties and exercise the additional functions provided for in this title, and may combine under it the following subdivisions of its work:

1. Division of Public Printing.
2. Division of Purchasing.
3. Division of Auditing.
4. Division of Design, Construction and Maintenance.
5. Division of Estimates and Appropriations.
6. Division of Eleemosynary Institutions.
7. And such other divisions of its work as it may find necessary in the administration of its duties. [Id.]

Art. 604. New divisions.—The Board may from time to time create such other divisions of its work as may be necessary, and appoint chiefs of such divisions, but no person shall be appointed chief of any division who has had less than five years actual experience immediately preceding his appointment in the work or a profession similar to that to which he is assigned by the Board. [Id.]

Art. 605. Qualifications and salary.—Wherever certain qualifications are prescribed for an office or any employment or appointment by the Board and certain years of experience are required, the existence of such years of experience and such qualifications as a fact shall be a prerequisite to the assignment of such officer, appointee or employé to occupy such position, and the payment of his compensation by the accounting officers of this State and the State Treasurer. The Comptroller may refuse to issue his warrant to any person occupying any office or position of employment with the Board, where he shall find that such person is disqualified as provided in this article, and the State Treasurer may refuse to pay any warrant issued to such person. The party claiming the right to the issuance of such warrants and the payment thereof, may bring a mandamus suit against either of such officers in the Supreme Court as in other cases. [Id.]

Art. 606. Suits and injunctions.—Mandamus suits may be brought in the Supreme Court against the board, but no other suit shall be brought against the Board of any other character, except in the District Court of Travis County. No temporary injunction shall ever issue against the Board except upon notice and hearing. [Id.]

CHAPTER TWO

DIVISION OF PUBLIC PRINTING

Art.

607. Chief of Division.
608. Contracts.
609. Printing at School for Deaf.
610. Rules for bids.
611. Separate contracts.
612. Quantity of reports, etc.
613. Bidder's bond.
614. Contractor's bond.
615. Accounts: regular.
616. Accounts: Legislative.
617. Abrogation of contracts.
618. New contracts.
619. Reporters' stationery.
620. Judicial reports.
621. Printing or reports.
622. Specifications of reports.
623. Bids: advertisements.
624. Contracts: terms.
625. Renewal contracts.
626. Price of reports.
627. Extra copies.
628. Printing plates.
629. Interest in contracts.
630. Contracts: approval.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Article 607. Chief of Division.—The Board shall appoint a chief of the Division of Public Printing who shall be a practical competent printer, who has had not less than five years experience in a commercial printing office, including the duties of estimator. [Acts 1919, p. 323.]

Art. 608. Contracts.—The Board shall contract for a term of not exceeding two years with responsible persons, firms, corporations or associations of persons, who shall be residents of Texas, for supplying to the State all printing, binding, stationery and supplies of like character for all departments, institutions and boards, save and except such work as may be done at the various educational and eleemosynary institutions. Said contract shall be let to the lowest and best responsible bidder after public advertising of such proposed letting for once a week for four consecutive weeks in at least six newspapers of general circulation in this State. No two of such papers shall be published in the same county. The Board may reject any and all bids; the reason therefor shall be entered in full in the minutes of the Board and shall be open to the inspection of the public at all times. New contracts shall be made in the same manner as hereinbefore provided. [Id.]

Art. 609. Printing at School for Deaf.—Any public printing and binding for the State may be executed by the Texas School for the deaf without regard to any contract with an individual to do the public printing thereof. [Id.]

Art. 610. Rules for bids.—The Board may establish rules and regulations in advertising for bids for printing and stationery supplies in such manner as in its judgment will best serve the State.

Any bidder shall be allowed to bid on either any or all of the items to be contracted for. The Board may define, itemize and group any class in advertising for bids and awarding contracts, in such manner as shall give the State the most efficient service. [Id.]

Art. 611. Separate contracts.—The Board shall have authority to determine to which bidder the several classes of work shall be awarded. It may let the contract for the several classes of printing to separate bidders, and in calling for proposals, it shall be specified that bids for stationery and office supplies shall be separate and distinct from the bids for printing. [Id.]

Art. 612. Quantity of reports, etc.—The Board shall order such quantity of all reports, documents, messages, journals and laws to be published as it may deem necessary, not more than five thousand of such reports. [Id.]

Art. 613. Bidder's bond.—All bids or proposals shall be accompanied by a bond or certified check in such sum as the Board may require, and such requirement shall be stated in the advertisement calling for bids. [Id.]

Art. 614. Contractor's bond.—When any bid shall have been accepted, the Board shall require of the successful bidder a bond in an amount to be fixed by the Board, conditioned that the contractor will comply with all the terms and conditions of contract. Said bond shall have two or more good and sufficient sureties, or shall be made by a surety company authorized to do business in Texas. The Attorney General shall, when requested by the Board, file suit against any contractor for breach of contract. [Id.]

Art. 615. Accounts: regular.—All accounts for printing done, or stationery furnished, except for the Legislature when in session, shall be audited in the following manner: The accounts shall be verified by the affidavit of the contractor that it is true and correct, that the amount of work charged for has actually been performed, or the actual amount of stationery and supplies have been delivered, and that the prices charged in the account are in accordance with the stipulations of the contract. The account shall be accompanied by a sample of the work done, and a receipt from the department to which the goods were delivered. The account shall be examined by the Chief of the Division of Public Printing, and, when certified by him as correct, approved by the department to which delivery was made. After having been thus examined and approved, the Comptroller shall issue his warrant for payment of account out of funds appropriated for that purpose. [Acts 2d C. S. 1919, p. 303.]

Art. 616. Accounts: Legislative.—All accounts for printing done, or stationery used, in either house of the Legislature, shall before being approved by the Legislature be presented to the Chief of Division of Public Printing for his certificate that the printing or binding for stationery is charged for at the rate of the current contract, and such account when approved by the committee on public printing of either house of the Legislature, shall authorize the Comptroller to draw his warrant to pay such account out of the contingent fund. [Id.]

Art. 617. Abrogation of contracts.—The contracts for printing and for stationery herein provided for may be abrogated by the Legislature when in session, or by the Board of Control with the consent of the Governor or Comptroller when the Legislature is not in session, if the contractor shall fail to perform the work or furnish the supplies in accordance with the law and with his contract as promptly as the exigencies of the public service demand. [Id.]

Art. 618. New contracts.—Should all bids on any contract be rejected, or the successful bidder fail to execute bond as provided herein, or should the contract be abrogated, the Board shall let a new contract in the manner provided herein. The Board may in its discretion make such temporary arrangement to meet the emergency as the public interest may demand. [Id.]

Art. 619. Reporters' stationery.—The Board shall furnish the reporters for the Supreme Court and the Court of Criminal Appeals with the necessary stationery for the performance of their duties. [Id.]

Art. 620. Judicial reports.—The Board shall from time to time cause the decisions of the Supreme Court and the Court of Criminal Appeals to be printed and bound in the manner provided by law. [Id.]

Art. 621. [1575–1579] Printing of reports.—As fast as the Chief of the Printing Division shall receive the manuscript copy of reported cases from the court reporter, he shall cause the same to be printed at the printing office of the Deaf and Dumb Asylum of Texas, with proper index tables of cases cited and of cases reported; or should the Board find that the work of printing and binding the reports can be done more speedily and more economically by contract, or that ample material and means to carry out the provisions hereof are not readily obtainable, it shall at once let the printing and binding of the reports out by contract, require security for the performance of the work, and delivery to the State of electrotype plates. [Acts 1882, p. 71; Acts 1919, p. 60.]

Art. 622. [1577] [964] Specifications or reports.—The Board shall have one thousand copies of each volume of the decisions of said Courts printed and bound. Each volume shall contain not less than seven nor more than eight hundred pages; and pages shall be twenty-six ems pica wide and forty-six ems pica long. The type used shall be long prima [primer] and minion of the same size used in Volume 23, Wallace's United States Supreme Court Reports; the lines shall be leaded with not thicker than eight to pica leads. The paper, press work and binding shall be the same style and at least equal in quality in every respect with the volumes of Moore & Walker's Reports heretofore published. The volumes containing the Supreme Court decisions shall be styled "The Texas Reports," and shall be so styled on the title page and back, and the volumes shall be numbered. The name of the reporter may be printed on the back of each volume. [Id.]

Art. 623. Bids: advertisements.—The Board shall invite bids upon proposals advertised by the Board in the manner provided by the Board, and it shall not be confined to the residents of this State.

The lowest responsible bidder shall be awarded the contract. The Board may reject any and all bids. [Acts 1919, p. 60.]

Art. 624. Contracts: terms.—The Board may fix all conditions, provisions and details of such contracts concerning the printing, binding, publication and sale of such reports, and demand such security from the contractor as will secure the performance of such contract. Such contracts shall be for a term of six years' duration at a time; and may provide for the printing and binding of delayed manuscripts of said reports. [Id.]

Art. 625. Renewal contracts.—The Board may provide from time to time by separate contracts under similar conditions, for renewal contracts in the event of forfeiture or for other reasons, and in order to facilitate the prompt printing and binding of said reports. [Id.]

Art. 626. Price of reports. The price of such reports furnished by the contractor to the legal profession and to the public of this State shall not exceed the contract price fixed by said contract. The number of volumes delivered to the State for its use shall not exceed three hundred of each volume of said reports. [Id.]

Art. 627. Extra copies.—The contract shall also provide that the contractor shall keep on hand a sufficient number of volumes of said reports, or make such arrangements as to enable the legal profession and the public in this State to obtain from the contractor such reports at the price fixed in the contract. [Id.]

Art. 628. Printing plates.—The Board shall determine whether electrotype or stereotype plates of said reports are to be made, and shall regulate the use thereof. The ownership of such plates, together with the copyright of the reports, shall remain in this State. [Id.]

Art. 629. Interest in contracts.—No member or officer of any department of the State Government shall be in any way interested in any contract which shall be let under the provisions of this law. [Id.]

Art. 630. Contracts: approval.—All contracts made under the provisions of this law shall be subject to the approval of the Governor, the Secretary of State and the Comptroller, as required by Article 16, Section 21, of the Constitution. [Id.]

CHAPTER THREE

PURCHASING DIVISION

Art.
631. Chief of Division.
632. Term of office, etc.
633. Interest in contracts.
634. Departmental supplies.
635. Bidder's affidavit.
636. Storekeepers.
637. Bond.
638. Acts prohibited.
639. Reports.
640. Surplus supplies.
641. May dispense with storekeeper.
642. Supply contracts.
643. Notice and limits.
644. Requisites of bids.
645. Short term contracts.
646. May reject bids.
647. Equal bids.
648. Equipment.
649. Bond or security.
650. Separate bids.
651. Opening of bids.
652. Quality of goods.
653. Misrepresentation.
654. Estimates.
655. Invoice: affidavit.
656. Invoice: delivery.
657. Invoice: check of goods.
658. Invoice: payment.
659. Contract bond.
660. Purchase without contract.
661. Equipment: specifications.
662. Local dealers.
663. Appropriations.
664. Rules.

Article 631. Chief of Division.—The Board may appoint a Chief of its Division of Purchasing, who shall have had not less than five years experience immediately preceding his appointment, as a purchaser for a department store or wholesale establishment of recognized standard and successful experience, and no other person shall be eligible for such position. [Acts 1919, p. 323.]

Art. 632. Term of office, etc.—Said chief shall hold his office for a term of two years from the date of his qualification, and until his successor is appointed and qualified. He shall not receive, directly or indirectly, any extra compensation in the way of commission or otherwise, nor shall he collect or be paid his salary or any part thereof while he is in any manner indebted to the State, or in arrears in his accounts and reports as such agent. [Acts 1899, p. 138; Acts 1915, p. 193.]

Art. 633. Interest in contracts.—Neither said chief nor any member of the Board nor any employé or appointee of the Board shall be interested in, or in any manner connected with, any contract or bid for furnishing supplies or articles of any kind to any of the institutions or departments of this State, or with any person, firm or corporation who is interested in or in any manner connected with any kind of contract with this State or any of its institutions and departments. Neither shall said agent accept or receive from any person, firm or corporation to whom any contract may be awarded, directly or indirectly, by rebate, gift or otherwise, any money or other thing of value whatever, nor shall he receive any promise, obligation or contract for future reward or compensation from any such party. [Id.]

Art. 634. Departmental supplies.—The Board shall purchase all the supplies used by each department of the State government and each eleemosynary institution, normal school, Agricultural and Mechanical College, University of Texas, and each other State school heretofore or hereafter created, such supplies including furniture and fixtures, and all other things except strictly perishable goods, technical instruments and books. [Acts 1919, p. 323.]

Art. 635. Bidder's affidavit.—The bidder for the contract for such supplies shall be required to file with his respective bids an affidavit stating that neither the affiant nor the firm, corporation, partnership nor institution represented by the affiant, or anyone acting for such firm, corporation or institution, has within twelve months past violated any law of this State relating to trusts or monopolies. The Attorney General shall prepare the form of such affidavit which shall embrace each phase of the statutes of Texas forbidding trusts and monopolies, and shall also provide that neither the affiant nor the firm, corporation or partnership represented by him has communicated directly or indirectly the bid made by such person, firm or corporation bidding, to any competitor bidding on said contract, or any person engaged in such line of business or any other person. [Id.]

Art. 636. Storekeepers.—The superintendent of each educational and eleemosynary institution placed by law under the management and control of the Board of Control, shall, with the consent of the Board, appoint one storekeeper and accountant for each of said institutions, who shall hold office for two years from the date of qualification, or until their successors shall have qualified, unless sooner removed by the Board. Where the magnitude of an institution is not sufficient to employ a storekeeper and accountant, the superintendent shall perform that service. [Acts 1899, p. 138; Acts 1915, p. 193.]

Art. 637. Bond.—Each storekeeper or accountant shall, before entering upon the performance of his duties, make and file with the Comptroller a bond in the sum of ten thousand dollars, payable to the State, conditioned for the full, faithful, accurate and honest performance of his duties, and approved by the Governor. [Id.]

Art. 638. Acts prohibited.—No such storekeeper or accountant shall sell or in any way be concerned in the sale of any merchandise, supplies or

other articles to any such institution, or have any interest in any contract therewith, or with any other institution or department of the State government. [Id.]

Art. 639. Reports.—Such storekeeper or accountant shall keep the Board constantly informed as to the amount and character of supplies on hand and the amount and character required in order to keep the institution provided for. They shall make reports to the Board on or before the tenth day of each month, showing the total amount of the appropriation, the total amount expended, and the balance unexpended on the first day of each month. They shall also furnish any other information respecting such matters as the Board may request. [Id.]

Art. 640. Surplus supplies.—When any institution accumulates an amount of supplies on hand in excess of its needs, and another institution is in need of such supplies, the Board shall be authorized to transfer any of such supplies from the institution having such excess to such institution in need of such supplies, and the debit and credit shall be made on the basis that such supplies can be purchased in the open market at the time of the transfer, when it is less than the cost under the general contract for such supplies for the fiscal year, otherwise the debit and credit shall be made on the basis of the general contract price for that year. [Id.]

Art. 641. May dispense with storekeeper.—Any educational institution may dispense with the position of storekeeper and appoint some person at such institution to receive such supplies, and make the reports required of storekeepers. [Id.]

Art. 642. Supply contracts.—The Board shall contract for all supplies, merchandise and articles of every description needed for the maintenance and operation of such institutions, except those supplies designated as perishable, and supplies of a special character, as books for libraries and supplies for the laboratories and laboratory work and instruction, and any special supplies for instruction, demonstration and research for educational institutions, to be designated as "Special Supplies for Educational Institutions." The Board shall base its contracts upon estimates to be furnished the Board by the superintendents, by the first day of April of each year, for the entire year. [Id.]

Art. 643. Notice and limits.—All such contracts shall be made after full notice by advertisement once a week for not less than four weeks in at least four of the leading papers of this State, to be selected by the Board. Such contracts shall be made within the limits of the appropriations made by the Legislature for such purposes, regard being had to the appropriations for each institution. [Id.]

Art. 644. Requisites of bids.—The Board shall advertise for sealed bids or proposals to furnish the aggregate of the articles and supplies as estimated by such institutions, naming the articles and supplies and the quantities and character required. All such bids and proposals shall, when required by the Board, be accompanied by samples or designs furnished by the bidder, and shall be for the entire period of one year. Such supplies, articles and merchandise shall be delivered at such times and in such quantities to such institutions, as the Board may designate. [Id.]

Art. 645. Short term contracts.—If the Board at any time discovers that they can purchase the same supplies for less money than for any one year by buying the same for a less length of time, they shall make such purchases for a shorter length of time, not less than for three months. [Id.]

Art. 646. May reject bids.—The Board shall in all cases reserve the right to reject or accept any or all bids, or reject in part if it prefers, and in such case they may buy in the open market until a satisfactory bid is offered. [Id.]

Art. 647. Equal bids.—The terms and conditions, and the period for which such bids or proposals are invited shall be clearly stated in the advertisement. When the same article is estimated for by two or more institutions, but of different brands or grades, such articles shall be purchased so as to produce uniformity in use by each institution, and other things being equal, supplies offered by bidders who have an established local business, shall have preference. [Id.]

Art. 648. Equipment.—Furniture or equipment for educational institutions shall be such as is especially adapted or designed for such institutions. [Id.]

Art. 649. Bond or security.—All bids or proposals shall be accompanied by a bond or certified check in such sum as the Board may require. Such requirement shall be stated in the advertisements calling for bids. [Id.]

Art. 650. Separate bids.—The Board may advertise for the various articles and supplies needed either separately or all together, and may accept a bid for the same to be furnished either separately or all by one bidder. Preference shall be given, all things being equal, to State products. [Id.]

Art. 651. Opening of bids.—All bids shall be opened on the date and at the place specified in the advertisement. The opening and inspection of bids shall be made by the Board in the presence of the Governor and the Comptroller. [Id.]

Art. 652. Quality of goods.—The supplies and articles furnished under all bids and contracts shall be such as called for by requisition of the superintendents of the several institutions. Each article shall be equal to the sample which is required with the accompanying bid. [Id.]

Art. 653. Misrepresentation.—If supplies delivered under contract are not equal to the sample, the superintendent shall refuse to accept them. [Id.]

Art. 654. Estimates.—The estimates upon which advertisements and contracts are made shall as near as practicable state the quantity and quality of the articles and supplies needed. [Id.]

Art. 655. Invoice: affidavit.—The contractor or seller shall in all cases append an affidavit stating that the invoice is correct and that it corresponds in every particular to the supplies furnished and shipped. [Id.]

Art. 656. Invoice: delivery.—Invoices of all supplies shall be furnished in triplicate by the contractor or seller at the time of delivery of said supplies, one of which shall be sent to the storekeeper of the institution to which the supplies are sent. [Id.]

Art. 657. Invoice: check of goods.—As soon as supplies are received and examined by the storekeeper of the institution to which the same were shipped, if they check with the invoices transmitted and the samples by which the supplies were sold, he shall transmit to the Board of Control the original invoices and duplicate with his certificate thereon that the supplies received correspond in every particular with the invoice and with the samples by which they were sold. If the Board finds such invoice to be correct, it shall approve and transmit the same to the Comptroller. [Id.]

Art. 658. Invoice: payment.—When such invoice so approved by such storekeeper and by the Board of Control, shall be approved by the Comptroller, he shall draw his warrant upon the State Treasury for the amount due on the invoice or for so much thereof as has been allowed, and it shall be charged against the institution. [Id.]

Art. 659. Contract bond.—When any bid has been accepted, the Board shall require of the successful bidder a bond payable to the State with good and sufficient sureties in a sum not less than one-third the amount of the bid, conditioned that the bidder will faithfully and accurately execute the terms of the contract into which he has entered. Said bond shall be filed in the office of the Comptroller, and recoveries may be had thereon until exhausted. [Id.]

Art. 660. Purchase without contract.—In case of emergency, and where articles are necessary and needed by any institution, and it is impracticable to include them in the annual contract, the superintendent shall make a requisition for same to the Board of Control; and the Board may forthwith purchase such article in the open market. [Id.]

Art. 661. Equipment: specifications.—Furniture or equipment for educational institutions shall be of the particular kind and make as requisitioned by such institution and approved by the Board. [Id.]

Art. 662. Local dealers.—Preference shall be given to dealers in cities or towns in the county in which said institution is located, conditioned that the articles purchased shall be equal in price and quality to articles which can be purchased elsewhere. [Id.]

Art. 663. Appropriations.—All purchases by contract or otherwise, as herein authorized, shall be in accordance with such appropriations as shall be made by the Legislature for the support of the several institutions respectively. [Id.]

Art. 664. Rules.—The Board shall frame and transmit to each institution a system of rules and regulations for the purchase of such supplies as have been designated by them as perishable and as special supplies for educational institutions, and to which, conformity by all institutions is hereby required. [Id.]

CHAPTER FOUR

PUBLIC BUILDINGS AND GROUNDS DIVISION

Art.
665. Custodianship of State property.
666. Shall sell property not needed.
667. Charge of Capitol.
668. Use of rooms in Capitol as bedrooms.
669. Shall inspect Public Buildings, etc.
670. Improvements and repairs.
671. Inspection of plans and specifications.
672. Inspection of material and workmanship.
673. Shall make needed improvements.
674. Maintenance of sewers.
675. Copy of plans.
676. Shall report to Governor.
677. State parks.
678. State cemetery.

Article 665. Custodianship of State property.—The State Board of Control shall have charge and control of all public buildings, grounds and property of the State which may not be used by the different officers of the State government, and is the custodian of all public personal property, and is charged with the responsibility to properly care for and protect such property from damage, intrusion, or improper usage. [Acts 1884, p. 60; Acts 1919, p. 326; G. L. vol. 9, p. 592.]

Art. 666. Shall sell property not needed.—All property belonging to the State, situated in the city of Austin, in any department, board or office of the State, when it shall become unfit for use or shall be no longer needed, shall be placed in the hands of the Board of Control, and the Board shall sell such property at public auction after advertising it for not less than five days in two newspapers, published in the City of Austin. The money from the sale of such property, less the expense of advertising and selling, shall be deposited in the State Treasury to the credit of the general revenue fund. The Board shall make a written report to the Comptroller after each sale, showing the articles received, each article sold, to whom sold and the price received. [Id.]

Art. 667. Charge of Capitol.—The Board, during the recess of the Legislature, shall have charge and control of the halls, chambers, and committee rooms of the State Capitol Building except as hereinafter provided. Before the assembling of each session of the Legislature, the Board shall prepare the different rooms for the use of the Legislature. [Id.]

Art. 668. Use of rooms in Capitol as bedrooms.—No room, apartment or office in the State Capitol Building shall be used at any time by any person as a bed room or for any private purposes whatever. This article shall not apply to the rooms occupied by the judges of the Supreme Court and the Courts of Civil and Criminal Appeals on the third and fourth floors of the Capitol. [Id.]

Art. 669. Shall inspect Public Buildings, etc.—The Board shall frequently inspect all the public buildings and property of the State at the Capitol, and all other buildings and property of the State at such regular intervals as may be necessary for the Board to keep constantly informed of the condition of the same. [Id.]

Art. 670. Improvements and repairs.—The Board shall prepare plans and specifications for improvement and repairs to public buildings or property of the State, and shall superintend through its division of public buildings and grounds, the construction of said work when such supervision is not otherwise especially provided for by law. [Id.]

Art. 671. Inspection of plans and specifications.—The Board shall inspect all plans and specifications for the public buildings and the additions thereto to be constructed for the State before such plans and specifications are adopted. The Board may reject any and all such plans and specifications, and it shall have full and final superintendence over all buildings, structures or additions thereto that may be constructed for the State. [Id.]

Art. 672. Inspection of material and workmanship.—The Board shall carefully examine and inspect the material and workmanship of each building, structure and addition thereto built for the State out of brick or stone or substitutes therefor, and shall see that the same are constructed in accordance with the contract plans and specifications therefor. The work, workmanship and the material thereof shall be subject to the approval of the Board. [Id.]

Art. 673. Shall make needed improvements.—When needed improvements or repairs for respective buildings and offices are called to the attention of the Board by the heads of such departments or offices, the Board shall provide for such repairs or improvements, and they shall be made under its direction. [Id.]

Art. 674. Maintenance of sewers.—The Board shall give special attention to the effective maintenance of the State sewers and their connections in the use of the public buildings, and shall see that such sewerage and connections at all times be kept in a sanitary condition, and that the gas and water pipes with their connections and appliances are maintained in working order, ready at any time for immediate use. [Id.]

Art. 675. Copy of plans.—The Board shall prepare and keep in its offices a copy of the plans of all public buildings and improvements thereto under its charge showing the exact location of all water, gas and sewerage pipes. [Id.]

Art. 676. Shall report to Governor.—The Board shall biennially on December 1st make a report to the Governor showing all improvements and repairs that have been made with an itemized account of receipts and expenditures, and showing the condition of all property under its control with an estimate of needed improvements and repairs. [Id.]

Art. 677. State parks.—All State parks shall be under the control and custody of the Board, and all laws relating to the same shall be executed and administered by the Board. [Id.]

Art. 678. State cemetery.—The Board shall control, superintend and beautify the grounds of the State Cemetery. They shall preserve the grounds and everything pertaining thereto and protect the property from depreciation and injury. They shall procure and erect, at the head of each grave which has no permanent monument, an obelisk of marble upon which shall be engraved the name of the dead therein buried. [Id.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

CHAPTER FIVE

DIVISION OF DESIGN AND CONSTRUCTION

Art.
679. Chief of division.
680. May employ experts.
681. Shall design public buildings.
682. Shall design parks, etc.
683. Shall furnish schools expert, etc.
684. Shall inspect plans, etc.
685. Assistants appointed.
686. Salaries of assistants.
687. One per cent to Treasurer.

Article 679. Chief of division.—The Board may select a chief of its division of design, construction and maintenance who shall be an architect of not less than five years experience next preceding his selection in the actual design, superintendency and construction of buildings. [Acts 1919, p. 326.]

Art. 680. May employ experts.—The Board may employ experts of masonry, plumbing, electrical construction, landscape gardening, and such other experts as may be necessary, as assistants to the chief of this division. [Id.]

Art. 681. Shall design public buildings.—The Board, through the chief of such division, shall design all public buildings erected at the expense of the State where designing is not otherwise provided for by law or by the appropriation bill, but in no instance shall plans or designs be adopted by the head of any department, board, institution, school or prison system of the State unless such design and plans have been approved by the Board. [Id.]

Art. 682. Shall design parks, etc.—The Board acting through such division shall design appropriate parks for each institution, school of the State, or prison system, which design shall be carried out by the head of such institution, school or prison system unless otherwise provided by law. [Id.]

Art. 683. Shall furnish schools expert, etc.—The Board through such division shall furnish any school, institution, department of the State, or prison system, on request, an expert to design and superintend any construction for landscape gardening provided for. [Id.]

Art. 684. Shall inspect plans, etc.—Where the contract price is twenty-five thousand dollars or more, the board shall inspect all plans and specifications for public buildings and structures and additions thereto that are to be constructed for and by the counties, municipalities and other political subdivisions of the State, and shall aid the commissioners court, city commission, board of aldermen, city manager, school board, committee board or other person or persons having in charge the preparation for construction of such public buildings, or structures or additions for such counties, cities, municipalities or other superintendence over all such buildings, structures or addition for such counties, cities, municipalities, and other political subdivisions, according to the terms of the contract. [Acts 1915, p. 253.]

Art. 685. Assistants appointed.—When the conditions require it, the Board may appoint not more than three assistants to the Chief of the Division of Design, Construction and Maintenance. Such assistants shall be skilled practical mechanics in the respective trades which enter into the construction of public buildings, and must have had at least ten years practical experience in their respective trade [trades] next prior to their appointment. [Id.]

Art. 686. Salaries of assistants.—The salary of each assistant shall not exceed eighteen hundred dollars per year, payable in equal monthly installments. They shall also receive their actual necessary travelling expenses while engaged in the actual performance of their duties. The Board shall not employ at any time more assistants than the fees which shall be collected under the provisions of this law shall be sufficient to pay. Expenses shall only be paid upon itemized sworn accounts, approved by the Board. The Board may discontinue the service of any assistant at its pleasure. [Id.]

Art. 687. One per cent to Treasurer.—The governing body of a city, county or political subdivision shall pay into the State Treasury one per cent of the estimated cost or contract price of each building or addition thereto to be constructed by such county, city or other political subdivision, immediately before beginning the work on such building, and the State Treasurer shall hold such sum for the purpose of defraying the salaries and other necessary expenses which may be incurred by the Board of Control in the performance of its duties as required by this Act, and such sum shall be paid out by the State Treasurer upon warrants issued by the Comptroller. [Id.]

CHAPTER SIX

DIVISION OF ESTIMATES AND APPROPRIATIONS

Art.
688. Estimates submitted.
689. Shall investigate estimates, etc.

Article 688. Estimates submitted.—The head of each department, school, institution, and of the prison system, and the head of any of the divisions or departments of government for which appropriations are made by the Legislature, shall submit to the State Board of Control, not later than January 1st of each year preceding the regular biennial session of the Legislature, an itemized account of all items of expenses for the preceding two years, and an estimate of the appropriations required by such department, school or institution or by the prison system for the regular biennial appropriation made by the Legislature which estimate shall be submitted, itemized in such manner as the Board of Control may require. [Acts 1919, p. 327.]

Art. 689. Shall investigate estimates, etc.—Upon receipt of such estimates, the Board shall investigate and consider the same and give hearings to those who have submitted the same, and shall obtain information from every available source including the reports from its auditors and examiners. After such hearings, the Board shall make up an appropriation budget for the Legislature which shall be submitted not later than December 1st of the year immediately preceding the meeting of the regular biennial session of the Legislature. Such budget shall be made at the expense of the Board of Control, and a copy thereof shall be mailed to each person who will be a member of the next Legislature, to the Governor and to the heads of each department, institution, and school of the State, and to the prison commission. A sufficient number of copies for the use of all the members of the House and Senate during the session of the Legislature shall be delivered to the Speaker of the House and the President of the Senate. The Board shall also cause to be printed such extra copies for public distribution as they may deem necessary to be given to any person who calls or writes for same. [Id.]

CHAPTER SEVEN

DIVISION OF ELEEMOSYNARY INSTITUTIONS

Art.
690. Division chief.
691. Superintendents elected.
692. Oath of office.
693. General powers and duties.
694. Requisitions by the Board.
695. Rules and regulations.

Article 690. Division chief.—The Board may employ a chief in the division of eleemosynary institutions who shall be an acting practicing surgeon, and who shall have been actively engaged in the practice of the profession for not less than ten years immediately preceding his appointment. Such physician shall

be one of generally recognized eminence in his profession. [Acts 1919, p. 328.]

Art. 691. Superintendents elected.—The Board shall elect a superintendent for each institution under its control. Each superintendent shall have had special advantages and practical experience in the management of the class of persons committed to his charge. The term of office shall be two years, subject to removal by the Board for good cause. [Id.]

Art. 692. Oath of office.—Each superintendent shall take the official oath and within twenty days after receiving notice of appointment, enter into bond in the sum of ten thousand dollars, payable to the state of Texas, to be approved by the Governor, and conditioned for the faithful performance of all the duties of said office. Such bond and oath shall be filed in the office of the Comptroller, and shall not become void on first recovery thereon, but may be sued upon until the full penalty is recovered.

Art. 693. General powers and duties.—The Board of Control shall have power:

1. To make rules and regulations for the government of the State eleemosynary institutions, not inconsistent with the constitution and laws.
2. To appoint all officers and employés of such institutions and fix their salaries and wages.
3. To discharge, upon the recommendation of the superintendent, any officer, employé or inmate.
4. To appoint assistant physicians, stewards, matrons and apothecaries.
5. To make all contracts and necessary arrangements for the erection of buildings or improvements upon the grounds of the institutions.
6. To examine and approve or reject any vouchers or accounts of the superintendents.
7. It shall exercise a careful supervision over the general operations of such institutions and control the expenditures, and direct the manner in which their revenue shall be disbursed.
8. It may take and hold in trust any gift or devise of real or personal estate for the benefit of such institution and apply the same as the donor or devisor may direct.
9. The Board shall maintain an effective inspection of each institution placed under its control and management, for which purpose a representative of the Board shall visit each institution once every month, and members of the Board shall visit each of such institutions at least once a year, at the time and in the manner as the board may prescribe by its rules or by-laws.
10. The general result of such inspection, with suitable suggestions, shall be inserted in a report detailing the past year's operations and the actual state of the institutions, which the Board shall make to the Legislature in January of each alternate year, accompanied by the report of the medical superintendents and stewards.
11. The Board shall keep a book in which shall be noted by the member making the visit to the institution, the date of his visit, the condition of the house, patients, and premises with such remarks of commendation or censure as may be considered by the member as pertinent, and each member shall sign the same. [Acts 1883, p. 103; Acts 1919, p. 326–7; G. L. vol. 9, p. 49.]

Art. 694. Requisitions by the Board.—All moneys appropriated by the Legislature for the erection of buildings or the making of improvements upon the grounds of an institution shall be subject to requisition by the Board of Control for the amount actually necessary to pay for such building or improvements; but no money shall be paid except it be upon estimate of completed work furnished by the contractor and approved by the architect. In no case shall more than three-fourths of the actual cost of building or improvements be paid until the work is completed and accepted. [Acts 1899, p. 318; Acts 1919, p. 326–7.]

Art. 695. Rules and regulations.—The Board may adopt such regulations as it deems proper and necessary for the payment of expenses other than salaries of officers, the purchase of supplies and such other expenditures as may be regulated by law; but under such regulations no money appropriated shall be drawn from the Treasury except upon vouchers specifying in detail the exact purpose for which the same is needed, certified as true and correct by the superintendent and approved by the Board. [Acts 1883, p. 103; G. L. vol. 9, p. 49.]

TITLE 21

BOND INVESTMENT COMPANIES

Art.
696. Deposit.
697. Default of deposit.
698. Receiver.
699. Interchange of deposit.
700. Return of deposit.

Article 696. [1309] Deposit.—Each corporation, company or individual, doing business in this State as a bond investment company, or company to place or sell bonds, certificates or debentures on the partial payment or installment plan, shall deposit with the State Treasurer, in cash or securities approved by said Treasurer, the sum of five thousand dollars, and shall deposit semi-annually with said Treasurer, in cash or securities, to be approved by said officer, ten per cent of all net premiums received until the sum deposited amounts to one hundred thousand dollars. [Acts 1897, p. 118; G. L. vol. 10, p. 1172.]

Art. 697. [1310] Default of deposit.—If any such domestic corporation, shall fail, for sixty days after its organization, to make with the State Treasurer the deposit required by this title, it shall be considered to have forfeited its charter; and the Attorney General shall upon information thereof, bring suit in the name of the State to have such charter or certificate of incorporation declared forfeited, and the court, upon so finding, shall declare such charter forfeited and appoint a receiver for such company, whose duty it shall be, under the order of the court, to distribute to the shareholders the assets of the company. The court shall out of such assets make equitable compensation for the receiver. [Id.]

Art. 698. [1311] Receiver.—In case of the failure of any such company, the district court of the county in which the principal office is located, upon the application of one or more shareholders, shall appoint a receiver for such company, whose duty it shall be to wind up its affairs, liquidate its debts, and distribute its assets, using therefor, upon the order of the court, the deposit previously made with the State Treasurer to secure the shareholders. Said Treasurer is authorized to pay out such deposit upon the warrant of the Comptroller in accordance with requisitions made upon the Comptroller by said receiver, approved by the court. [Id.]

Art. 699. [1312] Interchange of deposit.—On request of any such company, the State Treasurer is authorized to permit such company to interchange cash for the securities or securities for the cash deposited by such company under the provisions of this title with said Treasurer, such securities always to be approved by said Treasurer on the written advice of the Attorney General. [Acts 1901, p. 282.]

Art. 700. [1313] Return of deposit.—If any such company shall cease to do business in this State and satisfy the Comptroller and the Attorney General that it has no liabilities in this State, the Comptroller shall issue his warrant to the State Treasurer; and said Treasurer upon such warrant of the Comptroller, shall return to such company the cash or securities deposited by it under the provisions of this title. [Id.]

TITLE 22

BONDS—COUNTY, MUNICIPAL, ETC.

Chap.

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2. Courthouse, Jail and Other Bonds.
3. Public Road Bonds.
4. Viaducts, Bridges, Etc.
5. Funding, Refunding and Compromises.
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6a. Navigation Aid Bonds.
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CHAPTER ONE

GENERAL PROVISIONS AND REGULATIONS

Art.

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Article 701. [605] Shall hold election.—The bonds of a county or an incorporated city or town shall never be issued for any purpose unless a proposition for the issuance of such bonds shall have been first submitted to the qualified voters who are property tax payers of such county, city or town. [Acts 1899, pp. 103 and 258.]

Art. 702. Question submitted.—In all cases when the governing body of a county, city or town shall order an election for the issuance of the bonds of the county, city or town or of any political subdivision or defined district of a county, such body shall at the same time submit the question of whether or not a tax shall be levied upon the property of such county, city or town, political subdivision or defined district for the purpose of paying the interest on the bonds and to create a sinking fund for the redemption of the bonds.

Art. 703. [606] Submission of proposition.—The proposition to be submitted shall distinctly specify:

1. The purpose for which the bonds are to be issued;
2. The amount thereof;
3. The rate of interest;
4. The levy of taxes sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity;
5. The maturity date, or that the bonds may be issued to mature serially within any given number of years not to exceed forty. [Id. Acts 1899, p. 258; Acts 1st C. S. 1921, p. 37.]

Art. 704. [607] Time of election, etc.—The time and place or places of holding said election shall be designated in the election order. The manner of holding the same shall be governed by the laws regulating general elections. [Acts 1899, p. 258.]

Art. 705. [606] Form of ballot.—All voters desiring to support the proposition shall have written or printed upon their ballots the words "For the issuance of bonds," and those opposed, the words "Against the issuance of bonds." [Id.]

Art. 706. [611] [878] Maturity dates.—Bonds may be issued to mature serially within any given number of years not to exceed forty, within the discretion of the governing body issuing the same. [Acts 1893, p. 112; G. L. vol. 10, p. 542.]

Art. 707. [616] [918a] Interest and sinking fund.—When the issuance of bonds has been authorized, the governing body of a county or town shall provide for the levy and collection of a tax annually sufficient to pay the annual interest and provide a sinking fund for the payment of the bonds at maturity. Such bonds shall bear a rate of interest not exceeding six per cent. [Acts 1893, p. 84; G. L. vol. 10, p. 514.]

Art. 708. [617] [918b] Sale price.—Bonds shall never be sold at less than their par value and accumulated interest, exclusive of commissions. [Id.]

Art. 709. [619] [918d] Examination of bonds, etc.—Before any bonds shall be offered for sale, the county judge or the mayor, as the case may be, shall forward the bonds to the Attorney General, together with a certified copy of the order or ordinance levying the tax to pay the interest and provide a sinking fund, and a statement of the total bonded indebtedness of the county, city or town, including the series of bonds proposed, together with the amount of the assessed value of the property of the county, city or town for purposes of taxation as shown by the last official assessment of such county, city or town. Such county judge or mayor shall also furnish the Attorney General with any additional information he may require. [Id.]

Art. 710. [620] [918e] Registration.—When said bonds have been examined and certified by the Attorney General, they shall be registered by the Comptroller in a book kept for that purpose. [Id.; Acts 1901, p. 16.]

Art. 711. [621] [469] [423] Special registration.—The Comptroller shall indorse his certificate of registration on each city bond so registered, and at the request of the mayor, give his certificate to the amount of bonds so registered to date. [Acts 1875, p. 113; G. L. vol. 8, p. 506.]

Art. 712. [622] [918e] Certificate of approval.—The certificate of the Attorney General to the validity of such bonds shall be preserved of record. [Acts 1893, p. 84; Acts 1901, p. 16; G. L. vol. 10, p. 542.]

Art. 713. [623] [918e] Shall cancel old bonds.—In the case of funding or refunding bonds, the Comptroller shall not register the same until the original bonds are presented to him for cancellation. [Id.]

Art. 714. [624] [918e] Requisites of cancellation.—After registration of the new bonds, the Comptroller shall cancel the old, and deliver the new bonds to the proper party or parties. The old bonds may be presented for cancellation in installments, and a like amount of the new bonds registered and delivered as herein provided. [Id.]

Art. 715. [625] [918f] Evidence of validity.—Such bonds, after receiving the certificate of the Attorney General, and having been registered in the Comptroller's office, shall be held in every action, suit or proceeding in which their validity is or may be brought into question, prima facie valid and binding obligations. In every action brought to enforce collection of such bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence of its validity, together with the coupons attached thereto. The only defense which can be offered against the validity of such bonds shall be forgery or fraud. This article shall not be construed to give validity to any such bonds as may be issued in excess of the limit fixed by the Constitution, or contrary to its provisions. [Id.]

Art. 716. Validity of certain bonds.—No bonds or coupons legally and lawfully issued and signed by the duly authorized officers of any county, city, town, political subdivision, defined district or school district of this State shall ever be held invalid by reason of the fact that at the time of the actual delivery of such bonds to a purchaser, the respective persons who had signed such bonds or coupons may have been replaced in their respective offices by other persons after the signing of such bonds or coupons but before the delivery thereof. [Acts 2nd C. S. 1923, p. 60.]

Art. 717. [608] Exceptions.—The first three articles of this chapter shall not apply to funding bonds issued, or to be issued, for the funding of any valid outstanding bonds of a county, town or city; nor to any bond issue for a sum less than two thousand dollars, when issued for the purpose of repairing buildings or structures for the building of which bonds are allowed to be issued. [Acts 1899, p. 258.]

CHAPTER TWO

COURTHOUSE, JAIL AND OTHER BONDS

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725. Substitution of bonds.

Article 718. [610] [877] County issues authorized.—After having been authorized as provided in Chapter One of this title, the commissioners court of a county may lawfully issue the bonds of said county for the following purposes:

1. To erect the county courthouse and jail, or either;

2. To purchase suitable sites within the county and construct buildings thereon to provide homes or schools for dependent and delinquent boys and girls or for either;

3. To establish county poor houses and farms in the county;

4. To purchase and construct bridges for public purposes within the county or across a stream that constitutes a boundary line of the county;

5. To improve and maintain the public roads in the county.

When the commissioners court shall deem it advisable to issue bonds for both the purchase or construction of bridges and improvement and maintenance of the public roads, both questions may be submitted and voted on as one proposition. [Acts 1903, C. S. p. 9; Acts 1893, p. 112; Acts 1911, p. 204; Acts 1921, p. 98; G. L. vol. 10, p. 542.]

Art. 719. [605] Requisite vote.—If a majority of the property tax paying voters voting at such election shall vote in favor of the proposition, then such bonds shall be thereby authorized and shall be issued by the commissioners court. [Acts 1899, pp. 103 and 258.]

Art. 720. [611] [878] Term of bonds.—All bonds issued under this chapter shall run not exceeding forty years, and may be redeemable at the pleasure of the county at any time after five years after the issuance of the bonds, or after any period not exceeding ten years, which may be fixed by the commissioners court. [Acts 1893, p. 112; G. L. vol. 10, p. 542.]

Art. 721. [612] [879] Interest on bonds.—Such bonds shall draw interest at a rate not exceeding six per cent. per annum, payable annually or semi-annually within the discretion of the governing body. Interest shall be evidenced by attached coupons. [Id.]

Art. 722. [613] [880] Limit of issue.—The issue of bonds under this chapter shall be based upon the taxable values of the county according to the last approved assessment, and shall be limited as follows: Courthouse and jail bonds shall be limited to an amount not exceeding two per cent of said taxable values; bridge bonds, to an amount not exceeding one and one-half per cent of said taxable values. In determining the amount of the bonds of the respective kinds to be issued, previous indebtedness for said several purposes shall be considered. The total indebtedness of any county for the purposes provided in this chapter, shall not be increased by any issue of bonds to a sum exceeding five per cent of its said taxable values. [Id.; Acts 3rd C. S. 1920, p. 97.]

Art. 723. [614] [881] Interest and sinking fund.—The commissioners court shall levy annual ad valorem taxes sufficient to pay the interest on said bonds and create a sinking fund for their redemption; which shall not exceed for courthouse and jail bonds, one-fourth of one per cent; for bridge or road and bridge bonds, fifteen cents on each one hundred dollars. [Acts 1893, p. 112; G. L. vol. 10, p. 542.]

Art. 724. [615] [882] Bonds to be signed, etc.—The bonds shall be signed by the county judge and countersigned by the county clerk and registered by the county treasurer before delivery. The county treasurer shall keep an account of the amount of principal and interest paid on each, and no bond shall be sold at less than its par value and accrued interest, exclusive of commissions. [Id.]

Art. 725. [657] Substitution of bonds.—Where bonds have been legally issued, or may be hereafter issued for any purpose authorized in this chapter, new bonds in lieu thereof bearing the same or a lower rate of interest may be issued, in conformity with existing law, and the commissioners court may issue such bonds to mature serially or otherwise, not to exceed forty years from their date. [Acts 1901, p. 16; Acts 1893, p. 112; G. L. vol. 10, p. 542.]

CHAPTER THREE

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For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

1. COUNTY AND DISTRICT BONDS

Articles 726–752. [Repealed by Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 30.]

Art. 752a. Power to issue road bonds.—Any county, or any political subdivision of a county, or any road district that has been or may hereafter be created by any general or special law, is hereby authorized to issue bonds for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, in any amount not to exceed one-fourth of the assessed valuation of the real property of such county or political subdivision or road district, and to levy and collect ad valorem taxes to pay the interest on such bonds and provide a sinking fund for the redemption thereof. Such bonds shall be issued in the manner hereinafter provided, and as contemplated and authorized by section 52, of Article 3, of the Constitution of this State. The term "political subdivision" as used in this Act, shall be construed to mean any commissioners precinct or any justice precinct of a county, now or hereafter to be created and established. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 1.]

Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 31, read as follows: "Nothing in this Act shall be construed as invalidating any bond elections previously ordered or held within and for any county in this state or any political subdivision or defined district of any county under the provisions of Chapter 2, Title 18, Revised Statutes of 1911, and amendments thereto, or Chapter 3, Title 22, Revised Statutes, 1925, or under authority of any special county road law."

Art. 752b. Bond elections.—Upon the petition of fifty resident property taxpaying voters of any county, the commissioners' court of such county, at any Regular or Special Session thereof, shall order an election to be held in such county to determine whether or not the bonds of such county shall be issued for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, and whether or not taxes shall be levied on all taxable property of said county, subject to taxation, for the purpose of paying the interest on said bonds and to provide a sinking fund for the redemption thereof at maturity. The election order and notice of election shall state the purpose for which the bonds are to be issued, the amount thereof, the rate of interest, and that ad valorem taxes are to be levied annually on all taxable property within said county sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 2.]

Art. 752c. Establishment of road districts.—The County Commissioners' Courts of the several counties of this State may hereafter establish one or more road districts in their respective counties, and may or may not include within the boundaries and limits of such districts, villages, towns and municipal corporations, or any portion thereof, and may or may not include previously created road districts and political subdivisions or precincts that have voted and issued road bonds pursuant to section 52 of Article 3, of the Constitution, by entering an order declaring such road district established and defining the boundaries thereof. Provided that nothing in this Act shall be construed so as to prevent the creation of defined road districts and the issuance of bonds of said districts in counties having outstanding county-wide road bonds, and said defined road districts may be created in such counties in the manner provided by statute for the creation of defined road districts and issuing the bonds thereof. [Acts 1926, 39th Leg., 1st C. S., p. 23. ch. 16, § 3; Acts 1927, 40th Leg., 1st C. S., p. 250, ch. 92, § 1.]

Art. 752cc. Road district including portion of previous road district containing other improvement district.—If any road district a portion of which is proposed to be incorporated into a new road district, should embrace the whole or any part of any levee improvement district, drainage district, or other improvement district created under any law passed pursuant to Section 52, Article 3, of the Constitution of this State, the territory covered by such other district and other territory adjacent thereto may be excluded from the district sought to be created, but except as herein specifically permitted, no fractional part of a previously created road district shall be included within the limits of the road district created under the provision of this Act, and such excluded territory shall continue to bear and pay its proper proportion or any existing debt created for the construction of macadamized, graveled, or paved roads and turnpikes or in aid thereof, but shall not pay any portion of any debt created for said purposes after such territory is excluded from the district. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 3a; Acts 1927, 40th Leg., 1st C. S., p. 201, ch. 75, § 1.]

Art. 752d. Petition for election.—Where any political subdivision, or any road district, desires to issue bonds, there shall be presented to the Commissioners' Court of the county in which such subdivision or district is situated, a petition signed by fifty or a majority of the resident property taxpaying voters of said subdivision or road district praying such court to order an election to determine whether or not the bonds of such subdivision or district shall be issued to an amount stated for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, and whether or not taxes shall be levied on all taxable property within said subdivision or district in payment thereof. Upon presentation of such petition, it shall be the duty of the court to which it is presented to fix a time and place at which such petition shall be heard, which date shall be not less than fifteen nor more than thirty days from the date of the order. The clerk of said court shall forthwith issue a notice of such time and place of hearing, which notice shall inform all persons concerned of the time and place of hearing and of their right to appear at such hearing and contend for or protest the ordering of such bond election. Such notice shall state the amount of bonds proposed to be issued, and shall describe such political subdivision or road district by its name or number, and shall describe the boundaries thereof as such boundaries are described and defined in the order of the Commissioners' Court establishing such subdivision or district. The clerk shall execute said notice by posting true copies thereof in three public places within such subdivision or road district and one at the court house door of the county. Said notice shall be posted for ten days prior to the date of said hearing. Said notice shall also be published in a newspaper of general circulation in the subdivision or district, if a newspaper is published therein, one time, and at least five days prior to such hearing. If no newspaper is published in such subdivision or district, then such notice shall be published in some newspaper published in the county, if there be one. The duties herein imposed upon the clerk may be performed by said clerk in person or by deputy, as provided by law for other similar duties. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 4.]

Art. 752e. Hearing and determination.—At the time and place set for the hearing of the petition, or such subsequent date as may then be fixed, the court shall proceed to hear such petition and all matters in respect of the proposed bond election. Any person interested may appear before the court in person or by attorney and contend for or protest the calling of such proposed bond election. Such a hearing may be adjourned from day to day and from time to time, as the court may deem necessary. If upon the hearing of such petition, it be found that the same is signed by fifty or a majority of the resident property tax paying voters of such subdivision or road district, and that due notice has been given, and that the proposed improvements would be for the benefit of all taxable property situated in such subdivision or road district, then such court may make and cause to be entered of record upon its minutes an order directing that an election be held within and for such subdivision or road district at a date to be fixed in the order, for the purpose of determining the ques-

tions mentioned in such petitions; provided, however, that such court may change the amount of the bonds proposed to be issued, if, upon the hearing such change be found necessary or desirable. The proposition to be submitted at such election shall specify the purpose for which the bonds are to be issued, the amount thereof, the rate of interest, and that ad valorem taxes are to be levied annually on all taxable property within said district or subdivision sufficient to pay the annual interest and provide a sinking fund to pay the bonds at maturity. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 5.]

Art. 752f. Notice of election.—If the proposed issue of bonds and levy of taxes is for the entire county, notice of the election shall be given by publication in a newspaper published in such county, for three successive weeks, if there be one. In addition thereto, for three weeks prior to said election, notice shall be posted by the county clerk at four public places in the county, one of which shall be the courthouse door. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 6.]

Art. 752f–1. Election in political subdivision or road district.—If the proposed issue of bonds and levy of taxes is for a political subdivision or road district, notice of such election shall be given by publishing in a newspaper in the subdivision or district for three successive weeks, and by posting notices in at least three public places in such subdivision or district and at the courthouse door of the county. If no newspaper is published therein, then such published notice shall be given in some newspaper published in the county, if there be one. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 7.]

Art. 752f–2. Place of holding election in subdivisions.—The commissioners' court shall determine the time and place or places of holding such election, and the date of such election shall be not less than thirty days from the date of making the order of election. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 8.]

Art. 752g. Manner of holding election.—The manner of holding such election and canvassing and making returns thereof, shall be governed by the General Laws of this State when not in conflict with the provisions of this Act [Arts. 752a–752w, 767a–767d]. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 9.]

Art. 752h. Issuance of bonds.—If at such election two-thirds of the property tax paying voters, voting at such election, cast their ballots in favor of the issuance of bonds, the Commissioners' Court shall, as soon [soon] thereafter as practicable, issue said bonds on the faith and credit of said county, or political subdivision or road district, as the case may be. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 10.]

Art. 752i. Maturity dates and interest rate.—Such bonds shall mature not later than thirty years from their date, except as herein otherwise provided; they shall be issued in such denominations, and payable at such time or times as may be deemed most expedient by the Commissioners' Court, and shall bear interest not to exceed five and one-half per cent per annum. The general laws relative to county bonds, not in conflict with the provisions of this Act [arts. 752a–752w, 767a–767d], shall apply to the issuance, approval and certification, the registration, the sale and payment of the bonds provided for in this Act. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 11.]

Art. 752j. Sale of bonds and disposition of proceeds.—After approval and registration as provided by law relative to other bonds, such bonds shall continue in the custody and control of the Commissioners' Court of the county in which they were issued, and shall be by said court sold to the highest and best bidder for cash, either in whole or in parcels, at not less than their par value, and the purchase money therefor shall be placed in the county treasury of such county to the credit of the available road fund of such county, or of such political subdivision or road district of such county, as the case may be. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 12.]

Art. 752k. Ad valorem tax levy.—Before such bonds shall be put on the market, the County Commissioners' Court of the county in which such election was held, shall levy an ad valorem tax sufficient to pay the interest on such bonds and to provide a sinking fund to pay the bonds at maturity. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 13.]

Art. 752*l*. County assessments.—When such bonds are issued on the faith and credit of the county, the taxes herein authorized shall be assessed and collected in the same manner as now provided by law for the assessment and collection of other county taxes. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 14.]

Art. 752m. District and subdivision assessments.—When such bonds are issued for and on the faith and credit of a political subdivision or road district, such taxes shall be assessed and collected in the same manner as is now provided by law for the assessment and collection of common school district taxes. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 15.]

Art. 752n. Duties of assessor and collector.—The tax assessor and tax collector of the county wherein such taxes have been levied, shall assess and collect the same in the manner and at the time as other taxes; and when so collected, the tax collector shall pay them to the county treasurer as other taxes are paid. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 16.]

Art. 752o. Duties of custodian and depositary of proceeds.—The county treasurer is custodian of all funds collected by virtue of this law, and shall deposit them, with the county depository in the same manner as county funds are deposited. It shall be the duty of the county treasurer to promptly pay the interest and principal as it becomes due on such bonds out of the funds collected and deposited for that purpose. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 17.]

Art. 752p. Disbursement of proceeds by county treasurer.—The purchase money for such county bonds shall be paid out by the county treasurer upon warrants drawn on the available road fund, issued by the county clerk, countersigned by the county judge, upon certified accounts approved by the Commissioners' Court of the county; and the purchase money for such bonds issued on the faith and credit of a political subdivision or road district shall be paid out by the county treasurer upon warrants drawn on the available road fund thereof, issued by the county clerk, countersigned by the county judge, and approved by the Commissioners' Court. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 18.]

Art. 752q. Expenses.—The expense incurred in surveying the boundaries of a political subdivision or road district, and other expenses incident to the issuance of bonds of such subdivision or district, shall be paid from the proceeds of the sale of the bonds of the subdivision or district issuing the same. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 19.]

Art. 752r. Districts and subdivisions bodies corporate.—Any road district, or any political subdivision accepting the provisions of this Act, shall be a body corporate and may sue and be sued in like manner as counties; provided, however, that no such road district or political subdivision shall ever be held liable for torts. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 20.]

Art. 752s. Classification of county bonds.—When the road bonds have been issued by a county as a whole, such bonds shall be known and designated as "——— County Road Bonds," taking the name of the county issuing the same, and shall express on their face that they are issued under authority of Section 52, of Article 3, of the Constitution of Texas, and laws enacted pursuant thereto. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 21.]

Art. 752t. Classification of subdivision bonds.—If the proposition to issue the road bonds of a political subdivision or road district is adopted, such bonds shall express on their face: The State of Texas, the name of the county, the number or corporate name of the subdivision or district issuing such bonds, and

they shall be designated as "Road Bonds," and express on their face that they are issued under authority of Section 52, of Article 3, of the Constitution of Texas, and laws enacted pursuant thereto. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 22.]

Art. 752u. Powers of county commissioner.—The County Commissioner in whose Commissioners' precinct such political subdivision or road district is located, shall be ex officio road superintendent of said subdivision or district with power to contract in behalf of such subdivision or district in an amount not to exceed fifty dollars, which shall be approved by the Commissioners' Court. All contracts exceeding the sum of fifty dollars shall be awarded by the entire court. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 23.]

Art. 752v. Award of contracts.—Before the Commissioners' Court shall let a contract for work in a county or road district or subdivision, bids shall be invited by publishing an advertisement in a newspaper published in such county, and outside of the county, if the Commissioners' Court deems it advisable to do so. All contracts shall be awarded to the lowest and best bidder. Any or all bids may be rejected. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 24.]

Art. 752w. Certain counties may avail.—Any county operating under the provisions of special road tax law may take advantage of any of the provisions of this Chapter. [Arts. 752a–752w, 767a–767d.] [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 29.]

2. COMPENSATION BONDS

Arts. 753–767. [Repealed by Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 30.]

Art. 767a. Compensation bond issue.—Whenever in any political subdivision or road district in any county bonds have been issued under the authority of any general or special law enacted pursuant to Section 52, of Article 3, of the Constitution, and thereafter bonds are voted by the entire county for the purposes hereinafter authorized, such political subdivisions or road districts first issuing bonds may be fully and fairly compensated by the county in an amount equal in value to the amount of district bonds issued by such districts and which shall be done in the form and manner hereinafter prescribed:

(1) It shall be the duty of the Commissioners' Court, upon the presentation of a petition signed by two hundred and fifty resident property taxpaying voters of the county, whether residing in such road district or districts, or not, to order an election under the provisions of this Act to determine whether or not the bonds of such county shall be issued for road construction purposes as authorized by subdivisions 3 and 4 of this section.

(2) Such county bonds to be issued in such an amount as may be stated in the order of the Commissioners' Court, but within the limitations of the constitutional and statutory provisions; and at such election there shall also be submitted to the resident property taxpaying voters of the county the question as to whether or not a tax shall be levied upon the property of said county, subject to taxation, for the purpose of paying the interest on said bonds and to provide a sinking fund for the redemption thereof.

(3) When such road district or districts have by the requisite vote of the qualified property taxpaying voters thereof authorized, the issuance of bonds, and the same have not been issued and sold, or, if sold and the proceeds have not been expended at the time the election is to be ordered for the entire county, then the proposed county bonds shall be issued for the following purpose: "The issuance of county bonds for the construction of district roads and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes or in aid thereof, throughout such county." If the proposition to issue such county bonds for said purpose shall receive the necessary favorable vote as is now provided by law, and said bonds shall have been approved and issued, then so much of the bonds so issued by the county as may be necessary to fairly and fully compensate such road district or districts shall be set aside by the Commissioners' Court for that purpose; provided, that in the event such district bonds have not been issued and sold, then so much of the bonds so issued by the county as may be necessary to fairly and fully compensate such road district or districts shall be set aside for that purpose, and the same shall be sold and the proceeds applied to the construction, maintenance and operation of the roads within and for such road district or districts as contemplated by the election or elections theretofore held within and for such road district or districts and such unsold district bonds shall thereupon become totally void, and it shall be the duty of the Commissioners' Court of such county to immediately cancel and destroy such unsold district bonds; provided, however, that in the event such district bonds have been sold, then an exchange of a like amount of said county bonds may be made with the holder or holders of said district bonds as provided by subdivision 1 of Section 26, of this Act [Art. 767b], but if the Commissioners' Court should find that such exchange cannot be made, then so much of the county bonds as may be necessary shall be transferred and placed to the credit of the interest and sinking fund account of such road district or districts in conformity with the procedure prescribed by subdivision 2 of Section 26 hereof.

(4) Where such road district or districts have issued bonds for the construction of public roads therein and the proceeds derived from the sale of the bonds have been applied to the construction of roads within and for such districts, then such district roads may be merged into and become a part of the general county system of public roads and such road district or districts shall be fully and fairly compensated by the county in an amount equal in value to the amount of bonds outstanding against such road district or districts at the time the bonds are issued by the county, and the proposed county bonds shall be issued for the following purpose: "The issuance of county bonds for the purchase of district roads and the further construction, maintenance and operation of macadamized, graveled, or paved roads, and turnpikes, or in aid thereof, throughout such county." In the event the proposition to issue such county bonds shall receive the necessary favorable vote as is now provided by law, and said bonds shall have been approved and issued, then so much of the bonds so issued by the county as may be necessary for that purpose shall be set aside and exchanged for a like amount of outstanding district bonds, or the same may be transferred and placed to the credit of such road district or districts for the purpose of paying and retiring such district bonds as the same may mature. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 25.]

See Art. 752w as to what counties may take advantage of Chapter 16, Acts 1926, 39th Leg., 1st C. S.

See note to Art. 752a for general saving section of ch. 16, Acts 1926, 39th Leg., 1st C. S.

Art. 767b. Exchange of bonds.—If the proposition to issue such county bonds shall receive the necessary favorable vote as is now provided by law, and said bonds shall have been approved and issued, the taxes theretofore levied and collected in any road district or districts shall from that date be dispensed with as hereinafter provided, and the bonds so set apart by the Commissioners' Court shall be used exclusively for the purpose of constructing the roads in any such subdivisions or districts or for the purpose of purchasing or taking over the improved roads in any such subdivisions or districts, as the case may be. The exchange of such county bonds for such outstanding district bonds shall be made in one of the following methods, to wit:

(1) An exchange of said bonds may be made with the holder or holders of any outstanding district bonds. The agreement for such exchange shall be evidenced by order of the Commissioners' Court authorizing the same and by the written consent of the holder or holders of such district bonds, properly signed and acknowledged, as provided for the acknowledgment of written instruments by the laws of this State, which said order of the Commissioners' Court, written agreement properly executed by the holder or holders of

such district bonds, together with the county bonds to be given in exchange, shall be presented to and approved by the Attorney General of the State and shall bear his certificate of approval before the exchange is finally consumated [consummated]. When such exchange of county bonds for district bonds shall have been consumated [consummated], it shall be the duty of the Commissioners' Court to cancel and destroy said district bonds, and thereafter no tax shall ever be levied or collected therefor under the original election in such subdivisions or districts and the sinking funds then on hand to the credit of any such subdivisions or districts shall be passed to the sinking fund account of the county

(2) In the event the exchange of the county bonds for the outstanding district bonds cannot be made as hereinabove provided for, it shall then be the duty of the Commissioners' Court, at as early a date as practicable, to deposit with the county treasurer for the credit of the interest and sinking fund account of such road district or districts an amount of county bonds equal in value to the amount of outstanding district bonds. The order of the Commissioners' Court authorizing the deposit of county bonds for the credit of the interest and sinking fund account of such road district or districts, together with the county bonds so authorized to be deposited, shall be presented to and approved by the Attorney General of the State and shall bear his certificate of approval before such deposit of county bonds shall be made and credit passed to such road district or districts; provided, however, that such county bonds before deposited shall have printed or written across the face thereof the word "Nonnegotiable" and shall further recite that they are deposited to the credit of the interest and sinking fund account of the road district therein named as a guarantee for the payment of the outstanding district bonds that have not been exchanged, and the coupons annexed to such county bonds so deposited shall have written or printed thereon the word "Nonnegotiable." After such county bonds shall have been deposited for the credit of the interest and sinking fund accounts of any such road district or districts the sinking fund then on hand to the credit of such road district or districts shall be passed to the credit of the sinking fund account of the county and the Commissioners' Court shall no longer levy and collect the taxes provided for under the original election for said bonds in such road district or districts, but in lieu thereof the said court shall, from the taxes levied for the purpose of providing the necessary interest on the county bonds hereinabove provided for, pay annually the interest on said county bonds deposited for the credit of such road district or districts, detaching the coupon therefor, and said payment of interest shall be passed to the credit of the interest account of such road district or districts as the owner or owners of said county bonds, and the funds so realized by said road district or districts shall be used by the Commissioners' Court for the purpose of paying the interest on all such outstanding district bonds. It shall also be the duty of the Commissioners' Court to set aside annually, from the taxes levied to provide the necessary sinking fund for such county bonds, the necessary sinking fund for the retirement of said county bonds and upon maturity of said county bonds the Commissioners' Court shall pay said bonds in full and said payments shall be passed to the credit of the sinking fund of such road district or districts and the funds so realized by said road district or districts shall be used by the Commissioners' Court to pay in full all outstanding district bonds. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 26.]

Art. 767c. Issuance, form and requisites of compensation bonds.—The county bonds issued for the purpose contemplated in subdivisions three and four of Section 25 [Art. 767a] hereof, shall be issued in similar denominations, bearing the same rate of interest, having the same date or dates of maturity and with similar options of payment as the outstanding district bonds, it being the intent hereof that said county bonds shall in every respect be similar to said district bonds, except they shall be county obligations instead of district obligations, and shall be dated on a date after the date of the election at which they were authorized; and the county bonds issued in excess of the amount required to exchance [exchange], offset and retire said outstanding district bonds shall be issued and sold in the manner now provided by law and may mature serially or otherwise at the discretion of the Commissioners' Court and may run for a term not to exceed forty years and such bonds shall bear not more than five and one-half per cent interest per annum, and the proceeds thereof shall be credited to the avilable [available] road fund of the county and shall be expended by the Commissioners' Court in constructing, maintaining and operating macadamized, graveled, or paved roads and turnpikes, or in aid thereof, throughout such county. The issuance and sale of the bonds herein authorized and the levy and collection of taxes therefor shall be conducted as now required by law on other county bonds, except as herein otherwise provided; and provided further that the necessary expense incident to the issuance of said bonds may be paid out of the proceeds from the sale thereof. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 27.]

Art. 767d. Previously created districts and subdivisions.—Where any road district created under the provisions of this Act [Arts. 752a–752w, 767a–767d] includes within its limits any previously created road district, or any political subdivision or precinct, having at such time road bond debts outstandng, such included district or subdivision shall be fully and fairly compensated by the new district in an amount equal to the amount of the bonds outstanding against such included subdivision or district, and which shall be done in the form and manner prescribed for the issuance of county bonds under Sections 25 to 27, inclusive of this Act [Arts. 767a–767c], except the petition shall be signed by fifty or a majority of the resident property taxpaying voters of the new district, and the bonds proposed to be issued shall be for the purchase or construction of roads in the included subdivisions or districts and the further construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof. [Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 28.]

3. CONSOLIDATED DISTRICTS

Arts. 768–778. [Repealed by Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 30].

3a. DISTRICTS IN ADJOINING COUNTIES

Art. 778a. Power to issue bonds.—That, pursuant to authority conferred by Section 52, of Article 3, of the Constitution, any number of adjoining counties within this State are hereby empowered and authorized to issue bonds in any amount not to exceed one-fourth of the assessed valuation of the real property of the territory included within such counties, and to levy and collect annually ad valorem taxes to pay the interest upon such bonds and to provide a sinking fund for the redemption thereof, for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof. The phrase "any number of adjoining counties" as used in this Act [Arts. 778a–778p], shall be construed to mean "two or more counties contiguous to each other." [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 1.]

Section 17 of Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, provided that if any part thereof is held invalid, such holding shall not affect the remainder.

Art. 778b. Procedure prescribed.—In the event the qualified property taxpaying voters residing within two or more adjoining counties desire to combine such counties into one defined road district, for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, it shall be lawful for them to do so by following the procedure prescribed in the subsequent sections of this Act [Arts. 778c–778p]. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 2.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 778c. Petition for road district.—The petition for the creation and establishment of a defined road district composed of two or more adjoining counties, shall be signed by not less than fifty qualified voters and property taxpayers in each county. A separate petition for the establishment of said district shall be presented to the commissioners' court of each county in said proposed district. The following proceedings shall be had in each county:

(1) Each petition shall describe in general terms the road or roads proposed to be constructed, and in like general terms the cities, towns and villages, if any, to be connected by such road or roads, and shall name each county proposed to be included within such road district. Each petition shall request the commissioners' court to order an election to determine whether said county shall be included in the proposed road district;

(2) Upon presentation of each petition, it shall be the duty of the court to which it is presented, to fix a time such petition shall be heard, and the date of hearing shall be not less than fifteen nor more than thirty days from the date of the order, and the place of hearing shall be the regular meeting place of the commissioners' court in the county courthouse;

(3) The county clerk shall forthwith issue notice of such time and place of hearing, which notice shall inform all persons concerned of the time and place of hearing, and of their right to appear at such hearing and contend for or protest the ordering of such election. Such notice shall set forth in substance the contents of the petition, and shall give the name of each county proposed to be included within the road district. The clerk shall execute said notice by posting true copies thereof in five public places, within the county, to-wit: One copy at the courthouse door, and one copy in each commissioners' precinct. Said notice shall be posted for ten days prior to the date of such hearing. Said notice shall also be published in a newspaper of general circulation, published in the county, one time, and at least five days prior to such hearing; provided, however, that if no newspaper is published in the county, then the posting of the notice as hereinabove directed, shall be sufficient. The duties herein imposed upon the clerk, may be performed by said clerk in person, or by deputy, as provided by law for similar duties;

(4) At the time and place set for the hearing of the petition or such subsequent date as may then be fixed, the court shall proceed to hear such petition and all matters in respect of the proposed road district. Any person interested may appear before the court in person, or by attorney, and contend for or protest the creation of the proposed road district. Such hearing may be adjourned from day to day, and from time to time, as the court may deem necessary. If upon the hearing of such petition, it be found that the same is signed by fifty of the resident property taxpaying voters of the county, and that due notice thereof has been given, and that the creation of the proposed district by the consolidation of such county with the other counties named in the proceedings, would be for the benefit of all taxable property situated in such county, then such court may make and cause to be entered of record upon its minutes, an order directing that an election be held within such county at a date to be fixed in the order, but not less than fifteen nor more than thirty days from the date of the election order. Notice of such election shall be given in the same manner and for the same time required for notices of the hearing on the petition. Provided, however, that the elections shall be held in each county on the same date;

(5) The manner of holding such election and canvassing and making the returns thereof, shall be governed by the General Laws of this State, when not in conflict with the provisions of this Act [Arts. 778a–778p];

(6) When the election for the creation of the district has been held, the officers named by the commissioners' courts of the different counties to hold the election in their respective counties, shall make returns of the election to the commissioners' courts of their respective counties, and return all ballot boxes to the clerk of the commissioners' court of the county. It shall be the duty of the commissioners' court of each county in the proposed road district, upon receiving the returns of the election, to canvass the same and certify the result of the election in the county to the county judge of the county having the largest number of inhabitants, as shown by the last Federal census. Upon receipt of the returns of the election in the different counties of the district, the county judge designated to canvass the vote, shall canvass such vote and certify the result to each county in the proposed district. If the votes cast in each and all counties show a majority in favor of the consolidation of such counties into a defined road district, the commissioners' court of each county shall thereupon declare such defined road district created, and such district shall be known as ———— Counties Road District of Texas, enumerating the counties embraced within such district in alphabetical order. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 3.]

Art. 778d. Directors of district.—The county judges and county commissioners of the counties composing such district shall be ex-officio directors of such district, and they shall have the same power and authority with reference to the management of the affairs of said district as commissioners' courts have in respect of road districts wholly within one county. Said district when so formed, shall be a defined district within the meaning of the Constitution and a body corporate. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 4.]

Art. 778e. Purchasing improved roads.—Such road district may or may not purchase or take over improved roads already constructed by any county or other road district included therein; provided, that in the event it is determined to take over or purchase such improved roads, then the same shall be done in conformity with the procedure prescribed by Section 25 et seq., of Chapter 16, of the General Laws passed by the Thirty-ninth Legislature, at its First Called Session, in 1926, except that no petition shall be necessary. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 5.]

Art. 778f. Bond election.—After the creation of any such road district, the commissioners' court of the counties included therein, at a joint meeting held in the county having the largest number of inhabitants, as shown by the last Federal census, may order an election to be held within such district at a time not less than thirty days from the date of said order, at which election there shall be submitted this proposition:

"Shall the ——— Counties Road District of Texas, be authorized to issue the bonds of said district in the total sum of ——— dollars ($——), and to levy annually ad valorem taxes on all taxable property in said district to pay the interest on said bonds and create a sinking fund to redeem the principal at maturity, for the purpose of the construction, maintenance and operation of macadamized, graveled or paved roads and turnpikes, or in aid thereof, within said district.

"The roads to be constructed from the proceeds of the sale of said bonds, and the amount apportioned to each road, is as follows:

"(Here set out the road or roads as described in the order and notice of the election to determine the creation of the district, and the amount to be expended on each such road or roads.)"

In the event it is proposed to purchase or take over the improved roads already constructed by an included county, or any included road district, then the election order shall be in conformity with the provisions of Section 25, of Chapter 16, of the General Laws passed by the Thirty-ninth Legislature, at its First Called Session, in 1926. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 6.]

Art. 778g. Notice of election and declaring result.—After such election order has been passed at such joint meeting of the commissioners' courts, as the ex-officio directors of said road district, a certified copy thereof shall be transmitted to the county clerk of each county within such district. Thereupon, the commissioners' court of each county, at a regular or spe-

cial session held in their respective counties shall give notice of such proposed bond election to be held on the date named in the order of the courts passed at such joint meeting. Each election notice shall state the time and place of holding such election, and shall also state in substance the contents of such election order, and all other proceedings in respect of the question so submitted shall be in accordance with the provisions of Chapter 16, of the General Laws, passed by the Thirty-ninth Legislature, at its First Called Session, in 1926, relative to county road bond elections. The commissioners' courts of such counties as ex-officio directors of said road district, shall by order declare the result, and the county judge shall certify the result to the county judge of the county having the largest population. If at such election two-thirds of the property taxpaying voters of each county, voting at such election, cast their ballots in favor of the issuance of the bonds, the commissioners' court of each county, as soon after the declaration of the result as practicable, shall pass all such orders that may be necessary in the issuance of such bonds and the levy of taxes in payment thereof. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 7.]

Art. 778h. Maturity dates, interest and proceeds.—The General Laws relative to county road bonds authorized pursuant to Section 52, of Article 3, of the Constitution, shall apply to the authorization and issuance, approval and certification, the registration, the sale and payment, of the bonds provided for in this Act [Arts. 778a–778p], except as herein otherwise provided. Such bonds shall mature not later than forty years from their date, and shall bear interest not to exceed six per cent per annum. The necessary expense incident to the issuance of said bonds may be paid out of the proceeds from the sale thereof. Upon the issuance and sale of the bonds provided for herein, the commissioners' court of each county may pass all such orders that may be necessary, setting aside so much of the proceeds derived from the sale of such bonds as the ex-officio directors of said road district may deem necessary to be used for the maintenance, repair and upkeep of the roads of such district. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 8.]

Art. 778i. Bond tax.—The amount of the bond tax to be levied annually shall be determined by the commissioners' courts of the respective counties before the period at which the annual levy of taxes is made in the counties composing said district, and the proportion of the tax levied against the property in each of the counties, respectively, shall be levied by the commissioners' court of such county at the same time and in the same manner that other taxes in such counties are levied, and the levy and collection thereof shall be governed by the same laws that govern the levy and collection of county taxes. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 9.]

Art. 778j. Issuance of bonds.—Said bonds shall be issued as nearly as may be in form now in use in this State in the issuance of county bonds, except that said bonds shall be issued in the name of the district, and shall be signed by the county judges of the several counties composing said district, and countersigned by the county clerks of such counties, with the seals of the commissioners' courts of such counties impressed thereon, and such bonds shall be attested by the treasurer or depository of said district. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 10.]

Art. 778k. Sale of bonds.—The commissioners' courts of the counties embraced in such district, at a joint meeting held in the county having the largest number of inhabitants, as shown by the last Federal census, shall advertise such bonds for sale, and the advertisement or notice of such proposed sale, shall be published in a newspaper of general circulation published in the district, one time, and at least ten days before the time fixed for such sale. The commissioners' courts shall convene in joint meeting on the date specified in such published notice for the sale of said bonds, and which joint meeting shall be held in the county having the largest number of inhabitants, for the purpose of considering bids for the purchase of such bonds. Said courts shall have the right to reject any and all bids. Such bonds shall be sold by said courts, at such joint meeting, to the highest and best bidder for cash, either in whole or in parcels, at not less than their par value. The purchase money therefor shall be placed in the treasury or depository of said district to the credit of the available road fund of such district. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 11.]

Art. 778*l*. Meetings of Commissioners' Courts.—Any joint meeting of the courts may be adjourned from day to day and from time to time, as such courts may deem necessary and advisable. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 12.]

Art. 778m. Bond records.—The county commissioners' courts for each county included within such district shall provide a well bound book in which a list of said bonds shall be kept by the county clerk of each county, showing their numbers, amount, rate of interest, date of issue, when due, where payable, and said books shall be public records in each county. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 13.]

Art. 778n. Warrants.—The purchase money for such bonds shall be paid out by the treasurer or depository, of such district, upon warrants drawn on the available road fund issued by the county clerk of the county having the largest number of inhabitants, but such warrants shall be countersigned by the county judge of each county situated within the road district, and no such warrant shall be issued except in payment of certified accounts approved by the commissioners' court of each county. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 14.]

Art. 778*o*. Treasurer or depository of district.—The treasurer or depository of such district shall be any bank, banking corporation or individual banker resident in such district, and such treasurer or depository shall be selected by the commissioners' courts of the counties included within such district, at joint meetings held for that purpose in the county having the largest number of inhabitants. The treasurer or depository shall be governed by the same laws and shall be subject to the same penalties as are provided by law for depositories of county funds; provided, before any such treasurer or depository shall be entitled to receive any funds of the district, it shall give bond to the district with a corporate surety company as surety, which is authorized to do business in the State of Texas, in an amount equal to the funds so deposited, conditioned upon the safe-keeping of such funds and paying of the same. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 15.]

Art. 778p. Change of roads.—The commissioners' court of any such county shall have authority to change any road or roads designated in the petition to create such road district, provided, it shall be found at the hearing on such petition that such change is necessary and practicable, and would be a public benefit, and would be beneficial to all taxable property in the county. Nothing in this Act [Arts. 778a–778p] shall be construed as requiring any commissioners' court to grant a petition for the establishment of such road district, if at the hearing herein provided for it be found that it would not be beneficial to the taxable property in the county to include such county within the proposed road district. [Acts 1927, 40th Leg., 1st C. S., p. 218, ch. 80, § 16.]

4. GENERAL PROVISIONS

Art. 779. Investment of sinking fund.—The commissioners courts may invest sinking funds accumulated for the redemption and payment of any bonds issued by such county, political subdivision or defined district thereof, in bonds of the United States, of Texas, or any county in this State; or in bonds of the Federal Farm Loan Bank System. No such bonds shall be purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created. [Acts 1917, p. 464.]

Art. 780. Interest on investments.—All interest on such investments shall be applied to the sinking fund to which it belongs, and the use of such funds for any other purpose shall be considered a diversion thereof and punished as provided by article 94 of the Penal Code. [Id.]

Arts. 781–784. [Repealed by Acts 1926, 39th Leg., 1st C. S., p. 23, ch. 16, § 30.]

CHAPTER FOUR

VIADUCTS, BRIDGES, ETC.

Art.
785. May order election.
786. Survey and estimate.
787. Submission of resolution.
788. Conduct of election.
789. Ballot.
790. Issue of bonds.
791. Limit of issue.
792. Tax levy.
793. Court may contract.
794. Maintenance fund.
795. Rules and regulations.

Article 785. [642] May order election.—The county commissioners court of any county having a population in excess of fifty thousand inhabitants according to the last United States census, may in their discretion, order an election to determine the propriety of a bond issue to provide for the construction and maintenance of causeways, viaducts, bridges and approaches across any river and bottoms within the limits of such county, irrespective of any municipal boundaries. [Acts 1909, p. 46.]

Art. 786. [643] Survey and estimate.—The commissioners court of such county shall, prior to ordering any such election, provide for preliminary surveys and estimates for such work, and shall prescribe in the election order the amount and terms of such bond issue. [Id.]

Art. 787. [644] Submission of resolution.—The resolution providing for such election shall be recorded in the minutes of the commissioners court and shall be submitted to the property owning qualified voters of said county as a proposition at a regular or special election which may be ordered by said court for that purpose. If a majority of the votes cast shall be for such resolution, the same shall be deemed to be adopted. [Id.]

Art. 788. [645] Conduct of election.—Such election shall be governed in all respects by the laws governing elections in this State, and the returns made and canvassed in the same manner, and the results declared by proclamation of the county judge of said county. Such proclamation shall be posted in at least three public places in said county, and at the option of the county judge, published in some newspaper in said county. [Id.]

Art. 789. [647] Ballot.—Those desiring to vote for the resolution shall have written or printed on their ballots the words "For the Resolution to Issue Bonds to ....." (here insert purpose of the proposed bond issue as set forth in said resolution), and those desiring to vote against the resolution shall have written or printed on their ballots the words "Against the Resolution to Issue Bonds to ....." (here insert such purpose of the proposed bond issue, as set forth in said resolution). Such ballots shall be written or printed on plain white paper, with black ink or pencil, and shall contain no distinguishing mark or device, except as above provided. [Id.]

Art. 790. [648] Issue of bonds.—If the resolution be voted, the commissioners court, under the supervision and direction of the Comptroller, shall prepare and execute the bonds of the county accordingly. They shall bear interest not exceeding five per cent payable annually, and be redeemable in not less than five nor more than forty years from the date thereof. The time of maturity shall be expressed on the face of the bonds. Such bonds shall be registered or enrolled as other county bonds, and shall not be sold or negotiated at less than their par value. [Id.]

Art. 791. [648] Limit of issue.—In no case shall bonds be issued under this chapter for a greater sum than that a levy of five cents of the one hundred dollars property valuation of said county will yield sufficient revenue to pay the interest as it accrues, and create a sinking fund sufficient to pay the principal of such bonds at maturity. [Id.]

Art. 792. [649] Tax levy.—When bonds are issued under the provisions of this chapter, the commissioners court shall levy an annual ad valorem tax on all property of the county, which shall be used only for the purpose of paying interest on said bonds and creating a sinking fund to pay the principal. [Id.]

Art. 793. [650] Court may contract.—The commissioners court may contract with individuals, firms or corporations for the use of such causeways, viaducts, bridges and approaches, or constructing and maintaining and using tracks, telegraph lines or other such privileges, but shall make no exclusive nor preferential contracts, and before executing any such contracts, shall give notice by posting at the courthouse door and in three other public places in said county the full terms and nature of such proposed contracts. [Id.]

Art. 794. [651] Maintenance fund.—Revenues that may accrue from any contract or contracts so made may be applied to the maintenance and repair of such structure or structures; and such court may make adequate provision for such maintenance and repair. In the event the revenues accruing from the use of any such structure shall exceed the expenditures for its maintenance and repair, such excess shall be applied to the road and bridge fund of the county. [Id.]

Art. 795. [652] Rules and regulations.—The commissioners court may make rules for the use of any structure erected under the provisions of this chapter, and provide for the enforcement thereof. [Id.]

CHAPTER FIVE

FUNDING, REFUNDING AND COMPROMISES

Art.
796. In case of storms, etc.
797. Regulation of bonds.
798. Order of commissioners court.
799. Classification of issues.
800. Apportionment of taxes.
801. Requisites of bonds.
802. Registration and sale.

Article 796. [660] In case of storms, etc.—Any county or any city incorporated under the general laws which may suffer great destruction or damage of property or depreciation of the value of taxable property from storms, floods or other disasters, may fund, refund, compromise or settle its valid outstanding bonded and floating indebtedness. [Acts 1901, S. S. p. 18.]

Art. 797. [661] Regulation of bonds.—For such purpose, the bonds of the county or city may be issued by the governing body without a vote of the tax payers in denominations of not less than one hundred, nor more than one thousand dollars each, for an amount sufficient to consummate such compromise or settlement, not to exceed the amount unpaid on the outstanding indebtedness. Such bonds may be exchanged for bonds or other evidences of outstanding indebtedness of such county or city, or may be sold and the proceeds applied in the purchase of outstanding bonds or the payment of outstanding floating indebtedness, and may be exchanged or sold from time to time in such amounts as may be required for refunding said outstanding bonds and funding or settling said floating debts. [Id.]

Art. 798. [662] Order of commissioners court.—Before issuing such bonds, and not later than two years after the disaster, the governing body of the county or city shall, by an order or ordinance, entered on the minutes, recite the nature and date of such disaster, the taxable value of the remaining property subject to taxation in said city or county as shown by the first approved assessment roll of such county or city made after such disaster, and the amount of bonds that will be sufficient to fund, refund or settle the outstanding bonded and floating indebtedness of such

county or city, stating also, the amount of new bonds that will be required for refunding or settling each outstanding issue of bonds, and the amount of new bonds necessary to fund or settle the outstanding indebtedness charged against each particular fund. [Id.]

Art. 799. [663] Classification of issues.—Separate classes of bonds shall be issued to refund or settle, respectively, each separate issue of outstanding bonds, and to fund or settle, respectively, the indebtedness against each particular fund. [Id.]

Art. 800. [664–5–6] Apportionment of taxes.—The court or council shall determine and record in the minutes the proportion of the several annual ad valorem taxes authorized by law that can be applied, respectively, in payment of the interest and sinking funds of the several classes of bonds without depriving the city or county of the funds which will be required to meet the necessary current annual expenses of such county or city. A levy in proportion to such excess or excesses beyond the amount required for current annual expenses may be made to pay the interest and sinking fund, respectively, of the said several classes of bonds. The constitutional limitation as to the rates and purposes of the several taxes shall not be exceeded nor disregarded. [Id.]

Art. 801. [667 to 672] Requisites of bonds.—The court, or city council, shall also by order or ordinance, prescribe the form and the classes of said bonds, and provide for the issuance thereof, at such dates as may be expedient. Such bonds may be made payable at any date deemed expedient by the commissioners court or city council, not later than forty years from the date of the execution, and provision may be made for their redemption after five years, or after such longer period as may be deemed expedient. Said bonds shall bear interest as stipulated and specified in coupons attached thereto, not to exceed four per cent per annum. Said bonds shall be issued under and subject to all requirements of chapter one of this title, which are not in conflict with the requirements and provisions of this chapter, and shall be signed by the county judge or mayor, and attested by the county or city clerk, as the case may be. [Id.]

Art. 802. [673–4–5–6–7] Registration and sale.—When examined and certified by the Attorney General, said bonds shall be registered by the Comptroller without requiring the old bonds, warrants or other evidence of indebtedness to be presented to him for cancellation. Said bonds shall be delivered to the county or city treasurer, and said officer shall register said bonds in a book kept for that purpose, and said bonds may thereafter be sold or exchanged for not less than their face value and accrued interest. Before delivery of the bonds, the date of the sale or exchange thereof shall be indorsed and certified on the bonds by the county judge or mayor, whose signature shall be attested by the county or city clerk. [Id.]

CHAPTER SIX

RECLAMATION AND IRRIGATION BONDS

Art.
803. Power to issue.
804. Order for election.
805. Amount of bonds, etc.
806. Limit of indebtedness.
807. Election.
808. Order of issuance.
809. Additional bond issue.
810. May issue notes.
811. Shall order election.
812. Ballot, etc.
813. Requisites of issuance.
814. Issuance of bonds and notes.
815. May exchange bonds.
816. Sale of bonds and notes.
817. Other counties may avail.
818. Special powers.
819. Special fund.
820. Control of system.
821. Other improvements.
822. What counties may avail.

Article 803. Power to issue.—For the purpose of constructing and maintaining pools, lakes, reservoirs, dams, canals and waterways for irrigation purposes or in aid thereof, or purchasing any such improvements already existing and adding thereto and paying incidental expenses connected therewith, counties may issue bonds not to exceed one fourth of the assessed valuation of its real property and levy and collect necessary taxes to pay the interest and provide a sinking fund for the redemption thereof. [Acts 1923, p. 264.]

Art. 804. Order for election.—Upon the petition of fifty or more resident property taxpaying voters of a county for an election upon the question of issuing bonds under the provisions of Section 52, Article 3, or Section 59 of Article 16 of the State Constitution, the commissioners court shall at a regular or special session thereof, order an election to determine whether or not the bonds of such county shall be issued in an amount not to exceed one fourth of the assessed valuation of the real property of such county for the purposes stated in the preceding article, and whether or not a tax shall be levied upon the property of said county for the purpose of paying the interest on such bonds and providing a sinking fund for the redemption thereof. [Id.]

Art. 805. Amount of bonds, etc.—The amount of bonds proposed to be issued, with the rate of interest thereon not to exceed six per cent per annum, payable annually or semi-annually, and the date of maturity, shall be stated in the petition, in the order for the election, and in the notice therefor; or such order and notice may provide that the bonds may bear interest at a rate to be fixed by the commissioners court, not to exceed six per cent per annum, payable annually or semi-annually, and that the bonds may mature at such times as may be fixed by the commissioners court, serially or otherwise, not to exceed forty years from their date. [Id.]

Art. 806. Limit of indebtedness.—Where such county contains any district or districts organized under Section 52 of Article 3, or Section 59 of Article 16 of the State Constitution, the percentage of indebtedness of any such district based upon its assessed valuation of real property in the district, together with the percentage of the proposed county indebtedness based upon the assessed valuation of the real property of the county as shown by the last approved assessment rolls of such district and of the county, shall never exceed in any one or more of such districts, or in the county, twenty-five per cent of the assessed valuation of real property of such district or districts, or of such county. [Id.]

Art. 807. Election.—These rules shall govern the conduct and holding of such election:

1. Only resident property taxpayers who are qualified electors of the county shall be allowed to vote in such election, and a two-thirds vote shall be necessary to carry the proposition submitted thereat.

2. The ballots to be used at such election shall have written or printed thereon the words "For the issuance of the bonds and levy of tax in payment thereof." and "Against the issuance of the bonds and levy of tax in payment thereof." The commissioners court shall furnish the ballots for each of the polling places.

3. The election order shall fix the time of holding said election and shall designate the polling place or places in each voting precinct in the county where said election shall be held, and shall name a presiding judge, a judge and two clerks for each polling place, or may name more election officers for any polling place if the court considers it necessary.

4. A copy of the election order signed by the county judge shall serve as proper notice of said election, and one copy shall be posted at each polling place and one at the courthouse door for at least full twenty days prior to the date of the election, and shall also be published in a newspaper published in said county for three consecutive weeks prior to the date of said election, the first publication to be full twenty-one days before the date of the election.

5. The manner of conducting said election shall be governed by the election laws of this State, except as otherwise herein provided.

6. Immediately after the election the presiding judge at each polling place shall make returns of the result of the election showing the total number of votes cast, the number cast for and against the proposition, and he shall deliver such returns to the county clerk who shall keep them in a safe place and deliver them to the commissioners court, who shall at a regular or special session, canvass said returns and declare the result of said election by order entered upon the minutes of the court. [Id.]

Art. 808. Order of issuance.—If the issuance of the bonds and levy of the tax have been so adopted, the commissioners court, at a regular term thereof, shall make and enter an order directing the issuance of the bonds authorized, and in said order shall provide for the levy and collection of a tax annually sufficient to pay the annual interest thereon, payable at such place or places as provided in said order, and to redeem such bonds at maturity. [Id.]

Art. 809. Additional bond issue.—If bonds have been authorized to be issued, or have been issued as herein provided, and if the commissioners court of such county shall consider it necessary to make any modifications in any of the proposed improvements, or shall determine to purchase or construct further or additional improvements and issue additional bonds, or purchase additional property in order to carry out the purposes of the project, or to best serve the interests of the county, such findings shall be entered of record, and an order for an election shall be entered and notice thereof given, and such election shall be held and the result thereof declared, in accordance with the provisions of this chapter, and if the result of such election be in favor of the issuance of such additional bonds, the commissioners court may order such additional bonds to be issued in the manner herein provided. [Id.]

Art. 810. May issue notes.—Whenever a county shall have constructed or purchased improvements and the same shall be damaged so that it may be necessary to raise funds to repair such damage, the county may issue bonds to raise such funds in the manner provided in this chapter, or may issue its notes therefor. Such notes shall run not to exceed twenty years and bear interest not to exceed six per cent per annum payable annually or semi-annually. [Id.]

Art. 811. Shall order election.—Before such notes are issued, the commissioners' court shall order an election and give notice thereof, as required for elections upon bond issues, stating the purpose for which they are to be issued, the time they are to run, the rate of interest, and the time and place or places of election. [Id.]

Art. 812. Ballot, etc.—The ballots for such election shall have written or printed thereon "For the issuance of notes," and "Against the issuance of notes." Such election shall be held and returns made and canvassed as provided herein for bond elections. If a two-thirds majority of those voting at such election voted in favor of the issuance of such notes, the commissioners court may issue and sell same for the benefit of said county and the purpose or purposes for which authorized. [Id.]

Art. 813. Requisites of issuance.—The commissioners court shall pass and enter an order directing and authorizing the issuance of the notes, and in said order provisions shall be made for the levy and collection of a tax annually sufficient to pay the current interest and provide a sinking fund for the payment of the principal at maturity. Said notes may be issued to mature serially or otherwise, as may be provided in the election order and notice of election. The limitation of indebtedness hereinbefore provided shall also apply to the issuance of such additional bonds and such notes. [Id.]

Art. 814. Issuance of bonds and notes.—All bonds and notes issued under the provisions of this chapter shall be issued in the name of the county, and such bonds shall be designated "..... County Water Improvement Bonds," and such notes shall be designated "..... County Water Improvement Notes," and shall be signed by the county judge, countersigned by the county clerk and registered by the county treasurer, and the seal of the commissioners court shall be impressed thereon, and may be in such denominations as may be fixed by the commissioners court. [Id.]

Art. 815. May exchange bonds.—The commissioners court may exchange bonds for property or in payment of the contract price for work to be done in the construction of said improvements. [Id.]

Art. 816. Sale of bonds and notes.—The commissioners court shall sell or exchange such bonds and notes on the best terms and for the best obtainable price, not less than their par value. When the bonds or notes are sold, the proceeds shall immediately be delivered to the county treasurer. [Id.]

Art. 817. Other counties may avail.—Any county desiring to issue bonds in accordance with the provisions of this chapter, shall bring an action in the district court of such county, or in the district court of Travis County, to determine the validity of such bonds in the manner provided for the validation of Water Improvement District Bonds in Chapter 2 of the Title "Water" and each provision of said chapter relative to such suit, the duties of the Attorney General and Comptroller, the judgment to be rendered, the effect of such judgment, and other matters connected therewith, shall apply to the validation of such county bonds. [Id.]

Art. 818. Special powers.—Counties operating under the provisions of this chapter are hereby empowered to own and construct reservoirs, dams, levees, wells, canals and other improvements, and to acquire the necessary rights-of-way and other lands by purchase or by condemnation in the manner provided for the condemnation of right-of-way by railroad companies, and to do, construct, purchase and acquire all other works and improvements required for the proper and efficient irrigation of the lands in such county. [Id.]

Art. 819. Special fund.—The commissioners court shall annually levy a tax sufficient to pay the current interest on such bonds and to pay the principal thereof as the same becomes due, and said tax shall be assessed and collected as other county taxes, and when collected shall constitute a special fund and shall not be diverted or used for any other purpose than in this article provided. [Id.]

Art. 820. Control of system.—The commissioners court shall have and exercise the control and management of the affairs and operation of the irrigation system of such county to the same extent and in the manner provided in Chapter 2 of the Title "Water," as conferred upon the directors of Water Improvement Districts, and said court shall exercise all of the powers relative to the control, management, affairs and operation of such county irrigation system as such directors have under the provisions of said chapter, and all the provisions of said chapter relative to the control, management, affairs and operation of Water Improvement Districts shall apply to the control, management, affairs and operation of such county irrigation system. [Id.]

Art. 821. Other improvements.—Any county authorized under the provisions of this chapter, may issue bonds for the improvement of rivers, creeks and streams to prevent overflow and for all necessary drainage purposes in connection therewith, and bonds proposed to be issued for the combined purposes stated in this chapter, or for any two of said purposes, shall be treated and deemed as for one purpose and may be voted upon as one proposition. [Id.]

Art. 822. What counties may avail.—The terms of this chapter shall apply to such counties as may have been relieved from the payment of taxes for a term of years by act of the Legislature under and by virtue of the provisions of Section 10, Article 8, of the State Constitution. [Id.]

CHAPTER SIX-A

NAVIGATION AID BONDS

Art.
822a. Power to issue.
822b. Eminent domain.
822c. Elections and order for issuance.
822d. Bonds and warrants.
822e. Right of way and conveyance to United States.

Article 822a. Power to issue.—Sec. 1. Any county in this State may, upon a vote of a two-thirds majority of the resident property tax payers voting thereon, who are qualified electors of such county, at an election held hereunder as hereinafter provided, in addition to all other debts, issue bonds or warrants or otherwise lend its credit in any amount not to exceed one-fourth of the assessed valuation of the real property of such county, and levy and collect such taxes to pay the interest thereon, and provide a sinking fund for the redemption thereof, as herein provided, for the purpose of navigation, or in aid of navigation, by securing right-of-way and necessary dumping privileges for any canal or water-way, authorized to be constructed under any Act of the United States Congress now in force, or hereafter enacted, and shall have the power, after any right-of-way and necessary dumping privileges have been secured, to convey same to the Government of the United States, if necessary to do so to aid in any navigation by water-ways, or canals. [Acts 1927, 40th Leg., p. 129, ch. 84, § 1.]

Art. 822b. Eminent domain.—Sec. 2. Any county in this State shall have the right of eminent domain for the purpose of carrying out the authority granted in Section 1 [Art. 822a] of this Act.

Sec. 3. Said county shall have the right in lieu of exercising its right to eminent domain, as hereinbefore provided, to permit the Government of the United States to exercise its right of eminent domain, and lend its credit in guaranteeing the Government of the United States to pay such judgment or assessment of damages, as may be entered against said Government of the United States, for the value of such property as it may condemn for such right-of-way and necessary dumping privileges. [Acts 1927, 40th Leg., p. 129, ch. 84.]

Art. 822c. Elections and order for issuance.—Sec. 4. The commissioners' court of any county in this State may, upon its own motion, and shall, upon a petition presented to it by twenty-five of the resident property tax payers therein, at a regular or special term of said court, order an election for the purpose of determining as to whether or not said county shall issue bonds or warrants, or otherwise lend its credit for the purpose of navigation or in aid thereof, by securing the necessary right-of-way for the purposes indicated in Section 1 [Art. 822a] hereof; said election order shall describe as near as may be, the navigation purposes, or the aid thereto proposed, or the right-of-way and necessary dumping privileges, necessary to be secured and the amount of bonds or warrants, or extent of credit proposed to be authorized for such purposes; and if bonds or warrants are to be issued, their maturity dates and the rate of interest; and if it is proposed to lend the credit of the county in lieu of the issuance of bonds or warrants, said election order shall state the manner in which said credit is proposed to be used, and the extent thereof, and the terms and conditions thereof. Twenty days notice of the holding of said election shall be given by publication in some newspaper published at the county seat of said county, and by posting in three public places in the county, one of which, shall be at the county seat.

Sec. 5. The ballots for said election shall have printed thereon, the words and none other: "For the issuance of bonds (or warrants) or (loaning of credit) and levy of a tax in payment thereof," and "Against the issuance of bonds (or warrants) or (loaning of credit) and the levy of a tax in payment thereof."

Sec. 6. If the proposition submitted to the voters of said county is at said election, adopted by them the commissioners' court shall enter the same in the minutes of said court, setting out the date of election, the notice of election, the result of the election, together with an order providing for the issuance of such bonds or warrants, stating the amount thereof, the maturities thereof, and the rate of interest, and at the same time levy a tax sufficient to pay the interest of said bonds or warrants, and providing a sinking fund sufficient to liquidate same at maturity, or as the case may be, setting out the mode and manner and conditions under which it is determined at said election to lend its credit and the extent thereof.

Sec. 7. If, at said election, the credit of the county is to be used otherwise than by the issuance of bonds or warrants, and in such manner as that its use creates a debt against the county, the commissioners' court shall, at a regular or special term thereof, at the time of the entering of said order, authorizing the use of said credit and the creation of said debt, levy a tax sufficient to pay said debt, or such amount thereof, as may mature during the current year, and shall from year to year, levy a tax sufficient to liquidate same as it accrues. [Acts 1927, 40th Leg., p. 129, ch. 84.]

Art. 822d. Bonds and warrants.—Sec. 8. All bonds or warrants issued under the provisions of this Act [Arts. 822a–822e] shall be issued in the name of the county; shall be signed by the county judge and attested by the county clerk under the seal of the commissioners' court; they shall be issued in such denominations and payable at such time, or times, not to exceed forty years from their date as may be deemed most expedient by the court, and shall bear interest not to exceed 6% per annum. All bonds shall be approved by the attorney general and registered by the comptroller as other county bonds are approved and registered; all bonds or warrants shall be sold by the commissioners' court on the best terms and for the best price possible, but for not less than face par value and accrued interest, and all moneys received therefor, shall be paid to the county treasurer, and by him placed to the credit of the navigation fund of such county, and paid out on warrants, as other county funds are disbursed.

Sec. 9. When bonds or warrants have been voted, the commissioners' court shall levy and cause to be assessed and collected annually, taxes sufficient to pay the interest on such bonds, and to provide a sinking fund to redeem the same at maturity, and if the credit of the county is used otherwise than by the issuance of bonds and warrants, in such a way as that a debt against the county is created, said court shall levy and cause to be assessed and collected annually a tax sufficient to pay said indebtedness as and when it accrues. The sinking fund of said bonds or warrants, shall be invested as the sinking fund of other county bonds are invested. [Acts 1927, 40th Leg., p. 129, ch. 84.]

Art. 822e. Right of way and conveyance to United States.—Sec. 10. When right-of-way and necessary dumping privileges have been secured by such county under the provisions hereof, either by purchase, condemnation, or donation, such county shall have the right, and is hereby authorized to convey said right-of-way and necessary dumping privileges to the Government of the United States by deed executed as other deeds by counties are required to be executed.

Sec. 11. The purpose of this Act being to grant authority to the counties of Texas to issue bonds, warrants or otherwise lend their credit to acquire and convey to the United States Government, the necessary right-of-way for waterways or navigable canals, the construction of which has been, or may be, authorized by the Government of the United States; the cost of construction and maintenance of which, is to be borne by the Government of the United States, and for no other purpose, and the provisions of this Act [Arts. 822a–822e] shall be liberally construed for the purpose of carrying out such intent. [Acts 1927, 40th Leg., p. 129, ch. 84.]

Section 12 of Acts 1927, 40th Leg., p. 129, ch. 84, repeals ch. 41, passed by the Fortieth Legislature at its regular session.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

CHAPTER SEVEN

MUNICIPAL BONDS

Art.
823. May issue bonds.
824. Limitations.
825. Signature.
826. Shall provide for tax.
827. Funding of debt.
828. May compromise debts.
829. Exceptions.
830. Liquidation board.
831. Liquidation.
832. State tax laws.
833. Payment of taxes with bonds.
834. Further compromise.
835. Harbor bonds.

Article 823. May issue bonds.—Any city or town may issue its coupon bonds for such sum as it may deem expedient for the purpose of the construction or purchase of public buildings, waterworks, sewers, and other permanent improvements within the city limits, and for the construction and improvement of the roads, bridges, and streets of such city or town. This article includes building sites and buildings for the public free schools and institutions of learning within such cities and towns which assume the exclusive control of their public free schools and institutions of learning. Such bonds shall bear interest not to exceed six per cent per annum and shall become due and payable serially or otherwise not to exceed forty years from their date and may be payable at such place as may be fixed by ordinance. [Acts 1921, p. 13.]

Art. 824. Limitations.—The limitations now provided by law upon the bonds that such cities may issue shall not apply to bonds issued under this law. [Id.]

Art. 825. Signature.—All bonds issued by a city or town shall be signed by the mayor and countersigned by the city secretary. [Id.]

Art. 826. Shall provide for tax.—The governing body, when the issuance of bonds has been authorized, shall provide for the levy and collection of a tax annually sufficient to pay the annual interest and provide a sinking fund for the payment of such bonds and all other outstanding bonds of such city or town issued since September 25, 1883. [Id.]

Art. 827. [890] [465] [419] Funding of debt.—The governing body shall pass all necessary ordinances to provide for funding the whole or any part of the existing debt of the city or any future debt by cancelling the evidences thereof, and issuing to the holders or creditors, notes, bonds or treasury warrants, with or without coupons, bearing interest at any annual rate not to exceed six per cent. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 828. [891] [471] May compromise debts.—The governing body, by their resolution or ordinance, by referring to this law and adopting the same, are authorized to compromise and fund any existing valid indebtedness issued by the city or town, whether bonded or floating, and the coupons due upon the bonded debt. For such purpose, they are authorized to issue new bonds in denominations of not less than fifty nor more than one thousand dollars, in their discretion, with interest coupons payable annually, to become due and payable in not exceeding thirty years, and to bear interest not to exceed six per cent per annum. [Acts 1887, p. 50; G. L. vol. 9, p. 848.]

Art. 829. [892] [472] Exceptions.—No compromise shall be made by which any debt shall be funded when such debt is barred by the statutes of limitations. [Id.]

Art. 830. [896] [479] Liquidation board.—Whenever a compromise of the debt of any city or town shall be so affected, and the bonds are delivered to the creditors, a board of liquidation consisting of five reputable citizens of such city or town shall forthwith be appointed and organized in the manner following:

1. One each shall be appointed by the mayor of the city or town, the city counsel, the Governor, any district judge of the district in which such city or town is situated, and the holders of said indebtedness or a majority of them, and each shall fill vacancies in the office of their respective appointee in said board.

2. In case of failure, neglect or refusal of any or all of said officers to appoint a member of said board or to fill vacancies therein, then the holders of said bonds or any one or more of them may apply to any district court of the district in which such town or city is situated, or to the judge thereof in vacation, for the appointment of the members necessary to complete said board, and said court or judge shall make such appointment.

3. The members of said board shall serve without compensation, and shall hold office for four years. Each member of said board shall take an oath to faithfully perform the duties of his office. A majority of said board shall be a quorum to transact business. [Id.]

Art. 831. [896] [479] Liquidation.—These rules shall govern the handling and disposition of all moneys coming under the control of the board as herein provided:

1. Said board shall select some solvent depository for such moneys, for whose acts they shall be responsible, and shall, in writing, signed by them, notify the tax collector of said city or town, of said selection.

2. Said collector shall thereupon deposit at the close of business of each day one-half of all moneys collected by him for the twenty-four hours next preceding, on account of all the taxes of whatever nature levied by said city or town, with the said depository, whose receipt therefor shall be an acquittance of said collector.

3. The collector shall be liable on his official bond for any failure to promptly make such deposits and for ten per cent per month of such amounts in addition thereto as penalty, which sums may be recovered by said board in a suit therefor, which they shall promptly institute.

4. Whenever the total of said deposits shall equal the annual interest on said bonds, it shall be lawful for the collector to discontinue said deposits until he shall be notified in writing by said board that said deposits are reduced below that sum.

5. Said funds shall be subject to said board and shall be applied by it to the payment, first of the interest on the said bonds as they mature, secondly, to the payment of the principal thereof, and thirdly, to the payment of interest of any valid bonds issued by such city and not embraced in any issue of bonds issued under the provisions of this law, and fourthly, to the payment of the principal of bonds of the character last referred to on the maturity of the same.

6. The members of said board shall be liable for the prompt payment of interest out of said funds, and in case of failure or refusal, they shall in addition be liable to ten per cent of the amount of such interest as damages to be recovered by any person aggrieved thereby.

7. Whenever there shall be in the hands of such depository a sufficient sum to pay two per cent of the principal of said bonds in addition to one year's interest, said board shall use the same in the purchase of outstanding bonds as provided by law, and such bonds when so purchased shall be returned to the city council together with all coupons which have been paid.

8. Expenses incurred by the board in advertising for purchasers of bonds shall be paid out of said funds.

9. Said board shall make semi-annual reports to the city council of its acts and of all receipts and disbursements of money coming under their control. [Id.]

Art. 832. [897] [477] State tax laws.—Whenever such compromise shall be entered into and accepted in good faith, either by the holders of the present bonds or by any persons purchasing new bonds, as herein provided, all laws now or hereafter in force for the assessment and collection of State taxes shall also be in force and apply to the assessment and collection of taxes levied to meet the interest and sinking fund of said new bonds; and in any

suit instituted to enforce the payment of said bonds or coupons against any such city or town, no defense either in law or equity, shall be admitted in any court of this State, except such as originated upon, or subsequent to, the issuance of such new bonds. [Id.]

Art. 833. [900] [473] Payment of taxes with bonds.—The new bonds thus issued by a city or town shall be exempt from the payment of all taxes levied by such city or town. The taxes levied to pay such new bonds may be paid with the bonds or coupons thereof if matured. Said coupons and bonds shall only be received in payment of taxes which have been levied for the purpose of paying such bonds and coupons. [Id.]

Art. 834. [901] [481] Further compromise.—Cities and towns may compromise and liquidate their indebtedness and issue bonds therefor under such conditions as are prescribed in this title conferring such authority on counties, cities and towns, and as may be otherwise provided by law. [Id.]

Art. 835. [883] [482] Harbor bonds.—When necessary therefor, cities which border on the Gulf of Mexico may issue the coupon bonds of such cities to bear interest at not exceeding five per cent per annum for the purpose of improving or aiding the improvement of their harbors and the bars at the entrance thereof in such amounts as may be deemed necessary not to exceed the limit of indebtedness fixed by their respective charters, and may appropriate for such purpose money out of any surplus fund which may be on hand at any time, and when any bonds may be on hand, the issuance of which has been made for other purposes and may not be needed for such purpose. Such surplus bonds may be sold and the proceeds used for such improvements. [Acts 1883, p. 48; G. L. vol. 9, p. 354.]

CHAPTER EIGHT

SINKING FUNDS—INVESTMENTS, ETC.

Art.
836. Investments.
837. Secondary investments.
838. Annual report.
839. Disbursements.
840. Penalties.
841. Recovery.
842. Federal Farm Loan Bonds.

Article 836. [698] Investments.—The legally authorized governing body of any county, city or town, or the trustees of any school district or school community, may invest their respective sinking funds for the redemption and payment of the outstanding bonds of such county, city or town, or community, in bonds of the United States, war-savings certificates, and certificates of indebtedness issued by the Secretary of the Treasury of the United States, and in bonds of Texas, or any county of this State, or of any incorporated city or town. No such bonds shall be purchased which, according to their terms, mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created. [Acts 1905, p. 25; Acts 1918, 4th C. S., p. 164.]

Art. 837. [698] Secondary investments.—In the event a governing body is unable to purchase securities of the character mentioned in the preceding article, which mature at a date prior to the time of maturity of the bonds for the payment of which such sinking fund was created, then they may invest such funds in the bonds of any school district or school community authorized to issue bonds, under the same restrictions as provided in the preceding article. [Id.]

Art. 838. [699] Annual report.—The county treasurer of each county and the treasurer of each city shall make an annual report to the State Comptroller on the first day of August, showing the condition of the interest and sinking fund for each set of bonds of said county or city outstanding on the thirtieth day of June of each year, which said report shall be made under oath, and shall show:

1. The outstanding bonded indebtedness of said city or county, giving date when issued, the amount of each set of bonds, the rate of interest they bear, and when they mature;

2. The tax levy in force to provide for the interest and sinking fund on each set of said bonds;

3. The amount on hand to the credit of the interest and sinking fund of each set of said bonds, showing whether in cash or securities;

4. The amount received by the said fund since last report, and from what source;

5. The disbursements from said fund since last report, and for what purpose;

6. The amount of said bonds redeemed since last report, and the amount still outstanding. [Acts 1899, p. 45.]

Art. 839. [700] Disbursements.—No city or county treasurer shall honor any draft upon the interest and sinking fund provided for any of the bonds of such city or county, nor pay out nor divert any of the same, except for the purpose of paying the interest on such bonds or for redeeming the same, or for investment in such securities as may be provided by law. [Id.]

Art. 840. [701] Penalties.—Any treasurer who shall fail to make the reports provided for in the third article of this chapter, or who shall divert said fund or apply said fund for any other purpose than as permitted by the preceding article, shall be subject to a penalty of not less than five hundred nor more than one thousand dollars, to be recovered by the State, and in addition thereto, shall be liable for the amount of such fund so diverted. [Id.]

Art. 841. [702] Recovery.—The Comptroller, whenever the reports of any treasurer show that he has diverted said funds, or when he shall fail to make such reports, shall notify the Attorney General or the district attorney of the district in which such treasurer resides, or county attorney in counties in which there is no district attorney provided for by law, of the fact, who shall thereupon institute suit against such treasurer and his official bondsmen for the amount of such penalty and of said fund so diverted. The amount of such penalty so recovered shall be paid into the State Treasury, and the amount of the diverted fund so recovered shall be paid into the county or city treasury to the credit of the fund from which it was so diverted. [Id.]

Art. 842. Federal Farm Loan bonds.—All bonds issued under and by virtue of the Federal Farm Loan Act, approved by the President of the United States, July 17, 1916, shall be a lawful investment for all fiduciary and trust funds in this State, and may be accepted as security for all public deposits where deposits of bonds or mortgages are authorized by law to be accepted. Such bonds shall be lawful investments for all funds which may be lawfully invested by guardians, administrators, trustees and receivers, for saving departments of banks incorporated under the laws of Texas, for banks, savings banks and trust companies chartered under the laws of Texas, and for all insurance companies chartered or transacting business under the laws of Texas, where investments are required or permitted by the laws of this State. [Acts 1917, p. 122.]

TITLE 23

BRANDS AND TRADE MARKS

Art.
843. Trade mark of another.
844. Trade mark for dairymen.
845. Marks not to be similar.
846. Injunction.
847. Prima facie evidence of ownership.
848. Record for dairymen.
849. May assign.
850. Infringement enjoined.
851. Trade mark filed, etc.

Article 843. [1392] [918a] Trade mark of another.—All manufacturers or dealers in carbonated goods, mineral waters, soda water, or other beverage, or manufacturers of medicine or other compound requiring the use of kegs, casks, barrels, boxes, syphons,

bottles, or any other vessels for containers, upon which the names, brands, marks, or trade marks, or other designation of ownership or proprietorship, is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels [f]or containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a fac simile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks; and the act of so filing and causing to be recorded by the county clerk, and publishing, shall operate as a trade mark, securing to the said manufacturer the full protection of the law as a trade mark, entitling the said manufacturer to the sole and exclusive use in Texas of said mark, name or device; for which service the clerk shall be allowed the sum of one dollar, to be paid by the party having such brands, etc., recorded. It is hereby declared to be unlawful for any person or persons, corporate or otherwise, other than the proprietor, or by his written consent, to fill, for the purpose of traffic, or for sale, with any compound whatever, any box, syphon, bottle or other container so marked, recorded in the office of the county clerk, and published as provided in this article, or to deface, erase, obliterate, cover up or otherwise remove or cancel any such mark or device. [Acts 1893, p. 125; Acts 1901, p. 288; G. L. vol. 10, p. 555.]

Art. 844. Trade mark for dairymen.—Any person, firm or corporation engaged in the dairying business, or in the distribution or sale of milk requiring the use of bottles, may file in the office of the county clerk of the county in which it is expected such person, firm or corporation will sell or distribute milk, a fac simile or description of the name or names, trade name, mark or design used by such person, firm or corporation for advertising purposes, and cause such fac simile or description to be published in a public newspaper published in such county for three successive weeks, and the act of filing and publication shall operate to secure to such dairyman, milk distributor or milk dealer, sole and exclusive right to use in said county or counties said name or names, trade name, mark or design. [Acts 1921, p. 161.]

Art. 845. Marks not to be similar.—No name or names, trade name, mark or design shall be filed by the county clerk as aforesaid that could probably be mistaken for a name or names, trade name, mark or design already of record. [Id.]

Art. 846. Injunction.—Any person, firm or corporation having adopted a name or names, trade name, mark or design, as provided herein, may proceed by suit to enjoin the use of said name, or names, trade name, mark or design by any other person, firm or corporation, and all courts having jurisdiction thereof shall grant injunction to restrain the unlawful use thereof. [Id.]

Art. 847. Prima facie evidence of ownership.—Any person, firm or corporation engaged in the dairying business or the sale or distribution of milk, who shall have filed with the county clerk of the county in which they may be engaged in the distribution or sale of milk, a name or names, trade name, mark or design as herein provided, may cause to be engraved, etched, blown in or impressed or otherwise produced upon the bottles owned by said person, firm or corporation such name or names, trade name, mark or design, and when such name or names, trade name, mark or design is so impressed upon a bottle, such bottle shall be prima facie the property of the person, firm or corporation which may appear upon the record of the office of the county clerk of such county to be the owner of such name or names, trade name, mark or design either as the original owner or transferee, as herein provided. [Id.]

Art. 848. Record for dairymen.—Upon the filing with the county clerk of such fac simile or description, as herein provided, the county clerk shall record the same in a well-bound book and index the same under the name of each owner and also under the trade name, and shall furnish to such owner a certificate containing a description of same, which said certificate shall be prima facie evidence that the person or persons therein named is the owner of said name or names, trade name, mark or design. The clerk shall be paid a fee of one dollar for recording such trade mark or name. [Id.]

Art. 849. May assign.—Any owner of a name or names, trade name, mark or design recorded as herein provided who desires to convey or assign same shall do so by written assignment duly acknowledged, and filed with said county clerk, which said assignment shall refer to the book and page where said original is recorded, and the clerk shall upon the filing of said assignment, record and index same as an original and note on the margin the fact of the assignment and refer to the book and page where such assignment is recorded, and furnish to such assignee a certificate of ownership. The clerk shall receive for recording such transfer, such fees as are now provided by law for similar services. [Id.]

Art. 850. [705] [318c] Infringement enjoined.—Every person, association or union of workingmen, incorporated or unincorporated, having adopted a label, trade mark, design, device, imprint or form of advertisement, as aforesaid, may proceed by suit to enjoin the wrongful manufacture, use, display or sale of any such label, trade mark, design, device, imprint or form of advertisement, and the manufacture, use, display or sale of any such counterfeit or imitation; any court having jurisdiction thereof may grant an injunction to restrain such manufacture, use, display or sale, and shall award the plaintiff in such suit such damages resulting from such wrongful manufacture, use, display or sale as by him may have been sustained. Where such association or union is not incorporated, suits under this law may be commenced and prosecuted by any officer or member of such association or union in his own name, for himself and for the use and benefit of such association or union. [Acts 1895, p. 108; G. L. vol. 10, p. 838.]

Art. 851. [706] [318d] Trade mark filed, etc.—Every person, association or union of workingmen, incorporated or unincorporated, that has heretofore or shall hereafter adopt a label, trade mark, design, device, imprint or form of advertisement, shall file the same in the office of the Secretary of State by leaving two fac simile copies, with the Secretary of State, and said Secretary shall return to such person, association or union so filing the same, one of said fac simile copies along with and attached to a duly attested certificate of the filing of same, for which he shall receive a fee of one dollar. Such certificate of filing shall in all suits and prosecutions under this chapter be sufficient proof of the adoption of such label, trade mark, design, device, imprint or form of advertisement, and of the right of such person, association or union to adopt the same. No label, trade mark, design, device, imprint or form of advertisement shall be filed as aforesaid that would probably be mistaken for a label, trade mark, design, device, imprint or form of advertisement already of record. No person, or association shall be permitted to register as a label, trade mark, design, device, imprint or form of advertisement any emblem, design or resemblance thereto that has been adopted or used by any charitable, benevolent or religious society or association, without their consent. [Id.]

TITLE 24

BUILDING AND LOAN ASSOCIATIONS

Art.
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Article 852. Articles of Association.—Any number of persons, not less than five, who are residents of this State, desiring to organize a building and loan association for the purpose of building and improving homesteads, removing incumbrances therefrom, and loaning money to the members thereof, may, by complying with the provisions of this title, and entering into articles of association, become a corporate body. Said articles of association shall be signed by persons associating and acknowledged before some person authorized by the laws of this State to take acknowledgments to deeds, and shall set forth:

1. The name assumed by the association, which shall not be the name assumed by any other association incorporated under this law, nor so similar as to be likely to mislead.

2. The purpose for which the association is formed.

3. The amount of its authorized capital stock; and the number of shares into which it is divided; the par value of each share; and the number of shares subscribed for, which shall not be less than fifty in number.

4. The names of the incorporators; their respective residences and the number of shares subscribed by each.

5. The term of its corporate existence, which shall not exceed fifty years.

6. The name of the town, city or village in which such association is to be located. [Acts 1st C. S. 1913, p. 72.]

Art. 853. Organization.—When executed as aforesaid, said articles of association shall be approved by, and filed with the Secretary of State, and a copy thereof, duly authenticated under the hand and seal of State, shall be delivered to the Commissioner of Insurance, who shall file the same in his office, and a like copy thereof shall be recorded in the office of the clerk of the county court of the county in which the principal office of such association is located, whereupon the persons named in the article of association, their associates and successors, shall become a corporate body for the period for which they were organized, and shall exercise such powers as are herein granted, and such other powers as are necessary to enable such association to carry out the purpose of its organization, not inconsistent with the provisions of this law. Before such association shall proceed to business it shall adopt by-laws for the regulation and management of its business. Said by-laws shall not become operative until a copy thereof, duly certified by the president and secretary of the association shall have been approved by and filed with the Commissioner, and when so approved and filed the said Commissioner shall issue his certificate of such approval and filing and thereupon said association may proceed to do business. The provisions of this law shall not apply to loan corporations heretofore incorporated under the laws of Texas loaning money on real estate, or improvements thereon, in cities of this State of more than thirty thousand inhabitants and not requiring the borrowers to be members thereof, or holders of such shares in such corporations, and which have been doing business for as long as ten years prior to the passage of this Act. [Id. sec. 2.]

Art. 854. Directors.—The corporate powers of every building and loan association heretofore organized under the laws of this State, or which may be incorporated under this title, shall be exercised by a board of directors of not less than five members, who shall elect from their own number the officers of the association. The mode of electing members of said board of directors and officers and their respective terms of office shall be prescribed in the by-laws. [Id. sec. 3.]

Art. 855. Bond of Officers.—The secretary and treasurer of such association, and all other officers who sign and endorse checks, or who have charge of money or securities of such association, shall, before entering upon the duties of their office, each give such bond for the faithful performance of the same as shall be required and approved by the board of directors. Additional sureties or such increase of said bond as they may deem necessary, may be required at any time by the board of directors. Directors shall not be accepted as sureties on such bonds, and shall be individually liable for any loss sustained through their negligence or failure to comply with any provision of this article. [Id. sec. 4.]

Art. 856. Capital stock and shares.—The authorized capital stock of such association shall be divided into shares having a par value of not less than twenty-five dollars, nor more than two hundred dollars each, payable in periodical installments, called dues, not exceeding two dollars per month on each share; provided, that the by-laws may provide for the advance payment of installment dues and for which there may be issued an advance payment certificate. The shares may be issued in series, or at any time as the by-laws shall determine and subscriptions therefor shall be made payable to the association. Said shares shall be deemed personal property, transferable on the books of the association in the manner prescribed in the by-laws, and shall be paid off and retired as the by-laws shall direct. Every share shall be subject to a lien for the payment of unpaid dues and such other charges as may be lawfully incurred thereon under the provisions of this title. The by-laws may prescribe the manner of enforcing such lien. New shares may be issued in lieu of shares matured, withdrawn, retired or forfeited. At no time shall the shares issued and in force exceed the aggregate number of shares into which the authorized capital stock is divided as designated in the articles of the association. Any building and loan association heretofore or hereafter incorporated under the laws of this State, may, by a resolution adopted by a two-thirds vote of shares represented and voted at any annual meeting, or at any meeting called for that purpose, increase its authorized capital stock and shares, or amend its articles of association or by-laws, in any manner not inconsistent with the provisions of this title. No such increase of capital stock nor amendments shall have effect until a copy of such resolution, certified by the president and secretary of such association, shall be filed, approved and recorded in the same manner as is provided in the second article of this title for the filing and recording of original articles of association or by-laws, in any manner not inconsistent with the provisions of this title. [Id. sec. 5.]

Art. 857. Loans and security.—At such times as the by-laws shall designate, not less frequently than once a month, the board of directors shall hold meetings, at which the funds in the treasury applicable for loans shall be loaned to the members who, in open competition, shall bid the highest premium for priority of right to a loan; or in lieu thereof, such funds may be loaned either with or without premium, as the borrower may, in writing agree to pay, in which case the priority of right to a loan shall be decided by the priority of the application therefor. The manner in which said premium may be paid shall be prescribed

in the by-laws. No loans shall be made by such association to any one not a member thereof, except as hereinafter provided, nor to any member for an amount greater than the par value of the shares held by such member. Borrowers shall be required to give real estate security, unincumbered except by the prior liens held by such association, accompanied by a transfer and pledge to the association of the shares borrowed upon as collateral security for the payment of the loan. No loan made upon real estate security shall exceed in amount two-thirds of the appraised valuation of such real estate. The shares of such association may be received as security for the loan of an amount not to exceed ninety per cent of the withdrawal value of such shares. Subject to the approval of the Commissioner, the number of payment [payments] of dues, interest and premium required from the borrowing stockholder to pay off his loan and secure a release of his incumbrance may be limited to such a definite number as the by-laws may provide. When the funds in the treasury applicable for loans shall accumulate and be in excess of the amount required for loans to members, they may be loaned to non-members upon real estate securities unincumbered by prior liens in an amount not to exceed fifty per cent of the appraised value of such securities, or may be invested in such securities as are authorized to be accepted by saving banks in this State, but at no time shall such loans and investments exceed twenty per cent of the assets. [Id. sec. 6.]

Art. 858. Right to loan forfeited.—If the borrower neglects to offer security satisfactory to the board of directors within the time prescribed by the by-laws, his or her right to the loan shall be forfeited, and he or she shall be charged with interest or premium, if any, for one month, together with any expense incurred and the money appropriated for such loan may be reloaned at the next or any subsequent meeting. Whenever a borrowing shareholder shall be in arrears in the payment of dues, interest or premium for more than four months, the board of directors may, at their discretion, declare the pledged shares forfeited, and the whole amount of the loan due and payable, and its collection, together with the arrears of interest, premium and fines, may be enforced by proceedings upon the security held by the association, in accordance with law. The withdrawal value of the pledged shares, at the time of the commencement of the foreclosure proceedings shall be credited upon the loan. [Id. sec. 7.]

Art. 859. Repayment of loan.—Any borrowing shareholder desiring to repay his loan shall have the privilege of doing so at any time, by giving the association thirty days written notice of such intention. The borrower shall be charged with the amount of the original loan, together with all the arrearages of interest, premium and fines and other legal charges, and shall be given credit for the withdrawal value of his shares pledged as security; and the balance shall be received by the association in full satisfaction of said loan. In cases where the premium is deducted from the loan in a gross sum, and the borrower repays the loan before the expiration of the tenth year from the date upon which said loan was made, such borrower shall be given credit for one-tenth of the premium paid for every year of the said ten years then unexpired. Any borrower desiring to retain his or her shares and membership may repay his loan without claiming credit for the withdrawal value of said shares whereupon said shares shall be retransferred to him or her, and shall be free from any claim by reason of said loan. [Id. sec. 8.]

Art. 860. Withdrawal value.—By the term "withdrawal value" as used herein is meant: The then value of the stock at the time indicated in the connection in which the words are used, less the lawful charges against such shares in favor of the corporation. [Id. sec. 9.]

Art. 861. Lienholder may purchase.—Any loan or building association incorporated by or under this title is hereby authorized and empowered to purchase at any sheriff's or other judicial sale, or at any other sale, public or private, any real estate upon which such association may have or hold any mortgage, lien or other incumbrance, or in which said association may have an interest for the purpose of collecting any debt due it, or for the protection of its interest in such real estate, and may sell, convey, lease or mortgage, at pleasure to any person or persons whomsoever the real estate so purchased to the highest bidder after advertising same in some local paper for four consecutive weeks. [Id. sec. 11.]

Art. 862. Extension of time of corporation.—Any loan or building association incorporated under this or any prior law, may extend the duration of time for which said association was organized by a vote of two-thirds of the capital stock of such association represented and voting at any annual meeting of the stockholders of such association, or at any special meeting called for that purpose; thereupon the board of directors shall transmit a copy of the proceedings of such annual meeting or of such special meeting, duly attested, to the Secretary of State, who shall make a duly authenticated copy thereof, as provided in the third article of this title, certifying to the extension of time of such corporation, and the same shall be filed with the Commissioner and recorded as provided in said third article. Any building and loan association incorporated under any prior law, and extending the duration of the time for which it was incorporated, in the manner herein provided, shall be deemed as incorporated under and be invested with all the power given in this title, the same as though such corporation had been originally incorporated under it. [Id. Sec. 12.]

Art. 863. Financial statement.—Each association formed under the provisions of this title shall, at the close of its first year's operations, and annually at the same period in each year thereafter publish in at least one newspaper published in the place where its principal office may be located, or if no newspaper be published in such place, then in a newspaper published nearest such place, a concise statement, verified by the oaths of its president and secretary, showing the actual financial condition of the association, and the amount of its property and liabilities, specifying the same particularly. [Id. Sec. 13.]

Art. 864. Commissioner to supervise.—The Commissioner of Insurance shall have supervision of all building and loan associations doing business in this State, and shall be charged with the execution of the laws of this State relating to such association. During the absence or disability of the Commissioner his chief clerk or deputy shall be authorized to perform all the duties relating to the control and supervision of such association and the execution of the laws above described. [Id. Sec. 14.]

Art. 865. Statement to commissioner.—Every building and loan association doing business in this State shall, on the first day of January of each year, or within sixty days thereafter, file with the Commissioner a full and detailed statement of its financial condition on the 31st day of the preceding December, and the business transacted during the preceding year within this State. Said statement shall set forth the amount and character of its assets, liabilities, receipts and disbursements, and shall contain such other information, and be in such form as said Commissioner may prescribe, and shall be subscribed and sworn to by the secretary and treasurer of such association. Any such association refusing or neglecting to file the annual statement herein required within the period hereinbefore prescribed shall forfeit five dollars per day for each and every day such statement shall be withheld, and the Commissioner may maintain an action in the name of the State to recover such penalty, which, upon its collection, shall be paid into the State Treasury. The Commissioner shall within thirty days after such neglect or refusal to file such annual statement investigate the affairs of the association, and if found in a failing condition, take charge of its affairs. [Id. Sec. 15.]

Art. 866. Examination by commissioner.—Once in each year, or oftener, if in the opinion of the Commissioner it shall be necessary, the Commissioner shall make or cause to be made, an examination into the affairs of all building and loan associations doing business in this State. Such examination shall be full and complete, and in making the same the examiner shall have access to, and may compel the production of all books, papers and moneys, etc., of the association under examination and may examine any officer of such association or any other person connected therewith, as to its business and affairs. The Commissioner may appoint such special examiners as may be necessary to carry out the provisions of this title. Such examiner shall be paid at the rate of eight dollars per day; they shall also receive necessary traveling expenses connected with the duties of their office, which shall be paid by the State Treasurer on the warrant of the Commissioner and the approval of the Governor. The expense incurred and services, other than examinations, performed especially for such associations shall be paid in full by such associations. [Id. Secs. 16, 25.]

Art. 867. Liquidation.—Whenever it shall appear to the Commissioner that the affairs of any such association are in an unsound condition, or that it is conducting its business in an unsafe or unlawful manner, such Commissioner shall at once notify the board of directors of such association, giving them twenty days in which to restore its affairs to a safe and sound condition, or to discontinue its illegal practices. If after twenty days such restoration shall not have been made, or such illegal practices shall have not been discontinued, said Commissioner may order one of the examiners appointed to examine such association, or a special examiner appointed for that purpose, to take possession of all books, records and assets of every description of such association and hold and retain possession of the same pending the further proceedings hereinafter specified. Should the board of directors, secretary or person in charge of such association refuse to permit the said examiner to take possession aforesaid, said Commissioner shall communicate such fact to the Attorney General, whereupon the Attorney General shall at once institute such proceedings as may be necessary to place such examiner in immediate possession of the property of such association. Upon taking possession of the effects of the association as aforesaid, said examiner shall prepare a full and true statement of the affairs and conditions of such association, including an itemized statement of its assets and liabilities, and shall receive and collect all debts, dues and claims belonging to it, and may pay the immediate and reasonable expense of his trust. Said examiner shall be required to execute to the Commissioner a good and sufficient bond to be approved by such Commissioner, conditioned for the faithful discharge of his duties as custodian of such association. The Commissioner shall, within fifteen days next after said examiner has acquired possession of the property of such association, convene a special meeting of the shareholders for the purpose of considering and acting upon the examiner's report of the affairs and conditions of such association as found by him from his examination thereof. The shareholders may, at said special meeting, by votes of those owning two-thirds of the shares in force, resolve to go into liquidation and for that purpose may, by a majority vote of those present elect from their number a receiver and fix his compensation. The compensation to be allowed a receiver under this title shall be an amount reasonable in proportion to the value of the property of the association, and in no event shall exceed $2500.00 per annum. A copy of said resolution duly certified by the presiding officer and secretary of said special meeting, together with the name and address of the receiver thus elected, shall be filed with the Commissioner. Said receiver shall be charged with a proper distribution of the assets, the discharge of all liabilities and final closing up of the business of such association. Before he shall enter upon the duties of his office, he shall be required to execute to the association a good and sufficient bond, conditioned for the faithful discharge of his duties, which shall be approved by and filed with said Commissioner. Upon the election and qualification of said receiver as aforesaid, the examiner shall, when so ordered by the Commissioner, turn over and deliver to said receiver all the books, papers and effects of every description in his hands belonging to such association. Said receiver shall, upon the completion of said duties intrusted to him, prepare a statement to that effect, reciting therein that all of the liabilities of such association have been completely discharged [as far as its assets will permit] and its assets and property distributed among all the persons entitled thereto. Said statement shall be subscribed and sworn to by said receiver and filed with the Commissioner, and a notice of such dissolution shall be published for three successive weeks in a newspaper published in the county wherein the principal office of such association is located. Upon the filing of said statement and making publication as aforesaid, such association shall be deemed dissolved. [Id. Sec. 17.]

Art. 868. Injunction.—If after having called a meeting of the stockholders as herein provided, the Commissioner shall find that liquidation by the shareholders cannot be had or consummated, he shall communicate such fact, together with a statement of the condition of the association to the Attorney General, who shall thereupon institute the necessary proceedings to enjoin such association from doing any further business, and for the appointment of a receiver therefor. [Id. Sec. 18.]

Art. 869. Forfeiture of shares.—If a shareholder be in arrears in the payment of dues upon unpledged shares, the board of directors may, if the shareholder fails to pay the amount of arrears within thirty days after notice, declare said shares forfeited. The withdrawal value of said shares at the time of forfeiture shall be ascertained and paid to such stockholder upon such notice as the by-laws may prescribe. Fines for the non-payment of dues, interest or premium shall not exceed one per cent per month on each dollar in arrears. [Id. Sec. 19.]

Art. 870. Expense and reserve fund.—The gross earnings of every building and loan association shall be ascertained at least once in each year, from which shall be deducted a sufficient amount to meet the operating expenses of such association, and from said earnings only shall such expenses be paid. From the balance of the earnings there shall be set aside at least one per cent annually as a reserve fund, until such fund reaches five per cent of the outstanding loans, at which rate it shall thereafter be maintained and held by annual appropriations from the earnings. From said reserve fund shall be paid all losses sustained by said association from depreciation of securities or otherwise. After providing for expenses of the association, and the reserve fund as aforesaid, the residue of such earnings shall be transferred and apportioned to the credit of the shareholders as the association by its by-laws shall provide. [Id. Sec. 20.]

Art. 871. Consolidation.—At the annual meeting, or at any meeting called for that purpose, any two or more building and loan associations organized under the laws of this State may by two-thirds of the vote of all shareholders of each of the different associations resolve to consolidate into one upon such terms as shall be mutually agreed upon by the directors of such associations. Any shareholder not consenting to such consolidation shall be entitled to receive the withdrawal value of his stock in settlement, or, if a borrower, to have such value applied in part settlement of his loan. Such consolidation shall not take effect until a copy of said resolution, certified by a majority of the board of directors of each association, shall be filed with the Secretary of State and with the Commissioner and recorded in the manner hereinbefore provided. [Id. Sec. 21.]

Art. 872. Dissolution.—At the annual meeting, or at any meeting called for that purpose, any building and loan association of this State may, by a vote

of shareholders owning two-thirds of the shares in force, resolve to liquidate and dissolve the corporation. In order to facilitate such dissolution, the board of directors may, if they deem desirable, sell and transfer the mortgage securities and other property of such association to another corporation, person or persons, subject, however, to the vested and accrued rights of the mortgagors. Before said resolution shall have effect, a copy thereof, certified by the president and secretary of such association, together with an itemized statement of its assets and liabilities, sworn to by a majority of the directors, shall be filed with the Commissioner. After filing a copy of the resolution as aforesaid, it shall be unlawful for such association to issue stock or make any loans, but all of its income and receipts in excess of actual expense of management shall be applied to the discharge of liabilities. [Id. Sec. 22.]

Art. 873. Report of Commissioner.—The Commissioner shall annually, at the earliest possible date after the statements of such associations are received, make a report to the Governor of the general conduct and condition of all building and loan associations doing business in this State, including the information contained in such statements, arranged in tabular form together with such suggestions as he may deem expedient. There shall be printed of said report as many copies as the Commissioner shall deem necessary. [Id. Sec. 24.]

Art. 874. Foreign association.—Foreign building and loan associations doing business in this State shall conduct the same in accordance with the laws of this State governing domestic building and loan associations, and shall comply with all requirements of said laws except as herein provided. [Id. Sec. 26.]

Art. 875. Certificate of authority.—No foreign building and loan association shall do any business in this State until it shall procure from the Secretary of State a certificate of authority to do so. To procure such certificate of authority such foreign association shall comply with the following provisions:

1. It shall file with the Secretary of State a certified copy of its articles of incorporation, a copy of its by-laws and rules governing it, and its certificates and all printed matter issued by it, together with a statement of its financial condition such as is required annually from all building and loan associations organized under the laws of this State.

2. It shall file with the Secretary of State a written instrument, properly executed, agreeing that any summons or process of any court in this State may issue against it from any county in this State, and when served upon the Secretary of State, shall be accepted irrevocably as a valid service upon such foreign association. The Secretary of State shall mail a copy of such legal process served upon him to the home office of such foreign association, and the Secretary of State shall, within six days, certify to the court from which such summons or process issued, the fact of such mailing. The plaintiff shall for each process so served pay to the Secretary of State, at the time of such service, a fee of two dollars, which shall be recovered by the plaintiff as a part of the taxable costs if he prevail in the suit.

3. It shall deposit with the Secretary of State one hundred thousand dollars, either in cash or bonds of the United States, or bonds of any State in the United States, or bonds of any county or municipal corporation in the State of Texas, or mortgages, being first liens on improved and productive real estate located within this State, and worth at least twice the amount of the liens, or furnish surety company bond in said sum of one hundred thousand dollars; which securities or surety company bond shall be approved by the Secretary of State. Said deposit shall be held as security for all claims of residents of this State against such foreign associations, and shall be liable for all judgments or decrees thereon; and said securities shall not be released until all shares of such foreign associations held by residents of this State shall have been fully redeemed and paid off, and its contracts and obligations to residents of this State shall have been fully performed and discharged. Such foreign associations may collect and use the interest on any securities so deposited, so long as it fulfills its obligations and complies with the provisions of this title. It may also exchange them for other securities of equal value, if satisfactory to the Secretary of State. If the business of such associations be solely that of lending money in this State, and it sells none of its stock except where loans are actually made on real estate in this State for the full amount of the stock so sold, and made at the time of the sale of such stock, then in such event the provisions of this title requiring a deposit or bond of one hundred thousand dollars shall not apply. [Id. Sec. 27.]

Art. 876. Custody of securities.—All such securities deposited with the Secretary of State shall be immediately deposited by him with the State Treasurer, who, with his sureties, shall be responsible for the safe keeping thereof. The State Treasurer shall deliver such certificates only upon the written order of the Secretary of State. [Id. Sec. 28.]

Art. 877. Statement of foreign association.—Whenever such foreign association has complied with the provisions of this title, the Secretary of State shall so certify to the Commissioner, and thereupon such foreign association, shall also furnish to said Commissioner a full and complete financial statement of its affairs duly sworn to by its president and secretary, together with such other information as said Commissioner may require, which said report shall be filed annually thereafter. If the Commissioner is satisfied that such association is in sound financial condition and shall be satisfied that such foreign association is conducting its business in accordance with the laws of this State, and shall regard it safe, reliable and entitled to public confidence, he shall so certify to the Secretary of State, who shall issue certificate of authority and renewals of such certificate of authority upon the payment of the fees as herein provided. [Id. Sec. 29.]

Art. 878. Judgment against foreign association.—If at any time any shareholder of such foreign association residing in this State, shall recover judgment against such foreign association, which after thirty days shall not have been satisfied, the State Treasurer, upon an order from the Secretary of State, shall appropriate from the cash deposited with him by such association as herein provided, if any, or shall proceed to sell at the current market value, sufficient of the bonds, or collect sufficient of the mortgage securities deposited with him to satisfy the amount of such judgment, together with five per cent for his services and expense. Before ordering the State Treasurer to so proceed, the Secretary of State shall be served with an affidavit by the plaintiff or his attorney, setting forth the recovery of judgment, and that same has remained unpaid for thirty days, and that no proceedings are pending for appeal or reversal of the same. Such foreign association after notice of the service of such affidavits, shall not transact any new business in this State until any deficiency of securities caused by the necessity of satisfying such judgments shall have been made good by further deposit of similar securities with the Secretary of State. [Id. Sec. 31.]

Art. 879. Examination of same.—Every foreign building and loan association doing business in this State shall be subject to the same examinations as are building and loan associations organized under the laws of this State. The expense of all examinations of such foreign associations shall be paid by the association examined, and the money so received shall be paid into the State Treasury. It shall not be necessary for such examination to be made but once in each year. Such expense shall only include the necessary traveling expenses of such examiner and the sum of eight dollars per day, for each day actually required in making such examinations. [Id. Sec. 32.]

Art. 880. Revoking certificate.—Should the Secretary of State find, upon examination, that such for-

eign association does not conduct its business in accordance with law, or that the affairs of such foreign associations are in an unsound condition, or if such foreign association refuses to permit examination to be made, he may revoke the certificate of authority granted such foreign association to do business in this State. Upon the revocation of such certificate of authority, the Secretary of State shall mail a notice thereof to the home office of such foreign association, and cause a similar notice to be published in at least one newspaper published in the city of Austin. After publication of said notice it shall be unlawful for any agent of such foreign association to receive any further payments on shares from stockholders residing in this State, except payment on shares on which a loan has been made. [Id. Sec. 33.]

Art. 881. Penalty.—No foreign building and loan association shall be permitted to do business in this State unless the provisions of this title are fully complied with. All contracts made by such foreign associations while in default shall be absolutely void. Any such association violating any provision of this title, or failing to comply with any of its provisions, shall be subject to a penalty of not less than one hundred nor more than five hundred dollars, such penalty to be recovered by an action in the name of the State of Texas, and upon the collection thereof, the same shall be paid into the State Treasury. [Id. sec. 34.]

TITLE 25

CARRIERS

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1. DUTIES AND LIABILITIES

Article 882. [707] [319] [277] At common law.—The duties and liabilities of carriers in this State and the remedies against them, shall be the same as are prescribed by the common law except where otherwise provided by this title.

Art. 883. [708] [320] [278] Liability fixed.—Railroad companies and other common carriers of goods, wares and merchandise, for hire, within this State, on land, or in boats or vessels on the waters entirely within this State, shall not limit or restrict their liability as it exists at common law, by any general or special notice, or by inserting exceptions in the bill of lading or memorandum given upon the receipt of the goods for transportation, or in any other manner whatever. No special agreement made in contravention of this article shall be valid. [Act Dec. 4, 1863, p. 7; G. L. vol. 5, p. 661.]

Art. 884. [709] [321] [279] Must carry goods.—Upon the tender of the legal or customary rates of freight on goods offered for transportation, to a common carrier other than a railroad, such carrier shall receive and transport such goods, provided his vehicle or vessel has capacity safely to carry the goods so offered on the trip or voyage then pending, and such goods are of the kind usually carried upon such vehicle or vessel, and are offered at a reasonable time. Any common carrier refusing to transport goods as above provided or to take the same in the order presented, shall be liable in damages to the party injured, by reason of such refusal, and shall also be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered in each case by the owner of the goods in the county where the wrong is done or where the common carrier resides. [Acts 1860, p. 39; G. L. vol. 4, p. 1401; 1895, Sen. Jour. p. 478.]

Art. 885. [710] [322] [280] Must give bill of lading.—Common carriers, when they receive goods for transportation, shall give to the shipper, when it is demanded, a bill of lading, or written receipt stating the quantity, character, order and condition of the goods; and such goods shall be delivered in like order and condition to the consignee, the unavoidable wear and tare [tear] and deterioration in due course of transportation only, excepted. Any such common carrier failing to deliver goods as herein required shall be liable to the party injured for his damages, as at common law; and on refusal to execute and deliver a bill of lading or written receipt shall be liable to a penalty of not less than five nor more than five hundred dollars, to be recovered as in the preceding article. [Id.]

Art. 886. [711] [323] [281] Liability as a warehouseman, etc.—Railroad companies and other common carriers having depots and warehouses for storing goods shall be liable as warehousemen are at common law for goods and the care of the same stored at such depots or warehouses before the commencement of the trip or voyage on which said goods are to be transported. They shall be liable as common carriers from the commencement of the trip or voyage until the goods are delivered to the consignee at the point of destination. The trip or voyage shall be considered as having commenced from the time of the signing of the bill of lading, and the liability of the common carrier shall attach, as at common law, from and after such signing. [Id.]

Art. 887. [712] [324] [282] Diligence in delivery.—If the carrier at the point of destination shall use due diligence to notify the consignee, and the goods are not taken by the consignee, and have in consequence to be stored in the depots or warehouses of the common carriers, they shall thereafter only be liable as warehousemen. [Id.]

Art. 888. [713] [325] [283] Shall ship in order.—Where common carriers receive goods for transportation into their warehouses or depots, they shall forward them in the order in which they are received, the first received to be first forwarded, without giving the preference to one over another. For failure to do so, they shall be liable for all losses occurring while the goods remain, and for all damages occasioned or in any wise resulting from the delay. [Id.]

Art. 889. [714] [326] [284] Care of animals.—A common carrier who conveys live stock of any kind shall feed and water the same during the time of conveyance and until the same is delivered to the consignee or disposed of as provided in this title, unless otherwise provided by special contract. Any carrier who shall fail to so feed and water said live

stock sufficiently shall be liable to the party injured for his damages, and shall be liable also to a penalty of not less than five nor more than five hundred dollars, to be recovered by the owner of such live stock in any county where the wrong is done or where the common carrier resides.

2. BILLS OF LADING.

Art. 890. [715] Who shall issue.—All railroad companies, steamship companies and other common carriers, or receivers thereof, except express companies and pipe line companies, upon the receipt of freight for transportation shall issue bills of lading therefor, and authenticate, validate or certify such bills of lading, when the same shall be demanded by the shipper, in accordance with the provisions of this title. [Acts 1910, 4th C. S. p. 138.]

Art. 891. [716] Requisites.—Each bill of lading issued by a common carrier to which the provisions of this law apply for an intrastate shipment shall contain, and each bill of lading issued by such carrier for interstate or foreign shipment may contain, within the written or printed terms in addition to the other requirements of this law, the following:

1. The date of its issuance;
2. The name of the person from whom the goods have been received;
3. The place where the goods have been received;
4. The place to which the goods are to be transported;
5. A statement of whether the goods will be delivered to a specific person or the order of a specific person;
6. A description of the goods or the package containing them, which may, however, be in terms such as the Railroad Commission may approve;
7. The signature of the carrier or the duly authorized agent of the carrier; said bill of lading shall be so signed with pen and ink, and the person signing the same shall attach his signature below all written, printed or stamped matter contained in said bill of lading, except the words, "Authorized Agent of ....." (stating the name of his principal), which shall appear below his signature.
8. The carrier may insert in a bill of lading any other terms and conditions; provided such terms and conditions shall not be contrary to law or public policy or the orders promulgated by the Railroad Commission. No language shall be inserted in any bill of lading having the effect of limiting or avoiding any provision of this law. When any form of bill of lading has been approved by the Interstate Commerce Commission and has been adopted by any carrier and made a part of its tariff, then said bill of lading, as to interstate and foreign shipments, shall be a sufficient compliance with this article. [Id.]

Art. 892. [717] Definitions.—A bill of lading in which it is stated that the goods are consigned or destined to a specific person is a "straight" bill of lading. A bill of lading in which it is stated that the goods are consigned to the order of any person named in such bill of lading, is an "order" bill of lading. Order bills of lading shall not be issued in sets or in duplicate, but copies thereof may be issued. Such copies shall have written or printed across the face thereof: "Copy—Not Negotiable." [Id.]

Art. 893. [718] Agent's certificate.—The carriers affected by this law shall keep posted for public inspection in some conspicuous place in the station or place where freight is received, an instrument of writing authorizing the agent of such carrier, or person authorized to act for such carrier selected for such purpose, to execute, sign and issue bills of lading; and the agent or person authorized to act for said carrier, so selected, shall attach his signature to such instrument in the same manner that he signs bills of lading. [Id.]

Art. 894. [719] Validity of bills.—Each bill of lading issued by the authorized agent of any carrier or receiver thereof, affected by this law, shall be held to be the act and deed of such carrier or receiver thereof, and the principal shall be liable thereon in accordance with the terms thereof. When any such bill of lading shall be validated, authenticated or certified in accordance with the rules and regulations herein provided for, and as the Railroad Commission may prescribe in accordance with the provisions of this law, and in the hands of an innocent holder for value, it shall be incontestable as to the matters and things therein set forth. [Id.]

Art. 895. [720] Failure to deliver on order.—A carrier which delivers goods for which an "order" bill of lading has been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel said bill of lading shall be liable for the failure to deliver the goods to any one who, for value, in good faith, purchases such bill of lading, whether the purchaser acquired title to the bill of lading before or after the delivery of the goods by the carrier, notwithstanding such delivery was made to the person entitled thereto, except when goods are sold to satisfy the carrier's lien, and except when compelled to do so by legal process. [Id.]

Art. 896. [721] Partial delivery.—A carrier which delivers part of the goods for which an "order" bill of lading has been issued, and fails to take up and cancel the bill of lading, or to place plainly upon the bill of lading a statement that a portion of the goods had been delivered, with a description which may be in general terms, either of the goods or packages that had been so delivered, or of the goods or packages which still remain in the carrier's possession, shall be liable for the failure to deliver all of the goods specified in the bill of lading to any one who for value and in good faith purchases it, whether such purchaser acquires title to the bill of lading before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto, except when goods are sold to satisfy the carrier's lien, and except when compelled to do so by legal process. [Id.]

Art. 897. [722] Loss of order bill.—When an "order" bill of lading shall have been lost or destroyed, a court of competent jurisdiction, in term time or vacation, may order the delivery of the goods upon satisfactory proof of such loss or destruction, and upon the giving of a bond with good and sufficient sureties approved by the court, to protect the carrier or any person injured by such delivery, from any liability or loss incurred by reason of the original bill of lading remaining outstanding. The court in its discretion may also order the payment of the carrier's reasonable costs and counsel fees. The delivery of the goods under an order of court as provided in this article, shall not relieve the carrier from liability to a person to whom the order bill of lading has been or shall be negotiated for value, and without notice of the proceedings or the delivery of the goods. Nothing herein shall prevent the carrier from delivering the property covered by such lost bill of lading to any party claiming the same, on such terms as such party and the carrier may agree upon. [Id.]

Art. 898. [723] Not liable when.—The carrier shall not be liable under this law where the property has been replevied or levied upon or taken from the possession of the carrier by other legal process, or has been lawfully sold to satisfy the carrier's lien, or in case of the sale or disposition of perishable, hazardous or unclaimed goods, in accordance with law. [Id.]

Art. 899. [724] Railroad Commission.—The Railroad Commission shall adopt and prescribe forms, terms and conditions for the authentication, certification or validation of bills of lading issued by common carriers referred to in the first article of this subdivision, and regulate the manner and method of their issuance, and take such steps as it may deem necessary to carry this law into effect. It shall have authority to amend, alter and modify, from time to time, as it may deem expedient, any regulation which may be adopted by it in accordance with the provisions of

this subdivision, after giving due notice thereof to all carriers interested and to the public. [Id.]

3. DISPOSITION OF UNCLAIMED GOODS

Art. 900. [725] [327] [285] Unclaimed freight.—When any freight or baggage has been conveyed by a common carrier to any point in this State, and shall remain unclaimed for the space of three months at the office or depot nearest or most convenient to destination, and the owner, whether known or not, fails within that time to claim such freight or baggage, or to pay the proper charges if there be any against it, it shall be lawful for such common carrier to sell such freight or baggage at public auction, offering each article separately as consigned or checked. [Acts 1874, p. 203; G. L. vol. 8, p. 205.]

Art. 901. [726] [328] [286] Sale.—Thirty days' notice of the time and place of sale, and a descriptive list of the packages to be sold, with names and numbers or marks found thereon, shall be posted in three public places in the county where the sale is to be made and on the door of the depot or warehouse if any, where the goods are, and notice shall also be given in at least one newspaper in the county, if any be published therein, for thirty days before sale. Out of the proceeds of such sale, the carrier shall deduct the proper charges on such freight or baggage, including costs of storing and costs of sale, and hold the overplus, if any, to the order of the owner any time within five years, on proof of ownership made by the claimant or his duly authorized agent or attorney. [Id.]

Art. 902. [728] [330] [288] Sale of live stock.—If any live stock remains unclaimed for the space of forty-eight hours after its arrival at the place of its destination, the carrier may sell the same at public auction after giving five days' notice of the time and place of such sale, as prescribed in the preceding article and apply the proceeds as prescribed in said article, after deducting reasonable expenses for keeping, feeding and watering said live stock from the time of its arrival at the place of its destination until disposed of as herein provided. [Id.]

Art. 903. [729] [331] [289] Perishable property.—If any perishable property remains unclaimed after arrival of [at] its place of destination until in danger of depreciation the carrier shall sell the same at public auction, after giving five days' notice of the time and place of sale, as prescribed in the second preceding article and apply the proceeds as prescribed in said article. [Id.]

Art. 904. Data kept.—In each sale under the three preceding articles the carrier shall keep an account of such sale and the expense thereof proportioned to each article sold, a copy of the notice and a copy of the sale bill. [Id.]

4. CONNECTING LINES OF COMMON CARRIERS

Art. 905. [731] "Connecting lines."—All common carriers in this State over whose transportation lines, or parts thereof, is transported any freight, baggage or other property received by either of such carriers for shipment or transportation between points in this State, on a contract for carriage recognized, acquiesced in, or acted upon by such carriers shall, with respect to the undertaking and matter of such transportation be considered and construed to be connecting lines. Such lines shall be deemed and held to be agents of each other, each the agent of the others, and all the others the agents of each, and shall be deemed and held to be under a contract with each other and with the shipper, owner and consignee of such property for the safe and speedy transportation of such property from point of shipment to destination; and such contract as to the shipper, owner and consignee of such property shall be deemed and held to be the contract of each of such common carriers. The provisions of this law shall apply whether the route of such freight, baggage or other property be chosen by the owner or his agents, or by the initial carrier to whom such property is delivered. In any suit brought hereunder, the rights, duties and liabilities of the parties shall be determined by the initial contract executed by and between the owner, shipper or his or her duly authorized agents and the initial carrier, unless it be proved that a subsequent contract supported by a valuable consideration moving to the owner or shipper, in addition to that of the initial contract, was executed by such owner, shipper or his or their duly authorized agents with a subsequent connecting carrier handling the shipment, and the transportation of a caretaker shall not be deemed to be such valuable consideration. In any court of this State, any bill of lading, waybill, receipt, check or other instrument issued by either of such carriers, or other proof showing that either of them has received such freight, baggage or other property for shipment or transportation, shall constitute prima facie evidence of the subsistence of the relations, duties and liabilities of such carrier as herein provided, notwithstanding any stipulation or attempted stipulation to the contrary by such carrier, or either of them, and any stipulation contained in any contract contrary to any provision of this law shall be void. [Acts 1895, p. 186; Acts 1919, p. 320.]

Art. 906. [732] Recovery by shipper.—For any damage or injury to, or loss or delay of, any freight, baggage or other property, sustained anywhere during the transportation over connecting lines or either of them, as contemplated and defined in the preceding article, either or all of such connecting carriers, as the person or persons sustaining such damage may elect to sue therefor in this State, shall be held liable to such person or persons. The provisions of law allowing an apportionment of damage shall not be applicable to suits brought by such person or persons under the provisions of this subdivision except upon the plaintiff's request. Any carrier or carriers held liable under the provisions hereof shall be entitled in a subsequent action to recover the amount of any loss, damage or injury it has been required to pay hereunder, from the carrier or carriers through whose negligence the loss, damage or injury was sustained, together with all costs of suit; and for the purpose of such recovery, it shall only be necessary that the carrier against whom judgment was had, show which carrier or carriers caused the loss or damage and produce satisfactory evidence that the judgment rendered against it has been paid, and in such action between the carriers, the provisions of law allowing an apportionment of damage shall be applicable. [Id.]

5. PROTECTING MOVEMENT OF COMMERCE

Art. 907. Protecting commerce.—If at any time the movement of commerce by common carriers of this State or any of them is interfered with in violation of the provisions of Chapter 10, Title 14 of the Penal Code, and the Governor, after investigation, becomes convinced that the local authorities were failing to enforce the law, either because they were unable or unwilling to do so, the Governor shall, in order that the movement of commerce may not be interfered with, forthwith issue his proclamations declaring such conditions to exist and describing the area thus affected. Each article of said Title of the Penal Code is made a part hereof. [Acts 4th C. S. 1920, p. 8.]

Art. 908. Governor's jurisdiction.—Upon the issuance of the proclamation provided for in the preceding article, the Governor shall exercise full and complete police jurisdiction of the area described in the proclamation whether the same be all within or partly within, or partly without the limits of any incorporated city or county; the exercise of said police jurisdiction by the Governor as above set out, shall supersede all police authority by any and all local authority, provided that the Governor shall not disturb the local authorities in the exercise of police jurisdiction, at any place outside the district described in his proclamation. [Id.]

Art. 909. Arrests.—No peace officer of this State shall be permitted to make arrests after the Governor's proclamation has become effective, in the territory embraced by such proclamation, except officers

acting under the authority of the Governor under the provisions of this law. Persons arrested within the district shall be delivered forthwith to the proper authorities for trial. [Id.]

Art. 910. Rangers used.—The provisions of this law shall be effective without a declaration of martial law. The State Rangers may be used in the enforcement of the provisions of this law. If a sufficient number of Rangers are not available, the Governor is authorized to employ any number of men to be designated as special Rangers and such men shall have all the power and authority of the regular Rangers, and shall be paid the same salary as the Rangers are paid, and such salaries shall be paid out of the appropriation made to the executive office for the payment of rewards and the enforcement of the law.

Art. 911. Scope of law.—Nothing in this law shall be construed as limiting the power and authority of the Governor to declare martial law and to call forth the militia for the purpose of executing the law, when in the judgment of the chief executive it is deemed necessary so to do. This law shall be construed as cumulative of the existing laws of this State, and shall not be held to repeal any of the same except where in direct conflict herewith. [Id.]

6. REGULATION OF MOTOR BUS TRANSPORTATION

Art. 911a. Motor bus transportation and regulation by railroad commission.—Sec. 1 (a) That the term "Corporation" when used in this Act [Art. 911a; P. C. 1690a] means a corporation, company, association or joint stock association.

(b) The term "Person" when used in this Act [Art. 911a; P. C. 1690a] means an individual, firm, or copartnership.

(c) The term "Motor-bus Company" when used in this Act [Art. 911a; P. C. 1690a] means every corporation or person as herein defined, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor propelled passenger vehicle, not usually operated on or over rails, and engaged regularly in the business of transporting persons as passengers for compensation or hire over the public highways between points within the State of Texas, whether operating over fixed routes or otherwise, and provided further, that the term "Motor-bus Company" as used in this Act [Art. 911a; P. C. art. 1690a] shall not include corporations or persons, their lessees, trustees, or receivers, or trustees appointed by any court whatsoever, insofar as they own, control, operate, or manage motor propelled passenger vehicles operated wholly within the limits of any incorporated town or city and the suburbs thereof, whether separately incorporated or otherwise.

(d) The term "Public Highway" when used in this Act [Art. 911a; P. C. art. 1690a] means every street, road, or highway in this State.

(e) The term "Highway Commission" when used in this Act [Art. 911a; P. C. art. 1690a] means the Board of Highway Commissioners of the State of Texas.

(f) The term "Commission" when used in this Act [Art. 911a; P. C. art. 1690a] means the Railroad Commission of the State of Texas.

Sec. 2. All motor-bus companies, as defined herein, are hereby declared to be "common carriers" and subject to regulation by the State of Texas, and shall not operate any motor propelled passenger vehicle for the regular transportation of persons as passengers for compensation or hire over any public highway in this State except in accordance with the provision of this Act [Art. 911a; P. C. art. 1690a], provided, however, that nothing in this Act [Art. 911a; P. C. art. 1690a] or any provision thereof shall be construed or held to in any manner affect, limit, or deprive cities and towns from exercising any of the powers granted them by Chapter 147, pages 307 to 318 inclusive, of the General Laws of the State of Texas, passed by the Thirty-third Legislature, or any amendments thereto.

Sec. 3. It is hereby declared that when existing transportation facilities on any highway in this State do not provide passenger service which the Commission shall deem adequate to provide for public convenience on such highway, then such inadequacy of service shall be considered as creating a condition wherein the public convenience and necessity require the designation of, and provision for, additional service on such highway, and it shall be the duty of the Commission to issue certificate or certificates as herein provided, if in the opinion of said Commission the issuance of such certificate will promote the public welfare.

Sec. 4. The Commission is hereby vested with power and authority, and it is hereby made its duty to supervise and regulate the public service rendered by every motor-bus company operating over the public highways in this State, to fix or approve the maximum, or minimum, or maximum and minimum, fares, rates or charges of, and to prescribe all rules and regulations necessary for the government of, each motor-bus company; to prescribe the routes, schedules, services, and safety operations of each such motor-bus company, to require the filing of such annual and other reports and of other data by such motor-bus company as the Commission may deem necessary; and to supervise and regulate motor-bus companies in all other matters affecting the relationship between such motor-bus companies and the traveling public, whether herein specifically mentioned or not. The Commission, in prescribing and adopting routes and dealing with all other matters affecting the physical operation and control of motor-bus companies over the public highways, under the power and authority of this Act [Art. 911a; P. C. art. 1690a], shall give due and proper consideration, in forming its conclusions and prescribing its orders and regulations, to the general highway laws of this State and to the orders, regulations, ordinances, or recommendations of the Highway Commission of Texas, or the Commissioners' Courts of any County or Counties or the local government of any municipality through or between which the routes for such motor-bus companies are prescribed and adopted.

Sec. 5. No motor-bus company shall hereafter regularly operate for the transportation of persons as passengers for compensation or hire over the public highways of this State without first having obtained from the Commission under the provisions of this Act [Art. 911a; P. C. art. 1690a], a certificate or permit declaring that the public convenience and necessity require such operation; provided, however, that when it appears to the satisfaction of the Commission that any motor-bus company making application for a certificate or permit is operating and has been continuously operating a motor-propelled passenger vehicle service in good faith, over the particular highways designated in said application for certificate or permit, for a period commencing January 11th, 1927, or prior thereto, said motor-bus company, shall upon application be granted a temporary permit to operate just as said company shall have been operating during said period and no more; said temporary certificate or permit shall become permanent without notice and hearing before the Commission unless a protest shall be filed with the Commission as provided herein; and in the event protest is filed to the application of such motor-bus company, then said temporary certificate or permit shall continue in effect until said application and protest is heard and decided upon by the Commission, and said hearing and decision shall be had and rendered by the Commission as speedily as possible.

At any time within thirty days after the day this Act [Art. 911a; P. C. art. 1690a] shall take effect anyone affected by the granting of said certificate or permit may file with the Commission, a protest against said certificate or permit becoming or being made permanent, but such protest to be considered by the Commission must be filed within the specified thirty days and shall be in writing, and the author or authors of said protest shall supply the applying motor-bus company with a copy of same, setting forth in reasonable

detail the reasons for said protest. In the event of protest to any application of any existing motor-bus company, hearing upon such application and protest shall be had and decision rendered as provided for all other applications.

In all other matters the holders of temporary or permanent certificates or permits obtained in this manner shall be subject to all of the provisions of this Act [Art. 911a; P. C. art. 1690a].

Any right, privilege, permit, or certificate held, owned or obtained by any motor-bus company under the provisions of this Act [Art. 911a; P. C. art. 1690a] may be sold, assigned, leased or transferred, or inherited; provided, however, that any proposed sale, assignment, lease or transfer shall be first presented in writing to the Commission for its approval or disapproval and the Commission may disapprove such proposed sale, assignment, lease, or transfer if it be found and determined by the Commission that such proposed sale, assignment, lease or transfer is not made in good faith or that the proposed purchaser, assignee, lessee or transferee is not able or capable of continuing the operation of the equipment proposed to be sold, assigned, leased or transferred, in such manner as to render the service demanded by the public necessity and convenience on and along the designated route.

Provided, however, that any right, privilege, permit or certificate held, owned or obtained by any Motor Bus Company under the provisions of this Act or owned or obtained by any assignee or transferee of any such Motor Bus Company shall be taken and held subject to the right of the State at any time to limit, restrict or forbid the use of the Streets and Highways of this State to any owner or holder of such right, privilege, permit or certificate.

Sec. 6. The Commission is hereby vested with power and authority, and it is hereby made its duty upon the filing of an application for a certificate of public convenience and necessity, to ascertain and determine under such rules and regulations as it may promulgate, after considering existing transportation facilities on such highway, the service rendered and capable of being rendered thereby, and the demand for, or need of additional service, if there exists a public necessity for such service, and if public convenience will be promoted by granting said application and permitting the operating of motor vehicles on the highways designated in such application, as a common carrier for hire.

Sec. 7. The Commission shall also ascertain and determine if a particular highway or highways designated in said application are of such type of construction or in such state of repair, or subject to such use as to permit of the use sought to be made by the applicant, without unreasonable interference with the use of such highway or highways by the general public for highway purposes. And if the Commission shall determine, after hearing that the service rendered or capable of being rendered by existing transportation facilities or agencies on such highways is reasonably adequate, or that public convenience on such highways would not be promoted by granting of said application and the operation of motor vehicles on the public highways therein designated, or that such highway or highways are not in such state of repair, or are already subject to such use as would not permit of the use sought to be made by the applicant without unreasonable interference with the use of such highway or highways by the general public for highway purposes, then in either or any [of] such event said application may be denied and said certificate refused, otherwise the application shall be granted and the certificate issued upon such terms and conditions as said Commission may impose and subject to such rules and regulations as it may thereafter prescribe.

The Railroad Commission shall have no power in any event to refuse an application for a certificate of convenience and necessity on the ground that there are existing railroad or interurban railroad transportation facilities sufficient to serve the transportation needs of the territory involved.

In determining whether or not a certificate should be issued, the Commission shall give weight and due regard to (1) probable permanence and quality of the service offered by the applicant, (2) the financial ability and responsibility of the applicant and its organization and personnel (3) the character of vehicles and the character and location of depots or termini proposed to be used, and (4) the experience of the applicant in the transportation of passengers and the character of the bond or insurance proposed to be given to insure the protection of its passengers and the public.

The Commission shall have the power and authority to grant temporary certificates to meet emergencies and shall have the power to make special rules and regulations to meet special conditions in different localities and for such time as in its judgment may be deemed expedient and best for the public welfare.

Sec. 8. No application for certificate shall be considered by said Commission except that it be reduced to writing and set forth the following facts:

(a) It shall contain the name and address of the applicant, and the names and addresses of its officers; if any, and shall give full information concerning the financial condition and physical properties of the applicant.

(b) The complete route or routes over which the applicant desires to operate, together with a brief description of each vehicle which the applicant intends to use, including the seating capacity thereof.

(c) A proposed time schedule and a schedule of rates showing the passenger fares to be charged between the several points or localities to be served.

(d) It shall be accompanied by a plat or map showing the route or routes over which the applicant desires to operate, on which plat or map shall be delineated the line or lines of any existing transportation company or companies over the highways serving such territory, with the names and addresses of the owner or owners thereof, and shall point out the inadequacy of existing transportation facilities or services, and shall specify wherein additional facilities or service are required and would be secured by the granting of said application.

Sec. 9. Upon the filing of said application the Commission shall fix a time and place for hearing, and the place of hearing shall be the city of Austin, Texas, unless otherwise ordered by said Commission. Notice of the filing of said application, and the time and place of hearing shall be given by mail not less than ten days exclusive of the day of mailing before such hearing, addressed to the owner or owners of existing transportation facilities over the highways, serving such territory as applicant seeks to serve, as well as to the Highway Commission of the State of Texas, the County Judge or Judges of the Counties and to the Mayor of any incorporated city or town, through which such motor carriers seek to operate.

Sec. 10. The hearing shall be conducted under such rules and regulations as the Commission may prescribe, and all parties interested, including the Highway Commission of this State, may appear either in person or by counsel, and present such evidence and argument as they may desire and as the Commission may deem pertinent, in favor of or against the granting of said application. It shall be the duty of the Highway Commission of this State, upon the request of the Commission to furnish any and all information that it has at its command relating to the highway or highways designated in such application as well as such other information as said Commission may deem pertinent to the granting or refusal of such application. After such hearing, and such investigation as the Commission may make of its own motion, it shall be the duty of said Commission to either refuse said application and certificate, or to grant said application and issue said certificate, in whole or in part, upon such terms and conditions as it may impose, and subject to such rules and regulations as it may thereafter prescribe.

The Commission, at any time by its order duly entered after hearing had upon notice to the holder of any certificate granted under this Act [Art. 911a; P.

C. art. 1690a], and an opportunity given such holder to be heard, at which hearing it shall be proven to the satisfaction of the Commission, that such certificate holder has discontinued operation or has violated or refused or neglected to observe any of its proper orders, rates, fares, rules, or regulations, may suspend, revoke, alter or amend any certificate issued under the provisions of this Act [Art. 911a; P. C. art. 1690a], provided that the holder of such certificate shall have the right of appeal as provided herein.

Sec. 11. The Commission shall, in the granting of any certificate to any motor bus company for regularly transporting persons as passengers for compensation or hire, require the owner or operator to first procure liability and property damage insurance from a company licensed to make and issue such insurance policy in the State of Texas, covering each and every motor propelled vehicle while actually being operated by such applicant. The amount of such policy or policies of insurance shall be fixed by the Commission by general order or otherwise, and the terms and conditions of said policy or policies covering said motor vehicle are to be such as to indemnify the applicant against loss by reason of any personal injury to any person or loss or damage to the property of any person other than the assured and his employees. Such policy or policies shall furthermore provide that the insurer will pay all judgments which may be recovered against the insured motor bus company based on claims for loss or damage from personal injury or loss of, or injury to, property occurring during the term of the said policy or policies and arising out of the actual operation of such motor bus or busses, and such policy or policies shall also provide for successive recoveries to the complete exhaustion of the face amount thereof, and that such judgment will be paid by the insurer irrespective of the solvency or insolvency of the insured. Such liability and property damage insurance as required by the Commission shall be continuously maintained in force on each and every motor propelled vehicle while being operated in common carrier service. In addition to the insurance hereinabove set forth, the owner or operator shall also protect his employees by taking out workmen's compensation insurance either as provided by the Workmen's Compensation Laws of the State of Texas or in a reliable insurance company approved by the Railroad Commission of the State of Texas. The taking out of such indemnity policy or policies shall be a condition precedent to any operation and such policy or policies as required under this Act [Art. 911a; P. C. art. 1690a], shall be approved and filed with the Commission and failure to file and keep such policy or policies in force and effect as provided herein shall be cause for the revocation of the certificate and shall subject the motor bus company so failing to the penalties prescribed herein.

Sec. 12. The Commission shall have the power and authority under this Act [Art. 911a; P. C. art. 1690a] to hear and determine all applications of motor-bus companies; to determine complaints presented to it by motor-bus companies, by any public official or by any citizen having an interest in the subject matter of the complaint, or it may institute and investigate any matter pertaining to automobile passenger transportation for compensation or hire upon its own motion. The Commission, or any member thereof, or authorized representative of the Commission, shall have the power to compel the attendance of witnesses, swear witnesses, take their testimony under oath, make record thereof, and if such record is made under the direction of a Commission[er], or authorized representative of the Commission a majority of the Commission may upon the record render judgment as if the case had been heard before a majority of the members of the Commission. The Commission shall have the power and authority under this Act [Art. 911a; P. C. art. 1690a] to do and perform all necessary things to carry out the purpose, intent, and provisions of this Act [Art. 911a; P. C. art. 1690a], whether herein specifically mentioned or not, and to that end may hold hearings at any place in Texas which it may designate.

Sec. 13. Each witness who shall be summoned to appear before the Commission or a Commissioner or authorized representative outside the county of his residence shall receive for his attendance the same per diem and fees as now provided for witnesses in attendance on district courts of this State in criminal cases; such fees and mileage shall be ordered paid upon proper voucher, sworn to by such witness and approved by the Commission or the Chairman thereof, out of the moneys and funds arising under this Act [Art. 911a; P. C. art. 1690a]; provided that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any motor-bus or other transportation company involved in or concerning which the investigation or hearing on account of which he is called shall relate, and no witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation. All process issued by the Commission for summoning witnesses or other purposes shall be directed to the sheriff or any constable of any county in the State of Texas and any sheriff or constable of any county in this State shall promptly execute any subpœna or other document directed to him by the Commission and shall receive such fees for this service as is now paid for like services in the district courts of this State, such payment to be made on accounts properly verified and approved by the Commission or the Chairman thereof out of the fund provided in this Act [Art. 911a; P. C. art. 1690a].

Sec. 15. For the purpose of defraying the expense of administering this Act [Art. 911a; P. C. art. 1690a], every motor-bus company now regularly operating, or which shall hereafter regularly operate in this State, shall, in addition to other fees and charges provided for by law, at the time of the issuance of a certificate of convenience and necessity, as provided herein, and annually thereafter on or between September 1st and September 15th of each calendar year, pay a special minimum fee of Ten Dollars ($10.00) for each motor propelled vehicle, and a further fee computed on the basis of fifty (50) cents per passenger seat for the rated passenger capacity of the vehicle or vehicles used.

If the certificate of convenience and necessity herein referred to is issued after the month of September of any year, the fees paid shall be proportionate to the remaining portion of the year ending August 31st following, but in no case less than one-fourth the annual fee. In case of emergencies or unusual temporary demands for transportation the fee for additional motor propelled vehicles for less periods shall be fixed by the Commission in such reasonable amounts as may be prescribed by general rule or temporary order.

All fees accruing hereunder and all fines collected under the provisions of this Act [Art. 911a; P. C. art. 1690a] shall be payable to the State Treasurer at Austin, Texas, and shall, by the State Treasurer, be deposited in the State Treasury at Austin and credited to the fund to be known and designated as the "Motor Transportation Fund" and out of which all warrants for expenditures necessary in administering and enforcing this Act [Art. 911a; P. C. art. 1690a] shall be paid.

Sec. 16. The Commission shall have power to employ and appoint from time to time such experts, assistants, and other help, in addition to its present force, as may be deemed necessary to enable it at all times to properly administer and enforce this Act [Art. 911a; P. C. art. 1690a]. Such persons and employees of the Commission shall be paid for the services rendered such sums as may be fixed and prescribed by the Commission in monthly installments, and such salaries, wages and all fees that may be paid to witnesses and officers shall be paid out of the motor transportation fund by the State Treasurer on warrant of the Comptroller of Public Accounts on order or voucher approved by the Commission or the Chairman thereof. All actual and necessary traveling expenses of the members of the Commission and employees shall also be paid out of the said motor transportation fund in the same manner as salaries, wages, and fees when such accounts shall have been itemized and sworn to by the

Commission or employee incurring the expense and approved by the Commission or the Chairman thereof.

If the amount or total of such gross receipts collected under the provisions of this Act [Art. 911a; P. C. art. 1690a] shall not be sufficient during any annual period to pay such salaries, costs, charges, fees, and expenses, then the deficit shall be paid by the State Treasurer out of any funds not otherwise appropriated. Until sufficient funds have accrued to said motor transportation fund for the payment of expenses, fees, etc. as provided herein, said expenses shall be paid by the State Treasurer out of any funds not otherwise appropriated, such sum to be paid out of the general revenue not to exceed the sum of Five Thousand Dollars ($5,000.00), and said sum is hereby appropriated. Any surplus remaining in the motor transportation fund at the end of any fiscal year, after paying all such salaries, accounts, fees, and charges and after deducting such amount as may be contracted to be paid and incurred and such sum as may be reasonably estimated by the Commission for its use pending further collection of fees shall be paid over to the general revenue fund.

Sec. 17. If any such auto transportation company, association, corporation, or other party at interest be dissatisfied with any decision, rate, charge, rule, order, act, or regulation adopted by the Commission, such dissatisfied person, association, corporation, or party may file a petition setting forth the particular objection to such decision, rate, charge, rule, order, act, or regulation, or to either or all of them in the district court in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in a said court; either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending; provided, that if the court be in session at the time such right of action accrues the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this section the burden of proof shall rest upon the plaintiff who must show by the preponderance of evidence that the decisions, rates, regulations, rules, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them. The Commission shall not be required to give any appeal bond in any cause arising hereunder and no injunction shall be granted against any order of the Commission without hearing unless it shall clearly appear that irreparable injury will be done the complaining party if the injunction is not granted.

Sec. 18. Whenever notice is required in this Act [Art. 911a; P. C. art. 1690a] to be given ten days exclusive of the day of service and return shall be considered as reasonable notice; provided, that in case of emergency the Commission may hear any cause or complaint on less than ten days notice.

Sec. 19. The State Board of Control is hereby authorized and directed to set aside such additional office space in the Capitol at Austin as may be deemed necessary by the Commission for the proper performance of its added duties as herein defined. [Acts 1927, 40th Leg., p. 399, ch. 270.]

Section 20 of Acts 1927, 40th Leg., p. 399, ch. 270, repeals all conflicting laws and parts of laws, and section 21 provides that if any provision is held invalid such holding shall not affect the remaining provisions.

TITLE 26

CEMETERIES

Art.
912. Trust fund.
913. Who may be trustees.
914. Substitute trustees.
915. Construction of trust.
916. Powers of corporation.
917. May convey lots.
918. Lot owners may vote.
919. Cemetery corporations.
920. Rights of lot owners.
921. May acquire land.
921a. Location of cemeteries.
922. Purchase and condemnation.
923. Former owners.
924. Preserving rights.
925. Plat and survey.
926. May make by-laws.
927. Rules for care of lot.
928. Meeting to receive title.
929. Reports not required.
930. Authority of city.
931. Authority of county.

Article 912. Trust fund.—Persons desiring to provide a fund for maintaining and keeping up and beautifying of private blocks or lots in any cemetery in this State may do so by setting aside for such purposes a reasonable sum of money and by providing by written instrument which shall recite the terms of the trust for a trustee or trustees to handle and invest said sum and spend the resources therefrom as follows: Not exceeding seventy-five per cent of the net income therefrom shall be devoted to keeping up and beautifying the private blocks and lots designated in the instrument. The portion of such income not expended annually as set out in the preceding paragraph, the amount not to be less than twenty-five per cent of such income, shall be devoted to the general up-keep and beautifying of the cemetery in which such blocks or lots are located. [Acts 1917, p. 364.]

Art. 913. Who may be trustees.—The trustees provided for may be natural persons designated by name and their successors, or persons holding designated positions and indicated as holders of such positions and their successors, or corporations whose charters authorize them to act in such capacity. [Id.]

Art. 914. Substitute trustees.—The founder of said fund may designate therein the number of trustees and the manner of renewing same. If no method of perpetuating the trustees shall be set out in the instrument or if the trustees therein provided or their successors shall fail to effect such perpetuity, then any court having equity jurisdiction located within the county wherein such cemetery is maintained shall be authorized, upon application of any person interested, or of the court's own motion, if facts come within its cognizance, to appoint suitable trustees to the number specified in such instrument to execute such trust. [Id.]

Art. 915. Construction of trust.—Such trust and the administration thereof shall not be regarded and held to be a perpetuity, but as a provision for the discharge of a duty due from the party founding such trust to the persons interred upon such blocks or lots and to the public. [Id.]

Art. 916. [1300] [715] [639] Powers of corporation.—Cemetery corporations shall have power to divide the land of the cemetery into lots and subdivisions for the purposes of the cemetery, and to tax the property for the purpose of its general improvement. [P. D. 6002.]

Art. 917. [1301] [716] [640] May convey lots.—Such corporation shall have power to convey by deed or otherwise, any lot or lots of the cemetery for purpose of sepulture. When such lots shall have been surveyed and platted, the survey and plat shall be recorded in the office of the county clerk of the county wherein same are situated, and shall not afterward be changed or altered. No lots shall be sold or disposed of until such plat shall have been recorded. [P. D. 6003.]

Art. 918. [1302] [717] [641] Lot owners may vote.—All owners of lots purchased of any such corporation shall become members thereof, and be entitled to vote in the election of its officers and upon any other matters to the same extent as stockholders in other corporations. [P. D. 6004.]

Art. 919. [1286] Cemetery corporations.—Corporations for the purpose of owning and maintaining public or private cemeteries, or for the purpose

only of maintaining and caring for cemeteries, may be formed under and in accordance with the provisions of this title, and when so organized, shall have and exercise all the powers conferred by this title. In framing a charter for such corporation, if desired to confer upon it the powers specified in this title, the charter shall state that the corporation is organized in pursuance of this title. [Acts 1907, p. 37.]

Art. 920. [1287] Rights of lot owners.—Each owner of a lot or lots embraced in any cemetery subject to the provisions of this title shall be a shareholder in any corporation to which the land may belong, and shall be entitled to all rights and privileges of a shareholder whether the title to the lot or lots was acquired from the corporation, or was owned before its organization. [Id. sec. 2.]

Art. 921. [1289] May acquire land.—Every corporation organized under this title shall have the power to acquire, own, and hold all lands and other property which may be necessary or suitable to the accomplishment of its purposes, and may acquire lands which have been previously dedicated to burial purposes, by conveyance from the person or persons in whom title may be, or from any person who may hold such land in trust, with the power to transfer it to preserve the trust. [Id. sec. 4.]

Art. 921a. Location of cemeteries.—It shall be unlawful for any person, company, corporation or association to establish or use for burial purposes any graveyard or cemetery located less than one mile from the incorporated line of any city of not less than five thousand (5,000) inhabitants within the State of Texas; provided, that where cemeteries have heretofore been used and maintained within less than one mile from any incorporated city or town, and additional lands are required for cemetery purposes, any person owning lands adjacent to said cemetery may lay out and use or sell the same to be used as an addition to such cemetery, and the use of the said additional lands for such purposes shall be exempt from the provisions of this Section.

The maintenance or location and use of any graveyard or cemetery in violation of the provisions of this Act are declared to be a nuisance, and any person owning a residence in or near said town or city may maintain an action in the courts to abate such nuisance and to enjoin its continuance, and if it appears that said nuisance exists or is threatened in violation of this Act, a perpetual injunction shall be granted against parties guilty of such nuisance. [Id. 327.]

Art. 922. Purchase and condemnation.—Cemetery associations, whether incorporated or unincorporated, shall have the power to purchase, lease, or otherwise acquire, such land as may be needed by them in the communities in which their cemeteries may be located for the purpose of the proper burial of the dead, and such power shall extend to the acquisition of such land as may reasonably be needed therefor in the future as well as such land as may be immediately needed. Such land may be acquired also by condemnation proceedings. The acquisition of such lands is hereby declared to be for a public purpose. [Acts 1917, p. 323.]

Art. 923. [1290] Former owners.—In case the land purchased as herein specified, or any portion of it, has been used as a cemetery, then the owners of lots therein shall have the right to participate in the organization of the corporation and shall be shareholders therein after the company has been organized. [Id. sec. 4.]

Art. 924. [1291] Preserving rights.—Whenever any corporations organizing under this title shall acquire lands already used for burial purposes, the division of the said ground into lots, streets, etc., existing at the time of the acquisition, shall be preserved so far as is necessary to protect the rights of those who have already acquired lots therein. [Id. sec. 5.]

Art. 925. [1292] Plat and survey.—Any such corporation, after its organization, shall cause the ground which it may acquire for cemetery purposes to be laid out in proper avenues and alleys, blocks and lots, as may be found convenient and necessary for the proper use thereof; and the corporation shall cause a plat to be made of said cemetery ground, which shall be approved by the board of directors, and shall be attested by the president and secretary of the corporation, after which it shall be recorded in the county clerk's office of the county. [Id. sec. 5.]

Art. 926. [1293] May make by-laws.—Every corporation organized under this title shall have the power to make all necessary by-laws as prescribed by this title, and also to make all rules and regulations necessary to govern in the sale of lots and the use of the same by the purchasers thereof. [Id. sec. 6.]

Art. 927. [1294] Rules for care of lot.—The board of directors shall have authority to make reasonable rules, requiring the lot owners to keep their lots clean from improper growth, so as to preserve the good order and proper appearance of the grounds, but shall not have the power to require of any lot owner a particular character of improvement therein. [Id. sec. 6.]

Art. 928. [1295] Meeting to receive title.—When it is desired to create a corporation under this title to receive the title to lands theretofore dedicated to the purpose of a cemetery, notice of the time and place of a meeting of the lot owners shall be published in a newspaper in the county, if there be one, for thirty days; and printed notices shall be posted at, and upon, such cemetery for thirty days prior to the time fixed for the meeting. When the lot owners and other persons uniting in the formation of the corporation shall assemble, the majority of those present and voting shall decide upon the question of incorporation, and the conveyance of the land to it. Such meeting shall select the board of directors to be named in the charter, which may consist of lot owners alone, or persons may be chosen as directors who are not owners of lots in the cemetery. [Id. sec. 7.]

Art. 929. [1297] Reports not required.—Corporations formed under this title shall be exempt from any provision of law requiring periodical reports to be made to any department of the State government. [Id. sec. 8.]

Art. 930. [1298] Authority of city.—The governing body of any city in which the cemetery is to be located shall have the power to control the location of any such cemetery, and to prescribe the maximum price at which lots therein shall be sold to the public. [Id. sec. 8.]

Art. 931. [1299] Authority of county.—When any such cemetery is located without the limits of any city, the commissioners court of such county shall have the power to prescribe the maximum at which lots therein shall be sold. [Id. sec. 8.]

TITLE 27

CERTIORARI

1. CERTIORARI TO THE COUNTY COURT

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1. CERTIORARI TO THE COUNTY COURT

Article 932. [733] [332] [290] Certiorari to county court.—Any person interested in the estate of a decedent or ward may have the proceedings of the county court therein revised and corrected at any time within two years after such proceedings were had, and not afterward. Persons non compos mentis, infants and femes covert shall have two years after the removal of their respective disabilities within which to apply for such revision and correction. [Acts March 16, 1848, p. 106, G. L. vol. 3, p. 106.]

Art. 933. [734] [333] [291] Application for.—An application for writ of certiorari to the county court shall be made to the district court, or a judge thereof. It shall state the name and residence of each party adversely interested, and shall distinctly set forth the error in the proceeding sought to be revised.

Art. 934. [735] [334] [292] Granted on execution of bond.—The writ of certiorari shall in all cases be granted upon the application of a party therefor upon the applicant entering into bond in such sum as shall be required by the judge, sufficient to secure the costs of the proceeding.

Art. 935. [736] [335] [293] Not to operate as supersedeas.—A writ of certiorari shall not operate as a supersedeas of the judgment of the county court, unless the applicant therefor shall enter into bond with two or more good and sufficient sureties, in such sum as shall be fixed by the order of the district judge, payable to the adverse party, and conditioned for the performance of the judgment of the district court, in case such judgment shall be against the applicant.

Art. 936. [737] [336] [294] Writ.—The writ of certiorari shall be issued by the district clerk upon the compliance of the party with the order of the district court or the judge thereof. It shall be directed to the sheriff or any constable of the proper county, and shall command him to cite the county clerk to make out a certified transcript of the proceedings designated in the writ, and transmit the same to the district court to which the writ is returnable, on or before the return day of the next succeeding term thereof.

Art. 937. [738] [337] [295] When supersedeas granted.—When an order for a supersedeas has been made, it shall also require the clerk and all officers of said court to stay further proceedings on the judgment specified in said writ.

Art. 938. [739] [338] [296] Citation as in ordinary cases.—Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation for the party named in the application as being adversely interested in the proceedings sought to be revised.

Art. 939. [740] [339] [297] Trial de novo.—The cause shall be tried de novo in the district court, but the issues shall be confined to the grounds of error specified in the application for the writ. The judgment shall be certified to the county court for observance. [Act May 13, 1846, p. 363; G. L. vol. 2, p. 1669.]

Art. 940. [741] [340] [298] Appeals and writs of error.—Appeals and writs of error to the supreme court, from the judgments of the district courts in cases of certiorari, shall be allowed and governed by the rules as in other cases.

2. CERTIORARI TO JUSTICES' COURTS

Art. 941. [742] [341] [299] Certiorari to justices' court.—After final judgment in a justice court in any cause except in cases of forcible entry and detainer, the cause may be removed to the county court by writ of certiorari (or if the civil jurisdiction has been transferred from the county to the district court, then to the district court,) in the manner hereinafter directed. [Acts 1879, p. 125; G. L. vol. 8, p. 1425.]

Art. 942. [743] [342] [300] Order for writ.—The writ of certiorari shall be issued by order of the county court or the judge thereof (or district court or judge thereof, if jurisdiction is transferred to the district court), as provided in the preceding Article. [As amended Acts 1927, 40th Leg., p. 22, ch. 17, § 1.]

Art 943. [744] [343] [301] Requisites of the writ.—The writ shall command the justice to make and certify a copy of the entries in the cause on his docket, and transmit the same, with the papers in his possession, to the proper court on or before the first day of the next term thereof. If there is not time for such transcript and papers to be filed at such term, then they shall be so filed at the next succeeding term of said court. [Act March 20, 1848, p. 163; G. L. vol. 3, p. 163.]

Art. 944. [745] [344] [302] Affidavit of sufficient cause.—The writ shall not be granted unless the applicant or some person for him having knowledge of the facts, shall make affidavit setting forth sufficient cause to entitle him thereto. [Id.]

Art. 945. [746] [345] [303] Application for certiorari.—To constitute a sufficient cause, the facts stated must show that either the justice of the peace had not jurisdiction, or that injustice was done to the applicant by the final determination of the suit or proceeding, and that such injustice was not caused by his own inexcusable neglect. [Id.]

Art. 946. [747] [346] [304] Within what time granted.—Such writ shall not be granted after ninety days from the final judgment of the justice. [Id.]

Art. 947. [748] [347] [305] Bond with sureties required.—The writ shall not be issued unless the applicant shall first cause to be filed a bond with two or more good and sufficient sureties, to be approved by the clerk, payable to the adverse party, in such sum as the judge shall direct, to the effect that the party applying therefor will perform the judgment of the county or district court, if the same shall be against him. [Id.]

Art. 948. [749] [348] [306] Bond, affidavit and order.—The bond and affidavit, with the order of the judge, when made in vacation, shall be filed with the clerk of the court to which the same is returnable.

Art. 949. [750] [349] [307] Writ to issue instanter.—As soon as such affidavit, order of the judge, and bond, shall have been filed, the clerk shall issue a writ of certiorari. [Act May 10, 1850, p. 60.]

Art. 950. [751] [350] [308] Justice shall stay proceedings.—Upon service of such writ of certiorari being made upon the justice of the peace, he shall stay further proceedings on the judgment and forthwith comply with said writ. [Id.]

Art. 951. [752] [351] [309] Citation as in other cases.—Whenever a writ of certiorari has been issued, the clerk shall forthwith issue a citation for the party adversely interested.

Art. 952. [753] [352] [310] Cause docketed.—The action shall be docketed in the name of the original plaintiff, as plaintiff, and of the original defendant, as defendant.

Art. 953. [754] [353] [311] Motion to dismiss.—At the first term of the court to which the certiorari is returnable, the adverse party may move to dismiss the certiorari for want of sufficient cause appearing in the affidavit, or for want of sufficient bond.

Art. 954. [755] [354] [312] No amendment of bond or oath.—No amendment of the affi-

davit shall be made in the county or district court, nor shall a new affidavit be filed.

Art. 955. [756] [355] [313] Judgment of dismissal.—If the certiorari be dismissed, the judgment shall direct the justice to proceed with the execution of the judgment below.

Art. 956. [757] [356] [314] Pleading.—No pleading other than that required by law in the justice court shall be necessary, except in cases of amendment, as hereinafter provided.

Art. 957. [758] [357] [315] Issues made up.—When no pleadings were filed in the justice court, and none were necessary the issues shall be made up under the direction of the court.

Art. 958. [759] [358] [316] New matter may be pleaded.—Either party may plead any new matter in the county or district court which was not presented in the court below; but no new cause of action shall be set up by the plaintiff, nor shall any set-off or counter claim be set up by the defendant which was not pleaded in the court below. In all such cases the pleadings shall be in writing, and filed in the cause before the parties have announced ready for trial.

Art. 959. [760] [359] [317] Trial de novo.—The cause shall be tried de novo, in the county or district court; and judgment shall be rendered as in cases appealed from justice courts.

Art. 960. [761] [360] [318] Appeals and writs of error.—Appeals and writs of error from the judgments of the county or district court, in cases of certiorari from justice courts, shall be allowed, subject to such rules and limitations as apply in cases appealed from justices' courts.

TITLE 28

CITIES, TOWNS AND VILLAGES

Chap.

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CHAPTER ONE

CITIES AND TOWNS

Art.

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Article 961. [762–3] May adopt this title.—Any incorporated city, town or village in this State containing six hundred inhabitants or over, however legally incorporated, and any incorporated city, town or village of whatever population containing one or more manufacturing establishments within the corporate limits, may accept the provisions of this title relating to cities and towns, in lieu of any existing charter, by a two-thirds vote of the council of such city, town or village, had at a regular meeting thereof, and entered upon the journal of their proceedings, and a copy of the same signed by the mayor and attested by the clerk or secretary under the corporate seal, filed and recorded in the office of the county clerk in which such city, town or village is situated, and the provisions of this title shall be in force, and all acts heretofore passed incorporating said city, town or village which may be in force by virtue of any existing charter, shall be repealed from and after the filing of said copy of their proceedings, as aforesaid. When such city, town or village is so incorporated as herein provided, the same shall be known as a city or town, subject to the provisions of this title relating to cities and towns, and vested with all the rights, powers, privileges and immunities and franchises therein conferred. The provisions of this title shall not apply to any city, town or village until such provisions have been accepted by the council in accordance with this article. [Acts 1875, p. 113; G. L. vol. 8, p. 485; Acts 1881, p. 115; G. L. vol. 9, p. 207; Acts 1885, p. 57; G. L. vol. 9, p. 667; Acts 1915, p. 64; Acts 1919, p. 110.]

Art. 962. [764] [383] [342] General powers.—All the inhabitants of each city, town or village so accepting the provisions of this title shall continue to be a body corporate, with perpetual succession, by the name and style by which such city, town or village was known before such acceptance, and as such they and their successors by that name shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises possessed and enjoyed by the same at the time of said acceptance, and those hereinafter granted and conferred, and shall be subject to all the duties and obligations pertaining to or incumbent on the same as a corporation at the time of said acceptance, and may ordain and establish such acts, laws, regulations and ordinances, not inconsistent with the Constitution and laws of this State, as shall be needful for the government, interest, welfare and good order of said body politic and under the same name shall be known in law, and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatever, may take, hold and purchase, lease, grant and convey such real and personal or mixed property or estate as the purposes of the corporation may require, within or without the limits thereof; and may make, have and use a corporate seal and change and renew the same at pleasure. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 963. [765–6] Not affected by this title.—All property, real, personal or mixed, belonging to any city accepting the provisions of this title, is hereby vested in the corporation created by this title, and the officers of said corporation, in office at the date of its acceptance, shall continue in the same, until superseded in conformity with the provisions of this title. All rights, actions, fines, penalties and forfeitures in suits or otherwise, which have accrued under the laws heretofore in force, shall be vested in and prosecuted by the corporation hereby created. No suit pending shall be affected by the passage and acceptance of this title, but the same shall be prosecuted or defended as the case may be, by the corporation hereby created. [Id.]

Art. 964. [767] [571] [500] Cemetery lots exempt.—The cemetery lots which have, and may hereafter be laid out and sold for said city for private places of burial shall, with their appurtenances, be forever exempt from taxes, executions, attachments or forced sales. [Id.]

Art. 965. [773] [384] [343] City limits.—The bounds and limits of said municipality shall be and remain the same as fixed and defined by the provisions of the act of incorporation, substituted by the provisions of this title; provided, that said limits of said corporation may be hereafter extended by adding

additional territory to the same, whenever the majority of the qualified electors of said territory shall indicate a desire to be included within the limits of said corporation in the manner provided in Article 974 of this title. [Id.]

Art. 966. [774] [385] May incorporate.—Any city or town containing six hundred inhabitants or over may be incorporated as such, with all the powers, rights, immunities and privileges mentioned and described in the provisions of this title relating to cities and towns, in the manner described in Chapter 11 of this title for incorporating towns and villages, except that the application to become incorporated shall be signed by at least fifty electors, residents of such city or town, and except that when an election is held according to the provisions of such chapter the words "towns and villages" shall be construed to mean "cities and towns." When the entry by the county judge, provided in article 1139 is made with reference to a city or town of six hundred inhabitants and over, such city or town shall be vested with all the rights and privileges of such cities conferred by this title. [Acts 1881, p. 63; G. L. vol. 9, p. 155; Acts 1881, p. 115; G. L. vol. 9, p. 207; Acts 1915, p. 64.]

Art. 967. Cities of the Republic.—Any city, town or village, within this State, incorporated under any law, general or special, of the Republic of Texas, regardless of the extent of the boundaries thereof, or the number of its population, may accept the provisions of Chapters 1 to 10, both inclusive, of this title, in lieu of any existing charter created by any such law of the Republic of Texas, by a two-thirds vote of the council of such city, town or village; which action by the council shall be held at a regular meeting thereof and entered upon the journal of their proceedings, and a copy of the same signed by the mayor and attested by the clerk or secretary under the corporate seal, filed and recorded in the office of the clerk of the county court of the county in which such city, town or village is situated, and the provisions of said Chapters 1 to 10 both inclusive, of this title shall be in force, and all acts theretofore passed incorporating said city, town or village, which may be in force by virtue of any existing charter shall be repealed from and after the filing of said copy of their proceedings as aforesaid, when such city, town or village is so incorporated as herein provided, the same shall be known as a city or town, subject to the provisions of this title, vested with all the rights, powers, privileges, immunities and franchises therein conferred. [Acts 1917, p. 85.]

Art. 968. Effect of acceptance.—All the inhabitants of each city, town or village so accepting the provisions of chapters 1 to 10 of this title, shall continue to be a body corporate, with perpetual succession, by the name and style by which such city, town or village was known before the acceptance of the provisions of such law, and as such they and their successors by that name shall have, exercise and enjoy all the rights, immunities, powers, privileges and franchises possessed and enjoyed by the same at the time of the acceptance of the provisions of such title and those herein granted and conferred, and shall be subject to all the duties and obligations pertaining to or incumbent on the same as a corporation at the time of the acceptance of the provisions of such title, and may ordain and establish such acts, laws, regulations and ordinances not inconsistent with the Constitution and laws of this State, as shall be needful for the government, interest, welfare and good order of said body politic, and, under the same name, shall be known in law, and be capable of contracting and being contracted with, suing and being sued, impleading and being impleaded, answering and being answered unto, in all courts and places, and in all matters whatever, may take, hold and purchase, lease, grant and convey such real and personal or mixed property or estate as the purposes of the corporation may require, within or without the limits thereof; and may make, have and use a corporate seal and change and renew the same at pleasure. [Id.]

Art. 969. Property rights.—All property, real, personal or mixed, belonging to any such city, town, or village so incorporated under and by virtue of any law of the Republic of Texas, general or special, accepting said title, is hereby vested in the corporation thus created, and the council of such city, town or village is hereby authorized and empowered to sell and alienate such property and to appropriate the proceeds of such sale to the acquisition or construction, maintenance or operation of a water, sewer, gas and electric light and power system, or any one or more of such systems, within or without the limits of such city or town, or for any other public improvement within said city or town, as the council thereof may determine. [Id.]

Art. 970. To adjust boundaries.—Whenever there shall exist within the boundaries of any such city, town or village accepting said provisions, territory to the extent of at least ten acres contiguous, uninhabitated [uninhabited] and adjoining the lines of such city or town, the mayor and council of such city or town shall, within one year from the filing in the office of the county clerk of the action of the council accepting the provisions of this law, or as soon thereafter as practicable, and before they shall levy any taxes for said city or town by ordinance duly passed, discontinue said territory as a part of said city or town and shall redefine the bounds and limits of such city or town so that they shall conform as nearly as practicable to the requirements of article 971, and when said ordinance has been duly passed, the clerk shall enter an order to that effect on the minutes or records of the city or town council; and from and after the entry of such order, said territory shall cease to be a part of said city or town; provided that should there be situated within the said territory, so discontinued, any property of any description belonging to said city or town, the title to said property, so situated, shall remain in such city or town and may be sold, alienated and disposed of by such city or town, the same as if it were situated within the bounds and limits of such city or town. [Id.]

Art. 971. [777] Territorial boundaries.—No city or town in this State shall be hereafter incorporated under the provisions of the general charter for cities and towns contained in this title with a superficial area of more than two square miles, when such town or city has less than two thousand inhabitants, nor more than four square miles when such city or town has more than two thousand and less than five thousand inhabitants, nor more than nine square miles, when such city or town has more than five and less than ten thousand inhabitants. The mayor and board of aldermen, immediately after they qualify as such officers, shall pass an ordinance causing an actual survey of the boundaries of such town to be made according to the boundaries designated in the petition for incorporation and the field notes thereof recorded in the minute book of such town or city, and also in the record books of deeds in the county in which such city or town is situated. [Acts 1895, p. 17; G. L. vol. 10, p. 747.]

Art. 972. [778] Territory relinquished.—The mayor and the board of aldermen of any town or city in this State heretofore incorporated under Title 18 of the Revised Civil Statutes of 1895 of this State, and whose boundaries have been established so as to include more territory than is specified in the preceding article, shall immediately cause a resurvey of the boundaries of such city or town to be made, so as not to include more territory than is provided for in the preceding article; such resurvey to be made and the field notes thereof to be recorded as provided in said article. [Id.]

Art. 973. [780] Discontinuing territory.—Whenever there exists within the corporate limits of any city or town organized under the general laws within this State territory to the extent of at least ten acres, contiguous, uninhabited and adjoining the lines of any such city or town, the mayor and city or town council may by ordinance duly passed, discon-

tinue said territory as a part of said city or town; and when said ordinance has been duly passed, the mayor shall enter an order to that effect on the minutes or records of the city or town council; and, from and after the entry of such order, said territory shall cease to be a part of said city or town. [Acts 1895, p. 178; G. L. vol. 10, p. 909.]

Art. 974. [781] [574] Adjoining inhabitants.—When a majority of the inhabitants qualified to vote for members of the State legislature of any territory adjoining the limits of any city incorporated under, or accepting the provisions of, this title, to the extent of one-half mile in width, shall vote in favor of becoming a part of said city, any three of them may make affidavit to the fact to be filed before the mayor, who shall certify the same to the city council of said city. The said city council may, by ordinance, receive them as part of said city; from thenceforth the territory so received shall be a part of said city; and the inhabitants thereof shall be entitled to all the rights and privileges of other citizens, and bound by the acts and ordinances made in conformity thereto and passed in pursuance of this title. [Acts 1875, p. 156; G. L. vol. 8, p. 528.]

Art. 974a. Platting and recording subdivisions or additions.—Sec. 1. That hereafter, every owner of any tract of land situated within the corporate limits or within five miles of the corporate limits of any city in the State of Texas which contains twenty-five thousand inhabitants or more, according to the Federal Census of 1920, or any subsequent Federal Census, who may hereafter subdivide the same in two or more parts for the purpose of laying out any subdivision of any such town, or city, or any addition thereto, or any part thereof, or suburban lots or building lots, or any lots, and streets, alleys, parks or other portions intended for public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto, shall cause a plat to be made which shall accurately describe all of the subdivision of such tract or parcels of land, giving dimensions thereof, and the dimensions of all the streets, alleys, squares, parks, or other portions of same intended to be dedicated to public use, or for the use of purchasers or owners of lots fronting thereon or adjacent thereto.

Sec. 2. That every such plat shall be duly acknowledged by owners or proprietors of the land, or by some duly authorized agent of said owners or proprietors, in the manner required for the acknowledgment of deeds; and the said plat, subject to the provisions contained in this Act [Art. 974a; P. C. art. 427b], shall be filed for record and be recorded in the office of the County Clerk of the County in which the land lies.

Sec. 3. That it shall be unlawful for the County Clerk of any county in which such land lies to receive or record any such plan, plat or replat, unless and until the same shall have been approved by the City Planning Commission of any city affected by this Act [Art. 974a; P. C., art. 427b] if said city have a City Planning Commission and if it have no City Planning Commission, unless and until the said plan, plat, or replat shall have been approved by the governing body of such city. If such land lies outside of and within five miles of more than one city affected by this Act [Art. 974a; P. C., art. 427b] then the requisite approval shall be by the City Planning Commission or Governing Body, as the case may be, of such of said cities having the largest population. Any person desiring to have a plan, plat or replat approved as herein provided, shall apply therefor to and file a copy with the Commission or governing body herein authorized to approve same, which shall act upon same within thirty days from the filing date. If said plat be not disapproved within thirty days from said filing date, it shall be deemed to have been approved and a certificate showing said filing date and the failure to take action thereon within thirty days from said filing date, shall on demand be issued by the City Planning Commission or Governing Body, as the case may be, of such city, and said certificate shall be sufficient in lieu of the written endorsement or other evidence of approval herein required. If the plan, plat, or replat is approved, such Commission or governing body shall indicate such finding by certificate endorsed thereon, signed by the Chairman or presiding officer of said Commission or governing body and attested by its Secretary, or signed by a majority of the members of said Commission or Governing Body. Such Commission or governing body shall keep a record of such applications and the action taken thereupon, and upon demand of the owners of any land affected, shall certify its reasons for the action taken in the matter.

Sec. 4. If such plan or plat, or replat shall conform to the general plan of said city and its streets, alleys, parks, playgrounds and public utility facilities, including those which have been or may be laid out, and to the general plan for the extension of such city and of its roads, streets and public highways within said city and within five miles of the corporate limits thereof, regard being had for access to and extension of sewer and water mains and the instrumentalities of public utilities, and if same shall conform to such general rules and regulations, if any, governing plats and subdivisions of land falling within its jurisdiction as the governing body of such city may adopt and promulgate to promote the health, safety, morals or general welfare of the community, and the safe, orderly and healthful development of said community (which general rules and regulations for said purposes such cities are hereby authorized to adopt and promulgate after public hearing held thereon), then it shall be the duty of said City Planning Commission or of the governing body of such city, as the case may be, to endorse approval upon the plan, plat, or replat submitted to it.

Sec. 5. That any such plan, plat or replat may be vacated by the proprietors of the land covered thereby at any time before the sale of any lot therein by a written instrument declaring the same to be vacated duly executed, acknowledged and recorded in the same office as the plat to be vacated, provided the approval of the City Planning Commission or governing body of such city, as the case may be, shall have been obtained as above provided, and the execution and recordation of such shall operate to destroy the force and effect of the recording of the plan, plat or replat so vacated. In cases where lots have been sold, the plan, plat or replat, or any part thereof, may be vacated upon the application of all the owners of lots in said plat and with the approval, as above provided, of the City Planning Commission or governing body of said city, as the case may be. The County Clerk of the county in whose office the plan or plat thus vacated has been recorded shall write in plain, legible letters across the plan or plat so vacated the word "Vacated," and also make a reference on the same to the volume and page in which said instrument of vacation is recorded.

Sec. 6. The approval of any such plan, plat, or replat shall not be deemed an acceptance of the proposed dedication and shall not impose any duty upon such city concerning the maintenance or improvement of any such dedicated parts until the proper authorities of said city shall have made actual appropriation of the same by entry, use or improvement.

Sec. 8. Unless and until any such plan, plat or replat shall have been first approved in the manner and by the authorities provided for in this Act [Art. 974a; P. C., art. 427b], it shall be unlawful within the area covered by said plan, plat or replat for any city affected by this Act [Art. 974a; P. C., art. 427b], or any officials of such city, to serve or connect said land, or any part thereof, or for the use of the owners or purchasers of said land, or any part thereof, with any public utilities such as water, sewers, light, gas, etc., which may be owned, controlled or distributed by such city.

Sec. 9. If any such plan, plat or replat is disapproved by the City Planning Commission or governing body of such city, as the case may be, such disapproval shall be deemed a refusal by the city of the offered dedication shown thereon.

Sec. 10. The benefits of the provisions of this law

shall apply to, and the terms thereof extend to, any city in the State of Texas now or hereafter having less than twenty-five thousand inhabitants, as above defined, if and when the governing body thereof shall submit the question of the adoption or rejection hereof to a vote of the qualified voters of said city, either at a general election in said city or at a special election called for the purpose by said city, and if and when same shall have been adopted at such election by a majority vote of the qualified voters of said city voting at such election, said election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city, but said governing body is hereby empowered to order said election and to prescribe the time and manner of holding the same. Said body shall canvass and determine the result of said election, and if a majority of the voters voting upon the question of the adoption of said law at such election shall vote to adopt the same the result of said election shall by said governing body be entered upon their minutes, and thereupon all terms hereof shall be applicable to and govern such city adopting the same. A certified copy of said minutes shall be prima facie evidence of the result of such election and the regularity thereof, and the facts therein recited shall in all courts be accepted as true. [Acts 1927, 40th Leg., p. 342, ch. 231.]

Section 11 of Acts 1927, 40th Leg., p. 342, ch. 231, provides, that if any provision or part of the Act is held invalid such holding shall not affect the remaining provisions, and section 12 repeals all conflicting laws or parts of laws to the extent of such conflict.

Art. 975. [782] [575] Segregating territory.—Whenever fifty qualified voters of any territory within the limits of any incorporated town shall sign and present a petition to the mayor of such city, praying that such territory, setting the same out by metes and bounds, be declared no longer a part of such town, the mayor thereof shall order an election within thirty days thereafter to be held at the different voting precincts of said town; and if a majority of the legal voters of said town voting at such election cast their votes in favor of discontinuing said territory as a part of said town, the mayor of said city shall declare such territory no longer a part of said city, and shall enter an order to that effect on the minutes or records of the city council; and from and after the date of such order, said territory shall cease to be a part of said town; provided, no city or town shall thus be reduced to a less area than one square mile or one mile in diameter around the center of the original corporate limits. [Acts 1883, p. 99; G. L. vol. 9, p. 405.]

Art. 976. [783] [576] Liable for debts.—Whenever any territory shall withdraw as above provided, and such city or town shall at the time of such withdrawal owe any debts by bond or otherwise, such withdrawing territory shall not be released from the payment of its pro rata of such indebtedness; but it shall be the duty of said city council to continue to levy an ad valorem tax each year on the property of such territory of the same rate as is levied upon other property of such city, until the taxes collected from said territory shall equal its pro rata share of the indebtedness of said city or town at the time of the withdrawal. The taxes so collected shall be charged only with the cost of levying and collecting the same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the inhabitants of said territory from paying in full, at any time, their pro rata share of the indebtedness of said city. [Id.]

CHAPTER TWO

OFFICERS AND THEIR ELECTION

Art.
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Article 977. [784] [387] [344] City officials.—The municipal government of the city shall consist of a city council composed of the mayor and two aldermen from each ward, a majority of whom shall constitute a quorum for the transaction of business, except at called meetings, or meetings for the imposition of taxes, when two-thirds of a full board shall be required, unless otherwise specified, provided that where the city or town is not divided into wards, the city council shall be composed of the mayor and five aldermen, and the provisions of this title relating to proceedings in a ward shall apply to a whole city or town. Other officers of the corporation shall be a treasurer, an assessor and collector, a secretary, a city attorney, a marshal, city engineer, and such other officers and agents as the city council may from time to time direct. The office of treasurer, assessor and collector, city attorney, and city engineer may be dispensed with by an ordinance to that effect, and the powers and duties herein prescribed for such officers may be conferred by the council upon other officers. The above named officers shall be elected by the qualified electors of the city for a term of two years. [Acts 1881, p. 115; G. L. vol. 9, p. 208.]

Art. 978. [785] [388] [345] Election.—An election shall be held annually in each ward of said city on the first Tuesday in April, at such places as the city council may direct, and of which thirty days notice shall be given. Such election shall be ordered and notice thereof shall be given, and the election officers and supervisors appointed, as provided by article 2951. The presiding officers and judges must be qualified voters in the city. The city council shall provide for their compensation, and by ordinance, regulate and define their powers and duties. [Id.; Acts 1st C. S. 1905, p. 533.]

Art. 979. [786] [389] [346] Ward Election of Councilmen.—At the first election under this title there shall be elected a mayor, and two aldermen from each ward, one of whom shall hold office for one year, and the other for two years from the date of their election, to be determined by lot at the first regular meeting after said election. At each annual election thereafter there shall be elected one alderman from each ward, who shall hold office for two years. If the city or town is not divided into wards, the city council may determine by ordinance what number of aldermen shall go out of office in one year, and the manner of deciding which shall hold for the long term and which for the short term. [Acts 1895, p. 8, G. L. vol. 10, p. 783.]

Art. 980. [787] [390] [347] Hours of election.—The ballots of each ward shall be taken separately, the polls being opened in each ward for one day only, from eight o'clock a. m. until six o'clock p. m., with the privilege of a recess from 12 o'clock to one o'clock. If the polls are not promptly opened for the reception of votes at eight o'clock a. m., the time thus lost shall be extended beyond the hour of six p. m. so as to secure the full period of nine hours to vote. [Id.]

Art. 981. [787] [390] [347] Returns.—On closing the polls, the managers of the election shall immediately proceed to count and cast up the votes for each candidate and certify and sign the returns in duplicate, one of which shall be sealed and returned by the presiding officer for future use as a reference in the case of a contested election; the other shall be sealed with the name of the presiding officer written across the seals, and by the presiding officer, or in his absence or inability by one of the judges or clerks, delivered in open session to the city council as soon as practicable. The officer delivering the same shall

make oath before the mayor or one of the aldermen that the returns by him delivered have not been altered or opened since being signed and sealed as aforesaid. [Id.]

Art. 982. [787] [390] [347] Shall declare result.—The city council shall immediately open the returns from each ward, casting up the votes of the wards, and the persons receiving the highest number of votes for the respective offices shall be declared elected. In the first election held hereunder, the two persons from the same ward receiving the highest number of votes in the city for aldermen of the wards for which they are candidates shall be declared elected aldermen of such wards. If the city council fails to meet and declare the results of such election, the mayor shall discharge that duty. [Acts 1875, p. 113; Id.; G. L. vol. 8, p. 485.]

Art. 983. [787] [390] [347] Installation of officers.—The newly elected officers may enter upon their duties on the fifth day thereafter, Sundays excepted. If any such officer fails to qualify within thirty days after his election, his office shall be deemed vacant, and a new election held to fill the same. The city council-elect shall meet at the usual place of meeting on the fifth day, Sundays excepted, after their election or as soon thereafter as possible, and be installed under the provisions of this title. [Id.]

Art. 984. [789] [392] [349] Election managers.—The election managers shall be sworn well and truly to conduct the election, without partiality or prejudice, and agreeably to law, and according to the best of their skill and understanding. Such oath shall be administered by the mayor or any justice of the peace. The presiding officers and judges thus qualified shall have power to administer oaths necessary to the performance of their official duties. [Id.]

Art. 985. [789] [392] [349] Rejection of votes.—When any person offering a vote shall be objected to by any one qualified to vote at such election, the managers shall examine him on oath touching the points objected to; and, if he fails to establish his qualification to their satisfaction his vote shall be rejected. [Id.]

Art. 986. [791] [394] [350] Tie vote.—If in any election there is a tie between two or more candidates for the same office, all of whom cannot be elected, the city council shall declare such election void as between such candidates only, and immediately order a new election for the office, giving not less than five days notice thereof. [Id.]

Art. 987. [792] [395] [351] Qualifications of officers.—No person shall be eligible to the office of mayor unless he is a qualified elector and has resided twelve months next preceding the election within the city limits. To be eligible for aldermen, one must reside in the ward from which he may be elected at the time of his election. If any alderman removes from the ward in which he was elected, his office shall be deemed vacant. [Id.]

Art. 988. [793] [566] [495] Limitations of councilmen.—No member of the city council shall hold any other employment or office under the city government until [while] he is a member of said council, unless herein otherwise provided. No member of the city council, or any other officer of the corporation, shall be directly or indirectly interested in any work, business or contract, the expense, price or consideration of which is paid from the city treasury, or by an assessment levied by an ordinance or resolution of the city council, nor be the surety of any person having a contract, work or business with said city, for the performance of which security may be required, nor be the surety on the official bond of any city officer. [Acts 1875, p. 154; G. L. vol. 8, p. 526.]

Art. 989. [797] [396] [352] Vacancy.—In case of a vacancy from any cause in the office of mayor or alderman, the city council shall order a new election to fill such vacancy. All special elections shall be conducted as is herein provided for in the annual election. In all special elections to fill vacancies, ten days notice shall be sufficient. In case of a vacancy in any other office in the city, the mayor or acting mayor shall fill such vacancy by appointment, to be confirmed by the city council. [Acts 1887, p. 41; G. L. vol. 9, p. 839.]

Art. 990. [798–9] Special election.—Whenever a vacancy occurs by resignation or otherwise, in the municipal offices of any incorporated city or town in this State, so that the vacancy cannot be filled under the charter of said city or town, or under the laws of this State now in force, then the commissioners court of said county in which said town or city is situated, upon a petition of not less than twenty-six tax paying voters living in such city, shall order an election to be held to fill such vacancy, giving notice of not less than ten days in the usual manner provided for such elections, which shall be held in like manner as similar elections and the officers so elected shall in like manner be qualified and installed. [Acts 1875, p. 159; G. L. vol. 8, p. 485; G. L. vol. 10, p. 1213.]

Art. 991. [801] [399] [355] Mayor pro tempore.—At the first meeting of each new council, or as soon thereafter as practicable, one of the aldermen shall be elected president pro tempore, who shall hold his office for one year. In case of the failure, inability or refusal of the mayor to act, the president pro tempore shall perform the duties and receive the fees and compensation of the mayor. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 992. [802] [553] [482] Change of wards.—The wards of each city accepting the provisions of this title shall be and remain unchanged by its acceptance. The city council shall have power from time to time to cause a division of said city to be made into as many wards as they may deem necessary, and for the good of the inhabitants of said city, and may change the boundaries of the same. No such division or change shall be made unless it be done at least three months preceding the city election next ensuing; and said wards so established shall contain as far as practicable an equal number of voters. [Acts 1875, p. 151; G. L. vol. 8, p. 523.]

CHAPTER THREE

DUTIES AND POWERS OF OFFICERS

Art.
993. Oath.
994. Duties of mayor.
995. Special police force.
996. Powers of the mayor.
997. Ordinances and resolutions.
998. Police Officers.
999. Marshal, duties, etc.
1000. Secretary, duties, etc.
1001. Treasurer, duties, etc.
1002. Control of officers.
1003. Qualifications of appointee.
1004. Officer disqualified.
1005. Resignation of officers.
1006. Removal of officers.

Article 993. [803] [400] [356] Oath.—Every person elected or appointed to fill an office under this title shall, before entering upon the duties of his office, take and subscribe the official oath. The city council by ordinance may require such additional oath as it may deem best calculated to secure faithfulness in the performance of their duties by such officers. [Acts 1875, p. 118; G. L. vol. 8, p. 490.]

Art. 994. [804] [401] [357] Duties of mayor.—The mayor shall be the chief executive officer of said corporation, and shall be active at all times in causing the laws and ordinances of said city to be duly executed and put in force. He shall inspect the conduct of all subordinate officers in the government thereof, and, shall cause all negligence, carelessness and other violations of duty to be prosecuted and punished. He shall have power, if in his judgment the good of the city may require it, to summon meetings of the city council; and he shall communicate to that body such information and recommend such measures as may tend to the improvement of the finances, the police, health security, cleanliness, comfort, ornament and good government of said city. [Acts 1881, p. 115; G. L. vol. 9, p. 207.]

Art. 995. [805] [402] [358] Special police force.—Whenever the mayor deems it necessary, in order to enforce the laws of the city, or to avert danger, or to protect life or property, in case of riot or any outbreak or calamity or public disturbance, or when he has reason to fear any serious violation of law or order, or any outbreak or any other danger to said city, or the inhabitants thereof, he shall summon into service as a special police force, all or as many of the citizens as in his judgment may be necessary. Such summons may be by proclamation or other order addressed to the citizens generally, or those of any ward of the city, or subdivision thereof, or may be by personal notification. Such special police force while in service, shall be subject to the orders of the mayor, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city. [Acts 1875, p. 119; G. L. vol. 8, p. 491.]

Art. 996. [806] [403] [359] Powers of the mayor.—The mayor shall have power to administer oaths of office. He shall have authority in case of a riot or any unlawful assemblage, or with a view to preserve peace and good order in said city, to order and enforce the closing of any theatre, ball room, or other place of resort, or public room or building, and may order the arrest of any person violating in his presence, the laws of this State, or any ordinance of the city. He shall perform such other duties and possess and exercise such other power and authority as may be prescribed and conferred by the city council. [Id.]

Art. 997. [807] [404] [360] Ordinances and resolutions.—All ordinances and resolutions adopted by the council shall, before they take effect, be placed in the office of the city secretary; and the mayor shall sign those he approves. Such as he shall not sign, he shall return to the city council with his objections thereto. Upon the return of any ordinance or resolution by the mayor, the vote by which the same was passed shall be reconsidered. If, after such reconsideration, a majority of the whole number of aldermen agree to pass the same, and enter their votes on the journal of their proceedings, it shall be in force. If the mayor shall neglect to approve or object to any such proceedings for a longer period than three days after the same shall be placed in the secretary's office as aforesaid, the same shall go into effect. [Id.]

Art. 998. [808] Police Officers.—The city or town council in any city or town in this State, incorporated under the provisions of this title may, by ordinance, provide for the appointment, term of office and qualifications of such police officers as may be deemed necessary. Such police officers so appointed shall receive a salary or fees of office, or both, as shall be fixed by the city council. Such council may, by ordinance, provide that such police officers shall hold their office at the pleasure of the city council, and for such term as the city council directs. Such police officers shall give bond for the faithful performance of their duties, as the city council may require. Such officers shall have like powers, rights and authority as are by said title vested in city marshals. [Acts 1907, p. 299.]

Art. 999. [809] [407] [363] Marshal, duties, etc.—The marshal of the city shall be ex-officio chief of police, and may appoint one or more deputies which appointment shall only be valid upon the approval of the city council. Said marshal shall, in person or by deputy, attend upon the corporation court while in session, and shall promptly and faithfully execute all writs and process issued from said court. He shall have like power, with the sheriff of the county, to execute warrants; he shall be active in quelling riots, disorder and disturbance of the peace within the city limits and shall take into custody all persons so offending against the peace of the city and shall have authority to take suitable and sufficient bail for the appearance before the corporation court of any person charged with an offense against the ordinance or laws of the city. It shall be his duty to arrest, without warrant, all violators of the public peace, and all who obstruct or interfere with him in the execution of the duties of his office or who shall be guilty of any disorderly conduct or disturbance whatever; to prevent a breach of the peace or preserve quiet and good order, he shall have authority to close any theatre, ball room or other place or building of public resort. In the prevention and suppression of crime and arrest of offenders, he shall have, possess and execute like power, authority, and jurisdiction as the sheriff. He shall perform such other duties and possess such other powers and authority as the city council may by ordinance require and confer, not inconsistent with the Constitution and laws of this State. The marshal shall give such bond for the faithful performance of his duties as the city council may require. He shall receive a salary or fees of office, or both, to be fixed by the city council. The governing body of any city or town having less than three thousand inhabitants according to the preceding Federal census, may by an ordinance, dispense with the office of marshal, and at the same time by such ordinance confer the duties of said office upon any peace officer of the county, but no marshal elected by the people shall be removed from his office under the provisions of this article. [Acts 1875, p. 122; G. L. vol. 8, p. 494; Acts 1901, p. 114.]

Art. 1000. [810] [408] [364] Secretary, duties, etc.—The city secretary shall attend every meeting of the city council, and keep accurate minutes of the proceedings thereof in a book to be provided for that purpose, and engross and enroll all laws, resolutions and ordinances of the city council, keep the corporate seal, take charge of and preserve and keep in order all the books, records, papers, documents and files of said council, countersign all commissions issued to city officers, and licenses issued by the mayor, and keep a record or register thereof, and make out all notices required under any regulation or ordinance of the city. He shall draw all the warrants on the treasurer and countersign the same and keep an accurate account thereof in a book provided for the purpose. He shall be the general accountant of the corporation, and shall keep in books regular accounts of the receipts and disbursements for the city, and separately, under proper heads, each cause of receipt and disbursement, and also accounts with each person including officers who have money transactions with the city, crediting accounts allowed by proper authority and specifying the particular transaction to which such entries apply. He shall keep a register of bonds and bills issued by the city, and all evidence of debt due and payable to it, noting the particulars thereof, and all facts connected therewith, as they occur. He shall carefully keep all contracts made by the city council; and he shall perform all such other duties as may be required of him by law, ordinance, resolution or order of the city council. He shall receive for his services an annual salary payable at stated periods, and such additional fees as the city council may allow. [Id.]

Art. 1001. [811] [409] [365] Treasurer, duties, etc.—The treasurer shall give bond in favor of the city in such amount, and in such form as the city council may require, with sufficient security to be approved by the city council, conditioned for the faithful discharge of his duties. He shall receive and securely keep all moneys belonging to the city, and making all payments for the same upon the order of the mayor, attested by the secretary under the seal of the corporation. No order shall be paid unless the said order shall show upon its face that the city council has directed its issuance, and for what purpose. He shall render a full and correct statement of his receipts and payments to the city council, at their first regular meeting in every quarter and whensoever, at other times, he may be required by them so to do. At the end of every half year he shall cause to be published, at the expense of the city, a statement showing the amount of receipts and expenditures for the six months next preceding, and the general condition of the treasury. He shall do and perform such other

acts and duties as the city council may require. He shall receive such compensation as the city council shall fix. [Id.]

Art. 1002. [812] [411] [367] Control of officers.—The city council shall have power from time to time to require other and further duties of all officers whose duties are herein prescribed, and to define and prescribe the powers and duties of all officers appointed or elected to any office under this title whose duties are not herein specially mentioned, and fix their compensation. They may also require bonds to be given to the said corporation by all officers for the faithful performance of their duties. The city council shall provide for filling vacancies in all offices, not herein provided for. In all cases of vacancy, the same shall be filled only for the unexpired term. [Id.]

Art. 1003. [794] [562] [491] Qualifications of appointee.—No person other than an elector resident of the city shall be appointed to any office by the city council. [Id.]

Art. 1004. [800] [565] [494] Officer disqualified.—Any officer who has been intrusted with the collection or custody of funds belonging to a city who shall be in default to said city, shall thereafter be incapable of holding any office under said city, until the amount of his defalcation shall have been fully paid to said city, with ten per cent interest. [Id.]

Art. 1005. [795] [563] [492] Resignation of officers.—Resignation by any officer authorized by this title to be elected or appointed shall be made to the city council in writing, subject to their approval and acceptance. Any appointee of the mayor may present his written resignation to that officer for his action. [Id.]

Art. 1006. [796] [564] [493] Removal of officers.—The city council shall have power to remove any officer for incompetency, corruption, misconduct or malfeasance in office, after due notice and an opportunity to be heard in his defense. The city council shall also have power at any time to remove any officer of the corporation elected by them, by resolution declaratory of its want of confidence in said officer; provided, that two-thirds of the aldermen elected vote in favor of said resolution. [Id.]

CHAPTER FOUR

THE CITY COUNCIL

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Article 1007. [813] [412] [368] Presiding officer.—The mayor shall preside at all meetings of the city council, and shall have a casting vote, except in elections. If he and the president pro tem are absent, any alderman may be appointed to preside. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1008. [814] [413] [369] Meetings.—Petitions and remonstrances may be presented to the council in writing only. The city council shall hold stated meetings at such times and places as they shall by resolution direct. The mayor, of his own motion, or on the application of three aldermen, may call special meetings, by notice to each member of said council, the secretary and city attorney, served personally or left at their usual place of abode. The council shall determine the rules of its proceedings and be the judge of the election and qualification of its own members, and may compel the attendance of absent members and punish them for disorderly conduct. [Id.]

Art. 1009. [815] [567] [496] Attendance of officers.—Each alderman shall be fined three dollars for each meeting which he fails to attend, unless on account of his own sickness or that of his family. Any member of the city council remaining absent for three regular consecutive meetings of the board, unless prevented by sickness, without first having obtained leave of absence at a regular meeting, shall be deemed to have vacated his office, and the mayor shall proceed to fill the vacancy in accordance with the charter. [Id.]

Art. 1010. [816] [569] [498] Salary of officers.—The city council shall, on or before the first day of January next preceding each election, fix the salary and fees of office of the mayor to be elected at the next regular election, and fix the compensation to be paid to the officers elected or appointed by the city council. The compensation so fixed shall not be changed during the term for which said officers shall be elected or appointed. [Id.]

Art. 1011. [817] [464] [418] Powers.—The city council shall have power to pass, publish, amend or repeal all ordinances, rules and police regulations, not contrary to the Constitution of this State, for the good government, peace and order of the city and the trade and commerce thereof, that may be necessary or proper to carry into effect the powers vested by this title in the corporation, the city government or in any department or office thereof; to enforce the observance of all such rules, ordinances and police regulations, and to punish violations thereof. No fine or penalty shall exceed one hundred dollars. [Id.]

Art. 1011a. Grant of power for zoning.—For the purpose of promoting health, safety, morals, or the general welfare of the community, the legislative body of cities and incorporated villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. [Acts 1927, 40th Leg., p. 424, ch. 283, § 1.]

Section 10 of Acts 1927, 40th Leg., p. 424, ch. 283, provides that if any section or part is held invalid, such holding shall not affect the remainder.

Art. 1011b. Districts.—For any or all of said purposes the local legislative body may divide the municipality into districts of such number, shape, and area as may be deemed best suited to carry out the purposes of this Act [Arts. 1011a–1011j]; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. All such regulations shall be uniform for each class or kind of buildings throughout each district, but the regulations in one district may differ from those in other districts. [Acts 1927, 40th Leg., p. 424, ch. 283, § 2.]

Art. 1011c. Purposes in view.—Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the

character of the district and its peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality, and it is hereby provided that this Act [Arts. 1011a–1011j] shall not enable cities and incorporated villages aforesaid to require the removal or destruction of property, existing at the time such city or incorporated village shall take advantage of this Act [Arts. 1011a–1011j], actually and necessarily used in a public service business. [Acts 1927, 40th Leg., p. 424, ch. 283, § 3.]

Art. 1011d. Method of procedure.—The legislative body of such municipality shall provide for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established, and enforced, and from time to time amended, supplemented, or changed. However, no such regulation, restriction, or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper, or a paper of general circulation in such municipality. [Acts 1927, 40th Leg., p. 424, ch. 283, § 4.]

Art. 1011e. Changes.—Such regulations, restrictions, and boundaries may from time to time be amended, supplemented, changed, modified, or repealed. In case, however, of a protest against such change, signed by the owners of 20 per cent of [or] more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending 200 feet therefrom, or of those directly opposite thereto extending 200 feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of three-fourths of all the members of the legislative body of such municipality. The provisions of the previous section relative to public hearing and official notice shall apply equally to all changes or amendments. [Acts 1927, 40th Leg., p. 424, ch. 283, § 5.]

Art. 1011f. Zoning commission.—In order to avail itself of the powers conferred by this Act [Arts. 1011a–1011j], such legislative body shall appoint a commission, to be known as the zoning commission, to recommend the boundaries of the various original districts and appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and such legislative body shall not hold its public hearings or take action until it has received the final report of such commission. Where a city plan commission already exists, it may be appointed as the zoning commission. [Acts 1927, 40th Leg., p. 424, ch. 283, § 6.]

Art. 1011g. Board of adjustment.—Such local legislative body may provide for the appointment of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this Act [Arts. 1011a–1011j] may provide that the said board of adjustment may, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent and in accordance with general or specific rules therein contained.

The board of adjustment shall consist of five members, each to be appointed for a term of two years and removable for cause by the appointing authority upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.

The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this Act [Arts. 1011a–1011j]. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board, or bureau of the municipality affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time, as provided by the rules of the board, by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property. In such case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by a court of record on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of adjustment shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

The board of adjustment shall have the following powers:

1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this Act [Arts. 1011a–1011j] or of any ordinance adopted pursuant thereto.

2. To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

3. To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that the the spirit of the ordinance shall be observed and substantial justice done.

In exercising the above mentioned powers such board may, in conformity with the provisions of this Act [Arts. 1011a–1011j], reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision, or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance, or to effect any variation in such ordinance.

Any person or persons, jointly or severally, aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board, or bureau of the municipality, may present to a court of record a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 10 days after the filing of the decision in the office of the board.

Upon the presentation of such petition the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than 10 days and may be extended by the court. The allow-

ance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the board unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings. [Acts 1927, 40th Leg., p. 424, ch. 283, § 7.]

Art. 1011h. Enforcement and remedies.—The local legislative body may provide by ordinance for the enforcement of this Act [Arts. 1011a–1011j] and of any ordinance or regulation made thereunder. A violation of this Act [Arts. 1011a–1011j] or of such ordinance or regulation is hereby declared to be a misdemeanor, and such local legislative body may provide for the punishment thereof by fine or imprisonment or both. It is also empowered to provide civil penalties for such violation.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this Act [Arts. 1011a–1011j] or of any ordinance or other regulation made under authority conferred hereby, the proper local authorities of the municipality, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to restrain, correct, or abate such violation, to prevent the occupancy of said building, structure, or land, or to prevent any illegal act, conduct, business, or use in or about such premises. [Acts 1927, 40th Leg., p. 424, ch. 283, § 8.]

Art. 1011i. Buildings for telephone service excepted.—The provisions of this Act [Arts. 1011a–1011j] or of any ordinance of any city or town, enacted under the authority of this Act [Arts. 1011a–1011j], shall not apply to the location, construction, maintenance or use of central office buildings of corporations, firms or individuals engaged in the furnishing of telephone service to the public, or to the location, construction, maintenance or use of any equipment in connection with such buildings or a part of such telephone system, necessary in the furnishing of telephone service to the public. [Acts 1927, 40th Leg., p. 424, ch. 283, § 8a.]

Art. 1011j. Conflict with other laws.—Wherever the regulations made under authority of this Act [Arts. 1011a–1011j] require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this Act [Arts. 1011a–1011j] shall govern. Wherever the provisions of any other statute or local ordinance or regulation requires a greater width or size of yards, courts, or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this Act [Arts. 1011a–1011j], the provisions of such statute or local ordinance or regulation shall govern. [Acts 1927, 40th Leg., p. 424, ch. 283, § 9.]

Art. 1012. [818] [559] [488] Style of ordinances.—The style of all ordinances shall be "Be it ordained by the city council of the city of ....." (inserting the name of the city); but it may be omitted when published in the form of a book or pamphlet. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1013. [819–821] Publication of ordinances.—Every ordinance imposing any penalty, fine or forfeiture shall, after the passage thereof, be published in every issue of the official paper for ten days. If the official paper be published weekly, the publication shall be made in one issue thereof. Proof of such publication shall be made by the printer or publisher of such paper by affidavit filed with the city secretary, and shall be prima facie evidence of such publication and promulgation of such ordinances in all courts of the State. Such ordinances shall take effect and be in force from and after the publication thereof, unless otherwise expressly provided. Ordinances not required to be published shall take effect from their passage, unless otherwise provided. Any town or city desiring to publish its ordinances in pamphlets or book form need not republish such ordinances as have been previously published. All such ordinances, where printed and published by authority of the city council, shall be admitted and received in all courts without further proof. [Id.; Acts 1889, p. 4; G. L. vol. 9, p. 1032.]

Art. 1014. [823] [568] May remit fines.—The city or town council shall have power to remit in whole or in part by a vote of two-thirds of the members present, any fine or penalty belonging to the city, which may be imposed or incurred under this title, or under any ordinance or resolution passed in pursuance thereof. [Id.]

Art. 1015. Other powers.—The governing body shall also have power:

1. Promotion of health.—To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

2. Quarantine regulations.—To make regulations to prevent the introduction of contagious disease into the city; to make quarantine laws for that purpose, and to enforce them within the city and within ten miles thereof.

3. Joint sanitary regulations.—To co-operate with the commissioners' court of the county in which the municipality is situated in making such improvements as may, by it and said court, be deemed necessary to improve the public health and promote efficient sanitary regulations, and to arrange for the construction of, and payment for, said improvements.

4. Hospitals.—To erect or establish one or more hospitals, and control and regulate the same, and to prohibit or to permit and regulate the establishment of private hospitals.

5. Food inspection, etc.—To regulate the inspection of beef, pork, flour, meal, salt and other provisions; to appoint weighers, gaugers and inspectors, and to prescribe their duties and regulate their fees.

6. Sale of bread.—To regulate the weight and quality of the bread to be sold or used within the city.

7. Butchers.—To make such rules and regulations in relation to butchers as they may deem necessary and proper.

8. Unclean establishments.—To compel the owner or occupant of any grocery, soap, tallow, or chandler establishment, or blacksmith shop, tannery, stable, slaughterhouse, sewers, privy, hide house or other unwholesome or nauseous house or place, to cleanse, remove or abate the same, as may be necessary for the health, comfort and convenience of the inhabitants.

9. Location of establishment.—To direct the location of business, tanneries, blacksmith shops, found-

ries, livery stables and any manufacturing establishments; to direct the location and regulate the management and construction of, restrain, abate and prohibit within the city limits, slaughtering establishments and hide houses or establishments for making soap, for steaming or rendering lard, tallow, offal and such other substances as may be rendered; and all other establishments or places where any nauseous, offensive or unwholesome business may be carried on.

10. Drains, sinks, etc.—To require the owner of private drains, sinks and privies to fill up, cleanse, drain, alter, relay, repair, fix or improve the same as may be ordered by any resolution or ordinance of said city; and in the event of any failure, neglect or refusal to comply with any such order, the party so failing shall be liable to fine. In the event of there being no person in the city on whom such order can be served, the city may have such work done and such improvements made on account of the owner thereof. All costs, charges and expenses shall be a lien on the property, on the filing of a memorandum by the mayor, under the seal of the corporation thereof, and recording the same with the clerk of the district court. The city may enforce said lien and institute suit in the corporate name and obtain judgment against said party for the amount so due as aforesaid in any court having jurisdiction.

11. Nuisances.—To abate and remove nuisances and to punish the authors thereof by fine, and to define and declare what shall be nuisances and authorize and direct the summary abatement thereof; and to abate all nuisances which may injure or affect the public health or comfort in any manner they may deem expedient.

12. Dead animals, etc.—To prevent any person from bringing, depositing or having within the limits of said city any dead carcass, or other offensive or unwholesome substance or matter, and to require the removal or destruction by any person who shall have placed or caused to be placed upon or near his premises, or elsewhere, of any substance or matter, filth, or any putrid or unsound beef, pork or fish, hides or skins of any kind; and, on his default, to authorize the removal or destruction thereof by some officer of the city, and to require the owner of any dead animal to remove the same to such place as may be designated.

13. Burial of dead, etc.—To regulate the burial of the dead; to purchase, establish and regulate one or more cemeteries; to regulate the registration of marriages; and to direct the returning and keeping of bills of mortality.

14. Driving animals in city.—To prevent, regulate and control the driving of cattle, horses and other animals into or through the city.

15. Dogs.—To tax, regulate or restrain and prohibit the running at large of dogs and to authorize their destruction when at large contrary to ordinances, and to impose penalties for violation of such ordinances.

16. Pounds.—To establish and regulate public pounds, and to regulate, restrain and prohibit the running at large of horses, mules, cattle, sheep, swine, and goats, and to authorize the distraining, impounding and sale of the same for the costs of the proceedings and the penalty incurred, and to order their destruction when they cannot be sold and to impose penalties on the owners thereof for the violation of any ordinance.

17. Breeding animals.—To pass necessary ordinances to prevent any person, corporation or association of individuals from keeping for breeding purposes a jack, bull or stallion within the corporate limits of such city or town.

18. Control of police.—To create, establish and regulate the police of the city; to appoint watchmen and policemen, and to prescribe their duties and powers and compensation.

19. Workhouses.—To erect and establish one or more workhouses or houses of correction, within or without the city limits, make all necessary rules and regulations therefor, and appoint all necessary keepers or assistants. In such workhouse or house of correction may be confined all vagrants and disorderly persons, who may be committed by the mayor or recorder, and any person who shall fail or refuse to pay the fine or costs imposed for any offense may, instead of being committed to jail, be kept therein.

20. Breach of peace, etc.—To prevent all trespasses, breaches of the peace and good order, assaults and batteries, fighting, quarreling, using abusive, obscene, profane or insulting language and all disorderly conduct, and punish all persons thus offending.

21. Public disturbances.—To suppress and prevent any riot, affray, noise, disturbance or disorderly assembly in any public or private place within the city.

22. Noises and annoyances.—To prohibit and restrain the firing of firecrackers, guns and pistols, use of velocipedes, or use of any pyrotechnic or any other amusements or practices tending to annoy persons passing in the streets or sidewalks, or to frighten horses or teams; to restrain and prohibit the ringing of bells, blowing of horns and bugles, crying of goods, and all other noises, practices and performances tending to the collection of persons on the streets and sidewalks, by auctioneers and others, for the purpose of business, amusement or otherwise.

23. Obstructions on public ways, etc.—To prevent the incumbering of the streets, alleys, sidewalks, and public grounds, with any vehicle whatsoever, boxes, lumber, posts, awnings, signs, or any other substance or material whatever, to compel persons to keep all weeds, filth or any kind of rubbish from the sidewalks and streets and gutters in front of their premises, and to compel the owners of property to fill up, grade, gravel and otherwise improve the sidewalks in front of same.

24. Dangerous buildings, etc.—To order, whenever in the opinion of the city council, any building, fence, shed, awning or any erection of any kind or any part thereof is liable to fall down and endanger persons or property, any owner or agent of the same, or any owner or occupant of the premises on which such building, shed, awning or other erection stands or to which it is attached, to take down and remove the same, or any part thereof, within such time as they may direct; and to punish by fine and imprisonment, or either, any neglect, failure or refusal to comply therewith. The city council shall have power to remove the same at the expense of the city, on account of the owner of the property or premises, and assess the expenses on the land on which it stood or to which it was attached, and shall, by ordinance, provide for such assessment, the mode and manner of giving notice and the means of recovering any such expenses.

25. Bridges, sewers, etc.—To establish, erect, construct, regulate and keep in repair, bridges, culverts, and sewers, sidewalks and crossways, and to regulate the construction and use of the same, and to abate any obstructions or encroachments thereon; and the cost of construction of sidewalks shall be defrayed by the owner of the lot, or part of lot or block, fronting on the sidewalk. The cost of any sidewalk constructed by the city shall be collected, if necessary, by the sale of the lot, or part of lot or block on which it fronts, together with the cost of collection, in such manner as the city council may by ordinance provide. A sale of any lot or part of lot or block to enforce collection of costs of sidewalks shall convey a good title to the purchaser. The balance of proceeds of such sale, after paying the amount due the city and costs of sale, shall be paid to the owner.

26. Street railways.—To compel street railway companies to keep their roads in repair, and to make them conform to the grades of the streets upon which their tracks may be laid, whenever said streets shall have been graded by the city, and to restrain the rate of speed and to compel such railroads to supply ample accommodation for the safe and convenient travel of the people on the street where their track may run. The city council may enforce these regulations by proper ordinances with suitable penalties.

27. Railway companies.—To direct and control the laying and constructing of railroad tracks, turnouts and switches, or prohibit the same in the streets, avenues and alleys, unless the same have been authorized by law, and the location of depots within the city; to require that railroad tracks, turnouts and switches

shall be so constructed as to interfere as little as possible with the ordinary travel and use of streets, avenues and alleys and that sufficient space shall be left on either side of a track for the safe and convenient passage of teams, carriages and other vehicles, and persons; to require railroad companies to keep in repair the streets, avenues or alleys through which their track may run, and, if ordered by the city council, to construct and keep in repair, suitable crossings at the intersection of streets, avenues and alleys, and ditches, sewers and culverts, when the city council shall deem it necessary; to direct the use and regulate the speed of locomotive engines in said city, or to prevent and prohibit the use or running of the same within the city.

28. Unsafe driving.—To prevent, prohibit and suppress horse-racing, immoderate riding or driving in the streets; to compel persons to fasten their horses or other animals attached to vehicles, or otherwise, while standing or remaining in the streets.

29. Light and gas.—To provide for lighting the streets and erecting lamp posts therein, and regulating the lighting thereof, and from time to time create, alter or extend lamp districts, to exclusively regulate, direct and control the laying and repairing of the gas pipes and gas fixtures in the streets, alleys, sidewalks and elsewhere.

30. Water system.—To provide, or cause to be provided, the city with water; to make, regulate and establish public wells, pumps and cisterns, hydrants and reservoirs in the streets or elsewhere within said city or beyond the limits thereof, for the extinguishment of fires and the convenience of the inhabitants, and to prevent the unnecessary waste of water. Any city or town owning, or that may hereafter own, its water system and plant, shall not lease or sell the same without first submitting the question of such proposed lease or sale to a vote of the qualified voters who are property taxpayers of such town or city as shown by the last preceding tax rolls, at a general election, or at one held for that especial purpose, nor unless a majority of those voting shall vote in favor thereof. Before submitting such question to a vote as aforesaid, the proposed contract of lease or sale shall be distinctly set forth in the form of an ordinance or contract, and shall be filed with the city or town secretary or clerk at least twenty days prior to the day of the election, and shall at all times be subject to inspection by the people of such city.

31. Market house.—To establish or erect, or cause to be established or erected, markets and market houses; designate, control and regulate market places and privileges; inspect and determine the mode of inspecting meat, fish, vegetables and all produce and every article and thing therein brought for sale.

32. Parks, etc.—To provide for inclosing, regulating and improving all public grounds and cemeteries belonging to the city, and to direct and regulate the planting and preserving of ornaments and shade trees in the streets, sidewalks or public grounds.

33. Libraries.—To establish a free library in such city or town; to adopt rules and regulations for the proper management thereof, and to appropriate such part of the revenues of such city or town for the management and increase of such free library as the municipal government of such city or town may determine.

34. Street car taxes.—To assess and collect the ordinary municipal taxes upon street railways.

35. Trade taxes.—To tax all trades, professions, occupations and callings, the taxing of which is not prohibited by the Constitution of this State; which tax shall not be construed to be a tax on property.

36. Chauffeurs, porters, etc.—To license, tax and regulate hackmen, draymen, omnibus drivers and drivers of baggage wagons, porters, and all others pursuing like occupations, with or without vehicles, and prescribe their compensation, and provide for their protection and make it a misdemeanor to attempt to defraud them of any legal charge for services rendered, and to regulate, license and restrain runners for railroads, stages and public houses.

37. Peddlers, theaters, etc.—To license, tax and regulate or suppress and prevent hawkers, peddlers, pawnbrokers and keepers [of theatrical] or other exhibitions, shows and amusements.

38. Circuses, etc.—To license, tax or regulate theaters, circuses, the exhibitions of common showmen, shows of any kind, and the exhibition of natural and artificial curiosities, caravans, menageries and musical exhibitions and performances.

39. Licenses and fees.—To authorize the proper officer of the city to grant and issue licenses, and to direct the manner of issuing and registering thereof, and the fees to be paid therefor. No license shall be issued for a longer period than one year, and shall not be assignable except by permission of the city council.

40. Finances and property.—To manage and control the finances and all property, real and personal and mixed, belonging to the corporation.

41. Appropriations.—To appropriate money, and provide for the payment of debts and expenses of the city.

42. Special funds.—To provide by ordinance special funds for special purposes, and to make the same disbursable only for the purpose for which the fund was created. Any officer of the city misappropriating said special fund shall be deemed guilty of malfeasance in office, and shall, on complaint of any one interested in said funds misappropriated, be removed from office, and be incapable thereafter to hold any office in said city.

43. Improvements.—To appropriate so much of the revenues of the city emanating from whatever source, for the purpose of retiring and discharging the accrued indebtedness of the city, and for the purpose of improving the public markets and streets, erecting and conducting city hospitals, city hall, waterworks, and so forth, as they may from time to time deem expedient; and in furtherance of these objects, to borrow money upon the credit of the city.

Art. 1015a. Condemnation of lands for parks.—In case of the condemnation of land for laying out, establishing or enlarging any parks, parkways or pleasure grounds by any city in Texas which now has or may hereafter have a population of 12,000 or more inhabitants, the governing body of said city may, by ordinance, provide that the cost of such land and improvements shall be paid for, wholly or in part to an extent not exceeding the special benefits received by the property owners owning property in the vicinity thereof and benefited thereby, and may fix liens against said property so benefited to the extent same is specially benefited, provided, however, no assessments nor liens shall hold against homestead property so designated under existing laws and the procedure for and manner of assessing and collecting said benefits against and from said property owners and their said property shall be the same as that authorized by law in such city in which such proceedings are had in connection with the opening or widening of streets. Such assessments may be made payable in not exceeding sixteen (16) installments, the last maturing in not over fifteen (15) years, and may bear interest at not more than eight per cent (8%) per annum. [Acts 1927, 40th Leg., p. 433, ch. 288, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 433, ch. 288, provides that the act shall be in addition to and cumulative of any powers now or hereafter conferred by law on such cities.

Art. 1015b. Ordinances for segregation of races.—Sec. 1. That the power and authority is hereby conferred upon the Cities of Texas to provide by suitable ordinance for the segregation of negroes and whites in any such city and to withhold permits to build or construct a house to be occupied by white people in negro communities inhabited by negroes as defined by ordinance and to withhold building permits to any negro to establish a residence on any property located in a white community inhabited by white people as defined by ordinance.

Sec. 2. That it shall be lawful for negroes and whites to enter into mutual covenants or agreements concerning their respective residence and the power and authority is conferred upon the governing body of

any city to pass suitable ordinances requiring the observance of any such agreement.

Sec. 3. That the governing authorities of any such city shall have the full power to define the negro race, negro community, white race and white community.

Sec. 4. That the governing authorities of any such city shall have full power to enforce the observance of any ordinance passed leading to or providing for the segregation of the races and to require the observance thereof by appropriate penalties. [Acts 1927, 40th Leg., p. 154, ch. 103.]

Section 5 of Acts 1927, 40th Leg., p. 154, ch. 103, repeals all laws in conflict therewith.

Art. 1016. [854] [419] [375] Streets and alleys, etc.—Any incorporated city or town containing not more than five thousand population in this State shall have the exclusive control and power over the streets, alleys, and public grounds and highways of the city, and to abate and remove encroachments or obstructions thereon; to open, alter, widen, extend, establish, regulate, grade, clean and otherwise improve said streets; to put drains or sewers therein, and prevent incumbering thereof in any manner, and to protect same from encroachment or injury; and to regulate and alter the grade of premises; to require the filling up and raising of same; and such city council shall also have power to alter or vacate the alley in any block of ground in the city upon written application of the owner of the block, or if there be more than one owner of such block, then upon the written application of all owners thereof uniting in such application; such alley so vacated shall thereupon revert to and become the property of the owner of the block of which it was a part, or if more than one, then to the owners of the adjoining lots therein, each extending to the center of the alley so vacated. [Acts 1889, p. 1; Acts 1913, p. 326; Acts 1917, p. 351; G. L. vol. 9, p. 1029.]

Art. 1017. Sale of parks, streets, etc.—The charter or any amendment thereof, may authorize the governing body to sell and cause to be conveyed any land held or claimed for or as a public square or park, and the parts of streets and alleys within the limits of the city. The proceeds of any such sale shall be used only for the purpose of acquiring public squares, streets, or alleys. [Acts 1913, p. 326.]

Art. 1018. Use by railway, etc.—The charter, or any amendment thereto, may authorize the governing body to close for the exclusive use temporarily or perpetually by any railroad company or other corporation having power of eminent domain, any part or parts, of any street or streets, alley or alleys, and to ratify and confirm any prior ordinances closing any street or streets, alley or alleys, or any part or parts thereof, for the use of any railroad company or any such other corporation. [Id.]

Art. 1019. Special election.—No public square or park shall be sold, and no street or alley, nor part or parts of any street or alley closed, until the question of such sale or closing has been submitted to a vote of the qualified voters of the city or town, and approved by a majority of the votes cast at such election. [Id.]

Art. 1020. Towns so empowered.—The provisions of the three preceding articles shall be enforced in towns or cities under five thousand population, or cities over five thousand population which have no special charter, and in towns or cities incorporated under this title, and in cities or towns incorporated under any special law. The power authorized by this article may be conferred upon the governing body by vote of the qualified voters as provided in the preceding article. [Id.]

Art. 1021. [876] [577] [504] Interest on indebtedness.—No indebtedness of any character whatever, hereafter incurred by said corporation shall draw a higher rate of interest than six per cent per annum. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1022. [885 to 888] Audit board.—With the consent of the governing body, the mayor of each city or town incorporated under the general laws, shall at the first meeting of said body in January of each year appoint three resident citizens of said city or town who shall constitute a board of examiners of the finances of said city or town. Such examiners shall proceed to examine the books and accounts of each officer of said city or town, and make a sworn true report of the financial condition thereof to said governing body as soon as practicable and not later than the first meeting of said body in March of each year. The annual report of said board shall be passed upon by said governing body and spread upon the minutes of their meeting at the first regular meeting after the return of such report. Such examiners shall receive for their services such compensation as said governing body shall fix for every day actually employed in their investigations, not to exceed fifteen days in each year, which shall be paid by order of said body. [Acts 1905, p. 41; G. L. vol. 10, p. 771.]

Art. 1023. [889] [556] [485] Financial statement.—The city council shall, at least ten days before the expiration of each municipal year, cause to be published in a city newspaper a correct and full statement of the receipts and expenditures from the date of the last annual report, together with the sources from which the funds were derived, and showing for what purpose disbursed, the condition of the treasury, together with such information as may be necessary to a full understanding of the financial condition of the city. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1024. [899] [480] Receiver appointed.—A city or town so situated as is herein set forth, which fails to effect a compromise of its debts, or pending the negotiation of a compromise, shall be permitted, on its application setting forth its financial condition and insolvency, to have the district court of the county in which said city or town is situated, take charge of the collection and appropriation of all taxes levied and assessed by said city or town, except so much thereof as is necessary to pay the current expenses of the city or town; and to that end, said court, or the judge thereof in vacation, shall appoint a receiver or make the assessor and collector of said city or town its receiver to collect and pay into a named depository all taxes levied by said city or town for the payment of its debts; and said courts shall decide all questions of priority between conflicting claimants of said funds, and shall provide for the ratable and equitable distribution of said funds among all creditors entitled thereto. But it shall not be lawful for any court to appoint a receiver of or concerning any city or town except upon the voluntary application of such city or town. [Acts 1887, p. 50; G. L. vol. 9, p. 848.]

Art. 1025. [902] [555] [484] Official paper.—The city council shall, as soon as may be after the commencement of each municipal year, contract, as they may by ordinance or resolution determine, with a public newspaper of the city as the official paper thereof, and to continue as such until another is elected, and shall cause to be published therein all ordinances, notices and other matters required by this title or by the ordinance of the city to be published. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

CHAPTER FIVE

TAXATION

Art.

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Article 1026. [923] [484] Power to levy.—The governing body of any city or town in this State having a population of five thousand or less shall have power by ordinance to levy, assess and collect such taxes as such governing body may determine, not to exceed for any one year one and one-half per cent of the taxable property of such city or town, for current expenses and for the purpose of construction or the purchase of public buildings, water works, sewers, and other permanent improvements, within the limits of such city or town, and for the construction and improvement of the roads, bridges and streets of such city or town within its limits. [Acts 1921, p. 12.]

Art. 1027. [924] [485] Ad valorem tax.—The governing body of any incorporated city or town having a population of not more than five thousand inhabitants, shall have power, by ordinance, to levy and collect an annual ad valorem tax of not exceeding one and one-half per cent on the one hundred dollars valuation of taxable property within such city or town for the erection, construction or purchase of public buildings, streets, sewers and other permanent improvements within the limits of such city or town. Within the meaning of this article shall be included building sites and buildings for public free schools and institutions of learning within those cities and towns which have or may assume the exclusive control and management of public free schools and institutions of learning within their limits. [Acts 1885, p. 99; G. L. vol. 9, p. 719; Constitutional Amendment 1921.]

Art. 1028. Ad valorem tax in large cities.—The governing body of any city in this State having more than five thousand inhabitants, unless otherwise provided in its special charter granted by the Legislature or adopted by the people, shall have power by ordinance to levy, assess and collect such taxes as such governing body may determine, not to exceed for any one year two and one-half per cent of the taxable property of such city, for current expenses and for the purpose of construction or the purchase of public buildings, water works, sewers, and other permanent improvements, and for the construction and improvement of the roads, bridges and streets of such city, within its limits. [Acts 1921, p. 12.]

All ad valorem tax levies by resolution instead of by ordinance validated, except as to cities and towns in counties having a population of less than 30,000, by Acts 1927, 40th Leg., p. 263, ch. 184, § 1.

Art. 1029. Retirement of indebtedness.—To meet the interest and sinking fund on all indebtedness legally incurred prior to the adoption of the constitutional amendment of September 25, 1883, regarding the power of cities and towns to levy and collect taxes. etc., the governing body of the following cities and towns shall have power by ordinance to levy, assess and collect an annual ad valorem tax sufficient therefor:

1. Of any city or town having a population of five thousand or less.

2. Of any city having more than five thousand inhabitants, unless otherwise provided in the special charter granted by the Legislature or adopted by the people. [Id.]

Art. 1030. [927] [489] [428] Poll tax.—The city council shall have power to levy and collect an annual poll tax, not to exceed one dollar, of every male inhabitant of said city over the age of twenty-one and under sixty years, idiots and lunatics excepted, who is a resident thereof at the time of such annual assessment. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1031. [928–9] Occupation tax.—The city council shall have the power to levy and collect taxes, commonly known as licenses, upon trades, professions, callings and other business carried on; and each person and firm engaging in the following trades, professions, callings and business, among others, shall be liable to pay such license tax; every person or firm keeping a ball alley, or nine or ten-pin alley; every person or firm selling goods, wares and merchandise at public auction; every merchandise or cotton broker or commission merchant; every person or firm pursuing the occupation of hawker or peddler of goods or any article whatever; but this enumeration shall not be held to deprive the city council of the right to levy and collect other license taxes, and from other persons and firms under the general authority herein granted.

Art. 1032. [930] [492] [431] Power to collect tax.—Nothing herein shall prevent the city council from collecting the license, and each license tax provided for by this title. Each establishment shall be liable to said license tax; and any person or firm pursuing occupations, business, avocations or calling subject to said tax shall pay on each. No license shall extend to more than one establishment, or include more than one occupation, avocation, business or calling. [Id.]

Art. 1033. [931] [493] [432] Power to assess tax.—The city council shall have power to provide by ordinance for the assessing and collecting of said taxes, and to determine when taxes shall be paid by corporations, and when by the individual corporators. No tax shall be levied unless by consent of two-thirds of the aldermen elected. [Id.]

Art. 1034. [932] [494] [433] Collection of license tax.—The license tax shall be collected by the assessor and collector, and shall be paid to that officer by each person and firm owing such license and before engaging in any trade, profession, business, calling, avocation or occupation subject to said tax. This article shall apply to all persons owning [owing] any license and failing to pay the same. The city council may collect said license tax by suit under such rules as they may provide by ordinance. Said taxes, commonly known as licenses, shall not be construed to be a tax on property within the meaning of the provisions of this title. [Id.]

Art. 1035. [933] [554] [483] License revoked.—In any case where, by any provision of this title, or by an ordinance passed in pursuance thereof, a person is required to obtain a license for any calling, occupation, business or avocation, and has by the recorder been adjudged guilty of violating any city ordinance in relation thereto, the recorder, in addition to a fine, may institute proceedings to suspend or revoke the license so granted. [Id.]

Art. 1036. [934] [495] [434] "Real estate."—The term real estate or property as used in this law shall be held to include lots, lands, and all buildings or machinery and structures of every kind erected upon and affixed to the same. [Id.]

Art. 1037. [935] [496] [435] "Personal estate."—The term personal estate or property as used in this law shall be held to include all household furniture, money, goods, capital, chattels, public stocks and stocks of corporations, moneyed or otherwise, and generally all property which is not real. [Id.]

Art. 1038. [936] [497] [436] Exemptions.—The city council may, by ordinance, provide for the exemption from taxation of such property as they may deem just and proper. [Id.]

Art. 1039. [936] [497] [436] Special taxes.—Nothing in this chapter shall be construed to

prevent the city council from imposing, levying and collecting special taxes and assessments for the improvement of the avenues, streets and alleys, as hereinafter provided. [Id.]

Art. 1040. [937] [498] [437] Indebtedness.—The city council may also levy, assess and collect taxes necessary to pay the interest and provide a sinking fund to satisfy any indebtedness heretofore legally made and undertaken. All such taxes shall be assessed and collected separately from those levied, assessed and collected for current expenses of municipal government, and shall, when levied, specify in the act of levying the purpose therefor. Such taxes may be paid in coupons, bonds or other indebtedness for the payment of which such tax may have been levied. [Const. art. 11, sec. 6.]

Art. 1041. [938] [499] [438] Powers of council.—The city council may provide, by ordinance, for the prompt collection of all taxes assessed, levied and imposed under this title, and is authorized to sell or cause to be sold real as well as personal property, and may make such rules and regulations, and pass all ordinances as they may deem necessary to the levying, laying, imposing, assessing and collecting of any tax herein provided. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1042. [939] [500] [439] Further powers.—The city council may by ordinance, regulate the manner of making out tax lists or inventories and appraisements of property therein, and prescribe the oath that shall be administered on such rendition of property, and to prescribe how and when property shall thus be rendered, and to prescribe the number and form of assessment rolls, and fix the duties and powers of the assessor and collector, and adopt such measures as they deem advisable to secure the assessment of all property within the limits of said city, and collect the tax thereupon. [Id.]

Art. 1043. [940] [501] [440] Rendition.—Each person, partnership and corporation owning property within the limits of the corporation shall, between January first and April first of each year, hand to the city assessor and collector a full and complete sworn inventory of the property possessed or controlled by him, her or them, within said limits on the first day of January of the current year. [Id.]

Art. 1044. [941] [410] [366] Assessor and collector.—The assessor and collector shall make up the assessment of all property taxed by the city, and make duplicate rolls thereof, and on completion of the rolls, shall deliver one of them to the city secretary. He shall collect all the taxes due the city, and in the event of the non-payment of any taxes, shall proceed to sell the property to raise the amount of taxes so due; and shall in performance of his duties, observe the provisions of this title, and the ordinances of the city relating thereto. He shall give a good bond in such amount and form as the city council may prescribe. The council may require a new bond whenever they deem the existing bond insufficient; and when such bond is required, he shall perform no official act until said bond shall be given and approved. He shall at the end of every week, pay to the treasurer all money by him collected, and shall report to the city council at the first meeting in every month all money so collected and paid and perform all such other duties in such manner as the council may prescribe. The assessor and collector is authorized to require the owners of all property subject to taxation to render a correct account of the same under oath, to be administered by him. He shall receive such compensation as may be allowed by the city ordinances. [Id.]

Art. 1045. [942] [502] [442] List of personal property.—The assessor and collector shall make out a list of all personal property which has not been given in for assessment according to the provisions of this title, and assess the same in the name of the owner, if he be known; if not, then it shall be assessed by description of the property and as unknown owner. The value of such property shall be determined by the board of equalization. The same may be sold as in other cases, if the tax be not paid in the time prescribed by law. [Id.]

Art. 1046. [943] [503] [443] Unrendered property.—The assessor and collector, at the expiration of the time fixed by ordinance for the rendition of property shall ascertain such property in the city subject to taxation as has not been rendered; and the same shall be by him presented to the board of equalization for valuation by said board; and the same shall be by him entered in a supplement to the assessment roll as unknown, specifying the year for which said tax is not paid within the time prescribed by law; said property shall be sold at the same time and with like effect as other property. [Id.]

Art. 1047. [944] [504] [444] Back taxes.—Whenever the assessor and collector shall ascertain that any taxable property, real or personal, has not been assessed for any previous year, he shall assess the same in a supplement to his next assessment roll, at the same rate under which such property should have been assessed for such year, stating the year for which such property should have been assessed; and the taxes thereon shall be collected in the same manner as other assessments. In any case where any party has omitted to render property for taxation for any former year or years, and such taxes have not been paid, such party shall give such property in for assessment for the years thus omitted and pay such taxes; and the assessor and collector shall enter all such property in a supplement to his next assessment roll, under the head of payments for former years. [Id.]

Art. 1048. [945–955] Equalization board.—The city councils of cities and towns incorporated under the general laws shall annually, at their first meeting, or as soon thereafter as practicable, appoint three commissioners, each a qualified voter, a resident and property owner of the city or town for which he is appointed who shall be styled the board of equalization. At the same meeting said council shall, by ordinance, fix the time for the meeting of such board. Before said board enters upon its duties, it shall be sworn to faithfully and impartially discharge all duties incumbent upon it by law as such board. [Acts 1887, p. 152; G. L. vol. 9, p. 950.]

Art. 1049. [946] [506] Meetings of board.—The board of equalization shall convene annually, at the time so fixed to receive all the assessment lists or books of the assessor of their city, for examination, correction, equalization, appraisement, and approval. At each meeting of said board the city secretary shall act as secretary therefor. [Id.]

Art. 1050. [947] [507] Shall value property.—The board of equalization shall cause the assessor to bring before them, at the time so fixed all the assessment lists or books of the assessor of their city for their examination. Said board shall have power to send for persons and papers, to swear persons who testify, to ascertain the value of such property; and, if they are satisfied it is too high, they shall lower it to its proper value; and if too low, they shall raise the value of such property to a proper figure. Said board shall also have power to correct any errors that may appear on the assessor's lists or books. [Id.]

Art. 1051. [948] [508] Complaint.—Any person may file with said board at any time before the final action of said board a complaint as to the assessment of his or any other person's property, and said board shall hear said complaint. Said complainant shall have the right to have witnesses summoned in sustaining said complainant [complaint] as to the insurance on said property, or the rents and profits it may bring to the holder thereof.

Art. 1052. [949] [509] Unrendered property appraisal.—The city assessor, when he delivers to said board his lists and books, shall also furnish a certified list of the names of all persons who either refuse to swear or qualify or to sign the oath as required by law, together with a list of the property of such persons situated within the corporate limits of

their city, as made by him through other information. The board shall examine said lists and appraise the property so listed by the assessor. [Id.]

Art. 1053. [950] [510] Notice to owners.—In all cases where the board of equalization shall raise the value of any property appearing on the lists or books of the assessor, they shall, after having examined such lists or books and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said board to give written notice to the owner of such property or to the person rendering the same of the time to which said board has adjourned, and that such owner or person rendering said property may at that time appear and show cause why the value of said property should not be raised. Such notice may be served by depositing the same, properly addressed and postage paid, in the city post office. [Id.]

Art. 1054. [951–953] Shall lower values.—The board of equalization shall meet at the time fixed in said order of adjournment, and shall hear all persons the value of whose property has been raised. If said board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value. The action of said board at said meeting shall be final, and shall not be subject to revision by said board or by any other tribunal. [Id.]

Art. 1055. [952] [512] Approval of rolls.—The board of equalization, after it has finally examined and equalized the value of all property on the assessor's lists or books, shall approve said lists or books and return them, together with the lists that he may make up therefrom his general rolls as required by law; and when said general rolls are so made up, the board shall meet again to examine and approve said rolls. [Id.]

Art. 1056. [954] [514] Compensation of board.—The members of the board of equalization and the city secretary, while acting as secretary of said board, shall receive such pay for their services, to be allowed by the city council, as said council may deem just. [Id.]

Art. 1057. [956] [516] [445] Collection of taxes.—The assessor and collector, after the completion of the assessment roll, shall proceed to collect the taxes therein mentioned within the time, and give such notice as may be prescribed by the city council, and shall call once upon every person taxed, or on the agent or attorney of such person and demand the payment of the tax charged upon his or her person or property, if the person is to be found, and if not, then a written demand, specifying the amount of taxes due, left at the residence of some adult member of the family, shall be sufficient demand. If any person thus owing taxes has no residence, office or place of business, and no agent in the city or town known to the assessor and collector, then said demand shall not be necessary, and the ordinary published notice required by ordinance shall be sufficient. [Acts 1875, p. 115; G. L. vol. 8, p. 485.]

Art. 1058. [957] [517] [446] Tax sale.—If any person shall fail to pay the taxes imposed on him and his property within the time prescribed by the ordinances of the city, the assessor and collector shall, by virtue of his tax list and assessment roll, levy upon so much of the property subject to taxation belonging to such person as may be sufficient to pay his taxes and shall give notice of the time and place of the sale by advertisement (if not unknown property), of the property and amount of taxes, costs and fees due thereupon. Such notice shall be published in some newspaper published in said city. At the expiration of the time stated in such notice and on the day therein specified, the assessor and collector shall proceed to sell such property at public auction at some public place in said city designated in said notice. When real estate is offered for sale, the least amount of such real estate shall be sold as will be sufficient to bring the amount of the taxes, penalties and costs due by said delinquent. Should a less amount than the whole tract levied upon be sold, the assessor and collector shall, in making his deed to the purchaser, begin at a corner of said tract or parcel of land and designate the same as nearly as possible in a square so that the remaining portion will be affected to as little advantage as possible. [Acts 1875, p. 113; G. L. vol. 485.]

Art. 1059. [958] [518] [447] Effect of deed.—The assessor and collector shall, when any property has been sold for the payment of taxes, make, execute, and deliver a deed for said property to the person purchasing the same, and such deed shall be prima facie evidence in all controversies and suits in relation to the right of the purchaser, his heirs and assigns, to the premises thereby conveyed of the following facts:

1. That the land or lot or portions thereof conveyed was subject to taxation or assessment at the time the same was advertised for sale, and had been listed or assessed in the time or manner required by law.

2. That the taxes or assessment were not paid at any time before the sale.

3. That the land, lot, or portion thereof conveyed had not been redeemed from the sale at the date of the deed, and shall be conclusive evidence of the following facts:

(a) That the land, lot or portion thereof sold was advertised for sale in the manner and for the length of time required by law.

(b) That the property was sold for taxes or assessments as stated in the deed.

(c) That the grantee in the deed was the purchaser.

(d) That the sale was conducted in the manner prescribed by law.

And in all controversies and suits involving the title to land claimed and held under and by virtue of such deed, the person claiming title adverse to the title conveyed by such deed shall be required to prove, in order to defeat said title, either that the land was not subject to taxation at the date of the sale, that the taxes or assessment had been paid, that the land had never been listed or assessed for taxation and assessment, as required by this title, or some ordinance of the city, or that the same had been redeemed according to the provisions of this title, and that such redemption was made for the use and benefit of the person having the right of redemption under the law; but no person shall be permitted to question the title acquired by the said deed without first showing that he, or the person under whom he claims title, had title to the land at the time of the sale, or that the title was obtained after the sale; provided, however, that the owner of such property shall have the right to redeem the same at any time within two years of the day and date of the sale thereof, upon payment to the purchaser of double the amount of taxes for which the same was sold, together with the costs of such sale and double the amount of all taxes paid by the purchaser since such sale. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1060. [958] [518] [447] Personal property.—The assessor and collector shall have power to levy upon any personal property to satisfy any tax imposed by this title. All taxes shall be a lien upon the property upon which they are assessed, and in case any property levied upon is about to be removed out of the city, the assessor and collector shall proceed to take into his possession so much thereof as will pay the taxes assessed and the costs of collection. [Id.]

Art. 1061. [959] [519] [448] May continue sale.—If, from any cause, the sale of property levied upon or seized for taxes shall not take place at the time first appointed, the assessor and collector shall appoint some other time, give like notice, and proceed to sell such property as prescribed in the first instance. If said property levied upon or seized for taxes cannot be sold on the day advertised, such sale may be postponed from day to day until completed, of which postponement the assessor and collector shall give verbal notice at the expiration of sale each day. [Id.]

Art. 1062. [960] [520] [449] Failure to sell.—If, at any sale of real or personal property or estate for taxes, no bid shall be made for any parcel of land, or any goods and chattels, the same shall be struck off to the city, and the city shall receive, in the corporate name, a deed for said property, and shall be vested with the same right as other purchasers at such sale, and may sell and convey the same. [Id.]

Art. 1063. [961] [5198] [4760] Laws applicable.—The provisions of Chapter 8 Title 122, in reference to the seizure and sale of real and personal property for taxes, penalties and costs due thereon, shall apply as well to tax collectors for towns and cities as for tax collectors for counties. Tax collectors for cities and towns shall be governed, in selling real and personal property, by the same rules and regulations in all respects as to time, place, manner and terms and making deeds as are provided for tax collectors for counties, except as in this chapter otherwise provided. [Acts 1876, p. 259; G. L. vol. 8, p. 1095.]

Art. 1064. [962] [521] [450] One year redemptions.—If the real estate of an infant, feme covert, or lunatic be sold under this title, the same may be redeemed at any time within one year after such disability be removed. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1065. [963] Two year redemptions.—All lands sold under and by virtue of decree and judgment of court or as otherwise provided by law, for taxes due any incorporated city or town within this State, may be redeemed by the owner or owners thereof within two years from the date of deed, upon the payment to the purchaser, or his assigns, of double the amount so paid, including costs of court. The purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of deed. [Acts 1899, p. 50.]

Art. 1066. [964] [522] [452] Payment of taxes.—Taxes levied to defray the current expenses of the city government, and all license and occupation tax levied, and all fines, forfeitures, penalties and other dues accruing to cities, shall be collectible only in current money. [Const. art. 11, sec. 4.]

CHAPTER SIX

FIRE PREVENTION

Art.
1067. Frame building regulations.
1068. Fire regulations.
1069. Fire department.
1070. May destroy buildings.
1070a. Uniform fire hose couplings and hydrant outlets.

Article 1067. [965] [523] [453] Frame building regulations.—The city council may prohibit the erection, building, placing, moving or repairing of wooden buildings within such limits of the city as it may designate and prescribe, in order to guard against the calamities of fire; and may within said limits prohibit the moving or putting up of any wooden building from without said limits, and may also prohibit the removal of any wooden building from one place to another within said limits, and may direct that all buildings within the limits so designated as aforesaid, shall be made or constructed of fire-proof materials, and may prohibit the rebuilding or repairing of wooden buildings within the fire limits when the same shall have been damaged to the extent of fifty per cent of the value thereof, and may prescribe the manner of ascertaining such damage; and may declare any dilapidated building to be a nuisance and direct the same to be repaired, removed or abated in such manner as they shall direct; to declare all wooden buildings in the fire limits which they deem dangerous to contiguous buildings, or in causing or promoting fires, to be nuisances, and require and cause the same to be removed in such manner as they shall prescribe. [Acts 1875, p. 143; G. L. vol. 8, p. 515.]

Art. 1068. [966 to 975] Fire regulations.—The city council shall have power:

1. To prevent and prohibit the dangerous condition of chimneys, flues, fire-places, stove pipes, ovens or other apparatus used in or about any building or manufactory, and to cause the same to be removed or placed in a secure and safe condition.

2. To prevent the deposit of ashes where they would be liable to produce fire, or in any wooden box or barrel, or within any wooden building, and to appoint officers to enter into any building or inclosure to examine and discover whether the same are in a dangerous state, and to cause such as may be dangerous to be put in a safe condition.

3. To require the inhabitants to keep and provide as many fire buckets and ladders, or other means to reach the roof as they shall prescribe, and to regulate the use thereof in times of fire.

4. To compel the owners or occupants of houses or other buildings to have scuttles in the roofs and stairs or ladders leading to the same.

5. To regulate or prevent the carrying on of manufactories and works dangerous in promoting or causing fires; to prohibit or regulate the building and erection of cotton presses and sheds.

6. To regulate or prevent and prohibit the use of fireworks and firearms.

7. To direct, control or prohibit the keeping and management of houses or any buildings for the storing of gun powder and other combustible, explosive or dangerous materials within the city; to regulate the keeping and conveying of the same.

8. To regulate and prescribe the manner and to order the building of parapet and party walls.

9. To authorize the mayor, officers of fire companies or any officer of said city to keep away from the vicinity of any fire all idle, disorderly or suspicious persons, and arrest and imprison the same, and compel all officers of the city and all other persons to aid in the extinguishment of fires and in the preservation of property exposed to danger thereat, and in preventing theft.

10. And generally to establish such regulations for the prevention and extinguishment of fires as the city council may deem expedient. [Id.]

Art. 1069. [976] [534] [464] Fire department.—The city council may procure fire engines and other apparatus for the extinguishment of fires, and have control thereof, and provide engine houses for preserving the same; and shall have power to organize fire, hook and ladder, hose and ax companies and fire brigades. The companies so organized, the chief engineer and such assistant engineers as may be provided for, shall constitute the fire department. Each company may elect its own members and officers. The engineers shall be chosen as said department may determine, subject to the approval of the city council, who shall define the duties of said officers and pass such ordinances as they may deem proper for the welfare of said department. All officers so elected and approved shall be commissioned by the mayor. Said companies may adopt their own constitution and by-laws, not inconsistent with this title or the city ordinances. Said department shall take the care and management of the engines and other implements and apparatus provided and used for fighting fire, and their powers and duties shall be prescribed and defined by the city council. [Id.]

Art. 1070. [977–8] May destroy buildings.—When any building in the city is on fire, it shall be lawful for the chief or acting chief engineer, with the concurrence of the mayor, to direct such building, or any other building which they may deem hazardous and likely to take fire and communicate to other buildings, to be torn down or blown up or destroyed, and no action shall be maintained against any person or against the city therefor. Any person interested in any such building so destroyed or injured may, within six months, and not thereafter, apply in writing to the city council to assess and pay the damage he has sustained, and, if the city council and the claimant cannot agree on the terms of adjustment, then the applica-

tion of such claimant shall be referred to three commissioners, one to be appointed by the claimant, one by the city council and the third by both. Said commissioners shall be qualified voters and owners of real estate in the city. They shall be sworn faithfully to execute their duty according to the best of their ability, shall have power to subpœna and swear witnesses and shall give all parties a fair and impartial hearing, and give notice of the time and place of meeting. They shall take into account the probabilities of the building being destroyed by fire if it had not been so destroyed, and the loss of insurance upon said property, if any, caused by destroying the same, and may report that no damage should equitably be allowed to such claimant. Whenever a report shall be made and finally confirmed for the appraising of said damages, a compliance with the terms thereof by the city council shall be deemed a full satisfaction of said damages. [Id.]

Art. 1070a. Uniform fire hose couplings and hydrant outlets.—Sec. 1. That after this Act takes effect all fire department hose couplings and fire hydrant hose outlets now in service or which may hereafter be installed in this State, except those which are commonly known as the large steamer or pumper outlets, shall be provided with an uniform thread conforming to the following specifications, to-wit:

Inside diameter of male thread 2.5 inches.

Outside diameter of finished male thread 3.0625 inches.

Diameter at root of finished male thread 2.8715 inches.

Pitch diameter of male thread 2.9670 inches.

Clearance between male and female thread .03 inches.

Total length of threaded male end one inch.

Flat at top and valley of thread .01 inch.

Pitch or number of threads per inch 7.5.

Pattern—60 degree V thread. Female end cut ⅛ inch shorter than male end for endwise clearance. Outer ends of male and female threads terminated by the "Higbee Cut," to avoid crossing and mutilation of otherwise finely drawn out thread. Outer end of male thread left blank ¼ inch.

Sec. 2. The State Fire Insurance Commission of Texas shall have full supervision over the work necessary to be done in carrying out the provisions of this Act, and that department shall employ competent mechanics and provide all necessary equipment, tools and appliances and proceed with said work, and complete it at the earliest date circumstances will permit.

Sec. 3. The State Fire Insurance Commission shall notify all property owners having equipment for fire protection purposes which it may be necessary for a fire department to use in putting out fire, of the changes necessary to meet the requirements of this Act, and shall render such assistance as may be available in converting their equipment to conform to said requirements.

Sec. 4. The sum of $5,000 or such part thereof as may be necessary, is hereby appropriated out of any money in the State Treasury not otherwise appropriated for the fiscal year ending August 31, 1928, and $5,000 or such part thereof as may be necessary, is hereby appropriated out of any money in the State Treasury not otherwise appropriated for the fiscal year ending August 31, 1929, to be used for the purchase of equipment, tools and appliances, and for salaries and traveling expenses and all other necessary expenses of mechanics, in carrying out the provisions of this Act. [Acts 1927, 40th Leg., p. 380, ch. 257.]

CHAPTER SEVEN

SANITARY DEPARTMENT

Art.
1071. Health officers.
1072. Regulation of disease, etc.
1073. Public conveyances.
1074. Shall report disease.
1075. Physician, powers.
1076. Sewerage, etc.
1077. Plumbing inspector.
1078. Board of plumbers.
1079. Regulation of, plumbers.
1080. License.
1081. License denied.

Article 1071. [979] [537] [467] Health officers.—The city council shall appoint a health officer, and as many health inspectors as they may deem necessary, and shall prescribe, by ordinance, the powers and duties and compensation of the same. [Acts 1909, p. 340.]

Art. 1072. [980] [538] [468] Regulation of disease, etc.—The city council may take such measures as they may deem effectual to prevent the entrance of any pestilence, contagious or infectious diseases into the city; to stop, detain and examine for that purpose any person coming from any place infected, or believed to be infected, with such disease; to establish, maintain and regulate pesthouses or hospitals at some place within or not exceeding five miles beyond the city limits; to cause any person who shall be suspected of being infected with any such disease to be sent to such pesthouse or hospital; to remove from the city or destroy any furniture, wearing apparel, or property of any kind which shall be suspected of being tainted or infected with pestilence, or which shall be likely to pass into such a state as to generate or propagate diseases; to abate all nuisances of every description which are or may become injurious to the public health, in any manner that they deem expedient; and from time to time to do all acts, which they deem expedient; to preserve health and suppress disease in the city. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1073. [981] [539] [469] Public conveyances.—The owner, driver, conductor or person in charge of any stage, railroad car or public conveyance which shall enter the city, knowingly having on board any person sick of a malignant fever, or pestilential, contagious or infectious disease, unless such person become [became] sick on the way and could not be left, shall, within three hours after the arrival of such sick person, report in writing the facts, with the name of such person and the house where he was put down in the city, to the health officer. [Id.]

Art. 1074. [983] [541] [471] Shall report disease.—Every keeper of a hotel, boarding or lodging house in the city, in which any inmate thereof shall be sick with any infectious or pestilential disease, shall upon such fact coming to his knowledge, forthwith report the same to the health officer. Every physician in the city shall report, under his hand, to the officer above named, the name, residence and disease of every patient whom he shall have sick of any infectious or pestilential disease, within six hours after he shall have visited such patient. [Id.]

Art. 1075. [985] [543] [473] Physician, powers.—The health officer may be authorized by the council, when the public interest requires, to exercise for the time being such of the powers and perform such of the duties of the chief of police as the city council may direct, and is authorized to enter all houses and other places, private or public, at all times, in the discharge of such duties, having first asked permission of the owners or occupants. The city council shall have power to punish, by fine, any neglect or refusal to observe the orders and regulations of the health officer. [Id.]

Art. 1076. [986] Sewerage, etc.—Every city in this State, however organized, having underground sewers or cesspools, shall pass ordinances regulating the tapping of said sewers and cesspools, regulating house draining and plumbing. [Acts 1897, p. 236; Acts 1909, p. 162; G. L. vol. 10, p. 1290.]

Art. 1077. [990] Plumbing inspector.—In any such city where there is no city inspector of plumbing provided for by special charter, the governing body shall elect such inspector of plumbing, who shall hold office for such time as fixed by such board. Such inspector of plumbing may be the city engineer, if the board sees fit to elect him. [Id.]

Art. 1078. [987–8–9] Board of plumbers.—Such cities shall create a board for the examination of plumbers, to be known as the examining and supervising board of plumbers, to provide for an inspection of plumbing. Members of said board shall receive no compensation for services on said board. The said board shall consist of the following five persons: A member of the local board of health, if there be such a board of health, and if not, then the city physician or the city health officer, the city engineer, the city inspector of plumbing, a master plumber of not less than ten years active and continuous experience as a plumber, and one journeyman plumber of not less than five years of such active and continuous experience. The mayor and the governing body shall regulate the term each member shall serve; they shall fill all vacancies for the unexpired term of the member whose place is filled. [Id.]

Art. 1079. [991] Regulation of plumbers.—The examining and supervising board of plumbers shall examine and pass upon all persons now engaged in the business of plumbing, whether as master, employing, or journeyman plumber, in their respective cities, and all persons who may hereafter wish to engage in the business of plumbing as master, employing, or journeyman plumber, within their respective jurisdictions, and also any person who may apply for the office of plumbing inspector. They shall issue a license to such persons only as shall successfully pass a required examination. They shall register in a book to be kept for that purpose, the name and place of business of each person to whom a plumber's license is issued. Such license shall not be transferable. [Acts 1897, p. 236; G. L. vol. 10, p. 1290.]

Art. 1080. [992–3–6] License.—The board shall not issue licenses for more than one year, but the same shall be renewed from year to year upon proper application. Each applicant for said examination for plumber's license shall pay, to such person as said board may designate, three dollars for each master plumber examined, and two dollars for each journeyman plumber examined, which fees may be used by said board to defray any of its legitimate expenses, the residue, if any, to be paid to the city treasurer. The examination and examination fee shall not be required of the same person more than once. [Id.]

Art. 1081. [997] License denied.—Except in cities of less than five thousand inhabitants, a license shall not be issued to any person to carry on or work at the business of plumbing, or to act as an inspector of plumbing, until he has appeared before an examining or supervising board for examination and registration and shall have successfully passed the required examination. [Id.; Acts 1919, p. 248.]

CHAPTER EIGHT

STREETS AND ALLEYS

Art.
1082. Powers of council.
1083. Estimates of cost.
1084. Execution on property.
1085. Suit.

Article 1082. [999] [544] [474] Powers of council.—The city council shall be invested with full power and authority to grade, gravel, repair, pave or otherwise improve any avenue, street or alley, or any portion thereof, within the limits of said city, whenever, by a vote of two-thirds of the aldermen present, they may deem such improvement for the public interest; provided, the city council pay one-third and the owner of the property two-thirds thereof, except at the intersection of streets, from lot to lot across the streets either way shall be paid for by the city alone. Said costs shall be assessed on the property fronting on said street so improved, to be collected in equal annual payments, not less than five in number. All moneys collected from these assessments shall be appropriated exclusively to the payment of the bonds issued for the payment of the cost of said improvement. [Acts 1875, p. 113; G. L. vol. 8, p. 485.]

Art. 1083. [1000] [545] [475] Estimates of cost.—Whenever the city council shall determine to make any such improvement, they shall cause an estimate to be made of the probable cost thereof by the city engineer, or by some other officer of the city, or by a committee of three aldermen; and such engineer or other officer or committee shall also report a full list of all lots or fractional lots, giving number and size of the same, and the number of the block in which situated, and the names of the owners thereof, if known, and such other information as may be required by the city council; and if there be a lot or fractional lot the owner of which is not known, the same shall be entered on said list as unknown. The officer or committee aforesaid shall enter on said list, opposite each lot or fractional lot lying and being on each side of the street, avenue or alley so to be improved as aforesaid, one-third of the estimated expense for such work or improvement on such avenue, street or alley fronting, adjoining or opposite such lot or fractional lot; and, on the acceptance and approval of said report and list by the city council, said amount shall be imposed, levied and assessed as taxes, and shall be a lien upon the property until the payment of the same. [Id.]

Art. 1084. [1001] [546] [476] Execution on property.—After such action on the part of the city council, such officer or committee shall give such notice as may be required by ordinance, of said tax being due and within what time payable, and shall begin to collect the same. After the expiration of the period for payment of said tax, said officer or committee shall levy on so much of any property on said list on which said tax has not been paid as will be sufficient to pay the same, and the same notice of sale as is required in sales for other tax shall be given. If said tax is not paid before the day of sale, said officer or committee shall sell property in the name and under the circumstances, and to the extent and subject to the same conditions which may be provided by ordinance for the sale of real estate in the city, charged with the payment of taxes imposed by said corporation. Said officer or committee shall execute a deed to the purchaser at any such sale; and all other provisions of this title in reference to a deed drawn by the assessor and collector shall apply to the deed herein provided for. [Id.]

Art. 1085. [1002] [547] [477] Suit.—In addition to the authority granted to the city council to collect said assessment of taxes, they shall have the additional remedy of instituting suit in the corporate name for the recovery against any owner of the property for the amount due for any such work so made as aforesaid. They shall provide by resolution or ordinance under the provision of this title, for carrying out and executing the powers in this chapter conferred, and may adopt necessary resolutions, ordinances and regulations. [Id.]

CHAPTER NINE

STREET IMPROVEMENTS

Art.
1086. Powers of city.
1087. Order for improvements.
1088. Costs.
1089. Assessments, railways.
1090. Assessment and certificates.
1091. Exempt property.
1092. Enforcement of lien.
1093. Notice of hearing.
1094. Hearing.
1095. Reassessment.
1096. Owner may sue.
1097. Special reassessment.
1098. Notice, etc.
1099. Special lien.
1100. Time limit.
1101. Amount of assessment.
1102. Enforcible when.
1103. Effect of law.
1104. Adoption of provisions.
1105. Provisions cumulative.
1105a. Establishing building lines on streets.
1105b. Street improvements and assessments in cities having more than 1,000 inhabitants.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Article 1086. [1006–7] Powers of city.—Towns, cities and villages, incorporated under either general or special law, which shall accept the benefits of this chapter as herein provided, shall have power to improve any highway within their limits, by filling, grading, raising, paving or repaving the same in a permanent manner, or by the construction or reconstruction of sidewalks, curbs and gutters, or by widening, narrowing or straightening the same, and to construct necessary appurtenances thereto, including sewers and drains. "City," when used herein, shall include all incorporated towns, cities and villages, and the term "highway" shall include any street, avenue, alley, highway, or public place or square, or portion thereof, dedicated to public use. [Acts 2nd C. S. 1909, p. 402.]

Art. 1087. [1008] Order for improvements.—The governing body of any city shall have power to order the improvement of any highway therein, or part thereof, and to select the materials and methods for such improvement, and to contract for the construction of such improvements in the name of the city, and to provide for the payment of the cost of such improvements out of any available funds of the city. [Id.]

Art. 1088. [1009] Costs.—The cost of making such improvements may be wholly paid by the city, or partly by the city and partly by the owners of the property abutting thereon. In no event shall more than three-fourths of the cost of any improvement, except sidewalks and curbs, be assessed against such property owners or their property. The whole cost of construction of sidewalks and curbs in front of any property may be assessed against the owner thereof or his property. [Id.]

Art. 1089. [1010] Assessments, railway.—Subject to the terms hereof, the governing body of any city shall have the power to assess against the owner of any railroad or street railroad occupying any highway ordered to be improved, the whole cost of the improvement between or under the rails or tracks of said railroad or street railroad and two feet on the outside thereof, and shall have power, by ordinance, to levy a special tax upon said railroad, or street railroad, and its roadbed, ties, rails, fixtures, rights and franchise, which tax shall constitute a lien thereon superior to any other lien or claim, except State, county and municipal taxes, and which may be enforced, either by sale of said property in the manner provided by law in the collection of ad valorem taxes by the city, or by suit against the owner. The ordinance levying said tax shall prescribe when same shall become due and delinquent, and the method of enforcing the same. [Id.]

Art. 1090. [1011] Assessment and certificates.—Subject to the terms hereof, the governing body shall have power by ordinance to assess the whole cost of constructing sidewalks or curbs, and not to exceed three-fourths of the cost of any other improvement, against the owners of property abutting on such improvement and against their abutting property benefited thereby, and to provide for the time and terms of payment of such assessments and the rate of interest payable upon deferred payments thereon, which rate shall not exceed eight per cent per annum, and to fix a lien upon the property and declare such assessments to be a personal liability of the owners of such abutting property; and such governing body shall have the power to cause to be issued in the name of the city, assignable certificates declaring the liability of such owners and their property for the payment of such assessments and to fix the terms and conditions for such certificate. If any such certificate shall recite that the proceedings with reference to making such improvements have been regularly had in compliance with law, and that all prerequisites to the fixing of the assessment lien against the property described in said certificate and fixing the personal liability of the owner have been performed, such certificate shall be prima facie evidence of the facts so recited. The ordinance making such assessments shall provide for the collection thereof, with costs and reasonable attorney's fees, if incurred. Such assessments shall be secured by, and constitute a lien on said property, which shall be the first enforcible claim against the property against which it is assessed, superior to all other liens and claims, except State, county and municipal taxes. [Id.]

Art. 1091. [1012] Exempt property.—Nothing herein shall be construed to empower any city to fix a lien by assessment against any property exempt by law from sale under execution; but the owner of such exempt property shall nevertheless be personally liable for the cost of improvements constructed in front of his property, which may be assessed against him. The fact that any improvement is omitted in front of exempt property shall not invalidate the lien of assessments made against other property on the highway improved, not so exempt. [Id.]

Art. 1092. [1012] Enforcement of lien.—The lien created against any property, or the personal liability of the owner thereof, may be enforced by suit or by sale of the property assessed in the same manner as may be provided by law for the sale of property for ad valorem city taxes. The recital in any deed made pursuant to such sale, that all legal prerequisites to said assessment and sale have been complied with, shall be prima facie evidence of the facts so recited and shall in all courts be accepted without further proof. [Id.]

Art. 1093. [1013] Notice of hearing.—No assessment of any part of the cost of such improvement shall be made against any property abutting thereon or its owner, until a full and fair hearing shall first have been given to the owners of such property, preceded by a reasonable notice thereof given to said owners, their agents or attorneys. Such notice shall be by advertisement inserted at least three times in some newspaper published in the city, town or village where such tax is sought to be levied, if there be such a paper there, if not, then in the nearest to said city, town or village, of general circulation in the county in which said city is located, the first publication to be made at least ten days before the date of the hearing. The governing body may provide for additional notice cumulative of notice by advertisement. [Id.]

Art. 1094. [1013] Hearing.—Said hearing shall be before the governing body of such cities, at which such owners shall have the right to contest the said assessment and personal liability, and the regularity of the proceedings with reference to the improvement, and the benefit of said improvement to their property, and any other matter relating thereto. No assessment shall be made against any owner of abutting property or his property in any event in excess of the actual benefit to such owner in the enhanced value of his property, by means of such improvement, as ascertained at such hearing. The governing body of any city making improvements under the terms hereof shall, by ordinance, adopt rules and regulations providing for such hearings to property owners, and for giving reasonable notice thereof. [Id.]

Art. 1095. [1014] Reassessment.—The governing body of any city shall be empowered to correct any mistake or irregularity in any proceedings with reference to such improvement, or the assessment of the cost thereof against abutting property and its owners, and in case of any error or invalidity, to reassess against any abutting property and its owner the cost or part of the cost of improvements, subject to the terms hereof, not in excess of the benefits in enhanced value of such property from such improvement, and to make reasonable rules and regulations for a notice to and hearing of property owners before such reassessment. [Id.]

Art. 1096. [1015] Owner may sue.—Any property owner, against whom or whose property any assessment or reassessment has been made, shall have the right within twenty days thereafter, to bring suit to set aside or correct the same, or any proceeding

with reference thereto, on account of any error or invalidity therein. But thereafter such owner, his heirs, assigns or successors, shall be barred from any such action, or any defense of invalidity in such proceedings or assessments or reassessments in any action in which the same may be brought in question. [Id.]

Art. 1097. Special reassessment.—In any case in which the public funds of a city or town may have been or may hereafter be expended, or its vouchers or certificates issued to any contractor, or any contract made therewith, for the special improvement, raising or lowering the grade of, opening, straightening, widening, paving, constructing or grading of any street, avenue, alley, sidewalk, gutter or public way, or any part thereof, and if for any reason, no part of the cost of such improvement has been borne by the abutting property or paid by the owner or owners thereof, either because an attempted assessment and enforcement thereof for the same was erroneous or void, or was so declared in any judicial proceeding, the governing body shall have the power to proceed at any time to specially assess or reassess, such abutting property with such amount of the cost of such improvement as it deems proper, but in no event shall the amount exceed the special benefits such property receives therefrom by enhanced value thereto, the amount of such special benefits to be determined on a basis of the condition of such improvement as it exists at the time of such assessment or reassessment. [Acts 2nd C. S. 1919, p. 105.]

Art. 1098. Notice, etc.—No such assessment or reassessment, shall be made without at least ten days written notice and an opportunity to be heard on such question of special benefits given to the owner or owners of such abutting property. Such notice may be served either personally or by publication in some newspaper of general circulation, published in said city or town; and the governing body of any such city or town shall have power to provide for all procedure, rules and regulations necessary or proper for such notice and hearing and to levy, assess and collect such assessment or reassessment. [Id.]

Art. 1099. Special lien.—Such assessment, or reassessment shall constitute a lien upon such abutting property and a personal charge against the owner or owners thereof, which amount shall not be construed as becoming due, or having become due, before such assessment or reassessment is properly made in accordance with the provisions of this law. [Id.]

Art. 1100. Time limit.—Such assessment or reassessment as hereinbefore provided shall be begun within three years after the completion of improvements contiguous to the property against which assessment or reassessment is made, and not thereafter. In cases of reassessments where the question of validity of the original assessment may be, or may have been, in litigation, the period of time during which it was in litigation shall not be considered in computing said period of limitation. [Id.]

Art. 1101. Amount of assessment.—Any such assessment or reassessment made by the governing body of any city or town with less than five thousand inhabitants may equal the entire cost of sidewalk, curb and gutter, and the cost of any street improvement, exclusive of street intersections, and such governing body of such town in making such assessment or reassessment, shall follow the procedure prescribed in articles 1082 and 1083 in so far as applicable, but no such assessment or reassessment shall be made in excess of the special benefits in enhanced value conferred thereby on the property abutting such improvement, or until the owner or owners of such property shall have had notice, as provided above, and opportunity to contest such issue before such governing body under such rules and regulations as it may, by ordinance, prescribe. [Id.]

Art. 1102. Enforcible when.—Such assessment, or reassessment, shall be due and payable in equal annual installments not less than five in number; provided that the owner of such property shall have the right to appeal from the decision of the governing board to any court of competent jurisdiction within twenty days after such reassessment shall have been made, and upon failure to do so in said period, such assessment shall be final and conclusive upon such owner and property. [Id.]

Art. 1103. Effect of law.—The provisions of the six preceding articles relating to special assessments or reassessments are cumulative of all powers heretofore granted to any city or town either by general or special law; and all charter provisions of all cities and towns in this State heretofore adopted relative to the subject covered by this law are hereby validated. [Id.]

Art. 1104. [1016] Adoption of provisions.—The benefits of the provisions of this article and Articles 1086 to 1096, both inclusive, and Article 1105 shall apply to any city, and the terms thereof extend to the same, when the governing body thereof shall submit the question of the adoption or rejection hereof to a vote of the resident property taxpayers, who are qualified voters of said city, at a special election called for the purpose by said city. Said election shall be held as nearly as possible in compliance with the law with reference to regular city elections in said city, but said governing body is hereby empowered, and it shall be their duty on the written petition of one hundred qualified voters of said city, by resolution, to order said election, and prescribe the time and manner of holding the same. Said body shall canvass and determine the results of such election. If a majority of the voters voting upon the question of the adoption of said article, at such election, shall vote to adopt the same, the result of the election shall be entered by said governing body upon their minutes, and thereupon all the terms of said articles shall be applicable to and govern such city adopting the same. A certified copy of said minutes shall be prima facie evidence of the result of such election and the regularity thereof. When the provisions of said articles have been adopted by any city, the governing body thereof shall have full power to pass all ordinances or resolutions necessary or proper to give full force and effect thereto and to every part thereof. [Acts 2nd C. S. 1909, p. 402.]

Art. 1105. [1017] Provisions cumulative.—The provisions of Articles 1086 to 1096, both inclusive, and Article 1104 and of resolutions or ordinances passed pursuant thereto shall be cumulative of and in addition to existing laws pertaining to the making of such improvements. In any case in which a conflict may exist or arise between the provisions of said articles and the provisions of any law granting a special charter to any city in this State, the provisions of such special charter shall control. [Id.]

Art. 1105a. Establishing building lines on streets.—Sec. 1. The word "street" as used in this Act, means any public highway, boulevard, parkway, square or street, or any part or side of any of the same.

Sec. 2. It shall hereafter be lawful for any city which now has, or may hereafter have population of fifteen thousand (15,000) or more inhabitants, to establish building lines on any public street or highway, or part thereof in such city.

Sec. 3. The Legislative Body of any such city desiring to establish a building line may do so by adopting a resolution or ordinance describing the street, highway or part thereof to be affected, and the location of the building line or lines, and except as herein otherwise provided, by following the same procedure as that authorized by law in such city for the acquiring of land for the opening of streets. After the establishment of any such line, no building or other structures shall be erected, reconstructed or substantially repaired, and no new buildings or other structure, or part thereof, shall be erected or re-erected within said lines so established.

Sec. 4. The procedure for instituting and conducting the condemnation proceedings to condemn the easements and interests necessary to be taken and acquired to establish a building line under the author-

ity of this Act, and to assess and collect benefits against property owners and their property abutting on or the vicinity of said building line arising out of the establishment of said building line, shall be the same as that authorized by law in such city in connection with the opening of streets. In the condemnation of any tract where the ownership of or interests in said tract is in controversy or is unknown, the award may be made in bulk as to such tract, and paid into court for the use of the parties owning or interested therein, whoever they may be, as their interests may appear. The award and findings of the Special Commissioners when filed with the Judge of the County Court, or other court having jurisdiction over the condemnation proceedings, shall be final, and shall be made the judgment of said court. Compensation shall be due and payable upon rendition of the judgment by the court adopting the award.

Sec. 5. Whenever and wherever a building line shall be established under authority of this Act, all structures extending within such building lines shall be required to conform to the new line within a period of not more than twenty-five (25) years from the time of establishing said lines; such time to be provided in the ordinance providing for the establishment of such line. At any time, however, before or after the expiration of the time so fixed, the proper municipal authorities shall have the power to proceed in the manner then provided by law relating to condemnation proceedings by such cities to remove all structures and to condemn any property then within such line, and to assess benefits against property owners and their property benefited thereby, provided, however, that all owners of property so affected shall receive due notice and hearing in the manner then provided by law in the determination of the additional damages then sustained by the removal of such structures or the taking of land then within the building line and in the determination of benefits to be assessed against property owners affected and their property affected.

Sec. 6. This Act shall be in addition to and cumulative of any powers now or hereafter conferred by law on such cities. [Acts 1927, 40th Leg., p. 415, ch. 276.]

Art. 1105b. Street improvements and assessments in cities having more than 1000 inhabitants.—Sec. 1. That cities, towns and villages incorporated under either general or special law, including those operating under special charter, or amendments of charter adopted pursuant to the Home Rule provisions of the Constitution, shall have power to cause to be improved, any highway, within their limits by filling, grading, raising, paving, repaving, and repairing in a permanent manner, and by constructing, reconstructing, repairing and realigning curbs, gutters and sidewalks, and by widening, narrowing and straightening, and by constructing appurtenances and incidentals to any of such improvements, including drains and culverts, which power shall include that of causing to be made any one or more of the kinds or classes of improvements herein named or any combination thereof, or of parts thereof.

Sec. 2. That the term "city" whenever used herein shall include all incorporated cities, towns and villages; that the term "governing body" whenever used herein, includes the governing or legislative bodies of all incorporated towns, cities and villages, whether known as councils, commissions, boards of commissioners, common councils, boards of aldermen, city councils, or by whatever name such bodies may be known or designated under general or special laws or charters. That whenever the term "highway" is used herein it shall include any street, avenue, alley, highway, boulevard, drive, public place, square, or any portion or portions thereof, including any portion that may have or may be left wholly or partly unimproved in connection with other street improvements heretofore or hereafter made. The term "improve" or "improvements" when used herein shall include the kinds and classes of improvements, with incidents and appurtenances thereto, and any portions or combinations thereof, or of parts thereof, hereinabove mentioned, liberally construed. That whenever the term "cost" or "costs of improvements" or similar terms are used herein, same shall include expenses of engineering and other expenses incident to construction of improvements, in addition to the other costs of the improvements.

Sec. 3. That the governing body of any city shall have power to determine the necessity for, and to order, the improvement of any highway, highways, or parts thereof within such city, and to contract for the construction of such improvements in the name of the city, and to provide for the payment of the cost of such improvements by the city, or partly by the city and partly by assessments as hereinafter provided.

Sec. 4. That the cost of such improvements may be wholly paid by the city, or partly by the city and partly by property abutting upon the highway or portion thereof ordered to be improved, and the owners of such property, but if any part of the cost is to be paid by such abutting property and the owners, then before any such improvements are actually constructed, and before any hearing herein provided for is held, the governing body shall prepare, or cause to be prepared, an estimate of the cost of such improvements, and in no event shall more than all the cost of constructing, reconstructing, repairing and realigning curbs, gutters and sidewalks, and nine-tenths of the remaining cost of such improvements as shown on such estimate be assessed against such abutting property and owners thereof.

Sec. 5. If improvements be ordered constructed in any part of the area between and under rails, tracks, double tracks, turn outs and switches, and two feet on each side thereof, of any railway, street railway, or interurban, using, occupying, or crossing any such highway, portion or portions thereof, ordered improved, then the governing body shall have power to assess the whole cost of the improvements in such area against such railway, street railway, or interurban, and shall have power, by ordinance, to levy a special tax upon such railway, street railway, or interurban, and its road-bed, ties, rails, fixtures, rights and franchises, which tax shall constitute a lien thereon superior to any other lien or claim except State, County and City ad valorem taxes, and which may be enforced either by sale of said property in the manner provided by law for the collection of ad valorem taxes by the city, or by suit in any court having jurisdiction. The ordinance levying such tax shall prescribe the time, terms and conditions of payment thereof, and the rate of interest, not to exceed 8% per annum, and same, if not paid when due, shall be collectible, together with interest, expenses of collection and reasonable attorney's fees, if incurred. The Governing Body shall have power to cause to be issued assignable certificates in evidence of any such assessments as hereinafter provided.

Sec. 6. Subject to the terms hereof, the Governing Body of any city shall have power by ordinance to assess all the cost of constructing, reconstructing, repairing and realigning, curbs, gutters and sidewalks, and not exceeding nine-tenths of the estimated cost of such improvements, exclusive of curbs, gutters and sidewalks, against property abutting upon the highway or portion thereof ordered to be improved, and against the owners of such property, and to provide the time, terms and conditions of payment and defaults of such assessments, and to prescribe the rate of interest thereon not to exceed eight per cent (8%) per annum. Any assessments against abutting property shall be a first and prior lien thereon from the date the improvements are ordered, and shall be a personal liability and charge against the true owners of such property at said date, whether named or not. The Governing Body shall have power to cause to be issued in the name of the city assignable certificates in evidence of assessments levied declaring the lien upon the property and the liability of the true owner or owners thereof whether correctly named or not, and to fix the terms and conditions of such certificates.

If any such certificate shall recite substantially that the proceedings with reference to making the improve-

ments therein referred to have been regularly had in compliance with the law and that all prerequisites to the fixing of the assessment lien against the property described in said certificate and the personal liability of the owner or owners thereof have been performed, same shall be prima facie evidence of all the matters recited in said certificate, and no further proof thereof shall be required. In any suit upon any assessment or reassessment in evidence of which a certificate may be issued under the terms of this Act it shall be sufficient to allege the substance of the recitals in such certificate and that such recitals are in fact true, and further allegations with reference to the proceedings relating to such assessment or reassessment shall not be necessary.

Such assessments shall be collectible with interest, expense of collections, and reasonable attorney's fee, if incurred, and shall be a first and prior lien on the property assessed, superior to all other liens and claims except state, county and city ad valorem taxes, and shall be a personal liability and charge against the said owners of the property assessed.

Sec. 7. The part of the cost of improvements on each portion of highway ordered improved which may be assessed against abutting property and owners thereof shall be apportioned among the parcels of abutting property and owners thereof, in accordance with the Front Foot Plan or Rule provided that if the application of this rule would, in the opinion of the Governing Body, in particular cases, result in injustice or inequality, it shall be the duty of said Body to apportion and assess said costs in such proportion as it may deem just and equitable, having in view the special benefits in enhanced value to be received by such parcels of property and owners thereof, the equities of such owners, and the adjustment of such apportionment so as to produce a substantial equality of benefits received and burdens imposed.

Sec. 8. Nothing herein shall empower any city, or its governing body, to fix a lien against any interest in property exempt, at the time the improvements are ordered, from the lien of special assessment for street improvements, but the owner or owners of such property shall nevertheless be personally liable for any assessment in connection with such property. The fact that any improvement, though ordered, is omitted in front of property, any interest in which is so exempt, shall not invalidate the lien or liability of assessments made against other property.

The lien created against any property and the personal liability of the owner or owners thereof may be enforced by suit in any court having jurisdiction, or by sale of the property assessed in the same manner as may be provided by law or charter in force in the particular city for sale of property for ad valorem city taxes.

Sec. 9. No assessment herein provided for shall be made against any abutting property or its owners, nor against any railway, street railway or interurban, or owner, until after notice and opportunity for hearing as herein provided, and no assessment shall be made against any abutting property or owners thereof in excess of the special benefits of such property, and its owners in the enhanced value thereof by means of such improvements as determined at such hearing. Such notice shall be by advertisement inserted at least three times in some newspaper published in the city where such special assessment tax is to be imposed, if there be such a paper; if not, then the nearest to such city of general circulation in the county in which such city is located; the first publication to be made at least ten days before the date of the hearing. If any such notice shall describe in general terms the nature of the improvements for which assessments are proposed to be levied and to which such notice relates, shall state the highway, highways, portion or portions thereof to be improved, shall state the estimated amount or amounts per front foot proposed to be assessed against the owner or owners of abutting property and such property on each highway or portion, with reference to which hearing mentioned in the notice is to be held, and shall state the estimated total cost of the improvements on each such highway, portion or portions thereof, and if the improvements are to be constructed in any part of the area between and under rails and tracks, double tracks, turn-outs, and switches, and two feet on each side thereof of any railway, street railway or interurban, shall also state the amount proposed to be assessed therefor, and shall state the time and place at which such hearing shall be held then such notice shall be sufficient, valid and binding upon all owning or claiming such abutting property, or any interest therein, and upon all owning or claiming such railway, street railway, or interurban, or any interest therein, such hearing shall be by and before the governing body of such city and all owning any such abutting property, or any interest therein, and all owning any such railway, street railway, or interurban, or any interest therein, shall have the right, at such hearing, to be heard on any matter as to which hearing is a constitutional prerequisite to the validity of any assessment authorized by this Act, and to contest the amounts of the proposed assessments, the lien and liability thereof, the special benefits to the abutting property and owners thereof by means of the improvements for which assessments are to be levied, the accuracy, sufficiency, regularity and validity of the proceedings and contract in connection with such improvements and proposed assessments, and the governing body shall have power to correct any errors, inaccuracies, irregularities, and invalidities, and to supply any deficiencies, and to determine the amounts of assessments and all other matters necessary, and by ordinance to close such hearing and levy such assessments before, during or after the construction of such improvements, but no part of any assessment shall be made to mature prior to acceptance by the city of the improvements for which assessment is levied.

Anyone owning or claiming any property assessed, or any interest therein, or any railway, street railway, or interurban assessed or any interest therein, who shall desire to contest any such assessment on account of the amount thereof, or any inaccuracy, irregularity, invalidity, or insufficiency of the proceedings or contract with reference thereto, or with reference to such improvements, or on account of any matter or thing not in the discretion of the governing body, shall have the right to appeal therefrom and from such hearing by instituting suit for that purpose in any court having jurisdiction within fifteen (15) days from the time such assessment is levied; and anyone who shall fail to institute such suit within such time shall be held to have waived every matter which might have been taken advantage of at such hearing, and shall be barred and estopped from in any manner contesting or questioning such assessment, the amount, accuracy, validity, regularity and sufficiency thereof, and of the proceedings and contract with reference thereto and with reference to such improvements for or on account of any matter whatsoever. And the only defense to any such assessment in any suit to enforce the same shall be that the notice of hearing was not published or did not contain the substance of one or more of the requisites therefor herein prescribed, or that the assessments exceed the amount of the estimate, and no words or acts of any officer or employee of the city, or member of any governing body of the city, other than the action of the governing body shown in its written proceedings and records shall in any way affect the force and effect of the provisions of this Act.

Sec. 10. The governing body of the city shall have power to provide for changes in plans, methods or contracts for improvements, or other proceedings relating thereto, but any change substantially affecting the nature or quality of any improvements shall only be made when it is determined by two-thirds vote of the governing body that it is not practical to proceed with the improvement as theretofore provided for, and if any such substantial change be made after any hearing has been ordered or held then unless the improvement be abandoned altogether a new estimate of cost shall be made and a new hearing ordered, and held, and new notices given, all with like effect and in like

manner as herein provided for original notices and hearings. Changes in or abandonment of improvements must be with the consent of such person, firm or corporation as may have contracted with the city for the construction thereof, if any such contract has been entered into, and in case of abandonment of any particular improvement an ordinance shall be passed which shall have the effect of cancelling any assessments theretofore levied therefor, and all other proceedings relating thereto.

Sec. 11. Assessments against several parcels of property may be made in one assessment when owned by the same person, firm, corporation or estate, and property owned jointly by one or more persons, firms or corporations, may be assessed jointly.

Sec. 12. Said governing body shall have power to carry out all the terms and provisions of this Act and to exercise all the powers thereof, either by resolution, motion, order or ordinance, except where ordinance is specifically prescribed, and such governing body shall have power to adopt, either by resolution or ordinance, any and all rules or regulations appropriate to the exercise of such powers, the method and manner of ordering and holding such hearings, and the giving of notices thereof.

Sec. 13. In case any assessment shall for any reason whatsoever be held or determined to be invalid or unenforceable, then the governing body of such city is empowered to supply any deficiency in proceedings with reference thereto and correct any mistake or irregularity in connection therewith, and at any time to make and levy reassessments after notice and hearing as nearly as possible in the manner herein provided for original assessments, and subject to the provisions hereof with reference to special benefits. Recitals in certificates issued in evidence of reassessments shall have the same force as provided for recitals in certificates relating to original assessments.

Sec. 14. Anyone owning or claiming any property or interest in any property against which such reassessment is levied shall have the same right of appeal as herein provided in connection with original assessments, and in the event of failure to appeal within fifteen (15) days from the date of such reassessment, the provisions hereinabove made with reference to waiver, bar, estoppel, and defense shall apply to such reassessment. [Acts 1927, 40th Leg., 1st C. S., p. 489, ch. 106.]

Section 15 of Acts 1927, 40th Leg., 1st C. S., p. 489, ch. 106, provides that the act shall not repeal Rev. St. 1925, articles 1086–1096, 1104, 1105, and shall not repeal any charter or law, but shall exist as alternative provisions and that any city which may adopt or amend its charter under the Home Rule provision may provide therein for any of the provisions thereof as part of or as alternative to any charter provision, and provides further that the act shall not apply to cities not having more than one thousand inhabitants, and section 16 provides that if any section or part is held invalid, such holding shall not affect the remainder.

CHAPTER TEN

PUBLIC UTILITIES

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1. CITY OWNED UTILITIES

Article 1106. Appropriation of revenue.—The governing body of any city or town in this State, whether operating under special charter or under general law, may appropriate and apply the net revenues of its water works system or other public utility system, service or enterprise to the payment of the sinking fund and interest due by said city or town on the bonded indebtedness incurred on account of said system, service or enterprise, producing such revenues in the following manner:

1. Whenever said governing body desires to take advantage of the provisions of this article it shall at the end of its fiscal year, and before the passage of any ordinance levying taxes for that year, appropriate and set aside out of the net revenues such sums for such purpose only as such governing body shall deem to the best interest of the city or town.

2. Where the sums so set aside and appropriated shall be sufficient to pay in full the amounts needed for such sinking fund and interest for the fiscal year in which said revenues are produced, it shall not be thereafter necessary for the governing body to levy any tax for such sinking fund or interest for which this appropriation is made; but when said sums so appropriated shall not be sufficient to meet the required amounts for such sinking fund and interest, then the governing body shall include in the general tax ordinance for that year a tax sufficient to meet the deficiency in such sinking fund and interest allowance for that year. Nothing herein shall authorize said city or town to exceed the authorized tax limit. [Acts 1917, p. 355.]

Art. 1107. [1003] [548] Condemnation of property.—An incorporated city or town shall have the right of eminent domain to condemn private property for either of the following purposes:

1. To open, change or widen any public street, avenue, or alley.

2. To construct water mains, or supply reservoirs, or stand pipes for water works or sewers.

3. To establish thereon one or more hospitals or pest houses, within or without the limits of such city or town.

4. To construct and maintain sewer pipes, mains and laterals and connections and also private property upon which to maintain vats, filteration [filtration] pipes and other pipes, and which to use and occupy as a place for ultimate disposition of sewerage in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for successful operation of such sewer system, and when it also be made to appear that such sewer system is beneficial to the public use, health and convenience. [Acts 1909, p. 9.]

Art. 1108. [769 to 722] Public utilities.—Any town or city in this State which has or may be chartered or organized under the general laws of Texas, or by special Act or charter, and which owns or operates waterworks, sewers, gas or electric lights, shall have the power and right:

1. To own land for such purposes within or without the limits of such town or city.

2. To purchase, construct and operate water, sewer and gas and electric light systems inside or outside of such towns or city limits, and regulate and control same in a manner to protect the interests of such town or city.

3. To sell water, electric light or power and sewer privileges to any person or corporation outside of the limits of such town or city and to permit them to connect therewith under contract with such town or city,

under such terms and conditions as may appear to be for the best interests of such town or city.

4. To prescribe the kind of water or gas mains or sewer pipes and electric appliances within or beyond the limits of such town or city, and to inspect the same and require them to be kept in good order and condition at all times and to make such rules and regulations and prescribe penalties concerning same, as shall be necessary and proper. [Acts 1909, p. 159.]

In the catchline "722" should evidently be "772."

Art. 1109. Waterworks.—These rules shall govern incorporated cities having more than one thousand inhabitants according to its preceding Federal census and owning and operating their own waterworks systems for the purpose of supplying the inhabitants thereof with water for fire protection or domestic consumption and the users of the city:

1. They may proceed in accordance with the provisions of this article independently of and without reference to any other applicable law or charter provision, present or future, except as hereinafter provided, which said law or charter provisions shall remain in force as alternate methods.

2. Subject to the terms hereof, any such city may by purchase, gift or devise, or by the exercise of the right of eminent domain, acquire and own in fee simple or otherwise public or private lands and property including riparian rights, within or without the city limits or within any county in this State.

3. To furnish any such city an adequate and wholesome supply of water, any such city may exercise the right of eminent domain to acquire and condemn either public or private lands or property for the extension, improvement or enlargement of its waterworks system, including water supply reservoirs, riparian rights, stand pipes, water sheds, the construction of water supply reservoirs, wells or artesian wells and dams and the construction, building, erection or establishment of any necessary appurtenances or facilities which will furnish to the inhabitants of the city an abundant supply of wholesome water.

4. Any such city shall also have all the powers conferred upon water improvement districts or water control and preservation districts under the statutes now or hereafter existing providing for the exercise of the right of eminent domain, and shall have all the powers conferred by general law authorizing cities and towns to exercise the right of eminent domain.

5. Any such city may acquire the fee simple title to any land or property when same is expressed in the resolution ordering said condemnation proceedings by the governing body.

6. The term "city" or "cities" as used herein shall include all incorporated towns and cities acting hereunder. [Acts 1923, p. 29.]

Art. 1109a. Cities may mortgage.—All cities having more than one hundred and sixty thousand (160,000) inhabitants shall have power to issue bonds or notes therefor, and to secure payment thereof, to mortgage and encumber any such water system, and the incomes thereof and everything pertaining thereto.

And to purchase or otherwise acquire additions to, or extensions or enlargements of any such water systems, or additional water powers, riparian rights, or repair of such systems, or either of them; all cities having more than one hundred and sixty thousand (160,000) inhabitants shall have power to issue bonds and notes therefor, and to secure payment thereof, to mortgage and encumber such additions, extensions, enlargements, additional water powers, riparian rights, the income therefrom, and everything pertaining thereto, either separately or with such systems, or either of them.

And as additional security therefor, by the terms of such encumbrance, may grant to the purchaser, or purchaser under any sale or foreclosure thereunder, a franchise to operate the system and properties so purchased, for a term not over twenty years after such purchase, subject to all laws regulating the same then in force. [Acts 1925, p. 154.] [39th Leg. ch. 33, § 1.]

2. Whenever the income of any water system shall be encumbered under this Act, the expense of operating and maintenance, including all salaries, labor, materials, interest, repairs, and extensions, necessary to render efficient service, and every proper item of expense shall always be a first lien and charge against such income. The rates charged for services furnished by any of said systems shall be equal and uniform, and no free service shall be allowed except for city public schools, or buildings and institutions operated by such city, and there shall be charged and collected for such services a sufficient rate to pay for all operating, maintenance, depreciation, replacement, betterment and interest charges, and for interest and sinking fund sufficient to pay any bonds or notes issued to purchase, construct or improve any such systems or of any outstanding indebtedness against same. No part of the income of any such system shall ever be used to pay any other debt, expense or obligation of such city, until the indebtedness so secured shall have been finally paid. [Id.] [39th Leg. ch. 33, § 2.]

3. All cities acquiring a water system, or any addition, improvement or extension thereto, under this Act, may borrow money on the security of the plant, or addition or extension, so acquired, or owned, for the purpose of paying the purchase price and for the addition, improvement and extension thereof, and may issue bonds, notes or other obligations to evidence the moneys so borrowed, which bonds, notes or other obligations shall have the characteristics of negotiable instruments under the law merchant. Every contract, bond or note executed or issued under this Act shall contain this clause "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." No such obligation shall ever be a debt of such city, but solely a charge upon the properties so encumbered, and shall never be reckoned in determining the power of such city to issue bonds for any purpose authorized by law. [Id.] [39th Leg. ch. 33, § 3.]

4. The management and control of any such system or systems during the time same are encumbered, may by the terms of such encumbrance be placed in the hands of the city council of such city; but if deemed advisable may be placed in the hands of a board of trustees to be named in such encumbrance, consisting of not more than five members, one of whom shall always be the mayor of such city; and the compensation of such trustees shall be fixed by such contract, but shall never exceed five per cent of the gross receipts of any such systems in any one year. The terms of office of such board of trustees, their powers and duties, the manner of exercising same, the election of their successors, and all matter pertaining to their organization and duties may be specified in such contract of encumbrance; but in all matters where such contract is silent, the laws and rules governing the council of such city shall govern said board of trustees so far as applicable. Said city council or board of trustees having such management and control shall have power to make rules and regulations governing the furnishing of service to patrons and for the payment for same, and providing for discontinuance of such service to those failing to pay therefor when due until payment is made; and such city council shall have power to provide penalties for the violation of such rules and regulations and for the use of such service without the consent or knowledge of the authorities in charge thereof, and to provide penalties for all interference, trespassing or injury to any such systems, appliances or premises on which same may be located. [Id.] [39th Leg. ch. 33, § 4.]

5. Any contract of encumbrance under this Act may name, or provide for the selection of a trustee to make sale upon default in the payment of the principal or interest according to the terms of such contract, and for the selection of his successor, if disqualified or failing to act, and may provide for collection fees not exceeding five per cent of the principal; but no collection fees shall accrue, and no foreclosure proceedings shall be begun in any court or through any trustee, and no option to mature any part of such obligation, because of default in payment of any installment of prin-

cipal shall be exercised until ninety days written notice shall be given to each member of the city council of such city and to each member of such board of trustees, if any, that payment has been demanded and default made, which notice shall date from the sending of a letter to each person to be notified, by registered mail, postage and registration fees prepaid, and addressed to them at the post office in such city; and if the installments of principal and interest then due shall be paid before the expiration of said ninety days, together with the interest prescribed in such contract, not exceeding ten per cent per annum, from the date of default until the date of payment, it shall have like effect as if paid on the date same was originally due. [Id.] [39th Leg. ch. 33, § 5.]

6. In the encumbrance of any properties under this Act such city may encumber any such water systems, or any extensions, additions or enlargements thereof, singly or together, and may or may not include in such encumbrance the franchise provided for, and may omit or include in said encumbrances the whole or any part of the properties mentioned in Section 1 of this Act; but no such system shall ever be sold until such sale is authorized by a majority vote of the qualified property taxpayers of such city, or under the terms of any such mortgage or encumbrance, nor shall same be encumbered for purchase money or original cost, until authorized in like manner; such vote in either case to be ascertained at an election, of which notice shall have [been] given in like manner as cases of the issuance of municipal bonds by such cities.

All obligations herein authorized to be issued under Section 1 of this Act shall be submitted to the Attorney General for examination, and upon his approval as to the form thereof, shall be registered by the Comptroller in a book kept for that purpose; the Comptroller shall endorse his certificate of registration on each such obligation. [Id.] [39th Leg. ch. 33, § 6.]

7. All proceedings heretofore had by cities having more than one hundred and sixty thousand (160,000) inhabitants, in the acquisition of any water systems, and the encumbrance of same, within the authority given by this Act, be and the same are hereby approved and ratified. [Id.] [39th Leg. ch. 33, § 7.]

In the section of the law from which this article was taken, "To purchase or otherwise acquire any water systems," preceded the first paragraph as given here.

Art. 1109b. Eminent domain.—Incorporated cities and towns of less than five thousand inhabitants shall have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary and to take any private property within or without the city limits for any of the following purposes, to-wit:

To have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary and to take any private property within or without the city limits for any of the following purposes, to-wit: City halls, police stations, jails, calaboose, fire stations, libraries, school houses, high school buildings, academies, hospitals, sanitariums, auditoriums, market houses, reformatories, abattoirs, railroad terminals, docks, wharves, warehouses, ferries, ferry landings, elevators, loading and unloading devices, shipping facilities, piers, streets, alleys, parks, highways, boulevards, speedways, playgrounds, sewer systems, storm sewers, sewage disposal plants, drains, filtering beds and emptying grounds for sewer systems, reservoirs, water sheds, water supply sources, wells, water and electric light systems, gas plants, cemeteries, crematories, prison farms, and to acquire lands with and without the city for any other municipal purposes that may be deemed advisable.

The power herein granted for the purpose of acquiring private property shall include the power of the improvement and enlargement of the water works, including water supply, riparian rights, stand pipes, water sheds, the construction of supply reservoirs, parks, squares, and pleasure grounds, public wharves and landing places for steamers and other crafts, and for the purpose [e] of straightening or improving the channel of any stream, branch or drain, or the straightening or widening or extension of any street, alley, avenue or boulevard. That, in all cases where the city seeks to exercise the power of eminent domain, it shall be controlled, as nearly as practicable, by the law governing the condemnation of property of railroad corporations, in this State, the city taking the position of the railroad corporations in any such case; that the power of eminent domain hereby conferred shall include the right of the governing authority, when so expressed, to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes.

Art. 1110. Waterworks right of way.—To acquire rights of way for digging or excavating canals, laying mains or pipe lines for the purpose of conducting water through the same into the cities or towns for the use of the public, incorporated cities and towns owning their own waterworks system shall have the right of eminent domain to condemn private property for public use in and outside of the city or town limits of such cities or towns. [Acts 1915, p. 166.]

2. ENCUMBERED CITY SYSTEM

Art. 1111. Powers.—All cities and towns operating under this title have power to mortgage and encumber their light systems, water systems, or sewer systems, either, both, or all, and the franchise and income thereof, and everything pertaining thereto, acquired or to be acquired, to secure the payment of funds to purchase same, or to purchase additional water powers, riparian rights, or to build, improve, enlarge, extend or repair such systems, or either, or all of them, and as additional security therefor, by the terms of such encumbrance, may grant to the purchaser under sale or foreclosure thereunder, a franchise to operate the systems and properties so purchased for a term of not over twenty years after such purchase, subject to all laws regulating same then in force. No such obligation shall ever be a debt of such city or town, but solely a charge upon the properties so encumbered and shall never be reckoned in determining the power of such city or town to issue any bonds for any purpose authorized by law. [Acts 1911, p. 230; Acts 1927, 40th Leg., p. 276, ch. 194, § 1.]

Section 4 of said Acts 1927, 40th Leg., p. 276, ch. 194, repeals all conflicting laws and parts of laws.

Art. 1112. Vote, etc.—No such light, water or sewer system shall ever be sold until such sale is authorized by a majority vote of the qualified voters of such city or town; nor shall same be encumbered for more than five thousand dollars, except for purchase money, or for extensions, or to refund any existing indebtedness, until authorized in like manner. Such vote in either case shall be ascertained at an election, of which notice shall be given in like manner as in cases of the issuance of municipal bonds by such cities and towns. [Id.; Acts 1927, 40th Leg., p. 276, ch. 194, § 2.]

Art. 1113. Income.—Whenever the income of any lighting, water or sewer systems shall be encumbered under this law, the expense of operation and maintenance, including all salaries, labor, materials, interest, repairs and extensions, necessary to render efficient service, and every proper item of expense shall always be a first lien and charge against such incomes. The rates charged for services furnished by any said system shall be equal and uniform, and no free service shall be allowed except for city public schools, or buildings and institutions operated by such city or town. There shall be charged and collected for such services a sufficient rate to pay for all operating, maintenance, depreciation, replacement, betterment and interest charges, and for interest and sinking fund sufficient to pay any bonds issued to purchase, construct or improve any such systems or of any outstanding indebtedness against same. No part of the income of any such system shall ever be used to pay any other debt, expense

or obligation of such city or town, until the indebtedness so secured shall have been finally paid. [Id.; Acts 1927, 40th Leg., p. 276, ch. 194, § 3.]

Art. 1114. Notes, etc.—Every contract, bond or note issued or executed under this law shall contain this clause: "The holder hereof shall never have the right to demand payment of this obligation out of any funds raised or to be raised by taxation." [Id.]

Art. 1115. Control.—The management and control of any such system or systems during the time they are encumbered, may by the terms of such encumbrance, be placed in the hands of the city council of such town, or may be placed in the hands of a board of trustees to be named in such encumbrance, consisting of not more than five members, one of whom shall be the mayor of such city or town. The compensation of such trustees shall be fixed by such contract, but shall never exceed five per cent of the gross receipts of such systems in any one year. The terms of office of such board of trustees, their powers and duties, the manner of exercising same, the election of their successors, and all matters pertaining to their organization and duties may be specified in such contract of encumbrance. In all matters where such contract is silent, the laws and rules governing the council of such city or town shall govern said board of trustees so far as applicable. [Id.]

Art. 1116. Rules.—The city council or board of trustees having such management and control shall have the power to make rules and regulations governing the furnishing of service to patrons and for the payment of the same, and providing for the discontinuance of such service failing to pay therefor when due until payment is made. The city council shall have power to provide penalties for the violation of such rules and regulations and for the use of such service without the consent or knowledge of the authorities in charge thereof, and to provide penalties for all interference, trespassing or injury to any such systems, appliances or premises on which same may be located. [Id.]

Art. 1117. Default.—A contract of encumbrance may provide for the selection of a trustee to make sale upon default in the payment of the principal or interest according to the terms of such contract, and for the selection of his successor if disqualified or failing to act, and for collection fees not exceeding five per cent of the principal. [Id.]

Art. 1118. Notice.—No collection fees shall accrue, and no foreclosure proceedings shall be begun in any court or through any trustee, and no option to mature any part of such obligation because of default in payment of any installment of principal or interest shall be exercised until ninety days written notice shall be given to each member of the city council of such city or town and to each member of such board of trustees, if any, that payment has been demanded and default made, which notice shall date from the sending of a prepaid registered letter to each person to be notified, addressed to them at the post office in such city or town. If the installments of principal and interest then due shall be paid before the expiration of said ninety days, together with the interest prescribed in such contract, not exceeding ten per cent per annum, from the date of default until the date of payment, it shall have like effect as if paid on the date the same was originally due. [Id.]

3. CITY REGULATION

Art. 1119. [1018] Rates prescribed, etc.—The governing body of all cities and towns in this State of over two thousand population, incorporated under the general laws thereof, shall have the power to regulate, by ordinance, the rates and compensation to be charged by all water, gas, light and sewer companies, corporations or persons using the streets and public grounds of said city or town, and engaged in furnishing water, gas, light or sewerage service to the public, and also to prescribe rules and regulations under which such commodities shall be furnished, and service rendered, and to fix penalties to enforce such charges, rules and regulations. The governing body shall not prescribe any rate or compensation which will yield less than ten per cent per annum net on the actual costs of the physical properties, equipment and betterments. [Acts 1907, p. 217, § 1.]

Art. 1120. [1020] Protective ordinances, etc.—The governing body shall have power to pass such ordinances as they may deem proper to protect any said company, corporation or person, in the free enjoyment of all their rights and franchises, to protect any interference with their property or privileges, and to prevent the free or unauthorized use or waste of the water or other commodity or service furnished. [Id.]

Art. 1121. [1021] Reports.—Any such company, corporation or person who may be engaged in furnishing to the inhabitants of any such city or town any water, light, gas or sewerage service, shall, on or before the first day of March of each year, file with the mayor of such city or town a written report sworn to by the manager, secretary or president of such corporation, by a member of such company, and by any such person, which shall show:

1. The amount of any lien or mortgage upon the properties composing such plant;

2. All other indebtedness pertaining to such enterprise and the consideration therefor;

3. The actual cost of the visible physical properties, date when installed and the present value thereof, and herein the lands, machinery, buildings, pipes, poles, circuits, mains shall each be treated separately;

4. The annual cost of operating such plant, showing separate items, the amount paid for actual salaries, amount paid for labor of all kinds, fixed charges, including interest, taxes and insurance, giving each separately, amount paid for fuel, for extension and repairs, giving each separately, and particularizing the extension and repairs the cost of maintenance, amount paid for damages, claim or suits for damages, identifying each claim or suit, amount paid for miscellaneous expenses, and, if any machinery or equipment is abandoned, worn out or its use discontinued within the preceding year, the same shall be stated, the original cost, and the present value thereof shall be given;

5. The report shall give the gross earnings from any such plant, including revenues from every source whatever, stating items separately, amount received by each department. [Id.]

Art. 1122. [1022] Penalties.—Any such corporation, or any member of such company, or any such person mentioned in this chapter, who shall for thirty days wilfully refuse or fail to report in the manner provided by this chapter, shall forfeit and pay to any such city or town the sum of one hundred dollars per day for each and every day during which it shall continue in default; or, if any such corporation, or company, or person, shall file any report, knowing that the same does not truly report the facts about the matters mentioned therein, it shall forfeit and pay to such city or town the sum of two hundred and fifty dollars for each such wilfully false report. Such forfeitures and penalties shall be recovered at the suit of such city or town brought in the county where such city or town is located. [Id.]

Art. 1123. [1023] City owned plants.—The governing body of any city or town incorporated under the general laws shall have the power where such city or town owns the plant, to regulate by ordinance, the rates and compensation to be charged the public by such city or town for water, sewerage, gas, electricity or other fluid or substance used for lights, heat or power, to establish and operate necessary plants for the manufacture, generation or production thereof, and to sell and distribute the same to the public within the corporate limits. [Id.]

Art. 1124. Rates in certain cities.—Any city having a special charter or a charter adopted or amended under the provisions of chapter 13 of this title, and having authority under its charter to determine, fix and regulate the charges, fares or rates of

compensation to be charged by any person, firm or corporation enjoying a franchise in said city, shall in determining, fixing and regulating such charges, fares or rates of compensation, base the same upon the fair value of the property of such person, firm or corporation devoted to furnishing service to such city, or the inhabitants thereof, and not upon any stocks or bonds issued or authorized to be issued, by, or any other indebtedness of, such person, firm or corporation. No city shall be responsible for, concerned with, authorize, approve or have jurisdiction over, the issuance or sale of any stocks or bonds by any such person, firm or corporation, but the issuance and sale thereof shall be governed solely by the Constitution and laws of this State applicable thereto. [Acts 1st C. S. 1921, p. 152.]

Art. 1124a. Official reading of meters.—Sec. 1. That hereafter any consumer or user of electric power, current, natural or artificial gas furnished by any private concern in any city, town or village in this State on complaint made to the city Commissioners or city council of any city, town or village within this State, shall have the right to have any meter which measures the amount of electricity or gas installed by the person furnishing said electrical current or gas for the purpose of ascertaining what amount to charge him for the use thereof, examined, read and tested by the agents, servants and employees of the city commissioners or city council, as the case may be; said agents, servants and employees being hereby given the right to break the seal, and examine, read and test the various meters and similar devices, in company with an agent of the furnisher of said electrical power, current and gas, if said furnisher desires its representative to be present, if not, then such examination to be had without him but three days' notice shall be given to all persons, firms or corporations furnishing said electricity or gas of said test.

Sec. 2. The word "meter" as used in this Act applies to any instrument, apparatus or machine used for measuring electric currents or gas and recording the results obtained.

Sec. 3. The words "person" and "furnisher" used in this Act refer to any corporation, association, partnership or individual engaged in furnishing electricity, electric current, electrical power or gas for consumption for hire in cities.

Sec. 4. That on demand [of] said city council or city commissioners shall furnish the complaining consumer with a detailed report of the result of their reading, examination and testing of said meters or other said measuring devices for electrical current or gas as hereinbefore referred to, said report to state whether or not said meter or measuring device is functioning properly, is in good condition, and the amount of electrical current, power or gas used by the consumer for any period of time preceding of not more than one year, such period to be designated by the consumer in his complaint hereinbefore mentioned. [Acts 1927, 40th Leg., p. 71, ch. 47.]

Section 6 of said Act 1927, 40th Leg., p. 71, ch. 47, provides that the Act shall not affect any special charter granted any city, town or village, and section 7 provides that if any section or part shall be declared invalid the decision shall not affect the remainder.

4. JUDICIAL REGULATION

Art. 1125. [1025] Excessive rates.—All extortionate and unreasonable rates charged by public utility corporations, as hereinafter defined, are hereby declared to be unlawful; and the district courts of this State are hereby vested with jurisdiction and full power and authority to regulate, prevent and abolish the same; and said courts are given the power and authority whenever the public interest may require, to fix and establish rates for the service and products of all public utility corporations, and whenever the public interest may require and to carry out the provisions herein conferred, said courts are hereby expressly authorized to issue injunctions, quo warranto, and all other writs for the purpose of carrying out and making effective the purposes of this chapter, and said writs shall be governed by the rules and regulations now prescribed by law. No proceeding shall be begun in the district court having for its purpose the fixing or [of] rates of public utility corporations until and unless the city council of the city or town desiring to invoke the power herein conferred upon the district courts shall comply with the provisions of the succeeding article. [Acts 1905, p. 348.]

Art. 1126. [1026] Complaint.—If the city council of any city or town incorporated under the general laws of this State, shall desire to invoke the power of the district court granted in the preceding article, such council shall, by a two-thirds vote of all the members elected to said council, pass a resolution setting forth the matters complained of, naming the corporation against which the complaint is made, and in a general way the reasons for such complaint, and shall cause a copy of the same to be delivered to the president, vice president or secretary of said corporation, or cause to be left a copy of said resolution at the principal office of such corporation. [Id.]

Art. 1127. [1027] Suit.—If, within twenty days after the said corporation has been furnished with a copy of the resolution of the city council, the wrongs complained of shall not be corrected to the satisfaction of the city council, a petition setting forth the wrongs and grievances complained of, and stating the relief sought, may be filed in the name of the city or town as plaintiff against the corporation as defendant in any district court of the county in which such city or town may be situated. Process shall be issued upon said petition, and be served upon such corporation as now provided by law in civil cases. The case shall be set for trial in the same manner as other civil cases, except that it shall have precedence over all cases of a different character filed in such court as to the time of trial. Process shall issue in said cause in the same manner as process may issue in civil cases. The right of trial by jury of the issues involved shall also be given upon the demand of either party. [Id.]

Art. 1128. [1028] Trial.—Upon the trial of the cause, the court or jury, in arriving at a decision as to whether or not the rates complained of are reasonable or extortionate, and in fixing the rates, shall consider the cost of construction of the plant of the public utility corporation against which the petition is filed, the cost of the operation of such plant, its maintenance and repairs, the fixed charges that may be against the corporation, amount invested in such plant, and such other matters as may be material to the issues. The court trying the same shall have the power to order the corporation to make profert of its books and records for inspection in court in determining the question in issue. After a full hearing of all the evidence adduced, the court or jury shall have power, and it shall be their duty to fix the rates which may be charged by such public utility corporation; provided, that the rates fixed must be sufficient to yield such public utility company not less than ten per cent upon the investment, and the same shall continue in force for a period of three years. The rates fixed shall be entered of record upon the minutes of the court, and shall be held conclusive, as reasonable, fair and just, and shall remain for three years as the rates to be charged by such corporation, unless changed or modified by the judgment of said district court, or by the appellate courts to which either of the parties to said suit may appeal, or have writ of error. [Id.]

Art. 1129. [1029] Appeal.—If either party to the suit shall be dissatisfied with the decision of the court and the rate thereby established, an appeal may be taken by either party to the proper court of civil appeals, and said appeal shall be at once returnable to said court of civil appeals, and shall have precedence in such court of all cases of a different character therein pending. The parties to said suit may apply to the Supreme Court for a writ of error. [Id.]

Art. 1130. [1030] Enforcement.—When the final judgment is rendered in any cause fixing the rates to be charged by said corporation, the court rendering such judgment shall order in its decree the enforcement of the same; and is authorized and empowered

to provide in its decree that, if the same is not obeyed according to the terms thereof, the said corporation shall forfeit its charter if the same be a domestic corporation, or its permit to do business in this State if the corporation be a foreign corporation. If said order or decree be violated, it shall be the duty of the Attorney General, or county or district attorney, under the direction of the Attorney General, to institute suit in the district court of the county in which such corporation may have its principal office, or in Travis County, for the forfeiture of the charter of such corporation or the cancellation of its permit, as the case may be, and, if said charter be forfeited or permit canceled, the offending corporation shall thereafter be prohibited from carrying on its business within this State. [Id.]

Art. 1131. [1031] Corporations affected.—The public utilities included within the meaning of this subdivision are defined to be water companies furnishing water to the public; gas companies furnishing gas to the public, electric light or power companies furnishing light or power to the public; telephone companies furnishing telephones to the public; sewerage companies conducting sewerage for the public, whether said companies are incorporated under the laws of this or a foreign State. [Id.]

Art. 1132. [1032] Cities affected.—Any city within this State, incorporated under a special law, may at its option, avail itself of the provisions of this subdivision, but the same shall be cumulative of any other method which may now be provided in such special charter, and this law shall not repeal any provisions of such special charters. [Id.]

CHAPTER ELEVEN

TOWNS AND VILLAGES

Art.
1133. May be incorporated.
1134. Mode of incorporation.
1135. Adjoining territory added.
1136. Election order.
1137. Qualifications of electors.
1138. Ballots.
1139. Returns.
1140. Powers of corporation.
1141. Election of officers.
1142. Commission.
1143. Term of office.
1144. Annual election.
1145. Quorum may pass by-laws.
1146. Powers of aldermen.
1147. Powers of marshal.
1148. Tax sales.
1149. Condemnation for highways.
1150. Commissioners court may condemn.
1151. Crossings: duty of railroad.
1152. Publication of ordinances.
1153. Amendment of charter.

Article 1133. [1033] [579] [506] May be incorporated.—When a town or village may contain more than four hundred and less than ten thousand inhabitants, it may be incorporated as a town or village in the manner prescribed in this chapter. [Acts 1881, p. 63; G. L. vol. 9, p. 155; Acts 1897, p. 193; G. L. vol. 10, p. 1247; Acts 1915, p. 130.]

Cities and towns incorporated under Rev. St. 1925, Title 28, having 600 inhabitants or over, validated by Acts 1927, 40th Leg., p. 79, ch. 55, § 1.

Art. 1134. [1034] [580] [507] Mode of incorporation.—If the inhabitants of such town or village desire to be so incorporated, at least twenty residents thereof, who would be qualified voters under the provisions of this chapter, shall file an application for that purpose in the office of the county judge of the county in which the town or village is situated, stating the boundaries of the proposed town or village, the name by which it is to be known when incorporated, and accompany the same with a plat of the proposed town or village including therein no territory except that which is intended to be used for strictly town purposes. If any town or village be situated on both sides of a line dividing two counties, application may be made to the county judge of either county in which a portion of said town or village is located, in manner and form as herein provided. A new election shall not be ordered in less than one year. [Acts 1889, p. 5; G. L. vol. 9, p. 1033.]

Art. 1135. [1035] Adjoining territory added.—Whenever a majority of the inhabitants, who are qualified voters of any territory adjoining the limits of any town or village incorporated hereunder, shall vote in favor of becoming a part of said town or village, any three of them may make affidavit to such fact and file such affidavit with the mayor of said town or village, and such mayor shall certify the same to the council of said town or village. Thereupon, such council may, by ordinance, receive such inhabitants as a part of said town or village. Thenceforth the territory so received shall be a part of said town or village and the inhabitants shall be entitled to all the rights and privileges of other citizens and bound by all the acts and ordinances made in conformity thereto and passed in pursuance of this chapter; provided, that the area of no town or village shall ever exceed that of cities or towns, as provided for in chapter one of this title. [Acts 1903, p. 116.]

Art. 1136. [1036–7] Election order.—If satisfactory proof is made that the town or village contains the requisite number of inhabitants, the county judge shall make an order for holding an election on a day therein stated and at a place designated within the town or village for the purpose of submitting the question to a vote of the people. He shall appoint an officer to preside at the election, who shall select two judges and two clerks to assist in holding it. After a previous notice of ten days, by posting advertisement thereof at three public places in the town or village, the election shall be held in the manner prescribed for holding elections in other cases.

Art. 1137. [1038] [583] [510] Qualifications of electors.—Every person who has attained the age of twenty-one years and who has resided within the limits of the proposed town for the six months next preceding and is a qualified elector under the laws of this State, shall be entitled to vote at the election.

Art. 1138. [1039] [584] [511] Ballots.—On each ticket the voter must write or cause to be written or printed, "corporation" or "no corporation."

Art. 1139. [1040–41] Returns.—If a majority of the votes are cast in favor of incorporation the officers holding the election shall make return thereof to the county judge within ten days after the same was held. The county judge shall, within twenty days after the receipt thereof make an entry upon the records of the commissioners court that the inhabitants of the town or village are incorporated within the boundaries thereof; which boundaries shall also be designated in the entry. A certified copy of such entry, together with the plat of the town or village, shall thereupon be recorded in the proper record of deeds of such county. [Acts 1897, p. 193; G. L. vol. 10, p. 1247.]

Art. 1140. [1042] [587] [514] Powers of corporation.—When the entry mentioned in the preceding article has been made, the town shall be invested with all the rights incident to such corporation under this chapter, and shall have power to sue and be sued, plead and be impleaded, and to hold and dispose of real and personal property, provided such real property is situated within the limits of the corporation.

Art. 1141. [1043–4] Election of officers.—The county judge shall immediately order an election for a mayor, a marshal and five aldermen. No person shall be eligible to any of said offices unless he possess the requisites provided by this chapter for persons qualified to vote hereunder.

Art. 1142. [1045] [590] [517] Commission.—The county judge shall, immediately after the returns have been made, commission the candidate who received the highest number of votes for the office of mayor, and shall deliver certificates of election to the other officers elected. [R. S. 1879, p. 517.]

Art. 1143. [1046] [591] [518] Term of office.—The mayor, aldermen and all other officers

elected at the first election under this chapter, regardless of the time of such first election, shall hold their offices until their successors shall have been duly elected and qualified at the next succeeding annual election, according to the provisions of the succeeding article. [Acts 1873, p. 99; G. L. vol. 7, p. 551.]

Art. 1144. [1047] [592] [519] Annual election.—The annual election of officers of all towns and villages incorporated under the provisions of this chapter shall take place on such day as may be fixed by law for municipal elections throughout the towns and cities of the State. Should no such uniform day be fixed, then the elections herein provided for shall take place on the first Tuesday in April of each year. The mayor, or in case of his inability or refusal to act, any two aldermen, shall order such annual election by notices posted for at least ten days at three public places within the corporate limits. The returns of such election shall be made to the town or village council, and certificates of election given by the mayor or person acting as such to the persons elected to the various offices of such corporation. [Id.]

Art. 1145. [1048] [593] [520] Quorum may pass by-laws.—The mayor shall be the president of the board of aldermen and shall, with three of the aldermen, constitute a quorum for the transaction of business; and the quorum shall have power to enact such by-laws and ordinances not inconsistent with the laws and constitution of this State as shall be deemed proper for the government of the corporation.

Art. 1146. [1049 to 1055] Powers of aldermen.—The board of aldermen shall:

1. Have power to levy and collect an occupation tax of not more than one-half of the amount levied by the State; also to levy taxes on persons and property, real and personal, within the corporation, subject to taxation by the laws of this State; but the tax on persons and property shall not, in any one year, exceed the rate of one-fourth of one per cent on the one hundred dollars valuation.

2. Have and exercise exclusive control over the streets, alleys and other public places within the corporate limits; provided, that, with the consent of the board of aldermen, where streets are continuations of public roads, the commissioners court shall have power to construct bridges and other improvements thereon which facilitate the practicability of travel on said streets.

3. Have the power to cause the male inhabitants between the ages of twenty-one and forty-five years, except ministers of the gospel actually engaged in the discharge of their duties, to work on the streets and public alleys not to exceed five days in any one year, or furnish a substitute, or a sum of money, not to exceed one dollar for each day's work demanded, to employ such substitute.

4. Prevent, as far as practicable, any nuisances within the limits of the corporation, and cause such as exist to be removed at the expense of the person by whom they were occasioned or upon whose property they may be found.

5. Have power to prescribe the fine to be imposed by the mayor for the violation of any by-laws or ordinance, which shall in no case exceed one hundred dollars; but no fine shall be imposed except upon the verdict of a jury, should the defendant demand a trial by jury.

6. Fill, for the unexpired term, any vacancy which may occur in any office created by this chapter or by the board of aldermen under its provisions, such vacancy to be filled by the acting aldermen.

7. Have power to appoint such officers, other than those mentioned in this chapter, as shall be deemed necessary to carry out the provisions of the same, to prescribe their duties and to fix their compensation; and shall also have power to dismiss them at any time and appoint others in their stead.

8. Prescribe the bonds and security which the marshal and such other officers as may be appointed shall give, which shall be executed and approved by the mayor, before the marshal or other officer shall enter upon the discharge of his duties, said bond to be payable to the corporation.

9. Have power to appoint another marshal or officer in the place of the one so elected or appointed if the bond required in the preceding paragraph is not given within five days after the marshal is elected or appointed.

10. The board of aldermen may establish markets and may do whatever else may be necessary to give effect to the provisions of this chapter.

Art. 1147. [1056–7] Powers of marshal.—The marshal shall have the same power within the town that constables shall have within their precincts, and shall be entitled to the same fees. He shall discharge all other duties that may be prescribed by the by-laws and ordinances, not inconsistent with the laws of this State, and shall receive therefor such fees as may be fixed by the board. He shall assess and collect the corporation tax, and if the same be not voluntarily paid, he shall have power to make the collection in the same manner and with like effect as is prescribed in chapter 5 of this title for collection of taxes in cities, so far as applicable.

Art. 1148. [1058–9–61] Tax sales.—When any property shall be liable to assessment for corporation taxes, and the owner is unknown, such property shall be valued by the marshal and assessed by its description, stating that the owner of the property is unknown; unless the taxes are paid, the property shall be sold for the payment thereof, as nearly as may be in the manner in which such property when duly rendered is required to be sold, and the sale shall be equally valid. Real estate sold for taxes due the corporation may be redeemed as provided in chapter 5 of this title. Where the purchaser does not reside within the limits of the corporation, the estate may be redeemed by making the payment into the treasury of the corporation for the benefit of the purchaser.

Art. 1149. [1066–7] Condemnation for highways.—Any town or village in this State, incorporated under this chapter or by special charter, shall have the right, and they are hereby empowered, to condemn the right of way and roadbed of any railway company whose roadbed runs within the corporate limits of such town or village, when deemed necessary and so declared, by a majority vote of the board of aldermen, for the purpose of opening, widening or extending the streets of such town or village; provided, there are less than four railroad tracks. Failing to agree on the damages to be paid therefor, the mayor shall prepare a statement in writing showing the point on said railroad right of way where said street is desired to be opened, widened or extended, giving the width and length of that portion of the right of way of the railroad sought to be condemned, and describing it so that it can be clearly identified, the object for which it is sought to be condemned, the name and style of the railway company, and file the same with the county judge of the county in which such town or village is situated, whereupon proceedings shall be had to condemn said right of way. [Acts 1897, p. 216; G. L. vol. 10, p. 1270.]

Art. 1150. [1069] Commissioners court may condemn.—County commissioners shall have the right, upon petition of twenty freeholders of any community, or unincorporated town or city, to condemn roadbed of railroads for the same purpose mentioned in the preceding article. [Id.]

Art 1151. [1068] Crossings: duty of railroad.—Every railroad company in this State shall place and keep that portion of its roadbed and right of way over or across which any public street of any incorporated town or village may run, in proper condition for the use of the traveling public; and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed, by the town marshal of such town or village, it shall be liable to a penalty of twenty-five dollars for each week such railroad may fail or neglect to comply with the requirements of this article, recoverable in any court having jurisdiction of

the amount involved, in a suit in the name of such town or village. [Id.]

Art. 1152. [1060] [611] [538] Publication of ordinances.—No ordinance or by-laws shall be enforced until it has been published at least ten days in three public places in the town, or in a newspaper if one be published in the corporation. [R. S. 1879, [§] 538.]

Art. 1153. [1062–3] Amendment of charter.—Towns and villages heretofore incorporated by the Congress of the Republic or the Legislature of this State may, by a resolution of the board of aldermen and a two-thirds vote of the voters at an election held therefor, amend their charters in any particular not in conflict with the constitution of this State or the Revised Statutes. In order to amend the charter of any town or village, it shall be necessary, before said amendment shall go into effect, for the board of aldermen to adopt a resolution setting forth the amendment; and a certified copy of the same shall be approved by the Attorney General and recorded in the office of the Secretary of State before the same shall take effect. [Acts 1881, p. 83; G. L. vol. 9, p. 175.]

CHAPTER TWELVE

COMMISSION FORM OF GOVERNMENT

Art.
1154. Petition.
1155. Unincorporated towns.
1156. Ballot.
1157. Election.
1158. Officers.
1159. Vacancies.
1160. Shall supersede council.
1161. Officers appointed.
1162. Bonds of officers.
1163. Commissioners, duties, etc.
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Article 1154. [1070] Petition.—Whenever ten per cent of the qualified voters of any incorporated city or town having a population of over five hundred and less than five thousand inhabitants incorporated under the provisions of this title or any previous general law, or hereafter incorporated under any general law, or of any incorporated town or village having a population of more than five hundred and less than one thousand inhabitants incorporated under chapter 11 of this title or any previous general law, or hereafter incorporated under any general law, shall petition in writing the mayor of said city, town or village requesting that an election be ordered to determine whether such city, town or village shall adopt the commission form of government, the mayor shall order an election in such city, town or village, to determine whether or not the commission form of government shall be adopted. Thirty days notice of such election shall be given by publishing such notice in some newspaper therein if there be one, and if none, then by posting notices of same at three public places in such town, city or village. [Acts 1909, p. 189; Acts 1913, p. 36; Acts 1921, p. 123.]

Art. 1155. [1070] Unincorporated towns.—If any unincorporated city or town in this State, having a population of over five hundred and less than five thousand inhabitants, or any unincorporated town or village in this State having a population of more than two hundred and less than one thousand inhabitants, shall desire to be incorporated under the commission form of government as herein provided, an election to determine whether such incorporation may be had shall be called by the county judge of the county under the provisions herein governing incorporated cities and towns, and incorporated towns and villages, and notice of such election shall be given as herein provided, and if satisfactory proof is made that the city or town or village contains the requisite number of inhabitants, the county judge shall make an order for holding an election on a day therein stated, and at a place designated within the city or town or village, for the purpose of submitting the question to a vote of the people. [Id.]

Art. 1156. [1071] Ballot.—The ballots to be used in said election shall have written or printed thereon "For Commission" or "Against Commission." [Acts 1909, p. 189; Acts 1913, p. 36.]

Art. 1157. [1072] Election.—The mayor or county judge, as the case may be, shall appoint two judges of election, one of which shall be designated as the presiding judge, and two clerks, to hold said election. The election shall be held and governed by the general laws of this State except as herein otherwise provided, and the returns shall be made to the mayor or the county judge, as the case may be within five days after said election shall have been held. If a majority of the votes cast are "For Commission," then the mayor or county judge shall enter an order to that effect upon the minutes of the city council, or board of aldermen, or of the commissioners court, and after the entry of said order said incorporated city or town or village shall be under the commission form of government, and said unincorporated city or town, or unincorporated town or village, shall be incorporated and under the commission form of government. [Id.]

Art. 1158. [1073] Officers.—At such election there shall be elected two commissioners, who shall serve until the first Tuesday in April following, and in said unincorporated cities and towns, and unincorporated towns and villages, there shall at such elections be elected a mayor and two commissioners, who shall serve until the first Tuesday in April following. The mayor of the incorporated cities and towns, and incorporated towns and villages, adopting the commission form of government shall continue to hold his office for the term for which he was elected. The term of office of the mayor and commissioners, except the first elected under the provisions hereof, shall be two years, and they shall be elected on the first Tuesday in April every two years. [Id.]

Art. 1159. [1073] Vacancies.—In case of the death or the resignation of the mayor or commissioners, the others shall fill the place by appointment, provided, that shall a vacancy occur from death, resignation, or failure to qualify, or any other cause, of the mayor and one commissioner at the same time, or of two commissioners at the same time, the vacancy shall be filled by special election called by the county judge of the county, upon notice for the time, and subject to all the regulations herein for the original election; the result of said election shall be certified by the county judge to the clerk of said commission, and shall be entered upon the minutes. [Id.]

Art. 1160. [1073] Shall supersede council.—In incorporated cities and towns and incorporated towns and villages, adopting the commission form of government under the provisions hereof, the members of the city council, and board of aldermen shall hold their offices until the commissioners elected hereunder shall have qualified, and after such qualification, the officers of the city council, and board of aldermen shall be abolished, and the mayor and commissioners herein provided for shall constitute the "Board of Commissioners" of said city or town, or town or village. [Id.]

Art. 1161. [1074] Officers appointed.—Said "Board of Commissioners" shall appoint a competent person to be clerk, who shall also be treasurer and assessor and collector of taxes of such city or town, or town or village. He shall before entering upon the duties of his office, enter into a good and sufficient bond in double the estimated amount of annual revenues of such city or town or of such town or village, said estimate to be made by the "Board of Commissioners" and said bond to be approved by the said board and filed and recorded in the minutes thereof. Said clerk shall be invested and charged with and shall exercise all the power, rights and duties conferred upon and imposed by the general laws, upon the clerk, treasurer, assessor and collector of taxes, of cities and towns, or towns and villages, as the case may be. The board shall also have the authority to appoint a city attorney and such police force and such other officers

as they may deem necessary, and fix the salary or other compensation to be received by such clerk, and by such officers, and define their duties, and at any time may abolish any office which it creates, and may discharge any officer, clerk or employé which it appoints. [Id.]

Art. 1162. [1074] Bond of officers.—The mayor and each commissioner shall enter into a bond in the sum of three thousand dollars each, conditioned for the faithful performance of the duties of their office; said bond of the officers, first elected hereunder, shall be approved within twenty days after the entry upon the minutes of the city council, or board of aldermen or the commissioners court, as the case may be, by the county judge of the county in which such city or town, or town or village is located, and to be payable to said city or town or town or village for its use and benefit. All subsequent bonds of officers elected hereunder shall be approved by the "Board of Commissioners." [Id.]

Art. 1163. [1075] Commissioners, duties, etc.—The "Board of Commissioners" of all incorporated and unincorporated cities or towns or towns and villages of over five hundred and less than five thousand inhabitants incorporated under or adopting the commission form of government under the provisions of this chapter, shall have all of the authority and powers, and be subject to all of the duties granted and conferred under Chapters 1 to 10 both inclusive of this title, except where same may conflict with some provision of this chapter. In incorporated and unincorporated towns and villages of more than two hundred and not more than five hundred inhabitants, adopting or incorporated under the commission form of government hereunder, the "Board of Commissioners" shall have all authority and powers conferred under Chapter 11 of this title except where the same may be in conflict with some provision contained herein. [Id.; Acts 1921, p. 123.]

Art. 1164. [1076] Meetings and salary.—Said Board shall hold at least one regular monthly meeting and the mayor or two commissioners may call as many special meetings as may be necessary to attend to the municipal business. Each commissioner and said mayor shall receive for their service five dollars per day for each regular meeting, and three dollars per day for each special meeting. The Mayor or any commissioner shall not receive pay for more than five special meetings in any one month. In lieu of such per diem said "Board of Commissioners" of any such town or city with not less than two thousand population may fix a salary to be received by the mayor and commissioners, not to exceed the sum of twelve hundred dollars per year for said mayor and six hundred dollars per year for each commissioner. [Id.]

CHAPTER THIRTEEN

HOME RULE

Art.
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1182. Franchise election.

Article 1165. May change charter.—Cities having more than five thousand inhabitants may, by a majority vote of the qualified voters of said city, at an election held for that purpose, adopt or amend their charters, subject to such limitations as may be prescribed by the Legislature. No charter or any ordinances passed under said charter shall contain any provision inconsistent with the Constitution or general laws of this State; said cities may levy, assess and collect such taxes as may be authorized by law, or by their charters; but no tax for any purpose shall ever be lawful for any one year which shall exceed two and one-half per cent of the taxable property of such city, and no debt shall ever be created by any city unless at the same time provision be made to assess and collect annually a sufficient sum to pay the interest thereon and create a sinking fund of at least two per cent thereon. No city charter shall be altered, amended or repealed oftener than every two years. The governing body of such city may, by two-thirds votes of its members, or upon petition of ten per cent of the qualified voters of said city, shall provide by ordinance for the submission of the question, "shall a commission be chosen to frame a new charter." [Acts 1913, p. 307.]

Art. 1166. Requisites of submission.—The ordinance providing for the submission of such question shall require that it be submitted at the next regular municipal election, if one should be held, not less than thirty nor more than ninety days after the passage of said ordinance; otherwise it shall provide for the submission of the question at a special election to be called and held not less than thirty days nor more than ninety days after the passage of said ordinance and the publication thereof in some newspaper published in said city. The ballot containing such question shall bear no party designation, and provision shall be made thereon for the election from the city at large of a charter commission of not less than fifteen members, nor more than one member for each three thousand inhabitants, provided, that a majority of the qualified voters, voting on said question shall have voted in the affirmative. [Id.]

Art. 1167. Submission of charter.—The charter so framed by said commission shall be submitted to the qualified voters of said city at an election to be held at a time fixed by the charter commission not less than forty nor more than ninety days after the completion of the work of the charter commission; provision for which shall be made by the governing body of the city in so far as not prescribed by the general law. Not less than thirty days prior to such election, the governing body shall cause the city clerk or city secretary to mail a copy of the proposed charter to each qualified voter in said city as appears from the tax collector's rolls for the year ending January 31st, preceding said election. In preparing the charter the commission shall, as far as practicable, segregate each subject so that the voter may vote "Yes" or "No" on the same. [Id.]

Art. 1168. First election.—Where the legislative or governing authority of any city, or where any mass meeting has selected a charter committee or charter commission, or where the mayor of any city has appointed a charter committee which has proceeded with the formation of a charter for said city, the provisions hereof as to the selection of the charter commission shall not apply to the first charter election to be held in said city under the terms of this law.

Art. 1169. Adoption of charter.—If such proposed charter is approved by a majority of the qualified voters, voting at said election, it shall become the charter of said city until amended or repealed. No charter shall be considered adopted until an official order has been entered upon the records of said city by the governing body thereof declaring the same adopted. [Id.]

Art. 1170. Amendments.—When the governing body desires to submit amendments to any existing charter and in the absence of such petition, said body may, on its own motion, and shall upon the petition of at least ten per cent of the qualified voters of said city, submit any proposed amendment or amendments to such charter. The ordinance providing for the submission of any proposed amendment shall make the same provisions for holding the election and publishing notice thereof as provided in the second article

of this chapter. The governing body of said city shall cause the city clerk or city secretary to mail a copy of the proposed amendment or amendments to every qualified voter in said city as appears from the tax collector's rolls for the year ending January 31st, preceding said election. Every amendment submitted must contain only one subject, and in preparing the ballot for such amendment, it shall be done in such manner that the voter may vote "Yes" or "No" on any amendment or amendments without voting "Yes" or "No" on all of said amendments. Each such proposed amendment, if approved by the majority of the qualified voters voting at said election, shall become a part of the charter of said city. No amendment shall be considered adopted until an official order has been entered upon the records of said city by the governing body thereof declaring the same adopted. [Id.]

Art. 1171. Notice of intention.—No ordinance shall be passed submitting an amendment or amendments until twenty days' notice has been given of such intention by publication for ten days in some newspaper published in said city. By "twenty days" is meant from the first date said notice is published. [Id.]

Art. 1172. Other issues.—Nothing in this chapter shall prevent the qualified voters of any city of over five thousand inhabitants from adopting any charter or amendment thereto, and at the same time electing officers under such charter or amendment. [Id.]

Art. 1173. Certification.—Upon the adoption of any such charter or amendment to any existing charter as provided herein, the mayor or chief executive officer exercising like or similar powers, of any such city, as soon as practicable, after the adoption of any such charter or amendment, shall certify to the Secretary of State an authenticated copy under the seal of the city, showing the approval by the qualified voters of any such charter or amendment, and the Secretary of State shall thereupon file and record the same in a separate book to be kept in his office for such purpose. [Id.]

Art. 1174. Registration.—The city secretary of any such city or officer exercising like or similar powers, upon the adoption and approval of any such charter or any amendment thereof by the qualified voters as herein provided, shall record at length upon the records of the city, in a separate book to be kept in his office for such purpose, any such charter, or amendment so adopted. When such charter or any amendment thereof shall be so recorded, it shall be deemed a public act and all courts shall take judicial notice of same and no proof shall be required of same. All cities may institute and prosecute suits without giving security for cost and may appeal from judgment without giving supersedeas or cost bond. [Id.]

Art. 1174a. Validating charter or charter amendments.—That each charter, and amendment to a charter adopted by any city of more than five thousand inhabitants in this State, or where such city has amended or attempted to amend or adopt such charter, since the enactment of Chapter 147, Acts of the Regular Session of the Thirty-third Legislature of the State of Texas, 1913, and all proceedings had with reference thereto, are hereby validated, and are hereby declared to be in full force and effect, the same as if adopted in strict compliance with all the requirements of said Chapter 147, Acts of the Thirty-third Legislature, and this Act shall take effect and be in force from and after its passage. [Inserted by Compiler from Acts 1925, 39th Leg., ch. 50, p. 187, § 1.]

Art. 1175. Enumerated powers.—Cities adopting the charter or amendment hereunder shall have full power of local self-government, and among the other powers that may be exercised by any such city the following are hereby enumerated for greater certainty:

1. The creation of a commission, aldermanic or other form of government; the creation of offices, the manner and mode of selecting officers and prescribing their qualifications, duties, compensation and tenure of office.

2. The power to fix the boundary limits of said city, to provide for the extension of said boundary limits and the annexation of additional territory lying adjacent to said city, according to such rules as may be provided by said charter.

3. To hold by gift, deed, devise or otherwise any character of property, including any charitable or trust fund; to plead and be impleaded in all courts, and to act in perpetual succession as a body politic.

4. To provide that no public property or any other character of property owned or held by said city shall be subject to any execution of any kind or nature.

5. To provide that no fund of the city shall be subject to garnishment, and the city shall never be required to answer in any garnishment proceedings.

6. To provide for the exemption from liability on account of any claim for any damages to any person or property, or to fix such rules and regulations governing the city's liability as may be deemed advisable.

7. To provide for the levying of any general or special ad valorem tax for any purpose not inconsistent with the Constitution of this State.

8. To provide for the mode and method of assessing taxes, both real and personal, against any person and corporation, including the right to assess the franchise of any public corporation using and occupying the public streets or grounds of the city, separately from the tangible property of such corporation.

9. To provide for the collection of all taxes, including the right to impose penalties for delinquent taxes.

10. The power to control and manage the finances of any such city; to prescribe its fiscal year and fiscal arrangements; the power to issue bonds upon the credit of the city for the purpose of making permanent public improvements or for other public purposes in the amount and to the extent provided by such charter, and consistent with the Constitution of this State; provided, that said bonds shall have first been authorized by a majority vote by the duly qualified property tax-paying voters voting at an election held for that purpose. Thereafter all such bonds shall be submitted to the Attorney General for his approval, and the Comptroller for registration, as provided by law, provided that any such bonds after approval, may be issued by the city, either optional or serial or otherwise as may be deemed advisable by the governing authority. Whenever any city has heretofore been authorized, under any special charter, creating such city, to issue any bonds by the terms of such charter, the provisions of this chapter shall not be construed to interfere with the issuance of any such bonds under the provisions of any charter under which such bonds were authorized.

11. To have the exclusive right to own, erect, maintain and operate water works and water works system for the use of any city, and its inhabitants, to regulate the same and have power to prescribe rates for water furnished and to acquire by purchase, donation or otherwise, suitable grounds within and without the limits of the city on which to erect any such works and the necessary right of way, and to do and perform whatsoever may be necessary to operate and maintain the said water works or water works system and to compel the owners of all property and the agents of such owners or persons in control thereof to pay all charges for water furnished upon such property and to fix a lien upon such property for any such charges. To provide that all receipts from the water works may, in its discretion, constitute a separate or sacred fund which shall be used for no other purpose than the extension, improvement, operation, maintenance, repair and betterment of said water works system or water works supply, and to provide for the pledging of any such receipts and revenues for the purpose of making any of such improvements, and the payment of the principal and providing an interest and sinking fund for any bonds issued therefor under such regulations as may be provided by the charter adopted by such city.

12. To prohibit the use of any street, alley, highway

or grounds of the city by any telegraph, telephone, electric light, street railway, interurban railway, steam railway, gas company, or any other character of public utility without first obtaining the consent of the governing authorities expressed by ordinance and upon paying such compensation as may be prescribed and upon such condition as may be provided by any such ordinance. To determine, fix and regulate the charges, fares or rates of any person, firm or corporation enjoying or that may enjoy the franchise or exercising any other public privilege in said city and to prescribe the kind of service to be furnished by such person, firm or corporation, and the manner in which it shall be rendered, and from time to time alter or change such rules, regulations and compensation; provided that in adopting such regulations and in fixing or changing such compensation, or determining the reasonableness thereof, no stock or bonds authorized or issued by any corporation enjoying the franchise shall be considered unless [on] proof that the same have been actually issued by the corporation for money paid and used for the development of the corporate property, labor done or property actually received in accordance with the laws and Constitution of this State applicable thereto. In order to ascertain all facts necessary for a proper understanding of what is or should be a reasonable rate or regulation, the governing authority shall have full power to inspect the books and compel the attendance of witnesses for such purpose.

13. To buy, own, construct within or without the city limits and to maintain and operate a system or systems, of gas, or electric lighting plant, telephone, street railways, sewerage plants, fertilizing plants, abattoir, municipal railway terminals, docks, wharfs, ferries, ferry landings, loading and unloading devices and shipping facilities, or any other public service or public utility, and to demand and receive compensation for service furnished for private purpose or otherwise, and to exercise the right of eminent domain as hereinafter provided for the appropriation of lands, rights of way or anything whatsoever that may be proper and necessary to efficiently carry out said objects. Any city shall have the power to condemn the property of any person, firm or corporation now conducting any such business and for the purpose of operating and maintaining any such public utilities and for the purpose of distributing such service throughout the city or any portion thereof; provided that any city may adopt by its charter any such rules and regulations as it may deem advisable for the acquiring and operation of any such public utilities.

14. To manufacture its own electricity, gas, or anything else that may be needed or used by the public; to purchase and make contracts with any person or corporation for the purchasing of gas, electricity, oil or any other commodity or article used by the public and to sell the same to the public upon such terms as may be provided by the charter.

15. To have the power to appropriate private property for public purposes whenever the governing authorities shall deem it necessary; to take any private property within or without the city limits for any of the following purposes; city halls, police stations, jails, calaboose, fire stations, libraries, school houses, high school buildings, academies, hospitals, sanitariums, auditoriums, market houses, reformatories, abattoirs, railroad terminals, docks, wharves, warehouses, ferries, ferry landings, elevators, loading and unloading devices, shipping facilities, piers, streets, alleys, parks, highways, boulevards, speedways, playgrounds, sewer systems, storm sewers, sewerage disposal plants, drains, filtering beds and emptying grounds for sewer systems, reservoirs, water sheds, water supply sources, wells, water and electric light systems, gas plants, cemeteries, crematories, prison farms, and to acquire lands within and without the city for any other municipal purposes that may be deemed advisable. The power herein granted for the purpose of acquiring private property shall include the power of the improvement and enlargement of the water works, including water supply, riparian rights, stand pipes, water sheds, the construction of supply reservoirs, parks, squares and pleasure grounds, public wharves, and landing places for steamers and other crafts, and for the purpose of straightening or improving the channels of any stream, branch or drain, or the straightening, widening or extension of any street, alley, avenue or boulevard. The power of eminent domain hereby conferred shall include the right of the governing authority, when so expressed, to take the fee in the lands so condemned and such power and authority shall include the right to condemn public property for such purposes.

16. To have exclusive dominion, control, and jurisdiction in, over and under the public streets, avenues, alleys, highways and boulevards, and public grounds of such city and to provide for the improvement of any public street, alleys, highways, avenues or boulevards by paving, raising, grading, filling or otherwise improving the same and to charge the cost of making such improvement against the abutting property, by fixing a lien against the same, and a personal charge against the owner thereof according to an assessment specially levied therefor in an amount not to exceed the special benefit any such property received in enhanced value by reason of making such improvement, and to provide for the issuance of assignable certificates covering the payments for said cost, provided that the charter shall apportion the cost to be paid by the property owners and the amount to be paid by the city, and provided further, that all street railways, steam railways, or other railways, shall pay the cost of improving the said street between the rails and tracks of any such railway companies and for two feet on each side thereof. The city shall have the power to provide for the construction and building of sidewalks and charge the entire cost of constructing of said sidewalks, including the curb, against the owner of abutting property, and to make a special charge against the owner for such cost and to provide by special assessment a lien against such property for such cost; to have the power to provide for the improvement of any such sidewalk or the construction of any such curb by penal ordinance and to declare defective sidewalks to be a public nuisance. The power herein granted for making street improvements and assessing the cost by special assessment in the manner herein stated shall not be construed to prevent any city from adopting any other method or plan for the improvement of its streets, sidewalks, alleys, curbs, or boulevards, as it may deem advisable by its charter.

17. To open, extend, straighten, widen any public street, alley, avenue or boulevard and for such purpose to acquire the necessary lands and to appropriate the same under the power of eminent domain and to provide that the cost of improving any such street, alley, avenue or boulevard by opening, extending and widening the same shall be paid by the owners of property specially benefited whose property lies in the territory of such improvement and to provide that the cost shall be charged by special assessment and that a personal charge shall be made against any owner for the amount due by him and to provide for the appointment by the county judge or other officer exercising like or similar powers, of three special commissioners for the purpose of condemning the said lands and for the purpose of apportioning the said cost, which apportionment of said cost shall be specially assessed by the governing authorities against the owners and the property of the owners lying in the territory so found to be specially benefited in enhanced value by said special commissioners. The city shall pay such portion of such cost as may be determined by the said special commissioners, provided the same shall never exceed one third the cost, and the property owners and their property shall be liable for the balance of the same as may be apportioned by said commissioners. The city may issue assignable certificates for the payment of any such cost against such property owners and may provide for the payment of any such cost in deferred payments, to bear interest at such rate as may be prescribed by the charter not to exceed eight per cent. The city may adopt any

other method for the opening, straightening, widening or extending of its streets as herein provided for as may be deemed advisable, and charge the cost of same against the property and the owner specially benefited in enhanced value and lying in the territory of said improvement, that its charter may provide. The authority to adopt any other method shall include the manner of appointing commissioners, the manner of giving notice and the manner of fixing assessments or providing for the payment of any such improvement.

18. To control, regulate and remove all obstructions or other encroachments or encumbrances on any public street, alley or ground, and to narrow, alter, widen or straighten any such streets, alleys, avenues or boulevards, and to vacate and abandon and close any such streets, alleys, avenues or boulevards, and to regulate and control the moving of buildings or other structures over and upon the streets or avenues of such city.

19. Each city shall have the power to define all nuisances and prohibit the same within the city and outside the city limits for a distance of five thousand feet; to have power to police all parks or grounds, speedways, or boulevards owned by said city and lying outside of said city; to prohibit the pollution of any stream, drain or tributaries thereof, which may constitute the source of water supply of any city and to provide for policing the same as well as to provide for the protection of any water sheds and the policing of same; to inspect dairies, slaughter pens and slaughter houses inside or outside the limits of the city, from which meat or milk is furnished to the inhabitants of the city.

20. To license, operate and control the operation of all character of vehicles using the public streets, including motorcycles, automobiles or like vehicles, and to prescribe the speed of the same, the qualification of the operator of the same, and the lighting of the same by night and to provide for the giving bond or other security for the operation of the same.

21. To regulate, license and fix the charges or fares made by any person owning, operating or controlling any vehicle of any character used for the carrying of passengers for hire or the transportation of freight for hire on the public streets and alleys of the city.

22. To regulate the location and control the conduct of theaters, moving picture shows, ten pin alleys, vaudeville shows, and all places of public amusements.

23. To license any lawful business, occupation or calling that is susceptible to the control of the police power.

24. To license, regulate, control or prohibit the erection of signs or bill boards as may be provided by charter or ordinance.

25. To provide for the establishment and designation of fire limits and to prescribe the kind and character of buildings or structures or improvements to be erected therein, and to provide for the erection of fire proof buildings within certain limits, and to provide for the condemnation of dangerous structures or buildings or dilapidated buildings or buildings calculated to increase the fire hazard, and the manner of their removal or destruction.

26. To divide the city in zones or districts, and to regulate the location, size, height, bulk and use of buildings within such zones or districts, and to establish building lines within such zones or districts or otherwise, and make different regulations for different districts and thereafter alter the same. The governing authorities may be authorized by their charter to create a commission or board for the purpose of carrying out the powers of this section, or may provide for the creation of a board of appeals or review for the purpose of hearing and deciding on appeals from and reviewing any order, requirement, decision or determination of the governing authorities in carrying out the powers and authority herein conferred; provided the authority and power herein conferred shall never be construed to be a limitation of any other power and authority conferred in this chapter.

27. To provide for police and fire departments.

28. To provide for a health department and the establishment of rules and regulations protecting the health of the city and the establishment of quarantine stations, and pest houses, emergency hospitals and hospitals, and to provide for the adoption of necessary quarantine laws to protect the inhabitants against contagious or infectious diseases.

29. To provide for a sanitary sewer system and to require property owners to make connections with such sewers with their premises and to provide for fixing a lien against any property owner's premises who fails or refuses to make sanitary sewer connections and to charge the cost against said owner and make it a personal liability. To provide for fixing penalties for a failure to make sanitary sewer connections.

30. The power to require water works corporations, gas companies, street car companies, telephone companies, telegraph companies, electric light companies or other companies or individuals enjoying a franchise now or hereafter from the city, to make and furnish extensions of their service to such territory as may be required by the charter.

31. Provided that in all cities of over twenty-five thousand inhabitants, the governing body of such city, when the public service of such city may require the same, shall have the right and power to compel any street railway or other public utility corporation to extend its lines of service into any section of said city not to exceed two miles, all told, in any one year.

32. To provide for the establishment of public schools and public school system in any such city, and to have exclusive control over same and to provide such regulations and rules governing the management of same as may be deemed advisable; to levy and collect the necessary taxes, general or special, for the support of such public schools and public school system.

33. Whenever any city may determine to acquire any public utility using and occupying its streets, alleys, and avenues as hereinbefore provided, and it shall be necessary to condemn the said public utility, the city may obtain funds for the purpose of acquiring the said public utility and paying the compensation therefor, by issuing bonds, notes or other evidence of indebtedness and shall secure the same by fixing a lien upon the said properties constituting the said public utility so acquired by condemnation or purchase or otherwise; said security shall apply alone to said properties so pledged; and such further regulations may be provided by any charter for the proper financing or raising the revenue necessary for obtaining any public utilities and providing for the fixing of said security.

34. To enforce all ordinances necessary to protect health, life and property, and to prevent and summarily abate and remove all nuisances and to preserve and enforce the good government, order and security of the city and its inhabitants. [Id.; Acts 1921, p. 169.]

Art. 1176. Further powers.—The enumeration of powers hereinabove made shall never be construed to preclude, by implication or otherwise, any such city from exercising the powers incident to the enjoyment of local self-government, provided that such powers shall not be inhibited by the State Constitution. [Id.]

Art. 1177. Former powers.—All powers heretofore granted any city by general law or special charter are hereby preserved to each of said cities, and the power so conferred upon such cities, either by special or general law, is hereby granted to such cities when embraced in and made a part of the charter adopted by such city; and until the charter of such city as the same now exists is amended and adopted, it shall be and remain in full force and effect. [Id.]

Art. 1178. Vested rights.—The adoption of any charter hereunder or any amendment thereof shall never be construed to destroy any property, action, rights of action, claims, and demands of any nature or kind whatever vested in the city under and by virtue of any charter theretofore existing or otherwise ac-

cruing to the city, but all such rights of action, claims or demands shall vest in and inure to the city and to any persons asserting any such claims against the city as fully as though the said charter or amendment had not been adopted hereunder. The adoption of any charter or amendment hereunder shall never be construed to affect the right of the city to collect by special assessment any special assessment heretofore levied under any law or special charter for the purpose of paving or improving any street, highway, avenue or boulevard of any city, or for the purpose of opening, extending, widening, straightening or otherwise improving the same, nor affect any right of any contract or obligation existing between the city and any person, firm or corporation for the making of any such improvements. For the purpose of collecting any such special assessment and carrying out of any such contract, the provisions of all charters shall be continued in force. [Id.]

Art. 1179. Improvement districts.—Such city shall have the power to create and establish improvement districts, to levy, straighten, widen, enclose or otherwise improve any river, creek, bayou, stream or other body of water or streets or alleys, and to drain, grade, fill and otherwise protect and improve the territory within its limits, and shall have power to issue bonds for making such improvements, such improvement districts to be created and established agreeably to the general laws of this State providing for the creation of such improvement districts, and the issuance of such bonds shall be governed by the powers a city possesses in the matter of issuing bonds. [Id.]

Art. 1180. Private improvements.—Such city shall further have the power to straighten, widen, levy, enclose, or otherwise improve any river, creek, bayou, stream, or other body of water, or streets or alleys and to drain, grade, fill and otherwise protect and improve the territory within its limits and to provide that the cost of making any such improvements shall be paid for by the property owners owning property in the territory specially benefited in enhanced value by reason of making such improvements, and a personal charge shall be made against such owners as well as a lien shall be fixed by special assessment against any such property, and the city may issue assignable certificates or negotiable certificates, as it deems advisable, covering such cost, and may provide for the payment of such cost in deferred payments and fix the rate of interest not to exceed eight per cent, and may provide for the appointment of special commissioners or otherwise for the making or levying of said special assessment, or may provide that the same shall be done by the governing authorities, and that such rules and regulations may be adopted for a hearing and other proceedings had as may be provided by said charter. [Id.]

Art. 1181. Franchises.—No charter or any amendment thereof framed or adopted under this charter, shall ever grant to any person, firm or corporation any right or franchise to use or occupy the public streets, avenues, alleys or grounds of any such city, but the governing authority of any such city shall have the exclusive power and authority to make any such grant of any such franchise or right to use and occupy the public streets, avenues, alleys, and grounds of the city. If, at any time, before any ordinance granting a franchise takes effect, a petition shall be submitted to the governing authority signed by five hundred of the bona fide qualified voters of the city, then the governing body shall submit the question of granting such franchise to a vote of the qualified voters of the city, at the next succeeding general election. [Id.]

Art. 1182. Franchise election.—Such election shall occur within twelve months from the date such ordinance takes effect. If such election shall not occur within the said twelve months, then such ordinance may be submitted, if petitioned therefor as before provided, at a special election to be called by the governing body therefor. Whenever said ordinance is submitted at any election, notice thereof shall be published at least twenty days successively in a daily newspaper in said city prior to the holding of said election. The ballot used at said election shall briefly describe the franchise to be voted on and the terms thereof and shall contain the words "For the granting of a franchise" and "Against the granting of a franchise." If a majority of those voting at said election shall vote in favor of granting a franchise, the governing body upon canvassing the returns shall so declare and said franchise shall take effect in accordance with its terms. No franchise shall extend beyond the period fixed for its termination. [Id.]

CHAPTER FOURTEEN

CITIES ON NAVIGABLE STREAMS

Art.
1183. Extension of limits.
1184. Powers.
1185. Status of territory.
1186. Regulation.
1187. Restrictions.

Article 1183. Extension of limits.—The city council of all cities situated along or upon navigable streams in this State, and acting under special charters, may extend the limits of said city for the limited purposes named in the four succeeding articles, so as to include in said city the said navigable streams and the land lying on both sides thereof for a distance of twenty-five hundred feet from the thread of said stream to a distance of twenty miles or less in an air line from the ordinary boundaries of said city, either above or below the boundaries of said city, or both, by the passage of an ordinance extending the boundaries of said city to include the territory aforesaid, being a strip five thousand feet wide, and twenty miles, more or less, in length, or so much thereof as the city council may consider advisable to add to the limits of said city. [Acts 1913, p. 47.]

Art. 1184. Powers.—The city council of said city shall have the right, power and authority to secure land within the territory so added to said city by purchase, condemnation or gift, for the improvement of the navigation of said navigable streams or waters either by the United States or by said city, or by any navigation or other improvement district, and for the purpose of establishing and maintaining wharves, docks, railway terminals, side tracks, warehouses or any other facilities or aids whatsoever to either navigation or wharves. In all condemnation proceedings under this law the same procedure shall apply that now applies in condemnation of land by cities for the purchase of streets. [Id.]

Art. 1185. Status of territory.—For the purposes specified, the corporate limits of said cities shall, upon passage of said ordinance, be extended from the existing limits so as to include all the land added to said city by said ordinance. Such city shall have no right to tax the property over which such boundaries are extended, unless such property is within the line and within the limits of the general city boundaries or limits. [Id.]

Art. 1186. Regulation.—After the passage of the ordinance adding said territory to said city, said city shall have and exercise the fullest and most complete power of regulation of navigation and of wharfage and of wharfage rates and of all facilities, conveniences and aids to wharfage or navigation consistent with the Constitution of this State, and shall further have authority by criminal ordinances or otherwise, to police the navigation of said waters and the use of said wharves and facilities and aids to wharfage and navigation. [Id.]

Art. 1187. Restrictions.—The power granted in the four preceding articles shall not authorize the extension of the territory of any city for the limited purposes named so as to include any land which is already part of any other city or town corporation whether incorporated under the general laws or under special

law, or any land at the time belonging to any other city or town. [Id.]

CHAPTER FIFTEEN

CONSOLIDATION OF CITIES

Art.
1188. Authority.
1189. Petition.
1190. Election.
1191. "Consolidation."
1192. Registration.
1193. Merger.

Article 1188. Authority.—When two or more cities in this State over five thousand in population, adjoining and contiguous to each other in the same county, shall be desirous of being consolidated, it shall be lawful for them to adopt or amend their respective charters so as to consolidate under one government and take the name of the larger city, in the manner and subject to the provisions hereinafter prescribed. [Acts 1917, p. 71.]

Art. 1189. Petition.—Whenever as many as one hundred qualified voters of each of said cities shall petition the governing body of their respective cities to order an election for the purpose of voting on the consolidation of such cities into one city, said bodies may, at their next regular meeting order an election to be held at the usual voting places in the cities, on the same day, not less than thirty days after such order is made. If said petitions be signed respectively, however, by qualified electors equal to fifteen per cent of the total vote cast at the last preceding general election for city officials in each of said cities, next preceding the filing of said petitions, the respective governing bodies shall, within ten days after the receipt thereof, order an election to be held. [Id.]

Art. 1190. Election.—The governing body of each of said cities shall appoint from among the qualified voters of their respective cities, judges and clerks of said elections, and such elections shall be conducted under the ordinances of said cities, and in conformity with the general laws of this State. All persons voting at such election in favor of consolidation shall have written or printed on their ballots the words "For Consolidation," and all persons voting at such election not in favor of consolidation shall have written or printed on their ballots the words, "Against Consolidation." [Id.]

Art. 1191. "Consolidation."—The term "consolidation," as used in this chapter, means the adoption by the smaller cities of the charter and name of the larger of said cities, and the amendment of the charter of the larger cities so as to include in its boundaries the territory of the smaller city or cities so consolidated with it. [Id.]

Art. 1192. Registration.—If a majority of the qualified voters at said election in each of said cities shall vote in favor of consolidation, the mayor or chief executive officer exercising like or similar powers of each of said cities as soon as practicable after the returns of said election have been made, shall certify to the Secretary of State an authenticated copy under the seal of the said cities showing the approval of the qualified voters of the consolidation of the two cities. The Secretary of State shall thereupon file and record the same in a separate book to be kept in his office for such purpose. The returns of such election shall be recorded at length in the record books of the respective cities, and the consolidation of such cities shall be held thereupon to be consummated. [Id.]

Art. 1193. Merger.—After the consummation of such consolidation, all record books, public property, money on hand, credits, accounts and all other assets of the smaller of the annexed cities shall be turned over to the officers of the larger city, who shall be retained in office as the officials of the consolidated city during the remainder of their respective terms, and by such consolidation the offices existing in the smaller municipality shall be abolished and declared vacant, and the persons holding such offices shall not be entitled after the consummation of such consolidation, to further remuneration or compensation. All outstanding liabilities of the two cities so consolidated shall be assumed by the consolidated city. Whenever at the time of any such consolidation the respective cities shall have on hand any bond funds voted for public improvements not already appropriated or contracted for, such money shall be kept in a separate fund and devoted to public improvements in the territory for which such bonds were voted, and shall not be diverted to any other purpose. [Id.]

CHAPTER SIXTEEN

CORPORATION COURT

Art.
1194. Creation of court.
1195. Jurisdiction.
1196. Judge or recorder.
1197. Judge in other cities.
1198. Term of office.
1199. Vacancy.
1200. Clerk.

Article 1194. [903] Creation of court.—There is hereby created and established in each of the incorporated cities, towns, and villages of this State, a court to be known as the "Corporation Court." [Acts 1899, p. 40.]

Art. 1195. [904] Jurisdiction.—A corporation court shall have jurisdiction within the territorial limits of the city, town or village, in all criminal cases arising under the ordinances of the said city, town or village, and shall also have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such territorial limits. [Id.]

Art. 1196. [905] Judge or recorder.—Such court shall be presided over by a judge to be known as the "recorder" who, in cities, towns or villages incorporated under special charter shall be selected under the provisions of the charter concerning the election or appointment of the judge to preside over the municipal court. All such provisions are hereby made applicable to the recorder herein provided for. [Id.]

Art. 1197. [905] Judge in other cities.—In cities, towns and villages, not incorporated under special charter, the mayor shall be ex-officio recorder of the "corporation court," unless the governing body shall by ordinance authorize the election of a recorder, in which case a recorder shall be elected in the same manner and for the same time as the mayor is elected. [Id.]

Art. 1198. [906] Term of office.—Wherever in any such city, town or village, the office of the presiding magistrate of the municipal court therein shall not have expired when the recorder is elected, the recorder first elected shall hold his term of office corresponding to the unexpired term of said magistrate; and every two years thereafter such recorder shall be elected for a term of two years. [Id.]

Art. 1199. [906] Vacancy.—A vacancy in the office of recorder or clerk of the court in any city, town or village, shall be filled by the governing body for the unexpired term only. [Id.]

Art. 1200. [907] Clerk.—A clerk for said corporation court shall be elected by the governing body of each such city, town or village, at the same time at which the recorder is elected; but it may be provided by ordinance that the city secretary shall be ex-officio clerk of the said court, who may be authorized to appoint a deputy with the same power as the secretary. Such clerk shall hold his office for two years. In case of ex-officio clerk, he shall hold his office during his term as city secretary. The clerk shall keep minutes of the proceedings of the said court, issue all process, and generally perform all the duties of the clerk of a court as prescribed by law for a county clerk in so far as the same may be applicable. [Id.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

CHAPTER SEVENTEEN

CONDEMNATION FOR HIGHWAYS

Art.
1201. Cities empowered.
1202. Powers.
1203. Further powers.
1204. Resolution.
1205. Survey.
1206. Condemnation commission.
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1208. Errors.
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1211. Notice of assessment.
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1215. Certificates.
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1217. Reassessments.
1218. Deficiency assessments.
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1220. Enforcement of law.

Article 1201. Cities empowered.—Cities having more than one thousand inhabitants under the preceding Federal census may proceed in accordance with the provisions hereof, independently of and without reference to any other applicable law or charter provision, present or future, which, however, shall remain in force as alternative methods. The term "city" or "cities" used herein shall include all incorporated towns and cities acting hereunder. [Acts 1923, p. 4.]

Art. 1202. Powers.—Subject to the terms hereof, the governing body of a city may lay out, open, establish, widen, straighten, or extend any highway within its limits, and purchase, condemn, and take property therefor. The cost of property purchased, taken or damaged, and costs of condemnation and making assessments hereinafter referred to, and of the enforcement, collection, sale or realization into money of assessments or certificates, together with all other costs of making such improvements, may be paid wholly from any fund of the city available therefor, or wholly from the fund created by said assessments, or partly from each of said funds. The governing body shall have power to assess part or all of such costs against the owners of property abutting or in the vicinity of such improvements specially benefited thereby, and against said property, and to collect, enforce, sell or realize said assessments into money. The term "highway" shall include any street, avenue, boulevard, alley, public place or square, dedicated or to be dedicated to public use. [Id.]

Art. 1203. Further powers.—Cities may purchase by agreement with the owner any property, all or part of which in the opinion of the governing body is necessary for the making of improvements under the terms hereof, and pay for same out of any fund available. Cities may sell and convey any part of such property not appropriated to such improvement on such terms and for such consideration as they may see fit, and the proceeds shall become a part of a special fund out of which the cost of improvements provided for herein may be defrayed and shall be used for no other purpose, but only the cost of property actually appropriated to such improvement shall be included in any assessment made under the provisions hereof. [Id.]

Art. 1204. Resolution.—When the governing body shall determine to proceed hereunder it shall so declare by resolution which may state the nature and extent of the improvement to be made and the limits thereof, and may describe the parcel or parcels of land proposed to be taken or condemned by any description substantially identifying the same, or by lot or block number, or number of front feet, or by the name of the owner, or if owned by an estate, the name thereof. No mistake or omission of said resolution shall invalidate it, and its passage shall be conclusive of the public use and necessity of the proposed improvement. [Id.]

Art. 1205. Survey.—Upon passage of such resolution, the city engineer or engineer designated by the governing body shall prepare and submit to said body a plat showing the nature and limits of the proposed investments [improvements], the boundaries thereof, and the points between which it is proposed to establish the same, and the property through which it is to be extended, which is to be taken or condemned therefor, and shall in writing report the estimated total cost of said improvement, and of each parcel of property to be condemned or acquired. The governing body shall examine said plat and report and correct errors therein, if any, but no error or omission shall invalidate the same, or any proceeding had thereafter pursuant thereto. [Id.]

Art. 1206. Condemnation commission.—No property shall be taken without just compensation first made to the owner. If the amount of the compensation can not be agreed upon, the city may condemn said property under the rules governing procedure as provided by law under the title of "Eminent Domain." [Id.]

Art. 1207. Statutes applicable.—The applicable provisions of the laws relating to eminent domain are made a part of this law, and shall apply to proceedings hereunder, and all parties shall proceed in accordance with and be governed by said articles, unless otherwise herein provided. The city shall not be required to execute the bond referred to in said laws. [Id.]

Art. 1208. Errors.—The governing body, said commission and judge before whom condemnation proceedings are pending, shall take all steps and do all things proper to correct any error, invalidity or irregularity in any proceeding with reference thereto, and shall do so at the instance of any interested party. No error or omission in said proceedings shall invalidate the same, but any proceeding may be corrected, taken again, or adjourned, until such corrections are made or omissions supplied. [Id.]

Art. 1209. Assessments.—Whenever the governing body shall order the making of any improvement herein referred to, it may then or thereafter at any time provide by resolution that all or part of the costs thereof, as defined in the third article of this chapter, shall be assessed against said property abutting said proposed improvement, or in the vicinity thereof, and the owners thereof specially benefited thereby, together with reasonable attorney's fees and all costs incurred in the collection of said assessments, and shall have power to apportion the same among the owners of said property, and may designate the property proposed to be assessed, or the district within which property will be benefited and within which assessments may be made, provided no assessment shall be made against any property, or its owner, in excess of the special benefits thereto in the enhanced value thereof from said improvement. No assessments shall be made against any property exempt from execution, but the owner shall be personally liable and assessed therefor. [Id.]

Art. 1210. Lien.—Assessments shall constitute a prior lien upon the property to all others, except ad valorem taxes, and shall relate back and take effect as of the date of the resolution ordering the same. [Id.]

Art. 1211. Notice of assessment.—No assessment shall be made against owners of property benefited, or their property, until after a reasonable opportunity to be heard shall have been given them, lienholders, and others interested, before such governing body, or the commission hereafter referred to, preceded by a reasonable notice thereof, published three times prior to said hearing in some newspaper of general circulation in the city, the first publication to be not less than ten days prior to said hearing, and the names of owners, lienholders, and others interested need not be specifically set out in said notice, but the parcel or parcels of land proposed to be assessed shall be briefly described in said notice, either by lot and block, number, front feet, or by any other description reasonably identifying the same, or by reference to any plat, report or record filed in connection with said proceedings. The governing body or commission shall have power to give other and additional

notice, but said published notice shall be sufficient. [Id.]

Art. 1212. Hearing.—At said hearing said owners, lienholders, and other interested parties shall have the right to contest in writing said assessments, the special benefits, irregularities or invalidities thereof, or any prerequisite thereto, and to produce testimony in support of said contests, and the governing body or said commission shall determine the amounts, if any, to be assessed. [Id.]

Art. 1213. Assessments levied.—The governing body shall make assessments by ordinance. Said assessments may be enforced by suit brought by the city for the benefit of any holder and owner of such assessments, or of the certificates issued thereon, or brought by such holder and owner; or by the sale of the property assessed in the same manner as near as possible as is provided for the sale of real estate for municipal taxes. Assessments may be made payable in not exceeding sixteen installments, the last maturing in not over fifteen years, and may bear interest at not over eight per cent per annum. [Id.; Acts 1927, 40th Leg., p. 334, ch. 227, § 1.]

Art. 1214. Assessment commission.—At the time of or after the passage by the governing body of the resolution ordering such assessments, it shall have power in its discretion to declare that said hearing to property owners and other interested parties shall be had before the commissioners then or thereafter appointed to make condemnations, or before their successors are appointed should a vacancy occur, and thereupon such commission shall cause to be given the notice or notices provided in the third preceding article, and it shall have all the powers conferred by this law upon such governing body, and shall do all things with reference to said assessments which said governing body is hereby empowered to do, except as herein expressly provided. If said hearing shall be before said commission, it shall report in writing its findings to the governing body, which shall examine said report, and, if found correct, approve the same, and shall by ordinance assess against the owners and their property found to be benefited by said improvements, the amounts found to be properly chargeable against them. [Id.]

Art. 1215. Certificates.—The city may issue assignable certificates, payable to the city, or to the purchaser thereof, declaring the liability of owners and their property for the payment of assessments, and may fix the terms, time of payment, the conditions of default, and maturity thereof. [Id.]

Art. 1216. Suit on certificate.—The allegations of such recitals of such certificates in any suit brought for the enforcement thereof, shall be a sufficient allegation of all proceedings had by said governing body with reference to the making of said improvements and the assessment of the cost thereof, and of all prerequisites to the said assessment, and shall be deemed sufficient to permit proof of said proceedings and prerequisites without the necessity of alleging and setting forth the same in the pleadings, by caption, substantially or in full. [Id.]

Art. 1217. Reassessments.—No error in any proceeding hereunder, or in the description of property, or in the name of the owner, shall invalidate an assessment, which shall nevertheless be in effect as against the real and true owner and his property. Whenever the governing body is advised of such error it shall correct the same, and shall at the request of any interested party reassess any owner or property erroneously assessed, after lawful notice and hearing and in accordance with benefits as herein provided as to original assessments, and may fix the time and terms of payment of said sums so reassessed, and issue assignable certificates evidencing the same as herein provided as to original assessments. The right to make said reassessments shall continue until the expiration of six years from the date of the ordinance making the original assessment. But if the same shall have been resisted or brought in question in any action at law, the time consumed in said action shall be excluded in computing said term of six years. In making such reassessments it shall not be necessary to do any act, or take any step, or again perform any prerequisite already legally done or performed with reference to the original assessment, but the governing body may in its discretion proceed without again taking steps already validly taken or performed provided no reassessment shall be made until after the notice and hearing and in accordance with benefits, as herein provided. [Id.]

Art. 1218. Deficiency assessments.—If after any assessment has been made hereunder, if by means of an increased award of compensation for property taken or damaged in condemnation proceedings hereunder, or on appeal from the award of said commission, or for any other reason, the amount assessed and apportioned between the property owners benefited shall be found insufficient to defray all the costs of the improvement as herein defined, the governing body may, in its discretion, assess the deficiency against owners of property benefited, and their property, and apportion same among them, after the hearing and notice herein provided and after complying with each provision hereof applicable to original assessments; or said deficiency assessments may be made after notice and hearing before said commission in the manner provided in the fourth preceding article and assignable certificates evidencing said assessment may be issued by the city. [Id.]

Art. 1219. Suit.—Any property owner against whom or whose property an assessment or reassessment has been made, may, within ten days thereafter bring suit to set aside or correct the same, or any proceeding with reference thereto on account of any error or invalidity therein, but thereafter such owner, his heirs, assigns, or successors shall be barred from such action or any defense of invalidity in such proceedings or assessment or reassessment, in any action in which the same may be brought into question. [Id.]

Art. 1220. Enforcement of law.—The governing body shall have power to pass any ordinance or resolution, or to adopt rules and regulations, or to take any steps proper to give full legal effect to every part of this chapter. No assessment or reassessment shall be affected or invalidated in any manner by any error, omission or invalidity in any proceeding of the city hereunder with reference to the making of any improvement herein provided for, or with reference to the taking or condemnation of any property therefor, or with reference to determining and paying damages for property taken or damaged, but regardless thereof, and regardless of the fact that at the date of said assessments said improvements may not have been completed, the said assessments shall be in all things valid and binding. [Id.]

CHAPTER EIGHTEEN

ARTIFICIAL LIGHTING SYSTEM

Art.
1221. May install.
1222. Petition.
1223. Plans.
1224. Resolution.
1225. Specifications.
1226. Bids.
1227. Contract.
1228. Assessments.
1229. Mode of assessment.
1230. Statement.
1231. Notice of hearing.
1232. Hearing.
1233. Order of assessments.
1234. Lien.
1235. Suit.
1236. Proceedings.
1237. Certificates.
1238. Public improvements.
1239. General powers.
1240. Control.

Article 1221. May install.—Incorporated cities or towns of more than five thousand inhabitants under the preceding Federal census for the purpose of making local public street improvements by installing and

maintaining special lighting systems in said cities or portions thereof, may proceed in accordance with the provisions of the next succeeding nineteen articles, independently of and without reference to any other applicable law or charter provisions, present or future, except as herein provided for, which said law or charter provision shall remain in force as alternative methods. The term "city" or "cities," as used herein, shall include all incorporated cities and towns acting hereunder. [Acts 2d C. S. 1923, p. 16.]

Art. 1222. Petition.—Subject to the terms hereof, whenever a petition is filed with the governing body setting forth that a certain street, streets, or portions thereof not less than one block, naming and describing the same, or certain districts composed of streets, highways, boulevards or alleys, should be specially illuminated, and that an additional system is necessary for that purpose, and stating that such illumination thereof will be a public improvement and will be conducive to the public welfare, and is signed by a majority of the owners of property abutting on said street, streets or portions thereof, and praying that the governing body of such city specially illuminate such street, streets or portion thereof, and construct, install, equip and maintain additional system of street lights for that purpose, the governing body shall proceed in the manner hereinafter set out. [Id.]

Art. 1223. Plans.—The petitioning property owners may provide in said petition plans and specifications together with the kind of poles and lights and other material necessary to properly install said special lighting system, or such part of same as they desire to specify, and the governing body in that instance may order the same or any part thereof used in the construction of said system. If the kind specified in said petition is not available, the governing body shall use material of like kind and quality to that specified in said petition. Said body may reject any or all of said plans and specifications and have same prepared as hereinafter provided for. [Id.]

Art. 1224. Resolution.—The governing body shall have power, by resolution, to order the making of the public improvements mentioned herein, or any of them, by a majority vote, without first being petitioned to do so by the abutting property owners as hereinbefore provided, and the passage of such resolution shall be conclusive of the public necessity and the benefits thereof, and no notice of such action by the governing body shall be requisite to its validity. Such resolution shall in general terms, set forth the nature and extent of the improvements or improvement to be made, the street, streets or portions thereof to be illuminated, the material or materials with which the improvements are to be constructed, and the method or methods under which the cost of such improvements are to be paid. Such resolution shall be passed whether the improvements are made with or without the petition of the abutting property owners. [Id.]

Art. 1225. Specifications.—Upon the passage of the resolution by the governing body as hereinbefore provided, it shall be the duty of the city engineer, or the official of the city whose duties most nearly correspond to that of city engineer, to forthwith prepare plans and specifications for the said improvement, which, when completed, shall be submitted to the governing body for its approval.

Art. 1226. Bids.—When the plans and specifications have been approved and adopted by the governing body, it shall be the duty of the city secretary, or other officer as may be designated by the governing body, to at once advertise for sealed bids for the construction of such improvements in accordance with the specifications. Such advertisement shall be inserted in a daily paper of general circulation in the city concerned, and shall state the time within which the bids may be received as prescribed by the governing body, which shall not be less than ten and not more than fifteen days from the insertion of said advertisement. Bids shall be filed with the city secretary, or such other officer as the governing body may designate, and shall be opened and read at a public meeting of the governing body. Such body shall have the right to accept such bids as it shall deem most advantageous to the abutting property owners concerned in the improvement, or may reject any and all bids. No bid shall be amended, changed or revised after being filed. [Id.]

Art. 1227. Contract.—When the bids for such improvements have been accepted by the governing body, the city shall enter into a contract with the contractor or contractors to whom the work has been let for the performance thereof, which contracts shall be executed in the name of the city by its chief executive and attested by the city secretary, or such other officer as may be designated by the governing body, with the corporate seal. [Id.]

Art. 1228. Assessments.—The city shall have power to assess the whole cost of installing and completing the improvements provided for herein, both for labor and material, against the owners of property abutting upon the street, streets or portions thereof, upon which said improvements are to be constructed, and who are specially benefited thereby, and shall have power to fix a lien against such property to secure the payment of the proportion of such costs assessed against the owners of such property. In no event shall costs be assessed against such owners or their property, or their personal liability therefor finally determined until after the hearing hereinafter mentioned, and after the adjustment of equities between such owners. The cost assessed against any property or the owner thereof, shall not exceed the amount of the special benefit in enhanced value which such property shall receive from such improvement. [Id.]

Art. 1229. Mode of assessment.—The portion of the costs of such improvements which may be assessed against any such property or its owners, shall be in proportion as the frontage of the property of each owner is to the whole frontage of the property on the street, streets or portions thereof abutting on the special lighting system, and such cost shall be apportioned in accordance with what is commonly known as the frontage or front foot rule; provided that if the application of this rule would, in the opinion of the governing body in particular cases be unjust or unequal, it shall be the duty of said body to assess and apportion said costs in such proportion as it may deem just and equitable, having in view the specific benefit in enhanced value to be received by each owner of such property, the equities of such owners and the adjustment of such apportionment, so as to produce a substantial equality of the benefits received by and the burdens imposed upon each owner. [Id.]

Art. 1230. Statement.—The contract or contracts for such improvements having been executed and approved by the governing body, the city engineer, or the officer of the city whose duties most nearly correspond to that of city engineer, shall prepare a written statement which shall contain the names of such persons, firms, corporations or estates as may own property abutting on the section to be improved, the number of front feet owned by each, and describing the property owned by each, either by lot and block number, or otherwise so describing such property as may be sufficient to identify same; and such statement shall contain an estimate of the total cost of the improvement, the amount per front foot to be assessed against abutting property and its owners, and the total estimated amount to be assessed against each owner. Such statement shall be submitted to the governing body whose duty it shall be to examine same and correct any errors that may appear therein, but no error, omission or mistake in said statement shall in any manner invalidate any assessment made, or lien or claim of personal liability fixed thereunder. [Id.]

Art. 1231. Notice of hearing.—When the statement shall have been examined and approved by the governing body, it shall declare by resolution, and directing notice thereof to be given to the owners aforesaid by publication for ten consecutive days in a daily

newspaper of general circulation in the city where the improvement is to be made; but if there be no daily newspaper in such place, then the governing body shall give such notice to such owners by registered mail at least ten days before the time set for the hearing as hereinafter provided. The notice shall state the time and place of the hearing and the street, streets or portions thereof to be improved, with a general description of such improvements and a statement of the amount per front foot proposed to be assessed against the property, and a notice to all such property owners and all persons interested to appear at such hearing. It shall not be necessary to include in such notice a description of any property or the name of the owner, but such notice shall nevertheless be binding and conclusive upon all owners of property, or persons interested in or having a lien or claim thereon. [Id.]

Art. 1232. Hearing.—On the day set out in the notice for the hearing, not less than ten days from the date of such notice, or at any time thereafter before the close of the hearing, any person, firm or corporation interested in any property which may be claimed to be subject to assessment for the purpose of paying the cost of the improvement, in whole or in part, shall be entitled to a hearing before the governing body as to all matters affecting said property, or the benefits thereto, or such improvements, or any claim of liability, or objection to the making of said improvements, or any invalidity or irregularity in any proceeding with reference to making said improvements, or any other objection thereto. Such person, firm, or corporation shall file their objections in writing, and thereafter the governing body shall hear and determine the same, and all persons interested shall have full opportunity to produce evidence and witnesses and appear in person or by attorney; and a full and fair hearing thereof shall be given by such governing body, which hearing may be adjourned from time to time without further notice. The governing body shall have the power to inquire into and determine all facts necessary to the adjudication of such objections and the ascertainment of the special benefits to such owners by reason of the contemplated improvements; and shall render such judgment or order in each case as may be just and proper. Any objection to the irregularity of the proceedings with reference to the making of such improvements as herein provided, or to the validity of any assessment or adjudication of personal liability against such property or the owners thereof, shall be deemed waived unless presented at the time and in the manner herein specified. [Id.]

Art. 1233. Order of assessments.—When the hearing above mentioned has concluded, the governing body shall, by ordinance, assess against the several owners of the property abutting on the street, streets or portions thereof, such proportionate part of the cost of improvements as said body shall have adjudged against the respective owners and their property. Said ordinance shall fix a lien upon such property and declare the respective owners thereof to be personally liable for the respective amounts to be assessed; and shall state the time and manner of payment of such assessment; and said governing body may order that the said assessments shall be payable in installments, and prescribe the amount, time and manner of payment of such installments, which, except as hereinafter provided, shall not exceed six, and the last payment shall not be deferred beyond five years from the completion of such improvement and its acceptance by the city. The said ordinance shall also prescribe the rate of interest to be charged upon deferred payments, not to exceed seven per cent per annum; and may provide for the maturity of all deferred payments and their collection upon default of any installment of principal or interest. [Id.]

Art. 1234. Lien.—Each property owner shall have the privilege of discharging the whole amount assessed against him, or any installment thereof, at any time before maturity, upon payment thereof with accrued interest. The fact that more than one parcel of land, the property of one owner or jointly owned by two or more persons, firms or corporations, have been assessed together in one assessment, shall not invalidate the same or any lien thereon, or any claim of personal liability thereunder. The cost of any such improvement assessed against any property or owner thereof, together with all costs and reasonable attorneys fees when incurred, shall constitute a personal claim against such property owner, and shall be secured by a lien on such property superior to all other liens, claims, or titles, except city, county and State taxes, and such personal liability may be enforced by suit in any court of competent jurisdiction. In any suit brought under this article, it shall be proper to join as defendants two or more property owners who are interested in any single improvement or any single contract for such improvement. The person or persons who own property at the date of any ordinance providing for the assessment thereof, shall be severally and personally liable for their respective portions of the said assessment. The lien of such improvements shall revert back and take effect as of the date of the original resolution ordering the improvement, and the passage of such resolution shall operate as notice of such lien to all persons. Any error or mistake in such ordinance in the name of the owner of the property assessed, shall not invalidate the lien or personal liability thereby created, but the same shall nevertheless exist against the real and true owner of such property as if correctly described. [Id.]

Art. 1235. Suit.—At any time within ten days after the hearing herein provided for has been concluded, any person or persons having an interest in any property which may be subject to assessment under this law, or otherwise having any financial interest in such improvement or improvements or in the manner in which the cost thereof is to be paid, who may desire to contest on any ground the validity of any proceeding that may have been had with reference to the making of such improvements or the validity in whole or in part of any assessment or lien or personal liability fixed by said proceedings, may institute suit for that purpose in any court of competent jurisdiction. Any person who shall fail to institute such suit in said period of ten days, or who shall fail to diligently prosecute such suit in good faith to final judgment, shall be forever barred from making any such contest or defense in any other action, and this estoppel shall bind their heirs, successors, administrators and assigns. The city and the person or persons to whom the contract has been awarded shall be made defendants in such suit, and any other proper parties may be joined therein. [Id.]

Art. 1236. Proceedings.—There shall be attached to the plaintiff's petition an affidavit of the truth of the matters therein alleged, except such matters as are alleged on information and belief, that said suit is brought in good faith and not to injure or delay the city or the contractor or any owner of real estate abutting on the improvement. Unless the provisions of this article are complied with by the plaintiff or plaintiffs, such suit shall be dismissed on motion of any defendant and in that event plaintiff or plaintiffs shall be barred and estopped to the same extent as if suit had not been brought. In any case where a suit is brought as above provided, then the performance of the work may be suspended at the election of either the city or contractor until such suit shall be finally determined in the court of original jurisdiction or any appellate court to which the same may be taken by appeal or writ of error. Every appeal or writ of error shall be perfected within thirty days from the adjournment of the term of court of original jurisdiction at which final judgment was rendered in such suit; and no appeal or writ of error to review the judgment of said court may thereafter be taken or sued out by either party. Any such suit shall be entitled to precedence in the courts of this State, both of original and appellate jurisdiction, and shall be heard and determined as promptly as practicable. [Id.]

Art. 1237. Certificates.—The governing body may provide that for the cost, which is assessed against the abutting property and its owners, the contractor to whom the work may be let shall look only to such property owners and their property, and that the city shall be relieved of liability for such cost. The governing body may also authorize assignable certificates against abutting property or property owners. The recital in such certificates that the proceedings with reference to making such improvements have been regularly had in compliance with the terms of this law, and all prerequisites to the fixing of this lien and the claim of personal liability evidenced by such certificate, have been performed, shall be prima facie evidence of the facts so recited, and no other proof thereof shall be required, but in all courts the said proceedings and prerequisites shall, without further proof, be presumed to have been had or performed. Such certificates shall be executed by the chief executive of the city, and attested with the corporate seal by the city secretary or such other officer as may be designated by the governing body. [Id.]

Art. 1238. Public improvements.—The governing body, if it deems it to be more advantageous to the public, provided public funds are available therefor, may order by resolution the making of any local public improvement by installing a special lighting system as contemplated herein, and for such purpose shall prescribe the district composed of the street or streets, highways, boulevards or alleys, or any portion thereof, that are sought to be improved by the establishment and maintenance of such special lighting system. Specifications shall be prepared therefor under the direction of the governing body and bids shall be invited upon the same as provided herein for making such local improvements. Contracts shall be let as provided herein for making contracts in other cases. A hearing shall be accorded to all property owners owning property abutting upon the streets in such districts to be improved by the said lighting system, and the cost of the same shall be assessed against such property in the same manner as provided herein in other cases; a special lien shall be created against the abutting property and the owners thereof shall be personally liable as is provided herein in all other cases. The cost of making the said improvement shall be paid out of any available funds of the city which may be provided by said body. The amount of the cost of making such improvements so paid by the city to the contractor shall be reimbursed to the city by the property owners whose property is assessed in the manner provided for herein. All proceedings relative to making the assessments and issuing assignable certificates shall apply as far as practicable to the procedure to be followed in making the public improvements under the terms of this article. [Id.]

Art. 1239. General powers.—The governing body may provide additional rules and regulations governing hearings and the issuance of notices therefor as may be deemed advisable in order to afford a full hearing to all property owners concerning the assessments levied or to be levied against them on account of the special benefits received from the improvements so ordered. Such body may use such money as is at its disposal to assist in the financing of the public improvements herein provided for. [Id.]

Art. 1240. Control.—After the public improvements provided for in the preceding nineteen articles have been completed and the job accepted by the city, the same shall become the property of the city, and the city shall maintain the same at its own expense, as a part of its regular lighting system. [Id.]

CHAPTER NINETEEN

ABOLITION OF CORPORATE EXISTENCE

Art.
1241. Authority.
1242. Petition.
1243. Requisites of abolition.
1244. Receiver.
1245. Duties of receiver.
1246. Claim.
1247. Notice of claim.
1248. Adjustment.
1249. Contest, suit.
1250. Judgment and costs.
1251. Limitation.
1252. Certain dissolutions.
1253. Suits barred.
1254. Payment of claims.
1255. Collection of tax, etc.
1256. Delinquent taxes.
1257. Prior claims.
1258. Public schools.
1259. School taxes.
1260. Public buildings.
1261. Abolition of towns.
1262. When corporation ceases to function.
1263. Action for debt.

Article 1241. [1077] Authority.—Cities and towns incorporated under the general laws and cities and towns of ten thousand inhabitants or less chartered under special law, including those which may have heretofore accepted the provisions of Chapter 1 of this title, may abolish their corporate existence in the manner hereinafter provided. [Acts 1895, p. 166; G. L. vol. 10, p. 896.]

Art. 1242. [1078] Petition.—When one hundred of the property tax-payers, who are qualified voters of any such city or town, desire the abolishment of such corporation, they may petition the county judge to that effect, who shall thereupon order an election to be held in such city or town, as in the case of its incorporation. If a majority of the property taxpayers, who are qualified voters, of any such city or town is less than one hundred in number, then the county judge shall order an election as above provided upon the presentation to him of a petition signed by a majority of the tax payers of such city or town, who are qualified voters thereof. [Acts 1899, p. 245.]

Art. 1243. [1079] Requisites of abolition.—All persons who are legally qualified voters of the State and county in which such an election is ordered, and are resident property taxpayers in the city or town where such election is to be held, as shown by the last assessment roll of such city or town, shall be entitled to vote at such election. If a majority of such voters voting at such election shall vote to abolish such corporation, the county judge shall declare such corporation abolished, and enter an order to that effect upon the minutes of the commissioners court, and from the date of such order, said corporation shall cease to exist. [Acts 1895, p. 166; G. L. vol. 10, p. 896.]

Art. 1244. [1080] Receiver.—In all cases where any city or town having theretofore had a valid corporate existence, under the laws of this State, has abolished said corporate existence in the manner provided by law, and in all cases where any city or town having a valid corporate existence under such laws may hereafter abolish their corporate existence, any creditor of any such city or town may apply to the judge of the district court of the district in which such city or town may be situated, for the appointment of a receiver for said corporation. After having posted up in at least three public places in the county where such city or town is located, one of which shall be in said city or town, written notice stating the substance of the application, when and before whom the same will be heard, such judge in term time or vacation, may appoint a suitable person as such receiver for such corporation, and shall fix the amount of bond to be given by such receiver in at least double the probable amount of the indebtedness or value of the property of such town or city, conditioned for the faithful performance of his duties as such officer, and for the paying over and delivery of all money and property coming into his hands as such receiver, to the parties entitled to receive same, such bond to be approved by the judge making the appointment; and same, together with order of appointment, shall be filed with, and recorded in, the minutes of said court by the district clerk of the county where such city or town is situated. Receivers appointed under the provisions of this chapter shall receive such compensation as the court may allow. [Acts 1905, p. 325.]

Art. 1245. [1081] Duties of receiver.—A receiver appointed under the preceding article, after having given the required bond, and after having same duly filed and recorded, shall take charge of all the real and personal property, including moneys, minute books, ordinances, etc., except such property as pertains to the public free schools or devoted exclusively to public use, and shall return an inventory of all such property, money, books, etc., so received by him to the next succeeding term of the district court for the county in which such city or town is situated; and, for the purpose of securing such property, money, books, etc., he may, under the order of said court, or the judge thereof in vacation, bring suit against any person in possession of such property, books, or moneys, or indebted to said city or town, the same as such city or town could were it still incorporated. [Id.]

Art. 1246. [1082] Claim.—Any person, firm or corporation, having any claim against such city or town, shall within six months from the appointment of said receiver, present to him a statement of the amount of such claim, duly verified, which, if he finds correct, he will mark allowed, and file same in the district court; and at its next regular term, if no protest be filed, said claim shall be approved by said court and shall thereafter be considered a valid debt against such city or town. [Id.]

Art. 1247. [1082] Notice of claim.—No such claim or account against such city shall be allowed or approved by the receiver without notice of the presentment thereof first having been given, by publication in some newspaper, if any, in the town or city where same is filed or presented, for four consecutive weeks, and in case there be no newspaper published in such town or city, then by posting notice of the presentment of such claim at the courthouse door of the county in which said town or city is situated, for four weeks prior to the allowance of said claim or account. Such notice, whether published or posted, shall state the name and residence of the creditor, the amount and date of said claim and account, and for what purpose incurred. [Id.]

Art. 1248. [1082] Adjustment.—If such receiver finds any claim so presented to him unjust, in whole or in part, he shall endorse his finding thereon, and return same to the claimant, who may file same with the district court, if he desires to accept the findings of the receiver, and such claim for the amount allowed by the receiver may be acted upon by said court as other claims. [Id.]

Art. 1249. [1082] Contest, suit.—In case any protest by any taxpayer of said city or town be filed against any claim in said court, together with a bond to be approved by said court, that he will pay all costs of suit in case said claimant established his claim in full in any State court in which he may sue thereon, then such district court shall refuse to approve such claim until it shall have been established by judgment, recovered thereon in a State court of competent jurisdiction. Such suit to establish such claim or any claim disallowed in part or in whole, may be brought against the receiver, who shall make all legal defense against such claim. The court trying said claim is hereby authorized to hear and consider any material defense that may be or may have been urged against said claim, except that of limitation, though such claim, prior thereto, may have been reduced to judgment, but such judgment shall be considered, upon such trial, as prima facie evidence of the justness of such a claim. [Id.]

Art. 1250. [1082] Judgment and costs.—Any judgment recovered against such receiver upon a claim against such city or town shall be allowed by the receiver and approved by the district court wherein the receivership is pending. In all suits upon claims wherein protest and bond were filed in the district court, the claimant shall be liable for the costs of the suit, unless he recovers judgment for the full amount for which he asked the approval of the said district court. In suits upon claims rejected in part by the receiver, the claimant shall be liable for the costs of the suit, unless he establishes his claim for a greater amount than was allowed by the receiver. [Id.]

Art. 1251. [1083] Limitation.—Limitations shall not run, begin to run or be plead against any claim against such city or town at any time prior to six months after the appointment of such receiver. [Id.]

Art. 1252. [1084] Certain dissolutions.—No receiver shall be appointed for any such city or town whose corporate existence was dissolved prior to July 17, 1905, where the application therefor was not filed in said court within two years from and after July 10, 1905. [Id.]

Art. 1253. [1085] Suits barred.—No suit shall be brought against such receiver upon any claim, against the allowance of which a protest has been filed, as herein provided for, at any time after six months from the date of filing such protest, nor after the expiration of six months from the date of the disallowance of any such claim in whole or in part, where the claim has not been filed in the district court, after such disallowance as hereinbefore provided. [Id.]

Art. 1254. [1086] Payment of claims.—The district court of the county in which such town or city is situated, and in which such receivership is pending, shall provide for the payment of all claims legally established against such city or town, and determine the priority of any claims and order the sale of all property in the hands of the receiver subject to sale for such purpose, and direct such receiver to pay such claims. If the money and proceeds of property are insufficient to pay such indebtedness, then said court, at the request of any creditor, at the first regular term of said court in each year, shall levy a tax upon all the property and real and personal estate situated within the limits of said city or town, as previously incorporated, on the first day of the preceding January, not exempt from taxation under the Constitution and laws of this State, sufficient to discharge the indebtedness, but not to exceed the rate allowed by existing law for such purposes in incorporated cities and towns. [Id.]

Art. 1255. [1087] Collection of tax, etc.—Whenever the district court, having jurisdiction in the premises, has or may order the assessment and collection of taxes for the payment of the indebtedness of such town, or city, the tax assessor for the county in which such town or city is situated, shall assess the taxes so ordered in like manner as taxes in rural school districts. The county tax collector for such county shall collect such taxes in like manner as taxes in rural school districts. This article shall not repeal any part of Articles 1245 to 1250 inclusive. For the services rendered under this article, the assessor and collector shall receive the same compensation as for like services for the assessment and collection of taxes in rural school districts; and said collector shall pay such taxes when collected, to the receiver of such city or town. [Id.; Acts 1909, p. 68.]

Art. 1256. [1088] Delinquent taxes.—Suits may be brought by the receivers against delinquents, and a lien shall exist upon all property for such taxes, the same as though the corporate existence of such city or town had never been abolished, and such levy and assessment had been made by its council and assessor. [Acts 1905, p. 327.]

Art. 1257. [1090–1–2] Prior claims.—The compensation of the receiver, together with all the court costs and expenses, shall constitute a prior claim against such city or town, and shall be first paid out of any money on hand or collected. In case of taxation the money collected each year shall be paid pro rata upon all claims according to their priorities until all claims established and all costs and expenses are fully paid. On final settlement of such receivership, any money or property left on hand shall be turned over to the trustees or other officers in charge of the

public free school situated in said city or town for the benefit of such school. [Id.]

Art. 1258. [1093] Public schools.—Where the public free schools of such city or town are under the management of trustees appointed or elected by the voters of the city or town, or by the city or town council, at the time its incorporation is abolished under the provisions of this chapter, such trustees shall have the management of said schools for the remainder of the term for which they were appointed or elected, subject to the supervision of the commissioners court, unless such city or town shall sooner become incorporated for school purposes only. [Acts 1895, p. 166.]

Art. 1259. [1094] School taxes.—All taxes for municipal or school purposes which shall have been levied at the date of the abolishment of such corporation, and which shall not have been paid, shall be collected by the collector of the county in the same manner provided by law for the collection of State and county taxes, and paid into the county treasury; but the portion of such taxes levied for the purpose of maintaining the public free schools of such city or town shall be paid over to the trustees of the public free schools of said city or town and applied by them to the purpose for which they were levied.

Art. 1260. [1095] Public buildings.—When any corporation is abolished under the provisions of this chapter, and shall at the time of any such abolishment own any public buildings, public parks, public works or other property, and the same shall not have been sold or disposed of as provided in this chapter, the same shall be managed and controlled by the commissioners court of such county for the purpose to which same were originally used and intended; and, for this purpose, the commissioners court shall have and exercise, with reference thereto, the powers originally conferred by charter upon the mayor and aldermen of such city.

Art. 1261. [1096] [615] [540] Abolition of towns.—When twenty-five of the qualified voters of any incorporated town or village shall desire the abolishment of such corporation they may petition the county judge to that effect, who shall thereupon order an election to be held in such town or village, as in the case of its incorporation; and, if there be a majority of the voters of said corporation, voting at such election in favor of abolishing such corporation, the county judge shall declare the corporation abolished, and enter an order to that effect upon the minutes of the commissioners court. From and after the date of such order, the said corporation shall cease to exist. Nothing in this chapter shall be construed to repeal or otherwise affect any laws now upon the statutes of this State providing for the incorporation of towns and villages for school purposes; said towns and villages having not less than two hundred inhabitants. [Acts 1897, p. 194.]

Art. 1262. When corporation ceases to function.—When any corporation is abolished, or if any de facto corporation has been or shall be declared void by any court of competent jurisdiction, or if the same shall cease to operate and exercise the functions of such corporation or de facto corporation, when such corporation or de facto corporation has indebtedness outstanding, then the officers of such corporation, in office at the time of such dissolution, or at the time such corporation ceases to operate and exercise the functions of such corporation, shall take charge of the property of the corporation and sell and dispose of same, and shall settle the debts due by the corporation, and for said purpose shall have power to levy and collect a tax from the inhabitants of said city, town or village in the same manner as the said corporation. In the event of their failure or refusal to do so, and upon the petition of any number of the citizen taxpayers of such corporation or of the holders of the evidences of indebtedness of such corporation or de facto corporation, to the proper court within this State having jurisdiction in the county in which such dissolved or de facto corporation shall have been situated, the judge of said court shall appoint three trustees to take charge of such property and dispose of same and settle the debts of such corporation or de facto corporation, and for said purpose the said trustees so appointed shall be vested with all the powers herein given to the officers of such corporation. [Acts 1923, p. 309.]

Art. 1263. Action for debt.—The holder of any indebtedness against any municipal corporation which has or may be dissolved in any way provided in the preceding article, including dissolution of a de facto corporation by a court of competent jurisdiction, may maintain a suit in the proper court within this State having jurisdiction in the county in which such dissolved or de facto corporation shall have been situated, to establish said indebtedness against said municipal corporation, and service may be had on such dissolved corporation by serving the citation upon any person who was the mayor, secretary or treasurer of said corporation or pretended to act as such, at the time of its dissolution, and judgment may be rendered in such suit in favor of the holder of such indebtedness against such municipal corporation as fully as if it had not been dissolved or its organization declared void. The status of such city, town or village shall be and remain the same in so far as it affects the holders of its indebtedness, until such indebtedness has been paid. [Id.]

CHAPTER TWENTY

MISCELLANEOUS PROVISIONS

Art.
1264. Current expenses.
1265. Extension of limits.
1266. Discontinuing territory.
1267. Oil and mineral lands.
1268. Sale or lease of franchise.
1269. Salaries of officers.
1269a. Municipal bands.
1268b. Same subject—establishment and maintenance.
1269c. Same subject—election.
1269d. Same subject—subsequent elections.
1269e. Same subject—ordinances.
1269f. Same subject—charters affected.

Article 1264. Current expenses.—Any incorporated city or town in this State, whether incorporated under the general laws of this State, or incorporated by special charter adopted in the manner provided by law, and having a population of 161,000 or more according to the preceding Federal census, may, through its governing body, provide for the payment of its current expenses for any current fiscal year, or for any portion of such fiscal year, by the issuance of warrants drawn against the current revenues of said city or town for such fiscal year, in the manner following:

1. Such warrants shall be dated and numbered consecutively as they are issued, and shall become a lien upon the revenues of said city or town for such fiscal year, available for the payment thereof, and shall be paid consecutively according to their respective dates and numbers as funds for the payment thereof become available.

2. If no funds are available to pay such warrants at the time of their issuance, the governing body may provide for the payment of interest upon such warrants, or may provide for the payment of a discount thereon. Such interest or discount shall never exceed an amount equal to six per cent per annum upon the face of such warrants for the period of time intervening between the date of their issuance and the time of their payment.

3. In no event shall the governing body provide for the issuance of warrants upon which interest or discount is to be paid, in excess of eighty per cent of the estimated revenues of said city or town for such fiscal year, after the deduction of all interest upon the bonded indebtedness of such city or town to be paid out of the revenues for such fiscal year, and such sums as may be required to be paid into any sinking fund or into any special fund or any special trust fund of said city or town out of its revenues for such fiscal year. [Acts 1st C. S. 1921, p. 25.]

Art. 1265. Extension of limits.—Any city having a population of 100,000 and under 150,000 as shown by the preceding Federal census, shall have the power and authority to amend its charter so as to extend its boundary limits by annexing additional territory adjacent and contiguous to such city, where the territory so annexed does not include any incorporated city or town having more than five thousand inhabitants according to the preceding Federal census. Such extension shall be effected in the manner following:

1. The governing body of such city may, upon its own motion, and shall upon the petition of at least ten per cent of the qualified voters of said city as shown by the preceding general election, submit such proposed amendment to a vote of the qualified voters of such city, which election shall be held as provided by chapter 13 of this title.

2. If such amendment is adopted by a majority of those voting at such election, and such annexed territory shall include any incorporated city or town of five thousand inhabitants or less, then, from and after the adoption of such amendment, the incorporation of such city or town of five thousand inhabitants or less shall be abolished and shall cease to exist, and all record books, public property, public buildings, money on hand, credit accounts and other assets of the annexed incorporated city or town shall become the property of said larger city and shall be turned over to the officers thereof, and by such annexation, the offices existing in the smaller municipality shall be abolished and the persons holding such offices shall not be entitled to further remuneration or compensation; and all legal outstanding liabilities of such smaller city shall be assumed by the enlarged city.

3. Whenever such annexed city or town shall have on hand any bond funds for public improvement and not already appropriated or contracted for, such money shall be kept in a separate special fund and devoted to public improvements in the territory for which such bonds were voted, and shall not be diverted or used for any other purpose.

4. After such annexation, all claims, fines, debts and taxes due or payable to the annexed city or town shall thereupon become due and payable to said larger city and shall be collected by it. If taxes for the current year shall have been duly assessed prior to said annexation, then the amount so assessed shall remain as the amounts due and payable from the inhabitants of such annexed city or town for such current year. [Id. p. 153.]

Art. 1266. Discontinuing territory.—Whenever there exists within the corporate limits of any city in this State of 150,000 or more population according to the preceding Federal census located in a county having a population according to such census in excess of 205,000, whether such city was organized by special law, home rule charter, or general laws of this State, territory to the extent of at least three acres contiguous, unimproved and adjoining the lines of any such city, the governing body of any such city may, by ordinance duly passed, discontinue said territory as a part of any such city. When said ordinance has been duly passed, the governing body shall cause to be entered an order to that effect on the minutes or records of such city; and from and after the entry of such order, said territory shall cease to be a part of such city. [Acts 3rd C. S. 1923, p. 166.]

Art. 1267. Oil and mineral lands.—Cities and towns chartered or organized under the general laws of Texas, or by special Act or charter, which may own oil or mineral lands, shall have the power and right to lease such oil or mineral lands for the benefit of such town or city, but shall not lease for such purposes any street or alley or public square in said town or city, or any land therein dedicated by any person to public uses in such town or city; and no well shall be drilled within the thickly settled portion of any city or town, nor within two hundred feet of any private residence. [Acts 1919, p. 183.]

Art. 1268. Sale or lease of franchise.—Any individual, association or corporation now or hereafter organized under the laws of this State, including any municipal corporation of this State, engaged in manufacturing, producing, supplying or selling electricity, natural or artificial gas, steam, or water, or owning or operating any street railway within any incorporated city, town or village within this State, where the rates charged for such service are subject to regulation under authority of the laws of this State, may, by a majority vote of the qualified voters thereof having been first obtained at an election held for that purpose, lease, sell or otherwise dispose of its entire plant or business or any part thereof, to any other individual, association or corporation which, at the time of said sale, lease or other disposition of said plant or business or any part thereof, is doing, or has authority to do, a like business in said incorporated city, town or village. Nothing herein shall authorize any corporation to engage in any kind of business not authorized by its charter. [Acts 1915, p. 131.]

Art. 1269. Salaries of officers.—The municipalities of this State, having a population exceeding 150,000 according to the preceding Federal census, organized under any special Act of this State or by virtue of the Constitutional provisions of this State, shall have power and authority, acting by and through their governing bodies, to fix and prescribe from time to time, and to alter, modify and change the same, a salary or compensation of not exceeding the following sums, anything in any charter of such municipality or any special law to the contrary:

An annual salary to be paid the corporation judge, four thousand dollars; city attorney and city auditor, six thousand dollars each. No salary of said officers shall be decreased, after being fixed by said governing bodies, during the term of office for which they are elected or appointed. The salaries named herein may be changed in any charter or any amendment to any charter voted on at the home rule election by any such city. [Acts 3rd C. S. 1920, p. 31; Acts 3rd C. S. 1923, p. 187.]

Art. 1269a. Municipal Bands.—That the word "band" as used in this Act shall mean a band composed of such musical instruments as are recognized in the standard instrumentation established for the use of United States Army Bands. [Acts 1925, 39th Leg., ch. 22, p. 82, § 1.]

Art. 1269b. Same subject—establishment and maintenance.—That any incorporated city or town in this State is authorized to establish and maintain a band in such city or town, and to appropriate such part of the revenues of such city or town for the maintenance and operation of such band as the governing body of such city or town may determine. It is provided, however, that the total amount of such appropriation for any one year shall not exceed three mills for each one dollar of taxable value of property within such city or town. [Acts 1925, 39th Leg., ch. 22, p. 82, § 2.]

Art. 1269c. Same subject—election.—That it shall be the duty of the governing body of any city or town within this State, upon a written petition signed by a number of property tax paying voters in such city or town equal to at least ten per cent of the total number of votes cast at the last regular municipal election, to submit to the qualified property tax paying voters within such city or town, at an election for that purpose, the question of whether or not a band shall be established and maintained by such city or town. Such elections shall be held as nearly as possible in accordance with the law in reference to regular elections in said city or town, but said governing body is hereby empowered by resolution to order such elections and prescribe the form of ballot for use therein and the time and manner of holding the same. Such governing body shall canvass and determine the result of such elections in the manner provided by law for canvassing and returning the results of general elections held therein, and the result of the election shall be entered upon the minutes of said governing body. If the majority of the voters voting upon said

question at such election shall vote to establish and maintain a band, the governing body shall thereupon proceed to establish, and thereafter maintain, such band. [Acts 1925, 39th Leg., ch. 22, p. 82, § 3.]

Art. 1269d. Same subject—subsequent elections.—That the governing body of any city or town shall upon similar petition cause subsequent elections for said purpose to be held, as provided by Section 3 hereof [Art. 1269c]; but no two of such elections shall be held within the same city or town within a period of less than twelve months. [Acts 1925, 39th Leg., ch. 22, p. 82, § 4.]

Art. 1269e. Same subject—ordinances.—When it shall be determined to establish and maintain a band in any city or town, the governing body thereof shall have full power to pass all ordinances and resolutions to enable such city or town to maintain such band, and in addition thereto such governing body shall elect a non-partisan citizen commission of not more than five nor less than three members whose duty it shall be to negotiate contracts and formulate rules and regulations and do all things necessary or proper to establish, control and maintain said band. [Acts 1925, 39th Leg., ch. 22, p. 83, § 5.]

Art. 1269f. Same subject—charters affected.—That this Act shall not modify or in any manner affect any special charter which has been heretofore granted by the Legislature, nor any charter heretofore adopted by the voters of any city or town. [Acts 1925, 39th Leg., ch. 22, p. 83, § 6.]

TITLE 29

COMMISSIONER OF DEEDS

Art.
1270. Appointment.
1271. Oath.
1272. Seal.
1273. Authority.

Article 1270. [1097] [618] [542] Appointment.—The Governor is authorized to biennially appoint and commission one or more persons in each or any of the other states of the United States, the District of Columbia, and in each or any of the territories of the United States, and in each or any foreign country, upon the recommendation of the executive authority of said state, District of Columbia or territory or foreign country to serve as commissioner of deeds. Such commissioner shall hold office for two years. [Acts 1885, p. 98; G. L. vol. 9, p. 718.]

Art. 1271. [1098] Oath.—Such commissioner, before he shall proceed to perform any duty under and by virtue of this title, shall take and subscribe an oath or affirmation, before the clerk of any court of record in the city, county or country in which such commissioner may reside, well and faithfully to execute and perform all the duties of such commissioner under the laws of this State; which oath or affirmation, certified to by the clerk under his hand and seal of office, shall be filed in the office of the Secretary of State in this State. [Acts 1846, p. 187; G. L. vol. 2, p. 1493.]

Art. 1272. [1102] [623] [547] Seal.—Every such commissioner shall provide for himself a seal with a star of five points, in the center, and the words, "Commissioner of the State of Texas," engraved thereon, which seal shall be used to certify all the official acts of such commissioner; and without the impress of said seal upon any instrument, or to certify any act of such commissioner, said act shall have no validity in this State. [Act Dec. 31, 1861, p. 21; G. L. vol. 5, p. 465.]

Art. 1273. [1097] [618] [542] Authority.—The commissioner of deeds shall have the same authority as to taking acknowledgments and proofs of written instruments, administering oaths, and taking depositions to be used or recorded in this State, as is conferred by law upon a notary public of this State. [Acts 1885, p. 98; G. L. vol. 9, p. 718.]

TITLE 30

COMMISSION MERCHANTS

1. COMMISSION MERCHANTS
Art.
1274. "Commission Merchant" defined.
1275. Bond of.
1276. Suits on bond.
1277. Unlawful interest in sales.
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2. LIVE STOCK COMMISSION MERCHANTS
Art.
1281. Live stock commission merchant.
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1284. Duty of court, judge.
1285. Bond recorded.
1286. Deposit of proceeds.
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1. COMMISSION MERCHANTS

Article 1274. [3826] "Commission Merchant" defined.—Any person, firm or corporation pursuing, or who shall pursue the business of selling produce, or goods, wares or merchandise of any kind upon consignment for a commission, shall be held to be a commission merchant. [Acts 1907, p. 61.]

Art. 1275. [3827] Bond of.—Every commission merchant shall make bond in the sum of three thousand dollars, with a solvent surety company doing business in this State or with two or more good and sufficient sureties, who are residents of this State, and who shall make affidavit that they in their own right, over and above all exemptions, are worth the full amount of the bond they sign as sureties, payable to the county judge of each county in which such commission merchant maintains an office, and to the successors in office of such county judge as trustees for all persons who may become entitled to the benefits of this subdivision; conditioned that such commission merchant will faithfully and truly perform all agreements and contracts entered into with consignors for said produce, goods, wares or merchandise, will promptly receive and sell such produce, goods, wares or merchandise, and will on receipt of such produce, goods, wares or merchandise class the same, and if such class as made by such commission merchant is not as high as that made and sent to him by the consignor, he (the commission merchant) will immediately notify the consignor of such fact and of the class made by him; and, as soon as sold will send to the consignor a full and complete account of sales of same, giving an itemized account thereof, and the price received, the dates of sales, and shall, within five days after said produce, goods, wares or merchandise are sold, send to the consignor the full amount received for the same, less the commission due said commission merchant under the contract of assignment, such bond to be approved by the county judge of the county in which said commission merchant maintains an office, and by said judge filed for record in the county clerk's office as chattel mortgages are now authorized to be filed by law. [Acts 1907, p. 61; Acts 1913, p. 178.]

Art. 1276. [3828] Suits on bond.—Such bond shall be made and filed for record in each county in which such commission merchant maintains an office, and in which county suits may be maintained upon such bond by any person claiming to have been damaged by a breach of its condition. Said bond shall not become void upon the first recovery thereon, but may be sued upon until the amount thereof is exhausted. When said bond by suits of recovery has been reduced to the sum of fifteen hundred dollars, said commission merchant shall be required to enter into a new bond in the sum of three thousand dollars as required in the first instance. Said new bond shall be liable for all future contracts, agreements or consignments thereafter entered into by said commission merchant and consignor of such produce, cotton, sugar, goods, wares or merchandise, and upon failure of said commission

merchant to give said new bond as above required, he shall cease doing business in this State. [Id.]

Art. 1277. [3829] [2432] Unlawful interest in sales.—No factor or commission merchant to whom any cotton, sugar, produce or merchandise of any kind is consigned for sale on commission or otherwise, shall purchase the same or reserve any interest whatever therein upon the sale of same, either directly or indirectly, in his own name or in the name or through the instrumentality of another, for his own benefit or for the benefit of another, or as a factor or agent of any other person, without express written license from the owner or consignor of such cotton, sugar, produce or other merchandise, or some person authorized by him, under a penalty of forfeiture of one-half the value of cotton, sugar, produce or other merchandise so purchased or sold, to be recovered by the owner of the same by suit in the county where the sale took place, or wherein the offending party resides. [Acts 1860, p. 82; G. L. vol. 4, p. 1444.]

Art. 1278. [3830] [2433] Account of sales.—Upon the shipment of any produce, cotton, sugar, goods, wares or merchandise, consigned for sale to any factor or commission merchant, it is hereby made his duty that such commission merchant will faithfully and truly perform all agreements and contracts entered into with consignors for said produce, cotton, sugar, goods, wares and merchandise; that said commission merchant will promptly receive and sell such produce, cotton, sugar, goods, wares or merchandise, in accord with the contract of consignment and will on receipt of such produce, cotton, sugar, goods, wares or merchandise class the same, and if such class as made by such commission merchant is not as high as that made and sent to him by the consignor, he, (the commission merchant)' will immediately notify the consignor of such fact and of the class made by him and as soon as sold will send to the consignor a full and complete account of sales of same, giving an itemized account thereof, and the price received, the dates of sales, and shall, within five days after said produce, cotton, sugar, goods, wares or merchandise are sold, send to the consignor the full amount received for the same, less the commission due said commission merchant under the contract of consignment; and if cotton, sugar, or other produce sold by weight, the weight of same in gross, and the tare allowed, and be accompanied by the certificate or memorandum, signed by the weigher who weighed the same, of the weight and condition as required by law, and upon failure of said commission merchant to comply with any one of the provisions of this article, he and the bondsmen required by this subdivision shall be liable for all actual damages incurred by the consignor by reason thereof, and in addition thereto a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by the consignor in a suit filed for said actual damages and for said penalty. [Acts 1913, p. 178.]

Art. 1279. [3831] [2434] False charges.—No commission merchant or factor shall be permitted to make any charge for mending or patching, or roping bales, or for cooperage or repairing bales, or for labor, or hauling, or cartage, or for storage, marking or weighing, unless the same has been actually done; and, in case of any such charge, a bill of particulars shall be rendered notwithstanding any usage or custom to the contrary to make such charge, by rate or average; and the person offending against any provision of this article shall be liable to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by suit by the owner or consignor. [Acts 1860, p. 82; G. L. vol. 4, p. 1444.]

Art. 1280. Duties of shipper.—Each consignor of produce, goods, wares, or merchandise in this State consigning produce goods, wares, or merchandise to commission merchants to be sold on commission shall, when he consigns such produce, goods, wares or merchandise, send to such commission merchant a written statement in which such consignor shall state the amount, the quality or class, the condition of such produce, goods, wares or merchandise so consigned, and if said merchant, on receipt of same, fails to promptly notify said consignor of any objection he may have to the class, quality or quantity so consigned, then such statement shall be prima facie evidence of the fact that said consignment of such produce, goods, wares or merchandise is truly stated in said statement by the consignor to said commission merchant. When such produce, goods, wares or merchandise is received by said commission merchant, such merchant shall give to the agent of the railroad or other carrier so delivering such produce, goods, wares or merchandise, a receipt for same which receipt shall state the quality, quantity, grade and condition of such produce, goods, wares or merchandise, and said agent of the railroad or other carrier shall keep such receipt on file in his office subject to the inspection of any one interested in such shipment, for six months from the date of such receipt. [Acts 1913, p. 278.]

2. LIVE STOCK COMMISSION MERCHANT

Art. 1281. Live stock commission merchant.—Any person, firm or corporation, who shall pursue the business of selling live stock, cattle, cows, calves, bulls, steers, hogs, sheep, goats, mules, horses, jacks, and jennets or any of them, upon consignment for a commission or other charges, or who shall solicit consignment of live stock as a commission merchant or agent, or who shall advertise or hold himself out to be such, shall be deemed and held to be a live stock commission merchant within the meaning of this subdivision and subject to all the provisions and penalties herein prescribed. [Acts 1921, p. 175.]

Art. 1282. To make bond.—All live stock commission merchants before they shall engage in said business within this State, are hereby required to make bond in an amount hereinafter specified, signed by a solvent surety company authorized to do business in this State and having a paid up capital of not less than five hundred thousand dollars, which said bond shall be payable to the county judge of the county in which such commission merchant has his principal office or place of business, and to his successors in office, as trustee for all persons who may become entitled to the benefits of this law, such bond to be filed by such county judge in the office of the county clerk of the county in which such commission merchant has his principal office or place of business, and in which county suits shall be instituted for any illegal breaches of said bond. [Id.]

Art. 1283. Conditions and amount of bond.—Said bond shall be conditioned that such live stock commission merchant will faithfully obey and carry out all the terms and provisions of this law, and will faithfully and truly perform all agreements entered into with all the consignors, owners or those holding valid liens on said live stock with respect to receiving, handling, selling and making remittances and payments of the net proceeds thereof to the said named parties, or to the person, firm or corporation to whom said consignors, owners or valid lien holders shall direct such payments to be made; and said bond shall further provide and shall be conditioned that such commission merchant shall within forty-eight hours of the sale of live stock so consigned, excluding the day of sale, Sundays, and holidays, remit the net proceeds thereof to the parties rightfully entitled to receive the same, or to such person, firm or corporation to whom such parties shall direct the payment to be made, or shall within forty-eight hours of the sale of such live stock for said parties at interest deposit to the credit of such parties their respective interest in the net proceeds thereof in some State or National bank in the city or town where such live stock commission merchant has his principal office or place of business, if requested by any or all of the said parties at interest to do so. Said bond shall be made annually and shall expire on September 1st of each year. The amount of such bond shall be fixed by the county judge as follows: Double the amount of the average daily sales of the stock sold on commission for the preceding twelve months period (computed upon the number of

business days) by the person, firm or corporation desiring to pursue the business of a live stock commission merchant, which facts shall be made to appear to to the county judge by the sworn statement of the individual, or member of the partnership, or by the president or secretary of the corporation, seeking the approval of said bond. Any person, firm or corporation who has not heretofore engaged in the business of a live stock commission merchant shall give bond in the sum of twenty thousand dollars, which shall be the minimum bond to be given under this law. The period of forty-eight hours shall be computed excluding the day of sale, Sundays and holidays. [Id.]

Art. 1284. Duty of court, judge.—The county judge shall carefully scrutinize said bond when tendered and if satisfied therewith approve said bond. No bond shall be approved by him which is not in the amount prescribed by this law, and conditioned as required by this law and executed by such surety company. The data as to such surety company shall be first duly certified to the said county judge by a certificate to that effect issued by the Commissioner of Insurance. [Id.]

Art. 1285. Bond recorded.—Said bond together with the sworn statement made to the county judge by the applicant seeking the approval of the same and setting forth the average daily sales of such applicant for the twelve months period next prior thereto, shall, as soon as practicable after the approval of said bond by the county judge, be filed for record in the county clerk's office in the county where the principal business of said commission merchant is to be carried on, and shall be recorded at length and properly indexed in a well-bound book kept for that purpose, to be labeled "Bonds of Live Stock Commission Merchants" and shall also file and securely retain in the archives of his office said original bond and sworn statement. Said clerk shall immediately upon the recording and indexing of said bond and statement furnish to the person, firm or corporation filing the same a correctly certified copy thereof. It is also made the duty of said commission merchant to procure said certified copy from said clerk at the earliest practicable date after the filing and recording thereof. [Id.]

Art. 1286. Deposit of proceeds.—If the proceeds of any live stock sold by said live stock commission merchant shall become involved in a dispute between contending claimants or if said live stock commission merchant is notified that other parties are asserting rights to said proceeds, or any part thereof, in opposition to the claim of those shipping said stock to said commission merchant, said live stock commission merchant shall deposit the amount of said net proceeds involved in such contention in some State or National bank in the town or city where said live stock commission merchant has his principal place of business, and promptly notify all interested parties of his said action in the premises; whereupon no further liability as to such funds so deposited shall accrue or continue as to said live stock commission merchant, either personally or on his bond. [Id.]

Art. 1287. Suit on bond.—The bond provided for by this law may be sued upon and recovery had thereon by any persons claiming to have been damaged by a breach of its conditions. Said bond shall not become void upon the first recovery thereon but may be sued upon until the amount thereof is exhausted. Upon a reduction of said bond by recoveries thereon to the extent of one-half thereof said live stock commission merchant shall be required forthwith to make and file a new bond conditioned as in the third article of this subdivision so as to restore said bond to the required amount. If it shall come to the knowledge of the county judge that the surety company making such bond has become insolvent or is not financially able to make the said bond ample and sufficient in the opinion of said judge, then said officer shall notify said commission merchant to execute a new bond as herein provided for; whereupon it shall be the duty of such commission merchant to make a new bond the same as originally required by the provisions of this law. [Id.]

TITLE 31

CONVEYANCES

Art.
1288. Instrument of conveyance.
1289. Notice.
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1291. When an estate deemed a fee simple.
1292. Form of conveyance.
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1296. Estates in futuro.
1297. Implied covenants.
1298. Incumbrances include what.
1299. Conveyance of separate lands of wife.
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Article 1288. [1103] [624] [548] Instrument of conveyance.—No estate of inheritance or freehold, or for a term of more than one year, in lands and tenements, shall be conveyed from one to another, unless the conveyance be declared by an instrument in writing, subscribed and delivered by the party disposing of the same, or by his agent thereunto authorized by writing. [Act Feb. 5, 1840; P. D. 671; G. L. vol. 2, p. 327.]

Art. 1289. [1104] [625] [549] Notice.—A conveyance, such as is described in the preceding article, shall not be good and effectual against a purchaser in good faith, without notice thereof and for a valuable consideration, nor against any creditor, unless such conveyance be acknowledged by the party who shall have signed or delivered it, or proved, in the manner required by law, and before some officer authorized by law to take such acknowledgment or proof, and be filed for record with the clerk of the county in which the land, or a part thereof, is situated. [Id.]

Art. 1290. [1105] [626] [550] Partial conveyances.—All alienations of real estate, made by any person purporting to pass or assure a greater right or estate than such person may lawfully pass or assure, shall operate as alienations of so much of the right and estate in such lands, tenements or hereditaments as such person might lawfully convey; but shall not pass or bar the residue of said right or estate purporting to be conveyed or assured; nor shall the alienation of any particular estate on which any remainder may depend, whether such alienation be by deed or will, nor shall the union of such particular estate with the inheritance by purchase or by descent, so operate as to defeat, impair or in any wise affect such remainder. [Id.]

Art. 1291. [1106] [627] [551] When an estate deemed a fee simple.—Every estate in lands which shall thereafter [hereafter] be granted, conveyed or devised to one although other words heretofore necessary at common law to transfer an estate in fee simple be not added, shall be deemed a fee simple, if a less estate be not limited by express words or do not appear to have been granted, conveyed or devised by construction or operation of law. [Id.]

Art. 1292. [1107] [628] [552] Form of conveyance.—The following form, or the same in substance, shall be sufficient as a conveyance of the fee simple of any real estate with a covenant of general warranty, viz.:

"The State of Texas,
"County of.....

"Know all men by these presents, That I, ..., of the ..... (give name of city, town or county), in the state aforesaid, for and in consideration of ..... dollars, to me in hand paid by ....., have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said ....., of the.....(give name of city, town or county), in the state of ....., all that certain ..... (describe the premises). To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging, unto the said ..... his heirs or assigns forever. And I do hereby bind myself, my heirs, executors and administrators to

warrant and forever defend all and singular the said premises unto the said ....., his heirs and assigns, against every person whomsoever, lawfully claiming or to claim the same, or any part thereof.

"Witness my hand, this ..... day of ....., A. D. 19....

"Signed and delivered in the presence of .....

..... [Id.]

Art. 1293. [1108] [629] [553] Other forms and clauses valid.—No person shall be obliged to insert the covenant of warranty, or be restrained from inserting any clause or clauses in conveyances hereafter to be made, that may be deemed proper and advisable by the purchaser and seller; and other forms not contravening the laws of the land shall not be invalidated. [Id.]

Art. 1294. [1109] [630] [554] Must be witnessed or acknowledged.—Every deed or conveyance of real estate must be signed and acknowledged by the grantor in the presence of at least two credible subscribing witnesses thereto; or must be duly acknowledged before some officer authorized to take acknowledgments, and properly certified to by him for registration. [R. S. 1879, 554.]

Art. 1295. [1110] [631] [555] Conveyance by authorized officer.—Every conveyance of real estate by a commissioner, sheriff or other officer legally authorized to sell, under or by virtue of a decree or judgment of any court within this State, shall be good and effectual to pass the absolute title to such real estate to the purchaser thereof; but nothing herein shall be construed to affect the right, title or interest of any person or persons other than the parties to such conveyance, decree or judgment, and those claiming under them. [Id.]

Art. 1296. [1111] [632] [556] Estates in futuro.—An estate or freehold or inheritance may be made to commence in futuro, by deed or conveyance, in like manner as by will. [Id.]

Art. 1297. [1112] [633] [557] Implied covenants.—From the use of the word "grant" or "convey," in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs or assigns, are implied, unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein, to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from incumbrances.

Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance.

Art. 1298. [1113] [634] [558] Incumbrances include what.—The term "incumbrances" includes taxes, assessments and all liens upon real property.

Art. 1299. [1114] [635] [559] Conveyance of separate lands of wife.—The husband and wife shall join in the conveyance of real estate, the separate property of the wife; and no such conveyance shall take effect until the same shall have been acknowledged by her privily and apart from her husband before some officer authorized by law to take acknowledgments to deeds for the purpose of being recorded, and certified to in the mode pointed out in articles 6605 and 6608. [Acts 1897, p. 41; G. L., vol. 10, p. 1095.]

Art. 1300. [1115] [636] [560] Conveyance of homestead.—The homestead of the family shall not be sold and conveyed by the owner, if a married man, without the consent of the wife. Such consent shall be evidenced by the wife joining in the conveyance, and signing her name thereto, and by her separate acknowledgment thereof taken and certified to before the proper officer, and in the mode pointed out in articles 6605 and 6608. [Id.]

Art. 1301. [1116] [637] [561] Failing as a conveyance.—When an instrument in writing, which was intended as a conveyance of real estate, or some interest therein, shall fail, either in whole or in part, to take effect as a conveyance by virtue of the provisions of this chapter, the same shall nevertheless be valid and effectual as a contract upon which a conveyance may be enforced, as far as the rules of law will permit.

TITLE 32

CORPORATIONS—PRIVATE

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CHAPTER ONE

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Article 1302. [1121] [642] [566] Purposes.—The purposes for which private corporations may be formed are:

1. The support of public worship.

2. The support of any benevolent, charitable, educational or missionary undertaking.

3. The support of any literary and scientific undertaking; the maintenance of a library, or promotion of painting, music and other fine arts.

4. The protection of women and children and the prevention of cruelty to animals.

5. The protection and preservation and propagation of fish, oysters and game.

6. The erection and maintenance of sanitoriums, with the right to acquire and own lands and town lots; to improve, cultivate, rent and alienate same; to erect storage dams and otherwise develop irrigation on such lands; to erect, acquire and maintain hotels and bath houses on its property; and in conjunction therewith, to erect and maintain training schools and outdoor sports on its property for the training and pleasure of its patients and their families; to maintain and carry on such industrial enterprises in conjunction therewith as shall be necessary to furnish employment to the patients therein and their families; provided such corporation shall not own or control more land than is necessary for the actual conduct and control of a sanitarium. [Acts 1897, p. 191; Acts 1913, p. 114; G. L. vol. 10, p. 1245.]

7. The encouragement of agriculture and horticulture by associations for the maintenance of public fairs and exhibitions of stock and farm products.

8. To grow, sell and purchase seeds, plants, trees, etc., for agricultural, horticultural and ornamental purposes, and to purchase and lease all lands necessary for that purpose.

9. To support and maintain bicycle clubs, and other innocent sports. [Acts 1897, p. 189; G. L. vol. 10, p. 1243.]

10. To establish and maintain fishing, hunting and boating clubs; to protect, preserve and propagate fish and game; to purchase and own such lands and bodies of water as may be desirable in connection therewith; to erect suitable improvements thereon; and to raise such live stock for profit only as the preserves of the club will maintain. [Acts 1907, p. 291.]

11. To construct and maintain a telegraph and telephone line.

12. To engage in radio telegraphy and telephony and wireless telegraphy and telephony, with authority to own, lease, conduct, maintain and operate all the necessary plants, equipment and facilities thereto pertaining. [Acts 1923, 3rd C. S. p. 171.]

13. To supply water to the public.

14. To manufacture and supply gas, light, heat and electric motor power, or either of them to the public by any means.

15. Private corporations may be created for, or after being created, may be so amended as to include two or more of the following purposes: To construct or purchase and maintain mills and gins; to manufacture and supply to the public by any means, ice, gas, light, heat, water and electric motor power, or either, in connection with such mills and gins, or either; to harvest grain, or to harvest and thresh grain; provided, that the authorized capital stock of any corporation authorized by this subdivision shall not exceed two hundred and fifty thousand dollars. [Acts 1903, p. 227.]

16. The authorized capital stock of corporations created under or authorized by subdivision 88 hereof which shall include irrigation and any one or more of the other purposes named herein shall not exceed one million dollars; the authorized capital stock of corporations created under or authorized by this subdivision which shall include water works for the supply of water to the public or municipalities, and any one or more of the other purposes named, except irrigation, shall not exceed five hundred thousand dollars; and the authorized capital stock of corporations so authorized for any two or more of the purposes named herein, except irrigation and water works, or the supply of water to the public, shall not exceed two hundred thousand dollars. [Acts 1907, pp. 291, 294; Acts 1913, p. 352.]

17. To manufacture ice and non-intoxicating beverages, and in connection therewith, to operate a general storage business; provided, that no beverage of any kind prohibited by any law of this State from being manufactured, sold or stored, shall be so manufactured, sold, stored or in any manner kept in the possession of any company so incorporated. [Acts 1st C. S. 1921, p. 151.]

18. To manufacture and sell denatured alcohol and its by-products, provided such corporation shall by provision in its charter, or by amendment thereof, limit the amount of its capital stock that may be owned or controlled, directly or indirectly, by one stockholder, and the number of votes that may be cast in any stockholders' meeting by one stockholder. [Acts 1907, p. 291.]

19. To construct and maintain establishments for the preserving and canning of fruits, vegetables and fish.

20. To grow and sell fruits, vegetables and tobacco. [Acts 1901, p. 70.]

21. To establish and carry on a dairy and creamery business. [Acts 1897, p. 192; G. L. vol. 10, p. 1245.]

22. To raise, buy and sell live stock.

23. To construct and maintain stock yards and pens.

24. To construct and maintain establishments for slaughtering, refrigerating, canning, curing and packing meat, and to lend or advance money by such establishments on any class of live stock.

25. To grow and sell sugar cane with the right to make and refine sugar, molasses, and all by-products of sugar cane and to sell the same. [Acts 1905, p. 28.]

26. To conduct and carry on a general apiary business, and in connection therewith, to manufacture bee hives and bee keepers' supplies, and purchase and sell such goods, wares and merchandise used, manufactured and produced in such business. [Acts 1907, p. 11.]

27. To gather and harvest cotton; provided that the capital stock of such corporation shall not exceed fifty thousand dollars. [Acts 1911, p. 28.]

28. To grow, prepare for market, and sell rice, with power to construct, maintain and operate such dams, reservoirs, lakes, wells, canals, flumes, laterals, and other appurtenances as may be necessary or convenient for the purpose of irrigating. [Acts 1905, p. 28.]

29. To construct and maintain sewers.

30. To construct, maintain and operate canals, drains and ditches outside the corporate limits of cities and towns in any county in Texas. [Acts 1897, p. 109; Acts 1893, p. 109; Acts 1888, S. S. p. 1; Acts 1887, p. 40; Acts 1885, p. 59; G. L. vol. 9, pp. 679, 838, 999; G. L. vol. 10, pp. 539, 1163.]

31. To excavate, maintain and operate drainage ditches, canals, and flumes with power to condemn lands necessary for the right of way and machinery plants for such drainage ditches, canals and flumes. [Acts 1897, p. 192; G. L. vol. 10, p. 1245.]

32. To construct, maintain and operate canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and for conserving, storing, conducting and transferring water to all persons entitled to the use of the same for irrigation, mining, milling, manufacturing, the development of power to cities and towns for waterworks, and for stock-raising. [Acts 1917, p. 224.]

33. To construct and maintain water power.

34. To transact any manufacturing or mining business, and to purchase and sell goods, wares and merchandise used for such business.

35. To construct steam and electric plows for breaking, cultivating and draining lands.

36. To store, transport, buy and sell oil, gas, salt, brine and other mineral solutions; also sand and clay for the manufacture and sale of clay products. [Acts 1899, p. 202; Acts 1915, p. 259.]

37. To establish and maintain an oil business with authority to contract for the lease and purchase of the right to prospect for, develop and use coal and other

minerals, petroleum and gas; also the right to erect, build and own all necessary oil tanks, cars and pipes necessary for the operation of the business of the same. [Acts 1897, p. 188; G. L. vol. 10, p. 1242; Acts 1915, p. 225.]

38. To establish and maintain a drilling business, with authority to own and operate drilling rigs, machinery, tools and apparatus necessary in the boring, or otherwise sinking of wells in the production of oil, gas, or water, or either, and the purchase and sale of such goods, wares and merchandise used for such business. [Acts 1919, p. 8.]

39. To purchase and sell goods, wares and merchandise, and agricultural and farm products.

40. To buy and sell goods, wares and merchandise of any description, by wholesale or wholesale and retail, with a capital stock of not less than twenty thousand dollars; provided, such wholesale and retail business shall not be conducted apart or in separate establishments.

41. To do a general advertising business. [Acts 1911, p. 28.]

42. To transact a printing or publishing business, and in connection therewith to sell goods, wares and merchandise of a stationery and blank book manufacturing business.

43. To erect and maintain market houses and market places.

44. To establish, maintain, erect or repair a hotel, office building, opera and play house, apartment house, or steam laundry. [Acts 1907, p. 291; Acts 1897, p. 189; G. L. vol. 10, p. 1241.]

45. To design, purchase and sell steel and iron and other metal products and the manufacture of any or all of such products, and to design, sell, construct and erect engineering and architecture [architectural] structures, and to contract for the construction and erection of such structures. [Acts 1915, p. 175.]

46. To contract for the erection, construction, or repair of any building, structure or improvement, public or private, and erect, construct or repair same or any part thereof, and to acquire, own, prepare for use any materials for said purposes. [Acts 1919, p. 65.]

47. To erect or repair any building or improvement, and to accumulate and lend money for said purposes, and to purchase, sell and subdivide real property in towns, cities and villages and their suburbs not extending more than two miles beyond their limits and to accumulate and lend money for that purpose. [Acts 1897, p. 189; G. L. vol. 10, p. 1241.]

48. To accumulate and lend money without banking or discounting privileges.

49. For any one or more of the following purposes: To accumulate and lend money, purchase, sell and deal in notes, bonds and securities, but without banking and discounting privileges; to act as trustee under any lawful express trust committed to them by contract and as agent for the performance of any lawful act. [Acts 1919, p. 134.]

50. To subscribe for, purchase, invest in, hold, own, assign, pledge and otherwise deal in and dispose of shares of capital stock, bonds, mortgages, debentures, notes and other securities, obligations, contracts and evidences of indebtedness of foreign or domestic corporations not competing with each other in the same line of business; provided the powers and authority herein conferred shall in no way affect any provision of the anti-trust laws of this State. [Acts 1921, p. 265.]

51. To take and promote stock in manufacturing companies and corporations.

52. To organize exchanges, with authority to deal in the stocks of mining companies.

53. To organize cotton exchanges, chambers of commerce and boards of trade, with power to provide and maintain suitable rooms for the conduct of their business, and to establish and maintain uniformity in the commercial usages of cities and towns, to acquire, preserve and disseminate valuable business information, and to adopt rules, regulations and standards of classification, which shall govern all transactions connected with the cotton trade, and with other commodities where standards and classifications are required, and generally to promote the interest of trade and increase the facilities of commercial transactions. [Acts 1899, p. 58.]

54. To establish and maintain clearing house associations, with power to provide and maintain suitable rooms for the conduct of their business, and to establish and maintain uniformity in the commercial usages among the members of such associations, to authorize any National Banking Association, and any State Bank, Bank and Trust Company, or Trust Company incorporated under the laws of the State of Texas or any private bank to become members thereof; to acquire, preserve, disseminate and exchange between the members of such associations, or by the members of such associations through said clearing house associations, of valuable business information, and credit information upon the borrowers or customers of said members of such clearing house associations; to adopt rules, regulations, and standards of conduct governing the members of such associations; to employ clearing house examiners, to contract for the compensation of such examiners, to provide for the employment of assistants for such examiners; to adopt rules governing the assessment of members of such associations for the payment of expenses so incurred; to adopt and prescribe rules and regulations governing the admission of members of such associations, and their expulsion therefrom; to join with one or more such associations in other cities in the establishment and maintenance of a system of clearing house examinations of the members of such associations; and to adopt, promulagate [promulgate] and establish such rules and regulations governing the members of such associations as will, in the judgment of a majority of the members of such associations, contribute to the solvency and safety of the members of such associations and the protection of the depositors of the members of such associations. [Acts 1927, 40th Leg., p. 287, ch. 200, § 1.]

55. To accept, guarantee, enforce, become surety upon, buy, sell, contract with reference to, or otherwise deal in acceptances, bills of exchange, bills of lading and warehouse and other receipts growing out of or to be used in aid of the transportation, warehousing, distribution, or financing, in either domestic or foreign trade, of readily marketable, staple, non-perishable, agricultural products, and so executed or supported as to be secured upon or to represent such products in amounts at least equal in clear market value to the amount of the financial undertaking of such corporations upon or on account of such instruments; to buy, sell, indorse, contract with reference to, or otherwise deal in acceptances of approved banking corporations, not secured upon nor representing any such products, but eligible for rediscount to, or for purchase in, the open market by Federal Reserve Banks. [Acts 2nd C. S. 1919, p. 21.]

56. To make, compile and own abstracts of titles to lands, and liens of all character on any property, or any other abstracts of records in this State, or county thereof, required by law.

57. To guarantee titles to lands and indemnify the holders thereof against losses by reason of defects in titles. [Acts 1907, p. 292.]

58. To guarantee and assure the validity of bills of lading and other contracts. [Id.]

59. To audit books, accounts and transactions of persons, firms or corporations, private, public or municipal.

60. To construct and maintain any species of roads and bridges in connection therewith.

61. To construct, build, acquire, own, operate and maintain toll roads within this State. [Acts 1913, p. 143.]

62. To construct, operate, and maintain causeways, or causeways and bridges, which may be used for any mode of travel and transportation, with the right to demand, receive and collect charges as fares or tolls.

63. To construct and maintain a bridge or ferry which may be used for any or all modes of travel and transportation.

64. To establish and maintain garages with author-

ity to purchase, sell, store, house, rent, operate, repair and otherwise deal in automobiles and other motor vehicles and their accessories, gasoline, and oils necessary to the operation of motor vehicles. The right to operate shall not conflict with any ordinance of any incorporated city or town in which they shall operate. [Acts 1919, p. 7.]

65. To conduct a livery and transfer business with auto and horse drawn vehicles, and for the sale of such vehicles. [Acts 1913, p. 174.]

66. To establish and maintain a line of stages.

67. To construct or acquire with power to maintain and operate, street railways and suburban railways and belt lines of railways within and near cities and towns, for the transportation of freight and passengers, with power also to construct, own and operate union depots, and to buy, own, sell and convey right of way upon which to construct railroads. [Acts 1897, p. 189; Acts 1903, p. 62; G. L. vol. 10, p. 1241.]

68. To construct, acquire, maintain and operate lines of electric gas or gasoline, denatured alcohol, or naptha motor railways within and between any cities or towns, and interurban railways within and between cities and towns, in this State, for the transportation of freight or passengers, or both. [Acts 1897, p. 188; G. L. vol. 10, p. 1242; Acts 1903, p. 204; Acts 1909, 2nd C. S. p. 396; Acts 1913, pp. 67, 349; Acts 1917, p. 390.]

69. To transport goods, wares and merchandise, or any valuable thing.

70. To construct railroads and bridges for railroad companies.

71. To build, maintain and operate a line of railroads to mines, gins, quarries, manufacturing plants and mills.

72. The construction, operation and maintenance of terminal railways. [Acts 1907, p. 300; Acts 1905, p. 211; Acts 1897, p. 188; Acts 1917, p. 134; G. L. vol. 10, p. 1242.]

73. To build and navigate steamboats and vessels and to carry persons and property therein.

74. The building, constructing and repairing boats, ships and vessels for use in and for the navigation of rivers, lakes, streams and seas, with power to build, construct, maintain and operate such docks, dry docks, marine railways, wharves and other appurtenances as may be necessary for the accomplishment of such purpose. [Acts 1917, p. 246.]

75. To construct harbors and canals on the coast of the Gulf of Mexico.

76. To improve rivers and other waterways in this State, and to render the same navigable for steam vessels and other water craft, with the authority to charge and collect tolls for the navigation of such rivers and waterways.

77. To establish a transportation business with power to buy, construct, lease, own, operate and maintain and convey all kinds of steamships, vessels and other water craft, and to navigate the same between all parts of the globe, and upon rivers, and to construct, buy, lease, own, maintain, operate and convey warehouses, docks, and wharves, and to buy, lease, receive, own, hold, and enjoy real and personal property necessary in the transaction of its business; to receive, purchase, hold, use and convey such rights, privileges, franchises and property, and to exercise beyond the jurisdiction of this State such power as may be granted to or conferred upon it by any foreign government, state or municipality; to have officers and agents, and to maintain offices at all points at which the company may do business; to act as principal or agent in buying and selling merchandise in all foreign countries; to carry passengers, freight, express and mail. [Acts 1897, p. 191; G. L. vol. 10, p. 1245.]

78. To construct, build and manufacture aeroplanes, including all classes of flying machines, to buy, sell and otherwise deal therein, and to operate, or have operated any such machines for the purpose of carrying passengers and freight, or either, including United States mail, from and to any point in this State, and subject to the laws thereof, to and from any point in any State of the United States, or any foreign country, with the right to acquire, by purchase or otherwise, and to maintain all necessary starting and lighting grounds and fields. [Acts 1919, p. 9.]

79. To engage in international trade and to purchase and sell products of the farm, ranch, orchard, mine and forest. [Acts 1921, p. 227.]

80. To do business in any State or foreign country:

(a) The establishment of land companies to buy, own, sell and convey real estate and minerals, and engage in mining, agriculture and stock raising.

(b) Doing a general business in merchandise and manufactures.

(c) The acquisition, construction, maintenance, operating and owning of power and illuminating plants, and systems of every character.

(d) The acquisition, construction, maintenance, operating and owning of urban and other lines of railway and all other kinds of transportation and communication.

(e) The improvement of harbors and rivers, and the acquisition, construction, ownership, and operation of canals, irrigation work, wharves and warehouses, and all kinds of machinery, tools and materials used for all the purposes enumerated in this subdivision. Any corporation organized hereunder shall only own such real estate in this State as may be necessary for its office. For every charter granted hereunder which may include more purposes than are contained in any one paragraph of this subdivision, a separate franchise fee or tax shall be paid to this State for the additional purposes for which such corporation is organized. [Acts 1897, p. 191; G. L. vol. 10, p. 1245; Acts 1901, p. 70.]

81. To construct or purchase or purchase and maintain mills, gins, cotton compresses, grain elevators, wharves, and public warehouses for the storage of products and commodities, and the purchase, sale and storage of products and commodities by grain elevator and public warehouse companies; the loan of money by such elevator and public warehouse companies; and to act as general commercial brokers and as custom brokers in the United States and foreign countries. [Acts 3rd C. S. 1920, p. 27.]

82. To construct, purchase, maintain and operate warehouses at one or more places in this State for the storage of products of the soil, with authority to issue negotiable receipts therefor; provided such corporation shall, by provisions of its charter, or amendment thereof, limit the amount of its capital stock that may be owned or controlled directly or indirectly by one stockholder, and the number of votes that may be cast in any stockholder's meeting by one stockholder to not exceeding one thousand dollars of its capital stock. [Acts 1907, p. 291.]

83. To organize laborers, workingmen, wage earners and farmers to protect themselves in their various pursuits. [Acts 1897, p. 191.]

84. To promote immigration.

85. To organize and maintain volunteer fire companies.

86. To conduct the business of undertaker and embalmer. [Acts 1901, p. 70.]

87. To maintain a public or private cemetery or crematory.

88. Private corporations may be created for, or, after being created, may so amend their charters as to include two or more of the following purposes, namely: The supply of water to the public for irrigation, power, municipal or domestic purposes; the manufacture of and supply of ice to the public; the generation of and supply of gas, electric light and motor power to the public; the manufacture, supply and sale of carbonated water to the public; the operation of cottonseed oil mills and the operation of cotton compresses; provided, that corporations including more than one of the purposes named in this Article shall pay the franchise tax provided by law for each of the purposes so included in their charter or amendments

thereto. [Acts 1925, p. 188.] [39th Leg., ch. 51, § 1.]

89. Corporations may be formed for the purpose of engaging in the poultry business and to buy and sell poultry of all kinds with the right to acquire and own all property necessary to conduct such business. [Acts 1927, 40th Leg., p. 17, ch. 11, § 1.]

90. Private corporations may be formed for the purpose of engaging in the business of operating, conducting and maintaining a cafeteria or cafeterias, with authority to own, lease and operate all plants, equipment and facilities necessary, incident or pertaining thereto. The right to operate shall not conflict with any ordinance of any incorporated city or town in which such business shall be operated. [Acts 1927, 40th Leg., p. 17, ch. 11, § 1.]

CHAPTER TWO

CREATION OF CORPORATIONS

Art.
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1312. No capital stock.
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Article 1303. [1120] [641] [565] May create.—Private corporations may be created by the voluntary association of three or more persons for the purposes authorized by law and in the manner hereinafter mentioned. [Acts 1874, p. 120; G. L. vol. 8, p. 122; Act 1897, p. 188; P. D. 5935; G. L. vol. 10, p. 1242.]

Art. 1303a. Corporations for handling animals for menageries.—Private corporations may be created under the general laws of this State by the voluntary association of three or more persons for the purpose of owning, raising, selling and leasing animals used in circuses, menageries and zoos, and to buy, lease, own, build, construct, repair and sell wagons, chariots, harnesses, cages and other equipment necessary to and used in the operation of raising and handling animals used in circuses, menageries and zoos, and to own and lease such lands and construct such buildings and improvements as may be necessary for the accomplishment of such purpose. [Acts 1927, 40th Leg., p. 266, ch. 187, § 1.]

Art. 1303b. Corporations to deal in securities without banking privileges.—A private corporation may be formed for any one or more of the following purposes, without banking or insurance privileges: to accumulate and loan money, to sell and deal in notes, bonds and securities; to act as Trustee under any lawful express trust committed to it by contract, and as agent for the performance of any lawful act; to subscribe for, purchase, invest in, hold, own, assign, pledge and otherwise deal in and dispose of shares of capital stocks, bonds, mortgages, debentures, notes and other securities or obligations, contracts and evidences of indebtedness of foreign or domestic corporations not competing with each other in the same line of business, to borrow money or issue debentures for carrying out any or all purposes above enumerated. Provided that the power and authority herein conferred shall in no way affect any of the provisions of the anti-trust laws of this State. [Acts 1927, 40th Leg., p. 414, ch. 275, § 1.]

Art. 1304. [1122] [643] [567] Charter.—A charter must be prepared setting forth:

1. The name of the corporation;
2. The purpose for which it is formed;
3. The place or places where its business is to be transacted;
4. The term for which it is to exist;
5. The number of directors or trustees, and the names and residences of those who are appointees for the first year;
6. The amount of its capital stock, if any, and the number of shares into which it is divided. [Id.]

Art. 1305. [1123] [644] [568] Acknowledgment.—It must be subscribed by three or more persons, two of whom must be citizens of this State, and must be acknowledged by them, before an officer duly authorized to take acknowledgments of deeds. [Acts 1887, p. 103; Acts 1919, p. 246; G. L. vol. 9, p. 901.]

Art. 1306. [1123] [644] [568] Female incorporators.—Charters may be subscribed by married women who may be stockholders, officers and directors thereof; and their acts, contracts and deeds as such stockholders, officers and directors shall be as binding and effective for all the purposes of said corporation as if they were males. The joinder and consent of the husband and privy examinations separate and apart from him shall not be required. [Id.]

Art. 1307. [1124] [679] [603] Notice by firm.—Whenever any banking, mercantile or other business firm desires to become incorporated without a change of the firm name, such firm shall, in addition to the notice of dissolution required at common law, give notice of such intention to become incorporated, for at least four consecutive weeks in some newspaper published at the seat of State government, and in the county in which such firm has its principal business office, if there be a newspaper in such county, and, if not, then in some newspaper published in some adjoining county. Until such notice has been so published for the full period above named, no change shall take place in the liability of such firm or the members thereof. [Id.]

Art. 1308. [1125–1126–1127] Capital stock.—Before the charter of a private corporation created for profit can be filed by the Secretary of State, the full amount of its authorized capital stock must be in good faith subscribed by its stockholders and fifty per cent thereof paid in cash, or its equivalent in other property or labor done, the product of which shall be worth to the company the actual value at which it was taken or at which the property was received. The affidavit of those who executed the charter shall be furnished to the Secretary of State, showing:

1. The name, residence and postoffice address of each subscriber to the capital stock of such company;
2. The amount subscribed by each, and the amount paid by each;
3. The cash value of any property received, giving its description, location and from whom and the price at which it was received;
4. The amount, character and value of labor done, from whom, and price at which it was received. [Acts 1901, p. 18; Acts 1897, p. 192; Acts 1907, p. 309; G. L. vol. 10, p. 246.]

Art. 1309. [1128] [642] Further evidence.—If the Secretary of State is not satisfied, he may, at the expense of the incorporators, require other satisfactory evidence before he shall be required to receive, file and record such charter. [Id.]

Art. 1310. [1129] [642] Corporations exempt.—Corporations created under subdivisions 48, 67, 68, 71, 72 of Article 1302; corporations formed for the construction, purchase and maintenance of mills and gins, having a capital stock of not exceeding fifteen thousand dollars; mutual building and loan associations; corporations formed for the construction, purchase, maintenance and operation of cotton mills; and waterworks, ice plants, electric light plants and cotton warehouses in cities of less than ten thousand inhabitants, are exempt from the provisions of the two preceding articles. [Id. 3d C. S. 1920, p. 86.]

Art. 1311. [1130] [642] Exempt corporations: stock.—The stockholders of all private corporations such as are designated in the preceding article, with an authorized capital stock under the provisions of this chapter, shall be required to pay in at least one hundred thousand dollars in cash of their authorized capital stock, or to subscribe at least fifty per cent and pay in at least ten per cent of their authorized capital, before they shall be authorized to do business in this State. [Acts 1907, p. 309.]

Art. 1312. [1224] [714] [638] No capital stock.—No society, association, company, corporation or institution that does not have a capital stock is required in its charter to make any statement of the amount of capital stock or amount of each share; but it will suffice if the charter contains the other statements required, and also an estimate of the value of the goods, chattels, lands, rights and credits owned by the corporation.

Art. 1313. [1130–1–2] Filing charter.—When the stockholders of any company shall furnish satisfactory evidence to the Secretary of State of a compliance with the provisions of this chapter, said officer shall receive, file and record the charter of such company in his office, upon application and the payment of all fees therefor, and give his certificate showing the record of such charter and authority to do business thereunder. The charter shall thereupon be filed in the office of the Secretary of State, who shall record the same at length in a book to be kept for that purpose, and retain the original on file in his office. A copy of the charter, or of the record thereof, certified under the great seal of the State, shall be evidence of the creation of the corporation. The existence of the corporation shall date from the filing of the charter in the office of the Secretary of State. The certificate of the Secretary of State shall be evidence of such filing. [Acts 1874, p. 121, sec. 9; P. D. 5940; G. L. vol. 8, p. 123.]

Art. 1314. [1133–4–5] Amendments.—Any private corporation organized or incorporated for any purpose mentioned in this title, may amend or change its charter or act of incorporation by filing, authenticated in the same manner as the original charter, such amendments or changes with the Secretary of State. A corporation created by special Act of the Legislature shall also file with said officer its original charter and such amendments thereto or changes therein, if any, as have been made by special Act of the Legislature; and the same shall be recorded by the Secretary of State, followed by the proposed amendments or changes thereof. Such amendments or changes shall take effect and be in force from the date of the filing thereof. The certificate of the Secretary of State shall be evidence of such filing. No amendment or change violative of the Constitution or laws of this State or any provision of this title or which so changes the original purpose of such corporation as to prevent the execution thereof, shall be of any force or effect. [Acts 1874, sec. 10, p. 120; G. L. vol. 8, p. 122; Acts 1903, p. 227.]

Art. 1315. [1136] [651] Renewal of charter.—Corporations created for the support of benevolent, charitable, educational or missionary undertakings, the support of any literary or scientific undertaking, the maintenance of a library, or the promotion of painting, music or other fine arts, whose charter has expired by limitation, may revive such charter with all the privileges and immunities and rights of property, real and personal, exercised and held by it at the date of the expiration of its said charter, by filing, with the consent of a majority of its stockholders, a new charter under the provisions of this chapter, reciting therein such original privileges and immunities and rights of property, and by filing therewith a certified copy of such original expired charter. [Acts 1874, p. 120; G. L. vol. 8, p. 122; Acts 1883, p. 98; G. L. vol. 9, p. 404; Acts 1907, p. 301; Acts 1909, p. 226; P. D. 5942.]

Art. 1316. [1137] [651] Consolidation.—Any two or more of such corporations may revive and consolidate their charters under a new corporate name, or under the name of either, with all privileges, immunities and rights of property, real and personal, enjoyed by each at the date of the expiration of their several charters, by, in like manner, filing a charter, which shall recite the facts of consolidation, accompanied by certified copies of said original charters; provided the provisions thereof shall not be construed to relieve any corporation from the payment of occupation taxes, now or hereafter required by law. [Id.]

Art. 1317. [1138] [675] [599] Ostensible corporation: debt.—No person who assumes an obligation to an ostensible corporation as such, shall resist the enforcement of such obligation, on the ground that there was in fact no such corporation, until that fact shall have been adjudged in a direct proceeding had for that purpose.

Art. 1318. [1139] [650] [574] Legislative authority.—All charters or amendments to charters, under the provisions of this chapter, shall be subject to the power of the Legislature to alter, reform or amend the same. [Act April 23, 1874, p. 120; G. L. vol. 8, p. 122.]

CHAPTER THREE

GENERAL PROVISIONS

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Article 1319. [1117–18–19] Corporations classified.—Corporations are either public or private. A public corporation is one which has for its object the government of a portion of the State. Private corporations are of three kinds:

1. Religious.
2. For charity or benevolence.
3. For profit. [Acts 1874, p. 120; G. L. vol. 8, p. 122.]

Art. 1320. [1140] [651] [575] General powers.—Every private corporation as such has power:

1. To have succession by its corporate name for the period limited in its charter, not to exceed fifty years, and when no period is limited, for twenty years.
2. To maintain and defend judicial proceedings.
3. To make and use a common seal.
4. To purchase, hold, sell, mortgage or otherwise convey such real estate and personal estate as the purposes of the corporation shall require, and also to take, hold and convey such other property, real, personal, or mixed, or [as] shall be requisite for such corpora-

tion to acquire in order to obtain or secure the payment of any indebtedness or liability due, or belonging to, the corporation.

5. To appoint and remove subordinate officers and agents as the business of the corporation shall require, and to allow them a suitable compensation.

6. To make by-laws not inconsistent with existing laws, for the management of its property, the regulation of its affairs and the transfer of its stock.

7. To enter into any obligation or contract essential to the transaction of its authorized business.

8. To increase or diminish, by a vote of its stockholders cast as its by-laws may direct, the number of its directors or trustees, to be not less than three nor more than twenty-one; provided, that any corporation formed under Subdivisions 1, 2 and 3, of Chapter 1, may increase the number of its directors or trustees to not more than seventy-five. [Acts 1874, p. 120; G. L., vol. 8, p. 122; Acts 1907, p. 301; Acts 1909, p. 225; Acts 1923, p. 261.]

Art. 1321. [1162] [653] [577] May borrow money.—Corporations may borrow money on the credit of the corporation and may execute bonds or promissory notes therefor and may pledge the property and income of the corporation. [Acts 1874, p. 120; G. L. vol. 8, p. 122; Acts 1883, p. 98; G. L. vol. 9, p. 404; Acts 1917, p. 66.]

Art. 1322. [1173] [676] [600] Conveyances.—Any corporation may convey lands by deed, sealed with the common seal of the corporation, and signed by the president or presiding member or trustee of said corporation, or in common form without seal by its attorney in fact where the instrument constituting such attorney in fact is executed in said manner first mentioned. Such deed, when acknowledged by such officer or attorney in fact to be the act of the corporation, or proved in the manner prescribed for other conveyances of lands, may be recorded in like manner and with the same effect as other deeds. [Acts 1905, p. 230.]

Art. 1323. [1153] [655] [579] Directors: quorum.—A majority of the directors or trustees shall constitute a quorum, and be competent to fill vacancies in the board, and to transact all business of the corporation. An annual election shall be held for directors or trustees, at such time and place as the by-laws of the corporation may require. Provided that any corporation formed under subdivisions 1, 2 and 3 of Chapter 1, Title 32 of the Revised Civil Statutes of Texas of 1925 may elect all or a part of its directors for terms of not exceeding three years. [Acts 1907, p. 311, sec. 15; P. D. 5946; Acts 1927, 40th Leg., p. 349, ch. 235, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 349, ch. 235, repeals all conflicting laws and parts of laws.

Art. 1324. [1157] [659] [583] Failure to elect officers.—Should an election for directors not be held on the day appointed by the by-laws of any corporation organized under any law of this State, such corporation shall not, for that reason, be deemed to be dissolved. It shall be lawful on any other day to hold a meeting and elect its directors or trustees, in such manner as shall be prescribed by the by-laws thereof. [Id., sec. 19; P. D. 5950.]

Art. 1325. [1154] [656] [580] Officers.—The directors or trustees shall choose one of their number president, and shall appoint a secretary and treasurer and such other officers as they may deem necessary for the corporation. [Id., sec. 16.]

Art. 1326. [1155] [657] [581] By-laws.—The directors may adopt by-laws for the government of the corporation. Such by-laws may be altered, changed or amended by a majority vote of the stockholders at any election or special meeting ordered for that purpose by the directors or trustees, on a written application of a majority of the stockholders or members. [Id.]

Art. 1327. [1159] [661] [585] Directors' powers.—The directors shall have the general management of the affairs of the corporation, and may dispose of the residue of the capital stock at any time remaining unsubscribed, in such manner as the by-laws may prescribe. [Id., sec. 21.]

Art. 1328. [1160] [662] [586] Records.—They shall cause a record to be kept of all stock subscribed and transferred, and of all business transactions. Their books and records shall at all reasonable times be open to the inspection of any stockholder. [Id.]

Art. 1329. [1161] [663] [587] Dividends.—They shall, when required by one-third of the stockholders, present written reports of the situation and amount of business of the corporation, and declare and make such dividends of the profits from the business of the corporation as they shall deem expedient, or as the by-laws may prescribe. [Id.]

Art. 1330. [1145] [652] [576] Increase of capital.—The board of directors, trustees or managers of a corporation may increase its authorized capital when empowered to do so by a two-thirds vote of all its stock by complying with the provisions of Article 1348. Upon such increase of stock being made in accordance with such provisions and certified to the Secretary of State by the directors, and, if the Secretary of State is satisfied that the increase has been made in accordance with law and that the requirements of law have been complied with as to the subscription and payment of stock and in other respects, as on an original application for charter, he shall file such certificate of increase; and thereupon the same shall become a part of the capital stock of such corporation. Such certificate shall be filed and recorded in the same manner as the charter. [Id.; Acts 1893, p. 123; G. L. vol. 10, p. 553.]

The reference in this article to art. 1348 is erroneous, and was evidently intended for art. 1308.

Art. 1331. [1151] [652] Unpaid increase.—In case of failure by the stockholders to pay the unpaid portion of an increase of stock within two years from the date of the filing of the certificate of increase in the office of the Secretary of State, the charter of such company shall be forfeited, and the provisions of Articles 1339 to 1343 inclusive, shall govern the same as in case of the creation of a corporation. [Acts 1907, p. 311.]

Art. 1332. [1152] [652] Decrease of capital.—A corporation may decrease its capital stock by such amount as its stockholders may decide, by a two-thirds vote of all its outstanding stock, in like manner as is required for an increase. No such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company, or any stockholder thereof. Such decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such corporation, giving therein all its assets and liabilities, with names and postoffice addresses of all creditors and amount due each; and the Secretary of State may require, as a condition precedent to the filing of such certificate of decrease, that the debts of such corporation be paid or reduced. [Id.]

Art. 1333. Reduction: voting.—Whenever any corporation shall reduce its capital stock, and by reason thereof fractional shares of its stock shall be issued to or held by any of its stockholders, the holder of any such fractional share shall be entitled to vote the same at any meeting of the stockholders in accordance with the proportionate or ratable value of such shares. [Acts 1919, p. 173.]

Art. 1334. [1168] [666] [590] Stock, status of.—The stock of any corporation created under this title shall be deemed personal estate, and shall be transferable only on the books of the corporation in such manner as the by-laws may prescribe. [Acts 1907, p. 312, P. D. 5955.]

Art. 1335. [1169] [667] [591] Payment of stock.—The board of directors of any corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner, and in such installments, as may be required by the by-laws. [Id.]

Art. 1336. [1170] [668] [592] Stock forfeited.—If any stockholder shall neglect to pay any installment as required by the board of directors, the directors may declare his stock and all previous payments forfeited to the use of the company; but no stock shall be forfeited until the directors have caused a written notice to be served on him personally, or by depositing the same in the postoffice, properly directed to him at the postoffice nearest his usual place of residence, stating that he is required to make such payment at the time and place specified in said notice, and that if he fails to make the same, his stock and all previous payments thereon will be forfeited for the use of the company. Such notice may be served at least thirty days previous to the day on which such payment is required to be made. [Id.]

Art. 1337. [1171] [669] [593] May sue members.—All bodies corporate may sue for, recover and receive from their respective members all arrears or other debts, dues or demands owing to them, in like mode, manner and form as they might sue for, recover and receive the same from any person not a member of their body. [Id.]

Art. 1338. [1141] [642] Unpaid stock.—The stockholders of all corporations chartered under the provisions of the preceding chapter shall, within two years from the date of the filing of such charter, pay in the unpaid portion of the capital stock of such company; proof of which shall, within said time, be made to the Secretary of State, in the manner provided in said articles, for the filing of charters. [Acts 1907, p. 309.]

Art. 1339. [1142] [642] Default of payment.—In cases of the failure to pay the unpaid portion of capital stock, and to make proof thereof to the Secretary of State within two years from the date of the filing of the charter, the charter of such company shall become forfeited. Such forfeiture shall be consummated without judicial ascertainment by the Secretary of State entering upon the margin of the ledger kept in his office relating to such corporations the word, "forfeited," giving the date and reason therefor. [Id.]

Art. 1340. [1143] [642] Forfeiture notice.—The Secretary of State shall notify such corporation by mailing to the postoffice named as its principal place of business, or to any other place of business of such corporation, addressed in its corporate name, a written or printed statement of the date and fact of such forfeiture. A record of the date and fact of such notice shall be kept by such officer. [Id.]

Art. 1341. [1143] [642] Redemption.—The stockholders of any such corporation whose charter has been so forfeited, who shall within six months from the date of such forfeiture and not thereafter, pay in full the unpaid capital of such company and furnish to the Secretary of State proof of such fact as required herein, and in addition, shall pay the Secretary of State as fees belonging to his office, the sum of five dollars per month for each month and fractional part thereof between the date of forfeiture and settlement, shall be relieved from such forfeiture; and said officer shall write on the margin of said ledger the word "revived," giving the date thereof. [Id.]

Art. 1342. [1144] [642] Avoidance of forfeiture.—The stockholders of any such company shall have the right, at any time within two years from the date of filing of the charter, to make payment of the unpaid portion of the capital stock, to reduce the same so that by reduction, or reduction and payment, the full amount of the capital stock authorized by such reduction shall be paid, and thus avoid a forfeiture of the charter. No creditor of said company shall in any wise be prejudiced by such reduction of its capital stock in any claim or cause of action such creditor may have against such company or any stockholder or officer thereof. [Id.]

Art. 1343. [1144] [642] Failure to revive.—If the stockholders fail to cause the charter powers of said corporation to be revived, the affairs of such company shall be administered and wound up as on dissolution. [Id.]

Art. 1344. [552] Liable for debt.—If default shall be made in the payment of any debt or liability contracted by a trust, guaranty or surety company, each stockholder thereof, as long as he owns shares therein, and for twelve months after the date of a transfer thereof, shall be personally liable for all debts of such corporation existing at the date of such default or transfer, to an amount double the par value of such shares. [Acts 1905, S. S. p. 511.]

Art. 1345. [1198] [671] [595] Stockholders' liability.—If execution has issued against the property of a corporation, except a railway or a religious or charitable corporation, and there cannot be found any property whereon to levy such execution, then the execution may be issued against any of the stockholders to an extent equal to the amount of the stock unpaid. No execution shall issue against any stockholder, except upon an order of the court in which the suit or other proceeding was instituted, made in open court upon motion after a reasonable written notice to the person or persons sought to be charged. Upon such motion, such court may order execution to issue accordingly; or the plaintiff in execution may proceed by action to charge the stockholders with the amount of his judgment, in accordance with the liability of the stockholders. [Acts 1874, p. 120; G. L. vol. 8, p. 122.]

Art. 1346. [1199] [672] [596] Lists of stockholders.—The secretary or other officer having charge of the books of any corporation, on demand of the plaintiff in any execution against the corporation, his agent or attorney, shall furnish such plaintiff, his agent or attorney, with the name and place of residence of each stockholder as far as known, and the amount of stock held by each, as shown by such books. [Id.]

Art. 1347. [1200] [670] [594] Directors' liability.—If the directors of any corporation shall knowingly declare and pay any dividend when the corporation is insolvent, or any dividend the payment of which would render it insolvent, they shall be jointly and severally liable for all the debts of the corporation then existing, and for all debts of the corporation which thereafter, during the time such directors respectively remain in office, shall be contracted. The amount for which they shall be so liable shall not exceed the amount of such dividend. If any director is absent at the time of declaring the dividend, or shall object thereto at the time such dividend is declared and shall file his objections in writing with the secretary or other officer of the corporation having charge of the books, he shall be exempt from said liability. [Id.; Acts 1871, 2nd C. S. p. 66; Acts 1893, p. 123; G. L. vol. 7, p. 68; vol. 10, p. 553.]

Art. 1348. [1165] [665] [589] Indebtedness.—No corporation, domestic or foreign, doing business in this State shall create any indebtedness whatever except for money paid, labor done which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received reasonably worth at least the sum at which it was taken by the corporation. [Acts 1907, p. 312.]

Art. 1349. [1164] [665] [589] Acts prohibited.—No corporation, domestic or foreign, doing business in this State, shall employ or use its stock, means, assets or other property, directly or indirectly for any purpose whatever other than to accomplish the legitimate business of its creation, or those purposes otherwise permitted by law; provided that nothing in this article shall be held to inhibit corporations from contributing to any bona fide association, incorporated or unincorporated, organized for and actively engaged for one year prior to such contribution in purely religious, charitable or eleemosynary activities, nor to local, district, or statewide commercial or industrial clubs or associations or other civic enterprises or organizations not in any manner nor to any extent directly or indirectly engaged in furthering the cause of

any political party, or aiding in the election or defeat of any candidate for office, or aiding in defraying the expenses of any candidate for office, or defraying or aiding in defraying the expenses of any political campaign, or political headquarters, or aiding or assisting the success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof. [Acts 1917, p. 25.]

Art. 1350. [1166] Campaign expenditures.—No corporation, domestic or foreign, doing business in this State shall, directly or indirectly, contribute or pay any part of its assets, property or funds to any political party, or to any officer or campaign manager of any political party, or to any person whatsoever, for or on account of such party, nor to any candidate for any office, before or after nominations are made, or to aid in defraying the expenses of any candidate for office, or to any person for or on account of aid in defraying the expenses of a candidate for office, or to any person whatsoever for or on account of aid in maintaining or defraying the expenses of any campaign or political headquarters, or to any person whatsoever for or on account of the success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof. [Acts 1907, p. 312.]

Art. 1351. [1167] Penalty.—Any corporation which shall violate any provision of the three preceding articles, shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, and all rights and franchises which it holds under, from or by virtue of the laws of this State.

Whenever it appears that the money, assets, property or funds of a corporation have been issued, paid out, or used, in violation of any provision of the three preceding articles, by any agent, attorney, director or officer of such corporation, it shall be considered the act of the corporation, unless, within one year from the date of such violation it has caused to be entered, through its board of directors on its records in this State, an order repudiating the wrong and permanently dismissing from its service all persons directly or indirectly connected with such violation. [Id.]

Art. 1352. Political contributions.—No national bank, or any other corporation organized by authority of any law of Congress, and doing business in this State, or authorized to do business in this State, or any other corporation organized by the authority of the laws of this State, or of any foreign country, or any corporation authorized by the authority of the laws of any other State of the United States, doing business in this State, or authorized to do business in this State, shall make any money contribution, or its equivalent, or offer to pay at any future time any money, or its equivalent, directly or indirectly, for the purpose of aiding or defeating the election of any candidate for the office of Representative in Congress, or Presidential or Vice-Presidential Electors from this State, or any candidate for any State, district, county or precinct office in this State, or the success or defeat of any political measure submitted to a vote of the people of this State. Every corporation which shall make, or offer to make, any contribution in violation of the provisions of this article shall be subject to a penalty payable to the State of Texas of not less than five thousand nor more than ten thousand dollars for each offense. [Acts 1907, p. 169.]

Art. 1353. [1146] Watering stock.—No corporation shall issue any stock whatever, except for money paid, labor done which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received reasonably worth at least the sum at which it was taken by the company. Any corporation which violates any provision of this article shall, on proof thereof in any court of competent jurisdiction, forfeit its charter, permit or license, as the case may be, and all rights and franchises which it holds under, from, or by virtue of the laws of this State. [Acts 1907, p. 309.]

Art. 1354. [1147] Suit.—When any corporation has issued and has outstanding any stocks or bonds given or issued for any purpose, other than money paid to, labor done for, or property actually received by the corporation, the Attorney General when convinced that the facts exist which authorize the action, shall institute quo warranto or other appropriate judicial proceedings in Travis County or in any other county of this State where such corporation may be sued, to have such stocks or bonds issued in violation of the Constitution or laws of Texas, cancelled, expunged, and held for naught.

Within the meaning of the above, is included any bond or stock given in renewal, or in lieu of, any originally issued for purposes other than those mentioned above, also any issued by any corporation with which the corporation originally issuing any such stock or bonds has merged or been consolidated and given by said issuing corporation in the place of those originally issued for purposes other than as mentioned above. [Id.]

Art. 1355. [1148] Avoidance of suit.—If any suit authorized under the preceding article has been instituted, the same shall be dismissed at the cost of the defendant, or if not instituted, no action shall be brought, if the defendant corporation shall surrender, or cause to be surrendered, to the court, or to the Railroad Commission of Texas, for destruction, all such illegal stocks and bonds complained of, with proper and legal releases thereof, suitably executed for record, with such other written evidences and documents as may be necessary to show that such stocks or bonds are no longer outstanding against the corporation. [Id.]

Art. 1356. [1149] Remedies cumulative.—The rights and remedies given by the two preceding articles are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment, or collection of fines, forfeitures and penalties. [Id.]

Art. 1357. [1172] [674] [598] Misnomer.—No misnomer of any corporation shall defeat or vitiate any gift, grant, conveyance, devise, or bequest to the same. [Acts 1907, p. 312.]

Art. 1358. [1174] [673] [597] Principal office.—Each corporation or joint stock company of every description, whether organized and acting under a special charter or general law of this State, shall keep its principal office within this State. [Acts 1905, p. 230.]

CHAPTER FOUR

LANDS

Art.
1359. Conditions of purchase.
1360. Sale of surplus.
1361. Liquidation.
1362. Corporations prohibited.
1363. Town lot corporations.
1364. Escheat proceedings.
1365. Disposition of penalties.

Article 1359. [1175] Conditions of purchase.—No private corporation shall be permitted to purchase any lands under any provision of this chapter, unless the lands so purchased are necessary to enable such corporation to do business in this State, or except where such land is purchased in due course of business to secure the payment of debt. [Acts 1893, p. 36; Acts 1897, p. 48; G. L. vol. 10, pp. 466, 1102.]

Art. 1360. [1176] Sale of surplus.—All private corporations authorized by the laws of Texas, to do business in this State, whose main purpose is not the acquisition or ownership of lands, which have or may acquire by lease, purchase or otherwise more land than is necessary to enable them to carry on their business, shall, within fifteen years from the date said land may be acquired, in good faith sell and convey in fee simple all lands so acquired which are not necessary for the transaction of their business. [Id.]

Art. 1361. [1178] Liquidation.—Any lands acquired by corporations in payment of debts due such corporations shall be sold and conveyed as herein pro-

vided, within fifteen years from the date of the acquisition of such land. [Id.]

Art. 1362. [1177] Corporations prohibited.—No private corporation heretofore or hereafter chartered or created whose main purpose of business is the acquisition or ownership of land by purchase, lease or otherwise, shall hereafter be permitted to acquire any land within this State by purchase, lease or otherwise. [Id.]

Art. 1363. [1179] Town lot corporations.—Nothing in this chapter shall be construed to prohibit the lease, purchase, sale or subdivision of real property within incorporated towns, cities or villages, and their suburbs not extending more than two miles beyond their corporate limits, by corporations whose charters authorize them to lease, purchase, sell and subdivide real estate, within towns, cities and villages, and their suburbs, whether their suburbs be stated to be measured from the limits merely, or the corporate limits, of such towns, cities and villages. All such corporations now existing, or which may be hereafter created shall be authorized to lease, sell or subdivide real property in any unincorporated city, town or village, or the suburbs thereof, within this State, not exceeding two miles in any direction from the courthouse, or depot nearest the center of such city, town or village, or from the center thereof, if there be no courthouse or depot. [Id.]

Art. 1364. [1180] Escheat proceedings.—All corporations holding lands contrary to the provisions of this law shall hold the same subject to forfeiture and escheat proceedings. The Attorney General, or any district or county attorney, when either of them has reason to believe that any corporation is holding lands in violation of this law, shall institute suit in the name of the State of Texas, in Travis County, or in any county in Texas where such corporation may have an agent, or in any county where any part of the land may be situated, against such corporation, as is provided for the escheat of estates of deceased persons dying without devise thereof and having no heirs. [Acts 1893, p. 36; G. L. vol. 10, p. 466.]

Art. 1365. [1181] Disposition of penalties.—If it be determined upon the trial of said suit that lands are held contrary to this law, the court trying said cause shall enter judgment condemning such lands and ordering them to be sold as under execution, the proceeds of such sale to be first applied to the payment of costs of such suit, and the balance to be paid into the State Treasury subject to be paid to the stockholders, or persons entitled to receive the same as owners, upon proper proof made within twelve months from date of sale. If the legal representatives of such corporation fail to claim the said balance of money realized on sale of said land, then it shall escheat to the State and be applied to the available school fund. The court trying said cause shall allow the attorney representing the State a reasonable fee, to be taxed as cost in the suit. In no case shall the State be liable for costs or fees unless it is successful in said suit. [Id.]

CHAPTER FIVE

BOOKS, RECORDS, ETC.

Art.
1366. Examination.
1367. Request to examine.
1368. Authority to examine.
1369. Disclosures.
1370. Penalty.
1371. Provisions cumulative.

Article 1366. [1187] Examination.—Every corporation, domestic or foreign, doing business in Texas, shall permit the Attorney General or any of his authorized assistants or representatives, to make examination of all the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws, and other records of said corporation as often as he may deem necessary. [Acts 1907, p. 34.]

Art. 1367. [1187] Request to examine.—A written request shall be made to the president or other officer of said corporation at the time the Attorney General or his assistants desire to examine the business of said corporation. It shall be the duty of the officer or agent of any corporation to whom said request is presented to immediately permit the Attorney General, or his authorized assistant or representative to inspect and examine all the said books, records and other documents of said corporation. [Id.]

Art. 1368. [1188] Authority to examine.—The Attorney General, or any of his assistants or representatives when authorized by the Attorney General, has the power and authority to make investigation into the organization, conduct and management of any corporation authorized to do business within this State, and has authority to inspect and examine any of its said books, records and other documents, and take such copies thereof as in his judgment may show or tend to show that said corporation has been or is engaged in acts or conduct in violation of its charter rights and privileges, or in violation of any law of this State. [Id.]

Art. 1369. [1188] Disclosures.—The Attorney General, or his authorized assistants or representatives shall not make public, or use said copies or any information derived in the course of said examination of said records or documents, except in the course of some judicial proceedings in which the State is a party, or in a suit by the State to cancel the permit or forfeit the charter of such corporation, or to collect penalties for a violation of the laws of this State, or for information of any officer of this State charged with the enforcement of its laws. [Id.]

Art. 1370. [1189–1190] Penalty.—Any foreign corporation doing business in Texas under a permit granted under the laws of this State, or any officer or agent thereof, or any domestic corporation which shall fail or refuse to permit the Attorney General, or his authorized representative or representatives, to examine or take copies of any of its said books, records, and other documents whether same be situated within this or any other State within the United States, shall thereby forfeit its right to do business in this State; and its permit or charter shall be canceled or forfeited. [Id.]

Art. 1371. [1192] Provisions cumulative.—The provisions of this chapter shall be cumulative of all other laws now in force in this State, and shall not be construed as repealing any other means afforded by law for securing testimony or inquiring into the charter rights and privileges of corporations. [Id.]

CHAPTER SIX

LIENS FOR FINES, ETC.

Art.
1372. Law violations.
1373. Lien, notice.
1374. Abatement of suit.
1375. Receiver.
1376. Rights of State.
1377. Foreclosure.
1378. Law cumulative.

Article 1372. [1193] Law violations.—Whenever any domestic or foreign corporation in this State shall violate any law of this State, including the law against trusts, monopolies and conspiracies or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this State at the time of such violation, or which may thereafter come within this State, shall, by reason of such violation, become liable for such fines or penalties and for costs of suit and costs of collection. [Acts 1907, p. 175.]

Art. 1373. [1193] Lien, notice.—The State of Texas shall have a lien on all such property from the date that suit shall be instituted by the Attorney General or district or county attorney acting under his direction, in any court of competent jurisdiction within

this State, for the purpose of forfeiting the charter or canceling the permit of such corporation, or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture, shall constitute notice of such lien. [Id.]

Art. 1374. [1194] Abatement of suit.—Any action or cause of action for any fine, forfeiture or penalty that the State of Texas has, or may have, against any corporation chartered under the laws of this or any other state, territory or nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter or permit. [Id.]

Art. 1375. [1194] Receiver.—Whenever a corporation, against which the State has instituted suit for forfeiture of its charter or cancellation of its permit or for fines or penalties, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state for the forfeiture of its charter, the court in this State in which such suit is pending shall appoint a receiver for the property and business of such corporation within this State, or that may come or be brought within this State during such receivership; or the court may, in any case wherein the State is suing any such corporation for the forfeiture of its charter, or of its permit to do business in this State, or for fines or penalties, appoint a receiver for such corporation whenever the interest of the State may seem to require such action. [Id.]

Art. 1376. [1194] Rights of State.—The State shall have the right to writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by this law; and all property not otherwise exempt by law that may come into the possession of any receiver appointed under any provision of this chapter, shall be subject to the lien herein created, and for the payment of any such fine or penalty. [Id.]

Art. 1377. [1195] Foreclosure.—The Attorney General or any district or county attorney acting under his direction, may bring suit in the name of this State for the foreclosure of such lien. In case the suit for foreclosure is brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such corporation for the forfeiture of its charter or cancellation of its permit or for penalties or fines, service may be had upon any person within this State who acted and was acting as agent of any such corporation in this State at the time of such dissolution or forfeiture of charter or cancellation of permit. [Id.]

Art. 1378. [1196] Law cumulative.—The rights and remedies given by this law shall be construed as cumulative of all other laws in force in this State, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, penalties and forfeitures. [Id.]

CHAPTER SEVEN

INSOLVENT CORPORATIONS

Art.
1379. Unlawful to operate.
1380. Attorney General to sue.
1381. Liquidation.
1382. May dismiss action.
1383. Suit to dissolve.
1384. Permission to sue.
1385. Examination and notice.
1386. Provisions cumulative.

Article 1379. [1201] Unlawful to operate.—It shall be unlawful for any insolvent corporation, domestic or foreign, to do business in this State, or to exercise or retain any franchise or permit or charter granted from or by this State. [Acts 1907, p. 341.]

Art. 1380. [1202] Attorney General to sue.—The Attorney General, when convinced that any corporation is insolvent, shall institute quo warranto or other appropriate proceedings to forfeit its charter or cancel its permit. [Id.]

Art. 1381. [1202] Liquidation.—Each district and county attorney shall bring and prosecute the proceedings mentioned in the preceding article whenever directed so to do by the Attorney General. The court trying said cause, after the corporation has been shown to be insolvent, may, in its discretion, appoint a receiver or receivers for said corporation and all its properties, with full power to settle its affairs, collect its outstanding debts and divide the moneys and other properties belonging to said company among the stockholders thereof, after paying the debts due and owing by such corporation, and all expenses incident to the judicial proceedings and receivership. The court may continue the existence of such corporation for three years, and for such further reasonable time as may be necessary to accomplish the objects and purposes of this law. [Id.]

Art. 1382. May dismiss action.—If any suit authorized by this chapter has been instituted, the same shall be dismissed at the cost of the defendant; or, if not instituted, the same shall not be begun, if the defendant corporation, through its stockholders, shall pay off its indebtedness or reduce the same by paying, so that it is relieved of insolvency. [Id.]

Art. 1383. [1203] Suit to dissolve.—Stockholders of any insolvent corporation who own twenty-five per cent of its stock, or creditors of any such insolvent corporation who own twenty-five per cent of its indebtedness, may institute and prosecute a suit for the dissolution of such corporation. [Id.]

Art. 1384. [1203] Permission to sue.—Before such petition is filed by the Attorney General, or under his authority, or by the stockholders or creditors, as provided herein, leave therefor shall be first granted by the judge of the court in which the proceeding is to be instituted. [Id.]

Art. 1385. [1203] Examination and notice.—On presentation of such petition, before granting leave to sue, the judge shall carefully examine the same; and he may also require an examination into the facts; and if it shall be made to appear with reasonable certainty from said petition, or from the petition and facts, that the relief sought should be granted, the judge may grant such relief. On an application for the appointment of a receiver, the corporation proceeded against shall have ten full days notice prior to the day set for the hearing. [Id.]

Art. 1386. [1204] Provisions cumulative.—The rights and remedies given by this chapter are cumulative, and shall not affect, change or repeal any other remedies or rights now existing in this State for the enforcement, payment or collection of fines, forfeitures and penalties. [Id.]

CHAPTER EIGHT

DISSOLUTION OF CORPORATIONS

Art.
1387. How dissolved.
1388. Liquidation by officers.
1389. Extension of existence.
1390. Effect of dissolution.
1391. Suit on claim.
1392. May sue stockholders.
1393. Apportionment of debt.
1394. Forced apportionment.
1395. Extent of liability.

Article 1387. [1205] [680] [604] How dissolved.—A corporation is dissolved:

1. By the expiration of the time limited in its charter.

2. By a judgment of dissolution rendered by a court of competent jurisdiction.

3. Where four-fifths in interest of all the stock outstanding shall vote in favor of a dissolution at a stockholders' meeting called for that purpose on notice signed by a majority of the directors, stating time, place and object of the meeting, served personally or by mail at least thirty days next before the meeting.

If, at said meeting, four-fifths in interest of all the stockholders of said company shall consent in writing to the dissolution of the corporation, such written consent, together with a list of the directors and officers of the company, giving postoffice address and place of residence of each, certified by the president and secretary and treasurer as a true and correct action of the stockholders, shall be filed with the Secretary of State.

4. When, without a stockholders' meeting, all the stockholders of the corporation consent in writing to a dissolution, the same shall be certified to as above and filed with the Secretary of State. When any such certificate is filed with the Secretary of State, he shall issue a certificate that such consent has been filed and that the corporation is dissolved; and said officer shall so note on the ledger in his office.

5. By forfeiture of its charter without judicial ascertainment under any special provision of law.

6. Where a corporation created under this title or a general law of Texas shall fail to commence active operations within three years after filing its charter with the Secretary of State.

7. Whenever a corporation upon proper judicial ascertainment is found to be insolvent. [Acts 1907, p. 311.]

Art. 1388. [1206–7] Liquidation by officers.—Upon the dissolution of a corporation, unless a receiver is appointed by some court of competent jurisdiction, the president and directors or managers of the affairs of the corporation at the time of its dissolution shall be trustees of the creditors and stockholders of such corporation, with power to settle the affairs, collect the outstanding debts, and divide the moneys and other property among the stockholders after paying the debts due and owing by such corporation at the time of its dissolution, as far as such money and property will enable them after paying all just and reasonable expenses; and for this purpose they may in the name of such corporation, sell, convey and transfer all real and personal property belonging to such company, collect all debts, compromise controversies, maintain or defend judicial proceedings, and exercise full power and authority of said company over such assets and property. Said trustees shall be severally responsible to the creditors and stockholders of such corporation to the extent of its property and effects that shall have come into their hands. [Id.; Acts 1919, 2nd C. S., p. 140.]

Art. 1389. [1206] [682] [606] Extension of existence.—The existence of every corporation may be continued for three years after its dissolution from whatever cause, for the purpose of enabling those charged with the duty, to settle up its affairs. In case a receiver is appointed by a court for this purpose, the existence of such corporation may be continued by the court so long as in its discretion it is necessary to suitably settle the affairs of such corporation. [Id.]

Art. 1390. [1206] [682] [606] Effect of dissolution.—The dissolution of a corporation shall not operate to abate, nor be construed as abating any pending suit in which such corporation is a defendant, but such suit shall continue against such corporation and judgment shall be rendered as though the same were not dissolved. [Id.]

Art. 1391. [1206] [682] [606] Suit on claim.—When no receiver has been appointed for said corporation, suit may be instituted on any claim against said corporation, as though the same had been dissolved, and service of process may be obtained on the president, directors, general manager, trustee, assignee, or other person in charge of the affairs of the corporation at the time it was dissolved, and judgment may be rendered as though the corporation had not been dissolved, and the assets of said corporation shall be liable for the payment of such judgment just as if said corporation had not been dissolved. [Id.]

Art. 1392. [1208] [684] [608] May sue stockholders.—If a corporation, except a railway, charitable or religious corporation, be dissolved leaving debts unpaid, suit may be brought against any person or persons who were stockholders at the time of such dissolution, without joining the corporation in such suit; and if judgment be rendered and execution satisfied, any defendant may sue all who were stockholders at the time of dissolution for the recovery of the portion of such debt for which they were liable.

Art. 1393. [1208] [684] [608] Apportionment of debt.—Execution upon such judgment shall direct the collection to be made from the property of each stockholder respectively. If any number of stockholders defendants in the case shall not have property enough to satisfy his or their portion of the execution, then the amount of deficiency shall be divided equally among all the remaining stockholders, and collections made accordingly, deducting from the amount a sum in proportion to the amount of stock owned by the plaintiff at the time the company dissolved.

Art. 1394. [1209] [685] [609] Forced apportionment.—Any stockholder who pays more than his due proportion of any debt of the corporation may, by suit, compel contribution from the other stockholders.

Art. 1395. [1210] [686] [610] Extent of liability.—No stockholder shall be liable to pay debts of the corporation beyond the amount unpaid on his stock.

CHAPTER NINE

RELIGIOUS, CHARITABLE AND EDUCATIONAL

1. RELIGIOUS AND CHARITABLE

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1. RELIGIOUS AND CHARITABLE

Article 1396. [1212] [713] [637] Powers.—Any religious society, charitable, benevolent, literary or social association (other than colleges, universities, academies or seminaries), and any military or fire company, may, by the consent of a majority of its members become a body corporate under this title, electing directors or trustees, and performing such other things as are directed in the case of other corporations; and when so organized shall have all the powers and privileges, and be subject to all the restrictions in this title contained, for the objects named in the charter, and shall have the same power to make by-laws for the regulation of their affairs as other corporations. [Acts 1899, p. 236.]

Art. 1397. [1158] [660] [584] Secular affairs.—The secular affairs of a religious corporation shall be under the control of a board of trustees, to be elected by the members of such corporation; and the title to all property of any such corporation shall vest in such trustees. [Acts 1907, p. 311.]

Art. 1398. [1213] [713] [637] Spiritual affairs.—The directors or trustees of any corporation under this title shall not usurp or exercise the functions of any officer in charge of the spiritual affairs of any society. [Acts 1899, p. 236.]

Art. 1399. [1214] Lodges.—The grand lodge of Texas, Ancient, Free and Accepted Masons, the Grand Royal Arch Chapter of Texas, the Grand Com-

mandery of Knights Templars of Texas (Masonic); the grand lodge of the Independent Order of Odd Fellows of Texas, and other like institutions and orders organized for charitable or benevolent purposes may, by the consent of their respective bodies expressed by a resolution or otherwise, become bodies corporate under this title. [Id.]

Art. 1400. [1215–18] Lodges: charter.—The incorporation of any such grand lodge shall include all of its subordinate lodges, or bodies holding warrant or charter under such grand body, and each of such subordinate bodies shall have all the rights of other corporations under and by the name given it in such warrant or charter issued by the grand body to which it is attached, such rights being provided for in the charter of the grand body. Such subordinate bodies shall, at all times, be subject to the jurisdiction and control of their respective grand bodies, and subject to have their warrants or charters revoked by such grand body. [Id.]

Art. 1401. [1216] Lodges: trustees.—Such grand bodies and their subordinates may elect their own trustees or directors, or name certain of their officers as such, and perform such other acts as are directed or provided by law in the case of other corporations, and shall have power to make constitutions and by-laws for the government of their affairs. [Id.]

Art. 1402. [1217] Lodges: property.—Such orders, grand and subordinate, shall have the right to acquire and hold such lands and personalty as may be necessary or convenient for sites upon which to erect buildings for their use and occupancy, and for homes and schools for their widows, orphans or aged or decrepit or indigent members, and to sell or mortgage the same, such conveyances to be executed by the presiding officer, attested by the secretary with the seal. The power and authority of such subordinate bodies to sell or to mortgage shall be subject to such conditions as may be from time to time prescribed or established by the grand body to which the subordinate is attached. [Id.]

Art. 1403. [1219] Lodges: demise.—Upon the demise of any subordinate body so incorporated, all property and rights existing in such subordinate body shall pass to, and vest in, the grand body to which it was attached, subject to the payment of all debts due by such subordinate body; but the grand body shall never be liable for any sum greater than the actual cash value of the effects of such subordinate actually received by it, or its authority. [Id.]

Art. 1404. [1220] Lodges: loans.—Any grand body incorporated under this subdivision shall have the right and authority to loan any funds held and owned by it for charitable purposes, for the endowment of any of its institutions, or otherwise, and may secure such loans by taking and receiving liens on real estate, or in such other manner as it may elect. Upon sale of any real estate under such lien, such grand body may become the purchaser thereof, and hold title thereto. [Id.]

Art. 1405. [1221] Lodges: duration.—Any grand body incorporating under this subdivision may provide in its charter for the expiration of its corporate powers at the end of any given number of years; or it may provide in its charter for its perpetual existence, and by its corporate name have perpetual succession of the officers and members. [Id.]

Art. 1406. [1222] Existing lodge.—Any such grand body or subordinate body now having a valid chartered existence may continue under its present charter, or reincorporate under this subdivision. [Id.]

Art. 1407. [1223] Lodges: tax.—Bodies incorporated under this subdivision shall not be subject to, or required to pay a franchise tax. [Id.]

Art. 1408. May affiliate.—Boards of trustees of religious, charitable, educational or eleemosynary institutions may be affiliated with, elected and controlled by a convention, conference or association organized under the laws of this State or another State, whether incorporated or unincorporated, whose membership is composed of representatives, delegates, or messengers from any church or other religious association. [Acts 1923, p. 171.]

Art. 1409. Property rights.—Any religious, charitable, educational or eleemosynary institution organized under the laws of this State may acquire, own, hold, mortgage and dispose of and invest its funds in real and personal property in this State for the use and benefit and under the discretion of, and in trust for, such electing, controlling and parent body in furtherance of the purposes of the organization of the member institution. This article shall not apply to corporations organized for profit. [Id.]

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Art. 1410. [1225] [707] [631] Faculty.—The president, professors or principals shall constitute the faculty in academy, college or university corporations, and shall have power to enforce the rules and regulations enacted by the directors or trustees for the government and discipline of the students, and to suspend and expel offenders, as may be deemed necessary. [Acts 1874, p. 135; G. L. vol. 8, p. 137.]

Art. 1411. [1226] [708] [632] Powers of trustees.—The directors or trustees named in the charter of any college, academy, university or other corporation to promote education, and their successors, may make all necessary by-laws, elect and employ officers, provide for filling vacancies, appoint and remove professors, teachers, agents, etc., and fix their compensation, confer degrees, and do and perform all necessary acts to carry into effect the objects of the corporation. [Id.]

Art. 1412. [1227] [709] [633] Property.—Such corporations may procure, to be used as a part of the course of education, shops, tools and machinery, land for agricultural purposes and necessary buildings for carrying on their mechanical and agricultural operations. [Id.]

Art. 1413. [1228] [710] [634] Conversion of property.—Any such corporation may when a majority of its stockholders consent thereto, convert its property, except when held upon some special trust, into stock or scholarships, and file a certificate of their action, as required in the case of an increase of capital stock of a corporation. [Id.]

Art. 1414. [1229] [711] [635] Directors' liability.—The directors of any such corporation, whose property is held not as stock, but upon trust or devise, donation, gift or subscription, shall not contract debts beyond the means of the corporation. If they do contract debts to a larger amount, they shall be held individually liable for the same, after the means of the corporation are exhausted. [Id.]

Art. 1415. [1230] [712] [636] Removal.—Any such corporation, may by a vote of three-fourths of the directors, or if the same is owned in shares of stock, then by three-fourths of the stockholders, change the location and name of the institution, and transfer the effects thereof to the place of the new location, or may apply the property thereof to other purposes of education than those named in the original charter filed with the Secretary of State.

CHAPTER TEN

PUBLIC UTILITIES

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1. TELEGRAPH

Article 1416. [1231] [698] [622] Public ways: use.—Corporations created for the purpose of constructing and maintaining magnetic telegraph lines, are authorized to set their poles, piers, abutments, wires and other fixtures along, upon and across any of the public roads, streets and waters of this State, in such manner as not to incommode the public in the use of such roads, streets and waters. [Acts 1874, p. 132; G. L. vol. 8, p. 134.]

Art. 1417. [1332] [699] [623] Right of way.—They may also enter upon any lands owned by private persons or by a corporation, in fee or less estate, for the purpose of making preliminary surveys and examinations with a view to the erection of any telegraph line, and from time to time appropriate so much of said lands as may be necessary to erect such poles, piers, abutments, wires and other necessary fixtures for a magnetic telegraph, and to make such changes of location of any part of said lines as may from time to time be deemed necessary, and shall have a right of access to construct said line, and when erected, from time to time as may be required, to repair the same, and shall have the right of eminent domain to obtain the right of way and condemn lands for the use of the corporation. [Id.]

Art. 1418. [1233] [700] [624] Competitor: rights.—No corporation shall have power to contract with any owner of land for the right to erect and maintain a telegraph line over his lands to the exclusion of the lines of other companies. [Id.]

Art. 1419. [1234] [701] [625] Interstate lines.—Any corporation created as herein provided may construct, own, use and maintain any line or lines of telegraph, whether wholly within, or wholly or partly beyond the limits of this State. [Id.]

Art. 1420. [1234] [701] [625] Consolidations.—They shall have power to lease or attach to their line or lines other telegraph lines, by lease or purchase, and may join with any other corporation or association in constructing, leasing, owning, using or maintaining their line or lines, upon such terms as may be agreed upon between the directors or managers of the respective corporations, and may own and hold any interest in such line or lines, or may become lessees thereof on such terms as the respective corporations may agree. [Id.]

Art. 1421. [1236] [703] [627] Consolidation: powers.—Any telegraph company organized under the laws of this State may, at any regular meeting of the stockholders thereof, by vote of persons holding a majority of shares of the stock of such company, unite or consolidate with any other company or companies organized under the laws of the United States or of any State or territory, by the consent of the company with which it may consolidate or unite; and such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title, and be subject to the same liabilities. [Id.]

Art. 1422. [1235] [702] [626] Municipal regulation.—The corporate authorities of any city, town or village through which the line of any telegraph corporation is to pass, may, by ordinance or otherwise, specify where the posts, piers or abutments shall be located, the kind of posts that shall be used, the height at which the wires shall be run; and such company shall be governed by the regulations thus prescribed. After the erection of said telegraph lines, the corporate authorities of any city, town or village shall have power to direct any alteration in the erection or location of said posts, piers or abutments, and also in the height at which the wires shall run, having first given such company or its agents opportunity to be heard in regard to such alteration. [Id.]

2. TELEPHONE AND TELEGRAPH

Art. 1423. Consolidations.—Any person, firm or corporation organized under the laws of Texas owning a local telephone exchange, whether wholly within or partly beyond the State limits, shall have power to purchase and may join with any other individual, firm or corporation in constructing, leasing, owning, using or maintaining any other local telephone exchange, upon such terms as may be agreed upon between such persons, or the directors or managers of the respective corporations, and may own and hold any interest in such local telephone exchange or may become lessees thereof on such terms as the respective persons, firms or corporations may agree. In case of the purchase, lease or acquisition of one local telephone exchange by a company owning another when both systems are operating in the same incorporated city or town, the consent of such city or town shall be secured. [Acts 1913, p. 92.]

Art. 1424. Consolidation: mode.—Any telephone company organized under the laws of Texas owning a local telephone exchange may at any regular meeting of the stockholders thereof by vote of persons holding a majority of shares of the stock of such company, unite or consolidate such local exchange with the local exchange of any other company or companies organized under the laws of the United States, or of any State or territory, by the consent of the company with which it may so consolidate or unite. Such company so formed may hold, use and enjoy all the rights and privileges conferred by the laws of Texas on companies separately organized under the provisions of this title, and be subject to the same liabilities. Where two or more local exchanges are operating in the same incorporated city or town, the consent of such city or town shall be secured for such consolidation. [Id.]

Art. 1425. Consolidation: rates.—In case of the purchase, lease, acquisition or consolidation of one local telephone exchange with another, when both systems are operating in the same incorporated city or town, the rates charged for local telephone service after such consolidation shall not exceed the rate charged by the company charging the lowest rates in such city or town at the time of such purchase, lease, acquisition or consolidation, unless authorized by such city or town. [Id.]

Art. 1426. [1237] Transfer of messages.—All companies and corporations that own or operate telephone or telegraph lines for the purpose of transmitting messages from one point to another, are hereby required to arrange for conversations or transfer of messages as hereinafter provided. [Acts 1907, S. S. p. 462.]

Art. 1427. [1238] Telephone connections.—All persons, companies, firms or corporations doing a telephone business in this State shall be compelled to make physical connections between their toll line at common points, for the transmission of messages or conversations from one line to another. Such connection shall be made through the switchboard of such

persons, companies, firms or corporations, if any is maintained at such points, so that persons so desiring may converse from points on one of such lines to points on another. [Id.]

Art. 1428. [1239] Telegraph connections.—Each telegraph company or person, firm, corporation or association engaged in the business of accepting and transmitting messages to and from different points in this State, where the use of a telegraph instrument or instruments is necessary in the conduct of such business, shall, if there be any other persons, firm, corporation or association engaged in such business at the same point or in the same town, city or village, provide means whereby all messages conveyed to such points over the lines of any such companies shall be transferred to the lines of either or all other such companies engaged in such business at such common points, and transmitted to their final destination; and such facilities shall be provided as will guarantee the transfer of such messages in compliance with the provisions of this subdivision. [Id.]

Art. 1429. [1239] Transfers excepted.—In no case shall any message be transferred from one line to another against the will of the company first handling the same, when it is possible for such company to deliver said message direct to the party for whom it is intended by way of the line or lines operated and owned by said company. No telegraph or telephone company shall, under the provisions of this subdivision be compelled to receive from the wires or lines of any other telegraph or telephone company and convey to its final destination any message originating at any point on its own lines. [Id.]

Art. 1430. [1240] Transfer hearing.—The city council in incorporated cities, and the commissioners court at points where there is no city council, shall on application of one hundred resident citizens, or upon its own motion, hear such evidence as they think necessary, and upon a final hearing they shall determine whether or not it would be necessary for public convenience, and just to the telephone or telegraph companies, to make such connection or arrange for the transfer of messages; whereupon they shall enter of record their findings, and shall also set out in their order the conditions upon which such arrangements for conversation or transfer of messages shall be made, and shall decide what proportion of expense shall be paid by each of said connecting lines. [Id.]

Art. 1431. [1241] Penalty.—Whenever the city council or commissioners court shall enter an order in compliance with Arts. 1428 and 1429 requiring telephone or telegraph companies to arrange for conversation or transfer of messages, it shall be compulsory on said company to arrange for such conversation or transfer of messages, and failing to do so, they shall forfeit to the State of Texas on suit by the county or district attorney, the sum of ten dollars for each day they so neglect. The penalty herein assessed shall not be operative against a company which is prevented from making connections as herein required, through the fault or omission of another company, so long as such fault or omission shall cause such failure on its part to so connect. [Id.]

Art. 1432. [1241] Appeals.—Any company ordered to arrange for conversations or to transfer messages between its line and another line as herein provided, shall have the right to appeal from such order to the court having jurisdiction over said matter, and the court shall, if it shall find that appellant had reasonable grounds for prosecuting such appeal, suspend the penalty herein provided for until such appeal is finally determined. [Id.]

3. WATER

Art. 1433. [1004–1282] Privileges.—Any water corporation shall have power to sell and furnish such quantities of water as may be required by the city, town or village where located, for public or private buildings, or for other purposes; and such corporation shall have power to lay pipes, mains and conductors for conducting water through the streets, alleys, lanes and squares in any such city, town or village, with the consent of the governing body thereof, and under such regulations as it may prescribe. When deemed necessary to preserve the public health, any company or corporation chartered under the laws of this State for the purpose of constructing water works or furnishing water supply to any city or town, shall have the right of eminent domain to condemn private property necessary for the construction of supply reservoirs or standpipes for water work. [Acts 1874, p. 134; G. L. vol. 8, p. 136; Acts 1909, p. 8.]

Art. 1434. [1283] [706] [630] Contracts.—The governing body of any city, town or village in which any water corporation shall exist, is hereby authorized to contract with any such corporation for supplying with water the streets, alleys, lots, squares and public places in any such city, town or village. [Acts 1874, p. 134; G. L. vol. 8, p. 136.]

4. GAS AND LIGHT

Art. 1435. Powers.—Gas, electric current and power corporations shall have power to generate, make and manufacture, transport and sell gas, electric current and power to individuals, the public and municipalities for light, heat, power and other purposes, and to make reasonable charges therefor; to construct, maintain and operate power plants and substations and such machinery, apparatus, pipes, poles, wires, devices and arrangements as may be necessary to operate such lines at and between different points in this State; to own, hold and use such lands, right of way, easements, franchises, buildings and structures as may be necessary for the purpose of such corporation. [Acts 1911, p. 228.]

Art. 1436. Right of way.—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, right of way, easements and property of any person or corporation, and shall have the right to erect its lines over and across any public road, railroad, railroad right of way, interurban railroad, street railroad, canal or stream in this State, any street or alley of any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town. Such lines shall be constructed upon suitable poles in the most approved manner and maintained at a height above the ground of at least twenty-two feet; or pipes may be placed under the ground, as the exigencies of the case may require. [Id.]

Art. 1437. Finances.—Such corporation shall have the right to borrow money, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any of the purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this State, whenever the same may be applicable. [Id.]

Art. 1438. Discrimination.—It shall be unlawful for any such corporation to discriminate against any person, corporation, firm, association or place, in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances. [Id.]

5. SEWERAGE

Art. 1439. [1284] Eminent domain.—Every company or corporation incorporated under the laws of this State for the purpose of owning, constructing or maintaining a system of sewerage in any city or town in this State, shall be empowered by the exercise of the right of eminent domain, to condemn private property through which to lay, construct and maintain sewer pipes, mains and laterals, and connections, and also private property upon which to maintain vats, filteration [filtration] pipes and other pipes, such property to be used and occupied as a place for ultimate disposition of sewage, in or out of the town or city limits, whenever it be made to appear that the use of any such private property is necessary for the success-

ful operation of such sewer system, and when it also be made to appear that such sewer system is beneficial to the public use, health or convenience. The right of condemnation herein permitted shall not be invoked nor exercised within the corporate limits of the city or town, except as permitted or required by the city or town granting franchise to the company or corporation seeking the right of condemnation. [Acts 1899, p. 263.]

6. DEPOSITS

Art. 1440. Deposits for installing service.—Every person, firm, company, corporation, receiver or trustee engaged in the furnishing of water, light, gas or telephone service which requires the payment on the part of the user of such service [of] a deposit of money as a condition precedent to furnishing the same, shall pay six per cent interest per annum on such deposit to the one making same, or to his heirs or assigns, from the time of such deposit, the same to be paid on the first day of January of each year or sooner if such service be discontinued. When such service is discontinued, such deposit, together with any unpaid interest thereon, or such part of such deposit and unpaid interest, not consumed in bills due for such service, shall be returned to such depositor, his heirs or legal representatives. [Acts 2nd C. S. 1923, p. 101.]

7. REPORTS

Art. 1441. [1182] Corporations subject.—Every corporation within this State owning, leasing or operating in this State, in cities or towns of over twenty-five hundred population according to the preceding Federal census, a street railway, electric light or power plant furnishing light or power to the public, gas plant furnishing gas to the public, water plant furnishing water to the public, and sewerage company furnishing sewerage to the public, shall annually on or before the first day of March, file the report hereinafter provided with the Secretary of State, upon blank forms to be furnished by said officer. [Acts 1905, p. 40.]

Art. 1442. [1182] Report.—The report shall show the following facts:

1. The authorized capital stock of such corporation, the amount of such stock that has actually been issued, and how much of such stock actually issued is common, and how much preferred, and how much is due upon unpaid stock.

2. The bonded indebtedness of such corporation, and how many bonds have been actually sold, and the price of such sale, the rate of interest upon such bonds, and when such bonds mature.

3. Any other fixed lien or mortgage upon such property, and the amount thereof.

4. The floating indebtedness of such corporation, including all bills payable of whatever nature.

5. The value of the visible tangible property of such corporation, giving separate values of lands, machinery, buildings, tracks and equipment, and in gross, all bills receivable and cash on hand.

6. The annual cost of operating such corporation, showing under separate items: (a) amount paid for salaries; (b) amount paid for labor; (c) fixed charges including interest, taxes and insurance, giving each separately; (d) amount paid for fuel; (e) amount paid for extensions, repairs and maintenance, giving each separately; (f) amount paid for claims or suits for damages; (g) amount paid for miscellaneous expenses.

7. The annual gross earnings of such corporation, including revenues from every source, showing by separate items amount received by departments, such as amount received for light, sewerage, power, water, gas, street railway fares and tickets. [Id.]

Art. 1443. [1183] Additional reports.—Such corporations shall also make to the Secretary of State, upon blanks furnished by him, reports as to the price charged the public for sewerage, gas, water, light, power, and the price charged per passenger upon street railways, and if such corporations have contracts with cities or towns for furnishing water or light, then, the amount of such charge. [Id.]

Art. 1444. [1184] Sworn reports.—All reports provided for in this subdivision shall be under oath, and shall be made by any officer of the corporation having knowledge of the facts, or its general manager or superintendent. [Id.]

Art. 1445. [1185] Registration.—A true sworn copy of the reports required by this subdivision shall be filed annually on or before the first day of March with the Mayor of the city or town where the corporation has its principal place of business; and there shall also be filed at the same time a true sworn copy of said reports with the county clerk of the county in which such corporation has its principal place of business; and the same shall be by said clerk delivered to the commissioners court. Such reports shall be recorded in a properly indexed book, to be kept for that purpose, and open to the inspection of the public at all times. [Id.]

Art. 1446. [1186] Penalty.—Any corporation which shall for thirty days willfully fail or refuse to file such reports in the manner provided by this subdivision shall forfeit and pay to the State one hundred dollars for each day during which it shall continue in default; which shall be recovered by suit by the Attorney General. [Id.]

CHAPTER ELEVEN

ROADS

Art.
1447. Charter.

TOLL ROADS

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1462. Obstruction of streams.
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1464. Rules and rates.
1465. Use of road.

Article 1447. Charter.—The charter of a road company, in addition to the information required by article 1304, shall state: First, the kind of road intended to be constructed: Second, the places from and to which the road is intended to be run: Third, the counties through which it is intended to be run: Fourth, the estimated length of the road. [Acts 1874, p. 120; G. L. vol. 8, p. 122.]

TOLL ROADS

Art. 1448. Toll road: incorporation.—Any number of persons, not less than five, being subscribers to the stock, may organize themselves into a corporation for the purpose of constructing, building, acquiring, owning, operating and maintaining toll roads within this State by complying with the requirements of this subdivision. No corporation, except one chartered under the laws of this State, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any toll road within this State. [Acts 1913, p. 143.]

Art. 1449. Charter.—The persons proposing to form a toll road corporation shall adopt and sign articles of incorporation, which shall contain, in addition to the general requirements, the following:

1. The terminal points, and the intermediate counties through which it is intended to construct the toll road;

2. The names and places of residence of the several persons forming the association for incorporation; and

3. In what officers the management and control of the corporation shall be vested. [Id.]

Art. 1450. Examination.—The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, who shall carefully examine the same; and, if he finds them to be in accordance with the provisions of this subdivision, and not in conflict with the laws of the United States or of this State, he shall attach thereto a certificate to that effect. [Id.]

Art. 1451. Registration.—When said articles have been examined and certified, the same shall be filed in the office of the Secretary of State, accompanied by the affidavit of at least three of the directors named in such articles. Such affidavit shall state that the entire amount of the capital stock of such proposed corporation has been in good faith subscribed, and that fifty per cent of the amount subscribed has been actually paid to the directors named in such articles; and the Secretary of State shall cause such affidavit and articles to be recorded in his office, and shall attach a certificate of the fact of such record to said articles, and return the same to such corporation. [Id.]

Art. 1452. Duration.—No toll road corporation shall be formed to continue more than fifty years in the first instance, but such corporation may be renewed from time to time, for periods not longer than fifty years, in the manner provided for the renewal of railroad corporations. [Id.]

Art. 1453. Charter amendments.—Any toll road corporation may amend or change its articles of incorporation in the manner provided by law for railroad corporations. [Id.]

Art. 1454. Powers.—Every toll road corporation organized hereunder shall have the right to construct, build, acquire, own, operate and maintain toll roads between any points within this State. [Id.]

Art. 1455. Use of State lands.—Every such corporation shall have the right of way for its line of road through and over any land belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land. [Id.]

Art. 1456. Private lands.—Every toll road corporation shall have the right to cause such examination and survey for its proposed road to be made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damage that may be occasioned thereby. [Id.]

Art. 1457. Road construction.—Every such corporation shall have the right to lay out its road, not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments, to take as much more land as may be necessary for the proper construction and security of its road, and to cut down any standing trees that may be in danger of falling upon or obstructing such road, making compensation in the manner provided by law. [Id.]

Art. 1458. Railroad crossings.—Every such corporation shall have the right to construct its road across any railroad, street railroad or interurban line within this State, which it may intersect or touch; provided that it shall properly fence such crossings, and restore, in other respects, the property thus intercepted or crossed, to its former state. [Id.]

Art. 1459. Public way crossings.—Every such corporation shall have the right to construct its own road across any stream of water, water course, street, highway, plank road, turnpike or canal, which the route of said road shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossings in repair. [Id.]

Art. 1460. Openings.—Every such corporation which may fence its right of way, may be required to make openings or crossings through its fence and over its roadbed every five miles thereof, in the manner provided by law with reference to railroad corporations. [Id.]

Art. 1461. Culverts, etc.—In no case shall any toll road corporation construct its road without first constructing the necessary culverts or sluices, as the natural lay of the land requires, for the necessary drainage thereof. [Id.]

Art. 1462. Obstruction of streams.—Nothing in this chapter shall be construed to authorize the erection of any bridge or any other obstruction across or over any stream of water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed, so as to prevent the navigation of such stream of water. [Id.]

Art. 1463. Eminent domain.—Every toll road corporation shall have and enjoy all of the rights, privileges and immunities conferred by and be subject to each provision of the law relating to the exercise of the right of eminent domain. [Id.]

Art. 1464. Rules and rates.—Every toll road corporation shall have the power to promulgate, by its board of directors, all necessary and reasonable rules and regulations relating to the manner in which traffic shall move over any toll road operated by it, and to refuse the use of such road to any person who shall fail or refuse to abide by such rules and regulations; and shall be empowered to fix and charge tolls for the use of such roads; provided, that such rules and regulations shall not be contrary to law, and that the rate to be charged for each class of vehicle shall be the same to all in each of such classes. [Id.]

Art. 1465. Use of road.—No such corporation shall have the right arbitrarily to refuse the use of such road to any person who shall offer to pay the regular toll therefor, except that such corporation shall be authorized to refuse to permit such road to be used by any vehicle which shall render the same unduly hazardous to the patrons of said road or damaging to the surface thereof, or to any person who shall fail or refuse to abide by the reasonable and necessary traffic regulations promulgated by such corporation. [Id.]

CHAPTER TWELVE

BRIDGES, FERRIES AND CAUSEWAYS

1. CAUSEWAYS

Art.
1466. Authority to build.
1467. Statement of location.
1468. Priority.
1469. Condemnation of approaches.
1470. Land under water.
1471. Lease of right of way.
1472. Lessee may issue bonds.
1473. Causeway corporations.

2. BRIDGES AND FERRIES

1474. Bridge charter.
1475. Rights of corporation.
1476. Toll rate.
1477. Owner's liability.

1. CAUSEWAYS

Article 1466. Authority to build.—Any person, corporation or association of persons, hereinafter called the owner, may purchase, build, construct, own, maintain and operate a combination bridge, dam, dike, causeway and roadway across any arm of the Gulf of Mexico or inlet thereof, or any of the saltwater bays, wholly within the limits of this State, to provide a causeway, roadway or highway for vehicles, teams, pedestrians, railroads, and for every character of inland transportation. [Acts 1913, p. 331.]

Art. 1467. Statement of location.—Within ninety days after the commencement of construction of such structure, said owner shall file for record with the clerk of the county where the greater part of such structure is situated, a sworn statement showing the location of said proposed structure, the name of the same, the size of the same, the name of the stream,

bay or arm of the gulf or inlet thereof, or salt water bay over which it is to be built, the time when the work was commenced and the name of the owner, together with a map showing the location of said structure. [Id.]

Art. 1468. Priority.—The claimant's right to build said structure will relate back to the time of so filing said statement and map, and the first in time shall be the first in right. The filing of said statement and map shall be considered as taking "formal action." [Id.]

Art. 1469. Condemnation of approaches.—Said claimant may acquire by purchase or by the exercise of the right of eminent domain, all necessary approaches to said structure that said claimant deems necessary. [Id.]

Art. 1470. Land under water.—The land under water to be occupied by such structure and approaches thereto is hereby granted absolutely to said claimant, and five hundred feet more on each side of such structure is also granted with the right only to dredge therefrom or beyond same for material for causeways if required in construction and maintenance. [Id.]

Art. 1471. Lease of right of way.—Such owner may lease the right of way over said structure to cities and towns for public utilities owned and operated by them, and to corporations for the constructions by such corporations of railroad tracks over which steam and electric trains and cars may be operated for the transportation of freight and passengers; such right not to be granted in such way as to obstruct or interfere with the use of such structure for pedestrians. teams and vehicles, or to permit a monopoly. Said lease to railroad corporations shall be for such time and on such terms and conditions as the Railroad Commission of Texas may prescribe. Said railroad companies shall only charge for the use of said tracks as a part of the mileage according to statutory rates and the general laws of Texas. [Id.]

Art. 1472. Lessee may issue bonds.—Any corporation so contracting for the right of way over any part of said structure shall have the right to make and enter into any contract with said owner subject to the approval of the Railroad Commission, for the payment to said owner of all sums of money due thereunder, and for this purpose may issue and sell its bonds to the extent of the amount of such corporation's obligations to the said owner. No such bonds shall be issued by any railroad company or other corporation without first obtaining the permission, order and approval of the Railroad Commission. [Id.]

Art. 1473. Causeway corporations.—Corporations may be formed and chartered under the provisions of this law and of this title for the purposes stated in article 1466 hereof. All such corporations shall have full power and authority to make contracts with other persons or corporations conveying to said persons or corporations the right of easement or user of any portion of any such structure, and shall have full power and authority to charge, demand and receive reasonable and just tolls and charges for the use of said portions of said bridge, causeway or roadway, and the same shall be equal, just and uniform to all persons, corporations, cities and towns as herein provided, without discrimination as to the amount charged or delay in handling same. Any such corporation shall be subject to the regulation and control of the Railroad Commission as to all the powers and provisions of this law. [Id.]

2. BRIDGES AND FERRIES

Art. 1474. [1122] [643] [567] Bridge charter.—The charter of a bridge or ferry company, in addition to the general information required by law, shall state the stream intended to be crossed by the bridge or ferry. [Acts 1874, p. 122; G. L. vol. 8, p. 124.]

Art. 1475. [1279] [718] [642] Rights of corporation.—Whenever any person shall file with the Secretary of State any article of association for the erection and maintenance of a bridge or ferry, it shall not be lawful for any other toll-bridge or toll-ferry, to be established on the same stream within the limits specified in said article; provided, that said limits shall not extend more than three miles above and three miles below said bridge or ferry. This article shall not be construed to prohibit bridges and ferries at the crossings of any road on such stream within such limits, declared, either before or after the erection of such bridge or ferry, to be a public road by the commissioners court of the county in which such crossing is situated. [Acts 1874, p. 139; G. L. vol. 8, p. 141.]

Art. 1476. [1280] [719] [643] Toll rate.—All charges or tolls for crossing any bridge or ferry shall be regulated by the commissioners court by an order made at a regular term, and spread upon the minutes of said court, as provided in the case of other bridges and ferries. [Id.]

Art. 1477. [1281] [720] [644] Owner's liability.—All persons or corporate companies owning any toll bridge or ferry shall be liable for all damages caused by neglect, delay or the insufficiency of their bridge or ferry boat, which damages may be recovered by suit therefor. [Id.]

CHAPTER THIRTEEN

CHANNEL AND DOCK

Art.
1478. Purposes.
1479. Powers.
1480. Docks: powers.
1481. Further powers.
1482. Rate control.

Article 1478. [1249] [721] Purposes.—This chapter includes corporations created for the purpose of constructing, owning and operating deep water channels from the waters of the Gulf of Mexico along and across any of the bays on the coast of this State to the mainland, for the purposes of navigation and transportation, and for the construction, owning and operating of docks on the coast of this State for the protection and accommodation of ships, boats and all kinds of vessels for navigation, and their cargoes. [Acts 1887, p. 91; G. L. vol. 9, p. 889.]

Art. 1479. [1250] [722] Powers.—Every such channel corporation shall, in addition to the powers herein conferred, have power:

1. To cause such examination and survey for its proposed channel to be made as may be necessary to the selection of the most advantageous route for such purpose, by its officer, agents or servants; to enter upon any of the waters of such bays and upon any of the lands of this State, or of any person.

2. To take and hold voluntary grant of real estate and other property as shall be made to it to aid in the construction and maintenance of its deep water channel and works pertinent thereto.

3. To construct its channel across, along, through, or upon, any of the waters of the bays within the jurisdiction of this State, and so far into the main land as may be necessary to reach a place for its docks that will afford security from cyclones, storms, swells or tidal waves, with such depth as may suit its convenience and the wants of navigation, not less than five feet, and a width of not less than forty feet.

4. To furnish to vessels and boats adapted to the purpose, facilities for navigating in and along the entire length of its channel, and to charge and collect a toll therefor, to be prescribed by its by-laws, in no case to exceed one cent per barrel bulk of the capacity of each vessel for each mile of the length of its channel used by the vessel going either way.

5. To borrow such sums of money as may be necessary for constructing, finishing, or operating its channel, and to issue and dispose of its bonds, for any amount so borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid; provided, that damages for any property appropriated by such corporation shall be assessed and paid for as is provided for in case of railroads.

6. To enter upon and condemn and appropriate any lands of any persons or corporation that may be necessary for the uses and purposes of such channel corporation. No damages shall be assessed against or paid by it for any portion of the route of the channel embraced within and covered by the waters of any bay or lake on the coast of this State, nor for any portion of any island belonging to the State that may be requisite and necessary to the construction and successful operation of its channel; and provided, that its right of way shall not be less than the actual width of its channel, and not more than seven hundred feet in width on each side of its channel. When the land sought to be condemned is arable land, such right of way shall not extend farther than six hundred feet on each side of the channel from the edge or boundary of said channel.

7. To construct, own, and operate its channel so far into the waters of the Gulf of Mexico as may be necessary to obtain an adequate depth of water at its gulf entrance to facilitate the ingress and egress of such vessels as may navigate the same, in so far as this State may have the power to grant such right, which shall be in subordination to that of the United States government, in so far as that government has the constitutional power to control the same. [Acts 1874, p. 134; G. L. vol. 8, p. 136; Acts 1887, p. 91; G. L. vol. 9, p. 889; Acts 1895, p. 185; Acts 1897, p. 19; G. L. vol. 10, pp. 915, 1073.]

Art. 1480. [1251] [723] Docks: powers.—Every such dock corporation shall in addition to the powers heretofore conferred, have power:

1. To purchase, take and hold such land or real estate as shall be necessary for the construction and operation of its docks, approaches, entrances, moorings and ways, and the construction, use and enjoyment of such warehouses, stores and sheds as may be necessary to the receiving and discharging of freights, goods, wares and merchandise, and the proper protection and preservation thereof. No such dock corporation shall ever have the right or power to take or condemn to its use any private property without the free consent of the owner thereof, expressed by a sufficient deed in writing.

2. To construct its dock or docks in such manner and of such size and depth as it may deem proper to suit the convenience of such vessels as may see fit to use and occupy the same, and to collect from the vessels using the same, or from their masters, owners or consignees, such sum for the use thereof as may be authorized by its by-laws and agreed to by such masters, owners or consignees.

3. To borrow such sums of money as may be necessary for constructing, completing or operating its dock or docks, and to issue and dispose of its bonds for such amount borrowed, and to mortgage its corporate property and franchises to secure the payment of any debt contracted for the purposes aforesaid. [Acts 1887, p. 91; G. L. vol. 9, p. 889.]

Art. 1481. [1252] [724] Further powers.—Every such corporation shall, in addition to the powers heretofore conferred, have power:

1. To purchase, take and hold such land or real estate as shall be necessary for the construction, maintenance and operation of its harbor approaches, entrances, and ways thereto, and the construction of wharves, piers and warehouses.

2. To construct, own and maintain its harbor by building piers and breakwaters so far into the gulf as may be necessary to obtain sufficient depth of water to facilitate the ingress and egress, and the safety while in port of such vessels as may enter the same, in so far only as the State may have power to grant such right, which, however, shall be exercised subject and in subordination to the government of the United States, in so far as it may have constitutional power to control the same.

3. To provide facilities to vessels and boats entering its harbor, for anchorage, receiving and discharging cargoes and passengers, and to charge and collect fair and reasonable tolls and wharfage therefor, to be prescribed by its by-laws.

4. To borrow money in such amounts and on such terms as may be necessary for constructing and finishing or operating its harbor or piers, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate franchises to secure the payment of any debt contracted for the purposes aforesaid. [Id.]

Art. 1482. [1253] [725] Rate control.—All rates, tolls or charges made by any corporation formed under the provisions of this chapter, shall be subject to the right of the Legislature from time to time to alter, revise, change or amend the same. [Id.]

CHAPTER FOURTEEN

DEEP WATER

Art.
1483. Powers.
1484. Frontage.
1485. Application.
1486. Survey.
1487. Deferred payments.
1488. Forfeiture.
1489. Harbor facilities.
1490. Rate control.
1491. Railroad facilities.
1492. Effect of law.
1493. Other railroads.
1494. Shall file release.

Article 1483. [1254] [726] Powers.—Any corporation organized under the laws of Texas which is now authorized or which may hereafter be authorized by an Act of Congress of the United States to construct, own, operate or maintain, with private capital, a deep water harbor, navigable channel, docks or wharves on the Gulf Coast of Texas, shall be permitted to purchase from this State, at two dollars per acre, so much of any public lands, islands, shore or shallow bays belonging to this State, as may be situated within one-half mile from any point or points on the construction works of any jetties or any such deep water channel leading into the main harbor from the open sea. In no case shall such strip or body of land be more than one-half mile in width. Such company or corporation may also purchase from the State, at the same price per acre, any lands, shores, islands or shallow bays within one-fourth mile of each side of every navigable channel that such company or corporation may construct through or across such shallow bays in the prosecution of such work. [Acts 1891, p. 166; G. L. vol. 10, p. 168.]

Art. 1484. [1255] [727] Frontage.—Any such company or corporation owning in whole or in part any lands fronting or abutting upon any shallow bays in which any such work is being constructed, may purchase at the same price per acre any lands, shores or shallow bays adjoining and lying in front of such lands; provided, that such purchase shall not extend into such bay so as to include land covered with water having an average depth of more than three and one-half feet at mean low tide. The purchases under the provisions of this article shall not extend a greater distance along the front of the survey on the shore than three miles, nor a greater distance into the bay than one-half mile. The islands known as Tolly Island and Lydia Ann Islands, situated in Aransas Bay, shall not be subject to purchase hereunder. One-half of the proceeds of the sale of the lands provided for herein shall belong to the permanent free school fund of this State. [Id.]

Art. 1485. [1256] [728] Application.—All applications of a purchaser to buy under the foregoing articles shall be made in writing to the Land Commissioner, accompanied by one-fifth of the purchase money, and also a copy of the Act of Congress authorizing the construction of such deep water harbor, navigable channel, docks or wharves, and a complete plat or map showing the location and design of such improvements. Said map shall show the public lands, shores, islands and shallow bays applied for, and the depth of such shallow bays in feet, determined by actual survey, or as shown by the United States coast survey map. [Id.]

Art. 1486. [1257] [729] Survey.—Upon the payment of one-fifth of the purchase money, the Land Commissioner shall issue a receipt therefor, and attach thereto a copy of the application and plat filed by said purchaser. Said receipt shall be sufficient authority to the proper county surveyor to survey the lands, shores, islands or shallow bays sold. [Id.]

Art. 1487. [1257] [729] Deferred payments.—The remainder of the purchase money may be paid at any time within five years after the date of first payment. Deferred payments shall bear interest at the rate of five per cent per annum. If the purchaser of any island, shallow water bay, land, or either, under these articles, shall fail to pay the annual interest upon any part of the purchase money when such interest shall become due, or if such purchaser shall fail to pay the principal when the same shall become due, then all rights acquired under such purchases shall be forfeited, with all payments made thereon, without any judicial ascertainment of such forfeiture; and the Land Commissioner shall indorse upon the contract of purchase that the same is forfeited, whereby all rights so acquired shall be forfeited and revert to the State. [Id.]

Art. 1488. [1257] [729] Forfeiture.—If any such corporation, within five years from the date of the filing of its charter, shall fail to conform to the Act of Congress in prosecuting such work, or if such corporation shall fail to secure twenty feet of water at low tide upon the bars and other obstructions between the main harbor and the Gulf of Mexico, or if such corporation shall fail to maintain said twenty feet of water continuously for two years thereafter, then in any such case all islands, lands, shallow bays and other rights acquired under this chapter shall be forfeited and shall revert to and vest in the State of Texas. [Id.]

Art. 1489. [1258] [730] Harbor facilities.—Any such corporation may construct, own and maintain upon the Gulf Coast of Texas, in connection with its deep water harbor and navigable channels, docks and wharves and navigable channels for the accomodation [accommodation] of commerce, and such corporation may charge, demand and receive reasonable and just tolls and charge for the use of such docks and wharves, but such navigable channels so constructed shall forever remain open and free to all vessels without fee or charge. [Id.]

Art. 1490. [1258] [730] Rate control.—The tolls and charges for the use of said docks and wharves shall be equal, just and uniform to all vessels, persons and corporations, without discrimination as to amount charged or delay in handling the same. Such tolls and charges shall be under the control of the Legislature, and until otherwise directed by the Legislature, shall be subject to control and regulation by the Railroad Commission, under the rules prescribed for the regulations of railroads, so far as applicable. [Id.]

Art. 1491. [1258] [730] Railroad facilities.—Any railroad, or other means of transportation, which may be constructed between the mainland and any deep water harbor or channel shall be a public highway. All rates and charges for the transportation of freights and passengers thereon shall be subject to the control and regulation of the Railroad Commission as a railroad. Such railroad or other means of transportation shall receive from each ship, boat and vessel, or from the wharf on which the same is discharged, all freights and passengers, and transport and deliver them to the consignee, or any connecting line of railroad, without discrimination as to charges or delay in transportation and delivery, and shall in like manner receive from every person and from every connecting line of railroad, all freight and passengers, and transport and deliver the same to each and every ship, boat, vessel, person or corporation for delivery to such ship, boat or vessel on like equal and just terms, without discrimination as to charges and delay in transportation or delivery thereof. [Id.]

Art. 1492. [1258] [730] Effect of law.—Nothing herein shall be construed to affect any rights acquired before the enactment of this law. The acceptance of the provisions herein, or the exercise of any rights or privileges granted herein, by said corporation, or any person or corporation holding under the same, shall be deemed and held to be a contract with the State. Any wilful violation of these provisions, or the doing of any act herein prohibited, shall work a forfeiture of all rights acquired hereunder, so far as then held or claimed by the person or corporation guilty of such violation. [Id.]

Art. 1493. [1259] [731] Other railroads.—The privileges and rights granted herein shall never be exercised so as to in any way hinder or interfere with the completion of any railroad heretofore chartered to be built to and upon Harbor Island, in and upon the location designated in such charter; nor with any such railroads acquiring and controlling all necessary depot grounds, wharf grounds and deep water fronts that it may or could have acquired legally had not this law been enacted. [Id.]

Art. 1494. [1260] [732] Shall file release.—Before any rights can vest in any corporation by virtue of any purchase of public lands, islands, shores or shallow bays, the said corporation shall file with the Secretary of State a release to the State of Texas of all claim or right to have its tolls or charges imposed for any use to be made of such property or structures thereon regulated by any Act of Congress now existing or hereafter to be passed. [Id.]

CHAPTER FIFTEEN

OIL, GAS, SALT, ETC.

Art.
1495. Purposes.
1496. Powers.
1497. Right of condemnation.
1498. Fiscal powers.
1499. Oil and gas.
1500. Oil pipe lines.
1501. Separate corporations.
1502. Ownership of stock.
1503. Private pipe line.
1504. Effect of law.
1505. Discrimination.
1506. Additional powers.
1507. Fuller's earth pipe lines.

Article 1495. [1303] Purposes.—This chapter embraces corporations created for the purpose of storing, transporting, buying and selling oil, gas, salt brine and other mineral solutions; also sand and clay for the manufacture and sale of clay products; and the production of oil and gas. [Acts 1899, p. 202; Acts 1915, p. 259.]

Art. 1496. [1305] Powers.—Such corporations shall have power:

1. To store and transport oil, gas, brine and other mineral solutions, and also sand, clay and clay products, and to make reasonable charges therefor.

2. To buy, sell and furnish oil and gas for light, heat and other purposes; to lay down, construct, maintain and operate pipe lines, tubes, tanks, pump stations, connections, fixtures, storage houses and such machinery, apparatus, devices and arrangements as may be necessary to operate such pipes and pipe lines between different points in this State.

3. For the transportation of sand and clay, corporations shall have the right to construct, maintain and operate aerial tramways, a system consisting of wire cables supported by wooden, concrete or steel towers, over which buckets or carriers are propelled; and may own such connections, fixtures, guy lines and all necessary devices, storage houses and such machinery, apparatus and arrangements as may be necessary to operate such aerial tramways between different points in this State.

4. To own, hold, use and occupy such lands, right of way, easements, franchises, buildings and structures as may be necessary to the purposes of such corporation. [Id.]

Art. 1497. [1306] Right of condemnation.—Such corporation shall have the right and power to enter upon, condemn and appropriate the lands, right of way, easements and property of any person or corporation. Such corporation shall have the right to lay its pipes and pipe lines across and under any public road or highway, or under any railroad, railroad right of way, street railroad, canal or stream in this State, and to lay its pipes and pipe lines across or along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town. No pipe lines shall be laid parallel with and on any public highway, closer than fifteen feet from the improved section thereof, except with the approval and under the direction of the commissioners court of the county in which such highway is located. Said pipes and pipe lines shall be so buried and covered as not to interfere with the use and occupancy of such road, highway, street or alley by the public, or use and occupancy of such railroad or street railroad by the owner or owners thereof. Such pipes or pipe lines shall not pass through or under any cemetery, church or college, school house, residence, business, or storehouse, or through or under any building in this State, except by the consent of the owner or owners thereof. All such pipes and pipe lines, when same shall pass through or over the cultivated or improved lands of another, shall be well buried under ground at least twenty inches under the surface, and such surface shall be properly and promptly restored by such corporation unless otherwise consented to by the owners of such land. When such pipes and pipe lines shall be laid over or along any uncultivated or unimproved lands of another, and such lands shall thereafter become cultivated or improved, such pipes or pipe lines shall be buried by said corporation as herein provided for cultivated lands, within a reasonable time after notice by the owner of such lands, or his agent, to said corporation or any agent thereof. [Id.; Acts 1919, p. 272.]

Art. 1498. [1307] Fiscal powers.—Such corporation shall have the right to borrow money to an amount not in excess of its paid up capital stock, as provided by law, to issue stock and preferred stock, to mortgage its franchises and property to secure the payment of any debt contracted for any purposes of such corporation, and shall possess all the rights and powers of corporations for profit in this State whenever the same may be applicable to corporations of this character. [Acts 1899, p. 202; Acts 1915, p. 259; Acts 1917, p. 54.]

Art. 1499. [1307] Oil and gas.—Such corporation may also engage in the oil and gas producing business, prospecting for and producing oil and gas and owning and holding lands, leases and other property for said purposes and subject to the provisions of Chapter 4 of this title. No corporation shall exercise these powers while owning or operating oil pipe lines in this State. [Id.]

Art. 1500. [1307] Oil pipe lines.—Any corporation heretofore or hereafter organized under this chapter, and owning or operating oil pipe lines in this State, shall separately incorporate such oil lines, with the consent of a majority in amount of its stockholders and subject to the restrictions hereinafter imposed, whereupon, in addition to other powers which it may possess, it shall then acquire the right and power to engage in said oil and gas producing business. [Id.]

Art. 1501. [1307] Separate corporations.—Such separate incorporation shall be accomplished by the organization of another pipe line corporation under this chapter and the sale and conveyance to it of such oil pipe lines of the organizing company. In case of the ownership also of oil pipe lines beyond the borders of this State, additional pipe line corporations may be organized outside of this State, and such oil pipe lines located outside of Texas may be sold and conveyed to them. In every case herein provided for, the organizing company may subscribe for and own the capital stock of the organized pipe line corporation without being precluded from engaging in said oil and gas producing business. [Id.]

Art. 1502. [1307] Ownership of stock.—In lieu of engaging directly in the oil and gas producing business in any State or country, a corporation organized under this chapter and authorized to engage in said producing business may own the stock of other corporations engaged therein, provided that it shall not own the stock of more than one producing corporation, or one pipe line corporation, organized under the laws of this or any other single State. No corporation organized in any other state or country shall be permitted to own or operate oil pipe lines or engage in the oil producing business in this State when the stock of such corporation is owned in whole or in part by a corporation organized under this chapter. [Id.]

Art. 1503. [1307] Private pipe line.—Nothing in this chapter shall preclude the ownership or operation by any corporation, of private pipe lines in and about its refineries, fields or stations, even though such corporation may be engaged in the producing business. [Id.]

Art. 1504. [1307] Effect of law.—No provision of the six preceding articles shall be construed as limiting, modifying or repealing any part of the law regulating oil pipe lines, or as authorizing any ownership or transaction, the effect of which would be to substantially lessen competition or to violate any law of this State prohibiting trusts and monopolies and conspiracies in restraint of trade or to violate any provision of the anti-trust laws of this State. [Id.]

Art. 1505. [1308] Discrimination.—It shall be unlawful for any corporation organized under this chapter to discriminate against any person, corporation, firm, association or place in the charge for such storage or transportation, or in the service rendered; but it shall receive, store or transfer oil or gas, salt, sand and clay for any person, corporation, firm or association upon equal terms, charges and conditions with all other persons, corporations, firms or associations for like service. [Acts 1899, p. 202; Acts 1915, p. 259.]

Art. 1506. Additional powers.—Corporations organized under this chapter which shall file with the Secretary of State a duly authorized acceptance of the provisions of this law, are hereby declared to have, in addition to the powers enumerated in this chapter, the power to carry on the business therein authorized outside of as well as within this State; to own and operate refineries, casing and treating plants, sales offices, warehouses, docks, ships, tank cars and vehicles necessary in the conduct of their business; and to cause the formation of corporations outside of this State, not exceeding one in any state, territory or foreign country, whose purposes and powers exercised shall be only those conferred by law upon the forming or holding corporation as incorporated under the laws of Texas, and own and hold the stock of such corporation when the effect of such formation or stock holding is not substantially to lessen competition or otherwise to violate laws prohibiting trusts and monopolies and conspiracies in restraint of trade. [Acts 1915, p. 82.]

Art. 1507. Fuller's earth pipe lines.—Every person, firm, corporation, limited co-partnership, joint stock association or associations of any kind whatsoever owning, operating or managing any pipe line, or any part of any pipe line within this State for the transportation of fuller's earth for the public for hire, are declared to be common carriers, and shall have the right and power of eminent domain, and may condemn the necessary rights of way, easements, and sites, under the same terms and subject to the same conditions as are conferred by articles 1497 and 6022, on like persons, natural or otherwise, owning, operating or managing crude petroleum pipe lines. [Acts 1919, p. 272.]

CHAPTER SIXTEEN

WASTE WATER CORPORATIONS

Art.
1508. Purposes.
1509. Powers.
1510. Condemnation.
1511. Services.
1512. Ownership of stock.

Article 1508. Purposes.—Corporations may be created for the purpose of gathering, storing, and impounding water containing salt or other substances [produced] in the drilling and operation of oil and other wells, and to prevent the flow thereof into streams at times when the latter may be used for irrigation. [Acts 4th C. S. 1918, p. 122.]

Art. 1509. Powers.—Such corporations, in addition to the general powers conferred by law upon private corporations, may acquire, own, and operate ditches, canals, pipe lines, levees, reservoirs, and their appliances appropriate for the gathering, impounding or storage of such water and for the protection of such reservoirs from inflow or damage by surface waters. [Id.]

Art. 1510. Condemnation.—Such corporation shall have power to condemn lands and rights necessary for the purposes of such corporation; and also to cross with their ditches, canals, and pipe lines under any highways, canals, pipe lines, railroads, and tram or logging roads; conditioned that the use thereof be not impaired longer than essential to the making of such crossings. No right is conferred to pass through any cemetery or under any residence, school house or other public building, nor to cross any street or alley of any incorporated city or town without the consent of the authorities thereof. [Id.]

Art. 1511. Services.—In the localities in which they operate and to the extent of the facilities provided, such corporations shall serve all producers of such waters in the gathering, impounding, and storage of such waters, in proportion to the needs of such producers at fair and reasonable charges, and without discrimination between such producers under like conditions. [Id.]

Art. 1512. Ownership of stock.—Corporations interested in the proper disposition of such waters may subscribe for, own, and vote stock in the corporations which may be created hereunder. [Id.]

CHAPTER SEVENTEEN

TRUST COMPANIES AND INVESTMENTS

Art.
1513. Trust companies.

AGRICULTURAL FINANCE CORPORATIONS

1514. Purposes.
1515. "Agricultural products."
1516. Assets and liabilities.
1517. Limit of indebtedness.
1518. Ownership of stock.
1519. Regulation.

LOAN AND BROKERAGE COMPANIES

1520. Powers.
1521. Statements.
1522. Examinations.
1523. Liquidation.
1524. Violations of law.

Article 1513. Trust companies.—Every trust company organized under the laws of the State with a capital of not less than five hundred thousand dollars shall, in addition to all other powers conferred by law, have the power to purchase, sell, discount and negotiate with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, stocks, bonds, securities, including the obligations of the United States or of any States thereof; to issue debentures, bonds and promissory notes, to accept bills or drafts drawn upon it, but in no event having liabilities outstanding thereon at any one time exceeding five times its capital stock and surplus; provided, however, that with the consent in writing of the Banking Commissioner they may have outstanding at any one time ten times the capital stock and surplus; and generally to exercise such powers as are incidental to the powers conferred by this article. [Acts 3rd C. S. 1920, p. 90.]

AGRICULTURAL FINANCE CORPORATIONS

Art. 1514. Purposes.—This subdivision embraces private corporations formed for the purpose of dealing in acceptances and other receipts growing out, or to be used in aid, of the transportation, warehousing, distribution, or financing, in either domestic or foreign trade, of readily marketable, staple, non-perishable, agricultural products; and for dealing in acceptances of banking corporations not secured upon nor representing any such products. [Acts 2nd C. S. 1919, p. 21.]

Art. 1515. "Agricultural products."—By ready marketable, staple, non-perishable agricultural products are meant those classes of agricultural products which are subject to such constant dealing in ready markets as to make their values easily and definitely ascertainable and realizable on short notice, and which are not ordinarily subject to substantial depreciation in quality within the period of immaturity of the obligations which they secure, or by which they are represented. [Id.]

Art. 1516. Assets and liabilities.—The total liabilities to any corporation chartered under this law of any such banking corporation, on account of any such unsecured acceptances, shall at no time be permitted to exceed ten per cent of the unimpaired capital of such corporation. Each such corporation shall invest and keep invested in obligations of the United States, Texas, or political sub-divisions or incorporated cities of Texas, not less than one-half of its paid in capital. Such corporation shall have an unauthorized [authorized] capital stock of not less than five hundred thousand dollars which shall not be reduced by amendment to less than such sum. [Id.]

Art. 1517. Limit of indebtedness.—No such corporation shall enter into any contract or contracts of acceptances, guaranty, indorsement or suretyship when its obligation thereon in connection with its entire existing obligations and indebtedness primary or secondary, fixed or contingent, shall exceed five times its then unimpaired capital and surplus, unless previously authorized in writing by the Banking Commissioner so to do, in which case it may enter into such contract not to exceed the limit so fixed by such Commissioner, in no case to exceed ten times its said capital and surplus. Those obligations, to pay which at maturity, any such corporation has been furnished funds by other parties liable thereon, need not be considered in determining the amount of its existing obligations and indebtedness hereunder. All such contracts and obligations entered into in violation of this article shall be unenforceable against such corporation. Nothing herein shall prevent the enforcement of any such prohibited obligations by any holder who has acquired the same in due course, for value, before maturity, and without notice of its infirmity. [Id.]

Art. 1518. Ownership of stock.—Any private corporation formed under this title, and any banking corporation or trust company, except savings banks, may hold stock in corporations created hereunder, and in corporations chartered under the laws of the United States or in any State thereof, and principally engaged in financing domestic or foreign trade in any such agricultural products, in amounts not to exceed in the aggregate, ten per cent of the capital and surplus of such private corporation, banking or trust company, nor to exceed ten per cent of the capital stock of such corporation in which such stock is to be held. No banking corporation or trust company shall acquire stock in such corporation without express writ-

ten authorization therefor from the Banking Commissioner, under such rules and regulations as he may provide, except in payment of debt. If it shall acquire same in payment of debt, it shall promptly dispose of same unless expressly permitted to retain same by such commissioner. [Id.]

Art. 1519. Regulation.—Such corporations shall be subject at all times to the supervision and control of the Banking Commissioner, and shall conform to all lawful regulations of such Commissioner. No such corporation shall begin business until authorized to do so by such Commissioner after satisfactory showing made that such corporation has complied with the law, and thereafter it shall make reports to such Commissioner and be subject to such periodical visitations and examinations under his direction, and shall pay fees therefor, all as in the case of State banking corporations. Said Commissioner shall have such powers with reference to taking charge of such corporations, liquidating same, and for like causes as are possessed by him with reference to State banks. [Id.]

LOAN AND BROKERAGE COMPANIES

Art. 1520. Powers.—This subdivision shall embrace corporations created for any or all of the following purposes: To accumulate and lend money, purchase, sell and deal in notes, bonds, and securities, but without banking and discounting privileges; and to act as trustee under any lawful express trust committed to them by contract and as agent for the performance of any lawful act. No such corporation shall act as agent or trustee in the consolidation of or for the purpose of combining the assets, business or means of any other persons, firms, associations or corporations, nor shall such corporation as agent or trustee carry on the business of another. No such corporation shall be authorized to engage in or carry on any such business unless it shall have an actual paid in capital of not less than ten thousand dollars. [Acts 1919, p. 134.]

Art. 1521. Statements.—Such corporation shall publish in some newspaper of general circulation in the county where it has its principal place of business, on or before the first day of February of each year, a statement of its condition on the previous thirty-first day of December, in such form as may be required by the Banking Commissioner, showing under oath its assets and liabilities; and shall file a copy of such statement with the Commissioner, together with a fee of ten dollars for filing same. [Id.]

Art. 1522. Examinations.—The Banking Commissioner shall examine or cause to be examined, such corporation annually. Said corporation shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination, and a fee therefor not exceeding one-eighth of one per cent of its actual paid in capital. [Id.]

Art. 1523. Liquidation.—If upon examination it shall appear that the assets of said corporation, exclusive of its said capital paid in, are less than its liabilities, the said Commissioner shall notify it thereof in writing, and if said corporation shall not within thirty days from the receipt of said notice restore and make good such impairment of its capital, then it shall be the duty of the Commissioner to take possession of said corporation and its property and to wind the same up and distribute its assets in accordance with the provisions of law with reference to the liquidation of State banks. [Id.]

Art. 1524. Violations of law.—If it shall appear from such examination that said corporation has exceeded its corporation powers, or has been guilty of an unlawful act or acts, the said commissioner shall give written notice to such corporation to cease such act or practice and to conduct its business in accordance with law and its charter powers. If such corporation shall fail or refuse for a period of thirty days thereafter to comply with such notice, then it shall be the duty of said Commissioner to take possession of said corporation and its assets and wind up and distribute the said assets as hereinbefore provided. [Id.]

CHAPTER EIGHTEEN

MISCELLANEOUS

Art.
1525. Drainage.
1526. Irrigation and waterpower.
1527. International trading companies.
1528. Ice companies.

Article 1525. [1262–3–4–5–6–7] Drainage.—Corporations chartered for the purpose of constructing, maintaining and operating canals, drains and ditches outside of the corporate limits of cities and towns in any county in Texas shall:

1. Have power for the purpose of drainage, to acquire lands for the purpose of its business or in payment of stock or drainage rights, and to hold and dispose of such lands and all other property.

2. Alienate within fifteen years from the date of acquiring same all lands acquired by such corporations, subject to judicial forfeiture, except lands used for the construction, maintenance and operation of drains, ditches and laterals.

3. Have power to make contracts for the permanent drainage of any tract of land and the charges therefor, said charges to be subject to the control of the Legislature; and the rights therein shall be secured by a lien expressly given upon the lands, other than homesteads, benefited by said drain or canal.

4. Have the right to borrow money for the construction, maintenance and operation of its ditches, canals and laterals, and to issue bonds and mortgage its franchises to secure the payment of any debts contracted for the same.

5. Report to the commissioners court of the county wherein constructed, all drains and canals so constructed by such corporations, such report to be approved by said court. [Acts 1897, p. 109; G. L. vol. 10, p. 1163.]

Art. 1526. Irrigation and waterpower.—Corporations organized to construct, maintain and operate canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and for conserving, storing, conducting and transferring water to all persons entitled to the use of same for irrigation, mining, milling, manufacturing, the development of power, to cities and towns for waterworks, and for stockraising, shall have power to acquire lands by voluntary donation or purchase in payment of stock or bonds or water rights; and to hold, improve, subdivide and dispose of all such land and other property. Such corporations may elect directors or trustees to hold office for a period of three years, and may provide for the election of one-third in number thereof each year. [Acts 1917, p. 224.]

Art. 1527. International trading corporations.—Corporations created for the purpose of engaging in international trading and the purchase and sale of the products of the farm, ranch, orchard, mine and forest shall be empowered to pledge, borrow, hypothecate and receive in trust for the purpose of sale any and all products of the farm, ranch, and orchard, and shall be authorized to buy, sell and exchange raw products of the farm, ranch, orchard, mine and forest, and to take in payment therefor finished products of whatever kind and character that they may determine at a fair, equitable and just valuation. Such corporations shall have power to charter, lease, construct or purchase necessary vessels, ships, docks, wharves, and warehouses for the conduct of their business; to pool products of the farm in the sale of same; to hypothecate or pledge the credit of such corporations for the products so received under contract for the necessary funds with which to market same; to borrow money as other business corporations and to lend the same upon products that they may be engaged in the sale of, either as owner, agent, consignee, or commission merchant. They shall have generally and specially all the rights, powers and privileges belonging to a corporation engaging in international trading. Such corporations shall have authority to receive in payment of capital stock, manufacturing establishments, and the stocks and bonds of same at a fair and

just valuation, and to so receive the products of the farm, ranch and orchard. Whenever property is received in payment for capital stock, the Secretary of State shall appoint a board of appraisers who are familiar with the valuations of such property so taken in payment for capital stock to appraise same and furnish him with a sworn statement of the valuations of the property so taken in payment for capital stock. On receipt of same he shall approve, file and record the charter of such corporation. A majority of the stock shall in all instances be owned by citizens of the United States, and a majority of the officers and directors thereof shall in all instances be citizens of the United States and of this State. Nothing in this article shall prevent citizens of foreign countries from becoming stockholders in such corporations, but the control of such corporations shall never in any instance be vested in citizens of other countries than the United States. Violation of any provision herein as to the control of stock of such corporation shall be sufficient for the Secretary of State to cancel the charter of said corporation and same shall be placed in the hands of a receiver as provided by law. [Acts 1921, p. 227.]

Art. 1528. Ice companies.—Corporations organized or chartered under the laws of this State for the manufacture of ice shall also be authorized to engage in and transact the business of buying, selling and refrigerating poultry and poultry products, and buying, selling, canning and refrigerating fruits, produce and dairy products. [Acts 1913, p. 267.]

CHAPTER NINETEEN

FOREIGN CORPORATIONS

Art.
1529. Permit.
1530. Stock.
1531. Affidavit.
1532. Rights under permit.
1533. Property rights.
1533a. Voting stock and participating in management of domestic corporation.
1534. Disposal of property.
1535. Evidence.
1536. Right to sue.
1537. Amendments to charter.
1538. Corporations exempt.

Article 1529. [1314–20] Permit.—Any corporation for pecuniary profit, except as hereinafter provided, organized or created under the laws of any other State, or of any territory of the United States, or of any municipality of such State or territory, or of any foreign government, sovereignty or municipality, desiring to transact or solicit business in Texas, or to establish a general or special office in this State, shall file with the Secretary of State a duly certified copy of its articles of incorporation; and thereupon such official shall issue to such corporation a permit to transact business in this State for a period of ten years from the date of so filing such articles of incorporation. If such corporation is created for more than one purpose, the permit may be limited to one or more purposes. [Acts 1889, p. 87; Acts 1901, p. 18; G. L. vol. 9, p. 1115.]

Art. 1530. [1314] [745] Stock.—Before such permit is issued such corporation shall show to the satisfaction of the Secretary of State that at least one hundred thousand dollars in cash of their authorized capital stock has been paid in, or that fifty per cent of their authorized capital stock has been subscribed, and at least ten per cent thereof paid in. [Id.]

Art. 1531. [1315] Affidavit.—Before a permit is issued to such corporation, its president, vice president, secretary or treasurer, or two of the directors thereof, shall make and file in the office of the Secretary of State an affidavit stating that such corporation is not a trust or organization in restraint of trade in violation of the laws of this State, has not, within twelve months next preceding the making of such affidavit, become or been a party to any trust agreement of any kind which would constitute a violation of any anti-trust law of Texas existing at the date of such affidavit, and has not within that time, entered into or been in any wise a party to, any combination in restraint of trade within the United States, and that no officer of such corporation has, within the knowledge of affiant, within such time and on behalf of such corporation or for its benefit, made any such contract, or entered into or become a party to any such combination in restraint of trade. The jurat of the officer making such affidavit shall be attested by his official signature and seal of office. [Acts 1909, C. S. p. 267; Id.]

Art. 1532. [1317] [745] Rights under permit.—Such corporations, on obtaining such permit, shall have and enjoy all the rights and privileges conferred by the laws of this State on corporations organized under the laws of this State. [Acts 1897, p. 167; G. L. vol. 10, p. 1221.]

Art. 1533. Property rights.—Such corporations shall be authorized to hold, purchase, sell, mortgage or otherwise convey such real estate and personal estate as the purposes of such corporation may require, and to take, hold and convey such other property, real, personal, or mixed, as may be requisite for such corporation to acquire in order to obtain or secure the payment of any indebtedness or liability due, or which may become due, or belonging to, the corporation. [Id.]

Art. 1533a. Voting stock and participating in management of domestic corporation.—That when any foreign corporation without a permit to do business in this State lawfully owns or may lawfully own or acquire stock in Texas corporation, it shall not be unlawful for such foreign corporation to vote said stock and participate in the management and control of the business and affairs of such Texas corporation, as other stockholders, subject to all laws, rules and regulations governing Texas corporations, and especially subject to the provisions of the Anti-trust Laws of the State of Texas. [Acts 1925, 39th Leg., ch. 185, p. 455, § 1.]

Art. 1534. Disposal of property.—Such corporations shall alienate all real property so acquired not necessary for its purposes, within fifteen years from the time of acquisition; and shall alienate all real estate acquired for the purposes of such corporation within fifteen years from the expiration of the time for which the permit is issued, or, if such permit be renewed or such corporation be otherwise authorized to carry on business in Texas, then such real estate shall be alienated within fifteen years from the expiration of such renewal or authorization. If such corporation shall cease to carry on business in Texas, it shall alienate all such real estate so acquired by it, within fifteen years from the time of such cessation. [Id.]

Art. 1535. [1321] [749] Evidence.—Either the original permit or certified copies thereof by the Secretary of State shall be evidence of the compliance on the part of any corporation with the terms of this chapter. A certificate of the Secretary of State to the effect that the corporation named therein has failed to file in his office its articles of incorporation shall be evidence that such corporation has in no particular complied with the requirements of this chapter. [Id.]

Art. 1536. [1318] [746] Right to sue.—No such corporation can maintain any suit or action, either legal or equitable, in any court of this State upon any demand, whether arising out of contract or tort, unless at the time such contract was made, or tort committed, the corporation had filed its articles of incorporation under the provisions of this chapter. [Id.]

Art. 1537. Amendments to charter.—Each foreign corporation, after a permit has been granted it to do business in this State, shall immediately file with the Secretary of State a certified copy of any amendment or supplement to its original articles of incorporation when any such amendment or supplement to its original articles of incorporation is filed in the state territory or foreign country under whose laws such corporation is incorporated. [Acts 1919, p. 81.]

Art. 1538. [1319] [747] Corporations exempt.—The provisions of this chapter shall not apply to corporations created for the purpose of constructing, building, operating or maintaining any railway, or to such corporations as are required by law to procure certificates of authority to do business from the Commissioner of Insurance or from the Banking Commissioner. [Acts 1897, p. 167; G. L. vol. 10, p. 1221.]

CHAPTER NINETEEN "A"

NON-PAR CORPORATIONS

Art.
1538a. Non-par stock.
1538b. Statement on face.
1538c. Consideration for stock.
1538d. Shall file with Secretary of State.
1538e. Certificate by directors.
1538f. Fees.
1538g. Value of shares.
1538h. May amend charter.
1538i. Franchise tax.
1538j. Stock to be subscribed.
1538k. Forfeiture of charter.
1538l. Blue sky law.
1538m. Constitutionality.

Article 1538a. Non-par stock.—Upon the organization, under the laws of this State, of any private corporation for profit, other than corporations authorized to conduct a banking or insurance business, or upon the amendment of the charter in the manner now or hereafter provided by law of any private corporation for profit organized under the laws of this State other than corporations authorized to conduct a banking or insurance business, provision may be made for the issuance of shares of its stock without nominal or par value. Every such share shall be equal in all respects to every other such share, except that the charter or any amendment thereof may provide that such shares should be divided into different classes, the shares of each class to have such preferences, designations, rights, privileges and powers and be subject to such restrictions, limitations and qualifications as shall be stated in the charter or any amendment thereof. Any law of this State requiring that the par value of shares of stock of a corporation be stated in any certificate, report, or other instrument or paper shall be complied with by stating, in respect to shares without nominal or par value, that such stock is without par value, and wherever the amount of stock is required to be stated, the number of such shares without nominal or par value shall be stated and that such shares are without nominal or par value.

Art. 1538b. Statement on face.—Every certificate issued for shares of stock without nominal or par value shall have plainly stated on its face the number of shares which it represents and the class thereof, and shall not set forth any par value or value in dollars of such shares. No such certificate shall express or state thereon any rate of dividend, preference as to assets in liquidation, or price at which such shares may be redeemed except in dollars and cents per share.

Art. 1538c. Consideration for stock.—Corporations may issue and dispose of their authorized shares having no nominal or par value for such consideration as may be prescribed in the original charter or any amendment thereof; or, if no consideration is so prescribed, then for such consideration as may be fixed by the stockholders at a meeting duly called and held for that purpose, or by the board of directors when acting under general or special authority granted by the stockholders, or by the board of directors when acting under general authority conferred by the original charter or any amendment thereof; such consideration to be in the form of money paid, labor done or property actually received. Any and all shares without nominal or par value issued for the consideration prescribed or fixed in accordance with the provisions of this section shall be fully paid stock and not liable to any further call or assessment thereon, nor shall the subscriber or holder be liable for any further payments.

Art. 1538d. Shall file with Secretary of State.—Corporations authorizing the issuance of shares of its [their] stock without nominal or par value shall furnish to, and file with, the Secretary of State at the time of filing the charter or amendment to a charter authorizing the issuance of such stock a certificate authenticated by the incorporators as to original charter, and by a majority of the directors as to any amendment thereof, in the manner required by the laws of this State as to an original charter of incorporation, setting forth the following:

(a) The number of shares with a par or face value and the number of shares without nominal or par value that may be issued by the corporation and the classes, if any, into which such shares are divided.

(b) The par or face value of shares other than the shares which it is stated are to be without nominal or par value.

(c) That all stock having a par or face value, if any, has been in good faith subscribed, and fifty per cent thereof paid in, in cash, property or labor done.

(d) The number of shares without nominal or par value subscribed and the actual consideration received by the corporation for such shares; and upon receiving such certificate it shall be the duty of the Secretary of State, on payment of office fees and franchise tax due, to file and record the charter, or amendment thereof, of such corporation and to give his certificate showing the record thereof, provided, however, the stockholders of any corporation authorizing the issuance of shares of its stock without nominal or par value shall be required, in good faith, to subscribe and pay for at least ten per cent of the authorized shares to be issued without nominal or par value before said corporation shall be chartered or have its charter amended so as to authorize the issuance of shares without par or nominal value; provided further that in no event the amount so paid shall be less than $25,000.00.

Art. 1538e. Certificate by directors.—In the event the original charter or any amendment to a charter of a corporation authorizing the issuance of shares of stock without nominal or par value does not prescribe the consideration for which such shares, other than those subscribed and paid for at the time of the filing of the charter or any amendment to a charter, shall be issued, then, within ninety (90) days after the issuance of any such shares, the corporation shall file, with the Secretary of State a certificate, authenticated by a majority of the directors in the manner required by the laws of this State as to an original charter of incorporation, setting forth the number of such shares so issued and the actual consideration received by the corporation for such shares.

Art. 1538f. Fees.—Any corporation authorizing the issuance of shares of its stock without nominal or par value shall be required to pay to the Secretary of State, for the use of the State, fees as follows:

(a) The fees now or hereafter provided by the laws of this State as to any shares of its stock having a par or face value; and

(b) as to any shares of its stock without nominal or par value a fee of fifty dollars for the first ten thousand dollars of actual consideration received by the corporation for any such shares issued, provided, that if the actual consideration received by said corporation shall exceed ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars, or fractional part thereof, of actual consideration received by it; and, provided further, that any shares without nominal or par value not subscribed and paid for at the time of filing said original charter or amendment to a charter shall for the sole and only purpose of computing the filing fees, be assumed to have the same value per share as that for which the shares actually subscribed and sold were issued so that the filing fees, as fixed herein, shall be paid upon the entire authorized number of shares to be issued without nominal or par value; which said fees shall be paid to the Secretary of State at the time of filing the charter or any amend-

ment thereof, provided, that if, after payment of the fees herein provided, the corporation should thereafter issue shares of its stock without nominal or par value, which said shares were not subscribed, paid for, or issued, when the fees thereon were paid for a consideration or value per share in excess of the value such shares were assumed to have when the charter or amendment to a charter was filed, then said corporation, at the time of filing the certificate showing the actual consideration received by it for said shares so subsequently sold and issued, shall pay further or additional fees at the rates herein stipulated, upon such excess value or consideration; provided that the aggregate fees to be paid by a corporation as prescribed in this Section 6 shall never exceed the sum of twenty-five hundred dollars ($2500).

Art. 1538g. Value of shares.—The certificate required by this Act to be filed setting forth the value received by a corporation for the shares of its stock without nominal or par value which it may issue shall not be construed as fixing any value upon such shares, but said certificate shall be for the sole and only purpose of furnishing the Secretary of State a basis upon which to compute the filing fees and franchise tax to be paid upon said shares without nominal or par value.

Art. 1538h. May amend charter.—Any private corporation for profit, other than corporations authorized to conduct a banking or insurance business, having authorized shares with par or face value, or shares without nominal or par value, or both, may, by vote of the holders of a majority of its outstanding stock entitled to vote at any annual meeting or at any special meeting called and held for the purpose, amend its charter so as to change its shares or [of] stock with par or face value, or any class or classes thereof, into the same number or into a larger or smaller number of shares without nominal or par value provided that all shares in any one class shall be changed on the same basis, or so as to change its shares without nominal or par value, or any class or classes therefor [thereof], into a larger or smaller number of shares without nominal or par value provided that all shares in any one class shall be changed on the same basis; and provided further that the preferences, rights, limitations, privileges and restrictions granted or imposed with respect to any shares of outstanding stock shall not be impaired, diminished or changed without the consent of the holder thereof. Whenever any such amendment shall be made effective, all the shares with par or face value of the class or classes specified in said amendment shall be deemed for all purposes to have been converted, on the basis in said amendment stated, shares without nominal or par value of the class or classes specified, and all of the shares without nominal or par value changed into a larger or smaller number of shares without nominal or par value shall be deemed for all purposes to have been converted, on the basis in said amendment stated, into such larger or smaller number of shares without nominal or par value, and the corporation shall, in writing, notify all holders of shares of stock of the class or classes effected [affected] and shall thereafter, whenever any certificate for any such shares is presented for transfer or exchange, cancel the same, and in its place, issue, on the basis in said amendment stated, a new certificate, which shall conform to the provisions of Article 1538b hereof.

Art. 1538i. Franchise tax.—The amount of franchise tax to be paid by any corporation having shares of stock without nominal or par value shall be determined in the manner as now or hereafter prescribed by the laws of this State, except that such shares without nominal or par value shall, for the purpose of computing such tax only, be treated and considered as having and being of the value actually received by the corporation for the issuance of such shares as disclosed by the charter or any amendment thereof, as provided in Article 1538d hereof, or by a certificate as provided in Article 1538e hereof.

Art. 1538j. Stock to be subscribed.—Corporations authorizing the issuance of shares of its [their] stock without nominal or par value are exempt from the provisions of Articles 1308 to 1311, inclusive, and of Article 1338 of the Revised Civil Statutes, provided that no original charter nor any amendment to a charter which provides for stock having a nominal or par value shall be filed or recorded by the Secretary of State until the full amount of all such authorized capital stock having a par value shall have been subscribed, and fifty per cent thereof paid, and proof thereof made in the manner provided in said Articles 1308 to 1311, inclusive; and provided further, that the provisions of said Article 1338 as to the payment of the unpaid portion of capital stock shall apply to the payment of the unpaid portion of any stock which has a nominal or par value.

The Revised Civil Statutes above referred to are the Revised Civil Statutes of 1925.

Art. 1538k. Forfeiture of charter.—Any corporation authorized to issue shares of its stock without nominal or par value which shall fail or refuse to make and file within the time provided, any certificate or report required by this Act to be made and filed shall thereupon forfeit and pay to the State a penalty of not less than five dollars nor more than one hundred dollars for each and every day, during which it shall continue in default, which penalty shall be recovered by suit in a court of competent jurisdiction by the Attorney General of Texas; and upon proof in said suit that such corporation has not then filed the certificate or report required to be filed by it, said corporation shall forfeit its charter and all rights and franchises which it holds under, from, or by virtue of, the laws of this State.

Art. 1538*l*. Blue sky law.—The privileges and powers conferred by this chapter shall be deemed to be in addition to any and all powers and authority conferred by any other law or laws, and not in restriction or limitation of any of the powers now permitted to corporations of this State; provided, that nothing in this chapter shall be construed to in any way exempt the sale of such par value stock or non par value stock from the operation and control of the Blue Sky Law of this State as the same now exists or may hereafter be amended.

Art. 1538m. Constitutionality.—Should any provision of this Act be held invalid, the validity of the other provisions shall not be affected or impaired thereby. [Acts 1925, pp. 236–240.] [39th Leg. ch. 77, §§ 1–13.]

TITLE 33

COUNTIES AND COUNTY SEATS

Chap.

1. Creation of Counties.
2. Organization of Counties.
3. Corporate Rights and Powers.
4. County Lines.
5. County Seats.
6. County Boundaries.

CHAPTER ONE

CREATION OF COUNTIES

Art.

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1560. Law governing such elections.
1561. Returns of election.
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Article 1539. [1331] [756] [651] Legislature may create counties.—The Legislature shall have power to create counties for the convenience of the people. [Const. art. 9, sec. 1.]

Art. 1540. [1332] [757] [652] Area required.—In the territory of the State exterior to the counties now existing, no new county shall be created with a less area than nine hundred square miles in a square form unless prevented by pre-existing boundary lines. If the State lines render this impracticable in border counties, the area may be less. [Id.]

Art. 1541. [1333] [758] [653] Division of exterior territory.—The territory referred to in the preceding article may at any time, in whole or in part, be divided into counties in advance of population, and attached for judicial and land surveying purposes to the most convenient organized county. [Id.]

Art. 1542. [1334] [759] [654] Created out of other counties.—Within the territory of any county or counties now existing no new county shall be created with less area than seven hundred square miles. No such county now existing shall be reduced to a less area than seven hundred square miles. [Id.]

Art. 1543. [1335] [760] [655] Line of new county.—No new county shall be created so as to approach nearer than twelve miles of the county seat of any county from which it may, in whole or in part be taken. [Id.]

Art. 1544. [1336] [761] [656] County from existing county.—Counties of less area than nine hundred, but of seven hundred or more square miles, within counties now existing, may be created by a two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. [Id.]

Art. 1545. [1337] [762] [657] Existing counties reduced.—Any county now existing may be reduced to an area of not less than seven hundred square miles by a like two-thirds vote of each house of the legislature, taken by yeas and nays, and entered on the journals. [Id.]

Art. 1546. [1338] [763] [658] Liability of new county.—When any part of a county is stricken off and attached to, or created into another county, the part stricken off shall be obligated to pay its proportion of all existing liabilities of the county from which it was taken, in such manner as the law shall provide. [Id.]

Art. 1547. [1339] [764] Pro rata of indebtedness.—Any county which has been or may hereafter be created by the Legislature out of any other county or counties, shall be held liable for its proportion of all the liabilities of the county or counties from which it was taken, existing at the date of its creation as such new county, according to the proportionate value of the property in the excised territory, and the value of the property remaining in the old county. A suit to recover the same may be brought in the district court by the parent county, either in such parent county, or in the newly created county; and the court shall have power to make any order or render any judgment necessary to carry out and satisfy its decree therein. The provisions of this article shall not apply to any county, the claims against which have already been placed before courts having jurisdiction thereof and tried or dismissed under laws that were at such time constitutional. [Acts 1893, p. 124; G. L. vol. 10, p. 554.]

Art. 1548. [1340] [765] Apportionment of indebtedness.—Where any suit has been, or shall be, brought to enforce payment of the indebtedness created by the parent county or counties, or for the pro rata share of the excised territory, the assessment rolls of the parent county or counties for the year in which such new county was created shall be conclusive evidence of the property and value thereof remaining in the parent county, and in the excised territory at the date of the creation of such new county; provided that when the new county was organized and made assessment rolls for the same year as that in which it was created, such rolls shall be taken as conclusive evidence of the property therein and the taxable values thereof at the date of the creation of such new county, and the assessment rolls of the parent county for the same year shall be conclusive evidence of the property and the value thereof remaining in the parent county at the date of the creation of such new county. [Id.]

Art. 1549. [1341] [765a] Suits and special tax.—All suits brought under this law shall be given precedence upon the dockets of the courts. If the plaintiff shall recover, the commissioners court of the newly created county shall levy a special tax on all property in the territory taken from the plaintiff county sufficient to pay off the judgment, and, if the first levy be insufficient, to make said levy annually till said judgment is satisfied, and the judgment of the court shall order said commissioners court to make such levies. [Id.]

Art. 1550. [1342] [766] Non-residents to pay.—The Comptroller shall assess and collect from the non-residents of unorganized counties such rate of taxation, to pay the pro-rata share of the debt due by such unorganized county, as the commissioners court of the parent county shall levy on property in said parent county to pay such debt, and a certified statement of the commissioners court making the levy in the parent county, giving the amount of the levy, shall be authority for his action. [Acts 1889, p. 136; G. L. vol. 9, p. 1164.]

Art. 1551. [1343] [767] When territory added.—When the territory taken is added to and made a part of an organized county, the commissioners' court of such county shall levy and have collected on all property in such territory a tax sufficient to pay their pro-rata of the indebtedness, said tax not to exceed the constitutional limit; and the commissioners court of the county to which any unorganized county may be attached for judicial purposes shall levy and have collected on all property in such unorganized county owned or held by resident citizens a tax for the purpose of paying such indebtedness. [Id.]

Art. 1552. [1344] [768] Tax for pro-rata indebtedness.—When any county has organized, the commissioners court of such county shall levy and have collected on all property in this county such rate of taxation to pay the pro rata share of the debt due by such county as the commissioners court of the parent county shall levy on property in said parent county to pay such debt. [Id.]

Art. 1553. [1346] [770] County bonds held by school funds.—When any new county has been created wholly out of an existing county, if any bonds were legally issued by the parent county prior to the severance of a part of its territory, such of said bonds and the coupons due thereon as are held by the school fund of this State shall be apportioned by the Comptroller between the parent county and the new county on the basis now provided by law. [Acts 1891, p. 39; G. L. vol. 10, p. 41.]

Art. 1554. [1347] [771] Levy of tax for debt.—The commissioners court of the parent county, or of any county created out of the parent county, which has now or may hereafter be organized, shall levy and have collected on all property in such county a tax to pay such county's pro-rata share of the debt. The commissioners court of a county to which any unorganized county may be attached for judicial purposes shall levy and have collected on all property in said unorganized county owned by resident citizens thereof a tax for the purpose of paying said county's part of the debt. It shall be the duty of the Comptroller to assess and collect on all property in such unorganized counties owned by non-residents, a tax to pay said counties' pro rata part of said debt. Nothing herein shall be held to authorize the levy and collec-

tion of any tax in excess of that now allowed by the Constitution of this State. [Id.]

Art. 1555. [1348] [772] [659] Detachment by vote.—No part of any existing county shall be detached from it and attached to another existing county until the proposition for such change has been submitted to a vote of the electors of both counties, and shall have received a majority of those voting on the question in each. [Const. art. 9.]

Art. 1556. [1349] [773] [660] Election ordered.—An election for such purpose shall be ordered by the county judge, or county judges of the county or counties from which it is proposed to detach any proportion [portion] thereof, or to attach any portion thereto, upon the written application of not less than fifty qualified voters of said county or counties.

Art. 1557. [1350] [774] [661] Application.—Such application shall designate particularly by metes and bounds, the portion of the territory proposed to be detached, and shall show the number of square acres contained within said bounds, and the number of square acres remaining in the county or counties from which it is proposed to detach such part or parts, and the distance on a direct line of the county seat of any such county or counties from the nearest boundary line of the territory which it is proposed shall be detached.

Art. 1558. [1351] [775] [662] Notices of election.—The notices of such election shall contain substantially the boundaries and statements contained in the application, and in order of election.

Art. 1559. [1352] [776] [663] Question to be voted upon.—The question to be voted upon at such election shall be, for or against the proposition, and the ballots shall be, "For the proposition," or "Against the proposition."

Art. 1560. [1353] [777] [664] Law governing such elections.—Such election shall be governed by the law governing other elections so far as applicable, and not in conflict with any provisions of this chapter.

Art. 1561. [1354] [778] [665] Returns of election.—The returns of such election shall be made to the county judge or county judges of the county or counties in which the election takes place; and such judge or judges shall estimate the vote and make duplicate statements of the same, and shall officially certify to such statements, and one of said statements, together with a copy of the application so certified, he shall seal in an envelope, writing his name across the seal, and endorsing upon the package "Election returns of ——— County," and direct and transmit the same by mail or other safe conveyance to the Speaker of the House of Representatives at the seat of government, in time for the same to be received as early as practicable during the next session of the Legislature.

Art. 1562. [1355] [779] [666] Subsequent election.—When any such election has been held in a county, and the proposition to detach a portion thereof has been defeated, no other election for the same purpose shall be ordered or held within five years thereafter.

CHAPTER TWO

ORGANIZATION OF COUNTIES

Art.
1563. Old county shall organize new one.
1564. Election to be ordered when and by whom.
1565. County commissioners may act.
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1566a. Appraisers of taxable property in unorganized counties.
1567. Disorganized counties.
1568. Organization of attached county.
1569. Certificates of election.
1570. Delivery to new officers.
1571. Elections in unorganized counties.

Article 1563. [1356] [780] [667] Old county shall organize new one.—Whenever any new county shall hereafter be established, the commissioners court of the county from which the territory of such new county, or the greater part thereof was taken, at least one month previous to the general election next after such new county shall have been established shall lay off and divide such new county into convenient precincts for the election of justices of the peace and other precinct officers, defining particularly the boundaries of such precincts; and shall also designate convenient places in such new county where elections shall be held, and shall cause a record thereof to be made by the clerk. A copy thereof shall be transmitted to the county judge of such new county when elected. [Act March 20, 1848, p. 284; P. D. 1063; G. L. vol. 3, p. 284.]

Art. 1564. [1357] [781] [668] Election to be ordered when and by whom.—It shall be the duty of the county judge of every county from which any new county has been so taken at least one month previous to the general election of county officers next after such new county has been established, to order an election to be held in such new county or [on] said general election day, for all county officers authorized to be elected by the people of such new county, and to appoint a presiding officer for each place designated in such new county, for holding elections; such order of elections shall specify the number of precincts, their boundaries, and the officers to be elected in such county. Such presiding officers shall hold such elections in accordance with the laws regulating elections, and shall make their returns to the county judge who ordered such election, who shall open and examine such returns and give certificates to the persons elected. [Id.]

Art. 1565. [1358] [782] [669] County commissioners may act.—In any case where the office of county judge shall be vacant, any two of the county commissioners shall be authorized to perform each duty required of the county judge under this chapter. [Id.]

Art. 1566. [1359] [783] [670] Unorganized county.—Until a new county is legally organized, the territory thereof shall remain in all respects subject to the county from which the same has been taken. [Id.]

Art. 1566a. Appraisers of taxable property in unorganized counties.—Sec. 1. That the sum of Two Thousand ($2,000.00) Dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated out of any funds in the State Treasury, not otherwise appropriated, to each of the counties in this State to which an unorganized county is attached for judicial purposes, to be used by said county through its Commissioners' Court for the employment of a skilled appraiser, with the consent and approval of the Comptroller of Public Accounts of the State of Texas, to assist in the appraisal of taxable property situated in any such unorganized county, of which fund herein provided for, not exceeding One Thousand ($1,000.00) Dollars, shall be available for each calendar year for each such county for the years 1927 and 1928.

Sec. 2. After said appraiser has completed his work of the appraisal of the properties in the unorganized county, he shall make a report in duplicate to the Commissioners' Court of the county to which such unorganized county is attached for judicial purposes, stating therein in detail the values placed upon all classes of property by him in said unorganized county.

Sec. 3. After the Commissioners' Court has finally passed on the values fixed by said appraiser in his report, they shall certify their action to the Comptroller of Public Accounts, furnishing him with a duplicate of the report filed by the appraiser, and showing the action of the court had thereon, together with a certificate showing the extent of the services performed by the appraiser, and the value thereof, which shall be authority for the Comptroller to draw his warrant in favor of said appraiser for the amount shown to be due. [Acts 1927, 40th Leg., 1st C. S., p. 199, ch. 74.]

Art. 1567. [1360] [784] [671] Disorganized counties.—All legally organized counties that,

from any cause, may have lost, or may hereafter lose, their county organization, shall be, for all judicial and surveying purposes, and for the registration of deeds, mortgages and all other instruments that are now, or may hereafter be, required or permitted by law to be recorded attached to the organized county whose county seat is nearest to the county seat of such disorganized county, and so remain attached until such disorganized county shall again be legally organized. [Act Nov. 5, 1866, p. 90; G. L. vol. 5, p. 1008.]

Art. 1568. [1361] [785] [672] Organization of attached county.—When any unorganized or disorganized county has been attached to another county for judicial or other purposes, and desires to be organized or reorganized, a petition expressing such desire, signed by not less than seventy-five qualified voters residing in such county, may be presented to the commissioners court of the county to which such unorganized or disorganized county is attached, and thereupon said court shall proceed without delay to the organization or reorganization of such county in the same manner as hereinbefore provided for the organization of new counties. [Act May 1, 1874, p. 188; Acts 1918, 4th C. S. p. 17; G. L. vol. 8, p. 189.]

Art. 1569. [1362] [786] [673] Certificates of election.—The county judge of the county conducting the organization of another county shall issue certificates of election to the officers elected in such organized or reorganized county, and approve the bonds of such officers. [Act May 1, 1874, p. 188; G. L. vol. 8, p. 189.]

Art. 1570. [1363] [787] [674] Delivery to new officers.—All officers of the county from which a new county has been created or to which any such newly organized or reorganized county has been attached, and all other persons who may have in their possession any books, records, maps, or other property belonging to such newly organized or reorganized county, shall deliver the same to the proper officers of such newly organized or reorganized county within five days after such officers have been legally qualified.

Art. 1571. [1364] [788] [675] Elections in unorganized counties.—Where a county is not organized and there is no officer in the same authorized by law to organize such county, the county judge of the nearest county which is organized may order elections for county officers in any such county, and appoint the presiding officers and managers and clerks of election. [Acts March 26, 1848; P. D. 3624.]

CHAPTER THREE

CORPORATE RIGHTS AND POWERS

Art.
1572. County a body corporate.
1573. Suits against.
1574. Jurors.
1575. Execution against county.
1576. Validity of deed, etc.
1577. Sale of real estate.
1578. Contracts with a county valid.
1579. Suits on writings by county.
1580. Agents to contract for county.
1581. Costs in suit against county.

Article 1572. [1365] [789] [676] County a body corporate.—Each county which now exists or which may be hereafter established, shall be a body corporate and politic. [P. D. 1044.]

Art. 1573. [1366] [790] [677] Suits against.—No county shall be sued unless the claim upon which such suit is founded shall have first been presented to the commissioners court for allowance, and such court shall have neglected or refused to audit and allow the same, or any part thereof. [P. D. 1045.]

Art. 1574. [1367] [791] [678] Jurors.—In any suit instituted by or against any county, the inhabitants of the county so suing or being sued may if otherwise competent, be jurors or witnesses. [P. D. 1049.]

Art. 1575. [1368] [792] [679] Execution against county.—No execution shall be issued on any judgment against any county. When a judgment is rendered against a county the commissioners court of such county shall settle and pay such judgment in like manner and pro rata as other similar claims are settled and paid by said court. [P. D. 1050.]

Art. 1576. [1369] [793] [680] Validity of deed, etc.—All deeds, grants and conveyances heretofore or hereafter made and duly acknowledged, or proven, and recorded as other deeds of conveyance, to any county, or to the courts or commissioners of any county, or any other person or persons, by whatever form of conveyance, for the use and benefit of any county, shall be good and valid to vest in such county in fee simple or otherwise all such right, title, interest and estate as the grantor in any such instrument had at the time of the execution thereof in the lands conveyed and was intended thereby to be conveyed. [P. D. 1051.]

Art. 1577. [1370] [794] [681] Sale of real estate.—The commissioners court may, by an order to be entered on its minutes, appoint a commissioner to sell and dispose of any real estate of the county at public auction. The deed of such commissioner, made in conformity to such order for and in behalf of the county, duly acknowledged and proven and recorded shall be sufficient to convey to the purchasers all the right, title, and interest and estate which the county may have in and to the premises to be conveyed. Nothing contained in this article shall authorize any commissioners court to dispose of any lands given, donated or granted to such county for the purpose of education in any other manner than shall be directed by law. [P. D. 1052.]

Art. 1578. [1371] [795] [682] Contracts with a county valid.—Any note, bond, bill, contract, covenant, agreement or writing, made or to be made, whereby any person is or shall be bound to any county, or to the court or commissioners of any county, or to any other person or persons, in whatever form, for the payment of any debt or duty or the performance of any matter or thing to the use of any county, shall be valid and effectual to vest in said county any right, interest and action which would be vested in any person if any such contract had been made directly with him. [P. D. 1053.]

Art. 1579. [1372] [796] [683] Suits on writings by county.—Suits may be begun and prosecuted on such notes, bonds, bills, contracts, covenants, agreements, and writings, in the name of such county, or in the name of the person to whom they were made, for the use of the county, as fully and as effectually as any person may or can sue on like instruments made to him. [P. D. 1054.]

Art. 1580. [1373] [797] [684] Agents to contract for county.—The commissioners court may appoint an agent or agents to make any contract on behalf of the county for the erection or repairing of any county buildings, and to superintend their erection or repairing, or for any other purpose authorized by law. The contract or acts of such agent or agents, duly executed and done, for and on behalf of the county, and within his or their powers, shall be valid and effectual to bind such county to all intents and purposes. [P. D. 1055.]

Art. 1581. [1374] [798] [685] Costs in suit against county.—When the plaintiff in any suit against a county shall fail to recover a greater amount than the commissioners court of such county shall have allowed to such plaintiff on the presentation of his claim to such court, such plaintiff shall pay all costs of such suit. [P. D. 1056.]

CHAPTER FOUR

COUNTY LINES

Art.
1582. Survey made.
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1584. Natural objects.
1585. Notice to other counties.
1586. Oath and bond of surveyors.
1587. Return and record of field notes.
1588. Absence of surveyor.
1589. Land Commissioner to direct survey.

Art.
1590. Division of expense.
1591. Suit to establish boundary.
1592. Marking line on map.

Article 1582. [1375] [799] Survey made.—Whenever it appears to the satisfaction of the county court of any county, or notice shall be given such court by the Land Commissioner that the boundary or any part thereof, of the county is not sufficiently definite and well defined, such court shall appoint an experienced and competent practical surveyor, whose duty it shall be to ascertain by actual survey the boundary, or any part thereof, of said county, and to make and establish the lines and corners in the manner herein prescribed. The court, in the order making the appointment, shall specify the line or lines to be run, and the corners to be established and marked; and shall in all things conform to the law defining the boundaries of said county. [Acts 1879, p. 137; G. L. vol. 8, p. 1437.]

Art. 1583. [1376] [800] Marking boundary.—The initial corners of the surveys herein provided for shall be designated by posts, mounds or stone monuments; the posts shall be of hewn cedar, cypress or bois d' arc, at least eight inches in diameter, five feet long, and set in the ground not less than three feet; the mounds shall be of stone when practicable, otherwise of earth, and not less than two feet high; at the end of each mile in said boundary a like post, mound or stone monument shall be established; the initial corners shall be described on the post or monument established there. [Id.]

Art. 1584. [1377] [801] Natural objects.—In the field notes of the survey of the lines ordered to be run, the surveyor shall give accurate description of all prominent natural objects crossed by, or adjacent to said lines, as well as of the corners and lines of surveys on or near said boundaries. [Id.]

Art. 1585. [1378] [802] Notice to other counties.—The court making such order shall cause a copy thereof to be sent to the county courts of the counties interested in such boundary, stating the time and place, which time shall not be later than twenty days after the meeting of the county court of the county notified, for the commencement of the survey; and such notice shall be given at least ten days before the meeting of said county court; and the court so notified shall appoint an experienced and competent practical surveyor to proceed at the time and place to assist in running and establishing such line. [Id.]

Art. 1586. [1379] [803] Oath and bond of surveyors.—Such surveyors shall take the oath of office prescribed by law for county surveyors, and shall, before entering upon the duties herein prescribed, enter into bond in the sum of one thousand dollars, with two or more sureties to be approved by the county judge, payable to the county judge or his successors in office, conditioned for the faithful performance of his duty. [Id.]

Art. 1587. [1380] [804] Return and record of field notes.—When the line shall have been surveyed and marked as herein provided, it shall be the duty of the surveyor to make due return of the field notes and map to the county court; which field notes and map shall be recorded by the clerk, and a certified copy thereof returned to the general land office. [Id.]

Art. 1588. [1381] [805] Absence of surveyor.—If either of the surveyors appointed to run and mark such line shall fail to attend at the time and place appointed, the one in attendance shall proceed alone to perform the duties assigned and make his report to the county court of the county employing him, which being approved by such court, shall be recorded as evidence of the line in question. The line so surveyed and marked shall thereafter be regarded as the true boundary line between the counties. [Id.]

Art. 1589. [1382] [806] Land Commissioner to direct survey.—If the surveyors above provided for fail to agree as to the true boundary line between their respective counties, the facts of such disagreement, with a full statement of the questions at issue between them, shall be by them reported to the Land Commissioner, who shall examine the disputed matter at once; and from such data as the maps and archives of his office furnish, shall designate to such surveyors the line to be run stating at what specific point they shall begin and to what specific point they shall run, adhering as nearly as possible to the line designated in the act creating such county line, which instructions shall be authority for said surveyors to run such line. The line so run as above directed shall thereafter be the true dividing line between said counties. [Id.]

Art. 1590. [1383] [807] Division of expense.—The expense of surveying and marking such line shall be divided between the counties interested, in proportion to the frontage of each county upon the line, and paid for by each county as proportioned. The surveyors appointed as herein provided shall receive for their services three dollars per mile for each mile run. The expense of establishing the posts, mounds, or stone monuments shall be paid by the counties interested, and they shall be erected under the supervision and direction of the surveyor. [Id.]

Art. 1591. [1385] Suit to establish boundary.—Notwithstanding any preceding article of this chapter, any county in this State may bring suit against any adjoining county or counties, for the purpose of establishing the boundary line between them. Such suit shall be brought in the district court of the county in an adjoining judicial district whose boundaries are not affected by the suit, and whose county seat is nearest the county seat of the county suing. Said court shall try said cause as other causes, and shall have jurisdiction to determine where such boundary line is located, and, if necessary, shall order the same to be remarked and resurveyed. If, in the trial of any such cause, it is found that the boundary line between the counties involved has never been established and marked, or if marked has become indefinite and undefined, said court shall have power to re-establish the same and order it marked. Any boundary line so established by such judgment shall thereafter be regarded as the true boundary line between the counties in question; provided, that if it shall be found in any such cause that the boundary line in question has been heretofore established under the law then in force, the same shall be declared to be the true line, and shall be resurveyed and established as such. [Acts 1897, p. 222; G. L. vol. 10, p. 1276.]

Art. 1592. [1386] Marking line on map.—It shall be unlawful for the Land Commissioner to mark, fix or place on any of the maps in said office any contested county line at any definite point thereon, until a certified copy of the final judgment of the court is filed in the General Land Office, together with a certified copy of the field notes of the line so established by such judgment. [Id.]

CHAPTER FIVE

COUNTY SEATS

Art.
1593. Election for county seats.
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1600. County seats removed, when.
1601. Subsequent election.
1602. Courts shall hold at seat.
1603. Buildings to be provided.
1604. Place of holding court.
1605. Location of officers.

Article 1593. [1387] [809] Election for county seats.—In the organization of any county or counties now existing, or hereafter created by the Legislature, it shall be the duty of the county judge holding the election in such county for county officers thereof to order an election for the location of a county seat therein, which shall be conducted in the same manner as that regulating the election of the officers

of such new county. The place receiving a majority of all the votes cast by the electors voting on the location of such county seat shall thereafter be the county seat of such county, subject to be removed as other county seats. When any county has been organized, and no county seat has been located, the county judge of such county shall order an election for the location of a county seat. [Acts 1883, p. 82; G. L. vol. 9, p. 388.]

Art. 1594. [1388] [810] Vote necessary.—No county seat first established in a newly organized county shall be located at any point more than five miles from the geographical center of any county in this State, unless by a two-thirds vote of all the electors voting on the subject in said county. [Acts 1881, p. 67; G. L. vol. 9, p. 159.]

Art. 1595. [1389] [811] Election for removal of.—No county seat situated within five miles of the geographical center of any county shall be removed except by a vote of two-thirds of all the electors in said county voting on the subject; nor shall any county seat be removed from a point more than five miles from the geographical center of any county to any other point more than five miles from such center, nor from a point within five miles of the geographical center to any other point within five miles of such center, except by a two-thirds vote of all the electors in said county voting on the subject. No person shall be allowed to vote except he be a bona fide citizen of the county in which he offers to vote. A majority of said electors, however, voting at such election may remove a county seat from a point more than five miles from the geographical center of the county to a point within five miles of such center; and in counties having a population of not less than 1300 nor more than 1400, according to the last United States census, a majority of said electors voting at such election may remove a county seat from a point more than five miles from the geographical center of the county to another point more than five miles from such center; in either event the center to be determined by a certificate from the Land Commissioner. [Acts 1879, p. 84; G. L. vol. 8, p. 1384; Acts 1927, 40th Leg., 1st C. S., p. 7, ch. 5, § 1.]

Art. 1596. [1390] [812] Proceedings for removal of county seat.—When it becomes desirable to remove the county seat of any county, the county judge of said county, upon the written application of not less than one hundred freeholders and qualified voters, who are resident citizens of said county shall make a written order upon the minutes of said commissioners court for the holding of an election at various voting precincts in said county on a day therein named, which shall not be less than thirty nor more than sixty days from date of order, for the purpose of submitting the question to the electors of said county. When a county seat has been established for more than ten years, it shall require two hundred freeholders and qualified voters to make said application. In counties having less than three hundred and fifty legal voters, to be determined by the number of votes cast at the last preceding general election such application may be made by one hundred resident freeholders and qualified voters of said county. When a county seat has been established for more than forty years, it shall require a majority of the resident freeholders and qualified voters of said county to make the application, said majority to be ascertained by the county judge from the assessment rolls thereof. In counties having not more than 150 qualified voters, such application shall be held sufficient when it shall have been signed by a majority of the resident freeholders and qualified voters of said county, said majority to be ascertained by the county judge from the assessment rolls thereof. In the event of the failure, refusal or inability of the county judge to perform any duty imposed upon him by this article such duty may be performed by any two county commissioners of the county. [Acts 1893, p. 164; Acts 1919, 2nd C. S. p. 77.]

Art. 1597. [1391] [813] Geographical center.—The Land Commissioner, upon being notified by the county judge that a proposition is submitted to the people of his county, or that it is desirable on the part of the people thereof, that the center of such county shall be designated, preliminary to the removal of any county seat, shall from the maps, surveys and other data on file in his office, designate the center of such county, and shall certify the same to such county judge, who shall cause the same to be spread upon the records of deeds of his county. [Acts 1879, p. 84; G. L. vol. 8, p. 1354.]

Art. 1598. [1392] [814] Who may vote and form of ballot.—All persons who are qualified voters under the Constitution and laws of the State shall be entitled to vote at said election. On each ticket, the voter shall write or cause to be written or printed: "For removal to ....." (inserting the name of the place); or, should the voter be in favor of the county seat remaining where it is, he shall write or cause to be written or printed on his ticket: "For remaining at ....." (inserting the name of the place.) [Id.]

Art. 1599. [1393] [815] Election.—The county judge or commissioners shall order said election in each voting precinct in said county, which shall be conducted as near as may be, as elections for county officers. The officers holding the elections shall make return thereof to the authority ordering said election within ten days after the same was held, who shall then proceed to open said returns and count the same, and declare the result, which shall be entered upon the records of said commissioners court, and shall also state the name of the place from which, and the name of the place to which, the same is removed. A certified copy of such entry shall thereupon be recorded in the proper record deeds of such county. [Id.]

Art. 1600. [1394] [816] County seats removed, when.—When such entry has been made, the county seat, if the election be held to move the county seat from a point within five miles of the geographical center, to a point more or less than five miles from the geographical center, or from a point more than five miles from the geographical center, to any other point more than five miles from such center, shall be removed to the place receiving the votes of two-thirds of all the electors voting on the subject; and such place shall thereafter be the county seat of such county. If the election be held to move the county seat from a point more than five miles from the geographical center to a point within five miles of such center, then the county seat shall be moved to the place receiving a majority of all the electors in the county voting at such election, and such place shall thereafter be the county seat of such county. In counties having a population of not less than 1300 nor more than 1400 according to the last United States census, if the election be held to remove the county seat from a point more than five miles from the geographical center to another point more than five miles from such center, then the county seat shall be removed to the place receiving a majority of all the electors in the county voting at such election, and such place shall thereafter be the county seat of such county. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 7, ch. 5, § 2.]

Art. 1601. [1395] [817] Subsequent election.—Whenever an election for the location or removal of a county seat has been voted on by the electors of any county, and the question settled, it shall not be lawful for a like application to be made for the same purpose within five years thereafter. Provided, that an application may be made and an election held to remove the county seat from a location more than five miles from a railroad operating as a common carrier, to a location on a railroad within two years thereafter. [Id.; Acts 1927, 40th Leg., p. 264, ch. 185.]

Art. 1602. [1396] [818] [704] Courts shall hold at seat.—All terms of the district, county and commissioners court shall be held at the county seat.

Art. 1603. [1397] [819] [705] Buildings to be provided.—The county commissioners court of

each county, as soon as practicable after the establishment of a county seat, or after its removal from one place to another, shall provide a court house and jail for the county, and offices for county officers at such county seat and keep the same in good repair. [R. S. 1879; (Art.) 705.]

Art. 1604. [1398] [820] Place of holding court.—Until the county seats of new counties are established, as required under this chapter, the courts of such new counties shall be held at such place as may be appointed by the commissioners court of such county. [Acts 1879, p. 84; G. L. vol. 8, p. 1354.]

Art. 1605. [1399] Location of officers.—The county judge, sheriff, clerks of the district and of the county courts, county treasurer, assessor of taxes, collector of taxes, county surveyor and county attorney of the several counties of this State shall keep their offices at the county seats of their respective counties, provided, however, that in all counties having a city or cities, other than the county seats, within their boundaries, having a population of 20,000 and over, the assessor of taxes and the collector of taxes when authorized by order of the commissioners' court may maintain a branch office in said city or cities, and may appoint one or more deputies for said offices, and the salaries to be paid said deputies together with the office rent and other expenses incidental to maintaining said offices shall be considered as a part of the necessary expenses of the assessor of taxes and collector of taxes, respectively, and shall be paid in the manner now provided by law for the payment of the expenses of the assessor of taxes and collector of taxes. [Acts 1925, p. 508.]

CHAPTER SIX

COUNTY BOUNDARIES

Article 1606. [1400] [822] Boundaries as established, adopted, and acts creating continued in force.—The county boundaries of the counties in this State as now recognized and established are adopted as the true boundaries of such counties, and the acts creating such counties and defining the boundaries are continued in force.

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COUNTY FINANCES

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1. GENERAL PROVISIONS

Article 1607. [1401–2–6–52] Finance ledger.—Each commissioners court shall procure a well-bound ledger and index, to be known as the finance ledger, and shall cause to be entered therein a full and orderly statement of the condition of the county finances. The county clerk shall open and keep in said book an account with each officer of the county, district or State, who may be authorized or required by law to receive or collect all money or other property for the use of, or belonging to the county, and shall state at the top of each page of said account the name of such officer and his office. The clerk shall keep such other accounts as may be necessary to carry out the purposes of this title, and shall conveniently index each. And items shall be entered daily under their respective heads. All reports and vouchers shall be filed with said clerk and carefully preserved, and briefly noted in the proper account upon the ledger. Said finance ledger shall be at all times subject to the inspection of the public. [Acts 1893, p. 160; G. L. vol. 10, p. 590.]

Art. 1608. [1403] [824a] [935a] Quarterly statement.—Said clerk shall balance each account so kept, and make a sworn tabular statement at each regular term of the commissioners' court for the three months preceding the month when such court meets in regular session, to be presented to said court during the second day of its term, specifying therein the names of the creditors of said county, and the items of indebtedness, with their respective dates of accrual, and also the names of persons to whom moneys have been paid, with the amounts paid each, the names of persons from whom moneys have been received, with the date of receipt and for what account received, during the quarter for which such statement is prepared; said statement shall also separately show the amount to the credit or debit of each fund. [Id.]

Art. 1609. [1404] Exhibit published.—Immediately after the first regular term of said court in each year said clerk shall publish once in some weekly newspaper published in his county, or if there be no paper published therein, then by posting four copies of such exhibit, one in each commissioners precinct, one of which shall be at the court house door, the other three at public places in such precincts, an exhibit showing the aggregate amount paid out of each fund for the four preceding quarters, and the balance to the credit or debit of each fund; also the amount of indebtedness of said county, with their respective dates of accrual, and to whom and for what due; also the amount to the debit or credit of each officer or other persons with whom an account is kept. The cost for publishing the same shall be paid by or-

der of said court out of the general fund of the county. [Id.]

Art. 1610. [1407–12] Account with tax collector.—The accounts of the tax collector shall be kept as follows: A separate account shall be kept for each separate fund that may be upon the tax rolls; each account shall state the name of the collector, the character of the fund entered therein, and the year for which the same is assessed; and the taxes assessed for each year shall be kept separate and distinct.

Art. 1611. [1408] [827] [938] Receipts for tax rolls.—Whenever the tax rolls are ready for delivery to the tax collector, the court or officer having control of the same shall take from the collector a written receipt for the same, specifying the amount therein assessed and due the county, stating separately the amount assessed to each fund, and shall deliver said receipt to the county clerk, who shall charge the collector with the amount stated in said receipt in the proper account; and said amounts shall be treated as debts due the county by the collector.

Art. 1612. [1409] [828] [939] Collector's credits.—The collector shall discharge said indebtedness within the time prescribed by law, by filing with said clerk receipts for the same, as follows:

1. The commission due the collector.
2. The assessor's receipt for commissions due such assessor, if any, are to be paid by the county.
3. Proper vouchers for such payments as he may be required to pay out of any money on hand.
4. The county treasurer's receipt for the money paid into the treasury.

Art. 1613. [1410–11] Indigent and delinquent tax accounts.—The collector shall make separate lists of the indigent and delinquent taxpayers, showing their names, and the amount due by each taxpayer. The court shall carefully examine said list, and shall make an order and enter the same upon its minutes, stating the names and amounts that are adjudged uncollectible; and the collector shall have credit for the amounts included in said order in the proper accounts, only after said order has been made and entered.

Art. 1614. [1413] [832] [943] Shall deliver tax rolls to successor.—On leaving office the tax collector shall deliver to his successor the tax rolls in his possession, and shall receive from his successor a written receipt for the amount of taxes due on the tax rolls so delivered, specifying the amount of each fund and each year separately, and also the amount due on the indigent and delinquent list; and deliver said receipts to the county clerk, who shall enter those allowed by the court to the credit of the collector presenting them, and shall charge the amounts so credited to the successor in office of such collector, in the proper accounts.

Art. 1615. [1414–15–16–17–18] Occupation tax.—Said collector shall collect all occupation taxes due the county without assessment and give the party paying the tax a written receipt, stating his name, the occupation paid for, the time such occupation is to be pursued, and the amount collected for the State and for the county. On presentation of such receipt, the county clerk shall issue to the payee therein a license in the name of the State or county or both, in accordance with the tax so paid, authorizing said payee to pursue such occupation during the time for which the tax is paid. The clerk shall keep an occupation tax account with the collector of the county, in which he shall charge the collector with all licenses issued for the county. The collector shall have credit in said account for his commissions, and the amount paid into the treasury upon filing the proper receipt of the county treasurer with such clerk. Said clerk shall, at the end of every month, make two reports, one of licenses issued on taxes paid to the State which he shall forward to the Comptroller by mail; the other of licenses issued on taxes paid to the county and file the same in his office. Such reports shall recite the information contained in the tax collector's receipt for such tax, and shall be dated and signed under the clerk's official seal.

Art. 1616. [1419–20] Account with sheriff.—An account shall be kept with the sheriff charging him with all judgments, fines, forfeitures and penalties, payable to and rendered in any court of the county, the collection of which he is by law made chargeable. The sheriff may free himself from liability from such charge, by:

1. Producing the receipt of the county treasurer showing the payment of such judgment, fine, forfeiture or penalty.
2. Showing to the satisfaction of the commissioners court that the same cannot be collected, or that the same has been discharged by imprisonment or labor, or by escape, without his fault or neglect, and obtaining an order from said court allowing the same.

Art. 1617. [1421] [840] [951] Officers to report collections.—Each district clerk, county clerk, county judge, county treasurer, sheriff, district and county attorney, constable and justice of the peace, who shall collect or handle any money for the use of the county, shall make a full report to the commissioners court, at each regular term thereof, of all fines imposed and collected and all judgments rendered and collected for the use of the county, and all jury fees collected in their respective courts in favor of, or for the use of the county; and at the same time present their receipts and vouchers showing what disposition has been made of the money collected, fines imposed and judgments rendered. Said court shall carefully examine said reports, receipts and vouchers and, if found correct, shall cause the clerk to enter the same on the finance ledger, and, if found to be incorrect, shall summon said officer before them, and have the same corrected. Said reports, receipts, and vouchers shall be filed in the county clerk's office. [Acts 1887, p. 36; G. L. vol. 9, p. 834.]

Art. 1618. [1422] [841] [952] Collections: form of report.—The reports required by the preceding article shall state fully:

1. The name of the party fined and the amount of the fine, or the name of the party against whom judgment was rendered and the amount of such judgment.
2. The style and number of the cases in which fines have been imposed or judgments rendered, and the date thereof.
3. The amount of jury fees collected, and the style and number of the case in which each jury fee was collected and from whom collected.

Art. 1619. [1423] [842] [953] Accounts of justice.—Fines imposed and judgments rendered by justices of the peace shall be charged against the justice imposing or rendering the same. He may discharge said indebtedness by filing with the county clerk the treasurer's receipt for the amount thereof, or by showing to the satisfaction of the commissioners court that he has used due diligence to collect the same without avail, or that the same have been satisfied by imprisonment or labor.

Art. 1620. [1424–5] Report of attorneys.—The district attorney of each district shall, at each term of the district court for each county in his district, make a report to the county clerk, of all moneys received by him since the last term of the district court for such county for the use of such county. Each county attorney shall make a similar report to the said clerk at the end of each month.

Art. 1621. [1426] [845] Judgment sold.—Whenever the proceeds of any judgment revert to and belong to any county, if the principal and sureties thereon are insolvent so that under any existing process of law said judgment or any part thereof cannot be collected, the commissioners court is hereby constituted a board to dispose of such judgment, and may offer for sale, by such advertising as it deems necessary and to the best interests of the county, all the right of the county to such judgment. If the amount bid on same at public sale shall not be deemed sufficient, said court shall refuse to accept the same, and

shall dispose of said judgment in any manner deemed most advantageous to the interest of the county. Upon sale said court shall make a proper assignment of said judgment to the purchaser. [Acts 1st C. S. 1879, p. 9; G. L. vol. 9, p. 40.]

Art. 1622. [1427–8] Collections: report to clerk.—When any officer collects money belonging to, and for the use of, any county, he shall, except where otherwise provided in this title, forthwith report the same to the proper county clerk stating fully from whom collected, the amount collected, the time when collected, and by virtue of what authority or process collected. On making such report, such amount shall be charged to such officer, and he may discharge himself therefrom by producing the receipt of the proper county treasurer therefor.

Art. 1623. [1429–30] Estray account.—When an application to estray an animal is filed with the county clerk, said clerk shall keep an estray account on the debit side of said finance ledger showing, the date of the application, the name of the person estraying, and a brief description of the animal to be estrayed. The amount of such charge shall be left blank until said person shall file his account of the sale thereof. Upon the filing of said account, the net amount due the county from such sale shall be entered in the blank. When the receipt of the county treasurer is presented to the clerk, showing any amount paid into the treasury on account of such sale, the same shall be entered on the credit side of the account, showing the date, name of payer, amount paid and a brief description of the estray, and such amount shall be charged on the debit side of the county treasurer's account.

Art. 1624. [1431] [850] [960] Account with county treasurer.—An account with the county treasurer shall be kept in said ledger, in which such treasurer shall be charged separately with the amount of each fund for which he gives a receipt to the sheriff, collector, or other person paying the same into the treasury; and such treasurer shall have credit for all moneys paid out by him, when the commissioners court has approved his reports of the same and for his legal commissions.

Art. 1625. [1432–6–7] Claim registers.—Each county treasurer shall keep a well-bound book in which he shall register all claims against his county in the order of presentation, and if more than one is presented at the same time he shall register them in the order of their date. He shall pay no such claim or any part thereof, nor shall the same, or any part thereof, be received by any officer in payment of any indebtedness to the county, until it has been duly registered in accordance with the provisions of this title. All claims in each class shall be paid in the order in which they are registered.

Art. 1626. [1433] [852] [962] Claims classified.—Claims against a county shall be registered in three classes, as follows:

1. All jury scrip and scrip issued for feeding jurors.
2. All scrip issued under the provisions of the road law or for work done on roads and bridges.
3. All the general indebtedness of the county, including feeding and guarding prisoners, and paupers' claims.

Art. 1627. [1434–5] Registering claims.—Said treasurer shall enter each claim in the register, stating the class to which it belongs, the name of the payee, the amount, the date of the claim, the date of registration, the number of such claim, by what authority issued, and for what service the same was issued, and shall write on the face of the claim its registration number, the word, "registered," the date of such registration, and shall sign his name officially thereto.

Art. 1628. [1438] [857] [967] Classification of county funds.—The funds received by the county treasurer shall be classed as follows, and shall be appropriated, respectively, to the payment of all claims registered in the first, second and third classes:

1. All jury fees, all money received from the sale of estrays, and all occupation taxes.
2. All money received under any of the provisions of the road and bridge law, including the penalties recovered from railroads for failing to repair crossings, and all fines and forfeitures.
3. All money received, not otherwise appropriated herein or by the commissioners court. [Const. art. 16, sec. 24.]

Art. 1629. [1439] [858] [968] Other classes of funds.—The commissioners court may cause such other accounts to be kept, creating other classes of funds, as it may deem proper, and require the scrip to be issued against the same and registered accordingly.

Art. 1630. [1440] [859] [969] Transfer of funds.—The commissioners court by an order to that effect may transfer the money in hand from one fund to another, as it may deem necessary and proper, except that the funds which belong to class first shall never be diverted from the payment of the claims registered in class first, unless there is an excess of such funds.

Art. 1631. [1441–2] Report of claims.—At the end of each month the county treasurer shall file in the office of the county clerk a report showing the total amount of claims registered by him during said months stating each class separately. He shall enter the same upon the ledger under the head of "Registered indebtedness of the county," keeping a separate account of each class of indebtedness, and, from the reports of the treasurer of disbursements made, credit said accounts with the total amount of vouchers of each class of claims paid.

Art. 1632. [1443] [862] [972] Receipt of payee.—The county treasurer or any other officer disbursing money for the county, or receiving county claims in payment of dues of any kind, shall require the party receiving payment of, or credit for the same, his agent or attorney, to receipt in writing upon the face of such claim for the amount so paid or received thereon.

Art. 1633. [1444–5] Report of claims collected.—Every officer who shall collect any fine, penalty, forfeiture, judgment, tax or other indebtedness due the county in claims against the county, shall keep a descriptive list of such claims, and shall when he reports such collection, file with his report a list stating the party in whose favor each claim was issued, the class and register number thereof, the name of the party paying in such claim, and the amount received, and for what purpose received. Such claims and report shall be turned over to the county treasurer who shall give a proper receipt for the same, and he shall file said list with his report in the office of the county clerk.

Art. 1634. [1446] [865] [975] Accounts of treasurer.—The county treasurer shall keep accurate detailed accounts showing all the transactions of his office. And all warrants by him paid off shall be punched at the time he pays them; and the vouchers relating to and accompanying each report shall be presented to the commissioners court with the corresponding report, when said court shall compare the vouchers with the report, and all proper vouchers shall be allowed and the treasurer credited with the amount thereof. [Acts 1889, p. 6; G. L. vol. 9, p. 6.]

Art. 1635. [1447] [866] [976] Claim canceled.—When a claim presented as a voucher has been found by the court to be correct, the court shall cause the same to be canceled by writing or stamping upon the fact [face] thereof the word, "canceled," and the clerk shall attest the same by his official signature.

Art. 1636. [1448–9–50] To inspect treasurer's accounts.—When the commissioners court has compared and examined the quarterly report of the treasurer, and found the same correct, it shall cause an order to be entered upon the minutes of the court, stating the approval thereof, and reciting separately

the amount received and paid out of each fund by the treasurer since the preceding treasurer's quarterly report, and the balance of such fund, if any, remaining in the treasurer's hands and the court shall cause the proper credit to be made in the accounts of the treasurer, in accordance with said order. Said court shall actually inspect and count all the actual cash and assets in the hands of the treasurer belonging to the county at the time of the examination of his said report. Prior to the adjournment of each regular term of the court, the county judge and each commissioner shall make affidavit that the requirements of this article have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in said county treasurer's quarterly report made by said treasurer to said court, and held by him for the county, have been fully inspected and counted by them giving the amount of said money and other assets in his hands. Such affidavits shall be filed with the county clerk and recorded in the minutes of said court the term at which the same were filed; and the same shall be published in some newspaper published in the county if there be a newspaper published in the county, for one time. [Acts 1897, p. 27; G. L. vol. 10, p. 1081.]

Art. 1637. [1451] [868] [978] To examine finance accounts.—The commissioners court shall, at each regular term, examine all accounts and reports relating to the finances of the county, and compare the same with the vouchers accompanying them, and cause such corrections to be made as are necessary, in order to make said accounts and reports correct, and shall cause all orders made by them, appertaining to said accounts and reports, to be properly entered upon the minutes of said court and noted upon said accounts and reports.

Art. 1638. [1453–4] Finance committee.—At each term of the district court, the district judge, upon request of the grand jury, may appoint a committee consisting of three citizens of the county, men of good moral character and intelligence, and experienced accountants, to examine into the condition of the finances of the county. Said committee shall examine all the books, accounts, reports, vouchers and orders of the commissioners court relating to the finances of the county that have not been examined and reported upon by a previous committee; count all the money in the office of the county treasurer belonging to the county, and make such other examination as it deems necessary and proper in order to ascertain the true condition of the finances of the county. The court shall, if necessary, upon the application of said committee, send for persons and evidence to aid in such investigation.

Art. 1639. [1455] [872] [982] Report of committee.—Said committee shall, at the earliest practicable day after its appointment, make to said district court a detailed written report stating whether the books and accounts required to be kept by the provisions of this title are correctly kept in accordance with said provisions, and setting forth fully the condition of the finances of the county, the state of each officer's account, and specifying all irregularities, omissions and malfeasance of any kind that they may discover. Said report shall be signed and sworn to by said committee and filed in the office of the district clerk, and the attention of the grand jury called thereto as soon after the filing of the same as practicable.

Art. 1640. [1456] [873] [983] Pay of committee.—Said committeemen shall each be entitled to receive for their services three dollars for each day, not to exceed five days, that they may be engaged in the performance of their duties as such, to be paid out of the county treasury upon the certificate of the district judge stating the number of days served.

Art. 1641. Audit by accountant.—Any commissioners court, when in its judgment an imperative public necessity exists therefor, shall have authority to employ a disinterested, competent and expert public accountant to audit all or any part of the books, records, or accounts of the county; or of any district, county or precinct officers, agents or employés, including auditors of the counties, and all governmental units of the county, hospitals, farms, and other institutions of the county kept and maintained at public expense, as well as for all matters relating to or affecting the fiscal affairs of the county. The resolution providing for such audit shall recite the reasons and necessity existing therefor such as that in the judgment of said court there exists official misconduct, willful omission or negligence in records and reports, misapplication, conversion or retention of public funds, failure in keeping accounts, making reports and accounting for public funds by any officer, agent or employé of the district, county or precinct, including depositories, hospitals, and other public institutions maintained for the public benefit, and at public expense; or that in the judgment of the court, it is necessary that it have the information sought to enable it to determine and fix proper appropriation and expenditure of public moneys, and to ascertain and fix a just and proper tax levy. The said resolution may be presented in writing at any regular or called session of the commissioners court, but shall lie over to the next regular term of said court, and shall be published in one issue of a newspaper of general circulation published in the county; provided if there be no such newspaper published in the county, then notice thereof shall be posted in three public places in said county, one of which shall be at the court house door, for at least ten days prior to its adoption. At such next regular term said resolution shall be adopted by a majority vote of the four commissioners of the court and approved by the county judge. Any contract entered into by said commissioners court for the audit provided herein shall be made in accordance with the statutes applicable to the letting of contracts by said court, payment for which may be made out of the public funds of the county in accordance with said statutes. The authority conferred on county auditors contained in this title as well as other provisions of statutes relating to district, county and precinct finances and accounts thereof shall be held subordinate to the powers given herein to the commissioners' court. [Acts 1923, p. 170.]

Art. 1642. [1457–8] Requisites of report.—All reports required under any provision of this title shall be in writing and sworn to by the officer making the same, before some officer authorized to administer oaths; and all such monthly reports shall be filed within five days after the end of each month.

Art. 1643. [1459] [876] [986] Warrants attested.—All warrants or scrip issued against the county treasurer by any judge or court shall be signed and attested by the clerk or judge of the court issuing the same, under his official seal. No justice of the peace shall have authority to issue warrants against the treasury for any purpose whatever, except as provided in the Code of Criminal Procedure.

Art. 1644. [1405] Compensation of clerk.—The clerk shall receive annually as compensation for the labor performed in keeping the finance ledger and making the quarterly statement required by this title, the sum of five dollars for each one thousand dollars tax assessed as due the county, to be paid quarterly on order of the commissioners court out of the general fund of the county; provided, the same be not less than one hundred nor more than two hundred and fifty dollars per annum. [Acts 1893, p. 160; G. L. vol. 10, p. 590.]

2. COUNTY AUDITOR

Art. 1645. [1460] Appointment authorized.—In any county having a population of 35,000 inhabitants, or over, according to the preceding Federal census, or having a tax valuation of fifteen million dollars, or over, according to the last approved tax roll, there shall be biennially appointed an Auditor of Accounts and Finances, the title of said officer to be County Auditor, who shall hold his office for two years, and who shall receive as compensation for his services $125.00 for each million dollars, or major portion thereof of the

assessed valuation, the annual salary to be computed from the last approved tax roll; said annual salary from county funds shall not exceed $3,600.00. Provided that in all counties of not less than 35,000, nor over 37,500 inhabitants, according to the 1920 Federal census, the salary shall not be less than $2,400.00 annually, said salary to be paid monthly out of the general revenue of the county upon an order of the commissioners' court. [Acts 1905, p. 381; Acts 1907, p. 315; Acts 1915, p. 203; Acts 1917, p. 337; Acts 1923, p. 391; Acts 1927, 40th Leg., 1st C. S., p. 104, ch. 35, § 1.]

Art. 1646. Auditors for other counties.—When the commissioners court of a county, not mentioned and enumerated in the preceding article shall determine that an auditor is a public necessity in the dispatch of the county business and shall enter an order upon the minutes of said court fully setting out the reasons and necessity of an auditor, and shall cause said order to be certified to the district judges having jurisdiction in the county, said judges shall, if such reason be considered good and sufficient, appoint a county auditor, as provided in the succeeding article, who shall qualify and perform all the duties required of county auditors by the laws of this State; provided said judge shall have the power to discontinue the office of such county auditor at any time after the expiration of one year when it is clearly shown that such auditor is not a public necessity and his services are not commensurate with his salary received. [Acts 1917, p. 338.]

Art. 1646a. County auditors.—The commissioners' court of any county under twenty-five thousand population according to the last United States census may make an arrangement or agreement with one or more other counties whereby all counties, parties to the arrangement or agreement, may jointly employ and compensate a special auditor or auditors for the purposes specified in Articles 1645 and 1646. The county commissioners' court of every county affected by this article may have an audit made of all the books of the county, or any of them, at any time they may desire whether such arrangements can be made with other counties or not; provided the district judge or grand jury may order said audit if either so desires. [Acts 1925, p. 220.] [39th Leg. ch. 67, § 1.]

Art. 1647. [1461] Appointment.—The district judges having jurisdiction in the county, shall appoint the county auditor at a special meeting held for that purpose, a majority ruling; provided, that if a majority of such judges fail to agree upon the selection of some person as auditor, then either of said judges shall certify such fact to the Governor, who shall thereupon appoint some other district judge to act and vote with the aforesaid judges in the selection of such auditor. The action shall then be recorded in the minutes of the district court of the county and the clerk thereof shall certify the same to the commissioners court, which shall cause the same to be recorded in its minutes together with an order directing the payment of the auditor's salary. [Id.; Acts 1905, p. 381; Acts 1915, p. 182.]

Art. 1648. [1462] Qualification.—Said auditor shall be a citizen of the county of at least two years residence, and must be a man of unquestionable good moral character and intelligence, thoroughly competent in public business details; and he must be a competent accountant of at least two years experience in auditing and accounting. The judges making such appointment must first carefully investigate and consider the qualifications of said person. If no such qualified citizen of the county can be procured, said judges may appoint a qualified citizen from another county. [Id.]

Art. 1649. [1463] Bond and oath.—The auditor shall, within twenty days of his appointment, and before he enters upon the duties of his office, make a bond with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the county judge, conditioned for the faithful performance of his duties, to be approved by the commissioners court. He shall also take the official oath and an additional one in writing, stating that he is in every way qualified under the provisions and requirements of this title, and giving fully the positions of private or public trust he has heretofore held, and the length of service under each. He shall further include in his oath that he will not personally be interested in any contract with the county. [Acts 1905, p. 381.]

Art. 1650. [1464–5–6] Organization.—The auditor may at any time with the consent of the county judge appoint an assistant to act in his stead, who may discharge the duties of the auditor during his absence or unavoidable detention. The county judge shall require said assistant to take the usual oath of office for faithful performance of duty. The auditor with the consent of the county judge or of the commissioners court may appoint additional clerical help when needed. He shall provide himself with all necessary ledgers, books, records, blanks and stationery at the county's expense. [Id.]

Art. 1651. [1467–73] General duties.—The auditor shall have a general oversight of all the books and records of all the officers of the county, district or State, who may be authorized or required by law to receive or collect any money, funds, fees or other property for the use of, or belonging to, the county; and he shall see to the strict enforcement of the law governing county finances. [Id.]

Art. 1652. School ledger.—The auditor shall install in his office a school ledger showing an accurate account of all funds received and disbursed by the common school districts of his county; a bond register showing all the school bonds issued by the common school districts of his county, their rate of interest, date issued and maturity date; and he shall also keep an interest and sinking fund account of such school bonds. [Acts 1917, p. 337.]

Art. 1653. [1468] To examine accounts.—He shall have continual access to and shall examine all the books, accounts, reports, vouchers and other records of any officer, the orders of the commissioners court, relating to finances of the county, and all vouchers given by the trustee of all common school districts of the county and shall inquire into the correctness of same. [Id.; Acts 1905, p. 381.]

Art. 1654. [1469–70–71] To examine reports.—All reports of collections of money for the county required to be made to the commissioners court shall also be carefully examined and reported on by him. He shall at least once in each quarter check the books and examine all the reports of the tax collector, the treasurer and all other officers, in detail, verifying the footings and correctness of same, and shall stamp his approval thereon, or note any differences, errors or discrepancies. He shall carefully examine the quarterly report of the treasurer, of all the disbursements, together with the canceled warrants which have been paid, and shall verify the same with the register of warrants issued as shown on the books of the auditor. [Id.]

Art. 1655. [1472–4–5] To count cash.—The auditor, without giving any notice beforehand, shall examine fully into the condition of, or inspect and count the cash in the hands of the county treasurer, or in the bank in which he may have placed same for safe keeping, not less than once in each quarter, and oftener if desired, and shall see that all balances to the credit of the various funds are actually on hand in cash, and that none of said funds are invested in any manner, except as the law may authorize. [Id.]

Art. 1656. [1476–7] To prescribe forms and rules.—He shall prescribe and prepare the forms to be used by all persons in the collection of county revenues, funds, fees and all other moneys, and the mode and manner of keeping and stating their accounts, and the time, mode and manner of making their reports to the auditor, also the mode and manner of making their annual report of office fees collected and disbursed, and the amount refunded to the county in excess of

those allowed under the general fee bill law. He shall have power to adopt and enforce such regulations not inconsistent with the constitution and laws, as he may deem essential to the speedy and proper collection, checking and accounting of the revenues and other funds and fees belonging to the county. [Id.]

Art. 1657. [1478] Deposits.—All deposits that are made in the county treasury shall be upon a deposit warrant issued by the county clerk in triplicate; said warrants shall authorize the treasurer to receive the amount named, for what purpose, and to which fund the same shall be applied. The treasurer shall retain the original; and the duplicate shall be signed and returned to the county clerk for the county auditor and the triplicate signed and returned to the depositor. The auditor shall then enter same upon his books, charging the amounts to the county treasurer and crediting the party depositing same. The treasurer shall not, under any circumstances, receive any money in any other manner than that named herein. [Id.]

Art. 1658. [1479] Bids for supplies.—Bids shall be asked for all supplies of stationery, books, blanks, records, and other supplies for the various officers for which the county is required to pay, and the purchase made from the lowest bidder, after filing said bid with the auditor for record. [Id.]

Art. 1659. [1480] Bids for material.—Supplies of every kind, road and bridge material, or any other material, for the use of said county, or any of its officers, departments, or institutions must be purchased on competitive bids, the contract to be awarded to the party who, in the judgment of the commissioners court, has submitted the lowest and best bid. The county auditor shall advertise for a period of two weeks in at least one daily newspaper, published and circulated in the county, for such supplies and material according to specifications, giving in detail what is needed. Such advertisements shall state where the specifications are to be found, and shall give the time and place for receiving such bids. All such competitive bids shall be kept on file by the county auditor as a part of the records of his office, and shall be subject to inspection by any one desiring to see them. Copies of all bids received shall be furnished by the county auditor to the county judge and to the commissioners court; and when the bids received are not satisfactory to the said judge or county commissioners, the auditor shall reject said bids and re-advertise for new bids. In cases of emergency, purchases not in excess of one hundred and fifty dollars may be made upon requisition to be approved by the commissioners court, without advertising for competitive bids. [Id.; Acts 1921, p. 185.]

Art. 1660. [1481–2–3] Approval of claims.—All claims, bills and accounts against the county must be filed in ample time for the auditor to examine and approve same before the meetings of the commissioners court. No claim, bill or account shall be allowed or paid until it has been examined and approved by the county auditor. The auditor shall examine the same and stamp his approval thereon. If he deems it necessary, all such accounts, bill, or claims must be verified by affidavit touching the correctness of the same. The auditor is hereby authorized to administer oaths for the purposes of this law. [Acts 1905, p. 381.]

Art. 1661. [1484–5] Requisites of approval.—He shall not audit or approve any such claim unless it has been contracted as provided by law, nor any account for the purchase of supplies or materials for the use of said county or any of its officers, unless, in addition to other requirements of law, there is attached thereto a requisition signed by the officer ordering same and approved by the county judge. Said requisition must be made out and signed and approved in triplicate by the said officers, the triplicate to remain with the officer desiring the purchase, the duplicate to be filed with the county auditor, and the original to be delivered to the party from whom said purchase is to be made before any purchase shall be made. All warrants on the county treasurer, except warrants for jury service, must be countersigned by the county auditor. [Id.]

Art. 1662. [1486] Register of warrants.—He shall keep a register of all warrants issued by the judges or the district or county clerks on the county treasurer, and their dates of payment by the treasurer. Such clerks or judges shall daily furnish the auditor an itemized report specifying the warrants that have been issued, their numbers, their several amounts, the names of the persons to whom payable, and for what purpose, on forms prepared by the auditor. [Id.]

Art. 1663. [1487–8] Accounts with officers.—He shall keep an account with each person named in the preceding articles and in doing so he shall relieve the county clerk of keeping the finance ledger. His books shall show the detailed items of the indebtedness against all of said officers and the manner of discharging same. He shall require all persons who shall have received any moneys belonging to the county, or having the disposition or management of any property of the county to render statements to him. [Id.]

Art. 1664. [1489–90] General accounts.—He shall keep a general set of books showing all the transactions of the county relating to accounts, contracts, indebtedness of the county, and its receipts and disbursements of all kinds, and shall make tabulated reports of said funds and accounts for each regular meeting of the commissioners court. [Id.]

Art. 1665. [1491] Reports to commissioners.—He shall make quarterly and annual reports to the commissioners court, setting forth all the facts of interest, and showing the aggregate amounts received and disbursed out of each fund, the condition of each account on the books, the amount of bonded and other indebtedness of the county, together with such other information and suggestions as he may deem proper, or said court may require. Said annual report shall be made to include all transactions during the year ending July 31 of each year, and shall be completed and filed at a special term of the commissioners court in September. [Id.]

Art. 1666. [1492–3–4] Budget.—He shall prepare an estimate of all the revenues and expenses, and annually submit it to the commissioners court, which court shall carefully make a budget of all appropriations to be set aside for the various expenses of the county government in each branch and department. He shall open an account with each appropriation in said budget, and all warrants drawn against same shall be entered to said account. He shall carefully keep an oversight of same to see that the expenses of any department do not exceed said budget appropriations, and keep said court advised of the condition of said appropriation accounts from time to time. [Id.]

Art. 1667. Improvement district finances.—In all counties which have or may have a county auditor, and containing a population of 110,000 or more, as shown by the preceding Federal census, in which there exists or in which there may be created any improvement, navigation, drainage, road or irrigation district, or any other character of district having for its purpose the expenditure of public funds for improvement purposes, or for improvements of any kind, whether derived from the issuance of bonds or through any character of special assessment, the county auditor shall exercise such control over the finances of said districts as hereinafter provided. [Acts 1915, p. 17.]

Art. 1668. Improvement districts: supplies.—All purchases for supplies and materials, and all contracts for labor on behalf of any such districts shall be made in accordance with the law governing such districts, provided, that the commissioners or other governing body be authorized, without the taking of bids in cases of emergency to make purchases or contracts not to exceed the sum of fifty dollars, upon

requisition signed by at least two members of the governing body of such district. A requisition shall be issued therefor, executed in triplicate, one copy to be delivered to the person or corporation from whom the purchase is made, one to be delivered to the county auditor, and one to remain on file with the governing body of such district before any purchase shall be made. [Id.]

Art. 1669. Improvement districts: expenditures.—All bills for supplies, materials, labor, work or anything necessary to the carrying out of the purposes of any such district shall be contracted in accordance with the law creating and governing such district, except as may be otherwise provided herein. The proper officers of said districts shall file all bills with the county auditor before payment, and he shall audit and approve the same, provided said bills have been contracted in accordance with law and are found by him to be correct, and no bill shall be paid until the same has been audited and approved by the county auditor as provided by this article. All warrants in payment of bills of any such districts shall be drawn and signed in accordance with the law governing the issuance of warrants of such district, and shall be countersigned by the county auditor, and no treasurer or other depository of any such districts shall pay out any money except upon warrants so duly countersigned. He shall countersign warrants for the investment of funds only when invested in the manner authorized by law. He shall keep an accurate account of all balances on hand in the various district funds. [Id.]

Art. 1670. Improvement districts: forms.—The county auditor from time to time shall prescribe and prepare all necessary forms for the use of any of such districts in the payment of bills, collection and disbursements of money, keeping of accounts, and the making of reports; the expense of necessary printing and stationery used therefor shall be paid by the district. [Id.]

Art. 1671. Improvement districts: reports.—The county auditor shall check all reports required by law to be filed by any district officer, and within thirty days after the filing thereof shall make a detailed report to the commissioners court showing his finding thereon and the condition of such district as shown by said report, and as shown by the records of his office. He shall keep a set of books, showing all receipts and expenditures of the funds of such districts. It shall not be lawful for the treasurer or other depository to receive money for said district without executing proper receipts upon forms to be provided by the county auditor. All books, accounts, records, bills and warrants in the possession of any officer of any such district, or in the possession of any other person legally charged with their custody, shall at all times be subject to the inspection of the county auditor.

Art. 1672. Improvement districts: compensation.—The county auditor shall receive for his services in auditing the affairs of such districts, such compensation as the commissioners court may prescribe, which shall be paid by the county out of the general fund and repaid to the county by such districts by warrants drawn upon the proper funds of such district. In such counties which have or may have as many as five such districts, the compensation allowed the county auditor for his services on behalf of such districts shall be not less than the sum of twelve hundred dollars per annum, to be prorated among the districts in such proportion as the commissioners court may determine. [Id.]

Art. 1673. Pay of assistants.—In all counties having a population of one hundred and ten thousand or more, as shown by the preceding Federal census, the county auditor may appoint two assistants. He may also appoint a stenographer. The rate of pay for said assistants and stenographer shall be the same as fixed by general law for the payment of deputies or assistants to other officers. In addition to the assistants provided for in this article, the county auditor may appoint, by and with the consent of the county judge, or of the commissioners' court, such additional assistants as may be necessary to the proper conduct of his office. All of said assistants shall take the official oath, and shall be paid out of the general fund of the county upon the order of the commissioners' court. [Id.]

Art. 1674. [1495] Provisions controlling.—The provisions of this subdivision are cumulative, and, where conflicting with any existing law, the provisions of this subdivision shall control. [Acts 1905, p. 381.]

Art. 1675. [1496] County clerk's duties.—Where the provisions of this subdivision impose upon the auditor like duties as are required of the county clerk, the provisions of this law shall prevail, and to such extent only is the county clerk relieved of his duties. [Id.]

Art. 1676. [1497] Removal of auditor.—An auditor appointed under the provisions of law, who has been sufficiently proven guilty of official misconduct, or has proven to be incompetent to faithfully discharge the duties required of him, after due investigation by the same power which appointed him, may be removed, and his successor appointed. [Id.]

TITLE 35

COUNTY LIBRARIES

1. COUNTY FREE LIBRARIES

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2. LAW LIBRARY

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1. COUNTY FREE LIBRARIES

Article 1677. Authority to establish.—The commissioners court of any county may establish maintain, and operate within their respective counties, county free libraries in the manner and with the functions prescribed in this title. The said court shall also have the power and authority to establish in cooperation with another county or counties a joint free county library for the benefit of the co-operative counties. [Acts 2nd C. S. 1919, p. 219.]

Art. 1678. Territory.—The commissioners court of any county may establish county free libraries for that part of such county lying outside of the incorporated cities and towns already maintaining free public libraries and for such additional parts of such counties as may elect to become a part of or to participate in such county free library system. On their own initiative, or when petitioned to do so by a majority of the voters of that part of the county to be affected, said court shall proceed to establish and provide for the maintenance of such library according to the further provisions of this title. The county library shall be located at the county seat in the court house, unless more suitable quarters are available. [Id.]

Art. 1679. Tax for maintenance.—After a county free library has been established, the commissioners court shall annually set aside from the general tax fund of the county, a sum sufficient for the maintenance of said library, but not to exceed five cents on the hundred dollars valuation of all property in such county outside of all incorporated cities and towns already supporting a free public library, and upon all property within all incorporated cities and towns already supporting a free public library, and upon all property within all incorporated cities and towns already supporting a free public library which have elected to become a part of such free library systems provided in this title for the purpose of maintaining county free libraries and for purchasing property therefor. [Id.]

Art. 1680. Gifts and bequests.—The commissioners court is authorized and empowered to receive on behalf of the county any gift, bequest, or devise for the county free library, or for any branch or subdivision thereof. The title to all property belonging to the county free library shall be vested in the county, but where the gifts or bequests shall be made for the benefit of any branch or branches of the county free library, such gifts or bequests shall be administered as designed by the donor. [Id.]

Art. 1681. Existing libraries.—In any county where a farmers' county library has been established as provided by former laws the same shall continue to operate as a farmers' county library, unless a county free library shall be established as provided for in this title, in which case the former shall merge with and become a part of the latter. [Id.]

Art. 1682. Board of examiners.—A commission is hereby created to be known as the State Board of Library Examiners, consisting of the State Librarian, who shall be ex-officio chairman of the Board; the Librarian of the State University, who shall be an ex-officio member; and three other well trained librarians of the State who shall at first be selected by the State Librarian and the Librarian of the State University. The term of each shall be for six years, one of the appointive members retiring every two years. His successor shall be chosen by the remaining members of the Board in executive session. The members of said board shall receive no compensation for their services except actual and necessary traveling expenses paid out of the State library fund. Said Board shall arrange for an annual meeting and for such other meetings as may be necessary in the pursuance of its duties. Said board shall pass upon the qualifications of all persons desiring to become county librarians in the State of Texas, and may in writing adopt rules and regulations not inconsistent with the law for its government and for carrying out the purposes of this title. [Id.]

Art. 1683. County librarian.—Upon the establishment of a county free library the commissioners court shall biennially appoint a county librarian who shall hold office for a term of two years subject to removal for cause after a hearing by said court. No person shall be eligible to the office of county librarian unless prior to his appointment he has received from the State Board of Library Examiners a certificate of qualification for office. The county librarian shall prior to entering upon the duties of his office, file with the county clerk the official oath and make a bond conditioned upon the faithful performance of his duties with sufficient sureties approved by the county judge of the county of which the librarian is to be the county librarian, in such sum as the commissioners court may determine. [Id.]

Art. 1684. Salary and expenses.—The salary of the librarian and assistants shall be fixed by said court at the time they fix the salary of the appointive county officers. The county librarian and assistants shall be allowed actual and necessary traveling expenses incurred in the business of the library. [Id.]

Art. 1685. Duty of librarian.—The librarian shall endeavor to give an equal and complete service to all parts of the county through branch libraries and deposit stations in schools and other locations where suitable quarters may be obtained, thus distributing printed matter, books, and other educational matter as quickly as circumstances will permit. The county librarian shall have the power to make rules and regulations for the county free library, to establish branches and stations throughout the county, to determine the number and kind of employés of such library, and, with the approval of the commissioners' court, to appoint and dismiss such employés. The county librarian shall, subject to the general rules adopted by the commissioners' court, build up and manage according to accepted rules of library management, a library for the people of the county and shall determine what books and other library equipment shall be purchased. [Id.]

Art. 1686. Report of librarian.—The librarian of each county library shall, on or before the first day of October in each year, report to the commissioners court and to the State Librarian the operation of the county library during the year ending August 31st preceding. Such report shall be made on blanks furnished by the State Librarian, and shall contain a statement of the condition of the library, its operation during the year, and such financial and book statistics as are kept in well regulated libraries. [Id.]

Art. 1687. Supervision of library.—The county library shall be under the general supervision of the commissioners court. Such libraries shall also be under the supervision of the State Librarian, who shall, from time to time, either personally or by one of his assistants, visit the county free libraries and inquire into their condition, advising with the librarians and said court and rendering such assistance in all matters as he may be able to give. [Id.]

Art. 1688. Use of library.—Any white person of such county may use the county free library under the rules and regulations prescribed by the commissioners court and may be entitled to all the privileges thereof. Said court shall make proper provision for the negroes of said county to be served through a separate branch or branches of the county free library, which shall be administered by custodian of the negro race under the supervision of the county librarian. [Id.]

Art. 1689. Funds for library.—All funds of the county free library shall be in the custody of the county treasurer, or other county official, who may discharge the duties commonly delegated to the county treasurer. They shall constitute a separate fund to be known as the county free library fund, and shall not be used for any other purposes except those of a county free library. Each claim against the county free library shall be authorized and approved by the county librarian, or in his absence from the county, by his assistant. It shall then be acted upon in the same manner as are all other claims against the county. [Id.]

Art. 1690. Joinder with city.—After the establishment of a county free library the governing body of any incorporated city or town in the county, maintaining a free public library, may notify the commissioners court that such city or town desires to become a part of the county free library system, and thereafter such city or town shall be a part thereof, and its inhabitants shall be entitled to the benefits of such county free library, and the property within such town or city shall be included in computing the amount to be set aside as a fund for county free library purposes. [Id.]

Art. 1691. Contract with city.—The commissioners court wherein a county free library has been established under the provisions of this title, shall have full power and authority to enter into contracts with any incorporated city or town maintaining a public free library, and such incorporated city or town shall through its governing body, have full power to enter into contracts with such county to secure to the residents of such incorporated city or town the same privileges of the county free library as are enjoyed by the residents of such county outside of such in-

corporated city or town, or such privileges as may be agreed upon in such contract, upon such consideration to be named in the contract as may be agreed upon, the same to be paid into the county library fund, and thereupon the residents of such incorporated city or town shall have the same privileges with regard to said county free library as are had by the residents of such county outside of such incorporated city or town, or such privileges as may be agreed upon by contract. [Id.]

Art. 1692. Withdrawal of city.—The governing body of such incorporated city or town may at any time after two years notify the commissioners court that such city or town no longer desires to be a part of the county free library system and thereafter such city or town shall cease to participate in the benefits of such county free library system, and the property situated in said city or town shall no longer be assessed in computing the fund to be set aside for county free library purposes. The governing body of such city or town shall give the commissioners court six months notice and publish at least once a week for six successive weeks prior to either giving or withdrawing such notice in a county newspaper designated by the governing body, and circulated throughout such city or town, notice of such contemplated action, giving date and place of meeting at which such contemplated action is proposed to be taken. [Id.]

Art. 1693. Contract with another county.—The commissioners court of any county, wherein a county free library has been established under the provisions of this title, shall have full power and authority to enter into contracts or agreements with the commissioners court of any other county to secure to the residents of such other county such privileges of such county free library as may, by such contract, be agreed upon, the same to be paid into the county free library fund, and thereupon the inhabitants of such other county shall have the privilege of such county free library as may by such contract be agreed upon; and the commissioners court shall have full power and authority to enter into a contract with the commissioners court of another county wherein a county free library has been established, under the provisions of this title and shall have power to provide for and to set aside a county free library fund, in the manner already set out, for the purpose of carrying out such contract. But the making of such contract shall not bar the commissioners court of such county from establishing a county free library therein, and upon the establishment of such county free library such contract may be terminated upon such terms as may be agreed upon by the parties thereto, or may continue for the term thereof. [Id.]

Art. 1694. Contract with established library.—Instead of establishing a separate county free library, upon petition of a majority of the voters of the county, the commissioners court may contract for library privileges from some already established library. Such contract shall provide that such established library shall assume the functions of a county free library within the county with which the contract is made, including incorporated cities and towns therein, and shall also provide that the librarian of such established library shall hold or secure a county librarian's certificate from the State Board of Library Examiners. Said court may contract to pay annually into the library fund of said established library such sum as may be agreed upon, to be paid out of the county library fund. Either party to such contract may terminate the same by giving six months notice of intention to do so. Property acquired under such contract shall be subject to division at the termination of the contract upon such terms as are specified in such contract.

Art. 1695. Combined counties.—Where found to be more practicable, two or more adjacent counties may join for the purposes of this law and establish and maintain a free library under the terms and provisions above set forth for the establishment and maintenance of a county free library. In such cases the combined counties shall have the same powers and be subject to the same liabilities as a single county as provided in this law. The commissioners courts of the counties which have combined for the establishment and maintenance of a free library shall operate jointly in the same manner as does the commissioners court of a single county in carrying out the provisions of this law. If any county desires to withdraw from such combination it shall be entitled to a division of property in such proportion as agreed upon in the terms of combination at the time such joint action was taken. [Id.]

Art. 1696. Termination of library.—A county free library may be disestablished upon petition of a majority of the voters of that part of the county maintaining a county free library, asking that said library system be no longer maintained. The commissioners court upon the termination of existing contracts shall call in all books and movable property of the defunct county free library, and have same inventoried and stored under lock and seal in some dry and suitable place in the county court house. [Id.]

2. LAW LIBRARY

Art. 1697. Establishment of library.—A county law library may be established at the county seat by the commissioners court of any county containing a city of over 160,000 population according to the preceding Federal census. [Acts 1st C. S. 1921, p. 21.]

Art. 1698. Appropriation for library.—The commissioners court of any such county may establish and provide for the maintenance of such law library on its own initiative and appropriate therefor the sum of $20,000.00 or such part thereof as it deems necessary, and shall appropriate each [year] such sum as may be necessary to properly maintain and operate such library. [Id.]

Art. 1699. Rules and regulations.—Said court may make all rules and regulations necessary or proper for the establishment, maintenance, operation and use of said library not in conflict with the laws of this State. [Id.]

Art. 1700. Custodian.—Upon the establishment of a county law library the commissioners court shall employ a custodian or custodians of such library, who shall receive such pay as said court may fix. Each custodian shall execute a bond in the sum fixed by the court payable to and to be approved by the county judge of said county, conditioned that such custodian will faithfully perform his duties. [Id.]

Art. 1701. Gifts and bequests.—The commissioners court may receive on behalf of the county any gift or bequest for such library. The title to all such property shall be vested in the county. Where any gift or bequest is made with certain conditions, and accepted by the county, these conditions shall be administered as designated by the donor. [Id.]

Art. 1702. Funds of library.—All funds of such library shall be in custody of the county treasurer of such county. They shall be a separate fund and shall be used for no purpose other than for such library. Each claim against the county law library shall be acted upon in like manner as other claims against the county. [Id.]

TITLE 36

COUNTY TREASURER

Art.
1703. Election and term.
1704. Bond.
1705. New bond.
1706. Office declared vacant.
1707. Vacancy, how filled.
1708. Appointee: oath and bond.
1709. Moneys belonging to county.
1710. Accounts.
1711. Report to commissioners court.
1712. Deliver money, etc., to successor.
1713. Shall not pay out money, except.
1714. To examine dockets, accounts, etc.

Article 1703. [1499] [919] [987] Election and term.—A county treasurer shall be elected at each regular general election for a term of two years. [Const. art. 16, sec. 44; Acts 1876, p. 199; G. L. vol. 8, p. 1035.]

Art. 1704. [1500] [920] [988] Bond.—The county treasurer before entering upon the duties of his office, and within twenty days after he has received his certificate of election, shall give a bond payable to the county judge of his county, to be approved by the commissioners court, in such sum as such court may deem necessary, conditioned that such treasurer shall faithfully execute the duties of his office and pay over according to law all moneys which shall come into his hands as county treasurer, and render a true account thereof to said court at each regular term of said court. [Acts 1846, p. 338; P. D. 1096; G. L. vol. 2, p. 1644.]

Art. 1705. [1501] [922] [990] New bond.—The commissioners court, whenever they may consider the bonds, or either of the bonds, of a county treasurer, from any cause, insufficient or doubtful, shall require such treasurer to give another bond or bonds, or to give additional bond or bonds, as the case may be.

Art. 1706. [1502] [823] [991] Office declared vacant.—If the person elected treasurer fails to give the bonds required by this title and take the official oath within twenty days after receiving his certificate of election, it shall be the duty of the county judge to declare the said office vacant; and, should a treasurer fail to give another or an additional bond or bonds when required to do so, as provided in the preceding article, within twenty days after notice of such requirement, he shall be removed from said office in the manner provided by law.

Art. 1707. [1503] [924] [992] Vacancy, how filled.—In case of vacancy in the office of the county treasurer, the commissioners court of the county in which such vacancy occurs shall fill such vacancy by appointment, such appointment to be made by a majority vote of the commissioners present, at a regular or special term of such court. Such appointment shall continue in force until the next general election. [Acts 1876, p. 217; G. L. vol. 8, p. 1053.]

Art. 1708. [1504] [925] [993] Appointee: oath and bond.—The person appointed to fill the vacancy, as provided in the preceding article, shall, before entering upon the discharge of the duties of such office, and within twenty days after he has been notified of such appointment, take the oath and give the bonds required, as in the case of an election to such office. [Id.]

Art. 1709. [1505] [926] [994] Moneys belonging to county.—The county treasurer shall receive all moneys belonging to the county from whatever source they may be derived, and pay and apply the same as required by law, in such manner as the commissioners court of his county may require and direct. [Acts 1846, p. 338; G. L. vol. 2, p. 1644; P. D. 1097.]

Art. 1710. [1506] [927] [995] Accounts.—The county treasurer shall keep a true account of the receipts and expenditures of all moneys which shall come into his hands by virtue of his office, and of the debts due to and from his county; and direct prosecutions according to law for the recovery of all debts that may be due his county, and superintend the collection thereof. [Id.; P. D. 1098.]

Art. 1711. [1507] [928] [996] Report to commissioners court.—He shall render a detailed report at every regular term of the commissioners court of his county of all the moneys received and disbursed by him, of all debts due to and from his county, and of all other proceedings in his office, and shall exhibit to said court at every such term all his books and accounts for their inspection and all vouchers relating to the same, to be audited and allowed. [Id.; P. D. 1099.]

Art. 1712. [1508] [929] [997] Deliver money, etc., to successor.—He shall deliver the moneys, securities, and all other property of the county in his hands, together with all documents, instruments of writing, papers and books belonging to, or for the use of the county, to his successor in office, and perform all such other acts as may be required of him by said commissioners court. [Id.; P. D. 1100.]

Art. 1713. [1509] [930] [998] Shall not pay out money, except.—The county treasurer shall not pay any money out of the county treasury except in pursuance of a certificate or warrant from some officer authorized by law to issue the same; and, if such treasurer shall have any doubt of the legality or propriety of any order, decree, certificate or warrant presented to him for payment, he shall not pay the same, but shall make report thereof to the commissioners court for their consideration and direction. [P. D. 1101.]

Art. 1714. [1510] [931] [999] To examine dockets, accounts, etc.—He shall examine the accounts, dockets and records of the clerks, sheriff, justices of the peace, constables and tax collector of his county, for the purpose of ascertaining whether any moneys of right belonging to his county are in their hands which have not been accounted for and paid over according to law, and shall report the same to the commissioners court at their next term, to the end that suit may be instituted for the recovery thereof. [Id.; P. D. 1102.]

TITLE 37

COURT—SUPREME

Chap.

1. Judges.
2. Clerk, Employés and Reporter.
3. Terms and Jurisdiction.
4. Writ of Error.
5. Proceedings in the Supreme Court.
6. Judgment.
7. Commission of Appeals.

CHAPTER ONE

JUDGES

Art.

1715. Judges.
1716. Qualifications.
1717. Disqualification.

Article 1715. [1512–13] Judges.—The Supreme Court shall consist of a Chief Justice and two Associate Justices, any two of whom shall be a quorum. The concurrence of two judges shall be necessary to the decision of a case. One Justice of said Court shall biennially be elected for a term of six years, the classification to be as now constituted by law. In case of a vacancy in the Supreme Court, the Governor shall fill such vacancy until the next general election, and at such election the vacancy for the unexpired term shall be filled by election by the qualified voters of the State. [Const. art. 5, sec. 2; Acts 1892, p. 19; G. L. vol. 10, p. 383.]

Art. 1716. [1514] [935] [1003] Qualifications.—No person shall be eligible to be a Justice of the Supreme Court, unless he be, at the time of his election, at least thirty years of age, a citizen of the United States and of this State, and has been a practicing lawyer or a judge of a court in this State, or such lawyer and judge together, at least seven years. [Id.]

Art. 1717. [1516–17] Disqualification.—When the Court or any two of its members shall be disqualified to hear and determine any cause in said Court, or when the Judges of said Court shall be equally divided in opinion by reason of the absence or disqualification of one of its members, the same shall be certified by the presiding Judge to the Governor who shall immediately commission the requisite number of persons possessing the qualifications prescribed for Judges of the Supreme Court to try and determine

said cause. [Const. art. 5, sec. 11; Acts May 12, 1846; P. D. 1575; G. L. vol. 2, p. 1561.]

CHAPTER TWO

CLERK, EMPLOYÉS AND REPORTER

Art.
1718. Appointment of clerk.
1719. Vacancy in vacation.
1720. Duties of clerk.
1721. Deputy clerks.
1722. Library.
1723. Stenographers and bailiff.
1724. Reporter.
1725. Reports.

Article 1718. [1530–32] Appointment of Clerk.—The Supreme Court shall appoint for a term of four years one clerk who shall reside at Austin. Such appointment shall be recorded in the proceedings of the Court. Such appointee shall first give bond in the sum of five thousand dollars, to be approved by the Court, payable to the Governor and conditioned for the faithful performance of the duties of his office. He may be removed by the Court for neglect of duty or misconduct in office, after ten days' previous notice of the motion specifying the particular charges of negligence or misconduct in office preferred, and the Court shall determine the law and facts. The Court may whenever necessary appoint a clerk pro tempore. [Acts 1892, p. 19; G. L. vol. 10, p. 383.]

Art. 1719. [1531] [951] [1018] Vacancy in vacation.—If the office of clerk becomes vacant in vacation, an appointment shall be made by the Chief Justice and one of the Associates. The appointee shall give the prescribed bond and oath, the bond to be approved by any judge of the Court. Such appointment shall continue until a regular appointment shall be made. [Acts 1846, p. 250; G. L. vol. 2, p. 1557.]

Art. 1720. [1532 to 1535] Duties of clerk.—The clerk shall:

1. Collect and pay into the State Treasury all fees and costs collected by him over and above the salaries allowed him and his deputies, under rules prescribed by the Comptroller and approved by the Judges of the Supreme Court and recorded in the minutes of the Court.

2. Procure a seal for the use of the Court, which shall have a star of five points, with the words, "Supreme Court of the State of Texas" engraved thereon.

3. File and carefully preserve the transcripts of all records certified to said Court, and all papers relative thereto, and shall docket all causes in the order in which the Court shall direct, and shall faithfully record the proceedings and decisions of said Court, and certify its judgments to the courts from which the cases were brought.

Art. 1721. [1536] [1023] Deputy clerks.—When authorized by the Court by an order recorded in the minutes, the clerk may appoint one or more deputies who may discharge the duties required by law of the clerk, and who shall give bond in like sum and conditions required of the clerk, to be approved by the Court. The compensation of such deputies shall be unanimously agreed upon by the Judges and their action recorded in the minutes of the Court, such compensation not to exceed two thousand dollars a year for the first deputy and one thousand dollars a year for the second deputy, to be paid out of the fees collected. The Court in its discretion may dispense with the services of one or both such deputies temporarily or permanently. [Acts 1903, p. 115.]

Art. 1722. [1537–8] Library.—The library of the Supreme Court shall be open to the public under such rules as the Court may prescribe. The books shall not be removed from the library room, except by the Judges of the Courts and by members of the Legislature during its sessions, upon their receipt for the same. The clerk of the Supreme Court shall be librarian in charge of the library of said Court. The Chief Justice shall appoint an assistant librarian who may also act as marshal for said Court when required by the Court. The assistant librarian shall have immediate charge of the library and shall keep it open, except Sundays and holidays, from eight a. m. to five p. m., and shall make catalogs of the books and keep them in order. [Acts 1892, p. 19; G. L. vol. 10, p. 383; Acts 1st C. S. 1905, p. 462.]

Art. 1723. [1520–39] Stenographers and bailiff.—The Court may appoint not more than three stenographers, at a salary to be fixed by the Court, not exceeding one hundred and fifty dollars per month, and may appoint a bailiff to attend the sitting of the Court. [Acts 1915, p. 119.]

Art. 1724. [1572–74] Reporter.—The Court shall appoint to serve at the will of the Court one or more licensed attorneys to report the decisions of the Supreme Court. The reporter shall obtain from the proper clerk the records of cases to be reported, with the briefs and opinions therein, as soon as such cases are finally disposed of and the opinions are recorded, which shall be returned after the report thereof is completed. He shall under the direction of the Court, without delay, prepare for publication such decisions with appropriate syllabus and statements when necessary, with proper index, table of cases cited and cases reported, and shall, from time to time, deliver the same to the Board of Control for publication. [Acts 1919, p. 60.]

Art. 1725. [1575–77] Reports.—The Court shall designate the cases to be reported; and only those designated shall be reported and published. Only the main propositions made in the briefs and considered by the Court in the opinion, with the authorities cited in support of such propositions, shall be incorporated in the report. Each volume shall be copyrighted in the name of the reporter, who shall immediately on delivery of the edition transfer and assign the same to the State. It shall be electrotyped, and the plates shall be owned by the State and preserved by the Board of Control. [Id.]

CHAPTER THREE

TERMS AND JURISDICTION

Art.
1726. Terms of Supreme Court.
1727. Adjournment.
1728. Appellate jurisdiction.
1729. Writ of error or certificate.
1730. Court to make rules.
1731. Rules of practice.
1732. Jurisdictional facts.
1733. May issue writs.
1734. May issue mandamus, etc.
1735. To issue only by Supreme Court.
1736. May punish for contempt.
1737. Habeas corpus.
1738. Transfer of causes.

Article 1726. [1518] [937] [1005] Terms of Supreme Court.—The Supreme Court shall hold one term each year at the city of Austin, commencing on the first Monday in October, and ending on the last Saturday in the next June. [Acts 1892, p. 19; G. L. vol. 10, p. 383; Const. art. 5, sec. 2.]

Art. 1727. [1519] [938] [1010] Adjournment.—The Court may adjourn from day to day, or for such period as it deems necessary to the ends of justice and the determination of the business before them; and there shall be no discontinuance of any suit, process or matter returned to, or pending in, the Supreme Court, although a quorum of the Court may not be in attendance at the commencement or on any other day of the term. If a sufficient number of the judges shall not attend on any day of the term, any judge of the Court, or the bailiff attending, may adjourn the Court from time to time. [Acts 1846, p. 254; P. D. 1574; G. L. vol. 2, p. 1560.]

Art. 1728. [1521] [940] [1011] Appellate jurisdiction.—The Supreme Court shall have appellate jurisdiction co-extensive with the limits of the State, extending to all questions of law arising in the following cases when same have been brought to the Courts of Civil Appeals from final judgment of trial courts:

1. Those in which the judges of the Courts of Civil Appeals may disagree upon any question of law material to the decision.

2. Those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own, or of another Court of Civil Appeals, or of the Supreme Court upon any such question of law.

3. Those involving the construction or validity of statutes necessary to a determination of the case.

4. Those involving the revenues of the State.

5. Those in which the Railroad Commission is a party.

6. In any other case in which it is made to appear that an error of substantive law has been committed by the Court of Civil Appeals which affects the judgment, but excluding those cases in which the jurisdiction of the Court of Civil Appeals is made final by statute.

In all cases where the judgment of the Court of Civil Appeals is a correct one and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court shall refuse the application; in all cases where the judgment of the Court of Civil Appeals is a correct one but the Supreme Court is not satisfied that the opinion of the Court of Civil Appeals in all respects has correctly declared the law, it shall dismiss the case for want of jurisdiction.

Provided further that in cases of conflict named in Subdivision 2 above, the Supreme Court may, in its discretion, refuse the writ of error where the court is in agreement with the decision of the Court of Civil Appeals in the case in which the application is filed; and in cases of such conflict with a previous opinion of the Supreme Court, the Supreme Court may, in its discretion, without the necessity of granting the writ and hearing the case, reverse and remand the same on the application for writ of error. [Acts 1892, p. 19; Acts 1913, p. 107; Acts 1917, p. 140; G. L. vol. 10, p. 383; Acts 1927, 40th Leg., p. 214, ch. 144, § 1.]

Art. 1729. [1522] [941] [1011] Writ of error or certificate.—All causes mentioned in the preceding article may be carried to the Supreme Court either by writ of error or by certificate from the Court of Civil Appeals, but the Court of Civil Appeals may certify any question of law arising in any such case at any time they may choose, whether before or after the decision of the case in said Court. [Acts 1892, p. 19; Acts 1895, p. 145; Acts 1913, p. 107; Acts 1917, p. 140; G. L. vol. 10, pp. 383, 875.]

Art. 1730. [1523] [944] [1011] Court to make rules.—The Supreme Court shall from time to time make and promulgate suitable rules, forms and regulations for carrying into effect the articles in this title relating to the jurisdiction and practice of said Court. [Acts 1892, p. 19; G. L. vol. 10, p. 383.]

Art. 1731. [1524] [947] [1014] Rules of practice.—The Court may make and enforce all necessary rules of practice and procedure, not inconsistent with the law, for the government of said Court and all other courts of the State, so as to expedite the dispatch of business in said courts. [Id.]

Art. 1732. [1525] [945] [1011] Jurisdictional facts.—It shall have the power upon affidavit or otherwise, as the Court may determine, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction. [Id.]

Art. 1733. [1526] May issue writs.—The Supreme Court or any Justice thereof, shall have power to issue writs of procedendo, certiorari and all writs of quo warranto or mandamus agreeable to the principles of law regulating such writs, against any district judge, or Court of Civil Appeals or judges thereof, or any officer of the State Government, except the Governor. [Id.; Acts 1913, p. 107; Acts 1917, p. 140.]

Art. 1734. [1528] [949] [1016] May issue mandamus, etc.—Said Court or any judge thereof in vacation may issue the writ of mandamus to compel a judge of the district court to proceed to trial and judgment in a cause agreeably to the principles and usages of law, returnable to the Supreme Court on or before the first day of the term, or during the session of the same, or before any judge of the said Court as the nature of the case may require. [P. D. 1579.]

Art. 1735. [5732] [4861] To issue only by Supreme Court.—The Supreme Court only shall have power, authority or jurisdiction to issue the writ of mandamus or injunction or any other mandatory or compulsory writ or process against any of the officers of the executive departments of the government of this State to order or compel the performance of any act or duty which, by the laws of this State, they, or either of them, are authorized to perform, whether such act or duty be judicial, ministerial or discretionary. [Acts 1881, p. 7; Acts 1917, p. 141.]

Art. 1736. [1527] [948] May punish for contempt.—The Supreme Court shall have power to punish any person for a contempt of such Court according to the principles and usages of law in like cases, not to exceed a fine of one thousand dollars and imprisonment in jail not exceeding twenty days. [Acts 1846, p. 255; P. D. 1577; G. L. vol. 2, p. 1561.]

Art. 1737. [1529] Habeas corpus.—The Supreme Court or any of the Justices thereof, either in term time or in vacation, may issue writs of habeas corpus in any case where any person is restrained in his liberty by virtue of any order, process or commitment issued by any court or judge on account of the violation of any order, judgment or decree theretofore made, rendered or entered by such court or judge in any civil cause. Said Court or any Justice thereof, either in term time or in vacation, pending the hearing of application for such writ, may admit to bail any person to whom the writ of habeas corpus may be so granted. [Acts 1905, p. 20.]

Art. 1738. [1587] Transfer of causes.—The Supreme Court shall on the fifteenth day of June and the fifteenth day of December of each year equalize, as nearly as practicable, the amount of business upon the dockets of the several courts of civil appeals by directing the transfer of cases from such of said courts as may have the greater amount of business upon their docket to those having a less amount of business. And the courts of civil appeals to which such cases shall be transferred shall have jurisdiction over all such cases so transferred, without regard to the district in which the cases were originally tried and returnable upon appeal. Cases transferred from any court of civil appeals shall be taken from the cases appealed from the counties nearest the place where the court to which the cases are transferred is held. Provided that the Justices of the court to which such cases are transferred shall, after due notice to the parties or their counsel, hear oral argument on such cases at the place from which the cases have been transferred. Provided further that there shall be but one sitting for oral argument at the place from which cases are transferred for each equalization, and all cases so transferred at any one equalization must be orally argued at such sitting, or at the regular place of sitting of the court to which said cases are transferred. All opinions, orders and decisions in such transferred cases shall be delivered, entered and rendered at the place where the court to which such cases are transferred regularly sits, as the law provides. The actual and necessary traveling and living expenses of the Justices of said courts in hearing oral argument at the place from which such cases are transferred shall be borne by the State, and for payment thereof the Legislature shall make appropriation. [Acts 1895, p. 79; G. L., vol. 10, p. 809; Acts 1909, p. 88; Acts 1927, 40th Leg., p. 115, ch. 76, § 1; Acts 1927, 40th Leg., 1st C. S., p. 148, ch. 51, § 1.]

CHAPTER FOUR

WRIT OF ERROR

Art.
1739. Good cause to be shown.
1740. Petition for writ of error.
1741. Requisites of application.
1742. Filing.

Art.
1743. Petition with record.
1744. Reply to application.
1745. May refer case back.
1746. Court shall decide.
1747. Bond.
1748. Designation of Civil Appeals Justices.
1749. Justices to assemble.
1750. Effect of granting or denying writ.
1751. Disqualification of Justice.
1752. Supreme Court may also act.
1753. Powers.
1754. Expenses of designated Justices.

Article 1739. [1545] Good cause to be shown.—The Supreme Court may review final judgments of Courts of Civil Appeals upon writ of error, when good cause therefor be shown by application for such writ, as hereinafter required, the sufficiency of such cause to be determined as herein provided. [Acts 1917, p. 140.]

Art. 1740. [1540] [942] Petition for writ of error.—A writ of error before the Supreme Court may be applied for by petition addressed to said Court, stating the nature of the case and the grounds upon which the writ of error is prayed for, and showing that the Supreme Court has jurisdiction thereof; and the petition shall contain such other requisites as may be prescribed by the Supreme Court. [Acts 1892, p. 22; Acts 1895, p. 144; G. L. vol. 10, p. 386.]

Art. 1741. [1521–40] Requisites of application.—Until otherwise provided by rule of the Supreme Court, the application for a writ of error shall concisely state the question decided by the Court of Civil Appeals in which error is asserted. This shall be followed by only such brief and general statements as may be necessary to show that the question was involved in the cause and in the decision of the Court of Civil Appeals. More than one question may be presented in the same application. [Id.; Acts 1917, p. 140.]

Art. 1742. [1541] [942] Filing.—The petition shall be filed with the clerk of the Court of Civil Appeals within thirty days from the overruling of the motion for rehearing. [Acts 1895, p. 144.]

Art. 1743. [1542] [942] Petition with record.—The petition with the original record in the case, and the opinions of the Court of Civil Appeals, and the motion filed therein, and certified copies of the judgments and orders of the Court of Civil Appeals and copy of the appeal or supersedeas bond shall be filed with the Supreme Court. The party applying for the writ of error shall deposit with the clerk of the Court of Civil Appeals a sum sufficient to pay the expressage or carriage of the record to and from the clerk of the Supreme Court, which sum shall be charged as costs in the suit. [Id.]

Art. 1744. Reply to application.—Within ten days after the filing of the record in the Supreme Court the defendant in error may file a reply to the application for writ of error controverting the grounds alleged for granting the said writ, and may state reasons why the writ of error should not be granted. The Supreme Court may prescribe and enforce rules governing the proceedings by both parties under this law. If the defendant in error shall file such reply, the Supreme Court may finally dispose of the cause upon such application in the same manner and to the same extent as if the application had been granted and the cause set down for hearing, and its judgment shall be announced in open Court as in other cases, and an opinion may be filed as in the regular proceedings of the Court. [Acts 1st C. S. 1911, p. 108.]

Art. 1745. [1543] [943] May refer case back.—If a Court of Civil Appeals shall fail to file conclusions of fact, or to comply with the requirements of the law in filing such conclusions of fact, and such conclusions are necessary to enable the Supreme Court to properly determine the rights of the parties, the Court may suspend action on the petition for writ of error and return the record to the Court of Civil Appeals with instructions to make and return conclusions of fact upon the points indicated by the Supreme Court. [Acts 1901, p. 122; Acts 1892, p. 19; Acts 1913, p. 107; Acts 1917, p. 141; G. L. vol. 10, p. 384.]

Art. 1746. [1544] [943] Court shall decide.—If the Supreme Court shall find the case to be one of which it may take jurisdiction, it shall grant or refuse the writ of error or answer the questions certified by the Court of Civil Appeals, as the case may be. [Id.; Acts 1913, p. 107; Acts 1917, p. 141.]

Art. 1747. [1545] [942] Bond.—When a writ of error is granted and the plaintiff in error has given no bond, the Supreme Court in granting the writ shall specify what bond shall be given; and the plaintiff in error shall file such bond in the trial court, to be approved by the clerk of said court, and a certified copy thereof shall be at once sent to the Supreme Court. Upon the filing of said certified copy, the clerk of the Supreme Court shall issue the proper citation in error. [Acts 1895, p. 144; G. L. vol. 10, p. 874.]

Art. 1748. Designation of Civil Appeals Justices.—The Chief Justice of the Supreme Court or any two Justices thereof may, by a writing recorded in the minutes of the Supreme Court, designate three of the Justices of the Courts of Civil Appeals to act as hereinafter provided. Such powers may be exercised from time to time in the same manner as long as reason therefor may exist, and the personnel of the designated Justices of the Courts of Civil Appeals may be changed as often as may be advisable, by relieving one, or more, and designating another, or others, in order to interfere as little as possible with the work of the Courts of Civil Appeals. Not more than one Justice shall be designated to serve at any one time from any one of these courts. [Acts 1917, p. 142.]

Art. 1749. Justices to assemble.—The Justices of the Courts of Civil Appeals so designated, upon receiving notice thereof, shall assemble together at the State Capitol and take up, consider and act upon applications for writs of error as may be so referred to them, by granting, refusing or dismissing the same in accordance with the practice of the Supreme Court; and then such designated Justices may make such orders and give such directions, incidental to the consideration and disposition of the application. [Id.]

Art. 1750. Effect of granting or denying writ.—The granting of an application shall admit the cause into the Supreme Court to be proceeded with by the Court as provided by law. The refusal or dismissal of an application shall have the effect of denying the admission of the cause into the Supreme Court, except that motions for rehearing may be made to such designated Justices in the same way as such motions to the Supreme Court have been heretofore allowed. The refusal or dismissal of any application shall not be regarded as a precedent or authority. [Id.]

Art. 1751. Disqualification of Justice.—No one of such Justices shall participate in acting upon an application in a cause decided during his incumbency by the court of which he is a member. [Id.]

Art. 1752. Supreme Court may also act.—The Supreme Court shall still have power to act upon applications for writs of error, when deemed by it expedient. In any cause in which the Judges of the Courts of Civil Appeals shall have disagreed or shall have declared void a statute of the State, the application for writ of error shall be passed upon by the Supreme Court. [Id.]

Art. 1753. Powers.—The powers herein conferred upon the Justices of the Supreme Court and of the Courts of Civil Appeals are declared to be incidental to the offices held by them respectively. [Id.]

Art. 1754. Expenses of designated Justices.—Such designated Justices shall have all actual and necessary expenses incurred in the discharge of such additional duties, paid out of the State Treasury from warrants drawn by the Comptroller, upon itemized accounts of such expenses, verified by the affidavit of the claimant. [Id.]

CHAPTER FIVE

PROCEEDINGS IN THE SUPREME COURT

Art.
1755. Order of trial of causes.
1756. Trial on questions of law.
1757. Briefs.
1758. Certified question.
1759. Answer to question.
1760. Death of parties no abatement.
1761. Process.
1762. Motion for rehearing.
1763. Notice to opposing party.
1764. Service and return.
1765. When motion heard.

Article 1755. [1548] [971] [1042] Order of trial of causes.—Causes may be tried in such order as the Judges of said court may deem to the best interest and convenience of the parties or their attorneys. [Acts 1850, p. 171; P. D. 1585; G. L. vol. 3, p. 609.]

Art. 1756. [1546] [967] [1033] Trial on questions of law.—Trials in the Supreme Court shall be only upon the questions of law upon which the writ of error was allowed, or which were certified to the Supreme Court from a Court of Civil Appeals. The Supreme Court may require the original transcript to be sent up. [Acts 1892, p. 19; G. L. vol. 10, p. 384.]

Art. 1757. [1547] [968] [1033] Briefs.—In all cases taken to the Supreme Court by writ of error, the briefs and arguments filed in the Courts of Civil Appeals shall be submitted to the Supreme Court; and, in addition thereto, the attorney for either party may file additional briefs, under such rules and regulations as the Supreme Court may prescribe.

Art. 1758. [1621–24] [1041] Certified question.—When a question of law has been certified by a Court of Civil Appeals to the Supreme Court upon receipt of the record from the lower court, the Supreme Court shall cause the clerk to docket the case and set it down for argument, and notice shall be given to the attorneys of record of the setting of the case at least fifteen days before the date of the hearing. [Acts 1893, p. 89.]

Art. 1759. [1622–25] Answer to question.—The Supreme Court, on receiving such record, and certified question of law, from the Court of Civil Appeals transmitting the same, shall examine such record and certified question of law, and render an opinion as in other cases; which opinion, when so rendered by the Supreme Court on the record and question of law presented therein, shall be final and shall be the law on the question involved until said opinion shall have been overruled by the Supreme Court or abrogated by legislative enactment, and the Court of Civil Appeals shall be governed thereby. After the question is decided, the Supreme Court shall immediately notify the lower court of its decision. [Acts 1893, p. 89; Acts 1899, p. 170.]

Art. 1760. [1549] [973] [1044] Death of parties no abatement.—If any party to the record in a cause pending in the Supreme Court dies after the writ of error has been served and before such cause has been decided by the Supreme Court, such cause shall not abate by such death; but the court shall proceed to adjudicate such cause and render judgment therein as if all the parties thereto were living, and such judgment shall have the same force and effect as if rendered in the life time of all the parties thereto. [Id.]

Art. 1761. [1566] [982] [1056] Process.—All writs and process issuing from the Supreme Court shall bear the test of the Chief Justice or presiding Judge of said court, and be under the seal of said court and signed by the clerk thereof, and may be directed to the sheriff or any constable of any county in the State, and shall be by such officer executed and returned according to the demand thereof. Whenever such writs or process shall not be executed, the clerk of said court is authorized and required to issue another like process or writ, upon the application of the party suing out the former writ or process to the same or any other county. [Acts 1892, p. 16; G. L. vol. 10, p. 383.]

Art. 1762. [1561] [977] [1051] Motion for rehearing.—A motion for rehearing may be filed with the clerk of the court within fifteen days after the date of entry of the judgment or decision of the court, and not later. Should the court adjourn within less time than fifteen days after the rendition of the judgment, it may make such rules and regulations with reference to the filing of the motion as it may deem proper. The grounds relied upon for the rehearing shall be distinctly specified in the motion. The motion shall give the name and residence of the counsel of the opposing party if known, and if not known, the name and residence as shown in the record.

Art. 1763. [1562] [978] [1052] Notice to opposing party.—Upon the filing of such motion, the clerk shall make and transmit a certified copy of the same by mail to the sheriff or any constable of the county in which the attorney, or opposing party, as the case may be, is alleged in said motion to reside, together with a precept commanding him to deliver such copy to the person named in such precept. [Id.]

Art. 1764. [1563–4] Service and return.—Upon the receipt of such precept and copy of motion by the officer, it shall be his duty to deliver the copy of the motion to the person named in said precept, if found in his county, and to return said precept to the clerk by mail, stating thereon at what time and to whom he delivered the copy of the motion, or that the party named in the precept is not found in his county. Service of said motion on any one of several parties to a cause or their attorneys shall be sufficient service on all. [Id.]

Art. 1765. [1565] [981] [1055] When motion heard.—The Supreme Court may hear and determine such motion for rehearing at any time after five days from the return of such precept served. [Id.]

CHAPTER SIX

JUDGMENT

Art.
1766. Judgments in open court.
1767. Judgment on affirmance.
1768. Judgment enforced.
1769. May remand.
1770. Want of form.
1771. Decision.
1772. Judgment becomes final.
1773. Mandate to issue.
1774. Affidavit of inability to pay.
1775. Mandate barred.
1776. Mandate recalled.
1777. Execution.
1778. Execution returnable.
1779. Officer failing to make return.
1780. Money due other clerk.

Article 1766. [1550] [974] [1047] Judgments in open court.—In all cases decided by the Supreme Court, its judgments or decrees shall be pronounced in open court; and the opinion of the court shall be reduced to writing in such cases as the court may deem of sufficient importance to be reported. [Acts 1866, p. 134; P. D. 6417; G. L. vol. 5, p. 1052.]

Art. 1767. [1551] [975] [1049] Judgment on affirmance.—Whenever the Supreme Court shall affirm a judgment or decree of a Court of Civil Appeals, it shall render such judgment or decree as should have been rendered by the Court of Civil Appeals, and shall render judgment against the plaintiff in error and the sureties, on his appeal or supersedeas bond, for the performance of said judgment or decree, and shall make such disposition as to the costs as they may order. [Acts 1892, p. 23; Acts 1907, S. S. p. 467; Acts 1921, p. 54; G. L. vol. 10, p. 387.]

Art. 1768. [1567] [983] [1057] Judgment enforced.—Upon the rendition by the Supreme Court of any such judgment or decree as is contemplated by the preceding article, it shall not be necessary for the lower court from which the cause was removed to make any further order or decree therein, but the clerk of said lower court, on receipt of the mandate of

the Supreme Court or Court of Civil Appeals, shall proceed to issue execution thereon as in other cases. [Id.]

Art. 1769. [1552] [975] [1049] May remand.—If the judgment of a Court of Civil Appeals shall be reversed, the Supreme Court may remand the case either to the Court of Civil Appeals from which it came or to the district court, for another trial. [Id.]

Art. 1770. [1553] [972] [1043] Want of form.—There shall be no reversal or dismissal for want of form if the requirements of the law and the rules of the court be sufficiently complied with in presenting the case to enable the court to determine the same upon its merits. [Acts 1892, p. 19; G. L. vol. 10, p. 383.]

Art. 1771. [1553] [972] [1043] Decision.—In each case, the Supreme Court shall either affirm the judgment, or reverse and render such judgment as the Court of Civil Appeals should have rendered, or reverse the judgment and remand the case to the lower court, if it shall appear that the justice of the case demands another trial. [Id.]

Art. 1772. [1554] [976] [1050] Judgment becomes final.—The judgment of the Supreme Court shall be final at the expiration of fifteen days from the rendition thereof, when no motion for rehearing has been filed. [Acts 1897, p. 200; Acts 1892, p. 19; Acts 1901, p. 122; G. L. vol. 10, p. 1254; G. L. vol. 10, p. 383.]

Art. 1773. [1555–6–8] Mandate to issue.—Upon the rendition of final judgment, the clerk, upon payment of costs, shall issue the mandate in the case. The clerk of the Supreme Court shall not deliver a mandate until all costs of said court and of the Court of Civil Appeals shall have been paid, except as further herein provided. Mandates shall issue to the court in which the original judgment was rendered. [Acts 1892, p. 19; G. L. vol. 10, p. 383; Acts 1901, p. 123.]

Art. 1774. [1557] [976] [1050] Affidavit of inability to pay.—If the party against whom the costs are adjudged by the Supreme Court shall make affidavit of his inability to pay, or give security therefor, he may apply to the Supreme Court for an order to require the clerk of the court to issue the mandate in the cause; which motion shall be sustained unless the clerk of the court, or a party to the record, shall successfully controvert the truth of such affidavit. [Acts 1897, p. 200; Acts 1901, p. 122, G. L. vol. 10, p. 1254.]

Art. 1775. [1559] Mandate barred.—When a case is reversed and remanded, no mandate shall issue after twelve months from the rendition of final judgment of the Supreme Court, or the overruling of a motion for rehearing. When a cause is reversed and remanded by the Supreme Court, and the mandate is not taken out within twelve months as hereinbefore provided, then, upon the filing in the court below of a certificate of the clerk of the Supreme Court or Court of Civil Appeals, that no mandate has been taken out, the case shall be dismissed from the docket of said lower court. [Acts 1901, p. 123.]

Art. 1776. [1560] [976] [1050] Mandate recalled.—Should the Supreme Court set aside its judgment after the mandate has issued, the clerk shall at once notify the party to whom the mandate was directed to return it. [Acts 1897, p. 200; Acts 1901, p. 123; G. L. vol. 10, p. 1254.]

Art. 1777. [1568] [984] [1058] Execution.—If the costs have not been paid at the end of fifteen days from the date of judgment or from the overruling of a motion for rehearing, the clerk may issue an execution for the costs of the Supreme Court and the Court of Civil Appeals, specifying the amount of each, and attach to said execution a correct list of all costs accruing in each of said courts. The execution shall be directed to the sheriff or any constable of the county from which the cause was removed, or to any county in which the person or persons, or either of them, liable under such execution, may have property. It shall be the duty of every sheriff or constable receiving such execution to execute and return the same under the same rules, regulations, and liabilities as provided for executions from the district court. [Acts 1892, p. 23; G. L. vol. 10, p. 387.]

Art. 1778. [1569] [985] [1059] Execution returnable.—All executions for costs of the Supreme Court shall be returned by the officer to whom they are directed within four months from the date thereof. [Acts 1875, p. 70; G. L. vol. 8, p. 442.]

Art. 1779. [1570] [986] [1060] Officer failing to make return.—In case any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of the Supreme Court may issue citation returnable forthwith to such officer to appear before the Supreme Court, and show cause why he has not collected and returned such costs and execution; and failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for the amount of said costs, together with the cost of such proceeding. [Id.; Acts 1892, p. 19; G. L. vol. 10, p. 383.]

Art. 1780. [1571] [986] [1060] Money due other clerk.—When the Clerk of the Supreme Court receives any money due a clerk of the Court of Civil Appeals he shall pay it over to the proper clerk. If he refuses to do so upon demand, the clerk to whom the same is due may file in the Supreme Court a motion against him, and, upon ten days' notice to him, the Supreme Court may enter judgment against him and the sureties on his official bond for said amount. [Id.]

CHAPTER SEVEN

COMMISSION OF APPEALS

Art.
1781. Commission of Appeals.
1782. Vacancy.
1783. Sections of commission; clerk.
1784. Concurrence of two members.
1785. Making rules.
1786. Reference of causes by Supreme Court.
1787. Notice to parties.
1788. Causes referred by consent.
1789. Report on causes referred.
1790. Opinions.
1791. Report to Supreme Court.
1792. Refiling papers; costs.
1793. Sessions.
1794. Stenographers.
1795. Clerk.
1796. Seal.
1797. Dockets and records.
1798. Writs and process; contempt.
1799. Practice and procedure.
1800. Term of office.

Article 1781. Commission of Appeals.—A board of Arbitration and Appeals which shall be styled the Commission of Appeals of the State of Texas, to consist of six persons learned in the law, shall be appointed by the Governor, by and with the advice and consent of the Senate, if in session, be and the same is hereby created. The members of said Commission of Appeals of the State of Texas, shall have the same qualifications as are now prescribed by law for the judges of the Supreme Court of the State of Texas, and shall receive for their services the same salary to be paid in the same manner as are the salaries of the judges of the Supreme Court. [Acts 1925, p. 193.] [39th Leg., ch. 53, § 1.]

Art. 1782. Vacancy.—In case of a vacancy on said Commission of Appeals by the death, resignation or removal of any member thereof during vacation of the Legislature, it shall be the duty of the Governor to fill the same by appointment and the person so appointed shall continue in office until the next regular session of the Legislature after the appointment. In case of a vacancy on either section by the death, resignation or removal of any member thereof during the term of office, the Governor shall fill the same by appointment for the unexpired portion of the term for

which the commissioner so vacating his office had been appointed. [Acts 1925, p. 193.] [39th Leg., ch. 53, § 1.]

Art. 1783. Sections of commission; clerk.—The Commission of Appeals shall be divided into and sit in two sections to be known as Section A. and Section B., each of which shall consist of three members. Each section shall be a complete entity in and of itself and shall have all the authority hereinafter conferred upon the Commission of Appeals; but there shall be only one clerk for said Commission of Appeals. [Acts 1918, 4th C. S., p. 171.]

Art. 1784. Concurrence of two members.—The concurrence of two of the judges of any section shall be necessary to decision of any question or matter referred to them. [Acts 1925, p. 193.] [39th Leg., ch. 53, § 1.]

Art. 1785. Making rules.—The Commission of Appeals shall make rules regulating the hearing of causes submitted to them. The entire Commission of Appeals shall sit and act together in making and formulating of the rules of procedure hereinafter provided for. [Id.]

Art. 1786. Reference of causes by Supreme Court.—The Supreme Court is authorized to refer to either section of the Commission of Appeals any case pending before said Court, for examination and report thereon; and it shall be the duty of the Supreme Court, from time to time to refer to said Commission so many of the cases pending in said Court as may be reasonably considered and acted upon by the same at the several sessions thereof, having respect in such reference to the length of time such cases have been pending, as well as to promote an early disposition of the cases on the docket. [Id.]

Art. 1787. Notice to parties.—When any case is referred by the Supreme Court to said Commission, counsel for both parties shall have notice thereof, and shall have the right to be heard upon the same as if said cause were tried in the Supreme Court. [Id.]

Art. 1788. Causes referred by consent.—The Commission shall have power to hear and pronounce award upon all civil cases pending in the Supreme Court, wherein the parties or their attorneys may file written consent to the reference thereof to said Commission. [Id.]

Art. 1789. Report on causes referred.—It shall report its conclusions or award to the Supreme Court in the cases and its opinion thereon; and the conclusion or award aforesaid shall be the judgment of said Supreme Court, and said Court shall make and render such further order, judgment, or decree thereon as may be necessary or proper to make said award effective. [Id.]

Art. 1790. Opinions.—The opinion of the Commission in the cases so referred to it by consent shall not be published in the reports of the decisions of the Supreme Court, nor shall it have any further or other effect than to determine the particular causes wherein rendered, and shall have no force, effect or authority as precedent in other causes, unless otherwise decided by the Supreme Court. The opinion of the Commission in cases so referred to it, when adopted by said Court may be published as the opinion thereof, as in other cases. [Id.]

Art. 1791. Report to Supreme Court.—When the Commission has determined upon the proper disposition of any case referred to it, their opinion shall be submitted to the Supreme Court together with a brief synopsis of the case, and the record shall be returned therewith to be used by said Supreme Court. [Id.]

Art. 1792. Refiling papers; costs.—In cases referred to the Commission the papers shall not be refiled with said Commission, and only such additional costs as may be essential to carry into effect the provision hereof shall be incurred by the parties to such cases by reason of the reference thereof. [Id.]

Art. 1793. Sessions.—The Commission shall hold its sessions in Austin at the same time and place as the Supreme Court, but it shall continue work during the vacation of the Supreme Court in mid-summer. The Judges of the Commission may take a vacation, not to exceed eight weeks, during said period. [Id.]

Art. 1794. Stenographers.—They shall appoint stenographers not exceeding four, each of whom shall receive an annual salary not to exceed fifteen hundred dollars, to be paid in monthly installments, on warrants approved by the Chief Justice of the Supreme Court. [Id.]

Art. 1795. Clerk.—The Clerk of the Supreme Court shall perform the duties of Clerk of said Commission and shall be allowed for services rendered said Commission by him and his deputies, an additional compensation of fifteen hundred dollars per annum, to be paid out of the fees of his office. [Id.]

Art. 1796. Seal.—Said Commission of Appeals shall have a seal, being a star with five points and the words "Commission of Appeals of the State of Texas" around the same. [Id.]

Art. 1797. Dockets and records.—Regular dockets and minutes of all proceedings by or before said Commission of Appeals shall be kept, and the records and proceedings of courts of record, and all cases shall be docketed in the order in which they are transferred or referred by the Supreme Court. [Id.]

Art. 1798. Writs and process; contempt.—Said Commission shall have the right to issue writs of certiorari to perfect the record, and such process as the Supreme Court might issue to make parties, and shall have the power to punish for contempt. [Id.]

Art. 1799. Practice and procedure.—All laws and rules regulating practice and procedure in the Supreme Court shall be of force in the practice and proceedings of the Commission of Appeals so far as applicable. All applications for rehearing in cases referred to said Commission shall be made before and determined by it. [Id.]

Art. 1800. Term of office.—The term for which said Commissioners of Appeals shall exist shall be from the last Saturday in June, 1925, to and including the last Saturday in June, 1931. The names of the persons so appointed shall be submitted to the Senate for confirmation if in session when such appointments are made. If not, then at the first session of the Senate thereafter; provided that for the term beginning the last Saturday in June, 1925, one judge on each section of the commission shall be appointed for two years, one judge on each section for four years, and one judge on each section for six years from the last Saturday in June, 1925. Upon the expiration of the term of any member of either section his successor shall be appointed by the Governor for a term ending the last Saturday in June, 1931, when the Commission of Appeals itself shall expire under and by virtue of the terms of this Act. [Acts 1925, p. 193.] [39th Leg., ch. 53, § 1.]

TITLE 38

COURT OF CRIMINAL APPEALS

Art.
1801. Judges.
1802. Presiding judge.
1803. Disqualification of judge.
1804. Term of court.
1805. Seal of court.
1806. May ascertain facts.
1807. Mandate.
1808. Clerk.
1809. Deputy clerk.
1810. Reporter and reports.
1811. State Prosecuting Attorneys.
1811a. Commission of Criminal Appeals.
1811b. Term of office.
1811c. Approval of opinions.
1811d. Salary and expenses.

Article 1801. [1652] [1044] Judges.—The Court of Criminal Appeals shall consist of three judges, two of whom shall be a quorum. The concurrence of two judges shall be necessary to a decision of said court. Said judges shall have the same

qualifications as judges of the Supreme Court. At each biennial general election one judge for said court shall be elected for a term of six years, the division into classes to remain as now provided by law. [Acts 1892, p. 34.]

Art. 1802. [1654] [1046] Presiding judge.—The judges of said court shall choose a presiding judge from their number at such times as they deem proper. All writs and processes issuing from said court shall bear test in the name of said presiding judge and the seal of the court. [Id.]

Art. 1803. [1655] [1047] Disqualification of judge.—When any member thereof shall be disqualified under the Constitution and laws of this State to hear and determine any case in said court, the same shall be certified to the Governor who shall immediately commission a person learned in the law to act instead. [Id.]

Art. 1804. [1658] [1050] Term of court.—Said court shall hold one term each year at the city of Austin, commencing on the first Monday in October of each year, and shall continue until the last Saturday in June next succeeding. [Acts 1909, p. 51.]

Art. 1805. [1666] [1059] Seal of court.—The court shall use a seal having thereon a star with five points with the words, "Court of Criminal Appeals of Texas" engraved thereon. [Id.]

Art. 1806. [1661] [1054] May ascertain facts.—Said court shall have power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

Art. 1807. [1669] [1062] Mandate.—When the court from which an appeal has or may be taken has been or shall be deprived of jurisdiction over any case pending such appeal, and when such case has or may be determined by the Court of Criminal Appeals, the mandate of said appellate court shall be directed to the court to which jurisdiction has been, or may be, given over such case. [Id.]

Art. 1808. [1162–3–4] Clerk.—Said court shall appoint a clerk for said court, who shall:

1. Hold his office for four years unless sooner removed by the court for good cause, entered in its minutes.
2. Take and subscribe the official oath and give the same bond to be approved by said court as may be required of the clerk of the Supreme Court.
3. Perform as such clerk the like duties and be subject to the same liabilities as may be required of or prescribed for the clerk of the Supreme Court.

Art. 1809. Deputy clerk.—The court, or such clerk with the approval of the court, may designate any stenographer employed by said court to act as deputy clerk during the absence, illness or disability of said clerk. Such stenographer shall receive no extra compensation for such services, and shall discharge the duties of the clerk in the name of his principal as deputy clerk, signing his name after that of said principal as deputy clerk. [Acts 1923, p. 17.]

Art. 1810. [1667–8] Reporter and reports.—Said court shall appoint a reporter of such of its decisions as the law requires to be published, and may remove him for inefficiency or neglect of duty. The clerk shall deliver to the reporter the original opinions when recorded and the record in each case to be reported, taking receipt therefor, and the reporter shall return them when he finishes using them. The volumes of such decisions shall be numbered in continuation of the present reports, styled Texas Criminal Reports, and be printed and disposed of in like manner as the reports of the Supreme Court.

Art. 1811. State Prosecuting Attorneys.—The Governor, with the consent of the Senate, shall biennially appoint two attorneys to represent the State in all proceedings before the Court of Criminal Appeals, one of whom shall be styled "State Prosecuting Attorney," and the other "Assistant State Prosecuting Attorney," each said attorney to hold office for two years, and each of whom shall have had not less than four years experience as a practicing attorney or shall have been a district judge for not less than four years before his appointment. [Acts 1923, p. 335.]

Art. 1811a. Commission of Criminal Appeals.—By and with the advice and consent of the Senate of Texas, the Governor of this State is hereby authorized and empowered to appoint a commission to be composed of two attorneys at law, having those qualifications fixed by the laws and Constitution of this State for the judges of the Court of Criminal Appeals of Texas, which commission shall be for the aid and assistance of said court in disposing of the business before it; and shall discharge such duties as may be assigned it by said court. Each of said commissioners shall receive the same salary now or hereafter paid, and at the same time as do the judges of said court, and two stenographers for said commissioners shall be appointed by the court, who shall receive the same salary paid or to be paid the other stenographers of said court. Provided it shall not be obligatory on the Governor to appoint two such members to fill vacancy, if, in his judgment, the condition of the docket of the court does not require it, but he may, under his discretion, appoint only one such member. [Acts 1925, 39th Leg., ch. 95, p. 269, § 1; Acts 1927, 40th Leg., p. 56, ch. 40, § 2.]

Art. 1811b. Term of office.—Said commissioners shall hold office for a term of two years from the date of their appointment, and any vacancy occurring on said commission may be filled by the Governor for the unexpired term. [Acts 1925, 39th Leg., p. 269, ch. 95, § 2; Acts 1927, 40th Leg., p. 56, ch. 40, § 3.]

Art. 1811c. Approval of opinions.—All opinions of said commissioners shall be submitted to the Court of Criminal Appeals of Texas and shall receive the approval of said court or a majority of them, before handed down as opinions of said court, and when so approved and handed down, shall have the same weight and legal effect as if originally prepared and handed down by said Court of Criminal Appeals of Texas, and not otherwise. [Acts 1925, 39th Leg., ch. 95, p. 269, § 3; Acts 1927, 40th Leg., p. 56, ch. 40, § 4.]

Art. 1811d. Salary and expenses.—The sum of thirty thousand ($30,000.00) dollars, or so much thereof as may be necessary is hereby appropriated to be paid out of the State Treasury for the purpose of paying the salaries of the two commissioners hereinabove provided for and to pay such other expenses incident to said commission as may be found necessary by the Court of Criminal Appeals. [Acts 1925, 39th Leg., ch. 95, p. 270, § 4.]

TITLE 39

COURTS OF CIVIL APPEALS

Chap.

1. Terms and Jurisdiction.
2. Clerks and Employés.
3. Proceedings.
4. Certification of Questions.
5. Judgment of the Court.
6. Conclusions of Fact and Law.
7. Rehearing.
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CHAPTER ONE

TERMS AND JURISDICTION

Art.

1812. Three justices.
1813. Election and term of office.
1814. Qualifications of judges.
1815. Special judge.
1816. Terms of court.
1817. Location of courts.
1818. Adjournment.
1819. Jurisdiction defined.
1820. Judgment conclusive on facts.
1821. Judgment conclusive on law.
1822. Inquiry into jurisdiction.
1823. Writs of mandamus, etc.
1824. May mandamus district courts.
1825. Issuance of process.
1826. May punish for contempt.

Article 1812. [1580] [987] Three Justices.—Each Court of Civil Appeals shall consist of a Chief

Justice and two Associate Justices. A majority shall be a quorum for the transaction of business, and the concurrence of two Justices shall be necessary to a decision. [Acts 1st C. S. 1892, p. 25; G. L. vol. 10, p. 389.]

Art. 1813. [1581] [988] Election and term of office.—The Justices of each Court of Civil Appeals shall be elected at the general election by the qualified voters of their respective districts. Upon their qualification, after the first election after the creation of any Court of Civil Appeals, the Justices shall draw lots for the terms of office; those drawing number one shall hold for the term of two years; those drawing number two shall hold for a term of four years, and those drawing number three shall hold office for six years. Each of said offices shall be filled by election at the next general election before the respective terms expire; and the person elected shall thereafter hold his office for six years. [Id.]

Art. 1814. [1582] [989] Qualifications of Judges.—No person shall be eligible to the office of Justice of a Court of Civil Appeals, unless he be at the time of his election thirty years of age or over, a resident of the district from which he is elected, and has been a practicing lawyer or a judge of a court of this State, or such lawyer and judge together, at least seven years. [Id.]

Art. 1815. [1584] [1021] Special judge.—If all or any two members of any Court of Civil Appeals shall be disqualified to determine any cause in such court, that fact shall be certified to the Governor, who shall immediately commission the requisite number of persons, learned in the law, to try and determine said cause. [Id.]

Art. 1816. [1585] Terms of Court.—The term of each Court of Civil Appeals of the State of Texas shall begin on the first Monday in October of each year and shall continue in session until the first Monday in October the next succeeding year; provided that the Justices of each of said Courts shall be permitted to take a vacation of eight weeks during each year at such time as the Court may fix, during which period the Court shall not be adjourned but shall be in recess and may be called together by the Chief Justice or by the two Associate Justices in case business requiring immediate disposal should arise. [Acts 1897, p. 132; G. L. vol. 10, p. 1186; Acts 1927, 40th Leg., p. 120, ch. 79, § 1; Acts 1927, 40th Leg., 1st C. S., p. 147, ch. 50, § 1.]

Art. 1817. [1586] [993] Location of courts.—A Court of Civil Appeals shall be held at the following places, respectively:

1. In the First Supreme Judicial District, in the City of Galveston.
2. In the Second Supreme Judicial District, in the City of Fort Worth.
3. In the Third Supreme Judicial District, in the City of Austin.
4. In the Fourth Supreme Judicial District, in the City of San Antonio.
5. In the Fifth Supreme Judicial District, in the City of Dallas. [Acts 1892, S. S. p. 25; G. L. vol. 10, p. 389.]
6. In the Sixth Supreme Judicial District, in the City of Texarkana. [Acts 1907, p. 324.]
7. In the Seventh Supreme Judicial District, in the City of Amarillo. [Acts 1911, p. 269; Acts 1915, p. 121.]
8. In the Eighth Supreme Judicial District, in the City of El Paso. [Id.]
9. In the Ninth Supreme Judicial District, in the City of Beaumont. [Id.]
10. In the Tenth Supreme Judicial District, in the City of Waco. [Id.; Acts 1923, p. 152.]
11. The Eleventh Supreme Judicial District in the City of Eastland. [Acts 1925, p. 258.]
12. The cities of Beaumont, Waco and Eastland, respectively, shall furnish and equip suitable rooms for the Court of Civil Appeals therein, and for the justices thereof, without cost or expense to the State. [Id.]

Art. 1818. [1588] [955] Adjournment.—Such courts may adjourn from day to day or for such time as they may deem proper. If a quorum is not present at the first or any day of the term, any judge of the court or the bailiff thereof may adjourn the court from time to time until a quorum shall be in attendance, but the court shall not be finally adjourned for the term. [Acts 1895, p. 79; G. L. vol. 10, p. 809.]

Art. 1819. [1589] [996] Jurisdiction defined.—The appellate jurisdiction of the Courts of Civil Appeals shall extend to civil cases within the limits of their respective districts:

1. Of which the district courts have original or appellate jurisdiction.
2. Of which the county court has original jurisdiction, or of which the county court has appellate jurisdiction when the amount in controversy or the judgment rendered shall exceed one hundred dollars, exclusive of interest and costs. [Acts 1895, p. 79; G. L. vol. 10, p. 809.]

Art. 1820. [1590] [996] Judgment conclusive on facts.—The judgments of the Courts of Civil Appeals shall be conclusive in all cases on the facts of the case. [Id.]

Art. 1821. [1591] [996] Judgment conclusive on law.—The judgments of the Courts of Civil Appeals shall be conclusive on the law and facts, nor shall a writ of error be allowed thereto from the Supreme Court in the following cases, to-wit:

1. Any civil case appealed from the county court or from a district court, when, under the Constitution, a county court would have had original or appellate jurisdiction to try it, except in probate matters and in cases involving the revenue laws of the State or the validity of construction of a statute, or cases involving conflicts between decisions of the Courts of Civil Appeals or between a decision of a Court of Civil Appeals and a decision of the Supreme Court.
2. All cases of boundary.
3. All cases of slander.
4. All cases of divorce.
5. All cases of contested elections of every character other than for State officers, except where the validity of the statute is attacked by the decision.
6. In all appeals from interlocutory orders appointing receivers or trustees, or such other interlocutory appeals as may be allowed by law.
7. In all other cases as to law and facts, except where appellate jurisdiction is given to the Supreme Court and not made final in said Courts of Civil Appeals. [Acts 1st C. S. 1892, p. 25; Acts 1923, p. 110.]

Art. 1822. [1593] [998] Inquiry into jurisdiction.—Said court shall have power, upon affidavit or otherwise as by the courts may be thought proper, to ascertain such matters of fact as may be necessary to the proper exercise of their jurisdiction. [Id.]

Art. 1823. [1592] [997] Writs of mandamus, etc.—Said courts and the judges thereof may issue writs of mandamus and all other writs necessary to enforce the jurisdiction of said courts. [Id.]

Art. 1824. [1595] [1000] May mandamus district courts.—Said courts, or any judge thereof, in vacation, may issue the writ of mandamus to compel a judge of the district court to proceed to trial and judgment in a cause, returnable as the nature of the case may require. [Id.]

Art. 1825. [1645] [1034] Issuance of process.—Any writ or process issuing from any Court of Civil Appeals shall bear the test of the Chief Justice under the seal of said court and signed by the clerk thereof, and be directed to the sheriff or any constable of any county in the State, and be, by such officer, executed according to the command thereof and returned to the court from which it emanated. Whenever such writ or process shall not be executed, the clerk of said court shall issue another like process or writ upon the application of the party suing out the former writ or process to the same or any other county. [Acts 1st C. S. 1892, p. 25; G. L. vol. 10, p. 389.]

Art. 1826. [1594] [999] May punish for contempt.—They may punish any person for a contempt of said courts, not to exceed one thousand dollars fine or imprisonment not exceeding twenty days. [Id.]

CHAPTER TWO

CLERKS AND EMPLOYÉS

Art.
1827. Appointment of clerk.
1828. Bond.
1829. Removal.
1830. Seal of court.
1831. Records and judgments.
1832. Librarian.
1833. Deputy clerks.
1834. Disposition of costs.
1835. Report of costs collected.
1836. Stenographers.

Article 1827. [1596–7] Appointment of clerk.—Each Court of Civil Appeals shall appoint for a term of two years one clerk who shall reside at the place of holding Court. If the office becomes vacant in vacation, the appointment shall be made by the Chief Justice and one Associate. Each appointment shall be noted in the minutes of the Court. Whenever the necessity occurs, the Court may appoint a clerk pro tem. [Acts 1st C. S. 1892, p. 25.]

Art. 1828. [1596] Bond.—The clerk shall first make a bond for five thousand dollars payable to the Governor, conditioned for the faithful performance of the duties of his office, to be approved by any judge of his court. [Id.]

Art. 1829. [1598] [1003] Removal.—The clerk may be removed by the court for neglect of duty or malfeasance in office on motion specifying the particular charge preferred. In such case the court shall determine the law and the facts after having given such clerk ten days previous notice of the hearing. [Id.]

Art. 1830. [1599] [1004] Seal of court.—Each clerk shall procure a seal for the use of the court, which shall have a star of five points with "Court of Civil Appeals of the State of Texas" engraved thereon. [Id.]

Art. 1831. [1600–1] Records and judgments.—Each clerk shall file and carefully preserve all records certified to his court and all papers relative thereto, docket all causes in the order in which they are filed, record the proceedings and decisions of said court, and certify their judgments to the proper court. [Id.]

Art. 1832. [1603–4] Librarian.—Each clerk shall be librarian in charge of the library of his court, and shall take charge of, keep in good order and make catalogs of the books thereof. [Id.]

Art. 1833. [1602] [1007] Deputy clerks.—Each clerk may appoint one chief deputy. With the approval of the court he may appoint additional deputies who shall be paid out of the fees collected by the clerk, not to exceed one hundred dollars a month. Each deputy shall give bond to the clerk for the faithful discharge of his duty. [Id.]

Art. 1834. Disposition of costs.—Each clerk of a Court of Civil Appeals shall collect and pay into the State Treasury all costs collected by him, under such regulations as the Comptroller may prescribe and the judges of said Court approve. [Acts 1923, p. 129.]

Art. 1835. [1605] [1010] Report of costs collected.—Each clerk shall, within ten days after the first day of January and July, make a sworn report to his court showing the amount of costs collected by him during the previous six months, the causes in which the same were collected, and the disposition made of such costs. This report shall be filed and recorded in the minutes of said court. [Acts 1st C. S. 1892, p. 25.]

Art. 1836. [1606] [1012] Stenographers.—Each court may appoint one stenographer who shall be sworn to keep secret all matters which may come to his knowledge as such stenographer, and who shall give bond for two thousand dollars payable to the State of Texas, conditioned for the faithful performance of his duties, to be approved by the Chief Justice of said Court. [Acts 2nd C. S. 1919, p. 100.]

CHAPTER THREE

PROCEEDINGS

Art.
1837. Trial.
1838. Unapproved bills of exceptions.
1839. Time to file transcript.
1840. New appeal bond allowed.
1841. Certificate of affirmance.
1842. Cause heard after affirmance on certificate.
1843. Filing transcript after adjournment.
1844. Assignments of error.
1845. Docket of causes.
1846. Appearance by brief, etc.
1847. Service of notice.
1848. Order of hearing.
1849. Order of deciding cases.
1850. Death does not abate.

Article 1837. [1607] [1014] Trial.—A trial in a Court of Civil Appeals shall be:

1. On a statement of facts.
2. Or on statement of the pleadings and proof as agreed upon by the parties or their attorneys.
3. Or upon the conclusions of law and findings of fact certified by the judge of the trial court.
4. Or upon a statement of facts certified by the judge of the trial court.
5. Or upon a bill of exceptions to the opinion of the judge.
6. Or upon a special verdict.
7. Or upon an error in law either assigned or apparent upon the face of the record.

If none of the foregoing exists, the case shall be dismissed with costs alone or with costs and damages, in the discretion of the court. [Acts 1st C. S. 1892, p. 25; G. L. vol. 10, p. 389.]

Art. 1838. [1607] [1014] Unapproved bills of exceptions.—Where it appears to the satisfaction of the court that the facts stated in a bill of exceptions are fairly stated and that said bill was prepared in accordance with the law governing the preparation of such bills, and that the judge trying the cause refused to sign the same, the court shall admit, as part of the record, such unsigned bill of exception; and the truth of any such bill of exceptions shall be determined by the court on the copies of the affidavits required by law to be made in such case, such copies to be contained in, and to form a part of the record sent to the Court of Civil Appeals. [Id.]

Art. 1839. [1608] [1015] Time to file transcript.—In appeal or writ of error, the appellant or plaintiff in error shall file the transcript with the clerk of the Court of Civil Appeals within ninety days from the perfection of the appeal or service of the writ of error; provided, that for good cause, the court may permit the transcript to be thereafter filed upon such terms as it may prescribe. [Id.]

Art. 1840. [1609] [1025] New appeal bond allowed.—When there is a defect of substance or form in any appeal or writ of error bond, then on motion to dismiss the same for such defect, the appellate court may allow the same to be amended by filing in such appellate court a new bond, on such terms as the court may prescribe. [Id.]

Art. 1841. [1610] [1016] Certificate of affirmance.—If the appellant or plaintiff in error shall fail to file a transcript of the record, as directed in this chapter, then the appellee or defendant in error may file with the clerk of said court a certificate of the clerk of the district or county court in which such appeal or writ of error may have been taken, attested by the seal of his court, stating the time when and how such appeal was perfected or such citation was served; whereupon the Court of Civil Appeals shall affirm the judgment of the Court below, unless good cause can be shown why such transcript was not so filed. If a copy of the bond accompanies such certificate of the district or county clerk, the judgment shall, in like manner, be affirmed against the sureties on such bond. [Id.]

Art. 1842. [1611] [1017] Cause heard after affirmance on certificate.—In all cases where a Court of Civil Appeals has affirmed the judgment, under the provisions of the preceding article, said court may, at any time within fifteen days after such affirmance, permit the transcript to be filed by the appellant or plaintiff in error, and the case to be tried on its merits; provided appellant or plaintiff in error shall show to the court good cause why the transcript was not filed by him as provided in this chapter, and shall also show to said court that he has given the appellee or defendant in error notice of his intention to apply for such permission to file said transcript. [Id.]

Art. 1843. [1611] [1017] Filing transcript after adjournment.—Where the court shall adjourn within fifteen days after judgment was affirmed on certificate, it may permit the appellant or plaintiff in error to file his transcript at such time as may be deemed proper, and have the cause tried on its merits; provided, said appellant or plaintiff in error shall show good cause why said transcript was not filed as herein directed, and shall show to the court that he has given the appellee or defendant in error notice of his intention to apply for permission to file said transcript. [Id.]

Art. 1844. [1612] [1018] Assignments of error.—Before he takes the transcript from the clerk's office, the appellant or plaintiff in error shall file with the Clerk of the Court below all assignments of error, distinctly specifying the grounds on which he relies. Where a motion for new trial has been filed, the assignments therein shall constitute the assignments of error and need not be repeated by filing separate assignments of error. All errors not distinctly specified are waived, but an assignment shall be sufficient which directs the attention of the Court to the error complained of. [Id.; Acts 1913, p. 276.]

Art. 1845. [1613] [1022] Docket of causes.—When a cause is carried to a Court of Civil Appeals by writ of error, it shall be docketed in the order received. The clerk shall transfer said cause to the trial docket within thirty days after the same has been received and docketed. For good cause shown after notice to the adverse party, the Court may upon motion of either party extend the time for placing said cause on the trial docket. [Acts 1892, p. 25.]

Art. 1846. [1614] [1019] Appearance by brief, etc.—The attorneys for both the plaintiff and defendant may file written, typewritten or printed briefs or argument [s], if written not to exceed fifteen pages; and the Court shall be required to notice the same as if it were the personal appearance of said attorney, and shall not dismiss any suit or cause where such brief or argument is filed with the papers for want of further prosecution. [Acts 1st C. S. 1909, p. 270; Acts 1921, p. 210.]

Art. 1847. [1615] [1020] Service of notice.—All notices required herein to be given to parties or their attorneys of record shall be served by the clerk sending said notice to the attorneys by registered letter through the mail properly directed. Registration receipts shall be filed and kept by the clerk with the record of the cause.

Art. 1848. [1616] [1022] Order of hearing.—Causes on the trial docket of said court shall be submitted in the order of the date of filing, except as otherwise provided, unless continued to some future time for good cause shown; and the clerk shall notify the parties or their attorneys of record of the date set for hearing. [Acts 1st C. S. 1892, p. 30.]

Art. 1849. [1617] [1023] Order of deciding cases.—Cases shall be decided in the order in which they are filed at each term of the court, but the following cases shall have precedence of all others in the order named:

1. Cases in which the Railroad Commission is a party.
2. Cases in which the State is a party.
3. Cases submitted on oral argument for all parties to the cause.
4. Such other cases as the court, by order or rule, may direct. [Id.]

Art. 1850. [1618] [1026] Death does not abate.—If any party to the record in a cause pending in a Court of Civil Appeals shall die after the appeal bond is filed and approved or after the writ of error has been served, and before the cause has been decided, such cause shall not abate, but the court shall proceed to adjudicate the case and render judgment therein as if all parties thereto were still living. Such judgment shall have the same force and effect as if rendered in the lifetime of all the parties thereto. [Id.]

CHAPTER FOUR

CERTIFICATION OF QUESTIONS

Art.
1851. Questions of law certified.
1852. Certifying dissent.
1853. Papers sent to Supreme Court.
1854. Decision of Supreme Court.
1855. What questions certified.

Article 1851. [1619] [1043] Questions of law certified.—Whenever there shall arise an issue of law which a Court of Civil Appeals should deem advisable to present to the Supreme Court for adjudication, the presiding judge shall certify the question to be decided by the Supreme Court. Pending the decision of the Supreme Court, the cause in which the issue is raised shall be retained for judgment in harmony with the decision of the Supreme Court upon the issue submitted. [Acts 1893, p. 100; G. L. vol. 10, p. 530.]

Art. 1852. [1620] [1040] Certifying dissent.—When a dissenting opinion is rendered by one judge as to a conclusion of law material to a decision of the case, the grounds of his dissent shall be entered of record by the dissenting member. Upon motion of a party or upon its own motion the court shall certify the point or points of dissent to the Supreme Court. The provisions hereof shall apply to cases appealed from the county court as well as from the district court. [Acts 1893, p. 89; G. L. vol. 10, p. 519; Acts 1923, p. 72.]

Art. 1853. [1621] [1041] Papers sent to Supreme Court.—When a certificate of dissent is sent up by any Court of Civil Appeals, the clerk shall send up a certified copy of the conclusions of fact and law as found by the court, and the questions of law upon which there is a division, also the original transcript, if so ordered by the Supreme Court. [Id.]

Art. 1854. [1622] [1042] Decision of Supreme Court.—When the Supreme Court decides a question certified to it by a Court of Civil Appeals, such decision shall be binding upon the Court of Civil Appeals. [Id.]

Art. 1855. [1623] What questions certified.—Where a decision of a Court of Civil Appeals is in conflict with an opinion rendered by the Supreme Court of Texas or by some other Court of Civil Appeals in this State on any question of law, and such Court of Civil Appeals refuses to concur with the opinion rendered by the Supreme Court or such Court of Civil Appeals, the court refusing to concur with the conflicting opinion shall transmit the question of law involved in the cause wherein said conflict of opinion has arisen, duly certified, together with the record or transcript in such cause, to the Supreme Court for adjudication by the Supreme Court. [Acts 1899, p. 170; Acts 1923, p. 94.]

CHAPTER FIVE

JUDGMENT OF THE COURT

Art.
1856. If judgment reversed.
1857. Judgment on affirmance or rendition.
1858. Judgment enforced, etc.
1859. No reversal for want of form.
1860. Affirmance with damages for delay.
1861. Remittitur.
1862. Suggestion of remittitur.
1863. Refusal to remit not to be alluded to.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art.
1864. Mandate issued, when.
1865. No mandate until costs paid.
1866. Affidavit of inability.
1867. Mandate to issue in twelve months.
1868. When judgment set aside.
1869. Execution on failure to pay costs.
1870. Appellant on reversal to recover costs.
1871. Return of execution, when.
1872. Officer failing to make return.

Article 1856. [1626] [1027] If judgment reversed.—When the judgment or decree of the court below shall be reversed, the court shall proceed to render such judgment or decree as the court below should have rendered, except when it is necessary that some matter of fact be ascertained or the damage to be assessed or the matter to be decreed is uncertain, in either of which cases the cause shall be remanded for a new trial. [Acts 1st C. S. 1892, p. 25; G. L. vol. 10, p. 389.]

Art. 1857. [1627] [1028] Judgment on affirmance or rendition.—When a court of civil appeals affirms the judgment or decree of the court below, or proceeds to render such judgment or decree as should have been rendered by the court below, and such judgment shall be for the same or a greater amount or of the same nature as rendered in the court below, said court shall render judgment against the appellant or plaintiff in error and his sureties on the appeal bond, subject to such disposition as to costs on said appeal as said court may order. Said appellate courts shall in their discretion include in their said judgment or decree such damages, not exceeding ten per cent on the amount of the original judgment as they may deem proper; and the judgment or decree of said courts rendered as contemplated in this article shall be final. [Id.; Acts 1921, p. 54.]

Art. 1858. [1646] [1035] Judgment enforced, etc.—Upon the rendition by any court of civil appeals of any such judgment or decree as is contemplated in the preceding article, the lower court from which the cause was removed need not make any further order or decree therein; but the clerk of said lower court, on receipt of the mandate of the Supreme Court or Court of Civil Appeals, shall proceed to issue execution thereon as in other cases. [Acts 1st C. S. 1892, p. 25; G. L. vol. 10, p. 389.]

Art. 1859. [1628] [1024] No reversal for want of form.—There shall be no reversal on appeal or writ of error, nor shall the same be dismissed for want of form, provided sufficient matter or substance be contained in the record to enable the court to decide the cause upon its merits. [Id.]

Art. 1860. [1629] [1024] Affirmance with damages for delay.—Where the court shall find that an appeal or writ of error has been taken for delay, and that there was no sufficient cause for taking such appeal, then the appellant or plaintiff in error, if he be the defendant in the court below, shall pay ten per cent on the amount in dispute as damages, together with the judgment, interest and cost of suit thereon accruing. [Id.]

Art. 1861. [1630] [1024] Remittitur.—If, in any judgment rendered in the district or county court, there shall be an excess of damages rendered, and before the plaintiff has entered a release of same in such court in the manner provided by law, such judgment shall be removed to the Court of Civil Appeals. It shall be lawful for the party in whose favor such excess of damages has been rendered to make such remittitur in the Court of Civil Appeals in the same manner as such release is required to be made in the district or county court. Upon such release being filed in said court, after revising said judgment, said Court of Civil Appeals shall proceed to give such judgment as the court below ought to have given if the release had been filed therein. [Id.]

Art. 1862. [1631] [1029] Suggestion of remittitur.—In civil cases appealed to a Court of Civil Appeals, if such court is of the opinion that the verdict and judgment of the trial court is excessive and that said cause should be reversed for that reason only, then said appellate court shall indicate to such party, or his attorney, within what time he may file a remittitur of such excess. If such remittitur is so filed, then the court shall reform and affirm such judgment in accordance therewith; if not filed as indicated, then to be reversed. [Acts 1893, p. 89; G. L. vol. 10, p. 519.]

Art. 1863. [1632] [1029] Refusal to remit not to be alluded to.—Whenever a Court of Civil Appeals shall indicate that a verdict is excessive, and no remittitur shall be filed, no evidence shall be allowed, nor allusion made in a subsequent trial to the action of such appellate court in reference to the amount of excess of such verdict. [Id.]

Art. 1864. [1633] [1029] Mandate issued when.—If no writ of error be sued out, or motion for rehearing be filed, within thirty days after the decision of the court has been entered in a Court of Civil Appeals, the clerk of the court shall, upon application of either party and the payment of all costs, issue a mandate upon said judgment. [Id.]

Art. 1865. [1634] [1036] No mandate until costs paid.—On the rendition of a final judgment or decree in the Court of Civil Appeals, the clerk of said court shall not issue and deliver the mandate of the Court, nor certify the proceedings to the lower court, until all costs accruing in the case in such appellate court have been paid, subject, however, to the provisions of the succeeding article. [Acts 1897, p. 18; G. L. vol. 10, p. 1072.]

Art. 1866. [1635] [1036] Affidavit of inability.—If the party against whom the costs are adjudged shall make affidavit of his inability to pay the same or give security therefor, he may apply to the Court of Civil Appeals in which the case is pending for an order to require the clerk to issue the mandate or to certify the proceedings, as the case may be; which motion shall be granted by said court, unless the clerk or a party to the record shall controvert the truth of such affidavit and satisfy the court that such motion should not be granted. [Id.]

Art. 1867. [1559] Mandate to issue in twelve months.—In cases which have been reversed and remanded by a court of civil appeals, if no mandate shall have been taken out and filed in the court where the cause originated within one year after the motion for a rehearing was overruled or final judgment rendered, then upon the filing in the court below of a certificate of the clerk of the Court of Civil Appeals where the cause was pending that no mandate has been taken out, the case shall be dismissed from the docket. [Acts 1901, p. 123.]

Art. 1868. [1560] When judgment set aside.—If a Court of Civil Appeals sets aside its judgment after the mandate has been issued, the clerk shall at once notify the party to whom the mandate was directed to return it. [Acts 1897, p. 200; Acts 1901, p. 123; G. L. vol. 10, p. 1254.]

Art. 1869. [1647] [1036] Execution on failure to pay costs.—If neither party shall pay the costs and take out the mandate within thirty days after the time when the same can be issued by law, then the clerk shall issue execution for the costs accruing in his court against the party or parties against whom such costs have been adjudged, and shall send such execution by mail to the proper officer for collection; but he shall retain the mandate until the costs have been paid or collected, subject, however, to the provisions of the third preceding article. [Acts 1897, p. 18; G. L. vol. 10, p. 1072.]

Art. 1870. [1648] [1029] Appellant on reversal to recover costs.—In any cause reversed by a Court of Civil Appeals, the appellant shall be entitled to an execution against the appellee for costs occasioned by such appeal, said costs to be taxed by the clerk of the said court. [Acts 1893, p. 89; G. L. vol. 10, p. 519.]

Art. 1871. [1649] [1037] Return of execution, when.—All executions for costs of the Courts of Civil Appeals, as authorized by law, shall be returned by the sheriff or constable to whom they are directed within four months from the date thereof. [Id.; Acts 1892, p. 25.]

Art. 1872. [1650] [1038] Officer failing to make return.—If any officer shall fail or refuse to make such return with the amount of such costs, if he has collected the same, within the time prescribed herein, or shall make a false or fraudulent return of any such execution, the clerk of said court may issue citation returnable forthwith to such officer to appear before said court and show cause, if any he can, why he has not collected and returned said costs and execution; and failing to show cause, said court may enter judgment against such officer and the sureties on his official bond for said costs, together with the costs of such proceedings. [Id.]

CHAPTER SIX

CONCLUSIONS OF FACT AND LAW

Art.
1873. Conclusions of fact and law.
1874. To state reason for reversal.
1875. Supplemental findings.
1876. Decision and opinion.

Article 1873. [1636] [1639] Conclusions of fact and law.—In all cases decided by the Courts of Civil Appeals, in which the Supreme Court has jurisdiction of an application for writ of error, the Court of Civil Appeals, within thirty days after the decision of the case, shall make and file a conclusion of fact and law upon each material point assigned as error in that court. The evidence need not be stated, except when necessary to determine upon the correctness of some ruling of the court. Such findings of fact and conclusions of law may be included in the opinion of the court.

Art. 1874. [1637] [1039] To state reason for reversal.—In cases where the judgment of the trial court shall be reversed and the cause remanded, the Court of Civil Appeals shall state its reason for the judgment. [Acts 1901, p. 121; Acts 1892, p. 25; G. L. vol. 10, p. 389.]

Art. 1875. [1638] Supplemental findings.—If either party to a case, decided by a Court of Civil Appeals, shall be of the opinion that the findings of fact are insufficient upon any material issue assigned in that court as error, such party may, in his motion for rehearing specify the point upon which there is no finding of fact, or upon which the finding made by the court is insufficient, and ask said Court to make and file conclusions of fact upon the points indicated in the motion. If the court refuses to make such findings, or if the finding made be insufficient, such action may be assigned as error in application to the Supreme Court for a writ of error. [Acts 1901, p. 121.]

Art. 1876. [1639] Decision and opinion.—The Courts of Civil Appeals shall decide all issues presented to them by proper assignments of error by either party, whether such issues be of fact or of law and announce in writing their conclusions so found. [Acts 1905, p. 71.]

CHAPTER SEVEN

REHEARING

Art.
1877. Motion for hearing.
1878. Notice, how given.
1879. Service of notice and return.
1880. When motion determined.

Article 1877. [1641] [1030] Motion for rehearing.—Any party desiring a rehearing of any matter determined by any Court of Civil Appeals, may, within fifteen days after the date of entry of the judgment or decision of the court, or the filing of the findings of fact and conclusions of law, file with the clerk of said court his motion in writing for a rehearing thereof, in which the ground relied upon for the rehearing shall be distinctly specified, and the name and residence of the counsel of the opposing party if known, and if not known then the name and residence of the opposing party as shown in the record. If the court adjourns within less than fifteen days after the rendition of the judgment, the motion may be made at such time and in such manner as may be prescribed by rules to be made by the Supreme Court. [Acts 1892, p. 25; G. L. vol. 10, p. 389.]

Art. 1878. [1642] [1031] Notice, how given.—Upon the filing of such motion with the clerk, he shall mail a certified copy thereof to the sheriff or any constable of the county in which the attorney or opposing party is alleged in said motion to reside, together with a precept commanding him to deliver the copy of the motion to the person named in such precept.

Art. 1879. [1643] [1032] Service of notice and return.—Upon receiving such precept and copy of motion the officer shall deliver the copy of the motion to the person named in said precept, if found in his county, and return by mail said precept to the court from which it issued stating thereon how he executed the same or that the party named in the precept is not to be found in his county. [Id.]

Art. 1880. [1644] [1033] When motion determined.—At any time, after five days from the return of such precept served, said courts may hear and determine motion for rehearing, and not sooner. [Id.]

CHAPTER EIGHT

WRIT OF ERROR TO SUPREME COURT

Art.
1881. Filing copy of application.
1882. Copy to defendant in error.
1883. Forward to Supreme Court.

Article 1881. [1542] Filing copy of application.—When an application for a writ of error from a Court of Civil Appeals to the Supreme Court is filed in the Court of Civil Appeals, the applicant shall at the same time deposit witih the clerk of said Court of Civil Appeals a true copy of the application and shall notify the attorney of record of the defendant in error of the deposit of said copy. [Acts 1st C. S. 1911, p. 108.]

Art. 1882. Copy to defendant in error.—On request of the defendant in error or his attorney, the clerk shall deliver the copy of the application to the defendant in error or his attorney of record and forward the record of the cause with the application for a writ of error to the clerk of the Supreme Court within the time prescribed by law. [Id.]

Art. 1883. [1541–2] Forward to Supreme Court.—When a petition for a writ of error to the Supreme Court is filed with the Clerk of a Court of Civil Appeals, he shall note upon his record the filing of said petition, and promptly forward the same to the clerk of the Supreme Court with the original record in the case and the opinion of the Court of Civil Appeals, the motions filed therein, certified copies of the judgment and orders of the Court of Civil Appeals, and a copy of the appeal or the supersedeas bond of the plaintiff in error. [Acts 1895, p. 144, G. L. vol. 10, p. 874.]

TITLE 40

COURTS—DISTRICT

Chap.
1. The Judge.
2. District Clerk.
3. Powers and Jurisdiction.
4. Terms of Court.

CHAPTER ONE

THE JUDGE

Art.
1884. Election and qualification.
1885. Disqualification.
1886. Record of agreement.
1887. Special judge, when.
1888. Voting for special judge.
1889. Election for special judge.
1890. Failure of officers to act.
1891. Record of the election.
1892. Effect of such record.
1893. Other elections for special judge.

Article 1884. [1671–1672] Election and qualification.—For each judicial district there shall be elected at the general election for a term of four years a judge who shall be at least twenty-five years of age, a practicing attorney or a judge of a court in this State for four years and a resident of the district in which he is elected for two years next before his election. He shall reside in his district during his term of office. [Const., art. 5, sec. 7; art. 16, sec. 17.]

Art. 1885. [1676] [1069] Disqualification.—No change of venue shall be necessary because of the disqualification of a district judge, but he shall immediately certify his disqualification to the Governor, whereupon the Governor shall designate some district judge in an adjoining district to exchange and try such case or cases, and he shall notify both of said judges of such order; and such judges shall exchange districts for the purpose of disposing of such case or cases. If said judges be prevented from exchanging districts, the parties or their counsels may agree upon an attorney of the court for the trial thereof, and failing to agree, such fact shall be certified to the Governor by the district judge, or the special judge, whereupon the Governor shall appoint a person legally qualified to act as judge in the trial of the case. [Acts 1st C. S. 1897, p. 39; Acts 1915, p. 86; G. L. vol. 10, p. 1479.]

Art. 1886. [1677] [1070] Record of agreement.—Whenever a special judge is agreed upon for the trial of a particular cause, the clerk shall enter in the minutes of the court, as a part of the proceedings in such cause, a record showing:

1. That the judge of the court was disqualified to try the cause; and

2. That such special judge (naming him) was, by consent agreed upon by the parties to try the cause; and

3. That the oath prescribed by law has been duly administered to him. [Acts 1897, S. S. p. 39; Acts 1876, p. 141; G. L. vol. 8, p. 976; G. L. vol. 10, p. 1479.]

Art. 1887. [1678] [1071] [1094] Special judge, when.—Should the judge of a district court on the first or any future day of a term, fail or refuse to hold the court, the practicing lawyers of the court present may elect from among their number a special judge who shall hold the court and proceed with the business thereof. [Acts 1876, p. 140; G. L. vol. 8, p. 976.]

Art. 1888. [1679] [1072] [1095] Voting for special judge.—Such election shall be by ballot, and each practicing lawyer in attendance at such court shall be entitled to participate in such election and shall be entitled to one vote. A majority of the votes of the lawyers participating shall be necessary to the election of such special judge. [Id.]

Art. 1889. [1680] [1073] [1096] Election for special judge.—The election shall be conducted as follows: The sheriff or constable shall make proclamation at the court house door that the election of a special judge of the court is about to be made by the practicing lawyers present; the clerk shall then make a list of the practicing lawyers present; and such lawyers shall then organize and hold the election. [Id.]

Art. 1890. [1681] [1074] [1097] Failure of officers to act.—Should the sheriff, constable, and clerk, or either of them, fail or refuse to act, the said practicing lawyers may nevertheless proceed to organize themselves into such electoral body, and appoint a sheriff and clerk pro tempore to do the duties of such officers respectively. [Id.]

Art. 1891. [1682] [1075] [1098] Record of the election.—The clerk shall enter upon the minutes of the court a record of the election of such special judge, showing:

1. The names of all the practicing lawyers present and participating in such election.

2. The fact that the public proclamation was made at the court house door that such election was about to take place.

3. The number of ballots polled at such election and the number polled for each person, and the result of the election.

4. That the oath prescribed by law has been duly administered to the special judge. [Id.]

Art. 1892. [1683] [1076] [1099] Effect of such record.—The record of such proceedings, substantially complying with the requirements of the law, shall be conclusive evidence of the election and qualification of such special judge. [Id.]

Art. 1893. [1684] [1077] [1100] Other elections for special judge.—Like elections may be held from time to time during the term of the court to supply the absence, failure or inability of the judge, or of any special judge, to perform the duties of the office. [Id.]

CHAPTER TWO

DISTRICT CLERK

Art.
1894. Election and term.
1895. Vacancy.
1896. Clerk pro tem.
1897. Bond and oath.
1898. Deputies.
1899. To record proceedings.
1900. Report of fines and jury fees.
1901. Custody and care of records.
1902. Indexes to judgments.
1903. Joint clerk.
1904. Use of court seal.
1905. Seal of the court.

Article 1894. [1685] [1078] [1100] Election and term.—A clerk for the district court of each county shall be elected at each general election for a term of two years. [Const. art. 5, sec. 9; art. 16, sec. 17.]

Art. 1895. [1686] [1079] [1101] Vacancy.—Whenever a vacancy occurs in the office of district clerk, it shall be filled by the district judge of such county; and such appointee shall give bond and qualify and may hold his office until the next general election. Where a vacancy occurs in a county having two or more district courts, the vacancy shall be filled by the judges of such courts; and if they fail to agree, the Governor, upon the certificate of such judges, shall order a special election to fill such vacancy. [Id.; Acts 1876, p. 233; Acts 1891, p. 5; G. L. vol. 8, p. 1069.]

Art. 1896. [1687–8] Clerk pro tem.—Where a district clerk is a party to any pending or proposed suit, motion or proceeding in his court, the district judge in whose court the same may be pending or proposed, shall, on application of any person interested, or on his own motion, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. Such temporary clerk shall take an oath to faithfully and impartially perform the duties of such appointment, and shall also enter into bond, payable to the State of Texas, in an amount to be fixed by the judge and to be approved by him, conditioned for the faithful performance of his duties under such appointment. Such appointee shall perform each duty required by law of

the clerk in the particular suit, motion or proceeding in which he may be appointed. [Acts 1887, p. 102; G. L. vol. 9, p. 900.]

Art. 1897. [1689] [1082] [1102] Bond and oath.—Each district clerk, before entering upon his official duties, shall give bond, to be approved by the Commissioners court of the county, payable to the Governor, in the sum of five thousand dollars, conditioned for the faithful discharge of the duties of his office, and shall also take and subscribe the official oath which shall be indorsed upon the bond. Such bond and oath shall be filed and recorded in the office of the county clerk. [Acts 1846, p. 203; P. D. 500; G. L. vol. 2, p. 1510.]

Art. 1898. [1690–92] Deputies.—The district clerk may appoint one or more deputies by a written appointment under his hand and the seal of his court, which shall be filed and recorded in the office of the county clerk. When the clerk does not reside at the county seat he shall have a deputy or deputies residing there. [Id.]

Art. 1899. [1694] [1087] [1107] To record proceedings.—Such clerks shall keep a fair record of all the acts done, and proceedings had, in their respective courts; enter all judgments of the court, under direction of the judge, and keep a record of all executions issued and the returns thereon, in record books to be kept for the purpose.

Art. 1900. [1696] [1089] [1109] Report of fines and jury fees.—On the last day of each term of the court, the clerk shall make a written statement showing all moneys received by him for jury fees and fines, with the name of each party from whom received, up to the date of such statement, and since his previous statement; and also the name of each juror who has served at such term, the number of days he served, and the amount due him for such services. Such statement shall be examined, corrected, approved, and signed by the presiding judge. Such statement, when so approved and signed shall be recorded in the minutes of the court. [Acts 1846, p. 206; P. D. 4014; G. L. vol. 2, p. 1511.]

Art. 1901. [1700] [1093] [1112] Custody and care of records.—District clerks shall have the custody of records pertaining to or lawfully deposited in their offices, and shall carefully attend to the arrangement and preservation of the same. [Id.; P. D. 502.]

Art. 1902. [1701] [1094] [1113] Indexes to judgments.—They shall provide and keep in well bound books, as part of the records, full and complete alphabetical indexes of the names of the parties to all suits filed in their courts; showing in full the names of all the parties, indexed and cross-indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. [Acts 1876, p. 25.]

Art. 1903. [1703] [1096] Joint Clerk.—In counties having a population of less than eight thousand persons, according to the preceding federal census, only one clerk shall be elected. He shall take the oath and give the bond required of clerks of both the district and county courts, and shall have the powers and perform the duties of such clerks respectively. [Const. art. 5, sec. 20; Acts 1879, p. 47; Acts 1927, 40th Leg., p. 73, ch. 49, § 1.]

Art. 1904. [1704] [1097] [1116] Use of court seal.—When a joint clerk has been elected, he shall, in performing the duties of district clerk use the seal of said court to authenticate his official acts as clerk of the district court.

Art. 1905. [1729] [1122] [1131] Seal of the court.—Each district court shall be provided with a seal, having engraved thereon a star of five points in the center and the words, "District Court of ..... County, Texas." The impress of which shall be attached to all process, except subpœnas, issued out of such court, and shall be kept by the clerk and used to authenticate his official acts. [Acts 1846, p. 201; P. D. 1411; G. L. vol. 2, p. 1508.]

CHAPTER THREE

POWERS AND JURISDICTION

Art.
1906. Original jurisdiction.
1907. Matters of probate.
1908. Over commissioners court.
1909. General jurisdiction.
1910. Motions against sheriffs, attorneys, etc.
1911. May punish for contempt.
1912. Judgments transferred and enforced.
1913. Other jurisdiction.
1914. To grant all remedial writs.
1915. Powers in vacation.
1916. May alternate, etc.
1917. Appointing attorney.
1918. Minutes read and signed.

Article 1906. [1705] [1098] [1117] Original jurisdiction.—The district court shall have original jurisdiction in civil cases of:

1. Suits in behalf of the State to recover penalties, forfeitures and escheats.
2. Cases of divorce and dissolution of marriage.
3. Suits to recover damages for slander or defamation of character.
4. Suits for the trial of title to land and for the enforcement of liens thereon.
5. Suits for trial of right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars.
6. Suits, complaints or pleas, without regard to any distinction between law and equity, when the matter in controversary [controversy] shall be valued at or amount to five hundred dollars exclusive of interest.
7. Contested elections. [Const., Art. 5.]

Art. 1907. [1706] [1099] [1118] Matters of probate.—District courts shall have appellate jurisdiction and general control in probate matters over the county courts, for appointing guardians, granting letters testamentary and of administration, probating wills, settling accounts of executors, administrators and guardians, and for the transaction of business appertaining to estates. The district court shall also have such original jurisdiction and general control over executors, administrators, guardians and minors as provided by law. [Const., art. 5, sec. 8; Acts 1846, p. 200; P. D. 1406; Amendment 1891.]

Art. 1908. [1706] [1099] [1118] Over commissioners court.—Such court shall also have appellate jurisdiction and general supervisory control over the commissioners court, with such exceptions and under such regulations as may be prescribed by law. [Id.]

Art. 1909. [1706] [1099] [1118] General jurisdiction.—Such court shall have general original jurisdiction over all causes of action, for which a remedy or jurisdiction is not provided by law or the constitution, and such other jurisdiction, original and appellate as may be provided by law. [Const., art. 5, sec. 8; Acts 1846, p. 22; P. D. 1406.]

Art. 1910. [1707] [1100] [1119] Motions against sheriffs, attorneys, etc.—The district court shall have power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys, collected under the process of said court, or other defalcation of duty in connection with such process and of motions against attorneys for moneys collected by them and not paid over. [Acts 1846, p. 201, sec. 5; P. D. 1408; G. L. vol. 2, P. 1507.]

Art. 1911. [1708] [1101] [1120] May punish for contempt.—The district court may punish any person guilty of contempt of such court by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days. [Acts 1846, p. 201; P. D. 1409; G. L. vol. 2, p. 1507.]

Art. 1912. [1711] [1105] Judgments transferred and enforced.—When a district clerk

shall receive from the county clerk a certified copy of a judgment rendered in any civil or criminal case in the county court where the civil and criminal jurisdiction, or either, of the county court has been transferred to the district court, he shall immediately record such judgments in the minutes of the district court; and the said district court shall enforce said judgments by execution or otherwise, as other judgments rendered in said district court are enforced. [Acts 1879, p. 11; G. L. vol. 8, p. 847.]

Art. 1913. [1712] [1106] [1122] Other jurisdiction.—Subject to the limitations stated in this chapter, the district court is authorized to hear and determine any cause which is cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. [Acts 1846, p. 201; P. D. 1410; G. L. vol. 2, p. 1507.]

Art. 1914. [1713] [1107] [1123] To grant all remedial writs.—Judges of the district courts may either in term time or in vacation, grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. [Acts 1846, p. 200; P. D. 1407; G. L. vol. 2, p. 1507.]

Art. 1915. [1714] Powers in vacation.—Judges of the district courts may in vacation, by consent of the parties, exercise all powers, make all orders, and perform all acts, as fully as in term time, and may, by consent of the parties, try any civil case, except divorce cases, without a jury and enter final judgment. All such proceedings shall be conducted under the same rules as if done in term time; and the right of appeals and writ of error shall apply as if the acts had been done in term time. [Acts 1909, S. S. p. 352.]

Art. 1916. [1715] [1108] [1124] May alternate, etc.—A judge of the district court may hold court for or with any other district judge; and the judges of such courts may exchange districts whenever they deem it expedient. [Acts 1846, p. 202; P. D. 1418; G. L. vol. 2, p. 1509.]

Art. 1917. [1716] [1109] [1125] Appointing attorney.—Judges of district courts may appoint counsel to attend to the cause of any party who makes affidavit that he is too poor to employ counsel to attend to the same. [Id.; P. D. 1414.]

Art. 1918. [1127–1128] Minutes read and signed.—The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, corrected and signed in open court by the judge. Each special judge shall sign the minutes of such proceedings as were had before him. [Acts 1846, p. 202; P. D. 1415; G. L. vol. 2, p. 1509.]

CHAPTER FOUR

TERMS OF COURT

Art.
1919. Terms of court.
1919a. Terms of district court in unorganized county being organized.
1920. Special terms.
1921. Summoning juries.
1922. Adjournment of term.
1923. Extension of term.
1924. Extension in certain counties.
1925. Effect of extension.
1926. Citation by publication, etc.

Article 1919. [1718] [1111] [1127] Terms of court.—Each judge of the district courts shall hold the regular terms of his court at the county seat of each county in the district twice in each year, unless additional terms should be prescribed by law, and shall hold such special terms as may be required by law. [Const. art. 5, sec. 7.]

Art. 1919a. Terms of district court in unorganized county being organized.—Whenever any unorganized county within this State has become organized or may hereafter become organized, there being no time fixed by law for holding District Court in such counties, the District Judge in whose Judicial District such county is situated shall fix times to hold at least two terms of court each year in each of such counties, by a written declaration, to be forwarded by the District Judge to the District Clerk of the County, and by him spread on the minutes of the District Court. When the times are so fixed they shall not be changed, except by an act of the Legislature. [Acts 1927, 40th Leg., p. 132, ch. 85, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 132, ch. 85, repeals all conflicting laws and parts of laws.

Art. 1920. [1720–3] Special terms.—Whenever a district judge deems it advisable to hold a special term of the district court in any county in his district, such special term may be held; and such judge may convene such term at any time which may be fixed by him. Such district judge may appoint jury commissioners, who may select and draw grand and petit jurors in accordance with the law. Such jurors may be summoned to appear before such district court at such time as may be designated by the judge thereof. In the discretion of the district judge, a grand jury need not be drawn or empaneled. No new civil cases can be brought to a special term of the district court. [Const. art. 5, sec. 7; Acts 1879, p. 42; Acts 1905, p. 116; G. L. vol. 8, p. 879.]

Art. 1921. [1724] [1118] Summoning juries.—The juries for a special term shall be summoned in accordance with the law regulating juries at regular terms of court. At a special term all proceedings may be had in any case which could be had at any regular term of such court. All process issued to a previous regular term or to such special term, and all orders, judgments and decrees, and all proceedings had in any case, civil or criminal, which would be lawful if had at a regular term, shall have the same force and effect; and any proceeding had may be appealed from as if the case were tried at a regular term. [Id.]

Art. 1922. [1725] [1119] [1128] Adjournment of term.—Should the judge of a district court not appear at the time appointed for holding the same, and should no election of a special judge be had, the sheriff of the county, or in his default any constable of the county, shall adjourn the court from day to day for three days; and if the judge should not appear on the morning of the fourth day, and should no special judge have been elected, the sheriff or constable, shall adjourn the court until the next regular term thereof. [Acts 1846, p. 203; P. D. 1412; G. L. vol. 2, p. 1510.]

Art. 1923. [1726] Extension of term.—Whenever a district court shall be in the midst of the trial of a cause when the time for the expiration of the term of said court arrives, the judge presiding shall have the power and may, if he deems it expedient, extend the term of said court until the conclusion of such pending trial. The extension of such term shall be shown in the minutes of the court before they are signed. If the term is extended as herein provided, no term of court in any other county shall fail because thereof, but the term of court therein may be opened and held as provided by law when the district judge fails to appear at the opening of a term of court. [Acts 1909, p. 114.]

Art. 1924. Extension in certain counties.—A district court in a judicial district composed of more than one county and having terms of court fixed by law in counties in which there is a city of one hundred and thirty-five thousand population, or over, according to the preceding Federal census, may, by an order of the judge thereof made and entered of record in the minutes of said court, have any of such terms of court in such last described counties extended for such length of time as such judge may deem advisable for the transaction of the business of such court. [Acts 1923, p. 25.]

Art. 1925. Effect of extension.—If any term of court is extended as provided in the preceding article,

no term of such court as fixed by law shall fail, but same shall be opened and held as provided by law. When a new term shall run concurrently in time and in the same county with an extended term, the minutes of both such terms may be recorded together during the time such terms so run concurrently. While such new term is open, each entry made in the minute records of said court, during such time shall be presumed to be the minutes of proceedings of such new term unless otherwise shown in such minutes. [Id.]

Art. 1926. Citation by publication, etc.—Any citation by publication that may be issued out of any district court described in the two preceding articles shall be made returnable and be served as prescribed by law, but if there be insufficient time after the issuance thereof to allow the publication thereof the number of times prescribed by law before the first day of the next succeeding regular term of such court, then such citation shall be made returnable to the succeeding regular term of such court, and shall command the officer to summon defendant to appear and answer plaintiff's petition at such term, by making publication thereof as prescribed by law. [Id.]

TITLE 41

COURTS—COUNTY

Chap.

1. The county judge.
2. County clerk.
3. Powers and jurisdiction.
4. Terms of court.
5. Miscellaneous provisions.

CHAPTER ONE

THE COUNTY JUDGE

Art.

1927. Election and qualification.
1928. Bond.
1929. Absence from office.
1930. Special county judge.
1931. Governor may appoint special judge.
1932. Special judge in probate matter.
1933. Appointment by wire.
1934. Election of judges.

Article 1927. [1731] [1124] [1133] Election and qualification.—A county judge who shall be well-informed in the law of this State shall be elected in each county by the qualified voters thereof, at each general election, and shall hold his office for two years. [Const. art. 5, sec. 15; art. 16, sec. 17; Acts 1876, p. 17, sec. 1; G. L. vol. 8, p. 853.]

Art. 1928. [1732] [1125] [1134] Bond.—The county judge shall, before entering upon the duties of his office, execute a bond payable to the treasurer of his county to be approved by the commissioners court of his county, in a sum of not less than one thousand nor more than ten thousand dollars, the amount to be fixed by the commissioners court, conditioned that he will pay over to the person or officer entitled to receive it, all moneys that may come into his hands as county judge, and that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not vote or give his consent to pay out county funds except for lawful purposes. [Acts 1883, p. 50; Acts 1923, p. 13; G. L. vol. 9, p. 356.]

Art. 1929. [1733] [1126] [1135] Absence from office.—He shall attend at his office from day to day, and not absent himself from the county or the State without the permission of the commissioners court, to be entered on its minutes, nor shall he be absent with such permission for a longer period than ninety days. [Acts 1883, p. 8; G. L. vol. 9, p. 314.]

Art. 1930. [1737] [1130] Special county judge.—When a judge of the county court is disqualified, the parties may, by consent, appoint a proper person to try such case. [Acts 1893, p. 75.]

Art. 1931. [1738] [1131] Governor may appoint special judge.—Whenever a judge of the county court is disqualified to try a civil case pending in the county court, and the parties shall fail at the first term of the court to agree upon a special judge, the judge shall certify his disqualification to the Governor and the failure to agree upon another to try the same, whereupon the Governor shall appoint some person, learned in the law to try such case. [Id.]

Art. 1932. [1738] [1131] Special judge in probate matter.—When a county judge is disqualified to act in any probate matter, he shall forthwith certify his disqualification therein to the Governor, whereupon the Governor shall appoint some person to act as special judge in said case, who shall act from term to term until such disqualification ceases to exist. [Id.]

Art. 1933. [1739] [1132] Appointment by wire.—Whenever the county judge or the special judge shall be disqualified from trying a case, the parties or their counsel may agree upon an attorney for the trial thereof; and, if they shall fail to agree upon an attorney at or before the time it is called for trial, or if the trial of the case is pending and the county judge should become unable to act, or is absent, and a special judge is selected who is disqualified to proceed with the trial, and the parties then fail to select or agree upon a special judge who is qualified, the county judge or special judge presiding shall certify the fact to the Governor immediately, whereupon the Governor shall appoint a special judge, qualified to try same. Such appointment may be made by telegram or otherwise. The special judge shall proceed to the trial or disposition of such case. Any special judge agreed upon or appointed to try cases shall receive the same pay for his services as is provided by law for county judges. [Id.]

Art. 1934. [1741–2] Election of judges.—If a county judge fails to appear at the time appointed for holding the court, or should he be absent during the term or unable or unwilling to hold the court, a special county judge may be elected in like manner as is provided for the election of a special district judge. The special county judge so elected shall have all the authority of the county judge while in the trial and disposition of any case pending in said court during the absence, inability, or such refusal of the county judge. Similar elections may be held at any time during the term, to supply the absence, failure or inability of the county judge, or any special judge, to perform the duties of the office. When a special county judge shall have been so elected, the clerk shall enter upon the minutes of the court, a record such as is provided for in like cases in the district court. [Acts 1897, p. 7.]

CHAPTER TWO

COUNTY CLERK

Art.

1935. Election and term.
1936. Clerk pro tem.
1937. Bond and oath.
1938. Deputies.
1939. Soldiers' records.
1940. Clerk of commissioners court.
1941. Recorders.
1942. Custody of records.
1943. Keep record of proceedings.
1944. Index to judgments.
1945. Other dockets, indexes, etc.
1946. Report fines and jury fees.
1947. Jury fees and fines.
1948. Shall use seal.

Article 1935. [1743] [1133] [1142] Election and term.—A clerk of the county court for each county shall be elected at each general election by the qualified voters of such county, and shall hold his office for two years. [Const. art. 5, sec. 20; art. 16, sec. 17.]

Art. 1936. [1745–6] Clerk pro tem.—Where a county clerk shall be a party to any motion or proceeding in his court, the county judge shall, on his own motion, or on application of any person interested, appoint a clerk pro tempore for the purposes of such suit, motion or proceeding. The person so appointed shall take the oath to faithfully and impartially perform the du-

ties of such appointment, and shall also enter into bond, payable to the State of Texas, in such amount as may be required by the judge, to be approved by him, and conditioned for the faithful performance of his duties under such appointment. The person so appointed shall perform all the duties required by law of the clerk in the particular suit, motion or proceeding in which he may be appointed. [Acts 1887, p. 102; G. L. vol. 9, p. 900.]

Art. 1937. [1747] [1137] [1144] Bond and oath.—Each county clerk shall, before entering upon the duties of his office give bond with two or more good and sufficient sureties, to be approved by the commissioners court of the county, payable to the Governor in a sum to be fixed by the commissioners court, not less than two thousand nor more than ten thousand dollars conditioned for the safekeeping of the records and the faithful discharge of the duties of his office, and further conditioned that said clerk will pay over to his county all moneys illegally paid to him out of the county funds, as voluntary payments or otherwise. Said clerk shall also take and subscribe the official oath which shall be indorsed upon the bond, and the bond and oath so taken and approved shall be recorded in the county clerk's office, and deposited in the office of the clerk of the district court. A certified copy of such bond may be put in suit in the name of the Governor for the use of the party injured. [Acts 1876, p. 10; G. L. vol. 8, p. 846; Acts 1923, p. 24.]

Art. 1938. [1748–9–50] Deputies.—The county clerk may in writing, appoint one or more deputies under his hand and the seal of his court, which shall be recorded in the office of such clerk, and shall be deposited in the office of the district clerk. Deputies shall take the official oath and shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done and performed by such clerk in person. When the clerk does not reside at the county seat, he shall have a deputy residing there. [Acts 1876, p. 10; P. D. 500; G. L. vol. 8, p. 846.]

Art. 1939. Soldiers' records.—Each county clerk shall record in a well bound book the official discharge of each soldier, sailor or other person resident in the county who served at home or abroad in the army or navy forces of the United States in the late World War. For such services said clerk shall be allowed by the commissioners court, out of the general fund of the county, not to exceed fifteen cents for each one hundred words so recorded. [Acts 1919, p. 154.]

Art. 1940. [1753] [1143] [1150] Clerk of commissioners court.—They shall be ex-officio clerks of the commissioners court.

Art. 1941. [1754] [1144] [1151] Recorders.—They shall be ex-officio recorders for their several counties, and as such shall record in suitable books to be procured for that purpose all deeds, mortgages and other instruments required or permitted by law to be recorded; they shall be the keepers of such record books, and shall keep the same properly indexed, arranged and preserved. [Id.]

Art. 1942. [1755] [1145] [1152] Custody of records.—They shall be keepers of the records, books, papers and proceedings of their respective courts in civil and criminal cases and in matters of probate, and see that the same are properly indexed, arranged and preserved, and shall perform such other duties in that behalf as may be by law imposed on them. [Id.]

Art. 1943. [1756] [1146] [1153] Keep record of proceedings.—They shall keep a fair record of all the acts done and proceedings had in their respective courts, and enter all judgments of the court, under the direction of the judge, and shall keep a record of each execution issued, and of the returns thereon. [Id. P. D. 504.]

Art. 1944. [1757] [1147] [1154] Index to judgments.—They shall provide and keep in their respective offices, as part of the records thereof, full and complete alphabetical indexes of the names of the parties to all suits filed in their courts, which indexes shall be kept in well bound books, and shall state in full the names of all the parties to such suits, which shall be indexed and cross indexed, so as to show the name of each party under the proper letter; and a reference shall be made opposite each name to the page of the minute book upon which is entered the judgment in each case. [Acts 1876, p. 25; G. L. vol. 8, p. 861.]

Art. 1945. [1758] [1148] [1155] Other dockets, indexes, etc.—The clerk shall keep such other dockets, books and indexes as may be required by law; and all books, records and filed papers belonging to the office of county clerks shall at all reasonable times be open to the inspection and examination of any citizen, who shall have the right to make copies of the same. [Acts 1905, p. 114.]

Art. 1946. [1759] [1149] [1156] Report fines and jury fees.—On the last day of each term of the county court, the clerk shall make a written statement showing all moneys received by him for jury fees and fines since his last statement, with the names of the parties from whom received; and the name of each juror who has served at such term; the number of days he served, and the amount due him for such service. Such statement shall be examined and corrected by the presiding judge, and be approved and signed by him. When so approved and signed it shall be recorded in the minutes of the court. [Acts 1876, p. 23; G. L. vol. 8, p. 859.]

Art. 1947. [1760] [1150] [1157] Jury fees and fines.—The clerk shall pay to the county treasurer all jury fees and fines received by him to the use of the county.

Art. 1948. [1762] [1153] [1160] Shall use seal.—Where in any county a joint clerk shall have been elected, he shall, in performing the duties of county clerk, use the seal of said court to authenticate his official acts as such clerk.

CHAPTER THREE

POWERS AND JURISDICTION

Art.
1949. Exclusive original jurisdiction.
1950. Concurrent original jurisdiction.
1951. No jurisdiction.
1952. Appellate jurisdiction.
1953. Certiorari to justice courts.
1954. Motions against officers.
1955. To punish for contempt.
1956. Law and equity powers.
1957. To grant remedial writs.
1958. Appointing attorneys.
1959. Additional authority.
1960. Changed jurisdiction; eminent domain.

Article 1949. [1763] [1154] [1161] Exclusive original jurisdiction.—The county court shall have exclusive original jurisdiction in civil cases when the matter in controversary [controversy] shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest. [Const. art. 5, sec. 16; Acts 1876, p. 172; G. L. vol. 8, p. 1008.]

Art. 1950. [1764] [1155] [1162] Concurrent original jurisdiction.—The county court shall have concurrent jurisdiction with the district court when the matter in controversy shall exceed five hundred and not exceed one thousand dollars, exclusive of interest. [Id.]

Art. 1951. [1766] [1157] [1164] No jurisdiction.—The county court shall not have jurisdiction of any suit to recover damages for slander or defamation of character, nor of suits of the recovery of lands, nor suits for the enforcement of liens upon land, nor of suits in behalf of the State for escheats, nor of suits for divorce, nor of suits for the forfeiture of the charters of corporations and incorporated companies, nor of suits for the trial of the right to property levied on by virtue of any writ of execution, sequestration or attachment, when the property levied on shall be equal to or exceed in value five hundred dollars. [Id.]

Art. 1952. [1767] [1158] [1165] Appellate jurisdiction.—The county court shall have appellate jurisdiction in civil cases over which the justice courts have original jurisdiction when the judgment

appealed from or the amount in controversy shall exceed twenty dollars, exclusive of costs. [Id.]

Art. 1953. [1768] [1159] [1166] Certiorari to justice courts.—The county court shall also have jurisdiction in cases brought up from the justice courts by certiorari.

Art. 1954. [1769] [1160] [1167] Motions against officers.—The county court may hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with such process. [Acts 1876, p. 23; G. L. vol. 8, p. 859.]

Art. 1955. [1770] [1161] [1168] To punish for contempt.—The county court may punish, by fine not exceeding one hundred dollars, and by imprisonment not exceeding three days, persons guilty of contempt of such court. [Acts 1846, p. 200; P. D. 1409; G. L. vol. 2, p. 1506.]

Art. 1956. [1771] [1169] Law and equity powers.—Subject to the limitation stated in this chapter, the county court is authorized to hear and determine any cause which is cognizable by courts, either of law or equity, and to grant any relief which could be granted by said courts, or either of them. [Id.; P. D. 1410.]

Art. 1957. [1772] [1163] [1170] To grant remedial writs.—The county judge, either in term time or vacation, may grant writs of mandamus, injunction, sequestration, attachment, garnishment, certiorari and supersedeas, and all other writs necessary to the enforcement of the jurisdiction of the court. [Const. art. 5, sec. 16; Acts 1876, p. 19; G. L. vol. 8, p. 855.]

Art. 1958. [1773] [1164] [1171] Appointing attorneys.—The county judge may appoint counsel to attend to the cause of any party who makes affidavit that he is too poor to employ counsel to attend to the same. [Acts 1846, p. 200, sec. 11; P. D. 1414; G. L. vol. 2, p. 1506.]

Art. 1959. [1774] [1165] [1172] Additional authority.—The county court and the county judge shall also have such authority as may be vested in them by law.

Art. 1960. [1775] [1166] Changed jurisdiction; eminent domain.—Where the jurisdiction of a county court has been taken away, altered or changed by existing laws, the same shall remain as established, until otherwise provided by law. Jurisdiction shall obtain in all matters of eminent domain over which the county courts have jurisdiction by the general laws of this State. [Acts 1885, p. 77; G. L. vol. 9, p. 697.]

CHAPTER FOUR

TERMS OF COURT

Art.
1961. Terms of court.
1962. Other terms.
1963. Probate business.
1964. Judge failing to appear.

Article 1961. [1776] [1167] Terms of court.—The county court shall hold at least four terms for both civil and criminal business annually, and such other terms each year as may be fixed by the commissioners court. After having fixed the times and number of the terms of a county court, they shall not change the same until the expiration of one year. Until, or unless otherwise provided, the term of the county court shall be held on the first Monday in February, May, August and November, and may remain in session three weeks. [Const. Amendment 1883, art. 5, sec. 29.]

Art. 1962. [1176–1177] Other terms.—The commissioners court may, at a regular term thereof, by an order entered upon its records, provide for more terms of the county court for the transaction of civil, criminal and probate business, and fix the times at which each of the four terms required by the Constitution, and the terms exceeding four, if any, shall be held, not to exceed six annually, and may fix the length of each term. When the number of the terms of the county court has been fixed, the court shall not change the order before one year from the date of entry of the original order fixing such terms. [Acts 1885, p. 53.]

Art. 1963. [1776] [1167] Probate business.—Said court shall dispose of probate business either in term time or vacation under such regulations as may be prescribed by law. [Id.]

Art. 1964. [1178] [1169] Judge failing to appear.—If the county judge fails to appear at the time appointed for holding his court and no election of a special judge is had, the sheriff of the county, or, in his default, any constable of the county, shall adjourn the court from day to day for three days. If the judge should not appear on the fourth day and no special judge is elected, the sheriff or constable as the case may be, shall adjourn the court until the next regular term thereof. [Acts 1846, p. 200; P. D. 1412; G. L. vol. 2, p. 1506.]

CHAPTER FIVE

MISCELLANEOUS PROVISIONS

Art.
1965. Minutes.
1966. Seal of the court.
1967. Probate day designated.
1968. When case is transferred.
1969. Jurisdiction taken away.
1970. County courts at law.

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

1970— 1. Creation of county court of Dallas county, at law.
1970— 2. Name of county court of Dallas county at law changed.
1970— 3. Jurisdiction of said court.
1970— 4. Jurisdiction retained by county court of Dallas county.
1970— 5. Terms of county court of Dallas county, at law; practice, etc.
1970— 6. Judge to be elected when, etc.; qualifications; term.
1970— 7. Bond and oath of judge.
1970— 8. Special judge elected or appointed, how.
1970— 9. May issue writs.
1970—10. Clerk of; seal; sheriff to attend when, etc.
1970—11. Appointment of jury commissioners; selection, etc., of juries.
1970—12. Vacancy in office of judge, how filled.
1970—13. Fees and salary of judge.
1970—14. Salary of county judge of Dallas county.
1970—15. County Court of Dallas County, at Law, No. 2, created.
1970—16. Jurisdiction.
1970—17. Courts how designated; transfer of cases.
1970—18. Jurisdiction of other county courts.
1970—19. Power to issue writs.
1970—20. Terms of court.
1970—21. Judge; qualifications; salary.
1970—22. Special judge.
1970—23. Jurors.
1970—24. Vacancy.
1970—25. Transfer of cases.
1970—26. Qualifications of judges.
1970—27. Holding court for or with other judge.
1970—28. Terms of court.
1970—29. Current term of county court at law No. 2; effect of change of terms.
1970—30. Oath of office; bond; fees.
1970—31. Salaries of judges of county courts at law.
1970—32. Creation of county court of Tarrant county for civil cases.
1970—33. Jurisdiction of said court.
1970—34. Jurisdiction of criminal cases.
1970—35. Jurisdiction retained by county court of Tarrant county.
1970—36. Both courts may issue writs.
1970—37. Terms, practice, etc., of county court of Tarrant county for civil cases.
1970—38. Judge to be elected when, etc.; qualifications; term; vacancies how filled.
1970—39. Bond and oath of judge.
1970—40. Special judge elected or appointed how.
1970—41. Clerk of; seal; sheriff to attend when, etc.
1970—42. Selection, etc., of juries by the two courts jointly.
1970—43. Fees; salary of judge of county court of Tarrant county for civil cases.
1970—44. Removal of judge.
1970—45. Salary of county judge of Tarrant county.
1970—46. Court created.
1970—47. Jurisdiction.
1970—48. Same; juvenile and probate matters.
1970—49. Issuance of writs.
1970—50. Terms of court; practice.
1970—51. Judge.
1970—52. Same; bond and oath.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art.
1970—53. Special judge.
1970—54. Clerk; seal; sheriff.
1970—55. Fees; salary.
1970—56. Removal of judge.
1970—57. Shorthand reporter.
1970—58. Transfer of causes.
1970—59. Cases filed in either county court at law or county court for civil cases.
1970—60. Transfer of cases.
1970—61. Fees and salaries of judges.
1970—62. Designations of courts.
1970—63. Creation of county court of Bexar county for civil cases.
1970—64. Jurisdiction of said court.
1970—65. Jurisdiction retained by county court of Bexar county.
1970—66. Both courts may issue writs.
1970—67. Terms, practice, etc.
1970—68. Judge to be elected when, etc.; qualifications; term.
1970—69. Bond and oath of judge.
1970—70. Special judge elected or appointed how.
1970—71. Clerk of; seal; sheriff to attend when, etc.
1970—72. Selection, etc., of juries.
1970—73. Vacancies in office of judge, how filled; appointment of first judge.
1970—74. Fees; salary of judge.
1970—75. Removal of judge.
1970—76. County court of Harris county for civil cases created.
1970—77. Name changed; seal.
1970—78. Change of name not to affect court, except, etc.; judges, officers, process and returns.
1970—79. Jurisdiction of said court.
1970—80. Jurisdiction continued, etc.: additional jurisdiction; appeals; criminal jurisdiction, etc.
1970—81. Jurisdiction retained by county court of Harris county.
1970—82. Both courts may issue writs.
1970—83. Terms, practice, etc.
1970—84. Terms of court.
1970—85. Judge to be elected, when; qualifications; term.
1970—86. Bond and oath of judge.
1970—87. Special judge.
1970—88. Clerk; seal; sheriff to attend when, etc.
1970—89. Vacancy in office of judge, how filled, etc.
1970—90. Fees; salary of judge.
1970—91. Salary of county judge of Harris county.
1970—92. Clerk of criminal district court of Harris county to act as clerk in criminal matters, etc.; fees.
1970—93. Transfer of misdemeanor criminal cases.
1970—94. Judge to retain fees and costs in criminal cases.
1970—95. Court created.
1970—96. Jurisdiction.
1970—97. Powers of judge; concurrent jurisdiction.
1970—98. Qualifications of judge; appointment; oath; bond; fees and salary.
1970—99. Clerk; fees.
1970—100. Seal.
1970—101. Sheriffs and constables.
1970—102. Special judge.
1970—103. Power to issue writs.
1970—104. Jurisdiction of County Court at Law.
1970—105. Terms.
1970—106. Transfer of cases.
1970—107. Same.
1970—108. Practice.
1970—109. Process in transferred cases.
1970—110. Appointment of judge; election.
1970—111. County court of Jefferson county at law created.
1970—112. Jurisdiction.
1970—113. Jurisdiction of other courts.
1970—114. Terms of court.
1970—115. Election of judge; tenure; qualifications.
1970—116. Appointment of judge.
1970—117. Disqualification of judge.
1970—118. Issuance of writs.
1970—119. Clerk, seal, and sheriff.
1970—120. Selection of jurors.
1970—121. Vacancy in office of judge.
1970—122. Salary of judge; fees collected and accounted for.
1970—123. Appeals from lower courts.
1970—124. Fees of County Judge.
1970—125. Special judge; election; compensation.
1970—126. Act not repealed.
1970—127. Court created.
1970—128. Jurisdiction.
1970—129. Jurisdiction.
1970—130. Power to issue writs.
1970—131. Terms of court.
1970—132. Appointment of judge; election; qualifications of judge.
1970—133. Bond and oath of judge.
1970—134. Special judge.
1970—135. Clerk; seal; sheriff.
1970—136. Official shorthand reporter; appointment; term of office; oath; duties.
1970—136a. Reporter for county court.
1970—137. Juries.
1970—138. Compensation of judge.
1970—139. Removal of judge.
1970—140. Salary of county judge.
1970—141. Repeal; partial invalidity of act.
1970—142. County court at law for Eastland county created.
1970—143. Jurisdiction.
1970—144. Jurisdiction of County Judge of Eastland County retained.

Art.
1970—145. Terms of court; practice; appeals and writs of error.
1970—146. Judge; election; term of office.
1970—147. Bond and oath of judge.
1970—148. Issuance of writs.
1970—149. Clerk; seal; sheriff.
1970—150. Juries.
1970—151. Vacancy in office of judge.
1970—152. Fees and salary of Judge.
1970—153. County court of Wichita county at law created.
1970—154. Jurisdiction.
1970—155. Probate and other jurisdiction.
1970—156. Terms of court; practice.
1970—157. Election of judge; qualifications; tenure.
1970—158. Bond and oath of judge.
1970—159. Special judge.
1970—160. Issuance of writs.
1970—161. Clerk; seal; sheriff.
1970—162. Juries.
1970—163. Vacancy in office of judge; appointment of judge until next election.
1970—164. Fees and salary of Judge of County Court at Law.
1970—165. Fees and salary of county judge.
1970—166. Stenographer.
1970—167. [Texarkana court at law created.]
1970—168. Territorial limits.
1970—169. Jurisdiction and powers.
1970—170. Location and terms.
1970—171. Judge and clerk.
1970—172. Qualification of judge.
1970—173. Special judge.
1970—174. Qualifications and duties of clerk.
1970—175. Court stenographer.
1970—176. Sheriff.
1970—177. County attorney.
1970—178. Fees.
1970—179. Practice and procedure.
1970—180. Venue.
1970—181. Change of venue.
1970—182. Jury commission.
1970—183. Juries.
1970—184. Exemption from jury service.
1970—185. Venue in suits involving land.
1970—186. Appeals in civil cases.
1970—187. Expenses.
1970—188. Transfer of cases.
1970—189. Jurisdiction [of other courts] conformed.
1970—190. Armstrong county court; concurrent jurisdiction with justice court.
1970—191. Jurisdiction as county court.
1970—192. Appeal; amount in controversy.
1970—193. Jurisdiction of justices' courts not affected; appeal.
1970—194. Laws repealed.
1970—195. Castro county court; Jurisdiction of court.
1970—196. Appellate jurisdiction.
1970—197. May issue writs.
1970—198. Jurisdiction of probate court.
1970—199. Forfeiture, etc., of bonds and recognizances in criminal cases.
1970—200. Jurisdiction of misdemeanors; appellate jurisdiction.
1970—201. District court has no longer jurisdiction of certain cases.
1970—202. District clerk to deliver transcripts, etc.
1970—203. Motions against sheriffs and other officers; contempts; other powers.
1970—204. Terms of court.
1970—205. Jurisdiction of county court of Cochran and Colorado counties.
1970—206. Other jurisdiction.
1970—207. Appeals and writs of error.
1970—208. Jurisdiction of justices of the peace; appeals.
1970—209. Deaf Smith, Parmer, Randall, Castro and Lubbock county courts; jurisdiction of court.
1970—210. Same subject.
1970—211. Writs of error to court of civil appeals.
1970—212. Jurisdiction of justices of the peace, etc.
1970—213. Laws repealed.
1970—214. Jurisdiction of county court of Harrison county.
1970—215. Jurisdiction in civil cases.
1970—216. Judgments heretofore rendered in county court; executions, etc.
1970—217. Laws repealed.
1970—218. Appellate jurisdiction in civil cases, etc.
1970—219. May grant writs.
1970—220. District court not to have jurisdiction when.
1970—221. Clerk of district court to make transcripts in cases in which jurisdiction is given to county court, etc.
1970—222. Motions against sheriffs and other officers, etc.; contempts; other powers.
1970—223. May fix terms of court.
1970—224. County Court of Hockley and Cochran counties, jurisdiction.
1970—225. Other jurisdiction.
1970—226. Appeals and writs of error.
1970—227. Jurisdiction of justices of the peace; appeals.
1970—228. Jasper county court; jurisdiction in civil cases.
1970—229. Appellate jurisdiction in civil cases.
1970—230. May grant writs.
1970—231. Jurisdiction of probate court.
1970—232. Forfeited bonds, etc., in criminal cases.
1970—233. Jurisdiction of certain misdemeanors; appellate jurisdiction.
1970—234. Jurisdiction of district court.
1970—235. District clerk to deliver transcripts, etc., to county clerk.

Art.
1970—236. Motions against sheriffs and other officers; contempts; other powers.
1970—237. Terms of court.
1970—238. Jurisdiction of county court of Kendall county.
1970—239. Jurisdiction of District court.
1970—240. County clerk to make transcripts in cases transferred to district court, etc.
1970—241. Judgments heretofore rendered in county court; executions, etc.
1970—242. Jurisdiction of county court of Lee and Burleson counties.
1970—243. Other jurisdiction.
1970—244. Appeals and writs of error.
1970—245. Jurisdiction of justices of the peace; appeals.
1970—246. Oldham county court; jurisdiction in civil cases.
1970—247. Appellate jurisdiction in civil cases.
1970—248. May grant writs.
1970—249. Jurisdiction of probate court.
1970—250. Forfeited bonds, etc., in criminal cases.
1970—251. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.
1970—252. Jurisdiction of district court.
1970—253. District clerk to deliver transcripts, etc., to county clerk.
1970—254. Motions against sheriffs and other officers; contempts; other powers.
1970—255. Terms of court.
1970—256. Reagan county court; jurisdiction; transfer of cases.
1970—257. Judgments not effected; executions thereon.
1970—258. Jurisdiction of district court.
1970—259. County court; concurrent jurisdiction with justices of the peace.
1970—260. Appeals and writs of error.
1970—261. Jurisdiction of justices of the peace; appeals.
1970—262. Stonewall county court; jurisdiction in civil cases.
1970—263. Other jurisdiction.
1970—264. Appeals and writs of error to court of civil appeals.
1970—265. Jurisdiction of justices of the peace; appeals.
1970—266. Sutton county court; original civil jurisdiction.
1970—267. Appellate jurisdiction in civil cases.
1970—268. May grant writs.
1970—269. Probate jurisdiction.
1970—270. Forfeited bonds and recognizances.
1970—271. Jurisdiction of misdemeanors; appellate jurisdiction in criminal cases.
1970—272. Jurisdiction of district court.
1970—273. Transcripts of pending cases; entry of cases in county court.
1970—274. Motions against officers; contempts; other powers.
1970—275. Terms of court.
1970—276. Wheeler county court; jurisdiction in civil cases.
1970—277. Appellate jurisdiction in civil cases.
1970—278. May grant writs.
1970—279. Jurisdiction of probate court.
1970—280. Forfeited bonds, etc., in criminal cases.
1970—281. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.
1970—282. Jurisdiction of district court.
1970—283. District clerk to deliver transcripts, etc., to county clerk.
1970—284. Motions against sheriffs and other officers; contempts; other powers.
1970—285. Terms of court.
1970—286. Zapata county court; jurisdiction in civil cases.
1970—287. Appellate jurisdiction in civil cases.
1970—288. Power to grant writs, etc.
1970—289. Jurisdiction of probate court.
1970—290. Forfeited bonds, etc., in criminal cases.
1970—291. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.
1970—292. Jurisdiction of district court.
1970—293. District clerk to deliver transcripts, etc., to county clerk.
1970—294. Motions against sheriffs and other officers; contempts; other powers.
1970—295. Terms of court.
1970—296. Edwards county court; act repealed.
1970—297. Shelby County Court; jurisdiction restored.
1970—298. County court at law McLennan County created.
1970—299. Jurisdiction of County Court of Harrison County.
1970—300. Changing jurisdiction of county court of Edwards County.
1970—301. County courts at Law Nos. 1 and 2 Bexar County.
1970—302. Jurisdiction and time for holding Menard County Court.
1970—303. Jurisdiction and time for holding Sterling County Court.
1970—304. Jurisdiction and time for holding Irion County Court.
1970—305. County court at law Cameron County created.
1970—306. Jurisdiction of Bowie County Court diminished.
1970—307. Jurisdiction and time for holding county court of Kerr County.

Article 1965. [1779–1780] [1170] [1175] Minutes.—The minutes of the proceedings of each preceding day of the session shall be read in open court on the morning of the succeeding day, except on the last day of the session, on which day they shall be read, and if necessary be corrected, and signed in open court by the county judge. Each special judge shall sign the minutes of such proceedings as were had before him. [Acts 1846, p. 200; G. L. vol. 2, p. 1506.]

Art. 1966. [1781] [1172] [1177] Seal of the court.—Each county court shall be provided with a seal, having engraved thereon a star of five points in the center, and the words, "County Court of ..... County, Texas," the impress of which shall be attached to all process, except subpœnas, issued out of such court, and shall be used to authenticate the official acts of the clerk and of the county judge. [Id.]

Art. 1967. [1783] [1174] [1179] Probate day designated.—On the first day of the term for civil business, the county judge shall, by an order entered on the minutes, designate a day for taking up the probate business; and the probate docket shall thereupon be called in its regular order unless otherwise ordered by the court. [Acts 1876, p. 22; G. L. vol. 8, p. 858.]

Art. 1968. [1784] [1175] [1180] When case is transferred.—Whenever a cause shall be transferred from the county court to the district court, the clerk shall immediately make out a transcript of all the proceedings had in said cause in the county court, and shall transmit the same, duly certified as such, together with a bill of the costs which have accrued in said court, and all the original papers in the cause, to the clerk of the district court. [Acts 1876, p. 19; G. L. vol. 8, p. 855.]

Art. 1969. [1785] [1176] Jurisdiction taken away.—Each clerk of the county court where the civil and criminal jurisdiction, or either, of the county courts has been transferred to the district court, shall make out a certified copy of all judgments remaining unsatisfied, which have been rendered in civil or criminal cases in the county court, and transmit the same to the clerk of the district court of their respective counties. [Acts 1879, p. 10; G. L. vol. 9, p. 42.]

Art. 1970. County courts at law.—All county courts at law and all similar courts by whatever name known, which now exist, shall be continued in force, together with their organization, jurisdiction, duties, powers, procedure and emoluments that now exist by law, until otherwise changed by law.

ACTS CREATING COUNTY COURTS AT LAW AND SIMILAR COURTS, AND AFFECTING PARTICULAR COUNTY COURTS, AND DECISIONS THEREUNDER

Art. 1970–1. Creation of county court of Dallas county, at law.—There is hereby created a court to be held in Dallas county, to be called the ["County Court of Dallas County, at Law."] [Acts 1907, p. 115, sec. 1.]

See art. 1970–2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1."

Art. 1970–2. Name of county court of Dallas county at law changed.—The County Court of Dallas County at Law shall hereafter be known and designated as the County Court of Dallas County at Law No. 1. The judge and all officers of the County Court of Dallas County at Law shall continue as such respective officers of the County Court of Dallas County at Law No. 1, and all of the jurisdiction and powers of the County Court of Dallas County at Law and of the judges thereof, shall be preserved and continued as the County Court of Dallas County at Law No. 1. No change in the organization of the County Court of Dallas County at Law is effected hereby except the change of name, nor shall this section in anyway effect [affect] any case pending in said court. All process issued out of the County Court of Dallas County at Law before this Act takes effect, and all bonds executed and recognizances entered of record in said court shall bind the parties for their appearance or to fulfil the obligation of such bonds and recognizances in the County Court of Dallas County at Law and the acts of the judge thereof, shall be as valid and binding

as before this Act takes effect, and remain unaffected thereby. All pleadings, process, writs, bonds and recognizances in the County Court of Dallas County at Law may be amended at any time under the direction of the judge, to conform to this change in name. [Acts 1923, 38th Leg., ch. 24, § 1.]

Art. 1970–3. Jurisdiction of said court.—The [County Court of Dallas County at Law] shall have original and concurrent jurisdiction with the County Court of Dallas County in all matters and causes, civil and criminal, original and appellate, over which, by the general laws of the State, county courts have jurisdiction, except as provided in Section 3 of this Act [Art. 1970–4]; but this provision shall not affect jurisdictions of the commissioners court, or of the county judge of Dallas county as the presiding officer of such commissioners court, as to roads, bridges, and public highways and matters of eminent domain which are now within the jurisdiction of the commissioners court or the judge thereof. [Acts 1907, p. 115, sec. 2; Acts 1917, ch. 115, sec. 1.]

See art. 1970—2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1."

Art. 1970–4. Jurisdiction retained by county court of Dallas county.—The County Court of Dallas County shall retain, as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians; transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons; and to apprentice minors as provided by law; and the said court, or the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court; and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the State. The county judge of Dallas county shall be the judge of the County Court of Dallas County. All ex officio duties of the county judge shall be exercised by the said judge of the County Court of Dallas County except in so far as the same shall, by this Act, be committed to the judge of the [County Court of Dallas County, at Law.] [Acts 1907, p. 115, sec. 3; Acts 1917, ch. 115, sec. 2.]

See art. 1970—2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1."

Art. 1970–5. Terms of county court of Dallas county, at law; practice, etc.—[The terms of the county court of Dallas county, at law,] and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. [The terms of the county court of Dallas county, at law, shall be held as now established for the terms of the county court of Dallas county, until the same may be changed in accordance with the law.] [Acts 1907, p. 115, sec. 4.]

See art. 1970—2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1"; and art. 1970—28, prescribing the terms of such court.

Art. 1970–6. Judge to be elected when, etc.; qualifications; term.—There shall be elected in said county, by the qualified voters thereof, at each general election, a judge of the [county court of Dallas county, at law.] who shall be well informed in the laws of the state, who shall hold his office for two years, and until his successor shall have duly qualified. [Id. sec. 5.]

See art. 1970—2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1"; and art. 1970—26, prescribing additional qualifications for the judge thereof.

Art. 1970–7. Bond and oath of judge.—The judge of the [county court of Dallas county, at law, shall execute a bond] and take the oath of office, as required by the law relating to county judges. [Id. sec. 6.]

The provision for a bond is superseded by art. 1970—30. See art. 1970—2, changing name of court to "County Court of Dallas County at Law No. 1."

Art. 1970–8. Special judge elected or appointed, how.—A special judge of the [county court of Dallas county, at law,] may be appointed or elected as provided by laws relating to county courts and to the judges thereof. [Id. sec. 7.]

See art. 1970—2, changing name of court to "County Court of Dallas County at Law No. 1."

Art. 1970–9. May issue writs.—The [county court of Dallas county, at law,] or the judges thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus, in cases where the offense charged is within the jurisdiction of said court, or of any other court or tribunal inferior to said court. [Id. sec. 8.]

See art. 1970—2, changing name of court to "County Court of Dallas County at Law No. 1."

Art. 1970–10. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Dallas county shall be the clerk of the [county court of Dallas county, at law.] The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words, "County Court of Dallas County, at Law;" the sheriff of Dallas county shall, in person or by deputy, attend the said court when required by the judge thereof. [Id. sec. 9.]

See art. 1970—2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1."

Art. 1970–11. Appointment of jury commissioners; selection, etc., of juries.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the [county court of Dallas county, at law.] [Id. sec. 10.]

See art. 1970—2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1."

Art. 1970–12. Vacancy in office of judge, how filled.—Any vacancy in the office of the judge of the [county court of Dallas county, at law,] may be filled by the commissioners' court of Dallas county until the next general election. [Id. sec. 11.]

See art. 1970—2, changing name of court to "County Court of Dallas County at Law No. 1."

Art. 1970–13. Fees and salary of judge.—The judge of the [county court of Dallas county, at law], shall collect the same fees as are now established by law relating to county judges, all of which shall be by him paid monthly into the county treasury; and he shall receive an annual salary of [three thousand dollars per annum,] payable monthly, to be paid out of the county treasury by the commissioners' court. [Id. sec. 12.]

Provision as to salary is superseded by art. 1970—31. See art. 1970—2, changing name of court to "County Court of Dallas County at Law No. 1"; and art. 1970—30, relative to fees.

Art. 1970–14. Salary of county judge of Dallas county.—The county judge of Dallas county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary, for the ex officio duties of his office, as may be allowed him by the commissioners' court, not less than twelve hundred dollars per year. [Id. sec. 13.]

Art. 1970–15. County Court of Dallas County, at Law, No. 2, created.—There is hereby created a court to be held in Dallas county, Texas, to be known and designated as the "County Court of Dallas County, at Law, No. 2." [Acts 1917, ch. 101, sec. 1.]

Art. 1970–16. Jurisdiction.—The County Court of Dallas County at Law, No. 2, shall have exclusive concurrent civil and criminal jurisdiction of all cases, original and appellate, over which by the laws of the State of Texas, the existing [County Court of Dallas County at Law,] of Dallas county, Texas, would have original and appellate jurisdiction; provided all civil and criminal cases appealed from the several justice's courts of Dallas county shall be by the county clerk, filed in the [County Court of Dallas County, at Law,] and the County Court of Dallas County, at Law, No. 2, alternately as said appealed cases are received by said clerk from the several justices of the peace in said county, except in cases wherein the judge of either of said courts, at law, has granted the writ of certiorari, in which case the same shall be docketed in the court so granting said writ, and shall not be transferred from said court. [Id. sec. 2.]

See art. 1970—2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1."

Art. 1970–17. Courts how designated; transfer of cases.—The [County Court of Dallas County at Law] shall be known and designated as the "A" Court and the County Court of Dallas county at Law, No. 2, shall be known and designated as the "B" Court. The county clerk shall number consecutively all cases filed in said courts, affixing immediately following the number of all cases falling in the [County Court of Dallas County, at Law,] the letter "A," and immediately following the number of all cases falling in the County Court of Dallas County, at law, No. 2, the letter "B," and he shall make up the trial docket of each of said courts with respect to said numbers. The judge of either of said courts shall have the power to transfer to the other court any case pending upon the docket of his court, except in cases where the writ of certiorari has been granted; provided there shall never be transferred from the docket of one of said courts to that of the other a sufficient number of cases to reduce the number of cases on the docket of the court from which said case was transferred to a less number than the number of cases pending upon the docket of the court to which the same is transferred, without the consent of the judge to which said case is transferred. It shall be the duty of the judge to whose court said case is transferred to receive and try the case, and he shall not have the power to retransfer the same back to the court from which it came except he be disqualified to try the same, in which case it shall be his duty to retransfer the said case. [Id. sec. 3.]

See art. 1970—2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1."

Art. 1970–18. Jurisdiction of other county courts.—Nothing in this Act shall be construed as in anywise altering or changing the present jurisdiction provided by law of the [County Court of Dallas County, at Law,] nor of the County Court of Dallas County, except that the jurisdiction of the [County Court of Dallas County at Law,] is hereby made concurrent with the jurisdiction of the County Court of Dallas County, at Law, No. 2, as relates to the civil and criminal jurisdiction of said [County Court of Dallas County at Law,] as prescribed by the laws of the State of Texas. [Id. sec. 4.]

See art. 1970—2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1."

Art. 1970–19. Power to issue writs.—The said County Court of Dallas County, at Law, No. 2, or the judge thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas, and all other writs and process necessary to the enforcement of its jurisdiction; and also power to punish for contempts under such provisions as are or may be provided by the general laws governing county courts throughout the state. [Id. sec. 5.]

Art. 1970–20. Terms of court.—[The terms of the County Court of Dallas County, at Law, No. 2,] and the practice therein and appeals and writs of error therefrom, shall be as prescribed by the law relating to the county courts. [The terms of the County Court of Dallas County, at Law, No. 2, shall be held five times each year on the second Monday in January, March, May, September and November, and each term of said court shall extend over a period of two months;] provided, further there shall be a term of said court convened by the judge thereof not later than two weeks after he has qualified as such, as provided by law, and such term when so convened, shall continue until the beginning of the ensuing term, as provided herein. [Id. sec. 6.]

The bracketed portions are superseded by art. 1970—28.

Art. 1970–21. Judge; qualifications; salary.—There shall be elected in said county by the duly qualified voters thereof at each general election a judge of the County Court of Dallas County, at Law, No. 2, who shall be a licensed attorney in this State, well informed in the laws of the State, who shall have resided in, and been actively engaged in the practice of law in Dallas county for a period of not less than four years prior to such general election, who shall hold his office for two years and until his successor shall be duly qualified. [The judge of said court shall receive a salary of three thousand ($3,000.00) dollars per annum, payable monthly out of the county treasury by the commissioners' court.] [Id. sec. 7.]

Provision as to salary is superseded by art. 1970—31. Additional qualifications for the judges are prescribed by art. 1970—26.

Art. 1970–22. Special judge.—A special judge of the County Court of Dallas County, at Law, No. 2, may be appointed or elected as provided for by the laws relating to county courts and the judges thereof. [Id. sec. 8.]

Art. 1970–23. Jurors.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the county Court of Dallas County, at Law, No. 2. [Id. sec. 9.]

Art. 1970–24. Vacancy.—Any vacancy in the office of the County Court of Dallas County, at Law, No. 2, shall be filled by the commissioners' court of Dallas county until the next regular election. [Id. sec. 10.]

Art. 1970–25. Transfer of cases.—It shall be the duty of the judge of the [County Court of Dallas County, at Law,] to immediately transfer from the docket of the [County Court of Dallas County, at Law,] to the docket of the County Court of Dallas County, at Law, No. 2, one-half of the civil cases pending upon said docket, which shall be done by beginning with the oldest case pending upon the docket of his court and transferring every second case without reference to whether any particular case be pending upon the jury or non-jury docket of said court. [Id. sec. 12.]

See art. 1970—2, changing name of County Court of Dallas County at Law, to "County Court of Dallas County at Law No. 1."

Art. 1970–26. Qualifications of judges.—The judge of the County Court of Dallas County at Law No. 1 and the judge of the County Court of Dallas County at Law No. 2, shall each be a licensed attorney, well informed in the law, who shall have resided in and been actively engaged in the practice of law in Dallas County, or been judge of a court therein, for a period of at least four years prior to the general election at which he is elected. [Acts 1923, 38th Leg., ch. 24, § 2.]

Art. 1970–27. Holding court for or with other judge.—The judge of the County Court of Dallas County at Law No. 1, and the judge of the County Court of Dallas County at Law No. 2, may hold court for or with one another. [Acts 1923, 38th Leg., ch. 24, § 3.]

Art. 1970–28. Terms of court.—The terms of the County Court of Dallas County at Law No. 1, shall be held six times each year, on the first Monday

in January, March, May, July, September and November and each term shall continue to the commencement of the following term. The terms of the County Court of Dallas County at Law No. 2, shall be held six times each year on the first Monday in February, April, June, August, October and December, and each term shall continue to the commencement of the following term. [Acts 1923, 38th Leg., ch. 24, § 4.]

This partly supersedes arts. 1970—5 and 1970—20.

Art. 1970–29. Current term of county court at law No. 2; effect of change of terms.—The term of the County Court of Dallas County at Law No. 2, current at the time of the taking effect of this Act, shall continue until the commencement of the following term as fixed by this Act. All process issued out of said court before this Act takes effect is hereby made returnable to the terms of this court as fixed by this Act. All bonds heretofore executed and recognizances entered of record in said court shall bind the parties for their appearance or to fulfill the obligation of such bonds and recognizances at the terms of the said court as fixed by this Act. All process heretofore returned, as well as all bonds, and recognizances heretofore taken in this court, and all judgments, writs and decrees thereof, shall be as valid as if no change had been made in the time of the holdings of this court. [Acts 1923, 38th Leg., ch. 24, § 5.]

Art. 1970–30. Oath of office; bond; fees.—The judge of the County Court of Dallas at Law No. 1, and the judge of the County Court of Dallas County at Law No. 2, shall each take the oath of office prescribed by the law relating to county judges, but no bond shall be required of them. They shall be enabled to collect the same fees as are stipulated by law relating to county judges, all of which shall be collected by the county clerk of Dallas County, paid by him monthly into the county treasury of Dallas County, in accordance with the orders of the commissioners' court. [Acts 1923, 38th Leg., ch. 24, § 6.]

This partly supersedes art. 1970—13, supra.

Art. 1970–31. Salaries of judges of county courts at law.—The judge of the county court of Dallas County at Law No. 1 and the judge of the County Court of Dallas County at Law No. 2, shall each receive a salary of thirty-six hundred ($3600) dollars per annum, payable monthly out of the treasury of Dallas County, under the orders of the commissioners' courts. [Acts 1923, 38th Leg., ch. 176, § 1.]

This partly supersedes arts. 1970—13 and 1970—21.

Art. 1970–32. Creation of county court of Tarrant county for civil cases.—There is hereby created a court to be held in Tarrant county, Texas, [to be known and designated as the "County Court of Tarrant County for Civil Cases."] [Acts 1909, p. 48, sec. 1.]

The bracketed part of this article is superseded by art. 1970—62.

Art. 1970–33. Jurisdiction of said court.—The [county court of Tarrant county for civil cases] shall have jurisdiction of all civil matters and causes, original and appellate, over which by the general laws of the state of Texas, the county court of said county would have jurisdiction, except as provided in article 1801; and all civil cases pending in the county court of said county, other than probate matters, and such as are provided in said article, shall be, and the same are hereby, transferred to the county court of Tarrant county for civil cases; and all civil writs and process heretofore issued by, or out of, said county court, other than those pertaining to matters over which by said article jurisdiction remains in the county court of Tarrant county, [shall be] and the same are, returnable to the county court of Tarrant county for civil cases. The jurisdiction of the county court of Tarrant county for civil cases, and of the judge thereof, shall extend to all matters of eminent domain of which jurisdiction has heretofore vested in the county court of Tarrant county, or the judge thereof; but this provision shall not affect the jurisdiction of the commissioners' court or of the county judge of Tarrant county as the presiding officer of said court as to roads, bridges and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners' court or of the judge of the county court of Tarrant county. [Id. sec. 2.]

Additional powers are conferred by art. 1970—34. The name of the court is changed by art. 1970—62, to "County Court at Law No. 2" of Tarrant County.

Art. 1970–34. Jurisdiction of criminal cases.—In addition to the jurisdiction heretofore conferred by law upon the County Court of Tarrant County for Civil Cases, of Tarrant County, Texas, and the judge thereof, the said County Court of Tarrant County for Civil Cases shall have jurisdiction within Tarrant County of all criminal matters and causes, original and appellate, over which the County Court at Law of Tarrant County now has jurisdiction, and the jurisdiction of said courts, over such matters, within said county, shall be concurrent, provided, that the jurisdiction of the County Court of Tarrant County shall remain as now fixed by law, and be in no wise affected by this Act. [Acts 1925, 39th Leg., ch. 206, p. 679, § 1.]

Art. 1970–35. Jurisdiction retained by county court of Tarrant county.—The county court of Tarrant county shall retain, as heretofore the jurisdiction of all criminal cases, its jurisdiction as a juvenile court, its jurisdiction in matters pertaining to liquor licenses, forfeitures and bonds, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of administrators, executors and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and shall apprentice minors as provided by law. The county judge of Tarrant county shall be the judge of the county court of Tarrant county; and all ex officio duties of the county judge shall be exercised by the said judge of the county court of Tarrant county, except in so far as the same shall, by this chapter, be committed to the judge of the [county court of Tarrant county for civil cases.] [Acts 1909, p. 48, sec. 3.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county.

Art. 1970–36. Both courts may issue writs.—Both the said county court of Tarrant county and the county court of Tarrant county for civil cases, or either of the judges thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said courts, and also power to punish for contempts under such provisions as are, or may be, provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said courts, or of any court or tribunal inferior to said courts. [Id. sec. 4.]

Art. 1970–37. Terms, practice, etc., of county court of Tarrant county for civil cases.—The terms of the [county court of Tarrant county for civil cases,] and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by law relating to the county courts. The terms of the [county court of Tarrant county for civil cases] shall be held not less than four times each year; and the commissioners' court of Tarrant county shall fix the time at which said court shall hold its terms, until the same may be changed according to law. [Id. sec. 5.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to the "County Court at Law No. 2" of Tarrant county.

Art. 1970–38. Judge to be elected when, etc.; qualifications; term; vacancies how filled.—At each general election there shall be elected by the qualified voters of Tarrant county a judge of the

[county court of Tarrant county for civil cases,] who shall be well informed in the laws of this state, who shall hold his office for two years, and until his successor shall have been duly elected and qualified; provided, that no person shall be eligible for judge of the [county court of Tarrant county for civil cases,] unless he shall be a citizen of the United States and of this state, who shall have been a practicing lawyer of this state, or a judge of a court in this state, for four years next preceding his election, and who shall have resided in the county of Tarrant for two years next preceding his election. All vacancies in said office shall be filled by appointment by the governor until the next general election thereafter. [Id. sec. 6.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county.

Art. 1970—39. Bond and oath of judge.—The judge of the [county court of Tarrant county for civil cases] shall execute a bond and take the oath of office as required by the law relating to county judges. [Id. sec. 7.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county.

Art. 1970—40. Special judge elected or appointed how.—A special judge of the [county court of Tarrant county for civil cases] may be appointed or elected as provided by law relating to county courts and to the judges thereof. [Id. sec. 8.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county.

Art. 1970—41. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Tarrant county shall be the clerk for the [county court of Tarrant county for civil cases]. The seal of said court shall be the same as that provided for county courts, except that the seal shall contain the words, "County Court of Tarrant County for Civil Cases." The sheriff of Tarrant county shall, in person or by deputy, attend the court when required by the judge thereof. [Id. sec. 9.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county.

Art. 1970—42. Selection, etc., of juries by the two courts jointly.—The jurisdiction and authority now vested by law in the county court of Tarrant county for the selection and service of jurors shall be exercised by the two courts jointly and not separately. [Id. sec. 10.]

Art. 1970—43. Fees; salary of judge of county court of Tarrant county for civil cases.—The judge of the [county court of Tarrant county for civil cases] shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury; and he shall receive a salary of [three thousand dollars] annually, to be paid monthly out of the county treasury by the commissioners' court. [Id. sec. 11.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county; and art. 1970—65, changing the judge's salary to five thousand dollars.

Art. 1970—44. Removal of judge.—The judge of the [county court of Tarrant county for civil cases] may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this state. [Id. sec. 12.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county.

Art. 1970—45. Salary of county judge of Tarrant county.—The county judge of Tarrant county shall hereafter receive from the county treasury in addition to the fees allowed him by law, such a salary, for the ex officio duties of his office, as may be allowed him by the commissioners' court. [Id. sec. 13.]

Art. 1970—46. Court created.—That there shall be created a court to be held in Tarrant County, Texas, to be known and designated as the "County Court at Law" of Tarrant County, Texas. [Acts 1921, 37th Leg., ch. 28, § 1.]

Art. 1970—47. Jurisdiction.—The County Court at Law of Tarrant County, Texas, shall have exclusive jurisdiction within said county of all criminal matters and causes, original and appellate, that is now vested in the County Courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas, except as provided in Section 3 of this Act [Art. 1970—48]; and said County Court at Law shall have and exercise, in civil matters and causes, concurrent and equal jurisdiction with the [County Court of Tarrant County for civil cases,] said concurrent jurisdiction to extend to all causes and matters of which jurisdiction has heretofore vested in the [County Court of Tarrant County for civil cases] or the judge thereof. [Id., § 2.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county.

Art. 1970—48. Same; juvenile and probate matters.—The County Court of Tarrant County shall retain exclusively as heretofore its jurisdiction as a juvenile court, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, and grant letters testamentary and of administration, settle accounts of administrators, executors and guardians; transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of the estates of deceased persons; and of apprenticed minors as provided by law. The County Judge of Tarrant County shall be the judge of the County Court of Tarrant County, Texas, and all ex-officio duties of the County Judge shall be exercised by the said judge of the said County Court, except insofar as the same shall, by this Act, be committed to the judge of the County Court at Law of Tarrant County, Texas, and except such as have heretofore been conferred upon the judge of the [County Court of Tarrant County for civil cases.] [Id., § 3.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county.

Art. 1970—49. Issuance of writs.—The County Court at Law of Tarrant County, Texas, or the judge thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said court; and also power to punish for contempt under such provisions as are or may be provided by the General Laws governing County Courts throughout the State, and issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said court or of any court or tribunal inferior to said court. [Id., § 4.]

Art. 1970—50. Terms of court; practice.—The terms of the County Court at Law of Tarrant County, Texas, and the practice therein and appeals and writs of error therefrom shall be as prescribed by law relating to the County Courts. The terms of said County Court at Law shall be held not less than four times each year and the Commissioners' Court of Tarrant County, Texas, shall fix the time at which said court shall hold its terms, until the same may be changed according to law. [Id., § 5.]

Art. 1970—51. Judge.—As soon as may be after the passage of this Act, there shall be appointed by the Governor, in accordance with law, and subject to the confirmation of the Senate, a judge of the County Court at Law hereby created, who shall be well informed in the laws of the State and who shall hold his office until the next succeeding general election and until his successor shall have duly qualified. The judge of said court elected at any general election shall hold office for two years and until his successor shall have duly qualified: provided, that no person shall be eligible for judge of said court unless he shall be a citizen of the United States and of this State, who shall have

been a practicing lawyer of this State or a judge of a court in this State for four years next preceding his appointment or election, and who shall have resided in the county of Tarrant for two years next preceding his appointment or election. [Id., § 6.]

Art. 1970—52. Same; bond and oath.—The judge of the County Court at Law of Tarrant County, Texas, shall execute a bond and take the oath of office as required by the law relating to County Judges. [Id., § 7.]

Art. 1970—53. Special judge.—A special judge of the County Court at Law of Tarrant County, Texas, may be appointed or elected as provided by the laws relating to County Courts and to the judges thereof. [Id., § 8.]

Art. 1970—54. Clerk; seal; sheriff.—The county Clerk of Tarrant County, Texas, shall be the clerk of the County Court at Law of Tarrant County, Texas. The seal of said Court shall be the same as provided for County Courts except that the seal shall contain the words "County Court at Law, Tarrant County, Texas." The sheriff of Tarrant County shall, in person or by deputy, attend said court when required by the judge thereof. [Id., § 9.]

Art. 1970—55. Fees; salary.—The judge of the County Court at Law of Tarrant County, Texas, and the judge of the [County Court of Tarrant County for civil cases], shall collect the same fees provided by law for County Judges in similar cases, all of which shall be paid by them monthly into the County Treasury and the judge of each said courts, shall receive a salary of [$4,000] annually, to be paid monthly out of the County Treasury by the Commissioners' Court. [Id., § 10.]

See art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county; and art. 1970—61, changing the judges' salaries to five thousand dollars.

Art. 1970—56. Removal of judge.—The judge of the County Court at Law of Tarrant County, Texas, may be removed from office in the same manner and for the same causes as any other County Judge may be removed under the laws of this State. [Id., § 11.]

Art. 1970—57. Shorthand reporter.—For the purpose of preserving a record in all cases for the information of the court, jury and parties, the judge of the County Court at Law of Tarrant County, Texas, shall appoint an official shorthand reporter, who shall be well skilled in his profession, shall be a sworn officer of the court and shall hold his office at the pleasure of the court; and the provisions of Chapter eleven of Title 37 of the Revised Civil Statutes of Texas of 1911 relating to the appointment of stenographers for the District Courts shall, and it is hereby made to apply in all its provisions, insofar as they are applicable to the official shorthand reporter herein authorized to be appointed, and said reporter shall be entitled to the same fees and salaries and shall perform the same duties and shall take the same oath as are in said Chapter eleven of Title 37 provided for the stenographers of District Courts of this State, and also be governed by any other laws covering the stenographers of the District Courts of this State; provided, that the official shorthand reporter of said court shall not be required to take the testimony in cases where neither party litigant nor the judge demands it; but where the testimony is taken by said reporter a fee of three dollars shall be taxed by the clerk as costs in the case. Said reporter shall also as far as practicable, act as the official shorthand reporter of the County Court of Tarrant County for civil cases. [Id., § 12.]

Art. 1970—58. Transfer of causes.—As soon as may be after this Act takes effect, the Clerk of the County Court of Tarrant County, Texas, shall transfer to the docket of the County Court at Law of Tarrant County, Texas, all of the criminal cases then pending in the County Court of Tarrant County. The clerk shall note such transfers when made on the minutes of the County Court of Tarrant County, Texas. Thereafter, all new criminal cases filed in said county and coming within the jurisdiction of the County Court shall be placed on the docket of said County Court at Law. Until such time as the Commissioners' Court shall direct, no civil cases shall be filed in or transferred to said County Court at Law; but when directed to do so by said Commissioners' Court, the clerk of said county shall transfer from the docket of the [County Court of Tarrant County for civil cases] to the docket of said County Court at Law a sufficient number of civil cases to equalize the dockets of said two courts, and shall thereafter place new civil cases, as they are filed, on the docket of said County Court at Law in a ratio to be prescribed by said Commissioners' Court, which ratio may be changed or modified from time to time by order of said Commissioners' Court. [Id., § 13.]

Superseded in part by arts. 1970—59 and 1970—60. See also, art. 1970—62, changing name of county court of Tarrant county for civil cases to "County Court at Law No. 2" of Tarrant county.

Art. 1970—59. Cases filed in either county court at law or county court for civil cases.—Upon the passage and taking effect of this Act civil and criminal cases, within jurisdiction of such courts, may be originally filed in either the County Court at Law of Tarrant County, Texas, or the County Court of Tarrant County for Civil Cases. [Acts 1925, 39th Leg., ch. 206, p. 679, § 2.]

Art. 1970—60. Transfer of cases.—Whenever the judges of the County Court of Tarrant County for Civil Cases, or the judge of the County Court at Law, may deem it expedient to the transaction of the public business, he may transfer any cause pending in the court over which he presides to the docket of said other court, and the written order upon the minutes of either of said courts so transferring such case, signed by the judge thereof making the transfer, shall be authority for the clerk of such courts to make transfer. Provided, further, that the commissioners' court of said county may, within its discretion, direct the clerk of said courts to transfer from the docket of either of said courts any case or cases pending thereon to the docket of such other court, and thereupon the court to which the transfer may be made shall have jurisdiction to hear and determine such cause or causes as though the same had been originally filed therein. [Acts 1925, 39th Leg., ch. 206, p. 679, § 3.]

Art. 1970—61. Fees and salaries of judges.—The judge of the County Court at Law and the judge of the County Court of Tarrant County for Civil Cases, respectively, shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by them monthly into the county treasury, the judges of said courts shall each receive a salary of $5,000.00 annually, to be paid monthly out of the county treasury by the commissioners' court of Tarrant County, Texas. [Acts 1925, 39th Leg., ch. 206, p. 679, § 4.]

Art. 1970—62. Designations of courts.—From and after the passage and the taking effect of this Act the said County Court at Law of Tarrant County shall be known and designated as the "County Court at Law No. 1" of Tarrant County, Texas, and the said County Court of Tarrant County for Civil Cases shall be known and designated as the "County Court at Law No. 2" of Tarrant County, Texas. [Acts 1925, 39th Leg., ch. 206, p. 680, § 5.]

Superseding part of art. 1970—32.

Art. 1970—63. Creation of county court of Bexar county for civil cases.—That there is hereby created a court to be held in Bexar county, Texas, to be called the "County Court of Bexar County for Civil Cases." [Acts 1911, p. 15, sec. 1.]

Art. 1970—64. Jurisdiction of said court.—The county court of Bexar county for civil cases shall have exclusive jurisdiction of all civil matters and causes, original and appellate, over which, by the general laws of the State of Texas, the county court of said county would have jurisdiction, except as provided in section 3 of this Act [Art. 1970—65], and all civil cases other than probate matters, and such as are provided in section 3 of this Act, be, and the same are hereby transferred to the county court of Bexar county

for civil cases; and all civil writs and processes, heretofore issued by or out of said county court, other than pertaining to matters over which, by section 3 of this Act, jurisdiction remains in the county court of Bexar county, be, and the same are hereby made returnable to the county court of Bexar county for civil cases. [Id. sec. 2.]

Art. 1970—65. Jurisdiction retained by county court of Bexar county.—The county court of Bexar county shall retain, as heretofore, the jurisdiction of all criminal cases, the forfeiture of bonds in criminal cases and all proceedings in relation thereto; of all cases of eminent domain; the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of administrators, executors and guardians; transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law. The county judge of Bexar county shall be the judge of the county court of Bexar county, and all ex officio duties of the county judge shall be exercised by the said judge of the county court of Bexar county, except in so far as the same shall, by this Act, be committed to the judge of the county court of Bexar county for civil cases. The county judge of Bexar county shall retain authority to try all applications for liquor licenses, and shall approve all liquor bonds as may be provided by law. He shall also retain jurisdiction of the juvenile court. [Id. sec. 3.]

Art. 1970—66. Both courts may issue writs.—The said county court of Bexar county for civil cases or the judge thereof, shall have the power to issue writs of injunctions, sequestration, attachment, garnishment, certiorari, supersedeas, mandamus, and all other writs necessary to the enforcement of the jurisdiction of said court; and also power to punish for contempt under such provisions as are or may be provided by the general law governing county courts throughout the state, and to issue writs of habeas corpus in cases within the jurisdiction of said court. [Id. sec. 4.]

Art. 1970—67. Terms, practice, etc.—The terms of the county court of Bexar county for civil cases, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Bexar county for civil cases shall be held as follows: Beginning on the first Mondays in January, March, May, July, September and November of each year, and may continue until the business thereof is disposed of. [Id. sec. 5.]

Art. 1970—68. Judge to be elected when, etc.; qualifications; term.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the county court of Bexar county for civil cases, who shall be learned in the laws of the state, who shall hold his office for two years, and until his successor shall have been duly qualified. [Id. sec. 6.]

Art. 1970—69. Bond and oath of judge.—The judge of the county court of Bexar county for civil cases shall execute a bond in the sum of $5,000.00, and take the oath of office as required by the law relating to county judges. [Id. sec. 7.]

Art. 1970—70. Special judge elected or appointed how.—A special judge of the county court of Bexar county for civil cases may be appointed or elected as provided by laws relating to county courts, and to the judges thereof. [Id. sec. 8.]

Art. 1970—71. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Bexar county shall be the clerk of the county court of Bexar county for civil cases. The seal of said court shall be the same as that provided for county courts, except that the seal shall contain the words "County Court of Bexar County for Civil Cases." The sheriff of Bexar county shall in person or by deputy attend the court when required by the judge thereof. [Id. sec. 9.]

Art. 1970—72. Selection, etc., of juries.—The jurisdiction and authority now vested by law in the county court of Bexar county for the selection and service of jurors shall be exercised by each of the two courts within their jurisdiction. [Id. sec. 10.]

Art. 1970—73. Vacancies in office of judge, how filled; appointment of first judge.—Any vacancy in the office of the judge of the court created by this Act may be filled by the commissioners court of Bexar county until the next general election. The commissioners court of Bexar county shall, as soon as may be, after this Act shall take effect, appoint a judge of the county court of Bexar county for civil cases, who shall serve until the next general election, and until his successor shall be duly elected and qualified. [Id. sec. 11.]

Art. 1970—74. Fees; salary of judge.—The judge of the county court of Bexar county for civil cases shall collect the same fees provided by law for county judges in similar cases, all of which shall be paid by him monthly into the county treasury, and he shall receive a salary of three thousand dollars ($3,000.00) annually, to be paid monthly out of the county treasury by the commissioners court. The county judge of Bexar county shall receive in addition to the other fees allowed by law, a salary for the ex officio duties of his office of not less than $100.00 per month. [Id. sec. 12.]

Art. 1970—75. Removal of judge.—The judge of the county court of Bexar county for civil cases may be removed from office in the same manner, and for the same causes as any other county judge may be removed under the laws of this state. [Id. sec. 13.]

Art. 1970—76. County court of Harris county for civil cases created.—That there is hereby created a court to be held in Harris county, [to be called the county court of Harris county for civil cases.] [Acts 1911, p. 4, sec. 1.]

The bracketed part of this article is superseded by art. 1970—77.

Art. 1970—77. Name changed; seal.—The county court of Harris county for civil cases shall hereafter be known as the county court at law of Harris county, Texas, and the seal of said court shall hereafter be the same as that provided by law for county courts, except that the seal shall contain the words: "County Court at Law of Harris County, Texas." [Acts 1913, p. 10, sec. 1.]

Superseding part of art. 1970—76.

Art. 1970—78. Change of name not to affect court, except, etc.; judges, officers, process and returns.—The change in the name of said court shall in no way or manner, other than is provided in this Act, affect the officers or judge of said court, their compensation or tenure of office, and shall, in no way or manner, affect the process of said court already issued. The judge and officers now serving said county court of Harris county for civil cases, shall continue to serve said court under its changed name to the same effect to all things as if the name had not been changed All process heretofore issued out of said county court for civil cases and all returns thereon shall in all things be treated and considered as if the name of said court had not been changed. [Id. sec. 2.]

Art. 1970—79. Jurisdiction of said court.—The [county court of Harris county for civil cases] shall have jurisdiction in all civil matters and causes, original and appellate, over which, by the general laws of the state of Texas, the county court of said county would have jurisdiction, except as provided in section three (3) of this Act [Art. 1970—81], and all civil cases other than probate matters and such as are provided in section three (3) of this Act, be and the same are hereby transferred to the [county court of Harris county for civil cases], and all civil writs and processes heretofore issued by or out of said county court other than pertaining to matters over which, by section

three (3) of this Act, jurisdiction remains in the county court of Harris county be and the same are hereby made returnable to the [county court of Harris county for civil cases]. The jurisdiction of the [county court of Harris county for civil cases] and of the judge thereof shall extend to all matters of eminent domain of which jurisdiction has been heretofore vested in the county court of Harris county or in the county judge thereof, but this provision shall not effect [affect] the jurisdiction of the commissioners court or of the county judge of Harris county as the presiding officer of such commissioners court, as to roads, bridges, and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners court or the judge thereof. [Acts 1911, p. 4, sec. 2.]

Additional powers are conferred by art. 1970—80. The name of the court is changed by Art. 1970—77 to the "County Court at Law of Harris County, Texas."

Art. 1970—80. Jurisdiction continued, etc.; additional jurisdiction; appeals; criminal jurisdiction, etc.—The said court to be hereafter known as the county court at law for Harris county shall have all the jurisdiction heretofore conferred upon [Art. 1970—79] it under the name of the county court of Harris county for civil cases, and its judge shall have all the powers heretofore conferred upon the judge of the county court of Harris county for civil cases; and in addition to the said jurisdiction the said county court at law of Harris county shall have all of the, and the same jurisdiction over criminal matters that is now vested in the county courts having jurisdiction in civil and criminal cases under the constitution and laws of Texas, and all appeals from justices, mayors, recorders, or other inferior courts within Harris county, shall hereafter lie to said county court at law of Harris county instead of as heretofore, to the criminal district court of Harris county, and the judge of said court shall have, in addition to the powers now conferred upon him, the same powers, rights and privileges, as to criminal matters as are now vested in and enjoyed by the judges of county courts having criminal jurisdiction; provided, however, that said court shall have no jurisdiction over any of those matters the jurisdiction over which is now in the county court of Harris county or the judge thereof. [Acts 1913, p. 10, sec. 3.]

Art. 1970—81. Jurisdiction retained by county court of Harris county.—The county judge [court] of Harris county shall retain as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business pertaining to deceased persons, and to hear and determine all matters affecting juvenile offenders, minors, idiots, lunatics, person [persons] non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and shall have jurisdiction to hear and determine all matters relating to or arising out of the granting or revoking of liquor licenses, and all matters appertainng thereto; and to apprentice minors as provided by law. and the said court, or the judge thereof, shall have the power to issue writs of injunctions, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court, and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the state; but said county court of Harris county shall have no other jurisdiction, civil or criminal. The county judge of Harris county shall be the judge of the county court of Harris county, and all ex officio duties of the county judge shall be exercised by the said judge of the county court of Harris county, except in so far as the same shall by this Act be committed to the judge of the [county court of Harris county for civil cases]. [Acts 1911, p. 4, sec. 3.]

See art. 1970—77, changing name of county court of Harris county for civil cases to "County Court at Law of Harris County, Texas."

Art. 1970—82. Both courts may issue writs.—Both the said county court of Harris county and the [county court of Harris county for civil cases] or either of the judges thereof, shall have the power to issue writs of injunction, sequestration, attachment, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said courts; and also power to punish for contempts under such provisions as are or may be provided by the general laws governing county courts throughout the state, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said courts or of any court or tribunal inferior to said courts. [Id. sec. 4.]

See art. 1970—77 changing name of county court of Harris county for civil cases to "County Court at Law of Harris County, Texas." This article supersedes Acts 1911, p. 4, § 9.

Art. 1970—83. Terms, practice, etc.—The [terms of the county court of Harris county for civil cases] and the practice therein and appeals and writs of error therefrom shall be as prescribed by laws relating to county courts. [The terms of the county court of Harris county for civil cases shall be held as now established for the terms of the county court of Harris county until the same be changed in accordance with the law.] [Id. sec. 5.]

The bracketed parts of this article are superseded by arts. 1970—77 and 1970—84.

Art. 1970—84. Terms of court.—Said court shall hold six terms a year, beginning respectively on the first Monday in January, in March, in May, in July, in September, and in November of each year, and each term shall continue until the business is disposed of. [Acts 1913, p. 10, sec. 7.]

Art. 1970—85. Judge to be elected, when; qualifications; term.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the [county court of Harris county for civil cases,] who shall be well informed in the laws of the state, who shall hold his office for two years and until his successor shall have duly qualified. [Acts 1911, p. 4, sec. 6.]

See arts. 1970—77 and 1970—78, changing name of court.

Art. 1970—86. Bond and oath of judge.—The judge of the [county court of Harris county for civil cases,] shall execute a bond and take the oath of office as required by the law relating to county judges. [Id. sec. 7.]

See art. 1970—77, changing name of court to "County Court at Law of Harris County, Texas."

Art. 1970—87. Special judge.—A special judge of the [county court of Harris county for civil cases] may be appointed or elected as provided by law relating to county courts and to the judges thereof. [Id. sec. 8.]

See art. 1970—77, changing name of court to "County Court at Law of Harris County, Texas."

Art. 1970—88. Clerk; seal; sheriff to attend when, etc.—The county clerk of Harris county shall be the clerk of the [county court of Harris county for civil cases. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words "County Court of Harris County for Civil Cases."] The sheriff of Harris county shall, in person or by deputy, attend the said court when required by the judge thereof. [Id. sec. 10.]

The bracketed part of this article is superseded by art. 1970—77. See art. 1970—92, conferring on the clerk of the criminal district court the powers of clerk as to criminal matters.

Art. 1970—89. Vacancy in office of judge, how filled, etc.—Any vacancy in the office of the judge of the court created by this Act may be filled by the commissioners court of Harris county until the next general election. The commissioners court shall, as soon as may be after this Act shall take effect, appoint a judge of the [county court of Harris county for civil cases] who shall serve until the next general election

and until his successor shall be duly elected and qualified. [Id. sec. 11.]

See art. 1970—77, changing name of court to "County Court at Law of Harris County, Texas."

Art. 1970–90. Fees; salary of judge.—The judge of the [county court of Harris county for civil cases] shall collect the same fees as are now established by law relating to county judges, all of which shall be by him paid monthly into the county treasury, and he shall receive an annual salary of three thousand dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners court. [Id. sec. 12.]

See art. 1970—77, changing name of court, and art. 1970—94, providing for additional compensation.

Art. 1970–91. Salary of county judge of Harris county.—The county judge of Harris county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary for the ex officio duties of his office as may be allowed him by the commissioners court not less than fifteen hundred dollars per year. [Id. sec. 13.]

Art. 1970–92. Clerk of criminal district court of Harris county to act as clerk in criminal matters, etc.; fees.—The county clerk of Harris county shall have no authority in criminal matters pending in said county court at law for Harris county. The clerk of the criminal district court of Harris county shall act as the clerk of the said county court of [at] law for Harris county in all criminal matters, but only in criminal matters, and he shall sign all papers emanating from said court, including the minutes of said court in criminal matters, whenever its clerk's signature is necessary, as ex officio clerk of said county court at law for Harris county, using the seal of said court. The fees of said clerk as to those criminal matters, the jurisdiction over which is hereby vested in said county court at law, shall be the same in all respects, including amount, manner of payment and collection, as if the criminal district court of Harris county had retained jurisdiction over said matters. [Acts 1913, p. 10, sec. 4.]

Art. 1970–93. Transfer of misdemeanor criminal cases.—All misdemeanor criminal cases now pending in the criminal district court of Harris county, as well as all criminal cases on appeal to the said district court from the various subordinate courts of Harris county shall, immediately upon the taking effect of this Act, be transferred to the county court at law of Harris county, and the same are hereby so transferred, and upon said county court at law is hereby conferred jurisdiction of such cases. [Id. sec. 5.]

Art. 1970–94. Judge to retain fees and costs in criminal cases.—In addition to the compensation now provided by law, the judge of said county court at law of Harris county, shall tax up, receive and collect in each case, the same fees and costs in criminal cases over which said county court has jurisdiction, as are now provided by the general laws of the state, for judges of county courts having criminal jurisdiction, such fees to be retained by him as compensation for the additional jurisdiction conferred upon his court. [Id. sec. 6.]

Art. 1970–95. Court created.—There is hereby created a court to be held in Harris County, Texas, to be called the "County Court at Law No. 2 of Harris County, Texas." [Acts 1915, 1st C. S., ch. 8, sec. 1.]

Art. 1970–96. Jurisdiction.—Said County Court at Law No. 2 of Harris County, Texas, shall have, and it is hereby granted original and appellate jurisdiction, in all matters and causes of a civil and criminal nature, concurrent with and in all things equal to that heretofore conferred upon the County Court at Law of Harris County, Texas. [Id. sec. 2.]

Art. 1970–97. Powers of judge; concurrent jurisdiction.—The judge of said County Court at Law No. 2 of Harris County, Texas, shall have and exercise all the powers and shall be subject to all the limitations and obligations heretofore or hereafter conferred or imposed upon the judge of the County Court at Law of Harris County, Texas. Said County Court at Law No. 2 of Harris County, Texas, shall have concurrent jurisdiction with the County Court at Law of Harris County over criminal matters, and shall have the same jurisdiction over criminal matters, that is now vested in county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas. And said County Court at Law No. 2 of Harris County shall have concurrent jurisdiction with the County Court at Law of Harris County in all appeals from justices, mayors, recorders or other inferior courts within Harris County; and the judge of said court shall have the same powers, rights and privileges as to criminal matters as are now vested in and enjoyed by the judges of county courts having criminal jurisdiction; provided, however, that said court shall have no jurisdiction over any of those matters the jurisdiction over which is now vested in the County Court of Harris County, or the judge thereof. [Id. sec. 3.]

Art. 1970–98. Qualifications of judge; appointment; oath; bond; fees and salary.—The judge of the County Court at Law No. 2 of Harris County, Texas, shall be well informed in the law; he shall have been a duly licensed and practicing member of the bar of this State for not less than two years; he shall be appointed by the Governor of the State of Texas as soon as may be after this Act takes effect; he shall take the oath of office and execute an official bond as now required by the law relating to county judges, and he shall collect the same fees in civil cases as are now provided by law in case of county judges, all of which he shall pay monthly into the county treasury, and in lieu of such fees he shall receive a salary of three thousand dollars per annum to be paid out of the county treasury by the Commissioners Court of Harris County in monthly installments of two hundred and fifty dollars each. In addition to the compensation hereinbefore provided the judge of the County Court at Law No. 2 of Harris County shall tax up, receive and collect in each criminal case the same fees and costs as are now provided by the General Laws of the State for the judges of county courts having criminal jurisdiction, such fees to be retained by him as compensation for the exercise of the criminal jurisdiction herein conferred upon his court. [Id. sec. 4.]

Art. 1970–99. Clerk; fees.—The county clerk of Harris County shall be the clerk of said County Court at Law No. 2 of Harris County in civil matters and causes; and shall receive and collect the same fees which he now receives and collects as clerk of the County Court at Law of Harris County, Texas. The clerk of the Criminal District Court of Harris County, Texas, shall be clerk of said County Court at Law No. 2 in all criminal matters and causes, and shall receive and collect such fees as he now receives and collects in criminal matters as clerk of the County Court at Law of Harris County. [Id. sec. 5.]

Art. 1970–100. Seal.—The seal of the County Court at Law No. 2 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seal shall contain the words "County Court at Law Number Two of Harris County, Texas," and said seal shall be judicially noticed. [Id. sec. 6.]

Art. 1970–101. Sheriffs and constables.—The sheriff of Harris County, either in person or by deputy, shall attend said court when required by the judge thereof; and the various sheriffs and constables of this State executing process issued out of said court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts. [Id. sec. 7.]

Art. 1970–102. Special judge.—A special judge of said court may be appointed or elected in the manner and instances now or hereafter provided by the law relating to county courts and the judges thereof. [Id. sec. 8.]

Art. 1970–103. Power to issue writs.—Said court shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, habeas corpus in criminal misdemeanor cases, and all writs necessary to the enforcement of its jurisdiction; and, within the limitations placed upon county courts, to punish contempts thereof. Writs of injunction granted in civil cases by the judge of said County Court at Law No. 2 and by the judge of said County Court at Law shall be made returnable to the court in which the petition for injunction shall be filed, as hereinafter provided. [Id. sec. 9.]

Art. 1970–104. Jurisdiction of County Court at Law.—The jurisdiction, civil and criminal, of the County Court at Law of Harris County, Texas, shall not in anywise be impaired or affected by this Act. [Id. sec. 10.]

Art. 1970–105. Terms.—The terms of the court hereby created shall begin on the first Monday of the months of June, August, October, December, February and April of each year. The sessions of said court shall be held in such place as may be provided therefor by the Commissioners Court of Harris County. [Id. sec. 11.]

Art. 1970–106. Transfer of cases.—As soon as may be, after this Act takes effect, the clerk of the County Court at Law of Harris County, Texas, shall transfer to the docket of the County Court at Law No. 2 of Harris County, Texas, one-half of the civil cases then pending in said County Court at Law. In making such transfer, said Clerk shall first transfer to said County Court at Law No. 2 the case having the smallest file number on the docket of said County Court at Law. The case having the next highest file number shall remain on the docket of said County Court at Law. The case having the third smallest file number shall be transferred. In like manner said clerk shall go through the docket of said County Court at Law, transferring to the docket of said County Court at Law No. 2 every second civil case thereafter. The clerk shall note such transfer when made, on the minutes of the County Court at Law of Harris County, Texas. New civil and new criminal cases filed with said clerk after such transfer has been made, irrespective of the court or judge to which the petitions in such civil cases shall be addressed, shall, in like manner, be filed by the said clerk, one civil and one criminal case in said County Court at Law No. 2, and one civil and one criminal case in said County Court at Law. The first new civil case and the first new criminal case, filed with said clerk after such transfer has been made, shall both be filed in said County Court at Law No. 2. [Id. sec. 12.]

Art. 1970–107. Same.—The judges of said County Court at Law and of said County Court at Law No. 2, in their discretion, either in term time or in vacation, by an order entered upon the minutes of their respective courts, may transfer to the court of the other any case or cases then pending in their respective courts. And when such case or case[s] shall be so transferred the court to which such transfer shall be made shall have the same right and authority to try and finally dispose of the same as the court making such transfer. [Id. sec. 13.]

Art. 1970–108. Practice.—The practice in said County Court at Law No. 2, and in cases of appeal and writs of error therefrom and thereto, shall be the same as is now, or may hereafter be prescribed for county courts. [Id. sec. 14.]

Art. 1970–109. Process in transferred cases.—All process issued out of the County Court at Law of Harris County, Texas, prior to the time when the clerk thereof shall transfer cases from the docket of said courts, as provided in Section 12 of this Act [Art. 1970—105] in cases transferred as therein provided, shall be returned to and filed in the court hereby created, and shall be equally as valid and binding upon parties to such transferred cases as though such process had been issued out of the County Court at Law No. 2 of Harris County, Texas. Likewise, in cases transferred by the judges of either of said courts, as provided in Section 13 of this Act [1970—107], all process extant at the time of such transfer shall be returned to and filed in the court to which such transfer is made, and shall be as valid and binding as though originally issued out of the court to which such transfer may be made. [Id. sec. 15.]

Art. 1970–110. Appointment of judge; election.—As soon as this Act shall take effect the Governor of the State shall appoint a judge of the County Court at Law No. 2 of Harris County, who shall serve until the next general election and until his successor shall be duly elected and qualified. And any vacancy thereafter occurring in the office of the judge of the County Court at Law No. 2 of Harris County, created by this Act, shall be filed by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election, and until his successor shall have qualified. There shall be elected by the qualified voters of Harris County at each general election hereafter, a judge of the County Court at Law No. 2 of Harris County, who shall hold his office for two years, and until his successor shall be duly qualified. [Id. sec. 16.]

Art. 1970–111. County Court of Jefferson County at Law created.—There is hereby created a court to be held in Beaumont, Jefferson County, Texas, to be called the County Court of Jefferson County at Law. [Acts 1915, ch. 29, sec. 1.]

Art. 1970–112. Jurisdiction.—The County Court of Jefferson County at Law shall have jurisdiction in all matters and cases, civil and criminal, original and appellate, over which by the general laws of the State the County Court of said County would have jurisdiction, except as hereinafter provided in Section 3 of this Act [Art. 1970–113], and all cases pending in the County Court of said County other than probate matters such as are provided in Section 3 of this Act shall be and the same are hereby transferred to the County Court of Jefferson County at Law, and all writs and process, civil and criminal, heretofore issued by or out of said County Court, other than those pertaining to matters which are hereby exempt by this Act that are to remain in the County Court of Jefferson County, shall be and the same are thereby made returnable to the County Court of Jefferson County at Law. The jurisdiction of the County Court of Jefferson County at Law, and to the Judge thereof, shall extend to all matters of eminent domain of which jurisdiction as [was] heretofore vested in the County Court or in the County Judge; but this provision shall not affect the jurisdiction of the Commissioners Court or the County Judge of Jefferson County as the presiding officer of said Commissioners Court as to roads, bridges and public highways, or matters of eminent domain which are now in the jurisdiction of the Commissioners Court or the Judge thereof. [Acts 1915, ch. 29, sec. 2; Acts 1919, ch. 27, sec. 2.]

Art. 1970–113. Jurisdiction of other courts.—The County Court of Jefferson County shall retain, as heretofore, the general jurisdiction of the Probate Court and all jurisdiction conferred by law now over probate matters; and the Court herein created shall have no other jurisdiction than that named in this Act, and the County Court of Jefferson County as now and heretofore existing shall have all jurisdiction which it now has, save and except that which is given the County Court of Jefferson County, at Law, in this Act, but the County Court as now existing shall have no other jurisdiction, civil or criminal. The County Judge of Jefferson County shall be the Judge of the County Court of said county, and all ex-officio duties of the County Judge shall be exercised by said Judge of the County Court of Jefferson County, except in so far as the same shall by this Act be committed to the County Court of Jefferson County at Law. [Acts 1915, ch. 29, sec. 3; Acts 1919, ch. 27, sec. 3.]

Art. 1970–114. Terms of court.—There shall be twelve terms of the County Court of Jefferson County at law held annually and the practices therein

and the appeals and the writs of error thereto and therefor shall be as prescribed by the laws relating to County Courts. The said terms of the County Court of Jefferson County at law, shall be held as follows: Beginning on the first Monday of the first month after this Act shall become effective and shall continue in session until the last Saturday in said month when it shall adjourn, and open again on the first Monday in the next month and shall continue in session until the last Saturday in said month, and so on during the entire year, and the terms thereof shall be held at the Courthouse of Jefferson County, Texas. [Acts 1915, ch. 29, sec. 4; Acts 1919, ch. 27, sec. 4.]

Art. 1970–115. Election of judge; tenure; qualifications.—There shall be elected in Jefferson County by the qualified voters thereof at each general election a Judge of the County Court of Jefferson County at Law, who shall be well informed in the laws of the State, and who shall hold his office for two years and until his successor shall have been duly elected and qualified. No person shall be elected judge of said Court who has not been a resident citizen of Jefferson County, Texas, for at least two years prior to his election, and shall possess all of the qualifications for the office that are now required by the general laws of the State for County Judges. [Acts 1915, ch. 29, sec. 5; Acts 1919, ch. 27, sec. 5.]

Art. 1970–116. Appointment of judge.—When this Act shall become effective the present Judge of the County Court of Jefferson County at Law, shall continue to be the Judge of said Court and shall hold his office until the next general election of county officers or until his successor is elected and qualified. [Acts 1915, ch. 29, sec. 7; Acts 1919, ch. 27, sec. 7.]

Art. 1970–117. Disqualification of judge.—When the Judge of the County Court of Jefferson County at Law, is disqualified to try any case pending in the County Court of Jefferson County at Law, the parties or their attorneys in such a case may agree on the selection of a Special Judge to try such case, but if the parties or their attorneys fail to agree upon the selection of a Special Judge to try such case, it shall be the duty of the Judge of the County Court of Jefferson County at Law, to certify to the Governor that he is disqualified to try such case and the failure of the parties or their attorneys to agree upon the selection of a Special Judge to try such a case. Whereupon, the Governor shall proceed to appoint a Special Judge, learned in the law, to try such case. [Acts 1915, ch. 29, sec. 8; Acts 1919, ch. 27, sec. 8.]

Art. 1970–118. Issuance of writs.—The County Court of Jefferson County at Law, or the Judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas and all writs necessary to the enforcement of jurisdiction of said Court and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said Court, or of any other Court in said county of inferior jurisdiction to said County Court at Law. [Acts 1915, ch. 29, sec. 9; Acts 1919, ch. 27, sec. 9.]

Art. 1970–119. Clerk, seal, and sheriff.—The County Clerk of Jefferson County, Texas, shall be the Clerk of the County Court of Jefferson County at Law, and the seal of said Court shall be the same as provided by law for County Courts, except the seal shall contain the words "County Court of Jefferson County at Law," and the Sheriff of Jefferson County shall in person or by Deputy attend said Court when required by the Judge thereof, and the County Clerk of Jefferson County, Texas, is hereby authorized, if it becomes necessary, in his judgment, to appoint a Deputy to specially attend to the matters pertaining to the County Court of Jefferson County at Law, and said Deputy shall receive a salary of one hundred and fifty ($150.00) dollars per month, to be paid out of county treasury of Jefferson County on the order of the Commissioners Court of said county. [Acts 1915, ch. 29, sec. 10; Acts 1919, ch. 27, sec. 10.]

Art. 1970–120. Selection of jurors.—The Jurisdiction or authority now vested by law in the District Courts of this State for the drawing, selection and service of jurors shall be exercised by the County Court of Jefferson County at Law, provided a panel of not exceeding twenty-four jurors shall be drawn for any one week of said Court, and juries selected in the trial of any case shall not exceed six. [Acts 1915, ch. 29, sec. 11; Acts 1919, ch. 27, sec. 11.]

Art. 1970–121. Vacancy in office of judge.—Any vacancy in the office of the Judge of the County Court of Jefferson County at Law, may be filled by the County Commissioners Court, and when so filled the Judge shall hold office until the next general election and until his successor is elected and qualified. [Acts 1915, ch. 29, sec. 12; Acts 1919, ch. 27, sec. 12.]

Art. 1970–122. Salary of judge; fees collected and accounted for.—The Judge of the County Court of Jefferson County at Law, shall receive a salary of thirty-six hundred ($3600.00) dollars per annum, to be paid out of the county treasury of Jefferson County, Texas, on the order of the Commissioners Court of said county, and said salary shall be paid monthly in equal installments. The Judge of the County Court of Jefferson County at Law, shall assess the same fees as are now prescribed by law relating to County Judge's fees, all of which shall be collected by the Clerk of the Court and shall be paid into the county treasury on collection. No part of which shall be paid to the said Judge, but he shall draw a salary as above specified in this section. [Acts 1915, ch. 29, sec. 13; Acts 1919, ch. 27, sec. 13.]

Art. 1970–123. Appeals from lower courts.—All cases appealed from the Justices Courts and Recorders Courts in Jefferson County, Texas, shall be made direct to the County Court of Jefferson County at Law, under the provisions heretofore governing such appeals. [Acts 1915, ch. 29, sec. 14; Acts 1919, ch. 27, sec. 14.]

Art. 1970–124. Fees of County Judge.—The County Judge of Jefferson County, at the time this Act goes into effect, shall receive the same compensation in ex-officio salary and fees as he would have received had this Act, creating the County Court of Jefferson County at Law, not been enacted, said Compensation to be computed and allowed and ordered paid by the Commissioners Court of said County out of the general fund of said county. [Acts 1915, ch. 29, sec. 15; Acts 1919, ch. 27, sec. 15.]

Art. 1970–125. Special judge; election; compensation.—In the event of the failure from any cause of the Judge of this Court to open the same at the time prescribed by law, then a majority of the practicing attorneys present in said Court shall proceed to elect a Special Judge in the same manner as prescribed by law for the election of Special Judges of the District Courts, who shall preside over said Court until such regular Judge shall be able to hold the same, and said Special Judge shall be entitled to receive a fee of three ($3.00) dollars for each case tried and finally disposed of by him, the same to be paid by the County Treasurer upon the order of the Commissioners Court of Jefferson County, Texas. [Id. sec. 16.]

Art. 1970–126. Act not repealed.—Nothing in this Act shall be construed in any manner to affect or repeal the Court at Law, created for the city of Port Arthur in Jefferson County, Texas, passed by the Fourth Called Session of the Thirty-fifth Legislature and known as House Bill No. 112. [Id. sec. 16a.]

Art. 1970–127. Court created.—There is hereby created a court to be held in El Paso county, Texas, to be known and designated as the "El Paso County Court at Law." [Acts 1917, ch. 93, sec. 1; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970–128. Jurisdiction.—The El Paso County Court at Law shall have jurisdiction of all civil matters and causes, original and appellate over which by the General Laws of the State of Texas the County Court of said county would have jurisdiction, except as provided in Section 3, of this Act [Art. 1970

-129; and the El Paso County Court at Law of said county shall have jurisdiction in all criminal matters and causes, original and appellate over which by the General Laws of this State the County Court has jurisdiction, except as provided in Section 3, of this Act (Art. 1811—135) [1970—129]; and all civil and criminal writs and processes heretofore issued by and out of said County Court be, and the same are hereby made returnable to the El Paso County Court at Law of El Paso County, Texas. The jurisdiction of El Paso County Court at Law and the judge thereof shall extend to all matters of eminent domain of which jurisdiction has heretofore rested in the County Court of El Paso County, Texas, or the judge thereof, but this provision shall not effect [affect] the jurisdiction of the Commissioners' Court or the County Judge of El Paso County as presiding judge of said court as to roads, bridges and public highways and matters of eminent domain which are now within the jurisdiction of the Commissioners' Court or of the judge of the County Court of El Paso County, Texas. [Acts 1917, ch. 93, sec. 2; Acts 1918, 4th C. S., ch. 14, sec. 1; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—129. Jurisdiction.—The County Court of El Paso County, Texas, shall retain, as heretofore, its jurisdiction as a juvenile court, its jurisdiction in matters pertaining to liquor licenses, forfeitures and bonds and the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots and lunatics, persons non compos mentis and drunkards, grant letters testamentary and of administration, settle accounts with administrators, executors and guardians, transact all business pertaining to deceased persons, and to apprentice minors as provided by law. The County Judge of El Paso County, Texas, shall be the Judge of the County Court of El Paso County, Texas, and all ex-officio duties of the County Judge shall be exercised by said Judge of the said County Court of El Paso County, except in so far as the same shall by this Act [Arts. 1970—127 to 1970—135, 1970—137 to 1970—140] be committed to the Judge of the El Paso County Court at Law. [Acts 1917, ch. 93, sec. 3; Acts 1918, 4th C. S., ch. 14, sec. 2; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—130. Power to issue writs.—Both the said County Court of El Paso county and the El Paso County Court at Law or either of the judges thereof shall have the power to issue writs of injunction, sequestration, attachments, garnishment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said courts; and also power to punish for contempt under such provisions as are, or may be provided by the general laws governing county courts throughout the State, and to issue writs of habeas corpus, in cases where the offense charged is within the jurisdiction of said courts or of any court or tribunal inferior to said courts. [Acts 1917, ch. 93, sec. 4; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—131. Terms of court.—The terms of the El Paso County Court at Law and the practice therein and appeals and writs of error therefrom shall be, as prescribed by law relating to county courts. The terms of the El Paso County Court at Law shall be held not less than four times each year, and the commissioners court of El Paso county shall fix the time at which said court shall hold its terms, until the same shall be changed according to law. [Id. sec. 5; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—132. Appointment of judge; election; qualifications of judge.—The Governor shall appoint some suitable person who is a resident citizen of El Paso county as judge of the El Paso County Court at Law, as herein constituted, who shall hold such office until the next general election after his appointment, and until his successor shall have been elected and qualified, and all vacancies in said office shall also be filled by appointment by the Governor until the next general election thereafter. At the first general election in said county and at each general election thereafter there shall be elected by the qualified voters a judge of the El Paso County Court at law, who shall be well informed in the laws of this State, who shall hold his office for two years and until his successor shall have been duly elected and qualified; provided that no person shall be eligible for judge of the El Paso County Court at Law by election, unless he shall be a citizen of the United States and of this State; who shall have been a practicing lawyer of this State or a judge of a court in this State for at least four years next preceding his election, and who shall have resided in the county of El Paso for two years next preceding his election. [Id. sec. 6; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—133. Bond and oath of judge.—The judge of the El Paso County Court at Law shall execute a bond and take the oath of office as required by law relating to county judges. [Id. sec. 7; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—134. Special judge.—A special judge of the El Paso County Court at Law may be appointed or elected as provided by laws relating to county courts and the judges thereof. [Id. sec. 8; Acts 1927, 40th Leg. p. 270, ch. 191, § 1.]

Art. 1970—135. Clerk; seal; sheriff.—The county clerk of El Paso county shall be the clerk for the El Paso County Court at Law; the seal of said court shall be the same as that provided for county courts, except that the seal shall contain the words "El Paso County Court at Law." The sheriff of El Paso county shall, in person or by deputy, attend the court when required by the judge thereof. [Id. sec. 9; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—136. Official shorthand reporter; appointment; term of office; oath; duties.—For the purpose of preserving a record in all cases for the information of the court, jury and parties, the Judge of the County Court at Law of El Paso county, Texas shall appoint an official shorthand reporter for such court, who shall be well skilled in his profession, shall be a sworn officer of the court and shall hold his office at the pleasure of the court, and the provisions of Chapter Eleven of Title 37 of the Revised Civil Statutes of Texas of 1911 relating to the appointment of stenographers for the district courts shall, and it is hereby made to, apply in all its provisions, insofar as they are applicable, to the official shorthand reporter herein authorized to be appointed by the Judge of the County Court at Law of El Paso County, Texas and he shall be entitled to the same fees and shall perform the same duties and shall take the same oath as are in said Chapter Eleven of Title 37 provided for the stenographers of district courts of this State, and also be governed by any other laws covering the stenographers of district courts of this State, and in addition thereto receive a salary of Eighteen Hundred ($1,800.00) dollars annually, to be paid monthly out of the County Treasury upon order of the Commissioners' Court. [Acts 1918, 4th C. S., ch. 14, sec. 3; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970—136a. Reporter for county court.—For the purpose of preserving a record of all hearings had before the County Judge of El Paso County, Texas; for the information of the court and parties that may be interested therein, the Judge of the County Court of El Paso County, Texas, shall appoint an official shorthand reporter for such court who shall be well skilled in his profession, shall be a sworn officer of the court, and shall hold office at the pleasure of the County Judge, and all provisions of the Civil Statutes of the State of Texas, relating to the appointment of stenographers for district courts, shall, and it is hereby made and applied in all its provisions in so far as they are applicable to the official shorthand reporter herein authorized to be appointed by the County Judge of El Paso County, Texas, and such shorthand reporter shall receive a salary of Twelve Hundred ($1,200.00) dollars annually, to be paid monthly out of the County Treasury of El Paso County upon orders of the Commissioners' Court. [Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970–137. Juries.—The jurisdiction and authority now vested by law in the County Court of El Paso County, for the selection and service of jurors shall be exercised by each of said courts, but juries summoned for either of said courts may by order of the judge of the court in which they are summoned be transferred to the other court for service therein and may be used therein as if summoned for the court to which they may be thus transferred. [Acts 1917, ch. 93, sec. 10.]

Art. 1970–138. Compensation of judge.—The Judge of the County Court at Law of El Paso County, Texas, shall be entitled to the following compensation for his services as Judge of the County Court at Law; there shall be taxed and collected by the El Paso County Court at Law the same fees provided by the law for County Judges in similar cases, all of which shall be paid by the clerk monthly into the county treasury, and the judge of said court shall receive a salary of Four Thousand and Eight Hundred ($4,800.-00) dollars annually to be paid monthly out of the county treasury upon order of the commissioners' court. [Acts 1917, ch. 93, sec. 11; Acts 1918, 4th C. S., ch. 14, sec. 4; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970–139. Removal of judge.—The judge of the El Paso County Court at Law may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this State. [Acts 1917, ch. 93, sec. 12; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970–140. Salary of county judge.—The county judge of El Paso county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary, for the exofficio duties, not exceeding in the aggregate of fees and salary that which the existing laws provide for. [Id. sec. 13; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970–141. Repeal; partial invalidity of act.—All laws and parts of laws in conflict herewith be, and the same are hereby repealed, and it is further enacted that if any of the provisions of this Act shall be held void or in conflict with any provisions of the Constitution of this State the fact that such provisions may be held void shall in no wise affect any other provisions of this Act. [Acts 1918, 4th C. S., ch. 14, sec. 5; Acts 1927, 40th Leg., p. 270, ch. 191, § 1.]

Art. 1970–142. County court at law for Eastland county created.—There is hereby created a Court to be held in Eastland County, Texas, to be called "The County Court at Law for Eastland County." [Acts 1919, 2d C. S., ch. 16, sec. 1.]

Art. 1970–143. Jurisdiction.—The County Court at Law for Eastland County, shall have jurisdiction in all matters and causes, civil and criminal, original and appellate, including the general jurisdiction of the Probate Court, over which [by] the general laws of the State of Texas, the County Court would have jurisdiction; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons no[n] compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians; transact all business appertaining to deceased persons, minors, idiots, lunatics, and drunkards, including the settlement, partition and distribution of estates of deceased persons; and the apprentice of minors as provided by law, except as is provided in Section 3 of this bill [Art. 1970–144]. The said Court or the judge thereof, shall have power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court; and also to punish contempts under such provisions as are or may be provided by general law governing County Courts throughout the State. The jurisdiction of the County Court at Law for Eastland County and the Judge thereof, shall extend to all matters of eminent domain, of which the jurisdiction has heretofore invested in the County Court or the County Judge; but this provision shall not [a] effect the jurisdiction of the commissioners court or the county judge of Eastland County, Texas, as the presiding officer of such commissioners' Court, as to roads, bridges and public highways in matter of eminent domain which are now within the jurisdiction of the Commissioners' Court or the Judge thereof. The County Judge of Eastland County shall be the judge of the County Court at Law for Eastland County, Texas. All ex-officio duties of the county judge shall be exercised by the county judge of Eastland County, except in so far as same shall, by this Act be committed to the judge of the County Court at Law for Eastland County, Texas. [Id. sec. 2.]

Art. 1970–144. Jurisdiction of County Judge of Eastland County retained.—The County Judge of Eastland County, Texas shall retain as heretofore, all jurisdiction given under the general laws governing county judge in all the administration of the affairs of said county and as the presiding officer of said commissioners' court and nothing in this act shall be construed so as to confer upon the county court at Law for Eastland County, Texas or the judge thereof, any jurisdiction of the financial or fiscal affairs or taxation matters of said Court, the control or management of the roads, bridges, etc., or as the presiding officer of the commissioners' court. [Id. sec. 3.]

Art. 1970–145. Terms of court; practice; appeals and writs of error.—The terms of the County Court at Law for Eastland County, Texas, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by law relating to county courts. The terms of County Courts at Law for Eastland County, Texas, shall be held as now established by the terms of the County Court of Eastland County, until the same shall be changed in accordance with the law. [Id. sec. 4.]

Art. 1970–146. Judge; election; term of office.—There shall be elected in said county by the qualified voters, thereof, at said election, judge of the County Court at Law for Eastland County, Texas, who shall be well informed in law of the State who shall hold his office two years and until his successor shall have duly qualified. [Id. sec. 5.]

Art. 1970–147. Bond and oath of Judge.—The judge of the County Court at Law for Eastland County, shall execute a bond and take the oath of office as required by law for county judges, and may be appointed or elected as provided by law relating to county court and judges thereof. [Id. sec. 6.]

Art. 1970–148. Issuance of writs.—The County Court at Law for Eastland County or the judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus, in cases where the offense charged is within the jurisdiction of said court, or of any other court or tribunal inferior to said court. [Id. sec. 7.]

Art. 1970–149. Clerk; seal; sheriff.—The County Clerk of Eastland County shall be the Clerk of the County Court at Law for Eastland County. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words "County Court at Law for Eastland County, Texas"; the sheriff of Eastland County shall, in person or by deputy, attend the said court when required by the judge thereof. [Id. sec. 8.]

Art. 1970–150. Juries.—The jurisdiction and authority now vested by law in the County Court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the County Court at Law for Eastland County, Texas. [Id. sec. 9.]

Art. 1970–151. Vacancy in office of judge.—Any vacancy in the office of the judge of the county court at Law for Eastland County, may be filled by the Commissioners' Court of Eastland County until the next general election. [Id. sec. 10.]

Art. 1970–152. Fees and salary of Judge.—The Judge of the County Court at Law for Eastland

County, shall collect the same fees as are now established by law, relating to county judges and such ex-officio compensations for holding county court as the Commissioners' Court of said county shall prescribe and authorize. The County Judge of Eastland County, Texas, shall hereafter receive all such fees as are allowed him under the general laws and such salary for the ex-officio duties of his office as may be allowed him by the commissioners' court of said county. [Id. sec. 11.]

Art. 1970—153. County Court of Wichita County at Law created.—That there is hereby created a court to be held in Wichita County, to be called the County Court of Wichita County at Law. [Acts 1920, 36th Leg. 3d C. S., ch. 5, § 1.]

Art. 1970—154. Jurisdiction.—The County Court of Wichita County at Law shall have jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the general laws of the State, the county court of said county would have jurisdiction, except as provided in Section 3 of this Act [Art. 1970—155]; and all cases other than probate matters and such as are provided in Section 3 of this Act, be and the same are hereby transferred to the County Court of Wichita County at Law and all writs and process, civil and criminal, heretofore issued by or out of said county court, other than pertaining to matters over which by Section 3 of this Act, jurisdiction remains in the county court of Wichita County, be and the same are hereby made returnable to the County Court of Wichita County at Law. The jurisdiction of the County Court of Wichita County at Law and the judge thereof shall extend to all matters of eminent domain, of which jurisdiction has been heretofore vested in the county court or in the county judge, but this provision shall not effect [affect] the jurisdiction of the commissioners court, or of the county judge of Wichita County as the presiding officer of such commissioners court as to roads, bridges, and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners court or the judge thereof. [Id., § 2.]

Art. 1970—155. Probate and other jurisdiction.—The county court of Wichita County shall retain as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law; and the said court, or the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court, and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the State; but said county court of Wichita County, shall have no other jurisdiction, civil or criminal. The county judge of Wichita County shall be the judge of the county court of Wichita County. All ex-officio duties of the county judge shall be exercised by the said judge of the county court of Wichita County, except in so far as the same shall by this Act be committed to the judge of the County Court of Wichita County at Law. [Id., § 3.]

Art. 1970—156. Terms of court; practice.—The terms of the County Court of Wichita County at Law and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the County Court of Wichita County at Law shall be held as now established for the terms of the county court of Wichita County until the same may be changed in accordance with the law. [Id., § 4.]

Art. 1970—157. Election of judge; qualifications; tenure.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the County Court of Wichita County at Law, who shall be well informed in the laws of the State, who shall hold his office for two years, and until his successors shall have duly qualified. [Id., § 5.]

Art. 1970—158. Bond and oath of judge.—The judge of the County Court of Wichita County at Law, shall execute a bond and take the oath of office as required by the law relating to county judges. [Id., § 6.]

Art. 1970—159. Special judge.—A special judge of the County Court of Wichita County at law, may be appointed or elected as provided by law relating to county courts and to the judges thereof. [Id., § 7.]

Art. 1970—160. Issuance of writs.—The County Court of Wichita County at law, or the judges thereof shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said court or of any other court or tribunal inferior to said court. [Id., § 8.]

Art. 1970—161. Clerk; seal; sheriff.—The county clerk of Wichita County shall be the clerk of the County Court of Wichita County at Law; the seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words "Clerk of the County Court of Wichita County at Law." The sheriff of Wichita County shall in person or by deputy, attend the said court when required by the judge thereof. [Id., § 9.]

Art. 1970—162. Juries.—The jurisdiction and authority now vested in the county court for the appointment of jury commissioners and the selection and service of jurors, shall be exercised by the County Court of Wichita County at Law. [Id., § 10.]

Art. 1970—163. Vacancy in office of judge; appointment of judge until next election.—Any vacancy in the office of the judge of the court created by this Act, may be filled by the commissioners court of Wichita County until the next general election. The commissioners court shall as soon as may be, after this Act shall take effect, appoint a judge of the County Court of Wichita County at Law, who shall serve until the next general election and until his successors shall be duly elected and qualified. [Id., § 11.]

Art. 1970—164. Fees and salary of judge of County Court at Law.—The judge of the County Court of Wichita County at Law, shall collect the same fees as are now established by law relating to county judges, all of which shall be by him paid monthly into the county treasury, and he shall receive an annual salary of three thousand dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners court. [Id., § 12.]

Art. 1970—165. Fees and salary of county judge.—The county judge of Wichita County, Texas, shall collect the same fees as are now established by law relative to county judges, all of which shall be by him paid monthly into the county treasury, and he shall receive an annual salary of thirty-six hundred dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners court. [Id., § 13.]

Art. 1970—166. Stenographer.—For the purpose of preserving a record in all cases for the information of the court, jury and parties, the judge of the County Court, Wichita County, at Law, shall appoint an official shorthand reporter for such court, who shall be well skilled in his profession, shall be a sworn officer of the court, and shall hold office at the pleasure of the court; and the provisions of Chapter 11 of Title 37 of the Revised Civil Statutes of Texas, relating to stenographic reporters for the District Courts, shall, and it is hereby made to apply in all its provisions, in so far as they are applicable and not in conflict herewith, to the official shorthand reporter herein authorized to be appointed by the judge of the County Court, Wichita County, at Law; and he shall perform the same duties and shall take the same oath as are in

said Chapter 11 of Title 37 provided for the stenographers of District Courts of this State, and also be governed by any other laws covering the stenographers of District Courts of this State; and the stenographer herein authorized to be appointed shall receive a salary of Fifteen Hundred ($1,500.00) per annum, in addition to the transcript fees as provided for by the law for the stenographers of the District Courts of Texas: said salary to be paid monthly by the Commissioners' Court of Wichita County, Texas, out of the general funds of the county. [Acts 1921, 37th Leg., ch. 34, § 1 (§ 15).]

Art. 1970—167. Texarkana court at law created.—That there shall be and is hereby created and established, a court of record in Bowie County, Texas, to be called and known as the "Texarkana Court at Law." [Acts 1923, 38th Leg., ch. 69, § 1.]

Acts 1923, 38th Leg., ch. 69 (arts. 1970—167 to 1970—189), held unconstitutional. Turner v. Tucker, 113 T. 434, 258 S. W. 149.

Art. 1970—168. Territorial limits.—The territorial limits within which said Texarkana Court at Law shall have and exercise its jurisdiction shall be the present limits of Commissioners' Precinct No. One (1) of Bowie County, Texas, including and embracing the City of Texarkana, Texas, and adjacent territory defined and described by metes and bounds as follows:

Commencing at the extreme N E corner of the Republic of Texas N E corner of a survey made to W. W. Wooten by the Republic of Texas on south bank of Red River; thence up said Red River with its meanderings as follows: N 36¾ W 799 vrs. to the N W corner of the W W Wooten Survey; thence N 55 W 172 vrs. W 1700 vrs. to another corner of W. W. Wooten; thence N 10 W 200 vrs. N 45 E 370 vrs. N 11 W 390 vrs. N 27 W 430 vrs. N 31 W 340 vrs. N 63 W 837 vrs. N 45 W 300 vrs. N 3 W 300 vrs. N 15 E 400 vrs. N 21 E 300 vrs. N 5 W 400 vrs. N 40 W 400 vrs. W 300 vrs. S 280 vrs. S 20 E 200 vrs. S 24 E 630 vrs. S 5 E 220 vrs. S 12 W 220 vrs. S 28 W 230 vrs. S 54 W. 370 vrs. W 200 vrs. N. 70 W 350 vrs. N 24 W 950 vrs. N 77 W 510 vrs. S 190 vrs. S 22 E 370 vrs. E 200 vrs. to G. W. Lang's N W corner; thence S 18 W 470 vrs. S 48 W 160 vrs. S 70 W 320 vrs. S 48 W 160 vrs. 86 W 220 vrs. N 65 W 220 vrs. N 52 W 850 vrs. N 65 W 460 vrs. S 37 W 170 vrs. S 51 W 150 vrs. S 26 W 240 vrs. S 12 E 130 vrs. S 26 E 630 vrs. S 9 E 250 vrs. to the N W corner of the Lee Morris Survey; thence S 3 W 130 vrs. S 20 W 660 vrs. S 34 W 340 vrs. S 49 W 270 vrs. E 150 vrs. N 82 W 145 vrs. to the N W corner of J. J. James H. R. Survey; thence N 46 W 320 vrs. N 12 W 400 vrs. N 10 E 560 vrs. N 540 vrs. N 5 W 800 vrs. N 80 W 450 vrs. S 38 W 220 vrs. S 49 W 480 vrs. S 60 W 800 vrs. S 85 W 200 vrs. W 200 vrs. N 65 W 100 vrs. to the N W corner of Wesley Byers H. R. Survey; thence N 32 W 200 vrs. N 15 W 300 vrs. N 7 E 500 vrs. N 57 W 300 vrs. S 44 W 200 vrs. S 60 W 600 vrs. S 52 W 300 vrs. to the N W corner of Wm. Slingland H. R. Survey; thence S 81 W 115 vrs. W 200 vrs. N 58 W 400 vrs. N 18 W 500 vrs. N 10 E 480 vrs. N 10 W 580 vrs. N 57 W 40 vrs. to the N W corner of W. M. Akin H. R. Survey; thence N 83 W 1090 vrs. N 50 W 640 vrs. to the S W corner of the A. McKinney H. R. Survey; thence N 47 W 270 vrs. S 70 W 159 vrs. S 30 W 160 vrs. S 23 W 780 vrs. S 30 W 500 vrs. S 19 W 390 vrs. S 50 W 520 vrs. S 70 W 420 vrs. N 79 W 870 vrs. S 80 W 1000 vrs. S 2 E 400 vrs. S 33 E 700 vrs. S 72 E 600 vrs. S 80 E 1000 vrs. S 88 E 220 vrs. S 70 E 200 vrs. S 37 E 500 vrs. N 1300 vrs. S 50 W 530 vrs. N 73 W 540 vrs. to the N W corner of the C. McKinney H. R. Survey; thence N 63½ vrs. W 120 vrs. N 46 W 190 vrs. N 38 W 240 vrs. N 45½ W 230 W N 75½ W 450 vrs. S 73 W 250 vrs. S 32 W 250 vrs. S 35 W 550 vrs. to the N W corner of the W. M. McKinney H. R. Survey; thence S 40 W 390 vrs. S 72 W 250 vrs. W 120 vrs. S 81 W 90 vrs. N 70 W 90 vrs. N 80 W 130 vrs. N 55 W 140 vrs. N 64 W 70 vrs. N 38 W 170 vrs. N 48 W 70 vrs. N 20 W 420 vrs. to the N W corner of J. Drummond H. R. Survey; thence N 23 W 753 vrs. N 61 W 470 vrs. N 84 W 618 vrs. to the N W corner of the L. M. Rice H. R. Survey; thence N 80 W 400 vrs. W 280 vrs. N 69 W 100 W 200 vrs. N 75 W 360 vrs. N 45 W 480 vrs. N 22 W 240 vrs. N 26 W 120 vrs. to the S E corner of the C. M. Collom H. R. Survey; thence west 110 vrs. to the N W corner of the Jno. Collom H. R. Survey; to the N E corner of the Lemuel Peters H. R. Survey; this being the N. W. corner of Commissioners' Precinct No. 1, same being the N. E. corner of Commissioners' Precinct No. 2, a stake from which a hickory brs. S 38 E 3 vrs., a sweet gum brs. S 25 W 3.2 vrs. both marked J. C.; thence with Lemuel Peters' E B line at 1600 vrs. to Wilson Lake, at 7196 vrs. to Barkman's Creek 3 vrs. wide, runs E at 11104 vrs. the S E corner of said Lemuel Peters H. R. Survey at 11816, to the N B line of the Wm. H. Fort H. R. Survey; thence East with Fort's N G line 1145 vrs. to his (Fort's) N E corner; thence S with Wm. H. Fort's E B line 2732 vrs. to said Fort's S E corner; thence W with Wm. H. Fort's S B line 1083 vrs. to the N E corner of the survey in the name of W. H. Fort from Wm. Fort's S B line; thence S 165 vrs. S E corner of W. H. Fort's Survey at 1117 vrs. to the S E corner of Jonathan Read H. R. Survey at 2067 vrs. to the S E corner of Wm. Ware H. R. Survey; thence S with the meanders of McKinney Creek as follows: S 80 E 600 vrs. 70 E 800 vrs. S 60 E 700 vrs. S 40 E 511 vrs. to the E B line of Jno. A. Talbot H. R. Survey; thence S with Talbot's E B line 1425 vrs. to his S E corner on J. W. F. Elliott's N. B. line; thence continuing with the meanderings of Elliott's creek S 22 E 690 vrs. S 15 E 620 vrs. S 25 E 593 vrs. to the N B line of the Ann Hale H. R. Survey; thence E 100 vrs. S 12 E 950 vrs. S 57 E 1590 vrs. to the N B line of the Wm. Gaylor H. R. Survey; thence S 9 E 950 vrs. S 53 E 1732 vrs. to the S E corner of Wm. Gaylor H. R. Survey; thence along the creek S 43 E 800 vrs. to the S B line of Howard Etheridge Survey; thence S 61 E 700 vrs. to the E B line of the E. H. Tarrant H. R. Survey; thence S 59 E 725 vrs. S 45 E 700 vrs. to the S E line of the E. H. Tarrant Survey; thence S 38 E 800 vrs. to the W B line of Sec. 25; thence S 42 E 600 vrs. S 43 E 500 vrs. S 45 E 400 vrs. S 40 E 140 vrs. to S B line of Sec. 25, on N B line of Sec. 24; thence S 34 E 950 vrs. to the W B line of Sec. 22; thence S 1910 vrs. to the M. E. P. Reservation line; thence S 79 E with the M. E. & P. Reservation line 3350 vrs. to the N W corner of the survey made for Jacob McFarland, assignee of the M. E. & P. R. R. Cert. No. 159, also the N E corner of a survey made for J. W. Johnson, Cert. No. 1-280; thence S 2309 vrs. to Sulphur River, with its meanders as follows: S 35 E 180 vrs. S 20 E 180 vrs. S 45 E 80 vrs. S 74 E 100 vrs. S 88 E 90 vrs. N 80 E 270 vrs. 77 E 260 vrs. to the S W corner of J. M. Akin H. R. Survey; thence on with stream N 81 E 475 vrs. N 77 E 823 vrs. N 37 E 177 vrs. N 58 W 295 vrs. N 6 W 354 vrs. N 56 E 236 vrs. N 73 E 712 vrs. N 3 W 118 vrs. N 37 W 236 vrs. N 8 E 236 vrs. N 68 E 475 vrs. to the S W corner of the Jno. Loop H. R. Survey; Cert. No. 3-24 of Bowie County on Reservation line; thence continuing with meanders N 48 E 100 vrs. E 120 vrs. S 59 E 120 vrs. S 20 E 150 vrs. S 58 E 200 vrs. E 110 vrs. S 67 E 280 vrs. to the S W corner of Sec. 8; thence S 79 E 320 vrs. S 80 vrs. N 28 E 45 vrs. S 79 E 164 vrs. S 59 E 54 vrs. S 75 vrs. S 60 E 510 vrs. S 480 vrs. S 70 E 440 vrs. S 40 E 350 vrs. S 78 E 710 vrs. N 10 E 360 vrs. E 100 vrs. to the S W corner of Wm. Lane H. R. Survey; thence N 55 E 130 vrs. S 71 E 80 vrs. S 30 E 120 vrs. S 60 vrs. S 30 E 180 vrs. E 150 vrs. N 45 E 176 vrs. to the S W corner of P. S. Garrison H. R. Survey; thence S 50 E 440 vrs. S 36 E 615 vrs. S 6½ E 360 vrs. S 30 W 370 vrs. W 155 vrs. S 100 vrs. S 22 E 300 vrs. S 50 W 130 vrs. S 7½ W 630 vrs. S 60 E 80 vrs. N 34 E 240 vrs. S 68 E 322 vrs. to the E B line of the Republic of Texas; thence N with the State line at 1000 vrs. N E corner of the Wm. Morgan H. R. Survey, at 2603 vrs. N E corner of survey made to Ed Myers at 5614 vrs. to the N E corner of P. S. Garrison H. R. Survey at 6343 vrs. to the N E corner of the M. E. & P. R. R. Survey No. 7 at 8960 vrs. to the 90 mile post to N E corner of Geo. Brinlee H. R. Survey, at 12327 vrs. to the N E corner of M. E. & P. R. R. Sur. No. 7 at 12760 vrs. to the 94 mile post of State line at 15460 vrs. to the N E corner of the J. E. Janes H. R. Sur. at 16550 vrs. to the 96 mile post of State line at 17300 vrs. to

the N E corner of Jno. Janes H. R. Survey at 18500 vrs. to the city of Texarkana, at 19702 vrs. to the N E corner of David Drennan H. R. Survey at 21062 vrs. to the N E corner of Thos. Drennan H. R. Survey at 23212 vrs. to the N E corner of Sec. 4 at 24362 vrs. to the N E corner of M. E. & P. R. R. Survey No. 3 at 26252 vrs. to the N E corner of Willis Oldham H. R. Sur. at 27062 vrs. to the N E corner of Sec. 3 at 28362 vrs. to the N E corner of Wm. Martin H. R. Survey at 30862 vrs. N E corner of M. E. P. & P. R. R. Sur. No. 2 at 32912 vrs. to the N E corner of Wm. Burnside H. R. Survey at 34380 vrs. to the place of beginning, which said territory includes all of Commissioners' Precinct No. 1 of Bowie County, Texas, limits of said territory being the same as the limits of said Precinct No. 1, as same appears of record in Vol. 5, at pages 255, 256, minutes of the commissioners' court of Bowie County, Texas. [Acts 1923, 38th Leg., ch. 69, § 2.]

See note to art. 1970—167, supra.

Art. 1970—169. Jurisdiction and powers.—The Texarkana Court at Law shall have and exercise, within the territorial limits above defined, all the civil jurisdiction, at law and in equity, heretofore had and exercised by the District Court of the Fifth Judicial District of Texas, within and for the county of Bowie, and the County Court of Bowie County, Texas, and all such jurisdiction as may hereafter be vested by the Constitution and laws of this State in the district and county courts of this State, except and provided, the said Texarkana Court at Law shall not have or exercise jurisdiction in any of the following cases and classes of cases, to-wit:

(a) Suits by the State to recover escheats or penalties;

(b) Cases involving official misconduct or removal from office;

(c) Contested election cases or proceedings;

(d) Writs and proceedings of quo warranto and prohibition;

(e) Probate matters, administration of estates of decedents or guardianship of infants or lunatics. And the jurisdiction of the County Court of Bowie County, Texas, as a probate court, and the jurisdiction of the district court of said county in probate matters, shall not in any manner be altered or affected by this Act.

Said Texarkana Court at Law shall also have original jurisdiction of all suits, complaints and pleas whatsoever, without regard to any distinction in law and in equity, as well as all proceedings under distress warrants issued by justices of the peace, where the amount in controversy shall exceed in value two hundred ($200.00) dollars, exclusive of interest; the Texarkana Court at Law, and the judge thereof, shall have power to issue writs of habeas corpus, mandamus, injunction, certiorari, and writs of attachments, sequestration, garnishment, citation, and all other writs that may be by law issued out of the district and county courts of this State, necessary to enforce its jurisdiction.

And the court hereby established shall have and exercise jurisdiction in all cases that may be transferred thereto from the district court or the County Court of Bowie County, Texas, by agreement of the parties, or by the order of court, where said case is pending, upon its own motion, or upon motion made by the parties thereto, under the provisions of law in such cases made and provided; and all laws for the removal or transfer of cases pending in the district courts or county courts of this State, shall apply to the transfer of the cases of this court.

Said Texarkana Court at Law shall have appellate jurisdiction in all cases, civil and criminal, in which an appeal is now allowed, or which may be hereafter provided by law, to the County Court of Bowie County, Texas, from any justice court, mayor's court, recorder's, corporation or other court within said territorial limits, upon the terms, requirements and conditions provided by law, in appeals from such inferior courts to the county court, and in criminal cases where an appeal now lies to the County Court of Bowie County.

The said Texarkana Court at Law shall have original exclusive jurisdiction, within the territorial limits aforesaid, of all misdemeanor criminal cases (except cases involving official misconduct) when the crime or offense shall have been committed within the territorial limits hereinbefore defined, and of which the justice courts, or other inferior courts, have not jurisdiction and upon return and filing indictments by the grand jury of Bowie County, the clerk shall transfer all such cases in which this court has jurisdiction, to said court as provided by law for the transfer of misdemeanor cases to the county courts of this State; said court hereby created shall have jurisdiction of all bail bonds and recognizance taken, in any proceeding had before such court; in all cases transferred to said court from the district court or County Court of Bowie County, Texas; and may enter forfeitures thereof and final judgment, and enforce the collection of same by proper process, in the manner as provided by law in such bond proceedings; and all appeal bonds, recognizance, or other obligations taken for the appearance of defendants, parties and witnesses in either the district court or County Court of Bowie County, Texas, shall be binding on all such defendants, parties and witnesses, and their sureties for appearance in either of said courts, and in the court hereby established, in which said cause may be pending, or to which the same may be transferred; provided that as to all misdemeanor criminal cases arising within the territorial limits of the City of Texarkana, Texas, the said Texarkana Court at Law shall have criminal concurrent jurisdiction with the corporation court of the City of Texarkana, Texas, as to all such cases now within the jurisdiction of said corporation court.

Said court shall also be a juvenile court with full power and jurisdiction to try all delinquent children and to dispose of, control and handle all neglected or dependent children. [Acts 1923, 38th Leg., ch. 69, § 3.]

See note to art. 1970—167, supra.

Art. 1970—170. Location and terms.—The said Texarkana Court at Law shall hold its sessions at the City of Texarkana, Texas, in a suitable building or place to be provided and furnished by the City of Texarkana, Texas, or the inhabitants of said city, without cost or expense to the State of Texas, until a permanent court house shall be legally provided for, constructed and furnished. Said court shall hold four (4) terms each year as follows: Commencing on the second Monday in January of each year and may continue in session until the first Monday in April; commencing on the first Monday in April, and may continue in session until the first Monday in July; commencing on the first Monday in July and may continue in session until the first Monday in October, and commencing on the first Monday in October and may continue in session until the business of the court is disposed of; provided, if any case is on trial at expiration of any term of court such term shall continue until disposition of such case. [Acts 1923, 38th Leg., ch. 69, § 4.]

See note to art. 1970—167, supra.

Art. 1970—171. Judge and clerk.—There shall be appointed by the Governor, as soon as may be after this Act becomes a law, a judge and a clerk of (and for) said court, to be styled and known respectively as the judge and the clerk of the Texarkana Court at Law, who shall hold office until the next general election for State and county officers, when their successors shall be duly elected by the qualified voters residing within the territorial limits hereinbefore defined and set out; and thereafter said judge and clerk shall hold their offices for the term and period of two years, until their successors are duly elected and qualified. [Acts 1923, 38th Leg., ch. 69, § 5.]

See note to art. 1970—167, supra.

Art. 1970—172. Qualification of judge.—The judge of said court shall be a citizen of the United States and of this State; shall have been a practicing lawyer in this State, or judge of a court of record for four (4) years, shall have reached the age of twenty-

five (25) years; shall have resided within the territory hereinbefore defined for two (2) years next preceding his appointment or election, and shall continuously reside within said territory during his term of office. He shall preside over said court and shall perform all the duties required of a judge of a court of record. He shall receive an annual salary of three thousand six hundred ($3,600.00) dollars, to be paid by the State, as are the salaries of district judges. He shall qualify by taking oath and conforming to the provisions of the Constitution and law relating to the oath and qualification of county judges in this State. [Acts 1923, 38th Leg., ch. 69, § 6.]

See note to art. 1970—167, supra.

Art. 1970—173. Special judge.—Any vacancy in the office of a judge of said court shall be filled by the Governor until the next succeeding general election. No judge of said court shall sit in any case where he may be interested, or where he shall have been the counsel, or where either of the parties may be connected with him by affinity or consanguinity within the third degree. In case the judge of said court shall be disqualified from trying any case or cases pending in said court, no change of venue shall be necessary thereby, but the parties or their counsel shall have the right to select and agree upon an attorney of the court for the trial thereof, and in case they shall fail to select or agree upon an attorney for the trial of such case or cases at or before the time it is called for trial, or if the trial of the case is pending and the judge of said court shall be unable to act, or is absent, and a special judge is selected who is disqualified to proceed with the trial, and the parties fail to select a special judge at once who is qualified, it shall be the duty of the judge of said court, or special judge, to certify the fact immediately to the Governor, and the provisions of the Statutes in such cases regulating the appointment of special judges in the district courts of this State shall apply. Also all provisions of law relating to special judges to hold any term of court, or part thereof, and for the election of such judges by the bar of said court in the district courts shall apply to this court, and such special judges so selected either by the parties, appointment by the Governor, or election by the bar, shall take the oath and be governed by the Statutes in such cases regulating procedure in the district courts of this State, and such special judges shall receive the same compensation as herein provided for the regular judge of this court; and the clerk of said court shall enter upon the minutes of such court a record of the election of such special judge as provided by law in district courts. [Acts 1923, 38th Leg., ch. 69, § 7.]

See note to art. 1970—167, supra.

Art. 1970—174. Qualifications and duties of clerk.—The clerk of said court shall be a qualified voter in Bowie County, Texas, and within the territorial limits hereinbefore defined; shall have resided in Bowie County, Texas, and within said territorial limits continuously for one year next preceding his appointment or election. He shall keep an office in the building in which said court is held, from which all process of said court shall issue; he shall be provided with an official seal having engraved thereon in the center, a Star of five points, surrounded by the words, "Texarkana Court at Law," the impress of which seal shall be affixed to all process, except subpœnas for witnesses, that shall be issued out of said court, and shall be used to authenticate the official acts of such clerk. He shall have custody and care of all minutes, records, dockets, books, papers and the seal of said court, and shall safely keep the same in his office; and he may have and appoint such deputy or deputies as may be necessary for the transaction of the business of said court, who shall take the oath of office prescribed by the Constitution; they shall act in the name of their principal, and may do and perform all such official acts as may be lawfully done or performed by such clerk in person. He shall provide or be provided with, and keep all such dockets, minute-books, record books, files and other accessories, and shall record the proceedings of said court, and shall make up and keep such dockets, minutes and records of said court. He shall issue and attest all process that may be required, and shall perform all such other duties as may be incident to his office. He shall be allowed and receive as compensation, such fees as are allowed by law for district and county clerks for the same and similar services in the district and county courts, to be paid in the same manner. He shall take the oath and give bond as required of district clerks. Whenever a vacancy may, from any cause, occur in the office of the clerk of said court, the same shall be filled by the judge of said court and the clerk so appointed shall give bond and qualify in the same manner as if he had been elected, and shall hold his office until the next general election, and until his successor shall have duly qualified. In all cases wherein the clerk of said court is or shall hereafter be a party to any pending or proposed suit, motion or proceeding in his court, the presiding judge of said court in which the same is pending or proposed, shall either in term time or in vacation, on application of any person interested, or on his own motion appoint a clerk pro tempore for the purpose of such suit, motion or proceeding. [Acts 1923, 38th Leg., ch. 69, § 8.]

See note to art. 1970—167, supra.

Art. 1970—175. Court stenographer.—The judge of said court shall have power to appoint a court stenographer for said court, who shall possess the same qualifications, perform the same duties, and receive and be paid in the same manner the same compensation as provided by law for stenographers in the district courts, and the judge shall have the same power and such appointment shall be made in the same manner as provided by law in the case of district courts. [Acts 1923, 38th Leg., ch. 69, § 9.]

See note to art. 1970—167, supra.

Art. 1970—176. Sheriff.—It shall be the duty of the sheriff of Bowie County, in person or by deputy, to attend upon said court and to execute its process; and when he does not reside in the City of Texarkana, Texas, he shall have and keep one or more deputies resident of said city. [Acts 1923, 38th Leg., ch. 69, § 10.]

See note to art. 1970—167, supra.

Art. 1970—177. County attorney.—The county attorney of Bowie County shall represent and prosecute the pleas of the State in all criminal cases in said court. All the provisions of law regulating the duties of county attorneys in the county courts shall apply in this court when not in conflict with this Act. [Acts 1923, 38th Leg., ch. 69, § 11.]

See note to art. 1970—167, supra.

Art. 1970—178. Fees.—The county attorney, sheriff, and other officers attending upon said court shall receive and be paid the same fees and compensation and in the same manner as such officers are paid for like services in the district and county courts of this State. [Acts 1923, 38th Leg., ch. 69, § 12.]

See note to art. 1970—167, supra.

Art. 1970—179. Practice and procedure.—The practice and procedure in the Texarkana Court at Law shall be the same as are now or may hereafter be prescribed by law and by the rules of the Supreme Court, regulating and governing practice and procedure in the district and county courts of this State so far as applicable. [Acts 1923, 38th Leg., ch. 69, § 13.]

See note to art. 1970—167, supra.

Art. 1970—180. Venue.—No person who is an inhabitant of the territory hereinbefore defined shall be sued in any other court than the Texarkana Court at Law in any case of which jurisdiction is herein given to said court, nor shall any such person be prosecuted in any other court for any offense committed within the territory hereinbefore defined and set out of which this court is given exclusive jurisdiction, except in such cases as he might be sued or prosecuted

under existing law in such other courts if he were an inhabitant of another county than Bowie, or State than Texas; except that citizens of Bowie County residing outside of the territorial jurisdiction of the Texarkana Court at Law as defined by this Act, shall be permitted to bring suits against persons or corporations residing in or having agents within the territorial jurisdiction of said court, either in the District Court of Bowie County, or the county court of said county, or in the Texarkana Court at Law, as the plaintiff may elect; and except and provided, that all suits hereafter brought in Bowie County against corporations domiciled or having agents representing them within the territorial jurisdiction of the Texarkana Court at Law, by non-citizens of the State of Texas, or by non-residents of Bowie County, Texas, shall be brought in the Texarkana Court at Law; and except and provided, further, that no citizen of Bowie County, Texas, residing outside of the territorial jurisdiction of the Texarkana Court at Law, shall be sued for the enforcement of, or a breach of, any contract in writing in the Texarkana Court at Law, although such contract is by its terms performable in the territorial jurisdiction of said court, unless he shall have expressly contracted in writing that in the event of suit to enforce or for a breach of such contract such suit may be brought in such Texarkana Court at Law.

Except as herein modified and changed, Chapter 4, Title 37, Article [Articles] 1830 to 1834 inclusive, of the Revised Statutes of the State of Texas, as they now exist and as they may hereafter be amended, and all other general laws of the State regulating and defining venue of suits, and the practice and procedure as to pleading and passing upon same in the district court and county courts of this State, and prescribing the place where suit shall be brought as applied to the district and county courts, shall govern and control, and apply to the venue of suits brought or transferred to said Texarkana Court at Law in like manner as if the territory hereinbefore defined were a separate county or district, and where the word county or counties is used in said laws, they shall cover and apply to the territorial limits of the court herein created, as if, and in the same sense, as though the said territory over which this court has jurisdiction constituted and existing as a separate county. [Acts 1923, 38th Leg., ch. 69, § 14.]

See note to art. 1970—167, supra.

Art. 1970—181. Change of venue.—A change of venue to the District and County Courts of Bowie County, Texas, may be granted or taken in any case pending in said court on the grounds and in the manner as provided by law for a change of venue in the district and county courts of this State. [Acts 1923, 38th Leg., ch. 69, § 15.]

See note to art. 1970—167, supra.

Art. 1970—182. Jury commission.—The Judge of the Texarkana Court at Law shall at each term thereof appoint three (3) persons as a jury commission for said court, who shall each possess the following qualifications:

1. They shall be intelligent citizens, of good moral character, residing within the territorial limits hereinbefore defined;

2. They shall be freeholders in Bowie County, and qualified jurors in the court herein created and established.

3. They shall not be a party to or interested in any suit or case in said court which may require the intervention of a jury.

All the provisions of the laws of this State relating to the organization, privileges, powers, duties and compensation of jury commissioners for the district courts of this State shall apply to and govern in the Texarkana Court at Law as far as practicable, and when not otherwise provided herein. [Acts 1923, 38th Leg., ch. 69, § 16.]

See note to art. 1970—167, supra.

Art. 1970—183. Juries.—The judge of the Texarkana Court at Law shall organize and empanel petit juries at each term of said court in the same manner and under the rules of law in and under which petit juries are organized and empaneled in the district courts of this State. All petit jurors for the Texarkana Court at Law shall reside within the territory hereinbefore defined, and shall possess the qualifications prescribed by law for petit jurors for the district courts, and all the provisions of the laws of this State, not inconsistent with this Act, relating to the selection, exemptions, organizations, empaneling, privileges, powers, duties and compensation of petit juries or jurors shall apply and govern in the Texarkana Court at Law, as far as applicable, and when not otherwise herein provided. [Acts 1923, 38th Leg., ch. 69, § 17.]

See note to art. 1970—167, supra.

Art. 1970—184. Exemption from jury service.—Service as a juror in this court for six (6) days during the preceding six (6) months shall exempt and disqualify such juror from such service in the district court; and service for six (6) days during the preceding three months shall exempt and disqualify such juror from jury service in the county court. [Acts 1923, 38th Leg., ch. 69, § 18.]

See note to art. 1970—167, supra.

Art. 1970—185. Venue in suits involving land.—All suits for the recovery of land, or any interest in land, or involving the title to land, or for partition, and for the enforcement of liens on land, whenever the land is wholly situated within the territory hereinbefore defined, shall be brought in the Texarkana Court at Law. [Acts 1923, 38th Leg., ch. 69, § 19.]

See note to art. 1970—167, supra.

Art. 1970—186. Appeals in civil cases.—Appeals and writs of error shall lie from the Texarkana Court at Law, in civil cases, to the Court of Civil Appeals of the Sixth Supreme Judicial District of Texas, at Texarkana, Texas; and in criminal cases to the court of criminal appeals; under the same conditions, laws, rules, regulations, and procedure governing appeals and writs of error from the district and county courts in like cases. [Acts 1923, 38th Leg., ch. 69, § 20.]

See note to art. 1970—167, supra.

Art. 1970—187. Expenses.—The expenses of the Texarkana Court at Law shall be paid by the County of Bowie upon the certificate of the clerk of said court as are paid the expenses of the district and county courts of said county; provided that said county shall not be required to build or erect a court house or jail for said court for a period of five years after this Act takes effect. During said period of five years the city of Texarkana, Texas, may provide such court house and jail, and may permit the use of its city hall and jail for such purposes, and such buildings so provided shall in such case become and be the court house and jail within and for said designated territory for all legal purposes. [Acts 1923, 38th Leg., ch. 69, § 21.]

See note to art. 1970—167, supra.

Art. 1970—188. Transfer of cases.—All cases, both civil and criminal, of and over which jurisdiction is by this Act conferred upon the Texarkana Court at Law, that may be pending in the District and County Courts of Bowie County, Texas, when this Act takes effect, shall forthwith be transferred from said courts, respectively, to the Texarkana Court at Law, and all such cases which may be pending or hereafter be filed in the District Court or County Court of Bowie County, Texas, may by agreement of the parties be transferred from said courts respectively to the court herein created, by an order entered on the minutes of said district and county courts, if in session or in vacation by such order of transfer in writing and signed by the district or county judge, and be filed with the clerk of such court to be entered on the minutes thereof. When such order of transfer shall have been made and entered of record, as herein provided, it shall be the duty of the clerk of the court making such

order, to forthwith make and certify under his seal, a true copy of such order, and of all other orders theretofore made in each and every case so transferred, and to transmit the same, without delay, together with all original papers filed in such cases, to the clerk of the Texarkana Court at Law, at Texarkana, Texas, and said clerk of said Texarkana Court at Law shall immediately docket and number such cases consecutively on the proper docket of the Texarkana Court at Law, and said cases shall then stand for trial in due course.

Any action which may hereafter be brought in the District or County Court of Bowie County, on any cause of action arising or accruing outside said county, against any person residing within the territorial jurisdiction of the court hereby created, or against any corporation having an agent representing it within the territorial jurisdiction of the court hereby created, shall on application of the defendant made when required to answer therein be transferred to the court hereby created. [Acts 1923, 38th Leg., ch. 69, § 22.]

See note to art. 1970—167, supra.

Art. 1970—189. Jurisdiction [of other courts] conformed.—The jurisdiction of the District and County Courts of Bowie County, and of the Corporation Court of the City of Texarkana, Texas, is hereby confirmed [conformed] to the changes made by this Act. [Acts 1923, 38th Leg., ch. 69, § 23.]

See note to art. 1970—167, supra.

Art. 1970—190. Armstrong county court; concurrent jurisdiction with justice court.—That the county court of Armstrong county shall have and exercise original concurrent jurisdiction with the justices courts in all civil matters which by the general laws of this state is conferred upon justices courts. [Acts 1913, p. 60, sec. 1.]

Art. 1970—191. Jurisdiction as county court.—Said county court shall also have and exercise such jurisdiction over and pertaining to all matters and things and proceedings as by the general laws of this state is conferred upon county courts. [Id. sec. 2.]

Art. 1970—192. Appeal; amount in controversy.—No appeal or writ of error shall be taken to the court of civil appeals from any final judgment of said county court in civil cases of which said court has appellate or original concurrent jurisdiction with the justices courts where the judgment or amount in controversy does not exceed one hundred dollars exclusive of interests and costs. [Id. sec. 3.]

Art. 1970—193. Jurisdiction of justices' courts not affected; appeal.—This Act shall not be construed to deprive the justices' courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said court over such matters as are specified in section 1 of this Act [Art. 1970—190], nor shall this Act be construed to deny the right of appeal from the justices' courts to the said county court in any case originally brought in the justices' courts where the right of appeal now exists by law. [Id. sec. 4.]

Art. 1970—194. Laws repealed.—All laws and parts of laws in conflict with the provisions of this Act, be and the same are hereby repealed. [Id. sec. 5.]

Art. 1970—195. Castro county court; jurisdiction of court.—That the county court of Castro county shall hereafter have exclusive original jurisdiction in civil cases wherein the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest, and shall have concurrent jurisdiction with the district court of said county when the amount in controversy shall exceed five hundred dollars, and not exceed one thousand dollars, exclusive of interest. [Acts 1913, p. 26, sec. 1.]

Art. 1970—196. Appellate jurisdiction.—Said county court shall have appellate jurisdiction in civil cases over which the justice courts have original jurisdiction when the judgment of the court, appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest and costs, and said county court shall have power to hear and determine cases brought up from the justices courts by certiorari, under the provisions of the title of the Revised Civil Statutes of 1911, relating thereto. [Id. sec. 2.]

Art. 1970—197. May issue writs.—The county judge of said county shall have authority either in term time or in vacation, to grant writs of injunction, sequestration, mandamus, garnishment, attachment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the constitution has not exclusively conferred the power on the district court or judge thereof. [Id. sec. 3.]

Art. 1970—198. Jurisdiction of probate court.—The said court shall have and exercise the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business pertaining to the estate of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards; including the partition, settlement and distribution of estates of deceased persons and to apprentice minors as provided by general law and to issue all writs necessary for the enforcement of its jurisdiction and decrees. [Id. sec. 4.]

Art. 1970—199. Forfeiture, etc., of bonds and recognizances in criminal cases.—Said county court shall have jurisdiction in the forfeiture and judgment of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Id. sec. 5.]

Art. 1970—200. Jurisdiction of misdemeanors; appellate jurisdiction.—Said county court shall have original jurisdiction of all misdemeanors, except involving official misconduct and except misdemeanors in which the highest penalty that may be imposed by the law is a fine without imprisonment that does not exceed two hundred dollars, and said court shall have appellate jurisdiction with trials de novo in criminal cases in which the justices of the peace and other inferior tribunals of said county have original jurisdiction. [Id. sec. 6.]

Art. 1970—201. District court has no longer jurisdiction of certain cases.—The district court of said county shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct, and shall no longer have jurisdiction of cases in which the county court of said county by provisions of this Act has original or appellate jurisdiction. [Id. sec. 7.]

Art. 1970—202. District clerk to deliver transcripts, etc.—It shall be the duty of the district clerk of said county within thirty days after this Act shall take effect to make full and complete transcripts of orders on the criminal and civil dockets then pending before the district court of said county, of which cases by the provisions of this Act original and appellate jurisdiction is given to the said county court, and to deliver said transcripts, together with the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the respective dockets for trial by said court. [Id. sec. 8.]

Art. 1970—203. Motions against sheriffs and other officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcation of duty in connection with said process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and shall also have all the other powers and

jurisdiction conferred on county courts by the constitution and general laws of this state. [Id. sec. 9.]

Art. 1970–204. Terms of court.—The terms of said court shall commence on the fourth Monday in February, and on the fourth Monday in May, and on the fourth Monday in August, and on the fourth Monday in November of each year, and shall continue in session for each term until the business may be disposed of; provided that the county commissioners court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Id. sec. 10.]

Art. 1970–205. Jurisdiction of county court of Cochran and Colorado counties.—The county court of Cochran County and Colorado County shall have and exercise original concurrent jurisdiction with the justice courts in all civil matters which by the General Laws of this State is conferred upon a justice of the peace courts. [Acts 1925, 39th Leg., ch. 40, p. 172, § 1.]

Art. 1970–206. Other jurisdiction.—Such county court shall also have and exercise such jurisdiction over and pertaining to all matters, things and proceedings, as is by the General Laws of this State conferred upon county courts. [Acts 1925, 39th Leg., ch. 40, p. 172, § 2.]

Art. 1970–207. Appeals and writs of error.—No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said county court in civil cases of which said court has appellate jurisdiction or original concurrent jurisdiction with the justice courts where the judgment or amount in controversy does not exceed one hundred dollars exclusive of interest and costs. [Acts 1925, 39th Leg., ch. 40, p. 172, § 3.]

Art. 1970–208. Jurisdiction of justices of the peace; appeals.—Nothing in this Act shall be construed to deprive the justice courts of jurisdiction now conferred upon them by law or in any manner to impair or alter their jurisdiction, but only to give original concurrent jurisdiction to said county court over such matters as are specified in Article 1 of this Act; nor shall this Act be construed to deny the right of appeal from the justice courts to said county court in any case originally brought in any justice court where the right of appeal now exists by General Law. [Acts 1925, 39th Leg., ch. 40, p. 172, § 4.]

Art. 1970–209. Deaf Smith, Parmer, Randall, Castro and Lubbock county courts; jurisdiction of court.—That the county court of Deaf Smith, Parmer, Randall, Castro, and Lubbock counties and the unorganized counties of Bailey and Lamb shall have and exercise original concurrent jurisdiction with the justices courts in all civil matters which by the general laws of this state is conferred upon justices courts. [Acts 1911, p. 171, sec. 1.]

Art. 1970–210. Same subject.—Said county court shall also have and exercise such jurisdiction over and pertaining to all matters and things and proceedings as by the general laws of this state is conferred upon county courts. [Id. sec. 2.]

Art. 1970–211. Writs of error to court of civil appeals.—No appeal or writ of error shall be taken to the court of civil appeals from any final judgment of said county court in civil cases of which said court has appellate or original concurrent jurisdiction with the justices court where the judgment or amount in controversy does not exceed one hundred dollars exclusive of interests and costs. [Id. sec. 3.]

Art. 1970–212. Jurisdiction of justices of the peace, etc.—This Act shall not be construed to deprive the justices court of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said court over such matters as are specified in section 1 of this Act [Art. 1970—209], nor shall this Act be construed to deny the right of appeal from the justices courts to the said county court in any case originally brought in the justices court where the right of appeal now exists by law. [Id. sec. 4.]

Art. 1970–213. Laws repealed.—All laws and parts of laws in conflict with the provisions of this Act, be, and the same are hereby, repealed. [Id. sec. 5.]

Art. 1970–214. Jurisdiction of county court of Harrison county.—The county court of Harrison county shall have and exercise the general jurisdiction of a probate and criminal court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle the accounts of executors, administrators and guardians, transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the partition, settlement and distribution of estates of deceased persons, and to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its jurisdiction; to punish contempt under such provisions as are now or may be provided by general law governing county courts throughout the state, and said county court of Harrison county shall have jurisdiction over all criminal causes and criminal matters of which county courts have jurisdiction under the existing laws or laws hereafter enacted; [but the said county court of Harrison county shall not have any jurisdiction over civil causes or civil actions, whatsoever]. [Acts 1911, p. 95, sec. 1.]

The bracketed part of this article is superseded by arts. 1970—215 and 1970—218 to 1970—223.

Art. 1970–215. Jurisdiction in civil cases.—That the county court of Harrison county shall hereafter have exclusive original jurisdiction in civil cases wherein the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest, and shall have concurrent jurisdiction with the district court of said county, when the amount in controversy shall exceed five hundred dollars; and not exceed one thousand dollars, exclusive of interest. [Acts 1913, p. 103, sec. 1.]

Superseding a part of art. 1970—214. This article also superseded Acts 1911, p. 95, § 2. transferring to the district court of Harrison county jurisdiction of all civil matters and causes over which the county court of that county theretofore had jurisdiction. Acts 1911, p. 95, § 3, providing for transfer of pending causes from the county to the district court, to carry out the provisions of section 2, is rendered obsolete by this article.

Art. 1970–216. Judgments heretofore rendered in county court; executions, etc.—That this Act shall not be construed to in any wise or manner affect judgments heretofore rendered by said county court of Harrison county pertaining to matters and causes which by section 2 of this Act [Acts 1911, p. 95, superseded by Art. 1970—215] are transferred to the district court of said county, but the county clerk of said county shall issue all executions and orders of sale, and proceedings thereunder, and his act in so doing shall be valid and binding to all intents and purposes, the same as if no change had been made as by section 2 therein contemplated. [Acts 1911, p. 95, sec. 4.]

Art. 1970–217. Laws repealed.—That all laws and parts of laws in conflict herewith be and the same are hereby repealed. [Id. sec. 5.]

Art. 1970–218. Appellate jurisdiction in civil cases, etc.—Said county court shall have appellate jurisdiction in civil cases over which justices courts have original jurisdiction, when the judgment of the court appealed from, or the amount in controversy, shall exceed twenty dollars, exclusive of interest and costs, and said county court shall have power to hear and determine cases brought up from the justices courts by certiorari, under the provisions of the title of the Revised Civil Statutes of 1895 relating thereto. [Acts 1913, p. 103, sec. 2.]

Art. 1970–219. May grant writs.—The county judge of said county shall have authority, either in term time or in vacation, to grant writs of injunction, sequestration, mandamus, garnishment, attachment, certiorari, supersedeas, and all other writs necessary

to the enforcement of the jurisdiction of said court, and shall also have the power to issue writs of habeas corpus in all cases in which the constitution has not exclusively conferred the power on the district court or judge thereof. [Id. sec. 3.]

Art. 1970–220. District court not to have jurisdiction when.—The district court of said county shall no longer have jurisdiction of cases in which the county court of said county by provisions of this Act has original or appellate jurisdiction. [Id. sec. 4.]

Superseding contradictory provision in art. 1970—214.

Art. 1970–221. Clerk of district court to make transcripts in cases in which jurisdiction is given to county court, etc.—It shall be the duty of the clerk of the district court of said county within thirty days after this Act shall take effect to make full and complete transcripts of orders on the civil docket then pending before the district court of said county, of which cases by the provisions of this Act exclusive original or appellate jurisdiction is given to the said county court, and to deliver said transcripts, together with the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the docket for trial by said court, and a certified bill of costs in each case, and all such cases shall be immediately docketed by the county court, as appearance cases for the next succeeding term, and all civil cases shall be docketed and disposed of in the same manner as if the same had been originally filed in and triable in said county court, and all process in civil cases now issued and returnable to said district court shall be returnable to said county court. [Id. sec. 5.]

Art. 1970–222. Motions against sheriffs and other officers, etc.; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court, for failure to pay over moneys collected under process of said court, or other defalcation of duty in connection with such process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days any person guilty of contempt of said court, and shall also have all the other powers and jurisdiction conferred on county courts by the constitution and general laws of this state. [Id. sec. 6.]

Art. 1970–223. May fix terms of court.—The county commissioners' court of said county may hereafter fix the terms of said court whenever it may be deemed necessary. [Id. sec. 7.]

Art. 1970–224. County court of Hockley and Cochran counties; jurisdiction.—The county court of Hockley County and the unorganized county of Cochran shall have and exercise original concurrent jurisdiction with the justices' courts in all civil matters which by the general laws of this State is conferred upon said justice of the peace courts. [Acts 1923, 38th Leg., ch. 96, § 1.]

Art. 1970–225. Other jurisdiction.—Said county court shall also have and exercise such jurisdiction over and pertaining to all matters, things and proceedings as is by the general laws of this state conferred upon county courts. [Acts 1923, 38th Leg., ch. 96, § 2.]

Art. 1970–226. Appeals and writs of error.—No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said county court in civil cases of which said court has appellate jurisdiction or original concurrent jurisdiction with the justices' court where the judgment or amount in controversy does not exceed one hundred dollars exclusive of interest and costs. [Acts 1923, 38th Leg., ch. 96, § 3.]

Art. 1970–227. Jurisdiction of justices of the peace; appeals.—Nothing in this Act shall be construed to deprive the justices' courts of the jurisdiction now conferred upon them by law or in any manner to impair or alter their jurisdiction, but only to give original concurrent jurisdiction to said county court over such matters as are specified in Section 1 of this Act; nor shall this Act be construed to deny the right of appeal from the justices' court to said county court in any case originally brought in any justice court where the right of appeal now exists by General Law. [Acts 1923, 38th Leg., ch. 96, § 4.]

Art. 1970–228. Jasper county court; jurisdiction in civil cases.—That the county court of Jasper county shall hereafter have exclusive original jurisdiction in civil cases wherein the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest, and shall have concurrent jurisdiction with the district court of said county, when the amount in controversy shall exceed five hundred dollars, and not exceed one thousand dollars exclusive of interest. [Acts 1911, p. 11, sec. 1.]

Art. 1970–229. Appellate jurisdiction in civil cases.—Said county court shall have appellate jurisdiction in civil cases over which justices courts have original jurisdiction, when the judgment of the court appealed from, or the amount in controversy, shall exceed twenty dollars, exclusive of interest and costs, and said county court shall have power to hear and determine cases brought up from the justices courts by certiorari, under the provisions of the title of the Revised Civil Statutes, of 1895, relating thereto. [Id. sec. 2.]

Art. 1970–230. May grant writs.—The county judge of said county shall have authority, either in term time or in vacation, to grant writs of injunction, sequestration, mandamus, garnishment, attachment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the constitution has not exclusively conferred the power on the district court or judge thereof. [Id. sec. 3.]

Art. 1970–231. Jurisdiction of probate court.—That said court shall have and exercise the general jurisdiction of a probate court, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators, and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the partition, settlement and distribution of estates of deceased persons; and to apprentice minors as provided by general law and to issue all writs necessary for the enforcement of its jurisdiction and decrees. [Id. sec. 4.]

Art. 1970–232. Forfeited bonds, etc., in criminal cases.—Said county court shall have jurisdiction in the forfeiture and judgment of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Id. sec. 5.]

Art. 1970–233. Jurisdiction of certain misdemeanors; appellate jurisdiction.—Said county court shall have exclusive original jurisdiction of all misdemeanors, except misdemeanors involving official misconduct and except misdemeanors in which the highest penalty that may be imposed by the law is a fine without imprisonment, that does not exceed two hundred dollars, and said court shall have appellate jurisdiction with trial de novo in criminal cases in which justices of the peace and other inferior tribunals of said county have original jurisdiction. [Id. sec. 6.]

Art. 1970–234. Jurisdiction of district court.—The district court of said county shall no longer have jurisdiction of misdemeanors except misdemeanors involving official misconduct, and shall no longer have jurisdiction of cases in which the county court of said county by provisions of this Act have [has] original or appellate jurisdiction. [Id. sec. 7.]

Art. 1970–235. District clerk to deliver transcripts, etc., to county clerk.—It shall be the duty of the district clerk of said county within thirty days

after this Act shall take effect to make full and complete transcripts of orders on the criminal and civil dockets, then pending before the district court of said county, of which cases by the provisions of this Act original and appellate jurisdiction is given to the said county court, and to deliver said transcripts, together with the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the respective dockets for trial by said court. [Id. sec. 8.]

Art. 1970–236. Motions against sheriffs and other officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs, and other officers of the court, for failure to pay over moneys collected under the process of said court or other defalcation of duty in connection with such process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and shall also have all other powers and jurisdiction conferred on county courts by the constitution and general laws of this state. [Id. sec. 9.]

Art. 1970–237. Terms of court.—The terms of said court shall commence on the third Monday in February, and on the third Monday in May, and on the third Monday in August, and on the third Monday in November of each year, and shall continue in session for each term until the business may be disposed of; provided that the county commissioners court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Id. sec. 10.]

Art. 1970–238. Jurisdiction of county court of Kendall county.—That the county court of Kendall county shall have and exercise the general jurisdiction of probate courts, shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts as [of] executors, administrators, and guardians and transact all business appertaining to estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including partition, settlement and distribution of estates of deceased persons and to apprentice minors as provided by law, and to issue all writs necessary for the enforcement of its own jurisdiction, to punish contempt under such provisions as are now or may be provided by the general law governing county courts throughout the state, but the said county court of the said Kendall county shall have no other jurisdiction, civil or criminal whatsoever. [Acts 1911, p. 30, sec. 1.]

Art. 1970–239. Jurisdiction of district court.—That the district court of Kendall county shall have and exercise jurisdiction in all civil and criminal matters and causes over which, by the law of this state, the county court of said county would have jurisdiction, original or appellate, except as provided in section 1 of this Act, all causes, other than probate matters and such as are provided by section 1 of this Act [Art. 1970–237], be and the same are hereby transferred to the district court of Kendall county, and all writs and processes relating to any civil or criminal matters included in the subject matter of jurisdiction prescribed in section 1 of this Act, issued by or out of the said county court of Kendall county, be and the same are hereby made returnable to the next term of the district court of said county after this Act takes effect. [Id. sec. 2.]

Art. 1970–240. County clerk to make transcripts in cases transferred to district court, etc.—That the county clerk of Kendall county be, and he is hereby required, within thirty days after this Act takes effect, to make a full and complete transcript of all entries upon his civil and criminal docket heretofore made in cases which, by section 2 of this Act [Art. 1970—238], are required to be transferred to the district court of said county, together with all the papers to such cause pertaining, a certified bill of costs in each case, and all such cases shall immediately be docketed by the district court as appearance for the next succeeding term, and all criminal cases shall be docketed and disposed of in the same manner as if the same had been originally triable in said district court, and all process now issued and returnable to said county court shall be returnable to said district court. [Id. sec. 3.]

Art. 1970–241. Judgments heretofore rendered in county court; executions, etc.—That this Act shall not be construed to, in any anywise or in any manner, affect judgments heretofore rendered by said county court of Kendall county pertaining to matters and causes which by section 2 of this Act [Art. 1970—239], are [returnable] to the district court of said county, but the county clerk of said county shall issue all executions and orders of sale, and proceedings thereunder shall be as valid and binding to all intents and purposes as though the change had not been made as by section 2 therein contemplated. [Id. sec. 4.]

Art. 1970–242. Jurisdiction of county court of Lee and Burleson Counties.—The county court of Lee and Burleson Counties shall have and exercise original concurrent jurisdiction with the justice's courts in all civil matters which by the General Laws of this State is conferred upon said justice of the peace courts. [Acts 1925, 39th Leg., ch. 151, p. 359, § 1.]

Art. 1970–243. Other jurisdiction.—Said county court shall also have and exercise such jurisdiction over and pertaining to all matters, things and proceedings as is by the General Laws of this State conferred upon county courts. [Acts 1925, 39th Leg., ch. 151, p. 360, § 2.]

Art. 1970–244. Appeals and writs of error.—No appeal or writ of error shall be taken to the court of Civil Appeals from any final judgment of said county court in civil cases of which said court has appellate jurisdiction or original concurrent jurisdiction with the justice's court where the judgment or amount in controversy does not exceed one hundred dollars, exclusive of interest and costs. [Acts 1925, 39th Leg., ch. 151, p. 360, § 3.]

Art. 1970–245. Jurisdiction of justices of the peace; appeals.—Nothing in this Act shall be construed to deprive the justice's courts of the jurisdiction now conferred upon them by law or in any manner to impair or alter their jurisdiction, but only to give original concurrent jurisdiction to said county court over such matters as are specified in Section 1 of this Act; nor shall this Act be construed to deny the right of appeal from the justice's court to said county court in any case originally brought in any justice court where the right of appeal now exists by General Law. [Acts 1925, 39th Leg., ch. 151, p. 360, § 4.]

Art. 1970–246. Oldham county court; jurisdiction in civil cases.—That the county court of Oldham county shall hereafter have exclusive original jurisdiction in civil cases wherein the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest, and shall have concurrent jurisdiction with the district court of said county when the amount in controversy shall exceed five hundred dollars, and not exceed one thousand dollars, exclusive of interest. [Acts 1911, p. 122, sec. 1.]

Art. 1970–247. Appellate jurisdiction in civil cases.—Said county court shall have appellate jurisdiction in civil cases over which justices courts have original jurisdiction when the judgement [judgment] of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest and costs, and said county court shall have power to hear and determine cases brought up from the justices courts by certiorari, under the provisions of the title of the Revised Civil Statutes of 1895 relating thereto. [Id. sec. 2.]

Art. 1970–248. May grant writs.—The county judge of said county shall have authority either in term time or in vacation, to grant writs of injunction,

sequestration, mandamus, garnishment, attachment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the constitution has not exclusively conferred the power on the district court or judge thereof. [Id. sec. 3.]

Art. 1970—249. Jurisdiction of probate court.—That said court shall have and exercise the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business pertaining to the estate of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards; including the partition, settlement and distribution of estates of deceased persons, and to apprentice minors as provided by general law and to issue all writs necessary for the enforcement of its jurisdiction and decrees. [Id. sec. 4.]

Art. 1970—250. Forfeited bonds, etc., in criminal cases.—Said county court shall have jurisdiction in the forfeiture and judgment of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Id. sec. 5.]

Art. 1970—251. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.—Said county court shall have original jurisdiction of all misdemeanors, except involving official misconduct and except misdemeanors in which the highest penalty that may be imposed by the law is a fine without imprisonment that does not exceed two hundred dollars, and said court shall have appellate jurisdiction with trial de novo in criminal cases in which justices of the peace and other inferior tribunals of said county have original jurisdiction. [Id. sec. 6.]

Art. 1970—252. Jurisdiction of district court.—The district court of said county shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct, and shall no longer have jurisdiction of cases in which the county court of said county by provisions of this Act has original or appellate jurisdiction. [Id. sec. 7.]

Art. 1970—253. District clerk to deliver transcripts, etc., to county clerk.—It shall be the duty of the district clerk of said county within thirty days after this Act shall take effect to make full and complete transcripts of orders on the criminal and civil dockets then pending before the district court of said county, of which cases by the provisions of this Act original and appellate jurisdiction is given to the said county court, and to deliver said transcripts together with the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the respective dockets for trial by said court. [Id. sec. 8.]

Art. 1970—254. Motions against sheriffs and other officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court or other defalcation of duty in connection with such process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and shall also have all other powers and jurisdiction conferred on county courts by the constitution and general laws of this state. [Id. sec. 9.]

Art. 1970—255. Terms of court.—The terms of said court shall commence on the fourth Monday in February, and on the fourth Monday in May, and on the fourth Monday in August, and on the fourth Monday in November of each year, and shall continue in session for each term until the business may be disposed of; provided that the county commissioners court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Id. sec. 10.]

Art. 1970—256. Reagan county court; jurisdiction; transfer of cases.—Hereafter the county court of Reagan County in this State, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by general law for county courts. Any and all cases pending in the district court of Reagan County, which under the law after the taking effect of this Act should be pending in the county court of Reagan County, be and the same are hereby transferred to the county court of Reagan County, and all writs and processes relating to any such cases are hereby made returnable to the next term of the county court of Reagan County. The district clerk of Reagan County shall make the proper transfer of all cases hereinbefore provided for to be transferred, and shall make proper entry of such transfer upon his docket, and shall deliver over to the county clerk all necessary papers and files. [Acts 1923, 38th Leg., ch. 21, § 1.]

Art. 1970—257. Judgments not affected; executions thereon.—This Act shall not be construed to in any wise, or in any manner, affect judgments heretofore rendered by the district court pertaining to matters and causes which by this Act are made returnable to the county court, and the clerk of the district court of said county shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act. [Acts 1923, 38th Leg., ch. 21, § 2.]

Art. 1970—258. Jurisdiction of district court.—The jurisdiction of the district court of Reagan County shall be such as is provided by the Constitution and General Laws of this State consistent with the change in the jurisdiction of the county court herein made. [Acts 1923, 38th Leg., ch. 21, § 3.]

Art. 1970—259. County court; concurrent jurisdiction with justices of the peace.—The county court of Reagan County shall, in addition to the civil and criminal jurisdiction conferred upon county courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the justices courts in all civil matters which by the General Laws of this State is conferred upon justices' courts. [Acts 1923, 38th Leg., ch. 21, § 4.]

Art. 1970—260. Appeals and writs of error.—No appeal or writ of error shall be taken to the Court of Civil Appeals from an final judgment of said county court in civil cases of which courts has appellate or original concurred jurisdiction with the justices courts where the amount in controversy does not exceed one hundred dollars, exclusive of interest and costs. [Acts 1923, 38th Leg., ch. 21, § 5.]

Section 5 of Acts 1923 from which art. 1970—260 was taken reads as above set forth.

Art. 1970—261. Jurisdiction of justices of the peace; appeals.—This Act shall not be construed to deprive the justices' courts of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said county court over such matters as are specified in Section 4 of this Act, nor shall this Act be construed to deny the right of appeal from the justice court to said county court in any case originally brought in the justice court where the right of appeal now exists by law. [Acts 1923, 38th Leg., ch. 21, § 6.]

Art. 1970—262. Stonewall county court; jurisdiction in civil cases.—That the county court of Stonewall county shall have and exercise original concurrent jurisdiction with the justices courts in all civil matters which by the general laws of this State is conferred upon justices' courts. [Acts 1913, p. 86, sec. 1.]

Art. 1970—263. Other jurisdiction.—Said county court shall also have and exercise such jurisdiction over and pertaining to all matters and things and proceedings as by the general laws of this state is conferred upon county courts. [Id. sec. 2.]

Art. 1970—264. Appeals and writs of error to court of civil appeals.—No appeal or writ of error shall be taken to the court of civil appeals from any

final judgment of said county court in civil cases of which said court has appellate or original concurrent jurisdiction with the justice's court where the judgment or amount in controversy does not exceed one hundred dollars, exclusive of all interests and costs. [Id. sec. 3.]

Art. 1970—265. Jurisdiction of justices of the peace; appeals.—This Act shall not be construed to deprive the justices' courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said court over such matters as are specified in section 1 of this Act [Art. 1970—261], nor shall this Act be construed to deny the right of appeal from the justices' courts to the said county court in any case originally brought in the justice's court where the right of appeal now exists by law. [Id. sec. 4.]

Art. 1970—266. Sutton county court; original civil jurisdiction.—That the county court of Sutton County shall hereafter have exclusive original jurisdiction in civil cases where the matter in controversy shall exceed in value two hundred dollars and shall not exceed five hundred dollars, exclusive of interest, and that it shall have concurrent jurisdiction with the district court of said county when the matter in controversy shall exceed five hundred dollars and not exceed one thousand dollars. [Acts 1923, 38th Leg., ch. 30, § 1.]

Art. 1970—267. Appellate jurisdiction in civil cases.—Said county court shall have appellate jurisdiction in civil cases over which justice's courts of said county have original jurisdiction when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest, and said county court shall have the power to hear and determine cases brought up from the justice's courts by certiorari under the provisions of law relating thereto. [Acts 1923, 38th Leg., ch. 30, § 2.]

Art. 1970—268. May grant writs.—The county judge of said county shall have authority, either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, garnishment, attachment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the Constitution and laws have not exclusively conferred the power on the district judge or district court thereof. [Acts 1923, 38th Leg., ch. 30, § 3.]

Art. 1970—269. Probate jurisdiction.—Said court shall have, as now, the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, and common drunkards, grant letters of testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons; apprentice minors as provided by law; and to issue all writs necessary to the enforcement of its jurisdiction, orders, and decrees; and generally to exercise all the powers in probate matters conferred upon such courts by the Constitution and laws of the State. [Acts 1923, 38th Leg., ch. 30, § 4.]

Art. 1970—270. Forfeited bonds and recognizances.—Such courts shall have jurisdiction in the forfeiture of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Acts 1923, 38th Leg., ch. 30, § 5.]

Art. 1970—271. Jurisdiction of misdemeanors; appellate jurisdiction in criminal cases.—Said court shall have and exercise exclusive jurisdiction of all misdemeanors except misdemeanors involving official misconduct, and except misdemeanors in which the highest penalty that may be imposed by law is a fine, without imprisonment, that does not exceed two hundred dollars; and said court shall have appellate jurisdiction of criminal cases in which justice's courts and other inferior tribunals of said county have original jurisdiction. [Acts 1923, 38th Leg., ch. 30, § 6.]

Art. 1970—272. Jurisdiction of district court.—The district court of said county shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct, and shall no longer have jurisdiction of civil cases of which the county court of said county by provisions of this Act has original or appellate jurisdiction. [Acts 1923, 38th Leg., ch. 30, § 7.]

Art. 1970—273. Transcripts of pending cases; entry of cases in county court.—It shall be the duty of the district clerk of said county, within thirty days after this Act shall take effect to make full and complete transcript of orders on the criminal and civil dockets then pending before the district court of said county, of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said county court, and to file said transcript, together with the original papers in each case, in the county court of said county, and the county clerk shall enter said cases on the respective dockets of said county court as appearance cases for trial by said court. [Acts 1923, 38th Leg., ch. 30, § 8.]

Art. 1970—274. Motions against officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court for failure to pay over moneys collected under the process of said court, or other defalcations of official duty in connection with said process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and all other powers and jurisdictions conferred on county courts by the Constitution and general laws of the State of Texas. [Acts 1923, 38th Leg., ch. 30, § 9.]

Art. 1970—275. Terms of court.—The terms of said court shall commence on the third Monday in February, and on the third Monday in May, and on the third Monday in August, and on the third Monday in November of each year and shall continue in session for six weeks at each term, or until the business may be disposed of; provided that the county commissioners' court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Acts 1923, 38th Leg., ch. 30, § 10.]

Art. 1970—276. Wheeler county court; jurisdiction in civil cases.—That the county court of Wheeler county shall hereafter have exclusive original jurisdiction in civil cases wherein the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars, exclusive of interest, and shall have concurrent jurisdiction with the district court of said county when the amount in controversy shall exceed five hundred dollars, and not exceed one thousand dollars, exclusive of interest. [Acts 1911, p. 130, sec. 1.]

Art. 1970—277. Appellate jurisdiction in civil cases.—Said county court shall have appellate jurisdiction in civil cases over which justices courts have original jurisdiction when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest and costs, and said county court shall have power to hear and determine cases brought up from the justice courts by certiorari, under the provisions of the Title of the Revised Civil Statutes of 1895 relating thereto. [Id. sec. 2.]

Art. 1970—278. May grant writs.—The county judge of said county shall have authority, either in term time or in vacation, to grant writs of injunction, sequestration, mandamus, garnishment, attachment, certiorari, supersedeas and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the constitution has not exclusively conferred the power on the district court or judge thereof. [Id. sec. 3.]

Art. 1970—279. Jurisdiction of probate court.—That said court shall have and exercise the general

jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards; including the partition, settlement and distribution of estates of deceased persons; and to apprentice minors as provided by general law, and to issue all writs necessary for the enforcement of its jurisdiction and decree. [Id. sec. 4.]

Art. 1970—280. Forfeited bonds, etc., in criminal cases.—Said county court shall have jurisdiction in the forfeiture and judgment of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Id. sec. 5.]

Art. 1970—281. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.—Said county court shall have exclusive original jurisdiction of all misdemeanors except misdemeanors involving official misconduct and except misdemeanors in which the highest penalty that may be imposed by the law is a fine without imprisonment, that does not exceed two hundred dollars, and said court shall have appellate jurisdiction with trial de novo in criminal cases in which justices of the peace and other inferior tribunals of said county have original jurisdiction. [Id. sec. 6.]

Art. 1970—282. Jurisdiction of district court.—The district court of said county shall no longer have jurisdiction of misdemeanors except misdemeanors involving official misconduct, and shall no longer have jurisdiction of cases in which the county court of said county by provisions of this Act has original or appellate jurisdiction. [Id. sec. 7.]

Art. 1970—283. District clerk to deliver transcripts, etc., to county clerk.—It shall be the duty of the district clerk of said county within thirty days after this Act shall take effect to make full and complete transcripts of orders on the criminal and civil dockets, then pending before the district court of said county, of which cases by the provisions of this Act original and appellate jurisdiction is given to the said county court, and to deliver said transcripts, together with the original papers in each case, to the county clerk of said county, and the said county clerk shall file the same and enter said cases on the respective docket for trial by said court. [Id. sec. 8.]

Art. 1970—284. Motions against sheriffs and other officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the court, for failure to pay over moneys collected under the process of said court or other defalcations of duty in connection with such process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days, any person guilty of contempt of said court, and shall also have all other powers and jurisdiction conferred on county courts by the constitution and general laws of this state. [Id. sec. 9.]

Art. 1970—285. Terms of court.—The terms of said court shall commence on the fourth Monday in February, and on the fourth Monday in May, and on the fourth Monday in August, and on the fourth Monday in November of each year, and shall continue in session for each term until the business may be disposed of; provided, that the county commissioners court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Id. sec. 10.]

Art. 1970—286. Zapata county court; jurisdiction in civil cases.—That the county court of Zapata county shall hereafter have exclusive original jurisdiction in civil cases where the matter in controversy shall exceed in value two hundred dollars and shall not exceed five hundred dollars, exclusive of interest, and that it shall have concurrent jurisdiction with the district court of said county when the matter in controversy shall exceed five hundred dollars and not exceed one thousand dollars. [Acts 1913, p. 83, sec. 1.]

Art. 1970—287. Appellate jurisdiction in civil cases.—Said county court shall have appellate jurisdiction in civil cases over which justice's courts of said county have original jurisdiction when the judgment of the court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest, and said county court shall have the power to hear and determine cases brought up from the justice's courts by certiorari under the provisions of law relating thereto. [Id. sec. 2.]

Art. 1970—288. Power to grant writs, etc.—The county judge of said county shall have authority either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, garnishment, attachment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said court, and shall also have power to issue writs of habeas corpus in all cases in which the constitution and laws have not exclusively conferred the power on the district judge or district court thereof. [Id. sec. 3.]

Art. 1970—289. Jurisdiction of probate court.—Said court shall have, as now, the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, and common drunkards, grant letters testamentary and of administration; settle accounts of executors, administrators and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons; apprentice minors as provided by law; and to issue all writs necessary to the enforcement of its jurisdiction, orders, and decrees; and generally to exercise all the powers in probate matters conferred upon such courts by the constitution and laws of the state. [Id. sec. 4.]

Art. 1970—290. Forfeited bonds, etc., in criminal cases.—Such court shall have jurisdiction in the forfeiture of all bonds and recognizances taken in criminal cases of which said court has original or appellate jurisdiction. [Id. sec. 5.]

Art. 1970—291. Jurisdiction of certain misdemeanors; appellate jurisdiction in criminal cases.—Said court shall have and exercise exclusive jurisdiction of all misdemeanors, except misdemeanors involving official misconduct, and except misdemeanors in which the highest penalty that may be imposed by law is a fine, without imprisonment, that does not exceed two hundred dollars; and said court shall have appellate jurisdiction of criminal cases in which justice's courts and other inferior tribunals of said county have original jurisdiction. [Id. sec. 6.]

Art. 1970—292. Jurisdiction of district court.—The district court of said county shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct, and shall no longer have jurisdiction of civil cases of which the county court of said county, by the provisions of this Act, has original or appellate jurisdiction. [Id. sec. 7.]

Art. 1970—293. District clerk to deliver transcripts, etc., to county clerk.—It shall be the duty of the district clerk of said county, within thirty days after this Act shall take effect, to make full and complete transcript of orders on the criminal and civil dockets then pending before the district court of said county, of which cases, by the provisions of this Act. original and appellate jurisdiction is given to said county court, and to file said transcript together with the original papers in each case, in the county court of said county, and the county clerk shall enter said cases on the respective dockets of said county court as appearance cases for trial by said court. [Id. sec. 8.]

Art. 1970—294. Motions against sheriffs and other officers; contempts; other powers.—The said court shall also have the power to hear and determine all motions against sheriffs and other officers of the

court for failure to pay over moneys collected under the process of said court, or other defalcations of official duty in connection with said process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the county jail not exceeding three days any person guilty of contempt of said court, and all other powers and jurisdictions conferred on county courts by the constitution and general laws of the state of Texas. [Id. sec. 9.]

Art. 1970—295. Terms of court.—The terms of said court shall commence on the third Monday in February, and on the third Monday in May, and on the third Monday in September, and on the third Monday in November of each year, and shall continue in session for three weeks at each term, or until the business may be disposed of; provided, that the county commissioner's court of said county may hereafter change the terms of said court whenever it may be deemed necessary. [Id. sec. 10.]

Art. 1970—296. Edwards county court; act repealed.—That Chapter 30 of the General Laws of the Regular Session of the Thirty-seventh Legislature be and the same is hereby repealed, and any and all laws which now stand repealed by reason of said Chapter 30 are hereby revived. [Acts 1923, 38th Leg., ch. 60, § 1.]

Art. 1970—297. Shelby County Court; jurisdiction restored.—Chapter 8 of the General Laws of the Fourth Called Session of the Thirty-sixth Legislature is hereby repealed, and hereafter the county court of Shelby County, Texas, shall have the same jurisdiction and shall be subject to the same provisions as county courts generally throughout the State under the General Laws of the State of Texas.

The jurisdiction of the district court in Shelby County is hereby conformed to the change herein made of the jurisdiction of the county court, and hereafter said district court shall have the same jurisdiction as district courts under the Constitution and General Laws. It shall be the duty of the district clerk of said county within thirty days after this Act shall take effect to make full and complete transcripts of all orders on the civil and criminal dockets in cases then pending before the district court of said county of which cases by the provisions of this Act original or appellate jurisdiction is given to said county court, and to deliver said transcripts together with all original papers and a certified bill of costs in each case to the county clerk of said county and said county clerk shall take charge of said transcripts and papers and file the same and enter said cases on the proper docket. All process heretofore issued from the district court of said court in cases transferred under this Act to the county court shall be returnable to the first term of the county court, and all civil cases transferred shall be entered as appearance cases upon the docket of said county court. [Acts 1925, 39th Leg., ch. 89, p. 263, § 1.]

Art. 1970—298. County court at law McLennan County created.—Sec. 1. That there is hereby created a Court to be held in McLennan County, to be called the County Court at law of McLennan County. [Acts 1927, 40th Leg., p. 118, ch. 78.]

Sec. 2. The County Court at Law of McLennan County shall have jurisdiction in all matters and causes, civil and criminal, original and appellate, over which by the general laws of the State, the County Court of said County would have jurisdiction, except as provided in Section 3 of this Act; and all cases now pending in the County Court of said County, other than probate matters and such as are provided in Section 3 of this Act, be and the same are hereby transferred to the County Court at Law of McLennan County, and all writs and process, civil and criminal, heretofore issued by or out of the County Court of said County, other than pertaining to matters over which by Section 3 of this Act, jurisdiction remains in the County Court of McLennan County, be and the same are hereby made returnable to the County Court at Law of McLennan County. The jurisdiction of the County Court at Law of McLennan County and the judge thereof shall extend to all matters of eminent domain of which jurisdiction has been heretofore vested in the County Court or in the County Judge, but this provision shall not affect the jurisdiction of the commissioners' court, or of the County Judge of McLennan County as the presiding officer of such commissioners' court as to roads, bridges, and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners' court or the judge thereof. [Acts 1927, 40th Leg., p. 118, ch. 78.]

Sec. 3. The county court of McLennan County shall have jurisdiction as a juvenile court and the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law; and the said court, and the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court, and also to punish contempts under such provisions as are or may be provided by law governing county courts throughout the State; but said county court of McLennan County shall have no other jurisdiction, civil or criminal. The county judge of McLennan County shall be the judge of the county court of McLennan County. All ex-officio duties of the county judge shall be exercised by the said judge of the county court of McLennan County, except in so far as the same shall by this Act be committed to the judge of the County Court at Law of McLennan County. [Acts 1927, 40th Leg., p. 118, ch. 78; Acts 1927, 40th Leg., 1st C. S., p. 225, ch. 82, § 1.]

Sec. 4. The terms of the County Court at Law of McLennan County, shall be held as follows, to-wit: On the first Mondays in January, March, May, July, September and November in each year, and each term of said Court shall continue in session until and including the Saturday next preceding the beginning of the next succeeding term thereof. The practice in said Court, and appeals and writs of error therefrom, shall be as prescribed by the laws relating to County Courts. [Acts 1927, 40th Leg., p. 118, ch. 78.]

Sec. 5. There shall be elected in McLennan County by the qualified voters thereof, at each general election, a judge of the County Court at Law of McLennan County, who shall be a qualified voter in said county, and who shall be a regularly licensed attorney at law in this State, well informed in the laws of this State, and who shall have resided in and been actively engaged in the practice of law in this State or as the judge of a court for a period of not less than four years next preceding such general election, who shall hold his office for two years, and until his successor shall have been duly qualified. [Acts 1927, 40th Leg., p. 118, ch. 78.]

Sec. 6. The judge of the County Court at Law of McLennan County shall execute a bond and take the oath of office as required by law relating to county judges. [Acts 1927, 40th Leg., p. 118, ch. 78.]

Sec. 7. A Special Judge of the County Court at Law of McLennan County may be appointed or elected when and under such circumstances as are provided by law relating to County Courts and to the judges thereof, who shall receive the sum of $10.00 per day for each day he so actually serves, to be paid out of the general fund of the County by the commissioners' court. [Acts 1927, 40th Leg., p. 118, ch. 78.]

Sec. 8. The court created by this Act and the judges thereof shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said court or of any other court or tribunal inferior to said court. [Acts 1927, 40th Leg., p. 118, ch. 78.]

Sec. 9. The Clerk of the County Court of McLennan

County shall be the Clerk of the County Court at Law of McLennan County. The seal of said court shall be the same as that provided by law for county courts except that the seal shall contain the words "County Court at Law of McLennan County." The sheriff of McLennan County shall in person or by deputy attend the said Court when required by the judge thereof. [Acts 1927, 40th Leg., p. 118, ch. 78; Acts 1927, 40th Leg., 1st C. S., p. 225, ch. 82, § 2.]

Sec. 10. Any vacancy in the office of the judge of the Court created by this Act shall be filled by the Commissioners' Court of McLennan County until the next general election. The Commissioners' Court of McLennan County shall as soon as may be, after this Act shall take effect, appoint a judge of the County Court at Law of McLennan County, who shall serve until the next general election and until his successor shall be duly elected and qualified. [Acts 1927, 40th Leg., p. 118, ch. 78.]

Sec. 11. The judge of the County Court at Law of McLennan County shall assess the same fees as are or may be established by Law relating to county judges, all of which shall be collected by the Clerk of said Court and be by him paid monthly into the county treasury; and the judge of said County Court at Law shall receive an annual salary of Four Thousand Dollars, payable monthly, to be paid out of the county treasury by the commissioners' court, provided that said commissioners' court may if and when it sees fit, pay the judge of said court a larger amount of annual salary not to exceed Five Thousand Dollars, to be paid monthly out of the county treasury. [Acts 1927, 40th Leg., p. 118, ch. 78.]

Sec. 12. The County Judge of McLennan County shall receive an annual salary of Four Thousand Dollars to be paid monthly out of the county treasury, out of the general fund of the county. Said county judge shall assess the same fees, in matters within the jurisdiction of the County Court, as are or may be prescribed by law relating to County Judge's fees, all of which shall be collected by the Clerk of the Court and shall be by him paid into the county treasury monthly, for the use and benefit of the general fund; provided that the Commissioners' Court of McLennan County may, if and when it sees fit, pay the county judge a larger amount of annual salary not to exceed Five Thousand Dollars per annum, to be paid monthly out of the county treasury. [Acts 1927, 40th Leg., p. 118, ch. 78.]

Art. 1970—299. Jurisdiction of County Court of Harrison County.—Sec. 1. Hereafter the County Court of Harrison County, Texas, shall have the same jurisdiction and shall be subject to the same provisions as County Courts generally throughout the State, under the Constitution and General Laws of the State of Texas.

Sec. 2. The Jurisdiction of the District Court of the Seventy-first Judicial District of Texas is hereby conformed to the change herein made of the County Court of Harrison County, and hereafter said District Court shall have the same jurisdiction as District Courts generally throughout the State as provided and conferred by the Constitution and General Laws of the State of Texas. [Acts 1927, 40th Leg., p. 150, ch. 99.]

Section 3 of Acts 1927, 40th Leg., p. 150, ch. 99, repeals all conflicting laws and parts of laws.

Art. 1970—300. Changing jurisdiction of county court of Edwards county.—Sec. 1. Hereafter the county court of Edwards County shall have no civil or criminal jurisdiction and shall have jurisdiction in probate matters only. The civil and criminal jurisdiction heretofore vesting in said county court is hereby transferred to the district court of said county.

Sec. 2. It shall be the duty of the county clerk of said county within thirty days after this Act shall take effect to make a full and complete transcript of all orders on the civil and criminal docket in said county court in all civil and criminal matters, and shall transfer the same together with all other papers and records in connection with such cases and matters, to the clerk of the district court of said county. Said county clerk shall also prepare certified bills of costs in each such case and deliver the same to said district clerk, and the district clerk shall take charge of such transcripts, papers and costs bills and file and enter the same in said cases on the proper docket. All process heretofore issued from the county court in said county in cases transferred by this Act to the district court shall be returnable to the first term of the district court after this Act takes effect, and all cases transferred by this Act shall be entered as appearance cases upon the docket of the district court. [Acts 1927, 40th Leg., p. 333, ch. 226.]

Art. 1970—301. County courts at Law Nos. 1 and 2 Bexar County.—Sec. 1. From and after the passage and taking effect of this Act the county court of Bexar County for civil cases shall be known and designated as the "County Court at Law No. 1, of Bexar County, Texas." The present judge and all officers of the county court of Bexar County for civil cases shall continue as such respective judge and officers of the County Court at Law No. 1, of Bexar County, Texas, until the expiration of their present terms of office and until their successors shall have been duly elected or appointed and qualified.

Sec. 2. From and after the passage and taking effect of this Act the county court of Bexar County for criminal cases shall be known and designated as the "County Court at Law No. 2, of Bexar County, Texas." The present judge and all officers of the county court of Bexar County for criminal cases shall continue as such respective judge and officers of the County Court at Law No. 2, of Bexar County, Texas, until the expiration of their present terms of office and until their successors shall have been duly elected or appointed and qualified.

Sec. 3. Said County Court at Law No. 1, of Bexar County, Texas, and the judge thereof, shall have and exercise the same jurisdiction, original and appellate, heretofore conferred on said county court of Bexar County for civil cases, and the judge thereof, and in addition thereto, shall have jurisdiction within Bexar County, Texas, of all such subject matters and causes, original and appellate, over which the county court of Bexar County for criminal cases has heretofore had jurisdiction; and the authorized jurisdiction of said courts, namely, the County Court at Law No. 1, of Bexar County, Texas, and the County Court at Law No. 2, of Bexar County, Texas, over all such matters, within said county, shall be concurrent.

Sec. 4. Said County Court at Law No. 2, of Bexar County, Texas, and the judge thereof, shall have and exercise the same jurisdiction, original and appellate heretofore conferred on said county court of Bexar County for criminal cases, and the judge thereof, and in addition thereto, shall have jurisdiction within Bexar County, Texas, of all such subject matters and causes, original and appellate, over which the county court of Bexar County for civil cases has heretofore had jurisdiction; and the authorized jurisdiction of said courts, namely, the County Court at Law No. 1, of Bexar County, Texas, and the County Court at Law No. 2, of Bexar County, Texas, over all such matters, within said county, shall be concurrent.

Sec. 5. From and after the passage and taking effect of this Act, civil and criminal cases, within the jurisdiction of said courts, may be filed in either the County Court at Law No. 1, of Bexar County, Texas, or in the County Court at Law No. 2, of Bexar County, Texas.

Sec. 6. Whenever the judge of said County Court at Law No. 1, or the judge of said County Court at Law No. 2, of Bexar County, Texas, may deem it advisable or expedient he may transfer any case or cases pending in the court over which he presides to the other of said county courts at law, and the written order upon the minutes of said court so transferring such case, signed by the judge thereof making the transfer, shall be authority for the clerk of said court to make such transfer.

Sec. 7. It shall be the duty of the judge of the County Court at Law No. 1, of Bexar County, Texas,

as soon as practicable after the passage and taking effect of this Act to transfer as aforesaid from the docket of said court to the docket of said County Court at Law No. 2, of Bexar County, Texas, approximately one-half of the civil cases pending upon said docket, which shall be done by transferring every alternate case without reference to whether any particular case be pending upon the jury or nonjury of said court; provided, this section is directory in nature.

Sec. 8. It shall be the duty of the judge of the County Court at Law No. 2, of Bexar County, Texas, as soon as practicable after the passage and taking effect of this Act, to transfer as aforesaid from the docket of said court to the docket of said County Court at Law No. 1, of Bexar County, Texas, approximately one-half of the criminal cases pending upon said docket, which shall be done by transferring every alternate case without reference to whether any particular case be pending upon the jury or nonjury docket of said court; provided, this section is directory in nature.

Sec. 9. The judge of the County Court at Law No. 1, of Bexar County, Texas, and the judge of the County Court at Law No. 2, of Bexar County, Texas, may hold court for or with one another, and all acts and proceedings of any court so held shall be valid and binding.

Sec. 10. All writs, processes, judgments and decrees, civil and criminal, heretofore issued by or out of the said county court of Bexar County for civil cases or the said county court of Bexar County for criminal cases, as well as all bonds and recognizances taken in either of said courts, and all other acts and proceedings had therein, shall be as valid and enforceable and binding as if no change had been made in the name, designation, jurisdiction or time of the holding of either of said courts, and each and all of the same are, respectively, hereby made returnable and effective in that one of said county courts at law which shall have jurisdiction of the cause in conformity with the terms and provisions of this Act.

Sec. 11. The judge of said County Court at Law No. 1, of Bexar County, Texas, and the judge of said County Court at Law No. 2, of Bexar County, Texas, shall each take the oath of office prescribed by the law relating to county judges, but no bond shall be required of either of them. Each of the said judges shall be enabled to collect the same fee provided by law for county judges in similar cases, all of which shall be collected by the clerk of said courts and paid by him monthly into the county treasury of Bexar County, in accordance with orders of the commissioners court of said county. Each of said judges shall receive a salary of Five Thousand ($5,000.00) Dollars, annually, to be paid in equal monthly installments by said county by warrants drawn from the general funds thereof, out of the county treasury by the orders of the commissioners court.

Sec. 12. The county court of Bexar County, Texas, and the judge thereof, shall have and retain the same jurisdiction, powers, fees and perquisites of office as conferred on said county court of Bexar County, or the judge thereof, at and before the time of the passage and taking effect of this Act; and this Act shall in no wise affect said county court.

Sec. 13. The County Court at Law No. 1, of Bexar County, Texas, shall hold six terms of court each year commencing on the first Monday in January, March, May, July, September and November and each term shall continue until the business shall have been disposed of; and the County Court at Law No. 2, of Bexar County, Texas, shall hold six terms of court each year, commencing on the first Monday in February, April, June, August, October and December, and each term shall continue until the business shall have been disposed of; provided, no term of either of said courts shall continue beyond the date fixed for the commencement of its new term, except upon an order entered on its minutes during the term extending the term for any particular causes therein specified.

Sec. 14. Special judges of either said County Court at Law No. 1 or said County Court at Law No. 2 may be appointed or elected, and shall be authorized to act as provided by the general laws relating to county courts, and to the judges thereof; and every such special judge shall receive the same pay for his services as is provided by law for county judges in similar cases.

Sec. 15. The County Clerk of Bexar County shall be clerk of both said County Court at Law No. 1 and also said County Court at Law No. 2. The seal of each of said courts shall be the same as that provided for county courts, except that the seal of each of said county courts at law shall contain its name and number as specified in this Act. The sheriff of Bexar County shall in person, or by deputy, attend each of said courts when so required by the judge thereof.

Sec. 16. The term of the County Court at Law No. 1, of Bexar County, Texas, current at the time of the taking effect of this Act shall continue until the commencement of the next following term of said court, in the month as fixed by this Act, in the year 1927, or until any earlier adjournment thereof. All process issued out of said court before this Act takes effect, and not theretofore returnable, or returnable on some special date is hereby made returnable to the terms of court as fixed by this Act. All bonds heretofore executed in said court shall bind the parties to fulfill the obligation of such bonds at the terms of court, and to that one of said county courts at law having jurisdiction of the cause, in conformity with this Act. All writs and process heretofore issued and returned, as well as all bonds heretofore taken in said county court of Bexar County for civil cases, and all judgments, writs and decrees thereof, shall be as valid and binding, and enforceable, as if no change had been made in the jurisdiction or the time of the holdings of said court, or in the name and designation of said court.

Sec. 17. The term of the County Court at Law No. 2, of Bexar County, Texas, current at the time of the taking effect of this Act, shall continue until the commencement of the next following term of said court in the month as fixed by this Act, in the year 1927, or until any earlier adjournment thereof. All process issued out of said court before this Act takes effect, and not theretofore returnable, or returnable on some special date, is hereby made returnable to the terms of court as fixed by this Act. All bonds and recognizances heretofore executed and taken in said court shall bind the parties to fulfill the obligations of such bonds and recognizances at the terms of court, and to the one of said county courts at law having jurisdiction of the cause, in conformity with this Act. All writs and processes heretofore issued and returned, as well as all bonds and recognizances heretofore executed and taken in said county court of Bexar County for criminal cases, and all judgments and writs and decrees thereof shall be as valid and binding and enforceable as if no change had been made in the jurisdiction or the time of the holdings of said court, or in the name and designation of said court.

Sec. 18. There shall be appointed by the county attorney of said county, in addition to the assistants now provided by law, one special assistant, for the purpose of conducting the duties of his office in said courts. Such assistant county attorney shall be paid a salary of three thousand ($3,000.00) dollars annually, in equal monthly installments, by said county, upon warrants drawn against the general fund by orders of the commissioners court.

Sec. 19. For the purpose of preserving a record in all cases for the information of the court, jury and parties, the judge of the County Court at Law No. 2, of Bexar County, Texas, may appoint an official shorthand reporter for said court who shall be well skilled in his profession, shall be a sworn officer of the court, and shall hold his office at the pleasure of the court; and the provisions of the law relating to the appointment of stenographers for the district courts of this State shall and they are hereby made to apply in all their provisions, in so far as they are applicable, to the official shorthand reporter herein authorized to be appointed, and said reporter shall be entitled to the

same fees and salary, and shall perform the same duties, and shall take the same oath as now provided by the General Laws of this State covering the stenographers of the district courts of this State; and in all cases pending in said County Court at Law No. 2, of Bexar County, Texas, at the time of the passage and taking effect of this Act, and in all civil cases that may hereafter be filed in said court in which an answer has been filed or may be filed, and also in all other cases, civil and criminal, where either party litigant, or the court, should require the official shorthand reporter to take down the testimony, a stenographer's fee of three ($3.00) dollars shall be taxed by the clerk of said court as costs in this case, the same to be in addition to all other costs, and said fee, when so collected by said clerk, shall be by him paid into the treasury of Bexar County in the same manner as now required of district clerks under similar circumstances.

Sec. 20. The Act of the Legislature of the State of Texas, enacted by the Thirty-second Legislature, Regular Session, known as House Bill No. 111, Chapter 10, approved February 20, 1911, found on pages 15, 16 and 17, of the Session Laws of said Legislature, creating the county court of Bexar County for civil cases, and each provision of said Act, and the amendment to said Act passed by the Thirty-eighth Legislature of the State of Texas, known as House Bill No. 367, found on pages 73 and 74, of the Session Laws of the said Legislature, authorizing the appointment of an official shorthand reporter for said court, shall, except in so far as in conflict herewith, remain in full force and effect, and apply to the County Court at Law No. 1, of Bexar County, Texas.

Sec. 21. The Act of the Legislature of the State of Texas, enacted by the Thirty-fourth Legislature, Regular Session, known as Senate Bill No. 323, Chapter 39, approved March 5, 1915, as found on pages 78, 79, 80, and 81, of the Session Laws of said Legislature, creating the county court of Bexar County for criminal cases, and each provision of said Act, shall, except in so far as in conflict herewith, remain in full force and effect, and apply to the County Court at Law No. 2, of Bexar County, Texas. [Acts 1927, 40th Leg., p. 26, ch. 22.]

Section 22 of Acts 1927, 40th Leg., p. 26, ch. 22, repeals all conflicting laws and parts of laws and provides that if any part is held invalid, such holding shall not affect the remainder.

Art. 1970–302. Jurisdiction and time for holding Menard County Court.—Sec. 1. Hereafter the County Court of Menard County, Texas, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by the General Laws for county courts.

Sec. 2. This Act shall not be construed to in anywise, or in any manner affect judgments heretofore rendered by the District Court pertaining to matters and causes which, by this Act are made returnable to the County Court, and the Clerk of the District Court of said county shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act.

Sec. 3. The jurisdiction of the District Court of Menard County shall be such as provided by the Constitution and General Laws of this State, consistent with the change in jurisdiction of the County Court herein made.

Sec. 4. The County Court of Menard County shall, in addition to the civil and criminal jurisdiction conferred upon County Courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the Justices Courts in all criminal and civil matters which, by the General Laws of this State, is conferred upon Justice Courts.

Sec. 5. No appeal or writ of error shall be taken to the Court of Civil Appeals from a final judgment of said Court in civil cases, of which Court has appellate, original or concurrent jurisdiction with the Justices Courts, where the amount in controversy does not exceed one hundred dollars, exclusive of interest and costs.

Sec. 6. This Act shall not be construed to deprive the Justices Courts of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said county court over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal from the Justice Court to said County Court in any case originally brought in the Justice Court, where the right of appeal exists under the Constitution and General Laws of the State.

Sec. 7. It shall be the duty of the District Clerk of Menard County, Texas, within thirty days after this Act shall take effect, to make full and complete transcripts of orders on the criminal and civil dockets then pending before the District Court of said County of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said County Court and to file said transcript, together with the original papers in each case in the County Court of said County and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 8. The terms of said Courts shall commence on the first Monday in January, and on the first Monday in May and on the first Monday in August and the first Monday in November of each year and each of said terms shall continue in session for six weeks, or until the business may be disposed of; provided, that the County Commissioners' Court of said County may hereafter change the terms of said Court whenever it may be deemed necessary by said Commissioners' Court. [Acts 1927, 40th Leg., 1st C. S., p. 112, ch. 38.]

Section 9 of Acts 1927, 40th Leg., 1st C. S., p. 112, ch. 38, repeals all conflicting laws and parts of laws relating to Menard County.

Art. 1970–303. Jurisdiction and time for holding Sterling County Court.—Sec. 1. Hereafter the County Court of Sterling County, Texas, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by the General Laws for county courts.

Sec. 2. This Act shall not be construed to in anywise, or in any manner affect judgments heretofore rendered by the District Court pertaining to matters and causes which, by this Act are made returnable to the County Court, and the Clerk of the District Court of said county shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act.

Sec. 3. The jurisdiction of the District Court of Sterling County shall be such as provided by the Constitution and General Laws of this State, consistent with the change in jurisdiction of the County Court herein made.

Sec. 4. The County Court of Sterling County shall, in addition to the civil and criminal jurisdiction conferred upon County Courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the Justices Courts in all criminal and civil matters which, by the General Laws of this State, is conferred upon Justice Courts.

Sec. 5. No appeal or writ of error shall be taken to the Court of Civil Appeals from a final judgment of said Court in civil cases, of which Court has appellate, original or concurrent jurisdiction with the Justices Courts, where the amount in controversy does not exceed one hundred dollars, exclusive of interest and costs.

Sec. 6. This Act shall not be construed to deprive the Justices Courts of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said County Court over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal from the Justice Court to said County Court in any case originally brought in the Justice Court, where the right of appeal exists under the Constitution and General Laws of the State.

Sec. 7. It shall be the duty of the District Clerk

of Sterling County, Texas, within thirty days after this Act shall take effect, to make full and complete transcripts of orders on the criminal and civil dockets then pending before the District Court of said County of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said County Court and to file said transcript, together with the original papers in each case in the County Court of said County and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 8. The terms of said Courts shall commence on the first Monday in January, and on the first Monday in May and on the first Monday in August and the first Monday in November of each year and each of said terms shall continue in session for six weeks, or until the business may be disposed of; provided, that the County Commissioners' Court of said County may hereafter change the terms of said Court whenever it may be deemed necessary by said Commissioners' Court. [Acts 1927, 40th Leg., 1st C. S., p. 25, ch. 14.]

Section 9 of Acts 1927, 40th Leg., 1st C. S., p. 25, ch. 14, repeals all conflicting laws and parts of laws relating to Sterling County.

Art. 1970–304. Jurisdiction and time for holding Irion County Court.—Sec. 1. Hereafter the County Court of Irion County, Texas, in addition to its present jurisdiction, shall have civil and criminal jurisdiction as provided by the General Laws for County Courts.

Sec. 2. This Act shall not be construed to in anywise, or in any manner affect judgments heretofore rendered by the District Court pertaining to matters and causes which by this Act are made returnable to the County Court, and the Clerk of the District Court of said county shall issue all executions and orders of sale and proceedings thereunder, which shall be as valid and binding to all intents and purposes as though the change had not been made as directed in this Act.

Sec. 3. The jurisdiction of the District Court of Irion County shall be such as provided by the Constitution and General Laws of this State, consistent with the change in jurisdiction of the County Court herein made.

Sec. 4. The County Court of Irion County shall, in addition to the civil and criminal jurisdiction conferred upon County Courts by the Constitution and General Laws of this State, have and exercise concurrent jurisdiction with the Justices Courts in all criminal and civil matters which, by the General Laws of this State, is conferred upon Justice Courts.

Sec. 5. No appeal or writ of error shall be taken to the Court of Civil Appeals from a final judgment of said Court in Civil cases, of which Court has appellate, original or concurrent jurisdiction with the Justices Courts, where the amount in controversy does not exceed one hundred dollars, exclusive of interest and costs.

Sec. 6. This Act shall not be construed to deprive the Justices Courts of jurisdiction now conferred upon them by law, but is only to give concurrent and original jurisdiction to said County Court over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal from the Justice Court to said County Court in any case originally brought in the Justice Court, where the right of appeal exists under the Constitution and General Laws of the State.

Sec. 7. It shall be the duty of the District Clerk of Irion County, Texas, within thirty days after this Act shall take effect, to make full and complete transcripts of orders on the criminal and civil dockets then pending before the District Court of said County, of which cases by the provisions of this Act, original and appellate jurisdiction is given to said County Court and to file said transcript, together with the original papers in each case in the County Court of said County and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 8. The terms of said Courts shall commence on the first Monday in January, and on the first Monday in May, and on the first Monday in August and the first Monday in November of each year, and each of said terms shall continue in session for six weeks, or until the business may be disposed of; provided, that the County Commissioners' Court of said County may hereafter change the terms of said Court whenever it may be deemed necessary by said Commissioners' Court. [Acts 1927, 40th Leg., 1st C. S., p. 24, ch. 13.]

Section 9 of Acts 1927, 40th Leg., 1st C. S., p. 24, ch. 13, repeals all conflicting laws and parts of laws relating to Irion County.

Art. 1970–305. County court at law Cameron county created.—Sec. 1. There is hereby created a court to be held in Brownsville, Cameron County, Texas, which shall be known as the County Court of Cameron County at Law.

Sec. 2. The County Court of Cameron County at Law shall have and exercise the jurisdiction in all matters and cases, civil and criminal, original and appellate, over which by the general laws of the State, the County Court of said County would have jurisdiction except as herein provided in Section 3 of this Act, and all cases pending in the County Court of said County, other than probate matters such as are provided in Section 3 of this Act, at the time this Act shall become effective, shall be and the same are hereby transferred to the County Court of Cameron County at Law, and all writs and process, civil and criminal, heretofore issued by or out of the said County Court other than those pertaining to matters which are hereby exempt from this bill that are to remain in the County Court of Cameron County at Law shall be and the same is hereby made returnable to the County Court of Cameron County at Law.

Sec. 3. The County Court of Cameron County at Law shall have and exercise original concurrent jurisdiction with the Justice Courts in all civil and criminal matters which by the general laws of this State is conferred upon Justice Courts.

Sec. 4. No appeal or writ of error shall be taken to the Court of Civil Appeals from any final judgment of said County Court of Cameron County at Law in Civil cases of which said court has appellate or original concurrent jurisdiction with the Justice Court, where the judgment or amount in controversy does not exceed One Hundred Dollars ($100.00) exclusive of interest and costs.

Sec. 5. This Act shall not be construed to deprive the Justice Courts of the jurisdiction now conferred upon them by law, but only to give concurrent original jurisdiction to the said County Court of Cameron County at Law over such matters as are specified in this Act, nor shall this Act be construed to deny the right of appeal to the County Court of Cameron County at Law from the Justice Court where the right of appeal to the County Court now exists by law. The jurisdiction of the County Court of Cameron County at Law, and the Judge thereof, shall extend to all matters of eminent domain of which jurisdiction has heretofore vested in the County Court of Cameron County or in the County Judge; but this provision shall not affect the jurisdiction of the Commissioners' Court nor of the County Judge of Cameron County as the presiding officer of said Commissioners' Court as to roads, bridges, and public highways, or matters of eminent domain which are now in the jurisdiction of the Commissioners' Court or the Judge of the County Court of Cameron County.

Sec. 6. The County Court of Cameron County shall retain as heretofore, the general jurisdiction of the Probate Court and all jurisdiction now conferred by law over probate matters; and the court herein created shall have no other jurisdiction than that named in this bill, and the County Court of Cameron County as now and heretofore existing shall have all jurisdiction which it now has, save and except that which is given the County Court of Cameron County at Law in this bill, but the County Court as now existing shall have no other jurisdiction, civil or criminal. The County Judge of Cameron County shall be the Judge

of the County Court of said County, and all ex-officio duties of the County Judge shall be exercised by said Judge of the County Court of Cameron County, except in so far as the same shall by this bill be committed to the County Court of Cameron County at Law.

Sec. 7. The terms of the County Court of Cameron County at Law, and the practice therein, and the appeals and writs of error therefrom shall be as prescribed by the laws relating to County Courts. The terms of the County Court of Cameron County at Law shall be held in the court house of Cameron County, and begin on the first Monday in February, April, June, August, October and December of each year, and shall continue in session for eight weeks each term.

Sec. 8. There shall be elected in Cameron County by the qualified voters thereof at each general election a Judge of the County Court of Cameron County at Law who shall be well informed in the laws of the State, and who shall hold his office for two years, and until his successor shall have been duly elected and qualified. No person shall be elected Judge of said court who has not been a resident citizen and practicing attorney of Cameron County, Texas, for at least one year prior to his election, and shall possess all of the qualifications for the office that are now required by the general laws of the State for County Judge, before entering upon the duties.

Sec. 9. The County Attorney of Cameron County shall represent the State in all prosecutions pending in said County Court of Cameron County at Law, and shall be entitled to the same fee as now prescribed by law for such prosecutions in the County Courts.

Sec. 10. As soon as this bill becomes effective the Governor shall appoint a Judge of the County Court of Cameron County at Law, who shall hold his office until the next general election.

Sec. 11. In the case of the disqualification of the Judge of the County Court at Law of any case pending in his court, the County Judge shall sit in such case and the parties or their attorneys may agree on the selection of a special Judge to try such case or cases; and in default of such agreement a majority of the practicing lawyers of Cameron County shall elect a Judge to try such cases where the County Judge at Law is disqualified.

Sec. 12. The County Court of Cameron County at Law, or the Judge thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas and all writs necessary to the enforcement of jurisdiction of said court; and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said court, or of any other court in said county of inferior jurisdiction to said County Court at Law.

Sec. 13. The County Clerk of Cameron County, Texas, shall be the clerk of the County Court of Cameron County at Law, and the seal of said court shall be the same as that provided by law for County Courts, except the seal shall contain the words "County Court of Cameron County at Law," and the Sheriff of Cameron County shall in person or by deputy attend said court when required by the judge thereof, and the County Clerk of Cameron County, Texas, is hereby authorized, if it becomes necessary, in his judgment, to appoint a deputy to specially attend to the matters pertaining to the County Court of Cameron County at Law, and said deputy shall be allowed a salary of one hundred dollars per month.

Sec. 14. The jurisdiction or authority now vested by law in the County Court for the appointment of jury commission and selection and service of jurors shall be exercised by the County Court of Cameron County at Law and all petit jurors for criminal [cases] under existing laws at the time this act takes effect, shall be as valid as if no change had been made, and the persons constituting such juries shall be required to appear and serve at the next ensuing terms of said courts as fixed by this act, and their acts as jurors shall be as valid and legal as if they had served as jurors in the court for which they were originally drawn.

Sec. 15. Any vacancy in the office of the Judge of the County Court of Cameron County at Law may be filled by the Commissioners' Court, and when so filled the Judge shall hold office until the next general election and until his successor is elected and qualified.

Sec. 16. The judge of the County Court of Cameron County at Law shall receive a salary of not less than Twenty-five hundred dollars ($2,500.00) per annum, nor more than Thirty hundred ($3,000.00) dollars per annum at the discretion of the Commissioners' Court, to be paid out of the County Treasury of Cameron County, Texas, on the order of the Commissioners' Court of said County, and said salary shall be paid monthly in equal installments. The Judge of the County Court of Cameron County at Law shall assess the same fees as are now prescribed by law relating to the County Judge's fees, all of which shall be collected by the clerk of the court and shall be paid into the county treasury on collection, no part of which shall be paid to the said Judge, but he shall draw the salary as above specified in this section.

Sec. 17. All cases appealed from the Justice Court and other inferior courts in Cameron County, Texas, shall be made direct to the County Court of Cameron County at Law, under the provisions heretofore governing such appeals.

Sec. 18. The judge of the County Court of Cameron County at Law may be removed from office in the same manner and for the same causes as any County Judge may be removed under the laws of this State. [Acts 1927, 40th Leg., 1st C. S., p. 167, ch. 59.]

Art. 1970—306. Jurisdiction of Bowie County Court diminished.—Sec. 1. That the County Court of Bowie County shall have and exercise the general jurisdiction of probate courts, shall probate wills, appoint guardians of minors, idiots, lunatics, non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the partition, settlement and distribution of estates of deceased persons, and to apprentice minors as prescribed by law, and to issue all writs necessary to the enforcement of its jurisdiction, and to punish contempts under such provisions as are or may be provided by general law governing County Courts throughout the State; but said County Court shall have no other jurisdiction, civil or criminal.

Sec. 2. That the District Courts of said County shall have and exercise jurisdiction in all matters and causes, civil and criminal, over which, by General Laws of the State of Texas, the County Court of said County would have jurisdiction, except as provided in Section 1 of this Act, and that all cases other than probate matters and such as are provided in Section 1 of this Act be and the same are hereby transferred to the District Courts of said County, and all writs and process, civil and criminal, heretofore issued by or out of said County Court, other than those appertaining to matters over which by Section 1 of this Act jurisdiction is given to the County Court of said County, be and the same are hereby made returnable to the next term of the District Courts in and for said County.

Sec. 3. That the Clerk of the County Court of said Bowie County be and he is hereby required, within twenty days after this Act takes effect, to file with the Clerk of the District Court of said County all original papers in all of said causes, both civil and criminal, and all dockets and orders and proceedings had in all such causes, and said District Clerk shall immediately docket all of such causes on the docket or dockets of the District Courts of said County, and all of such causes, both civil and criminal shall stand on the dockets of said District Courts in the same manner and place as each individual case stood on the docket of the County Court of said County. [Acts 1927, 40th Leg., 1st C. S., p. 19, ch. 9.]

Section 4 of Acts 1927, 40th Leg., 1st C. S., p. 19, ch. 9, repeals all conflicting laws and parts of laws.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 1970—307. Jurisdiction and time for holding county court of Kerr County.—Sec. 1. That the County Court of Kerr County shall hereafter have exclusive original jurisdiction in civil cases where the matter in controversy shall exceed in value two hundred dollars, and shall not exceed five hundred dollars exclusive of interest, and that it shall have concurrent jurisdiction with the District Court of said County when the matter in controversy shall exceed five hundred dollars and not exceed one thousand dollars.

Sec. 2. Said County Court shall have appellate jurisdiction in civil cases over which Justice's Courts of said County have original jurisdiction when the judgment of the Court appealed from or the amount in controversy shall exceed twenty dollars, exclusive of interest, and said County Court shall have the power to hear and determine cases brought up from the Justice's Courts by certiorari under the provisions of law relating thereto.

Sec. 3. The County Judge of said County shall have authority either in term time or in vacation, to grant writs of mandamus, injunction, sequestration, garnishment, attachment, certiorari, supersedeas, and all other writs necessary to the enforcement of the jurisdiction of said Court and shall also have power to issue writs of habeas corpus in all cases in which the Constitution and laws have not exclusively conferred the power on the District Judge or District Court thereof.

Sec. 4. Said Court shall have, as now, the general jurisdiction of a probate court; shall probate wills, appoint guardians of minors, idiots, lunatics, and common drunkards, grant letters testamentary and of administration; settle accounts of executors, administrators, and guardians; transact all business pertaining to the estates of deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the partition, settlement, and distribution of estates of deceased persons; apprentice minors as provided by law; and to issue all writs necessary to the enforcement of its jurisdiction, orders, and decrees; and generally to exercise all the powers in probate matters conferred upon such courts by the Constitution and laws of the State.

Sec. 5. Such Court shall have jurisdiction in the forfeiture of all bonds and recognizances taken in criminal cases of which said Court has original or appellate jurisdiction.

Sec. 6. Said Court shall have and exercise exclusive jurisdiction of all misdemeanors, except misdemeanors involving official misconduct, and except misdemeanors in which the highest penalty that may be imposed by law is a fine, without imprisonment, that does not exceed two hundred dollars; and said Court shall have appellate jurisdiction of criminal cases in which Justice Courts and other inferior tribunals of said County have original jurisdiction.

Sec. 7. The District Court of said County shall no longer have jurisdiction of misdemeanors, except misdemeanors involving official misconduct, and shall no longer have jurisdiction of civil cases of which the County Court of said County, by the provisions of this Act, has original or appellate jurisdiction.

Sec. 8. It shall be the duty of the District Clerk of said County, within thirty days after this Act shall take effect, to make full and complete transcript of orders on the criminal and civil dockets then pending before the District Court of said County, of which cases, by the provisions of this Act, original and appellate jurisdiction is given to said County Court, and to file said transcript together with the original papers in each case, in the County Court of said County, and the County Clerk shall enter said cases on the respective dockets of said County Court as appearance cases for trial by said Court.

Sec. 9. The said Court shall also have the power to hear and determine all motions against sheriffs and other officers of the Court for failure to pay over moneys collected under the process of said Court, or other defalcations of official duty in connection with said process, and shall have power to punish by fine not exceeding one hundred dollars, and by imprisonment in the County jail not exceeding three days, any person guilty of contempt of said Court, and all other powers, and jurisdictions conferred on County Courts by the Constitution and General Laws of the State of Texas.

Sec. 10. The terms of said Court shall commence on the first Monday in February, and on the first Monday in May, and on the first Monday in August, and on the first Monday in November, in each year, and shall continue in session for three weeks at each term, or until the business may be disposed of; provided, that the County Commissioners' Court of said County may hereafter change the terms of said Court whenever it may be deemed necessary. [Acts 1927, 40th Leg., 1st C. S., p. 254, ch. 96.]

Section 11 of Acts 1927, 40th Leg., 1st C. S., p. 254, ch. 96, repeals all conflicting laws and parts of laws relating to Kerr County.

TITLE 42

COURTS—PRACTICE IN DISTRICT AND COUNTY

Chap.

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2. Pleading.
3. Citation.
4. Costs and security therefor.
5. Abatement and discontinuance of suit.
6. Certain district courts.
7. The jury.
8. Trial of causes.
9. Judgments and remittitur.
10. New trials and arrest of judgment.
11. Bills of exception and statement of facts.
12. Appeal and writ of error.
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CHAPTER ONE

INSTITUTION, PARTIES AND VENUE

1. INSTITUTION OF SUITS

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1. INSTITUTION OF SUITS

Article 1971. [1812] [1177] [1181] Commenced by petition.—Civil suits in the district and county courts shall be commenced by petition filed in the office of the clerk. [Acts 1846, p. 363; P. D. 1425; G. L. vol. 2, p. 1669.]

Art. 1972. [1813–14] Duty of clerk.—When a petition is filed with the clerk he shall indorse thereon the number of the suit, the day on which it was filed, and sign his name officially thereto. [Id.]

Art. 1973. [1815] [1179] [1183] Clerk's file docket.—Each clerk shall keep a file docket which shall show in convenient form the number of the suit, the names of the attorneys, the names of the parties to

the suit, and the object thereof, and, in brief form, the officer's return on the process, and all subsequent proceedings had in the case with the dates thereof. [Id.]

Art. 1974. [1816] [1180] [1184] Suits commenced on Sunday.—No civil suit shall be commenced nor process issued or served on Sunday except in cases of injunction, attachment, garnishment, sequestration, or distress proceedings. [Id.; Acts 1897, p. 84; P. D. 1424; G. L. vol. 10, p. 1138; Acts 1919, p. 157.]

2. SUITS AGAINST NON-RESIDENTS

Art. 1975. [2172] [1504] Actions maintainable.—Persons claiming a right to or interest in property in this State may bring and prosecute to final decree, judgment or order, actions against non-residents of this State, or persons whose place of residence is unknown, or who are transient persons, who claim an adverse estate, or interest in, or who claim any lien or incumbrance on said property, for the purpose of determining such estate, interest, lien, or incumbrance, and granting the title to said property, or settling the lien or incumbrance thereon. [Acts 1893, p. 77; G. L. vol. 10, p. 507.]

Art. 1976. [2173] [1504] Actual possession not necessary.—Such action may be maintained by any such person whether or not he is in actual possession of such property. Service on the defendant or defendants may be made by publication as is or may be provided by law for publication of citation against such defendants. [Id.]

Art. 1977. [2174] [1504] Requisites of pleadings.—The pleadings in such case shall set forth the title of the complainant, and such proceedings shall be had in such action as may be necessary to fully settle and determine the question of right or title in and to said property between the parties to said suit, and to decree the title or right of the party entitled thereto; and the court may issue the appropriate order to carry such decree, judgment or order into effect. [Id.; Acts 1919, p. 98.]

Art. 1978. [2175] [1504] No judgment by default.—No judgment by default shall be taken in such case, but the facts entitling the plaintiff to judgment shall be exhibited to the court on the trial; and a statement of the facts shall be filed as provided by law in suits against non-residents of this State where no appearance has been made by them. [Acts 1893, p. 77.]

Art. 1979. [2176] [1504] Suit to extinguish lien.—If said suit shall be for the extinguishment of a lien or claim for money on said property that may be held by the defendant, the amount thereof, with interest, shall be ascertained by the court; and the same deposited in the registry of the court, subject to be drawn by the parties entitled thereto; but in such case no decree shall be entered until said sum is deposited; which fact shall be noted in said decree. [Id.]

3. PARTIES TO SUITS

Art. 1980. [1835] [1196] [1200] Suits by or against counties.—Suits by or against a county or incorporated city, town or village shall be in its corporate name.

Art. 1981. [1836] [1197] [1201] By executors, etc.—Suits for the recovery of personal property, debts or damages, and suits for title or possession of lands, or for any right attached to, or growing out of the same, or for injury or damage done thereto, may be instituted by executors, administrators or guardians appointed in this State; and judgment in such cases shall be conclusive, but may be set aside by any person interested for fraud or collusion on the part of such executor or administrator. [Acts 1846, p. 363; P. D. 1447; G. L. vol. 2, p. 1669.]

Art. 1982. [1837] [1198] [1202] For lands against decedents.—In every suit against the estate of a decedent involving the title to real estate, the executor or administrator, if any, and the heirs shall be made parties defendant. [Acts 1870, p. 173; G. L. vol. 6, p. 347; P. D. 5697.]

Art. 1983. [1839] [1200] [1204] For wife's separate property.—The husband may sue either alone or jointly with his wife for the recovery of the separate property of the wife; and, in case he fails or neglects so to do, she may sue alone by authority of the court. [Acts 1840, p. 3; G. L. vol. 2, p. 177; P. D. 4636.]

Art. 1984. [1840] [1201] [1205] Against husband and wife for necessaries.—The husband and wife shall be jointly sued for all debts contracted by the wife for necessaries furnished herself or children, and for expenses which may have been incurred by the wife for the benefit of her separate property. [Acts 1848, p. 77; G. L. vol. 3, p. 78; P. D. 4643.]

Art. 1985. [1841] [1202] [1206] For wife's debts, etc.—The husband shall be joined in suits for separate debts and demands against the wife, but no personal judgment shall be rendered against the husband. [Acts 1846, p. 363; G. L. vol. 2, p. 1669; P. D. 9.]

Art. 1986. [1842] [1203] [1207] Several obligors to contract.—The acceptor of a bill of exchange, or a principal obligor in a contract, may be sued either alone or jointly with any other party who may be liable thereon; but no judgment shall be rendered against a party not primarily liable on such bill or other contract, unless judgment be also rendered against such acceptor or other principal obligor, except where the plaintiff may discontinue his suit against such principal obligor as hereinafter provided. [Id.; Acts 1840, p. 144; G. L. vol. 2, p. 318; P. D. 1426, 1448–9.]

Art. 1987. [1843] [1204] [1208] Parties conditionally liable.—The assignor, indorser, guarantor and surety upon a contract, and the drawer of a bill which has been accepted, may be sued without suing the maker, acceptor or other principal obligor, when the principal obligor resides beyond the limits of the State, or where he cannot be reached by the ordinary process of law, or when his residence is unknown and cannot be ascertained by the use of reasonable diligence, or when he is dead, or actually or notoriously insolvent.

Art. 1988. [1844] [1204] [1208] Against sheriff, etc.—Whenever a sheriff, constable or a deputy or either has been sued for damages for any act done in his official character, and has taken an indemnifying bond for the acts upon which the suit is based, he may make the principal and surety on such bond parties defendant in such suit, and the cause may be continued to obtain service on such parties. [Id.; Acts 1885, p. 90; G. L. vol. 9, p. 710.]

Art. 1989. [1845] [1205] On official bonds.—In suits brought by the State or any county, city or independent school district against any officer who has held an office for more than one term, or against any depository which has been such depository for more than one term, or has given more than one official bond, the sureties on each and all such bonds may be joined as defendants in the same suit whenever it is difficult to determine when the default sued for occurred and which set of sureties on such bonds is liable therefor. [Acts 1891, p. 86; G. L. vol. 10, p. 314; Acts 1919, p. 34.]

Art. 1990. [1846] [1206] Different officials and bondsmen.—In suits by the State upon the official bond of a State officer, any subordinate officer who has given bond, payable either to the State or such superior officer, to cover all or part of the default sued for, together with the sureties on his official bond, may be joined as defendants with such superior officer and his bondsmen whenever it is alleged in the petition that both of such officers are liable for the money sued for. [Acts 1891, p. 86; G. L. vol. 10, p. 314.]

Art. 1991. [1847] [1207] Suit in name of State.—Whenever an official bond is made payable to the State of Texas, or any officer thereof, and a re-

covery thereon is authorized by, or would inure to the benefit of parties other than the State, suit may be brought on such bond in the name of the State alone for the benefit of all parties entitled to recover thereon. [Id.]

Art. 1992. [1848] [1208] [1209] Additional parties.—Before a case is called for trial, additional parties, necessary or proper parties to the suit, may be brought in, either by the plaintiff or the defendant, upon such terms as the court may prescribe; but not at a time nor in a manner so as to unreasonably delay the trial of the case.

Art. 1993. [1849] [1209] [1210] May appear by attorney.—Any party to a suit may appear and prosecute or defend his rights therein, either in person or by an attorney of the court.

Art. 1994. [2167–71] May appear by next friend.—Minors, lunatics, idiots or non compos mentis who have no legal guardian may sue and be represented by "next friend" under the following rules:

1. Such next friend shall have the same rights concerning such suits as guardians have, but shall give security for costs, or affidavits in lieu thereof, when required.

2. Such next friend or his attorney of record may with the approval of the court compromise suits and agree to judgments, and such judgments, agreements and compromises, when approved by the court, shall be forever binding and conclusive upon the party plaintiff in such suit.

3. In such cases when a judgment is recovered for money or other personal property the value of which does not exceed five hundred dollars, the court may by order entered of record, authorize such next friend or other person to take charge of such money or other property for the use and benefit of the plaintiff when he has executed a proper bond in a sum at least double the value of the property, payable to the county judge, conditioned that he will pay said money with lawful interest thereon or deliver said property and its increase to the person entitled to receive the same when ordered by the court to do so, and that he will use such money or property for the benefit of the owner under the direction of the court.

4. The judge of the court in which the judgment is rendered upon an application and hearing, in term time or vacation, may provide by decree for an investment of the funds accruing under such judgment. Such decree, if made in vacation, shall be recorded in the minutes of the succeeding term of the court.

5. The person who takes such money or property shall receive such compensation as the court may allow and shall make such disposition thereof as the court may order; and he shall return such money or property into court upon the order of the court.

6. If any person has an interest in such recovery, the court may hear evidence as to such interest, and order such claim, or such part as is deemed just, to be paid to whoever is entitled to receive the same. [Acts 1893, p. 3; G. L. vol. 10, p. 433; Acts 1909, p. 176.]

4. VENUE

Art. 1995. [1830] [1194] [1198] Venue, general rule.—No person who is an inhabitant of this State shall be sued out of the county in which he has his domicile except in the following cases:

1. Married women.—A married woman may be sued in the county in which her husband has his domicile. [Acts 1863, p. 10; G. L. vol. 5, p. 664; Acts 1889, p. 48; G. L. vol. 9, p. 1075; P. D. 1423; Acts 1913, p. 424.]

2. Transient persons.—A transient person may be sued in any county in which he may be found.

3. Non-residents; residence unknown.—If one or all of several defendants reside without the State or if their residence is unknown, suit may be brought in the county in which the plaintiff resides.

4. Defendants in different counties.—If two or more defendants reside in different counties, suit may be brought in any county where one of the defendants resides. The transfer or assignment of a note or chose in action shall not entitle any subsequent holder to sue thereon in any other county than that in which such suit could have been prosecuted if no assignment or transfer had been made.

5. Contract in writing.—If a person has contracted in writing to perform an obligation in a particular county, suit may be brought either in such county or where the defendant has his domicile.

6. Executors, administrators, etc.—If the suit is against an executor, administrator or guardian, as such, to establish a money demand against the estate which he represents, the suit may be brought in the county in which such estate is administered.

7. Fraud and Defalcation.—In all cases of fraud, and in all cases of defalcation by public officers, suit may be brought in the county where the fraud was committed or where the defalcation occurred, or any of such suits may be brought where the defendant has his domicile. [As amended Acts 1927, 40th Leg., 1st C. S., p. 197, ch. 72, § 1.]

8. Attachment, sequestration, etc.—A suit for damages resulting from the suing out of a writ of attachment or sequestration, or for levying any such writ, may be brought in the county from which such writ was issued, or in any county where such levy was made in whole or in part.

9. Crime or trespass.—A suit based upon a crime, offense, or trespass may be brought in the county where such crime, offense, or trespass was committed, or in the county where the defendant has his domicile.

10. Personal property.—Suit for the recovery of personal property may be brought in any county where the property may be or where the defendant resides.

11. Inheritances.—If the defendant has inherited an estate concerning which the suit is commenced, suit may be brought in the county where such estate principally lies.

12. Lien.—A suit for the foreclosure of a mortgage or other lien may be brought in the county where the property or any part thereof subject to such lien is situated.

13. Partition.—Suits for the partition of land or other property may be brought in the county where such land or other property, or a part thereof, may be, or in the county in which one or more of the defendants reside, or in the county of the residence of any defendant who may assert an adverse claim to or interest in such property, or seeks to recover the title to the same. Nothing herein shall be construed to fix venue of a suit to recover the title to land. [Id.; Acts 1919, p. 152.]

14. Lands.—Suits for the recovery of lands or damages thereto, or to remove incumbrances upon the title to land, or to quiet the title to land, or to prevent or stay waste on lands, must be brought in the county in which the land, or a part thereof, may lie.

15. Breach of warranty.—Suits for breach of warranty of title to lands may be brought in any county where either vendor resides, and all other vendors may be joined in the same suit.

16. Divorce.—Suits for divorce shall be brought in the county in which the plaintiff shall have resided for six months next preceding the bringing of the suit.

17. Injunctions.—Suits to enjoin the execution of a judgment or to stay proceedings in any suit shall be brought in the county in which such judgment was rendered or in which such suit is pending.

18. Revision of probate.—Suits to revise the proceedings of the county court in matters of probate must be brought in the district court of the county in which such proceedings were had.

19. Suits against counties.—Suits against a county shall be brought within such county.

20. Heads of departments.—Suits for mandamus against the head of any department of the State Government shall be brought in Travis County.

21. Corporations: charters.—Suits brought by the State for the purpose of forfeiting the charter of a

private corporation chartered by Act of the Legislature, or organized under the laws of this State, and for the purpose of canceling the permit authorizing a foreign corporation to transact business in this State, and for the purpose of restraining corporations from exercising powers not conferred upon them by the laws of this State, and for the purpose of preventing persons from engaging in business in this State contrary to the laws thereof, may be brought in Travis County.

22. Railway lands.—Suits on behalf of the State to forfeit land fraudulently or colorably alienated by railway companies in fraud of the rights of the State, under the laws granting lands to railway companies, shall be brought in Travis County.

23. Corporations and associations.—Suits against a private corporation, association or joint stock company may be brought in any county in which the cause of action, or a part thereof, arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated. Suits against a railroad corporation, or against any assignee, trustee or receiver operating its railway, may also be brought in any county through or into which the railroad of such corporation extends or is operated. Suits against receivers of persons and corporations may also be brought as otherwise provided by law.

24. Carriers.—Suits arising from damage or loss to any passenger, freight, baggage or other property, by reason of its transportation, or contract in relation thereto, in whole or in part by one or more common carriers or the assignees, lessees, trustees or receivers thereof, operating or doing business as such in this State, or having agents or representatives in this State, may be brought against one or more of those so doing business, in any county where either does business or has an agent or representative.

25. Railway personal injuries.—Suits against railroad corporations, or against any assignee, trustee or receiver operating any railway in this State, for damages arising from personal injuries, resulting in death or otherwise, shall be brought either in the county in which the injury occurred, or in the county in which the plaintiff resided at the time of the injury. If the defendant railroad corporation does not run or operate its railway in, or through, the county in which the plaintiff resided at the time of the injury, and has no agent in said county, then said suit shall be brought either in the county in which the injury occurred, or in the county nearest that in which the plaintiff resided at the time of the injury, in which the defendant corporation runs or operates its road, or has an agent. If the plaintiff is a non-resident of this State, then such suit may be brought in any county in which the defendant corporation may run or operate its railroad, or have an agent. When an injury occurs within one-half mile from the boundary line dividing two counties, suit may be brought in either of said counties.

26. Railroad wages.—Suits by mechanics, laborers and operatives, for their wages due by railroad companies, may be instituted and prosecuted in any county in this State where such labor was performed, or in which the cause of action, or part thereof, accrued, or in the county in which the principal office of such railroad company is situated.

27. Foreign corporations.—Foreign corporations, private or public, joint stock companies or associations, not incorporated by the laws of this State, and doing business within this State, may be sued in any county where the cause of action or a part thereof accrued, or in any county where such company may have an agency or representative, or in the county in which the principal office of such company may be situated; or, when the defendant corporation has no agent or representative in this State, then in the county where the plaintiffs or either of them, reside.

28. Insurance.—Suits against fire, marine or inland insurance companies may also be commenced in any county in which the insured property was situated. Suits on policies may be brought against any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health and accident insurance company, in the county where the home office of such company is located, or in the county where loss has occurred or where the policyholder or beneficiary instituting such suit resides.

29. Libel or slander.—A suit for damages for libel or slander shall be brought, and can only be maintained, in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county where the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff. [Acts 1919, p. 138.]

29a. Two or more defendants.—Whenever there are two or more defendants in any suit brought in any county in this State and such suit is lawfully maintainable therein under the provisions of Article 1995 as to any of such defendants, then such suit may be maintained in such county against any and all necessary parties thereto. [Acts 1927, 40th Leg., 1st C. S., p. 197, ch. 72, § 2.]

30. Special venue.—Whenever in any law authorizing or regulating any particular character of action, the venue is expressly prescribed, the suit shall be commenced in the county to which jurisdiction may be so expressly given.

Art. 1996. [1834] [1195] [1199] When water course or highway is boundary.—Where any part of a river, water course, highway, road or street is the boundary line between two counties, the several courts of each of said counties shall have concurrent jurisdiction in all cases over such parts of said river, water course, highway, road or street as shall be the boundary of such county in the same manner as if such parts of said river, water course, highway, road or street were within the body of such county.

CHAPTER TWO

PLEADING

1. PLEADING IN GENERAL

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1. PLEADING IN GENERAL

Article 1997. [1817–18–19] Definition and system.—Pleadings in civil suits in the district and county courts shall:

1. Be by petition and answer.

2. Consist of a statement in logical and legal form of the facts constituting the plaintiff's cause of action or the defendant's ground of defense.

3. Contain any other matter which may be required by any law authorizing or regulating any particular action or defense.

4. Be in writing signed by the party or his attorney and be filed with the clerk.

Art. 1998. [1820–24] Of intervenor.—Any party may intervene in vacation, subject to be stricken out by the court for sufficient cause at the next term on the motion of the opposite party; and such intervenor shall, within five days from the filing of same, notify the opposite party or his attorney of the filing of such pleadings. When court is in session such pleadings shall be filed under the rules governing amendments to pleadings. So far as applicable, pleadings of an intervenor shall conform to the requirements of pleadings of the plaintiff and defendant respectively.

Art. 1999. [1822] [1186] [1190] Alleging a corporation.—An allegation that a corporation was duly incorporated shall be taken as true, unless denied by the affidavit of the adverse party, his agent or attorney, whether such corporation is a public or private corporation and however created.

Art. 2000. [1823] [1187] [1191] Special Act or Law.—A pleading founded wholly or in part on any private or special Act or law of this State or of the Republic of Texas need only recite the title thereof, the date of its approval, and set out in substance so much of such act or laws as may be pertinent to the cause of action or defense.

Art. 2001. [1824–25–26] Amendments.—Parties may amend their pleadings, file suggestions of death and make representatives parties, make new parties, and file such other pleas as they may desire:

1. In vacation, by filing such pleas with the clerk of the court in which the suit is pending.

2. When court is in session, under leave of the court upon such terms as the court may prescribe before the parties announce ready for trial, and at such time as not to operate as a surprise to the opposite party.

3. When because of the insufficiency of the pleadings of the successful party, the judgment has been arrested or a new trial granted.

Art. 2002. Bill of discovery.—All trial courts shall entertain suits in the nature of bills of discovery, and grant relief therein in accordance with the usages of courts of equity. Such remedy shall be cumulative of all other remedies. [Acts 1923, p. 31.]

This article, prior to its incorporation into the Revised Statutes of 1925, contained after the words "all trial courts" the additional words "in this state having jurisdiction of the subject-matter of litigation,"

2. PLEADINGS OF THE PLAINTIFF

Art. 2003. [1827] [1191] [1195] The petition.—The petition shall state the names of the parties and their residences, if known, with a concise statement of the cause of action, and such other allegations pertinent to the cause, as the plaintiff may deem necessary to sustain his suit, without any distinction between suits at law and in equity, and shall also state the nature of the relief sought. [Acts 1846, p. 363; P. D. 1427; Acts 1913, p. 256; Acts 1915, p. 155; G. L. vol. 2, p. 1669.]

Art. 2004. [1828] [1192] [1196] Defensive matters.—When the defendant sets up a counter claim, the plaintiff may plead thereto under rules prescribed for pleadings of defensive matter by the defendant, so far as applicable. Whenever the defendant is required to plead any matter of defense under oath, the plaintiff shall be required to plead such matters under oath when relied on by him. [Id.]

Art. 2005. [1829] [1193] [1197] Special defenses.—The plaintiff need not deny any special matter of defense pleaded by the defendant, but the same shall be regarded as denied unless expressly admitted. [Id.]

3. PLEADINGS OF THE DEFENDANT

Art. 2006. [1902] [1262] [1262] Answer may include several matters; etc.—The defendant in his answer may plead as many several matters, whether of law or fact, as he shall think necessary for his defense, and which may be pertinent to the cause; provided, that he shall file them all at the same time and in due order of pleading. A general denial of matters pleaded by the adverse party which are not required to be sworn to, shall be sufficient to put the same in issue. [Acts 1846, p. 3631; P. D. 1441; Acts 1913, p. 256; Acts 1915, p. 155; G. L. vol. 2, p. 1669.]

Art. 2007. [1903] Plea of privilege.—A plea of privilege to be sued in the county of one's residence shall be sufficient if it be in writing and sworn to, and shall state that the party claiming such privilege was not, at the institution of such suit, nor at the time of the service of process thereon, nor at the time of filing such plea, a resident of the county in which such suit was instituted and shall state the county of his residence at the time of such plea, and that "no exception to exclusive venue in the county of one's residence provided by law exists in said cause"; and such plea of privilege when filed shall be prima facie proof of the defendant's right to change of venue. If the plaintiff desires to controvert the plea of privilege, he shall within five days after appearance day file a controverting plea under oath, setting out specifically the fact or facts relied upon to confer venue of such cause on the court where the cause is pending. [Acts 1907, p. 248; Acts 1917, p. 388.]

Art. 2008. [1903] Hearing on plea.—Upon the filing of such controverting plea, the judge or justice of the peace shall note on same a time for a hearing on the plea of privilege. Such hearing, unless the parties agree upon the date, shall not be had until a copy of such controverting plea, including a copy of such notation thereon, shall have been served on each defendant, or his attorney, for at least ten days exclusive of the day of service and the date of hearing, after which the court shall promptly hear such plea of privilege and enter judgment thereon. Either party may appeal from the judgment sustaining or over-ruling the plea of privilege, and if the judgment is one sustaining the plea of privilege and an appeal is taken, such appeal shall suspend the transfer of the venue and a trial of the cause pending the final determination of such appeal. [Id.]

Art. 2009. [1904–5] Answer filed.—Where citation has been personally served at least ten days before the first day of the term to which it is returnable, exclusive of the day of service and return, the answer of the defendant shall be filed on or before the second day of the return term, and before the call of the appearance docket on said second day. Where service of citation has been made by publication, the answer of the defendant shall be filed on or before the appearance day of the term to which the citation is made returnable. [Acts 1893, p. 31; G. L. vol. 10, p. 401; Acts 1st C. S. 1909, p. 324; Acts 1917, p. 24.]

Art. 2010. [1906] [1265] [1265] Certain pleas to be verified.—An answer setting up any of the following matters, unless the truth of the pleadings appear of record, shall be verified by affidavit:

1. That the suit is not commenced in the proper county.

2. That the plaintiff has not legal capacity to sue.

3. That the plaintiff is not entitled to recover in the capacity in which he sues.

4. That there is another suit pending in this State between the same parties for the same cause of action.

5. That there is a defect of parties, plaintiff or defendant.

6. A denial of partnership as alleged in the petition, whether the same be on the part of the plaintiff or defendant.

7. That the plaintiff or the defendant, alleged in the petition to be duly incorporated, is not duly incorporated as alleged.

8. A denial of the execution by himself or by his authority of any instrument in writing, upon which any pleading is founded, in whole or in part, and charged to have been executed by him or by his authority, and not alleged to be lost or destroyed. Where such instrument in writing is charged to have been executed by a person then deceased, the affidavit will be sufficient if it state that the affiant has reason to believe

and does believe that such instrument was not executed by the decedent or by his authority.

9. A plea denying the genuineness of the indorsement or assignment of a written instrument as required by article 573.

10. That a written instrument upon which a pleading is founded is without consideration, or that the consideration of the same has failed in whole or in part.

11. That an account which is the foundation of the plaintiff's action, and supported by an affidavit, is not just; and, in such case, the answer shall set forth the items and particulars which are unjust.

12. That the contract sued upon is usurious. [Acts 1846, p. 363; P. D. 1, Id.; P. D. 288, Id.; P. D. 1443; Acts 1840, p. 144; P. D. 224; Acts 1874, p. 52; P. D. 6828c; Acts 1883, p. 4; G. L. vol. 2, p. 1669.]

Art. 2011. [1908] [1267] [1267] General denial.—Where the defendant has pleaded a general denial, and the plaintiff shall afterward amend his pleading, such original denial shall be presumed to extend to all matters subsequently set up by the plaintiff.

Art. 2012. [1909] [1268] [1268] Pleas to be filed in due order.—Pleas shall be filed in the due order of pleading, and shall be heard and determined in such order under the direction of the court. [Acts 1846, p. 363; G. L. vol. 2, p. 1669.]

Art. 2013. [1910] [1269] [1269] Pleas determined during term at which filed.—Pleas to the jurisdiction, pleas in abatement, and other dilatory pleas and demurrers, not involving the merits of the case, shall be determined during the term at which they are filed, if the business of the court will permit. [Id.]

Art. 2014. [1907] [1266] [1266] Pleas of payment, counter claim.—When a defendant shall desire to prove payment, counter claim or set-off, he shall file with his plea an account stating distinctly the nature of such payment, counter claim or set-off, and the several items thereof; failing to do so, he shall not be allowed to prove the same, unless it be so plainly and particularly described in the plea as to give the plaintiff full notice of the character thereof. [Acts 1840, p. 62; P. D. 3444; G. L. vol. 2, p. 236.]

Art. 2015. [1325–6] Pleas of counter claim.—Whenever any suit is brought for the recovery of any debt due by judgment, bond, bill or otherwise, the defendant shall be permitted to plead therein any counter claim he may have against the plaintiff, subject to such limitations as may be prescribed by law. The plea setting up such counter claim shall state distinctly the nature and the several items thereof, and shall conform to the ordinary rules of pleading. [Id.]

Art. 2016. [1900] [1260] [1260] No discontinuance.—Where the defendant has filed a counter claim seeking affirmative relief, the plaintiff shall not be permitted, by a discontinuance of his suit, to prejudice the right of the defendant to be heard on such counter claim.

Art. 2017. [1329–30] Set-off.—If the plaintiff's cause of action be a claim for unliquidated or uncertain damages, founded on a tort or breach of covenant, the defendant shall not be permitted to set off any debt due him by the plaintiff. If the suit be founded on a certain demand, the defendant shall not be permitted to set off unliquidated or uncertain damages founded on a tort or breach of covenant on the part of the plaintiff. However, the defendant may plead in set off any counter claim founded on a cause of action arising out of or incident to, or connected with, the plaintiff's cause of action.

Art. 2018. [1831] Plea not waived.—Issuing process for witnesses and taking depositions shall not constitute a waiver of a plea of privilege, but depositions taken in such case may be read in evidence in any subsequent suit between the same parties concerning the same subject-matter in like manner as if taken in such subsequent suit. [Acts 1907, p. 248.]

Art. 2019. [1832] Transferred if plea is sustained.—If a plea of privilege is sustained, the cause shall not be dismissed, but the court shall transfer said cause to the court having jurisdiction of the person of the defendant therein; and the costs incurred prior to the time such suit is filed in the court to which said cause is transferred shall be taxed against the plaintiff. [Id.]

Art. 2020. [1833] Record transmitted.—When a plea of privilege is sustained, the court shall order the venue to be changed to the proper court of the county having jurisdiction of the parties and the cause. The clerk shall make up a transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send it with the original papers in the cause to the clerk of the court to which the venue has been changed. [Id.]

CHAPTER THREE

CITATION

Art.
2021. Issuance.
2022. Requisites.
2023. Out-county defendant.
2024. If sheriff is a party.
2025. Duty of officer receiving.
2026. Service of citation.
2027. Against counties.
2028. Against cities and towns, etc.
2029. Against corporations and joint stock associations.
2030. Receiver of railroad company.
2031. Foreign corporations.
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2033. Against partners.
2034. Return of citation.
2035. Alias process.
2036. Time of service.
2037. Defendant without State.
2038. Notice served.
2039. Citation by publication.
2040. Unknown heirs [or stockholders] of defunct corporation.
2041. Form of published citation.
2042. Publication of citation in land suits.
2043. Return of citation by publication.
2044. Mistake in return.
2045. Acceptance of service.
2046. Entering appearance.
2047. Answer is appearance.
2048. Constructive appearance.
2049. Reversal of judgment.
2050. No judgment without service.

Article 2021. [1850–51–76] Issuance.—When a petition is filed with the clerk, he shall promptly issue a citation for the defendant. If there be several defendants residing in different counties, citation shall issue to each county. All citations and notices mentioned in this chapter shall contain the requisites prescribed in this title for writs. [Acts 1854, p. 53; P. D. 1430; G. L. vol. 3, p. 1497.]

Art. 2022. [1852] [1213] [1314] Requisites.—Citations shall be directed to the sheriff or any constable of the county where the defendant is alleged to reside or be, and command him to summon the defendant to appear and answer the plaintiff's petition at the next regular term of the court, stating the time and place of holding the same. It shall state the date of the filing of the petition, its file number and the names of all the parties and the nature of the plaintiff's demand; but the nature of plaintiff's demand need not be stated in cases where by law it is required to accompany a citation with a certified copy of plaintiff's petition. [Id.; Acts 1846, p. 363; G. L. vol. 2, p. 1669; Acts 1866, p. 199; G. L. vol. 5, p. 1117; Acts 1919, p. 212.]

Art. 2023. [1853] [1215] [1216] Out-county defendant.—Each defendant to be served without the county in which the suit is pending, shall have a certified copy of the plaintiff's petition accompany the citation.

Art. 2024. [1854] [1216] [1217] If sheriff is a party.—If the sheriff is a party to or interested in a suit, the citation shall be addressed to any constable of his county. [Acts 1846, p. 363; P. D. 1437; G. L. vol. 2, p. 1669.]

Art. 2025. [1856] [1857] Duty of officer receiving.—The officer to whom citation is delivered shall endorse thereon the day and hour on which he

received it, and shall execute and return the same without delay. [Id. sec. 14; P. D. 1433.]

Art. 2026. [1856] [1218] [1219] Service of citation.—Unless it otherwise directs, the citation shall be served by the officer delivering to each defendant, in person, a true copy of the citation and a certified copy of the petition when served without the county in which the suit is pending. [Id.]

Art. 2027. [1858] [1220] [1221] Against counties.—In suits against a county, the citation shall be served on the county judge of such county. [Id. p. 320; P. D. 1048; G. L. vol. 2, p. 1626.]

Art. 2028. [1859] [1221] [1222] Against cities and towns, etc.—In suits against an incorporated city, town or village, the citation may be served on the mayor, clerk, secretary or treasurer thereof. [Acts 1854, p. 53; P. D. 1430; G. L. vol. 3, p. 1497.]

Art. 2029. [1860] [1222] [1223] Against corporations and joint stock associations.—In suits against any incorporated company or joint stock association, the citation may be served on the president, secretary or treasurer of such company or association, or upon the local agent of such company or association in the county where suit is brought, or by leaving a copy of the same at the principal office of the company during office hours. If neither the president, secretary or treasurer reside in the county in which suit is brought, and such company or association has no agent in the county, then the citation may be served upon any agent representing such company or association in the State. [1903, p. 66; Acts 1874, pp. 31, 108; G. L. vol. 8, pp. 34, 110; Acts 1854, p. 53; G. L. vol. 3, p. 1497; P. D. 1430; 4888; Acts 1887, p. 119; G. L. vol. 9, p. 917.]

Art. 2030. [1860] [1222] [1223] Receiver of railroad company.—In suits against receivers of railroad companies, service may be had either upon the receiver, the general or division superintendent, or any agent of the receiver who resides in the county in which suit is brought. If there be no agent of the receiver in the county in which suit is brought, then service may be had upon any agent of the receiver in the State. [Id.]

Art. 2031. [1861] [1223] Foreign corporations.—In suits against a foreign corporation, joint stock company or association, or acting corporation or association, process may be served on the president, vice president, secretary, treasurer, or general manager, and in any cause of action arising within this State, process may also be served upon any local or traveling agent, or traveling salesmen of such corporation, joint stock company or association, or acting corporation or association in this State. [Acts 1885, p. 79; Acts 1919, p. 181; G. L. vol. 9, p. 699.]

Art. 2032. [1862] Foreign railway corporations.—Service may also be had on foreign railway corporations by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations where one is a foreign railway corporation, and the other a domestic corporation, if said conductor handles and operates trains over such foreign and domestic corporation's tracks across the State line of Texas and on the track of the domestic corporation within this State or upon any agent who has an office in Texas who sells tickets or makes contracts for the transportation of passengers or property over any line of railway, or part thereof, of such foreign railway corporation or company. Conductors who are engaged in handling trains and employed by a foreign railway corporation and a domestic corporation, and who operate such trains across the State line of Texas, and agents engaged in selling tickets or making contracts for the transportation of property, are hereby designated as agents of such foreign corporation or companies upon whom service of citation may be had. [Acts 1905, p. 30: Acts 1919, p. 288.]

Art. 2033. [1863] [1224] [1224] Against partners.—Citation served upon one member of a partnership or firm shall be sufficient to authorize a judgment against the firm and the partner actually served. [Acts 1858, p. 110; P. D. 1514; G. L. vol. 4, p. 982.]

Art. 2034. [1864—5] Return of citation.—The return of the officer executing the citation shall be indorsed on or attached to the same; it shall state when the citation was served and the manner of service, conforming to the command of the writ, and be signed by him officially. When the citation has not been served, the return shall show the diligence used by the officer to execute the same and the cause of failure to execute it, and where the defendant is to be found, if he can ascertain. [Acts 1848, p. 106; P. D. 1507; G. L. vol. 3, p. 106.]

Art. 2035. [1866] [1227] [1227] Alias process.—When any process has not been returned, or has been returned without service, or has been improperly served, the clerk shall, upon the application of any party to the suit, his agent or attorney, issue other process to the same or any other county as the applicant may direct. [Acts 1846, p. 363; P. D. 1435; G. L. vol. 2, p. 1669.]

Art. 2036. [1867—1868] Time of service.—Citations shall be served before the return day thereof; and, the defendant shall not be required to plead at the return term of the court, unless citation be served at least ten days before the first day of such term, exclusive of the days of service and return, but when a citation is served before return day thereof and less than ten days before the first day of such term, exclusive of the day of service and return, such service shall compel the defendant to plead at the next succeeding term of the court. [Acts 1891, p. 94; G. L. vol. 10, p. 96.]

Art. 2037. [1869] [1230] [1230] Defendant without State.—Where the defendant is absent from the State, or is a non-resident of the State, upon application of the plaintiff, his agent or attorney, the clerk shall address a notice to the defendant requiring him to appear and answer the plaintiff's petition at the time and place of holding court, naming such time and place. It shall give the date of the filing of the petition, the file number of the suit, the names of all the parties, and shall state that a copy of the plaintiff's petition accompanies the notice; but shall not be required to state plaintiff's cause of action. It shall be dated, filed and attested by the clerk with the seal of the court impressed thereon; and the date of its issuance shall be noted thereon; a certified copy of the plaintiff's petition shall accompany the notice. [Acts 1875, p. 170; G. L. vol. 8, p. 542; Acts 1919, p. 250.]

Art. 2038. [1870 to 1873] Notice served.—Such notice may be served by any disinterested person competent to make oath of the fact by delivering to the defendant in person a true copy of such notice, together with the certified copy of the plaintiff's petition. The return of service in such cases shall be indorsed on or attached to the original notice, and shall state when it was served and the manner of service, and be signed and sworn to by the party making such service before some officer authorized by the laws of this State to take affidavits, under the hand and official seal of such officer. A defendant served with such notice shall be required to appear and answer in the same manner and under the same penalties as if he had been personally served with a citation within this State. [Acts 1875, p. 170; G. L. vol. 8, p. 542.]

Art. 2039. [1874] [1235] [1235] Citation by publication.—Where a party to a suit, his agent or attorney, shall make oath when the suit is instituted, or at any time during its progress, that any party defendant therein is a non-resident of the state, or that he is absent from the state, or that he is a transient person, or that his residence is unknown to affiant, the clerk shall issue a citation for such defendant addressed to the sheriff or any constable of the county in which such suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the officer to summon the defendant by making publication of such citation in some newspaper published therein, but if not, then in the near-

est county where a newspaper is published, once in each week for four consecutive weeks previous to the return day thereof. [Id.; Acts 1848, p. 106; G. L. vol. 3, p. 106; Acts 1879, p. 103; G. L. vol. 8, p. 1403; Acts 1917, p. 23; Acts 1919, p. 168.]

Art. 2040. [1875] [1236] [1236] Unknown heirs [or stockholders] of defunct corporation.—Where property in this State has been granted or has accrued to the heirs as such, of any deceased person, or to the stockholders of defunct corporation, any party having a claim or cause of action against them relative to such property, if their names be unknown to him, may bring an action against them, their heirs or legal representatives, describing them as the heirs of such named ancestor or unknown stockholder of such corporation. If the plaintiff, his agent, or attorney, shall make oath that the names of such heirs or stockholders are unknown to the affiant, the clerk shall issue a citation for such heirs or stockholders, addressed to the sheriff or any constable of the county in which such suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the officer to summon the defendant by making publication of such citation as provided in the preceding article. [Acts 1866, p. 125; G. L. vol. 5, p. 1043; Acts 1848, p. 106; G. L. vol. 3, p. 106; P. D. 5460; Acts 1917, p. 23; Acts 1919, p. 168.]

Art. 2041. [1875] [1236] [1236] Form of published citation.—In cases of citation by publication as provided for in the two preceding articles, it need not contain the details and particulars of the cause of action; provided that in suits by publication involving land, it shall be sufficient in making the brief statement of the cause of action in such citation to state the kind of suit, the number of acres of land involved in the suit, or the number of the lot and block, or any other plat description that may be of record if the land is situated in a city or town, the survey on which and the county in which the land is situated, and any special pleas which are relied upon in such suit. [Id.]

Art. 2042. [1877] [1264] [1264] Publication of citation in land suits.—In all suits involving title to land, wherein service of citation is by publication, such publication shall be made in the county in which the land is situated. If there be no newspaper published in such county, then in the county nearest that wherein the land is situated. [Acts 1846, p. 363; G. L. vol. 2, p. 1669; Acts 1909, S. S. p. 324.]

Art. 2043. [1878] [1238] [1238] Return of citation by publication.—The return of the officer executing such citation shall be indorsed or attached to the same, and show how and when the citation was executed, specifying the dates of such publication, be signed by him officially and shall be accompanied by a printed copy of such publication.

Art. 2044. [1879] [1239] [1239] Mistake in return.—Any mistake or informality in a return may be corrected by the officer at any time under the direction of the court. [Acts 1846, p. 363; G. L. vol. 2, p. 1669; P. D. 53.]

Art. 2045. [1880] [1240] [1240] Acceptance of service.—The defendant may accept service of process, or waive the issuance or service thereof by a written momorandum [memorandum] signed by him or by his duly authorized agent or attorney, and filed among the papers of the cause; and such waiver or acceptance shall have the same force and effect as if the citation had been issued and served as provided by law. [Id. P. D. 1508, 1432.]

Art. 2046. [1881] [1241] [1241] Entering appearance.—The defendant may, in person, or by attorney, or by his duly authorized agent, enter an appearance in open court. Such appearance shall be noted by the judge upon his docket and entered in the minutes, and shall have the same force and effect as if the citation had been duly issued and served as provided by law. [Id.]

Art. 2047. [1882] [1242] [1242] Answer is appearance.—An answer shall constitute an appearance of the defendant so as to dispense with the necessity for the issuance or service of citation upon him. [Id.]

Art. 2048. [1883] [1243] [1243] Constructive appearance.—If the citation or service thereof is quashed on motion of the defendant, the case may be continued for the term, but the defendant shall be deemed to have entered his appearance to the succeeding term of the court.

Art. 2049. [1884] [1244] [1244] Reversal of judgment.—Where the judgment is reversed on appeal or writ of error taken by the defendant for the want of service, or because of defective service of process, no new citation shall be issued or served, but the defendant shall be presumed to have entered his appearance to the term of the court at which the mandate shall be filed.

Art. 2050. [1885] [1245] [1245] No judgment without service.—In no case shall judgment be rendered against any defendant unless upon service, or acceptance or waiver of process, or upon an appearance by the defendant, as prescribed in this chapter, except where otherwise expressly provided by law. [Acts 1846, p. 6, G. L. vol. 2, p. 1671.]

CHAPTER FOUR

COSTS AND SECURITY THEREFOR

Art.
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Article 2051. [2030] [1421] [1420] Parties responsible.—Each party to a suit shall be liable to the officers of the court for all costs incurred by himself. No sheriff or constable shall be compelled to execute any process in civil cases coming from any county other than the one in which he is an officer, unless the fees allowed him by law for the service of such process shall be paid in advance; except when affidavit is filed, as provided by law. The clerk issuing the process shall indorse thereon the words, "pauper oath filed", and sign his name officially below them; and the officer in whose hands such process is placed for service shall serve the same. [Acts 1887, p. 102; G. L. vol. 9, p. 900.]

Art. 2052. [2031] [2491] [2427] Parties liable for other costs.—Each party to a suit shall be liable for all costs incurred by him. If the costs cannot be collected from the party against whom they have been adjudged, execution may issue against any party in such suit for the amount of costs incurred by such party, but no more.

Art. 2053. [2032] [1422] [1420] May demand payment.—Officers may demand payment of all costs due in each and every case pending in their respective courts, up to the adjournment of each term of said courts. [Acts 1879, p. 9; G. L. vol. 8, p. 1390.]

Art. 2054. [2033] [1423] [1420] How costs collected.—If any party responsible for costs fails or refuses to pay the same within ten days after

demand for payment, the clerk or justice of the peace may make certified copy of the bill of costs then due, and place the same in the hands of the sheriff or constable for collection. All taxes imposed on law proceedings shall be included in the bill of costs. Such certified bill of costs shall have the force and effect of an execution. The removal of a case by appeal shall not prevent the issuance of an execution for costs at the end of the term. [Id.]

Art. 2055. [2034] [1424] [1420] Officer to levy.—The sheriff or constable upon demand and failure to pay said bill of costs, may levy upon a sufficient amount of property of the person from whom said costs are due to satisfy the same, and sell such property according to the law governing sales under execution. Where such party is not a resident of the county where such suit is pending, the payment of such costs may be demanded of his attorney of record; and neither the clerk nor justice of the peace shall be allowed to charge any fee for making out such certified bill of costs, unless he is compelled to make a levy. [Id.]

Art. 2056. [2035] [1425] [1421] Successful party to recover.—The successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided. [Id.; P. D. 1483.]

Art. 2057. [2037] [1427] [1423] Fees of only two witnesses.—In no cause shall there be allowed the fees of more than two witnesses to any one fact. [Id.; P. D. 1487.]

Art. 2058. [2038] [1428] [1424] Costs of motions.—The court may give or refuse costs on motions at its discretion, except where otherwise provided by law. [Id.; P. D. 1482.]

Art. 2059. [2039–40] On exception to pleadings.—If an exception to a pleading is sustained, all the costs of such exception and of the pleading adjudged to be insufficient, shall be taxed against the party filing such insufficient pleadings. If such exception be overruled, all costs of such exception shall be taxed against the party taking the exception. [Id.]

Art. 2060. [2041] [1431] [1427] Of several suits.—Where any plaintiff shall bring in the same court several suits against the same defendant for causes of action which should have been joined, he shall recover the costs of one action only; and the costs of the other actions shall be adjudged against him, unless sufficient reasons appear to the court for instituting several actions. [Id.; P. D. 1452.]

Art. 2061. [2042] [1432] [1428] Demand reduced by payments.—Where the plaintiff's demand is reduced by payment to an amount which would not have been within the jurisdiction of the court, the defendant shall recover his costs. [Acts 1860, p. 15; P. D. 3446; G. L. vol. 4, p. 1377.]

Art. 2062. [2043] [1433] [1429] In assault and battery, etc.—In civil actions for assault and battery, slander and defamation of character, if the verdict or judgment shall be for the plaintiff, but for less than twenty dollars, the plaintiffs shall not recover his costs, but each party shall be taxed with the costs incurred by him in such suit. [Acts 1846, p. 363; P. D. 1467; G. L. vol. 2, p. 1669.]

Art. 2063. [2044] [1434] [1430] Cost of new trials.—The costs of new trials may either abide the result of the suit or may be taxed against the party to whom the new trial is granted, as the court may adjudge when he grants such new trial. [Id.; P. D. 1474.]

Art. 2064. [2045] [1435] [1431] On arrest of judgment.—When the judgment is arrested or the verdict is set aside because of the insufficiency of the pleadings of the party in whose favor the verdict or judgment was rendered, the cost thereof shall be taxed against the party filing such insufficient pleadings. [Id.; P. D. 1475.]

Art. 2065. [2046–47] On appeal and certiorari.—When a case is appealed, if the judgment of the higher court be against the appellant, but for less amount than the original judgment, such party shall recover the costs of the higher court but shall be adjudged to pay the costs of the court below; if the judgment be against him for the same or a greater amount than in the court below, the adverse party shall recover the costs of both courts. If the judgment of the court above be in favor of the party appealing and for more than the original judgment, such party shall recover the costs of both courts; if the judgment be in his favor, but for the same or a less amount than in the court below, he shall recover the costs of the court below and pay the cost of the court above.

Art. 2066. [2048] [1438] [1434] Court may otherwise adjudge costs.—The court may, for good cause, to be stated on the record, adjudge the costs otherwise than as provided in this chapter.

Art. 2067. [2049] [1439] [1436] Security.—The clerk may require from the plaintiff security for costs before issuing any process, but shall file the petition and enter the same on the docket. [Acts 1848, p. 184; P. D. 3833.]

Art. 2068. [2050] [1440] [1436] Rule for costs.—The plaintiff may be ruled to give security for costs at any time before final judgment, upon motion of the defendant or any officer of the court interested in the costs accruing in such suit, and, if such rule be entered against the plaintiff and he fail to comply therewith on or before the first day of the next term of the court, the suit shall be dismissed. [Acts 1848, p. 106; G. L. vol. 3, p. 106.]

Art. 2069. [2051] [1441] [1437] Judgment on cost bond.—All bonds given as security for costs shall authorize judgment against all the obligors in such bond for the said costs, to be entered in the final judgment of the cause. [Id.]

Art. 2070. [2052] [1442] [1438] Affidavit of inability.—A party who is required to give security for costs may file with the clerk or justice of the peace an affidavit that he is too poor to pay the costs of court and is unable to give security therefor; and the clerk or justice shall issue process and perform all other services required of him, in the same manner as if the security had been given. Any party to the suit, or the clerk or justice, shall have the right to contest such affidavit. Such contest may be tried before the trial of the cause, at such time as the court may fix and notice thereof shall be given by noting it on the docket at the term of the court at which the affidavit is filed. [Acts 1907, p. 4.]

Art. 2071. [2053] [1442] [1438] Deposit for costs.—In lieu of a bond for costs, the party required to give the same may deposit with the clerk or the justice such sum as the court or justice from time to time may designate as sufficient to pay the accrued costs. [Acts 1907, p. 4.]

Art. 2072. [768–2054–5] No security required.—No security for costs shall be required of the State or of any incorporated city or town in any action, suit or proceeding, or of an executor, administrator or guardian appointed by a court of this State in any suit brought by him in his fiduciary character.

Art. 2072a. Banking commissioner and Board not required to give security.—That hereafter neither the Banking Commissioner of Texas nor the State Banking Board shall be required to give any cost bonds in trial courts in cases to which they may be a party in their official capacities, nor shall they be required to give any cost bond on appeal or supersedeas bond on appeal, or writ of error, in any civil case which they may be prosecuting, or defending in their official capacities. [Acts 1927, 40th Leg., p. 203, ch. 135, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 203, ch. 135, repeals all conflicting laws and parts of laws.

Art. 2073. [2056] Intervenor or defendant.—The rules in this chapter as to security for costs by a plaintiff shall also apply to an intervenor and to a defendant who seeks a judgment against the plaintiff on a counter claim after the plaintiff has discontinued his suit.

Art. 2074. [1446–2057] Secured by other bond.—No further security shall be required if the costs are secured by the provisions of an attachment or other bond filed by the party required to give security for costs.

Art. 2075. [1927] Taxing stenographers' fees.—The clerks of all courts having official reporters shall tax as costs in each civil case where an answer is filed, except suits to collect delinquent taxes, a stenographer's fee of three dollars, which shall be paid as other costs in the case, and paid by said clerk, when collected, into the general funds of the county in which said court sits. [Acts 1911, p. 264.]

Art. 2076. Taxing interpreters' fees.—In each civil suit wherein the services of an interpreter are used, three dollars shall be charged and collected as part of the costs as interpreters' fees, to be paid when collected into the general funds of the county. [Acts 4th C. S. 1918, p. 26.]

Art. 2077. [3918 to 3922] Execution for costs.—When costs have been adjudged against a party and are not paid, the clerk or justice of the court in which the suit was determined may issue execution, accompanied by an itemized bill of costs, against such party to be levied and collected as in other cases; and said officer, on demand of any party to whom any such costs are due, shall issue execution for costs at once. This article shall not apply to executors, administrators or guardians in cases where costs are adjudged against the estate of a deceased person or of a ward. No execution shall issue in any case for costs until after judgment rendered therefor by the court. [Acts 1876, p. 285; G. L. vol. 8, p. 1120; Acts 1879, p. 93; G. L. vol. 8, p. 1393.]

CHAPTER FIVE

ABATEMENT AND DISCONTINUANCE OF SUIT

Art.
2078. Death of plaintiff.
2079. Scire facias.
2080. Death of defendant.
2081. Where executor, etc., dies.
2082. Surviving parties.
2083. Death between verdict and judgment.
2084. Marriage not to abate suit.
2085. Suit for the use of another.
2086. Suit for injuries resulting in death.
2087. Where some defendants not served.
2088. Discontinuance as to principal obligor.
2089. Discontinuance in vacation.
2090. Discontinuance as to defendants served, etc.
2091. Requisites of scire facias.

Article 2078. [1886] [1246] [1246] Death of plaintiff.—Where the cause of action is one which survives, no suit shall abate because of the death of any party thereto before the verdict or decision of the court is rendered, but such suit may proceed to judgment as hereinafter provided. If the plaintiff dies, the heirs, or the administrator or executor of such decedent may appear and upon suggestion of such death being entered of record in open court, may be made plaintiff, and the suit shall proceed in his or their name. [Id.]

Art. 2079. [1887] [1247] [1247] Scire facias.—If no such appearance and suggestion be made at the first term of the court after the death of the plaintiff, the clerk upon the application of defendant, his agent or attorney, shall issue a scire facias for the heirs or the administrator or executor of such decedent, requiring him to appear and prosecute such suit. After service of such scire facias, should such heir or administrator or executor fail to enter appearance on or before appearance day of the succeeding term of the court, the defendant may have the suit discontinued. [Id.]

Art. 2080. [1888] [1248] [1248] Death of defendant.—Where the defendant shall die, upon the suggestion of death being entered of record in open court, or upon petition of the plaintiff, the clerk shall issue a scire facias for the administrator or executor or heir requiring him to appear and defend the suit, and upon the return of such service, the suit shall proceed against such administrator or executor or heir. [Id. P. D. 7.]

Art. 2081. [1889] [1249] [1249] Where executor, etc., dies.—Where an executor or administrator shall be a party to any suit, whether as plaintiff or defendant, and shall die or cease to be such executor or administrator, the suit may be continued by or against the person succeeding him in the administration, or by or against the heirs, upon like proceedings being had as provided in the two preceding articles, or the suit may be discontinued, as provided in the second preceding article. [P. D. 6, 7.]

Art. 2082. [1890] [1250] [1250] Surviving parties.—Where there are two or more plaintiffs or defendants, and one or more of them die, upon suggestion of such death being entered upon the record, the suit shall at the instance of either party proceed in the name of the surviving plaintiffs or against the surviving defendants, as the case may be. [Id. P. D. 4.]

Art. 2083. [1891] [1251] [1251] Death between verdict and judgment.—Where either party dies between verdict and judgment, the judgment shall be entered as if both parties were living. [Id. P. D. 5.]

Art. 2084. [1892–1893] Marriage not to abate suit.—A suit by or against a feme sole shall not abate by her marriage, but upon suggestion of such marriage being entered on the record, the husband may make himself a party plaintiff, or if she be a defendant, the clerk shall upon such suggestion or upon petition issue a scire facias to the husband; and the case, after the service and return thereof, shall thereupon proceed to judgment. [Id. P. D. 8, 9.]

Art. 2085. [1894] [1254] Suit for the use of another.—When a plaintiff suing for the use of another shall die before verdict, the person for whose use such suit was brought, upon such death being suggested on the record in open court, may prosecute the suit in his own name, and shall be as responsible for costs as if he brought the suit. [Id. sec. 42; P. D. 10.]

Art. 2086. [1895] [1255] [1255] Suit for injuries resulting in death.—In cases arising under the provisions of the title relating to injuries resulting in death, the suit shall not abate by the death of either party pending the suit, but in such case, if the plaintiff dies, where there is only one plaintiff, some one or more of the parties entitled to the money recovered may be substituted and the suit prosecuted to judgment in the name of such party or parties, for the benefit of the persons entitled; if the defendant dies, his executor, administrator or heir may be made a party, and the suit prosecuted to judgment. [Acts 1860, p. 32; P. D. 18; G. L. vol. 4, p. 1395.]

Art. 2087. [1896] [1256] [1256] Where some defendants not served.—Where some of the several defendants in a suit are served with process in due time and others not so served, the plaintiff may either discontinue as to those not so served and proceed against those that are, or he may continue the suit until the next term of the court and take new process against those not served. No defendant against whom any suit may be so discontinued shall be thereby exonerated from any liability under which he was, but may at any time be proceeded against as if no such suit had been brought and no such discontinuance entered. [Acts 1846, p. 363; P. D. 1448; G. L. vol. 2, p. 1669.]

Art. 2088. [1897] [1257] [1257] Discontinuance as to principal obligor.—Where a suit is discontinued as to the principal obligor, no judgment can be rendered therein against an indorser,

guarantor, surety or drawer of an accepted bill who is jointly sued, unless it is alleged and proved that such principal obligor resides beyond the limits of the State, or in such part of the same that he cannot be reached by the ordinary process of law, or that his residence is unknown and cannot be ascertained by the use of reasonable diligence, or that he is dead or actually or notoriously insolvent. [Id. P. D. 1449, 1426, 225.]

Art. 2089. [1898] [1258] [1258] Discontinuance in vacation.—The plaintiff may enter a discontinuance on the docket in vacation, in any suit wherein the defendant has not answered, on the payment of all costs that have accrued thereon. [Id. sec. 28; P. D. 1440.]

Art. 2090. [1899] [1259] [1259] Discontinuance as to defendants served, etc.—When it would not operate to the prejudice of the other defendants the court may permit the plaintiff to discontinue his suit as to one or more of several defendants who were served with process, or who have answered, but no such discontinuance shall, in any case, be allowed as to a principal obligor, except in the cases provided for in the second preceding article.

Art. 2091. [1901] [1261] [1261] Requisites of scire facias.—The scire facias and returns thereon, provided for in this chapter, shall conform to the requisites of citations and the returns thereon, under the provisions of chapter 4 of this title.

CHAPTER SIX

CERTAIN DISTRICT COURTS

Art.
2092. Rules of practice and procedure.
2093. Rules in other courts apply.

Article 2092. Rules of practice and procedure.—The following rules of practice and procedure shall govern and be followed in the civil district courts in counties having two or more district courts with civil jurisdiction only, whose terms continue for three months or longer, to-wit:

1. Citation.—Citations issued for personal service in the county in which the suit is pending shall command the officer to summon the defendant to appear and answer the plaintiff's petition at or before ten o'clock a. m. of the Monday next following the expiration of the twenty-five days from the date of citation and shall be executed and returned by the officer twenty days after the date of issuance.

2. Execution and return.—Citations or notices issued for personal service on a defendant to appear at or before ten o'clock a. m. of the Monday next after the expiration of fifty-five days from the date the citation or notice is issued, shall be executed or served on or before thirty-five days from the date of issue and shall be made returnable thirty-five days after such date.

3. Out-county citation.—Citation for defendants alleged to reside or be outside of the county in which the suit is pending, but within this State, shall be directed to the Sheriff or any constable of the county where the defendant is alleged to reside or be and shall command him to summon the defendant to appear and answer the plaintiff's petition at or before ten o'clock a. m. of the Monday next following the expiration of thirty days from the date the citation is issued and shall be executed and returned to the officer within twenty days after the date of issue.

4. Time for appearance.—Citations or notices issued for personal service on a defendant alleged to reside or be outside of the State but within the United States, shall notify the defendant to appear at or before ten o'clock a. m. of the Monday next after the expiration of fifty-five days from the date the citation or notice is issued and shall be executed or served on or before thirty-five days from the date of issue and shall be made returnable thirty-five days after date of issue.

5. Citation shall specify day.—In each of said cases the citation or notice shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and if any defendant so served does not appear and answer at or before the time specified in such citation or notice, judgment by default may be rendered against such defendant.

6. Citation by publication.—If citation is to be served by publication it shall be returnable forty-two days after the date of issue and shall command the defendant to appear at or before ten o'clock a. m. of the Monday next following the expiration of forty-two days after the citation was issued, and shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and shall be served by being published in the manner and for the length of time required by law for citations by publication in the same kind of cases or matters in other district courts at the time the publication is made and the first publication shall be at least twenty-eight days before the return day of the citation.

7. Service in foreign country.—If citation is issued to be served personally on any defendant or party in any foreign country it shall be made returnable at such time as the plaintiff or person procuring its issuance shall direct, which shall not be less than thirty days nor more than one hundred and twenty days after the date of issue and shall notify and command the defendant or person to be served to appear and answer at or before ten o'clock a. m. of the Monday next following the expiration of twenty days after the return day of the citation or notice and shall specify the day of the week, the day of the month and the time of day the defendant is required to appear and answer, and shall be served on or before the return day, and if any defendant so served does not appear and answer at or before the time specified in the citation or notice, judgment by default may be rendered against such defendant.

8. Where citation or service is quashed.—If the citation or service thereof is quashed on motion of the defendant, such defendant shall be deemed to have entered his appearance at ten o'clock a. m. on the Monday next after the expiration of twenty days after the day on which the citation or service is quashed, and such defendant shall be deemed to have been duly served so as to require him to appear and answer at that time, and if he fails to do so, judgment by default may be rendered against him.

9. Writs of attachment.—Writs of attachment shall be executed immediately after their issuance. Every such writ shall be made returnable, on or before ten o'clock a. m. of the Monday next after the expiration of fifteen days from the issuance of the writ, and the officer executing the writ shall return the same at or before that time with his action indorsed thereon or attached thereto, signed by him officially, showing how he has executed the writ.

10. Writs of garnishment.—Writs of garnishment shall be executed immediately after their issuance and every such writ shall command the officer to summon the garnishee to appear at or before ten o'clock a. m. of the Monday next following the expiration of twenty-five days from the date the writ was issued and the writ shall specify when and where the garnishee is required to answer and the officer receiving the writ of garnishment shall within fifteen days after the issuance of the writ make his return showing how he has executed the writ.

11. Failure of garnishee to answer.—If the garnishee fails to make answer to the writ on or before ten o'clock a. m. of the Monday next following the expiration of twenty-five days from the date of the writ, he shall be in default and it shall be lawful for the court, at any time after judgment shall have been rendered against the defendant, to render judgment by default against such garnishee for the full amount of such judgment against the defendant, with all accruing interest and costs. The plaintiff in garnishment shall have fifteen days after the garnishee's answer is filed within which to controvert the same if he so desires.

12. Other writs and process.—All other writs and process not expressly otherwise provided for in this article and which under the general law are now returnable to the first day of the next term of court after the issuance thereof, and which require the defendant or person served to appear on the first day of the next succeeding term, shall be returnable fifteen days after the date thereof and shall be executed and returned at or before the expiration of fifteen days from the date thereof and shall require the defendant or party served to appear and answer at or before ten o'clock a. m. of the Monday next after the expiration of twenty-five days after such writ or process was issued, and all such writs or process shall so specify.

13. Appealed cases.—In cases appealed to said district courts from inferior courts, the appeal, including transcript, shall be filed in the district court within thirty days after the rendition of the judgment or order appealed from, and the appellee shall enter his appearance on the docket or answer to said appeal on or before ten o'clock a. m. of the Monday next after the expiration of twenty days from the date the appeal is filed in the district court.

14. Pleas of privilege.—Pleas of privilege shall be filed at or before the time the defendant is required to answer and a contest thereof if any, shall be filed within twenty days after the appearance day, and if a contest is filed, the same shall, when filed, be set for hearing by the court within not exceeding thirty days after being filed and shall be determined by the court within not exceeding ten days after the date for which the same is set unless postponed or continued without prejudice, by order or leave of the court, by agreement of the parties, and shall not be postponed longer than sixty days after being filed unless by order of the court entered by agreement of the parties.

15. Amended pleadings.—Whenever any party files a pleading of any character, he shall at the same time either deliver to the adverse party, or deposit with the clerk for the adverse party, a copy of such pleading, which copy shall not be filed by the clerk. All filed pleadings shall remain at all times in the clerk's office or in the court or in custody of the clerk, except that the court may by order entered on the minutes allow a filed pleading to be withdrawn for a limited time whenever necessary on leaving a certified copy on file. The party withdrawing such pleading shall pay the costs of such order and certified copy.

16. Where more than one adverse party.—If there is more than one adverse party and the adverse parties are represented by different attorneys, one copy of each pleading shall on request be furnished to each attorney representing the adverse parties, but a firm or attorneys associated in the case shall count as one. Not more than four copies of any pleading shall be required to be furnished to adverse parties and they shall be delivered to the first four applicants entitled thereto. After a copy of a pleading is furnished to an attorney or deposited with the clerk for him, he cannot require another copy of the same pleading to be furnished to him.

17. Failure to furnish copy.—If any party fails to furnish the adverse party with a copy of any pleading in accordance with this provision, he may be required to do so by order of the court on motion made and given, and if he fails to comply with any such order within five days after its date, he may be punished as for contempt of court, and a certified copy may be ordered to be furnished by the clerk and the costs thereof charged to the party who had failed to comply with the order to furnish the same.

18. Setting cases for trial, etc.—On the first Monday in each calendar month the judge of each court may, and as far as practicable shall, set for trial during the calendar month next after the month during which the setting is made, all contested cases which are requested to be set, and by agreement of the parties, or on motion of either party, or on the courts [court's] own motion with notice to the parties, the court may set any case for trial at any time so as to allow the parties reasonable time for preparation. Non-contested cases may be tried or disposed of at any time whether set or not, and may be set at any time for any other time.

19. Postponement or continuance.—Cases may be postponed or continued by agreement with the approval of the court, or upon the court's own motion or for cause. When a case is called for trial and only one party is ready, the court may for good cause either continue the case for the term or postpone and reset it for a later day in the same or succeeding term.

20. Cases may be reset.—A case that is set and reached for trial may be postponed for a later day in the term or continued and reset for a day certain in the succeeding term on the same grounds as an application for continuance would be granted in other district courts. After any case has been set and reached in its due order and called for trial two or more times and not tried, the court may dismiss the same unless the parties agree to a postponement or continuance but the court shall respect written agreements of counsel for postponement and continuance if filed in the case when or before it is called for trial unless to do so will unreasonably delay or interfere with other business of the court.

21. Exchange and transfer.—The judges of such courts may, in their discretion, exchange benches or districts from time to time, and may transfer cases and other proceedings from one court to another, and any of them may in his own court room try and determine any case or proceeding pending in another court without having the case transferred, or may sit in any other of said courts and there hear and determine any case there pending, and every judgment and order shall be entered in the minutes of the court in which the case is pending and at the time the judgment or order is rendered, and two or more judges may try different cases in the same court at the same time, and each may occupy his own court room or the room of any other court. The judge of any such court may issue restraining orders and injunctions returnable to any other judge or court, and any judge may transfer any case or proceeding pending in his court to any other of said courts, and the judge of any court to which a case or proceeding is transferred shall receive and try the same, and in turn shall have power in his discretion to transfer any such case to any other of said courts and any other judge may in his court room try any case pending in any other of such courts.

22. Cases transferred to judges not occupied.—When the judge of any such court shall become disengaged, he shall notify the presiding judge, and the presiding judge shall transfer to the court of the disengaged judge the next case which is ready for trial in any of said courts. Any judge not engaged in his own court may try any case in any other court.

23. Judge disqualified.—If a judge of any court is disqualified in any case pending in his court, and his disqualification is certified to the Governor, the Governor may require the judge of any other of such courts to exchange benches or districts with the disqualified judge, and may, at any time, require any of such judges to exchange districts with each other or with any other district judge. In case of the absence, sickness or disqualification of any judge, any other of said judges may hold court for him or may transfer from his court to any other of said courts any case or proceeding then pending in the court of said absent, sick or disqualified judge.

24. Judge may hear only part of case.—Any judge may hear any part of any case or proceeding pending in any of said courts and determine the same, or may hear and determine any question in any case, and any other judge may complete the hearing and render judgment in the case.

25. Any judge may hear dilatory pleas, etc.—Any judge may hear and determine demurrers, motions, petitions for injunction, applications for appointment of receivers, interventions, pleas of privilege, pleas in abatement, all dilatory pleas, motions for new trial and all preliminary matters, questions and proceedings and may enter judgment or order thereon in the

court in which the case is pending without having the case transferred to the court of the judge acting, and the judge in whose court the case is pending may thereafter proceed to hear, complete and determine the case or other matter, or any part thereof, and render final judgment therein. Any judgment rendered or action taken by any judge in any of said courts in the county, shall be valid and binding.

26. Selection of presiding judge.—The judges of such courts shall twice a year, in January and July select one of their number as presiding judge and may at any time cancel and annul such selection and select any other judge as presiding judge. Each such proceeding shall be by majority vote. Each judge shall enter on his minutes an order reciting the selection of the presiding judge. The presiding judge may assign any case in his court or any of such courts in the county to any other judge or court, or may assign any judge to try any case in any of the courts, and the judge in whose court an assigned case is pending shall transfer the case to the court to which it is assigned, and the judge of the court to which it is assigned shall receive and try the case, and such judge shall hold any other court or try any case which he is requested by the presiding judge to try.

27. Judges may make rules.—The judges may by majority vote make rules for the calling of the docket, for the setting and postponement of cases, for the hearing and acting upon motions, questions of law, applications for injunctions and receivers, and for classifying and distributing cases and for having one calendar for all set cases in all courts and for prescribing when the different courts shall have jury trials and when they shall have non-jury trials, and such other rules as they deem advisable to facilitate the dispatch of business. All rules made by said judges shall be adopted by order of each judge and spread upon the minutes of his court, but such rules shall not be inconsistent with any rule adopted or prescribed by the Supreme Court, nor in conflict with any law of this State.

28. Motion for new trial.—A motion for new trial filed during one term of court may be heard and acted on at the next term of court. If a case or other matter is on trial or in process of hearing when the term of court expires, such trial, hearing or other matter may be proceeded with at the next term of the court. No motion for new trial or other motion or plea shall be considered as waived or over-ruled, because not acted on at the term of court at which it was filed, but may be acted on at the succeeding term or at any time which the judge may fix or to which it may have been postponed or continued by agreement of the parties with leave of the court. All motions and amended motions for new trials shall be presented within thirty days after the original motion or amended motion is filed and shall be determined within not exceeding forty-five days after the original or amended motion is filed, unless by written agreement of the parties filed in the case, the decision of the motion is postponed to a later date.

29. Time to file motion for new trial.—A motion for new trial where required shall be filed within ten days after the judgment is rendered or other order complained of is entered, and may be amended by leave of the court at any time before it is acted on within twenty days after it is filed.

30. Judgment final, when.—Judgments of such civil district courts shall become as final after the expiration of 30 days after the date of judgment or after a motion for a new trial is over-ruled as if the term of court had expired. After the expiration of thirty days from the date the judgment is rendered or motion for new trial is over-ruled, the judgment cannot be set aside except by bill of review for sufficient cause, filed within the time allowed by law for the filing of bills of review in other district courts.

31. Appeal bonds filed, when.—In appeals from such civil district courts the appeal bond shall be filed within thirty days after the judgment or order appealed from is rendered, if no motion for new trial is filed, and if a motion for new trial is filed, the appeal bond shall be filed within thirty days after the motion for new trial is overruled. In such appeals the statement of facts and bills of exception shall be filed within ninety days after the judgment is rendered if there is no motion for new trial, but if there is a motion for new trial then ninety days after motion for new trial is over-ruled. When a statement of facts or bills of exception is presented to the adverse party or his attorney it shall be returned within five days signed by the attorney of such adverse party if found correct, and if found incorrect shall be returned within that time with a written statement of the objections thereto. [Acts 1923, p. 215.]

Art. 2093. Rules in other courts apply.—All inconsistent laws and rules of practice and procedure shall be inoperative in the civil district courts of the class included within this chapter, but shall not be affected by this law in so far as they relate to other district courts. All laws and rules of practice and procedure provided for other district courts shall continue in effect and operate and be observed in the civil district courts of the class covered by this law. In all trials and proceedings not provided for herein, the general rules of practice and procedure provided for in other district courts shall be the rules of practice and procedure in the civil district courts of the class included herein. [Id.]

CHAPTER SEVEN

THE JURY

1. JURIES IN CERTAIN COUNTIES

Art.
2094. Selecting names for wheel.
2095. Cards put in wheel.
2096. Cards drawn from wheel.
2097. List certified.
2098. List delivered to clerk.
2099. Cards to be used again.
2100. Loss of wheel.
2101. Interchangeable juries.
2102. Jury quarters.
2103. Reducing number in general panel.

2. JURY COMMISSIONERS

2104. Appointment of jury commissioners.
2105. Failure to attend.
2106. Oath of jury commissioners.
2107. Duties of jury commissioners.
2108. Failure to get jury.
2109. Jury commissioners for county court.
2110. Selecting jurors.
2111. Drawing jurors.
2112. Certified lists delivered.
2113. Oath to clerk and deputies.
2114. List sent to county court.
2115. List sent to district court.
2116. Shall destroy lists.

3. JURY FOR THE WEEK

2117. Summoning jurors.
2118. Jury for the week.
2119. Oath to sheriff for talesmen.
2120. Excuses of jurors.
2121. Defaulting juror.
2122. Pay of jurors.

4. THE JURY IN COURT

2123. Right to jury.
2124. Demand and fee.
2125. Time to demand.
2126. Call of docket for demand.
2127. Oath of inability.
2128. Jury docket.
2129. Jury trial day.
2130. Withdrawing demand for jury.
2131. Challenge to the array.
2132. When challenge is sustained.
2133. Qualifications.
2134. Disqualification.
2135. Jury service.
2136. Where several fire companies in one town.
2137. Filing of exemptions.
2138. Jury list in certain counties.
2139. Preparing jury list.
2140. Delivery of jury list.
2141. Summoning talesmen.
2142. Challenge to juror.
2143. Challenge for cause.
2144. "Challenge for cause."
2145. Certain questions not to be asked.
2146. Number reduced by challenge.
2147. Making peremptory challenge.
2148. Number of peremptory challenges.
2149. Lists returned to clerk.
2150. If jury is incomplete.
2151. Swearing jury.

1. JURIES IN CERTAIN COUNTIES

Article 2094. [5151] Selecting names for wheel.—Between the first and fifteenth days of August of each year, in all counties having therein a city containing a population aggregating twenty thousand or more people, as shown by the preceding Federal census, the tax collector or one of his deputies, together with the tax assessor or one of his deputies, together with the sheriff or one of his deputies, and the county clerk or one of his deputies, and the district clerk or one of his deputies, shall meet at the court house of their county and select from the list of qualified jurors of such county as shown by the tax lists in the tax assessor's office for the current year, the jurors for service in the district and county courts of such county for the ensuing year in the manner hereinafter provided. [Acts 1907, p. 269; Acts 1911, p. 150.]

Art. 2095. [5152–3] Cards put in wheel.—Said officers shall write the names of all men who are known to be qualified jurors under the law, residing in their respective counties, on separate cards of uniform size and color, writing also on said cards, whenever possible, the post-office address of each juror so selected. The cards containing said names shall be deposited in a circular hollow wheel, to be provided for such purpose by the commissioners court of the county. Said wheel shall be made of iron or steel and shall be so constructed as to freely revolve on its axle; and shall be kept locked at all times, except when in use as hereinafter provided, by the use of two separate locks, so arranged that the key to one will not open the other lock; and said wheel, and the clasps thereto attached into which the locks shall be fitted, shall be so arranged that said wheel cannot be opened unless both of said locks are unlocked at the time the wheel is opened. The keys to such locks shall be kept, one by the sheriff and the other by the district clerk. The sheriff and the clerk shall not open such wheel, nor permit the same to be opened by any person, except at the time and in the manner and by the persons herein specified; but said sheriff and clerk shall keep such wheel, when not in use, in a safe and secure place, where the same cannot be tampered with. [Acts 1907, p. 269.]

Art. 2096. [5154] Cards drawn from wheel.—Not less than ten days prior to the first day of a term of court, the district clerk or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the district judge, if the jurors are to be drawn for the district court, or the clerk of the county court, or one of his deputies, and the sheriff, or one of his deputies, in the presence and under the direction of the county judge, if the jurors are to be drawn for the county court, shall draw from the wheel containing the names of jurors, after the same has been well turned so that the cards therein are thoroughly mixed, one by one the names of thirty-six jurors, or a greater or less number where such judge has so directed, for each week of the term of the district or county courts for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks for such term or terms for which jurors will be required. At such drawing, no person other than those above named shall be permitted to be present. The officers attending such drawing shall not divulge the name of any person that may be drawn as a juror to any person. [Id.]

Art. 2097. [5155] List certified.—The several lists of names so drawn, shall be certified under the hand of the clerk or the deputy doing the drawing, and the district or county judge in whose presence said names were drawn from the wheel, to be the list drawn by said clerk for the said several weeks, and shall be sealed up in separate envelopes indorsed, "List of petit jurors for the ——— week of the ——— term of the ——— court of ——— county," (filling in the blanks properly) and the clerk doing the drawing shall write his name across the seals of the envelopes and shall then immediately deliver the same to the judge in whose presence such names were drawn, or to his successor in office in case such judge dies before such delivery can be made to him. [Id.]

Art. 2098. [5156] List delivered to clerk.—The judge shall deliver such envelopes to the clerk, or one of his deputies, and shall in his discretion instruct the clerk to indorse on any of such envelopes that the jury for that week shall be summoned for some other day than Monday of said week, and the judge shall, at the same time, administer to the clerk and to each of his deputies an oath in substance as follows: "You and each of you do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law, nor communicate to any one the name or names of the men appearing on any of the jury lists, that you will not, directly or indirectly, converse or communicate with any one selected as juror concerning any case pending for trial in this court at its next term. So help you God." [Id.]

Art. 2099. [5157] Cards to be used again.—When the names are drawn for jury service, the cards containing such names shall be sealed in separate envelopes, indorsed, "Cards containing the names of jurors for the ——— week of the ——— term of the ——— court of ——— county," (filling in the blanks properly); and said envelopes shall be retained securely by the clerk, unopened, until after the jury has been impaneled for such week; and, after such jurors so impaneled have served four or more days, the envelopes containing the cards bearing the names of the jurors for that week shall then be opened by the clerk, or his deputy, and those cards bearing the names of men who have not been impaneled and who have not served as many as four days, shall be immediately returned to the wheel by the clerk, or his deputy; and the cards bearing the names of the men serving as many as four days shall be put in a box provided for that purpose for the use of the officers who shall next select the jurors for the wheel. [Id.]

Art. 2100. [5158] Loss of wheel.—If the wheel containing the names of jurors be lost or destroyed, with the contents thereof, or if all the cards in said wheel be drawn out, such wheel shall immediately be refurnished, and cards bearing the names of jurors shall be placed therein immediately in accordance with this law, and the judge desiring jurors for a regular or special term of his court may have the same selected in accordance with the general jury laws if such new wheel cannot be furnished in time to comply with the provisions of the jury wheel law. [Id.]

Art. 2101. Interchangeable juries.—The provisions of this article shall be applicable only to such counties of this State as may now maintain three or more district courts, or in which three or more district courts may be hereafter established. A criminal court in any county with jurisdiction in felony cases shall be considered a district court within the meaning of this article. The "Interchangeable Jury Law" shall not apply to a selection of jurors in lunacy cases or in capital cases.

1. Jury Wheel Law governs.—The provisions of the seven preceding articles, commonly known as the "Jury Wheel Law", shall remain in full force in the counties which may be governed by this law, except as modified by the special provisions of this law.

2. Organization and supervision.—In each county under this law, the district judges shall meet together and determine approximately the number of jurors that are reasonably necessary for jury service in all the county courts at law, county courts and district courts of such county, for each week during the time said courts may hold during the year, and shall thereupon order the drawing of such number of jurors from the wheel for each of said weeks, said jury to be known as the general panel of jurors for service in all such courts of such county for the respective weeks for which they are designated to serve. A majority of said district judges are authorized to act in carrying out the provisions of this law; they may increase or diminish the number of jurors to be selected for any week, and shall order said jurors drawn for as many

weeks in advance of service as they deem proper. From time to time they shall designate the judge to whom the general panel shall report for duty, and said judge, for such time as he is chosen to so act shall organize said juries and have immediate supervision and control of them. The said jurors so limited in number shall, after being regularly drawn from the wheel, be served by the sheriff to appear and report for jury service before said judge so designated, who shall hear the excuses of the said jury and swear them in for service for the week that they are to serve to try all cases that may be submitted to them in any of said courts.

3. Used interchangeably.—Said jurors, when impaneled shall constitute a general panel for the week, for service as jurors in all county and district courts in said county, and shall be used interchangeably in all of the said courts. In the event of a deficiency of said jurors at any given time to meet the requirement of all said courts, the judge having control of said general panel for the week shall order such additional jurors to be drawn from the wheel as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no further needed. Resort to the wheel shall be had in all cases to fill out the general panel, except where waived by the parties or their attorneys; provided that by written agreement entered into by all parties to any cause or suit, or the attorney of record in such suit or cause filed therein, the sheriff or other officer in attendance upon said court, may summon the jury needed, or any part of same, in such cause or suit by talesmen, without resorting to the jury wheel, and in such cause or suit said jurors so selected shall be paid as if regularly drawn from the jury wheel. [Acts 1917, p. 147; Acts 4th C. S. 1918, p. 136.]

Art. 2102. Jury quarters.—The commissioners court of each such county shall set apart for the use and convenience of said general panel some room or place in or near the court house, which shall be comfortably furnished and fitted up for them to stay when not required for actual jury service. Said quarters shall be occupied by said panel when not in service and they shall remain in or conveniently near thereto so as to be at all times subject to duty in any court when called for, without delaying the proceedings of such court. The sheriff shall assign one of his deputies to look after the said panel, call them when needed by the judges, provide for their wants and to have general custody and control of them when not in actual service. [Acts 1917, p. 147.]

Art. 2103. Reducing number in general panel.—When it becomes necessary to diminish the general panel for the week of its selection on account of lack of work in any court or for any other cause, the judge having supervision of said jury for the week shall designate the number to remain. He shall cause the clerk to draw from the names of the general panel the number required, and those jurors whose names are so drawn shall continue in service for the remainder of the week and the others excused. [Acts 1917, p. 147; Acts 4th C. S. 1918, p. 136.]

2. JURY COMMISSIONERS

Art. 2104. [5122–23–24] Appointment of jury commissioners.—The district court of each county shall at each term thereof appoint three jury commissioners for said court, and shall cause the sheriff to notify them of their appointment and when and where they are to appear. Such commissioners shall possess the following qualifications:

1. Be intelligent citizens of the county and able to read and write.
2. Be qualified jurors and freeholders of the county.
3. Be residents of different portions of the county.
4. Have no suit in said court which requires the intervention of a jury.
5. The same person shall not act as jury commissioner more than once in the same year. [Acts 1876, p. 79; G. L. vol. 8, p. 915.]

Art. 2105. [5125] [3148] [3020] Failure to attend.—One appointed jury commissioner who without reasonable excuse fails or refuses to attend and perform the duties required shall be fined by the court not less than twenty-five nor more than one hundred dollars. [Id.]

Art. 2106. [5126] [3149] [3021] Oath of jury commissioners.—When the appointees appear before the court, the judge shall administer to them the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a juryman concerning the merits of any case to be tried at the next term of this court until after such cause may be tried or continued, or the jury discharged." [Id.]

Art. 2107. [5128–29–30–31] Duties of jury commissioners.—The judge shall instruct said commissioners as to their duties and designate to them for what weeks they shall select petit jurors and the number for each week. They shall retire in charge of the sheriff to some suitable room and be kept free from intrusion during their session, and shall not separate until they complete their duties. The clerk shall furnish them with all necessary stationery, and with a list of those appearing from the records of the court to be exempt or disqualified from serving on the petit jury at each term, and shall also deliver to them the envelope required by law for the placing therein of the names selected, and take their receipt therefor showing whether or not the seal remained unbroken. The last assessment roll of the county shall be furnished them by the legal custodian of the same. [Id.]

Art. 2108. [5127] [3150] [3022] Failure to get jury.—If from any cause, the jury commissioners should not be appointed at the time prescribed, or should fail to select jurors as required, or should the panels selected to be set aside, or the jury lists returned into the court be lost or destroyed, the court shall forthwith proceed to supply a sufficient number of jurors for the term, and when deemed necessary may appoint jury commissioners for that purpose. [Id.]

Art. 2109. [5132–3–4] Jury commissioners for county court.—The county court shall, at its first term after the last day of December and the last day of June of each year, appoint three jury commissioners for said court, having the same qualifications as jury commissioners for the district court. The same proceedings shall be had in the county court by its officers and said commissioners to procure jurors as are required by this title for similar proceedings in the district court, except as modified by the provisions of this article.

1. Oath.—The oath to be administered to said commissioners shall be: "You swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as a juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, communicate with any one selected by you as a juryman concerning the merits of any case to be tried by this court within the next six months, until said case shall have been tried or otherwise disposed of."

2. To select jurors.—Said commissioners shall select jurors for all the terms of the county court to be held within six months after the adjournment of the first week of said court after the dates first named. The county judge shall designate the number of jurors to be so selected for each term and week. [Acts 1876, p. 81; G. L. vol. 8, p. 917; Acts 1884, p. 27; G. L. vol. 9, p. 559.]

Art. 2110. [5135] [3158] Selecting jurors.—The jury commissioners shall select from the citizens of the different portions of the county, liable to serve

as jurors, one hundred persons, or a greater or less number if so directed by the court, free from all legal exceptions, of good moral character, of sound judgment, well-informed, and, so far as practicable, able to read and write, to serve as petit jurors at the next term, if in the district court, and for the next six months, if in the county court, and shall write the names of such persons on separate pieces of paper, as near the same size and appearance as may be, and fold the same so that the names cannot be seen. [Id.]

Art. 2111. [5136] [3159] [3031] Drawing jurors.—The names of the persons so written and folded shall be deposited in a box, and after being well shaken and mixed, the commissioners shall draw therefrom the names, one by one, of thirty-six persons, or a greater or less number where the judge has so directed, for each week of the term of the district court or terms of the county court for which a jury may be required, and shall record such names as they are drawn upon as many separate sheets of paper as there are weeks of such term or terms for which juries will be required. [Id.]

Art. 2112. [5138–39] Certified lists delivered.—The several lists of names drawn shall be certified under the hands of the commissioners to be the lists drawn by them for the said several weeks, and shall be sealed in separate envelopes, indorsed, "List of petit jurors for the ——— week of the ——— term of the ——— court of ——— county," (filling in the blanks). The commissioners shall write their names across the seals of the envelopes and deliver them to the judge, who shall deliver them to the clerk, or to one of his deputies in open court, and the court may instruct the clerk to indorse on any of such envelopes that the jury for that week shall be summoned for some other day than Monday of said week. [Id.]

Art. 2113. [5140–41] Oath to clerk and deputies.—The judge shall at the same time administer to the clerk and each of his deputies an oath in substance as follows: "You do solemnly swear that you will not open the jury lists now delivered to you, nor permit them to be opened, until the time prescribed by law; that you will not directly or indirectly, converse or communicate with any one selected as a juror concerning any case pending for trial in this court at its next term," if in the district court; or if in the county court, "within the next six months." If for any reason such oath should not be administered to any of the deputies, or should the clerk subsequently appoint a deputy, the clerk shall administer to such deputy a like oath. [Id.]

Art. 2114. [5142–3–4–5] List sent to county court.—The district court commissioners shall make out for the use of the county court commissioners a complete list of the names of all persons selected by them as grand and petit jurors, and shall place said list in an envelope and seal the same and write their names across the seal; and shall address said envelope to the jury commissioners of the county court of the proper county and shall deliver the same to the district judge in open court. The judge shall immediately deliver said envelope to the county clerk or one of his deputies, at the same time administering to him this oath: "You do solemnly swear that you will, to the best of your ability, safely keep this envelope and that you will neither open the same nor allow it to be opened, except as provided by law; and that you will cause it to be delivered to the jury commissioners of the county court next hereafter appointed in and for this county." At the first term of the county court thereafter held, at which jury commissioners are appointed, said clerk shall deliver said envelope to the jury commissioners or one of them appointed at said term, and take a receipt therefor; and said receipt shall state whether the seal of said envelope be broken or not. After the jury commissioners appointed by said court have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as a juror by said commissioners. [Id.]

Art. 2115. [5146–7–8–9] List sent to district court.—The jury commissioners for the county court shall make out for the use of the jury commissioners of the district court a complete list of the names of all persons selected by them as jurors, and shall place said list in an envelope and seal the same, and write their names across the seal, and address said envelope to the jury commissioners of the district court of the proper county, and shall deliver the same to the county judge in open court. The county judge shall immediately deliver said envelope to the district clerk, or one of his deputies, at the same time administering to him this oath: "You do solemnly swear that you will, to the best of your ability, safely keep this envelope and that you will neither open the same nor allow it to be opened, except as provided by law, and that you will cause it to be delivered to the jury commissioners of the district court next hereafter appointed in and for this county." At the first term of the district court thereafter held, said clerk shall deliver said envelope to the jury commissioners or one of them appointed at said term, and take a receipt therefor showing whether the seal of said envelope be broken or not. After the jury commissioners appointed at said term of the district court have assembled for business, they shall open said envelope and read said list of names, and no person named on said list shall be selected as juror by said commissioners. [Id.]

Art. 2116. [5150] [3173] [3045] Shall destroy lists.—The jury commissioners in both the district and county courts, before leaving the apartment in which they have selected jurors, shall destroy said list of names, and it shall be unlawful for them, or any of them, to make known to any person the name of any juror on said lists. [Id.]

3. JURY FOR THE WEEK

Art. 2117. [5159–60] Summoning jurors.—Within not more than thirty days and not less than ten days prior to each term of the court, the clerk of the district and county courts, respectively, shall open the list of jurors selected for such term and make out a copy of the same, duly certified under his hand and the seal of his office, and deliver the same to the sheriff. Where the judge has directed that the jurors for any week shall be summoned for some other day than Monday, the clerk shall note such order for the information of the sheriff. On receipt of such lists, the sheriff shall immediately notify the several persons named therein to be in attendance on the court on the day and week for which they were respectively drawn to serve as jurors for said week. [Acts 1876, p. 171; G. L. vol. 8, p. 1007.]

Art. 2118. [5165–6–7–8–9] Jury for the week.—On Monday of each week of the court for which a jury shall be summoned, and for which there may be jury trials, or where the jury trials for the week have been set for some other day, then on such day the court shall select thirty qualified jurors, or a greater or less number, in its discretion, to serve as jurors for the week. If such selection is not from any cause then made, it may be made on any later day. Such jurors shall be selected from the names included in the jury list for the week, if there be the requisite number of such in attendance who are not excused by the court; if such number be not in attendance at any time, the court shall direct the sheriff to summon a sufficient number of qualified men to make up the requisite number of jurors. The court may adjourn the whole number of jurors for the week or any part thereof, to any subsequent day of the term, but the jurors shall not be paid for the time they may stand adjourned. [Id.]

Art. 2119. [5170] [3184] [3056] Oath to sheriff for talesmen.—Whenever it may be necessary to summon jurors who have not been selected by jury commissioners under the provisions of this title, the court shall administer to the sheriff and each of his deputies the following oath: "You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such

jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any juryman touching any case pending for trial; and that you will not by any means attempt to influence, advise or control any juryman in his opinion in any case which may be tried by him. So help you God." [Id.]

Art. 2120. [5171] [3185] [3057] Excuses of jurors.—The court may hear any reasonable sworn excuse of a juror, and may release him entirely or until some other day of the term. [Id.]

Art. 2121. [5172] [3186] [3058] Defaulting juror.—Any defaulting juror lawfully notified who without reasonable excuse fails to be in attendance on the court in obedience to such notice shall be fined not less than ten nor more than one hundred dollars. [Id.]

Art. 2122. [5218–19–20] Pay of jurors.—Each juror in the district or county court or county court at law shall receive three dollars for each day or fraction of a day that he may attend as such juror, to be paid out of the jury fund of the county by the county treasurer upon the certificate of the clerk of the court in which such service is rendered, stating the service, when and by whom rendered, and the amount due therefor. Such certificates may be transferred by delivery and shall be receivable at par from the holder for all county taxes. [Acts 1866, p. 201; G. L. vol. 5, p. 1119; Acts 1919, p. 35.]

4. THE JURY IN COURT

Art. 2123. [5173] [3187] [3059] Right to jury.—The right to trial by jury shall remain inviolate, subject to the following rules and regulations. [Const. art. 1, sec. 15.]

Art. 2124. [5174–80] Demand and fee.—No jury trial shall be had in any civil suit, unless an application therefor be made in open court, and a jury fee of five dollars if in the district court, and three dollars if in the county court, be deposited by the applicant with the clerk to the use of the county. [Acts 1876, p. 171; G. L. vol. 8, p. 1007.]

Art. 2125. [5175] [3189] [3061] Time to demand.—Any party to a civil suit in the district or county court desiring to have the same tried by jury, shall make an application therefor in open court on the first day of the term at which the suit is to be tried, unless the same be appearance day, in which event the application shall be made on default day. [Id.]

Art. 2126. [5178–9] Call of docket for demand.—On the first day of each term, the court shall call over the docket, except appearance cases, and shall note therein in each case whether or not a jury trial is applied for therein and by which party. On the call of the appearance docket, the court shall in like manner note in each appearance case whether or not and by whom a jury trial is applied for. [Id.]

Art. 2127. [5181–3] Oath of inability.—The deposit for a jury fee shall not be required when the party shall within the time for making such deposit, file with the clerk his affidavit to the effect that he is unable to make such deposit, and that he can not, by the pledge of property or otherwise, obtain the money necessary for that purpose; and the court shall then order the clerk to enter the suit on the jury docket. [Acts 1876, p. 171; G. L. vol. 8, p. 1007.]

Art. 2128. [5184] [3198] [3070] Jury docket.—The clerks of the district and county courts shall each keep a docket, styled, "The Jury Docket," in which shall be entered in their order the cases in which jury trials have been ordered by the court. [Id.]

Art. 2129. [5185] [3199] [3071] Jury trial day.—The court shall, by an order entered on the minutes, designate any day during the term for the taking up of the jury docket and the trial of the cases thereon. Such order may be revoked or changed at discretion. [Acts 1876, p. 78; G. L. vol. 8, p. 914.]

Art. 2130. [5186–7] Withdrawing demand for jury.—When one party has applied for a jury trial, he shall not be permitted to withdraw such application without the consent of the parties adversely interested. If so permitted, the court in its discretion may by an order permit him to withdraw also his jury fee deposit. [Id.]

Art. 2131. [5188–89–90–91] Challenge to the array.—Any party to a suit which is to be tried by a jury may, before the jury is drawn, challenge the array upon the ground that the officer summoning the jury has acted corruptly, and has wilfully summoned jurors known to be prejudiced against the party challenging or biased in favor of the adverse party. All such challenges must be in writing setting forth distinctly the grounds of such challenge and supported by the affidavit of the party or some other credible person. When such challenge is made, the court shall hear evidence and decide without delay whether or not the challenge shall be sustained. This article does not apply when the jurors summoned have been selected by jury commissioners. [Id.]

Art. 2132. [5192] [3206] [3078] When challenge is sustained.—If the challenge be sustained, the array of jurors summoned shall be discharged, and the court shall order other jurors summoned in their stead, and shall direct that the officer who summoned the persons so discharged, and on account of whose misconduct the challenge has been sustained, shall not summon any other jurors in the case. [Id.]

Art. 2133. [5114–15–16] Qualifications.—All men over twenty-one years of age are competent jurors, unless disqualified under some provision of this chapter. No man shall be qualified to serve as a juror who does not possess the following qualifications:

1. He must be a citizen of the State and of the county in which he is to serve, and qualified under the constitution and laws to vote in said county; provided, that his failure to pay poll tax as required by law shall not be held to disqualify him for jury service in any instance.
2. He must be a freeholder within the State, or a householder within the county.
3. He must be of sound mind and good moral character.
4. He must be able to read and write, except in cases provided for in the succeeding article.
5. He must not have served as a juror for six days during the preceding six months in the district court, or during the preceding three months in the county court.
6. He must not have been convicted of felony.
7. He must not be under indictment or other legal accusation of theft or of any felony. Whenever it shall be made to appear to the court that the requisite number of jurors able to read and write cannot be found within the county, the court may dispense with the exception provided for in the fourth subdivision and the court may in like manner dispense with the exception provided for in the fifth subdivision, when the county is so sparsely populated as to make its enforcement seriously inconvenient. [Acts 1905, p. 207; G. L. vol. 8, p. 914.]

Art. 2134. [5117] [3141] [3012] Disqualification.—The following persons shall be disqualified to serve as jurors in any particular case:

1. Any witness in the case.
2. Any person interested, directly or indirectly, in the subject matter of the suit.
3. Any person related by consanguinity or affinity within the third degree to either of the parties to the suit.
4. Any person who has a bias or prejudice in favor of or against either of the parties.
5. Any person who has sat as a petit juror in a former trial of the same, or of another case, involving

the same questions of fact. [Acts 1876, p. 83; G. L. vol. 8, p. 914.]

Art. 2135. [5118] [3142] [3013] Jury service.—All competent jurors are liable to jury service except the following persons:

1. All persons over sixty years of age.
2. All civil officers of this State and of the United States.
3. All ministers of the gospel engaged in the active discharge of their ministerial duties.
4. All physicians and attorneys engaged in actual practice.
5. All publishers of newspapers, school masters, druggists, undertakers, telegraph operators, railroad station agents, ferrymen, and all millers engaged in grist, flouring and saw mills.
6. All presidents, vice-presidents, conductors, engineers and firemen of railroad companies when engaged in the regular and actual discharge of their respective positions.
7. Any person who has acted as a jury commissioner within the preceding twelve months.
8. All members of the national guard of this State under the provisions of the title "Militia."
9. In cities and towns having a population of fifteen hundred or more inhabitants, according to the last preceding United States census, the active members of organized fire companies, not to exceed twenty to each one thousand of such inhabitants.
10. Agents and patrolmen engaged in the Forestry Protection work, employed by the State Department of Forestry when engaged in the regular and actual discharge of their duties. [Id.; Acts 1927, 40th Leg., p. 88, ch. 63, §§ 1, 2.]

Art. 2136. [5119] [3143] Where several fire companies in one town.—If there be more than one organized fire company in such town or city, the whole number of exemptions provided under Subdivision Ten of the preceding article shall be equally divided between such companies. Before such exemption of any of such fire company shall be made available, the members to be exempted shall be selected by their respective companies; and their names shall be handed in to the clerks of the district and county courts, respectively, by the chief of the fire department of such city or town, or in case there be no such officer, then by the foreman of the company. [Id.]

Art. 2137. [5121] Filing of exemptions.—All persons summoned as jurors in any court of this State, who are exempt by statutory law from jury service, may, if they so desire to claim their exemptions, make oath before any officer authorized by law to administer oaths, or before the officers summoning such persons, stating their exemptions, and file said affidavit at any time before the convening of said court with the clerk of said court, which shall constitute sufficient excuse without appearing in person. [Acts 1907, p. 216.]

Art. 2138. Jury list in certain counties.—In counties governed as to juries by the laws providing for interchangeable juries, the names of the panel [jurors] shall be placed upon the general panel in the order in which they are drawn from the wheel, and jurors shall be assigned for service from the top thereof, in the order in which they shall be needed, and jurors returned to the general panel after service in any of such courts shall be enrolled at the bottom of the list in the order of their respective return, provided, however, that the trial judge upon the demand of any party to any case reached for trial by jury, or of the attorney for any such party, shall cause the names of all the members of the general panel available for service as jurors in such case to be placed in a hat or other receptacle and well-shaken, and said trial judge shall draw therefrom the names of a sufficient number of jurors from which a jury may be selected to try such case, and such names shall be transcribed in the order drawn on the jury list from which the juror is to be selected to try such case. [Acts 1917, p. 147, Acts 1919, p. 6.]

Art. 2139. [5202–3] Preparing jury list.—When the parties have announced ready for trial, the clerk shall write the name of each regular juror entered of record for that week on separate slips of paper, as near the same size and appearance as may be, and shall place the slips in a box and mix them well. [Acts 1876, p. 78; G. L. vol. 8, p. 914.]

Art. 2140. [5204] [3218] [3090] Delivery of jury list.—The clerk shall draw from the box, in the presence of the court, the names of twenty-four jurors, if in the district court, or so many as there may be, if there be a less number in the box; and the names of twelve jurors if in the county court, or so many as there may be, and write the names as drawn upon two slips of paper and deliver one slip to each party to the suit or his attorney. [Id.]

Art. 2141. [5205] [3219] [3091] Summoning talesmen.—When there are not as many as twelve names drawn from the box, if in the district court, or if in the county court, as many as six, the court shall direct the sheriff to summon such number of qualified persons as the court deems necessary to complete the panel. The names of those thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding articles. [Id.]

Art. 2142. [5193–5200–1] Challenge to juror.—A challenge to a particular juror is either a challenge for cause or a peremptory challenge. The court shall decide without delay any such challenge, and if sustained, the juror shall be discharged from the particular case. Either such challenge may be made orally on the formation of a jury to try the case. [Id.]

Art. 2143. [5206] [3220] [3092] Challenge for cause.—When twelve or more jurors, if in the district court, or six or more, if in the county court, are drawn, and the lists of their names delivered to the parties, if either party desires to challenge any juror for cause, the challenge shall now be made. The name of a juror challenged and set aside for cause shall be erased from such lists. [Id.]

Art. 2144. [5194–5] "Challenge for cause."—A challenge for cause is an objection made to a juror, alleging some fact which by law disqualifies him to serve as a juror in the case or in any case, or which in the opinion of the court, renders him an unfit person to sit on the jury. Upon such challenge the examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge. [Id.]

Art. 2145. [5196] [3210] [3082] Certain questions not to be asked.—In examining a juror, he shall not be asked a question the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands by some legal accusation with theft or any felony. [Id.]

Art. 2146. [5207] [3221] [3093] Number reduced by challenge.—If the challenges reduce the number of jurors to less than will constitute a legal jury, the court shall order other jurors to be drawn or summoned and their names written upon the list instead of those set aside for cause. [Id.]

Art. 2147. [5197–5208] Making peremptory challenge.—If there remain on such lists not subject to challenge for cause, twelve names, if in the district court, or six names if in the county court, the parties shall proceed to make their peremptory challenges. A peremptory challenge is made to a juror without assigning any reason therefor. [Id.]

Art. 2148. [5198–9] Number of peremptory challenges.—Each party to a civil suit shall be entitled to six peremptory challenges in a case tried in the district court, and to three in the county court. [Acts Dec. 1, 1871, p. 61; G. L. vol. 7, p. 63.]

Art. 2149. [5209] [3223] [3095] Lists returned to clerk.—When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case be in the district court, call off the first twelve

names on the lists that have not been erased; and if the case be in the county court, he shall call off the first six names on the lists that have not been erased; those whose names are called shall be the jury. [Acts 1876, p. 78; G. L. vol. 8, p. 914.]

Art. 2150. [5210] [3224] [3096] If jury is incomplete.—When by peremptory challenges the jury is left incomplete, the court shall direct other jurors to be drawn or summoned to complete the jury; and such other jurors shall be impaneled as in the first instance. [Id.]

Art. 2151. [5211] [3225] [3097] Swearing jury.—When the jury has been selected, such of them as have not been previously sworn for the trial of civil cases, shall be sworn by or under the direction of the court.

CHAPTER EIGHT

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1. APPEARANCE AND PROCEDURE

Article 2152. [1934] [1280] [1280] Appearance day.—The second day of each term of the district or county court is termed appearance day. [Acts 1891, p. 94.]

Art. 2153. [1935] [1281] [1281] Call of appearance docket.—On appearance day of each term, or as soon thereafter as practicable, the court shall call, in their order, all the cases on the docket which are returnable to such term.

Art. 2154. [1936] [1282] [1282] Judgment by default.—Upon the call of the appearance docket, or at any time after appearance day, the plaintiff may take judgment by default against any defendant who has been duly served with process and who has not previously filed an answer. [Acts 1846, p. 363; P. D. 1508; G. L. vol. 2, p. 1669.]

Art. 2155. [1937] [1283] [1283] Where only some answer.—Where there are several defendants, some of whom have answered and others have made default, an interlocutory judgment by default may be entered against those who have not answered and the cause may proceed against the others. [Id.; P. D. 1450.]

Art. 2156. [1938] [1284] [1284] Assessing damages on liquidated demands.—Where a judgment by default is rendered against the defendant, or all of several defendants, if the cause of action is liquidated and proved by an instrument in writing, the damages shall be assessed by the court, or under its direction, and judgment final shall be rendered therefor, unless the defendant shall demand and be entitled to a trial by jury. [Id.]

Art. 2157. [1939–40] [1285–86] [1285–86] On unliquidated demands.—If the cause of action is unliquidated or be not proved by an instrument in writing, the court shall hear evidence as to damages and shall render judgment therefor, unless the defendant shall demand and be entitled to a trial by jury in which case the judgment by default shall be noted, a writ of inquiry awarded, and the cause entered on the jury docket. [Id.]

Art. 2158. [1941] [1346] [1212–1345] On service by publication.—Where service has been made by publication, and no answer has been filed nor appearance entered within the time prescribed by law, the court shall appoint an attorney to defend the suit in behalf of the defendant, and judgment shall be rendered as in other cases; but, in every such case, a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof. The court shall allow such attorney a reasonable fee for his services, to be taxed as part of the costs. [Acts 1846, p. 363; Acts 1866, p. 125; P. D. 1488, 26; G. L. vol. 2, p. 1669; G. L. vol. 5, p. 1143.]

Art. 2159. [1942] [1211] [1211] Guardian ad litem.—When a minor, lunatic, idiot or a non compos mentis may be a defendant to a suit, and such minor, lunatic, idiot or person non compos mentis has no guardian within the State, the court shall appoint a guardian ad litem for such person for the purpose of defending the suit, and allow him a reasonable fee for his services, to be taxed as a part of the costs. [Acts 1895, p. 80; Acts 1884, p. 374; P. D. 1446; G. L. vol. 2, p. 1669.]

Art. 2160. [2182] [1454] [1450] Consolidation of suits.—Whenever several suits may be pending in the same court, by the same plaintiff, against the same defendant, for causes of action which may be joined, or where several suits are pending in the same court, by the same plaintiff, against several defendants, which may be joined, the court in which the same are pending may, in its discretion, order such suits to be consolidated. [Acts 1846, p. 375; G. L. vol. 2, p. 1681.]

Art. 2161. [1943] [1287] [1287] Suits called in order.—All cases in which final judgment has not been rendered by default shall be called for trial in the order in which they stand on the docket unless otherwise ordered by the court. [Acts 1846, p. 363; G. L. vol. 2, p. 1669.]

Art. 2162. [1944] [1288] [1288] Tried when called.—Every suit shall be tried when it is called, unless it be continued or postponed to a future day of the term or be placed at the end of the docket to be called again for trial in its regular order. [Id.; Acts 1927, 40th Leg., p. 23, ch. 18, § 1.]

Art. 2163. [1945] [1289] [1289] Day set for jury docket.—The court shall, by an order entered on the minutes, designate a day of the term for calling for trial the causes on the jury civil docket at all subsequent terms, until changed by a like order; but, in case of change, it shall not take effect until the succeeding term of said court. [Acts 1881, p. 5; G. L. vol. 9, p. 97.]

Art. 2164. [1945] [1289] [1289] Jury cases.—Where juries have been demanded, questions of law, demurrers, exceptions to pleadings, etc., shall, as far as practicable, be heard and determined by the court before the day designated for the trial, and jurors shall be summoned to appear on the day of the term so designated. [Id.]

Art. 2165. [1946] [1290] [1290] Call of non-jury docket.—The non-jury docket shall be taken up at such times as not unnecessarily to interfere with the dispatch of business on the jury docket.

Art. 2166. [1947] [1291] [1291] Issue of law and dilatory pleas.—When a case is called for trial, the issues of law arising on the pleadings, all pleas in abatement and other dilatory pleas remaining undisposed of shall be determined; and it shall be no cause for postponement of a trial of the issues of law that a party is not prepared to try the issues of fact. [Acts 1846, p. 363; G. L. vol. 2, p. 1669.]

2. CONTINUANCE AND CHANGE OF VENUE

Art. 2167. [1917] [1276] [1276] Continuance.—No application for a continuance shall be heard before the defendant files his defense, nor shall any continuance be granted except for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law. [Acts 1848, p. 109; P. D. 1509; G. L. vol. 3, p. 109.]

Art. 2168. [1918] [1278] [1278] Application for continuance.—If the ground of such application be the want of testimony, the party applying therefor shall make affidavit that such testimony is material, showing the materiality thereof, and that he has used due diligence to procure such testimony, stating such diligence, and the cause of failure, if known; that such testimony cannot be procured from any other source; and, if it be for the absence of a witness, he shall state the name and residence of the witness, and what he excepts [expects] to prove by him; and also state that the continuance is not sought for delay only, but that justice may be done; provided that, on a first application for a continuance, it shall not be necessary to show that the absent testimony cannot be procured from any other source. [Acts 1897, p. 117; G. L. vol. 10, p. 1171.]

Art. 2169. [1911] [1270] [1270] Change of venue by consent.—Upon the written consent of the parties filed with the papers of the cause, the court, by an order entered on the minutes, may transfer the same for trial to the court of any other county having jurisdiction of the subject matter of such suit. [Acts 1876, p. 25; G. L. vol. 8, p. 861.]

Art. 2170. [1912] [1271] [1271] Granted on application.—A change of venue may be granted in civil causes upon application of either party, supported by his own affidavit and the affidavit of at least three credible persons, residents of the county in which the suit is pending, for any following cause:

1. That there exists in the county where the suit is pending so great a prejudice against him that he cannot obtain a fair and impartial trial.

2. That there is a combination against him instigated by influential persons, by reason of which he cannot expect a fair and impartial trial.

3. For other sufficient cause to be determined by the court. [Acts 1874, p. 67; P. D. 5885a, G. L. vol. 8, p. 69.]

Art. 2171. [1913] [1272] [1272] Shall be granted.—Where such application for a change of venue is duly made, it shall be granted, unless the credibility of those making such application, or their means of knowledge or the truth of the facts set out in the said application are attacked by the affidavit of a credible person; when thus attacked, the issue thus formed shall be tried by the judge, and the application either granted or refused. [Id.; P. D. 5885d; Acts 1893, p. 2; G. L. vol. 10, p. 432.]

Art. 2172. [1914] [1273] [1273] To what county.—If the application is granted, the cause shall be removed to an adjoining county, the court house of which is nearest the court house of the county in which the suit is pending, unless it appears in the application that such nearest county is subject to some objection sufficient to authorize a change of venue therefrom in the first instance; but the parties may, by consent, agree that it shall be changed to some other county, and the order of court shall conform to such agreement. [Id.]

Art. 2173. [1915] [1274] [1274] In case of new counties.—When a suit is pending in the district or county court of any county, out of the territory of which a new county has been or may be made, in whole or in part, if the defendants or any one of them, shall file a motion in the court where such suit is pending, to transfer the same to such new county, naming it, together with an affidavit stating that neither he nor any one of the defendants now resides in the territorial limits of the county where such suit is pending, and that neither he nor any one of the defendants resided in said territorial limit at the time the suit was instituted, and further stating that at the date of the filing of such suit, said defendant was a resident citizen within the territorial limits of the new county, the court shall grant a change of venue to such new county, unless the suit could be properly brought in the county in which the same is pending under some provision of law. [Acts 1876, p. 74; G. L. vol. 8, p. 910.]

Art. 2174. [1916] [1275] [1275] Transcript on change.—When a change of venue has been granted, the clerk shall immediately make out a correct transcript of all the orders made in said cause, certifying thereto officially under the seal of the court, and send the same, with the original papers in the cause, to the clerk of the court to which the venue has been changed.

3. THE TRIAL

Art. 2175. [2181] [1451] [1447] Obsolete procedure.—All vouchers, views, essoins, and also trials by wager of battle and wager of law are repealed. [Acts 1846, p. 363; G. L. vol. 2, p. 1669.]

Art. 2176. [1948] [1292] [1292] Trial by the court.—The rules governing the trial of causes before a jury shall govern in trials by the court in so far as applicable.

Art. 2177. [1949] [1293] [1293] Agreed case.—Parties may submit matters in controversy to the court upon an agreed statement of facts filed with the clerk, upon which judgment shall be rendered as in other cases; and such agreed statement signed and certified by the court to be correct and the judgment rendered thereon shall constitute the record of the cause. [Acts 1858, p. 110; P. D. 1516; G. L. vol. 4, p. 982.]

Art. 2178. [1950] [1294] [1294] Appeal tried de novo.—Cases brought up from inferior courts shall be tried de novo. [Acts 1846, p. 363; P. D. 1459, 1460; G. L. vol. 2, p. 1669.]

Art. 2179. [5212–3] Oath to jury.—The jury shall be sworn by the court or under its direction, as follows: "You, and each of you, do solemnly swear that in all cases between parties which shall be to you submitted, you will a true verdict render, according to

the law, as it may be given you in charge by the court, and to the evidence submitted to you under the rulings of the court. So help you God." [Acts 1858, p. 205; G. L. vol. 4, p. 1077.]

Art. 2180. [1951] [1297] [1297] Order of proceedings on trial by jury.—The trial of cases before a jury shall proceed in the following order, unless the court should, for good cause, to be stated in the record, otherwise direct:

1. Plaintiff's petition shall be read to the jury.
2. Defendant's answer shall be read to the jury.
3. If there be any intervener his pleadings shall be read.
4. The party upon whom rests the burden of proof on the whole case under the pleadings, shall be permitted to state to the jury briefly the nature of his claim or defense and facts relied upon in support thereof.
5. Such party shall then introduce his evidence.
6. The adverse party may then state briefly the nature of his defense or claim and the facts relied on in support thereof.
7. He shall then introduce his evidence.
8. The intervenor may, in like manner, make his statement, and shall then introduce his evidence.
9. The parties shall then be confined to rebutting testimony on each side.

Art. 2181. [1952] Additional testimony.—At any time before the conclusion of the argument the court may permit additional evidence to be offered to supply an omission where it clearly appears to be necessary to the due administration of justice.

Art. 2182. [1955] [1301] [1301] Non-suit.—At any time before the jury has retired, the plaintiff may take a non-suit, but he shall not thereby prejudice the right of an adverse party to be heard on his claim for affirmative relief. When the case is tried by the judge, such non-suit may be taken at any time before the decision is announced. [Acts 1853, p. 19; P. D. 1464; G. L. vol. 3, p. 1302.]

Art. 2183. [1953] [1299] [1299] Order of argument.—After the evidence is concluded and the charge is read, the parties may argue the case to the jury. The party having the burden of proof on the whole case shall be entitled to open and conclude the argument; where there are several parties having separate claims or defenses, the court shall prescribe the order of argument between them.

4. CHARGE OF THE COURT

Art. 2184. [1970] [1316] [1316] Charge to jury.—Unless expressly waived by the parties, the judge shall prepare and in open court deliver a written charge to the jury on the law of the case, or if the case is submitted on special issues, he shall submit the issues of fact to the jury. [Acts 1913, p. 113.]

Art. 2185. [1971–2] Requisites.—The charge shall be in writing, signed by the judge, filed with the clerk, and shall be a part of the record of the cause. It shall be prepared after the evidence has been concluded and shall be submitted to the respective parties or their attorneys for inspection, and a reasonable time given them in which to examine and present objections thereto, which objections shall in every instance be presented to the court before the charge is read to the jury, and all objections not so made and presented shall be considered as waived. Failure of the Court to give reasonable time to the parties or their attorneys for examination of the charge shall be reviewable upon appeal upon proper exception. The judge shall so frame his charge as to distinctly separate questions of law from questions of fact, and not therein comment on the weight of the evidence, and so as to instruct the jury as to the law arising on the facts, and shall only submit controverted questions of fact. [Id.]

Art. 2186. [1973] [1319] [1319] Special charges.—Either party may present to the judge such written instructions as he desires to be given to the jury; and the judge may give such instructions, or a part thereof, or he may refuse to give them, as he may see proper. Such instructions shall be prepared and presented to the court and submitted to opposing counsel for examination and objection within a reasonable time after the charge is given to the parties or their attorneys for examination. [Id.]

Art. 2187. [1954–71–73] Charge read before argument.—Before the argument is begun, the judge shall read to the jury, in the precise words in which they were written, his charge and all special charges which he may give. [Id.]

Art. 2188. [1974] [1320] [1320] Refusal or modification.—When a special instruction is requested and the provisions of the law have been complied with and the trial judge refuses the same, he shall indorse thereon "Refused," and sign the same officially. If the trial judge modify a special charge, he shall indorse thereon "Modified as follows: (stating in what particular he has modified the charge) and given, and exception allowed" and sign the same officially. Such refused or modified charge when so indorsed shall constitute a bill of exceptions and it shall be conclusively presumed that the party asking said charge presented the same at the proper time, excepted to its refusal or modification, and that all the requirements of law have been observed, and the same shall entitle the party requesting such charge to have the action of the trial judge in refusing or modifying the same reviewed without preparing a formal bill of exceptions. [Id.; Acts 1917, p. 389.]

Art. 2189. [1984–1992] Special issues.—In all jury cases the court may submit said cause upon special issues without request of either party, and, upon request of either party, shall submit the cause upon special issues raised by the pleadings and the evidence in the case. Such special issues shall be submitted distinctly and separately. Each issue shall be answered by the jury separately. In submitting special issues the court shall submit such explanations and definitions of legal terms as shall be necessary to enable the jury to properly pass upon and render a verdict on such issues. If the nature of the suit is such that it cannot be determined on the submission of special issues, the court may refuse the request to do so, but the action of the court in refusing may be reviewed on proper exception in the appellate court, and this article shall be construed in connection with the succeeding article. [Acts 1913, p. 113.]

Art. 2190. [1985] [1331] [1331] Submission of issues.—When the court submits a case upon special issues, he shall submit all the issues made by the pleading. Failure to submit an issue shall not be deemed a ground for reversal of the judgment, unless its submission has been requested in writing by the party complaining of the judgment. Upon appeal or writ of error, an issue not submitted and not requested is deemed as found by the court in such manner as to support the judgment if there is evidence to sustain such finding. A claim that the testimony was insufficient to warrant the submission of an issue may be complained of for the first time after verdict. [Acts 1st C. S. 1897, p. 15; Id.]

5. CASE TO JURY

Art. 2191. [5214–16] Number of jurors.—The jury in the district courts shall be composed of twelve men; but the parties may by consent agree, in a particular case, to try with a less number. In county courts the jury shall be composed of six men.

Art. 2192. [1956] [1302] [1302] Foreman of jury.—Each jury shall appoint one of their body foreman.

Art. 2193. [1957–75] Papers taken to jury room.—The jury may take with them in their retirement the charges and instructions, general or special, which were given and read to them, and any written evidence, except the depositions of witnesses, but shall not take with them any special charges which have been refused. Where part only of a paper has been

read in evidence, the jury shall not take the same with them, unless the part so read to them is detached from that which was excluded.

Art. 2194. [1958] [1304] [1304] Jury kept together.—The jury may either decide a case in court or retire for deliberation. If they retire, they shall be kept together in some convenient place, under the charge of an officer, until they agree upon a verdict or are discharged by the court; but the court in its discretion may permit them to separate temporarily for the night and at their meals, and for other proper purposes.

Art. 2195. [1959] [1305] [1305] Officer shall attend jury.—The officer in charge of the jury shall not make nor permit any communication to be made to them, except to inquire if they have agreed upon a verdict, unless by order of the court; and he shall not before their verdict is rendered communicate to any person the state of their deliberations or the verdict agreed upon.

Art. 2196. [1960] [1306] [1306] Judge to caution jury.—If permitted to separate, either during the trial or after the case is submitted to them, the jury shall be admonished by the court that it is their duty not to converse with, or permit themselves to be addressed by, any other person, on any subject connected with the trial.

Art. 2197. [1961] [1307] [1307] Jury may communicate with court.—The jury may communicate with the court by making their wish known to the officer in charge, who shall inform the court, and they may then in open court, and through their foreman, communicate with the court, either verbally or in writing.

Art. 2198. [1962–75] Jury may ask further instruction.—After having retired, the jury may ask further instructions of the court touching any matter of law. For this purpose they shall appear before the judge in open court in a body and through their foreman state to the court, either verbally or in writing, the particular question of law upon which they desire further instruction; and the court shall give such instruction in writing, but no instruction shall be given except in conformity with the preceding rules and only upon the particular question on which it is asked.

Art. 2199. [1963–4] Disagreement as to evidence.—If the jury disagree as to the statement of any witness, they may, upon applying to the court, have such witness again brought upon the stand; and the judge shall direct him to repeat his testimony to the point in dispute, and no other, and as nearly as he can in the language used on the trial; and on their notifying the court that they disagree as to any portion of a deposition or other paper not carried with them in their retirement, the court may, in like manner, permit such portion of said deposition or paper to be again read to the jury.

Art. 2200. [1965–6–7–8] Discharge of jury.—The jury, after the cause is submitted to them, may be discharged:

1. By the court when they cannot agree and both parties consent to their discharge, or when they have been kept together for such time as to render it altogether improbable that they can agree.
2. By the court when any calamity or accident may, in the opinion of the court, require it.
3. By the court when by sickness or other cause their number is reduced below the number constituting the jury in such court.
4. By the final adjournment of the court before they have agreed upon the verdict.
5. Where a jury has been so discharged without having rendered a verdict, the cause may be again tried at the same or another term.

Art. 2201. [1969] [1315] [1315] Court open for jury.—The court, during the deliberations of the jury, may proceed with other business or adjourn from time to time, but shall be deemed open for all purposes connected with the case before the jury.

6. VERDICT

Art. 2202. [1977–82–83–84–85–86–87–88] Definition and substance.—A verdict is a written declaration by a jury of its decision of the issues submitted to them in the case.

1. It shall be signed by the foreman of the jury and shall comprehend the whole or all the issues submitted to it.
2. The verdict is either a general or special verdict.
3. The jury shall render a general or special verdict as the court may direct.
4. A general verdict is one whereby the jury pronounces generally in favor of one or more parties to the suit upon all or any of the issues submitted to it.
5. A special verdict is one wherein the jury finds the facts only on issues made up and submitted to them under the direction of the court.
6. A special verdict found under the provisions of this article shall, as between the parties, be conclusive as to the facts found. [Acts 1846, p. 363; Acts 1st C. S. 1897, p. 15; Acts 1913, p. 113; G. L. vol. 2, p. 1669.]

Art. 2203. [1993–5217] Form of verdict.—No special form of verdict is required, and the judgment shall not be arrested or reversed for mere want of form therein if there has been substantial compliance with the requirements of the law in rendering a verdict. No verdict shall be rendered in any cause except upon the concurrence of all members of the jury trying the case. [Id.]

Art. 2204. [1977–5217–5219] Verdict by nine jurors.—Pending a trial of a civil case in the district court, where one or more jurors may die or be disabled from sitting, if there be as many as nine of the jurors remaining, those remaining may render and return a verdict; but in such case the verdict must be signed by each juror rendering it. [Acts 1876, p. 82; G. L. vol. 8, p. 918.]

Art. 2205. [1976–9] When jury have agreed.—When the jury agree upon a verdict, they shall be brought into court by the proper officer, their names shall be called by the clerk, and they shall deliver their verdict to the clerk; and if they state that they have agreed, the verdict shall be read aloud by the clerk. If in proper form, and no juror dissent therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court.

Art. 2206. [1979] [1325] Polling the jury.—Either party shall have the right to have the jury polled, which is done by calling separately the name of each juror and asking him if it is his verdict. If any juror answer in the negative, the jury shall be retired for further deliberation.

Art. 2207. [1961–1980] Defective verdict.—If the verdict is informal or defective, the court may direct it to be reformed at the bar. If not responsive to the issue submitted, the court shall call their attention thereto and send them back for further deliberation.

7. FINDINGS BY COURT

Art. 2208. [1989] [1333] [1333] Conclusions of fact and law.—Upon a trial by the court, the judge shall, at the request of either party, state in writing the conclusions of fact found by him separately from the conclusions of law. Such findings of fact and conclusions of law shall be filed with the clerk and shall be a part of the record.

Art. 2209. [1990] [1333] [1333] Court to render judgment.—Where a special verdict is rendered, or the conclusions of fact found by the judge are separately stated, the court shall render judgment thereon unless set aside or a new trial is granted. [Acts 1899, p. 190.]

Art. 2210. [1991] [1333] [1333] Exceptions, etc., transcript.—It shall be sufficient for the party excepting to the conclusions of law or judgment of the court to cause it to be noted on the record in the judgment entry that he excepts thereto; and he

may thereupon take his appeal or writ of error without a statement of facts or further exceptions in the transcript; but the transcript shall in such cases contain the special verdict or conclusions of fact and law aforesaid, and the judgment rendered thereon. [Id.]

CHAPTER NINE

JUDGMENTS AND REMITTITUR

1. JUDGMENTS

Art.
2211. Judgments.
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1. JUDGMENTS

Article 2211. [1994—5—7] Judgments.—The judgments of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity. Only one final judgment shall be rendered in any cause except where it is otherwise specially provided by law. Judgment may, in a proper case, be given for or against one or more of several plaintiffs, and for or against one or more of several defendants or intervenors. [Acts 1846, p. 363; P. D. 1476, 1410; G. L. vol. 2, p. 1669.]

Art. 2212. Contribution between tort feasors.—Any person against whom, with one or more others, a judgment is rendered in any suit on an action arising out of, or based on tort, except in causes wherein the right of contribution or of indemnity, or of recovery, over, by and between the defendants is given by statute or exists under the common law, shall, upon payment of said judgment, have a right of action against his co-defendant or co-defendants and may recover from each a sum equal to the proportion of all of the defendants named in said judgment rendered to the whole amount of said judgment. If any of said persons co-defendant be insolvent, then recovery may be had in proportion as such defendant or defendants are not insolvent; and the right of recovery over against such insolvent defendant or defendants in judgment shall exist in favor of each defendant in judgment in proportion as he has been caused to pay by reason of such insolvency. [Acts 1917, p. 360.]

Art. 2213. [1996] [1453] [1449] Where several counts, etc.—Where there are several counts in the petition, and entire damages are given, the verdict or judgment, as the case may be, shall be good, notwithstanding one or more of such counts may be defective. [Acts 1846, p. 363; P. D. 1460; G. L. vol. 2, p. 1669.]

Art. 2214. [1998] [1338] [1338] May pass title.—Where the judgment is for the conveyance of real estate, or for the delivery of personal property, the decree may pass the title to such property without any act to be done on the part of the party against whom the judgment is rendered. [Acts 1846, p. 363; P. D. 1481; G. L. vol. 2, p. 1669.]

Art. 2215. [1327] [752] [647] On counter claim.—If the defendant establishes a demand against the plaintiff upon a counter claim exceeding that established against him by the plaintiff, the court shall render judgment for the defendant for such excess.

Art. 2216. [1328] [753] [648] On counter claim for costs.—Whenever a counter claim is pleaded, the party in whose favor final judgment is rendered shall also recover the costs, unless it be made to appear on the trial that the counter claim of the defendant was acquired after the commencement of the suit, in which case, if the plaintiff establishes a cause of action existing at the commencement of the suit, he shall recover his costs. [Acts 1860, p. 15; G. L. vol. 4, p. 1377.]

Art. 2217. [1999] [1339] [1339] Court shall enforce its decrees.—The court shall cause its judgments and decrees to be carried into execution; and where the judgment is for personal property, and it is shown by the pleadings and evidence and the verdict, if any, that such property has an especial value to the plaintiff, the court may award a special writ for the seizure and delivery of such property to the plaintiff; and in such case may enforce its judgment by attachment, fine and imprisonment. [Acts 1846, p. 200; P. D. 1420; G. L. vol. 2, p. 1506.]

Art. 2218. [2000] [1340] [1340] Of foreclosure.—Judgments for the foreclosure of mortgages and other liens shall be that the plaintiff recover his debt, damages and costs, with a foreclosure of the plaintiff's lien on the property subject thereto, and, except in judgments against executors, administrators and guardians, that an order of sale shall issue to the sheriff or any constable of the county where such property may be, directing him to seize and sell the same as under execution, in satisfaction of the judgment; and, if the property cannot be found, or if the proceeds of such sale be insufficient to satisfy the judgment, then to make the money, or any balance thereof remaining unpaid, out of any other property of the defendant, as in case of ordinary executions. [Acts 1846, p. 394; P. D. 1480; G. L. vol. 2, p. 1700.]

Art. 2219. [2001] [1341] [1340] Writ of possession.—When an order foreclosing a lien upon real estate is made in a suit having for its object the foreclosure of such lien, such order shall have all the force and effect of a writ of possession as between the parties to the foreclosure suit and any person claiming under the defendant to such suit by any right acquired pending such suit; and the court shall so direct in the judgment providing for the issuance of such order. The sheriff or other officer executing such order of sale shall proceed by virtue of such order of sale to place the purchaser of the property sold thereunder in possession thereof within thirty days after the day of sale. [Acts 1885, p. 10; G. L. vol. 9, p. 630.]

Art. 2220. [2002] [1342] [1341] On appeal from probate court.—Judgment on appeal or certiorari from any county court sitting in probate shall be certified to such county court for observance. [Acts 1846, p. 363; P. D. 1460; G. L. vol. 2, p. 1669.]

Art. 2221. [2003] [1343] [1342] On appeal from justice's court.—Judgments on appeal or certiorari from justice's court shall be enforced by the county court.

Art. 2222. [2004—5] Against executors, etc.—A judgment for the recovery of money against an executor, administrator or guardian, as such, shall state that it is to be paid in the due course of administration. No execution shall issue thereon, but it shall be certified to the county court, sitting in matters of probate, to be there enforced in accordance with law, but judgments against an executor appointed and acting under a will dispensing with the action of the county court in reference to such estate shall be enforced against the property of the testator in the hands of such executor, by execution, as in other cases. [Acts 1846, p. 393; G. L. vol. 2, p. 1669.]

Art. 2223. [2006] [1347] [1346] Against partners.—Where the suit is against several partners jointly indebted upon contract, and the citation has been served upon some of such partners but not upon all, judgment may be rendered therein against such

partnership and against the partners actually served, but no personal judgment or execution shall be awarded against those not served. [Acts 1858, p. 110; P. D. 1514; G. L. vol. 4, p. 982.]

Art. 2224. [2008] [1349] [1347] Contract to waive or confess.—No acceptance of service and waiver of process, nor entry of appearance in open court, nor a confession of judgment shall be authorized in any case by the contract or writing sued on, or any other instrument executed prior to the institution of such suit, nor shall such acceptance or waiver be made until after suit brought. [Acts 1885, p. 33; G. L. vol. 9, p. 653.]

Art. 2225. [2007–9–10] Confession of judgment.—Any person against whom a cause of action exists may, without process, appear in person or by attorney, and confess judgment therefor in open court, as follows:

1. A petition shall be filed and the justness of the debt or cause of action be sworn to by the person in whose favor the judgment is confessed.
2. If the judgment is confessed by attorney, the power of attorney shall be filed and its contents be recited in the judgment.
3. Every such judgment duly made shall operate as a release of all errors in the record thereof, but such judgment may be impeached for fraud or other equitable cause. [Acts 1846, p. 393; G. L. vol. 2, p. 1660.]

Art. 2226. [2178–9] Attorney's fees.—Any person having a valid claim against a person or corporation for personal services rendered, labor done, material furnished, overcharges on freight or express, lost or damaged freight or express or stock killed or injured, may present the same to such person or corporation or to any duly authorized agent thereof; and if, at the expiration of thirty days thereafter, the claim has not been paid or satisfied, and he should finally obtain judgment for the full amount thereof as presented for payment to such person or corporation, he may also recover, in addition to his claim and costs, a reasonable amount as attorney's fees, not to exceed twenty dollars, if represented by an attorney. [Acts 1909, p. 93; Acts 1923, p. 312.]

2. REMITTITUR AND CORRECTION

Art. 2227. [2012–13–14] Remittitur.—Any party in whose favor a judgment has been rendered may remit any part thereof:

1. In open court, and such remittitur shall be noted on the docket and entered in the minutes.
2. In vacation, by executing and filing with the clerk a written release signed by him or his attorney of record, and attested by the clerk with his official seal. Such releases shall be a part of the record of the cause.
3. Execution shall issue for the balance only of such judgment. [Acts 1846, p. 397; G. L. vol. 2, p. 1703.]

Art. 2228. [2015] [1356] [1354] Correction of mistakes.—Mistakes in the record of any judgment or decree may be amended by the judge in open court according to the truth or justice of the case after notice of the application therefor has been given to the parties interested in such judgment or decree, and thereafter the execution shall conform to the judgment as amended. [Acts 1846, p. 203; P. D. 49; G. L. vol. 2, p. 1509.]

Art. 2229. [2016] [1357] [1355] Misrecitals corrected.—Where in the record of any judgment or decree of a court, there shall be any omission or mistake, miscalculation or misrecital of a sum or sums of money, or of any name or names, if there is among the records of the cause any verdict or instrument of writing whereby such judgment or decree may be safely amended, it shall be corrected by the court, wherein such judgment or decree was rendered, or by the judge thereof in vacation, upon application of either party, according to the truth and justice of the case. The opposite party shall have reasonable notice of the application for such amendment. [Acts 1846, p. 396; P. D. 51; Revision 1879; G. L. vol. 2, p. 1702.]

Art. 2230. [2017] [1358] [1356] Correction in vacation.—The judge making such correction in vacation shall embody the same in a judgment, and certify thereto and deliver it to the clerk who shall enter it in the minutes. Such judgment shall constitute a part of the record of the cause, and any execution thereafter issued shall conform to the judgment as corrected.

Art. 2231. [2018] [1359] [1357] Defective judgment cured.—A remittitur or correction made as provided in any of the four preceding articles shall from the making thereof cure any error in the verdict or judgment by reason of such error, omission, mistake or excess. [Acts 1846, p. 397, P. D. 52; G. L. vol. 2, p. 1703.]

CHAPTER TEN

NEW TRIALS AND ARREST OF JUDGMENT

Art.
2232. Motion.
2233. Not more than two.
2234. For misconduct.
2235. If not equitable.
2236. Bill of review.

Article 2232. [2019–20–23–25] Motion.—New trials may be granted and judgments arrested or set aside on motion for good cause, on such terms as the court shall direct. Each such motion shall:

1. Be made within two days after the rendition of verdict if the term of court shall continue so long, if not, then before the end of the term, and may be amended under leave of the court.
2. Be in writing and signed by the party or his attorney.
3. Specify each ground on which it is founded, and no ground not specified shall be considered.
4. Be determined at the term of the court at which it is made. [Acts 1846, p. 392; G. L. vol. 2, p. 1698.]

Art. 2233. [2024] [1372] [1370] Not more than two.—Not more than two new trials shall be granted either party in the same cause, except when the jury have erred in matter of law or been guilty of some misconduct. [Id.]

Art. 2234. [2021] For misconduct.—Where the ground of the motion is misconduct of the jury or of the officer in charge of them, or because of any communication made to the jury or that they received other testimony, the court shall hear evidence thereof from the jury or others in open court, and may grant a new trial if such misconduct proved, or the testimony received, or the communication made, be material. [Acts 1905, p. 21.]

Art. 2235. [2022] [1452] [1448] If not equitable.—New trials may be granted when the damages are manifestly too small or too large. [Acts 1846, p. 363; G. L. vol. 2, p. 1669.]

Art. 2236. [2026–7–8–9] Bill of review.—In cases in which judgment has been rendered on service of process by publication, where the defendant has not appeared in person or by attorney of his own selection:

1. The court may grant a new trial upon petition of the defendant showing good cause, supported by affidavit, filed within two years after such judgment was rendered. The parties adversely interested in such judgment shall be cited as in other cases.
2. Execution on such judgment shall not be suspended unless the party applying therefor shall give a good and sufficient bond payable to the plaintiff in the judgment, in double the amount of the judgment or value of the property adjudged, to be approved by the clerk, and conditioned that the party will prosecute his petition for new trial to effect and will perform such judgment as may be rendered by the court should its decision be against him.
3. If property has been sold under the judgment

and execution before the process was suspended, the defendant shall not recover the property so sold, but shall have judgment against the plaintiff in the judgment for the proceeds of such sale. [Id.]

CHAPTER ELEVEN

BILLS OF EXCEPTION AND STATEMENT OF FACTS

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2238. Transcript of evidence.
2239. Statement in duplicate.
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2241a. Return of bills of exceptions and statement of facts.
2241b. Failure to return bills of exceptions and statement of facts.
2242. Independent statement.
2243. Substance and approval.
2244. Agreed statement of evidence.
2245. Statement not filed in time.
2246. Time of filing.
2247. Time to file conclusions.
2248. Successor to trial judge.

Article 2237. [2058–67] When taken; rules.—If either party during the progress of a cause is dissatisfied with any ruling, opinion, or other action of the court, he may except thereto at the time the said ruling is made, or announced or such action taken, and at his request time shall be given to embody such exception in a written bill. The preparation and filing of bills of exception shall be governed by the following rules:

1. No particular form of words shall be required in a bill of exception; but the objection to the ruling or action of the court shall be stated with such circumstances, or so much of the evidence as may be necessary to explain, and no more, and the whole as briefly as possible.

2. Where the statement of facts contains all the evidence requisite to explain the bill of exception evidence need not be set out in the bill; but it shall be sufficient to refer to the same as it appears in the statement of facts.

3. The ruling of the court in the giving, refusing or qualifying of instructions to the jury shall be regarded as approved unless excepted to.

4. Where the ruling or other action of the court appears otherwise of record, no bill shall be necessary to reserve an exception thereto.

5. The party taking a bill of exception shall reduce the same to writing and present it to the judge for his allowance and signature.

6. The judge shall submit such bill to the adverse party or his counsel, if in attendance on the court, and if found to be correct, the judge shall sign it without delay and file it with the clerk.

7. If the judge finds such bill incorrect, he shall suggest to the party or his counsel, such corrections as he deems necessary therein, and if they are agreed to, he shall make such corrections, sign the bill and file it with the clerk.

8. Should the party not agree to such corrections, the judge shall return the bill to him with his refusal indorsed thereon, and shall prepare, sign and file with the clerk such bill of exception, as will, in his opinion, present the ruling of the court as it actually occurred.

9. Should the party be dissatisfied with said bill filed by the judge, he may, upon procuring the signatures of three respectable bystanders, citizens of this State, attesting to the correctness of the bill as presented by him, have the same filed as part of the record of the cause; and the truth of the matter in reference thereto may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the papers of the cause, within ten days after the filing of said bill and to be considered as part of the record relating thereto. [Acts 1846, p. 391; G. L. vol. 2, p. 1697; Acts 1913, p. 113.]

Art. 2238. [1924–2079] Transcript of evidence.—When any party to any suit reported by any such reporter shall desire a transcript of the evidence in said suit, said party may apply for same and shall indicate whether he desires same in question and answer form or in narrative form. In the event such transcript should be ordered in question and answer form, then such reporter shall make the same up in duplicate in question and answer form, and shall receive as compensation therefor the sum of fifteen cents per hundred words for the original. In the event said transcript should be ordered made in narrative form, then such reporter shall make up same in duplicate in narrative form, and shall receive as compensation therefor the sum of twenty cents per hundred words for the original; provided, that in case any reporter charges more than the fees herein allowed he shall be liable to the person paying the same a sum equal to four times the excess so paid. [Id., 1925, p. 670.]

Art. 2239. [2070] Statement in duplicate.—When a transcript is ordered in question and answer form, and filed with the clerk, the party appealing shall prepare or have prepared from said transcript so filed, a statement of facts in duplicate, which shall consist of the evidence adduced upon the trial, both oral and by deposition, stated in succinct manner and without unnecessary repetition, together with copies of such documents, sketches, maps and other matters used in evidence. Such statement of facts shall not be copied in the transcript of the clerk, but when agreed to by the parties and approved by the judge shall be filed in duplicate with the clerk, and the original thereof sent upon appeal as part of the record in the cause. Like procedure shall be followed if the statement of facts is prepared independently by the parties and agreed to and approved by the judge or prepared by the judge on the failure of the parties to agree. When a statement of facts is made at the request of a party by the official court reporter, the fees therefor shall not be taxed as costs. [Acts 1911, p. 264.]

Art. 2240. [2069] [1380] [1378] When the parties disagree.—1. If the parties do not agree upon such statement of facts, or if the judge does not approve or sign it, the parties may submit their respective statements to the judge, who shall, from his own knowledge, with the aid of such statements, prepare and sign and file with the clerk a correct statement of the facts proved on the trial; and such statement shall constitute a part of the record.

2. The judge shall not be required to prepare such statement of facts unless the party appealing, by himself or attorney, within the time allowed for filing, shall present to the judge within fifteen days after adjournment of the court or after the entering of the final judgment, as the case may be, a statement of facts and shall certify thereon, over his signature, that to the best of his knowledge and belief, it is a full and fair statement of all the facts proved on the trial.

3. When the duty devolves upon the court to prepare the statement of facts, he shall have such time in which to do so as he deems necessary, but shall not postpone the preparation and filing of same, so as to delay the filing thereof, together with a transcript of the record in the appellate court within the time prescribed by law. [Acts 1892, p. 42; G. L. vol. 10, p. 406; Acts 1911, p. 264.]

Art. 2241. [2071] Party unable to pay.—In any civil case where the appellant or plaintiff in error has made the proof required to appeal his case without bond, such party may make affidavit of such fact, and upon the making and filing of such affidavit, the court shall order the official reporter to make a transcript in narrative form in duplicate and to deliver the same to said party, but such reporter shall receive no pay for same.

Art. 2241a. Return of bills of exceptions and statement of facts.—Whenever within the eighty days that are provided by law for filing bills of exceptions and statements of fact in the trial court, the ap-

pellant or his attorney shall present bills of exceptions and statements of fact to the appellee or his attorney for the purpose of procuring an agreement thereto as provided in Articles 2239 and 2240, it shall be the duty of the appellee and his attorney to return to the appellant or his attorney the bills of exceptions and statements of fact within twenty days after having received said bills of exceptions and statements of fact, with his approval or disapproval of the same. [Acts 1927, 40th Leg., p. 67, ch. 44, § 1.]

Art. 2241b. Failure to return bills of exceptions and statement of facts.—If the appellee or his attorney fails to return to the appellant or his attorney the bills of exceptions and statements of fact within twenty days after the date they are delivered to him, with his approval or disapproval, then it shall be conclusively assumed that there is a disagreement upon said bills of exceptions and statements of fact and upon proof in any manner satisfactory to the judge of the trial court that said bills of exceptions and statements of fact had been delivered to the appellee or his attorney for twenty days or more, said judge shall then make out, sign and file with the clerk proper bills of exceptions and statements of fact in the same manner as provided for in Articles 2239 and 2240 as in case of an actual disagreement. [Acts 1927, 40th Leg., p. 67, ch. 44, § 1.]

Art. 2242. [2072] Independent statement.—Nothing in this chapter shall prevent parties from preparing a statement of facts on appeal independent of the transcript of the notes of the official court reporter. [Acts 1911, p. 264.]

Art. 2243. [2068] [1379] Substance and approval.—After the trial of a cause, either party may make out a written statement of facts given in evidence on the trial, and submit the same to the opposite party or his attorney for inspection. If the parties or their attorneys agree upon such statement of facts, they shall sign the same; and it shall be submitted to the judge who shall, if he finds it correct, approve and sign it; and the same shall be filed with the clerk. [Acts 1892, p. 42; G. L. vol. 10, p. 406.]

Art. 2244. [2068] [1379] [1377] Agreed statement of evidence.—Where it is agreed by the parties to the suit, or their attorney of record, that the evidence adduced upon the trial of the cause is sufficient to establish a fact or facts alleged by either party, the testimony of the witnesses and the deeds, wills, records, or other written instruments, admitted as evidence relating thereto, shall not be stated or copied in detail into a statement of facts; but the facts thus established shall be stated as facts provided [proved] in the case; provided, an instrument, such as a note or other contract, mortgage or deed of trust, that constitutes the cause of action on which the petition, or answer, or cross bill, or intervention, is founded may be copied once in the statement of facts. When there is any reasonable doubt of the sufficiency of the evidence to constitute proof of any one fact under the preceding rule there may then be inserted such of the testimony of the witnesses and written instruments, or parts thereof, as relate to such facts. [Id.]

Art. 2245. [2074] [1382] Statement not filed in time.—Whenever a statement of facts has been filed after the time prescribed by law, and the party tendering the filing of same shall show to the satisfaction of the appellate court that he has used due diligence to obtain the approval and signature of the judge thereto, and to file the same within the time prescribed by law for filing the same, and that his failure to file the same within said time is not due to the fault or laches of said party or his attorney, and that such failure was the result of causes beyond his control, the appellate court shall permit said statement of facts to remain as part of the record and consider the same in the hearing and adjudication of said cause the same as if said statement of facts had been filed in time. [Acts 1887, p. 17; G. L. vol. 9, p. 815.]

Art. 2246. [2073] Time for filing.—The time for filing statements of fact and bills of exception in the district and county courts and county courts at law shall be governed by the following rules:

1. When the appeal is taken from a judgment rendered in a civil cause tried in any of said courts, the party appealing shall have eighty days after the adjournment of the term of the court wherein the cause is tried within which to prepare and file his statement of facts and bills of exception in the trial court.

2. If the term of court may by law continue more than eight weeks, the statement of facts and bills of exception shall be filed in the trial court within ninety days after final judgment is rendered.

3. Upon application of the party appealing, the judge before whom the cause is tried may, in term time or vacation for good cause shown, extend the time for filing such statements of fact and bills of exception; but the time shall not be extended in any case so as to delay the filing of the statement of facts together with the transcript of the record in the appellate court within ninety days after the date of filing the appeal or writ of error bond.

Art. 2247. [2075] Time to file conclusions.—When demand is made therefor, the judge of a district or county court shall have ten days after adjournment of the term at which the cause was tried in said court in which to prepare his findings of fact and conclusions of law in cases tried before the court. [Acts 1903, p. 32; Acts 1st C. S. 1907, p. 446.]

Art. 2248. [2076] Successor to trial judge.—Any judge of a district or county court whose term of office expires before the adjournment of the term of such court at which a cause may be tried, or during the period prescribed for the filing of the statement of facts and bills of exception, or conclusions of law and fact, may approve such statement of facts and bills of exception, or file such findings of fact and conclusions of law in such cause, as provided in this title, and where any such judge shall die before the time for such approval or filing, the same may be approved or filed by his successor, as provided by article 2288.

CHAPTER TWELVE

APPEAL AND WRIT OF ERROR

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Article 2249. To Court of Civil Appeals.—An appeal or Writ of Error may be taken to the Court of Civil Appeals from every final judgment of the district court in civil cases, and from every final judgment in the county court in civil cases of which the county court has original jurisdiction, and from every

final judgment of the county court in civil cases in which the court has appellate jurisdiction, where the judgment or amount in controversy exceeds one hundred dollars exclusive of interest and costs. [Acts 1925, p. 45.] [39th Leg., ch. 18, § A; Acts 1927, 40th Leg., p. 75, ch. 52, § 1.]

Art. 2250. [2079] Appeal from interlocutory order.—An appeal shall lie from an interlocutory order of the district court if such appeal be taken within twenty days from the entry of such order in the following cases and shall take precedence in the appellate court, but the proceedings in the court below shall not be stayed during the pendency of the appeal, unless otherwise ordered by the appellate court:

1. Appointing a receiver or trustee in any cause.

2. Overruling a motion to vacate an order appointing a receiver or trustee in any case. [Acts 1917, p. 379.]

Art. 2251. [2080] Appeals in injunctions.—Appeals from orders of the district and county courts granting or dissolving temporary injunctions shall lie in the cases and in the manner provided in the title "Injunctions."

Art. 2252. [2081–2–3] Definitions.—The party taking an appeal is called the "appellant" and the adverse party the "appellee." The party suing out a writ of error is called the "plaintiff in error" and the adverse party the "defendant in error." The term "Appellate court" includes the Supreme Court or Court of Civil Appeals having jurisdiction of a cause appealed. The term "Court below" means the court from which the appeal or writ of error is taken. [Acts 1892, p. 42; G. L. vol. 10, p. 406.]

Art. 2253. [2084] [1387] [1387] Appeal perfected.—An appeal may, in cases where an appeal is allowed, be taken during the term of the court at which the final judgment in the cause is rendered by the appellant giving notice of appeal in open court within two days after final judgment, or two days after judgment overruling a motion for a new trial, which shall be noted on the docket and entered of record, and by his filing with the clerk an appeal bond, where bond is required by law, or affidavit in lieu thereof, as hereinafter provided, within twenty days after the expiration of the term. If the term of court may by law continue more than eight weeks, the bond or affidavit in lieu thereof shall be filed within twenty days after notice of appeal is given, if the party taking the appeal resides in the county, and within thirty days, if he resides out of the county. [Id.; Acts 1927, 40th Leg., p. 21, ch. 15, § 1.]

Art. 2254. [2085] [1388] [1388] No appeal bond required.—In cases where the appellant is not required by law to give bond on appeal, the appeal is perfected by the notice provided for in the preceding article.

Art. 2255. [2086] [1389] [1389] Writ of error sued out.—The writ of error, in cases where the same is allowed, may be sued out at any time within six months after the final judgment is rendered. [Acts 1892, p. 42; G. L. vol. 10, p. 406; Acts 1919, p. 136.]

Art. 2256. [2087] [1390] [1390] By petition.—The party desiring to sue out a writ of error shall file with the clerk of the court in which the judgment was rendered a written petition signed by him or by his attorney, and addressed to such clerk. [Acts 1846, p. 363; P. D. 1495; G. L. vol. 2, p. 1669.]

Art. 2257. [2088] [1391] [1391] Requisites of petition.—The petition shall state the names and residences of the parties adversely interested, shall describe the judgment with sufficient certainty to identify it, and shall state that he desires to remove the same to the Court of Civil Appeals for revision and correction. Where the plaintiff in error desires the issuance of a supersedeas, he shall state the facts which entitle him thereto, and pray for the issuance thereof. [Acts 1892, p. 42; G. L. vol. 10, p. 406.]

Art. 2258. [2089] [1392] [1392] Error bond.—The plaintiff at the time of filing such petition shall file with the clerk a writ of error bond, or affidavit in lieu thereof, as provided by law. [Acts 1846, p. 363; G. L. vol. 2, p. 1669.]

Art. 2259. [2090] [1393] [1393] Citation in error.—Upon the filing of such petition and bond, the clerk shall forthwith issue a citation for the defendant in error and if there be several defendants residing in different counties, one citation shall issue to each of such counties. [Id.]

Art. 2260. [2091] [1394] [1394] Form and requisites of citation.—The citation shall be styled, dated and tested by the clerk as other writs, and the date of its issuance shall be noted thereon. It shall be directed to the sheriff or any constable of the county where the defendant is alleged to reside or be, and shall command him forthwith to summon the defendant to appear and defend such writ before the Court of Civil Appeals within sixty days from date of service of said citation, stating the place of holding the same, according to the provisions of the law regulating the returns of appeals and writs of error from the court in which the judgment was rendered. It shall state the date of the filing of the petition in error, the names of the parties, and the description of the judgment as therein given. Such citation shall be made returnable within ten days from the issuance of the same, if defendant resides in the county, and within twenty days, if he resides out of the county. [Acts 1892, p. 42; G. L. vol. 10, p. 406.]

Art. 2261. [2092–3] Service and return.—The sheriff or constable receiving such citation shall indorse the day and hour on which he receives it, and execute and return it forthwith. Service shall be made by delivering to the defendant in error, and, if more than one, then, to each of them, in person, a true copy of such citation. The return of such officer shall state when and how the same was served, and shall be signed by him officially. If it has not been served, the return shall show the diligence used by the officer to execute the same, and a failure to execute the same, and where the defendant is to be found, so far as he has been able to ascertain. [Id.]

Art. 2262. [2094] [1397] [1397] Alias citation.—If the citation is returned not executed, the clerk shall forthwith issue an alias or pluries citation, as the case may be, which shall conform to the requisites prescribed for the issuance of citation in the first instance, and shall, in addition, indicate how many previous citations have been issued. [Acts 1846, p. 363; P. D. 1495; G. L. vol. 2, p. 1669.]

Art. 2263. [2095] [1398] [1398] Service on attorney.—If it appears from the allegations in the papers of the cause that the party is a non-resident of the State, or if it appears from the return of the sheriff or constable that the party cannot be found in the county of his residence, the citation shall direct the officer to summon the defendant by making service on his attorney of record, if there be one. [Id.]

Art. 2264. [2096] [1399] [1399] Service in other modes.—Service of the citations may be also made in either mode provided in chapter three of this title, so far as the same are applicable.

Art. 2265. [2097] [1400] [1400] Cost bond.—The appellant or plaintiff in error, as the case may be, shall execute a bond to be approved by the clerk, payable to the appellee or defendant in error, in a sum at least double the probable amount of the costs of the court below, the Court of Civil Appeals, and the Supreme Court, to be fixed by the clerk, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect, and shall pay all the costs which have accrued in the court below, and which may accrue in the Court of Civil Appeals and the Supreme Court. [Acts 1892, p. 42; G. L. vol. 10, p. 406.]

Art. 2266. [2098] [1401] [1401] Party unable to give cost bond.—Where the appellant or plaintiff in error is unable to pay the costs of appeal, or give security therefor, he shall nevertheless be entitled to prosecute his appeal; but, to do so, he shall make strict proof of his inability to pay the costs, or

any part thereof. Such proof shall be made before the county judge of the county where such party resides, or before the court trying the case, and shall consist of the affidavit of the party stating his inability to pay the costs; which affidavit may be contested by any officer of the court or party to the suit, whereupon the court trying the case, if in session, or the county judge of the county in which the suit is pending, shall hear evidence and determine the right of the party to his appeal. [Acts 1871, p. 74; Acts 1879, p. 90; P. D. 6180; G. L. vol. 8, p. 1390.]

Art. 2267. [2099] [1402] [1402] Appeal or writ of error perfected.—When the bond, or affidavit in lieu thereof, provided for in the two preceding articles, has been filed and the previous requirements of this chapter have been complied with, the appeal or writ of error, as the case may be, shall be held to be perfected.

Art. 2268. [2100] [1403] [1403] Judgment not suspended.—The bond or affidavit in lieu thereof, provided in the three preceding articles, shall not have the effect to suspend the judgment, but execution shall issue thereon as if no such appeal or writ of error had been taken.

Art. 2269. Revival against successor of officer.—When a suit in mandamus or injunction is brought against a person holding a public office, in his official capacity, and after final trial and judgment in the trial court, and notice of appeal to the Court of Civil Appeals or Supreme Court has been given, if such person should vacate such office, the suit shall not abate, but his successor may be made a party thereto by a motion showing such facts and that he has demanded such successor to such office to do or to refrain from doing such official act as such suit is based upon and such successor has failed or refused to comply with such demand, duly verified by any party to such suit or his attorney. After service is duly perfected or waived by the parties, the court shall proceed to hear and determine same, and its judgment, order or decree shall be enforced by the court, and such successor shall be bound thereby. In such cases, the successor shall not be liable for any costs that have accrued prior to the time he was made a party. [Acts 1917, p. 367.]

Art. 2270. [2101] [1404] [1404] Supersedeas bond.—An appellant or plaintiff in error, desiring to suspend the execution of the judgment may do so by giving a good and sufficient bond to be approved by the clerk, payable to appellee or defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such appellant or plaintiff in error shall prosecute his appeal or writ of error with effect; and in case the judgment of the Supreme Court or the Court of Civil Appeals shall be against him, he shall perform its judgment, sentence or decree, and pay all such damages as said court may award against him. [Acts 1892, p. 42; G. L. vol. 10, p. 406.]

Art. 2271. [2102] [1405] [1405] Where judgment is for property.—Where the judgment is for the recovery of land or other property, the bond shall be further conditioned that the appellant or plaintiff in error shall, in case the judgment is affirmed, pay to the appellee or defendant in error the value of the rent or hire of such property in any suit which may be brought therefor. [Acts 1846, p. 363; P. D. 1492; G. L. vol. 2, p. 1669.]

Art. 2272. Additional bond.—In all cases carried by appeal or writ of error from the district or county court to the Court of Civil Appeals or to the Supreme Court, in which a supersedeas bond shall be given, and whenever the said bond shall become insufficient by reason of the insolvency of the sureties on such bond, or from any other cause, the court in which the said appeal or writ of error is pending, shall, upon proper showing of such insufficiency being made, require the giving of additional supersedeas bond in like amount as the original, to be approved by the clerk of the court in which said appeal or writ of error is pending. [Acts 1921, p. 223.]

Art. 2273. When party fails to comply.—Upon failure to comply with the rule of the court ordering the execution of said additional supersedeas bond within a period of twenty days after such order is served, the court in which said appeal or writ of error is pending shall issue an order to the trial court, directing or permitting the issuance of execution on the judgment appealed from; but said appeal or writ of error shall not be dismissed, but continued upon the docket as if said cause had been appealed or writ of error granted upon cost bond, provided the clerk of the court in which said appeal or writ of error is pending is satisfied that the original bond is still sufficient when considered as a cost bond. [Id.]

Art. 2274. Bond insufficient as cost bond.—In the event that said clerk shall consider the said original supersedeas bond insufficient when considered as a cost bond, then the said appeal or writ of error shall be dismissed, unless the appellant or the plaintiff in error within twenty days after notice served by the clerk that the said bond is deemed insufficient for the purposes of the cost bond, shall execute a new bond satisfactory to said clerk, sufficient to secure the payment of the costs theretofore accrued, or that might thereafter accrue in the further prosecution of the said appeal or writ of error. The giving of said additional original bond or bonds shall not release the liability of the sureties on the original supersedeas bond. [Id.; Acts 1927, 40th Leg., p. 40, ch. 27, § 1.]

Art. 2275. [2103] [1406] [1406] Judgment stayed.—Upon the filing of a proper supersedeas bond, the appeal or writ of error shall be held to be perfected, and the execution of the judgment shall be stayed, and should execution have been issued thereon, the clerk shall forthwith issue a supersedeas. [Acts 1846, p. 363; G. L. vol. 2, p. 1669; P. D. 1495.]

Art. 2276. [2105–6] No bond required.—Neither the State of Texas, nor any county in the State of Texas, nor the Railroad Commission of Texas, nor the head of any department of the State of Texas, prosecuting or defending in any action in their official capacity, shall be required to give bond on any appeal or writ of error taken by it, or either of them, in any civil case.

Executors, administrators and guardians appointed by the courts of this State shall not be required to give bond on any appeal or writ of error taken by them in their fiduciary capacity. [Acts 1848, p. 106; G. L. vol. 3, p. 106; P. D. 1503; Acts 1897, p. 27; G. L. vol. 10, p. 1081; Acts 1909, S. S. p. 284.]

Art. 2277. [2107] [1409] [1409] If party dies.—In case of the death of any party entitled to an appeal or writ of error, the same may be taken by his executor, administrator or heir.

Art. 2278. [2108–9–10] Transcript delivered.—When an appeal or writ of error has been perfected, the clerk of the court shall, upon the application of either party, make out, and deliver to him a transcript of the record of the cause, which shall, except in the cases hereinafter provided, contain a full and correct copy of all the proceedings had in the cause. If the pleadings or the judgment show an appearance of the defendant, in person or by attorney, the citation and returns shall not be copied into the transcript. [Acts 1846, p. 363; P. D. 1494; G. L. vol. 2, p. 1669.]

Art. 2279. [2111] [1413] [1413] Omissions.—The parties may, by agreement in writing, with the approval of the judge, direct the clerk to omit from the transcript any designated portion of the proceedings not deemed material to the disposition of the cause in the appellate court. [Acts 1858, p. 110; P. D. 1516; G. L. vol. 4, p. 982.]

Art. 2280. [2112] [1414] [1414] Agreed statement.—The parties may agree upon a brief statement of the case and of the facts proven, with or without copies of any part of the proceedings as shall, in their opinion, enable the appellate court to determine whether there has been any error in the judgment; and, if the judge shall approve and sign such statement, it shall be filed among the papers of the

cause and constitute a part of the record, and, on appeal or writ of error shall be copied into the transcript in lieu of such proceedings themselves. [Id.]

Art. 2281. [2113] [1415] [1415] Transcript must contain.—The transcript shall in all cases contain a copy of the final judgment, notice of appeal, petition for writ of error and citation in error, with return of service thereon, bond on appeal or writ of error, or affidavit in lieu thereof, assignments of error, and a statement of the accrued costs. [Id.]

Art. 2282. [2114] [1416] [1416] Clerk's certificate.—The clerk shall certify to the correctness of the transcript and sign the same officially with the seal of the court attached. Such certificate shall state whether the same be a transcript of all the proceedings in the cause, or a transcript agreed upon by the parties. [Acts 1846, p. 363; P. D. 1494; G. L. vol. 2, p. 1669.]

Art. 2283. [2115] [1417] Briefs.—Not less than five days before the time of filing the transcript in the Court of Civil Appeals the appellant or plaintiff in error shall file with the clerk of the trial court a copy of his brief, which he shall deposit with the papers of the cause, with the date of filing indorsed thereon; and he shall forthwith give notice to the appellee or defendant in error, or his attorney of record, of the filing of such brief, and in twenty days after such notice the appellee or defendant in error shall file a copy of his brief with the clerk of said court below, and four copies with the clerk of the Court of Civil Appeals. [Acts 1st C. S. 1892, p. 42; G. L. vol. 10, p. 406.]

Art. 2284. [2116] [1418] [1417] Awaiting mandate.—Where a cause shall be removed by appeal or writ of error to the appellate court, the cause shall remain or be replaced on the docket to await the mandate of the appellate court.

Art. 2285. [2117] [1419] [1418] Return of mandate.—Upon the return of the mandate, if the judgment of the court below be reversed by the appellate court, the cause shall stand for trial in its order on the docket.

CHAPTER THIRTEEN

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1. MISCELLANEOUS

Article 2286. [2180] [1447] [1443] Writs and process.—The style of all writs and process shall be "The State of Texas;" and unless otherwise specially provided by law, every such writ and process shall be directed to the sheriff or any constable of the proper county, shall be made returnable on the first day of the next term of the court after the issuance thereof, and shall be dated and attested by the clerk with the seal of the court impressed thereon; and the date of its issuance shall be noted on the same. [Const. art. 5, sec. 12; Acts 1866, p. 199; Acts 1846, p. 363; G. L. vol. 2, p. 1117.]

Art. 2287. [2183] [1455] [1451] Neglect by officers.—Any clerk, sheriff, or other officer who neglects or refuses to perform any duty required of him under any provision of this title shall be liable to damages at the suit of any person injured, and may be punished for contempt of court. [Acts 1846, p. 363; G. L. vol. 2, p. 1669.]

Art. 2288. When judge dies during term.—If the judge dies during a session of court duly convened for the term and the time provided by law for holding said court has not expired, such death shall not operate to adjourn said court for the term, but the court shall be deemed at recess for not exceeding six days, and if no successor be appointed or elected during said recess, or if a person appointed or elected does not qualify and assume the duties of office during said recess, then the court shall be deemed to have adjourned. If a successor to such judge shall qualify and assume office during said recess, he may continue to hold said court for the term as provided, and all motions undisposed of shall be heard and determined by him, and statements of facts and bills of exception shall be approved by him. If the time for holding such court expire or the recess expire before a successor shall qualify, then all motions pending, including those in arrest of judgment or for new trial, shall stand as continued in force until such successor has qualified and assumed office, and he shall have power to act on them at the succeeding term, or on an earlier day in vacation on notice to all parties to the motion, and such orders shall have the same effect as if rendered in term time. The time of allowing statement of facts and bills of exception from such order shall date from the time the motion was decided. [Acts 1913, p. 260.]

Art. 2289. [2157–8–9–62–63] Lost records and papers.—When any papers or records are lost or destroyed during the pendency of a suit, the parties may, with the approval of the judge, agree in writing on a brief statement of the matters contained therein; or either party may supply such lost records or papers as follows:

1. After three days' notice to the adverse party or his attorney, make written sworn motion before the court stating the loss or destruction of such record or papers, accompanied by certified copies of the originals if obtainable, or by substantial copies thereof.

2. If the adverse party admit the correctness of such copies, and the court be satisfied that they are substantial copies of the originals, or on the approval of said brief statement an order shall be made substituting such copies or brief statement for the originals.

3. Such substituted copies or brief statement shall be filed with the clerk, constitute a part of the cause, and have the force and effect of the originals. [Acts 1850, p. 160, G. L. vol. 3, p. 598, P. D. 4969.]

Art. 2290. [2164–5–6] Deposits pending suit.—The officer having custody of any money, debt, script, instrument of writing, or other article paid or

deposited in court during the progress of any cause to abide the result of any legal proceeding, shall seal up in a secure package the identical money or other article so received and deposit it in some safe or bank vault, keeping it always accessible and subject to the control of the court; and he shall also keep in his office as a part of the records thereof a correct itemized statement of such deposit, on what account received, and the disposition made of the same. When his term of office expires, such officer shall turn over to his successor all of such trust funds and other property and the record book thereof, taking his receipt therefor. This article shall not exempt any officer or his surety from any liability on his official bond for any neglect or other default in regard to said property. [Acts 1876, p. 7; G. L. vol. 8, p. 843.]

Art. 2291. [2118–19–20–21–22–23] Motions.—The clerk shall keep a motion docket in which he shall enter every motion filed in his court, the names of the parties and their attorneys, a brief statement of its nature, and the number of the suit in which it is made if it relates to a suit pending. Service of notice on a party may be made, when necessary, either by the proper sheriff or constable or by any person competent to testify, and may be served in like manner as an original writ, either on the party or his attorney of record. The return of such notice when made by such officer or person, verified by his affidavit, shall be prima facie evidence of the fact of service. If the time of service is not elsewhere prescribed, the adverse party is entitled to three days' notice of a motion not relating to a pending suit, and such motions shall be taken up and disposed of in their order as other suits are required to be. Notice of a motion in a suit pending is given by filing the motion and its entry in the motion docket during the term, and such motion which does not go into the merits of the case may be disposed of at any time before the trial of the case. [Acts 1846, p. 363; G. L. vol. 2, p. 1669.]

Art. 2292. [2124–5–6–7] Audit.—When an investigation of accounts or examination of vouchers appears necessary for the purpose of justice between the parties to any suit, the court shall appoint an auditor or auditors to state the accounts between the parties and to make report thereof to the court as soon as possible. The auditor shall verify his report by his affidavit stating that he has carefully examined the state of the account between the parties, and that his report contains a true statement thereof, so far as the same has come within his knowledge. Said report shall be admitted in evidence, but may be contradicted by evidence from either party where exceptions to such report or of any item thereof have been filed before the trial. The court shall award reasonable compensation to such auditor to be taxed as costs of suit. [Acts 1846, p. 389; G. L. vol. 2, p. 1695.]

2. RECEIVERS

Art. 2293. [2128] [1465] Appointment.—Receivers may be appointed by any judge of a court of competent jurisdiction of this State, in the following cases:

1. In an action by a vendor to vacate a fraudulent purchase of property; or by a creditor to subject any property or fund to his claim; or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or any party whose right to or interest in the property or fund or the proceeds thereof is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.

2. In an action by a mortgagee for the foreclosure of his mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed or materially injured; or that the condition of the mortgage has not been performed and the property is probably insufficient to discharge the mortgage debt.

3. In cases where a corporation is insolvent or in imminent danger of insolvency; or has been dissolved or has forfeited its corporate rights.

4. In all other cases where receivers have heretofore been appointed by the usages of the court of equity. [Acts 1887, p. 119; G. L. vol. 9, p. 917; Acts 1889, p. 55; G. L. vol. 9, p. 1083.]

Art. 2293a. Appointment for church or congregation.—Sec. 1. That the judge of any district court, or other court having jurisdiction, is hereby authorized and required in term, time, or on vacation, to appoint a receiver or receivers for any defunct or disorganized church or congregation when the fact of such condition is brought to the attention of such court by an application for the appointment of a receiver or receivers for such defunct or disorganized church or congregation.

Sec. 5. The term "church or congregation" is meant to refer to a local congregation of believers in Christ, and not to a denomination or communion as a whole.

Sec. 6. The terms "defunct or disorganized" are meant to apply to an organization which formerly maintained regular forms of work and worship in a given community such as the Bible School, Communion services, preaching services, etc., at regular interval [intervals], and which has ceased to function in these and similar capacities as a church for a period of one or more years. [Acts 1927, 40th Leg., p. 68, ch. 45.]

Art. 2294. [2129–30] Qualifications.—A receiver for property within or partly within and partly without this State must, when appointed, be a bona fide citizen and qualified voter of this State, and if so qualified and appointed he shall keep and maintain actual residence in this State during the pendency of such receivership; if not so qualified, his appointment as such receiver shall be void in so far as the property within this State is concerned. No party, attorney, or any person interested in any way in an action for the appointment of a receiver shall be appointed receiver therein. [Id.]

Art. 2294a. Member of church or congregation.—That the receiver or receivers appointed for any such defunct or disorganized church or congregation, shall be a member or members of an active church or congregation of like faith and order, or shall be a recognized missionary or ecclesiastical body of like faith or order, denomination or communion; and in case any such denomination or communion of like faith and order, shall have a State Missionary Society, or shall hereafter appoint, elect or organize, or cause to be appointed, elected or organized, such a State Missionary Society, and shall authorize the same to act as a receiver or trustee for such denomination or communion, then such State Missionary Society, or other similar organization so formed and named, shall be appointed to serve as receiver or trustee by said court. [Acts 1927, 40th Leg., p. 68, ch. 45, § 2.]

Art. 2295. [2131] [1468] Quo warranto.—Where a domestic corporation owning property in this State shall have a receiver of such property appointed who is not a bona fide citizen and qualified voter of this State, said corporation shall thereby forfeit its charter; and the Attorney General shall at once prosecute a suit by quo warranto against said corporation so offending to forfeit its charter. The court trying the cause shall forfeit the charter of said corporation upon proof that a person has been appointed receiver of its property situated in this State who is not so qualified. [Id.]

Art. 2296. [2132] [1369] Oath and bond.—When a receiver is appointed, he shall, before he enters upon his duties, be sworn to perform them faithfully, and shall execute a good and sufficient bond, to be approved by the court appointing him, in the sum fixed by the court, conditioned that he will faithfully discharge his duty as receiver in the action (naming it) and obey the orders of the court therein. [Acts 1887, p. 120.]

Art. 2297. [2133] [1470] Receiver's power.—The receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to receive rents, collect, compound for, com-

promise demands, make transfers, and generally to do such acts respecting the property as the court may authorize. [Id.]

Art. 2297a. Receiver of church or congregation.—That it shall be the duty of such trustee or trustees when so appointed, to take charge of all property, real, personal or mixed, and choses in action, belonging to such defunct or disorganized church or congregation and administer the same under the direction of the court making the appointment, for the best interest of such defunct or disorganized church or congregation; and where necessary to preserve the property, to sell the same under the order of said court; and in case said court shall be of the opinion that said church or congregation may not be revived or reorganized within a reasonable time, it shall be the duty of said court to order all of said property sold at public or private sale, and the proceeds received from such sale or sales shall be turned over and delivered to said trustee or trustees to be used by them for a church or congregation, denomination or communion or organization of like faith and order. [Acts 1927, 40th Leg., p. 68, ch. 45, § 3.]

Art. 2298. [2134] [1471] Investing funds.—The funds in the hands of a receiver may be invested upon interest by order of the court, but no such order shall be made except upon consent of all the parties to the action. [Id.]

Art. 2299. [2135] [1472] Application of funds.—All moneys that come into the hands of a receiver as such receiver shall be applied as follows, to the payment:

1. Of all court costs of the suit.
2. Of all wages of employés due by the receiver.
3. Of all debts due by the receiver for materials and supplies purchased during receivership by the receiver for the improvement of the property in his hands as receiver.
4. Of all debts due for betterments and improvements done during receivership to the property in his hands as such receiver.
5. Of all claims and accounts against the receiver on contracts made by the receiver during the receivership, and of personal injury claims and claims for stock against said receiver accruing during said receivership, and all judgments rendered against said receiver for personal injuries and for stock killed.
6. Of all judgments recovered against persons or corporations in suits brought before the receiver in the action.

As to all money coming into the hands of a receiver which are the earnings of the property in his hands, said claims shall have a preference lien on the same, and the receiver shall pay the same on the claims against him in the order of preference named above, and the court shall see that he does so. [Id.]

Art. 2300. [2136] [1473] Discharge of receiver.—If a receiver is discharged pending suits against him for causes of action growing out of and arising during the receivership, the cause of action shall not abate, but may be prosecuted to final judgment against the receiver; and the plaintiff may make the party or corporation to whom the receiver has delivered the property a party to the suit. If judgment is finally rendered in favor of the plaintiff against the receiver, the court shall also enter judgment in favor of the plaintiff against the party to whom the property was delivered by the receiver. [Id.]

Art. 2301. [2137] [1472] When property subject to execution.—Where there is a judgment against a receiver and he shall have in possession moneys subject to the payment of such judgment, and the plaintiff owning the judgment shall apply to the court appointing the receiver for an order to pay said judgment, and if said court should refuse to order said judgment paid, when there is money in the hands of said receiver subject to the payment of the judgment, then the court rendering the judgment shall order an execution to issue on said judgment against said receiver upon the filing by the plaintiff in the court where the judgment was rendered an affidavit reciting that the plaintiff had applied to the court appointing the receiver for an order for said receiver to pay said judgment, and that it was shown to the court that there was money in the hands of the receiver at that time which was subject to the payment of the judgment, and that said court refused to order him to pay the judgment. Said execution when so issued shall be levied upon any property in the hands of the receiver and the same shall be sold as under ordinary execution; and a sale of the property will convey the title of the same to the purchaser. [Id.]

Art. 2302. [2138] [1475] Judgments first lien on property.—All judgments rendered against a receiver for causes of action arising during the receivership shall be a lien upon all property in the hands of the receiver superior to the mortgage lien. If the property should be turned back into the possession of the party or corporation owning same at the time of the appointment of a receiver, or any one for them, or to their assigns or purchasers, the party or corporation so receiving said property from said receiver shall take said property charged with all of the unpaid liabilities of the receiver occurring during the receivership, to the value of the property delivered by the receiver. [Id.]

Art. 2303. [2139] [1476] Persons liable for debts.—If a receiver is discharged by the court before all of the liabilities of the receiver arising during the receivership are settled in full, then the person, persons, or corporation to whom the receiver delivers the property that was in his hands as receiver shall be liable to the persons having claims against said receiver for the full amount of the liabilities. [Id.]

Art. 2304. [2140] [1477] Effect of discharge.—The discharge of a receiver shall not work an abatement of the suit against a receiver nor in any way affect the right of the party to sue the receiver if he sees proper. [Id.]

Art. 2305. [2141] [1478] Property liable for debts.—When property has been returned to the original owner without any sale of said property, such owner shall be liable for all of the unpaid liabilities of the receiver in causes of action arising out of and during the receivership, and the plaintiff may make such owner to whom the property was delivered a party defendant along with the receiver; and, if judgment is rendered against the receiver upon a cause of action arising out of and during the receivership, then the court shall also, at the same time, render judgment against such defendants for the amount so found for plaintiff; and plaintiff shall have the right to foreclose his lien on the property so returned. [Id.]

Art. 2306. [2142] [1479] Outstanding liabilities at discharge.—If at the date of the discharge of a receiver there exists against him any judgments or unpaid claims not sued on which arose during the receivership, then such claims and judgments shall be a preference lien on all of the property that was in the receiver's hands as such at said date superior to the mortgage lien; and the person or corporation to whom the receiver has delivered such property shall be liable for such claims and judgments to the value of such property. [Id.]

Art. 2307. [2143] [1480] Liability of receiver and person to whom property is delivered.—Any person having a claim against a receiver not sued on at the date of the discharge of the receiver, shall have the right to sue said receiver, either alone or jointly, with the person or corporation to whom the receiver delivered said property that was in his hands as such receiver; and, if any judgment is rendered against said receiver, a judgment shall also be rendered against the person or corporation for the same amount that is rendered against the receiver, not to exceed the value of the property so received by said person or corporation. [Id.]

Art. 2308. [2144] [1481] Receiver to give bond on appeal.—In a suit against a receiver, if the receiver desires to appeal or apply for a writ of error from judgment rendered against him, before such ap-

peal or writ of error shall be perfected or allowed, such receiver shall enter into bond with two or more good and sufficient sureties, to be approved by the clerk of the court or justice of the peace, payable to the appellee or the defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such receiver shall prosecute his appeal or writ of error with effect; and, in case the judgment of the court to which such appeal or writ of error be taken shall be against him, that he will perform its judgment, sentence, or decree, and pay all such damages and costs as said court may award against him. If the judgment of the appellate court shall be against such receiver, judgment shall, at the same time, be entered against the sureties on his said bond, and execution thereon may issue against such sureties within twenty days after such judgment is rendered. [Id.]

Art. 2309. [2145] [1482] Deposit of railroad funds.—When a line of railroad operated by a receiver lies wholly within this State, all money which comes into the hands of the receiver, whether from operating the road or otherwise, shall be kept and deposited in such place within this State as the court may direct, until properly disbursed; but, if any portion of the road lies in another State, the receiver shall be required to deposit in this State at least such share of the funds in his hands as is proportioned to the value of the property of the company within this State.

Art. 2310. [2146] [1483] Suit by or against.—When property within the limits of this State has been placed in the hands of a receiver who has taken charge of such property, such receiver may, in his official capacity, sue or be sued in any court of this State having jurisdiction of the cause of action, without leave of the court appointing him. If judgment is recovered against said receiver, the court shall order said judgment paid out of any funds in the hands of said receiver as such receiver. [Id.]

Art. 2311. [2147] [1484] Venue of suit against.—Actions may be brought against the receiver of the property of any person where said person resides; and against receivers of a corporation in the county where the principal office of said corporation may be located, and against receivers of railroad companies in any county through or into which the road is constructed. Service of summons may be had upon the receiver, or upon the general or division superintendent of the road, or upon any agent of said receiver who resides in the county where the suit is brought.

Art. 2312. [2150] [1488] Venue to appoint.—If the property sought to be placed in the hands of a receiver is a corporation whose property lies within this State, or partly within this State, then the action to have a receiver appointed shall be brought in this State in the county where the principal office of said corporation is located. [Id.; Acts 1927, 40th Leg., p. 20; ch. 13, § 1.]

Art. 2313. [2149] [1487] Jurisdiction to appoint.—When a person resides in this State and a receiver is applied for, or if the property sought to be placed in the hands of a receiver is situated within the limits of this State, no court other than one within the limits of this State, shall have power to appoint any receiver of said property. [Id.]

Art. 2314. [2148] [1486] Inventory by receiver.—The receiver as soon after his appointment as possible, shall return to the court appointing him a true and correct inventory of all property received by him as such receiver. [Id.]

Art. 2315. [2151] [1489] Where there are betterments, etc.—When a receiver of a corporation has, under the order of the court appointing him, made improvements upon the property and purchased rolling stock, machinery, and made other improvements whereby the value of the property of said corporation has been increased, or has extended a road, or acquired any property in connection with said road, and has paid for same out of the current receipts of the corporation that came into his hands as receiver, then, if there be any floating debts against said corporation, said corporation shall be made to contribute to the floating indebtedness to the full value of the money so spent by said receiver as aforesaid. When there are liens of any kind upon the property of said corporation in the hands of such receiver, and said property is sold under the order of the court, and said liens foreclosed, then the court appointing such receiver, if there be any unpaid debts or judgments, or claims against the corporation itself, shall detain in the hands of the clerk of the court money to the full value of the improvements made by the receiver of the property sold, and pay the same over to whoever has or may have a claim, debt, or judgment against said corporation; and the court, in ordering the sale of the property, shall require sufficient cash to be paid in at date of sale to cover the full value of the improvements so made by said receiver out of the current funds received by him from the property while receiver. [Id.]

Art. 2316. [2152] [1490] Preference claims.—All judgments, claims, or causes of action when determined, existing against any corporation at the time of the appointment of a receiver, shall be paid out of the earnings of such corporation while in the hands of the receiver, to the exclusion of mortgage action; and the same shall be a lien on such earnings. [Id.]

Art. 2317. [2153] [1491] Receivership of corporation limited.—No corporation shall be administered in any court for more than three years from the date of such appointment; and within three years such court shall wind up the affairs of such corporation, unless prevented by appeal of litigation. [Id.]

Art. 2318. [2154] [1492] Application for receiver.—No receiver of a joint stock or incorporated company, co-partnership or private person shall ever be appointed on the petition of such joint stock or incorporated company, partnership or person. A stockholder or stockholders of such joint stock or incorporated company may have his or their action against such company, and may have a receiver appointed as in ordinary cases. Nothing herein shall prevent a member of any co-partnership from having a receiver appointed whenever a cause of action arises between the co-partners. [Id.]

Art. 2319. [2155] [1493] Rules of equity shall govern.—In all matters relating to the appointment of receivers, and to their powers, duties and liabilities, and to the powers of the court in relation thereto, the rules of equity shall govern whenever the same are not inconsistent with any provision of this chapter and the general laws of the State. [Id.]

Art. 2320. [2156] [1485] Master in chancery.—After a receiver has been appointed and qualified, the court shall, in every case, appoint a master in chancery who shall be a citizen of this State, and not an attorney for either party to the action, nor related to either party, who shall perform all of the duties required of him by the court, and shall be under orders of the court, and have such power as a master of chancery has in a court of equity. [Acts 1887, p. 121; G. L. vol. 9, p. 919.]

3. OFFICIAL COURT REPORTER

Art. 2321. [1920–21] Appointment and examination.—Each district and criminal district judge shall appoint an official court reporter who shall be a sworn officer of the court and shall hold his office during the pleasure of the court. Before any person is so appointed, the judge shall assign three attorneys practicing in said court to examine said applicant as to his competency as follows: The applicant shall, in the presence of such committee, write at the rate of at least one hundred and seventy-five words per minute for five consecutive minutes from questions and answers submitted to him, not counting the words "question" and "answer," and shall transcribe the

same with accuracy. If the applicant passes this test satisfactorily a majority of the committee shall furnish him with a certificate of that fact, which shall be filed among the records of the court and be recorded by the clerk in the minutes thereof. As to subsequent appointments, the presentation of a certified copy from said clerk of said certificates shall be prima facie evidence of the applicant's competency. No examination by any committee shall be required of an applicant who has been official stenographer of any district court in this State for not less than two years prior to his application. [Acts 1911, p. 264.]

Art. 2322. [1922] Oath.—Said reporter in addition to taking the official oath shall subscribe to an oath to be administered to him by the district clerk to the effect that he will well and truly in an impartial manner keep a correct record of all evidence offered in each case reported by him, together with the objections and exceptions made by the parties to such suit, and the rulings and remarks of the court in passing upon the admissibility of testimony. [Id.]

Art. 2323. [1928] Deputy reporter.—In case of illness, press of official work, or unavoidable disability of the official shorthand reporter to perform his duties in reporting proceedings in court, the judge of the court may, in his discretion, authorize a deputy shorthand reporter to act during the absence of said official shorthand reporter, and said deputy shorthand reporter shall receive, during the time he acts for said official shorthand reporter, the same salary and fees as the official shorthand reporter of said court, to be paid in the manner provided for the official shorthand reporter; but the said official shorthand reporter shall also receive his salary in full during said temporary disability to act. The necessity for a deputy official shorthand reporter shall be left entirely within the discretion of the judge of the court. [Acts 1925, p. 670.] [39th Leg., ch. 202, § 1.]

Art. 2324. [1923–4–6] Duty of reporter.—Each official court reporter shall:

Attend all sessions of the court, take full shorthand notes of all oral testimony offered in every case tried in said court, together with all objections to the admissibility of the evidence, the rulings and remarks of the court thereon, and all exceptions thereto.

Preserve all shorthand notes taken in said court for future use or reference for a full year, and furnish to any person a transcript in question and answer form or narrative form of all such evidence or other proceedings, or any portion thereof as such person may order, upon the payment to him of the fees provided by law.

When any party to any suit reported by any such reporter shall desire a transcript of the evidence in said suit, said party may apply for same and shall i[n]dicate whether he desires same in question and answer form or in narrative form. In the event such transcript should be ordered in question and answer form, then such reporter shall make the same up in duplicate in question and answer form, and shall receive as compensation therefor the sum of fifteen cents per hundred words for the original. In the event said transcript should be ordered made in narrative form, then such reporter shall make up same in duplicate in narrative form, and shall receive as compensation therefor the sum of twenty cents per hundred words for the original; provided, that in case any reporter charges more than the fees herein allowed he shall be liable to the person paying the same a sum equal to four times the excess so paid. [Acts 1925, p. 670.] [39th Leg., ch. 202, § 1.]

Art. 2325. [1925] Fees.—The official court reporter shall receive as fees for making a transcript of the evidence given in civil cases the sum of fifteen cents per one hundred words when made in question and answer form and twenty cents per one hundred words when made in narrative form. He shall also receive the sum of fifteen cents per one hundred words for preparing statements of facts. No charge shall be made in any case for duplicate copies. [Acts 1911, p. 264; Acts 3rd C. S. 1920, p. 88.]

Art. 2326. [1925] Compensation.—The official shorthand reporter of each judicial district in this State and the official shorthand reporter of any county court, either civil or criminal, in this State, shall receive a salary of two thousand one hundred dollars per annum, in addition to the compensation for transcript fees as provided for in this Act. Said salary shall be paid monthly by the commissioners' court of the county, out of the general fund of the county, upon the certificate of the district judge. In judicial districts of this State composed of two or more counties said salary shall be paid monthly by the counties of the district in proportion to the number of weeks provided by law for holding court in the respective counties in the district; provided, that in a district wherein in any county the term may continue until the business is disposed of, each county shall pay in proportion to the time court is actually held in such county. [Acts 1925, p. 670.] [39th Leg., ch. 202, § 1.]

Art. 2327. [1932] In county court.—When either party to a civil case pending in the county court or county court at law applies therefor, the judge thereof shall appoint a competent stenographer, if one be present, to report the oral testimony given in such case. Such stenographer shall take the oath required of official court reporters, and shall receive not less than five dollars per day, to be taxed and collected as costs. In such cases the provisions of this title with respect to the preparation of the statement of facts, the time to be allowed therefor, and for the presentation to the opposite party, and the approving and filing thereof by the court, shall apply to all statements of facts in civil cases tried in said courts, and all provisions of law governing statement of facts and bills of exception to be filed in district courts and the use of same on appeal, shall apply to civil cases tried in said courts. [Acts 1911, p. 264.]

4. MANDAMUS

Art. 2328. [5731] [1450] [1446] On ex parte hearing.—No mandamus shall be granted on ex parte hearing; and any peremptory mandamus granted without notice shall be abated on motion. [Acts 1846, p. 300, sec. 4; P. D. 1407.]

TITLE 43

COURTS—JUVENILE

Art.
2329. Juvenile court.
2330. "Dependent or neglected child."
2331. Who may institute proceedings.
2332. Citation.
2333. Hearing.
2334. Jury.
2335. Adjudication.
2336. Disposition of child.
2337. Custody of child.
2338. Care of delinquent child.

Article 2329. [2185–2192] Juvenile Court.—When it is sought to have a child adjudged to be a "delinquent child," as that term is defined in Article 1083 of the Code of Criminal Procedure, the county courts, district courts, and the criminal district courts shall have original jurisdiction in all such proceedings. When disposing of such cases the court may be known as the Juvenile Court, and shall at all times be deemed in session for the purpose of disposing of such cases, and shall have a juvenile docket. The district court only shall have original jurisdiction in all proceedings wherein it is sought to have a child adjudged to be a dependent or neglected child, and its findings in such cases shall be entered in a book kept for that purpose to be known as the "Juvenile Record." [Acts 1907, p. 137; Acts 1913, p. 214; Acts 4th C. S. 1918, p. 43.]

Art. 2330. [2184] "Dependent or neglected child."—The term "dependent child" or "neglected child" includes any child under sixteen years of age who is dependent upon the public for support or who

is destitute, homeless or abandoned; or who has not proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill fame or with any vicious or disreputable person, or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such child; or any such child whose parents or guardian permit it to use intoxicating liquor except for medicinal purposes or to become addicted to the use of such liquors, or permits it in or about any place where intoxicating liquors are sold. [Acts 1907, p. 135.]

Art. 2331. [2186] Who may institute proceedings.—Any person who is a resident of the county, having knowledge of a child in his county who appears to be a "dependent" or "neglected" child may file with the district clerk of his county a written petition, setting forth the facts constituting the child "dependent" or "neglected;" which petition shall be verified by the affidavit of the petitioner. It shall be sufficient, if the affidavit shall be upon information and belief. Such petition shall set forth the name of the parent or parents of such child, if known, and their residence; and if such child has no parent living, then the name and residence of the guardian of such child, if it has one. [Id.]

Art. 2332. [2187] Citation.—Upon the filing of such petition, the judge of said court shall fix the day and time for the hearing of such petition. If it appears that one or both of such parents, or guardian, if there be no parents, reside in said county, the clerk of said court shall immediately issue citation; which citation shall include a copy of the petition, which shall be served on such parent, parents, or guardian, if any, if either can be found in said county, not less than two days before the time fixed for said hearing, requiring them to appear on said day and hour to show cause, if any, why such child should not be declared by said court to be a "dependent" and "neglected" child. Such citation shall be served by the sheriff or any constable of the county. If it appears from the petition that neither of said parents are living, or do not reside in said county and that said child has no guardian residing in said county, or in case one or both of said parents, or the guardian in case there be no parents, shall indorse on said petition a request that the child be declared a "dependent child," then the citation herein provided for shall not be issued; and the court may thereupon proceed to a hearing of the case. In case neither of the parents or guardian is found, then the court shall appoint some suitable person to represent said child in said cause. [Id.]

Art. 2333. [2188] Hearing.—Upon such hearing of such case the child shall be brought before said court; whereupon, the court shall investigate the facts, and ascertain whether the child is a "dependent child," its residence, and, as far as possible, the whereabouts of its parents or near adult relatives, when and how long the child has been maintained, in whole or in part, by private or public charity, the occupation of the parents, if living, whether they are supported by the public or have abandoned the child, and to ascertain, as far as possible, if the child is found dependent, the cause thereof. The court may compel the attendance of witnesses on such examination; and the clerk shall issue all process and the sheriff and other officers of the court shall serve the same as in other cases. The county attorney, when requested by the court, shall appear in any such examination in behalf of the petition. It shall be the duty of the county attorney of such county, upon the request of the court or any petitioner, to file a petition and to conduct any necessary proceedings in any case within the provisions of this title. [Id.]

Art. 2334. Jury.—Any person interested in any case under this title may appear therein and may be represented by counsel, and may demand a jury as in other cases. If no jury is demanded, it shall be deemed to have been waived. The judge of the court, of his own motion, may order a jury to try such case. [Id.]

Art. 2335. [2189] Adjudication.—Upon the hearing of such case, if the said child shall be found to be a dependent or neglected child, as defined herein, it shall be adjudged a "dependent child;" and an order may be entered making disposition of said child as to the court seems best for its moral and physical welfare. It may be turned over to the care and custody of any suitable person or any suitable institution in the county or State organized for the purpose of caring for "dependent children," and which is able and willing to care for same. And when such child is so turned over to the custody of such person or institution, such person or institution shall have the right to the custody of said child, and shall be at all times responsible for its education and maintenance, subject at all times to the order of the court. [Id.]

Art. 2336. Disposition of child.—In any case where the court shall award any dependent or neglected child to the care of any individual or institution in accordance with the provisions of this title, the child, unless otherwise ordered, shall become a ward and be subject to the guardianship of the institution or individual to whose care it is committed. Such institution or individual shall, with the consent of the court, have authority to place such child in a suitable family home, the head of such family being responsible for the maintenance and education of said child. Any institution or individual receiving any such child under the order of the court shall be subject to visitation or inspection by any person appointed by the court for such purpose; and the court, may at any time, require from any institution or person a report containing such information as the court shall deem proper or necessary, to be fully advised as to the care, education, maintenance and moral and physical training of the child, as well as the standing and ability of such institution or individual to care for such child. The court may change the guardianship of such child, if, at any time, it is made to appear to the court such change is to the best interest of the child. If, in the opinion of the court, the causes of the dependency of any child may be removed under such conditions or supervisions for its care, protection and maintenance as may be imposed by the court, so long as it shall be for its best interests, the child may be permitted to remain in its own home and under the care and control of its own parent, parents or guardian, subject to the jurisdiction and direction of the court; and when it shall appear to the court that it is no longer to the best interests of such child to remain with such parents or guardian, the court may proceed to a final disposition of the case. [Id.]

Art. 2337. Custody of child.—In case any child is adjudged to be dependent or neglected under this title then such parents or guardian shall thereafter have no right over or to the custody, services or earnings of said child except upon such conditions in the interest of such child as the court may impose, or where, upon proper proceedings, such child may lawfully be restored to the parents or guardian. [Id.]

Art. 2338. Care of delinquent child.—In any case of a "delinquent child," the court may continue the hearing from time to time and may commit the child to the care of a probation officer, or to the care or custody of any other proper person, and may allow said child to remain in its own home, subject to visitation of the probation officer or other person designated by the court, or under any other conditions that may seem proper and be imposed by the court; or the court may cause the child to be placed in the home of a suitable family, under such conditions as may be imposed by the court, or it may authorize the child to be boarded out in some suitable family, in case provision is made, by voluntary contribution or otherwise, for the payment of the board of such child until suitable provision may be made in a home without such payment; or the court may commit it to any institution in the county that may care for children that is willing to receive it, or which may be provided

for by the State or county, suitable for the care of such children, willing to receive it, or of any State institution for boys or girls, willing to receive such child, or to any other institution in the State of Texas for the care of such children willing to receive it. In no case shall a child proceeded against under this law be committed beyond the age of twenty-one. The order of the court committing such child to the care and custody of any person shall prescribe the length of time and the conditions of such commitment. Such order shall be subject to change by further orders of the court with reference to said child; and the court shall have the power to change the custody of such child or to entirely discharge it from custody whenever, in the judgment of the court, it is to the best interest of the child to do so. [Acts 1913, p. 218.]

TITLE 44

COURTS—COMMISSIONERS

1. COMMISSIONERS COURTS

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1. COMMISSIONERS COURTS

Article 2339. [2236] [1532] [1509] Election.—Each county shall be divided into four commissioners precincts, and one commissioner shall be elected bienially [biennially] in each precinct, and each commissioner shall hold his office for two years. [Const. art. 5, sec. 18; Acts 1876, p. 51, sec. 3; G. L. vol. 8, p. 887.]

Art. 2340. [2239] [1535] [1512] Oath and bond.—Before entering upon the duties of their office, the county judge and each commissioner shall take the official oath, and shall also take a written oath that he will not be directly or indirectly interested in any contract with, or claim against, the county in which he resides, except such warrants as may issue to him as fees of office. Each commissioner shall execute a bond to be approved by the county judge in the sum of three thousand dollars, payable to the county treasurer, conditioned for the faithful performance of the duties of his office, that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not vote or give his consent to pay out county funds except for lawful purposes. [Acts 1923, p. 14.]

Art. 2341. [2240] [1536] [1513] Vacancy.—In case of vacancy in the office of commissioner, the county judge shall appoint some suitable person living in the precinct where such vacancy occurs, to serve as commissioner for such precinct until the next general election. [Acts 1876, p. 51; G. L. vol. 8, p. 887.]

Art. 2342. [2237] [1533] [1510] The Court.—The several commissioners, together with the county judge, shall compose the "Commissioners Court," and the county judge, when present, shall be the presiding officer of said court. [Const. art. 5, sec. 18; Acts 1876, p. 51; G. L. vol. 8, p. 887.]

Art. 2343. [2238] [1534] [1511] Quorum.—Any three members of the said court, including the county judge, shall constitute a quorum for the transaction of any business, except that of levying a county tax. [Id.]

Art. 2344. [2278] [1566] [1529] Seal.—Each commissioners court shall have a seal, whereon shall be engraved a star with five points, the words, "Commissioners Court, ——— County, Texas," (the blank to be filled with the name of the County) which seal shall be kept by the clerk of said court and used in authentication of all official acts of the court, or of the presiding officer or clerk of said court, in all cases where a seal may be necessary for the authentication of any of said acts. [Acts 1876, p. 53; G. L. vol. 8, p. 889.]

Art. 2345. [2279] [1557] [1530] The clerk.—The county clerk shall be ex-officio clerk of the commissioners court; and he shall attend upon each term of said commissioners court; preserve and keep all books, papers, records and effects belonging thereto, issue all notices, writs and process necessary for the proper execution of the powers and duties of the commissioners court, and perform all such other duties as may be prescribed by law. [Id.]

Art. 2346. [2280–1] [1558–9] [1531–2] Process.—All notices, citations, writs and process issued from said court shall be in the name of the "State of Texas," and shall be directed to the sheriff or any constable of a county and shall be dated and signed officially by the clerk, and shall have the seal of the court impressed thereon. All process of said court, when not otherwise directed by law shall be executed at least five days before the return day thereof, which return day shall be specified in the process. Subpœnas for witnesses may be executed and returned forthwith when necessary. [Id.]

Art. 2347. [2282] Notice posted.—Whenever the commissioners court shall be unable to secure the publication of any notice or report required by law in the manner and for the fee provided therefor, such notice or report may be made and published by posting one copy of such notice at the courthouse door, and one of said copies shall be posted at some public place in each commissioners precinct for thirty days prior to the next succeeding term of the commissioners court. No two such copies shall be posted in the same town or city. [Acts 1899, p. 39.]

Art. 2348. [2274–5] [1552–3] [1525–6] Regular terms.—The regular terms of the commissioners court shall be commenced and be held at the court house on the second Monday of each month throughout the year and may continue in session one week; provided the court need not hold more than one session each quarter if the business of the court does not demand a session. Any session may adjourn at any time the business of the court is disposed of. Special terms may be called by the county judge or three of the commissioners, and may continue in session until the business is completed. [Acts 1876, p. 53; Acts 1911, p. 198; G. L. vol. 8, p. 889.]

Art. 2349. [2276–7] Minutes.—The court shall require the county clerk to keep suitable books in which shall be recorded the proceedings of each term of the court; which record shall be read and signed after each term by the county judge, or the member presiding and attested by the clerk. The clerk shall also record all authorized proceedings of the court between terms; and such record shall be read and signed

on the first day of the term next after such proceedings occurred. [Id.]

Art. 2350. County commissioners' salaries.—In counties having the following assessed valuations respectively, the county commissioners of such counties shall each receive the annual salaries herein specified, to be paid in equal monthly installments out of the general funds of the county:

Assessed Valuation	Salary
$ 6,500,000 and less than $ 10,000,000	$1,200.00
$ 10,000,000 and less than $ 12,500,000	$1,500.00
$ 12,500,000 and less than $ 20,750,000	$1,800.00
$ 20,750,000 and less than $ 25,000,000	$2,000.00
$ 25,000,000 and less than $ 30,000,000	$2,250.00
$ 30,000,000 and less than $100,000,000	$2,400.00
$100,000,000 and less than $200,000,000	$3,600.00
$200,000,000 and over	$4,200.00

In counties having an assessed valuation of less than $6,500,000 each county commissioner shall receive five dollars per day for each day served as commissioner and when acting as ex-officio road superintendent in his precinct, not to exceed one thousand dollars in any year. In counties whose assessed valuation is $100,000,000 or more, said commissioners shall devote their entire time to the duties required of them by law and such other duties as their Commissioners' Court may require of them. "Assessed valuation" means the total assessed valuation of all properties as shown by the tax rolls certified by the county assessor, approved by the Commissioners' Court and approved by the Comptroller for the previous year, provided that nothing herein shall affect any local or special law. [Acts 1925, p. 340.] [39th Leg., ch. 135, § 1; Acts 1927, 40th Leg., p. 435, ch. 490, § 1; Acts 1927, 40th Leg., 1st C. S., p. 138, ch. 46, § 1.]

Art. 2350a. County commissioners' salaries.—Each county commissioner in each of the counties of of all judicial districts of Texas, composed of two counties as of date January 1, 1925, which said counties comprising such judicial districts had a total population of not less than thirty-five thousand nor more than forty-one thousand inhabitants, according to the last United States census, and which said counties have an aggregate area of not less than 1890 square miles according to the records of the General Land Office of Texas, may receive eighteen hundred ($1,800.00) per annum from the general funds of such counties, payable in twelve equal monthly installments, as compensation for all services rendered of whatsoever nature, whether in connection with the roads of the county, or in connection with other county business. [Acts 1925, p. 229.] [39th Leg., ch. 72, § 1.]

Art. 2350b. Salary of county commissioners.—Each county commissioner in counties having a population of not less than 17,000 according to the United States census of 1920, and which have an area of not less than 1060 square miles, nor more than 1200 square miles and which have assessed property valuations of not less than $10,000,000 and which do not contain a town or city of 7,500 population or more, may receive a salary of eighteen hundred ($1,800.00) dollars per annum, payable in twelve equal monthly installments, as compensation for their services rendered, of whatever nature, either in connection with the roads of the county, or in connection with other county business. The amount of salary to be received by commissioners in counties classed as herein set out, shall be fixed by an order of the commissioners' court passed at a regular term of such court, and entered upon its minutes; provided that nothing herein shall effect or apply to the counties of Grimes, Houston, Leon, Madison, Montgomery, Polk, San Jacinto, Trinity and Walker in said State. [Acts 1925, p. 302.] [39th Leg., ch. 118, § 1.]

Art. 2350c. [6901a] Salary of county commissioners.—In all counties having an assessed valuation of all taxable properties of one hundred million ($100,000,000) dollars or more, based upon the approved tax rolls for the year 1923, the county commissioners shall devote their entire time to the duties required of them by law and such other duties as may be required of them by the commissioners' court of their respective counties, and may each receive a salary of three thousand six hundred ($3,600.00) dollars per annum, payable in equal monthly installments, and this salary shall be in lieu of all other fees and per diem of all kinds now allowed by law; provided that in all counties, having an assessed valuation of all taxable property of less than ten million ($10,000,000.00) dollars, based upon the approved tax rolls for the year 1923, the county commissioners of the several counties shall each receive five ($5.00) dollars per day for each day served as commissioner and when acting as ex-officio road supervisors of their precinct, they shall each receive five ($5.00) dollars for each day actually served in supervising the construction or repair of the public roads in their respective precincts; provided that each commissioner shall, in no event, receive more than one thousand ($1,000.00) dollars in any one year for such service. [Id., p. 386.] [39th Leg., ch. 171.]

2. POWERS AND DUTIES

Art. 2351. [2241] [1537] [1514] Certain powers specified.—Each commissioners court shall:

1. Lay off their respective counties into precincts, not less than four, and not more than eight, for the election of justices of the peace and constables, fix the times and places of holding justices courts, and shall establish places in such precincts where elections shall be held; and shall establish justices precincts and justices courts for the unorganized counties as provided by law.
2. Establish public ferries whenever the public interest may require.
3. Lay out and establish, change and discontinue public roads and highways.
4. Build bridges and keep them in repair.
5. Appoint road overseers and apportion hands.
6. Exercise general control over all roads, highways, ferries and bridges in their counties.
7. Provide and keep in repair court houses, jails and all necessary public buildings.
8. Provide for the protection, preservation and disposition of all lands granted to the county for education or schools.
9. Provide seals required by law for the district and county courts.
10. Audit and settle all accounts against the county and direct their payment.
11. Provide for the support of paupers and such idiots and lunatics as cannot be admitted into the lunatic asylum, residents of their county, who are unable to support themselves. By the term resident as used herein, is meant a person who has been a bona fide inhabitant of the county not less than six months and of the State not less than one year.
12. Provide for the burial of paupers.
13. Punish contempts by fine not to exceed twenty-five dollars or by imprisonment not to exceed twenty-four hours, and in case of fine, the party may be held in custody until the fine is paid.
14. Issue all such notices, citations, writs and process as may be necessary for the proper execution of the powers and duties imposed by such court and to enforce its jurisdiction.
15. Said court shall have all such other powers and jurisdiction, and shall perform all such other duties, as are now or may hereafter be prescribed by law. [Const. art. 5; Acts 1876, p. 51; G. L. vol. 8, p. 887; Acts 1885, p. 89; G. L. vol. 9, p. 708; Acts 1911, p. 236.]

Art. 2352. [2242] [1538] May levy taxes.—Said court shall have the power to levy and collect a tax for county purposes, not to exceed twenty-five cents on the one hundred dollars valuation, and a tax not to exceed fifteen cents on the one hundred dollars valuation to supplement the jury fund of the county, and not to exceed fifteen cents for roads and bridges on the one hundred dollars valuation, except for the payment of debts incurred prior to the adoption of the amendment to the Constitution. September 25, A. D.

1883, and for the erection of public buildings, streets, sewers, water works and other permanent improvements, not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and except as in the Constitution otherwise provided. They may levy an additional tax for road purposes not to exceed fifteen cents on the one hundred dollar valuation of the property subject to taxation, under the limitations and in the manner provided for in Article 8, Sec. 9, of the Constitution and in pursuance of the laws relating thereto. [Const. art. 8, sec. 9; Amendment 1899.]

Road districts organized and bonds issued under laws held invalid by the United States Supreme Court in Browning v. Hooper, 46 S. Ct. 141, 269 U. S. 396, 70 L. Ed. 330, were validated by Acts 1926, 39th Leg., 1st C. S., p. 33, ch. 17.

Art. 2353. [2243] [1539] [1516] Tax limit.—No tax levied for the purpose of paying debts incurred prior to the eighteenth day of April, A. D. 1876, shall exceed two and one-half mills on the dollar, and no tax levied for the erection or repair of public buildings shall exceed two and one-half mills on the dollar for any one year. [Const. art. 8, sec. 9; Amendment 1899.]

Art. 2354. [2244] [1540] [1517] When tax levied.—No county tax shall be levied except at a regular term of the court, and when all members of said court are present. [Id.]

Art. 2355. [2245–6] To fill vacancies.—The Court shall have power to fill vacancies in the office of: County Judge, County Clerk, Sheriff, County Attorney, County Treasurer, County Surveyor, County Hide Inspector, Assessor of Texas [Taxes], Collector of Taxes, Justices of the Peace, Constables, and County Superintendent of Public Instruction. Such vacancies shall be filled by a majority vote of the members of said Court, present and voting, and the person chosen shall hold office until the next general election. [As amended Acts 1927, 40th Leg., 1st C. S., p. 248, ch. 90, § 1.]

Art. 2356. [2252–3] Bridges in corporate limits.—Said court may erect bridges within the corporate limits of any city or town to the same extent and under the same conditions now prescribed by law for the construction of bridges outside the limits of any city or town. Said court and the governing body of any city or town may co-operate in the erection of a bridge within the corporate limits of a city or town, and jointly erect such bridge upon terms and conditions mutually agreed upon; and either or both the city and county may issue its bonds to pay its proportionate part of the debt by complying with the requirements of the law regulating the issuance of bonds by counties and cities and towns. [Acts 1895, p. 164; G. L. vol. 10, p. 894.]

Art. 2357. [2255] [1547] Shall keep in repair.—The commissioners court of counties owning bridges, situated within the corporate limits of cities and towns, shall keep the same in repair. This article shall not affect or diminish the liability of town and city corporations for injuries caused by defective condition of such bridges situated within the city limits. [Acts 1897, p. 212.]

Art. 2358. [2256] May contract for supplies.—The commissioners court by an order entered of record, may contract as hereinafter prescribed, with some suitable person or persons to supply the county with blank books, all legal blanks and stationery as may be required by law to be furnished the county officials. [Acts 1907, p. 252.]

Art. 2359. [2257] Bids advertised.—The commissioners court shall advertise, at least once in every two years, for sealed proposals to furnish blank books, legal blanks, stationery and such other printing as may be required for the county for the term of such contract, and shall receive separate bids for the different classes hereinafter designated. Such advertisement shall be made by the county clerk, who shall notify by registered letter, each newspaper and job printing house in the county, and at least three stationery and printing houses in the State, of the time said contract is to be awarded, and of the probable amount of supplies needed. [Id.]

Art. 2360. [2258] New bids advertised for.—Should supplies furnished by the successful bidder not be of the quality designated and provided for, then the commissioners court may declare such contract null and void, and from time to time advertise for sealed proposals as in the first instance, rejecting any or all bids as often as they may deem best. [Id.]

Art. 2361. [2260] Preference to local citizens.—All things being equal, contracts must be awarded to a citizen or taxpayer of the county in which the contract is let. [Id.]

Art. 2362. [2262] Stationery classified.—The stationery shall be divided into four classes: Class "A" shall embrace all blank books and all work requiring permanent and substantial binding. Class "B" shall embrace all legal blanks, letter heads and other printing, stationery and blank papers. Class "C" shall embrace typewriter ribbons, pens, ink, mucilage, pencils, penholders, ink stands and ware of like kind. Class "D" poll tax receipts and all election supplies of whatever nature and description, not furnished by the State. Each and every bid shall be upon a particular class, separate and apart from any other class. To the lowest bidder on each class shall be awarded the contract for all work of that class. [Id.]

Art. 2363. [2263] Bond with bid.—Each bid shall be accompanied by a bond of the bidder, with two or more good and sufficient sureties, conditioned that, should the contract be awarded to him, he will without delay, upon being notified of such award, enter into a written contract, according to law and with his proposal, and will give such bond as may be required for the faithful performance of said contract. [Id.]

Art. 2364. [2264] Unlawful interest in contract.—No member of the commissioners court or any county officer shall be, either directly or indirectly, interested in any such contract. [Id.]

Art. 2365. [2265] Contract made in open court.—All contracts shall be made in open court, with the lowest bidder, and all bids shall be spread in full on the minutes of the court.

Art. 2366. [2266] Contract and bond.—The successful bidder shall enter into a written contract with the court, and shall give bond in the sum of two hundred and fifty dollars for each class or contract, to be approved by the county judge, conditioned for the faithful compliance with his bid and with the law, and shall be made payable to the county judge or his successors in office. [Id.]

Art. 2367. [2268] Affidavit with bid.—The manager, secretary or other agent or officer of the bidder shall attach to each bid an affidavit to the effect that affiant has full knowledge of the relations of the bidder with the other firms in the same line of business and that the bidder is not a member of any trust, pool or combination of any kind and has not been for six months last past, directly or indirectly concerned in any pool or agreement or combination to control the price of supplies bid on, or to influence any person to bid or not to bid thereon. [Id.]

Art. 2368. Contracts over $2000.—No commissioners court shall make a contract calling for or requiring the expenditure or payment of two thousand dollars or more out of any fund or funds of any county or subdivision of any county, without first submitting such proposed contract to competitive bids. Notice of the time and place when and where such contract will be let shall be published in such county or subdivision once a week for four weeks prior to the time set for letting such contract, and a certified check for five per cent of the amount of the bid shall be required to be filed with each bid, and said contract shall be let to the lowest and best responsible bidder upon said contract and said bidder shall be required to give a good and sufficient bond in the full amount of the

contract price executed by some surety company authorized to do business in this State. If there is no newspaper published in such county or subdivision, then notice of the letting of such contract shall be given by causing notice thereof to be posted at the courthouse door of such county for four weeks prior to the time of letting such contract. Provided, that in case of public calamity, where it becomes necessary to act at once to appropriate money to relieve the necessities of citizens or to preserve the property of the county or subdivision, this provision may be waived. All contracts made by or with said court calling for or requiring the expenditure of any amount of money less than two thousand dollars and exceeding five hundred dollars shall be let by competitive bids at a regular term of court, except in case of urgent necessity or public calamity. The provisions of this article shall not apply to any work done under the direct supervision of the county commissioners and paid for by the day. A contract made by the commissioners court without complying with the terms of this article shall be void, and shall not be enforceable in any court of this State, and the performance of same and the payment of any money thereunder may be enjoined by any citizen of the county or subdivision. This law shall be cumulative of this title. [Acts 1917, p. 349; Acts 1923, p. 262.]

Art. 2369. [2269] Commissioners may repeal order.—The commissioners court may, by order entered of record after contracts have been in force for the specified time in such contract, repeal said order. [Acts 1907, p. 252.]

Art. 2370. [2270] [1548] [1521] Provide for county court.—Said court may, when necessary, provide buildings, rooms or apartments at the county seats, other than the court house, for holding the sessions of the county courts. [Acts 1876, p. 211; G. L. vol. 8, p. 1047.]

Art. 2371. Rest-room.—Said courts may maintain public rest-rooms for women in the court house or at some convenient place near the court house. The rest-room shall be comfortably furnished with necessary furnishings as may be needed to make the room attractive and comfortable for women. The commissioners court may assist the public in paying the salary of a matron to be appointed by the county judge with the consent of the commissioners. The expense of furnishing and maintaining rest-rooms shall be limited in the following manner:

1. In counties having a population of twenty-five thousand or less, not exceeding $125.00 for furnishings and $15.00 per month for matron.

2. In counties having a population of twenty-five thousand and not exceeding fifty thousand, not to exceed $200.00 for furnishings and $25.00 per month for matron.

3. In counties having a population exceeding fifty thousand, not to exceed $300.00 per month for furnishings and $50.00 per month for matron.

The population shall be determined by the preceding Federal census. [Acts 1919, p. 159; Acts 2nd C. S. 1919, p. 178.]

Art. 2372. Interpreters.—Each commissioners court may pay an interpreter for his services as such in any court within their county only for the time he is actually employed not to exceed three and one-half dollars a day, to be paid out of the general fund upon proper warrant issued by the court or clerk thereof. [Acts 4th C. S. 1918, p. 26.]

TITLE 45

COURTS—JUSTICE

Chap.

1. Justices and Justice Courts.
2. Institution of suit.
3. Appearance and trial.
4. Judgment and new trial.
5. Execution.
6. Appeal and certiorari.

CHAPTER ONE

JUSTICES AND JUSTICE COURTS

Art.

2373. Election, bond and term of office.
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2376. Commissioned.
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Article 2373. [2283] [1560] [1533] Election, bond and term of office.—The qualified voters of each justice precinct in this State, at each biennial election, shall elect one justice of the peace, styled in this title "justice," who shall hold his office for two years. Each justice shall give bond payable to the county judge in the sum of one thousand dollars, conditioned that he will faithfully and impartially discharge the duties required of him by law, and will promptly pay over to the party entitled to receive it, all moneys that may come into his hands during his term of office. [Acts 1885, p. 90; G. L. vol. 9, p. 710.]

Art. 2374. [2284–85] In unorganized counties.—The commissioners courts of counties to which unorganized counties are attached for judicial purposes may appoint a justice and a constable for each unorganized county attached to said county for judicial purposes, in accordance with the law authorizing such appointments in organized counties. Whenever, in any unorganized county, a necessity may exist for the appointment of more than one justice and constable, and one hundred qualified voters of said county shall petition the commissioners court of the organized county to which such unorganized county is attached for judicial purposes, asking the appointment of such officers, such commissioners court shall lay off and designate as many justice precincts in such unorganized county as may be necessary, not exceeding four, and such court may appoint one justice and one constable for each justice precinct in such unorganized county; and such justice precincts shall be legally constituted election precincts. [Acts 1879, p. 89; G. L. vol. 8, p. 1389; Acts 1885, p. 88; G. L. vol. 9, p. 708.]

Art. 2375. [2286] [1563] [1534] Two justices elected.—Where there is a city of eight thousand inhabitants or more in a justice precinct, two justices of the peace shall be elected. [Id.; Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2376. [2287] [1564] [1353] Commissioned.—Each justice of the peace shall be commissioned as justice of the peace of his precinct and ex officio notary public of his county. [Const., art. 4, sec. 20; Acts 1876, p. 165; G. L. vol. 8, p. 1001.]

Art. 2377. [2289] [1566] [1537] Nearest justice to hold court.—Whenever there is a vacancy or the justice in any precinct shall be absent, or unable or unwilling to perform the duties of his office, the nearest justice in the county may temporarily perform the duties of the office. [Acts 1876, p. 164; G. L. vol. 8, p. 1001.]

Art. 2378. [2290] [1567] [1538] Disqualification.—No justice of the peace shall sit in a cause where he may be interested, or where he may be related to either party within the third degree by consanguinity or affinity. [Id., sec. 24.]

Art. 2379. Justice's office.—When the justice precinct where the courthouse of any county is located contains more than seventy-five thousand inhabitants, the commissioners court of said county shall provide and furnish a suitable place in such courthouse for such justice to hold court. [Acts 1919, p. 152.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 2380. [2298–99–2300–01] Term of court.—These rules shall govern as to the terms of court:

1. Each justice shall hold a term of his court for civil business once in each month, and may transact such business out of term time as may be authorized by law.

2. Each justice shall hold the regular term of his court at his office at such time as the commissioners court may prescribe.

3. The justice may hold court from day to day until all business shall be disposed of, or may adjourn the court or the trial of any case to a particular day.

4. If the regular term from any cause shall not be opened on the day fixed therefor by law, the court shall be considered adjourned until its next regular term. [Acts 1876, p. 157; G. L. vol. 8, p. 993; Acts 1881, p. 10; G. L. vol. 9, p. 102.]

Art. 2381. [2319–20–26–28–2400] District court rules govern.—The rules governing the district courts shall also govern the justice courts, in so far as they can be applied, in the following cases:

1. As to requiring security for costs, and the effect of the rule for costs and the penalty for noncompliance therewith.

2. As to parties to suits.

3. Issuance and service and return of citation, and notice to serve non-resident defendants.

4. Acceptance of service and entering appearance.

5. Amendment of pleadings.

6. Whenever the mode of proceeding in any particular case or matter is not prescribed by the provisions of this title, or of some other law or title specifically relating thereto.

Art. 2382. [2302–3–4] Docket.—Each justice shall keep a civil docket in which he shall enter:

1. The title of all suits commenced before him.

2. The time when the first process was issued against the defendant, when returnable, and the nature thereof.

3. The time when the parties, or either of them appeared before him, either with or without citation.

4. A brief statement of the nature of the plaintiff's demand or claim, and the amount claimed, and a brief statement of the nature of the defense made by the defendant, if any.

5. Every adjournment, stating at whose request and to what time.

6. The time when the trial was had, stating whether the same was by a jury or by the justice.

7. The verdict of the jury, if any.

8. The judgment rendered by the justice and the time of rendering same.

9. All applications for setting aside judgments or granting new trials and the order of the justice thereon, with the date thereof.

10. The time of issuing execution, to whom directed and delivered, and the amount of debt, damages and costs; and, when any execution is returned, he shall note such return on said docket, with the manner in which it was executed.

11. All stays and appeals that may be taken, and the time when taken, the amount of the bond and the name of the sureties.

12. He shall also keep such other dockets, books and records as may be required by law, and shall keep a fee book in which shall be taxed all costs accruing in every suit commenced before him. [Acts 1876, p. 156; G. L. vol. 8, p. 992.]

Art. 2383. [2305–6] Custody of books, etc.—Each justice shall arrange and safely keep all dockets, books and papers transmitted to him by his predecessors, and all papers filed in any case in his court subject at all reasonable times to the inspection of any interested party. Any person having possession of dockets, books or papers belonging to the office of any justice shall deliver the same to such justice on demand. [Acts 1876, p. 156; G. L. vol. 8, p. 992.]

Art. 2384. [2307] [1584] [1555] Enforcing delivery.—If any person having such dockets, books or papers, refuses to deliver the same on such demand, he may, upon motion, be attached and imprisoned by order of the county judge in term time or vacation, until he shall make such delivery; but such motion shall be supported by affidavit, and three days' notice thereof shall be given to the party against whom such motion is made. [Id.]

Art. 2385. [2291] [1568] [1539] Jurisdiction.—Justice courts shall, in addition to their other powers and duties, have and exercise original jurisdiction in civil matters of all cases where the amount in controversy is two hundred dollars, or less, exclusive of interest, of which exclusive original jurisdiction is not given to the district or county courts, and of cases of forcible entry and detainer, and to foreclose mortgages and enforce liens on personal property, where the amount in controversy is within their jurisdiction. [Const., art. 5, sec. 19; Acts 1876, p. 155; G. L. vol. 8, p. 991.]

Art. 2386. [2293–4–5–7] Other powers.—Justices of the peace shall also have power:

1. To punish any party guilty of a contempt of court by fine not to exceed twenty-five dollars and by imprisonment not exceeding one day.

2. To issue writs of attachment, garnishment and sequestration within their jurisdiction, the same as judges and clerks of the district and county courts.

3. To exercise jurisdiction over all other matters not hereinbefore enumerated that are or may be cognizable before a justice of the peace under any law of this State.

4. To proceed with all unfinished business of his office in like manner as if such business had been originally commenced before him.

Art. 2387. [2296] [1573] [1544] No jurisdiction.—Justice courts have no jurisdiction of suits in behalf of the State to recover penalties, forfeitures and escheats, of suits for divorce, of suits to recover damages for slander or defamation of character, suits for the trial of title to land, or of suits for the enforcement of liens on land. [Const. art. 5, sec. 8.]

Art. 2388. [2326] [1603] [1573] Oral pleadings.—The pleadings shall be oral, except where otherwise specially provided; but a brief statement thereof may be noted on the docket. [Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2389. [2327] [1604] [1574] Sworn pleadings.—An answer or other pleading setting up any of the following matters shall be in writing and signed by the party or his attorney and verified by affidavit:

1. That the suit is not commenced in the proper county or precinct.

2. That the plaintiff has not legal capacity to sue.

3. That the plaintiff is not entitled to recover in the capacity in which he sues.

4. That there is another suit pending in this State between the same parties for the same cause of action or counter claim.

5. That there is a defect of parties plaintiff or defendant.

6. That the plaintiffs or defendants suing or sued as partners or receiver are not partners or receiver as alleged.

7. That the plaintiff or defendant suing or sued as a corporation is not a corporation as alleged.

8. That a written instrument purporting to be signed by him and relied on by the other party was not executed by him or by his authority.

9. That the indorsement or assignment of a written instrument pleaded by the adverse party was not executed by the party by whom it purports to have been executed, or by his authority.

10. That a written instrument pleaded by the adverse party is without consideration, or that the consideration of the same has failed, in whole or in part.

11. That an account pleaded by the adverse party and duly verified by affidavit, as provided by the laws of this State, is not just; and, in such case, the answer shall set forth the items and particulars which are unjust.

12. That the contract sued upon is usurious. [Acts 1891, p. 85; G. L. vol. 10, p. 87.]

CHAPTER TWO

INSTITUTION OF SUIT

Art.
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2402. Special process server.

Article 2390. [2308] [1585] [1556] Suits, where brought.—Every suit in the justice court shall be commenced in the county and precinct in which the defendant or one or more of the several defendants resides, except in the following cases and such other cases as are or may be provided by law:

1. Cases of forcible entry and detainer must be brought in the precinct where the premises, or a part thereof, are situated.

2. Suits against executors, administrators and guardians as such must be brought in the county in which such administration or guardianship is pending, and in the precinct in which the county seat is situated.

3. Suits against counties must be brought in such county and in the precinct in which the county seat is situated.

In the following cases the suit may, at the plaintiff's option, be brought either in the county and precinct of the defendant's residence or in that provided in each exception:

4. Suits upon a contract in writing promising performance at any particular place, may be brought in the county and precinct in which such contract was to be performed, provided that in all suits to recover for labor actually performed, suit may be brought and maintained where such labor is performed, whether the contract for same be oral or in writing.

5. Suits for the recovery of rents may be brought in the county and precinct in which the rented premises, or a part thereof are situated.

6. Suits for damages for torts may be brought in the county and precinct in which the injury was inflicted.

7. Suits against transient persons may be brought in any county and precinct where such defendant is to be found.

8. Suits against non-residents of the State or persons whose residence is unknown, may be brought in the county and precinct where the plaintiff resides.

9. Suits for the recovery of personal property may be brought in any county and precinct in which the property may be.

10. Suits against private corporations, associations and joint stock companies may be brought in any county and precinct in which the cause of action or a part thereof arose, or in which such corporation, association or company has an agency or representative, or in which its principal office is situated.

11. Suits against railroad and canal companies, or the owners of any line of transportation vehicles of any character, for any injury to person or property upon the road, canal, or line of vehicles of the defendant, or upon any liability as a carrier, may be brought in any precinct through which the road, canal or line of vehicles may pass, or in any precinct where the route of such railroad, canal, or vehicle may begin or terminate.

12. Suits against fire, marine or inland insurance companies may be brought in any county and precinct in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may be brought in the county and precinct in which the persons insured, or any of them resided at the time of such injury or death.

13. Suits against the owners of a steamboat or other vessel may be brought in any county or precinct where such steamboat or vessel may be found, or where the cause of action arose or the liability was contracted or accrued. In every suit commenced in a county or precinct in which the defendants or one of them may reside, it shall be affirmatively shown in the citation or pleading, if any, that such suit comes within one of the exceptions named in this article. [Acts 1876, p. 154; Acts 1917, p. 321; G. L. vol. 8, p. 993.]

Art. 2391. [2309] [1586] [1557] Residence of a single man.—The residence of a single man is where he boards. [Acts 1876, p. 154.]

Art. 2392. [2310–11] Where there are two justices.—Where, in any one precinct, incorporated city or town there may be more than one justice of the peace, the suit may be brought before either of them. [Id.]

Art. 2393. [2312] [1589] [1560] If justice is disqualified.—If there be no justice qualified to try the suit in the proper precinct, the suit may be commenced before the nearest justice of the county who is not disqualified to try the same. [Id.]

Art. 2394. [2313] [1590] [1561] Venue changed on affidavit.—If any party to a suit before any justice shall make an affidavit supported by the affidavit of two other credible persons, citizens of the county, that they have good reason to believe, and do believe that such party cannot have a fair and impartial trial before such justice or in such justice['s] precinct, the justice shall transfer such suit to the court of the nearest justice within the county not subject to the same or some other disqualification.

Art. 2395. [2316] [1593] [1563a] "Nearest justice."—By the term "nearest justice", as used in this chapter, is meant the justice whose place of holding his court is nearest to that of the justice before whom the proceeding is pending or should have been brought.

Art. 2396. [2314] [1591] [1562] By consent.—The venue may also be changed to the court of any other justice of the county, upon the written consent of the parties or their attorneys, filed with the papers of the cause.

Art. 2397. [2317] [1594] [1564] Order of transfer.—The order of transfer in such cases shall state the cause of the transfer, and the name of the court to which the transfer is made, and shall require the parties and witnesses to appear before such court at its next ensuing term.

Art. 2398. [2318] [1595] [1565] Transcript.—When such order of transfer is made, the justice who made the order shall immediately make out a true and correct transcript of all the entries made on his docket in the cause, certify thereto officially, and send it, with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the justice of the precinct to which the same has been transferred.

Art. 2399. [2315] [1592] [1563] Special justice.—If a justice be disqualified from sitting in any civil case, or is sick or absent from the precinct, the parties to such suit may agree upon some person to try the case; and, should they fail to agree at the first term of the court after service is perfected, the county judge in whose county said case is pending, shall, upon the application of the justice in whose court said cause is pending, or upon the application of either party to said suit, appoint some person who is qualified to try said cause. The fact of the disqualification of the justice and the selection by agreement or appointment of some other person to try said cause shall be noted on the docket of said justice in said cause. [Acts 1895, p. 26; G. L. vol. 10, p. 756.]

Art. 2400. [2321] [1598] [1568] Requisites of process.—Every writ of [or] process from the justice courts shall be issued by the justice, shall be

in writing and signed by him officially. The style thereof shall be "The State of Texas." It shall, except where otherwise specially provided by law, be directed to the sheriff or any constable of the proper county, be made returnable to some regular term of such court; and the date of its issuance noted thereon. [Acts 1876, p. 158; G. L. vol. 8, p. 994.]

Art. 2401. [2322–23] Citation.—When a claim or demand is lodged with a justice for suit, he shall issue forthwith a citation for the defendant. If there be several defendants residing in different counties, one citation shall be issued to each of such counties. The citation shall be directed to the sheriff or any constable of the county where the defendant is represented to be, and shall, in addition to the requirements of the preceding article, require the officer to summon the defendant to appear and answer the plaintiff's suit at some regular term of the court, stating the time and place of holding the same. It shall state the names of all the parties to the suit, and the nature of the plaintiff's demand. [Id.]

Art. 2402. [2324] [1601] [1571] Special process server.—The justice, in case of an emergency, may depute any person of good character to serve any process; and the person so deputed shall for such purpose, have all the authority of a sheriff or constable; but in every such case the justice shall indorse on the process a statement in writing, signed by him officially, to the effect that he has deputed such person to serve such process. Such person shall also take and subscribe an affidavit, to be indorsed on or attached to the process, to the effect that he will to the best of his ability execute the same according to law. [Id.]

CHAPTER THREE

APPEARANCE AND TRIAL

Art.
2403. Continuance.
2404. Appearance day.
2405. If defendant fails to appear.
2406. Appearance noted.
2407. If no demand for jury.
2408. Call of non-jury docket.
2409. Dismissal.
2410. Proceedings.
2411. Jury trial demanded.
2412. Jury trial day.
2413. Summons for jury.
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2415. Jurors called.
2416. Excuses.
2417. Defaulting jurors.
2418. Talesmen.
2419. Call of jury docket.
2420. Challenge to the array.
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2422. Challenge for cause.
2423. Peremptory challenge.
2424. The jury.
2425. If jury is incomplete.
2426. Jurors sworn.
2427. Verdict.
2428. Jurors paid.

Article 2403. [2329] [1606] [1576] Continuance.—The justice for good cause shown, supported by affidavit, may continue any suit pending before him to the next regular term of his court, or postpone the same to some other day of the term. [Acts 1876, p. 159; G. L. vol. 8, p. 995.]

Art. 2404. [2330] [1607] [1577] Appearance day.—The first day of each term of the justice court after the return of the process duly served in any cause shall be appearance day; but where the service was made by publication, the first day of the second term after such publication shall be appearance day. [Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2405. [2331] [1608] [1578] If defendant fails to appear.—If the defendant who has been duly served with a citation shall fail to appear at, or before, ten o'clock a. m. on appearance day, the justice shall proceed in the following manner:

1. If the plaintiff's cause for action be liquidated and proved by an instrument of writing purporting to have been executed by the defendant, or be upon an open account duly verified by affidavit, the justice shall, whether the plaintiff appear or not, render judgment in his favor against the defendant for the amount of such written obligation or sworn account, after deducting all credits indorsed thereon.

2. If the plaintiff's cause of action is not so liquidated, and the plaintiff appears in person or by agent or attorney, the justice shall proceed to hear the testimony; and, if it appears therefrom that the plaintiff is entitled to recover, judgment shall be rendered against the defendant for such amount as the testimony shows the plaintiff entitled to; otherwise, judgment shall be rendered for the defendant.

Art. 2406. [2332] [1609] [1579] Appearance noted.—If the defendant appear, the same shall be noted on the docket, and the cause shall stand for trial in its order.

Art. 2407. [2334] [1611] [1581] If no demand for jury.—If neither party shall demand and be entitled to a jury trial, the justice shall try the cause without a jury. [Acts 1876, p. 159; G. L. vol. 8, p. 995.]

Art. 2408. [2335] [1612] [1582] Call of non-jury docket.—The docket of cases to be tried by the justice shall be called regularly; and the cases shall be tried when called, unless the same shall be continued or postponed. [Id.]

Art. 2409. [2336] [1613] [1583] Dismissal.—If the plaintiff shall fail to appear when the cause is called in its order for trial, the justice, on motion of the defendant, may dismiss the suit. [Id.]

Art. 2410. [2337–61] Proceedings.—The trial before the justice or before the jury shall conform as near as may be to the rules governing the district and county courts, except that the justice shall not charge the jury, and all the rules of evidence and the provisions for procuring the attendance of witnesses, for taking the depositions of witnesses and parties, and for taking and determining the exceptions thereto, prescribed for the government of the district and county courts, shall, when not in conflict with the provisions of this title, govern the proceedings in justice courts so far as the same may be applicable. [Id.]

Art. 2411. [2339–40] Jury trial demanded.—Either party shall be entitled to a trial by jury, upon complying with the provisions of this chapter. The party desiring a jury shall, on or before the first day of the term at which the case is to be tried, make a demand for a jury, and also deposit a jury fee of three dollars, which shall be noted on the docket; and the case shall be set down as a jury case. [Acts 1876, p. 159; G. L. vol. 8, p. 994.]

Art. 2412. [2341] [1618] [1588] Jury trial day.—The justice shall, on the first day of the term, fix a day for taking up the jury cases, if any, pending for trial at such term, and he may fix said first day of the term for that purpose.

Art. 2413. [2342–43] Summons for jury.—Whenever at any term of a justice court there may be any jury cases pending for trial, the justice shall order the sheriff or constable to summon such number of legally qualified jurors as he may deem necessary, to attend as a jury before such justice at a day and place directed. The justice, on delivering such order to the officer, shall administer to him the following oath "You do solemnly swear that you will, to the best of your skill and ability, and without bias or favor toward any party, summon such jurors as may be ordered by the court; that you will select none but impartial, sensible and sober men, having the qualifications of jurors under the law; that you will not, directly or indirectly, converse or communicate with any juryman, touching any case pending for trial; and that you will not, by any means, attempt to influence, advise or control any juryman in his opinion in any case which may be tried by him. So help you God." [Acts 1876, p. 80; G. L. vol. 8, p. 916.]

Art. 2414. [2344–45] Summoning jury.—The officer shall immediately summon the required number of jurors to appear before the justice at the day

and place named. Such summons shall be by an oral notice by the officer to the juror that he is required to appear as a juror before such justice on the day and at the place named.

Art. 2415. [2346] [1623] [1593] Jurors called.—At the time fixed for taking up the jury cases, the justice shall proceed to call the names of the jurors so summoned.

Art. 2416. [2347] [1624] [1594] Excuses.—The court may hear any reasonable excuse of a juror, supported by oath, and may excuse him for the trial of any particular case, or for one or more days of the term.

Art. 2417. [2348] [1625] [1595] Defaulting jurors.—If any person so summoned as a juror shall fail or refuse to attend, the justice shall enter a fine nisi against him not exceeding five dollars, to the use of the county, to be made final, with costs, unless such person shall, after being cited to do so, show a good and sufficient excuse for such failure.

Art. 2418. [2349] [1626] [1596] Talesmen.—If the number of jurors present and not excused be less than six, or less than the justice shall deem necessary, he shall order the sheriff or constable to summon a sufficient number of other qualified jurors.

Art. 2419. [2350] [1627] [1597] Call of jury docket.—When the required number of jurors is present, the jury cases shall be called in their order on the docket.

Art. 2420. [2351–52] Challenge to the array.—When the parties to a jury case have announced themselves for trial, either party may challenge the array of jurors. The cause and the manner of making such challenge, the decision thereof and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts.

Art. 2421. [2353] [1630] [1600] Drawing jury.—If no challenge to the array is made, the justice shall write the names of all the jurors present on separate slips of paper, as nearly alike as may be, and shall place them in a box and mix them well, and shall then draw the names one by one from the box, and write them down as they are drawn, upon several slips of paper, and deliver one slip to each of the parties, or their attorneys. [Acts 1876, p. 82; G. L. vol. 8, p. 918.]

Art. 2422. [2354–55] Challenge for cause.—If either party desires to challenge any juror for cause, such challenge shall now be made. The causes of such challenge, and the manner of making it and the decision thereof, and the proceedings, when such challenge is sustained, shall be as provided for similar proceedings in the district and county courts.

Art. 2423. [2356] [1633] [1603] Peremptory challenge.—When a juror has been challenged for cause, his name shall be erased from the slips furnished to the parties; and, if as many as six names remain on such slips, the parties may make their peremptory challenge governed by the rules prescribed for the district and county courts.

Art. 2424. [2357] [1634] [1604] The jury.—When the peremptory challenges are made, they shall deliver their slips to the justice, who shall call off the first six names on the slips that have not been erased, and these shall be the jury to try the case.

Art. 2425. [2358] [1635] [1605] If jury is incomplete.—If the jury by peremptory challenges is left incomplete, the justice shall direct the sheriff or constable to summon others to complete the jury; and the same proceedings shall be had in selecting and impaneling such jurors as are had in the first instance. [Acts 1876, p. 82; G. L. vol. 8, p. 918.]

Art. 2426. [2359–60] Jurors sworn.—When the jury has been selected, such of them as have not been previously sworn for the trial of civil cases shall be sworn by the justice. The form of the oath shall be in substance as follows: "You and each of you do solemnly swear that in all cases between parties which shall be to you submitted you will a true verdict render, according to the law and evidence. So help you God." [P. D. 3984.]

Art. 2427. [2362] [1639] [1609] Verdict.—Where the suit is for the recovery of specific articles, the jury shall, if they find for the plaintiff, assess the value of each of such articles separately, according to the proof. [Acts 1876, p. 163; G. L. vol. 8, p. 998.]

Art. 2428. [2363] [1640] [1610] Jurors paid.—Before the verdict is rendered, the justice shall pay to each juror fifty cents out of the jury fee deposited in the case.

CHAPTER FOUR

JUDGMENT AND NEW TRIAL

1. JUDGMENT

Art.
2429. Judgment upon verdict.
2430. Case tried by justice.
2431. Judgment.
2432. Costs.
2433. Judgment for specific articles.
2434. To enforce judgment.
2435. No judgment without citation.
2436. Confession of judgment.
2437. Warrant of attorney.
2438. Rules governing.

2. NEW TRIAL

2439. Judgments by default.
2440. New trials.
2441. Sworn motion.
2442. Notice.
2443. If motion granted.
2444. But one new trial.

1. JUDGMENT

Article 2429. [2364] [1641] [1611] Judgment upon verdict.—Where the case has been tried by a jury and a verdict has been returned by them, the justice shall announce the same in open court and note it in his docket, and shall proceed to render judgment thereon.

Art. 2430. [2365] [1642] [1612] Case tried by justice.—When the case has been tried by the justice without a jury, he shall announce his decision in open court and note the same in his docket, and render judgment thereon. [Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2431. [2366] [1643] [1613] Judgment.—The judgment shall be recorded at length in the justice's docket, and shall be signed by the justice; clearly state the determination of the rights of the parties in the subject matter in controversy and the party who shall pay the costs, and shall direct the issuance of such process as may be necessary to carry the judgment into execution.

Art. 2432. [2367] [1644] [1614] Costs.—The successful party in the suit shall recover his costs, except in cases where it is otherwise expressly provided. [Id., Secs. 11–14.]

Art. 2433. [2368] [1645] [1615] Judgment for specific articles.—Where the judgment is for the recovery of specific articles, their value shall be separately assessed, and the judgment shall be that the plaintiff recover such specific articles, if they can be found, and if not, then their value as assessed, with interest thereon at the rate of six per cent from the date of judgment. [Id., Sec. 19.]

Art. 2434. [2369] [1646] [1616] To enforce judgment.—The court shall cause its judgments to be carried into execution, and where the judgment is for personal property and the verdict, if any, is that such property has an especial value to the plaintiff the court may award a special writ for the seizure and delivery of such property to the plaintiff, and may, in addition to the other relief granted in such case, enforce its judgment by attachment, fine and imprisonment. [Acts 1846, p. 200; G. L. vol. 2, p. 1506.]

Art. 2435. [2370] [1647] [1617] No judgment without citation.—No judgment, other than judgment by confession, shall be rendered by the jus-

tice of the peace against any party who has not entered an appearance or accepted service, unless such party has been cited either personally or by publication, or been served by the notice to serve a nonresident provided for by law. [Acts 1870, p. 87; Acts 1876, p. 163; Acts 1909, p. 89; P. D. 6341; G. L. vol. 6, p. 261; G. L. vol. 8, p. 999.]

Art. 2436. [2371] [1648] [1618] Confession of judgment.—Any party may appear in person, or by an agent or attorney, before any justice of the peace, without the issuance or service of process, and confess judgment for any amount within the jurisdiction of the justice court; and such judgment shall be entered on the justice's docket as in other cases; but, in such cases, the plaintiff, his agent or attorney shall make and file an affidavit signed by him, to the justness of his claim. [Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2437. [2372] [1649] [1619] Warrant of attorney.—Where such judgment is confessed by an agent or attorney the warrant of attorney shall be filed with the justice and noted in the judgment. [P. D. 1477.]

Art. 2438. [2373] [1650] [1620] Rules governing.—The rules governing the district and county courts in relation to judgments shall also apply to justice courts, in so far as they may not conflict with some provision of this title.

2. NEW TRIAL

Art. 2439. [2374] [1651] [1621] Judgments by default.—A justice may within ten days after the rendition of a judgment by default or of dismissal, set aside such judgment, on motion in writing, for good cause shown, supported by affidavit. Notice of such motion shall be given to the opposite party at least one full day prior to the hearing thereof. [Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2440. [2375] [1652] [1622] New trials.—The justice, within ten days after the rendition of a judgment in any suit tried before him, may grant a new trial therein on motion in writing showing that justice has not been done in the trial of the cause. [Id.]

Art. 2441. [2376] [1653] [1623] Sworn motion.—If the grounds of the motion be other than that the verdict, or judgment is contrary to the law or the evidence, or that the justice erred in some matter of law, the motion shall be supported by affidavit. [Id.]

Art. 2442. [2377] [1654] [1624] Notice.—All motions to set aside a judgment, or to grant a new trial, under the two preceding articles, shall be made within five days after the rendition of the judgment and one day's notice thereof shall be given the opposite party or his attorney. [Id.]

Art. 2443. [2378] [1655] [1625] If motion granted.—If a judgment is set aside, or a new trial is granted, the cause shall be continued to the next regular term of the court, unless otherwise agreed by the parties with the consent of the justice. [Id.]

Art. 2444. [2379] [1656] [1626] But one new trial.—But one such new trial shall be granted to either party. [Id.]

CHAPTER FIVE

EXECUTION

Art.
2445. Judgments enforced by execution.
2446. Execution.
2447. Taxation of costs.
2448. Execution on eleventh day.
2449. Within the ten days.
2450. Execution to another county.
2451. Dormant judgments.
2452. General rules apply.
2453. Stay of execution.

Article 2445. [2380–2] Judgments enforced by execution.—The judgments of the justice courts shall be enforced by execution or other appropriate process. Such execution or other process shall be returnable in sixty days. [Acts 1876, p. 163; G. L. vol. 8, p. 999.]

Art. 2446. [2381] [1658] [1628] Execution.—Such execution or other process shall conform to the requirements of writs. It shall describe the judgment and shall require the sheriff or constable of the proper county to execute the same, according to its terms, whether the same be to make a sum of money, or to deliver personal property, or to deliver possession of real estate, or to do some other thing; and, if for money, it shall state the rate of interest; and it shall also require the officer to make the costs which may have been adjudged against the defendant in execution, and the further costs of executing the writ. A certified copy of the costs, taxed against the defendant in execution according to the fee book up to the issuance of the execution, shall be attached to the writ.

Art. 2447. [2383] [1660] [1630] Taxation of costs.—Within ten days after the rendition of any final judgment of the justice court, the justice shall tax the costs of such suit and enter the same in his fee book.

Art. 2448. [2384] [1661] [1631] Execution on eleventh day.—On the eleventh day after the rendition of any final judgment, if the case has not been appealed, and no stay of execution has been granted, the justice shall issue an execution for the enforcement of such judgment and the collection of the costs. [Id.]

Art. 2449. [2385] [1662] [1632] Within the ten days.—Such execution may be issued at any time before the eleventh day, upon the filing of an affidavit by the plaintiff in the judgment, or his agent, or attorney, to the effect that the defendant is about to remove his property out of the county, or is about to transfer or secrete his property for the purpose of defrauding his creditors. [Id.]

Art. 2450. [2386] [1663] [1633] Execution to another county.—Where an execution from a justice court is sent to a county other than that in which the judgment was rendered, it shall be accompanied by a certificate of the county clerk, and attested by his official signature and seal of office that the officer issuing the same is an acting justice of the peace in said county. The cost of procuring such certificate shall be collected as a part of the costs of executing the writ. [Acts 1842, p. 62; G. L. vol. 2, p. 740.]

Art. 2451. [2387] [1664] [1634] Dormant judgments.—If no execution is issued within twelve months after a judgment is rendered, the judgment shall become dormant, and no execution shall issue thereon unless such judgment be revived. Where the first execution has issued within the twelve months, the judgment shall not become dormant unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years after the issuance of the preceding execution. [Acts 1866, p. 118; P. D. 7005, 7007; G. L. vol. 5, p. 1036.]

Art. 2452. [2388] [1665] [1635] General rules apply.—The rules prescribed for the issuance, levy and return of executions shall apply to the justice courts where not in conflict with some provision of this chapter. [Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2453. [2389–90] Stay of execution.—At any time within ten days after the rendition of any judgment in a justice court, the justice may grant a stay of execution thereof for three months from the date of such judgment, if the person against whom such judgment was rendered shall, with one or more good and sufficient sureties, to be approved by the justice, appear before him and acknowledge themselves and each of them bound to the successful party in such judgment for the full amount thereof, with interest and costs, which acknowledgment shall be entered in writing on the docket, and signed by the persons binding themselves as sureties; provided, no such stay of

execution shall be granted unless the party applying therefor shall first file an affidavit with the justice that he has not the money with which to pay such judgment, and that the enforcement of same by execution prior to three months would be a hardship upon him and would cause a sacrifice of his property which would not likely be caused should said execution be stayed. Such acknowledgment shall be entered by the justice on his docket, and shall constitute a judgment against the defendant and such sureties, upon which execution shall issue in case the same is not paid on or before the expiration of such day. [Acts 1876, p. 154; G. L. vol. 8, p. 990; Acts 1887, p. 10; G. L. vol. 9, p. 808.]

CHAPTER SIX

APPEAL AND CERTIORARI

Art.
2454. Appeal.
2455. To district court, when.
2456. Appeal bond.
2457. Affidavit of inability.
2458. Appeal perfected on affidavit.
2459. Transcript.
2460. Certiorari.

Article 2454. [2391] [1668] [1638] Appeal.—A party to a final judgment in any justice court may appeal therefrom to the county court where such judgment, or the amount in controversy, shall exceed twenty dollars exclusive of costs, and in such other cases as may be expressly provided by law. [Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2455. [2392] [1669] To district court, when.—In all counties in which the civil jurisdiction of the county courts has been transferred to the district courts, appeals and writs of certiorari may be prosecuted to remove a case tried before a justice of the peace to the district court, in the same manner and under the same circumstances under which appeals and writs of certiorari are allowed by general law to remove causes to the county court. [Acts 1879, p. 125; G. L. vol. 8, p. 1425.]

Art. 2456. [2393] [1670] [1639] Appeal bond.—The party appealing, his agent or attorney, shall, within ten days from the date of the judgment, file with the justice a bond, with two or more good and sufficient sureties, to be approved by the justice, in double the amount of the judgment, payable to the appellee, conditioned that appellant shall prosecute his appeal to effect, and shall pay off and satisfy the judgment which may be rendered against him on appeal. When such bond has been filed with the justice, the appeal shall be held to be thereby perfected and all parties to said suit or to any suit so appealed shall make their appearance at the next term of court to which said case has been appealed without further notice. [Acts 1883, p. 91; Acts 1915, p. 170; G. L. vol. 9, p. 397.]

Art. 2457. [2394] [1671] Affidavit of inability.—Where the appellant is unable to pay the costs of appeal, or to give security therefor, he shall nevertheless be entitled to prosecute his appeal; but in order to do so, he shall be required to make strict proof of his inability to pay the costs, or any part thereof. Such proof shall be made before the county judge of the county where such party resides or before the court trying the same, at any time within ten days from and after the date of the judgment rendered therein, and shall consist of the affidavit of said party stating his inability to pay the costs; which affidavit may be contested by any officer of the court or party to the suit; whereupon, it shall be the duty of the court trying the case, or the justice of the peace of the precinct in which the suit is pending, to hear evidence and to determine the right of the party to his appeal. [Acts 1887, p. 113; G. L. vol. 9, p. 911.]

Art. 2458. [2395] [1672] Appeal perfected on affidavit.—When the bond, or the affidavit in lieu thereof, provided for in the two preceding articles, has been filed, and the previous requirements of this chapter have been complied with, the appeal shall be held to be perfected. [Id.; Acts 1883, p. 91; G. L. vol. 9, p. 397.]

Art. 2459. [2396–97] Transcript.—Whenever an appeal has been granted from the justice court to the county court, the justice who made the order shall immediately make out a true and correct copy of all the entries made on his docket in the cause, and certify thereto officially, and send it, together with a certified copy of the bill of costs taken from his fee book, and the original papers in the cause, to the clerk of the county court of his county. Such transcript and papers shall, if practicable, be sent to said county clerk on or before the first day of the next term of such court; but, if there be not time to make out and send the same to the first term, they may be so sent on or before the first day of the second term of the court. [Acts 1876, p. 154; G. L. vol. 8, p. 990.]

Art. 2460. [2398–99] Certiorari.—A cause tried before a justice, wherein the amount in controversy or the judgment exceeds twenty dollars, exclusive of costs, may be removed from such justice court to the county court by certiorari under the rules prescribed in the title and chapter relating thereto. Whenever a writ of certiorari to remove any cause from the justice court to the county court shall be served on any justice of the peace, he shall immediately make out a certified copy of the entries made on his docket, and of the bill of costs, as provided in case of appeals, and send same, together with the original papers in the cause, to the clerk of the county court in the manner and within the time prescribed in the preceding article.

TITLE 46

CREDIT ORGANIZATIONS

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1. RURAL CREDIT UNIONS

Article 2461. Defined.—The words "rural credit union" shall mean a co-operative association formed for the purpose of promoting thrift among its members, and to enable them, when in need, to obtain for productive purposes moderate loans of money for short periods and at reasonable rates of interest. The capital stock of rural credit unions organized under the provisions of this title shall be divided into shares of twenty-five dollars. Entrance fees of rural credit unions may be fixed by the board of directors at such an amount as may be prescribed by the by-laws. [Acts 1913, p. 162.]

Art. 2462. Loans and investments.—A rural credit union may receive the savings of its members in payment for shares; may lend to its members at reasonable rates of interest not to exceed six per cent per annum, or invest as hereinafter provided the funds so accumulated and may undertake such other activities relating to the purposes of the association as its by-laws may authorize. [Id.]

Art. 2463. May incorporate.—Ten or more citizens of this State may associate themselves together by articles of agreement and form a rural credit union, and upon the approval of the State Banking Board may become a corporation upon complying with such provisions of the law regulating State banks as may be applicable to the transaction of the business herein authorized to be done. The State Banking Board may permit the formation of such corporation when it is satisfied that the proposed field of operation is favorable to the success of a rural credit union, and that the standing of the proposed members is such as to give assurance that its affairs will be administered in accordance with the spirit of this law, and the Banking Commissioner shall issue a charter to said rural credit union to do business in conformity with the provisions of this title. Such Commissioner or his deputy, shall have authority to examine the accounts, books and papers of rural credit unions herein authorized to be organized. Any rural credit union violating any provision of this title shall be subject to the forfeiture of its charter. [Id.]

Art. 2464. Right to use name.—No person, partnership, association or corporation, except corporations formed under the provisions of this law shall hereafter transact business under any name or title which contains the words "rural credit union," except those herein expressly authorized to be formed.

Art. 2465. Supervision.—The Banking Commissioner shall require such rural credit unions to keep such books as he may deem necessary for the proper conduct of their business; may make examination and report of the transaction of such rural credit union's business. The rural credit unions shall be subject to the general supervision of the Commissioner. [Id.]

Art. 2466. By-laws.—The by-laws of the rural credit unions shall prescribe:

1. The name of the corporation.
2. The purpose for which it is formed.
3. The conditions of residence or occupation which qualify persons for membership.
4. The par value of the shares of capital stock.
5. The conditions on which shares may be paid in, transferred and withdrawn.
6. The conditions on which deposits may be received and withdrawn.
7. The method of receipting for money paid on account of shares or deposited.
8. The number of directors and number of members of the credit committee.
9. The duties of the several officers.
10. The fines, if any, which may be charged for failure to meet obligations of the association punctually.
11. The date of the annual meeting of members.
12. The manner in which members shall be notified of meetings.
13. The number of members which shall be a quorum at meetings.
14. Such other regulations as may seem necessary. [Id.]

Art. 2467. Approval of by-laws.—No such credit union shall receive deposits or payments on account of shares, or make any loans until its by-laws have been approved in writing by the Banking Commissioner, nor shall any amendments to its by-laws become operative until they have been so approved. [Id.]

Art. 2468. Meetings.—The fiscal year of every such association shall end at the close of business on the thirty-first day of December. The annual meeting of the association shall be held at such time and place as the by-laws prescribe. Special meetings may be held by order of the directors or of the supervisory committee. The clerk shall give notice of such special meetings upon written request of ten members. Notice of all meetings of the association shall be given in the manner prescribed by the by-laws. No person shall be entitled to vote who has not been a member for more than three months but this restriction shall not apply during the first twelve months of the existence of the association, nor shall any member vote by proxy or have more than one vote. At the annual meeting, the members shall upon recommendation of the board of directors declare dividends and fix the amount of entrance fee. At any meeting the members may decide upon any question of interest to the association, and upon appeal of two members may reverse the decisions of the credit committee or board of directors; and, by a three-fourths vote of those present, provided the notice of the meeting shall have specified the question to be considered, may amend the by-laws. [Id.]

Art. 2469. Board of Directors.—At the annual meeting the members shall elect a board of directors of not less than five members from which a credit committee of not less than three members may be selected. A supervisory committee of three members shall also be elected. No member of the Board of Directors shall be a member of the advisory committee, nor shall one person be a member of more than one of said committees. All members thereof, as well as all officers whom they elect, shall be sworn, and shall hold their several offices until others are elected and qualified in their stead. A record of every such qualification shall be filed and preserved with the records of the association. [Id.]

Art. 2470. Officers.—At their first meeting the board of directors shall elect from their number a president, a vice president, a clerk and a treasurer, who shall be the executive officers of the association. The board of directors shall have the general management of the affairs, funds and records of the association, and shall meet as often as may be necessary. It shall be their special duty:

1. To act upon all applications for membership.
2. To act upon the expulsion of members.
3. To fix the amount of surety bond which shall be required of each officer having custody of the funds.
4. To determine the rate of interest on loans.
5. To fill vacancies in the board of directors or in the credit committee of the association until the election and qualification of officers to fill said vacancies.
6. To make recommendations to meetings of the members relative to the amount of entrance fee; the maximum number of shares which may be held by, and the maximum amount which may be lent to, any one

member; the dividend to be declared; amendments to the by-laws and any other matters which in their opinion, the members should decide. [Id.]

Art. 2471. Credit committee.—The credit committee shall approve every loan or advance made by the association. Every application for a loan shall be made in writing and shall state the purpose for which the loan is desired, and the security offered. No loan shall be made unless the credit committee is satisfied that it promises to benefit the borrower, nor unless it has received the unanimous approval of those members of said committee who were present when it was considered, nor if any member of said committee shall disapprove thereof; but applicant for a loan may appeal from the decisions of the credit committee to the board of directors. [Id.]

Art. 2472. Supervisory committee.—The supervisory committee shall inspect the securities, cash and accounts of the association and supervise the acts of its board of directors, credit committee, and officers. At any time, the supervisory committee, by unanimous vote, may suspend the credit committee or any officer elected by the board of directors, and by a majority vote may call a meeting of the shareholders to consider any violation of this title or of the by-laws, or any practice of the association which, in the opinion of said committee, is unsafe or unauthorized. Within seven days after the suspension of the credit committee the supervisory committee shall cause notice to be given of a special meeting of the members to take such action relative to such suspension as may seem necessary. The supervisory committee shall fill vacancies in their own number until the next annual meeting. [Id.]

Art. 2473. Capital and shares.—The capital of the association shall be unlimited in amount. Shares of capital stock may be subscribed for and paid in in such manner as the by-laws shall prescribe. [Id.]

Art. 2474. Shares and deposits.—Shares may be issued and deposits received in the name of a minor and such shares and deposits may, in the discretion of the directors, be withdrawn by such minor or by his parent or guardian, and in either case payments made on such withdrawals shall be valid. If shares are held or deposits made in trust, the name and residence of the beneficiary shall be disclosed and the account shall be kept in the name of such holder as trustee for such person. If no other notice of the existence and terms of such trust has been given in writing to the association, such shares or deposits may, upon the death of the trustees, be withdrawn by the person for whom the amount of such shares was paid in or for whom such deposit was made, or by his legal representatives. [Id.]

Art. 2475. Depositories.—The capital, deposits and surplus funds of the association shall be either lent to the members for such purposes and upon such security and terms as the credit committee shall approve, or deposited to the credit of the association in savings banks or trust companies incorporated under the laws of this State, as in national or State banks located therein, such depositories to be approved by the Banking Commissioner. [Id.]

Art. 2476. Repaying loan.—A borrower may repay the whole or any part of his loan on any day on which the office of the association is open for the transaction of business. For failure to pay the interest or any installment required by the terms of the loan, the borrower may be fined if the by-laws so prescribe. [Id.]

Art. 2477. Conditions of loans.—No member of the board of directors or of the credit or supervisory committee shall receive any compensation for his services as a member of said board or committees, nor shall any member of the credit or supervisory committee, either directly or indirectly, borrow from or become surety for any loan or advance made by the association except upon the approval of two-thirds of the members of the association. No loan shall be granted except for the productive purposes or urgent needs nor for a longer period than eight months; nor shall any loan be renewed for a sum as large as the original amount. Loans to any one member shall not exceed two hundred dollars. [Id.]

Art. 2478. May expel member.—The board of directors may expel from the association any member who has not carried out his engagements with the association, or has been convicted of a criminal offense, or neglects or refuses to comply with the provisions of this law or of the by-laws of the association, or who habitually neglects to pay his debts, or shall become insolvent or bankrupt, or shall have deceived the association with regard to the use of borrowed money. No member shall be expelled until he has been informed in writing of the charges against him and an opportunity has been given him, after reasonable notice, to be heard thereon. [Id.]

Art. 2479. Liability to expelled member.—The amounts paid in on shares or deposited by members who have withdrawn or have been expelled, shall be paid to them, but in the order of withdrawal or expulsion, and only as funds therefor become available and after deducting any amounts due by said members to the association. Such expulsion shall not operate to relieve a member from any remaining liability to the association. [Id.]

Art. 2480. Audit.—Immediately before a meeting of the directors called to recommend the declaration of a dividend, the supervisory committee shall make a thorough audit of the receipts, disbursements, income, assets and liabilities of the association for the fiscal year and shall make a full report thereon to the directors. Said report shall be read at the annual meeting and shall be filed and preserved with the records of the association. [Id.]

Art. 2481. Dividend.—At the annual meeting a dividend may be declared from income which has been actually collected during the fiscal year next preceding or during the months which have elapsed since the association began business, and which remains after the deduction of all expenses, losses and the amount required to be set apart as a guaranty fund. Such dividend shall be paid on all fully paid shares outstanding at the close of the fiscal year, but shares which become fully paid during the year shall be entitled only to a proportional part of said dividend, calculated from the first day of the month following such payment in full. Dividends due to a member shall be paid to him in cash or credited to the account of partly paid shares for which he has subscribed. [Id.]

Art. 2482. Guaranty fund.—Immediately before the payment of each dividend, there shall be set apart as a guaranty fund twenty per cent of the net income which has accumulated during the fiscal year. Said fund and the investments thereof belong to the association and shall be held to meet contingencies or losses in its business. All entrance fees shall be added at once to the guaranty fund. But upon recommendation of the board of directors the members at an annual meeting may increase, and whenever said fund equals or exceeds the amount of capital stock actually paid in, may decrease the proportion of profits required by this article to be set apart as a guaranty fund. [Id.]

Art. 2483. Dissolution.—At any meeting specially called to consider the subject, the members upon the unanimous recommendation of the board of directors may vote to dissolve the association, provided at least two-thirds of the members are present at such meeting, and provided that not more than ten members either in person or by written notice, object thereto. A committee of three shall thereupon be elected to liquidate the assets of the association, and each share of the capital stock, according to the amount paid in thereon, shall be entitled to its proportion of the proceeds after all debts of the association have been paid. [Id.]

Art. 2484. Report to Commissioner.—Within twenty days after the last business day of December in each year, every such association shall make to the Banking Commissioner a report, in such form as he may prescribe, signed by the president, treasurer

and a majority of the supervisory committee who shall certify and make oath that the report is correct according to their best knowledge and belief. Any such association which neglects to make the said report within the time herein prescribed shall forfeit to the State five dollars for each day during which such neglect continues. [Id.]

2. AGRICULTURAL AND LIVESTOCK POOLS

Art. 2485. May incorporate.—Any association of persons which may include corporations duly chartered, State banks and trust companies, National banks and trust companies, and co-operative associations composed of persons engaged in producing or producing and marketing staple agricultural products or livestock, or both, may organize a pool for the purpose of borrowing and lending money on agricultural products or livestock, or both, for agricultural purposes or for the raising, breeding, fattening or marketing of livestock. Any number of persons, not less than three, may incorporate for the purpose of growing, storing, preparing for the market, and marketing agricultural products or for the purpose of growing, raising, fattening for the market, and marketing livestock or for both such purposes and may use any of such livestock or farm products, or both, as security, in financing such enterprises; and shall have all the privileges of a pooling organization in borrowing money to promote the business of such corporation. [Acts 2nd C. S. 1923, p. 82.]

Art. 2486. Definitions.—"Pools" as used in this title shall be held to mean agricultural financial pools and livestock financing pools; "agricultural products" shall be held to mean any or all products of the farm, orchard or dairy usually classed as agricultural products other than livestock; "livestock" shall be held to mean any herd of cattle, sheep, goats or swine; "margins" shall be held to mean additional security in money of legal tender of the United States. [Id.]

Art. 2487. May borrow.—Such pools shall have the right to borrow money, and to use as security for such borrowed funds, the security given by those borrowing money from such pooling organizations, and shall be authorized to co-operate with the Federal Reserve Banks and Federal Farm Loan Banks under the provisions of the Federal laws affecting farm credits. [Id.]

Art. 2488. May loan.—Such pools are authorized to lend money on agricultural products that are stored in bonded licensed warehouses and for which there is outstanding therefor a negotiable bonded warehouse receipt issued in accordance with the Uniform Warehouse Receipt Act. They are also authorized to lend money to the owners of herds upon the terms and conditions as hereinafter provided, and such herds shall be permitted to remain in the possession of the owner or owners thereof, or in the possession of an agent or representative of the owner or owners. A mortgage against such herd, or shipping documents issued against such herds in transit, may be used as collateral for such loan. [Id.]

Art. 2489. Loans and interest.—The interest charged on all such loans shall not exceed by more than one and one-half per cent the rate of interest charged such pooling institutions by the farm loan banks. No loans shall be made by any pooling organization to any person or association of persons, unless such person or association is engaged in producing, or producing and marketing, staple agricultural products, or livestock, upon which such loan is made. All such commodities, articles or things classed herein as agricultural products shall be insured with some stock insurance company authorized to do business in this State. Such insurance shall be for not less than the full amount of the loan. At no time shall a greater amount than seventy-five per cent of the market value of such commodities, articles or things on date of loan be loaned thereon. [Id.]

Art. 2490. Agents for borrowers.—Such pools shall have the right to act as agents for all borrowers in the sale of such commodities, articles or things on which loans have been made. The commissions charged for such service shall not exceed fifty cents per bale for cotton sold, and shall in all cases on all other commodities, articles or things be reasonable. Where such pools operate bonded and licensed warehouses, it shall have authority to make a charge for storage, for drawing and handling of samples and for insurance in addition to other charges as provided for herein. [Id.]

Art. 2491. Warehouses and concentration places.—All such pools are authorized to own, maintain, and operate bonded and licensed warehouses when such warehouses are deemed necessary in the conduct of said business, and to own or maintain concentration places, including railroad sidings. [Id.]

Art. 2492. Margins.—Such pools shall be authorized to demand margins, such as is necessary to keep the market value of any commodity, article or thing on which a loan has been made up to within seventy-five per cent of the value of such commodity, article or thing on date of loan at any time during the life of such loan, and shall have the right to sell any commodity, article or thing on which a loan has been made when the owner or owners thereof fail or refuse to put up or provide for such margin. All such margins shall be credited to the account of such borrower and same shall be taken into account when such loan or loans shall be liquidated. [Id.]

Art. 2493. Loan limit and liquidations.—Such pools are authorized to make loans as herein provided, the total of which shall at no time exceed ten times the total of the capital stock and surplus of such organizations. The borrower of any funds from such pool shall have the right to liquidate his loan at any time during the contract period thereof, upon full and satisfactory settlement of all claims against such borrower due such organization. [Id.]

Art. 2494. Bond.—Before engaging in business in this State, such pools shall furnish a good and sufficient bond, conditioned upon the faithful performance of its duties and responsibilities as a pooling organization, said bond to be for ten per cent of the capital stock of such pool. Such bonds shall be approved by the commissioners court of the county in which such pool is organized, or in which is located the home office of such pool. All such bonds shall be certified to the Commissioner of Agriculture who shall, upon receipt of such bond and after satisfying himself as to its genuineness, issue to such pool a certificate of authority to conduct a pool in accordance with the provisions of this law, upon the payment of a fee of ten dollars which shall be collected by said Commissioner and by him paid into the State Treasury. [Id.; Acts 1927, 40th Leg., p. 145, ch. 94, § 1.]

Art. 2495. Officers to furnish bonds.—The officers of such pools shall be a president, vice-president, and a secretary and treasurer, provided that the office of secretary and treasurer may be held by one person, and a board of directors, all of which shall be members of such pooling organization. The said board of directors shall elect a president, vice-president, secretary and treasurer from said board of directors, and such board shall be authorized to employ a manager and others to conduct the affairs of the pool. The secretary-treasurer and all officers in charge of the management shall be required to furnish to such pool, a good and sufficient bond conditioned upon the faithful performance of duty. Such bond shall be not less than five per cent of the total of the capital stock and surplus of said pool. The directors of any such pool shall not permit such persons to conduct the affairs of such pools when they have not so furnished bond. [Id.]

Art. 2496. To file statement.—All such pools shall on the first of January, April, July and October of each year file with the Commissioner of Agriculture a sworn statement showing the amount of business done, the number of negotiable receipts on which loans have been made and the values of such com-

modities, the total of all such loans, the total of all the obligations of the pool, to whom due and the amount of interest being paid on same, the quantity or number of sales made for clients, the gross receipts of such sales, the amount of commissions charged thereon, and the number and value of all livestock mortgages and other securities. [Id.; Acts 1927, 40th Leg., p. 39, ch. 26, § 1.]

Art. 2497. Pools may use security.—All such pools shall be authorized to use such security or collateral held by them as security for loans made to such pooling organizations. When any loan due the pooling organization is satisfied, such organization shall deliver to the borrower a final receipt of settlement, and when any article, commodity or thing is sold, the negotiable warehouse receipt shall be delivered to the maker thereof, and cancelled in accordance with the provisions of the Warehouse Acts of this State. [Id.]

Art. 2498. Term of loan.—The maximum term of any loan on agricultural products shall not exceed twelve months and no loans on livestock shall be for any term exceeding three years. Loans may be renewed conditioned upon new and agreed valuations of the commodity, article or thing, or upon additional security, or both. [Id.]

Art. 2499. Unlawful to dispose of receipt.—No person shall dispose of any negotiable bonded warehouse receipt placed with any bonded organization as security on loan, or to be held by such pool, pending the sale of any such commodity, article or thing represented by such receipt except as provided herein. [Id.]

3. MUTUAL LOAN CORPORATIONS

Art. 2500. Purpose.—Ten or more persons, five of whom shall be citizens of Texas, may organize corporations to aid their member stockholders in producing, or producing and marketing of staple agricultural products, or in acquiring, raising, breeding, fattening or marketing of livestock. [Acts 2nd and 3rd C. S. 1923, pp. 87, 174.]

Art. 2501. Powers.—Such corporations shall have power:

1. To accumulate and lend money to their member stockholders where such loans are made for the purposes provided for in the Federal "Agricultural Credits Act of 1923."

2. To lend money to their member stockholders where the money loaned is to be used for the production or production and marketing of staple agricultural products, or for the acquiring, raising, breeding, fattening or marketing of livestock, or the purchase of the capital stock of such corporations and in order to obtain the funds to loan their members, such corporations are authorized to purchase, sell, indorse and discount the notes of its member stockholders and by indorsement to become liable as principal makers thereof, where such notes are secured by warehouse receipts or shipping documents covering such agricultural products or chattel mortgages on livestock or by crop mortgages or other acceptable chattel mortgages or other acceptable security. [Id.]

Art. 2502. Capital stock.—Such corporations must have a fully paid up capital stock of not less than ten thousand dollars at the time of the filing of the articles of incorporation. Ten thousand dollars of such capital shall be kept intact and invested in securities approved by law for investments of saving banks. In the discretion of the organizers or board of directors, the capital stock may be divided into preferred and common stock, and in such case the articles of incorporation shall provide for the payment of dividends on preferred stock and for the retirement of both kinds of stock. Preferred stock shall be issued in such amount only as provided in the articles of incorporation. No dividends shall be paid on common stock until dividends provided to be paid on the preferred stock have been fully paid at the rate provided in the articles of incorporation. With the approval of the Banking Commissioner first obtained, any domestic corporation except a savings bank may invest any part of its funds in the preferred stock of such corporation.

Art. 2503. Ratio of capital to loans.—Such corporations shall automatically increase their capital stock at the rate of ten per cent of the amount of loans made by them to their member stockholders and their articles of incorporation and by-laws shall so provide. Such corporation shall not make loans in excess of ten times its unimpaired capital stock represented by the part of its capital stock so automatically increased. [Id.]

Art. 2504. Articles of incorporation.—The articles of incorporation shall further provide: That each applicant for a loan or discount by such corporation shall become a subscriber to its common stock in an amount equal to ten per cent of the loan or discount applied for, to be fully paid for upon or before the closing of such loan or granting of such discount, provided the board of directors may waive such requirement if the stockholder is already the owner of sufficient stock; and that the corporation may buy in out of available funds any outstanding capital stock at the book value thereof, as conclusively determined by the directors of the corporation. [Id.]

Art. 2505. Semi-annual report.—On or before the tenth day of each January and July, such corporation shall file with the Secretary of State a report showing its true financial condition on the first days of January and July, and the amount of capital stock, both preferred and common, then outstanding, including that added by the automatic increase. Such corporations shall not pay a franchise tax. [Id.]

Art. 2506. Liability of stockholders.—Except for debts lawfully contracted between a member stockholder and the corporation, no stockholder either preferred or common, shall be liable for the debts, contracts or engagements of the corporation beyond the par value of the stock owned by such stockholder, and the stock, both common and preferred, shall be nonassessable.

Art. 2507. Rate of interest.—No corporation organized under the provisions of this chapter shall, in making loans to its members, or discounting notes of the members of such corporation, exceed two and a half per cent of the rate of discount established by the Federal Farm Loan Board for discounts made by the Federal Intermediate Credit Banks. [Acts 1925, p. 221.] [39th Leg., ch. 68, § 1.]

4. CO-OPERATIVE CREDIT ASSOCIATIONS

Art. 2508. Purposes.—Ten or more persons, citizens of this State, who are engaged in the production, or production and marketing of staple agricultural products, or the raising, breeding, feeding, fattening or marketing of live stock, may organize private co-operative credit associations not for profit. [Acts 2nd C. S. 1923, p. 90.]

Art. 2509. Powers.—Such associations shall have the following powers:

1. To borrow for and lend money to its members only.

2. To discount or rediscount for its members only, and to purchase and sell the notes of its members, or such other evidences of indebtedness as may be discounted or rediscounted under the provisions of the Federal "Agricultural Credits Act of 1923," and under the terms, rules and regulations prescribed by the Federal Farm Loan Board, and to that end may indorse all bills, notes or other evidences of indebtedness of its members.

3. And to do such acts as are permitted to associations generally organized under the laws of this State where not in conflict herewith. [Id.]

Art. 2510. Capital stock.—Such associations may be organized with or without capital stock, but if organized to lend money secured by chattel mortgages on live stock, shall have a capital stock. Associations having a capital stock shall automatically increase the same at the rate of ten per cent of the

amount of loans or discounts made by them to their stockholder members and such loans or discounts shall never exceed ten times the amount of their paid up unimpaired capital stock, and the articles of incorporation shall so provide. [Id.]

Art. 2511. Articles of incorporation.—In addition to the requirements prescribed by the general corporation law, the articles of incorporation shall provide: That loans shall not be obtained for, made to, or notes purchased of, or discount for any person or association other than a stockholder in such association; and that each applicant for a loan or discount by such association shall become a subscriber to its capital stock in an amount equal to ten per cent of the amount of the loan or discount applied for, to be fully paid for on or before the closing of such loan or granting of such discount. A filing fee of ten dollars shall accompany said articles of incorporation and be paid to the Secretary of State.

Art. 2512. Fees and reports.—Each such association, except those having a capital stock, shall pay an annual license fee of ten dollars, and all such associations shall be exempt from all franchise or other license tax. On or before the tenth days of January, April, July and October, those having a capital stock shall file with the Secretary of State with a fee of two dollars and fifty cents, accurate reports showing their financial condition and the amount of outstanding paid up capital stock as of the first of January, April, July and October. [Id.]

Art. 2513. Retirement of stock.—Whenever the debts and liabilities of such association are less than fifty per cent of its assets, and in the judgment of the directors the same may be done without impairment of the financial condition of such association, said board may authorize the buying in and purchase of its capital stock at the book value thereof as it may conclusively determine, and pay for it in cash within one year thereafter; provided the board may in its discretion retire pro rata such stock held by any member or group of members whose loans have been paid in whole or in part. [Id.]

5. FARMERS' CO-OPERATIVE SOCIETY

Art. 2514. May incorporate.—Private corporations may hereafter be incorporated for the purpose of enabling those engaged in agricultural pursuits to cooperate with each other for the purposes named in this subdivision. Only those engaged in agricultural pursuits can become incorporators of, or members of societies chartered under this law. Each corporation chartered hereunder shall contain as a part of its name these words, "Farmers' Co-operative Society". Persons not engaged in agricultural pursuits may be permitted to contribute an amount not in excess of one-third the outstanding working capital of the society. [Acts 1917, p. 432.]

Art. 2515. Purely local.—Corporations chartered hereunder shall be purely local in their character, shall confine their activities, business operations and membership to the community in which they are located, and in no event to extend beyond the territory surrounding the town, village or city designated as the place of business of the corporation. No public funds appropriated to any department of State government, or to any State institution shall be used in organizing any society or corporation mentioned in this subdivision. Corporations incorporated under this law may join with other corporations incorporated under this Act in establishing and maintaining joint agencies for the accomplishment of the purposes for which they are incorporated.

Art. 2516. Laws governing.—Those desiring to form corporations hereunder shall, in the exercise of the rights herein granted and subject to the limitations herein provided, prepare and file their charters under the general corporation laws of this State, which said corporation laws shall govern them except where in conflict with the provisions of this subdivision. [Id.]

Art. 2517. Filing and recording charter.—The Secretary of State shall charge for filing charters and amendments to charters of corporations incorporated hereunder the sum of ten dollars for each charter and amendment thereof. Charters, amendments to charters and by-laws must be filed in the office of the Secretary of State and must before being filed, first be approved by the Attorney General. Copies of the charter and by-laws properly certified to by the Secretary of State shall also be filed in the office of the county clerk of the county in which it is located any society which is incorporated hereunder, but need not be recorded by the county clerk, but shall be kept by him subject to inspection of any person interested. The Secretary of State shall, in furnishing the corporation certified copies of charters, amendments and by-laws, furnish to the society two certified copies of each, one for the files of the society, and one to be filed in the office of the county clerk. [Id.]

Art. 2518. Statement to be made.—Corporations chartered hereunder shall be purely co-operative, and not for profit, and shall not be required to pay any annual franchise tax, but shall nevertheless make a statement of their assets and liabilities to the Secretary of State, showing the condition of their affairs, in such form as the Attorney General may prepare for the Secretary of State. Such societies may, by their directors, in accordance with their by-laws pass their profits to the surplus fund or divide the same among the members of the society in proportion to their respective contributions in cash to the working capital of the corporation and patronage of their members. [Id.]

Art. 2519. Assets.—Corporations chartered hereunder shall have property of not less than five hundred dollars in value, which may be cash, property or note[s] acceptable to the board of directors. No membership certificates shall be issued for subscriptions in the form of notes until such notes have been paid in full, principal and interest, and the holders of membership certificates for which cash or property has not been paid, while entitled to vote in the management of the affairs of the corporation, shall not be entitled to share in its dividends nor in a distribution of any assets until such notes are paid in full. However, they may become borrowers from the corporation under the provisions of this subdivision and the by-laws adopted hereunder. Such notes shall be construed to be valid subscription contracts, and shall be the property of the corporations chartered hereunder for any and all purposes. [Id.]

Art. 2520. Authority.—Corporations chartered under this law shall have authority to borrow money and discount notes to an aggregate amount not in excess of five times the working capital of the corporation; such corporations shall have the right to loan their funds to members only upon such terms and security, if any, as may be provided in their by-laws; they shall also have the right to act as the co-operative selling and purchasing agents of their members only, and may for their members sell any and all agricultural products, and for their members purchase machinery and all supplies of any kind or character, including the purchase of fire, live stock, hail, cyclone and storm insurance for its members; in the event of purchasing insurance for its members, however, the corporation shall have authority to be, and shall be appointed and licensed as, the agent of the insurance companies, and the commissions so received by it shall be a part of the corporate funds of the company; they shall also have authority to own and operate such machinery and instrumentalities as may be necessary in the production, harvesting, and preparation for market of farm and ranch products. [Id.]

Art. 2521. Membership.—Membership in societies incorporated under this law can be obtained only by election thereto at the time of organization of the society by the organizers thereof, or by the board of directors of such society when organized under such rules and limitations as may be made in the by-laws. Members shall each have one vote only in the man-

agement of the affairs of the corporation. Members may be suspended or expelled for misconduct under such rules and regulations as may be prescribed in the by-laws. In case of expulsion the society shall return to the member at such time as may be fixed in its by-laws an amount equal to the money value of the amount contributed by such member to the working capital of the society. [Id.]

Art. 2522. Withdrawal.—Membership certificates shall not be transferable, but members shall have the right of withdrawal under such rules and regulations as may be adopted by the society in its by-laws. In case of withdrawal the society may return to the member an amount equal to the money value of the amount contributed by him to the working capital of the society. [Id.]

Art. 2523. Liability of members.—Unless otherwise provided the members of a corporation chartered hereunder shall not be responsible to the corporation or to its creditors in excess of the membership shares subscribed by them, and when such shares are paid for their liability shall cease; provided that the association may, in its by-laws, make each member responsible for an additional amount equal to one hundred per cent of the shares owned by a member, payable upon assessment of the board of directors for the payment of the debts and obligations of the corporation; and may provide in like manner that members may waive their right to claim personal property exempt from seizure for debt as against debts and obligations due to the society. In all such instances such liability must be plainly provided for in the by-laws, which by-laws in this and all other instances must be signed by the member. [Id.]

Art. 2524. Publications.—Appropriate forms of charter, charter amendments, by-laws, rules and annual reports to the members and such other forms as may be necessary to make this law effective, shall be prepared by the Attorney General and filed with the Secretary of State, who shall cause same, together with a copy of this law, to be published and distributed among the citizens of the State who may be interested. [Id.]

TITLE 47

DEPOSITORIES

Chap.

1. State depositories.
2. County depositories.
3. City depositories.
4. Special depository.

CHAPTER ONE

STATE DEPOSITORIES

Art.

2525. Depository board.
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Article 2525. [2417] Depository Board.—The State Treasurer as secretary, together with the Attorney General and the Banking Commissioner, shall constitute the Depository Board. The said Board shall have the right to make such rules and regulations governing the establishment and conduct of State depositories and the handling of funds therein as the public interest may require, not inconsistent with the provisions of this chapter, which said rules and regulations shall be in writing and entered upon the minutes of said Board. Whenever in this chapter the word Treasurer is used it shall mean the State Treasurer, and the word Board shall mean the State Depository Board. [Acts 1923, p. 60; Acts 1927, 40th Leg., 1st C. S., p. 161, ch. 57, § 1.]

Art. 2526. [2418] Bids.—The treasurer on the 15th, day of September annually, shall mail to each state and national bank doing business in this State, a circular letter enclosing an application blank to be used by banks in making application for a deposit of State funds for a term of one year after the 1st, day of December next succeeding. Said letter shall state the conditions to be complied with by the applicants as herein provided. The Treasurer shall make four certified lists of the banks to which such letters are mailed, each to be accompanied by a copy of such letter, one of which he shall deliver to each member of the Board and the other he shall keep on file in his office for the inspection of any person desiring to see the same. Funds deposited shall be for a period of one year's time. If it develops that more depositories are required at any time, the Board may send out notices to all state and national banks who are not depositories, notifying them that further applications for funds for the unexpired term will be accepted. Said additional depositories shall comply with the same rules and conditions regarding all other depositories approved under this chapter. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 161, ch. 57, § 1.]

Art. 2527. [2419] Application for deposits.—The application of the bank applying for State funds shall state its amount of paid up capital stock and permanent surplus, and the maximum of State funds it will accept, accompanying same with a statement of the bank's condition at the date of said application. Such application shall contain a provision that the books and accounts of such bank, if designated as a State Depository, shall be open at all times to the inspection of the Board, any member or any accredited representative thereof. All such applications shall be mailed to the Treasurer at Austin in time to reach his office on or before noon of the fifteenth day of October next succeeding. Applications received in the next succeeding five days may be considered at the option of the Board. [Id.]

Art. 2528. [2420] Acceptance.—When the Treasurer receives such application, he shall endorse thereupon the date of its receipt, and shall on the first Monday in November prepare three lists giving the names of all applicants for funds and the amount applied for. One list shall be furnished each member of the Board. Said board shall meet promptly thereafter and consider said applications, giving approval to those applicants that are acceptable and having the power to reject those whose management or condition, in the opinion of the board, does not warrant the placing of State funds in their possession. No application for State funds shall be granted to any bank whose liabilities for borrowed money are in excess of its capital stock, but the board may in its discretion waive this provision. State depositories shall pay interest to the State upon funds deposited with them at the rate of 4% per annum on average daily net balances, payable to the Treasurer monthly. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 161, ch. 57, § 1.]

Art. 2529. [2423] Qualifications of Depositories.—As soon as practicable after the Board shall have passed upon all applications, the Treasurer shall notify all banks whose applications have been accepted of their designation as State depositories. The Treasurer shall require each bank so designated to qualify as a State depository on or before the twenty-fifth day of November next succeeding by (a) depositing a depository bond signed by some surety company authorized to do business in Texas in an amount equal to not less than double the amount of State funds allotted, such bond to be payable to the Treasurer and to be in such form as may be prescribed by the Board and subject to the approval of such Board; or (b) by pledging with the Treasurer any securities of the fol-

lowing kinds in an amount at par value one-fifth greater than the amount of State funds allotted; Bonds and certificates of indebtedness of the United States, bonds of this State, bonds issued by banks organized under the Federal Farm Loan Act located in Texas, bonds of counties, independent school districts and common school districts located in Texas, and bonds issued by municipal corporations in Texas. No state, county, independent school district, common school district or municipal bonds shall be accepted as collateral security unless they shall be approved by the Attorney General. The Board shall have the power to reject, without assigning any reason therefor, any or all collateral or any surety bond tendered by a State depository, and its action in so doing, shall be final and not subject to any review.

When the collateral pledged by a State depository to secure a deposit of State funds shall be in excess of the amount required under the provisions of this chapter, the Treasurer may, subject to the approval of the Board, permit the release of any such excess. In the event the balance to the credit of the Treasurer on the books of such bank shall be thereafter increased, adequate security as provided for in this chapter, shall be deposited and maintained by such depository bank. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 161, ch. 57, § 1.]

Art. 2530. [2426] Deposit of securities.—The securities above mentioned shall be delivered to the Treasurer and receipted for by him, and retained by him in the vaults of the State Treasury and if, in any case, or at any time, such bonds or other securities are not satisfactory security in the opinion of the Board for the deposits made under this chapter, they may require such additional security to be given as will be satisfactory to them. Said Board shall, from time to time, inspect such bonds and see that the same are actually kept in the vaults of the State Treasury. In the event that any State depository shall fail to pay deposits or any part thereof on the check of the Treasurer, he shall have the power to forthwith realize upon such bonds or other securities deposited by said bank, and disburse the money arising therefrom, according to law, upon the warrants drawn by the Comptroller upon the funds for which said bonds or other securities are secured. Any bank making deposits of bonds or other securities with the Treasurer under the provisions of this chapter may cause such bonds or other securities to be endorsed or stamped, as they may deem proper, so as to show that they are deposited as collateral and not transferable, except as herein provided. The right of substitution of securities shall be granted to depositories, provided the securities substituted meet with the requirements of the law and are approved by the Board.

Upon request of the owner or owners, the Treasurer may surrender interest coupons or other evidence of interest when due on securities deposited with him by depository banks, provided said securities are ample to meet the requirements of the State. [Id.]

Art. 2531. [2424] Failure to qualify.—In case any bank that has submitted an application for State funds shall fail to qualify within the time specified in this chapter after being notified to do so, it shall forfeit its right to act as a depository for a period of one year. [Id.]

Art. 2532. [2425] Placing deposits.—After the depositories have qualified as provided in the preceding articles, it shall be the duty of the Treasurer to deposit the funds belonging to the State in such depositories, as far as practical on a fair percentage basis, and shall at all times keep such funds equitably prorated in proportion to the amount which each is entitled to receive by drawing warrants alternately thereon, or by apportioning the warrants so drawn.

No depository shall be entitled to keep on deposit more than fifty per cent of its paid up capital stock and permanent surplus. Any reduction in the capital stock and surplus of any depository shall reduce correspondingly the amount of funds which it can retain as a depository, and the Treasurer is authorized to withdraw from said depository any funds in excess of fifty per cent of its capital and surplus.

The amount of funds allotted to any one depository shall at no time exceed one hundred thousand dollars. If there be a surplus after the awards are made, the surplus shall be prorated among the applying banks. Such provisions, however, shall not affect arrangements for clearing checks made by said Board with Reserve Depositories as hereinafter provided.

All State depositories shall collect at their own expense all checks, drafts and demands for money deposited with them by the Treasurer, and when using due diligence, shall not be liable on such collections until the proceeds thereof have been received by the depository bank.

If the Treasurer shall fail to exercise proper diligence in depositing or investing State funds in accordance with the provisions of this chapter, he shall be liable to the State for three per centum annually on funds which he fails to deposit or invest, excepting such as he may retain in the State Treasury or on deposit with Reserve Depositories sufficient to meet the current demands on the Treasury. The term "current demands on the Treasury" as herein used, shall be construed to mean funds which may be withdrawn in payment of the State's obligations at any time. It is not the purpose of this law to require the Treasurer to deposit funds in a State depository, which in his judgment, would have to be withdrawn before October 1st, next following such deposit.

State Depositories shall show in their published statements the amount of State funds on deposit with them. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 161, ch. 57, § 1.]

Art. 2533. [2428] Reserve Depositories.—The Board shall designate one or more banks in centrally located cities to be known as Reserve Depositories, to be used for clearing checks and other obligations due the State, and the Treasurer shall keep sufficient funds on deposit in said depositories to meet all current demands upon the State. All items received by the Treasurer for collection shall be deposited with such depositories for credit to the account of the Treasurer and all checks drawn by the Treasurer for the payment of obligations due by the State may be drawn on a reserve depository or on a State depository, so that the checks of the State may at all times pass current as cash. Reserve depositories shall pay interest to the State at the rate of two and one-fourth per cent per annum on daily net balances, payable monthly, provided, however, the Treasurer is hereby authorized to waive the collection of such interest from any reserve depository on funds in like amount and for a like period of time such depository may be holding, at the request of the Treasurer, treasury warrants drawn against the general revenue fund, to assist him in preventing the State from going on deficiency. All funds deposited with reserve depositories shall be subject to demand. The Board shall fix the amount of security to be required of any reserve depository and when so fixed, the reserve depository shall execute or give security of the kind or kinds provided for other State depositories. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 161, ch. 57, § 1.]

Art. 2534. [2431] Withdrawals.—The funds on deposit with depositories shall be subject to withdrawal at any time by the Treasurer. At no time shall the withdrawal from one depository be greater than twenty-five per cent of its quota for any one month, unless fifteen days notice has previously been given the depository by the Treasurer. Whenever the current demands upon the Treasurer are such that the said twenty-five per cent is insufficient to meet such current demands, then the Treasurer shall have power, without notice, to withdraw additional amounts above the twenty-five per cent to meet such current demands, provided that such additional amounts shall be drawn in equal portion as far as possible from different depositories, and not the full amount from any one depository. The limitation as to the withdrawal of only twenty-five per cent of any bank's quota and the limitation as to additional amounts, shall not apply to any reserve depository. [Id.]

Art. 2535. [2429] Remittances.—All State depositories shall remit free of charge to the Treasurer on his demand, all withdrawals of State funds as provided for in the preceding article. All remittances to the Treasurer made by the State or reserve depositories, or any person or persons may be in cash by registered letter, by post office money order, express money order of any company authorized to do business in Texas, or by any bank draft on any bank in the following cities: Dallas, Fort Worth, Waco, Houston, Austin, Galveston and San Antonio. The liability of any reserve depository, State depository or person sending the same shall not cease until the said money is actually received by the Treasurer. Any depository that refuses to remit for State items, or Treasury drafts, as above indicated, shall upon order of the Board forfeit its right to receive further deposits, and the Board shall have the right to withdraw all funds from said bank, which shall thereafter cease to be a State depository. [Id.]

Art. 2536. [2434] Extensions.—If it should be found by the Board at the expiration of any biennial depository period that any of the existing depository banks have not been or will not be selected as depositories for the ensuing period and that the withdrawal of State funds at any particular depository bank will create a demand on such funds at any particular depository bank which it will not be able to meet, though otherwise solvent, and if it should be further found by the Board that such action is warranted in the interest of the public welfare, then the Board shall have the discretion and authority to extend the time of payment of such funds into the State Treasury from time to time. Such extension shall not be made unless and until such depository bank executes a new application and gives security as provided in this chapter covering such time as the Board may designate. Any depository bank receiving the benefits of this extension privilege shall pay a rate of interest one per cent per annum in excess of the then current rate as fixed by the Board. [Id.]

Art. 2537. [2432] Cancellation of contracts.—Each depository shall have the right to cancel its depository contract upon accounting to the Treasurer for all funds deposited with it, (a) at the end of any year by giving thirty days notice in advance, or (b) when the interest rate is increased by the rate Board.

The Board shall have the right to terminate a contract with a depository at any time they deem it to the interest of the State to do so, upon giving the depository fifteen days notice of such termination. The Treasurer may discontinue making deposits in any bank, when in the opinion of the Board the condition or management of the bank warrants such action on his part. [Id.]

Art. 2538. [2433] Surplus.—If there should be at any time a surplus of State funds above the aggregate amount applied for by and allotted to State funds above the aggregate amount applied for by and allotted to State depositories, together with the amount necessary in the judgment of the Treasurer to be carried in reserve depositories, the Treasurer is hereby authorized and it shall be his duty, with the approval of the Board, to invest all of such surplus in bearer obligations of the United States Government yielding interest at a rate of not less than three per centum per annum, such securities to be purchased on the open market at the best price obtainable and to be held by him as the property of the State in such manner as similar securities are required by law to be held. As the needs of the State may require and before withdrawing funds from any State depository, it shall be the duty of the Treasurer to convert all such obligations into cash by selling the same on the open market at the best price obtainable and placing the proceeds thereof to the credit of the proper funds. [Id.]

Art. 2539. [2437] Interest.—Any State depository receiving State funds under the provisions of this chapter shall pay to the Treasurer at the end of each month in the manner prescribed by him, interest on the average daily balance for said month at the rate fixed by the Rate Board. All State funds deposited under the provisions of this chapter shall be subject to a change in the rate of interest by the Rate Board at the end of any one year. [Id.]

Art. 2540. [2421] Rate Board.—The Texas Rate Making Board shall be composed of five members who shall be citizens of Texas, and who shall be competent and skilled business men of known ability and high moral character and integrity, to be appointed biennially by the Governor and confirmed by the Senate. All members of said Board shall hold office for two years beginning February 1, bienially [biennially]. Any vacancy in the membership of said Rate Board shall be filled by the Governor for the unexpired term. The Governor shall designate one of said members as chairman of said board. In appointing said members, the Governor shall not select any two from the same section of the State. The Governor shall have full power to remove any member of said board from office for good cause, the reasons for such removal to be specified and filed with the Secretary of State. [Id.]

Art. 2541. [2421] Expenses of Rate Board.—The members of said board shall serve without remuneration, but the Legislature shall make ample provision for the payment of their traveling expenses, including hotel expenses, necessarily incurred in connection with their official duties. [Id.]

Art. 2542. [2421] Duties of Rate Board.—The Rate Board shall have power and it shall be its duty to fix and specify annually the precise rate of interest which banks designated as State depositories shall pay to the credit of the Treasurer on average daily balances in said banks. The rate of interest to be charged shall be the same for all banks. Said Rate Board shall never fix a rate for less than four per cent. [Id.]

Art. 2543. [2421] Meetings.—Said Rate Board, for the purpose of fixing such interest rate shall meet on the first Monday in September of each year, at which meeting the rate of interest for the succeeding year, beginning on December 1st of each year and ending on the 30th day of November, shall be fixed. When the rate of interest has been fixed the Rate Board shall certify the rate to the State Depository Board.

All meetings of the Rate Board shall be upon call of the chairman, or in the event of his failure, refusal or neglect to act, upon the call of any three members thereof, such meetings to be held in any available room or space in the State Capitol. Said Rate Board shall meet at least once each year on the first Monday in September, and as often thereafter as may be necessary. Whenever a quorum of both the Rate Board and the State Depository Board shall deem it necessary, the Rate Board and the State Depository Board shall meet in joint session or meeting. [Id.]

CHAPTER TWO

COUNTY DEPOSITORIES

Art.

2544. Notice to bidders.
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2546. Opening bids and selecting depository.
2547. Bond.
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2549. Designating depository.
2550. Deposits not bid for.
2551. Clearing house to be selected.
2552. Checks payable at county seat.
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2554. Warrants, how paid and charged.
2555. May select at subsequent term.
2556. New bond may be required.
2557. Liability of treasurer.
2558. Bids from adjoining county.

Article 2544. [2440] Notice to bidders.—The commissioners court of each county is authorized and required at the February term thereof next following each general election to receive proposals from any banking corporation, association, or individual banker in such county that may desire to be selected as the depository of the funds of such county. Notice that such bids will be received shall be published by and over the name of the county judge, once each week for

at least twenty days before commencement of such term in some newspaper published in said county; and if no newspaper be published therein, then in any newspaper published in the nearest county. In addition thereto, notice shall be published by posting same at the court house door of said county. [Acts 1905, p. 392; Acts 1907, p. 208; Acts 1917, p. 16.]

Art. 2545. [2441] Sealed proposals.—Any banking corporation, association or individual banker in such county desiring to bid, shall deliver to the county judge, on or before the first day of the term of the commissioners court at which the selection of a depository is to be made, a sealed proposal stating the rate of interest offered on the funds of the county for the term between the date of such bid and the next regular time for the selection of a depository. Said bid shall be accompanied by a certified check for not less than one-half of one per cent of the county revenue of the preceding year as a guarantee of the good faith on the part of the bidder, and that, if his bid is accepted, he will enter into the bond hereinafter provided. Upon the failure of the banking corporation, association or individual banker in such county that may be selected as such depository, to give the bond required by law, the amount of such certified check shall go to the county as liquidated damages, and the county judge shall readvertise for bids. [Id.]

Art. 2546. [2442] Opening bids and selecting depository.—It shall be the duty of the commissioners court at 10 o'clock a. m., on the first day of each term at which bids are required to be received, to publicly open such bids and cause each bid to be entered upon the minutes of the court, and to select as the depository of all the funds of the county the banking corporation, association or individual banker offering to pay the largest rate of interest per annum for said funds. The commissioners court may reject any and all bids. The interest upon such county funds shall be computed upon daily balances to the credit of such county with such depository, and shall be payable to the county treasurer monthly, and shall be placed to the credit of the jury fund or to such funds as the commissioners court may direct. When selection of a depository has been made, the checks of bidders whose bids have been rejected shall be immediately returned. The check of the bidder whose bid is accepted shall be returned when his bond is filed and approved by the commissioners court, and not until such bond is filed and approved. [Id.]

Art. 2547. [2443] Bond.—Within five days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker so selected, to qualify as County Depository, (a) By executing and filing with the commissioners court a bond or bonds payable to the county judge and his successors in office, to be approved by the commissioners court and Comptroller and filed in the office of the county clerk of said county with not less than five (5) sureties, who shall offer as security unincumbered real estate in this State not exempt from execution under the laws of this State of as great value as double the amount of said bond or of as great value as double the amount of all said bonds when more than one bond, and said bond or bonds shall in no event be less than double the amount of the revenues of such county for the next preceding year for which same are made.

Such bond or bonds shall contain an accurate description of the real estate offered as security by the several sureties who execute the same, and it shall be provided in said bond that the county shall have a first lien on all of the real estate set out and described therein, to secure the performance of the obligations of such bond. Said bond or bonds when approved and filed as herein provided shall be recorded in the deed of trust records of each county in which any of the land therein described is situated as other real estate mortgages are recorded, and when the obligations of such bond are discharged said lien shall be released of record by order of the commissioners court, which order may be recorded as other releases of deed of trust liens are recorded. Nothing herein shall prevent the making of such bond or bonds by a surety company or companies, as provided by law and payable as herein provided.

Or (b) in lieu of such personal bond or surety bond, as above specified, said banking corporation, association or individual banker so selected as County Depository may pledge, and said depository bank is hereby authorized to pledge with the Commissioner's Court for the purpose of securing such county funds, securities of the following kind, in an amount equal to the amount of such county funds on deposit in said depository bank, to-wit: United States Bonds, certificates of Indebtedness of the United States, Bonds of the State of Texas, or of any County, City, Town, Independent School District, Common School District, or bonds issued under the Federal Farm Loan Act, or road district bonds; and said Commissioner's Court may accept said securities in lieu of such personal or surety bonds; and such securities so pledged by such depository bank shall be deposited as the Commissioner's Court may direct.

When the securities pledged by a depository bank to secure county funds shall be in excess of the amount required under the provisions of this Article, the Commissioner's Court shall permit the release of such excess; and when the county funds deposited with said depository bank shall for any reason increase beyond the amount of securities pledged, said depository bank shall immediately pledge additional securities with the Commissioner's Court so that the securities pledged shall at no time be less than the total amount of county funds on deposit in said depository bank. The right of substitution of securities shall be granted to depositories, provided the securities substituted meet with the requirements of the law and are approved by the Commissioner's Court. Upon the request of such depository bank, the Commissioner's Court shall surrender interest coupons or other evidence of interest, when due, on securities deposited with said Commissioner's Court by such depository bank, provided said securities remaining pledged are ample to meet the requirements of said Commissioner's Court.

The condition of the bond or bonds, or contract for securities pledged shall be conditioned for the faithful performance of all the duties and obligations devolving by law upon such depository, and for the payment upon presentation of all checks drawn upon said depository by the county treasurer of the county and that said county funds shall be faithfully kept by said depository and accounted for according to law. Any suits arising thereon shall be tried in the county for which such depository is selected. [Acts 1905, p. 393; Acts 1909, p. 165; Acts 1917, p. 17; Acts 1927, 40th Leg., p. 197, ch. 129, § 1.]

Art. 2548. Additional bond.—Whenever, after the creation of a county depository, as by this chapter provided, there shall accrue to the county or any subdivision thereof, any funds or moneys from the sale of bonds or otherwise, the commissioners court of such county at its first meeting after such special funds shall have come into the treasury, or depository of such county, or so soon thereafter as may be practicable, may make written demand upon the duly accredited and established depository of the county for a special additional bond as such depository in a sum equal to the whole amount of such special fund, to be kept in force so long as such fund remains in such depository. Such extra or special bond may be canceled and a new bond contemporaneously substituted therefor as such special fund may have been reduced. Such special bond shall at all times be sufficient in amount to cover such special fund then on hand. Upon the failure of such depository to furnish such additional bond within thirty days from the date of such demand, the commissioners court may cause such special funds to be withdrawn upon the drafts of the county treasurer from such depository, and cause the same to be deposited in some solvent national bank or State bank whose combined capital stock and surplus is in excess of such special fund, and to leave the same or so much thereof as may not have been expended with such national bank or State

bank of last deposit, until such time that such county depository may have filed with the commissioners court the required additional bond, when such special fund or so much thereof as shall not have been expended shall be forthwith returned to and deposited with such county depository. The requiring of such additional or special bond shall be optional with such commissioners court. When a banking institution selected, qualified and acting as a county depository shall become insolvent and it shall become necessary to resort to the depository bond or bonds to collect the county and State funds deposited therein, payment shall be made to the county and State pro rata.

Art. 2549. [2444] Designating depository.—As soon as said bond be given and approved by the commissioners court, and the Comptroller, an order shall be made and entered upon the minutes of said court designating such banking corporation, association, or individual banker, as a depository of the funds of said county until sixty days after the time fixed for the next selection of a depository; and, thereupon, it shall be the duty of the county treasurer of said county, immediately upon the making of such order, to transfer to said depository all the funds belonging to said county, as well as all funds belonging to any district or other municipal subdivision thereof not selecting its own depository, and immediately upon receipt of any money thereafter, to deposit the same with said depository to the credit of said county, district and municipalities; and, for each and every failure to make such deposit, the county treasurer shall be liable to said depository for ten per cent, upon the amount not so deposited, to be recovered by civil action against such treasurer and the sureties on his official bond in any court of competent jurisdiction in the county. It shall also be the duty of the tax collector of such county to deposit all taxes collected by him, or under his authority, for the State and such county and its various districts and other municipal subdivisions, in such depository or depositories, as soon as collected, pending the preparation of his report of such collections and settlement thereon, which shall bear interest on daily balances at the same rate as such depository or depositories have undertaken to pay for the use of county funds, and the interest accruing thereon shall be apportioned by the tax collector to the various funds earning the same. The bond of such county depository or depositories shall stand as security for all such funds. If the tax collector of such county shall fail or refuse to deposit tax money collected as herein required, he shall be liable to such depository or depositories for ten per cent upon the amount not so deposited and shall in addition be liable to the State and county and its various districts and other municipal subdivisions for all sums which would have been earned had this provision been complied with, which interest may be recovered in a suit by the State. Upon such funds being deposited as herein required, the tax collector and sureties on his bonds shall thereafter be relieved of responsibility for its safe-keeping. All money subject to the control of the county treasurer or payable on his order, belonging to districts or other municipal subdivisions selecting no depository, are hereby declared to be "county funds" within the meaning of this chapter and shall be deposited in accordance with its requirements and shall be considered in fixing the amount of the bond of such depository. [Acts 1905, p. 393; Acts 1917, p. 19.]

Art. 2550. [2445] Deposits not bid for.—If for any reason there shall be submitted no proposals by any banking corporation, association or individual banker to act as county depository, or in case no bid for the entire amount of the county funds shall be made, or in case all proposals made shall be declined, then in any such case the commissioners court shall have the power, and it shall be their duty, to deposit the funds of the county with any one or more banking corporation, association or individual banker, in the county or in adjoining counties in such amounts and for such periods as may be deemed advisable by the court, and at such rate of interest, not less than one and one-half per cent per annum, as may be agreed upon by the court and the banker or banking concern receiving the deposit, interest to be computed upon daily balances due the county treasurer. Any banker or banking concern receiving deposits under this article shall execute a bond in the manner and form provided for depositories of all funds of the county, with all the conditions provided for same, the penalty of said bonds to be not less than the total amount of county funds to be deposited with such banker or banking concern. [Id.]

Art. 2551. [2446] Clearing house to be selected.—When the funds of any county shall be deposited with two or more depositories, the commissioners court shall select and name by order one of said depositories to act as a clearing house for the others, at which all county warrants shall be finally paid. [Acts 1905, p. 393, sec. 26.]

Art. 2552. [2447] Checks payable at county seat.—It shall be the duty of the depository to provide for the payment, upon presentment at the county seat of the county, of all checks drawn by the county treasurer upon the funds of said county, as long as such funds shall be in the possession of the depository subject to such checks. For every failure to pay any such check at such county seat upon presentment, said depository shall forfeit and pay to the holder of such check ten per cent of the amount thereof; and the commissioners court shall revoke the order creating such depository and the amount of its bid shall not be returned, but shall be forfeited to the county. [Id. sec. 27.]

Art. 2553. [2448] Depository not located at county seat.—If any depository selected by the commissioners court be not located at the seat of such county, said depository shall file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid; and such depository shall cause every check to be paid upon presentation at the place so designated so long as the said depository has sufficient funds to the credit of said county applicable to its payment. [Id. sec. 28.]

Art. 2554. [2449] Warrants, how paid and charged.—It shall be the duty of the county treasurer, upon the presentation to him of any warrant drawn by the proper authority, if there shall be money enough in the depository belonging to the funds upon which said warrant is drawn and out of which the same is payable, to draw his check as county treasurer upon the county depository in favor of the legal holder of said warrant, and to take up said warrant and to charge same to the fund upon which it is drawn. No county treasurer shall draw any check upon the funds with said depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same. No money belonging to said county shall be paid by said depository, except upon the check of the county treasurer. It shall be the duty of such depository to make a detailed statement to the commissioners court at each regular term of said court, showing the daily balances of the preceding quarter. In case any bonds, coupons or other indebtedness of any county, by the terms thereof, are payable at any particular place other than the treasury of the county, nothing herein contained shall prevent the commissioners court of any such county from causing the treasurer to place a sufficient sum at the place where such debts shall be payable at the time and place of their maturity. [Id.]

Art. 2555. [2450] May select at subsequent term.—If for any reason, no selection of a depository be made at the time provided by law, the commissioners court may, at any subsequent time after twenty days notice, select a depository in the manner provided for such selection at the regular time; and the depository so selected shall remain the depository until the next regular time for selecting a depository, un-

less the order selecting and naming such depository be revoked for lawful reasons. [Id. sec. 30.]

Art. 2556. [2451] New bond may be required.—If the commissioners court shall at any time deem it necessary for the protection of the county, it may require any depository to execute a new bond; and, if said new bond be not filed within five days from the time of the service of a copy of said order upon said depository, the commissioners court may proceed to the selection of another depository in the manner provided for the selection of a depository at the regular time for such selection. [Id. sec. 31.]

Art. 2557. [2452] Liability of Treasurer.—The county treasurer shall not be responsible for any loss of the county funds through the failure or negligence of any depository; but nothing in this chapter shall release any county treasurer for any loss resulting from any official misconduct or negligence on his part, nor from any responsibility for the funds of the county until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds by him. [Id. sec. 32.]

Art. 2558. [2453] Bids from adjoining county.—If there be no bank situated within the county that seeks to select a county depository, then the commissioners court shall advertise for bids in the adjoining counties in the manner provided by the first article of this chapter. When a depository has been selected by the commissioners court in the manner set forth in this law said county depository shall, within five days after notice of such selection has been given to said depository, file with the county treasurer of such county a statement designating the place at said county seat where, and the person by whom, all deposits may be received from the treasurer for such depository, and where and by whom all checks will be paid. [Id. sec. 33.]

CHAPTER THREE

CITY DEPOSITORIES

Art.
2559. Council to take bids for depository.
2560. Award and bond.
2561. Designating depository, etc.
2562. Warrants and checks paid.
2563. May select at subsequent meeting.
2564. Liability of treasurer.
2565. Restrictions upon drawing.
2566. Definition of terms.

Article 2559. [2454] Council to take bids for depository.—The governing body of every city in this State incorporated under the general laws thereof, or incorporated under special charter, at its regular meeting in July of each year, is authorized to receive sealed proposals for the custody of the city funds, from any banking corporation, association or individual banker, doing business within the city, that may desire to be selected as the depository of the funds of the city. The school funds, from whatever source derived, of incorporated cities, is part of the city funds and is subject to the provisions of this chapter. Notice that such bids will be received shall be published by the city secretary not less than one nor more than four weeks before such meeting, in some newspaper published in the city. Any banking corporation, association, or individual banker, doing business in the city desiring to bid, shall deliver to the city secretary, on or before the day of such meeting designated by said published notice, a sealed proposal, stating the rate per cent upon daily balances that such bidder offers to pay to the city for the privilege of being made the depository of the funds of the city for the year next following the date of such meeting; or, in the event that such selection shall be made for a less term than one year, as hereinafter provided, then for the time between the date of such bid and the next regular time for the selection of a depository as aforesaid. All such proposals shall be securely kept by the secretary, and shall not be opened until the meeting of the council for the purpose of passing upon the same; nor shall any other proposals be received after they shall have been opened. [Acts 1905, pp. 260, 395; Acts 1917, p. 132.]

Art. 2560. [2455] Award and bond.—Upon opening of the sealed proposals submitted, the governing body shall select as the depository of such funds the banking corporation, association, or individual banker offering to pay to the city the largest amount for such privileges. The council shall have the right to reject any and all bids, and readvertise for new proposals. Within five days after the selection of such depository, it shall be the duty of the banking corporation, association or individual banker, so selected to execute a bond, payable to the city, to be approved by the mayor with the concurrence of the city council, and filed with the city secretary, with not less than three solvent sureties, who [,] shall own unincumbered real estate in the county in which said city is located, of as great value as the amount of said bond; or said depository may make such bond in some approved fidelity and surety company, the penalty of said bond to be at least double the total revenues of the city for the preceding fiscal year, and conditioned for the faithful performance of all duties and obligations devolving by law or ordinance upon said depository, and for the payment upon presentation of all checks drawn upon said depository by the city treasurer, whenever any funds shall be in said depository applicable to the payment of said check, and that all funds of the city shall be faithfully kept by said depository, and with the interest thereon accounted for according to law; and for a breach of said bond, the city may maintain an action in its name. [Acts 1905, pp. 260, 396, sec. 35.]

Art. 2561. [2456] Designating depository, etc.—As soon as said bond shall be given and approved, an order shall be made by the council designating said banking corporation, association, or individual banker, as the depository of the funds of the city until the time fixed by this chapter for another selection, and such order shall be entered upon the minutes. It shall be the duty of the city treasurer, immediately upon the making of said order, to transfer to said depository all the funds in his hands belonging to the city, and, immediately upon the receipt of the money thereafter, he shall deposit the same with said depository to the credit of the city; and, for each and every failure to make such deposit, the treasurer and his bondsmen shall be liable to said depository for ten per cent per month upon the amount not so deposited, to be recovered by civil action in a court of competent jurisdiction. If any banking corporation, association, or individual banker, after having been selected as such depository, shall fail to give bond within the time provided by this chapter, then the selection of such banking corporation, association, or individual banker, as the depository of the city funds shall be set aside and be null and void, and the governing body shall, after notice published in the manner hereinbefore provided, proceed to receive new bids and select another depository. [Acts 1905, p. 261, Id. sec. 36.]

Art. 2562. [2457] Warrant and checks paid.—The city treasurer, upon presentation to him of any warrant drawn by the proper authority, if there shall be enough money in the depository belonging to the fund upon which said warrant is drawn and out of which the same is payable, shall draw his check as city treasurer upon the city depository in favor of the legal holder of said warrant, and take up said warrant, and charge the same to the fund upon which it is drawn. In no case shall the city treasurer draw any check upon any fund in the city depository, unless there is sufficient money belonging to the fund upon which said warrant is drawn to pay the same. No money belonging to the city shall be paid out of the city depository, except upon checks of the city treasurer. All such checks shall be payable by said depository at its place of business in the city. In case any bonds or coupons or other indebtedness of the city are payable, by the terms of such bonds, coupons or other indebtedness, at any particular place other than the city treasury, nothing herein shall prevent the

governing body from causing the treasurer to withdraw from the depository and to place at the place where such bonds, coupons or other indebtedness shall be payable at the time of their maturity, a sufficient sum to meet the same. [Acts 1905, p. 261. Id. sec. 37.]

Art. 2563. [2458] May select at subsequent meeting.—If for any reason no selection of a depository is made at the time fixed by this chapter, said governing body may, at any subsequent meeting, after notice published as hereinbefore provided, receive bids and select a depository in the manner herein set out, and the banking corporation, association, or individual banker so selected shall remain the depository until the next regular term for the selection of a depository, unless the order selecting it be revoked for the causes specified in this chapter. If the governing body shall at any time deem it necessary for the protection of the city, it may by resolution, require the depository to execute a new bond; and, upon failure to do so within five days after the service of a copy of the resolution on said depository, said body may proceed to select another depository in the manner hereinbefore provided. [Id.]

Art. 2564. [2458] Liability of treasurer.—The city treasurer shall not be responsible for any loss of the city funds through the negligence, failure or wrongful act of such depository, but nothing in this chapter shall release said treasurer from responsibility for any loss resulting from any official misconduct on his part nor from responsibility for the said funds at any time when, for any reason, there shall be no city depository, nor until a depository shall be selected and the funds deposited therein, nor for any misappropriation of such funds in any manner by him. [Acts 1905, p. 261, Id. sec. 38.]

Art. 2565. [2459] Restrictions upon drawing.—No check shall be drawn upon the city depository by the treasurer, except upon a warrant signed by the mayor and attested by the secretary. No warrant shall be drawn by the mayor and secretary upon any of the special funds, created for the purpose of paying the bonded indebtedness of said city, in the hands of the city treasurer, or in the depository, for any purpose whatsoever other than to pay the principal or interest of said indebtedness, or for the purpose of investing said special fund according to law. No city treasurer shall pay or issue a check to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose of paying interest due on said bonds, the principal of said bonds, or for the purpose of making an investment of said fund according to law. The treasurer shall report to the council on or before its first regular meeting of July in each year, the amount of receipts and expenditures of the treasury, the amount of money on hand in each fund, and the amount of bonds falling due for the redemption of which provision must be made; also the amount of interest to be paid during the next fiscal year, and such other reports as the existing law requires of him. [Acts 1905, p. 262, Id. sec. 39.]

Art. 2566. [2460] Definitions of terms.—All provisions of this chapter shall apply to towns and villages incorporated under the general laws of Texas, as well as to cities so incorporated, and the terms "city secretary", and "secretary" shall be construed to include the clerk or secretary of such towns and villages; the term, "city treasurer" shall be construed to include the treasurer of such towns and villages, and the term "city" shall be construed to include towns and villages. [Acts 1905, p. 262, Id. sec. 40.]

CHAPTER FOUR

SPECIAL DEPOSITORY

Art.
2567. Selection of special depository.
2568. For State funds.
2569. Selection optional.

Article 2567. Selection of special depository.—When any bank, which is a county, city or district depository of public funds under the laws of this State, suspends business or is taken charge of by the Comptroller of the currency or the Commissioner of Banking, as the case may be, the lawful county, city or district authorities, authorized to select the depository in the first instance, shall have the discretion and authority to select by contract a special depository for the public funds in such suspended bank. Such special depository shall assume the payment of the amount of public funds due by the suspended bank on the date of its suspension, including interest to that date, and shall pay the same to the lawfully designated public authority in accordance with the contract entered into by such special depository. The contract shall be for the performance of the agreement entered into between the proper public authorities designated above, and the special depository, and shall require the payment of the deposit in such installments as may be agreed upon, the last of which shall be paid not exceeding three years from the date of the contract. The installments, or the amount due, may be evidenced in the discretion of the contracting parties by negotiable certificates of deposit or cashier's checks, payable at specified dates, if made a part of the contract. The performance of the contract and the payment of funds described therein shall be secured by bond, or by several bonds in case of installments, to be given by the special depository with the same character of sureties as is required by regular depository bonds. The contracts and bonds of special depositories shall be approved by the authority authorized by law to approve contracts and bonds of regularly selected depositories. The rate of interest which funds placed in a special depository hereunder shall bear shall be fixed by the contract, or such funds may, in the discretion of the contracting parties, be non-interest bearing. [Acts 1921, p. 68.]

Art. 2568. For State funds.—If any State funds are in the county depository which has failed, the amount thereof shall be ascertained by the Comptroller, who shall be authorized in his discretion to enter into a contract for the custody and payment of the same, with the special depository selected by the county authorities in the same manner that the county authorities are herein authorized so to do, and to take and approve contracts and bonds therefor. State funds thus placed in such special depository shall bear the average rate of interest received by the State on State funds placed with the regularly selected State depositories. [Id.]

Art. 2569. Selection optional.—Nothing in this chapter shall require the State, county, city or district authorities to select any special depository as herein permitted, but they may proceed by their lawful remedies against the failed bank, if, in their discretion, it is best for the public interest so to do. [Id.]

TITLE 48

DESCENT AND DISTRIBUTION

Art.
2570. Intestate leaving no husband or wife.
2571. Intestate leaving husband or wife.
2572. Distinction because of property's source.
2573. Whole and half blood.
2574. Corruption of blood or forfeiting estate.
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2577. Per capita and per stirpes.
2578. Community estate.
2579. Passes charged with debts.
2580. Jus accrescendi abolished.
2581. Illegitimate children.
2582. Bastards inherit from mother.
2583. Alienage no bar to inheritance.

Article 2570. [2461] [1688] [1645] Intestate leaving no husband or wife.—Where any person, having title to any estate or inheritance, real, personal or mixed, shall die intestate, it shall descend and pass in parcenary to his kindred, male and female, in the following course:

1. To his children and their descendants.

2. If there be no children nor their descendants, then to his father and mother, in equal portions. But if only the father or mother survive the intestate, then his estate shall be divided into two equal portions, one of which shall pass to such survivor, and the other half shall pass to the brothers and sisters of the deceased, and to their descendants; but if there be none such, then the whole estate shall be inherited by the surviving father or mother.

3. If there be neither father nor mother, then the whole of such estate shall pass to the brothers and sisters of the intestate, and to their descendants.

4. If there be none of the kindred aforesaid, then the inheritance shall be divided into two moieties, one of which shall go to the paternal and the other to the maternal kindred, in the following course: To the grandfather and grandmother in equal portions, but, if only one of these be living, then the estate shall be divided into two equal parts, one of which shall go to such survivor, and the other shall go to the descendant or descendants of such deceased grandfather or grandmother. If there be no such descendants, then the whole estate shall be inherited by the surviving grandfather or grandmother. If there be no surviving grandfather or grandmother, then the whole of such estate shall go to their descendants, and so on without end, passing in like manner to the nearest lineal ancestors and their descendants. [Act March 18, 1848, p. 129; P. D. 3419; G. L. vol. 3, p. 129; Act Jan. 18, 1840, p. 132; G. L. vol. 3, p. 306.]

Art. 2571. [2462] [1689] [1646] Intestate leaving husband or wife.—Where any person having title to any estate of inheritance, real, personal or mixed, shall die intestate as to such estate, and shall leave a surviving husband or wife, the estate of such intestate shall descend and pass as follows:

1. If the deceased have a child or children, or their descendants, the surviving husband or wife shall take one-third of the personal estate, and the balance of such personal estate shall go to the child or children of the deceased and their descendants. The surviving husband or wife shall also be entitled to an estate for life, in one-third of the land of the intestate, with remainder to the child or children of the intestate and their descendants.

2. If the deceased have no child or children, or their descendants, then the surviving husband or wife shall be entitled to all the personal estate, and to one-half of the lands of the intestate, without remainder to any person, and the other half shall pass and be inherited according to the rules of descent and distribution; provided, however, that if the deceased have neither surviving father nor mother nor surviving brothers and sisters, or their descendants, then the surviving husband or wife shall be entitled to the whole of the estate of such intestate. [P. D. 3422.]

Art. 2572. [2463] [1690] [1647] Distinction because of property's source.—There shall be no distinction in regulating the descent and distribution of the estate of a person dying intestate between property which may have been derived by gift, devise or descent from the father, and that which may have been derived by gift, devise or descent from the mother; and all the estate to which such intestate may have had title at the time of death shall descend and vest in the heirs of such person in the same manner as if he had been the original purchaser thereof; provided, however, that if such intestate was the legally adopted heir of another, and dies leaving no surviving husband or wife, and no children, then so much of his estate as was obtained by gift, devise or descent, from the person adopting him, shall descend to the person and his heirs who adopted such intestate. [Act March 20, 1861; G. L. vol. 5, p. 359.]

Art. 2573. [2464] [1691] [1648] Whole and half blood.—In cases before mentioned, where the inheritance is directed to pass to the collateral kindred of the intestate, if part of such collateral be of the whole blood, and the other part of the half blood only of the intestate, those of half blood shall inherit only half so much as those of the whole blood; but if all be of the half-blood they shall have whole portions. [Acts 1848, p. 129; P. D. 3424; G. L. vol. 3, p. 129.]

Art. 2574. [2465] [1692] [1649] Corruption of blood or forfeiting estate.—No conviction shall work corruption of blood or forfeiture of estate nor shall there be any forfeiture by reason of death by casualty; and the estate of those who destroy their own lives shall descend or vest as in the case of natural death. [Const. Bill of Rights, sec. 21; Id.]

Art. 2575. [2466] [1693] [1650] Persons not in being.—No right of inheritance shall accrue to any person whatsoever other than to children or lineal descendants of the intestate, unless they be in being and capable in law to take as heirs at the time of the death of the intestate. [Acts 1848, p. 129; P. D. 3423; G. L. vol. 3, p. 129.]

Art. 2576. [2467] [1694] [1651] Advancements brought into hotchpotch.—Where any of the children of a person dying intestate, or their issue, shall have received from such intestate in his lifetime any real, personal or mixed estate by way of advancement, and shall choose to come into the partition and distribution of the estate with the other distributees, such advancement shall be brought into hotchpotch with the whole estate, and such party returning such advancement shall thereupon be entitled to his proper portion of the whole estate; provided that it shall be sufficient to account for the value of the property so brought into hotchpotch at the time it was advanced. [P. D. 3426.]

Art. 2577. [2468] [1695] [1652] Per capita and per stirpes.—When the intestate's children, or brothers and sisters, uncles and aunts, or any other relations of the deceased standing in the first and same degree alone come into the partition, they shall take per capita, namely: by persons; and, when a part of them being dead and a part living, the descendants of those dead have right to partition, such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. [Acts 1887, p. 49; G. L. vol. 9, p. 847.]

Art. 2578. [2469] [1696] [1653] Community estate.—Upon the dissolution of the marriage relation by death, all property belonging to the community estate of the husband and wife shall go to the survivor, if there be no child or children of the deceased or their descendants; but if there be a child or children of the deceased, or descendants of such child or children, then the survivor shall be entitled to one-half of said property, and the other half shall pass to such child or children, or their descendants. But such descendants shall inherit only such portion of said property as the parent through whom they inherit would be entitled to if alive. [Acts 1887, p. 76; G. L. vol. 9, p. 874.]

Art. 2579. [2470] [1697] [1654] Passes charged with debts.—In every case, the community estate passes charged with the debts against it. [P. D. 5498.]

Art. 2580. [2471] [1698] [1655] Jus accrescendi abolished.—Where two or more persons hold an estate, real, personal or mixed, jointly, and one joint owner dies before severance, his interest in said joint estate shall not survive to the remaining joint owner or joint owners, but shall descend to, and be vested in, the heirs or legal representatives of such deceased joint owner in the same manner as if his interest had been severed and ascertained. [Act March 18, 1848, p. 129; P. D. 3429; G. L. vol. 3, p. 129.]

Art. 2581. [2472] [1699] [1656] Illegitimate children.—Where a man, having by a woman a child or children, shall afterward intermarry with such woman, such child or children, if recognized by him, shall thereby be legitimated and made capable of in-

heriting his estate. The issue also of marriages deemed null in law shall nevertheless be legitimate. [P. D. 3427.]

Art. 2582. [2473] [1700] [1657] Bastards inherit from mother.—Bastards shall be capable of inheriting from and through their mother, and of transmitting estates, and shall also be entitled to distribute shares of the personal estates of any of their kindred, on the part of their mother, in like manner as if they had been lawfully begotten of such mother. [P. D. 3428.]

Art. 2583. [2474] [1701] [1658] Alienage no bar to inheritance.—In taking title to land by descent, it shall be no bar to a party that any ancestor through whom he derives his descent from the intestate, is or has been an alien. [P. D. 44, 45, 46.]

TITLE 49

EDUCATION—PUBLIC

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CHAPTER ONE

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2606. Manuscript bonds.

1. BOARD OF REGENTS

Article 2584. The government of the University.—The government of the University of Texas shall be vested in a Board of Regents composed of nine persons. They shall elect a chairman from their number who shall serve at the pleasure of the board. The State Treasurer shall be the treasurer of the University. The board shall have the right to make and use a common seal and may alter the same at pleasure. [Acts 1913, p. 191.]

Art. 2585. [2639] [3846] Powers.—They shall establish the departments of a first-class university, determine the offices and professorships, appoint a president, who shall, if they think it advisable, also discharge the duties of a professor, appoint the professors and other officers, fix their respective salaries; and they shall enact such by-laws, rules and regulations as may be necessary for the successful management and government of the University; they shall have power to regulate the course of instruction and prescribe, by and with the advice of the professors, the books and authorities used in the several departments, and to confer such degrees and to grant such diplomas as are usually conferred and granted by universities.

Art. 2586. [2640] [3848] May remove officers.—The regents shall have power to remove any professor, tutor or other officer connected with the institution, when, in their judgment, the interest of the University shall require it.

Art. 2587. [2641] [3849] Admission fee.—The fee of admission to the University shall never exceed thirty dollars. It shall be open to all persons of both sexes in this State on equal terms, without charge for tuition, under the regulations prescribed by the regents, and to all others under such regulations as the board of regents may prescribe. [Id.]

Art. 2588. [2649] [3854] Annual report.—The board of regents shall report to the State Board annually, and to each regular session of the Legislature, the condition of the University, setting forth the receipts and disbursements, the number and salary of the faculty, the number of students, classified in grades and departments, the expenses of each year, itemized, and the proceedings of the board and faculty fully stated. [Acts 1881, p. 80; G. L. vol. 9, p. 172.]

Art. 2589. [2651] [3856] Expenses.—The reasonable expenses incurred by the boards of regents and visitation in the discharge of their duties shall be paid from the available University fund.

2. FUNDS AND PROPERTIES

Art. 2590. [2626] [3836] Permanent fund.—The following shall constitute a permanent fund to be used for the benefit of the University of Texas:

1. All lands and other property heretofore set apart and appropriated for the establishment and maintenance of the University of Texas under any previous law.

2. One million acres of the unappropriated public domain of the State set apart for that purpose by the present Constitution, and one million acres of land set apart by Act of April 10, 1883.

3. All bonds that have or may be purchased with the proceeds of the sale of University lands.

4. All proceeds of the sales of University lands that are or may be placed in the State Treasury.

5. All grants, donations and appropriations that may be made or received from any other source. [Const. art. 5, secs. 10–15; Acts 1858, p. 148; G. L. vol. 4, p. 1020; P. D. 3573.]

Art. 2591. [2627] [3837] Use.—Such portions of such funds as are in the possession of the State, or that may be received, shall be held in trust by the State for the use and maintenance of said University; and all such funds as are susceptible of investment, and that have not heretofore been invested, shall be invested for the benefit of such University in the manner provided in the Constitution and laws on that subject. [Id.]

Art. 2592. [2643] Improvements.—The Board of Regents of the University of Texas shall expend the interest which has heretofore accrued and that which may hereafter accrue on the permanent University fund, and also all other income of said fund and all income resulting from the use of the University lands, including all proceeds from grazing and mineral leases which proceeds are now in the State Treasury or may be hereafter received from such leases, for permanent improvements to be erected on the campus of the University of Texas or at any of the branches of the University, and the Board of Regents may pledge said interest and income for a term of not exceeding fifteen

years to make said funds immediately available. Any contract for the expenditure of said interest and income for any other purpose shall be void. No lease of said land shall be made for a period of more than ten years during the fifteen year period. [Acts 1925, p. 415.] [39th Leg., ch. 175, § 1.]

Art. 2593. Contracts, how made.—All contracts, with architects, plan makers, landscapers or draftsmen, or with any other person, firm or corporation of whatever name or designation shall be absolutely void unless same be approved by the signed written vote of a majority of said Board of Regents in regular or called meeting assembled, and provided further that all contracts for the construction or erection of such permanent improvements shall be absolutely void unless same are made after receiving sealed competitive bids after advertisement therefor by the president of the Board of Regents, for four consecutive weeks in one or more newspapers of general circulation in the State of Texas, and said bids considered and awards made to the lowest responsible bidder by the signed written vote of a majority of said Board of Regents, in a regular or called meeting assembled. Said bids and awards shall be made only after such publication.

Art. 2593a. Distribution of Funds.—The proceeds arising from activities which effect [affect] lands belonging to the public free school fund or the permanent fund of the several asylums, shall be credited to the permanent funds of said respective institutions. All proceeds paid or collected from activities under this law affecting the lands belonging to the permanent fund of the University of Texas shall be credited by the State Treasurer to the available fund of such institution, and all such funds shall be held by the Board of Regents of the University in a special building fund and shall be expended only for the erection of buildings and equipping same, or for other permanent improvements. All proceeds arising from the activities affecting lands other than those belonging in the public free school fund, the University and the several asylums, shall be credited to the same fund. [Id. p. 415.] [39th Leg., ch. 175, § 2.]

Art. 2594. [2644] [3852] Expenditures.—All expenditures may be made by the order of the board of regents, and the same shall be paid on warrants from the Comptroller based on vouchers approved by the chairman of the board or by some officer of the University designated by him in writing to the Comptroller, and countersigned by the secretary of the board, or by some other officer of the University designated by said secretary in writing to the Comptroller. [Id.; Acts 1911, p. 99.]

Art. 2595. [2628–32] Donations.—Donations of property for the purpose of establishing or assisting in the establishment of a professorship or scholarship in the University or any of its branches, either temporarily or permanently, may be made and such donations will be governed by the following rules:

1. The legal title to the property shall be vested in a person or persons, body corporate, or the State of Texas, to be held in trust for said purpose under such directions, limitations and provisions as may be declared in writing in the donation not inconsistent with the objects and proper management of said institution or its branches.

2. The donor may declare and direct the manner in which the title to said property shall thereafter be transmitted from such trustee in continued succession, to be held and appropriated to the use aforesaid.

3. The donor may declare and direct the person or class of persons who shall receive the benefit of said donation and the manner of their selection.

4. Said declarations, directions and limitations shall not be inconsistent with the objects and proper management of said institution or its branches.

5. In case of failure to transmit the title to the property or to bestow its use in the manner as declared and directed in the donation, or should such uses, or either of them, become impracticable from the change of circumstances, the title to the property, unless otherwise expressly directed by the donor, shall vest in this State to be held in trust to carry into effect the purposes of the donation as nearly as may be practicable by such agencies as may be provided therefor.

6. The title to the property donated shall be received, and the trust conferred in the donation shall be assumed, subject to laws that may be passed and carried into effect from time to time which may be necessary to prevent the loss of, or damage to, the property donated, or an abuse or neglect of the trust so as to defeat, materially change, or prevent the objects of the donation.

7. Copies of such donation shall be filed with the board of regents of the University or the branch to which the donation applies, which board shall report the condition and management of the property and the manner in which the trust is being administered, as part of the matters reported pertaining to said institution. [Acts 1889, p. 143; G. L. vol. 9, p. 1117.]

Art. 2596. [2633] [4263a] Control of lands.—The board of regents are invested with the sole and exclusive management and control of the lands set aside and appropriated to, or acquired by, the University of Texas, with the right to sell, lease and otherwise manage, control and use the same in any manner, and at such prices and under such terms and conditions as they deem best for the interest of the University, not in conflict with the State Constitution; provided, such land shall not be sold at a less price per acre than that at which the same class of other public lands may be sold under the statutes. [Acts 1895, p. 19; G. L. vol. 10, p. 749.]

Art. 2597. [2634] Control of mineral lands.—The board of regents are invested with the sole and exclusive management and control of all mineral lands within the domain appropriated, set aside or acquired by the University of Texas; and said board of regents is hereby empowered and authorized to sell, lease, manage and control said mineral lands belonging to said University as may seem best to them for the interest of the University; and they are further empowered with authority to explore and have explored and develop said mineral lands and to make any contract with any persons whomsoever for the exploration and development of said mineral lands, and pay the expenses for such exploration or development out of the proceeds of the lease or sale of said land. [Acts 1901, p. 266.]

Art. 2598. [2635] [4263b] Duty of Land Commissioner.—The Land Commissioner shall furnish to the board of regents complete and accurate maps and all other data necessary to show the location and condition of every tract of the University lands, and shall at all times furnish to said board such additional information as they may require, and render to said board such possible assistance as they shall request in the discharge of their duties. [Acts 1895, p. 19; G. L. vol. 10, p. 749.]

Art. 2599. [5439] Sales to railroad; application.—Any railroad company owning, operating or constructing a line of railway in this State, desiring to purchase any portion of the University land in this State except mineral lands under provisions of this and the three succeeding articles for the location and establishment thereon of town sites, depots, stations, yards, divisional terminals, shops, round houses or water stations shall file an application to purchase each tract so desired, supported by the affidavit of its president, vice-president or chief engineer which application shall:

1. Describe by metes and bounds or otherwise sufficient to satisfy the Board of Regents of the particular tract of land that it desires to purchase.

2. Show that said land is desired and needed by said railway company for some one or more of the purposes for which the sale of such lands are authorized by this article, and that it is the intention of said railway company to speedily use said land for such purposes.

3. Show that said application is not made for the use or benefit of any other person or corporation than the applicant nor in collusion with, or in the interest of any other person or corporation whatsoever.

Be accompanied by a plat and map, together with the field notes of each tract of land so applied for, if required. [Acts 1905, p. 58; Acts 1919, p. 312.]

Art. 2600. [5440] Railway sales; patent.—When any such application is so filed, said Board shall investigate the matter therein set forth; and, if after such investigation they shall be satisfied that the statements made in such application are true they shall then determine and fix the fair and reasonable value of such tracts of land, regardless of any lease thereon, unless the lessee shall have two hundred dollars worth of improvements thereon, in which event the consent of the lessee shall be first obtained, and shall advise the applicant of the price so fixed; and, if said railway company desires said land at the price so fixed, it shall pay therefor in cash to the State Treasurer the price so fixed by said Board of Regents, and the Treasurer shall give his receipt showing such payment, whereupon there shall be issued and delivered to the said railway company a patent for said tract or tracts of land, to be properly executed by the Governor and the Land Commissioner upon the payment of the patent fee therefor. [Acts 1903, p. 127.]

Art. 2601. [5441] Condition of sale.—All land purchased by or for any one railway company under the provisions of this law shall be sold subject to the following conditions and limitations:

1. If such land is desired for the purpose of the location and establishment thereon of depots, stations, yards, divisional terminals, shops or round houses, said railway company shall be permitted to purchase only such amount of land adjoining its line of road, tracks or right of way as may be necessary for the proper operation and maintenance of said railway which fact shall be determined by said board of regents, and if desired by them, they may for that purpose, have the advice and assistance of the engineer of the Railroad Commission of Texas.

2. If said land applied for be desired for water stations at points on or near said line of railway where it is necessary to construct and maintain a dam and reservoir for the impounding of rain water, for the use and operation of said railway, sufficient land may be sold for such purpose as may be necessary for the proper construction, preservation and maintenance of such water station, not to exceed six hundred and forty acres for each water station. Each tract sold for such purpose must be within three miles of the line of road of said railway company, and must be at least eight miles distant from any other tract sold to the same railway company for the same purpose; and, when said tract of land does not adjoin said line of road of said railway company, said railway shall have the right of way over any University lands for its water mains from its said water station to its line of railway.

3. If said land is sold for town site purposes, not exceeding three hundred and twenty acres shall be sold therefor, and such tract must be at least eight miles distant from any other tract of land sold for the same purpose to said railway company, and, after such sale, no other tract or tracts of land shall ever be sold to said railway company, or its assigns, for town site purposes, adjoining said tract sold for such purpose. All lands sold for town sites must either adjoin said railway tracks, line of road or right of way, or adjoin land sold under the provisions hereof to said railway company for depots, stations, yards, divisional terminals, shops or round houses. All such lands shall be in good faith placed upon the market for sale, and said railway company shall alienate the title to said lands so sold to said railway company within the term of ten years after acquiring title to same. [Acts 1905, p. 58.]

Art. 2602. [5443] Forfeiture.—If any railway company fails to use said land for the purpose for which the same was sold, within five years from the date of the patent for each tract of land sold, said land and all improvements thereon belonging to said railway company shall revert to the University fund. Whenever any land is sold to railway companies for the purpose mentioned in this chapter and shall be used for any other purposes than those mentioned in this chapter, then such land shall revert to the State. [Acts 1903, p. 127.]

Art. 2603. [5458–9] Right to lands; limitation.—Any person claiming the right to purchase or lease any lands belonging to the State University which have been sold or leased to any other person under any provision of the law authorizing the sale or lease of any such lands, shall bring his suit therefor within one year after the date of the award of such sale or lease and not thereafter. If no such suit has been instituted within said period it shall be conclusive evidence that each requirement of law with reference to the sale or lease of such land was complied with. Nothing in this article shall affect the State in any action or proceeding it may bring in respect to said lands. [Acts 1905, p. 35; Acts 1921, p. 118.]

3. GENERAL PROVISIONS

Art. 2604. [2645] [3853] Non-sectarian.—No religious qualification shall be required for admission to any office or privilege in the University. No course of instruction of a sectarian character shall be taught therein. [Acts 1881, p. 80; G. L. vol. 9, p. 172.]

Art. 2605. [2650] [3855] Board of visitors.—The Legislature at each regular session shall appoint a board of visitors who shall attend the annual examinations of the University and its branches and report to the Legislature thereon. [Id.]

Art. 2606. [2652–4] Manuscript bonds.—The Governor is authorized and directed to have issued manuscript bonds of the State of Texas to be sold or exchanged at par for the permanent University fund at any time when there is on hand in cash any reasonable amount of such funds not less than five thousand dollars. Said bonds shall be of such denomination as the Governor may direct, shall be redeemable at the pleasure of the State, and shall bear five per cent interest payable annually at the State Treasury on the first day of March of each year. Said bonds shall recite the title and date of passage of the act of 1889, p. 81, shall be signed by the Governor and Treasurer and countersigned by the Comptroller, and shall be registered in the office of the State Treasurer. After said bonds have been registered, the Governor shall offer said bonds to the State Board as an investment for the permanent University fund then on hand in cash which are by law authorized to be invested. If the State Board takes said bonds, the Treasurer and Comptroller shall make the proper entry, showing the facts of the transaction and the necessary transfer of such fund on their books. If said board shall not take said bonds thus offered, the same shall be destroyed and cancelled and of no effect whatever. [Acts 1889, p. 81; G. L. vol. 9, p. 1109.]

CHAPTER TWO

AGRICULTURAL AND MECHANICAL COLLEGE

Art.
2607. Branch of University.
2608. Leading object.
2609. Free tuition.
2610. The board of directors.
2611. Certificate of appointment.
2612. Expenses of directors.
2613. Powers and duties.
2613a. Reforestation.
2614. Perpetual fund.
2615. Accrued interest.

Article 2607. [2655] [3860] Branch of University.—The Agricultural and Mechanical College of Texas, located in Brazos County, and by the Constitution made and constituted a branch of the University of Texas, for instruction in agriculture, the mechanical arts and the natural science connected therewith, shall be managed and controlled as herein provided. [Const. art. 7, sec. 13; 12 U. S. Stat., p. 503; 14 Id., p. 203; Acts 1875, p. 72; P. D. 5693; G. L. vol. 8, p. 444.]

Art. 2608. [2656] [3861] Leading object.—The leading object of this College shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanical arts, in such manner as the legislature may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life. [12 U. S. Stat., p. 503; Act of Cong. July 2, 1862, sec. 4.]

Art. 2609. [2663] [3868] Free tuition.—There shall be maintained and instructed at said College annually, free of charge to them, three students from each senatorial district in this state, one of whom shall be appointed by the senator of such district, and the other two by the representatives thereof. One-half of said students so appointed shall be compelled to take an agricultural, and the other a mechanical, course of study, to be assigned by the president of said College. The Comptroller, on proper vouchers being filed in his office by the directors, is authorized to draw his warrant on the State Treasurer against any appropriation made for such purpose. [Id.]

Art. 2610. [2657–60] The Board of Directors.—The government of the Agricultural and Mechanical College shall be vested in a Board of Directors composed of nine persons. Said board shall elect from their number a president of the board, who shall call said board together for the transaction of business whenever he deems it expedient. The board shall have the right to make and use a common seal. [Acts 1881, p. 75; G. L. vol. 9, p. 167; Acts 1913, p. 191.]

Art. 2611. [2662] [3867] Certificate of appointment.—The Secretary of State shall forward a certificate to each director within ten days after his appointment, notifying him of the fact of such appointment, and, should any director so appointed and notified fail for ten days to give notice to the Governor of his acceptance, his appointment shall be deemed void, and his place filled as in case of vacancy. [Acts 1881, p. 75; G. L. vol. 9, p. 167.]

Art. 2612. [2661] [2866] Expenses of directors.—Said directors shall serve without compensation, but shall receive actual expenses incurred in attending said meetings or in the transaction of any business of the College imposed by said board. [Acts 1881, p. 75; G. L. vol. 9, p. 167.]

Art. 2613. [2664–2676] Powers and duties.—The Board of Directors is charged with the duties and empowered to do and perform the acts hereinafter set forth as follows:

1. The board shall, when necessary, appoint the president and professors of the college and such other officers as, from time to time, they may think proper to keep the college in successful operation, and may from time to time abolish any office that is in their judgment unnecessary. [Acts 1875, p. 74; G. L. vol. 8, p. 446.]

2. The president and board shall employ an expert entomologist, one or more, as may be deemed necessary, whose duty it shall be to devise, if possible, means of destroying the Mexican boll weevil, boll worm, caterpillar, sharpshooter, chinch bug, peach bug, fly and worm and other insect pests and to perform the duties of professor of entomology in the college. [Acts 1899, p. 9.]

3. The board shall establish at and in connection with the said College a school or department for instruction in the theory and practical arts of grading, classing and determining the spinable value of cotton, whose main purpose shall be to train students in the theory and practical art of cotton classing in all its branches from the field to the factory. [Acts 1909, p. 220.]

4. The board shall also provide for a special summer school of at least two months each year for the training of special students who shall be admitted without an entrance examination and may make provisions for said summer school and purchase the necessary equipment, and generally do and perform all acts necessary to establish and maintain the same. [Id.]

5. The board shall establish at and in connection with the said College a school or department for instruction in the theory and practical art of textile and kindred branches of industry, whose main purpose shall be to train students in the theory and practice of cotton manufacturing in all its branches, from the raw cotton to the finished fabric, and shall do and perform all acts necessary to establish and maintain said school or department. [Acts 1903, p. 74; Acts 1909, p. 220.]

6. The board shall also, from time to time, make such by-laws, rules and regulations for the government of said College as they may deem necessary and proper for that purpose, and shall regulate the course of study, the rates of tuition, the manner of performing labor, and the kind of labor to be performed by the students of said College, and shall also prescribe the course of discipline necessary to enforce the faithful discharge of the duties of the professors, officers and students. [Acts 1875, p. 74; G. L. vol. 8, p. 446.]

7. The board shall require the teaching of elementary agriculture for teachers in the summer sessions. [Acts 1909, p. 221.]

8. The board shall employ a graduate civil engineer of said College having a practical and scientific knowledge of the conservation of moisture and soil fertility, who understands the practical art of terracing farm land to preserve the moisture and soil fertility and to prevent the washing away and the destruction of the properties of the soil, and who has had five years actual experience in terracing farm lands in some southern State. He shall receive a salary not exceeding two thousand dollars per annum, and shall make his headquarters at the College, where he shall instruct the students by lecture and practical demonstration, in the best method of such conservation and terracing so as to enable them to do the work successfully. He shall devote one-half of his time to such instruction, and the other half shall be spent in field work, giving practical demonstrations in terracing to farmers' institutes and other farmers' organizations, and the president of said College shall require him to go over the State upon the application of farmers desiring expert instruction in terracing farm lands, and in conserving the moisture and soil fertility. He shall be furnished with the necessary instruments and equipment for such demonstration and instruction. [Acts 1911, p. 155.]

9. All expenditures for the Agricultural and Mechanical College of Texas may be made by the order of the board of directors and the same shall be paid on warrants from the Comptroller based on vouchers approved by the president of the board of directors, or by some officer or officers of the College designated by him in writing to the Comptroller. [Acts 1915, p. 104.]

10. The board shall appoint a State Forester who shall be a technically trained forester of not less than two years' experience in professional forestry work. His compensation shall be fixed by said board at not to exceed three thousand dollars per annum, and he shall be allowed reasonable traveling and field expenses incurred in the performance of his official duties. He shall, under the general supervision of said board, have direction of all forest interest and all matters pertaining to forestry within the jurisdiction of this State. He shall appoint, subject to the approval and confirmation of said board, such assistants and employés as may be necessary in executing the duties of his office and the purposes of said board, their compensation to be fixed by said board. He shall take such action as may be deemed necessary by said board to prevent and extinguish forest fires, shall enforce all laws pertaining to the protection of forest and woodlands, and prosecute for any violation of such laws; and collect data relative to forest conditions. He shall prepare for said board annually a report on the progress and condition of State forestry work, and recommend therein plans for improving the State system of forest protection, management and replace-

ment. He shall, upon request, under the sanction of the board of directors, and whenever he deems it essential to the best interest of the people of the State, co-operate with counties, towns, corporations or individuals in preparing plans for the protection, management and replacement of trees, woodlots and timber tracts, under an agreement that the parties obtaining such assistants pay at least the field expenses of the men employed in preparing said plans. The board of directors may co-operate with the Federal Forest Service under such terms as may seem desirable. [Acts 1915, p. 220.]

11. Upon the recommendation of the board of directors, the Governor is authorized to accept gifts of land to the State, to be held, protected and administered by said board as State forests, and to be used so as to demonstrate the practical utility of timber culture and water conservation, and as game preserves. Such gifts must be absolute except for the reservation of all mineral and mining rights over and under said lands, and shall contain a stipulation that they shall be administered as State forests. The board of directors shall have the power to purchase lands in the name of the State, suitable chiefly for the production of timber, as State forests, using for such purposes any special appropriation. The Attorney General shall see that all deeds conveying such land to the State are properly executed before the gift is accepted or payment of the purchase money is made. All moneys received from the sale of wood, timber, minerals or other products from the State forests and penalties for trespassing thereon shall be paid into the State Treasury. [Id.]

Art. 2613a. Reforestation.—All that certain several tracts and parcels of land lying and being situated in Cherokee County, Texas, near the town of Maydelle in said county and State, the several tracts consisting approximately of about two thousand one hundred and fifty (2150) acres of land more or less, now being owned by the State of Texas and the Prison Commission of the State of Texas, is hereby set aside for reforestization [reforestation] purposes to be used by the Agricultural and Mechanical College to demonstrate reforestization work. [Acts 1925, 39th Leg., ch. 204, p. 674, § 1.]

Art. 2614. [2677] [3872] Perpetual fund.—The money arising from the sale of the one hundred and eighty thousand acres of land donated to this State by the United States under the provisions of an Act of Congress passed on the second day of July, 1862, and an amended Act of Congress of July 23, 1866, shall constitute a perpetual fund, under the conditions and restrictions imposed by the above recited acts, for the benefit of said College; and the investment of the same, heretofore made in the bonds of the State, shall continue until the Legislature shall, by law, direct it to be invested otherwise in furtherance of the interests of said College and in accordance with the terms on which it was received. [12 U. S. Stat., p. 503; 14 U. S. Stat., p. 203; Acts 1875, p. 73; G. L. vol. 8, p. 445.]

Act April 7, 1915, c. 154, provides for a reissue of state bonds in order to comply with the provision of the federal donation act as to rate of interest of bonds held by the Agricultural and Mechanical College. See, also, House Concurrent Resolution No. 2, approved Jan. 29, 1915 (Acts 1915, Reg. Sess. p. 273).

Act Feb. 17, 1917, c. 27, makes an appropriation in furtherance of the carrying out of Act 34th Leg., ch. 154.

Art. 2615. [2678–81] Accrued interest.—The interest heretofore collected by the State Board of Education in accordance with the provisions of the act of August 21, 1876, due at the end of the fiscal year of 1876, on the bonds belonging to said Agricultural and Mechanical College and invested in six per cent State bonds, shall also constitute a part of the perpetual fund of said college until the legislature shall otherwise provide. The State Board shall collect the semi-annual interest on said bonds as the same becomes due, and place the same in the State Treasury to the credit of said College fund. The interest on all such bonds is set apart exclusively for the use of said College, and shall be drawn from the Treasury by the board of directors on vouchers audited by said board, or approved by the Governor and attested by the secretary of the board. On such vouchers being filed with the Comptroller, he shall draw his warrant on the State Treasurer for the same, from time to time, as the same may be needed to pay the directors, professors and officers of the College. [Const. art. 7, sec. 8; Acts 1876, p. 283; G. L. vol. 8, p. 1119; Acts 1875, p. 72; G. L. vol. 8, p. 444; Acts 1879, C. S. p. 16; G. L. vol. 9, p. 48.]

CHAPTER THREE

JOHN TARLETON AGRICULTURAL COLLEGE

Art.
2616. Government.
2617. Student loan fund.
2618. Courses of study.
2619. Eminent domain.

Article 2616. Government.—The government and direction of policies of the John Tarleton Agricultural College at Stephenville shall be vested in the Board of Directors of the Agricultural and Mechanical College of Texas. [Acts 1917, p. 58.]

Art. 2617. Student loan fund.—The sum of $75,000 donated by the citizenship of Stephenville and Erath County shall be used by said board of directors as a student loan fund to be lent to students who cannot otherwise attend said college, at a rate of interest not to exceed five per cent per annum, on such terms and conditions as said board may deem advisable. [Id.]

Art. 2618. Courses of study.—Said college shall rank as a Junior Agricultural College, which for the purposes of this law is designated as an institution offering four year courses beginning with the junior year of a four year high school and extending to and including the sophomore year of a standard four year college, provided that nothing in this law shall preclude the offering of such preparatory courses or short courses as may be deemed advisable. It shall be coeducational and instruction shall be offered in agriculture, including the arts and sciences connected therewith. [Id.]

Art. 2619. Eminent domain.—Said board of directors is hereby vested with the power of eminent domain to acquire for the use of said college such lands as may be necessary or proper for carrying out its purposes. [Id.]

CHAPTER FOUR

NORTH TEXAS JUNIOR AGRICULTURAL COLLEGE

Art.
2620. Government.
2621. Courses of study.
2622. Faculty.
2623. Entrance requirements.

Article 2620. Government.—The North Texas Junior Agricultural, Mechanical and Industrial College at Arlington shall be under the direction of the board of directors of the Agricultural and Mechanical College designated herein the supervisory board in connection with a local board of managers composed of five members to be appointed by the Governor, subject to the approval of said supervisory board, by and with the advice and consent of the Senate, who shall serve for two years from the date of their appointment. Said local board shall perform all the duties required in the management of said College in like manner as governing boards of the same character. Said local board shall meet at Arlington as soon after their appointment as convenient and organize by the election of a presiding officer, a secretary and a treasurer. The supervisory board shall determine the compensation to be paid said local board. [Acts 1917, p. 260.]

Art. 2621. Courses of study.—Said local board shall have all the powers, subject to the supervision

of the supervisory board, necessary to establish and maintain said College as a co-educational institution in the arts and sciences of academic grade, and to furnish instruction in agriculture, horticulture, floriculture, stock raising and domestic arts and sciences, including the several branches and studies usually taught in the established institutions of like character, having in view the training of the youth for the more important industrial activities of life, while acquiring facilities for the acquirement of a good practical literary education not below the academic grade. [Id.]

Art. 2622. Faculty.—The local board, in connection with the supervisory board, shall appoint a president and professors of said College and such officers as they may think proper and necessary to put the same into successful operation, and make such rules and regulations for the government of said officers and the proper management of said institution as they may deem advisable. They shall regulate rates of tuition with the course of discipline necessary to enforce the faithful discharge of the duties of all officers, professors and students. They shall, in connection with the faculty, divide the courses of instruction into departments so as to secure a thorough education of the academic grade and the best possible industrial training, selecting careful and efficient professors in each department, giving preference to Texas teachers, if available, and shall adopt all such rules, by-laws and regulations as they may deem necessary to carry out all the purposes and objects of said institution. Said boards shall determine and fix the salary of each officer, professor and employé, provided that the salaries of the professors in any department shall not exceed that which is now fixed for the professors of the Agricultural and Mechanical College or the College of Industrial Arts. [Id.]

Art. 2623. Entrance requirements.—The terms upon which pupils may be admitted, including the entrance requirements, shall be determined by the local board and the supervisory board, and in that respect they are empowered to fix or remit tuition, fees and charges as they may deem best for said institution and the people for whose benefit it is established. [Id.]

CHAPTER FIVE

COLLEGE OF INDUSTRIAL ARTS

Art.
2624. Name of institute.
2625. Board of regents.
2626. Courses.
2627. General duties of regents.
2628. To apportion students.

Article 2624. [2682] Name of institute.—The industrial institute and college located at Denton, in Denton county, for the education of white girls in the arts and sciences shall be known as the College of Industrial Arts. [Acts 1901, p. 306.]

Art. 2625. [2683–4–7] Board of Regents.—The Board of Regents of the College of Industrial Arts at Denton shall be composed of nine persons, four of whom shall be women. The Board of Regents shall have the power incident to their position and to the same extent, so far as may be applicable and shall receive like compensation as is conferred by law on the regents of the State University; said Board of Regents shall elect a president, a secretary and a treasurer, whose terms of office shall be two years. The president shall convene the Board of Regents to consider any business connected with said College whenever he deems it expedient. The secretary shall record in a well-bound book all of the proceedings had by said Board. The treasurer shall receive and disburse all moneys under the direction of the Board, and shall be required to give bond in such sum as the Board may prescribe. [Acts 1901, p. 306; Acts 1913, p. 191; Acts 1927, 40th Leg., p. 216, ch. 145, § 1.]

Art. 2626. [2685] Courses.—The board of regents shall possess all the powers necessary to the establishment and maintenance of a first-class industrial institute and college for the education of white girls in this State in the arts and sciences, at which such girls may acquire a literary education, together with a knowledge of kindergarten instruction, telegraphy, stenography and photography, drawing, painting, designing and engraving, in their industrial application, needle-work, including dressmaking, bookkeeping, scientific and practical cooking, including a chemical study of food, practical housekeeping, trained nursing, caring for the sick, the care and culture of children, with such other practical industries as, from time to time, may be suggested by experience, or tend to promote the general object of said institute and college, to-wit: Fitting and preparing such girls for the practical industries of the age. [Id.]

Art. 2627. [2686–9] General duties of regents.—The board of regents shall appoint a president and professor of said college and such other officers and employés as they may think proper, and fix their salaries not to exceed the salaries paid professors in any one department at the Agricultural and Mechanical College; and make such rules and regulations for the government of said officers as they may deem advisable. They shall regulate rates of tuition, together with course of discipline necessary to enforce the faithful discharge of the duties of all officers, professors and students; divide the course of instruction into departments, so as to secure a thorough education and the best possible instruction in all of said industrial studies, selecting careful and efficient professors in each department, and shall adopt all such rules, by-laws and regulations as they may deem necessary to carry out all the purposes and objects of said institution. [Id.]

Art. 2628. [2688] To apportion students.—The board of regents shall apportion to each county its quota of pupils or students, on the basis of the number of educatable white girls in the State and several counties; and the several superintendents of education of the several counties shall, after having given notice in some newspaper of the county, and three weeks after such publication, under such regulations as the board of regents may adopt, appoint such number of white girls to such industrial institute and college as such county may be entitled to. [Id.]

CHAPTER SIX

TEXAS TECHNOLOGICAL COLLEGE

Art.
2629. Purpose.
2630. Board of Directors.
2631. Courses.
2632. Eminent domain.

Article 2629. Purpose.—The Texas Technological College at Lubbock shall be a co-educational college giving thorough instruction in technology and textile engineering from which a student may reach the highest degree of education along the lines of manufacturing cotton, wool, leather and textile engineering, the chemistry of materials, the technique of weaving, dyeing, tanning and the doing of any and all other things necessary for the manufacturing of raw materials into finished products; and said college shall also have complete courses in the arts and sciences, physical, social, political, pure and applied, such as are taught in colleges of the first class, leading to the degrees of bachelor of science, bachelor of arts, bachelor of literature, bachelor of technology and any and all other degrees given by colleges of the first class; said college being designed to elevate the ideals, enrich the lives and increase the capacity of the people for the democratic self-government, and particularly to give instruction in technology, manufacturing and agricultural pursuits, domestic husbandry and home economics so that the boys and girls of this State may attain their highest usefulness and greatest happiness and in so doing, may prepare themselves for producing from the State its greatest possible wealth. [Acts 1923, p. 32.]

Art. 2630. Board of Directors.—The government, control and direction of the policies of said technological college shall be vested in a board of nine directors who shall hold office for a period of six years. The Governor shall biennially appoint three directors, the classification to continue as constituted by law. The Governor may remove any director for inefficiency or inattention to his duties as members of such board. The board of directors shall provide a president therefor who shall devote his entire time to the executive management of said school and who shall be directly accountable to the board of directors for the conduct thereof. [Id.]

Art. 2631. Courses.—In addition to the courses provided in technology and textile engineering, said college shall offer the usual college courses given in standard senior colleges of the first class and shall be empowered to confer appropriate degrees to be determined by the board of directors, and shall offer four year courses, two year courses, or short term courses in farm and ranch husbandry and economics and the chemistry of soils and the adaption of farm crops to the peculiar soil, climate and condition of that portion of the State in which the college is located and such other courses and degrees as the board of directors may see fit to provide as a means of supplying the educational facilities necessary for this section of the State. The board shall furnish such assistance to the faculty and students of said college as will enable them to do original research work and to apply the latest and most approved method of manufacturing and, in general, to afford the facilities of the college for the purpose of originating, developing, supporting and maintaining all of those agencies for the development of the physical, mental and moral welfare of the students who attend the college and for the further purpose of developing the material resources of the State to their highest point of value and usefulness by teaching the arts of commerce and manufacturing. All male students attending this college shall be required to receive such instruction in military science and tactics as the board of directors may prescribe which shall at all times, comply in full with the requirements of the United States Government now given as a prerequisite to any aid now extended or hereafter to be extended by the Government of the United States to State institutions of this character and all such white male students shall, during their attendance at such college, be subject to such military discipline and control as the board of directors may prescribe. [Id.]

Art. 2632. Eminent domain.—The board of directors is hereby vested with the power of eminent domain to acquire for the use of said college such land as may be necessary for the purpose of carrying out its purpose. [Id.]

CHAPTER SEVEN

SCHOOL OF MINES AND METALLURGY

Art.
2633. Government.
2634. Purpose of school.
2635. Faculty.
2636. Tuition.
2637. Annual reports.

Article 2633. Government.—The School of Mines and Metallurgy at El Paso shall be under the management and control of the Board of Regents of the State University, and the faculty of said school shall be appointed by the Board of Regents of the University of Texas, and such appointees shall hold their positions for a term of two years, and the same is hereby made and constituted a branch of the State University of Texas for instruction in the arts of mining and metallurgy as now provided for by law. [Acts 1913, p. 427; Acts 1919, p. 92.]

Art. 2634. Purpose of school.—The principal purpose of said school shall be to teach such branches in mining and metallurgy as will give a thorough technical knowledge of mines and mining, and all subjects pertaining thereto, including physics and mining, engineering, mathematics, chemistry, geology, mineralogy, shop work and drawing, the technical knowledge and properties of mine gases, assaying, surveying, drafting of maps and plans, and such other subjects pertaining to mining engineering as may add to the safety and economical operation of mines within this State. [Id.]

Art. 2635. Faculty.—Said school shall have a separate and distinct faculty which shall have the power, under the direction of the board of regents, to confer degrees and issue diplomas and fix a standard of grades for all students attending said school, and to make such rules and regulations for the proper control and management of the school as they may deem necessary. Said school shall have regular courses leading to degrees, and such other special courses as the faculty may deem necessary. The regular course shall extend over a period of two years. [Acts 1913, p. 428.]

Art. 2636. Tuition.—The board of regents shall fix the terms and tuition to be charged students in this school, and all moneys received from said tuition or in any way from said school, over and above that necessary for the actual maintenance and carrying on of said school shall be paid into the State Treasury. [Id.]

Art. 2637. Annual reports.—At the close of each school year the board of regents shall require the faculty of said school to report to them the workings and progress of said school, and the board of regents in turn shall make a detailed report to the Governor exhibiting the progress, condition, and wants of the several departments of instruction in said school, the course of study in each and the number and names of the officers and students, the amount of receipts and disbursements, together with the nature, cost and results of all important experiments and investigations, and such other matters, including special industrial and economical statistics as may be thought useful. The board of regents shall cause the same to be printed for the use of the Legislature and the people of the State, and shall cause one copy of same to be transmitted by mail to the Secretary of the Interior and one copy to the Commissioner of Labor at Washington, and one copy to the Commissioner of Labor and Chief Mine Inspector of this State. [Id.]

CHAPTER EIGHT

PRAIRIE VIEW STATE NORMAL AND INDUSTRIAL COLLEGE

Art.
2638. Management.
2639. Appointment of students.
2640. Duties of board.
2641. Obligation of students.
2642. Courses.
2643. Appropriations.

Article 2638. [2718] [3885] Management.—The Prairie View State Normal and Industrial College for colored teachers at Prairie View shall be under the control and supervision of the board of directors of the Agricultural and Mechanical College, and said board shall in all respects have the same powers and perform the same duties in reference to this college as those conferred upon them by law for the government of the Agricultural and Mechanical College. [Acts 1879, p. 181; G. L. vol. 8, p. 1481.]

Art. 2639. [2719] [3886] Appointment of students.—Said board shall admit one student from each senatorial district, who shall be appointed by the senator representing said district, and one student from each representative district, who shall be appointed by the member of the Legislature representing said district; provided, that, where there is more than one representative in a district, each representative of such district shall appoint one student, said students to be taken from the colored population of this State, and shall not be less than sixteen years of age at the time of their admission. Said board may

provide for receiving such number of students of both sexes as the school can best accommodate. [Id.; Acts 1899, p. 325.]

Art. 2640. [2720] [3887] Duties of board.—Said board shall appoint a principal teacher and such assistant teachers and other officers of said school as may be necessary, and shall make such rules, by-laws and regulations for the government of said school as they may deem necessary and proper, and shall regulate the course of study and the manner of performing labor by the students, and shall provide for the board and lodging and instruction of the students, without pecuniary charge to them, other than that each student shall be required to pay one-third of the cost of said board, lodging and instruction, quarterly, in advance; and said board of directors shall regulate the course of discipline necessary to enforce the faithful discharge of the duties of all officers, teachers, students and employés of said school, and shall have the same printed and circulated for the benefit of the people of the State and the officers, teachers, students and employés of said school. [Id.]

Art. 2641. [2721] [3888] Obligation of students.—Said board shall require each student admitted to said school to sign a written obligation, in a proper book kept for that purpose, binding said student to teach in the public free schools for the colored population of their respective districts at least one year next after their discharge from the normal school, and as much longer than one year as the time of their connection with said normal school shall exceed one year; for which teaching said discharged students shall receive the same rate of compensation allowed other teachers of such schools with like qualifications. [Id.]

Art. 2642. [2722] Courses.—There shall be maintained a four-year college course of classical and scientific studies at said college, to which graduates of the normal course shall be admitted without examination, and to which others may be admitted after having passed a satisfactory examination in the branches comprised in the normal course; provided, that no State student shall be admitted to the privileges of the said course; and provided further, that the diploma conferred on the completion of said course shall entitle the holder without other or further examination to teach in any colored free school of the State. [Acts 1901, p. 35.]

Art. 2643. [2723] [3889] Appropriations.—The Comptroller shall annually set apart out of the interest accruing from the University fund, appropriated for the support of public free schools, the sum of six thousand dollars for the support of said normal school, and place said fund to the credit of said normal school and the same may be drawn by the board of directors on vouchers audited by the board or approved by the Governor and attested by the Secretary; and, on filing such vouchers, the Comptroller shall draw his warrant on the State Treasury for the same from time to time as the same may be needed. [Acts 1879, p. 181; Id.; G. L. vol. 8, p. 1481.]

CHAPTER NINE

STATE TEACHERS' COLLEGES

1. GENERAL PROVISIONS

Art.
2644. Control of colleges.
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2646. Diplomas and certificates.
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2651. Purpose.
2652. Funds set apart for college.
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1. GENERAL PROVISIONS

Article 2644. Control of colleges.—Except as herein provided, all laws establishing State teachers colleges or normal institutes for the training of white teachers and providing for their government, control and maintenance are continued in force, and all such colleges which are or may be established by law shall be under the general control and management of the Board of Regents of the State Teachers' Colleges.

Art. 2645. [2695] Subjects required to be taught.—Manual training, domestic science and agriculture shall be taught in each of the State Teachers' Colleges. Elementary agriculture shall be taught in the summer sessions of said colleges.

Art. 2646. [2696] Diplomas and certificates.—Diplomas and teachers certificates of each of the State Teachers' Colleges shall authorize the holders to teach in the public schools.

Art. 2647. Board of regents.—The board of regents of the State Teachers' Colleges shall be composed of six persons. Said board is charged with the duties and empowered to do and perform the acts hereinafter set forth as follows:

1. The Board of Regents of the State Teachers' Colleges is charged with the responsibility of the general control and management of all State Teachers' Colleges for white persons and may erect, equip and repair buildings; purchase libraries, furniture, apparatus, fuel and other necessary supplies; employ and discharge presidents or principals, teachers, treasurers and other employés; and fix the salaries of the persons so employed. The principal of each State Teachers' College shall nominate annually to the board of regents such professors, teachers, officials and assistants as in his opinion will promote the best interests of the institution. [Acts 1911, 2nd C. S. p. 74; Acts 1913, p. 191.]

2. The board shall visit each college under its control and management at least once during each scholastic year and inspect its work and gather such information as will enable said board to perform its duties intelligently and effectively. [Id.]

3. The board may determine what departments of instruction shall be maintained in the State Teachers' Colleges and what subjects of study shall be pursued in each department. Said board shall not change any department of instruction provided by law, and no department shall be established for the support of which provision has not been made by the Legislature. The board shall also have authority to fix the rate of incidental fees to be paid by students attending said schools and to make rules for the collection of such fees and for the disbursement of such funds. [Id.]

4. The board shall make an annual report to the Governor showing the general condition of the affairs of each college and shall make such recommendations as it may deem best for future management and welfare thereof. [Id.]

5. The board may determine the conditions on which students may be admitted to such colleges, and what grades of certificates may be issued to students attending, and on what conditions certificates and diplomas may be issued to students, and by what authority said certificates and diplomas shall be signed.

6. The board shall meet each year at Austin, on the first Monday in May, or as soon thereafter as practicable, for the transaction of business pertaining to the affairs of the State normal schools, and at such other times and places as a majority of the members of the board deem necessary for the welfare of said colleges. Each and every member of said board shall receive five dollars per day for the time spent attending the meetings provided for in this law, and in addition thereto the amount of their traveling expenses, said compensation to be paid to the several members of the board out of the appropriation for the support and maintenance of the said State Teachers' Colleges as the board may direct. [Id.]

7. All appropriations made by the Legislature for the support and maintenance of State Teachers' Col-

leges, for the purchase of land or buildings for the use of such schools, for the erection or repair of buildings, for the purchase of apparatus, libraries or equipment of any kind or for any other improvement of any kind, shall be disbursed under the direction and authority of the board of regents; and said board shall have power to formulate and establish such rules for the general control and management of the State normal schools for white teachers, for the auditing and approving of accounts, and for the issuance of vouchers and warrants as in their opinion may be necessary for the efficient administration of such schools. [Id.]

8. The board shall file in each house of the Legislature, at each of its regular biennial sessions, a statement of the receipts and expenditures of each of said normal schools, showing the amount of salaries paid to the various teachers, contingent expenses, expenditures for improvements, etc., together with such recommendations as the board may see proper to submit relative to the appropriation for said schools to be made by the Legislature. [Id.]

9. Power and authority is hereby conferred upon said board of regents to acquire by purchase or condemnation for the use and benefit of any of the State Teachers' Colleges, such lands within the counties where such schools may be located, as said board may deem expedient for the use of any of said schools for purposes necessary in the conduct thereof. [Acts 1913, p. 347.]

10. If in the exercise of such power, said board and the land owner cannot agree upon the sale and purchase of said land, the board of regents shall request the Attorney General to proceed to condemn the land required as provided by law. In lieu of such suit, the parties thereto may select by agreement three persons to ascertain the value of such land under their oaths and the direction of the court. The finding and decision of the jury, court or of such persons, shall in all cases be final; provided the parties to said proceedings shall have the right to appeal as in other civil cases.

11. When the value of the land has been so ascertained and the court is satisfied with such valuation, it shall enter a decree vesting the title of such lands in this State for the use and benefit of the State Teachers' College for whose benefit the land is sought to be acquired, to be held, owned, possessed and enjoyed by the State of Texas, for the purposes hereinbefore stated. No such decree shall be entered until the value of the land so ascertained, together with all reasonable cost and expense of the owner in attending such proceeding, shall be paid to him or into court for his benefit and subject to his order, such costs and expenses to be ascertained by the court in which such proceeding is had, including reasonable attorneys fees to be fixed by the court. [Id.]

2. SAM HOUSTON STATE TEACHERS' COLLEGE

Art. 2648. [2692–4] Admission of students.—Not more than two students from each senatorial district, and six from the State at large, shall be received in the Sam Houston State Teachers' College at Huntsville, as State students, who shall receive tuition, board and lodging free to the extent of the appropriation that may be made. In no case shall the current expenses of the institute exceed the sum or sums appropriated. The board of regents shall make all necessary rules and regulations for the admission of students, and the manner of their appointment or selection. No student shall be received who is not a resident of this State and at least of the age of sixteen years and of good moral character. Said board may authorize other students to be admitted to said College who shall pay tuition, in whole or in part, as the board may prescribe. [Acts 1879, p. 182; G. L. vol. 8, p. 1482.]

Art. 2649. [2693] [3881] Obligation of students.—All students attending said institute at State expense shall sign a written obligation in a book to be kept at the College for that purpose, binding said student to teach in the public schools of their respective districts at least one year next after their discharge from the normal school and as much longer than one year as the time of their attendance at said school shall exceed one year, for which teaching said student shall receive the same compensation allowed other teachers of said schools. Said board of education shall make rules by which students may receive certificates of qualification as teachers, authorizing them to teach without examination. [Id.]

Art. 2650. [2698] [3884] Annual appropriation.—The State Comptroller shall annually set apart out of the available free school fund the sum of fourteen thousand dollars for the support of said College and place the same to its credit. Said sum may be drawn upon by the board of regents for the current expenses of said school on vouchers audited by said board or approved by the Governor and attested by the Secretary; and, on filing said vouchers, the Comptroller shall draw his warrant on the State Treasurer for the same. The board is authorized to receive from the agent of the trustees of the Peabody Education Fund such sums as he may tender for the aid of said institute, and shall disburse the same in such manner as will best subserve the interests of said college. [Acts 1879, p. 182; G. L. vol. 8, p. 1482.]

3. NORTH TEXAS STATE TEACHERS' COLLEGE

Art. 2651. [2699] Purpose.—The State Teachers' College located at Denton shall be known as the "North Texas State Teachers' College." It shall be conducted for a session of not less than thirty-six weeks each year upon improved methods and plans for first class schools designed for special training of teachers. [Acts 1899, p. 74.]

Art. 2652. [2701] Funds set apart for college.—The Comptroller shall set apart annually, out of the general revenue, the sum of twenty thousand dollars for the maintenance of said normal school, together with such other sums as may be appropriated by the Legislature for defraying a part of the expenses of the students appointed from year to year by senators and representatives, such sum or sums to be placed to the credit of such State normal school, and which shall be paid out upon warrants approved by the Governor and attested by the board of regents. Said board is hereby authorized to receive from the agent of the Peabody Education Fund such sums as he may tender for the aid of the said State normal school, to be disbursed in such manner as may be prescribed by the donor. [Id.; Amended Acts 1901, p. 10.]

Art. 2653. [2702] Free tuition.—Tuition in said college shall be free to all students who are at least sixteen years of age, of good moral character, and who wish to prepare themselves for the profession of teaching. All State students attending such college shall sign a written obligation, in a book to be kept for that purpose, binding said students to teach in the public schools of this State for as long a period of time as they attend said college, for which teaching they shall receive the same compensation as other teachers. [Id.]

4. SOUTHWEST TEXAS STATE TEACHERS' COLLEGE

Art. 2654. [2708–11] School established.—The institution established at San Marcos shall be known as the Southwest Texas State Teachers' College. The rules and regulations provided by law for the government of the Sam Houston State Teachers' College shall apply so far as applicable to the government and control of this college. [Acts 1909, p. 221.]

Art. 2654a. Tuition in state educational institutions.—Sec. 1. No State educational institution shall collect from the students thereof any tuition, fee or charge of any kind whatever except as permitted by this Act, and no student shall be refused admission to or discharged from any such institution for the

non-payment of any tuition, fee or charge except as permitted in this Act.

Sec. 2. Any such educational institution may collect from each student a matriculation fee of not to exceed thirty ($30) dollars for any term of nine months, and laboratory charges to cover actual laboratory materials and supplies used by such student not to exceed in any event four ($4.00) dollars for any one year from any one student in any one laboratory course. Matriculation fees for any six weeks may not exceed five dollars, or for any ten weeks term, not to exceed ten dollars. Provided, however said educational institutions may collect reasonable deposits from students each year to insure said institutions against losses, breakage etc., in libraries and laboratories, said deposits to be returned at the end of each school year minus such damage, loss or breakage as may have been done by each individual student who has put up a deposit.

Sec. 3. The words "State educational institutions" as used in this Act shall include the following and any branch thereof: The University of Texas; the Agricultural and Mechanical College of Texas; the various State teachers' colleges of Texas; the College of Industrial Arts of Texas; the John Tarleton Agricultural College of Texas; the North Texas Agricultural College; the Prairie View State Normal and Industrial College; the Texas Technological College; and any other State educational institutions either heretofore provided for or hereafter to be provided for under the laws of this State.

Sec. 4. Nothing in this Act shall prevent the collection of fees or charges voluntarily paid by the students to cover the expense of student activities; provided, however, that the same shall never be made compulsory or required by the educational institution as a condition precedent to a student entering or continuing at said institution. [Acts 1927, 40th Leg., p. 351, ch. 237.]

CHAPTER TEN

STATE DEPARTMENT OF EDUCATION

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1. STATE SUPERINTENDENT

Article 2655. [4509] Election.—There shall be elected at each general election, a State Superintendent of Public Instruction, who shall hold his office for a term of two years. The Superintendent shall take the official oath and shall perform such duties as may be prescribed by law. [Acts 1905, p. 263.]

Art. 2656. [4510–13] General duties.—The State Superintendent shall be charged with the administration of the school laws and a general superintendency of the business relating to the public schools of the State, and he shall have printed for general distribution such number of copies of school laws as the State Board of Education may determine. He shall hear and determine all appeals from the rulings and decisions of subordinate school officers, and all such officers and teachers shall conform to his decisions. Appeal shall always be from his rulings to the State Board. He shall prescribe suitable forms for reports required of subordinate school officers and teachers, and blanks for their guidance in transacting their official business and conducting public schools and shall, from time to time, prepare and transmit to them such instructions as he may deem necessary for the faithful and efficient execution of the school laws, and by whatsoever is so communicated to them, they shall be bound to govern themselves in the discharge of their official duties. He shall examine and approve all accounts against the school funds that are to be paid by the State Treasurer, and, upon such approval, the Comptroller shall be authorized to draw his warrant. He may employ such clerks to perform the duties of his office as may be authorized by appropriations therefor.

Art. 2657. [4511] To advise school officers.—The State Superintendent shall advise and counsel with the school officers of the counties, cities and towns and school districts as to the best methods of conducting the public schools, and shall be empowered to issue instructions and regulations binding for observance on all officers and teachers in all cases wherein the provisions of the school law may require interpretation in order to carry out the designs expressed therein, also in cases that may arise in which the law has no provision, and where necessity requires some rule in order that there may be no hardships to individuals, and no delays or inconvenience in the management of school affairs. [Id.]

Art. 2658. [4512] Shall note educational progress.—He shall inform himself concerning the educational progress of the different parts of this State and of other States. In so far as he may be able, he shall visit different sections of this State and address teachers' institutes, associations, summer normals and other educational gatherings, instruct teachers and arouse educational sentiment; and the Legislature shall make adequate appropriation for necessary traveling expenses, or those of his representative, when in the service of the State. [Id.]

Art. 2659. [4514] Plans for school buildings.—The State Superintendent shall prepare as many as three sets of plans for public school buildings designed to meet the needs of rural schools of various sizes, and, upon request of the trustees of any school district, shall furnish copies of such plans and specifications. [Id.; Acts 1909, p. 21.]

Art. 2660. [4515–16] Shall make report.—The State Superintendent shall, one month before the meeting of each regular session of the Legislature and ten days prior to any special session thereof, at which, under the Governor's proclamation convening the same, any legislation may be had respecting the public schools, make a full report to the State Board of the condition of all the public schools. Such report shall give all the information called for by the State Board and such other matters as the State Superintendent shall deem important. The Governor shall lay such report before the Legislature and two thousand copies of said report shall be printed in pamphlet form for the use of the Legislature and for distribution among the various school officers and libraries within the State, and other States and territories of the United States and Canada, and the Bureau of Education at Washington. [Acts 1905, p. 263.]

Art. 2661. [4517] School officers to report.—The State Superintendent shall require of county judges, county, city and town superintendents, county and city treasurers and treasurers of school boards and other school officers and teachers, such school re-

ports relating to the school fund and other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish the county, city and town superintendents, and other school officers and teachers, for the use of such officers and teachers, the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them. [Id.]

Art. 2662. [4618] Reports to be filed.—The State Superintendent shall file all reports, documents and papers transmitted to him and the State Board by county or city school officers, and from all other sources, pertaining to public schools, and keep a complete index of the same. [Id.]

Art. 2663. [4519–20] Shall prorate funds.—On the first of each month, the State Superintendent shall prorate to the several counties, cities and towns and school districts constituting separate school organizations, according to the scholastic population of each, the available school money collected during the preceding month and then on hand as shown by the certificate issued that day to him by the Comptroller, and shall thereupon certify to the Comptroller the total sum prorated to each; and such certificate shall be authority for the Comptroller to draw his warrant in favor of the Treasurer of each such county, city or town or school district for the amount stated in such certificate. He shall receive from the State Treasurer all warrants so drawn, and shall transmit such warrants to the respective treasurer in favor of whom they are drawn. [Acts 1909, 2nd C. S. 432.]

2. STATE BOARD

Art. 2664. [2727–8] Members.—The Governor, Secretary of State and Comptroller shall constitute a State Board of Education which shall hold its sessions at Austin. The Governor shall be ex officio president of the board. The State Superintendent shall be ex officio secretary of the Board and shall keep a complete record of all its proceedings, which shall be signed by the president and attested by the secretary. [Acts 1905, p. 263.]

Art. 2665. [2729] Shall make apportionment.—The State Board shall, on or before the first day of August in each year, based on the estimate theretofore furnished said Board by the Comptroller, make an apportionment for the ensuing scholastic year of the available State school fund among the several counties of the State, and the several cities and towns and school districts constituting separate school organizations, according to the scholastic population of each; and thereupon the secretary shall certify to the treasurer of each such separate school organization the total amount of available school fund so apportioned to each, which certificate shall be signed by the president, countersigned by the Comptroller and attested by the secretary. [Acts 2nd C. S. 1909, p. 432.]

Art. 2666. [2733] New districts created at eleemosynary institutions.—The State Board is authorized to create new school districts at such of the several eleemosynary institutions of this State, including the State Orphan Asylum, or at any and all orphan homes or like institutions that may be established by any fraternal organization; provided, that the number of children within the scholastic age in each instance be sufficient to justify such action. The territorial limits in each case shall be co-extensive with the property lines of the institution. [Acts 1905, p. 263.]

Art. 2667. [2734] Trustees for such districts.—Upon the exercise of such power, the State Superintendent shall appoint a board of three trustees for each district so created; and such trustees need not be residents of such district, and the fact shall be duly certified to local authorities for information and observance; and upon the creation of such districts the trustees shall take and certify the census of the children within the scholastic age, and the funds shall thereafter be apportioned directly to such district; and the law pertaining to independent districts shall govern so far as applicable, though the State Board may make special regulations and orders for the government of such districts as they may deem expedient. [Id.]

Art. 2668. [2735] Transfer of funds.—Upon the creation of such district, the county school superintendent shall transfer to such district whatever amount of money may have been apportioned for the current school year to the old district, for and in behalf of the children included in the new district; provided only, such children may not have had the advantage of such fund in the old district.

Art. 2669. [2736] Investing school fund.—The State Board is authorized and empowered to invest the permanent public free school funds of the State in bonds of the United States, the State of Texas or any county thereof, and the independent or common school districts, road precinct, drainage, irrigation, navigation, and levee districts in this State, and the bonds of incorporated cities and towns. [Acts 1905, p. 263; Acts 1909, p. 216.]

Art. 2670. [2737] Purchase of bonds.—When any county bonds, or the bonds of any incorporated city, independent or common school district, road precinct, drainage, irrigation, navigation and levee districts are offered for sale, the party offering, or proposing to sell, such bonds shall first submit them to the Attorney General who shall carefully inspect and examine the same in connection with the law under which they were issued, and shall diligently inquire into the facts and circumstances so far as may be necessary to determine the validity thereof; and, upon being satisfied that such bonds were issued in conformity with law, and that they are valid and binding obligations, he shall thereupon certify to their validity, and his certificate to that effect, so procured by the party offering such bonds for sale, shall be submitted to the Comptroller or State Board with the bonds so offered for sale, and shall be carefully preserved by the Comptroller. If the same be purchased from the county, city, precinct or district issuing the same, or from any person authorized to act for it in the negotiations or sale of such bonds, such bonds shall thereafter be held to be valid and binding obligations in every action or proceeding in which their validity is or may be called in question, unless fraudulently issued, or issued in violation of the constitutional limitation. In every such action such certificate of the Attorney General shall be admitted and received as prima facie evidence of the validity of the bonds and coupons thereto, which may have been so purchased. [Id.]

Art. 2671. [2738] Conditions of purchase.—The Comptroller or State Board shall carefully examine the bonds so offered and investigate the facts tending to show the validity thereof; and such Board may decline to purchase same unless satisfied that they are a safe and proper investment for such fund. No bonds shall be so purchased that bear less than three per cent interest. No bonds, except State or Federal bonds, shall be so purchased when the indebtedness of the county, city, precinct or district issuing same, inclusive of the bonds so offered, shall exceed seven per cent of the assessed value of the real estate therein. If default be made in the payment of interest due upon such bonds, the State Board may at any time prior to the payment of such overdue interest, elect to treat the principal as also due, and the same shall thereupon, at the option of said Board become due and payable; and the payment of both such principal and interest shall in all such cases be enforced in the manner provided by law, and the right to enforce such collection shall never be barred by any law or limitation whatever. [Id.]

Art. 2672. [2739] Estoppel.—In all cases where the proceeds of the sale of any bonds have been received by the proper officers of any such county, city, precinct or district, or by the party acting for it in negotiating the sale thereof, such county [,] city, precinct or district shall thereafter be estopped from de-

nying the validity of such bonds so issued, and the same shall be held to be valid and binding obligations for the amount of bonds sued on and interest thereon, at the rate mentioned therein, deducting such amounts, if any, as have been previously paid thereon. [Acts 1905, p. 263; Acts 1909, p. 216.]

Art. 2673. [2740] Option to purchase.—Whenever any county, city, independent or common school district, road precinct, drainage, irrigation, navigation or levee district of this State issues any bonds, and they have been approved by the Attorney General, as required by the preceding articles, the county judge, the mayor, the president of the board of trustees of the school district, or the county judge or party authorized by law to sell such bonds, shall notify the State Board of all bids received for such bonds, and shall give said Board an option of ten days in which to purchase such bonds; provided, that said Board will pay the price offered for such bonds by the best bona fide bidder; and, if the Board fails to purchase such bonds within said time, then such county judge, mayor, or president shall sell the bonds to the best bona fide bidder. If the State Board shall pay a premium out of the permanent school fund, on any bonds purchased as an investment for the permanent school fund, then the principal of such bonds and an amount of the interest first accruing on such bonds equal to the premium so paid, shall be treated as the principal in such investment, and, when such first interest is collected, such sum of the same shall be returned to the permanent school fund, and, if they purchase said bonds for less than par, the discount they receive in the purchase of said bonds shall be paid to the available school fund when the bonds are paid off and discharged. The price paid for bonds shall be indorsed thereon at the time the same are purchased. If said Board shall refuse to purchase bonds from such county, city, precinct or district, or the parties to whom said bonds were issued, then in no event shall said Board purchase said bonds from any subsequent owner or holder of the same. [Id.]

Art. 2674. [2742] Jurisdiction.—The district court of Travis County shall have jurisdiction of any suit upon bonds or obligations belonging to the permanent public school funds, or purchased therewith, concurrent with that of any other court having jurisdiction in said case. [Id.]

Art. 2675. [2743] Extent of these provisions.—The provisions of the six preceding articles shall extend to any bonds or securities other than the bonds of the State or of the United States, in which the public school funds are or may be invested, as is or may be authorized or prescribed by law, and also to any bonds or securities purchased with any of the permanent funds set apart for the support, maintenance and improvement of any asylum or other institution of this State. [Id.]

3. EDUCATIONAL SURVEY COMMISSION

Art. 2675a. Selection of Commission.—There is hereby created a survey committee, the membership of which is hereinafter designated, which is authorized and empowered to select an Educational Survey Commission of twelve (12) members, at least six (6) of whom shall not be engaged in the profession of teaching and at least two of whom shall be women; to make a survey of the public educational system of the State, including all schools and educational institutions supported in whole, or in part by public taxation, and all administrative departments connected therewith, for the sake of determining the efficiency of their work and to report its findings with recommendations for improvement to the Governor and Legislature not later than December 1, 1924. [Acts 1923, 38th Leg., ch. 124, p. 258, § 1.]

Art. 2675b. Membership of Survey Committee.—The said survey committee shall consist of the following persons: The Governor, as chairman; the State Superintendent of Public Instruction; the chairman of the Senate Committee on Educational Affairs; the chairman of the House Committee on Education; the Presidents of the University of Texas; the Agricultural & Mechanical College and the College of Industrial Arts; the Presidents of two of the State normal colleges, who shall be designated by the chairman of the State Normal School Board of Regents; the superintendent of a city school system, the superintendent of a county system of schools, the principal of an elementary public school, two persons engaged in the State banking business, two persons engaged in farming and two persons engaged in the general mercantile business, each of whom shall be designated by the Governor. It shall be the duty of the said survey committee to meet at the call of the chairman within sixty days after this Act shall go into effect to select the members of an educational survey commission as provided for in Section 1 of this Act. [Acts 1923, 38th Leg., ch. 124, p. 258, § 2.]

Art. 2675c. Organization of Commission.—The Educational Survey Commission shall meet within thirty days after its appointment at such time and place as shall be designated by the Governor and shall organize by electing a chairman and a secretary and such other officers as it may deem necessary, and adopt such rules and regulations as are necessary to carry out the provisions of this Act. It shall be the duty of said Educational Survey Commission to employ an educational expert as a survey director, who shall, with the assistance of such a survey staff of experts as he may select subject to the approval of the said Educational Survey Commission, make a thorough and impartial survey of the public educational system of the State, including all schools and educational institutions supported in whole or in part by public taxation, and all administrative departments connected therewith as to means of support, organization, co-ordination, administration, and general efficiency, in accordance with approved scientific standards of educational research; provided that the said survey director and his staff may not be residents of Texas and provided that the said survey director may call upon any official, or officials, of the educational institutions of this State for such assistance as he may deem necessary, such individuals to receive no remuneration for their services except actual expenses incurred in the discharge of their duties, as approved by the Educational Survey Commission. [Acts 1923, 38th Leg., ch. 124, p. 258, § 3.]

Art. 2675d. Compensation, expenses.—The members of said Survey Committee and Educational Survey Commission shall serve without pay, except actual expenses incurred in the discharge of their duties. Said Educational Survey Commission is hereby authorized and empowered to purchase such supplies and employ such clerical help in addition to the expert service hereinbefore provided, as may be necessary for the proper discharge of its duty within the limitation herein prescribed. [Acts 1923, 38th Leg., ch. 124, p. 258, § 4.]

Art. 2675e. Access to records.—That the Educational Survey Commission and its employés shall be accorded free access to all public records that would disclose information that would be valuable in the interest of the betterment of the educational system in this State. All persons having charge of any schools or educational institutions supported wholly, or in part, by public funds shall furnish all the information available and render all the assistance possible in making the survey complete, and any person who wilfully withholds records or information within his possession, or obstructs the work of the Educational Survey Commission in any way, shall be fined in any sum not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars, in any court of competent jurisdiction. [Acts 1923, 38th Leg., ch. 124, p. 258, § 5.]

Art. 2675f. Appropriation.—There is hereby appropriated out of any money in the State Treasury, not otherwise appropriated, the sum of fifty thousand ($50,000.00) dollars, or as much thereof as may be necessary for the purpose of defraying the expense of the survey hereby proposed, including the publication of

the Educational Survey Commission's report, provided that the said report shall be made by the Survey Commission within the time provided in Section 1 hereof, and shall include all of the findings, statistical and otherwise, as recommended by the Survey Staff, together with any and all recommendations that may be formulated by said Survey Staff; provided further that all expenditures under this Act shall be made on warrants signed by the president and secretary of the Educational Survey Commission and approved by the State Comptroller of Public Accounts who shall keep in his office a complete record of such expenditures, including all necessary vouchers, receipts and other records, provided no part of this appropriation shall be available before September 1, 1923. [Acts 1923, 38th Leg., ch. 124, p. 258, § 6.]

Art. 2675g. Extension of term of office of Commission.—The term of office of the Educational Survey Commission created by the Act of the Thirty-eighth Legislature, Regular Session, be and the same is hereby extended for a period of two years, in order that the said Educational Survey Commission may complete the work for which it was created and established. And it is hereby made the duty of the said commission to prepare suitable bills and resolutions to effect necessary changes in and addition to the public educational system of Texas as they may deem necessary and to embody such bills and resolutions in a report to the Legislature at a Called Session of the Thirty-ninth or the Regular Session of the Fortieth Legislature. A complete copy of the Commission's report, as provided for above, shall be filed with the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Superintendent of Public Instruction. [Acts 1925, 39th Leg., ch. 187, p. 459, § 1.]

Art. 2675h. Law applicable; vacancies.—The said Educational Survey Commission, as provided for herein, shall be governed by the provisions of the Act creating the Commission in so far as they are applicable to the purposes of this Act as set forth in Section 1. Any vacancies that may have occurred in the said Commission or may hereafter occur, may be filled by the remaining members of the Commission; provided however, that the Commission as revived and extended by this Act shall not include in its membership any person who is employed by or is officially connected with any State supported educational institution. [Acts 1925, 39th Leg., ch. 187, p. 460, § 2.]

Art. 2675i. Appropriation.—The sum of two thousand ($2,000.00) dollars, or such amount thereof as may be necessary, is hereby appropriated out of the general revenue of the [the] State to pay the expenses of the Commission in the preparation of the reports herein provided for; provided no remuneration shall be paid to any member of the said Commission, except the actual expenses incurred in the discharge of his duties. [Acts 1925, 39th Leg., ch. 187, p. 460, § 3.]

CHAPTER ELEVEN

COUNTY SCHOOLS

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1. TRUSTEES

Article 2676. Election.—The general management and control of the public free schools and high schools in each county shall be vested in five county school trustees elected from the county, one of whom shall be elected from the county at large by the qualified voters of the common school districts of the county, and one from each commissioners precinct by the qualified voters of each commissioners precinct, who shall hold office for a term of two years. The time for such election shall be the first Saturday in April of each year; the order for the election of county school trustees to be made by the county judge at least thirty days prior to the date of said election, and such order shall designate one voting place for each common school district. The election officers appointed to hold the election for trustees in each common school district shall hold the election at the same place therein for the county school trustees. Each year there shall be elected alternately two county school trustees and three county school trustees in each county. The State Superintendent shall prepare a proper form of the ballot to be used in such election and such other explanation of the laws as he deems necessary, and transmit the same to the county judge of each county at least sixty days prior to the date of such election. All vacancies shall be filled by the remaining trustees. [Acts 1915, p. 69.]

Art. 2677. Qualifications.—The county school trustees shall be qualified voters of the precinct or county from which they are elected, and four of them shall reside in different commissioners precincts. They shall be of good moral character, able to read and speak the English language, shall be persons of good education, and shall be in sympathy with public free schools. The returns of their election shall be made to the county clerk within five days after such election shall have been held, to be delivered by him to the commissioners court at its first meeting thereafter to be canvassed and the results declared as in cases of other elections. The county clerk shall issue to said trustees their commissions and impress thereon the seal of the said court after they have taken the official oath and filed same with said clerk. [Id.]

Art. 2678. [Repealed by Acts 1927, 40th Leg., p. 259, ch. 181, § 2.]

Art. 2678a. Classification of schools.—The County Board of School Trustees shall classify the schools of the county in accordance with such regulations as the State Superintendent may prescribe, into elementary schools and high schools for the purpose of promoting the efficiency of the elementary schools and of establishing and promoting high schools at convenient and suitable places. In classifying the schools and in establishing high schools, said trustees shall give due regard to schools already located, to the distribution of population and to the advancement of the students in their studies. In the event any school is so classified that a resident high school student within the free school age cannot receive instruction in his home district, his tuition for the number of months attended in any other high school recognized by either county or State, shall be paid by warrants drawn by the local trustees on funds of said district and approved by the county superintendent. Provided, that if said student, after having completed the course of study offered in his home district is not prepared to enter a high school recognized by either the county or State, the superintendent of the school district which maintains the high school he desires to attend, shall place said student in the proper grade

and said district shall be entitled to receive tuition for said student in the same manner as if said student should attend the high school of said district. If the high school attended, receives the transfer of State and county funds for said student, credit shall be given for the amount of same. The rate of tuition charged said pupil shall be based upon the actual cost of teaching service in the high school attended exclusive of all other current or fixed charges and in no event shall said tuition rate exceed five dollars per month. In the event the funds of the local district are not sufficient to maintain the elementary schools of said district for the desired length of term and also pay the tuition of resident high school students the said local district shall receive reimbursement on July first of each year from the State of Texas, for such tuition as has been paid on sworn statement of the trustees, approved by the County Superintendent and the County Board of School Trustees, by warrant drawn by the Comptroller at the request of the State Superintendent of Public Instruction on any funds appropriated by the Legislature for this purpose. [Acts 1927, 40th Leg., p. 259, ch. 181, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 259, ch. 181, repeals Rev. St. 1925, article 2678, and all conflicting laws and parts of laws.

Art. 2679. Classification of high schools.—The public high schools of the State shall, upon satisfactory evidence, be ranked by the State Department of Education as follows:

1. A high school of the first class shall be one which maintains at least four years or grades of work above the seventh grade or years, may include in its curriculum the first seven grades or years of work, shall employ at least two teachers to teach high school subjects, who shall each hold a State first grade certificate or certificate of higher grade, and shall be maintained for not less than eight scholastic months during each school year.

2. A high school of the second class shall be one which maintains at least three years or grades of work above the seventh grade or year, and shall otherwise conform to the requirements for the first class.

3. A high school of the third class shall be a high school which maintains at least two years or grades of work above the seventh grade or year, may include in its curriculum the first seven years or grades of work, shall employ at least one teacher to teach high school subjects, who shall hold a State first grade certificate or certificate of higher grade, and shall be maintained for not less than seven scholastic months during each school year.

Each such class of high schools shall be entitled to receive a certificate of approval or classification from the State Department of Education. Other high schools shall not be prohibited by this law, but shall not be entitled to receive such certificate. A grade or year of work as herein mentioned shall consist of not less than thirty-two weeks of five days each. [Acts 1911, p. 34; Acts 1915, p. 71.]

Art. 2680. Subjects in high schools.—Besides the subjects prescribed by law to be taught in the public schools of Texas, such additional subjects as agriculture, manual training, domestic economy or other vocational branches shall be included in the course of study in all high schools provided for herein which are located outside of incorporated towns and cities, and special attention shall be given to teaching said subjects. [Acts 1915, p. 71.]

Art. 2681. School districts.—The county school trustees are authorized to exercise the authority heretofore vested in the commissioners court with respect to subdividing the county into school districts, and making changes in school district lines. Said trustees shall call an annual joint meeting of the district and county school trustees of the county to be held at the county seat at some convenient season in August or September of each year, to be presided over by the chairman of the county school trustees. They shall consider questions dealing with the location of high schools and the teaching of high school subjects, the classification of schools and such other matters as may pertain to the location, conduct, maintenance and discipline of schools, the terms thereof, and other matters of interest in school affairs of the county, and the county school trustees shall be guided in their action by the result of the deliberation of such meeting, not inconsistent with law. The county school trustees may also call other meetings of the district school trustees, when deemed necessary by them, or on the petition of a majority of such district school trustees. The county superintendent, as secretary of the county school trustees, shall keep an accurate and complete record in a well bound book provided for that purpose, the field notes of all changes made in school district lines, and of all proceedings of the county school trustees. A certified copy of such change in a school district line shall be made and transmitted by the county superintendent to the county clerk, and the county clerk shall record the field notes and certified copy of such change in a well bound book to be designated as the "Record of School Districts." In providing better schooling for the children and in carrying out the provisions of article 2678, the county superintendent shall, on the recommendation of the county school trustees, transfer children of scholastic age from one school district to another, and the amount of funds to be transferred with each child of scholastic age shall be the amount to which the district from which the child is transferred is entitled to receive. [Id.]

Art. 2682. Supervisory powers of district court.—The district court shall have general supervisory control of the actions of the county board of school trustees in creating, changing and modifying school districts. [Id.]

Art. 2683. Powers of trustees.—The county school trustees of each county shall constitute a body corporate, by the name of the county school trustees of ——— County, State of Texas, and in that name may acquire and hold real and personal property, sue and be sued, and may receive bequests and donations or other moneys or funds coming legally into their hands, and may perform other acts for the promotion of education in the county. The title to any school property belonging to the county, the title of which has heretofore been vested in the county judge and his successors in office, or any school property that may be acquired, shall vest in the county school trustees and their successors in office for public free school purposes.

Art. 2684. Organization.—At the regular meeting in May, the county trustees shall elect one of their number president; and three trustees shall be a quorum to transact business, and all questions shall be decided by majority vote. The secretary shall keep a true and correct record of all the proceedings of said county school trustees in a well bound book, which shall be open to public inspection. He shall keep an accurate record of the term of office of each common school district and county school trustee, and shall furnish the county judge at least sixty days prior to the date of their election the number of trustees to be elected in each district or precinct or in the county at large.

Art. 2685. Apportionment of fund.—Upon receiving notice from the State Superintendent of the amount of State available school funds apportioned to the county, exclusive of all independent districts having each more than one hundred and fifty scholastics, the county school trustees, acting with the county superintendent, shall apportion all available State and county funds to the school districts as prescribed by law. [Id.]

Art. 2686. Appeals.—All appeals from the decision of the County Superintendent of Public Instruction shall lie to the County Board of School Trustees, and should either party decide to further appeal such matters, they are here given the right to elect to appeal to any court having proper jurisdiction of the subject matter; or to the State Superintendent of Public Instruction as now provided by law, provided the election of which course of appeal the party or parties de-

sire to pursue, shall be given within five days from the final decision of said County Board of School Trustees, provided this act shall not apply to any controversy now pending or to any orders of school authorities made more than five days before this act becomes effective. [Id.; Acts 1927, 40th Leg., p. 128, ch. 83, § 1.]

Section 1 of Acts 1927, 40th Leg., p. 128, ch. 83, repeals all conflicting laws and parts of laws.

Art. 2687. Meetings.—The county school trustees shall hold meetings once each quarter, on the first Monday in August, February, May and November, or as soon thereafter as practicable, and at other times when called by the president of the county school trustees or at the instance of any two members of the county school trustees and the county superintendent, the meeting place to be at the county seat and in the office of the county superintendent. Each trustee shall be paid three dollars per day, but not exceeding thirty-six dollars in any one year, for the time spent in attending such meetings out of the general fund of the county by warrants drawn on order of the commissioners court, after approval of the account, properly sworn to, by the president of the county school trustees. [Id.]

2. SUPERINTENDENT

Art. 2688. [2750] Office established.—The commissioners court of every county having three thousand scholastic population or more as shown by the preceding scholastic census, shall at each general election provide for the election of a county superintendent to serve for a term of two years, who shall be a person of educational attainments, good moral character, and executive ability, and who shall be provided by the commissioners court with an office in the court house, and with necessary office furniture and fixtures. He shall be the holder of a teacher's first grade certificate, or teacher's permanent certificate. In every county that shall attain three thousand scholastic population or more, the commissioners court shall appoint such superintendent who shall perform the duties of such office until the election and qualification of his successor. In counties having less than three thousand scholastic population, whenever more than twenty-five per cent of the qualified voters of said county, as shown by the vote for Governor at the preceding general election, shall petition the commissioners court therefor, said court shall order an election for said county to determine whether or not the office of county superintendent shall be created in said county; and if a majority of the qualified property taxpaying voters, voting at said election, shall vote for the creation of the office of county superintendent in said county, the commissioners court, at its next regular term after the holding of said election, shall create the office of county superintendent, and name a county superintendent, who shall qualify under this chapter, and hold such office until the next general election. [Acts 1905, p. 263; Acts 1907, p. 210.]

Art. 2689. [2751] Bond.—The county superintendent shall first take the official oath and shall enter into a bond in the sum of one thousand dollars, with good and sufficient sureties, to be payable to and approved by the commissioners court, conditioned upon the faithful performance of his duties. Any sum collected on a forfeiture of said bond shall become a part of the available county school fund. [Acts 1905, p. 263.]

Art. 2690. [2752] Supervision of schools.—The county superintendent shall have, under the direction of the State Superintendent, the immediate supervision of all matters pertaining to public education in his county. He shall confer with the teachers and trustees and give them advice when needed, visit and examine schools, and deliver lectures that shall tend to create an interest in public education. He shall spend four days each week visiting the schools while they are in session, when it is possible for him to do so. He shall have authority over all of the public schools within his county, except such of the independent school districts as have a scholastic population of five hundred or more. In such independent school districts as have less than five hundred scholastic population, the reports of the principals and treasurers to the State Department of Education shall be approved by the county superintendent before they are forwarded to the State Superintendent. All appeals in such independent school districts shall lie to the county superintendent, and from the decisions of the county superintendent to the State Superintendent, and thence to the State Board of Education. [Id.; Acts 1907, p. 210.]

Art. 2691. [2753] Teachers' institutes.—The County Superintendent or ex-officio County Superintendent in each county having more than fifteen teachers under his supervision during the preceding scholastic year shall organize and hold, in each of said counties, with such assistance as may be necessary, within the week preceding the opening of a majority of the schools of the county as determined by the County Board of Trustees, one institute of two consecutive days for white and for colored teachers, respectively, and he shall require the attendance of white teachers upon the institute for white teachers and the attendance of colored teachers upon the institute for colored teachers; provided, that the County Superintendent, shall hold such additional teachers' meetings during the first nine months of the scholastic year, not to exceed three full days, as may be authorized by the County Board of School Trustees; provided, further, that the failure of the County Superintendent to comply with these requirements shall be sufficient cause for his removal from office. The County Superintendent shall be authorized to cancel the certificate of any teacher who wilfully and persistently absents himself from attendance upon the County Teachers Institute; and the County Superintendent may refuse to approve the contract of any teacher who waits until after the county institute to sign the contract if in his opinion the delay was for the purpose of avoiding institute attendance. Teachers shall be paid at the rate of their regular monthly salaries for attendance upon the two-day institute, and for attendance upon such additional teachers' meetings as may be authorized by the County Board of School Trustees; provided, that payment for institute attendance may be made at the close of the last school month of the term; provided, further, that the County Board of School Trustees shall determine whether teachers in their respective counties shall be paid for attendance upon such other teachers' meetings as may be authorized by said board. The plan, scope, and quality of work in both county and independent school district institutes shall be approved by the State Superintendent of Public Instruction. The Board of Trustees of any independent school district having five hundred or more scholastic population may authorize the superintendent of schools in such district to organize and hold institutes for the teachers in such districts, in lieu of the county institute; provided, that the superintendent of schools in such district shall have authority to enforce attendance upon institute. [Id.; Acts 1927, 40th Leg., p. 282, ch. 197, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 282, ch. 197, repeals all conflicting laws and parts of laws.

Art. 2691a. Rural school supervisors.—Sec. 1. That the County Board of School Trustees in Counties having a population of 36,750 to 37,550, according to the Federal census of 1920, and a scholastic population of at least 9,000 as shown by the scholastic report for the school year of 1926–27, may employ a rural school supervisor to plan, outline, and supervise the work of the primary and intermediate grades of the rural schools of the county.

Sec. 2. It shall be the duty of such supervisor to visit the schools of the county and help the teachers with their class work by teaching demonstration lessons for them; suggesting methods of presenting the work and aiding them in any other ways possible.

Sec. 3. The supervisor may call meetings of the teachers when deemed necessary, for the purpose of discussing their work with them, and it shall be the duty of the teachers to attend all such meetings called by the supervisor, whenever possible.

Sec. 4. The salary of the rural school supervisor shall be determined by the County Board of School Trustees; provided that the total salary paid such supervisor for any one year shall not exceed $1,800.00. Said salary shall be paid out of the local or available funds of the districts in proportion to the weekly salary, or salaries, of the teachers of the district.

Sec. 5. The employment of a rural school supervisor under the terms of this Act shall exempt the county superintendent from holding a teachers' institute for rural teachers, and exempt the rural teachers of the county from attendance upon a teachers' institute as provided for in Article 2691, Revised Statutes of 1925, and as amended by the Fortieth Legislature; provided that such employment shall not exempt the County Superintendent from holding an institute for all independent school districts with a scholastic population of less than five hundred as provided for under Article 2691. [Acts 1927, 40th Leg., 1st C. S., p. 249, ch. 91.]

Art. 2692. [2755] Shall apportion funds.—The county superintendent, upon the receipt of the certificate issued by the State Board of Education for the State fund belonging to his county, shall apportion the same to the several school districts, not including the independent school districts of the county, making a pro rata distribution as per the scholastic census, and shall at the same time apportion the income arising from the county school fund to all the school districts, including the independent school districts of the county, making a pro rata distribution as per scholastic census. Within thirty days after such apportionment, the trustees of each district shall, if possible, agree upon a division of the funds of the district among the schools thereof, and shall fix the term for which the schools of the district shall be maintained for the year. Should they agree upon a division of the funds of the district or upon the length of the term of which the schools of the district shall be maintained, they shall at once certify their agreement to the county superintendent who shall not approve any contracts with teachers of the district until such agreement is received. Should the trustees fail to agree, they shall at once certify their disagreement to the county superintendent who shall proceed to fix the school term of such school district and declare the division of the school fund of the district among the schools thereof, endeavoring as far as practicable to provide, for the schools of such district, school terms of the same length. [Acts 1905, p. 263; Acts 1907, p. 204.]

Art. 2693. [2756] General duties.—The county superintendent shall approve all vouchers legally drawn against the school fund of his county. He shall examine all the contracts between the trustees and teachers of his county, and if, in his judgment, such contracts are proper, he shall approve the same; provided, that in considering any contract between a teacher and trustees he shall be authorized to consider the amount of salary promised to the teacher. He shall distribute all school blanks and books to the officers and teachers of the public schools, and shall make such reports to the State Superintendent as may be required by that officer. He shall discharge such other duties as may be prescribed by the State Superintendent. [Acts 1905, p. 263.]

Art. 2694. [2757] May administer oaths.—The county superintendents are hereby empowered to administer oaths necessary in transacting any business relating to school affairs; but shall receive no compensation for administering same. [Id.]

Art. 2695. [2759] Transfers.—Each year after the scholastic census of the county is completed, the county superintendent shall, if any district has fewer than twenty pupils of scholastic age, either white or colored, have authority to consolidate said district as to said white or colored schools with other adjoining districts, and to designate the board of trustees which shall control the white or colored school of such consolidated district. But this shall be done before the apportionment is made, and the apportionment shall be made with respect to such consolidation. [Acts 1905, p. 263.]

Art. 2696. [2760] Application to transfer.—Any child lawfully enrolled in any district, or independent district, may at the discretion of the county superintendent be transferred to the enrollment of any other district, or independent district, in the same county, upon the written application of the parent or guardian or person having the lawful control of such child, filed with the county superintendent. No child shall be transferred more than once. The applicant shall state in said application that it is his bona fide intention to send said child to the school to which the transfer is asked. Upon the transfer of any child, its portion of the school funds shall follow and be paid over to the district, or independent district, to which such child is transferred; provided, no transfer shall be made after August first, after the enrollment was made. [Id.]

Art. 2697. [2761] Transfer to adjoining county.—Any child specified in the preceding article, and its portion of the school fund, may be transferred to an adjoining district in another county, in the manner provided in said article. It must be shown to the county superintendent that the school in the district in which such child resides, on account of distance or some uncontrollable and dangerous obstacle, is inaccessible to such child. [Acts 1907, p. 242.]

Art. 2698. Emergency transfers.—In case of conditions resulting from public calamity in any section of the State such as serious floods, prolonged drouth, or extraordinary border disturbances, resulting after the scholastic census has been taken, in such sudden change of the scholastic population of any county as would work a hardship in the support of the public free schools of the said county, the State apportionment of any child of school age may, on approval of the State Board, be ordered by the State Superintendent to be transferred to any other county or independent school district in any other county; provided, that the facts warranting such transfer shall be sent to the State Superintendent by the county or district board of trustees of schools to which transfer is to be made with a formal request for the said transfer before the first of August of the year in which such unusual conditions occur. No application for emergency transfers shall be granted unless the number of transfers applied for exceeds twenty per cent of the number of children assigned to said district including regular transfers as a result of the preceding census. The State Superintendent shall in such case notify the county superintendent of both counties that final apportionments of school funds cannot be made under these circumstances before August 15. All arrangements for the said emergency transfers must be completed by the 15th of August following the unusual conditions causing the emergency. Children whose State funds are thus transferred to any county shall be included in the number of children for whom the county school apportionment of the said county is made. [Acts 2nd C. S. 1919, p. 87; Acts 1923, p. 253.]

Art. 2699. [2762] By agreement of trustees.—Except as herein provided, no part of the school fund apportioned to any district or county shall be transferred to any other district or county; provided that districts lying in two or more counties, and situated on the county line, may be consolidated for the support of one or more schools in such consolidated district; and, in such case, the school funds shall be transferred to the county in which the principal school building for such consolidated district is located; and provided, further, that all the children residing in a school district may be transferred to another district, or to an independent district, upon such terms as may be agreed upon by the trustees of said districts interested. [Acts 1905, p. 263.]

Art. 2700. [2758] Salary.—The county superintendent [s] shall receive from the available school fund of their respective counties annual salaries based

on the scholastic population of such counties, as follows:

Population	Salary
3000 or less	$1600.00
3001 to 4000	1800.00
4001 to 5000	1900.00
5001 to 6000	2000.00
6001 to 7000	2200.00
7001 to 8000	2400.00
8001 to 9000	2500.00
9001 to 10,000	2600.00
10,001 or more	2800.00

In making the annual per capita apportionment to the schools, the county school trustees shall also make an annual allowance out of the State and county available funds for salary and expenses of the office of the county superintendent, and the same shall be prorated to the schools coming under the supervision of the county school superintendent. The compensation herein provided for shall be paid monthly upon the order of the county school trustees; provided, that the salary for the month of September shall not be paid until the county superintendent presents a receipt from the State Superintendent showing that he has made all reports required of him. The county board of trustees may make such further provision as it deems necessary for office and traveling expenses for the county superintendent and any assistant he may have; provided that expenditures for office and traveling expenses shall not exceed three hundred dollars per annum, and the county board of trustees may make provision for the employment of a competent assistant for the county superintendent who shall, in addition to his other duties, act as attendance officer; and said board is hereby authorized to fix the salary of such assistant and pay the same out of the same funds from which the salary and expenses of the county superintendent are paid; provided, that the county superintendent of Dallas County shall receive an annual salary of $4,800.00, and office expenses of not exceeding $600.00 per annum, to be paid as provided in this article, and in addition thereto he shall be allowed traveling expenses of not exceeding $900.00 per annum to be paid monthly out of the general fund of the county by the county treasurer on the order of the commissioners court as said expenses may be incurred. [Acts 3rd C. S. 1920, p. 100; Acts 1923, p. 377.]

Art. 2700a. Salary and office expenses of superintendent.—Sec. 1. That the salary of the Superintendent of Public Instruction in all counties in Texas having 210,000 population or more according to the last preceding Federal census, shall be from and after the passage of this act the sum of $4,800.00 (forty-eight hundred dollars) per annum and the same is fixed by this act at the [that] sum.

Sec. 2. In making the annual per capita apportionment to the schools, the county school trustees of all counties having 210,000 population or more according to the last preceding Federal census shall also make an allowance out of the State and county available school funds for the payment of the salary of the Superintendent of Public Instruction of all counties having 210,000 population or more according to the last preceding Federal census $4,800.00 (forty-eight hundred dollars) and office expenses in any sum not exceeding $600.00 (six hundred dollars) per annum for stamps, stationery, expressage, and printing incidental to and necessary in the administration of his office; and shall be prorated to the schools in said county in proportion to the scholastic population of each district or community in the county that is under the jurisdiction and supervision of said county superintendent. And the Commissioners' Court of all counties having population 210,000 or more according to the last preceding Federal census may spend out of the general fund of said county any sum not exceeding the sum of $900.00 (nine hundred dollars) per annum to defray the traveling expenses of the County Superintendent.

Sec. 3. The salary and expenses for stamps, stationery, expressage and printing provided herein shall be paid monthly upon the order of the county school trustees; provided that the salary for the month of September shall not be paid until the said Superintendent of Public Instruction shall have presented a receipt or certificate from the State Superintendent of Public Instruction showing that he has made all reports required of him. That the travelling expenses provided for herein shall be paid monthly by the County Treasurer on order of the Commissioners' Court as said expenses may be incurred. [Acts 1927, 40th Leg., p. 393, ch. 266.]

Section 4 of Acts 1927, 40th Leg., p. 393, ch. 266, repeals all conflicting laws or parts of laws.

Art. 2700b. Superintendent's salary and office expenses in certain counties.—Sec. 1. That the salary of the County Superintendent of Public Instruction of each county in Texas having a population of not less than 60,000 nor more than 73,000 according to the last Federal census, shall from and after the passage of this Act be not less than the sum of $2,800.00 per annum nor more than the sum of $3,800.00 per annum.

Sec. 2. In making the annual per capital apportionment to the schools of the counties having a population of not less than 60,000 nor more than 73,000, the County School Trustees shall also make an annual allowance out of the State and County Available Funds for the payment of the salary of the Superintendent of Public Instruction not less than $2,800.00 nor more than $3,800.00 and office expenses in any sum not exceeding $200.00 per annum for stamps and stationery; and the Commissioners' Courts of the Counties having a population of not less than 60,000 nor more than 73,000 may expend out of the general funds of said counties any sums not exceeding the sum of $600.00 per annum to defray the expenses incurred by said County Superintendent which said sum shall be paid by said Commissioners upon certificate of said Superintendent that the expenses have been incurred in the discharge of his duties as such Superintendent.

Sec. 3. The salary to be paid monthly upon the order of the School Trustees; provided, that the salary for the month of September shall not have been paid until the Superintendent of Public Instruction shall have presented a receipt or certificate from the State Superintendent of Public Instruction showing that he has made all reports required of him; that the expenses provided for herein shall be paid monthly by the County Treasurer on the order of the Commissioners' Court. [Acts 1927, 40th Leg., p. 394, ch. 267.]

Section 4 of Acts 1927, 40th Leg., p. 394, ch. 267, repeals all conflicting laws or parts of laws.

Art. 2701. [2763—4] Ex-officio superintendent.—In each county having no school superintendent, the county judge shall be ex-officio county superintendent and shall perform all the duties required of the county superintendent in this chapter. He shall give bond in the sum of one thousand dollars payable to and to be approved by the commissioners court and conditioned for the faithful performance of his duties. [Acts 1905, p. 263.]

CHAPTER TWELVE

COUNTY UNIT SYSTEM

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Article 2702. Election.—Upon the petition, duly signed and verified by the tax rolls of the county, of five hundred qualified voters of any county having a population of one hundred thousand or over, according to the preceding Federal census, the county judge shall call an election in said county within ninety days thereafter to determine whether or not such county shall adopt what is commonly known as the county unit system of education, provided for under this law; such election to be governed by the laws governing the holding of a primary election in and for a county, in which said election is called. The county judge shall prepare a proper form of ballot to be used in such election and furnish such explanations of the law as in his judgment may be necessary and transmit the same to the presiding officer of each election precinct. A majority of all votes cast shall be required to adopt the provisions of this law. The results of said election shall be certified by the county judge to the Secretary of State, and shall take effect as soon as the county board of education hereinafter provided for has been duly elected and qualified, and this law shall take the place of any existing general or special law affecting said county which may be in conflict with the provisions hereof. [Acts 1923, p. 237.]

Art. 2703. County board of education.—The general management, supervision and control of the public schools and of the educational interests of each county adopting the provisions of this law, shall be vested in the county board of education except as otherwise provided by law, and said board shall perform such duties as are or may be required of it by law. Said board shall be composed of seven members, one of whom shall be elected from each commissioners precinct by the qualified voters of such precinct and three from the county at large who shall hold office for a term of four years. They shall be nominated at the regular primary election held for county officers and elected at the general election. At the first election seven members of said board shall be elected, four of whom shall be elected for a term of two years and three for a term of four years and bienially [biennially] thereafter. At the first meeting after such election, the members so elected shall determine by lot who shall hold under the four year term and who under the two year term. At subsequent elections, four members and three members shall be elected on alternate years. Such members shall be persons of good moral character, with at least a fair elementary education, and they need not hold teacher's certificates, and shall be of good standing in their respective communities, and known for their honesty and business ability, public spirit and interest in the promotion of public education. Any vacancy in said office shall be filled by a majority of the remaining members and the appointee shall hold office until the next general election following the date of his appointment. If the vacancy is not so filled within thirty days, the State Superintendent shall fill the vacancy. Each such member shall first qualify by taking the official oath, the certification of which shall be filed in the office of the probate judge of the county. The term "Board" when hereafter used in this chapter shall mean the County Board of Education and the term "Superintendent" shall mean the County Superintendent of Education. [Id.]

Art. 2704. Meetings.—Said board shall hold an annual meeting on the first Tuesday in January. At this meeting the board shall elect one of its members to serve as president, and one to serve as vice-president. Other regular meetings shall be held on the first Tuesday in April, July and October of each year and such other special meetings may be held and at such place as the duties and business of the board may require. No motion or resolution shall be declared adopted without the concurrence of the majority of the whole board. [Id.]

Art. 2705. Payment for services.—The members of said board shall receive five dollars a day from the public schools of the county. Such members shall not be allowed pay for more than twenty days in any one year, to be paid in like manner as provided for the pay of teachers. [Id.]

Art. 2706. County superintendent secretary.—The board shall during the month of May appoint as its executive officer a county superintendent of education who shall also be secretary of the board. Such appointment may be for a term of two or five years from the first day of July succeeding his appointment. Such person must be a graduate of a standard normal school, or have completed courses in other institutions that in the opinion of said board are equivalent to such education, or must hold a first grade or life certificate, and in addition thereto have had at least three years of successful teaching experience. He shall devote his entire time to public school purposes and shall receive such compensation as said board shall direct, not less than fifteen hundred dollars per annum. As secretary, he shall conduct all correspondence of the board; keep and preserve all its records, receive all the reports required by the board, and see that such reports are in proper form, complete, and accurate. He shall have the right to advise on any question under consideration by the board, but shall have no vote. Said board may, by an affirmative vote of five or more of its members, remove such person for immorality, misconduct in office, incompetency or wilful neglect of duty, or when in the opinion of the board the best interests of the schools require it. If said office is temporarily vacant or said officer is absent by reason of the nature of the business in hand or otherwise, the board shall temporarily appoint some one to act as secretary. [Id.]

Art. 2707. Treasurer of board.—Said board shall select some suitable person, company or corporation to act as treasurer of the public school funds of the county. Said treasurer shall be selected and he shall qualify and give bond in like manner as provided by law for treasurers of independent school districts, except that the amount of his bond shall be determined according to the estimated amount of the receipts coming annually into his hands. [Id.]

Art. 2708. Scope of board's authority.—All the property, estate, effects, money, funds, claims and donations now or hereafter vested by law in the public school authorities of any county for the benefit of the public free schools of any county, are hereby transferred and vested in the county board of education and their successors in office. Said board is authorized, empowered, directed and required to maintain a uniform and effective system of public schools. Real and personal estate granted, conveyed, devised or bequeathed for the use of any particular county, school district, or public school, shall be held in trust by said board for the benefit of any such county, school district, or school. Said board shall determine with and on the advice of the county superintendent of education, the educational policy of the county, and shall prescribe rules and regulations for the conduct and management of the schools. The authority vested in said board shall apply to the county as a whole, including all cities and towns therein. [Id.]

Art. 2709. To supervise school system.—Said board shall exercise through the superintendent and

his professional assistants, control and supervision of the public school system of the county, subject to the provisions of this law. The board shall consult and advise, through its executive officer and his professional assistants, with school trustees, principals, teachers, and interested citizens, and shall seek in every way to promote the interest of the schools under their jurisdiction. [Id.]

Art. 2710. Sanitation.—Said board shall provide sanitary, hygenic [hygienic] suitable and convenient water closets or outhouses for the children of the public schools under its jurisdiction, not less than two for each school or building when both sexes are in attendance, with separate means of access to each and shall make provisions for keeping same in a clean, comfortable, sanitary and hygienic condition. [Id.]

Art. 2711. Consolidation of districts.—Said board shall consolidate schools, wherever in its judgment, it is practicable, and arrange if possible, for the transportation of pupils to and from such consolidated schools. Before consolidating two or more separate schools located in separate school districts said board shall call a meeting of the board of trustees of such school districts to meet with the county board for the purpose of giving such boards of local trustees an opportunity of being heard as to the advisability of making such consolidations. [Id.]

Art. 2712. Common line districts.—The county boards of education of two or more counties shall have the power to provide jointly for the maintenance of schools in or near the dividing line of such counties, on the basis of the probable enrollment in such school from the counties represented. [Id.]

Art. 2713. To appoint teachers.—Said board shall appoint, upon the written recommendation of the county superintendent, all principals, teachers, clerical and professional assistants for the county authorized by the board. The county board shall suspend or dismiss for immorality, misconduct in office, insubordination, or incompetency, or wilful neglect of duty, or whenever, in the opinion of the board, the best interests of the school require it, superintendents, principals, teachers, or other employés or appointees of the board. [Id.]

Art. 2714. Grades and courses.—Subject to the provisions of this law, said board shall on the written recommendation of its secretary, subject to the regulations of the State Board grade and standardize all schools under its jurisdiction and prescribe courses of study for same. A printed copy of these courses of study shall be supplied to every teacher and interested citizen of the county. The elementary schools of the county shall have grades from one to six inclusive, the junior high schools, grades seven to nine inclusive; and the senior high schools, grades ten and eleven inclusive. Upon the recommendation of the secretary, said board shall prescribe the conditions for admission of pupils from the elementary schools to the junior high schools, and from the junior to the senior high schools. [Id.]

Art. 2715. Date of opening.—Said board in order to expedite the payment of the teachers' salaries and to make possible efficient supervision, shall fix a uniform date for each fiscal year for the opening of all schools in the county under its jurisdiction, and all schools, so far as said board deems practicable, shall open on said date. If for any reason, the board shall permit any schools to open at a later date, the reports and the records of such schools shall be made so as to conform to the scholastic months, counting from said uniform date. [Id.]

Art. 2716. Census.—Said board subject to the rules and regulations of the State board, shall cause to be taken in the manner provided by law, under the direction of its secretary, a census of the children in the county within scholastic age. Upon the recommendation of its secretary, the board shall appoint a sufficient number of enumerators to take the census, and shall fix their compensation and order them paid out of the available funds of the county. The report of the enumerators shall be made under oath to said secretary not later than the fifteenth day of April next succeeding the time of the taking of the census, and on or before June first following, said secretary shall make his consolidated report to the State board. The said secretary upon the direction at any time of the State Superintendent, shall cause the whole or any part of any school census in his county to be retaken. [Id.]

Art. 2717. Reports.—Said board shall cause to be prepared and published annually, in the month of October, in sufficient quantities for distribution among the citizens of the county, a report covering the condition, current accomplishment, and needs for the improvement of the schools, and also a statement of the business and financial transactions of the board with an itemized account of all receipts and expenditures of said board. Such statement must show a total amount of school funds received by the county board and the sources from which derived; the amount expended for teacher's salaries in each of the several school districts of the county and the amount paid out of the school funds for any other purpose than teachers' salaries must be shown and shall include the name of the persons to whom paid, the amount of each of said items and the purpose for which said amounts were expended. Said board shall make all reports at the time and in the manner required by the State Board and the secretary of said county board shall prepare the same. [Id.]

Art. 2718. Forms for reports.—Said secretary shall submit to the board forms and blanks on which school trustees, supervisors, attendance officers, principals, teachers, janitors and other regular employés shall make such reports as said board shall require of them and said board shall prescribe the same. [Id.]

Art. 2719. To provide separate schools.—Said board shall provide schools of two kinds; those for white children and those for colored children. Such schools respectively, shall be free to all such children over six years of age. This article shall not be construed as in any wise reducing the scholastic age relative to State apportionment. [Id.]

Art. 2720. Compulsory attendance.—Said board shall, upon the recommendation of its secretary, arrange the county into one or more appropriate and convenient compulsory school attendance districts; shall keep full and complete records of the boundaries thereof, and shall see to it that the compulsory attendance law is enforced. [Id.]

Art. 2721. May borrow money.—Said board shall have authority, upon the recommendation of its secretary to borrow money on the credit of the school fund of the county to meet salaries of teachers and current expenses when the current funds on hand are not sufficient to meet the same, to be secured by a pledge of the current revenues of the year. All such current loans, under the provisions of this article and other regulations of the board, shall be paid within the county school year in which such current loans are made, and from the funds accruing for the support of the schools within such given school year. The amount so borrowed shall at no time exceed one-third of the sum estimated for current expenses, as shown by the school budget of that year. [Id.]

Art. 2722. Right to acquire property.—Said board shall have the right to purchase, acquire by the right of eminent domain, lease, receive, hold, transmit and convey the title to the real and personal property for school purposes, except where otherwise provided. It shall have the power to sue and contract, all contracts to be made after resolutions have been adopted by the board and spread upon its minutes. All processes shall be executed by service on the executive officers of the board. [Id.]

Art. 2723. To insure buildings.—Said board is charged with the duty of seeing that every school building whose title is vested in the State, county or school district, is insured for its insurable value, and to this end may use such a part of the proceeds of the maintenance funds of the schools herein provided as

may be specifically set apart for such purpose by said board. [Id.]

Art. 2724. Local revenue and taxation.—Said board shall form a budget of the county funds to be used for the benefit of the public schools within said county during the year in which said funds are to be used, and which shall be composed of the State and county available school funds and of any other funds that may be received for any schools in said county from the State and also such local funds as may be derived by local taxes as hereinafter provided for. Immediately upon the adoption of this law and at such other times as they may deem necessary and to the best interest of the schools, said board shall call an election of all qualified taxpaying voters of the county to determine whether or not the county will vote in favor of levying a tax for the maintenance of schools and bonds for the purchase of sites and the erection of school houses and teacherages. The aggregate amount of bonds issued for said purpose and the amount of maintenance tax shall never exceed one dollar on the hundred dollar valuation of taxable property and the specific rate of tax need not be determined in the election. Any district within said county may continue to levy and collect any tax for maintenance and bonds heretofore provided, and any district within said county may hereafter provide by an election as provided in subdivision 4 of Chapter 13 for the levy and collection of an additional tax for maintenance and bonds, the proceeds of which tax are to be used for the benefit of the schools within said district. All property assessed for school purposes by the county shall be assessed at such valuation as may be fixed by a county board of equalization, and assessed and collected by an assessor and collector of taxes all of which shall be appointed by the county board of education. [Id.]

Art. 2725. Election for revenue.—Said board shall order the sheriff to post a notice of such election at some public place within each local school district in said county, for three weeks before the election, and the sheriff shall obey such order. Not more than one such election shall be held in the same scholastic year. The president of said board shall appoint a presiding officer for each voting place to hold said election who shall make due returns thereof as required by law for holding a general election; and shall prepare ballots therefor at the county's expense, which shall have written or printed thereon: "For maintenance tax," and "Against maintenance tax." If the election is for the purpose of issuing bonds, the form of the ballot shall be "For the issuance of bonds and the levying of the tax in payment thereof," or "Against the issuance of the bonds and the levying of the tax in payment thereof." All polls for local tax elections shall be opened at 8 o'clock a. m. and shall be closed at seven o'clock p. m. and none of the officers holding such election shall be entitled to compensation therefor. All persons who are legally qualified voters of this State and of the county of their residence and who are resident property taxpayers in said county, shall be entitled to vote in such county tax elections. Returns shall be made to the county board of education and the result declared at its first meeting, as in case of general elections. Any person may challenge a voter, but if the challenged party takes an oath that he is qualified as a voter of the State and county, and that he is a resident property taxpayer in said district, then he shall be entitled to vote. [Id.]

Art. 2726. Tax levy.—Said board shall, at the time of levying the taxes for county purposes, also levy upon such school district the rate of tax said district has voted upon itself, or, if the proposition shall have been, "For a school tax not exceeding seventy-five cents on the one hundred dollar valuation of taxable property in the district," said board shall levy such rate within that limit as shall have been determined by the board of trustees of said district and the county superintendent and certified to said county board of education by the county superintendent. The tax assessor shall assess said tax as other taxes are assessed, and make an abstract showing the amount of special taxes assessed against each school district in his county, and furnish the same to the county superintendent, on or before the first day of October for the year for which such taxes are assessed; and the taxes levied upon the real property in said districts shall be a lien thereon, and the same shall be sold for unpaid taxes in the manner and at the time of sales for State and county taxes. A special tax voted in any district after the levy of county taxes shall be levied at any meeting of the county board of education, prior to the delivery of the assessment rolls by the assessor. The tax assessor shall assess, and the tax collector shall collect, said taxes for educational purposes as other taxes are assessed and collected. The tax assessor and collector shall each receive a commission of one-half of one per cent for assessing and collecting such tax. The tax collector shall pay all such taxes to the county treasurer; and said treasurer shall credit the treasurer of the county school board the amount belonging to it and pay out the same in accordance with the law. [Id.]

Art. 2727. Duties of county superintendent.—The county superintendent shall see that the laws relating to the schools and the rules and regulations of the State and county boards of education are carried into effect. He shall have authority to administer oaths and to examine witnesses under oath in any part of the county on any matter pertaining to the public schools of the county, and to cause the examination to be reduced to writing. He shall in addition to the other duties required of him hereunder, perform the following duties:

1. Recommend to the county board of education, the kind, grade, the location of schools and plans therefor to be established and maintained, and the compulsory school attendance and local districts to be established, educational policies to promote the educational interests of the county and rules and regulations for the conduct of the schools, and for the admission of pupils to the junior and senior high schools.

2. Recommend to said board for condemnation, school buildings which are unsanitary and unfit for use. He shall recommend in writing all repairs, purchase of play grounds, school sites and buildings to be erected with State, county and local aid, and shall see that the plans and specifications, and the rules and regulations of the State Department with reference to the erection, repair, and equipment of the school buildings are carefully followed. He shall approve in writing all contracts of whatever kind entered into by the county board of education.

3. Work out plans for the consolidation of schools, and for the grounds, buildings, and equipment of such consolidated schools and submit the same to said board.

4. Grade and standardize all public schools of the county, prepare rules and regulations therefor, and prescribe courses of study for the schools of the county and submit the same to said board. Printed copies of such courses shall be supplied to every teacher and interested citizen of the county.

5. Be the representative of the State Superintendent in all State examinations for teachers' certificates conducted within the county, and shall perform such duties in connection therewith as may be required by the State Board.

6. Organize and attend county and local institutes for teachers and citizens, advise teachers as to their further study in professional reading, assist parents and citizens to acquire knowledge of the aims and work of the schools, and call conferences with principals, teachers, attendance officers, school trustees and other interested citizens to develop interest in education and improve the condition of the schools.

7. Visit the schools, observe the management and instructions, and give suggestions for the improvement of the same.

8. Prepare an annual school budget for the schools of the county and shall submit the same to said board; and shall in every way seek to secure funds for the support and development of the schools of the county. He shall annually publish in a newspaper printed at the county seat a full itemized statement of the re-

ceipts and disbursements of the county at the time he forwarded the same to the State Superintendent.

9. On or before the first day of July of each year, forward to the State Superintendent, on blanks to be furnished by the latter, an annual report of the public schools of his county for the preceding year and submit a copy of same to said county board. If he fails, neglects, or refuses to make such statement, the county treasurer of the school funds is authorized and instructed to withhold the amount due him for the preceding month or months as salary, until said report has been duly received and approved by the State Superintendent.

Art. 2728. Assistants.—The county board of education may, in its discretion, provide, upon the nomination of its secretary, at least the following assistants: An elementary school supervisor and a statistical and stenographic clerk. No person shall be eligible for appointment as such supervisor who does not hold a certificate of graduation from a State normal school or the equivalent thereof. Said board may employ additional clerical and professional assistants, including health supervisors, and may reimburse them for all traveling expenses necessary in the performance of their official duties. The county commissioners shall provide said secretary and his professional and clerical assistants with ample, convenient and comfortable office quarters, and provide necessary forms and supplies, furniture and office equipment, stationery and postage required by them in the discharge of their official duties. [Id.]

Art. 2729. Teachers to keep record.—No teacher shall be entitled to receive payment for services unless all the current records of the school have been kept with care and accuracy, and no teacher or other employé of the board shall be entitled to receive payment for services unless all records required by the county board of education have been properly made and submitted. [Id.]

Art. 2729a. County board of trustees and powers.—In any organized county of this State not having heretofore elected or appointed a county board of trustees, the Commissioners' Court of said county is hereby authorized to appoint a county board of trustees for said county, the residence of whose members shall conform to the provisions of the general law relating to the election of county trustees.

And the said board of county school trustees when appointed shall have and exercise all the rights and powers conferred upon county boards of trustees by the provisions of the general law; provided also that the county board may create one or more school districts in any unorganized county attached to said organized county for judicial purposes and provide for the organization of schools therein by the appointment of trustees for the said districts. The county school trustees of any organized county are authorized to exercise the authority heretofore vested in the Commissioners' Court with respect to subdividing the county into school districts and making changes in school district lines. [Acts 1927, 40th Leg., 1st C. S., p. 17, ch. 7, § 1.]

Art. 2730. District school trustees.—Each school district shall, in the manner provided by law, elect for every school in the county, discreet, competent and reliable persons of mature years, not exceeding three in number, residing near the school house, and having the respect and confidence of the community, to serve as trustees of the school. Such trustees shall care for the property, look after the general interests of the school, and from time to time make reports to the county board of education, through its secretary, showing the progress and needs of the schools and the will of the people in regard to the schools. [Acts 1923, p. 237.]

Art. 2731. Meetings.—Said trustees shall hold a meeting on the first Saturday in June of each year or as soon thereafter as practicable. At this meeting, the board shall appoint one of its members as chairman and shall give notice of such appointment to the county board of education. Other regular meetings shall be held at least twice during the scholastic year, and such special meetings shall be held as the duties of the board require. [Id.]

Art. 2732. Assignment of teachers.—Said trustees shall have the power by unanimous vote to refuse to accept the original assignment by the county board of education, of any teacher, not later than thirty days before the time set for the opening of the school upon written notification to the county superintendent of education setting out the reason for such refusal, and it is hereby made the duty of said superintendent to nominate another teacher for such school; provided, however, that not more than three such teachers shall be assigned to any one place under the provisions of this article. Said trustees may file written charges with said county board requesting the removal of the principal or any teacher of said schools. [Id.]

Art. 2733. Closing schools.—No teacher shall have the power to close the school during the school hours unless in case of an emergency without the consent of the school trustees or the county superintendent of education. [Id.]

Art 2734. Janitor.—Said trustees, with the approval of the principal, may recommend the appointment of a janitor for the school under its jurisdiction. [Id.]

Art. 2735. To visit schools—Said trustees shall visit the schools under their jurisdiction at least once each month and consult with the teachers and principals of the schools as to the progress of the pupils, conditions and cleanliness of the school and the grounds belonging to same, and give such aid as in their power for the advancement of said school. [Id.]

Art. 2736. Care of property.—Said trustees shall have the care of the building and grounds, the school apparatus and other school property. They shall attend to all incidental repairs and pay for the same out of the incidental funds collected in accordance with this chapter, provided that when repairs are to be paid for out of other than incidental funds, the amount to be expended shall be approved by the county superintendent of education and authorized by the county board of education before the repairs are made. [Id.]

Art. 2737. Hygienic condition.—The school trustees shall see that the water closets or out houses connected with the school are kept clean, comfortable, and in a sanitary and hygienic condition. [Id.]

Art. 2738. Use of school building.—The school trustees shall have the power in their discretion to authorize the use of the school building for such civic, social, recreational and community gatherings as in their opinion do not interfere with the principal use of the said school building or property, and provided that the building is placed in as clean a condition as it was when turned over to the person or persons requesting its use, ordinary wear and tear excepted. [Id.]

Art. 2739. Application of law.—All reference to schools in this law shall be understood to apply alone to public schools, and the authority granted by this law to the county board of education and the county superintendent of education, of general supervision, control and management of the schools and the educational interests of the county, and the establishment of an educational policy for such county shall apply alone to the public school system. [Id.]

Art. 2740. Abolishment of unit system.—Any county operating under this law, any time after two years from the adoption hereof, may by majority vote abolish said county unit system at an election held after the presentation of a petition to abolish the same, said petition and election to conform to the provisions of this law governing the adoption of the county unit system. [Id.]

Art. 2740a. Supervision of schools in counties of more than 1100 square miles.—Sec. 1. The general management, supervision, and control of the public free schools of counties with an area of more than eleven hundred square miles and a population of not less than 40,000 and not more than 100,000 according

to the 1920 Federal census, shall be vested in a County Board of Education. The County Board of Education shall be composed of five members to be elected at the General election on the Tuesday after the first Monday in November and in the same manner as is now provided by General Law for the election of county officers, one of whom shall be elected from each commissioner's precinct and one from the county at large, by the qualified voters of the common school districts and independent school districts of 500 scholastic or less. The member at large shall serve as president of the said board. All of said members shall serve for a term of two years.

Sec. 2. Meetings: The County Board of Education of such counties shall hold such meetings as are now provided by law and the rules generally adopted by deliberative bodies for their government shall be observed.

Sec. 3. Payment: The members of the County Board of Education shall receive $5.00 per day for the time spent in attending meetings, to be paid in the same manner and from the same funds as is now provided by law; provided that they may not be allowed pay for more than 20 days in any one year.

Sec. 4. Powers and Duties: The County Board of Education shall appoint, subject to the provisions of this Act, as its executive officer, a County Superintendent of Education, who shall also be the secretary of the County Board of Education, and whose duties shall be the same as are now specified by law and as otherwise defined in this Act. The County Board of Education shall designate the salary of the County Superintendent, subject to the provisions of this Act. The County Board of Education shall appoint such assistants, supervisors, and clerical help for the County Superintendent as may be deemed necessary by this body, subject to the provisions of this Act.

Sec. 5. The County Board of Education may, upon the recommendation of the County Superintendent, provide for the employment of such professional supervision as may be deemed necessary, this to be in lieu of the teachers' institute as now provided by law. The County Superintendent shall be exempt after the passage of this Act from such requirements as are now provided by law for the holding of teachers' institute; and shall be empowered to provide for such meetings of the teachers of the county as may be deemed necessary and to require the attendance of all teachers upon such meetings.

Sec. 6. In making the annual per capita apportionment to the schools, the County Board of Education shall also make an annual allowance out of the State and county available funds for the salary and expenses of the County Superintendent and such assistants, supervisors, and clerical help as he may have, and such expenses shall be pro rata to the schools subject to the supervision of said Board; provided that in making this allowance for county administration, the per capita assessment against the scholastics of the districts subject to the supervision of the County Board of Education shall not exceed $1.50, provided further that the salary of the County Superintendent for the month of September shall not be paid until he presents a receipt from the State Superintendent of Public Instruction showing that he has made all reports required of him.

The County Superintendent shall nominate the principals and teachers for the various schools of the county, but this nomination shall be subject to confirmation by the District Trustees. The District Trustee shall have the power to refuse to confirm the nomination of the County Superintendent, and when such confirmation is refused, the County Superintendent shall nominate another teacher for such school, provided however, that not more than three such teachers shall be nominated for any one place under the provisions of this Section. In the event the District Trustees should refuse to confirm the nomination of the County Superintendent as provided herein, the selection of the principal or teachers shall be by joint action of the District Trustees and the County Superintendent, in which case a majority vote shall prevail.

Sec. 7. The District Trustee shall make all purchases of equipment and supplies for the various school districts and shall contract for all buildings and improvements and repairs and all other expenditures, but where the consideration involved is more than $50.00 such contracts and purchases shall be approved by the County Superintendent.

Sec. 8. The County Board of Education shall at its August meeting set aside such county available school funds as may have accrued from investments of the permanent school funds and land leases and shall supplement this with an amount not exceeding 5% of the State available school funds apportioned to the county, to be used as an equalization fund to be distributed by the County Board, under such rules and regulations as may be adopted by the County Board, provided that no district shall participate in this distribution that does not levy a local tax for school purposes of at least 75 cents on each one hundred dollars property valuation of such district. [Acts 1927, 40th Leg., 1st C. S., p. 246, ch. 89.]

Section 9 of Acts 1927, 40th Leg., 1st C. S., p. 246, ch. 89, repeals all conflicting laws and parts of laws.

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1. COMMON SCHOOL DISTRICTS

Article 2741. [2815–6] Establishment of districts.—The commissioners courts of all organized counties not already subdivided shall subdivide their respective counties into convenient common school districts and designate them by number. Any county hereafter organized shall be so subdivided before the beginning of the next ensuing school year after its organization. The commissioners court of any organized county, to which any unorganized county is attached for judicial purposes, may, and, upon written petition of not less than ten resident citizens of such unorganized county shall create such unorganized county into one or more school districts, and shall cause an order to that effect to be entered upon the minutes of said court. Said courts may reduce the area of any common school district, create additional school districts, consolidate two or more adjacent districts, or subdivide any school district, if necessary for the interest of the school children; provided, no school district shall be established so as to contain less than nine square miles of territory. The area of a school district having an outstanding bonded indebtedness, shall never be reduced until after such bonded indebtedness shall have been fully discharged.

In counties containing a population of less than ten thousand, no common school district shall be organized or surveyed in such a manner that the geographical center of the same will be more than four miles from the farthest line of said district. All districts shall be located as conveniently as possible to the scholastic population. [Acts 1905, p. 263; Acts 1913, p. 259.]

Art. 2742. [2817] To designate districts.—Said courts shall give the metes and bounds of each district, and shall designate the same carefully by giving the whole surveys and parts of surveys with acreage of whole surveys and approximate acreage of parts of surveys in each district, and the county clerk shall carefully record the same; and each district shall be given a number which shall be painted in large letters or figures over the doors of the school houses, said signs to be provided by the district trustees of each district. [Id.]

Art. 2742a. Reduction and revision of districts.—Sec. 1. The County Board of Trustees in each organized county with common school districts containing one hundred and twenty-five square miles or more which have no bonded indebtedness, may subdivide such districts, or revise or rearrange the boundaries of any districts, or may detach territory therefrom and add such territory so detached to other adjoining common school districts or independent school districts which have heretofore been incorporated under general or special law, if necessary for the interest of the school children, provided that no such common school district, when so reduced, shall contain less than nine square miles; and provided further that no such action shall be taken by said board of trustees without reasonable notice to the public and to the trustees of the districts affected nor without giving sufficient opportunity for all interested persons to be heard.

Sec. 2. The portion of territory detached from such common school district when added to an independent school district, shall become subject to and be governed by all laws governing such independent school district. [Acts 1927, 40th Leg., p. 239, ch. 165.]

Section 3 of Acts 1927, 40th Leg., p. 239, ch. 165, repeals all conflicting laws and parts of laws.

Art. 2742b. Method of increasing or diminishing area of districts and adjusting indebtedness.—Sec. 1. Whenever a majority of the legally qualified property taxpaying voters residing in any territory contiguous to an Independent School District desire the annexation of said territory to the contiguous Independent School District, the County Judge, when petitioned by 20 or a majority of the property taxpaying voters residing in the district from which the territory is to be taken, shall order an election in said Common School District for the purpose of determining whether a majority of the legally qualified property taxpaying voters residing in said Common School District shall favor the annexation of the proposed territory.

The petition for the election must give the metes and bounds of the territory to be annexed and said metes and bounds shall be included and made a part of the order of the County Judge calling for the election. Said order for the election must be issued and public notice given thereof, as in other school elections, three weeks prior to the date of said election. The returns of said election shall be canvassed by the Commissioners' Court, and if it is found that a majority of the legally qualified property taxpaying voters residing in the district from which the territory is to be taken are in favor of the annexation, a petition shall then be presented to the Board of Trustees of the Independent District to which the territory is to be annexed, and if the Board of Trustees of the Independent District approve the annexation, it shall be made; but before said annexation shall become final, it shall be approved by the County Board of School Trustees of said County.

Provided that before the Independent Districts shall have the authority to accept the annexation of territory thereto, an election shall be ordered by the Trustees of said Independent District and notice thereof given as in other school elections. If a majority of the legally qualified voters residing in said District, voting at such election, vote in favor of annexation, the territory may be annexed as provided for herein; provided, however, that no consolidation or annexation can be had or effected unless and until each district affected shall, by a majority of the votes cast in said District, vote in favor of such annexation or consolidation.

Sec. 2. Whenever a majority of the legally qualified, taxpaying voters residing in a contiguous area of an Independent District or Common School District desire to have such territory detached from said Independent District or Common School District and annexed to some other Independent District or to a Common School District or for the purpose of forming a new district, they shall present a petition duly signed to the Board of Trustees of the Independent District or Common School District praying for the detachment of the territory for one of the purposes mentioned herein. If the Board of Trustees find that the petition is duly signed by a majority of the legally quali-

fied taxpaying voters residing in such territory, it may pass an order detaching such territory therefrom and declaring it annexed to some other district or for the purpose of forming a new district; provided, that the order of the Board of Trustees of the Independent District or Common School District must be approved by the County Board of Trustees and the annexation of the detached territory to any other district must be made by the County Board of Trustees and the creation of any new district from the detached territory must be made by said County Board of Trustees; provided that no new district shall be created with an area of less than 25 square miles; and no district shall be created or have its area increased except for the convenience of the school children or avoidance of hazards to them.

Sec. 3. Territory may be annexed to a Common School District upon petition of a majority of the legally qualified property taxpaying voters residing within the proposed annexation by the County Board of School Trustees; provided that whenever a majority of the legally qualified property taxpaying voters residing within any Common School District shall vote so to do, the County Board of Trustees may abolish said Common School District and annex the territory contained therein to one or more contiguous school districts.

The election herein provided for shall be ordered by the County Judge and the returns canvassed and the results declared as is provided by law for other elections pertaining to Common School Districts.

Sec. 4. It is herein provided that the maximum limit of 25 square miles which an Independent District may contain shall not apply to any provision of this Act, and it shall be lawful to increase the area of an Independent District without any limitations being placed on the maximum number of square miles such district may contain; but no Common School District shall be encroached upon or reduced in area except by majority vote of the qualified voters of such Common School District.

Sec. 5. Whenever a majority of the legally qualified property taxpaying voters residing in a Common School District, or one or more Common School Districts formerly constituting an Independent School District, desire to incorporate the said Common School District as an Independent School District for school purposes only, they may do so on a petition presented to the County Board of Trustees, and when the said County Board of Trustees find that the petition is duly signed by a majority of the legally qualified property taxpaying voters, and sufficient evidence being presented that said district when formed into an Independent School District will be financially capable of maintaining High School work at a reasonable cost per capita, they shall grant said petition by making an order upon the minutes of said County Board of Trustees; said order shall state the name by which said Independent School District shall be known and by which it may sue and be sued; at the same time said County Board of Trustees shall order an election in said Independent School District for seven school trustees, said election to be held according to the General Election Laws of the State; the returns of said election shall be made to the County Board of Trustees who shall declare the result; when the newly elected school trustees have qualified, said Independent School District shall enjoy all the privileges of an Independent School District as provided by Statutes.

Sec. 5a. Whenever a majority of the legally qualified property taxpaying voters residing in two or more contiguous Common School Districts lying in two or more Counties desire to consolidate said contiguous Common School Districts for school purpose only, they may do so by a petition signed by twenty or more of the qualified taxpaying voters in each Common School District, presented to the County Board of School Trustees of the County in which the Common School District is situated.

Each County Board of County School Trustees upon the receipt of above mentioned application shall order an election in the Common School District of their respective Counties praying for the consolidation to determine if such Common School District shall consolidate with its contiguous Common School District lying in an adjoining County. Said election shall be held in each County upon the same date. The returns of said election shall be made to the respective Boards of County School Trustees who shall declare the result and if the consolidation is approved by a majority of the taxpaying voters of each Common School District applying for consolidation, the Board of County School Trustees of each County shall declare the result and at the same time notify the school trustees of each Common School District voting for consolidation who shall within ten days meet in joint meeting and select a name by which said new consolidated school district shall be known and designate the County having supervision of said consolidated district and at the same time they shall appoint school trustees for said new consolidated school district who shall serve until the next April election or until their successors shall qualify. Upon the election and qualifying of the above mentioned school trustees the new consolidated school district shall be in all manner and form governed by the general laws made and provided for the government of Common School Districts.

Sec. 5b. In the manner prescribed by general law, Article 2806, Revised Statutes, 1925, providing for the consolidation of school districts by election, Common School and Common County-line Districts may be consolidated, and Common School and Common County-line School Districts may be consolidated with a contiguous Independent District in the same or in an adjoining County; provided that when the proposition is to consolidate districts having territory in two or more adjoining Counties, the petitions and election orders prescribed in Article 2806, Revised Statutes, 1925, shall be addressed to and issued by the County Judge of each County for and in behalf of each district wholly in his County or over which his County has jurisdiction for administrative purposes, and the County Commissioners' Court of each County shall canvass the returns of the election in each district lying wholly within the County or under its jurisdiction for administrative purposes, and declare the results, as in the case of the consolidation of districts lying wholly within one County; and when the results are so declared the consolidation of the districts shall thereby become effective.

Districts formed under the provisions of this Act by the consolidation of Common School and Common County-line Districts shall be known as consolidated Common or consolidated Common County-line Districts, as the case may be, and shall function as Common School Districts, except as otherwise provided by general law governing consolidated Common School Districts.

Sec. 6. All districts heretofore created by the Commissioners' Court or by the County Board of Trustees are hereby validated in all respects as though they had been legally created and all acts of the Board of Trustees of said district are hereby made valid and legal; except in cases in which the creative orders have been appealed from and no final disposition of such appeals has been made all of which districts are expressly excluded from this provision.

Sec. 7. Nothing in any provision of this Act shall repeal or effect the law enacted by the Regular Session of the 39th Legislature, providing for the creation of rural high schools.

Sec. 8. One County Trustee shall be elected from the County at large and one from each Commissioners' Precinct by the voters of the districts under the supervision of the County Trustees and no school district not under the supervision of such trustees shall participate in their election.

Sec. 9. When the boundaries of any school district having an outstanding bonded indebtedness have been changed or its territory divided or two or more of such districts consolidated, it shall be the duty of the County Board of Trustees to make such an adjustment of such indebtedness and district properties between the districts effected and between the territory divided,

detached or added, as may be just and equitable, taking into consideration the value of school properties and the taxable wealth of the districts effected and the territory so divided, detached or added as the case may be. And when said Board has arrived at a satisfactory basis of such an adjustment, it shall have the power to make such orders in relation thereto as shall be conclusive and binding upon the districts and the territory thereby effected.

Sec. 10. To carry into effect orders adjusting bonded indebtedness when changes are made in school districts, the County Board of Trustees shall have the power to order the Trustees of the districts effected, to order an election for the issuing of such refunding bonds as may be necessary to carry out the purpose of such order; and, in such case, it shall be the duty of the district trustee to order such election, cause the same to be held, and, if the proposition is carried, to issue the bonds voted. Such bonds shall be of the same denomination and carry the same interest rate and mature at the same time as the outstanding bonds owing by the district issuing them; and when so issued, shall if possible be exchanged for the outstanding bonds for which the district issuing them shall still be liable, according to the order adjusting such indebtedness; and in cases where such an exchange cannot be made the new bonds of the district, to the amount of the old bonds for which it is still liable and to which no exchange can be made, shall be deposited in the County Treasury to the account of such district. Thereafter taxes shall be levied and assessed only for the payment of interest, sinking fund and principal of the new bonds so issued; and the funds arising from such taxation shall be used to discharge the principal and interest of such new bonds as have been issued and exchanged and such old bonds as have not been exchanged. When taxes are collected applicable to new bonds not exchanged and the proceeds applied to payment on old bonds not exchanged, the corresponding new bonds in the County Treasury shall be credited with such payment and retired as the old unexchanged bonds are retired.

Sec. 11. In cases where changes are made and districts having outstanding bonded indebtedness and where the necessary refunding bonds are voted down or where the County Board of Trustees are otherwise unable to arrange an adjustment or settlement of such bonded indebtedness, it shall be the duty of the trustees to certify the fact and the territories effected by such changes, to the Commissioners' Court and thereupon it shall become the duty of the Commissioners' Court to thereafter annually levy and cause to be assessed and collected from the taxpayers of such districts as they existed before the changes were made, the tax necessary to pay the interest, the sinking fund and discharge the principal of such indebtedness as it matures. And it shall be the duty of each Independent School District so effected, to cause all funds in its hands, whether sinking funds or otherwise, which have been collected on account of such bonded indebtedness, to be transferred to the County Treasurer of the County in which such district is situated and such district shall thereafter cease to levy and collect any tax on account of such bonds; and it shall be the duty of the County Treasurer to keep the funds so transferred and those arising from taxation, in separate accounts and apply the same only to the discharge of such bonded indebtedness and the interest thereon, as the same matures.

Sec. 12. Nothing in the provision of this Act shall prevent the County Board of Trustees from arranging any other method for the adjustment and settlement of outstanding bonded indebtedness of school districts in which changes are made but they shall have full power and authority to make any legal and equitable adjustment and settlement in such cases that can be effected. [Acts 1927, 40th Leg., 1st C. S., p. 228, ch. 84.]

Section 13 of Acts 1927, 40th Leg., 1st C. S., p. 228, ch. 84, repeals all conflicting laws and parts of laws, and section 13a provides that if any section is held invalid such holding shall not affect the remaining sections.

Art. 2743. County line districts.—The boards of county school trustees shall have full power and authority to create common school districts, to contain territory within two or more counties. In creating said district each such board shall pass an order describing the territory to be included in such district by metes and bounds, giving the course and direction with the exact length of each line contained in such description and locating each corner called for upon the ground, and shall also give the acres of each survey and parts of survey of lands contained in such district, together with a map showing the conditions upon the ground as described in the field notes, giving the number of acres of land contained in each survey and parts of survey contained in each county; also showing the exact position and location of the county line in the territory created into such district. Said order shall also designate and name some one of the counties having territory included in the description of such district which shall manage and have control of the public schools therein for all school purposes.

Said district shall have no authority or power until said order has been passed by the board of county school trustees of each county having territory included therein. No common county line school district shall be created with or changed to a less area than nine square miles, and shall be laid out in as near the shape of a square as possible, and in no event shall the length of such district be greater than the width plus one-half of the width of such district. [Acts 1909, Ch. 17; Acts 1911, p. 200; Acts 1917, p. 441.]

Art. 2744. County line districts; powers.—Common county line school districts shall have all the rights, powers and privileges of common school districts, and for all school purposes, shall be managed and controlled by the county named in the order creating such district, and should such district desire to levy the special tax authorized by law to be levied for the purpose of the maintenance of its schools, or to issue bonds in accordance with the limitations for such purpose provided by law for common school districts, or both, after an election has been held in such common county line school district as provided by law and it has been determined by a majority vote that such district shall levy such special tax or issue such bonds, the commissioners court of the county having control of such district shall pass an order levying such tax or issuing such bonds, or both, against the territory included within such county where the commissioners court in control of the school is located, and such order levying said tax or issuing said bonds and levying a tax to pay the interest and sinking fund, shall be passed by the commissioners court of each county having territory in such district. Each such court shall continue to levy the said tax at such rate as is determined and certified by the county superintendent of the county having control of said schools until such tax be diminished or abrogated, as provided by law, or such bonds, if such a district has outstanding bonds, have been fully and finally paid and discharged. The tax assessor shall assess the taxes levied by the commissioners court of his county against the territory included in such county line school district for each year that such tax is levied, and shall make up a separate tax roll covering the special tax on territory in his county included in the county line school district, and deliver it with the general tax rolls of his county, which shall guide the tax collector in collecting the local taxes for such school district. The tax collector shall collect such special tax for such county line district in his county for every year that such tax has been levied in such districts and keep a separate account covering the territory of his county included in county line school districts, for the purpose of determining how much tax has been collected, and such taxes shall be paid by his county to the county line school district. Such district shall not be changed or abolished except by the consent of the commissioners court of each county having territory contained therein, and if such a district has outstanding bonds the same shall

not be changed or abolished in any way until after such bonds are finally paid and discharged. [Acts 1911, p. 200.]

Art. 2744a. Districts and bonds validated.—Sec. 1. All school districts, including all common county-line school districts, heretofore attempted to be created or consolidated by the proper authorities of the county, or by election in cases where an election for such purpose may have been authorized by law, and which have been recognized as valid by the proper school authorities of the respective counties, are hereby validated; provided that in case of such elections it appears that a majority of the votes cast in each district concerned was in favor of such creation or consolidation of such district or districts, or that in the case of common county-line school districts, the same territory has been designated by the proper authorities of each county concerned; such districts are hereby validated in all respects.

Sec. 2. All bond issues and all levies of special school taxes heretofore voted or which may hereafter be voted by any such district, are hereby validated, as though the original creation or consolidation of such district was in all respects regular; provided that the proceedings in the election for such bond issue or special taxes were or shall be in all other respects valid; and provided further that this Act shall not be construed as validating any bond issue attempted to have been voted upon any territory larger than, or in any way different from, that defined by the latest valid order of the county board of trustees, changing or defining the boundaries of the district for which such election was attempted to be held. [Acts 1927, 40th Leg., 1st C. S., p. 196, ch. 71.]

Art. 2745. [2818] Election of trustees.—On the first Saturday in April of each year, the qualified voters of each common school district, at a school district meeting for that purpose, shall elect three trustees for said district, who shall enter upon the discharge of their duties on the first of May next following. No person shall be trustee who cannot read and write the English language intelligibly, and read, comprehend and interpret the school laws of Texas, and who has not been a resident of such district for six months prior to his election. They shall immediately organize by electing one of their number president and one secretary. The term of office of said trustees shall be divided into two classes, and they shall draw for the different classes; and one drawing number one shall serve for one year, and those drawing numbers two and three shall serve for two years. On the first Saturday in April of each year thereafter, alternately one and two trustees shall be elected each of whom shall serve for two years. Said trustees shall first take the official oath and shall, as soon as practicable, file same with the county superintendent or county judge. [Acts 1905, p. 263.]

Art. 2746. [2819–20] Conduct of election.—Said trustees shall appoint three persons, qualified voters of the district, who shall hold such election and make returns thereof to said trustees within five days after such election, and said persons shall receive as compensation for their services the sum of one dollar each, to be paid out of the general fund of the county in which said election was held. The board of trustees, when ordering such election and appointing persons to hold election, shall give notice of the time and place where such election will be held, which notice shall be posted at three public places within the district at least twenty days prior to the date of holding said election. If, at the time and place for holding such election, any or all of the persons so appointed to hold such election are absent or refuse to act, then the electors present may select of their number a person or persons to act in the place of those absent or refusing to act. Said board of trustees shall meet and canvass the returns of said election within five days after returns have been made and declare the result of said election and issue to the persons so elected their commissions as such trustees, and shall notify the county judge or the county superintendent if the county has a superintendent. [Id.; Acts 1915, p. 204.]

Art. 2746a. [2820] Official ballots.—All of the ballots for the election of school trustees in common school districts and in independent school districts having fewer than 500 scholastics as shown by the last preceding scholastic census roll approved by the State Department of Education and exclusive of transfers shall be printed with black ink on clear white paper, of sufficient thickness to prevent the marks thereon being seen through the paper, and be of uniform style; at the top of the ballot shall be printed "Official Ballot,..... Independent School District," the number or name of the school district in which the election is to be held to be filled in by the judge of the county when he orders the ballots printed. Any person desiring to have his name placed on said official ballot, as a candidate for the office of trustee of a common school district or independent school district as herein provided shall, at least ten days before said election, file a written request with the county judge of the county in which said district is located, requesting that his name be placed on the official ballot, and no candidate shall have his name printed on said ballot unless he has complied with the provisions of this section; provided that five or more resident qualified voters in the district may request that certain names be printed. The county judge, upon receipt of said written request, and at least five days before the election, shall have the ballots printed as provided in this Act, placing on the ballot the name of each candidate who has complied with the terms of this Act and deliver a sufficient number of printed ballots and necessary election supplies to the presiding officer of the election at least one day before the election is held, the said election supplies including the ballots, poll lists and tally sheets to be delivered by the county judge by mail or in any other manner by him deemed best, to the presiding officer of said election in sealed envelopes, and said sealed envelopes shall not be opened by the election officers until the day of the election. The expense of printing the ballots and delivering same to the presiding officers, together with the other incidental expenses, shall be paid out of the general funds of the county. The election officers of said election shall be required to use the ballots so furnished by the county judge as provided by the terms of this Act. The election officers shall make returns of said election to the county judge and certify the result in the same manner as is now required by law, and said ballot boxes, which have been furnished by the local school officials shall be sent to the county judge and said election returns shall be canvassed by the commissioners' court, and together with ballot boxes shall be safely preserved for a period of three months next after the date of the election. [Acts 1925, p. 329.] [39th Leg., ch. 128, § 1.]

Art. 2747. Removal of trustee.—If a trustee so elected or appointed as herein provided, who in the opinion of the county superintendent, does not possess the qualifications prescribed by law, the county superintendent shall refuse to recognize such person who has been so elected and make written request within twenty days after such election, of the county attorney, or district attorney if there be no county attorney, to institute and prosecute with dispatch suit in the name of the State for the removal of such trustee, in the district court of the county where such trustee resides, at the option of said attorney. Upon good cause shown within the discretion of the court where such suit is pending, it shall be lawful to enjoin and restrain such person from acting as such trustee during the pendency of such suit. It shall be lawful to summon such trustee before the court in the trial of such cause, and there make examination of him as to his qualifications to serve as such. If after being so summoned, such trustee fails, neglects or refuses to obey said summons and fails to appear for the purpose of examination, and fails or refuses to submit to such examination, such failure, neglect or refusal shall be prima facie evidence of his disqualification, and be-

cause thereof the court trying such cause shall be authorized to render thereupon judgment by default against such trustee so defaulting, removing him from his said office and declaring the same vacant. The county board of education of the county where such trustee has been elected shall appoint some suitable person, who is qualified by law to act as such trustee, if during the pendency of such suit said trustee shall be enjoined from so acting. If such trustee so elected shall be so removed then such trustee so appointed shall continue to serve until the next regular election of school trustees for such district. The county board of education shall fill a vacancy in said office by appointing a suitable person qualified by law to act as trustee until the next regular election of school trustees for such district. [Acts 1905, p. 263; Acts 1907, p. 204; Acts 1917, p. 447.]

Art. 2748. [2822] Trustees a body corporate.—Said trustees shall be a body politic and corporate in law, and shall be known by and under the title and name of district trustees of district number....., and county of....., State of Texas; and as such may contract and be contracted with, sue and be sued, plead or be impleaded, in any court of this State of proper jurisdiction, and may receive any gift, grant, donation or devise made for the use of the public schools of the district. All reports and other official papers shall be headed with the number of district and name of county. [Acts 1905, p. 263.]

Art. 2749. [2823–4] Control of schools.—Said trustees shall have the management and control of the public schools and public school grounds; and they shall determine how many schools shall be maintained in their school district, and at what points they shall be located; provided, that not more than one school for white children and one school for colored children shall be established for each sixteen square miles of territory or major fraction thereof, within such district; and they shall determine when the schools shall be opened and when closed. They shall have the power to employ and dismiss teachers; but in case of dismissal, teachers shall have the right of appeal to the county and State Superintendents. They shall contract with teachers and manage and supervise the schools, subject to the rules and regulations of the county and State Superintendents; they shall approve all claims against school funds of their district; provided, that the trustees, in making contracts with teachers, shall not create a deficiency debt against the district. [Id.]

Art. 2750. [2825] Contracts with teachers.—Trustees of a district shall make contracts with teachers to teach the public schools of their district, but the compensation to a teacher, under a written contract so made, shall be approved by the county superintendent before the school is taught, stating that the teacher will teach such school for the time and money specified in the contract. The board of trustees shall have authority, whenever the average daily attendance exceeds thirty-five pupils, to employ one competent assistant to every thirty-five pupils of such excess and fractional part thereof exceeding fifteen pupils. All children within the scholastic age residing in such district, though they may have settled in such district since the scholastic census was taken, shall be entitled to receive all the benefits of the schools of such district. In a district that levies a special school tax the trustees shall have the right to increase the salaries of teachers and the scholastic age, and may also have the schools taught longer than six months, if it is deemed advisable. [Id.]

Art 2751. [2826] Check for payment of teacher.—The amount contracted by trustees to be paid a teacher shall be paid on a check drawn on the county treasurer by a majority of the trustees and approved by the county superintendent. [Id.; Acts 1921, p. 237.]

Art. 2751a. Prompt payment of teachers.—That County Boards of School Trustees of the various counties of Texas shall, on September 1st of each year, or as soon thereafter as practicable, ascertain the current financial resources of each school district under their supervision and in the event any of said districts do not or will not have sufficient funds on deposit to pay the salaries of teachers when and as due authorize the Depository Bank of the County to charge interest at a rate to be agreed upon by said depository and said trustees, which rate shall not exceed eight per cent per annum on vouchers issued to teachers from the date of the receipt by said depository until sufficient funds accrue to the credit of the district issuing said vouchers to liquidate the respective vouchers, the said interest to be paid from the available funds of the district affected; provided that no voucher shall draw interest after sufficient funds have accrued in the depository for its payment, and provided further that the vouchers on which the interest is to be charged shall not exceed in amount fifty per cent of the current available funds of the district issuing said vouchers. And in order to enable the County Board of Trustees to make provision for paying teachers' salaries when due as provided for herein, the Depository Bank shall, on the request of the County Board of Trustees, furnish the County Board with a report of the funds to the credit of the various school districts, and of the financial needs of said districts; and the financial statement of the said Depository Bank made at the close of scholastic year to the State Superintendent of Public Instruction shall include full reports of all interest charged under the provisions of this Act. [Acts 1927, 40th Leg., p. 385, ch. 260, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 385, ch. 260, repeals all conflicting laws and parts of laws.

Art. 2752. [2844–5] Contracts for building.—The trustees of a school district shall contract for the erection of the buildings and superintend the construction of the same; and the county superintendent shall draw his warrant upon the school fund so appropriated only upon the accounts first approved by them. No mechanic, contractor, material man, or other person, can contract for, or in any other manner have or acquire, any lien upon the house so erected or the land upon which the same is situated; and all contracts with such parties shall expressly stipulate for a waiver of such lien. [Acts 1905, p. 263.]

Art. 2753. [2846] Sale of school property.—The trustees of any school district, upon the order of the county trustees prescribing the terms thereof, when deemed advisable, may make sale of any property belonging to said school district, and apply the proceeds to the purchase of necessary grounds, or to the building or repairing of schoolhouses, or place the proceeds to the credit of the available school fund of the district. [Id.]

Art. 2754. [2847] Control of school property.—All school houses erected, grounds purchased or leased for a school district, and all other property belonging thereto, shall be under the control of the district trustees of such district. [Id.]

Art. 2755. [2848] Separate schools.—A school house constructed in part by voluntary subscription by colored parents or guardians, and for a school for colored children, shall not be used for white children without the consent of the trustees of the district, and a like rule shall protect the use of school houses erected in part by voluntary subscription of white parents or guardians for the benefit of white children. [Id.]

Art. 2756. [2849] Title to property.—All conveyances, devises, and bequests of property for the benefit of the public schools made by any one for any county, city or town, or district, shall, when not otherwise directed by the grantor or devisor, vest said property in the county school trustees, or the board of school trustees of the city or town, or the trustees of the school district, or their successors in office, as the trustees for those to be benefited thereby, and the same, when not otherwise directed shall be administered by said officers under such rules as the State Superintendent may establish. [Id.]

2. INDEPENDENT DISTRICTS IN TOWNS

Art. 2757. [2851–54] Incorporation of town.—Any common school district containing seven hundred inhabitants or more may form an incorporation for free school purposes only, which may or may not include within its bounds any town or village incorporated for municipal purposes, the same not having assumed control of the public free schools within its limits. The territory so incorporated shall hereinafter be called an "independent school district" and said incorporation shall be laid out in a square as near as may be practicable with reference to the location of a school building.

Whenever any such common school district as herein provided is desired to be so incorporated there shall be presented to the county judge a petition signed by twenty or a majority of the resident qualified voters thereof praying for an election to be ordered for the purpose of determining the question of such incorporation. Said petition shall also contain a definite description by metes and bounds of such common school district proposed to be so incorporated, and said petition shall recite the name by which such independent school district shall be known, and said petition shall pray for an election to determine whether said common school district shall be incorporated as an independent school district and for the election of seven trustees.

Upon presentation of said petition to the county judge as herein provided such county judge shall enter his order upon the minutes of the commissioners court granting said petition, provided that said county judge finds and determines the sufficiency of such petition and that the facts presented to him in support of such petition are true and substantially inclusive. Such order of election by said county judge shall, when made, specify the date of said election which shall be held within twenty days from the date of such order, and shall designate the place or places at which said election shall be held in said common school district proposed to be so incorporated, and said county judge shall, by such order, appoint a presiding officer for the place or each of the places of said election, and said county judge shall also, in entering such election order, describe the proposition to be so submitted together with a definite description by metes and bounds of the common school district proposed to be so incorporated. The said county judge shall issue a notice of such election stating in substance the contents of such election order and the time and place or places of said election, and said county judge shall cause the sheriff to post a copy of such notice of election in three different public places within the boundaries of such common school district as described in said election order, which posting shall be done not less than ten days prior to the date fixed for said election.

The said election shall be held under the provisions of the laws of this State regulating general elections, except as herein otherwise provided, and only qualified voters who are residents of the common school district proposed to be so incorporated, shall be entitled to vote at said election. The officers holding the said election shall make returns of the result thereof to said county judge, and said county judge shall canvass such returns and declare the results of said election, and if a majority of the votes cast at said election shall have been cast in favor of such incorporation, then said county judge shall so find and enter his order to that effect and incorporating said independent school district upon the minutes of the commissioners court and cause the county clerk to record a certified copy of such order in the deed records of the county. Thereupon, such "independent school district" shall thereafter be regarded as duly incorporated for free school purposes only and shall have and is hereby vested with all the rights, powers and privileges conferred and imposed by the general laws of this State upon independent school districts. And said independent school district shall, upon notice to the State Superintendent of Education, be entitled to receive its share of the available school fund to which it is entitled as provided by the laws of this State.

Whenever any unincorporated town or village is included within the boundaries of any incorporated independent school district and such town or village be thereafter incorporated for municipal purposes, it shall not hereby acquire any right to take or assume control of the public free schools within its limits. [Acts 1905, p. 263; Acts 1927, 40th Leg., p. 353, ch. 238, § 1.]

Section 3 of Acts 1927, 40th Leg., p. 353, ch. 238, provides that if any of its provisions shall be held invalid, such holding shall not affect the remaining provisions, and section 4 repeals all conflicting laws and parts of laws.

Art. 2758. [2852–3] Board of trustees.—When the said county judge shall enter his order for the incorporation election herein provided, he shall at the same time order an election to be held at the same time and place or places and by the same election officers for the election of a board of trustees to consist of seven members. Notice of the said election for the seven members of said board of trustees for the proposed independent school district shall be given within the same time and manner as herein provided for the giving of notice of election for the incorporation of an independent school district. The said election shall be held at the same time and place by the same election officers appointed to hold such incorporation election, and such election officers shall make returns of the result of such election for trustees to said county judge, and said county judge shall canvass the returns and declare the result thereof for said election and enter his order to that effect in the same manner as herein provided for such incorporation election. And said county judge shall issue his certificate of election to each of the seven candidates for the office of such trustee who received the greatest number of votes cast for the office of trustee, respectively. And upon the issuance of such certificate of election to and upon the taking of the oath of office provided in the Constitution of this State, by each of such trustees, they shall, respectively, be deemed to have fully qualified and shall immediately enter upon the discharge of their respective duties. When each of the seven trustees have so qualified as herein provided, they shall, respectively, file their oaths of office with the county judge, and proceed with the organization of the board of trustees by electing one of their number as president of the board of trustees, electing a secretary of such board of trustees who may or may not be a member of such board, and by election a treasurer and an assessor and collector of taxes, and such other officers and committees as shall be deemed by said board necessary.

Each of the seven trustees who were elected at such incorporation election shall hold office until the next regular trustee election to be held on the first Saturday in April next succeeding and until their respective successors have been duly elected and qualified, at which time seven trustees shall be elected for said independent school district, whose respective terms of office shall be determined in the following manner and by the following method: Such trustees shall draw by lot, and those trustees drawing the numbers 1, 2, 3 and 4 shall serve one year for the term of office ending with the next regular trustee election on the first Saturday in April of the following year and until their respective successors have been duly elected and qualified. And those trustees drawing the numbers 5, 6 and 7 shall serve for two years for the term of office ending with the next regular trustee election on the first Saturday in April of the second year following their election.

The said board of trustees of each of such independent school districts incorporated under the provisions of this Act shall have and exercise and are hereby vested with all the rights, powers, privileges and duties conferred and imposed upon the trustees and boards of trustees of independent school districts by the general laws of this State. [Id.; Acts 1927, 40th Leg., p. 353, ch. 238, § 2.]

See note to art. 2757.

Art. 2759. City control of district.—When a town or village incorporated for free school purposes only under the general law, and hereinafter designated as an "independent school district," and a city or town forming a part of such independent school district, which is incorporated for municipal purposes, under the general law, and hereinafter referred to as an incorporated city or town, shall desire to have the public schools within such independent district assumed by or under the control of such city or town, the same shall be done in the following manner:

Whenever as many as fifty or a majority of the resident qualified voters of such independent school district petition the district board of trustees thereof to order an election for the purpose of voting on such proposition of whether or not the public free schools in said district shall be assumed and controlled by such incorporated city or town, said board shall order an election to be held at the usual voting places within such district, and which election shall be ordered and held in conformity with the law governing bond and tax elections in independent school districts, except the qualified electors voting thereat need not be property tax payers, but must be qualified to vote under the laws of this State regulating general elections. [Acts 1919, 2nd C. S. p. 32.]

Art. 2760. City control: ballot.—All persons voting at such election in favor of such proposition shall have written or printed on their ballots the words "For assuming control of the public free schools of ——— Independent School District by the city of ———, Texas," and all persons voting at such election not in favor of such proposition shall have written or printed on their ballots the words "Against assuming control of the public free schools of ——— Independent School District by the city of ———, Texas." [Id.]

Art. 2761. Extent of city control.—If a majority of the qualified voters voting at the election in such independent school district, shall vote in favor of the incorporated city or town assuming control of the schools of such independent school district, the district board of trustees shall certify the results of such election to the governing authority of such incorporated city or town, together with a certified copy of the record showing all the proceedings had in the incorporation of such independent school district and all boundary extensions thereto, if any, together with a well defined map accurately showing the territory described in such record. If said governing authority finds that such election has been in all respects lawfully held and the returns thereof duly and legally made, then it shall, by ordinance duly passed and entered of record, assume control and management of the public free schools within its limits, in conformity with the provisions and requirements of subdivision 3 of this chapter except as otherwise provided herein; provided, that if the boundaries of such independent school district do not coincide with the boundaries of the incorporated city or town, then the city governing body shall on the same day pass an ordinance extending its corporate line for school purposes only so that the same shall coincide with and embrace the same territory within such independent school district. If such independent school district shall have an outstanding bonded indebtedness, then the incorporated city or town shall become liable and bound for the payment of such bonded indebtedness and the governing body thereof, shall levy and cause to be assessed and collected, upon all property subject to taxation within the limits of such incorporated city or town or within the limits of such corporation as extended for school purposes only if the boundaries of the former independent school district were not the same as the boundaries of the incorporated city or town, taxes to pay interest on such bonds and provide a sinking fund sufficient to redeem the same at maturity, and such tax thereafter shall be annually levied and collected so long as such bonds, or any of them, are outstanding and unpaid; and provided further that the assumption of the control of the schools of such independent school district shall not abrogate or affect any maintenance tax theretofore authorized in such independent school district and such tax shall thereafter be annually levied, assessed and collected by the proper authorities of such incorporated city or town, until increased or changed by the qualified voters in conformity with the provisions and requirements of subdivision 4 of this chapter. [Id.]

Art. 2761a. Abolishing corporate existence affecting school districts.—Sec. 1. That all cities and towns and towns and villages that have heretofore assumed control of the schools within its limits, whether or not said districts have been added to as provided by the laws of Texas, are hereby declared to be Independent School Districts.

Sec. 2. That where towns and villages or cities and towns have heretofore abolished their corporate existence as in municipal corporation the public free schools theretofore under the control of said towns and villages or cities and towns, are hereby declared to be independent school districts and shall remain under the control of the Trustees theretofore elected or appointed, and said Trustees shall be annually elected thereafter, unless said city or town shall sooner re-incorporate for municipal purposes and again assume control of said schools as provided by Article 2759, Revised Civil Statutes, 1925. [Acts 1927, 40th Leg., p. 81, ch. 57.]

Section 3 of Acts 1927, 40th Leg., p. 81, ch. 57, validates all towns and villages or cities and towns that have heretofore assumed control of their free public schools and have abolished their corporate existence and reincorporated and again assumed control of their free public schools, and also all acts by the board of trustees of the district or the municipal authorities in accepting said acts and assuming control of the district.

Art. 2762. City control: officers.—Nothing in this law shall be construed as affecting the terms of office of any trustee previously elected in such independent school district and serving as such at the time of the assumption of the control of the district schools by the incorporated city or town, and such trustees shall be vested with the same authority as is conferred by law upon school trustees in cities and towns constituting separate and independent school districts, and shall thereafter be elected in the same manner as school trustees for such cities and towns, in accordance with the provisions of the succeeding subdivision of this chapter. [Acts 1919, 2nd C. S. p. 32.]

Art. 2763. [2856] Small districts: laws applicable.—All incorporated districts, having each fewer than one hundred and fifty scholastics according to the latest census, shall be governed in the general administration of their schools by the laws which apply to common school districts; and all funds of such districts shall be kept in the county depositories and paid out on order of the trustees approved by the county superintendent. [Id.; Acts 1909, p. 17.]

Art. 2764. Districts in several counties.—Independent school districts may be created containing territory within two or more counties in the same way and manner that towns and villages are created by law for municipal purposes; provided, that the map required by the law governing said incorporation shall show the correct location and position of the county lines involved in such incorporation proceedings. Said incorporated free school district containing territory in two or more counties shall have all the rights, powers, and privileges granted under the general laws to incorporations for free school purposes only. The same modes, manners, and methods of government and procedure provided by the general law for independent school districts incorporated for free school purposes only shall govern the management and control of the incorporated school districts for free school purposes containing territory within two or more counties. [Acts 1911, p. 200.]

Art. 2765. [2865] Extension of boundaries.—Whenever the territory heretofore incorporated, or which may hereafter be incorporated, for free school purposes, shall contain less than twenty-five square miles, and thereafter the majority of the inhabitants,

qualified to vote for members of the Legislature, of any territory adjoining the limits of the town and village so incorporated, shall desire such territory to be added to and become a part of such incorporated town or village for free school purposes only, and a majority of such qualified voters sign a petition to that effect, any three of such qualified voters may file with the president of the board of trustees of such incorporated town or village the said petition, fully describing by metes and bounds the territory proposed to be annexed and showing its location with reference to the existing territory of the town or village already incorporated, provided that said territory proposed to be added must be contiguous to one line of said corporation. Upon so filing said petition, affidavits and descriptions, said president shall submit the same to the board, and, if upon investigation by the board it is found that the proposed addition will not increase the corporate limits so that the whole, when so increased, will exceed twenty-five square miles, the said board of trustees, by resolution duly entered upon its minutes, may receive such proposed territory as an addition to, and become a part of, the corporate limits of such town or village; a copy of which resolution, containing a description of the added territory, shall be filed for record in the county clerk's office of the county in which said town or village is situated, after which the territory so received shall be a part of said town or village; and the inhabitants thereof shall thenceforth be entitled to all the rights and privileges, and subject to the same liabilities of taxation as other citizens, and all property within said limits shall thenceforth be subject to such taxation as may have been, or may hereafter be, provided by said incorporation for free school purposes only. [Id.]

Art. 2766. [2866] Change of boundaries.—The commissioners court of any county shall have the authority to change the boundaries of any independent district incorporated for free school purposes only, situated in said county, when in the judgment of said court the public good demands such change; provided, that the president of the board of trustees of the independent district to be affected by the proposed change shall first be notified, and said board of trustees shall have the right to be heard in case there is opposition to the change. No such change shall be made that would reduce the total value of taxable property in any independent district against which there are outstanding bonds legally issued. [Id.]

Art. 2767. Change of districts.—All independent school districts incorporated for free school purposes within the State of Texas, whether created under the general laws or by special act, now in existence, or hereafter to be created may be abolished in the manner herein provided:

The County Judge of any county in which any independent school district or part thereof is situated, shall, upon petition in writing signed by twenty-five of the resident property tax payers, who are qualified voters of such independent school district, make an order for holding an election for such purposes, on a day therein stated, and at a place within said independent school district and within the county in which said county court is situated, therein designated. He shall appoint an officer to preside at the election, who shall select two judges and two clerks to assist in holding it. After previous notice of ten days by posting advertisements thereof at three public places within such independent school district, the election shall be held in the manner prescribed by law for holding general elections, except as is herein provided.

All persons who are legally qualified voters of the State and of the county in which such independent school district or part thereof is situated, and who have resided within said independent school district for at least six months next preceding, shall be entitled to vote at such election.

The officers holding such election shall make return thereof to the County Judge within ten days after the same is held. If a majority of such voters, voting at such election, shall vote to abolish such independent school district, the County Judge shall declare such independent school district abolished, and shall enter an order to that effect upon the minutes of the commissioners Court, and from the date of such order, said independent school district shall cease to exist. [Id.; Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

Section 2 of said Acts 1927, 40th Leg., p. 444, ch. 294, provides that if any provision thereof is held invalid such holding shall not affect the other provisions.

Art. 2767a. Payment of indebtedness of district abolished.—When any independent school district is abolished, whether as provided in this Chapter, or in any other lawful manner, having at the time of such abolishment, outstanding bonds or other indebtedness, enforcible either at law or in equity, then the County Board of School Trustees, or County Board of Education, as the case may be, for the purpose of paying such bonds, or other indebtedness, shall manage, control or dispose of all property of said independent school district; shall have power to levy and collect taxes; shall have power to bring and defend litigation in the name of said independent school district and shall have power to do any and all things necessary for the payment of such bonds or other indebtedness, which such independent school district, or the Trustees thereof, could have done if such independent school district had not been abolished. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

See note to art. 2767.

Art. 2767b. Suits against district abolished.—Any creditor of any independent school district which has been, or may be abolished, either under this Act [Arts. 2767–2767f], or in any other lawful manner, shall file his claim against said district with the County Board of School Trustees, or the County Board of Education, as the case may be, within sixty days after said school district has been abolished. If such claim is not allowed, such creditor may maintain suit against such abolished independent school district as such, in the proper court of the State. Service in such suit may be had upon the Chairman, or President of the County Board of School Trustees, or Board of Education, as the case may be, and such County Board of School Trustees, or Board of Education, shall defend such suit on behalf of such abolished independent school district, and may, within its discretion, make such settlement of such litigation as may be deemed advisable. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

See note to art. 2767.

Art. 2767c. Taxation for indebtedness.—As used in this, and the succeeding articles the term "Independent School District" is defined to mean any independent school district whether created by special act, or under the general laws; and the term "school district" shall include every school district now existing or hereafter to be created in any manner whatsoever and likewise any other corporation having assumed control of its schools.

When all of the territory embraced within the boundaries of any abolished independent school district, having previously had legal existence, and having outstanding bonds or other indebtedness, enforcible either at law, or in equity, shall thereafter be contained or included within the limits of any other school district, all taxes against the property of such abolished independent school district at the time at which it is included or contained within such other school district, shall remain in full force and effect and shall be levied and collected by such other school district and the proper officers thereof until said entire indebtedness is fully paid.

If a part of the territory embraced within such abolished independent school district shall thereafter be included or contained within the limits of such other school district, then such taxes shall remain in full force and effect upon the property so included and shall be collected as hereinbefore provided until the proportion of such indebtedness as the assessed value of the portion so included or contained bears to the entire assessed value of said abolished independent

school district, has been paid fully. The assessed values of such property shall be those shown upon the preceding county tax assessment roll after such territory is included in such other district.

Such other school district may assume such bonds or other indebtedness at an election held for that purpose, at which a majority of the qualified property tax paying voters of such other district, shall vote in favor thereof; in which event, all of the property within such other district, not exempt under the law, shall be subject to taxation for the payment of such bonds or other indebtedness. And the proper officers of such other district, shall levy upon such property in said district, a tax adequate for the payment of said bonds and other indebtedness, over such a period of time as may be necessary for that purpose. Such election shall be held in the manner provided for holding an election for voting bonds, or for voting a special tax, as the case may be, within such other school district. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

See note to art. 2767.

Art. 2767d. Territory of district abolished embraced in another district.—Where all the territory embraced within such abolished independent school district shall be contained or included within the limits of such other school district, title to all the property, both real and personal, belonging to such abolished independent school district shall be vested in such other school district, or its governing officers, and where a part of the territory embraced within such abolished independent school district shall be contained or included within the limits of such other school district, all real property, improvements and appurtenances, belonging to such abolished independent school district, and situated within the territory so included or contained, and such proportion of all personal property of whatsoever nature, as the assessed value of the territory so included or contained bears to the entire assessed value of said abolished independent school district, obtained as provided in Article 2767e hereof, belonging to such abolished independent school district, shall vest in such other school district or its governing officers, provided however, that nothing herein shall affect the rights of any creditor of such abolished independent school district. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

See note to art. 2767.

Art. 2767e. Uncollected taxes.—When all or part of the territory embraced within an abolished independent school district, having at the time of such abolishment, no outstanding indebtedness, shall be included or contained within the limits of such other school district, all uncollected taxes on the property so included or contained for the years up to and including the last day of January of the year immediately following that in which such territory is included or contained, within such other school district, shall be levied and collected by such other school district at the rate in force at the time of such abolishment and in the same manner as such abolished independent school district might or could have done had no abolishment been had. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

See note to art. 2767.

Art. 2767f. Effect of abolishing district created out of territory of two districts.—Upon the abolishment of an independent school district created by special or local law out of territory theretofore containing two or more common school districts, said common school district shall immediately come into existence by operation of law with the same boundaries they had prior to the creation of said independent school district; and all funds, property, rights and liabilities of the abolished independent school district may be divided as bewteen [between] the said common school districts by agreement between the trustees of said common school districts. In the event said trustees are unable to agree, decision shall be made by the county board of school trustees for said funds, property, rights and liabilities to be apportioned to the said common school districts in an equitable and just manner, taking into consideration the property owned and the assets and liabilities of said common school districts at the time such independent school district was created and also taking into consideration the assets and liabilities coming into existence after the formation of said independent school district. Any bonds issued by one of said common school districts prior to the creation of said independent school district shall be paid and retired by the common school district issuing same, and taxes for that purpose shall be levied and collected by said common school district. Any moneys paid by such abolished independent school district in connection with any such bond issue to take care of interest or sinking fund, shall be paid back by the common school district issuing such bonds in such an amount as will be necessary to reimburse the other common school district or districts in the territory of such abolished independent school district. High school children in any common school district within the territory of any such abolished independent school district which independent school district was created out of two common school districts shall have the right to attend school in the other common school district within the territory composing any such abolished independent school district without tuition, provided such other common school district has not more than 350 scholastic population. Any debt incurred by any such abolished independent school district the benefits of which accrue particularly to one of said common school districts shall be taken over by said common school district. [Acts 1927, 40th Leg., p. 444, ch. 294, § 1.]

See note to art. 2767.

3. INDEPENDENT DISTRICTS IN CITIES

Art. 2768. [2867–8] Assumption of control.—Any city or town in this State may acquire the exclusive control of the public free schools within its limits. Any city or town which has heretofore, under the Act of March 15, 1875, or any subsequent law, assumed control of the public free schools within its limits, and has continued to exercise the same until the present time, or any city or town which may hereafter determine so to do by majority vote of the property tax payers of said city or town voting at an election held for that purpose, may have exclusive control of the public free schools within its limits. [Acts 1905, p. 263.]

Art. 2769. [2869] Election.—The mayor of said city or town shall, upon the written application of not less than fifty of the qualified electors thereof, and within twenty days thereafter, order an election by the qualified electors of such city or town, to be conducted as other municipal elections, to decide, by a majority of the votes cast by the qualified electors of such city or town at such election, whether such city or town shall acquire the exclusive control of the public free schools and institutions of learning within its limits. Not more than one election shall be held in any one calendar year to determine such question. [Id.]

Art. 2770. [2870] Shall receive pro rata of school funds.—Such city or town, after notice to the State Board that it has determined to assume control of the public free schools within its limits, shall receive such pro rata of the available school fund as its scholastic population may entitle it to. [Id.]

Art. 2771. [2871] General laws shall govern.—Schools thus organized and provided for by incorporated cities and towns shall be subject to the general laws, so far as the same are applicable; but each city or town having control of schools within its limits shall constitute a separate school district, and may provide for the organization of schools and the appropriation of its school funds in such manner as may be best suited to its population and condition. [Id.]

Art. 2772. [2872] Property vested in trustees.—In every city or town in this State which has or may assume the exclusive control and management of

public free schools within its limits, and which has or may determine that such exclusive control and management shall be in a board of trustees, and organized under an Act of the Sixteenth Legislature, approved April 3, 1879, and Acts amendatory thereto, the title to all houses, lands and other property owned, held, set apart, or in any way dedicated to the use and benefit of the public free schools of such city or town, including property heretofore acquired as well as that which may hereafter be acquired, shall be vested in the board of trustees and their successors in office, in trust for the use and benefit of the public free schools in such city or town; and such board of trustees shall have and exercise the exclusive control and management of such school property, and shall have and exercise the exclusive possession thereof for the purpose aforesaid; provided, that where trustees are named other than the municipal corporation itself, in any instrument conveying, donating, bequeathing or devising any money or other property, real or personal, for the benefit of any city or town, this law shall not interfere in any manner with the title or authority of such trustees to or over such money or other property. Such board of trustees shall constitute a body corporate, and shall have full power to protect the title, possession and use of all such property within the limits of such city or town, and may bring and maintain such suit or suits in law or in equity in any court of competent jurisdiction when necessary to recover the title or possession of any such property that may be adversely held or seized, or to prevent any trespass upon or injury to such property; provided, that the provisions of this article shall not apply to lands belonging to the State upon which houses for school purposes have been built without authority from the State. [Id.]

Art. 2773. [2873] Sale of school property.—Any houses or lands held in trust by any city or town for public free school purposes may be sold for the purpose of investing in more convenient and desirable school property, with the consent of the State Board, by the board of trustees of such city or town; and, in such case, the president of the school board shall execute his deed to the purchaser for the same, reciting the resolution of the State Board giving consent thereto and the resolution of the board of trustees authorizing such sale. [Id.]

Art. 2774. [2885] Appointment of trustees.—Towns and cities which have heretofore chosen their trustees by appointment of the city council or board of aldermen, under the provisions of Article 4018, Revised Statutes of 1895, shall be authorized to continue to choose their trustees in this manner; that is, by the appointment of the board of aldermen of said city or town; provided, that seven trustees shall be appointed at first, four of whom shall serve for one year, and three for two years; and each year thereafter, four trustees and three trustees alternately, shall be appointed for a term of two years; and further provided, that on a petition of twenty-five per cent of the voters of any such city or town, to be ascertained by the ballots cast at the last regular city election in said city or town, the mayor of such city or town shall order an election to determine whether or not the school affairs of such city or town shall be directed by a school board elected in accordance with the provisions of this chapter; and, in case of an affirmative vote, an election shall at once be ordered by the said mayor, for the purpose of choosing a school board consisting of seven trustees, as provided in the succeeding article. [Id.]

Art. 2775. [2886] Election.—In each independent district that shall hereafter be organized, the county judge of the county in which said independent district is situated shall order an election for seven trustees, who shall constitute the school board of such district, and all of whom shall serve without compensation. All of the qualified voters of each such district shall be entitled to vote at any election for trustees hereunder. [Id.]

Art. 2776. [2887] Board shall order elections.—All elections shall be ordered by the board of trustees of each independent school district; and such order shall be made at least ten days before the date of election; and a notice of the order shall be posted at three different places in the district. The board of school trustees, at the time of ordering such election, shall appoint three persons to hold the election, and shall designate the places where the polls shall be open. Each person appointed to hold such election shall receive one dollar therefor, to be paid out of the general fund of the county as other claims are paid. All such elections shall be held, and returns thereof made to the board of school trustees, in accordance with the general election laws. The board of school trustees shall canvass such returns, declare the result of such election, and issue certificates of election to the persons shown by such returns to be elected. [Id.; Acts 1915, p. 205.]

Art. 2777. [2888–9–93] Terms of office.—The seven candidates receiving the largest number of votes at the first election, and the three or four candidates receiving the largest number of votes at all subsequent elections, shall be entitled to serve as trustees hereunder. Those elected at the first election shall determine by lot the term for which they are to serve. The four members drawing numbers one, two, three and four shall serve for one year, and the three members drawing the numbers five, six and seven shall serve two years, or until the second of April thereafter, and until their successors are elected and qualified; and regularly thereafter on the first Saturday in April of each year, four trustees and three trustees, alternately, shall be elected for a term of two years, to succeed the trustees whose term shall at that time expire. The members of the board remaining after a vacancy shall fill the same for the unexpired term. [Id.]

Art. 2778. [2890] Oath of office.—Each trustee shall first swear that he will faithfully and impartially discharge the duties of such office; and his affidavit to that effect shall be filed after the first election with the county judge, and after all subsequent elections with the president or chairman of the school board. [Acts 1905, p. 263.]

Art. 2779. [2891] Organization of board.—Said trustees shall meet within twenty days after the election, or as soon thereafter as possible, for the purpose of organizing. A majority of said board shall constitute a quorum to do business. They shall choose from their number a president, and they shall choose a secretary, a treasurer, assessor and collector of taxes, and other necessary officers and committees. [Id.]

Art. 2780. [2892] Power of trustees.—Said trustees shall adopt such rules, regulations and by-laws as they may deem proper; and the public free schools of such independent district shall be under their control; and they shall have the exclusive power to manage and govern said schools, and all rights and titles to property for school purposes heretofore vested in the mayor, city councils, or school trustees by articles 3995, 4013 and 4032, Revised Statutes of 1895, or other statutes, general and special, except such cities as are exempted by this title, shall be vested in said board of trustees and their successors in office; and their claims shall apply to any action or suit which may arise to which said board is a party. [Id.]

Art. 2781. [2895] Teachers' contracts.—The board of trustees of any city or town or of any independent school district may elect a superintendent or principal or teacher in the schools therein for a term not to exceed two years, and in cases of twelve month contracts the date of employment shall begin on July first and end on June thirtieth. [Acts 1905, p. 263; Acts 1923, p. 260.]

Art. 2782. [2884] Cities exempt.—The cities of Dallas and Fort Worth shall be exempt from the provisions of this title concerning trustees. [Acts 1905, p. 263.]

Art. 2783. [2894] Additional courses.—Any school district having voted a tax under the provisions of the succeeding subdivision may prescribe such other studies as the board of school trustees may deem proper. [Id.; Acts 1913, p. 175.]

4. TAXES AND BONDS

Art. 2784. Taxing power.—The commissioners court for the common school districts in its county, and the district school trustees for the independent school districts incorporated for school purposes only, shall have power to levy and cause to be collected the annual taxes and to issue the bonds herein authorized, subject to the following provisions:

1. In common school districts, for the further maintenance of public free schools and the erection and equipment of school buildings therein, a special tax; and in independent districts for the maintenance of schools therein, an ad valorem tax, not to exceed one dollar on the one hundred dollars valuation of taxable property of the district.

2. In common school and independent districts, for the purchase, construction, repair or equipment of public free school buildings within the limits of such districts and the purchase of the necessary sites therefor, a tax not to exceed fifty cents on the one hundred dollars valuation, such tax to be for the payment of the current interest on and provide a sinking fund sufficient to pay the principal of bonds which said districts are empowered to issue for such purposes.

3. The amount of maintenance tax, together with the amount of bond tax of any district, shall never exceed one dollar on the one hundred dollars valuation of taxable property; and if the rate of bond tax, together with the rate of maintenance tax voted in the district, shall at any time exceed one dollar on the one hundred dollars valuation, such bond tax shall operate to reduce the maintenance tax to the difference between the rate of the bond tax and one dollar.

4. No tax shall be levied, collected, abrogated, diminished, or increased, and no bonds shall be issued hereunder, until such action has been authorized by a majority of the votes cast at an election held in the district for such purpose, at which none but property tax paying qualified voters of such district shall be entitled to vote.

5. All property assessed for school purposes in a common school district shall be assessed at the rate of value of property as said property is assessed for State and county purposes. [Acts 1921, p. 56.]

Road districts organized and bonds issued under laws held invalid by the United States Supreme Court in Browning v. Hooper, 46 S. Ct. 141, 269 U. S. 396, 70 L. Ed. 330, were validated by Acts 1926, 39th Leg., 1st C. S. p. 33, ch. 17.

Art. 2785. Elections.—Before an election is held to determine the proposition of the levy of such tax or the issuance of such bonds, a petition therefor signed by twenty or more, or a majority of those entitled to vote at such election, shall be presented to the county judge of the county if for a common school district, and to the district trustees if for an independent school district. On presentation of said petition, said officer or officers shall order an election for such purpose, and order the sheriff to post notices thereof in three places in the district for three weeks prior thereto, or if for an independent district, the secretary of said board of trustees shall post such notices. The petition, election order and notice of election shall in all cases either state the specific rate of tax to be voted on or that the rate shall not exceed the limit herein specified. All election orders and notices of elections shall state the time and place of holding the election. The ballots for maintenance tax elections in common school districts shall have written or printed thereon the words "For school tax," and "Against school tax"; and for independent districts "For maintenance tax," and "Against maintenance tax." If said maintenance tax proposition is defeated at an election held for such purpose, no other election shall be held therefor within one year from the date of said election. The commissioners court for common school districts, and the board of trustees for independent districts, shall canvass the returns and declare the result of all elections hereunder; and said elections shall be held and conducted as provided by law for general elections, except as herein provided. [Id.]

Art. 2786. Bonds.—Whenever the proposition to issue bonds is to be voted on in any common or independent school district hereunder, the petition, election order and notice of election must distinctly specify the amount of the bonds, the rate of interest, their maturity dates, and the purpose for which the bonds are to be used. The ballots for such election shall have written or printed thereon the words "For the issuance of bonds and the levying of the tax in payment thereof"; and "Against the issuance of bonds and the leving [levying] of the tax in payment thereof." All such bonds shall bear not more than six per cent interest per annum, and may mature serially or otherwise, not exceeding forty years from their date; provided, that when the houses are to be built of wood, said bonds shall mature in not more than twenty years from their date. Such bonds shall be examined by the Attorney General and registered by the Comptroller. All bonds shall be sold to the highest bidder for not less than their par value, and the proceeds of such sale shall be deposited in the county depository for the common school districts, and in the district depository for the independent school districts, to the credit of such districts, and shall be disbursed only for the purpose for which said bonds were issued, on warrants issued by the district trustees and approved by the county superintendent for common school districts, and by the president of the board of trustees and countersigned by the secretary of said board for independent districts. [Id.]

Art. 2787. Common school bonds.—If the proposition to issue said bonds of a common school district carries at an election held therefor, the commissioners court as soon thereafter as practicable shall issue said bonds on the faith and credit of said common school district. Said bonds shall express on their face: The State of Texas, the name of the county, and the number or corporate name of the district issuing said bonds. They shall be signed by the county judge, countersigned by the county clerk and registered by the county treasurer, in accordance with the general law relative to county bonds. At the time of the issuance of said bonds and each year thereafter so long as any of said bonds are outstanding, the said court shall levy a bond tax within the limits herein specified to pay the interest on said bonds and redeem the same at maturity. The rate of such tax shall be determined by the trustees of the district and county superintendent and certified by the county superintendent to the commissioners court, and said court shall levy the tax at said rate until a change is recommended by said school officers. Said tax shall be assessed and collected as provided by law for the assessment and collection of special local tax for the maintenance of public free schools. After said bonds shall have been issued and sold and said bond tax has been levied, it shall be unlawful to hold an election in said district to determine whether or not said tax shall be discontinued or lowered until said bonds, together with the interest thereon, shall have been fully paid, nor shall the limits and boundaries of said common school district ever be decreased by the county board of school trustees until all of said bonds and the accrued interest thereon shall have been fully paid. [Id.]

Art. 2787a. May pay bond.—The State Board of Education may authorize the trustees of any common school district or of any independent school district of this State to pay off and discharge, at any interest paying date whether the bonds are matured or not, all or any part of any bonded indebtedness now owned or hereafter to be owned by the State Permanent School Fund, outstanding against any common school district, or any independent school district in this State.

It shall be the duty of the school trustees of any common school district, or any independent school district of this State desiring to pay off and discharge any

bonded indebtedness now owned or hereafter to be owned by the Permanent School Fund of this State, outstanding against such district or districts, before maturity thereof, to make direct application in writing to the State Board of Education at least thirty days before any interest paying date on said bonds, making known to said State Board of Education the desire of said trustees to pay off and discharge said bonded indebtedness, or any part thereof, describing said bonds or the part thereof that the trustees desire to pay off and discharge; and it shall be the duty of the State Board of Education upon receipt of such application to act thereon in such manner as they deem best and notify the applicant or applicants whether the application is refused or granted in whole or in part; provided, that only such tax money as has been collected by virtue of tax levies made for the specific purpose of providing a sinking fund and paying interest on the particular bonds to be redeemed shall be expended in the redemption, taking up, or paying off of such bonds as provided in this Act; unless said bonds are being redeemed for the purpose of being refunded; and the application of the board of trustees of any common or independent school district desiring to retire bonds as herein provided shall include an affidavit to that effect in their application; and provided further, that it shall be unlawful for any person upon whom any duty rests in carrying out the provisions of this law to give or receive any commission, premium, or any compensation whatever for the performance of such duty or duties.

The provisions of this Act shall apply also to the governing boards of all cities, counties and political subdivisions in this State whose bonds are owned or may hereafter be owned by the Permanent School Fund of the State.

Art. 2788. Independent district bonds.—The bonds authorized to be issued by independent districts shall be coupon bonds, and the aggregate amount thereof shall never reach an amount such that a tax of fifty cents on the one hundred dollars valuation of taxable property will not pay current interest and provide a sinking fund sufficient to pay the principal at maturity. The election for said bonds shall be held within thirty days after order of election, as fixed in the election order. The board of trustees shall at the same time fix the polling places for holding such election and name a judge and two clerks at each polling place, or more judges and clerks, if deemed necessary, and furnish all necessary ballots and other election supplies requisite to such election. Immediately after the bond election the officers holding the same shall make returns of the result thereof to the board of trustees of the district, and return the ballot box to the secretary of such board, who shall safely keep the same and deliver them together with the returns of the election to the board of trustees at its next regular or special meeting; and said board shall then canvass the returns and declare the result of said election. If said election results in favor of the issuance of bonds and the levy of the tax in payment thereof, said board, after such result has been declared, shall make an order directing the issuance of the bonds of such district and provide for the levy and collection of a tax annually of sufficient amount with which to pay the interest and provide a sinking fund with which to pay such bonds at maturity. Such bonds shall state upon their face the purpose for which they are issued, and shall be issued in the name of the independent school district, signed by the president of the board of trustees of such district, and countersigned by the secretary of such district, and have the seal of the district affixed to each bond. When said bonds have been duly approved and registered, they shall continue in the custody of and under the control of said board and shall be sold by said board for cash, either in whole or in parcels. [Id.]

Art. 2789. [2864] Refunding bonds.—Where bonds have been legally issued, or may be hereafter issued, by any town or village incorporated for free school purposes only, new bonds, bearing the same or a less rate of interest, may be issued in conformity with this subdivision in lieu thereof; provided, no election shall be necessary to authorize the issuance of such new bonds; and provided, further, that the State Treasurer shall, upon order of the State Board, exchange bonds not matured held by him for the permanent school fund for the new refunding bonds issued by the same incorporation under the provisions of this subdivision, in case the rate of interest on the new bonds is not less than the rate of interest on the bonds for which they are exchanged. [Acts 1905, p. 263.]

Art. 2790. Independent district tax.—If an independent school district votes a maintenance tax, the board of trustees shall thereafter annually levy and cause to be assessed and collected upon the taxable property in the limits of the district for the maintenance of the public free schools of the said district such ad valorem tax as the qualified voters of such district authorized at the election held for that purpose; or if no specific rate has been voted, said board shall levy such a rate each year within that limit as it may deem judicious. Where a maintenance tax has been voted, no election to revoke, modify or increase the same shall be held until two years from the date of the election authorizing such maintenance tax. An election to revoke, modify or increase such maintenance tax, when permissible, may be obtained and held substantially as herein provided for an election to authorize such tax; provided, however, that no change or modification in such maintenance tax shall ever affect any bond tax authorized by such district. [Acts 1921, p. 56.]

Art. 2791. [2861] Independent district assessor.—The district tax assessor and collector shall have the same power and shall perform the same duties with reference to the assessment and collection of taxes for free school purposes that are conferred by law upon the city marshal of incorporated towns or villages, and he shall receive such compensation for his services as the board of trustees may allow, except in cities and towns provided for, not to exceed four per cent of the whole amount of taxes received by him. He shall give bond in double the estimated amount of taxes coming annually into his hands, payable to and to be approved by the president of the board, conditioned for the faithful discharge of his duties, and that he will pay over to the treasurer of the board all funds coming into his hands by virtue of his office as such assessor and collector; provided that in the enforced collection of taxes the board of trustees shall perform the duties which devolve in such cases upon the city council of an incorporated city or town, the president of the board of trustees shall perform the duties which devolve in such cases upon the mayor of an incorporated city or town, and the county attorney of the county in which the independent school district is located shall perform the duties which in such cases devolve upon the city attorney of an incorporated city or town under the provisions of law applicable thereto. It shall be within the discretion of the board of trustees of any independent school district to name an assessor of taxes who shall assess the taxable property within the limits of the independent school district within the time and in the manner provided by existing laws, in so far as they are applicable, and when said assessment has been equalized by a board of equalization appointed by the board of trustees for that purpose, shall prepare the tax rolls of said district and shall duly sign and certify same to the county tax collector as provided for in the succeeding article. The said assessor of taxes shall receive a fee of two per cent of the whole amount of taxes assessed by him as shown by the completed certified tax rolls. [Acts 1905, p. 263; Acts 1923, 2nd C. S., p. 78.]

Art. 2792. [2862] County assessor for independent district.—When a majority of the board of trustees of an independent district prefer to have the taxes of their district assessed and collected by the county assessor and collector, or collected only by the county tax collector, same shall be assessed and collected by said county officers and turned over to the treasurer of the independent school district for which

such taxes have been collected. The property of such districts having their taxes assessed and collected by the county assessor and collector, shall not be assessed at a greater value than that assessed for county and State purposes. If said taxes are assessed by a special assessor of the independent district and are collected only by the county tax collector, the property of said district may be assessed at a greater value than that assessed for State and county purposes and the county tax collector in such cases shall accept the rolls prepared by the special assessor and approved by the board of trustees as provided in the preceding article. When the county assessor and county collector are required to assess and collect the taxes of independent school districts they shall respectively receive one per cent for assessing and collecting same. [Id.]

Art. 2793. [2829–32] Common school tax: election.—The county judge shall appoint a presiding officer for each voting place to hold any such election in common school districts; and shall prepare the ballots for such elections, and the county shall bear the expense of having them printed. All polls for school district elections shall be opened at eight o'clock a. m., and shall be closed at six o'clock p. m. and none of the officers holding such election shall be entitled to compensation therefor. Any person may challenge a voter; but if the challenged party takes an oath that he is a qualified voter of the State and county, and that he is a resident property taxpayer in said district, he shall be entitled to vote. [Acts 1905, p. 263; Acts 1909, p. 17.]

Art. 2794. [2833–35] Change in common school tax.—At any time after the expiration of two years after any common school district has levied a school tax on itself, twenty property taxpaying qualified voters, or a majority of such voters of the district, may have an election held, upon the proper petition to the county judge, to determine whether such tax shall be abrogated, increased or diminished. Said election shall be held and conducted as other elections in said district. If the election be to abrogate or diminish the school tax, the ballots shall have written or printed thereon the words: "For abrogating school tax," or "For diminishing school tax to ..... cents;" and "Against abrogating school tax," or "Against diminishing school tax to ..... cents." If the election be to determine whether the tax shall be increased, the ballots shall have written or printed thereon the words: "For increase of school tax" and "Against increase of school tax." [Id.]

Art. 2795. Levy of common school tax.—The commissioners court, at the time of levying taxes for county purposes, shall also levy upon all taxable property within any common school district the rate of tax so voted if a specific rate has been voted; otherwise said court shall levy such a rate within the limit so voted as has been determined by the board of trustees of said district and the county superintendent and certified to said court by the county superintendent. If such tax has been voted after the levy of county taxes, it shall be levied at any meeting of said court prior to the delivery of the assessment rolls by the assessor. The tax assessor shall assess said tax as other taxes are assessed and make an abstract showing the amount of special taxes assessed against each school district in his county and furnish the same to the county superintendent on or before the first day of September of the year for which such taxes are assessed. The taxes levied upon the real property in said districts shall be a lien thereon and the same shall be sold for unpaid taxes in the manner and at the time of sales for State and county taxes. The tax collector shall collect said taxes as other taxes are collected. The tax assessor shall receive a commission of one-half of one per cent. for assessing such tax and the tax collector a commission of one-half of one per cent. for collecting the same. The tax collector shall pay all such taxes to the county treasurer, and said treasurer shall credit each school district with the amount belonging to it, and pay out the same in accordance with law. [Acts 1921, p. 56.]

Road districts organized and bonds issued under laws held invalid by the United States Supreme Court in Browning v. Hooper, 46 S. Ct. 141, 269 U. S. 396, 70 L. Ed. 330, were validated by Acts 1926, 39th Leg., 1st C. S., p. 33, ch. 17.

Art. 2796. Districts affected.—The provisions of the twelve preceding articles relative to tax and bond elections in common school districts shall also apply to common county line school districts. The provisions hereof relative to tax and bond elections in independent school districts shall apply to any such district incorporated under general or special laws for school purposes only, and shall also apply to all such incorporated districts having each fewer than one hundred and fifty scholastics according to the latest census. [Id.]

Art. 2797. Teachers' homes.—Any common school district or independent school district, whether created by special act of the Legislature or by vote of the people, and any city or town which has assumed control of its public schools, may issue serial coupon bonds in the same manner as provided by law for the issuance of other bonds to build and equip school houses and to purchase sites therefor, for the purpose of purchasing or building a teachers' home and for purchasing land in connection therewith, provided no bonds shall be issued to provide a home in a district employing fewer than three teachers in a single school. [Acts 1923, p. 256.]

Art. 2798. [2875] Tax in cities.—After a city or town has assumed control of the public free schools within its limits, the governing body shall also submit the question to the property taxpayers as to whether or not the additional amount as provided for hereinafter shall be raised by taxation. The provisions of this subdivision relative to the holding of elections in common school and other independent districts shall apply to elections held under the provisions of this law, except as otherwise provided herein. [Acts 1905, p. 263.]

Art. 2799. [2877] Election for tax.—The governing body of any city or town which is a separate and independent school district, whether incorporated under any act of the Congress of the Republic or the Legislature of Texas, or under any act or incorporation whatever, shall have power by ordinance to annually levy and collect ad valorem taxes for the support and maintenance of public free schools and for the erection and equipment of public free school buildings in the city or town. The proposition submitted may be for such a rate of ad valorem tax not exceeding such per cent. as may be voted by a majority vote of all votes cast at any such election. If the proposition is carried, the school tax shall be continued to be annually levied and collected for at least two years, and thereafter, unless it be discontinued at an election held to determine whether the tax shall be continued or discontinued at the request of fifty property taxpayers of such independent district. When the tax is continued no election to discontinue it shall be held for two years; when the tax is discontinued no election to levy a tax shall be held during the same year. [Id.; Acts 1917, p. 380.]

Art. 2800. [2878–9] Governing body to fix rate.—If the vote of the taxpayers is in favor of said tax, then the governing body of a city or town which has assumed exclusive control of the public free schools in its limits shall annually thereafter levy and assess upon the taxable property in the limits of such district, by ordinance duly passed and approved, in accordance with the usual assessment of taxes for municipal purposes, such additional tax, not to exceed the rate voted, as may be necessary for the support and maintenance of the public schools and for the erection and equipment of public school buildings for nine months in the year. If a specific rate of tax has been voted, the governing body shall have no discretion in determining the rate to be levied, but shall levy and assess the same at the rate voted. [Id.]

Art. 2801. [2880] Trustees to fix rate.—In a city or town constituting an independent school district, and where a special tax for school purposes has been voted by the people or provided by special charter; the board of trustees shall determine what amount of said tax, within the limit voted by the people or fixed by special charter, will be necessary for the maintenance and support of the school and for the erection and equipment of public school buildings for each current year; and the governing body of such city or town, upon the requisition of the said board of trustees, shall annually levy and collect said tax, as other taxes are levied and collected; and said tax, when collected, shall be placed at the disposal of the said school board, by paying over monthly to the treasurer of said board the amount so collected, to be used for the maintenance and support of the public free schools and for the erection and equipment of public school buildings in such district. [Id.]

Art. 2802. [2881] Assessment and collection.—In an independent school district constituted of a city or town having a city assessor and collector of taxes, such assessor and collector of taxes shall assess and collect the taxes for school purposes; provided, that in a city or town having an assessor and collector of taxes, the levy of taxes for school purposes shall be based upon the same assessment of property upon which the levy for other city purposes is based. In such a city or town, the assessor and collector of taxes shall receive no other compensation for collecting school taxes than the compensation paid him for assessing and collecting city taxes; and taxes for school purposes in such a city or town shall be assessed and collected as other city taxes are assessed and collected. [Acts 1905, p. 263.]

5. ADDITIONS AND CONSOLIDATIONS

Art. 2803. [2883] Extension of city limits for school purposes.—Any city or town that has taken charge of the public free schools within its limits, or that shall hereafter take charge of the same, may, by ordinance, extend its corporation lines for school purposes only, on a petition signed by a majority of the resident qualified voters of the territory, which is to be taken into said city or town for school purposes only, and recommended by a majority vote of the trustees of the public free schools of said city or town; provided, that the proposed change shall not deprive the scholastic children of the remaining part of the common school district or districts which may be affected by the proposed change, of the opportunity of attendance upon school. The added territory shall bear its pro rata part according to taxable values of any school debt or debts that may be owed or contracted by said city or town to which it shall have been added, and shall not bear any part of any other debt that may be owed or contracted by such town or city. The property of the added territory shall bear its pro rata part of all school taxes, but of no other taxes. The added territory shall not affect the city's debts or business relations in any manner whatever, except for school purposes as provided above. The officers whose duty it is to assess and collect school taxes within the city limits shall also assess and collect school taxes within the territory added for school purposes as herein provided. [Acts 1905, p. 263.]

Art. 2803a. Disannexing territory for school purposes.—Sec. 1. Any city in this State with a population of more than 100,000 located in a county having a population of 210,000 or more at the then preceding United States census, through its governing body, by ordinance, shall have the power to disannex for school purposes only any territory without the municipal limits of such city and which has been annexed by such city for school purposes only, wherever the territory to be disannexed is at some point contiguous to an adjoining school district and where a majority of the persons owning property in such territory petition the city to be disannexed, and where the Board of Trustees of the school district, of which the city is a part, or other governing body of such school district, if there be any other governing body, consents to such disannexation.

Sec. 2. In the event of any territory being disannexed under the terms hereof, the liabilities of the territory disannexed for outstanding obligations shall be governed by the present general laws which are applicable to territory which is changed from one school district to another.

Sec. 3. In the event of the disannexation of any territory under the terms of this Act, such territory shall thereupon ipso facto immediately become a part of the adjoining school district other than that from which it has been disannexed; provided, however, that if it adjoins more than one school district, other than the one from which it has been disannexed, it shall become a part of the school district to be designated by the Commissioners' Court of the County in which it is mainly situated. Upon any city passing a disannexation ordinance, a certified copy of the same shall be furnished by the governing body of such city to the Commissioners' Court of the County in which the principal part of the land disannexed is situated. [Acts 1927, 40th Leg., p. 137, ch. 89.]

Art. 2804. Extending city limits to include district.—Whenever the limits of any incorporated city or town constituting an independent school district are so extended or enlarged as to embrace the whole or any part of any independent or common school district adjacent to such incorporated city or town, that portion of such adjacent district so embraced within the corporate limits of such incorporated city or town shall thereafter become a part of the independent school district constituted by such incorporated city or town.

If within the portion of such district so embraced there should be situated any real property belonging to such district, such city or town may acquire the same upon such terms as may be mutually agreed upon between the governing body of such city or town and the authorities of such district.

This article shall not apply where it shall be determined at an election held within such city or town by majority vote of those voting thereon that the territory or any portion thereof to be so embraced shall not thereby become a part of the independent school district constituted by such city or town, but shall be taken into the city limits for municipal purposes only, and shall remain for school purposes a portion of the adjacent independent or common school district as though said city limits had not been extended. [Acts 1st C. S. 1917, p. 35; Acts 2nd C. S. 1919, p. 101.]

Art. 2805. Municipality assuming indebtedness.—In all cases where a district is embraced within an incorporated city or town, as provided in the preceding article; and in all cases where any town or village has been or may be incorporated for free school purposes only and which shall include within the limits thereof any portion of any common school district which has an outstanding bonded indebtedness, then such city, town or village shall become liable and bound for the payment of such proportion of the bonded indebtedness of such district as the assessed value of the portion thereof so included bears to the entire assessed value of the district from which the same was taken. The assessed values of the districts so included shall be those shown upon the last preceding county tax assessment roll after such districts are so included; such incorporated city, town or village shall pay either directly or through the officers of such district the proportion of the interest and principal of such bonded indebtedness for which it is liable. [Id.]

Art. 2806. Election to consolidate.—On the petition of twenty or a majority of the legally qualified voters of each of several contiguous common school districts praying for the consolidation of such districts for school purposes, the county judge shall issue an order for an election to be held on the same day in each such district. The county judge shall give notice of the date of such elections by publication of the order in some newspaper published in the county for twenty days prior to the date on which such elections are ordered,

or by posting a notice of such elections in each of the districts, or by both such publication and posted notices. The commissioners court shall at its next meeting canvass the returns of such elections, and if the votes cast in each and all districts show a majority in favor of such consolidation, the court shall declare such common school districts consolidated.

Common school districts may in like manner be consolidated with contiguous independent school districts, and the district so created shall be known by the name of the independent school district included therein, and the management of the new district shall be under the existing board of trustees of the independent district, and all the rights and privileges granted to independent districts by the laws of this State shall be given to the consolidated independent districts created under the provisions of this law.

The term "district" as used in this and the succeeding nine articles means "consolidated common school districts," or "consolidated independent school district." [Acts 2nd C. S. 1919, p. 167; Acts 3rd C. S. 1923, p. 169.]

Art. 2807. Consolidation: Outstanding bonds.—If at the time of such proposed consolidation there are outstanding bonds of any of such districts, then at an election held for that purpose on some future day, there shall be, or at the election held for the purposes of consolidation, there may be, submitted to the qualified tax paying voters of such proposed consolidated district the question as to whether or not the said consolidated district shall assume and pay off said outstanding bonds and whether or not a tax shall be levied therefor. If said election on the question of assuming said outstanding bonds is held on the day upon which the election on the question of consolidation is held, there shall be separate notices, ballots, and ballot boxes and tally sheets for the two separate elections. If a majority of said voters should vote at either of said elections to assume and pay off said bonded indebtedness, then said bonded indebtedness shall become valid and subsisting obligations of said consolidated district, and the proper officers thereof shall annually thereafter levy sufficient taxes to pay the interest thereon as it accrues and to create a sinking fund which in addition to the sinking funds already accumulated in the original bonded district will pay off and retire the said outstanding bonds when they shall become due. [Acts 1919, 2nd C. S., p. 167.]

Art. 2808. Consolidation: Trustees.—The board of county school trustees at its next meeting after such consolidation of school districts is declared, shall appoint a board of seven trustees for the consolidated district. No person shall be trustee who cannot read and write the English language understandingly, and who has not been a resident of this State one year, and of the district six months, prior to his appointment or election. The terms of office of three of the trustees so appointed shall expire on the first day of May next following their appointment, and the terms of office of the other four trustees shall expire on the first day of May of the succeeding year, as those so appointed shall determine by lot. Each year thereafter alternately three trustees and four trustees shall be elected by the qualified voters of the district on the first Saturday of April and trustees so elected shall enter upon the discharge of their duties on the first day of May next following and serve for a term of two years thereafter. District trustees shall qualify by taking the official oath which shall be filed with the county superintendent of the county wherein the district is situated. The board of trustees after being qualified shall immediately organize by electing one of their number president and another secretary, a report of which organization shall be filed with the county superintendent. The board of county school trustees shall fill any vacancy by appointment until the next regular election for district trustees. The board of trustees of the district shall appoint three qualified voters of the district to hold said election and make returns thereof in like manner as provided by law for holding elections for trustees in common school districts, except that the persons holding said election shall each receive two dollars a day for such services. [Id.]

Art. 2809. Consolidation: Teachers.—The board of trustees so elected shall employ a superintendent for the district, who shall be elected for one year or for two years as the trustees may determine, and who, in addition to his duties as superintendent, shall be a teacher in one of the elementary schools or the high school of the district. Acting in collaboration with the district superintendent, the board of trustees shall employ teachers for the several elementary schools of the district, or for the departments of the high school, which teachers shall be elected for one year or two years as the trustees decide, and they shall serve under the direction and supervision of the district superintendent. Contracts between the trustees and the district superintendent and teachers shall be in writing and subject to the approval of the county superintendent of the county wherein such district is situated. [Id.]

Art. 2810. Consolidation: Superintendent.—The district superintendent shall visit personally and inspect the several schools of the district and advise with the teachers therein, and he shall be responsible to the district trustees and to the county superintendent for the proper conduct of the school work and the management of the schools of the district. He shall spend at least one-fourth of his time in visiting and inspecting the schools of the district, and he shall make recommendations from time to time to the district trustees and to the county superintendent for any changes which in his judgment are necessary for the proper management of the schools of the district. He shall keep such records and make such reports as are required of him by the district trustees and the county superintendent, and the county superintendent shall refuse to approve vouchers drawn against the school funds of the district until such reports are made by the district superintendent. [Id.]

Art. 2811. Consolidation: Elementary schools. The district trustees shall recognize or establish elementary schools within the bounds of the district as the need for such elementary schools shall appear. They shall, in so far as is practicable, provide uniform school buildings and equipment for the several elementary schools so recognized or established, and they shall arrange an annual wage schedule for the teachers employed in such elementary schools as nearly uniform as is possible. The instruction in the elementary schools of the district shall embrace not more than the first seven grades or years of work as outlined in the course of study issued by the State Superintendent and approved by the county superintendent. [Id.]

Art. 2812. Consolidation: High schools.—Said trustees may recognize or establish not more than one high school for white children and one high school for colored children within the limits of the district, which high schools shall be located with reference to the convenience of the majority of the high school pupils of either race. The instruction in such high schools may embrace any or all of the four years or grades of work above the seventh grade, as outlined by the State Superintendent and approved by the county board of trustees. Such high school may be located and conducted in connection with some of the elementary schools of the district as said trustees may decide. [Id.]

Art. 2813. Consolidation: Free transportation.—When in their judgment it is deemed necessary or expedient, said trustees may provide for the transportation of pupils to and from any elementary school or high school of the district whereupon such pupils may be in attendance, and trustees are hereby empowered to employ transportation vehicles and drivers for such service, paying the cost thereof out of the local maintenance fund of the district or out of such other funds as may be appropriated for this purpose. [Id.]

Art. 2814. Consolidation: Laws applicable.—Taxing and bonding powers as are provided for elsewhere in the laws of this State are hereby guaranteed

to such consolidated districts, and rural school aid shall be extended to any or all of the schools of the districts so consolidating which comply with the laws and rulings governing the distribution of State aid to rural schools and independent districts. Appeals from such districts shall be made to the county superintendent and county board. [Id.]

Art. 2815. Dissolution.—Such consolidated districts may in the same manner provided for their consolidation, be dissolved and the districts included therein restored to their original status, except that it shall not be necessary to provide polling places in each district. Each such district when so restored shall assume and be liable for its pro rata part of the outstanding financial obligations of the consolidated district, such pro rata part to be based on the relation the total assessed valuation of all property in the district bears to the total assessed valuation of property in the consolidated district, as shown by the assessment rolls of the district for the current year. No election for the dissolution of said consolidated districts shall be held until three years have elapsed after the date of the election at which such districts were consolidated. [Id.]

6. DISTRICTS IN LARGE COUNTIES

Art. 2815a. Rearrangement of districts.—It shall be the duty of the County Board of Trustees of the public schools in every county in this State, having 210,000 population or more, according to the last preceding federal census, as soon as may be after this Act shall take effect, to re-arrange and re-subdivide all the territory of their respective counties into such number of convenient school districts as it shall deem advisable and designate them by number.

Such re-arrangement and re-subdivision shall be accomplished by constituting such existing Independent school districts as the Board shall deem advisable, together with such territory adjacent to such Independent school districts as it may deem advisable to add thereto, the new districts into which such county shall be subdivided; and such existing Independent school districts, so enlarged shall continue to have and exercise all the powers and duties now provided by law and shall continue to be governed by existing law and by this Act.

The words, "School District," as herein used, shall refer to Common school districts or to Independent school districts, however created.

The County Board of Trustees shall have the power, from time to time, to alter or amend the re-arrangement and the re-subdivision of school districts herein provided for, and in making such original re-arrangement and re-subdivision, and in amending or altering same may increase or reduce the area of any school district; create additional school districts; consolidate two or more adjacent districts; revise or re-arrange the boundaries of any school district; attach territory thereto or detach territory therefrom, if necessary for the best interests of the school children, provided that the territory of no Independent school district having more than five hundred (500) scholastics shall be changed without the consent of its Board of Trustees, and provided further that said Board shall not subtract from the territory of any school district in such a way as to leave any portion thereof remaining in such district with insufficient taxable wealth to raise revenue sufficient to pay interest and create a sinking fund for outstanding bonds; and provided that no portion of the territory of the county shall be left in a school district, after such subdivision shall have been made, with insufficient taxable wealth to raise revenue sufficient to provide all the scholastics residing within such district with proper and convenient school facilities, both in the elementary and high school grades.

It shall be the further duty of the county Board of School Trustees at their first meeting after the State apportionment of available school funds has been made or as soon thereafter as practicable to apportion the available school funds of the county to the respective school districts within their jurisdiction on a per capita basis as shown by the last scholastic census, provided that the county Board of School Trustees shall be first required to set aside the entire available funds arising from the county permanent school funds, and to set aside not less than five per cent or not more than ten per cent of all other available school funds of the county derived from all other sources including the state per capita apportionment, the said sums so set aside to constitute a county equalization fund that shall not be apportioned on a per capita basis, but shall be expended by the said county Board of School Trustees as a fund for equalizing as far as possible educational opportunities in the county and giving special aid to small and weak schools and to extend the school privileges of such children as have no other adequate provision for schooling in the districts in which they live, and to defray the costs of the county school administration. Provided that no part of such county equalization fund shall be expended in any school district in which there is not levied and collected taxes for school purposes amounting to one dollar ($1.00) on the one hundred ($100.00) dollars of taxable property. [Acts 1927, 40th Leg., p. 124, ch. 82, § 1.]

Section 11 of Acts 1927, 40th Leg., p. 124, ch. 82, repeals all conflicting laws and parts of laws.

Art. 2815b. Maps of districts.—Before undertaking to create, revise or re-arrange the boundaries or to change the territory in any school district, the County Board of Trustees shall cause a plan and a map to be made showing the boundaries of all districts affected and of the new district, if any to be created, with the area, taxable wealth and scholastic population of such district so affected or to be created; and notice shall be given for ten days by posting advertisements thereof in three public places within the territory embraced in such new district before such action is taken. All interested persons shall be given full opportunity to be heard. [Acts 1927, 40th Leg., p. 124, ch. 82, § 2.]

Art. 2815c. Adjustment of bonded indebtedness.—Sec. 3. When the boundaries of any school district having an outstanding bonded indebtedness have been changed or its territory divided or two or more such districts consolidated, it shall be the duty of the County Board of Trustees to make such an adjustment of such indebtedness and district properties between the districts affected and between the territory divided, detached or added, as may be just and equitable, taking into consideration the value of the school properties and the taxable wealth of the districts affected and the territory so divided, detached or added, as the case may be. And when said Board has arrived at a satisfactory basis of such an adjustment, it shall have the power to make such orders in relation thereto as shall be conclusive and binding upon the districts and the territory thereby affected.

Sec. 4. To carry into effect orders adjusting bonded indebtedness when changes are made in school districts, the County Board of Trustees shall have the power to order the trustees of the districts affected, to order an election for the issuing of such refunding bonds as may be necessary to carry out the purpose of such order; and, in such case, it shall be the duty of the district trustees to order such election, cause the same to be held, and if the proposition is carried, to issue the bonds voted. Such bonds shall be of the same denomination and carry the same interest rate and mature at the same time as the outstanding bonds owing by the district issuing them; and when so issued, shall, if possible, be exchanged for the outstanding bonds for which the district issuing them shall still be liable, according to the order adjusting such indebtedness; and in cases where such an exchange can not be made, the new bonds of the district, to the amount of the old bonds for which it is still liable, and for which no exchange can be made, shall be deposited in the County Treasury to the account of such district. Thereafter taxes shall be levied and assessed only for the payment of the interest, sinking fund and principal of the new bonds so issued; and

the funds arising from such taxation shall be used to discharge the principal and interest of such new bonds as have been issued and exchanged, and such old bonds as have not been exchanged. When taxes are collected applicable to new bonds not exchanged and the proceeds applied to payment on old bonds not exchanged, the corresponding new bonds in the County Treasury shall be credited with such payment and retired as the old unexchanged bonds are retired.

Sec. 5. In cases where changes are made in districts having outstanding bonded indebtedness and where the necessary refunding bonds are voted down or where the County Board of Trustees are otherwise unable to arrange an adjustment or settlement of such bonded indebtedness, it shall be the duty of the trustees to certify the fact and the territories affected by such changes, to the Commissioners' Court and thereupon it shall become the duty of the Commissioners' Court to thereafter annually levy and cause to be assessed and collected from the tax payers of such districts as they existed before the changes were made, the tax necessary to pay the interest, the sinking fund and discharge the principal of such indebtedness as it matures. And it shall be the duty of each independent school district so affected, to cause all funds in its hands, whether sinking funds or otherwise, which have been collected on account of such bonded indebtedness to be transferred to the County Treasurer of the county in which such district is situated and such district shall thereafter cease to levy and collect any tax on account of such bonds; and it shall be the duty of the County Treasurer to keep the funds so transferred and those arising from taxation, in separate accounts and apply the same only to the discharge of such bonded indebtedness and the interest thereon, as the same matures.

Sec. 6. Nothing in the provisions of this Act [Arts. 2815a–2815f] shall prevent the County Board of Trustees from arranging any other method for the adjustment and settlement of outstanding bonded indebtedness of school districts in which changes are made, but they shall have full power and authority to make any legal and equitable adjustment and settlement in such cases that can be effected. [Acts 1927, 40th Leg., p. 124, ch. 82.]

Art. 2815d. Condemnation of lands.—Said trustees shall have the power to condemn land for free school purposes and may institute, maintain and prosecute suits for that purpose following the procedure applicable to condemnation of lands by railways or any other method authorized by law. [Acts 1927, 40th Leg., p. 124, ch. 82, § 7.]

Art. 2815e. Free transportation.—It shall be the duty of any school district into which the county shall be subdivided under this Act [Arts. 2815a–2815g] to provide adequate and convenient means of transportation to and from the schools of such school children in any district as it may be reasonably necessary to make such provision for, and to establish such routes for that purpose as the Board of Trustees of such district may deem advisable and to alter and change the same from time to time and the expense of such transportation shall be paid by the district in which such children may reside. [Acts 1927, 40th Leg., p. 124, ch. 82, § 8.]

Art. 2815f. Appeals.—In all cases where changes have been made in the territory of existing school districts, any party aggrieved shall have the right to appeal to a District Court of the county in which such school district is located and the decision of such Court on such appeal shall be final; provided notice of such appeal is given to the County Board of Trustees within ten (10) days after the passage of any such order making such changes; and provided further that such appeal to the District Court shall be perfected within thirty (30) days from date of such order. [Acts 1927, 40th Leg., p. 124, ch. 82, § 9.]

Art. 2815g. Trustees.—For each county subject to the provisions of this Act [Arts. 2815a–2815g] the Board of County School Trustees shall consist of seven members, three of whom shall be elected from the county at large by the qualified voters of the county, and one from each commissioner's precinct by the qualified voters of such precinct, all of whom shall be elected on the first Saturday in April after this Act shall take effect and every two years thereafter for a term of two years. All vacancies on such Board shall be filled by the remaining Trustees. Such Board of County School Trustees shall have the powers and duties and possess the qualifications provided by law with respect to County School Trustees generally in this State, in addition to those provided by this Act.

The members of the County Board of Trustees of the Public Schools of any County affected by this Act shall receive five ($5.00) dollars per day for their services in complying with the duties imposed upon them by this Act, to be allowed by the Commissioners' Court and paid out of the General Fund of the County upon accounts to be approved by the Chairman of said County Board of Trustees; and the expense of making maps and plats provided for by this Act and all other expenses incident to carrying out its provisions shall be similarly allowed and paid. [Acts 1927, 40th Leg., p. 124, ch. 82, § 10.]

CHAPTER FOURTEEN

SCHOLASTIC CENSUS

Art.
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2817. Duty of census trustee.
2818. County line districts.
2819. Duty of county superintendent.
2820. Duty of State Superintendent.
2821. Compensation.
2822. In independent districts.

Article 2816. [2774] Taking census.—The county superintendent and the board of trustees of the independent school districts, on the first day of each January or as soon as practicable thereafter, shall appoint one of the trustees of each school district, or some other qualified person, to take the scholastic census, who shall be known as the census trustee of the district. The census trustee between the first day of March and the first day of April after his appointment, shall take a census of all the children that will be over seven and under eighteen years of age on the first day of the following September, and who are residents of the school district on said first day of April. In taking the said census he shall visit each home, residence, habitation and place of abode, and shall by actual observation and interrogation, enumerate the children thereof in the following manner: He shall use for each parent, or guardian or person having control of any such children, a prescribed form showing the name, color and nationality of the person rendering such children, the name and number of the school district in which the children reside, and the name, sex and date of birth of each such child of which he is a parent or guardian, or of which he has control. The census trustee shall require such forms to be subscribed and sworn to by the person rendering the children, and he is authorized to administer oaths for this purpose. When the census trustee visits any home or house or place of abode of a family, and fails to find either the parent or any person having legal control, he shall leave the prescribed census blank for the use of parents at such home or place of abode, with a note to the parent or guardian having legal control of such child or children, requiring that the form be filled out, signed and sworn to, and that the blank, when so filled out, shall be delivered by the parent or person having legal control of the child or children to the census trustee. [Acts 1905, p. 263; Acts 1915, p. 183.]

Art. 2817. [2775] Duty of census trustee.—Only children of the same family shall be listed on one form; and, if one person has under his control children of different family name, he shall use a separate form for each family name. The census trustee shall arrange the forms for white and colored children separately, in alphabetical order, according to the family name of the children reported thereon. He shall also make, on a prescribed form, separate census rolls

for the white and colored children of his district, showing the name, age, sex and color of each child, and the name of the parent, guardian or person having control of said child, by whom it is reported. He shall also make a summary of his rolls showing the number of such children of each race of scholastic age. He shall make oath to all his rolls and summaries, and to the faithful and accurate discharge of his duties, and deliver said rolls, with the forms arranged in alphabetical order, to the county superintendent on or before June first next after his appointment. [Acts 1905, p. 263.]

Art. 2818. County line districts.—The scholastic census of all common county line school districts shall be taken under the supervision of the authorities of the county having control of such school district and reported by such county to the State Department of Education as provided by law governing the taking of the scholastic census of the State, except that the census trustee taking the census of a common county line school district shall make a separate roll of the scholastic population contained in the territory of each county in such district which shall be separate and distinct from the general census roll of such district and be returned together with the general census roll, as provided by law, to be made by the census trustees. The county superintendent of the county having control of the schools of such district shall make up a duplicate of the copy containing separately the scholastic population of each county having territory in such district and send such duplicate to the county superintendent and county treasurer of each such county to be by them used for the purpose of apportioning the county available school funds. If such district has voted a special tax for the purpose of school maintenance or the payment of interest and sinking fund on school bonds, the county superintendent of each of said counties shall, from time to time, as such taxes have been collected by his county, draw his warrant against the county treasurer or county depository of such county for such amount of available county school funds or special tax, or either or both, as the case may be, as shall be in the hands of the treasurer or depository in favor of the county treasurer of the county having control and management of the schools of such district, and upon the presentation of such warrant, the treasurer or depository against whom the warrant was drawn shall pay over to the treasurer named as depository of the county having control of the schools of the district such amount of money as is called for in such warrant. The said warrant shall be drawn in favor of the school district embracing the territory in the counties involved and in favor of the county treasurer or depository of the county having control of the schools of the districts and be credited to such school district, and the funds of such school districts shall be used as provided by law for the use of the different kinds of school funds. [Acts 1911, p. 201.]

Art. 2819. [2776] Duty of county superintendent.—The rolls and summaries of the census trustee shall be preserved by the county superintendent in his office for three years after they are filed. The county superintendent shall make, on prescribed forms, separate consolidated rolls for the white and colored children of his county, showing the name, age and sex of each, together with the number of the district in which it lives, and the name of the parent or guardian, arranging the names of the children according to the alphabetical order of their family names. In making these consolidated rolls, he shall scrutinize carefully the work of the census trustees, and shall have power to summon witnesses, take affidavits and correct any errors he may find in any census trustee's roll, and he shall carefully exclude all duplicates. If he deems it necessary he may reject any roll, and appoint another census trustee to take the census of the district, in which case he shall not approve the warrant to pay the census trustee whose work has been rejected. When the county superintendent has prepared his consolidated census rolls, one for each race, he shall make a duplicate of each, and he shall make affidavit to the correctness of both originals and duplicates. The originals he shall, on or before July first, forward to the State Superintendent, and the duplicates shall be filed with the county clerk and become permanent records of his office. The county superintendent shall forward with his consolidated rolls an abstract on the prescribed form, under oath, showing the number of children of each race, of the different years of school age, and the total number of children of each race, and the total of both races in his county. In making his consolidated rolls and in investigating the work of any census trustee, the county superintendent shall refer to the forms and rolls of previous years, when necessary, and they shall be carefully preserved for this purpose. [Id.]

Art. 2820. [2777] Duty of State Superintendent.—The State Superintendent shall have authority to investigate the census of any county, to correct errors, and in extreme cases when he believes gross errors have occurred or that fraud has been practiced, he may, with the approval of the State Board, reject any county roll and require the census of the county to be retaken. [Acts 1905, p. 287.]

Art. 2821. [2778] Compensation.—For their services, the census trustees shall receive four cents per capita of the children of scholastic age taken by them in county districts and three cents per capita in towns of twenty-five hundred and not more than five thousand inhabitants, and two cents per capita in cities of more than five thousand inhabitants. The county superintendent shall receive one cent per capita of the scholastic population reported by him. These amounts shall not be paid until the census of the county is accepted by the State Superintendent, and shall be forfeited as follows: The trustee's compensation, if his work is rejected by the county superintendent and the census of his district ordered retaken; and both the county superintendent's and the trustee's compensation, if the census of the county is rejected and ordered by the State Superintendent and the State Board to be retaken. [Id.]

Art. 2822. [2779] In independent districts.—The provisions of this chapter shall apply to the taking of the scholastic census in cities and towns constituting independent districts, except as specially provided herein, to wit: The census trustee shall be appointed by the president of the board of trustees, and a census trustee may be appointed for each ward or school sub-district, at the discretion of the president of the school board making such appointment. The forms for the parent and the rolls shall show the street and house number or location of the house or place in which each child resides. [Id.]

CHAPTER FIFTEEN

SCHOOL FUNDS

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Article 2823. [2725] What shall constitute school fund.—Besides other available school funds provided by law, one-fourth of all occupation taxes and one dollar poll tax levied and collected for the use of public free schools, exclusive of the delinquencies and cost of collections; the interest arising from any bonds or funds belonging to the permanent school fund, and all the interest derivable from the proceeds of the sale of land heretofore set apart for the permanent school fund which may come into the State Treas-

ury; all moneys arising from the lease of school lands, and such an amount of State tax not to exceed thirty-five cents on the one hundred dollars valuation of property, as may be from time to time levied by the Legislature, shall constitute the available school fund, which fund shall be apportioned annually to the several counties of this State, according to the scholastic population of each, for the support and maintenance of the public free schools. [Acts 1905, p. 263.]

Art. 2824. [5402] [4271] School lands.—Each county may sell or dispose of the lands granted to it for educational purposes in such manner as may be provided by the commissioners court of such county, and the proceeds of any such sale shall be invested in bonds of the United States, the State of Texas, the bonds of the counties of the State, and the independent or common school districts, road precinct, drainage, irrigation, navigation and levee districts in this State, and the bonds of incorporated cities and towns, and held by such county alone as a trust for the benefit of public free schools therein, only the interest thereon to be used and expended annually. [Acts 1889, p. 104; Acts 1915, p. 210.]

Art. 2825. [2726] Income from lease.—Besides other available school funds provided by law, the proceeds of any leasing or renting of lands, heretofore granted by the State of Texas to the several counties thereof for educational purposes, shall be appropriated by the commissioners courts of said counties in the same manner as is provided by law for the appropriation of the interest on bonds purchased with the proceeds of the sale of such lands; and the proceeds arising from the sale of timber on said lands, or any part thereof, shall be invested in like manner as the Constitution and law requires of proceeds of sales of such lands; and it shall be unlawful for the commissioners court of any county to apply said proceeds, or any part thereof, to any other purpose, or to loan the same, except as above required. [Acts 1905, p. 263.]

Art. 2826. [2271] [1550] [1523] Duty of commissioners court.—It shall be the duty of the commissioners court to provide for the protection, preservation and disposition of all lands heretofore granted, or that may hereafter be granted to the county for education or schools. [Const., art. 7, sec. 6.]

Art. 2827. [2772] Authorized expenditures.—The public free school funds shall not be expended except for the following purposes:

1. The State and county available funds shall be used exclusively for the payment of teachers' and superintendents' salaries, fees for taking the scholastic census, and interest on money borrowed on short time to pay salaries of teachers and superintendents, when these salaries become due before the school funds for the current year become available; provided that no loans for the purpose of payment of teachers shall be paid out of funds other than those for the then current year.

2. Local school funds from district taxes, tuition fees of pupils not entitled to free tuition and other local sources may be used for the purposes enumerated for State and county funds and for purchasing appliances and supplies, for the payment of insurance premiums, janitors and other employes, for buying school sites, buying, building and repairing and renting school houses, and for other purposes necessary in the conduct of the public schools to be determined by the Board of Trustees, the accounts and vouchers for county districts to be approved by the county superintendent; provided, that when the State available school fund in any city or district is sufficient to maintain the schools thereof in any year for at least eight months, and leave a surplus, such surplus may be expended for the purposes mentioned herein. [Acts 1905, p. 263; Acts 1919, p. 189.]

Art. 2828. [2767] County depository.—The terms "county treasurer" and "county treasury," as used in all provisions of law relating to school funds, shall be construed to mean the county depository. The commissioners court shall file with the State Department of Education a copy of the bond of said depository to cover school funds. No commission shall be paid for receiving and disbursing school funds. [Acts 1905, p. 263; Acts 1909, p. 17.]

Art. 2829. [2768] Bond.—Within twenty days after the receipt of a certificate of its selection, the county depository shall execute a good and sufficient bond, payable to the county judge, in an amount equal to the probable amount of available school fund and of the permanent county fund, which may come into his hands, to be estimated by the county superintendent, or commissioners court in a county having no superintendent, and shall be conditioned that the depository will faithfully perform its duties under this title, and safely keep and faithfully disburse the school fund according to law, and pay such warrants as may be drawn on said fund by competent authority. [Id.]

Art. 2830. [2769] To keep accounts.—The county treasurer, upon receiving notice from the State Superintendent of the amount apportioned to the county, shall report the same to the county superintendent, who shall immediately apportion the same to the several districts, according to the scholastic census; and the county superintendent shall immediately notify the county treasurer of the amount apportioned to each district. The county treasurer shall keep a separate account with each district, showing the amount apportioned, according to the certificate of apportionment, and the amount paid out to each school and district. In no case shall the county treasurer pay out any part of the school fund without the approval of the county superintendent. [Id.]

Art. 2831. [2770] Balances.—All balances of the general school fund not appropriated for the current year shall be carried over by the treasurer as part of the general school fund for the county for the succeeding year, and unexpired [unexpended] balances to the credit of any district shall be carried over for the benefit of such school district. If any such balance shall exceed five dollars per capita, according to the last scholastic census, then such excess shall be reapportioned to the school districts of the county. [Id.]

Art. 2832. [2771] Districts of more than 150 scholastics.—In an independent district of more than 150 scholastics, whether it be a city which has assumed control of the schools within its limits or a corporation for school purposes only, the treasurer of the school fund shall be that person or corporation who offers satisfactory bond and the best bid of interest on the average daily balances for the privilege of acting as such treasurer. The treasurer when thus selected shall serve for a term of two years and until his successor shall have been duly selected and qualified, and he shall be required to give bond in an amount equal to the estimated amount of the total receipts coming annually into his hands. Said bond shall be made payable to the president of the board and his successors in office, conditioned for the faithful discharge of the treasurers' duties and the payment of the funds received by him upon the draft of the president of the school board drawn upon order duly entered of the board of trustees. Said bond shall be further conditioned that the treasurer shall safely keep and faithfully disburse all funds coming into his hands as treasurer, and shall faithfully pay over to his successor all balances remaining in his hands. It shall be approved by the school board and the State Department of Education shall be notified of the treasurer by the president of the school board filing a copy of said bond in said department. [Acts 1925, p. 328.] [39th Leg., ch. 127, § 1.]

Art. 2833. [2773] District treasurer's report.—Each treasurer receiving or having control of any school fund of an independent school district shall keep a full and separate itemized account with each of the different classes of school funds coming into his hands, and shall on or before the first day of October of each year, file with the board of trustees of such independent school district and with the State Superintendent an itemized report of the receipts and dis-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

bursements of the school funds for the preceding school year ending August 31st, which report shall be on a form prescribed and furnished by the Department of Education. The board of trustees shall notify the State Superintendent of their approval of said report within thirty days after receipt of same, should same be approved, and the State Superintendent shall notify the board of trustees of objections or of recommendations concerning same should he desire to make any. All vouchers showing items of the report shall be filed with the board of trustees and the State Superintendent may demand same when passing on said report or for the purpose of investigating same. [Acts 1905, p. 275; Acts 1919, p. 276.]

Art. 2834. [2744] Comptroller shall report to State Board.—The Comptroller shall keep a separate account of the available State school fund arising from every source, and shall, on or before the meeting of the State Board on or before the first day of August of each year, make an estimate of the amount of available school fund to be received from every source, and to be available for the succeeding scholastic year, and report the same to said board. [Acts 1909, 2nd C. S. p. 432.]

Art. 2835. [2745] He shall draw warrants.—The Comptroller shall, on the first working day of each month, certify to the State Superintendent the total amount of money collected from every source during the preceding month and on hand to the credit of the available school fund, and shall draw his warrant on the State Treasurer, and in favor of the treasurer of the available school fund of each county, city or town, and each school district having control of its public schools, for the amount stated in, and upon receipt of, the certificate therefor issued to him on the first day of each month by the State Superintendent and shall register such warrants and transmit them to the State Treasurer. [Id.]

Art. 2836. [2746] He shall report to Legislature.—The Comptroller shall, on or before the meeting of each regular session of the Legislature, report to the Legislature an estimate of the amount of the available school fund to be received for the succeeding two years, and the several sources from which the same accrues, and which may be subject to appropriation for the establishment and support of public schools. [Acts 1905, p. 263.]

Art. 2837. [2747–9] Duty of Treasurer.—The State Treasurer shall receive and hold as a special deposit all money belonging to the available school fund, and keep an account of the same. He shall register every warrant drawn by the Comptroller on such fund in favor of the treasurer of the available school fund of any county, city, town or school district having control of its public schools, and transmit such warrants to the State Superintendent. On presentation to him for payment properly endorsed, he shall pay such warrants each in the order in which presented. He shall not, under any circumstances, use any portion of the permanent or available school funds in payment of any warrant drawn against any other fund whatever. [Acts 1909, 2nd C. S. p. 432; Acts 1905, p. 263.]

Art. 2838. [2748] Shall report condition of funds.—The State Treasurer shall, thirty days before each regular session of the Legislature, and ten days before any special session, at which any legislation can be had respecting the public schools, report to the Governor the condition of the permanent and available school funds, the amount of each, and the manner of its disbursement; and he shall also make any additional report required by the Board of Education. [Acts 1905, p. 263.]

CHAPTER SIXTEEN

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1. TEXTBOOK COMMISSION

Article 2839. The commission.—A permanent Textbook Commission of the State of Texas is hereby authorized and created, to be styled the "Texas State Textbook Commission" which shall be composed of seven members appointed by the Governor with the advice and consent of the Senate, together with the State Superintendent of Public Instruction and the Governor of the State, who shall be ex-officio members of the same. In appointing members of the Textbook Commission, the Governor shall select as such members citizens of recognized ability from the various business and professional activities and teachers of recognized scholarship and professional standing, and the teacher members of said board shall have been actively and continuously engaged in teaching or supervising in the public schools of this State for the past five years, and shall have State Permanent Primary, or State Permanent, State Permanent High School or State Permanent Elementary certificates. One member of the said Board shall have had at least three years' experience in teaching in the schools of Texas below the High school within five years immediately preceding the appointment, and the Commission shall represent as nearly as possible every phase of public school work. No two appointed members of the said Commission shall live in the same county. In the event any member, after appointment, shall move his place of abode into the same county as another member he shall thereby automatically vacate his position as a member of the said Commission.

The term of office of the appointive members shall extend to the end of the term of the officer making the appointment, unless sooner terminated by operation of the provisions of this law.

No person who has acted as a textbook agent for any author or textbook publishing houses, or has been an author or an associate author or directly or indirectly interested in the publication of any book, or who owns stock in any publishing house, or in any school book depository, shall be eligible to appointment on the Textbook Commission. Any vacancy occurring on said Commission from any cause shall be filled by

appointment of the Governor as in the original appointments.

Appointments shall be made by the Governor during the regular session of the Legislature, and immediately thereafter the members shall be called together in special session to adopt such rules, regulations and by-laws to govern the action of the Commission as it may deem proper, not inconsistent with the provisions of this law. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 1.]

Art. 2840. Affidavit.—Each member of the Commission before entering upon his duties as a member of the Commission, shall make out and file with the Secretary of State an affidavit that he is not and has not been directly or indirectly interested in or connected with or employed by any publishing house, person, firm or corporation submitting any books for adoption, or in any books offered for adoption, or in any books adopted, nor is he connected in business with any person or agent representing such house, person, firm or corporation to whom any contract may be awarded by said Commission during the term and duration of said contract, nor does he own stock in any school book depository, and that he is not connected in any business with any person or agent representing such house, firm or corporation, and that he will not become so interested and will not accept any position as agent or representative of any person, firm or corporation who may submit any books for adoption or to whom any contract may be awarded by said Commission during the term and duration of said contract, and that he is possessed of the qualifications required in Article 2839 as amended, and is under no disqualification mentioned therein. In the event any member of said Commission becomes interested in any publishing company, as an agent, representative, or author, such publishing company shall be barred from submitting bids until after the contracts made by the Commission, of which said agent, representative, or author was a member, have expired. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 2.]

Art. 2841. Chairman—secretary—annual meeting.—The Governor shall be chairman of the commission and the State Superintendent of Public Instruction shall be its secretary, who shall keep a complete record of all proceedings of the Commission. The commission shall meet annually on the second Monday in October and at such other times and places as may be designated by the chairman for the purpose of considering and extending contracts, the making of new adoptions, and the keeping and operation of a complete system of uniform textbooks for the public free schools of this State in accordance with the provisions of this Act. The commission shall keep a minute book for its proceedings and on every action of the commission an "aye" and "no" vote of the members thereof shall be required, and such minute book shall be kept in the office of the Superintendent of Public Instruction, and shall be open to public inspection, and no adopted text shall be superseded or substituted or new text adopted except by the affirmative vote of two-thirds of the members of the commission.

Art. 2842. Continuing or discontinuing textbooks.—It shall be the duty of the Commission to meet annually on the second Monday in October, and at such other times as it may be called together by the Chairman, for the purpose of considering the advisability of continuing or discontinuing, at the expiration of each current contract, any or all of the State adopted textbooks in use in the public schools of Texas, and of making such adoptions as are provided for in Section 5 of this Act. Before making any change in the adopted series, however, the Commission shall, upon thorough investigation, satisfy itself that a change is necessary for the best interests of the school children and that such change is consistent with financial economy. Provided that unless new texts better suited to the requirements of the schools and at a price and quality satisfactory to the Commission are offered to supplant existing texts, then the Commission shall renew the existing contracts for such a period as may be deemed advisable not to exceed a period of six years. Provided, that wherever the contractor supplying any book agrees to renew the contract on the same terms for a period of not less than two years or more than six, the members of the Commission shall give preference to the offer of the Company holding the contract if they shall thereby secure as good or better books at a lower price than by making a different contract; and it shall always be lawful for them to renew a contract on such terms as in their judgment may be for the best interests of the State. Provided further that before the Commission shall determine to displace any book upon which the contract is expiring, it shall, before making a new contract for a new text, ascertain through the office of the State Superintendent of Public Instruction, the number of usable books of the kind on which the contract has, or is about to expire, there are on hand, and also the estimated number of such books that would be required to supply the needs of the schools of the State using said books for the first, second and third years immediately succeeding the expiration of the contract on such books. The Commission shall then secure from the publisher of such book a bid or offer for the furnishing of such textbooks to meet the actual necessities of the schools of the State during the said first, second, and or third year period, allowing the State, however, a margin of twenty-five per cent over, or twenty-five per cent under, the estimated number to be required. If, upon consideration of the cost of the books required to supply such needs for such a period, it appears to the Commission that it will be economical to do so, it may make a contract with such publisher to furnish such books during said first, second and, or third year period with a view to using up the entire supply of such books on hand instead of wasting the same at the expiration of the original contract. At the expiration of said period, the commission shall then make a contract for a textbook on the subject. No contract shall ever be made, binding the State to buy a specific number or a specific quantity of textbooks, but all contracts shall be for such books as the State may need and the purpose of furnishing an estimated number of the books needed, as above provided, shall have as its purpose to give the textbook publishers only an approximation as to the possible quantity of books which the State may need. The contracts for the total number of different texts adopted shall be so arranged, in adoptions taking place after the passage of this Act, that contracts on not more than one-sixth of the total number of different basal subjects shall expire in any one year, or shall be changed in any one year. The series of copy books and the series of drawing books shall each be considered as one book. If no text or texts on any prescribed subject or subjects are submitted by any particular publisher or publishers that meet the requirements of the schools, as may be determined by the Commission, then it shall be the duty of the Chairman of the Commission, to instruct the Secretary of the Commission to investigate the book markets for the purpose of securing bids with a view of providing at most reasonable price or prices possible, the best available texts on any and all subjects that are to be adopted by the Commission for the schools of Texas. At the time the Superintendent of Public Instruction undertakes to secure a statement of the number of usable books on hand, as provided above, he shall also secure from the superintendents of independent school districts and county superintendents an expression as to whether or not they believe the existing text should be re-adopted or a new text adopted, and such information shall be for the use of the Textbook Commission, but the Textbook Commission shall not be bound to re-adopt the old text or to adopt a new text by reason of such expression of preference by such superintendents. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 3.]

Art. 2843. Uniform system.—The Textbook Commission authorized by this Act shall have authority to select and adopt a uniform system of textbooks to be used in the public free schools of Texas, and the books so selected and adopted shall be printed in the English language, and shall include and be limited to textbooks on the following subjects: Spelling, reading, English

language and grammar, geography, arithmetic, physiology-hygiene, civil government, history of the United States (in which the construction placed on the Federal Constitution by the fathers of the Confederacy shall be fairly represented) history of Texas, agriculture, a system of writing books, a system of drawing books, and may also, if deemed necessary, adopt a geography of Texas and a civil government of Texas; provided that none of said textbooks shall contain anything of a partisan or sectarian character, and that nothing in this Act shall be construed to prevent the teaching of German, Bohemian, Spanish, French, Latin or Greek in any of the public schools.

Said Textbook Commission shall also adopt a multiple list of books for use in the high schools of the State, said multiple list including not fewer than three nor more than five textbooks on the following subjects: Algebra, plane geometry, solid geometry, general science, biology, physics, chemistry, a one year general history, ancient history, modern history, American history, Latin, Spanish, physical geography, English composition, history of American literature, history of English literature, physiology, agriculture and civil government and for each high school branch of study any one textbook of said multiple list adopted for that subject may be selected for and used in any high school of the State as the textbook on such branch in that high school, but when such book is so chosen by the local authorities from the multiple list adopted such book shall be continued in that high school for the entire five years of the adoption period. Provided, however, that the multiple list herein provided for shall apply to all high schools classed by the Department of Education as high schools of the first class. For use in all other high schools a uniform system of textbooks on each subject mentioned above shall be selected by the commission; provided, that in any city or independent school district having more than one high school of the first class said city or independent school district shall adopt from said multiple list for use in each of said high schools the same books and shall use said books so adopted for a period of not less than five years.

Specific rules as to the manner of the selection of books by the high school shall be made by the State Textbook Commission.

The commission, as herein provided for, shall adopt textbooks in accordance with the provisions of this Act for every public free school in this State and no public free school in this State shall use any textbook unless same has been previously adopted and approved by this commission; and the commission shall prescribe rules under which all textbooks adopted and approved shall be introduced or used by or in the public schools of the State.

In the event as many as three suitable texts are not offered for adoption on any one subject, the commission may select fewer than three texts.

Existing contracts shall not be affected by any adoptions made under this Act.

Art. 2844. Supplementary readers.—The Textbook Commission shall have authority to adopt supplementary readers for the first seven grades and such other supplementary books for use in said elementary grades as it may deem advisable. Said other supplementary books may be arranged in a series by said commission, one book in each series for each elementary grade, and contracts for not more than four series of supplementary books and readers, inclusive, as provided for in this section, may be in force at the same time; provided, that such series of these supplementary books shall only be used to supplement the basal book on reading and in no case shall supplemental books be adopted for other subjects. Each bidder presenting such book or books shall state at what price it or they are offered, provided, however, that no supplementary books shall be purchased and used to the exclusion of the books prescribed under the provisions of Article 2343, but full use must be made in good faith of the books selected by said commission under Article 2343 before any of the supplementary books provided for in this article shall be purchased and used.

Art. 2845. May change textbooks.—The Textbook Commission may at any time require such changes, amendments or additions to the book or books adopted as in their judgment will be for the best interest of the public schools of this State; and contracts for books under the provisions of this Act shall be made upon the distinct condition that the commission provided for in this Act may, during the time for which the books are adopted under this Act, upon giving one year's previous notice to the publishers thereof, order such changes, amendments and additions to the book or books so adopted as such Textbook Commission may determine; provided, also that if in the judgment of the commission such changes or revisions make it impractical for the revised books to be used in the same class with the old books, the publishers will be required to give the same exchange terms as were given when the books were first adopted, and such exchange period shall extend two years from the time the revised books are first put into use in the schools; provided, that nothing in this section shall be construed so as to give said commission power or authority to abandon any book or books originally contracted for.

Art. 2846. Notice of meeting to be given.—When texts are to be selected and adopted under the provisions of this law, or where a contract for a text then in use is about to expire, the Chairman of the Commission shall, two months in advance of the meeting of the Commission, at which time, the adoption may be made, give public notice by having printed in the public press a notice to the effect that such meeting will be held and that adoptions will be made, and by sending written notices to all persons, firms or corporations in whose behalf such notices shall have been requested. Such notices shall state the time and place of the meeting of the Commission, the subjects on which textbooks may be adopted, and the last date on which sample copies of books offered, prepared as provided in the succeeding paragraph of this Article shall be deposited, the amount of the cash deposit required, the time allowed for signing contract and filing bond after award is made; and that formal proposals will be received on the date of the meeting.

Deposits of Samples.—At least thirty days prior to the date of the meeting of the said Commission, every person, firm or corporation desiring to submit bids shall file with the State Superintendent of Public Instruction nine copies of each book on which a bid will be submitted, in each of which copies there shall be printed or stamped a statement of the price at which such book and special editions thereof are sold in other places under State or county adoptions, and the minimum quantities in which it will be sold at such prices, and there shall also be printed or stamped in such books a statement of the publisher's catalogue price of the same and special editions thereof, together with trade discounts and the conditions under which, and the purchasers to whom, such discounts are allowed, and the place of delivery. There shall also be printed or stamped in each book the price at which it is offered to Texas, f. o. b. the Publisher's Texas depository, with and without exchange. There shall also be printed or stamped in each book, the minimum wholesale price at which such book, and special editions thereof, are sold f. o. b. the shipping point of the publisher and the name of the shipping point shall also be stated.

Bids and Cash Deposits.—Bids, when filed by the publishers, shall state specifically at what price each book will be furnished, and such bid shall be accompanied by specimen copies of each book offered, and it shall be required that each bidder deposit with the Treasurer of the State of Texas such sum of money as the Commission may require, to be not less than five hundred ($500.00) dollars, nor more than twenty-five hundred ($2,500.00) dollars, according to the value of the books each bidder may propose to supply; and each bidder shall file with the Secretary of the Commission on the day that the Commission meets or within the last five (5) days just preceding the date on which such Commission meets, an affidavit executed

by the individual bidder or a member of the firm or the president and secretary of the corporation bidding, which shall set forth all of the facts with reference to the eligibility of the bidder to make a proposal. Such deposit shall be forfeited to the State absolutely if such bidder so depositing shall fail or refuse to make and execute the contract and the bond required within such time as the Commission may require, which time shall be specified in the notice advertised. Such deposits shall be returned to the unsuccessful bidders on certificate of the State Superintendent that no contract has been awarded on the bid for which the sum was deposited. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 4.]

Art. 2847. Filing of bids.—All bids submitted to the Textbook Commission for the furnishing of textbooks shall be deposited with the Chairman of the Commission, to be delivered by him to the Commission in session for the purpose of considering the same. Such bid shall state the price at which the books will be furnished to the State of Texas, f. o. b. the bidder's Texas depository, which price must be in accord with that printed or stamped in the sample copies of the books previously deposited, and shall also state the terms and conditions upon which said books shall be furnished, which terms and conditions shall not be in conflict with the other provisions of this Chapter.

Each bidder shall file with the Secretary of the Commission on the day that the Commission meets an affidavit executed by the individual bidder, or a member of the firm or the president and secretary of the corporation bidding, which shall state that all the taxes levied against the bidder under and by virtue of Chapter 148, Acts of the Twenty-ninth Legislature, and all other Acts amendatory thereof, have been paid and shall be accompanied by official certificates in support of such statement, where such certificate can be secured; such affidavit shall also state the name or names of all the people employed to act for such bidder, directly or indirectly, in any way whatsoever in securing the contract or in the preparation of its bids, and supporting documents, with the addresses of such individuals and the capacity in which they serve; and said affidavit shall further state the names of any and all other persons who may have at any time during the preceding year received, either directly or indirectly any money or other thing of value from said company, by way of emolument for services rendered in this State, either directly or indirectly, in securing or attempting to secure, contracts for the sale of books of said publisher, or in promoting the sale of such books to the State of Texas; and that no member of the Commission is in any way interested, directly or indirectly, in such individual, firm or corporation bidding; and in the event any publisher, after filing said affidavit, shall employ an attorney or other representative to assist in securing the award of a contract by the Commission, he shall disclose such employment to the Commission by filing a supplementary affidavit before any contract in which he is interested shall be awarded.

No publisher who cannot and does not comply with these provisions shall be eligible to bid.

No bid shall be considered from, and no contracts shall be made with any publisher not eligible to bid under the provisions of this law, and any contracts made with an ineligible bidder shall be void. The statements made in all affidavits filed by the publisher with the bid shall be considered warranties, and if found to be untrue, shall subject the contract to forfeiture and authorize a recovery on the bond to the full amount thereof, as liquidated damages, unless it be shown that such mis-statement or non-disclosure of fact was unintentional or an oversight on the part of said publisher. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 5.]

Art. 2848. Bids opened.—It shall be the duty of the commission to meet at the time and place mentioned in the notice and advertisement, and it shall then and there open and examine the sealed proposals received; and it shall be the duty of the commission to make a full and complete investigation of all the books and bids accompanying the same. The textbooks shall be selected and adopted after a careful examination and consideration of all books presented, and the books selected and adopted shall be those which in the opinion of the commission are most acceptable for use in the schools,—quality, mechanical construction, paper, print price, authorship, literary merit and other relevant matters being given such weight in making its decision as the commission may deem advisable. The commission shall proceed without delay to adopt for use in the public schools of this State textbooks on all branches hereinbefore mentioned; provided, that if the bids submitted to said commission should not be satisfactory to said commission, they may postpone the selection of such books or a part thereof to such time as they may select, and after the same is readvertised, new bids may be received and acted on by such commission as provided for in this Act; provided, that no textbook shall be adopted until it has been read carefully and examined by at least a majority of the commission.

Art. 2849. Bids in two forms.—All publishers submitting bids under the provisions of this law shall submit their bids in two forms, one in which is stated the allowance made for the books then in use, and the property of the State when offered in exchange for the new books adopted under this law; the other without stating the allowance for said books, which books would remain the property of the State; provided that said allowance and condition for exchange if agreed to and accepted by the State shall be enforced only during the two scholastic years following a change in books; both prices under these two forms of bids shall be printed or stamped upon the sample copies deposited under the provisions hereof. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 6.]

Art. 2850. Changes may be ordered.—Every contract entered into with a publisher for the adoption of any book or books shall contain a provision that the commission herein provided for may, during the life of the contract, upon giving one year's previous notice to the publishers of such book or books, order such changes, amendments and additions to the book or books so selected and adopted as in the discretion of said commission shall keep them up to date and abreast of the times; provided that such revisions shall not be made oftener than once in two years.

Art. 2851. Contractors bond.—The bidder to whom any contract may have been awarded shall execute a good and sufficient bond payable to the State of Texas in the sum of not less than ten thousand ($10,000.00) dollars for each basal book adopted under the provisions of this Act; and a good and sufficient bond payable to the State of Texas in the sum of not less than three thousand ($3,000.00) dollars for each supplementary textbook adopted under the provisions of this Act; provided further, that the commission is hereby given authority to require bond in such further and additional sums as it may deem advisable, said bond to be approved by the commission; such bond to be conditioned that the contractor shall faithfully perform all the conditions of the contract; the contract and bond shall be prepared by the Attorney General, and be payable in Travis County, Texas, and shall be deposited in the office of the Secretary of State. For the purpose of securing satisfactory bond a series of pamphlet writing books shall be considered as one basal book, and a series of pamphlet drawing books shall be considered as one basal book. The bond shall not be exhausted by a single recovery thereon, but may be sued upon from time to time until the full amount thereof is recovered; and the Texas State Textbook Commission may, at any time, on twenty days' notice, require a new bond to be given, and in the event the contractor shall fail to furnish such new bond the contract of such contractor may, at the option of the Texas State Textbook Commission, be forfeited.

Art. 2852. Books to be bought at minimum prices—The maximum price which the Texas State Textbook Commission shall contract to pay, f. o. b. the

Texas depository of the publisher, for any books to be used in the public schools of this State shall not exceed the minimum price at which the publisher sells such book in wholesale quantities, f. o. b. the publisher's publishing house, after all discounts have been deducted. Any contract made for the purchase of books for use in the public schools of this State at a higher price than the maximum price fixed by the preceding sentence of this article shall be void. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 7.]

Art. 2853. Anti-trust provision.—No book or books shall be purchased from any person, firm or corporation who is a member of or connected with any trust; and in the event it be established that this provision has been violated, such violation shall be held to be fraud and collusion as contemplated under Article 2852 of this Act, and the Attorney General shall bring suit upon the bond of such person, firm or corporation, and upon proof of such violation shall recover the liquidated damages as provided for in said Article 2852 hereof, as defined by the laws of this State, and a sworn affidavit that said person or corporation is not connected either directly or indirectly with a trust shall be required, and said affidavit shall be filed with said commission. Before proceeding to adopt books as provided under the provision of this Act, the commission shall require all persons, firms and corporations bidding for a contract to file with the commission a sworn statement on or before the date selected by the commission for receiving sealed bids, stating whether said person, firm or corporation is interested, or whether said person, firm or any member thereof, or any individual stockholder of such corporation is interested, or whether said person, firm, or any member thereof, or any individual stockholder of such corporation is interested or acting as a director, trustee or stockholder, either directly or indirectly or through a third party, or in any manner whatsoever in any other textbook publishing house, and this statement shall be sworn to by such person, a member of such firm or the president, secretary, and each of the directors of said corporation. All firms or persons bidding for a contract or supplying books shall present a sworn statement signed by all its members showing the names of all members of said firm, and whether any other person, firm or corporation has any financial interest in said firm, and also whether any individual member or members of said firm have any financial interest in any other textbook publishing firm or corporation or textbook publishers. The commission shall require all corporations, or persons, or firms to file with the Governor attested copies of all written agreements entered into and existing between them and others engaged in the textbook publishing business, and if in the opinion of the commission such written agreements or other facts adduced are violations of the anti-trust law of the State of Texas, or opposed to public policy, the bids of such houses shall not be considered by the commission.

Art. 2854. Contract approved.—Each contract shall be duly signed by the publishing house or its authorized officers and agents; and if it is found to be in accordance with all the provisions of this Act, and if the bond herein required is presented and duly approved, the commission shall approve said contract and order it to be signed on behalf of the State by the Governor in his capacity as chairman. All contracts shall be made in duplicate, one copy to remain in custody of the Secretary of State and be copied in full in the minutes of the meeting of the commission in a well bound book, and the other copy to be delivered to the company or its agent.

Art. 2855. Deposit to be returned.—When any person has been awarded a contract and he has filed his bond and contract with the commission and the same has been approved, the commission shall make an order on the Treasurer of the State reciting such fact, and thereupon the Treasurer shall return the deposit of such bidder to him; but if any successful bidder shall fail to make and execute the contract and bond as hereinbefore provided, the Treasurer shall place the deposit of such bidder in the State Treasury to the credit of the available school fund, and the commission shall readvertise for other bids to supply such books which said bidder may have failed to supply. All unsuccessful bidders shall have their deposit returned to them by the State Treasurer as soon as the commission has decided not to accept their bids.

Art. 2856. Commission to issue proclamation.—As soon as the State shall have entered into the contract for the furnishing of books for the public schools of this State under the provision of this Act, it shall be the duty of the commission to issue its proclamation of such facts to the people of the State; and the State Superintendent of Public Instruction shall carefully label and file away the copies of the books adopted as furnished for examination to the board; and such copies of such books shall be securely kept and the standard of quality and mechanical excellence of the book or books so furnished under this Act shall be maintained in said books so furnished under contract authorized by this Act during the continuance of the contract.

Art. 2857. List to be furnished.—As soon as practical after the adoption of the textbooks provided for in this Act, the Superintendent of Public Instruction shall address a circular letter to the county superintendent and to the president of the school boards in independent school districts, which circular letter shall contain a list of all the books with their respective prices, together with such other information as he may deem advisable.

Art. 2858. Depository.—All parties with whom the contracts have been made shall establish and maintain in some city in the State a depository where a stock of their goods to supply all immediate demands shall be kept; and contractors not maintaining their own individual or separate State agencies or depositories shall maintain a joint agency or depository to be located at some suitable and convenient distributing point. Any person, dealer or school board in any county in the State may order from the central depository; provided that the price of books so ordered shall be paid in advance. Upon the failure of any contractor to furnish the books as provided in the contract and in this Act, the county judge in the county wherein such books have not been furnished shall report the fact to the Attorney General, and he shall bring suit on account of such failure in the name of the State of Texas in the district court of Travis County, and shall recover on the bond given by such contractor for the full value of the books not furnished as required, and in addition thereto the sum of one hundred dollars, and each day of failure to furnish the books shall constitute a separate offense, and the amounts so recovered shall be placed to the credit of the available school fund of the State. Any unorganized county shall be furnished from the same agency as the county to which said unorganized county is attached for judicial purposes in the same manner as such organized county.

Art. 2859. Price to be printed.—The contract price of each book shall be plainly printed on the inside of the back of each book, together with the following notice, "The price marked hereon is fixed by the State, and any deviation therefrom should be reported to the State Superintendent of Public Instruction;" provided this notice may be waived by the State Board of Education the last year of the contract.

Art. 2860. Textbooks exclusive.—The books adopted by the commission under the provisions of this law shall be introduced and used as textbooks to the exclusion of all others in public free schools of this State for such period of years as may be determined by the commission, not to exceed six years in any case; provided the right to the exclusive use of new books during the first three years of the term of any contract shall be waived by the contracting publishers to provide for the gradual introduction of new books; and provided further that nothing in this Act shall be construed to prevent or prohibit the trustees of school districts from purchasing textbooks with the

local maintenance funds and furnishing free textbooks to the students in the event that no contracts are made by the State. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 8.]

Art. 2861. Appearing before commission.—No person, not the author or publisher or the bona fide permanent and regular employé of such publisher, shall appear before such Textbook Commission in behalf of any book submitted to the Commission for adoption, or seek to influence the members thereof.

2. DISTRIBUTION OF BOOKS

Art. 2862. Additional supplementary books.—When the supplementary books other than those selected by the Textbook Commission are used, they shall be furnished at a price fixed by the trustees of the school in which they are used and approved by the State Superintendent of Public Instruction, which price in no case shall be greater than the publishers list price; and if any teacher or trustee shall knowingly and directly or indirectly receive from any pupil a greater price therefor than the price fixed, he shall be guilty of a misdemeanor, and on conviction shall be fined not less than fifty dollars nor more than one hundred dollars.

Art. 2863. Cancellation for fraud.—The State may, in a suit to be instituted by the Attorney General, cancel any contract entered into by virtue of the provisions of this Act for fraud, or collusion, or material breach of contract upon the part of either party of the contract, or any member of the commission or any person, firm or corporation or their agents making said bond or contract; and for the cancellation of any such contract the Attorney General is hereby authorized to bring suit in the proper court of Travis County, and in case of the cancellation of any contract as provided for, the damages are fixed at not less than the amount of said bond, to be recovered as liquidated damages in the same suit cancelling said contract; and on account of the difficulty of determining the damages that might accrue by reason of such fraud, collusion or material breach, and cancellation of such contract, the full amount of the bond given by the contractor shall be considered as liquidated damages to be recovered out of said bond by the State at the suit of the Attorney General, and every contract that shall contain a clause to this effect.

Art. 2864. Agent designated.—Any person, firm or corporation with whom a contract has been entered into under the provisions of this Act shall designate the Secretary of the State of Texas as its or their agent, upon whom citation and all other writs and processes may be served in the event any suit shall be brought against such person, firm or corporation.

Art. 2865. Compensation of teachers.—The teachers selected upon said Commission under the provisions of this Act shall receive as compensation for their services the sum of five dollars per day each while on active duty and actual traveling expenses in going to and from the place of meeting, and in attending to the business of the Commission, to [be] paid upon warrants drawn by the Comptroller under the direction and approval of the chairman of the Commission. The Superintendent of Public Instruction is hereby fully authorized to employ one stenographer to assist in the clerical work of the State Textbook Commission, the pay of said stenographer to be paid out of the appropriation made for expenses of the Textbook Commission on account approved by the State Superintendent of Public Instruction.

Art. 2866. Without cost to pupils.—The State Board of Education is hereby authorized and empowered and it is made its duty to purchase books from the contractors of textbooks used in public free schools of this State and to distribute the same without other cost to the pupils attending such schools within this State in the manner and upon the conditions hereinafter set out.

Art. 2867. Available fund.—In order to carry out the provisions of this Act the State Board of Education shall annually at a meeting designated by them each year set apart out of the available free school fund of the State an amount sufficient to purchase and distribute the necessary school books for the use of the pupils of this State for the scholastic year ensuing.

Art. 2868. Textbook fund.—The State textbook fund of this State shall consist of the fund set aside by the State Board of Education from the available school fund as is provided for in this Act, together with all funds accruing from the sale of disused books and all moneys derived from the purchase of books from boards of school trustees by private individuals, by schools, or from any other source.

Art. 2869. Superintendent's report.—The State Board of Education shall require from the State Superintendent on July first of each year a report as to the funds necessary for the purchase and distribution of [or] other necessary expenses of school books for the regular school session of the following year, and said Board of Education shall have the power to set apart from the available school fund the estimated amount with 25 per cent additional, this additional sum to be used to meet emergencies or necessities caused by unusual increase in scholastic attendance or by unusual and unforseen [unforeseen] expenses and school conditions. Funds transferred in the textbook fund shall remain permanently in this fund until expended, and shall not lapse to the State at the close of the fiscal year. The State Superintendent of Public Instruction shall be required to include in the aforementioned report to the State Board of Education a statement as to the amount of this fund which is unexpended, and said amount shall be considered by the board in determining the necessary expenditures for textbooks for the following year.

Art. 2870. Superintendent — manager. — The purchase and distribution of free textbooks for the State shall be under the management of the State Superintendent of Public Instruction, subject to the approval of the State Board of Education.

Art. 2871. Depositories.—All parties with whom book contracts have been made shall establish and maintain in some city in the State a depository where a stock of their goods to supply all immediate demands shall be kept; all contractors not maintaining their own individual or separate state agencies or depositories shall maintain a joint agency or depository to be located at some suitable and convenient distributing point, at which general depository each contractor joining in said agency shall keep on hand a sufficient stock of books to supply the schools of the State.

Books purchased in accordance with the terms of this Act shall be delivered to the school districts f. o. b. the Texas depository of the publisher and shall be shipped by freight, parcel post or express, as may be set out in the requisition therefor. In case it is necessary for the publisher or the depository to prepay any shipping charges, same shall be repaid by the State, in addition to the bill for books, and in the same manner that the books are paid for; provided that the State Department of Education shall be given authority to direct the route by which said books shall be shipped.

Any person, school not controlled by the State, or dealer in any county in the State may order books from the said State agency, or depository and the books so ordered shall be furnished at the same rate and discount as are granted to the State; provided, that in such case the State depository or agency may require that the price of books so ordered shall be paid in advance. Upon failure of any contractor to furnish the books as provided in the contract and in this Act, the county judge in the county wherein such books have not been furnished, shall report the fact to the Attorney General, and he shall bring suit on account of such failure in the name of the State of Texas in the district court of Travis County, and shall recover on the bond given by such contractor for the

full value of the books not furnished as required, and in addition thereto the sum of one hundred dollars, and each day of failure to furnish the books shall constitute a separate offense, and the amount so recovered shall be placed to the credit of the State Textbook Fund. [As amended Acts 1927, 40th Leg., p. 308, ch. 213, § 9.]

Art. 2872. Custodians.—The school trustees of each district shall be designated as the legal custodians of the books, and shall have the power to make such arrangements for the distribution of books to the pupils as they may deem most effective and economical; provided, that no district shall have the power to make any regulation in regard to textbooks which is at variance with the provisions of this Act, or with the regulation of the State made by the State Superintendent of Public Instruction and approved by the State Board of Education.

Art. 2873. Property of the State.—Books shall remain the property of the State, and after purchase through requisition according to the provisions of this Act, shall remain in the charge of the district school trustees as the legal custodians of the books. The district school trustees shall have the power to delegate to their employees such power as to requisitions and distributions of books and the management of books as in their judgment may be best, provided that such plans shall not be at variance with the provisions of this law, or with the State rules for free textbooks formulated by the State Superintendent of Public Instruction and approved by the State Board of Education.

Art. 2874. Trustees bond.—One or more members or employees of each district board of trustees shall enter into bond in the sum of fifty per cent in excess of the value of the books consigned to them by the State, payable in Austin, Texas, to the Governor of the State of Texas, or his successors in office, said bond to be approved by the county judge of the county in which the school is situated, and by the State Superintendent of Public Instruction and deposited with the State Superintendent, conditioned on the faithful discharge of his duties under his employment and under this Act, and that he or they will faithfully account for all books coming into his or their possession and for all moneys received from the sales thereof. All moneys accruing from the forfeiture of the bonds shall be deposited by the Governor to the credit of the State Textbook Fund.

Art. 2875. Requisitions.—Requisitions for books shall be made in the following manner: On the first day of April each teacher shall make report to the principal of the maximum attendance of his or her grade, or school, if not a graded school. If the school has only one teacher, said report as to the maximum attendance of pupils of each grade of work shall be made by the teacher to the board of school trustees and to the county superintendent. Reports as to the maximum attendance for the school shall be made not more than one week subsequent to the first school day of April by the principal to the city or town superintendent or by the principal to the county superintendent if the school is not situated in a city or town. The city or town superintendent of schools shall compile reports of principals and make report to the State Superintendent of Public Instruction. The county superintendent shall compile reports of the rural schools in his county and make report to the State Superintendent of Public Instruction. Books needed by the rural schools shall be requisitioned and distributed entirely through the office of the county superintendent. The duties of the county superintendent with reference to the care and distribution of textbooks shall be subject to the approval of the county board of trustees and the State Superintendent. Reports as to the maximum attendance of each school under their direction shall be made to the State Superintendent of Public Instruction by the aforesaid superintendent of cities, towns, and counties not later than April 25th, provided that should the school close before this date, it shall be the duty of the teacher to file with the county superintendent and with the board of school trustees reports complying with the provisions of this Act. Blank forms for reports and for requisitions of textbooks shall be furnished to all boards of school trustees by the State Department of Education. Requisitions for books for a subsequent session shall be based on said reports as to the maximum number of scholastics in attendance the preceding school session, plus an additional ten per cent, and such requisition shall be made through the State Superintendent of Public Instruction and by him furnished to the State depository designated by contractors of books not later than June 1st of each year, provided that in cases of unforseen [unforeseen] emergency the State depository shall fill small orders for books on requisition approved by the State Department of Education. One copy of each textbook used in the work taught by the teacher shall be issued by the school trustees, or their representatives, to each teacher as a desk copy, such books to be returned to the trustees or their representatives at the close of the session.

Art. 2876. Warrants.—Bills for textbooks purchased by the State on requisitions as provided for in Article 2876a shall be paid by warrants on the State Treasury made by the Comptroller on receipt of bills approved by the State Superintendent of Public Instruction. Such payment shall be made within ninety days from date of delivery, and if payment be delayed thereafter, six per cent. per annum shall be added until date of payment.

Art. 2876a. Teachers to report.—Teachers and school officers must make such reports as to the use, care and condition of free textbooks as may be required by the local trustees or by the State Department of Education. The salary for any month of any teacher or employee who neglects to make such report at the proper time may be withheld until each report be received in a condition satisfactory in form and content. Textbooks shall be subject to inspection by any inspector or agent authorized by those having charge of the local textbook service, or authorized by the State Superintendent of Public Instruction, subject to the approval of the State Board of Education, provided that inspectors authorized by the State Department of Education shall be those in regular employment as high school inspectors, rural school inspectors, or inspectors of vocational education.

Art. 2876b. Rules by superintendent.—Specific rules as to the requisition, distribution, care, use, and disposal of books may be made by the State Superintendent of Public Instruction, subject to the approval of the State Board of Education; provided, that such rules shall not conflict with the provisions of this Act, or with the uniform textbook law under the terms of which contracts for supplies and books are made with the publishers or with the terms of said contract. No teacher or employee of the school engaged in the distribution of textbooks under this law as the agent or employee of the State, or of any county or district in the State shall, in connection with this distribution, sell or distribute, or in any way handle, any kind of school furniture or supplies, such as desks stoves, blackboards, crayon, erasers, pens, ink, pencils, tablets, etc.

Art. 2876c. Printed labels.—All books shall have printed labels on both inside covers. Each school shall number all books, placing the number on these labels. All teachers shall keep a record of the number of all books issued to each pupil. All books must be covered by the pupil under the direction of the teacher. Books must be returned to the teacher at the close of the session, or when the pupil withdraws from school. Each pupil, or its parent or guardian shall be responsible to the teacher for all books not returned by the pupil, and said pupil not returning all books delivered to him or her shall not be entitled to the benefits of this Act until said books are paid for by said parent or guardian.

Local boards of trustees shall make provision for the fumigation of books before the reissue of the books. Covers of all books shall be removed before reissue, and the pupil to whom the books are issued shall replace cover under the direction of the teacher.

Art. 2876d. Books may be purchased.—Books may be bought from the local boards of trustees by pupils or parents of pupils attending the public schools of the State, said board to furnish the books at the retail contract price. Any book may be purchased from the State depository designated by the contractor holding the contract for said book, by State institutions or by private schools, or church schools, such purchase to be made on the same terms as those given to the State for the same book. All money accruing from sales of books by district boards of school trustees shall be forwarded to the State Textbook Fund not later than one month after the sale.

Art. 2876e. Disposition of textbooks.—The State Superintendent of Public Instruction, with the approval of the State Board of Education, may provide for the disposition of such textbooks as are no longer in a fit condition to be used for purposes of instruction, or for discarded books remaining the property of the State. In case of the disuse of books in fair condition, inspectors of the State Department of Education may require the continuance of the use of said books.

Art. 2876f. Complaints.—Complaints in regard to textbook service shall be made both to the State Superintendent and to the State depository designated by the contractor of the books. In case such complaint does not receive reasonable prompt attention complaint shall be taken to the county judge, who shall proceed in accordance with the provisions of this Act. Trustees of unorganized counties shall make complaint to the county judge of the county to which said unorganized county is attached for judicial purposes.

Art. 2876g. Requisitions for readers.—Requisitions for supplementary readers and books may be made at convenient times during the session, but must be made within one month in advance of the time the books will be needed, and shall be issued according to the rules prescribed by the State Board of Education.

Art. 2876h. Expenses.—All necessary expenses incurred by the operation of this Act incident to the enforcement of this law shall be paid from the State Textbook Fund herein provided for upon bills approved by the State Superintendent of Public Instruction, and shall be paid upon warrants drawn by the Comptroller upon the Treasury of the State.

Art. 2876i. Constitutionality.—Should the courts declare any section or provision of this Act unconstitutional, such decision shall effect [affect] only the section or provision so declared to be unconstitutional, and shall not effect [affect] any other section or part of this Act.

Art. 2876j. Complete plan.—The provisions of this Act are intended to furnish a complete plan for the adoption, purchase, distribution and use of free textbooks to be supplied to the public free schools of the State. All laws and part of laws in conflict herewith are hereby repealed.

CHAPTER SEVENTEEN

TEACHERS' CERTIFICATES

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1. ISSUANCE OF CERTIFICATES

Article 2877. [2794] State Board of Examiners.—The State Superintendent shall be authorized to appoint a State Board of Examiners, consisting of not less than three competent teachers, living in the State, to serve during his pleasure, and he may increase or decrease the number, as varying conditions may make necessary. [Acts 1905, p. 262.]

Art. 2878. [2786] County board of examiners.—Each county superintendent shall appoint two persons who shall be a county board of examiners. A person to be eligible to such appointment must hold a teacher's State certificate of first or higher grade. They shall serve during the pleasure of the county superintendent, and shall meet at his call. The State Superintendent may, for cause approved by the State Board, require the county superintendent to dismiss any such appointee. In such case the vacancy must be filled by an appointee approved by the State Board. The county board of examiners of each county shall hold an examination if there be applicants, on the first Friday and Saturday following in the months of April, June, July, September and December of each year, and the State Superintendent may authorize such other examinations as may be necessary to secure an adequate force of certified teachers. Said board of examiners shall use the questions prescribed by the State Department of Education and shall conduct the examinations in accordance with the rules and regulations prescribed by said State Department and the county superintendent. [Acts 1911, p. 195; Acts 1920, 3rd C. S., p. 112.]

Art. 2879. [2787] Application.—Any person desiring to be examined for a teacher's certificate shall make application to the county superintendent, stating the class of certificate desired, and shall present to the county superintendent a statement of three good and well known citizens, or such proof as he may require of his qualifications, except the examination grades required for the class of certificate desired. After investigation, the county superintendent shall give the applicant a written recommendation to the county board of examiners requiring them to examine the applicant for a certificate of the class mentioned; but no person shall receive such recommendation without first depositing with the county superintendent the sum of four dollars as an examination fee, and the recommendation given by the county superintendent shall show the receipt of said fee. The county board of examiners shall not permit any person to enter the examination who does not first present the written recommendation of the county superintendent. All examinations provided for herein and elsewhere in the Texas school laws shall be conducted in writing and in the English language. The county superintendent shall forward promptly to the State Superintendent, all papers of applicants applying for State certificates, these to be submitted to the State Board of Examiners, together with the reports of the county board of examiners, on a prescribed form furnished by the State Department of Education, with a fee of two dollars from the fee paid to him by each of the applicants applying for State certificates. Until shipment of papers to the State Superintendent, papers of applicants for a State certificate shall be deposited in some safe or vault at the county court house. [Acts 1905, p. 262; Acts 1911, p. 189; Acts 1921, p. 250.]

Art. 2880. [2788] Applicant's requisites.—No person shall receive a certificate authorizing his employment in the public free schools of Texas without showing to the satisfaction of the county superin-

tendent that he is a person of good moral character, and has ability to speak and understand the English language sufficiently to use it easily and readily in conversation and in giving instruction in all subjects prescribed for the class of certificate for which he applies. The county superintendent, unless he knows the facts personally, shall require satisfactory proof of the applicant as herein required before issuing his recommendation to the county board of examiners. No certificate shall be granted to a person under 18 years of age. [Acts 1905, p. 262; Acts 1911, p. 189; Acts 3rd C. S. 1920, p. 114.]

Art. 2881. [2786] Examination of papers.—The State Board of Examiners shall, at their next meeting after the receipt of said papers and reports, together with the fees, examine the papers and shall make a report to the State Superintendent recommending that certificates be issued or be not issued, according to the grades made. To each applicant who has made the required grades the State Superintendent shall forward the report, together with the certificate recommended by the State Board of Examiners; and to each applicant who has failed to make the required grades, the State Superintendent shall forward the report of the State Board of Examiners without a certificate. [Acts 1911, p. 195; Acts 3rd C. S. 1920, p. 112.]

Art. 2882. [2798] Record of certificates.—The county superintendent shall keep a record of all certificates held by persons teaching in the public schools of the common school districts and of the independent school districts of his county. Any person who desires to teach in a public free school of a common school district shall present his certificate for record, before the approval of his contract. Any person who desires to teach in the public schools of an independent school district shall present his certificate to the county superintendent for record before his contract with the board of trustees of the independent school district shall become valid. A teacher or superintendent who does not hold a valid certificate shall not be paid for teaching or work done before the granting of a valid certificate, except for teaching in such branches as are exempted under the terms of this law. [Id.]

Art. 2883. [2781] Salaries.—Trustees in making a contract with a teacher shall determine the salary to be allowed or the wages to be paid. Provided a teacher holding a permanent State certificate shall not receive wages in excess of one hundred and fifty dollars per month out of the public free school fund; a teacher holding a first grade certificate shall not receive as wages from the public free school fund more than one hundred and twenty-five dollars per month, and a teacher holding a second grade certificate shall not receive as wages from the public free school fund more than one hundred dollars per month; provided that the salary limits herein specified shall not apply to any school district which levies and collects a local tax for school purposes. All women teaching in the State schools of the State shall be paid the same compensation as is paid to men for performing the same kind, grade and quantity of service. [Acts 1905, p. 262; Acts 1919, p. 145; Acts 3rd C. S. 1920, p. 45; Acts 1921, p. 211.]

Art. 2884. [2814] Cancellation of certificates.—Any certificate may be canceled for cause by the authority issuing it; and the State Superintendent shall have power to cancel any certificate upon satisfactory evidence that the holder thereof is conducting his school in violation of the laws of the State or is a person unworthy to instruct the youth of this State. If any teacher holding a certificate to teach in the public schools of this State shall enter into a written contract with any board of trustees to teach in any public school of this State, and shall, after making such contract and without the consent of the trustees, abandon said contract, except for good cause, such abandonment shall be considered sufficient grounds for the cancellation of said teacher's certificate, and the same may be canceled upon the complaint of said trustees, or either of them. Before any certificate shall be canceled the holder thereof shall be notified, and shall have an opportunity to be heard, and shall have the right of appeal from such decision to the State Superintendent, and the State Board; provided, that when the State Superintendent shall have canceled the certificate, the appeal shall be to the State Board. The State Superintendent shall have the authority, upon satisfactory evidence being presented, to reinstate any teacher's certificate canceled under the provisions of this article, and upon a refusal of the Superintendent to so reinstate such certificate, the applicant shall have the right of appeal to the State Board. [Acts 1905, p. 263; Acts 1917, p. 366.]

2. CLASSES OF CERTIFICATES

Art. 2885. [2797] Kinds of certificates.—Teachers' certificates authorizing the holders thereof to contract to teach in the public free schools of this State shall be of three kinds, as follows:

1. Elementary certificates.
2. High school certificates.
3. Special certificates.

Elementary certificates shall be of the following classes:

1. Elementary certificates of the second class.
2. Elementary certificates of the first class.
3. Elementary permanent certificates.

High school certificates shall be of the following classes:

1. High school certificates of the second class.
2. High school certificates of the first class.
3. High school permanent certificates.

Special certificates granted to teachers of kindergarten and special branches of study shall be of two classes:

1. Temporary.
2. Permanent. [Acts 1921, p. 242.]

Art. 2885a. Ten years.—When a teacher of a special subject has been for ten years engaged in teaching that subject in a city or town of two thousand inhabitants or more the board of trustees of such city or town shall have the right to employ such teacher though such teacher has no certificate. [Acts 1925, p. 326.] [39th Leg., ch. 124, § 1.]

Art. 2886. Certificate by examination.—An elementary certificate of the second class may be obtained by examination only. An applicant for an elementary certificate of the second class shall be examined in spelling, reading, writing, arithmetic, English grammar, elementary physiology and hygiene with special reference to narcotics, school management and methods of teaching, descriptive geography, Texas history, United States history, Texas school law relating to teachers and pupils, and, in addition, on any two of the following subjects:

Elementary agriculture, elementary composition, drawing and music.

In taking examination for elementary certificate of the second class, no applicant shall be permitted at any one series of examinations to take examinations on more than thirteen subjects, eleven prescribed and two optional. An elementary certificate of the second class shall be valid, unless canceled by lawful authority, until the second anniversary of the thirty-first day of August of the scholastic year in which the examination was held, and to receive such a certificate an applicant shall make on examination on all subjects an average grade of not less than seventy-five per cent and on each subject a grade of not less than fifty per cent; provided that if the applicant makes a general average on all subjects of not less than eighty-five per cent and on each subject a grade of not less than sixty per cent, he may receive an elementary certificate of the second class valid, unless canceled by lawful authority, until the third anniversary of the thirty-first day of August of the calendar year in which the examination was held.

A high school certificate of the second class may be secured by examination only.

An applicant for a high school certificate of the sec-

ond class shall be examined in the subjects prescribed for an elementary certificate of the second class, on any two of the optional subjects prescribed for an elementary certificate of the second class, and in addition thereto, on civil government, higher English composition, elementary psychology applied to teaching, and on any four of the following subjects:

Algebra, physical geography, ancient history, modern history, elements of plane geometry, botany and American literature.

A high school certificate of the second class shall be valid, unless canceled by lawful authority, until the second anniversary of the thirty-first day of August of the calendar year in which the examination was held. The applicant shall make on examination on all subjects an average grade of not less than seventy-five per cent and on each subject a grade of not less than fifty per cent; provided that if the applicant makes a general average on all subjects of not less than eighty-five per cent, and on each subject a grade of not less than sixty per cent, he shall be entitled to receive a high school certificate of the second class valid, unless canceled by lawful authority, until the third anniversary of the thirty-first day of August of the calendar year in which the examination was held. [Acts 1921, p. 242.]

Art. 2887. Building to higher certificate.—The holder of an elementary certificate of the second class may during the validity of said certificate, build to a high school certificate of the second class by taking examination in the additional subjects required for a high school certificate of the second class and in any four of the optional subjects prescribed for a high school certificate of the second class.

An applicant who, at one series of examinations, takes examinations on all of the subjects required for a high school certificate of the second class, shall not be permitted to take examination, at any one series of examinations, on more than twenty subjects, fourteen required and six optional, as specified in the requirements, respectively, for the issuance of elementary and a high school certificate of the second class. An applicant who takes at one series of examinations all of the examinations necessary to raise an elementary certificate of the second class to a high school certificate of the second class, shall not be permitted to take examinations during any one series of examinations on more than seven subjects, three prescribed, and four optional. [Id.]

Art. 2887a. Certificate for teachers in grade and high schools.—That any teacher holding a valid certificate classified as an "Elementary Permanent Certificate builded upon a Temporary High School Certificate or First Grade Certificate," or "High School Permanent Certificate" under Art. 2885 Revised Civil Statutes of 1925 shall be authorized to teach any subject in any grade in any common school or high school in this State, which subject such teacher was required to pass in order to acquire such certificate. And such teacher shall be authorized to contract as teacher, principal, superintendent or other position to which he or she may be assigned by the trustees or other governing body of any common school or high school for all grades and subjects covered by his or her certificate as aforesaid, and for the pay authorized by law for the grades or subjects so contracted to be taught. In determining the subjects required for any such certificate all subjects shall be considered, whether such certificate was issued as a permanent originally, or by building upon temporary certificates so as to include all subjects passed upon as a whole to acquire such certificates, and no discrimination shall be made between certificates acquired by examination, and those acquired through actual attendance at teachers' or other colleges. [Acts 1927, 40th Leg., p. 386, ch. 261, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 386, ch. 261, repeals all conflicting laws or parts of laws.

Art. 2888. College certificates.—An applicant who completes the first year course of a Texas State normal school shall be entitled to receive an elementary certificate of the first class, which shall be valid unless cancelled by lawful authority until the second anniversary of the thirty-first day of August of the calendar year in which the certificate was issued.

An applicant who completes the second-year course of a Texas State normal school shall be entitled to receive an elementary certificate of the first class, which shall be valid, unless cancelled by lawful authority, until the third anniversary of the thirty-first day of August of the calendar year in which the certificate was issued.

A person who has satisfactorily completed five full courses in any Texas State normal college, or in any university, senior college, junior college, or normal college which is ranked as first class by the State Superintendent shall be entitled to receive from the State Department of Education an elementary certificate of the first class, which shall be valid unless canceled by lawful authority, until the fourth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued; provided that the five courses shall include at least one course in education dealing especially with elementary education, at least one course in English, and that not more than two courses may be taken in one subject; and provided further that all of these five courses must be those only which the college recognizes as credit towards its diploma or degree.

An applicant who has satisfactorily completed the second year of college work in a Texas State normal college, and who has specialized in the materials of elementary education, including a minimum of thirty-six recitation hours of practice teaching in the elementary grades, under the supervision of a critic teacher, shall be entitled to receive a permanent elementary certificate.

An applicant who has satisfactorily completed the second year's work of a university, or senior or junior college, other than a Texas State normal college, which is classified as first class by the State Superintendent, in which work shall be included two courses of professional training, shall be entitled to receive an elementary certificate of the first class, valid until the sixth anniversary of the thirty-first day of August of the calendar year in which the certificate was issued; provided that the holder of this certificate shall, upon completion of five years of successful elementary teaching, be granted a permanent elementary certificate; provided further that the satisfactory completion of any year's work at any Texas State normal college, or any university, senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, may be substituted for a year's successful teaching, if this attendance at college take place after the issuance of the certificate.

A high school certificate of the first class, valid until the second anniversary of the thirty-first day of August of the scholastic year in which the certificate is issued, shall be granted to a student who has satisfactorily completed five full courses in any Texas State normal college or in any university, senior college, junior college or normal college, which is ranked as first class by the State Superintendent; provided that the five courses shall include at least one course in education, and at least one course in English, and that not more than two courses may be taken in any one subject; and provided further that all these five courses must be those only which the college recognizes as credit towards its diploma or a degree.

A high school certificate of the first class, valid until the fourth anniversary of the thirty-first day of August of the scholastic year in which the certificate is issued, shall be issued to a student who completes two years of college work in any Texas State normal college, or in any university, senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, provided that this work shall include two courses in education, one of which shall bear upon training for high school teaching.

A high school certificate of the first class, valid until the sixth anniversary of the thirty-first day of August of the scholastic year in which the certificate is issued shall be granted to a student who completes

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

three years of college work in a Texas State normal college or in any university, senior college, or normal college which is ranked as first class by the State Superintendent, provided that this work shall include three courses in education, one course of which must include a minimum of thirty-six recitation hours of practice teaching and one course of which shall bear upon training for high school teaching.

A permanent high school certificate shall be granted to a student who has satisfactorily completed a four year course, leading to a degree, in a Texas State normal college or in any university, senior college, or normal college, classified as first class by the State Superintendent, provided that this work shall include four courses in education, one of which shall bear upon high school teaching and one of which shall consist of study of methods, observation of methods, and practice in teaching.

Any person who holds a diploma conferring upon him the degree of Bachelor of Arts, or any equivalent Bachelor's degree, or any higher academic degree, from any Texas State normal college, or any university, senior college, or normal college, which is ranked as first class by the State Superintendent, who has not had four full courses in education, but who furnishes satisfactory evidence of having completed two full courses in education, one of which shall bear upon high school teaching, and of having had not less than three years' successful experience in teaching, aggregating not less than twenty-seven months, subsequent to the taking of the degree, shall be entitled to receive from the State Department of Education a permanent high school certificate, which shall be valid anywhere in the State, unless canceled by lawful authority; provided that a person on receiving such a diploma and degree from any Texas State normal college, or any university, senior college, or normal college, which is ranked as first class by the State Superintendent, who has taken two full courses in education, one of which shall bear upon high school teaching, and who has not had three years' successful experience in teaching, may be granted a temporary high school certificate, valid until the fourth anniversary of the thirty-first day of August of the scholastic year in which the diploma is issued.

An elementary certificate of the second class shall be valid only in elementary schools, grades one to seven, inclusive.

A high school certificate of the second class shall be valid in elementary schools, grades one to seven, inclusive, and in third class high schools, and unclassified high schools, but not in first and second class accredited high schools.

An elementary certificate of the first class shall be valid only in elementary schools, grades one to seven, inclusive; provided that the holder of an elementary certificate based upon the completion of two years of college work in a Texas State normal college, or in any university, senior college, junior college, or normal college, ranked as first class by the State Superintendent, may contract to teach in unclassified high schools, and in high schools of the third class.

A two-year high school certificate of the first class shall be valid in the elementary grades, one to seven, inclusive, in third class high schools, and unclassified high schools, but not in accredited high schools of the first and second class.

A high school certificate of the first class, valid for four years or six years, shall entitle the holder to contract to teach in any elementary grade or in any high school.

The term "course" as relating to college work, wherever it occurs in this law is to be taken as designating not less than the equivalent of 108 recitation hours of work.

In all cases of elementary, high school or special certificates, granted on college work, the validity of the certificate shall begin with the date of the completion of the work on which the certificate is granted, and shall expire on the thirty-first day of August of the scholastic year, for the specified length of time for which the certificate was issued. The State Board of Examiners in the State Department of Education shall on application of institutions in Texas to be recognized as junior colleges, teachers' colleges, colleges or universities of the first class, make investigations as to the standards of such institutions, and shall make recommendations to the State Superintendent of Public Instruction[s], who shall give them such rating as the standards of their work may justify. Any school applying for approval under the provisions of this Act shall pay a fee of twenty-five dollars. Each applicant for teachers' certificates based on college credentials from junior colleges, teachers' colleges, colleges or universities, shall pay a fee of one dollar to cover the expenses of inspection and standardization of approved colleges and of recording and issuing the certificate.

The State Superintendent shall appoint a suitable person or persons of recognized college standing, who shall make a thorough inspection of the equipment and standards of instruction maintained in each school applying for approval under this law, and who shall make a detailed report to the State Board of Examiners for their consideration. The State Board of Examiners shall make recommendation to the State Superintendent in regard to the classification of schools applying for approval under the provisions of this law, and shall give to them such rating as the standards of their work may justify.

The State Superintendent shall have each school receiving the benefits of this law thoroughly inspected from year to year as to its standards and facilities of instruction, and he shall have authority to suspend any school from the benefits of this law which fails for any reason to maintain the approved standards of classification. [Acts 1921, p. 242; Acts 1925, p. 370.]

Art. 2889. Special certificates.—Special certificates may be issued authorizing the holders to teach in a kindergarten or to teach the special subjects specified in this article.

Any person who has satisfactorily met the college entrance requirements of any Texas State normal college or any university or senior college, junior college or normal college, ranked as first class by the State Superintendent, and who has satisfactorily completed one year's training in a kindergarten training school for teachers which has been classified by the State Superintendent as a kindergarten training school of the first class, shall be entitled to receive a kindergarten certificate valid for two years, and the holder thereof on completing the equivalent of three courses of additional work at a kindergarten training school classified as first class by the State Superintendent, shall be entitled to have this certificate extended for one year.

A person who has satisfactorily met the college entrance requirements of any Texas State normal college or any university, or senior college, junior college, or normal college ranked as first class by the State Superintendent and who has satisfactorily completed a two-year college course in a kindergarten training school for teachers, classified by the State Superintendent as a kindergarten training school of the first class, shall be entitled to receive a kindergarten certificate valid for four years. The holder of such certificate after three years of satisfactory experience in teaching in a kindergarten, shall be entitled to receive a permanent kindergarten certificate; provided that it shall be illegal for a person to teach in a public school kindergarten unless he or she is the holder of a kindergarten certificate.

Certificates authorizing the holders to teach the special subjects of agriculture, domestic art, domestic science, commercial subjects, public school drawing, expression, manual training, physical training, public school music, vocal music, instrumental music, industrial training, or foreign languages may be granted to applicants as follows:

An applicant who has met the college entrance requirements of any Texas State normal college, or any university or senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, and, in addition thereto, has satisfactorily completed ten college courses, at least one of

which shall be in English, at least one in education, and at least one in the special subject on which the certificate is issued, these courses to be taken in any Texas State normal college, or any university, or senior college, junior college, or normal college, which is ranked as first class by the State Superintendent, shall be entitled to receive a special certificate authorizing him to make contract to teach his special subject, which special certificate shall be valid until the third anniversary of the thirty-first day of August of the scholastic year in which the certificate was issued; provided that one of these courses must include special methods of teaching the subject on which the certificate is granted.

An applicant who has met the college entrance requirements of any Texas State normal college, or any university, senior college or normal college, which is ranked as first class by the State Superintendent, and in addition thereto has satisfactorily completed fifteen college courses, at least one of which shall be in English, at least one in education, and at least three of which shall be in the subject on which the certificate is granted, these courses to be taken in any Texas State normal college, or any university, or senior college, or normal college, ranked as first-class by the State Superintendent, shall be entitled to receive a certificate entitling him to contract to teach his special subject, which certificate shall be valid until the fourth anniversary of the thirty-first day of August of the scholastic year in which the certificate is granted.

It is especially herein provided that the holder of a special kindergarten certificate, or a special certificate in commercial subjects, public school music, public school drawing, or physical training, on the completion of three years of teaching the special subject during the validity of his certificate or certificates, shall be entitled to receive a permanent special certificate in his subject, valid for use in the public schools, unless cancelled by lawful authority.

An applicant who has met the college entrance requirements of any Texas State normal college or any university or senior college, or normal college, ranked as first class by the State Department of Education, and in addition thereto, has completed twenty college courses, at least one of which shall be in English, at least one in education, and at least four of which shall be in his special subject, these courses to be taken in any Texas State normal college, senior college, or normal college, ranked by the State Superintendent as a college of the first class, shall be entitled to receive a permanent certificate in his special subject, valid for life unless cancelled by lawful authority; provided that the college courses shall include special methods of teaching the subject on which the certificate is issued.

Teachers who devote the major portion of their time to teaching or supervising special subjects shall be required to hold a high school certificate or a special certificate, as provided for in this law, on the special subject in which they give instruction or supervise work. [Acts 1921, p. 242.]

Art. 2889a. Special certificate.—Any person who for six years or more has been the holder of a State first grade certificate or its equivalent, and who can furnish evidence of successful experience in teaching in the public schools for six or more sessions subsequent to September 1, 1910, shall be entitled to receive a State permanent first grade certificate.

Any person who has been engaged in teaching a special subject in the public school for a period of four years, and who has been employed to teach the said subject during the last three years prior to September 1, 1925, shall be exempt from the requirement to hold a teacher's special certificate so long as he or she continues to be employed to teach the same subjects; provided that any person who has been engaged in the teaching of music, or writing and drawing in the public schools of Texas for ten years shall be exempt from the present law and be given a life certificate in that subject.

Any teacher who applies for a Texas teachers' certificate on credentials from another state may be granted by the State Superintendent an emergency certificate valid for four months, while the record is being completed, prior to determining the kind and class of certificate, if any, to be issued to the applicant. The applicant shall be required to pay the same fee for the issuance of an emergency certificate as is required by law to be paid on application for other teacher's certificates.

Any person who is employed to teach any trade or industry in the public schools may, upon application to the State Superintendent, signed by the majority of the board of trustees of the school desiring his services, be issued a temporary permit to teach said trade without being required to hold the special certificate prescribed by law; provided that no permit may be granted for a longer term than two years and provided further that the fee for issuing said permit shall be the same as is required by law for the issuance of teacher's certificates.

The provisions of this Act are cumulative of the laws now in force regulating the issuance of teacher's certificates and all laws and parts of laws in conflict with the provisions expressed herein are hereby repealed. [Acts 1925, p. 449.]

Art. 2890. Certificates from other States.—The holders of diplomas or certificates from other States, who desire certificates valid in Texas, shall present such diplomas or certificates to the State Superintendent, who shall require the State Board of Examiners to make investigations as to the value of such diplomas or certificates as measured by the standards for certificates in this State; and the State Superintendent shall have the power to issue to the holder of a diploma or certificate from another State such Texas certificate as, in his judgment, the holder is entitled to receive, when the value of his diploma or certificate is estimated by the standards required for Texas certificates; provided that no certificates may be issued if the said diploma or certificate is not estimated to equal the lowest State certificate issued in Texas. [Acts 1911, p. 189; Acts 1920, 3rd C. S., p. 112.]

Art. 2891. City certificates.—A city or town which has a scholastic population of one thousand or more and has become an independent school district and which levies a local tax for educational purposes or which maintains a system of free schools for nine months in each year, and which has employed a superintendent of city schools, may have a city Board of Examiners. Said Board of Examiners shall in all cases consist of the city superintendent of the city schools; together with two other persons who shall be appointed by him, and who shall be teachers. The city Board of Examiners is hereby authorized to issue certificates valid only in the city in which they are issued; such certificates shall be temporary.

Temporary city certificates shall be of three classes, as follows: Second Grade, First Grade, and High School. A temporary city certificate shall be good for two years, unless cancelled by lawful authority, and a second city certificate shall not be issued to any person. The further regulation of the issuance of such certificates shall be provided for by the board of trustees of such cities or towns; provided, that no city or town shall make the requirements for a temporary certificate inferior to the requirements provided by law for any State certificates of the corresponding grades. Any city or town may at the discretion of the superintendent of city schools, employ a teacher of any special branch not included in the requirements of a State certificate, without requiring an examination or a teacher's certificate. Nothing in this article shall prevent the board of trustees of any city or town from recognizing the certificate issued in any other such city or town in this State and validating the same in the city or town so recognizing.

A superintendent of schools in any city or town of this State shall be required to be the holder of a State first grade or State permanent certificate, and no school board may legally contract with any superintendent who is not the holder of a State first grade or State permanent certificate; provided, however,

this certificate requirement shall not apply to a superintendent who has held a position as city or town superintendent for a period of ten consecutive years in the school in which he or she is employed. [Acts 1921, p. 243.]

Art. 2891a. Teachers' certificates revived and continued.—Any person holding a teacher's certificate of any kind or grade which has not expired at the beginning of any summer school of any State Teachers College or any other institution rated as first class by the State Department of Education in this State, shall have the right to have such certificate revived and continued in force for a period of one year by taking four courses or subjects and passing in same at such summer session of a State Teachers College or any other institution rated as first class by the State Department of Education in this State. Upon successfully passing such four courses or subjects, the President of the College shall certify to same and attach his certificate to the teacher's certificate so held by such person, and thereupon such teacher's certificate shall be presented to the State Department of Education and upon the payment of one dollar fee by the holder, shall be renewed and continued for one year from the beginning of the ensuing school year after taking said four courses; provided the word course or subject as herein specified shall mean one-third of a regular nine month's [months'] course. [Acts 1927, 40th Leg., 1st C. S., p. 115, ch. 40, § 1.]

CHAPTER EIGHTEEN

COMPULSORY EDUCATION

Art.
2892. Attendance requirements.
2893. Exemptions.
2894. Excuses for absences.
2895. Attendance officer.
2896. Powers and duties.
2897. Superintendent shall furnish list, etc.
2898. Parole of pupil.

Article 2892. Attendance requirements.—Every child in this State who is eight years and not more than fourteen years old shall be required to attend the public schools in the district of its residence, or in some other district to which it may be transferred, as provided by law, for a period of not less than one hundred days during each scholastic year. The period of compulsory school attendance at each school shall begin at the opening of the school term unless otherwise authorized by the district school trustees and notice given by the trustees prior to the beginning of such school term; provided that no child shall be required to attend school for a longer period than the maximum term of the public school in the district where such child resides. [Acts 1915, p. 93; Acts 1923, p. 255.]

Art. 2893. Exemptions.—The following classes of children are exempt from the requirements of this law:

1. Any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship, and shall make the English language the basis of instruction in all subjects.

2. Any child whose bodily or mental condition is such as to render attendance inadvisable, and who holds definite certificate of a reputable physician specifying this condition and covering the period of absence.

3. Any child who is blind, deaf, dumb or feeble-minded, for the instruction of whom no adequate provision has been made by the school district.

4. Any child living more than two and one-half miles by direct and traveled road from the nearest public school supported for the children of the same race and color of such child and with no free transportation provided.

5. Any child more than twelve years of age who has satisfactorily completed the work of the seventh grade of a standard elementary school of seven grades, and whose services are needed in support of a parent or other person standing in parental relation to the child, may, on presentation of proper evidence to the county superintendent, be exempted from further attendance at school. [Id.]

Art. 2894. Excuses for absences.—Any child not so exempt may be excused for temporary absence due to personal sickness, sickness or death in the family, quarantine, severe storm which has destroyed bridges and made the regular means of travel dangerous, or for unusual causes acceptable to the teacher, principal or superintendent of the school in which the said child is enrolled; provided that the excuses are in writing and signed by the parent or guardian of said child. Any case so excused may be investigated by the authorities discharging the duties of attendance officer for the school from which said child is so excused. [Id.]

Art. 2895. Attendance officer.—The county school trustee of any county having a scholastic population of more than three thousand may elect a school attendance officer for said county upon petition of at least fifty resident freeholders of said county setting forth good reasons why said county should have an attendance officer. A public hearing shall be had on said petition after due notice thereof given by publication in a newspaper published at the county seat for three consecutive weeks, or if there be no such newspaper, then by posting printed notices in two public places within the county and one at the courthouse door of said county. If, after such hearing, said trustees believe that a school attendance officer is necessary to the proper enforcement of the provisions of this law, and that the schools of said county will be benefited by having said attendance officer, the said board may elect such officer as herein provided.

The board of trustees of any independent district having a scholastic population of more than two thousand may in like manner elect an attendance officer for said district.

Such attendance officer may have his salary paid from the available school funds belonging to said county or district, not exceeding two dollars per day for the time actually employed in discharging his duty. In any county or independent district where such attendance officer is not so elected, the duties of said attendance officer shall devolve upon the school superintendents and peace officers of such county or district who shall perform the same without additional pay. Counties or independent school districts which may avail themselves of the option to elect school attendance officers may elect the probation officer or some officer or officers of the juvenile court of said county to serve as such attendance officer. [Id.]

Art. 2896. Powers and duties.—The attendance officer shall have power to investigate all cases of unexcused absences from school, to administer oaths and to serve legal process, to enforce the provisions of this law, to keep records of all cases of any kind investigated by him in the discharge of his duties, and to make reports of his work as the State Superintendent may require. Nothing in this law shall be construed to authorize any attendance officer to invade or enter without permission of the owner or tenant thereof, or the head of any family residing therein, any private home, or private residence, or any room or apartment thereof, except to serve lawful process upon any parent, guardian or other person standing in parental relation to any child affected by this law, or to forcibly take corporal custody of any child anywhere without permission of the parent or guardian thereof, or other person standing in parental relation to such child, except in obedience to valid process issued by a court of competent jurisdiction. [Id.]

Art. 2897. Superintendent shall furnish list, etc.—The county superintendent shall furnish to the superintendent of schools of each school district in the county, and to the principal of the school in case there be no superintendent, a complete list of all children of scholastic age belonging in said district, as shown by the last scholastic census and the record of transfers to and from said district. The superintendents and principals of the various schools of said county shall report to said county superintendent the

names of all children subject to the provisions of this law who have not enrolled in said school, and the superintendent, principal or other official of private, denominational or parochial schools shall furnish to said county superintendent a list of all children of scholastic age enrolled in the school presided over by said official and the district in which said child was enumerated in the public school census. From such reports the county superintendent shall make up a complete list of all children within scholastic age enrolled in the various districts of said county who have not enrolled in some school and are not complying with the compulsory attendance law, and said list shall be furnished to the attendance officer. All notices, forms and blanks to be used by any of the superintendents, principals or officials of any school shall be prescribed by the State Superintendent. Any teacher giving instruction to any child within compulsory attendance age shall promptly report any unexcused absences to the attendance officer. [Id.]

Art. 2898. Parole of pupil.—Any child within the compulsory school attendance ages who shall be insubordinate, disorderly, vicious or immoral in conduct, or who persistently violates the reasonable rules and regulations of the school which he attends, or who otherwise persistently misbehaves therein so as to render himself an incorrigible, shall be reported to the attendance officer who shall proceed against such child in the juvenile court. If such child is found guilty in said court the judge shall have the power to parole said child, after requiring the parent or other person standing in parental relation, to execute a bond in the sum of not less than ten dollars, conditioned that said child shall attend school regularly and comply with all the rules and regulations of said school. If the superintendent or principal of any school shall report to the attendance officer for said school that said child has violated the conditions of his parole, said attendance officer shall proceed against such child before the judge of the juvenile court, and if such child shall be found guilty of violating the conditions of said parole, the bond shall forthwith be declared forfeited and shall be collected in the same manner as other forfeited bonds under the general laws of this State, and the proceeds of same shall be paid into the available school fund of the common or independent school district. The judge of said court may, after a fair and impartial hearing given to said child, again parole said child, requiring such bond as he may deem prudent, and require said child to again enter school. If said child shall violate the conditions of the second parole and shall be convicted of same he shall be committed to a suitable training school as may be agreed upon by the parent of the child and the judge of the juvenile court in which the child is convicted. [Id.]

CHAPTER NINETEEN

MISCELLANEOUS PROVISIONS

Art.
2899. Non-sectarian schools.
2900. Separate schools.
2901. Where children may attend school.
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2903. Scholastic year.
2904. Powers of trustees over pupils.
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Article 2899. [2896] Non-sectarian schools.—No part of the public school fund shall be appropriated to or used for the support of any sectarian school. [Acts 1905, p. 263.]

Art. 2900. [2897–8] Separate schools.—All available public school funds of this State shall be appropriated in each county for the education alike of white and colored children, and impartial provisions shall be made for both races. No white children shall attend schools supported for colored children, nor shall colored children attend schools supported for white children. The terms "colored race" and "colored children," as used in this title, include all persons of mixed blood descended from negro ancestry. [Id.]

Art. 2901. [2899] Where children may attend school.—Every child in this State of scholastic age shall be permitted to attend the public free schools of the district or independent district in which it resides at the time it applies for admission, notwithstanding that it may have been enumerated elsewhere, or may have attended school elsewhere part of the year. [Id.]

Art. 2902. [2894–2900] Scholastic age.—All children, without regard to color, over seven years of age and under eighteen years of age at the beginning of any scholastic year, shall be entitled to the benefit of the public school fund for that year. The board of school trustees of any city or town or independent or common school district shall admit to the benefits of the public schools any person over seven and not over twenty-one years old at the beginning of the scholastic year, if such person or his parents or legal guardian reside within said city, town or district. [Id.; Acts 1913, p. 175; Acts 1915, p. 183.]

Art. 2903. [2901] Scholastic year.—The scholastic year shall commence on the first day of September of each year and end on the thirty-first day of August thereafter. [Acts 1905, p. 263; Acts 1915, p. 183.]

Art. 2904. [2902] Powers of trustees over pupils.—The trustees of schools shall have the power to admit pupils over and under scholastic age, either in or out of the district, on such terms as they may deem proper and just; provided, that in admitting pupils over and under the scholastic age, the school shall not be overcrowded to the neglect and injury of pupils within the scholastic age. They may suspend from the privileges of schools any pupil found guilty of incorrigible conduct, but such suspension shall not extend beyond the current term of the school. [Id.]

Art. 2905. Trustees' powers: eminent domain.—The county school trustees shall have power to purchase and lease real property for all the common school districts, and the independent school districts of their county having less than 150 scholastics, and the trustees of all independent school districts having 150 scholastics or more shall have power to purchase and lease real property for their district, for the purpose of supplying playgrounds, agricultural tracts and sites upon which to build school houses and such other buildings as are necessary for the schools of said districts, and to acquire such real property and easements therein by the exercise of the right of eminent domain. [Acts 1917, p. 323.]

Art. 2906. [2903] School terms.—Public schools shall be taught for five days in each week. Schools shall not be closed on legal holidays unless so ordered by the trustees. A school month shall consist of not less than twenty school days, inclusive of holidays, and shall be taught for not less than seven hours each day, including intermissions and recesses. [Acts 1905, p. 263; Acts 1915, p. 183.]

Art. 2907. Governing boards: appointment.—Each member of the governing board of the University of Texas, the Agricultural and Mechanical College, of the normal colleges, and of the College of Industrial Arts, shall be a qualified voter, and shall be selected from different portions of the State. One-third of the membership of each such board shall be bienally [biennially] nominated by the Governor and appointed by and with the advice and consent of the

Senate, and shall hold their offices for six years, respectively. [Acts 1913, p. 191.]

Art. 2908. [2766] Oath.—County superintendents, county judges and all school officers shall take the official oath. [Acts 1905, p. 263.]

Art. 2909. Definitions.—As used in this title:

1. State Superintendent means the State Superintendent of Public Instruction.

2. State Board means the State Board of Education.

3. County superintendent means county superintendent of public instruction.

Art. 2910. [2904] Agents for book publishers.—No member of the board of trustees of any public school, nor teacher in any of the public schools in this State, nor county or city superintendent of public schools shall, during the term of his office as trustee or superintendent, or during the time of his employment as teacher, act as agent or attorney for any textbook publishing company selling textbooks in this State. Nor shall any person interested in the publication of textbooks, or in selling the same to be used in the public schools of this State, be eligible to serve as school trustee, county or city superintendent of schools, or as teacher in any of the public schools of this State. If, after election as trustee, county or city superintendent or employment as teacher, any person filling such position accepts the agency or attorneyship of any textbook publishing company, the acceptance of such agency or attorneyship shall work a forfeiture of the office or place in the public schools held at the time of the acceptance of such agency or attorneyship. [Acts 1905, p. 263.]

Art. 2911. [2783] Prescribed studies.—All public schools in this State shall be required to have taught in them orthography, reading in English, penmanship, arithmetic, English grammar, modern geography, composition, physiology and hygiene, including the effects of alcoholic stimulants and narcotics on the human system, mental arithmetic, Texas history, United States history, civil government, elementary agriculture, cotton grading and other branches as may be agreed upon by the trustees or directed by the State Superintendent; provided, that the subject of elementary agriculture shall not be required to be taught in independent school districts having a scholastic population of three hundred or more, unless so ordered by the school boards. Suitable instruction shall be given in the primary grades once each week regarding kindness to animals and the protection of birds and their nests and eggs. Elementary agriculture shall include certain practical field studies and laboratory experiments as prescribed by the county school trustees in conformity to law and the requirements of the State Superintendent. Each summer normal institute and each county teachers' institute shall employ at least one instructor who shall be selected because of his special preparation to give instruction in agriculture. [Acts 1905, p. 262; Acts 1907, p. 316; Acts 1915, p. 134.]

Art. 2912. [2784] Registers and reports.—Teachers shall keep daily registers, in which the attendance, names, ages and studies of the pupils shall be recorded, and such other matters as may be prescribed by the State Superintendent. Said registers shall be open to the inspection of all parents, school officers, and all other persons who may be interested. All teachers shall make monthly reports on such subjects as may be designated by the State Superintendent or county superintendent, to be approved by a majority of the trustees of the district, and shall file the same with the county superintendent when they present their vouchers for their month's salaries. They shall make such reports at the end of the school term as may be prescribed by the State Superintendent, and, until such term reports are made, the trustees shall not approve vouchers for last month's salaries, nor shall the county treasurers pay the same. [Acts 1905, p. 263.]

Art. 2913. [2785] Shall attend summer schools.—As far as possible all teachers in the public schools of this State shall attend the summer normal and county institutes. [Id.]

Art. 2914. [2731] Elementary agriculture.—The State Normal School Board of Regents, the boards of directors of the Agricultural and Mechanical College, of the College of Industrial Arts, and of the State University shall require the teaching of elementary agriculture for teachers in the summer sessions of said institutions and the State normal schools. [Acts 1909, p. 221.]

Art. 2915. Cotton classing.—The State Board is authorized and instructed to require the teaching of cotton classification in all the State normal schools, industrial schools, summer normal schools, teachers' institutes, and in all public schools; such subject shall not be required to be taught in independent school districts having a scholastic population of three hundred or more, or in districts where the cotton acreage is less than ten per cent of the total acreage planted to farm products, unless so ordered by the school board or trustees. The grades of cotton taught in all schools shall be those established and provided for by the United States Department of Agriculture and known as official types or "standards." The State Superintendent shall furnish full information to all schools required to teach the classification of cotton, as to how to obtain such types or "standards." [Acts 1913, p. 129.]

Art. 2916. Cotton classing: standards.—The commissioners court of all counties coming under the provisions of this law shall provide for at least one set of the official types or "standards" to be placed in charge of the county superintendent, who shall use them for the purposes of instruction in classification of cotton, lend them to summer normal schools and teachers' institutes held in his county, and have types of same made for the various schools in his county applying for same, provided, that such schools shall pay the cost of making said types. The school board or trustees of every school district required by the provisions of this law to teach cotton grading, shall furnish the county superintendent with samples of the different grades of cotton from which a set of types or "standards" shall be made by comparing them with the official types or "standards," and the county superintendents shall certify that the same have been carefully compared with the official types or standards in his office, and shall correctly label same, showing the grade thereof; provided, that nothing in this article shall prevent school boards or trustees from purchasing the official types or standards direct from the United States Department of Agriculture. The State normal schools and the State industrial schools shall procure the official types or standards from the United States Department of Agriculture and pay for same out of the appropriation made by the Legislature for their support and maintenance. [Id.]

Art. 2917. Cotton classing: instructors.—The State normal and industrial schools shall employ a competent instructor to teach the practical art of grading and classing cotton, and the handling of cotton in all of its branches from the field to the factory. Summer normals and county institutes shall make provision for the employment of instructors in cotton classification in the same way that they employ instructors in other required branches. [Id.]

Art. 2918. Cotton classing cetificates.—Students of any school in this State where cotton grading or classing is required to be taught shall be entitled to a certificate of proficiency after passing such examination as the faculty of the school or the county superintendent of the county in which they propose to teach may prescribe; provided, that the applicant must be able to class sixty per cent or more of the samples presented compared with the types or standards of the Department of Agriculture. [Id.]

Art. 2919. Free kindergartens.—The trustees of any school district in Texas, upon the petition of the parents or guardians of twenty-five or more chil-

dren under the scholastic age down to and including five years, residing in said district, shall establish and maintain a kindergarten as a part of the public free schools of said district, for the training of children within said ages residing in said district, and shall establish such courses of training, study and discipline, and such rules and regulations governing such kindergartens as said trustees shall deem best. Any such petition for the establishment and maintenance of a free kindergarten shall be presented to the trustees of said district between the first day of June and the first day of August in any one year. The cost of establishing and maintaining such kindergartens shall be paid from the special school tax of said districts. Said kindergartens shall be a part of the public school system and shall be governed, as far as practicable in the same manner and by the same officers as is or may be provided by law for the government of the other public schools of the State. The trustees shall be empowered to employ to teach such kindergartens only those who hold State Kindergarten Certificates. [Acts 1917, p. 319.]

Art. 2920. Building specifications.—The public school buildings of Texas shall conform to the following requirements:

1. No window admitting light shall be so placed in a class room or study hall that it must be faced by pupils when seated at their desks. All such window openings shall not come lower than a point three and a half feet from the floor, and shall extend to a point within six inches of the ceiling; and the area of clear window surface thereof shall not be less than one-sixth of the area of the floor space in said class room or study hall. No part of said class room or study hall shall be at a greater distance from the window than twice the height of the top of the window above the floor, except when adequate skylights are provided. The main light in all one-room schools shall come from the left of the pupils as they sit at their desks, and in all larger buildings this condition shall be approximated as nearly as architectural demands and the demands of ventilation will permit.

2. All school houses shall be provided with sufficient heating apparatus. All stoves, radiators or other sources of direct heat located within the class rooms or study halls shall be so jacketed, ventilated or otherwise protected that the desks upon the side adjoining same shall not be more than five degrees Fahrenheit hotter than the desks upon the opposite side of the room; and shall be equipped with an automatic temperature regulator that will regulate the temperature of said class room or study hall to within two degrees of any set standard.

3. Every class room or study hall shall be provided with an efficient apparatus whereby in cold weather a supply of thirty cubic feet per minute of fresh, warm air shall be supplied to each pupil in such manner as not to place any pupil in a disagreeable draft, and shall be provided with exhaust flue or flues, with inlets at or near the floor line, so arranged as to effectively carry out of the room the cold and impure air without placing any pupil in a disagreeable draft.

4. All interior wood work in school buildings shall be without such unnecessary fluting, turning or carvings as catch dust and microbes, and all floors shall have their surfaces made impervious to water and germs by a coat of boiling paraffin oil or other floor dressing having similar effect, applied immediately after the floor is laid.

5. All school buildings of two or more stories shall be provided with not less than two widely separated flights of stairs, and no stair shall have winding treads, but every tread shall be full width and turns be made flat landings not less than four feet wide, and there shall be one such landing between floors. All stairs shall have a hand rail on each side and of such size and so placed that it can be held easily by the pupils using said stairs.

6. All outside doors and all doors leading from class rooms or study halls shall be hung so as to open outward. [Acts 1913, p. 244.]

Art. 2921. Examination of plans.—No public school building shall be constructed in Texas at an expense of more than four hundred dollars, until the board of school trustees of the district or city or town in which the work is to be done shall have first secured a school building permit from the officer legally authorized to grant such permit, certifying that the plans and specifications of said proposed building conform to the regulations prescribed in the preceding article. The petition for said permit shall be made in writing, and shall set forth such details of the plans and specifications as are necessary to pass upon the legality of the lighting, heating, ventilation, sanitation and fire protection in such proposed building. For buildings in a common school district the county superintendent of the county in which the school is to be located, and for buildings of an independent school district or in a city or town that has assumed control of its schools, the superintendent of public schools in that district or city or town, is hereby authorized, empowered and required to examine all plans for all proposed public school buildings, costing over four hundred dollars, and to grant permits only for such buildings, as conform to the requirements of this law, and to make a report to the State Superintendent of all such permits granted, transmitting all evidence. [Id.]

Art. 2922. Unauthorized payments for construction.—No person charged with the duty of disbursing school funds or of authorizing disbursement of school funds in this State shall pay or authorize the payment of any vouchers or in any other manner pay out any sum of public money for the construction of any school building at an expense of more than four hundred dollars until the board of school trustees of said district or city or town has secured from the properly constituted authority a legal permit for such work. Any disbursing officer failing to observe the provisions of this law shall be held liable for such amount as is paid out on account of such building, as is not legally permitted. [Id.]

CHAPTER NINETEEN A

RURAL HIGH SCHOOLS

Art.
2922a. Authority to establish.
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2922c. Area.
2922d. County line districts.
2922e. Control of.
2922f. Elementary schools—how abolished.
2922g. Districts classified.
2922h. Outstanding bonds.
2922i. Warrants.
2922j. Deposit and disbursement of funds.
2922k. Control by and of trustees.
2922l. Tax.

Article 2922a. Authority to establish.—In each organized county in this State and in any county which shall hereafter be organized, the county school trustees shall have the authority to form one or more rural high school districts, by grouping contiguous common school districts having less than four hundred scholastic population and independent school districts having less than two hundred and fifty scholastic population for the purpose of establishing and operating rural high schools, provided also that the county school trustees may annex one or more common school districts or one or more independent school districts having less than two hundred and fifty scholastic population to a common school district having four hundred or more scholastic population or to an independent district having two hundred and fifty or more scholastic population upon the approval of the board of trustees of each school district affected; provided that when one or more common school districts are so annexed to a common school district having four hundred or more scholastic population, or to an independent district having two hundred and fifty, or more scholastic population, as the case may be, a board of trustees shall be elected from the district at large and shall have the management and control of the district as enlarged until the time for the next election and

qualifications of trustees for common and independent districts, as provided by General Law. Provided that the county school trustees shall have the authority to abolish a rural high school district on a petition signed by a majority of the voters of each elementary school district composing the rural high school district and when such district has been abolished the elementary districts shall automatically revert back to their original status, with the exception that in the event there are any outstanding indebtednesses against the said rural school district each elementary district shall assume its proportional part of the debts. [As amended Acts 1925, 39th Leg., p. 204, ch. 59; Acts 1927, 40th Leg., 1st C. S., p. 206, ch. 78, § 1.]

Art. 2922b. How classed.—Rural high school districts as provided for in the preceding article shall be classed as common school districts, and all other districts, whether common or independent, composing such rural high school district shall be referred to in this Act as elementary school districts; provided that all independent school districts enlarged by the annexation thereto of one or more common school districts as provided for in Article 2922a shall retain its status and name as an independent school district, and shall continue to operate as an independent school district under the provisions of the existing laws and the laws hereafter enacted governing other independent school districts, except as otherwise provided for herein.

Art. 2922c. Area.—No rural high school district, as provided for herein, shall contain a greater area than one hundred square miles, or more than seven elementary school districts, except that the county school board of school trustees may form rural high school districts, as provided in Article 2922a, containing more than one hundred square miles, upon a vote of a majority of the qualified electors in the said proposed rural high school district voting at an election called for such purpose; and provided further, that the said board of county school trustees may form a rural high school district containing more than seven elementary districts upon a vote of a majority of the qualified voters in each of the elementary districts within such proposed rural high school district.

Art. 2922d. County line districts.—The county board of trustees of two or more adjoining counties shall have the authority, upon the written order of a majority of the members of each county board concerned, to establish a county line rural high school district, and to designate the county which shall have supervision of said county line rural high school district. Said county line rural high school district shall be governed as other rural high school districts herein provided for.

Art. 2922e. Control of.—The control and management of the schools of a rural high school district, established under the provisions of this Act, shall be vested in a board of seven trustees, elected by the qualified voters of the said district at large, who shall be elected and serve in accordance with the provisions of General Law relative to common school districts, except as may be otherwise provided herein; and provided that such elementary district included in such rural high school district must be the residence of at least one member of said board. Any vacancy shall be filled for the unexpired term by appointment by the county board of trustees. Provided that for a rural high school district formed with more than one hundred square miles of territory, or containing more than seven elementary districts, as provided in this Act, the board of trustees, as herein provided for, shall be elected from the district at large. Should any rural high school district fail to elect a trustee or trustees as provided for in this Act, the county board of trustees shall appoint said trustee or trustees. Four of said trustees shall be elected each odd number of years and three on each even number of years on the first Saturday in April. The trustees of the first board shall draw for terms. In the event a rural high school district is created subsequent to the date for the election of trustees of common school districts, as provided by General Law, it shall be the duty of the county board to appoint a board of trustees for the district, as prescribed herein, to serve until the next date for the election of common school district trustees. In the election of rural high school district trustees, at least one voting box shall be provided in each elementary district composing the high school district.

The present board of trustees of all elementary school districts which may be included within a rural high school district, as herein provided, shall continue in control of their respective districts until the close of the current scholastic year, but they shall make no contract effecting the expenditure of any school funds subsequent to September 1, 1925, nor shall they have any other authority in the management and control of the schools of the said districts after September 1, 1925. The boards of trustees of rural high school districts shall immediately upon their election and organization proceed to make contracts for the operation of all schools under their control. The first board of trustees herein provided for shall be elected on the first Saturday in April, 1925, and annually thereafter an election shall be held as provided for by law for holding trustee elections in common school districts.

Art. 2922f. Elementary schools—how abolished.—The county board of school trustees shall not have the authority to abolish or consolidate any elementary school district already established except upon the vote of a majority of the qualified electors residing in such elementary district; provided that when any school within an elementary district fails to have an average daily attendance the preceding year of at least twenty pupils it may be discontinued by the board of trustees of said rural high school district, and said district may be consolidated by the county board of school trustees with some other district or districts for elementary school purposes; provided that if there is more than one white or one colored school in such elementary school district the board of trustees of the said rural high school districts or an independent district, as the case may be, may consolidate such white or colored schools of the elementary district; and provided that the board of trustees of a rural high school district may transfer the pupils of one elementary district to another within the rural high school district, when the transfer is made from an elementary district of lower classification to one of higher classification; and provided further that the board of trustees of a rural high school district may transfer pupils from an elementary district to any other elementary district within the rural high school district upon application of the parents or guardian of the said pupils.

Whenever one or more common school districts are annexed to a common school district or to an independent district under the provisions of Section 1, such common or independent district shall maintain elementary schools of such classification as the county board may designate in each district so annexed, for the same length of term provided for the schools of the said common school district or independent district. Provided such schools may be discontinued by the local board of trustees when the average daily attendance of any such schools for the preceding year is less than twenty.

Art. 2922g. Districts classified.—The county board of school trustees shall classify the elementary schools in each rural high [school] district and designate the number of grades that shall be taught in such schools, and when such classification is made the board of trustees of the rural high school districts shall maintain a school of such classification for the same length of term as all other schools within said rural high school district. The board of trustees of a rural high school district shall have a right to be heard by the county board of trustees relative to the classification of schools within their districts and shall have the right of appeal from such classification from the county board of school trustees to the State Superintendent of Public Instruction.

Art. 2922h. Outstanding bonds.—In the event any of the elementary districts included within a rural high school district or the common school districts annexed to a common or independent district, or the common school or independent district to which one or more common school districts are annexed, as herein provided for, have outstanding bonded or other valid indebtedness, then at an election for that purpose, at a date to be designated by the proper authorities, as provided by General Law, the question as to whether or not the said rural high school district, common school district, or independent school district as the case may be, shall assume and pay off such outstanding bonds or other indebtedness and whether a tax shall be levied therefor may be submitted to the qualified taxpaying voters of such high school, common or independent district. If a majority of the votes cast at such an election favor the assumption of such indebtedness then such indebtedness shall become valid and subsisting obligations of the said rural high school district, common school district, or independent district; and the board of trustees of such district shall annually thereafter levy and collect sufficient taxes to pay the interest on the bonds so assumed as it accrues, and create a sinking fund which, in addition to the sinking funds already accumulated in the original bonded district or districts, will pay off and retire the said outstanding bonds when they shall become due. The said election providing for the assumption of such bonded or other indebtedness shall be called and held in accordance with existing provisions of law relating to elections for the issuance of bonds by independent school districts. [As amended Acts 1925, 39th Leg., p. 204, ch. 59; Acts 1927, 40th Leg., 1st C. S., p. 206, ch. 78, § 2.]

Art. 2922i. Warrants.—All funds of every nature to which a rural high school district may be entitled shall be paid out on warrants issued by the secretary and signed by the secretary and president of the board of trustees and approved by the county superintendent of public instruction. The board of school trustees shall select its own president and secretary, each of whom shall be a member of the board. The secretary shall keep a complete itemized account of all receipts and disbursements in a well-bound book owned and paid for by the district, and his accounts shall be approved by the county superintendent and by the county board of school trustees at the end of each scholastic year. No school funds shall be allotted or apportioned and paid to any rural high school district for the following year thereafter until this report is submitted to and approved by the county superintendent and the county board of school trustees.

Art. 2922j. Deposit and disbursement of funds.—All funds belonging to a rural high school district shall be deposited in the county depository and disbursed in the same manner as other funds are disbursed from such depository under the depository law in so far as same are applicable.

Art. 2922k. Control by and of trustees.—All rural high schools within a rural high school district herein provided for shall be under the immediate control of the board of school trustees for such rural high schools, and such board of school trustees shall be under the control and supervision of the county superintendent and county board of school trustees, and shall be subject to the same provisions of law and restrictions that common school districts are now subject to, except where otherwise provided herein.

Art. 2922*l*. Tax.—The board of trustees of a rural high school district provided for in this Act shall have the power to levy and collect an annual ad valorem tax not to exceed one dollar on the hundred dollars valuation of taxable property of the district for the maintenance of schools therein, and a tax not to exceed fifty cents on the one hundred dollars valuation of taxable property of the district for the purpose of the payment of accounts legally contracted in purchasing, constructing, repairing or equipping public free school buildings within the limits of each district, and the purchase of necessary sites therefor; provided, that the amount of maintenance tax, together with the amount of the bond tax of the district shall never exceed one dollar on the one hundred dollars valuation of taxable property; and provided further that no such tax shall be levied and no such bonds shall be issued until after an election shall have been held wherein a majority of the qualified tax-paying voters, voting at said election, shall have voted in favor of the levying of said tax, or of the issuance of said bonds, or both, as the case may be, and which election shall be held in accordance with the law now governing such elections in independent school districts, provided that the local taxes previously authorized by a district or districts included in a rural high school district or annexed to a common or independent school district, as provided for herein, shall be continued in force until such time as a uniform tax may be provided for the benefit of the rural high school district or said common or independent district as enlarged by the annexation of the said common school districts thereto. The board of trustees of any rural high school district may appoint an assessor of taxes who shall assess the taxable property within the limits of said district within the time provided by existing laws, and said assessment shall be equalized by the board of equalization composed of three members appointed by the board of trustees of said district. The said board of equalization shall be composed of legally qualified voters residing in said district, and shall have the same power and authority, and be subject to the same restrictions that now govern such boards in independent school districts. The tax assessor herein provided for shall receive such compensation for his services as the trustee of said district may allow, not to exceed two (2) per cent of taxes assessed by him. The county tax collector shall collect such tax and shall receive one-half of one per cent for his services for collecting such tax. Such tax when collected shall be deposited in the county depository to the credit of such rural high school district. The tax assessor herein provided for shall make a complete list of all assessments made by him, and when approved by the board of trustees shall be submitted to the county tax collector not later than September first of each year. [As amended Acts 1925, 39th Leg., p. 204, ch. 59; Acts 1927, 40th Leg., 1st C. S., p. 206, ch. 78, § 3.]

CHAPTER NINETEEN B

STATE AID FOR RURAL AND SMALL TOWN SCHOOLS

Art.
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2922o. Grant of aid.
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Article 2922m. Appropriation for state aid.—For the purpose of promoting the public school interests of rural schools and those of small towns, and of aiding the people in providing better school facilities for the education of their children, one and a half million ($1,500,000.00) dollars, or such part thereof as may be necessary, is hereby appropriated, for the school year ending August 31, 1926, and one and a half million ($1,500,000.00) dollars, or such part thereof as may be necessary, for the year ending August 31, 1927, to be used in accordance with the provisions of this Act in aiding rural schools and those of small towns. [Acts 1925, 39th Leg., ch. 113, p. 292, § 1.]

Art. 2922n. Conditions of distribution of aid.—State aid under the provisions of this Act may be distributed in such way to assist all schools of not

more than 400 scholastic enrollment located in common or independent districts of not more than 500 scholastics to maintain the school for such length of term, not to exceed eight months, as may be desired by the district board of school trustees, the granting of such aid to be subject to the following conditions:

1. Each school receiving this aid shall be provided with a suitable school house, erected in accordance with the Texas School House Building Law, or meeting substantially the requirements thereof, which shall be well located on a plot of ground not less than one acre in extent, properly drained.

2. Each such school shall be provided with necessary desks, seats and blackboards, with library, maps and charts, with such heating and ventilating equipment and such sanitary closets as are approved by the State Superintendent or his representative.

3. Teachers employed in State aid schools shall furnish to the State Superintendent satisfactory evidence of professional training and worthy service.

4. No common or independent school district shall be eligible to receive aid unless it shall be providing for the maintenance of its schools by voting and levying a local school tax of not less than seventy-five cents on the hundred dollars of property valuation; and provided further that the property valuation shall not be less than said property is valued for State and county purposes.

5. Each school receiving State aid under the provisions of this Act shall teach the common school subjects as prescribed by law, and shall follow the State course of study and shall be required to observe the school laws and rulings of the State Superintendent of Public Instruction and State Board of Education.

6. After August 31, 1926, no district shall be granted aid to be used directly or indirectly in assisting the district to liquidate outstanding indebtedness previously contracted. [Acts 1925, 39th Leg., ch. 113, p. 293, § 2.]

Art. 2922o. Grant of aid.—Schools of not more [than] four hundred (400) and not less than fifteen (15) scholastics located in districts of not more than 500 enrollment, complying with the foregoing conditions may send to the State Superintendent on blanks provided by the State Department of Education, a list of teachers employed in the school, showing the monthly salary, experience and training of each, together with an itemized statement of expected receipts and expenditures, the length of term, and such other information as may be required. The State Superintendent, with the approval of the State Board of Education, may then grant to the school such an amount of this fund as may be necessary to maintain the school for the desired length of term, provided that this period be not longer than eight scholastic months.

It is hereby provided further that sparsely settled counties having less than 1400 scholastics population in the common school districts may be exempted from the minimum restrictions of this section, provided that each district applying for aid votes and levies the limit of local support as provided in this bill. [Acts 1925, 39th Leg., ch. 113, p. 293, § 3.]

Art. 2922p. Preference in distribution of aid.—It is expressly hereby provided that all school districts meeting the requirements of this Act and not having sufficient available school funds to maintain their schools six months in the year shall be given the preference in the distribution of this fund to the end that all the public schools in the State can be maintained at least six months in the year, provided that no salaries to be paid out of State and county funds shall exceed those permitted in the General School Laws in accordance with the grade of certificate held. [Acts 1925, 39th Leg., ch. 113, p. 294, § 4.]

Art. 2922q. Aid without compliance with conditions.—In case of extraordinary and unusual conditions where it can be shown that its own resources are insufficient, the State Board of Education may arrange for the support of the rural school from State aid funds for a period of not exceeding six months even though the school district be unable to comply with the foregoing conditions; provided, however, that the amount of the tax herein provided for must be voted by the patrons of said school district and cannot be waived by the State Board of Education, and provided further, that the amount granted in no case shall exceed $300.00. [Acts 1925, 39th Leg., ch. 113, p. 294, § 5.]

Art. 2922r. One-teacher schools.—Under the provisions of this Act no one-teacher school, with an enrollment of more than twenty pupils, shall be eligible to receive aid, if said school offers work above the seventh grade, as outlined by the State Course of Study; provided, however, that in addition to the funds allotted by any district for a one-teacher school of not more than seven grades, a grant not to exceed five dollars per month for each child of scholastic age residing in the district and desiring to attend a public high school in another district may be made on the recommendation of the county superintendent, for a period not to exceed the number of months the public schools are maintained in the district of such child's residence, if the said district does not maintain a public high school open to such pupil; and provided further that no such grant may be made unless satisfactory evidence of the actual enrollment of such child in a high school is furnished by the principal thereof, and then only for the months in which such child is in regular attendance on such high school. Said allowance of $5.00 per capita per month is to be in lieu of a transfer of the State and county per capita apportionment, and if such transfer is made, a credit shall be allowed the district for the same. The funds due to high school pupils, as provided in this section, shall be paid to them [by] warrants drawn by the trustees of the district, against the funds granted said district for such purpose.

Only districts that are levying and collecting a local tax of not less than seventy-five cents on the hundred dollars valuation are eligible for this special aid. The funds due for such tuition shall be paid by warrants drawn by the trustees of the pupil's home district against the funds granted said district for such purpose. [Acts 1925, 39th Leg., ch. 113, p. 294, § 6.]

Art. 2922s. Special aid for teaching of special subjects.—State aid to the amount of not more than $250.00 to any one school in a district which will provide for proper instruction and demonstration in farm mechanics and carpentry, gardening and agriculture, home economics and sanitation, sewing, cooking and canning, according to plans furnished and approved by the State Department of Education, may be granted from the appropriation authorized by this Act. It is expressly provided that the school district which applies for special aid under this section must be complying with the foregoing conditions as stated in Section 2 of this Act. [Acts 1925, 39th Leg., ch. 113, p. 295, § 7.]

Art. 2922t. Consolidated districts.—It is hereby further provided that the sum of one thousand ($1,000.00) dollars may be granted by the State Superintendent, with the approval of the State Board of Education, for each rural consolidation effected during the biennium ending August 31, 1927, between two or more common school districts, or between an independent school district and one or more common school districts, provided the total scholastic population does not exceed five hundred in such consolidated district; provided such consolidation results in the erection of a rural high school building with not fewer than four teachers, or the addition of at least one room and one teacher, as a consequence of the consolidation, to the high school already provided, and resulting in a school of not fewer than four teachers. This sum shall become available when the building has been erected, or is nearing completion. [Acts 1925, 39th Leg., ch. 113, p. 295, § 8.]

Art. 2922u. Consolidated rural schools.—Consolidated rural schools, formed in accordance with Section 8 of this Act, which make provision for transportation of pupils to and from said schools at public expense, may be granted from this fund in addition to

the amount provided in Section 8 of this Act, a sum equal to one-half the cost of transportation, in amount not to exceed five hundred ($500.00) dollars for any one school, provided the contract for said transportation be approved by the State Superintendent. [Acts 1925, 39th Leg., ch. 113, p. 295, § 9.]

Art. 2922v. Maximum for district.—Except as authorized in Sections 8 and 9, no district shall receive a total of more than one thousand ($1,000.00) dollars in any one year under the provisions of this Act. [Acts 1925, 39th Leg., ch. 113, p. 295, § 10.]

Art. 2922w. Power of State Board.—The State Board of Education shall be authorized and it shall be their duty to take such action and to make such rules and regulations not inconsistent with the terms of this Act, as, in its opinion, may be necessary to carry out the provisions and intentions of this Act. They shall have the power to impose such other conditions and regulations as to the granting of State aid as may not conflict with provisions herein specified, as, in their opinion, may be for the best interests of the schools for whose benefit the funds are appropriated. [Acts 1925, 39th Leg., ch. 113, p. 295, § 11.]

Art. 2922x. Duties of State Superintendent.—It shall be the duty of the State Superintendent of Public Instruction to go in person or to send one of the rural school supervisors, authorized by this Act, who shall make a thorough investigation in person, or through representatives approved by the State Board of Education, of the grounds, buildings, equipment and possibilities of each school applying for State aid under the provisions of this Act, and aid shall not be granted to any school unless it be shown that such aid is actually needed for efficiency of school work and for the desired length of term. In cases where exceptional conditions, or lack of sufficient supervisory force renders personal inspection by the Department of Education impossible in time to grant State aid to some schools, the State Superintendent shall pursue such course, in regard to the final granting of State aid to such schools, as, on his recommendation, may be approved by the State Board of Education. [Acts 1925, 39th Leg., ch. 113, p. 296, § 12.]

Art. 2922y. Warrants and reports.—Warrants for all money granted under the provisions of this Act shall be transmitted by the State Superintendent of Public Instruction to treasurers or depositories of school districts to which State aid is granted in the same manner as warrants for State apportionment are now transmitted, and it shall be the duty of all treasurers or depositories to make annually itemized reports under oath to the State Superintendent of Public Instruction of the expenditure of all money granted under the provisions of this Act. [Acts 1925, 39th Leg., ch. 113, p. 296, § 13.]

Art. 2922z. Apportionment privileges.—County schools and small town schools shall be entitled to share in the distribution of State and county available school funds, and in all other school funds in the same manner as other school funds, and in all other school districts; and in case high school grades are maintained the community shall still be entitled to participate in the distribution of any State aid that may be extended by the Legislature of Texas for vocational or industrial purposes to high schools of the State although it accepts the provisions of this Act. [Acts 1925, 39th Leg., ch. 113, p. 296, § 14.]

Art. 2922zz. Use of funds by district.—No part of the funds herein appropriated shall be used to increase the minimum monthly salary of teachers over that specifically contracted for in their employment. By this section it is meant that no part of funds appropriated herein shall be used to supplement or add to any monthly salary of any teacher originally contracted for by such teacher and should any school which would otherwise be eligible to receive funds under this Act, agree or promise to pay an additional amount, or bonus, to any teacher above the minimum monthly salary originally contracted for by such teacher, then such school shall forfeit its right to receive aid under this Act. [Acts 1925, 39th Leg., ch. 113, p. 296, § 15.]

TITLE 50

ELECTIONS

Chap.

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CHAPTER ONE

MISCELLANEOUS PROVISIONS

Art.

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Article 2923. [3081] [1810] [1759] Applicable to all elections.—The provisions of this title shall apply to all elections held in this State, except as otherwise provided herein. [Acts 1st C. S. 1905, p. 520.]

Art. 2924. [3079] [1806] [1755] County judge failing to act.—Whenever, by this title, any duty is devolved upon a county judge and that office is vacant, or such officer from any cause fails to perform such duty, any two or more of the county commissioners of the county may and shall perform such duty.

Art. 2925. [2937] Blanks furnished.—At least thirty days before each general election the Secretary of State shall prescribe forms of all blanks necessary under this title and furnish same to each county judge. [Acts 1st C. S. 1905, p. 528, sec. 32.]

Art. 2926. [3080] [1018] [1757] To certify death of officer.—When any State or district officer, member of Congress, member of the Legislature or notary public shall die, the county judge of the county where such death occurs or of the county where such officer resided, shall immediately certify the fact of the death of such officer to the Secretary of State. [Acts 1863, p. 16; G. L. vol. 5, p. 604.]

Art. 2927. [3082] Ineligibility.—No person shall be eligible to any State, county, precinct or municipal office in this State unless he shall be eligible to hold office under the Constitution of this State, and unless he shall have resided in this State for the period of twelve months and six months in the county, precinct, or municipality, in which he offers himself as a candidate, next preceding any general or special election, and shall have been an actual bona fide citizen of said county, precinct, or municipality for more than six months. No person ineligible to hold office shall ever have his name placed upon the ballot at any general or special election, or at any primary election where candidates are selected under primary election laws of this State; and no such ineligible candidate shall ever be voted upon, nor have votes counted for him, at any such general, special, or primary election. [Acts 1895, p. 81; G. L. vol. 10, p. 811; Acts 1919, p. 17.]

Art. 2928. [3083] Ineligibility bars.—Neither the Secretary of State, nor any county judge of this State, nor any other authority authorized to issue certificates, shall issue any certificates of election or appointment to any person elected or appointed to any office in this State, who is not eligible to hold such

office under the Constitution of this State and under the above article; and the name of no ineligible person, under the Constitution and laws of this State, shall be certified by any party, committee, or any authority authorized to have the names of candidates placed upon the primary ballots at any primary election in this State; and the name of no ineligible candidate under the Constitution and laws of this State shall be placed upon the ballot of any general or special election by any authority whose duty it is to place names of candidates upon official ballots. [Id.; Acts 2nd C. S. 1919, p. 97.]

Art. 2929. Injunction may issue.—The district court shall have authority to issue writs of injunction and all other necessary process at the suit of any interested party, or of any voter, to enforce the provisions of the above two articles and to protect thereunder the rights of all parties and the public; for such purpose, jurisdiction and authority is conferred upon all district courts of this State and all cases filed hereunder shall have first right of precedence upon trial and appeal. [Acts 1919, p. 18.]

CHAPTER TWO

TIME AND PLACE

Art.
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Article 2930. [2810 to 2912–3088] Time and place.—A general election shall be held on the first Tuesday after the first Monday in November, A. D. 1926, and every two years thereafter, at such places as may be prescribed by law, after notice given as prescribed by law. Special elections shall be held at such times and places as may be fixed by law providing therefor. In all elections, general, special, or primary, the polls shall be open from eight o'clock a. m. to seven o'clock p. m. The election shall be held for one day only. [Acts 1st C. S. 1905, p. 520.]

Art. 2931. [2918–19–2964] In cities and towns.—All provisions of this title which prescribe qualifications for voting and which regulate the holding of elections shall apply to elections in cities and towns. In towns or cities incorporated under the general laws, the governing body may provide for city or town elections that there shall be one or more polling places; and, in such case, the certified list of poll taxpaying voters for all election precincts in which voters reside who are to vote at any such polling place shall be used therefor. In all cities and towns in which the number of electors at the last municipal election does not exceed four hundred in number, but one election poll shall be opened at any municipal election; and all officers of such towns and cities to be elected shall be voted for at such poll. [Id.; Acts 1897, p. 10.]

Art. 2932. Held in public buildings.—In all cases where it is practicable so to do, all elections shall be held in some school house, fire station or other public building within the limits of the election precinct in which such election is being held. No charge shall be made for the use of such building except that any additional expense actually incurred by the authorities in charge of such building on account of the holding of the election therein shall be repaid to them by the party who would be liable for the expenses of holding the election under the existing law. If there be no public building so available, such election may be held in some other building. [Acts 1917, p. 357.]

Art. 2933. [2913–17] Election precincts formed.—Each commissioners court may, if they deem it proper, at each August term of the court, divide their respective counties, and counties attached thereto for judicial purposes, into convenient election precincts, each of which shall be differently numbered and described by natural or artificial boundaries or survey lines by an order to be entered upon the minutes of the court. They shall immediately thereafter publish such order in some newspaper in the county for three consecutive weeks. If there be no newspaper in the county, then such copy of such order shall be posted in some public place in each precinct in the county. No election precinct shall be formed out of two or more justice precincts, nor out of the parts of two or more justice precincts. The commissioners court shall cause to be made out and delivered to the county tax collector, before the first day of each September a certified copy of such last order for the year following. [Acts 1st C. S. 1905, p. 520.]

Art. 2934. [2914] Precincts in cities and towns.—The commissioners court, in establishing new election precincts, shall divide any city or town into as may [many] election precincts as they may see proper, none of which shall have resident therein more than three hundred and fifty voters as ascertained by the vote of the preceding general city or town election. Every ward in every incorporated city, town or village shall constitute an election precinct, unless there shall have been cast in said ward, at the last general city or town election held therein, more than three hundred and fifty votes. Cities and towns and towns and villages incorporated under the general laws shall not necessarily constitute election precincts. No precinct shall be made out of parts of two wards. This article shall not apply to cities, towns and villages of less than ten thousand inhabitants; and, in such cities, towns and villages, the justice precincts in which said cities, towns and villages are situated may be divided into election precincts without regard to the wards of such cities, towns and villages, and without reference to the number of votes to be cast. [Id.; sec. 8.]

Art. 2935. [2915] [1709] Unorganized counties.—Each unorganized county which is attached for judicial purposes to an organized county shall be attached for election purposes, to some one of the commissioners precincts of such organized county, and voters in such unorganized county shall be authorized to vote in any election for commissioner of such commissioners precinct; provided, when more than one election precinct has been established by law in such unorganized county, each election precinct therein shall be attached, for election purposes, severally to one of the commissioners precincts of such organized county; and voters in such election precincts shall be authorized to vote in any election for commissioner of the commissioners precinct to which such election precinct has been attached. [Acts 1885, p. 88; G. L. vol. 9, p. 708.]

Art. 2936. [2916] [1732] Where to vote.—All voters shall vote in the election precinct in which they reside. [Acts 1881, p. 97; G. L. vol. 9, p. 189.]

CHAPTER THREE

OFFICERS OF ELECTION

Art.
2937. In small precincts.
2938. In large precincts.
2939. Qualifications.
2940. Disqualifications.
2941. Appointed supervisors.
2942. Agreed supervisors.
2943. Pay of judges and clerks.
2944. Precinct judges served.
2945. In unorganized counties.

Article 2937. [2920] In small precincts.—The commissioners court at the February term shall appoint from among the citizens of each voting precinct in which there are less than one hundred voters who have paid their poll tax and received their certificates of exemption, two reputable qualified voters as judges of the election, selected from different political parties if practicable, who shall continue to act until their successors are appointed. When the bounds of the precinct are changed so that one or more judges reside outside of the precinct for which they were appointed, the court shall appoint others to

fill such vacancy or vacancies. One of the judges who shall, in all cases belong to the party that at the last general election cast the largest vote for Governor throughout the State shall be designated as the presiding judge at elections; he shall appoint two competent and reputable qualified voters of different political parties if practicable, to act as clerks of the election. The order appointing all judges shall be entered of record. The presiding judge shall act in receiving and depositing the votes in the ballot boxes, and the other judge shall act in counting the votes cast; one clerk shall keep the poll list of qualified voters, and upon the poll list he shall write at the time of voting the name and number of each voter; the other clerk shall act as canvassing clerk, and shall keep the tally list of votes counted. Said officers shall perform such other duties as the presiding judge may direct. [Acts 1st C. S. 1905, p. 533, sec. 57.]

Art. 2938. [2921] In large precincts.—For every precinct in which there are one hundred citizens or more who have paid their poll tax or received their certificates of exemption, the commissioners court shall appoint four judges of election, who shall be chosen when practicable from opposing political parties, one of whom shall be designated as presiding judge. The presiding and one associate judge shall act in receiving and depositing the votes in the ballot box, and the other two judges shall act in counting the votes cast. The presiding judge shall appoint four competent and reputable clerks who have paid their poll tax, and of different political parties, when practicable; two of said clerks shall assist in keeping poll lists and the list of qualified voters; upon the poll lists they shall write the name and number of each voter, and at the time voted. Two clerks shall be canvassing clerks, who shall keep tally lists of votes counted and perform such other duties as the presiding judge may direct. At the close of the canvassing and during its progress, the tally clerks shall compare their tally lists and certify officially to their correctness. Provided, that in all elections held under the provisions of this title, other than general elections, local option elections and primary elections, the officers to be appointed by the commissioners court to hold said elections shall be a presiding judge, and assistant judge and two clerks, whose compensation shall be two dollars per day, and two dollars extra to the presiding judge for making return of the election. [Id.; sec. 58.]

Art. 2939. Qualifications.—All supervisors, judges and clerks of any general or primary election shall be qualified voters of the election precinct in which they are named to serve. [Acts 2nd C. S. 1923, p. 75.]

Art. 2940. [2922] Disqualifications.—No one who holds an office of profit or trust under the United States or this State, or in any city or town in this State or within thirty days after resigning or being dismissed from any such office, except a notary public, or who is a candidate for office, or who has not paid his poll tax, shall act as judge, clerk or supervisor of any election, nor shall any one act as chairman or as member of any executive committee of a political party, either for the State or any district, county or city, who has not paid his poll tax, or who is a candidate for office, or who holds any office of profit or trust under either the United States or this State, or in any city or town in this State; or who may be enjoying gratuitous passage on street cars or on other public service corporations, by reason of his appointment as a special policeman, or any one who has any connection, whatever, with the city, whereby the city is justified in issuing to any such person free transportation on the street cars, or franks entitling him to the free use of public service corporations, or any person who is regularly employed in any capacity by the city for whose services a salary or wages is paid, except a notary public. [Id.; sec. 60; Acts 1911, p. 18.]

Art. 2941. [2923] Appointed supervisors.—The chairman of the county executive committee, for each political party that has candidates on the official ballot, or if he fail to act, any three members of such committee, may, not less than five days before the general election, nominate one supervisor of election for each voting precinct, who has paid his poll tax, by presenting his name to the county judge, who shall indorse his approval on the certificate of his nomination if he is a reputable citizen, but not otherwise. Thereupon, on his presenting such nomination and its approval to the presiding judge of the precinct, he shall be permitted to sit conveniently near the judges, so that he can observe the conduct of the election, including the counting of the votes, the locking and sealing of the ballot boxes, their custody and safe return. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. Before he shall be permitted to act as supervisor, he shall take an oath, to be administered by the presiding judge, that he will mention and note any errors he may see in testing or counting the votes, and that he will well and truly discharge his duties as supervisor impartially, and will report in writing all violations of the law and irregularities that he may observe to the next grand jury. [Acts 1st C. S. 1905, p. 534, sec. 59.]

Art. 2942. [2924] Agreed supervisors.—Any one-fifth of the candidates whose names appear on the official ballot on the day preceding the election or prior thereto may agree in writing signed by them upon two supervisors who, when selected, shall be sworn as election officers. Said supervisors shall be qualified voters of the county in which they may serve as such supervisors, and while the election is being held shall remain in view of the ballot boxes until the count is concluded. It shall be their duty to be present at the marking of the ballot of any voter, by the judge of said election, not able to make his own ballot, to see that said ballot is marked in accordance with the wishes of the voter, and to see that each ballot is correctly called. Said supervisors shall note any fraud or irregularity occurring and report same to the next grand jury. [Acts 2nd C. S. 1909, p. 451.]

Art. 2943. [2925–26] Pay of judges and clerks.—Judges and clerks of general and special elections shall be paid three dollars a day each, and thirty cents per hour each for any time in excess of a days work as herein defined. The judge who delivers the returns of election immediately after the votes have been counted shall be paid two dollars for that service, provided the polling place of his precinct is at least two miles from the courthouse, and provided also he shall make returns of all election supplies not used when he makes return of the election. Ten working hours shall be considered a day within the meaning of this article. The compensation of judges and clerks of general and special elections shall be paid by the county treasurer of the county where such services are rendered upon order of the commissioners court of such county. [Acts 1921, p. 216.]

Art. 2944. [2927] Precinct judges served.—Precinct judges for all general elections shall be served with copies of the order of the commissioners court properly certified to by the clerk of the said court, designating the number, name and bounds of the election precinct and of their appointment as judges. Such service shall be made by the sheriff or a constable within ten days after the entry of such order, and return shall be made thereof on a copy showing when, where and how he executed the same. [Acts 1st C. S. 1905, p. 522, sec. 11.]

Art. 2945. [2928] [1708] In unorganized counties.—The commissioners court to which any unorganized county is attached for judicial purposes shall appoint some suitable person in each of such unorganized counties to serve as presiding officer of elections in said unorganized county in the same manner as in the appointment of presiding officers in election precincts in organized counties. [Acts 1881, p. 97; G. L. vol. 9, p. 189.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

CHAPTER FOUR

ORDERING ELECTIONS, ETC.

Art.
2946. Proclamation by Governor.
2947. Order by county judge.
2948. Writs of election.
2949. Failure to order.
2950. Notice of election.
2951. Municipal elections.
2952. To fill vacancy.
2953. In case of a tie.

Article 2946. [2929] Proclamation by Governor.—Notice shall be given to the people of all elections for State and district officers, electors for president and vice-president of the United States, members of Congress, members of the Legislature, and all officers who are elective every two years. Such notices shall be by proclamation by the Governor ordering the election, not less than thirty days before the election, issued and mailed to the several county judges. [Acts 1st C. S. 1905, p. 528, sec. 30.]

Art. 2947. [2930] Order by county judge.—The county judge, or if his office is vacant or if he fails to act, then two of the county commissioners, shall order an election for county and precinct officers, and all other elections which under the law the county judge may be authorized to order. The county judge or county commissioners, as the case may be, shall issue writs of election ordered by him or them, in which shall be stated the day of election, the office or offices to be filled by the election or the question to be voted on, or both, as the case may be. [Id.; sec. 31.]

Art. 2948. [2931] [1725] [1682] Writs of election.—The writs of election and copies of the form of returns shall be delivered to the sheriff of the county, who shall, previous to the day of election, deliver the same to the presiding officer of each election precinct in which the election is ordered to be held, and in case there is no presiding officer in any such election precinct, the same shall be delivered to the qualified voter of such election precinct who resides at or nearest to the voting place in such precinct.

Art. 2949. [2932] Failure to order.—A failure from any cause, on the part of the Governor, or the county judge or commissioners court, or of both, to order or give notice of any general election shall not invalidate the same if otherwise legal and regular. [Acts 1st C. S. 1905, p. 528, sec. 31.]

Art. 2950. [2933] Notice of election.—The county judge shall cause notice of a general election or any special election to be published by posting notice of election at each precinct thirty days before the election; which notice shall state the time of holding the election, the office to be filled, or the question to be voted on; provided, that in local option, stock law and road tax elections, or any other special election specially provided for by the laws of this State, the notices of election shall be given in compliance with the laws governing said elections respectively. If a vacancy occurs in the State Senate or House of Representatives during the session of the Legislature, or within ten days before it convenes, then twenty days notice of a special election to fill such vacancy shall be sufficient. Posting notice of an election shall be made by the sheriff or a constable, who shall make return on a copy of the writ, how and when he executed the same. [Id.; sec. 33.]

Art. 2951. [2934] Municipal elections.—In all city, town and village elections, the mayor, or if he fails to do so, then the governing body shall order elections pertaining alone to municipal affairs, give notice and appoint election officers to hold the election, unless a different method be prescribed by the charter of such city, town or village; but, in all cases, supervisors may be selected as in general elections, and judges and clerks shall each be selected from different political parties when practicable. [Id.; sec. 34.]

Art. 2952. [2935] To fill vacancy.—In all cases of vacancy in a civil office in the State, caused by death or resignation or otherwise, the vacancy of which is to be filled by election, the officer authorized by this title to order elections shall immediately make such order, fixing the day, not exceeding thirty days after the first public notice of such order to fill the unexpired term. [Id.; sec. 35.]

Art. 2953. [2936] [1805] [1754] In case of a tie.—At any election, if there be an equal number of votes given to two or more persons for the same office, except executive offices as provided in the Constitution, and no one elected thereto, the officer to whom the returns are made shall declare such election void as to such office only, and shall immediately order another election to fill such office; and notice shall be given, and such other election shall be held in the same manner as the general election. [Acts 1876, p. 310; G. L. vol. 8, p. 1146; P. D. 3606.]

CHAPTER FIVE

SUFFRAGE

Art.
2954. Not qualified to vote.
2955. Qualifications for voting.
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2957. To vote in city elections.
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2961. Mode of paying poll tax.
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2966. Removal to another ward.
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2968. Exemption certificate in cities.
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2972. Collector may administer oaths.
2973. Proof of residence.
2974. False swearing reported.
2975. Lists of voters.
2976. Duplicates kept.
2977. Statement of receipts.

Article 2954. [2938] Not qualified to vote.—The following classes of persons shall not be allowed to vote in this State:

1. Persons under twenty-one years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.
4. All persons convicted of any felony, except those restored to full citizenship and right of suffrage, or pardoned.
5. All soldiers, marines and seamen employed in the service of the army or navy of the United States. [Acts 1st C. S. 1905, p. 520.]

Art. 2955. [2939] Qualifications for voting.—Every person subject to none of the foregoing disqualifications who shall have attained the age of twenty-one years and who shall be a citizen of the United States, and who shall have resided in this State one year next preceding an election, and the last six months within the district or county in which he or she offers to vote, shall be deemed a qualified elector. The electors living in an unorganized county may vote at an election precinct in the county to which such county is attached for judicial purposes; provided that any voter who is subject to pay a poll tax under the laws of this State or ordinances of any city or town in this State, shall have paid said tax before offering to vote at any election in this State and holds a receipt showing that said poll tax was paid before the first day of February next preceding such election; and, if said voter is exempt from paying a poll tax and resides in a city of ten thousand inhabitants or more, he or she must procure a certificate showing his or her exemptions, as required by this title. If such voter shall have lost or misplaced said tax receipt, he or she shall be entitled to vote upon making and leaving with the judge of the election an affidavit that such tax was paid by him or her, or by his wife or by her husband before said first day of February next preceding such election at which he or she offers to vote, and that said receipt has been lost or misplaced. In any election

held only in a subdivision of a county for the purpose of determining any local question or proposition affecting only such subdivision of the county, then in addition to the foregoing qualifications, the voter must have resided in said county for six months next preceding such election. The provisions of this article as to casting ballots shall apply to all elections including general, special and primary elections. [Acts 1st C. S. 1905, p. 520; Acts 1st C. S. 1917, p. 62; Acts 4th C. S. 1920, p. 10; Acts 1921, p. 217; Acts 1923, p. 318.]

Art. 2956. [2939] Absentee voting.—Any qualified elector, as defined by the laws of this State, who expects to be absent from the county of his or her residence on the day of the election may vote subject to the following conditions, to-wit: At some time not more than ten days nor less than three days prior to the date of such election such elector shall make his or her personal appearance before the county clerk of his or her residence, and if personally unknown to such clerk, shall be identified by at least two reputable citizens of such county, and shall deliver to such clerk his or her poll tax receipt or exemption certificate, entitling him or her to vote at such election, and said clerk shall deliver to such elector one ballot which has been prepared in accordance with the law for use in such election which shall then and there be marked by said elector apart and without the assistance or suggestion of any person and in such manner as said elector shall desire same to be voted, which ballot shall be folded and placed in a sealed envelope and delivered to said clerk who shall keep same so sealed, and who shall also keep said poll tax receipt or certificate open to the inspection of any person who may wish to examine or see same until the second day prior to said election, and said clerk shall on said second day place the said poll tax receipt or certificate together with the said envelope containing said marked ballot, in another envelope which shall be by said clerk then mailed to the presiding judge of the voting precinct in which said elector lives. Or at some time not more than twenty days nor less than ten days prior to the date of such election, such elector shall make his or her personal appearance before a notary public, and if personally unknown to such notary public, shall be identified by at least two reputable citizens, and shall deliver to such notary public his poll tax receipt or exemption certificate, entitling said elector to vote at such election, or if such elector shall have lost or misplaced his or her poll tax receipt, he or she shall be entitled to vote upon making affidavit that such poll tax was actually paid by him or her before said first day of February next preceding such election at which he or she offers to vote and that said receipt has been lost, or misplaced, and in such case the affidavit so made shall be sent by the officer administering the oath to the county clerk of the county in which such elector resides. Such county clerk receiving the affidavit shall verify same by examining the poll tax records of the county wherein said elector resides, or where he claims his residence to be. Said notary public shall mail same to the county clerk of the county of residence of such elector so named, and upon receipt of the poll tax receipt or exemption certificate, the county clerk shall mail to such elector one ballot which has been prepared in accordance with the law for use in such election under registered letter marked "Official ballot for such elector (giving elector's name) not to be opened except in the presence of a notary public," printed on outside of letter. Such elector shall make oath before such notary public that such ballot was then and there marked by such elector apart and without assistance or suggestion of any other person, in such manner as said elector shall desire same to be voted, which ballot shall be folded and placed in a sealed envelope together with such affidavit which shall be marked on the outside of said envelope "Official ballot of such elector (giving elector's name)" and mailed by such notary public to the county clerk of the county wherein such elector votes, who shall keep same so sealed, and who shall also keep said poll tax receipt or certificate open to the inspection of any person who may wish to examine or see same until the second day prior to said election, and said clerk shall on said day place the said poll tax receipt or certificate together with the said sealed envelope containing said marked ballot in another envelope which shall be by said clerk then mailed to the presiding judge of the voting precinct in which said elector lives. The postage for the entire correspondence herein made necessary shall be provided by said elector. In the presence of the election officers provided by law, and on the day of such election and between the hours of two and three o'clock the said presiding judge of same in the precinct of the residence of said elector shall open the envelope containing said poll tax receipts and marked ballots and publicly announce that the ballot of such named electors is proposed to be cast, at which time any person who desires to challenge said vote and the right of same to be cast, shall be heard to present such challenge, and if there be no challenge of same, said vote shall be cast and counted according to the law; and if there be any challenge of such vote, legal cause for same shall be heard and decided according to the law provided in the case of challenge. In case no challenge is made, such poll tax receipt, after same is marked "Voted" as provided by law, shall be mailed back to the said county clerk. But in case of challenge, if challenged, such poll tax receipt together with affidavits relating thereto shall be mailed by said judge of election to the county clerk of such county who shall keep same for thirty days and if no demand be made for the production of same before any body or persons in authority within said time, said county clerk shall deliver such receipt to the owners thereof. When voted, the judge of election shall mark opposite the name of such absentee voter the word "Absentee." The provisions of this article shall apply to all elections, including general, special and primary elections. [Id.]

Art. 2957. [2940] To vote in city elections.—All qualified electors of this State, as described in the two preceding articles who shall have resided for six months immediately preceding an election within the limits of any city or incorporated town shall have a right to vote for mayor and all other elective officers; but, in all elections to determine the expenditure of money or assumption of debt, or issuance of bonds, only those shall be qualified to vote who pay taxes on property in such city or incorporated town. [Acts 1st C. S. 1905, p. 521, sec. 3.]

Art. 2958. [2941] "Residence."—The "residence" of a single man is where he usually sleeps at night; that of a married man is where his wife resides, or if he be permanently separated from his wife, his residence is where he sleeps at night; provided that the residence of one who is an inmate or officer of a public asylum or eleemosynary institute, or who is employed as a clerk in one of the departments of the government at the capitol of this State, or who is a student of a college or university, unless such officer, clerk, inmate or student has become a bona fide resident citizen in the county where he is employed, or is such student, shall be construed to be where his home was before he became such inmate or officer in such eleemosynary institution or asylum or was employed as such clerk or became such student; and if on payment of his poll tax he would be a qualified voter, he shall be permitted to return during the month of January in each year to his home to pay his poll tax or obtain his certificate of exemption, and shall be permitted to return again to his home to vote at any general or primary election. The inmates of the Confederate Home situated within the limits of the city of Austin shall, after obtaining their certificates of exemption, be entitled to vote for State, district, municipal and county officers. [Id.; sec. 4.]

Art. 2959. [2942] Liable to poll tax.—A poll tax shall be collected from every person between the ages of twenty-one and sixty years who resided in this State on the first day of January preceding its levy, Indians not taxed, persons insane, blind, deaf or dumb, and those who have lost a hand or foot, or per-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

manently disabled, excepted. It shall be paid at any time between the first day of October and the first day of February following; and the person when he pays it, shall be entitled to his poll tax receipt, even if his other taxes are unpaid. [Id.; Acts 4th C. S. 1920, p. 11.]

Art. 2960. [2943] Exempt from poll tax.—Every person who is more than sixty years old or who is blind or deaf or dumb, or is permanently disabled, or has lost one hand or foot, shall be entitled to vote without being required to pay a poll tax, if he has obtained his certificate of exemption from the county tax collector when the same is required by the provisions of this title. [Id.]

Art. 2961. [2944] Mode of paying poll tax.—If the taxpayer does not reside in a city of ten thousand inhabitants or more, his poll tax must either be paid by him in person or by some one duly authorized by him in writing to pay the same, and to furnish the collector the information necessary to fill out the blanks in the poll tax receipt. Such authority and information must be signed by the party who owes the poll tax, and must be deposited with the tax collector and filed and preserved by him. [Id.]

Art. 2962. [2945] Paying poll tax in large city.—In all cases where the taxpayer resides in a city of ten thousand inhabitants or more, the tax must be paid in person by the taxpayer entitled to the receipt, except as provided by this article. If a person residing in a city of ten thousand inhabitants who is subject to pay a poll tax, intends to leave the precinct of his residence before the first day of October with the intention not to return until after the first day of the following February, and does not return before that time, he shall be entitled to vote, if possessing all other legal qualifications, by paying his poll tax or obtaining his certificate of exemption through an agent authorized by him in writing, which shall state truly his intention to depart from the precinct, the expected period of his absence, and every fact necessary to enable the tax collector to fill the blanks in his receipt. Such authority in fact, must be sworn to by the citizen, and certified to by some officer authorized to administer oaths. It shall be deposited with the tax collector and kept in his office. [Id.]

Art. 2963. Receipt mailed.—When, in cases permitted by this title, the tax is paid by an agent, the tax receipt shall not be delivered to such agent, but shall be sent by mail to the taxpayer or kept and delivered to him in person by the tax collector. [Id.]

Art. 2964. [2946] Not to pay tax.—No candidate for office shall pay the poll tax for another. No person shall for or on behalf of any candidate for office or person interested in any question to be voted on, pay the poll tax for another; provided, that any person, who has bought the property of another, which property is legally bound for the payment of any poll tax, may pay the poll tax of such former owner; but the collector in such case shall not issue a poll tax receipt authorizing any person to vote, but shall give the party paying the same an ordinary memorandum receipt therefor; but such memorandum receipt shall not state either the race, occupation or residence of the taxpayer. [Id.; sec. 16.]

Art. 2965. [2949–50] Form of receipt.—Each poll tax receipt and its duplicate shall show the name of the party for whom it was issued, the payment of the tax, age, his race, the length of time he has resided in the State, the length of time he has resided in the county, the voting precinct in which he lives, except when he lives in an unorganized county, his occupation, his post-office address, or, if he lives in an incorporated city, ward, street and number of his residence, if numbered, and the length of time he has resided in such city or town. The poll tax receipt shall be in the following form, and numbered consecutively in each book provided for in this title:

Poll Tax Receipt. No. ——.

State of Texas, County of ———. Received of ——— ——— dollars, in payment of poll tax for the year A. D. 19—.

The said taxpayer being duly sworn by me, says that he is ——— years old, that he resides in voting precinct No. —— in ——— County, that his race is ———, that he has resided in Texas ——— years, and in ——— County ——— years, that he is by occupation ———, that his post-office address is ——— (If in an incorporated city or town, a blank must be provided for the ward, street and number of residence in lieu of his post-office address, and length of time he has resided in such city or town.) All of which I certify.

(Signed) ————,

(Seal) Tax Collector ——— County, Texas.

Art. 2966. [2951] Removal to another ward.—If a citizen in a city of ten thousand inhabitants, after receiving his poll tax receipt or certificate of exemption, removes to another ward in the same city before the next election, he may vote at any general election in the ward of his new residence by presenting his poll tax receipt or certificate of exemption to the precinct election judges, or by making affidavit that it has been lost or misplaced; which affidavit shall be left with the judges and forwarded with the election returns. But in all such cases if the removal was to the ward of his new residence in the same city before the certified list of voters was delivered to the precinct judges, he shall appear before the tax collector not less than five days before such election or primary election and obtain a corrected receipt or certificate; and his name shall be added to the list of voters for the precinct of his new residence; and he shall not vote in that event unless his name appears on the certified list of voters. [Id.; sec. 21.]

Art. 2967. [2952] Removal to another county or precinct.—If a citizen after receiving his poll tax receipt or certificate of exemption, removes to another county or to another precinct in the same county, he may vote at an election in the precinct of his new residence in such other county or precinct by presenting his poll tax receipt or certificate of exemption or his affidavit of its loss to the precinct judges of election, and state in such affidavit where he paid such poll tax or received such certificate of exemption, and by making oath that he is the identical person described in such poll tax receipt or certificate of exemption, and that he then resides in the precinct where he offers to vote and has resided for the last six months in the district or county in which he offers to vote and twelve months in the State. But no such person shall be permitted to vote in a city of ten thousand inhabitants or more, unless he has first presented to the tax collector of his residence a tax receipt or certificate, not less than four days prior to such election or primary election or made affidavit of its loss and stating in such affidavit where he paid such poll tax or received such certificate of exemption; and the collector shall thereupon add his name to the list of qualified voters of the precinct of his new residence; and, unless such voter has done this and his name appears in the certified list of voters of the precinct of his new residence, he shall not vote. [Id.; sec. 22.]

Art. 2968. [2953] Exemption certificate in cities.—Every person who is exempted by law from the payment of a poll tax and who is in other respects a qualified voter, who resides in a city of ten thousand inhabitants or more, shall after the first day of October and before the first day of February following, before he offers to vote, obtain from the tax collector of the county of his residence a certificate showing his exemption from the payment of a poll tax. Such exempt person, shall on oath, state his name, county of his residence, occupation, race, age, the length of time he has resided in Texas, the length of time he has resided in the county, and the length of time he has resided in the city, and the ward and voting precinct in which his residence is located, the street, and number of his residence, if numbered. He shall also state the grounds on which he claims exemption from the payment of a poll tax. Such certificate shall be detached from said book, leaving thereunder a duplicate carbon or other copy thereof which shall contain the same

description; and the original shall be delivered, bearing its proper number, to the citizen in person to identify him in voting. Certificates of exemption for each precinct shall be numbered consecutively, beginning at one. They shall be in the following form:

Certificate of Exemption from Poll Tax.

State of Texas, County of ———. No. ——.

I, ———, Tax Collector for said county, Texas, do hereby certify that ——— personally appeared before me on the ——— day of ——— A. D. and being sworn, said name is ———, that his race is ———, that he is ——— years old, that his occupation is ———, that he has resided in Texas for ——— years, in the county of ——— for ——— years, and in the city of ——— for ——— years, and that he now resides in precinct No. ———, in ward No. ———; and on ——— street, and in house No. ——— (if numbered) that he is exempt from the payment of poll tax by reason of ——— and that he is a qualified voter under the Constitution and laws of Texas. (Signed) ———,

(Seal) Tax Collector ——— County, Texas.

Art. 2969. [2954] Becoming of age.—Every person who will reach the age of twenty-one years after the first day of January and before the day of a following election at which he or she wishes to vote, and who possesses all the other qualifications of a voter under the Constitution and laws of Texas shall be entitled to vote at such election, and it shall not be necessary for such person to have paid a poll tax or to have obtained a certificate of exemption in order to entitle such person to vote at such election. If the right of such person to vote is challenged on the ground of non-age, if such person shall make affidavit that he or she, has attained the age of twenty-one years on the day of such election, such person shall be entitled to vote at such election upon filing such affidavit with the judge of election. This law shall not apply to cities having a population of five thousand or more according to the preceding Federal census. [Id.; Acts 2nd C. S. 1923, p. 45.]

Art. 2970. [2956] Poll tax books.—Each commissioners court before the first day of October every year, shall furnish to the county tax collector a blank book for each voting precinct, which shall be marked with the name and number of the precinct for which it is intended. Each book shall contain a sufficient number of blank poll tax receipts for each voting precinct not in a city of ten thousand inhabitants or more, and not exceeding three hundred and fifty blank poll tax receipts and certificates of exemptions for each precinct in a city of ten thousand inhabitants or more, of which not more than sixty shall be certificates of exemptions, and a greater or less number of each in the same proportion when sufficient for the voters of the precinct. Each receipt and certificate shall, in each such book, be bound immediately over a duplicate copy thereof; which duplicate copy, when filled out, shall correspond with the receipt or certificate in its number, the name, length of residence in the State or county, the voting precinct, race, occupation and post-office address of the citizen to whom the tax receipt or certificate of exemption is given. If the voting is in a city, the receipt or certificate and duplicate must show the ward, street and number, if numbered, of the citizen's residence (in lieu of post-office address); and the length of time he has resided in such city. The receipts and certificates shall be numbered in consecutive order. Similar blank books of poll tax receipts shall be furnished to such unorganized county attached to such county for judicial purposes, except that the voting precinct need not appear therein. When the tax receipt or certificate is delivered to the citizen, it shall be detached from the book and retained by him for his future use and identification in voting. [Acts 1st C. S. 1905, p. 520, sec. 14.]

Art. 2971. [2957] Poll tax deputy.—In all counties containing a city of ten thousand inhabitants or more, other than the county seat, such collector shall have a duly authorized and sworn deputy to represent him for the purpose of accepting poll taxes and giving receipts therefor, who shall keep his office for such purpose at some convenient place in such city during the entire month of January of each year, and he shall publish four weeks notice of the authority of such deputy and the location of the office. [Id.; sec. 17.]

Art. 2972. [2958] Collector may administer oaths.—The county collector is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this title connected with his official duties. Id.; sec. 24.]

Art. 2973. [2959] Proof of residence.—If the county collector does not personally know one who applies to pay his poll tax or secure his certificate of exemption from its payment, as being a resident in the precinct which such person claims as that of his residence, it shall be the duty of such collector to require proof of such residence; and if he has reason to believe such person has falsely stated his age, occupation, precinct of his residence, or the length of his residence in the State, county and city, he shall require proof of such statement; and, if on inquiry, he is satisfied that said person has sworn falsely, he shall make a memorandum of the words used in such statement, and present the same to the foreman of the next grand jury. [Id.; sec. 26.]

Art. 2974. [2960] False swearing reported.—Whenever the county collector shall have reason to believe that a citizen who has paid his poll tax or received a certificate of exemption has sworn falsely to obtain the same, he shall report the facts upon which such belief is founded to the next grand jury organized in the county. [Id.; sec. 20.]

Art. 2975. [2961] Lists of voters.—Before the first day of April every year, the county tax collector shall deliver to the board that is charged with the duty of furnishing election supplies separate certified lists of the citizens in each precinct who have paid their poll tax or received their certificates of exemption, the names being arranged in alphabetical order, and to each name its appropriate number, as shown by the duplicates retained in his office, with a description of the voter as to his residence, his voting precinct, length of his residence in the State and county, his race, occupation and post-office address if not in a city of more than ten thousand inhabitants. If the county has any unorganized county or counties attached to it for judicial purposes, the tax collector shall also deliver to said board, before the first day of April of each year, as many certified lists of the electors resident in such unorganized county or counties, who have paid their poll tax or received the certificate of exemption as there are election precincts in his county; which lists shall be identical with those of poll tax payers in his own county, except that the voting precinct shall not be stated. The tax collector of any county containing a town or city of more than ten thousand inhabitants shall also furnish to said board, not less than four days prior to any primary or general election, supplemental lists in the form herein prescribed, of all poll tax paying voters who have, since paying their poll tax, removed to each voting precinct in each such city or town in the county from another county or in another precinct in the same county. Said board shall furnish each presiding judge of a precinct the certified list and supplemental list of the voters of his precinct at the time when he furnishes other election supplies. Such certified lists of qualified voters shall be in the following form:

Voters in Election Precinct.

No. .....
Name .....
Precinct .....
Age .....
Length of residence in State.....
Length of residence in county.....
Occupation .....
Race .....
Length of residence in city and ward.....
Street and number of residence.....
Post-office address.....
[Id.; sec. 29.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 2976. [2962] Duplicates kept.—The county collector shall keep securely in a safe place the duplicates for each precinct from which such poll tax receipts and certificates of exemption have been detached, and they must remain there except when taken out for examination, which must always be done in his presence, but they shall be burned by the county judge at the expiration of three years. [Id. sec. 29.]

Art. 2977. [2963] Statement of receipts.—On or before the tenth day of March of each year, the tax collector shall make a statement to the county clerk showing how many poll tax receipts have been issued and to whom issued in each voting precinct in the county. Such statement shall become a record of the commissioners court. [Id.; sec. 28.]

CHAPTER SIX

OFFICIAL BALLOT

Art.
2978. Official ballot.
2979. Death or declination.
2980. Form of ballot.
2981. How to mark ballot.
2982. Constitutional amendment and other questions.
2983. Form by local authorities.
2984. Ballots furnished.
2985. Voters provide form.

Article 2978. [2964–5–6–7–70] Official ballot.—In all elections by the people, the vote shall be by official ballot, which shall be numbered, and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this title. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this title. The name of no candidate shall appear more than once upon the official ballot, except as a candidate for two or more offices permitted by the Constitution to be held by the same person. The name of no candidate of any political party that cast one hundred thousand votes or more at the last preceding general election shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as herein otherwise provided. [Acts 1st C. S. 1905, p. 520.]

Art. 2979. [2968] Death or declination.—If a nominee dies or declines his nomination, and the vacancy so created shall have been filled, and such facts shall have been duly certified in accordance with the provisions of this title, the Secretary of State or county judge, as the case may be, shall promptly notify the official board created by this law to furnish election supplies that such vacancy has occurred and the name of the new nominee shall then be printed upon the official ballot, if the ballots are not already printed. If such declination or death occurs after the ballots are printed, or due notice of the name of the new nominee is received after such printing, the official board charged with the duty of furnishing election supplies shall prepare as many pasters bearing the name of the new nominee as there are official ballots, which shall be pasted over the name of the former nominee on the official ballot before the presiding judge of the precinct indorses his name on the ballot for identification. No paster shall be used except as herein authorized, and if otherwise used the names pasted shall not be counted. [Id. sec. 50.]

Art. 2980. [2969] Form of ballot.—All ballots shall be printed with black ink on clear white paper of uniform style and of sufficient thickness to prevent the marks thereon to be seen through the paper. The tickets of each political party shall be placed or printed on one ballot, arranged side by side in columns separated by a parallel rule. The space which shall contain the title of the office and the name of the candidate shall be of uniform style and type on said tickets. At the head of each ticket shall be printed the name of the party. When a party has not nominated a full ticket, the titles of those nominated shall be in position opposite the same office in a full ticket, and the titles of the officers shall be printed in the corresponding positions in spaces where no nominations have been made. In the blank columns and independent columns, the titles of the offices shall be printed in all blank spaces to correspond with a full ticket. When presidential electors are to be voted on, their names shall appear at the heads of their respective tickets. When Constitutional amendments or other propositions are to be voted on, the same shall appear once on each ballot in uniform style and type. [Id.]

Art. 2981. How to mark ballot.—When a voter desires to vote a ticket straight, he shall run a pencil or pen through all other tickets on the official ballot, making a distinct marked line through such ticket not intended to be voted; and when he shall desire to vote a mixed ticket he shall do so by running a line through the names of such candidates as he shall desire to vote against in the ticket he is voting, and by writing the name of the candidate for whom he desires to vote in the blank column and in the space provided for such office; same to be written with black ink or pencil, unless the names of the candidates for which he desires to vote appear on the ballot, in which event he shall leave the same not scratched. [Id. sec. 53.]

Art. 2982. [2971] Constitutional amendment and other questions.—When a Constitutional amendment or other question submitted by the Legislature is to be voted on, the form in which it is submitted shall, if the Legislature has failed to prescribe a form be described by the Governor in his proclamation in such terms as to give the voter a clear idea of the scope and character of the amendment, and printed once at the bottom of each ballot as described by this title, the words "for" and "against" under it. If a proposition or question is to be voted on by the people of any city, county or other subdivision of the State, the form in which such proposition shall be voted on shall be prescribed by the local or municipal authority submitting it. [Id. sec. 4.]

Art. 2983. [2972] Form by local authorities.—At the election of school district officers or school officers for a city, town or village, at which no officer is to be elected, or election of officers of fire departments, any ballot may be used prescribed by local authorities. [Id. sec. 51.]

Art. 2984. [2973–4] Ballots furnished.—For each voting precinct, there shall be furnished one and a half times as many official ballots as there are qualified voters in the precinct, as shown by the list required to be furnished by the tax collector to precinct judges. The official ballots to be counted before delivery and sealed up and together with the instruction cards, with poll lists, tally sheets, distance markers, returning blanks and stationery, shall be delivered to the precinct judges, and the number of each indorsed on the package, and entered of record by the county clerk in the minutes of the commissioners court. In like manner, shall be sent the list of qualified voters for the precinct certified to by the collector. [Id. secs. 44 and 48.]

Art. 2985. [2975] Voters provide form.—If, from any cause, the official ballots furnished for an election precinct have been exhausted or not delivered to the precinct judges, the voters may provide their own ballot after the style of the official ballot described in this title. [Id. sec. 47.]

CHAPTER SEVEN

ARRANGEMENTS AND EXPENSES OF ELECTION

Art.
2986. Voting booths.
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2989. When booth not required.
2990. Ballot boxes marked.
2991. Ballot boxes.
2992. Board to provide supplies.
2993. Judge to procure.
2994. Collector's fees.
2995. Sheriff's and constable's fees.
2996. Expenses for election supplies.
2997. Municipal elections.

Article 2986. [2976] Voting booths.—Voting booths shall be furnished and used at elections at each voting precinct in towns or cities of ten thousand inhabitants or more. [Acts 1st C. S. 1905, p. 529, sec. 37.]

Art. 2987. [2977] Booths and guard rails.—There shall be one voting booth or place for every seventy citizens who reside in the voting precinct and who at the last general election paid their poll tax or obtained certificates of exemption from its payment, provided, the judges of the election may provide as many more booths and places as they deem necessary. Each polling place, whether provided with voting booths or not, shall be provided with a guard rail, so constructed and placed that only such persons as are inside of such guard rail can approach the ballot boxes or compartments, places or booths at which the voters are to prepare their votes, and that no person outside of the guard rail can approach nearer than six feet of the place where the voter prepares his ballot. The arrangement shall be such that neither the ballot boxes nor the voting booths nor the voters while preparing their ballots shall be hidden from view of those outside the guard rail, or from the judges, and yet the same shall be far enough removed and so arranged that the voter may conveniently prepare his ballot for voting in secrecy. Where voting booths are required they shall have three sides closed and the front side open, shall be twenty-two inches wide on the inside, thirty-two inches deep and six feet four inches high, contain a shelf for the convenience of the voter in preparing his ballot; and shall be so constructed with hinges that they can be folded up for storage when not in use. The voting booths shall be so arranged that there shall be no access to them through any doors, window or opening except through the front of the booth; and the same care shall be observed in precincts where there are no booths in protecting the voter from intrusion while he is preparing his ballot. [Id. secs. 38 and 41.]

Art. 2988. [2978] Open to view.—All booths and voting places shall be properly lighted. Every guard rail shall be provided with a place for entrance and exit. The arrangement of the polling place shall be such that the booths or places prepared for voting can only be reached by passing within the guard rail; and the booths, ballot boxes, election officers and every part of the polling place, except the inside of the booths, shall be in plain view of the election officers and persons outside the guard rail, among whom may be one challenger for each political party and no more. [Id. sec. 40.]

Art. 2989. [2980] When booth not required.—When voting booths are not required, a guard rail shall be so placed that no one not authorized can approach nearer than six feet of the voter while he is preparing his ballot; and a shelf for writing shall be prepared for him, with black lead pencil, and so screened that no other person can see how he prepares his ballot. [Id. sec. 42.]

Art. 2990. [2981] Ballot boxes marked.—For each election precinct, there shall be provided four ballot boxes to be marked as follows: "Ballot box No. 1 for election precinct No. ———" (giving name and number of precinct); "Ballot box No. 2 for election precinct No. ———;" "Ballot box No. 3 for election precinct No. ———;" "Ballot box No. 4 for election precinct No. ———." [Id. sec. 43.]

Art. 2991. [2982] Ballot boxes.—All ballot boxes shall be securely made of metal or wood, provided with a top, hinges, lock and key, and an opening shall be made at the top of each just large enough to receive a ballot when polled.

Art. 2992. [2983] Board to provide supplies.—The county judge, county clerk and sheriff shall constitute a board, a majority of whom may act, to provide the supplies necessary to hold and conduct the election, all of which shall be delivered to the presiding judges of the election by the sheriff or any constable of the county, when not called for and obtained in person by the precinct judges. Said board shall file with the commissioners court a written report of their action as to supplies furnished by the county, giving a detailed statement of the expenses incurred in procuring such supplies. [Id. secs. 38 and 39.]

Art. 2993. [2984] Judge to procure.—If, from any cause, ballot boxes, voting booths, guard rails or other election supplies have not been received by the presiding judge, he shall procure them, and they shall be paid for as other election supplies. If the certified list of qualified voters is not in his possession at least three days before the election, he shall send for and procure them. [Id. sec. 45.]

Art. 2994. [2986] Collector's fees.—The tax collector shall be paid fifteen cents for each poll tax receipt and certificate of exemption issued by him, to be paid pro rata by the State and county, in proportion to the amount of poll tax received by each; and this shall include his compensation for administering oaths, furnishing certified lists of qualified voters in election precincts for use in all general elections and primary conventions, when desired, and for all duties required of him under this title; provided, that collectors, whose salaries are fixed by the fee bill, shall receive ten cents for each poll tax receipt and certificate of exemption issued by him; and such fees are not to be accounted for as fees of office. [Id. sec. 144.]

Art. 2995. [2987] Sheriff's and constable's fees.—The sheriff or any constable for serving copies of the order designating the bounds of election precincts, or the election judges, posting notices, and for serving all other writs or notices prescribed by this title, shall be paid the amounts allowed by law for serving civil process. For delivering election supplies to precinct judges, when they are not obtained by such judges in person, the sheriff or constable shall be paid such amount as the commissioners court may allow, not to exceed two dollars for each election precinct. [Id. sec. 145.]

Art. 2996. [2988] Expenses for election supplies.—All expenses incurred in providing voting booths, stationery, official ballots, wooden or rubber stamps, tally sheets, polling lists, instruction cards, ballot boxes, envelopes, sealing wax and all other supplies required for conducting a general or special election shall be paid for by the county, except the cost of supplying booths for cities. All accounts for supplies furnished or services rendered shall first be approved by the commissioners court, except the accounts for voting booths for cities. [Id. sec. 147.]

Art. 2997. [2989–90] Municipal elections.—The expense of all city elections shall be paid by the city in which same are held. In all elections in incorporated cities, towns and villages, the mayor, the city clerk, or the governing body shall do and perform each act in other elections required to be done and performed respectively by the county judge, the county clerk, or the commissioners' court. [Id. sec. 45.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

CHAPTER EIGHT

CONDUCTING ELECTIONS AND RETURNS THEREOF

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Article 2998. [2991] Officers of election sworn.—Before opening the polls, the presiding judge of election and each of the other judges and clerks shall repeat in an audible voice: "I solemnly swear that I will not in any manner request or seek to persuade or induce any voter to vote for or against any candidate or candidates, or for or against any proposition to be voted on; and that I will faithfully perform this day my duty as officer of the election, and guard as far as I am able, the purity of the ballot box. So help me God." [Acts 1st C. S. 1905, p. 533, sec. 56.]

Art. 2999. [2992] Preliminary arrangements.—The judges and clerks of election for each precinct, and supervisors if any, shall meet at the polling place at least half an hour before the time for opening the polls, and shall proceed to arrange the guard rail, the space within the guard rail, the voting booths, if any, and the furniture for the orderly and legal conduct of the election. The judges of election shall then examine the ballot boxes and the blank official ballots, and shall deposit such ballots as are found to be defective in printing in ballot box No. 4 for mutilated or return ballots. They shall examine the sample ballots, instruction cards, distance markers, tally sheets, return sheets, certified list of voters, rubber stamps and all things required for the election. The package of official ballots shall remain in the custody of the judges and the polling clerks, and shall not be opened until the morning of the election and at the polling place. The judges shall cause to be placed at the distance of one hundred feet from the entrance of the room at which the election is held visible distance markers in each direction of approaches to the polls, on each of which shall be printed in large letters the words: "Distance markers. No electioneering or loitering between this point and the entrance to the polls." The judges shall examine the ballot boxes and then relock them, after all present can see they are empty. The ballot clerks with official ballots, the presiding officer of the election, the poll clerk, the election supplies and the certified lists of qualified voters for the precinct, and the supervisors, if any, shall be as conveniently near each other as practicable within the polling place. [Id. sec. 55.]

Art. 3000. [2993] Instruction card posted.—Before the election begins, one instruction card shall be posted conspicuously near each distance marker and one posted up in each voting booth where it can be read. When there are no voting booths, one shall be posted up in plain view at the place prepared for the voter to make out his ballot. [Id. sec. 56.]

Art. 3001. [2994] Presiding judge absent.—If no presiding judge was appointed or fails to act or fails to attend on election day, the voters present may appoint their own presiding officer, who has paid his poll tax, and they may also appoint the necessary assistant judges of election. When a presiding officer who has been appointed by a commissioners court fails to act in conducting an election, and one is selected by the voters present, the judges and clerks at such election shall, in making their returns of election, certify to that fact, and state that the acting judges were appointed by the voters present. When an assistant judge or clerk having been appointed fails to act at the opening of the polls or during the election, the presiding judge shall appoint in his place another with the same qualifications, and return a certificate of such appointment with each election return. [Id. sec. 83.]

Art. 3002. [2995] Power of presiding judge.—Judges of election are authorized to administer oaths to ascertain all facts necessary to a fair and impartial election. The presiding judge of election, while in the discharge of his duties as such, shall have the power of the district judge to enforce order and keep the peace. He may appoint special peace officers to act as such during the election and may issue warrants of arrest for felony, misdemeanor or breach of peace committed at such election, directed to the sheriff or any constable of the county, or such special peace officer, who shall forthwith execute any such warrants, and, if so ordered by the presiding judge, confine the party arrested in jail during the election or until the day after the election, when his case may be examined into before some magistrate, to whom the presiding judge shall report it; but the party arrested shall first be permitted to vote, if entitled to do so unless he is drunk from the use of intoxicating liquor, then he shall not be permitted to vote until he is sober. [Id. sec. 67.]

Art. 3003. [2996] To inspect ballot boxes.—Before the balloting begins, the presiding judge shall unlock ballot box No. 1, and after all the officers of the election and supervisors have inspected the same to see that it is empty, relock it and place it within view, where it shall remain until removed to make room for ballot box No. 2. A like examination shall be made of ballot box No. 2. [Id. sec. 68.]

Art. 3004. [2997] Present poll tax receipt.—No citizen shall be permitted to vote, unless he first presents to the judge of election his poll tax receipt or certificate of exemption issued to him before the first day of February of the year in which he offers to vote, except as otherwise permitted in this title, unless the same has been lost or mislaid, or left at home, in which event he shall make an affidavit of that fact, which shall be left with the judges and sent by them with the returns of the election; provided, that, if since he obtained his receipt or certificate he removes from the precinct or county of his residence, he may vote on complying with other provisions of this title. [Id. sec. 66.]

Art. 3005. [2998] Announcer.—One election judge shall receive from the voter his poll tax receipt or certificate of exemption, when he presents himself to vote; the voter shall announce his name, and the judge after comparing the appearance of the party with the description given in the certified list of qualified voters of the precinct made out by the county collector, and being satisfied that it accords therewith, shall pronounce in an audible voice the name of the voter, and his number as given in the list of qualified voters. If the voter has lost, mislaid or left at home his receipt or certificate, and shall present his affidavit of that fact, and if his appearance tallies with that given for the same number and name on the list of qualified voters, or if the voter presents his affidavit of

removal from some other precinct or county, in cases where the same is permitted by this title, together with his receipt or certificate or affidavit of the loss thereof, and the judges of election shall be satisfied that he paid his poll tax or received his certificate of exemption before the first day of the preceding February, the judge shall in like manner pronounce in an audible voice the name and number of the elector on the certified list of qualified voters with the word, "correct." [Id. sec. 71.]

Art. 3006. [2999] Examination of challenged voter.—When a person offering to vote shall be objected to by an election judge or a supervisor or challenger, the presiding judge shall examine him upon an oath touching the points of such objection, and, if such person fails to establish his right to vote to the satisfaction of the majority of the judges, he shall not vote. If his vote be received, the word, "sworn," shall be written upon the poll list opposite the name of the voter. [Id. sec. 73.]

Art. 3007. [790–3000] Vote challenged.—In any election, State, county or municipal, being held in any city or town of ten thousand inhabitants or more according to the preceding Federal census, when the right of any elector to vote is challenged, the following proceedings shall be had:

1. The judges of election shall refuse to accept such vote of such elector unless in addition to his own oath he proves by the oath of one well known resident of the ward that he is a qualified voter at such election and in such ward.

2. When such vote is accepted, the word "challenged" shall be written on the ballot, and the judges shall cause the clerk of election to make a minute of the name of the elector and the party testifying under oath as to his qualifications, and such memoranda shall be kept by the county clerk of the county for six months after such election is held, subject to order of the district judge. [Acts 1891, p. 47; G. L. vol. 10, p. 49.]

Art. 3008. [3001] Delivery of ballot.—When the judges are satisfied as to the right of the citizen to vote, the judge shall stamp in legible characters with a stamp of wood or rubber the poll tax receipt or certificate of exemption with the words: "Voted ..... day of ....., A. D. 19....." Or write the same words in ink and then return said receipt or certificate to the voter, and shall at the same time deliver to him one official ballot on the blank side of which the presiding judge shall have previously written his signature. The voter shall then immediately repair to a voting booth or a place prepared for voting by the election officers, and there prepare his ballot in the manner provided by law. [Id. sec. 72.]

Art. 3009. [3002–3119] Marked ballot.—At either a general, special or primary election, any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed or promised to vote or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked ballot on paper, if he has one. [Id. secs. 70 and 127.]

Art. 3010. [3003] Aid to voter.—Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, nor shall any assistance be given a voter in preparing his ballot, except when a voter is unable to prepare the same himself because of some bodily infirmity, such as renders him physicially [physically] unable to write or is over sixty years of age and is unable to read and write, in which case two judges of such election shall assist him, they having been first sworn that they will not suggest, by word or sign or gesture, how such voter shall vote; and they will confine their assistance to answering his questions, to naming candidates, and the political parties to which they belong, and that they will prepare his ballot as such voter himself shall direct; provided that the voter must in every case explain in the English language how he wishes to vote, and no judge of the election shall use any other than the English language in aiding the voter, or in performing any duty as such judge of the election. Where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes. If the election be a general election, the judges who assist such voters shall be of different political parties, if there be such judges present, and if the election be a primary election one or more supervisors may be present when the assistance herein permitted is being given, but each supervisor must remain silent except in cases of irregularity or violation of the law. [Id. sec. 82; Acts 4th C. S. 1918, p. 54; Acts 1919, p. 94.]

Art. 3011. [3004] Officers not to electioneer.—No election judge, clerk or other person connected with the holding of an election, shall on election day, indicate by words, sign, symbol or writing to any citizen, how he shall or should not vote; provided, nothing herein shall interfere with the operation of the preceding article. [Acts 1st C. S. 1905, p. 533, sec. 65.]

Art. 3012. [3005] Depositing ballot.—When a citizen shall have prepared his ballot, he shall fold the same so as to conceal the printing thereon, and so as to expose the signature of the presiding judge on the blank side, and shall, after leaving the booth, hand to the numbering judge his ballot. If the judges are satisfied that the ballot returned is the one delivered to the voter, the numbering judge shall number the ballot, writing on the blank side the number opposite the voter's name on the voting list, and shall stamp or write the same with the word "voted," and deposit the ballot in the ballot box. The letter, "V" shall, at the same time, be marked by any clerk on the certified list or supplemental list of qualified voters opposite the voter's name thereon, and the voter shall at once leave the polling place. [Id. sec. 74.]

Art. 3013. [3006–3119] Mutilated ballots.—At any general or primary election no voter shall be entitled to receive a new ballot in lieu of one mutilated and defaced, until he first returns such ballot. No one shall be supplied with more than three ballots in succession, when they are mutilated or defaced. A register shall be kept by the clerks as the voting progresses of the mutilated or defaced ballots, which shall be deposited in box No. 4. [Id. secs. 75 and 138.]

Art. 3014. [3007] Bystanders excluded.—From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges and supervisors, if any. No person, except those admitted to vote, shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, and supervisors of election. [Id. sec. 76; Acts 4th C. S. 1918, p. 54.]

Art. 3015. [3008] Defective ballots in Box No. 4.—In ballot box No. 4 shall be deposited, in addition to ballots defectively printed, all defaced and mutilated ballots, and, when the polls are closed, all the ballots that have not been voted. The box shall be locked and so returned sealed to the county clerk, with a statement which shall be placed therein signed by the presiding judge of the number of ballots received by him, the number of mutilated or defaced ballots that the box contained, and also the number of ballots not given to voters, as well as those defectively printed, so that, after adding such numbers, all ballots delivered to the election officers may be accounted for. Such ballot box shall, when the returns of votes cast are canvassed by the commissioners court, be opened, the ballots counted and a record made of what they have found to be its contents. [Acts 1st C. S. 1905, p. 533, sec. 69.]

Art. 3016. [3009] Deposit and count.—At the expiration of one hour after voting has begun, the receiving judges shall deliver ballot box No. 1 to the counting judges, who shall at once deliver in its place ballot box No. 2, which shall again be opened and ex-

amined in the presence of all the judges and securely closed and locked; and, until the ballots in box No. 1 have been counted, the receiving judge shall receive and deposit ballots in ballot box No. 2. Ballot box No. 1 shall, on its receipt by the counting judges, be immediately opened and the tickets taken out by one of them, one by one, when he shall read and distinctly announce while the ticket remains in his hand, the name of each candidate voted for thereon, which shall be noted on the tally sheets, and shall then deliver the ballot to the other counting judge, who shall place the same in box No. 3, which shall remain locked and in view until the counting is finished, when said box shall be returned with the other boxes, locked and sealed, to the county clerk. Ballot boxes Nos. 1 and 2 shall be used by the receiving judge and the counting judge alternately, as above provided, as often as the counting judge has counted and exhausted the ballots in either box. [Id. sec. 80.]

Art. 3017. [3010] Examining ballots.—No officer of election shall unfold or examine the face of a ballot when received from an elector, nor the indorsement on the ballot, except the signature of the judge, or the words stamped thereon, nor compare it with the clerk's list of voters when the ballots are counted, nor shall he permit the same to be done; nor shall he examine or permit to be examined the ballots after they are deposited in a ballot box, except as herein provided for in canvassing the votes, or in cases especially provided by law. [Id. sec. 77.]

Art. 3018. [3011–12] Ballots not counted.—The counting judges and clerks shall familiarize themselves with the signature of the judge who writes his name on each ballot that is voted, and shall count no ballot where two or more are folded together, or that does not bear the judge's signature or is unnumbered, or if, on examination by the judges, such signature is found to be a forgery. If the names of two or more persons are upon a ballot for the same office, when but one person is to be elected to that office, such ballot shall not be counted for either of such persons. [Id. secs. 78; Acts 1876, p. 308; G. L. vol. 8, p. 1144.]

Art. 3019. [3013] If nominee dies before election.—If a nominee dies or declines the nomination before the election, and no one is nominated to take his place, the votes cast for him shall be counted and return made thereof; and, if he shall have received a plurality of the votes cast for the office, the vacancy shall be filled as in case of a vacancy occurring after the election. [Acts 1st C. S. 1905, p. 533, sec. 78.]

Art. 3020. [3014] Supervisors present.—The election supervisors may be present when the ballots are being examined and the vote called off and noted on the talley sheets. [Id. sec. 80.]

Art. 3021. [3015] Announcement of vote.—At each change of the boxes, one judge shall announce at the outer door of the voting place the number of votes already cast. [Id. sec. 81.]

Art. 3022. [3016–17] Status of count announced.—Immediately upon the closing of the polls, and at intervals of two hours thereafter, a judge shall make a correct but unofficial memorandum of the total number of votes counted for each candidate at that time, such memorandum being in the order in which the names of the candidates appear upon the ballot; and thereupon he shall publicly announce from such memorandum the status of the count at the door of the building where the counting is in progress. This memorandum shall thereafter be accessible to the public, and especially newspaper reporters, who may call for information; and the presiding judge or an associate judge may furnish reporters information concerning the status of the count at other times after the polls have closed. The announcement of the status of the count shall continue as aforesaid until the count has been completed, when a correct but unofficial announcement of the total number of votes received by each candidate shall be announced as above provided. This article shall also apply so as to require the same reports from judges of primary elections. No judge or clerk shall make any statement, nor give information in any manner, of the number of votes or any other fact regarding their opinion of the state of the polls, after the closing thereof, except as herein permitted. [Id. secs. 76 and 78.]

Art. 3023. [3018] [1807] Privilege from arrest.—In all cases except treason, felony or breach of peace, voters shall be privileged from arrest during their attendance at elections, and in going to and returning therefrom. [Id. sec. 63; P. D. 3625.]

Art. 3024. [3019] Loitering near polls.—The election judges shall prevent loitering and electioneering while the polls are open, within one hundred feet of the door through which voters enter to vote, and within one hundred feet of the place where the voter is required to prepare his ballot; and, for this purpose, they may appoint a special constable to enforce this authority. [Id. sec. 84.]

Art. 3025. [3020] Conveying to polls.—No vehicle shall be used by any person to convey voters to the voting places unless the voter is physically unable to go to or to enter the polling place without assistance, in which event two of the judges of different political parties, if there are such, may deliver an official ballot to him at the entrance to the polling place and permit him to make out his ballot and deliver it there. [Id. sec. 85.]

Art. 3026. [3024–5] Return of elections.—When the ballots have all been counted, the managers of the election in person shall make out triplicate returns of the same, certified to be correct, and signed by them officially, showing: First, the total number of votes polled at such box; second, the number polled for each candidate; one of which returns, together with the poll lists and tally lists, shall be sealed up in an envelope and delivered by one of the precinct judges to the county judge of the county; another of said returns, together with poll lists and tally lists, shall be delivered by one of the managers of election to the county clerk of the county to be kept by him in his office open to inspection by the public for twelve months from the day of the election; and the other of said returns, poll and tally lists shall be kept by the presiding officer of the election for twelve months from the day of the election. In case of vacancy in the office of county judge, or the absence, failure or inability of that officer to act, the election returns shall be delivered to the county clerk of the county who shall safely keep the same in his office, and he, or the county judge, shall deliver the same to the commissioners court on the day appointed by law to open and compare the polls. [Acts 1883, p. 50; Acts 1st C. L. 1905, p. 541, sec. 91; G. L. vol. 9, p. 357.]

Art. 3027. [3026] To be stored.—One of the precinct judges shall deliver the returns of election with certified lists of qualified voters, with all stationery, rubber stamps and blank forms and other election supplies not used, to the county judge, immediately after the votes have been counted. He shall provide for the safe storage of the voting booths in some place in the precinct, and notify the county judge. [Acts 1st C. S. 1905, p. 541, sec. 91.]

Art. 3028. [3027–28] Ballots delivered to county clerk.—Immediately after counting the votes by the managers of election, the presiding officer shall place all the ballots voted, together with one poll tax list and one tally list, into a wooden or metallic box, and shall securely fasten the box with nails, screws or locks, and he shall, within ten days after the election, Sundays and the days of election excluded, deliver said box to the county clerk of his county, or to the county to which the unorganized county is attached for judicial purposes, whose duty it shall be to keep the same securely; and, in the event of any contest growing out of elections within one year thereafter, he shall deliver said ballot box to any competent officer having a process therefor, from any tribunal or authority authorized by law to demand such ballot box; provided, that all questions arising at any election board shall be settled and determined by

the presiding officer, and the judges, anything in any law to the contrary notwithstanding. If no contest grows out of the election within one year after the day of such election, the said clerk shall destroy the contents of said ballot box by burning the same. [Acts 1876, p. 308; G. L. vol. 8, p. 1144; Acts 1881, p. 97; G. L. vol. 9, p. 189.]

Art. 3029. [3029] [1749] [1704] To retain poll and tally list.—The presiding officer shall retain in his custody one poll list and one tally list of the election, and shall keep the same for one year after election, subject to the inspection of any one interested in such election.

Art. 3030. [3030] [1753] [1705] Commissioners to open returns.—On the Monday next following the day of election, and not before, the commissioners court shall open the election returns and estimate the result, recording the state of the polls in each precinct in a book to be kept for that purpose; provided, that, in the event of a failure from any cause of the commissioners court to convene on the Monday following the election to compute the votes, then said court shall be convened for that purpose upon the earliest day practicable thereafter. [Acts 1883, p. 50; G. L. vol. 9, p. 357.]

Art. 3031. [3031] [1754] [1706] Returns not estimated.—No election returns shall be opened or estimated, unless the same have been returned in accordance with the provisions of this title.

Art. 3032. [3032–34] Certificates of election.—After an estimate of the result of an election has been made as provided for in this title, the county judge shall deliver to the candidate or candidates for whom the greatest number of votes have been polled for county and precinct officers a certificate of election, naming therein the office to which such candidate has been elected, the number of votes polled for him and the day on which such election was held and shall sign the same and cause the seal of the county court to be thereon impressed. If the county constitutes a senatorial or representative district of itself, the commissioners court shall at the same time make an estimate of the votes polled for members of the Legislature; and the county judge shall give a like certificate of election, as provided herein to the person receiving the highest number of votes for senator or representative, and shall also transmit a duplicate of such certificate to the Secretary of State. [Acts 1883, p. 50; G. L. vol. 9, p. 357.]

Art. 3033. [3035] [1757] Returns for certain State and district officers.—In all elections for State or district officers, except members of the Legislature, representatives and Senators in the United States Congress, and for the adoption or rejection of proposed Constitutional amendments, the county judge shall, on the Monday next following the day of election, or as soon thereafter as the commissioners court shall have opened the returns and estimated the result as provided in article 3030 make out duplicate returns of the election; one of which he shall immediately transmit to the seat of government of the State, sealed in an envelope, directed to the Secretary of State, and endorsed, "Election Returns for ——— county, for ———" (filling the first blank with the name of the county and the other blank with the name of the office for which the election was held, or a designation of the proposed amendments to the Constitution voted upon, as the case may be); and the other of such returns shall be deposited in the office of the clerk of the county court of the county where such election was held. [Acts 1897, p. 31; G. L. vol. 10, p. 1085.]

Art. 3034. [3036] [1758] [1710] Such returns counted.—On the fortieth day after the election, the day of election excluded, and not before, the Secretary of State in the presence of the Governor and Attorney General, or in case of vacancy in either of said offices, or of inability or failure of either of said officers to act, then in the presence of either one of them, shall open and count the returns of the election. [Acts 1883, p. 50; G. L. vol. 9, p. 357.]

Art. 3035. [3037] [1759] [1711] Governor to give certificate.—When the returns have been counted, the Governor shall immediately make out, sign and deliver a certificate of election, with the seal of the State thereto affixed, to the person or persons who shall have received the highest number of votes for each or any of said offices. [Id.]

Art. 3036. [3038–9] Returns for Governor and Lieutenant Governor.—Each county judge shall promptly make duplicate returns of the election for Governor and Lieutenant Governor, carefully sealed in an envelope, one of which shall be transmitted to the seat of Government in this State, directed to the Speaker of the House of Representatives and indorsed as provided in Article 3033 and the other of said returns shall be deposited in the office of the county clerk of said county. Said transmitted returns directed to the Secretary of State shall be kept by him with the package and seal thereon to remain unbroken until the organization of the next Legislature, when he shall, on the first day thereof, deliver them to the Speaker of the House of Representatives. [Id.]

Art. 3037. [3040–1] Returns for legislators.—When an election shall have been held for members of the Legislature in any district composed of more counties than one, the county judge to whom the returns in each county are made, and who is not authorized to give certificates of election to such members of the Legislature, shall make out and send complete returns of such election for members of the Legislature in his county immediately after examining and recording the same, to the county judge of the county who may by law be authorized to give certificates of election to such members for such district. Said returns shall be sealed in an envelope, and the name of the officer forwarding them shall be written across the seal, and the envelope shall be indorsed, "Election Returns," and directed to the county judge of the proper county and transmitted by mail or other safe and expeditious conveyance. [Id.]

Art. 3038. [3042–3] Certificate of legislator.—The county judge to whom the returns named in the preceding article are forwarded, or in case of a vacancy in that office, or of inability or failure to act on the part of such officer, then the county clerk of such county shall, upon the thirtieth day after the election, Sunday excluded if Sunday be the thirtieth day, open and count said returns in the presence of at least two qualified voters of said district, and, after recording the same, shall give a certificate or certificates of election under seal of said court to the person or persons receiving the highest number of votes for senator or representative in that district. Said certificate shall state the number of votes received by the person to whom the same is given; and the officer giving such certificate shall immediately forward a duplicate of the same to the Secretary of State. If all the election returns of the district shall have been received by the returning officer of the district before the said thirtieth day, then he may count said returns and issue the certificate of election as provided for in the preceding article at any time before said thirtieth day. [Id.]

Art. 3039. [3044] [1766] [1718] County judge to certify to Secretary of State.—At the expiration of thirty days from an election, and from time to time thereafter as the officers may qualify, each county judge shall make out and certify to the Secretary of State a tabular statement showing who were elected, and to what office, and the date of qualification, giving the number of the precinct, of precinct officers, and he shall also certify the result of the vote for members of the Legislature; and he shall in like manner report to the Secretary of State all special elections to fill a vacancy in any county or precinct office, certifying when and how the vacancy occurred. [Acts 1863; G. L. vol. 5, p. 604; P. D. 3604.]

Art. 3040. [3045] [1809] [1758] Commission to officers.—The Governor shall commission all officers except Governor, members of Congress, electors for President and Vice-President of the United

States, members of the Legislature and municipal officers. [Acts 1876, p. 310; G. L. vol. 8, p. 1146.]

CHAPTER NINE

CONTESTING ELECTIONS

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Article 3041. [3046–3050] By whom tried. Contested elections for other purposes than the election of officers shall be tried by any district court of the county where the election was held. Contested elections for the following offices shall be tried:

1. For district attorney, by any district judge of the district in the county where the candidate receiving the certificate of election shall reside.

2. For district judge, by the district judge of and in the county of the adjoining district, the county seat of which is nearest to the residence of the candidate receiving the certificate of election, and in counties having two or more district courts, then by the district court of the adjoining district in said county.

3. For any justice of the Supreme Court or Court of Criminal Appeals, in any district court of Travis County, and for any justice of any court of Civil Appeals by any district court in the county where said court of Civil Appeals has its sittings.

4. For any county office, by any district court of the county where the election was held. [Acts 1895, p. 58; G. L. vol. 10, p. 788.]

Art. 3042. [3051] [1798] Notice of contest.—Any person intending to contest the election of any one holding a certificate of election for any office mentioned in this law, shall, within thirty days after the return day of election, give him a notice thereof in writing and deliver to him, his agent or attorney, a written statement of the ground on which such contestant relies to sustain such contest. By the "return day" is meant the day on which the votes cast in said election are counted and the official result thereof declared. [Id.]

Art. 3043. [3052] [1799] Reply to notice of contest.—The person holding such certificate shall, within ten days after receiving such notice and statement, deliver, or cause to be delivered, to said contestant, his agent or attorney, a reply thereto in writing. [Id.]

Art. 3044. [3053] [1800] Service of notice.—The notice, statement and reply required by the two preceding articles may and shall be served by any person competent to testify, and shall be served by delivering the same to the party for whom they are intended in person, if he can be found in the county, if not found, then upon the agent or attorney of such person, or by leaving the same with some person over the age of sixteen years at the usual place of abode or business of such person.

Art. 3045. [3054] [1801] Where to file papers.—If the contest be for the validity of an election for any State office, except the office of Governor and Lieutenant-Governor, or for any district office, except members of the Legislature, or for any county office, a copy of the notice and statement of the contestant and of the reply thereto of the contestee served on the parties shall be filed with the clerk of the court having jurisdiction of the case. [Id.]

Art. 3046. [3055] [1802] Cause to have precedence.—When the notice, statement and reply have been filed with the clerk of the court, he shall docket the same as in other causes, and the said contest shall have precedence over all other causes. If the office contested for be that of district clerk, then a clerk pro tem shall be appointed as is provided by law in suits where the clerk is a party to the suit. [Id.]

Art. 3047. [3056] [1803] Evidence and procedure.—In trials of all contests of election, the evidence shall be confined to the issues made by the statement and reply thereto, which statement and reply may be amended as in civil cases. As to the admission and exclusion of evidence, the trial shall be conducted under the rules governing proceedings in civil causes. [Id.]

Art. 3048. [3057] [1804] To execute bond.—Whenever the validity of an election for an officer other than for members of the Legislature is contested, the contestee shall, within twenty days after the service of said notice and statement of such contest upon him, file with the clerk of the court in which such contest is pending a bond with two or more good and sufficient sureties, payable to the contestant, to be approved by said clerk, in an amount to be fixed by said clerk, and not less than double the probable amount of salary or fees or both, as the case may be, to be realized from the office being contested for a period of two years; conditioned that, in the event the decision of the contest shall be against such contestee and in favor of the contestant, such contestee will pay over to such contestant whatever sum may be adjudged against him by a court having jurisdiction of the subject matter of such bond. [Id.]

Art. 3049. [3058] Failure to file bond.—If the contestee fails to file the bond as required in the preceding article, and within the time therein prescribed, said clerk shall notify the contestant immediately of such failure; and such contestant shall have the right, within ten days after such notice, to file a like bond payable to the contestee, conditioned that, in the event the decision of the contest is against him and in favor of the contestee, he will pay over to such contestee whatever sum may be adjudged against him, the said contestant, by a court having jurisdiction of the subject matter of such bond. [Id.]

Art. 3050. [3059] Execution of bond by contestant certified.—Immediately upon the filing of said bond by the contestant, the clerk shall certify in writing, and under his official seal, to the Governor, that the contestee failed to give the required bond, and that the contestant has given such bond in accordance with law. [Id.]

Art. 3051. [3060] To commission contestant.—Upon receiving such certificate from the clerk, the Governor shall issue a commission to the said contestant for the office in controversy pending such contest; and thereupon the contestant, upon qualifying in said office as required by law, shall exercise all the rights and powers and perform all the duties of said office for the full term thereof, unless it shall otherwise be determined and ordered by the court upon the trial of such contest. [Id.]

Art. 3052. [3061] Failure of contestant to execute bond.—The Governor shall issue the commission to the contestee at the time provided by law as in other cases, unless he has been notified of the failure of such contestee to file the bond required by article 3048, in which event the Governor shall withhold the

issuance of such commission until after the time allowed the contestant to file such bond has elapsed; but, if the said contestant shall also fail to file bond as provided in article 3049, and within the time therein required, the clerk shall certify all the facts in the case under his official seal to the Governor, who shall thereupon issue the commission to the contestee. [Id.]

Art. 3053. [3062] Fraudulent votes not counted.—If any vote or votes are found upon the trial of any contested election to be illegal or fraudulent, the trial court shall subtract such vote or votes from the poll of the candidate who received the same, and after a full and fair investigation of the evidence shall decide to which of the contesting parties the office belongs. [Id.]

Art. 3054. [3063] Election declared void.—If it appears on the trial of any contest provided for in article 3045 that it is impossible to ascertain the true result of the election as to the office about which the contest is made, either from the returns of the election or from any evidence within reach, or from the returns considered in connection with other evidence, or should it appear from the evidence that such a number of legal voters were, by the officers or managers of the election, denied the privilege of voting as, had they been allowed to vote, would have materially changed the result, the court shall adjudge such election void, and direct the proper officers to order another election to fill said office; which election shall be ordered and held and returns thereof made in all respects as required by the general election laws of the State. [Id.]

Art. 3055. [3064] Bonds subject to suit.—The bonds required to be filed by the contestant and contestee under the provisions of this chapter shall remain on file in the office of the clerk where filed, and may be sued upon as other bonds. [Id.]

Art. 3056. [3065–6] Appeal available.—Either the contestant or contestee may appeal from the judgment of the district court to the Court of Civil Appeals, under the same rules and regulations as are provided for appeals in civil cases; and such cases shall have precedence in the Court of Civil Appeals over all other cases. In case of appeal as provided for in this article, the clerk shall, without delay, make up the transcript and forward the same to the clerk of the Court of Civil Appeals for that district. [Id.]

Art. 3057. [3067] [1804] Taxing costs.—The costs in all contested election cases shall be taxed according to the laws governing costs in civil cases, except when otherwise specially provided, and bond for cost may be required as in civil suits. [Id.]

Art. 3058. [3068] Measure of damages.—Where the contest shall have been decided against one of the parties and the other party shall have filed a bond and performed the duties of the office under the provisions of this chapter, the bond so filed shall inure to the benefit of the successful party in any suit thereon in a court having jurisdiction of the amount in controversy; and the measure of damages recoverable, besides cost of suit, shall be the salary, fees, and emoluments of office of which he has been deprived, less such reasonable expenses as the party holding the office shall have incurred in executing the duties of the office; provided, that he shall have acted in good faith in receiving the certificate of election or commission for the office. [Id.]

Art. 3059. [3069] [1804] For Legislature.—If the contest be for the validity of an election for members of the Legislature, a copy of the notice, the statement, and the reply served upon the parties as required by this chapter, shall, within twenty days after the service thereof, be filed with the district returning officer to whom the returns of such election were made, who shall envelope the same, together with a certified copy of the poll book or register of the votes of each precinct and county returned to him in said election, and shall seal the said envelope and write his name across the seals, and address the package to the President of the Senate or Speaker of the House of Representatives, as the case may be, to the care of the Secretary of State, and shall forward the same by mail or other safe conveyance to the seat of government, so as to reach there, if possible, before the convening of the Legislature. [Id.]

Art. 3060. [3070] Depositions taken.—At any time after filing said papers with said returning officer, either party to said contest may proceed, at his own expense, to take such written testimony as he may deem proper, having first served the opposite party, his agent or attorney, with a copy of the interrogatories he intends to propound to each witness, and the name of the officer before whom the same will be answered as well as the time and place of taking such testimony. [Id.]

Art. 3061. [3071] Who may take such depositions.—Any officer authorized by the law of this State to administer oaths, upon being satisfied as to any costs, including his own fees, that may accrue in the taking of such testimony, shall proceed upon the application of the party desiring it, to summon the witness or witnesses named in the interrogatories and take his or their answers in writing and under oath to such interrogatories and cross interrogatories as may be propounded in writing. [Id.]

Art. 3062. [3072] How depositions may be returned.—The answers of each witness shall be reduced to writing and signed by such witness, and sworn to by such witness before the officer taking the same, and shall be certified to by such officer and sealed in an envelope; and the name of said officer shall be written by him across the seals; and he shall forward the same without delay by mail or other safe conveyance to the President of the Senate or Speaker of the House of Representatives, as the case may be, to the care of the Secretary of State, at the seat of government. [Id.]

Art. 3063. [3075] Referred to committee.—The notice and statement of contest and the other papers pertaining thereto shall immediately after the organization of the Legislature be opened by the President of the Senate or by the Speaker of the House of Representatives, as the case may be; and the same shall be referred to the committee on privileges and elections of the House in which the contest is pending, which committee shall proceed without delay to fix a time for the hearing of said case, and, after due notice to the parties thereto shall investigate the issues between said parties, hearing all the legal evidence that may be presented to said committee, and shall as soon thereafter as practicable report their conclusions of law and fact in respect to said case to the house by which said committee was appointed, accompanied by all the papers in the cause, and the evidence taken therein, with such recommendations as may to them seem proper. Any one or more of the committee dissenting from the views of the majority may present a minority report. [Id.]

Art. 3064. [3074] Hearing by committee.—The rules of evidence and the laws in force respecting the admissibility of evidence, the taking of depositions and the issuance and service of process in the district courts of this State shall be observed by said committee, so far as the same may be applicable. Said committee shall have the power to send for persons and papers, and the chairman of said committees shall have the power to issue all process necessary to secure the attendance of witnesses and the production of papers, ballot boxes and other documents before said committee, and such process shall be executed by the sergeant-at-arms of the house in which the contest is pending, or by such other person as the presiding officer of said house may designate. [Id.]

Art. 3065. [3075] Procedure by house.—The house in which the contest is pending shall, as soon as practicable after the report of the committee has been received, fix a day for the trial of the contest, and shall proceed to determine whether the contestant or contestee, or either of them, is entitled to the contestant's seat; provided, the said house may hold the election void after full consideration of all the evidence and for the reasons prescribed in article 3054,

and in such case the Governor shall at once be notified of the vacancy. Such fees shall be paid to the witnesses and the officers serving the process as shall be prescribed by the rules of the house in which said contest is pending, and no mileage or per diem shall be paid to either of the parties to said contest until said case is determined, and in no case shall any mileage or per diem be paid to any party against whom any contest is decided. [Id.]

Art. 3066. [3076] Contest for State office.—If the contest be for the validity of an election for Governor, Lieutenant-Governor, Comptroller, State Treasurer, Land Commissioner or Attorney General, the same shall be tried and determined by both houses of the Legislature in joint session, and the provisions of this chapter governing in case of a contest for the validity of an election for members of the Legislature shall apply to and govern in a contest for the offices above named, as far as applicable. [Id. Const. art. 4, sec. 3.]

Art. 3067. United States Senator.—If the nomination of any candidate for United States Senator be contested, the same shall be conducted under the provisions of the law regulating contests before party election committees or the courts for State officers. [Acts 1st C. S. 1913, p. 101.]

Art. 3068. [3181] For presidential electors.—Any person intending to contest the election of any or all of the persons duly declared elected as electors of president and vice-president, shall within fifteen days from the said fourth Monday in November, file with the Secretary of State a written statement of the ground on which such contestant relies to sustain such contest, and shall within such time, notify the contestee thereof in writing, and deliver to him, his agent or attorney, a copy of said statement. The contestee shall, within ten days after receiving such notice, file with the Secretary of State his reply thereto in writing. The contest shall, as soon thereafter as possible, be tried and determined by the State Board of canvassers, consisting of the Governor, Attorney General and Secretary of State, or any two of them; and their decision shall be rendered at least six days before the time fixed by law for the meeting of the electors. Such decision, in which two at least of such board shall join, shall be final, and certificates of election, in accordance therewith shall at once be issued by the Secretary of State to the proper parties. Where not otherwise herein provided, the provisions of law relating to contests for the validity of an election for members of the Legislature shall apply to such contests for presidential electors. [Acts 1897, p. 24; G. L. vol. 10, p. 1079.]

Art. 3069. [3077] Other contested elections.—If the contest be for the validity of an election held for any other purpose than the election of an officer or officers in any county or part of a county or precinct of a county, or in any incorporated city, town or village, any resident of such county, precinct, city, town or village, or any number of such residents, may contest such election in the district court of such county in the same manner and under the same rules, as far as applicable, as are prescribed in this chapter for contesting the validity of an election for a county office.

Art. 3070. [3078] Parties defendant.—In any case provided for in the preceding article, the county attorney of the county, or if there is no county attorney, the district attorney of the district, or the mayor of the city, town or village, or the officer who declared the official result of said election, or one of them, as the case may be, shall be made the contestee, and shall be served with notice and statement, and shall file his reply thereto as in the case of a contest for office; but in no case shall the costs of such contest be adjudged against such contestee, or against the county, city, town or village which they may represent, nor shall such contestee, be required to give any bond upon an appeal. [Id.]

Art. 3071. Constitutional amendment.—Within sixty days from the date of any election upon any proposed amendment to the Constitution, and not thereafter, any citizen of this State who is a qualified voter, shall have the right to contest said election by filing his petition in a district court of Travis County, fully stating his grounds for contest, naming the Secretary of State as contestee; and thereupon the district judge, in whose court the contest is filed, shall make an order for the issuance, and the clerk of said court or the judge thereof, shall issue a writ of injunction enjoining the Secretary of State from tabulating, estimating or canvassing the returns of said election and from ascertaining or declaring the result of said election until said contest is finally determined. Citation shall be issued and served upon the Secretary of State as in other civil cases. At the time of filing such petition, contestant shall cause to be published in a daily newspaper printed in Texas, for at least ten days before appearance day, a brief notice to all parties interested that such suit has been filed. The Secretary of State shall within twenty days from service of citation file a formal answer, but shall not be liable for any costs. Any qualified citizen or citizens adversely interested in such contest may appear by counsel of their own choosing upon either side of the contest, but opponents of the contest shall have the right to direct and control the pleadings of the Secretary of State and the conduct of the contest upon the part of the contestees; and contestants shall jointly and not severally plead in the cases. The said court shall cause the party contesting the result of said election and the parties adversely interested to form issues and shall as near as may be conform the hearing and determination of such contest to the proceedings usual in courts in contested election cases. The court shall permit contestants to amend their petition, include therein allegations charging fraud, irregularities or mistakes, upon such terms as to the court may seem just, and likewise the contestees shall have the right both to contest the charges made by the contestant and to make counter charges, but the court shall bring the parties to issue with all possible dispatch. Said contestant shall be required to give a good and sufficient bond to be approved by the clerk of the court wherein said contest is filed, conditioned that the said contestant will pay, in the event he is defeated in said contest, all the costs that may be incurred in the trial of said contest. He shall not be permitted to file any such contest and give in lieu of the bond herein provided for any affidavit of inability to pay the costs as provided for by law. [Acts 1911, p. 144.]

Art. 3072. Power of court.—The said court shall have the power to appoint commissioners to sit at such places as the court may designate for the purpose of hearing testimony, reducing same to writing and reporting same to said court, said court shall also have the power to issue all orders that may be necessary or proper to compel the production before said court or any commissioner appointed by said court of all ballot boxes and instrumentalities used in connection with said election that may be necessary or proper to determine the issues raised by such contest, and to send by proper process to any county in the State, for the officers of the election or the custodians of ballot boxes for the purpose of aiding in, ascertaining and determining any matter or thing necessary or proper in connection with the trial of said contest. The said court may proceed to the trial of said issue raised by said contest after having given the contestants and the contestees full and fair opportunity to produce before said court the evidence upon such issues. The court may adjourn the said hearing from time to time and may, before the final determination of said cause, make such orders and decrees as to the court may seem just and proper, requiring any election officers to make such certificate of the result of such election as in the judgment of the court such officers should have made in making the returns of such election. Upon the trial of said cause, the court shall have full power and authority to hear and determine all matters and things necessary or proper to the determination of the question whether a majority.

of the legal votes cast in said election, either in favor of or against said proposed amendment, including the manner of holding the election, any frauds or irregularities in the conduct thereof, or in the making of the returns thereof illegal votes cast at said election or legal votes prevented from being cast, false calculations, certificates or returns, and to exercise all powers of the court, in order to fully inquire into and ascertain the true and correct result of such election, free from any fraud, irregularity or mistake. [Id.]

Art. 3073. To compel returns.—The said court shall have full authority when the result of such election in any voting precinct box shall have been ascertained and determined, to order and compel the proper officers thereof to make true and correct returns of such election in such voting box as finally determined by said court, to the proper officers of such county and when the result in any county shall have been ascertained and determined by said court, to order and compel the proper returning officers of such county to make true and correct returns of the result of said election in said county as to said amendment as ascertained by said court to the Secretary of State, and to order the Secretary of State to make his returns, tabulations, canvassings, countings and certificates in accordance with the result of such election as finally ascertained and determined by the court. [Id.]

Art. 3074. Decree.—The said contest shall have precedence in said court over all causes pending therein. Either party may appeal as in other civil cases and the same shall have precedence over all other causes pending in the appellate courts to which the appeal or writ of error is taken, except such cases as may be entitled to precedence over said cause by virtue of some provision of the Constitution of this State, Upon final judgment in said appellate court, it shall enter a decree ordering and directing the Secretary of State to declare the true result of said election as judicially determined and ascertained by said court, and the Secretary of State shall make his tabulations, canvassings and certificates of the results of such election in accordance with the final judgment of said court, and said amendment shall be adopted or rejected in accordance with the final result of said election as finally determined by the judgment of said court. [Id.]

Art. 3075. Result final.—The result of said contest shall finally settle all questions relating to the validity of said election, and it shall not be permissible to again call the legality of said election in question in any other suit or proceeding. If no contest of said election is filed and prosecuted in the manner and within the time herein provided for, it shall be conclusively presumed that said election as held and the result thereof as declared are in all respects valid and binding upon all courts, provided, that pending such contest the enforcement of all laws in relation to the subject matter of such contest shall not be suspended, but shall remain in full force and effect. [Id. sec. 15.]

CHAPTER TEN

CONSTITUTIONAL AMENDMENTS

Art.
3076. Officers named.
3077. Duties of election officers.
3078. Discovering fraud.

Article 3076. Officers named.—Whenever any proposed amendment to the Constitution of this State is to be voted upon by the qualified voters of this State, either at an election held for that purpose, or at any election for the State officers, the county chairman of any organization advocating, and the county chairman of any organization opposing the adoption of such amendment, or if such county chairman fails to act, then three members of the county executive committee of any organization advocating, or three members of the county executive committee opposing the adoption of such Constitutional amendment may at any time not less than five days before the election at which such proposed amendment is to be voted upon, nominate one judge, one clerk and one supervisor to serve as judge, clerk and supervisor, respectively, for the voting box for which they are so selected, who shall be qualified voters of the voting precinct or box for which they are chosen, by presenting in writing to the county judge of the county the names of such judges, clerks and supervisors so selected. Such county judge shall appoint the parties nominated to act in such capacities at the respective voting precincts and boxes for which they are respectively selected. If the county judge fails or refuses to appoint such officers, they shall apply to the officers and judges of the voting precinct or box for which they were respectively nominated, and the manager and judges of such precinct or box shall permit such persons so selected to act in the capacities named. [Acts 1911, p. 144.]

Art. 3077. Duties of election officers.—Such judges, clerks and supervisors shall serve in addition to the election officers provided for by the general election laws, and they shall receive the same compensation. Said judges and clerks shall assist in holding and conducting said election, and in receiving and counting the votes cast. Said supervisor shall have the right to watch the conduct of the election, including the counting of the votes, locking and sealing the ballot boxes, their custody and safe return. [Id. sec. 3.]

Art. 3078. Discovering fraud.—Any supervisor who shall discover any fraud or irregularity in the conduct of an election or in counting the votes or in making returns thereof, within five days after said election, shall file a written sworn report with the county clerk of the county in which he resides, setting out fully any irregularity or fraud or semblance thereof occurring in said voting precinct or box that would in any manner affect the true result of said election in said voting precinct. Said county clerk shall keep said report on file in his office and shall permit the same to be inspected upon application by any citizen of this State. Such supervisor shall call the attention of the officers holding such election to any fraud, irregularity or mistake, illegal voting attempted, or legal voting prevented, or other failure to comply with the law governing such election at the time it occurs, if practicable, and if he has knowledge thereof at the time; and he shall not report any matter to which he should have called but did not call attention at the time, unless he shows some good and sufficient reason therefor. [Id. sec. 4.]

CHAPTER ELEVEN

PRESIDENTIAL ELECTORS

Art.
3079. Time of election.
3080. Governor's proclamation.
3081. Returns.
3082. Returns by counties.
3083. To count returns.
3084. Electors to convene.
3085. Pay of electors.

Article 3079. [3176–7] Time of election.—On the Tuesday after the first Monday in November, A. D. 1928, and on the Tuesday next after the first Monday in November every four years thereafter, the qualified voters for members of the State Legislature shall elect at such regular election from among the resident citizens over twenty-one years of age and not members of either house of the Congress of the United States, as many electors of president and vice-president of the United States as the State of Texas may at the time be entitled to elect, and each such qualified voter shall be authorized to vote for the whole number of electors that the State will then be empowered to elect. [Acts 1848, p. 104; G. L. vol. 3, p. 104.]

Art. 3080. [3184] [1819] [1768] Governor's proclamation.—The Governor shall issue a proclamation under the seal of the State, and have the same published for at least forty days before an election for electors, in some newspaper printed at Austin, requiring the county judge, or other proper officer or officers, of each county in the State to cause said election to be held at each precinct in the county at the time and for the purpose prescribed in this chapter. [Id. P. D. 3662.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 3081. [3178] [1813] [1762] Returns.—The officers conducting said elections within three days after holding said election shall compute the number of votes given for each person there voted for as an elector, and shall make out in writing, seal up, certify and transmit the result of said election to the county judge or other proper officer of their county, in the same manner prescribed by the laws regulating elections for members of the State Legislature. [Id. P. D. 3646.]

Art. 3082. [3179] [1814] Returns by counties.—On the Monday next following the day of election, or as soon thereafter as the commissioners court shall have opened the election returns, and estimated the result, in accordance with law, the county judge shall make duplicate returns of the election, one of which he shall at once send sealed in an envelope, directed to the Secretary of State at Austin, and endorsed "Election Returns for ..... County for Presidential Electors," (filling the blank with the name of the county) and the other of such returns shall be deposited in the office of the county clerk of the county where such election was held. [Id. P. D. 3647; Acts 1897, p. 24; G. L. vol. 10, p. 1079.]

Art. 3083. [3180] [1815] To count returns.—The Secretary of State, in the presence of the Governor and Attorney General, or either of them, on the fourth Monday in November next after said election, shall open all the election returns received by him, and correctly add up all the votes cast in the several counties for each of the said electors, and cause the result thereof, with the names of those elected, to be published forthwith in some newspaper printed at Austin; and shall issue certificates of election to the persons so elected. [Id. P. D. 3648.]

Art. 3084. [3181–2–3] Electors to convene.—On or before the meeting of the electors the Governor shall cause three lists of the names of such electors to be made out and delivered to them, as required by Act of Congress. The electors so chosen shall convene in the Capitol at Austin on the Second Monday in January next after their election, and vote for president and vice-president of the United States, and make returns thereof as is or may be required by the laws of the United States. If any person so chosen elector shall, by death or other disabling cause, fail to attend by the hour of two o'clock in the afternoon of the day fixed by law, and vote as required by law, or if any such person shall be legally disqualified to serve as elector, a majority of the qualified electors present, after having convened, may appoint some other person to act as elector in the place of any such absent or disqualified person, and shall immediately report their action to the Secretary of State. [Acts 1848, p. 104; G. L. vol. 3, p. 104; Acts 1879, p. 24; G. L. vol. 10, p. 1079.]

Art. 3085. [3185] [1820] [1769] Pay of electors.—Such electors shall receive the same pay for mileage in traveling to and from Austin and the same pay daily while engaged there in the duties required of them by law, as that allowed by law to the members of the Legislature.

CHAPTER TWELVE

UNITED STATES SENATORS

Art.
3086. Election day.
3087. Vacancy.
3088. State laws apply.
3089. Name on ballot.
3090. Nomination at primary.
3091. All laws apply.
3092. Application to get on ballot.
3093. Requisites of application.
3094. Second primary.
3095. Conduct of election.
3096. Candidate not nominated.
3097. Vacancy; application to get on ballot.
3098. Request to enter special primary.
3099. If two Senators.

Article 3086. Election day.—An election for the election of a Senator from Texas to the Congress of the United States shall be held on the first Tuesday after the first Monday in November of every year immediately preceding the fourth day of March when the term of any United States Senator from the State of Texas to the Congress of the United States is to expire. At such election no person shall be qualified to vote for any candidate for United States Senator unless he is a qualified elector in any election held to elect members of the most numerous branch of the Legislature of this State. [Acts 1st C. S. 1913, p. 101.]

Art. 3087. Vacancy.—When any vacancy occurs in the representation of this State in the United States Senate, the Governor of this State shall within ten days issue writs of election to fill such vacancy, which election shall be held not less than sixty days nor more than ninety days after such vacancy occurs, provided, if the Congress or Senate is in session at the time of such vacancy or should convene before such election or before the result of the same can be officially ascertained under law, the Governor shall make temporary appointment of a suitable and qualified person to represent the State in the United States Senate, until the election and qualification of a Senator can be made. [Id.]

Art. 3088. State laws apply.—Every law regulating or in any manner governing elections or the holding of primaries in this State shall be held to apply to each election or nomination of a candidate for a United States Senator so long as they are not in conflict with the Constitution of the United States or of any law or statute enacted by the Congress of the United States regulating the election of United States Senators or the provisions of this law. The returns from any election held for United States Senator shall be made, the result ascertained and declared, a certificate of election issued, as provided for the election of representatives in Congress, by this title. [Id.]

Art. 3089. Name on ballot.—The name of no candidate for United States Senator shall be placed upon the official ballot of any party or of any organization as the nominee of said party or organization for said office unless the said candidate has been duly nominated and selected as herein provided. [Id.]

Art. 3090. Nomination at primary.—Each party desiring to nominate a candidate for United States Senator shall, if such election is to be held on the first Tuesday after the first Monday in November of any year, nominate or select such candidate at a general primary election to be held throughout the State on the fourth Saturday in July next preceding such election for United States Senator. [Id.]

Art. 3091. All laws apply.—At each primary election held in this State for the nomination of a candidate for United States Senator, each provision of the laws of this State which has for its object the protection of the ballot and the safe-guarding of the public against fraudulent voting, illegal methods, undue influence, corrupt practices, and in fact each restriction of whatever kind or character as applied to any election held in this State whether general, special or primary shall be held to apply to a primary election held for or when a candidate for United States Senator is to be nominated when not in conflict with the provisions of this law. When the law with reference to holding senatorial primaries is silent, the election officers in securing supplies, in conducting the election and in making returns and in canvassing the votes shall in every particular follow the methods provided by law covering primary elections or general elections held for the purpose of nominating or electing State, district, county, and precinct officers. [Id.]

Art. 3092. Application to get on ballot.—Any person affiliating with any political party who desires his name to appear on the general official primary ballot of said party as a candidate for the nomination of such party for United States Senator shall file with the State chairman of said party not later than the first Monday in June preceding such general primary his written request that his name shall be placed on the official ballot of said party as a candidate at the aforesaid general primary for the nomination as a candi-

date for United States Senator before the party with which he affiliates. [Id.]

Art. 3093. Requisites of application.—Any person who is thirty years of age or over, and who has been for nine years a citizen of the United States and is a bona fide inhabitant of the State who desires his name to appear on the official ballot at any primary election as a candidate for the nomination of said party as a candidate for United States Senator shall address his application to the State chairman of the party with which he affiliates setting forth:

1. That he is a candidate for the nomination of his party as a candidate for United States Senator.
2. His age, occupation, county of his address, and post-office address.
3. That he is a member in good faith of the political party upon whose ballot he wishes his name to appear and that if he voted at the preceding election he voted for the nominees of said party.
4. That he will, during his term of office, if elected, endeavor to truly respect the wishes of his constituency and to abide by and support such measures as may be endorsed by the primary voters of his party in this State as declared by their vote at a primary election.

Said application shall be signed by the candidate and duly acknowledged before some person authorized to take acknowledgments. Twenty-five qualified voters may likewise join in a request that the name of any person affiliating with such party be placed upon the official ballot as a candidate for United States Senator, giving the occupation, county of residence and post-office address of such person, signing and acknowledging same as above provided, and may file the same with the State chairman on or prior to the date above mentioned with the same effect as if such request had been filed by the party named therein as a candidate for such nomination. All such petitions or requests filed by twenty-five voters shall be endorsed by the person in whose favor the request is made showing his willingness to qualify for the position, if elected. All requests, whether made by the candidate or by petition shall be considered filed with the State chairman when they are sent from any point within the United States by registered mail, on or before the date mentioned, addressed to the State chairman at his post-office address. [Id.]

Art. 3094. Second primary.—No person shall be declared the nominee of any political party for United States Senator unless he has complied with every requirement of this law and all laws applicable thereto and has received a majority of all the votes cast at said primary election for all the candidates for that party for United States Senator. If at the first primary election no candidate receives a majority of the vote polled by his party for all the candidates for United States Senator before said party, the State Executive Committee or State chairman thereof shall call a second primary election for the purpose of determining the choice of the party as between the two candidates receiving the largest number of votes at the first primary election. Said second primary shall be held on the fourth Saturday in August, immediately after the first primary is held. At such second primary, only the two candidates in each party receiving the highest votes shall be voted upon. [Id.]

Art. 3095. Conduct of election.—At each primary held for the nomination of a candidate for United States Senator, the election shall be conducted by the duly appointed and constituted election officers of the several polling places and voting precincts throughout the State who shall be paid as provided by law for holding elections in other cases. No person shall vote for any candidate for the nomination for United States Senator who does not belong to the same political party with which the voter affiliates and when any voter attempts to vote for any person as a candidate for the nomination for United States Senator, and is challenged he shall, before being permitted to vote, make an affidavit that he is a bona fide member of said party and if he voted in the preceding general election held for the election of State officials, he voted for the nominees of the party whose ticket he desires to vote. Upon making such affidavit he shall be permitted to vote. [Id.]

Art. 3096. Candidate not nominated.—Any person who has not been defeated at the primary election preceding the general or special election for United States Senators, desiring to have his name appear upon the official ballot at any general election as a candidate for United States Senator who is not the nominee of any political party or political organization may do so only upon presenting a petition to the Secretary of State signed by at least ten per cent of the qualified voters in the State of Texas as measured by the total vote for Governor at the preceding general election. Said petition shall conform in every particular to the requirements of the laws of this State with reference to placing the name of any candidate, other than the nominee of any party upon the official ballot, but in no case shall the name of any person be placed upon the official ballot at any general election as a candidate for United States Senator as the nominee of any party unless he has been nominated under the provisions of this law and has complied with every provision of the laws of this State with reference to the nomination of candidates for United States Senators. [Id.]

Art. 3097. Vacancy: application to get on ballot.—Any person desiring to have his name appear upon the official ballot as a candidate for United States Senator at any special election held for the purpose of filling a vacancy in the United States Senate, when no party primary is held, may do so by presenting his application to the Secretary of State which shall set forth:

1. That he is a candidate for United States Senator.
2. His age, occupation, the county of his residence and his post-office address.
3. That he is a member in good faith of the political party upon whose ballot he wishes his name to appear, that if a voter at the preceding election he voted for the nominees of said party.
4. That he will during the term of his office, if elected, endeavor to truly respect the wishes of his constituency and to abide by and support such measures as may be endorsed by the primary voters of his party in this State, and that he will use all honorable means at his command to secure the appointment for such applicants for positions in the Federal service as received a majority of the votes at any primary held by the members of his party to determine their wishes with reference thereto. Said application to be signed by the candidate and properly acknowledged before some person authorized to take acknowledgments. The Secretary of State shall upon receipt of the application which conforms to the above requirements, issue his instructions to the county clerks of this State directing that the name of the applicant shall be printed on the official ballot in the column under the title of the office for which he is a candidate. [Id.]

Art. 3098. Request to enter special primary.—Any candidate who desires his name to appear on the official ballot for a special primary as a candidate for the nomination of such party for the office of United States Senator shall file with the State chairman of his party, not later than fifteen days prior to the date of such primary, his written request that his name be placed upon such official ballot as a candidate for the nomination of United States Senator, giving his age and occupation, the county of his residence and post-office address, which shall be signed by him and acknowledged by him before some officer, and also twenty-five qualified voters may likewise join in a request that the name of any person affiliating with such party be placed upon the official ballot as a candidate for United States Senator, giving the occupation, county of residence and post-office address of such person, signing and acknowledging same as above provided, and may file the same with the State chairman within the time above mentioned with the same effect as if such request had been filed by the party named therein as a candidate for such nomination. The chairman and secretary of the State com-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

mittee shall forthwith cause to be mailed to the chairman and secretary of every county committee of the party in the State the name of such candidate for United States Senator, with instructions that it be placed on the official ballot of such county. All requests shall be considered filed with the State chairman when they are sent from any point within the United States by registered mail, or by telegraph, addressed to the State chairman at his post-office address. On the first Saturday following such special primary election, the county executive committee of each county in the State, shall meet and canvass the returns of such election, and shall immediately thereafter certify by its chairman and secretary the result of said election and forward same to the State chairman. The State executive committee shall meet at a time not later than fifteen days after the date of said special primary and canvass and tabulate the returns of said election as certified by the county chairman, and the candidate receiving the majority of the number of votes cast at such primary shall be the nominee of the party for such office; and the State chairman shall order the name of such candidate placed upon the official ballot of said party. Provided, however, if at the first primary election no candidate receives a majority of the votes polled by his party for all the candidates for United States Senator before said party, the State executive committee or State chairman thereof shall call a second primary election for the purpose of determining the choice of the party as between the two candidates receiving the largest number of votes at the first primary election. Said second primary shall be held on the third Saturday following the first primary, and at such primary, only the two candidates in each party receiving the two highest votes shall be voted upon. [Id.]

Art. 3099. If two Senators.—When there are two Senators to be elected from Texas to Congress, each candidate offering his name for election shall designate in his application for a position on the ticket whether in a general or special election or primary, whether he is a candidate for the short term or long term. [Id.]

CHAPTER THIRTEEN

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1. BY PARTIES OF ONE HUNDRED THOUSAND VOTES AND OVER

Article 3100. [3085] "Primary election."—The term "primary election," as used in this chapter, means an election held by the members of an organized political party for the purpose of nominating the candidates of such party to be voted for at a general or special election, or to nominate the county executive officers of a party. [Id.]

Art. 3101. [3084] Nominated at primary.—On primary election day in 1926, and every two years thereafter, candidates for Governor and for all other State offices to be chosen by vote of the entire State, and candidates for Congress and all district offices to be chosen by the vote of any district comprising more than one county, to be nominated by each organized political party that cast one hundred thousand votes or more at the last general election, shall, together with all candidates for offices to be filled by the voters of a county, or of a portion of a county, be nominated in primary elections by the qualified voters of such party. [Acts 1st C. S. 1905, p. 549.]

Art. 3102. [3086] Date of primary.—The fourth Saturday in July 1926, and every two years thereafter shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on no other day, except when specially authorized. No person shall be declared the nominee of any political party at any primary election for any State or district office unless he has complied with every requirement of all laws applicable to primary and other elections, and has received a majority of all the votes cast at such primary elections for all candidates for such office. If at the general primary election for any political party, no candidate becomes the nominee for any State or district office under this article, a second primary election shall be held by such political party, in the State or such district, or districts, as the case may be, on the fourth Saturday in August succeeding such general primary election, and only the name of the two candidates who received the highest number of votes for any office for which nomination was made at the general election shall be placed on the official ballot as candidates for such office at such second primary. The second primary election shall be conducted according to the law prescribed for conducting the gen-

eral primary election, and the candidates receiving a majority of all votes cast for the office to which they aspire shall be declared the nominee for their respective offices. Any political party may hold a second primary election on the fourth Saturday in August to nominate candidates for any county or precinct office, where a majority vote is required to make nomination; but at such second primary, only the two candidates who received the highest number of votes at the general primary for the same office shall have their names placed upon the official ballot. Nominations of candidates to be voted for at any special election shall be made at a primary election at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations. All precincts in the same county and all counties in the same district shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than ten days prior to the city or town election at which they are to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method for conducting county primary elections shall apply to them. [Id. Acts 4th C. S. 1918, p. 191.]

Art. 3103. [3087] Where to vote.—The places of holding primary elections of political parties in the various precincts of the State shall not be within one hundred yards of the place at which such elections or conventions are held by a different political party. When the chairmen of the executive committees of the different parties cannot agree on the places where precinct primary elections to be held on the same day shall be held, such places in each precinct shall be designated by the county judge, who shall cause public notice thereof to be given at once in some newspaper in the county, or if there be none, by posting notices in some public place in the precinct. [Acts S. S. 1905, p. 549.]

Art. 3104. [3089] Officers of primary.—All the precinct primary elections of a party shall be conducted by a presiding judge, to be appointed by a chairman of the county executive committee of the party, with the assistance and approval of at least a majority of the members of the county executive committee. Such presiding judge shall select an associate judge and two clerks to assist in conducting the election; two supervisors may be chosen by any one-fourth of the party candidates, who, with the judges and clerks, shall take the oath required of such officers in general elections. Two additional clerks may be appointed, but only when, in the opinion of the presiding judge, there will be more than one hundred votes polled at the primary election in the precinct. [Id.]

Art. 3105. [3090] Judges of primary.—Judges of primary elections have the authority, and it shall be their duty, to administer oaths, to preserve order at the election, to appoint special officers to enforce the observance of order and to make arrests, as judges of general elections are authorized and required to do. Such judges and officers shall compel the observance of the law that prohibits loitering or electioneering within one hundred feet of the entrance of the polling place, and shall arrest, or cause to be arrested, any one engaged in the work of conveying voters to the polls in carriages or other mode of conveyance, except as permitted by this title. [Id.]

Art. 3106. [3091–2] Majority or plurality vote.—The county executive committee shall decide whether the nomination of county officers shall be by majority or plurality vote, and, if by a majority vote, the committee shall call as many elections as may be necessary to make such nomination, and in case the committee fails to so decide, then the nomination of all such officers shall be by a plurality of the votes cast at such election. [Id.]

Art. 3107. Political party may prescribe qualifications of members.—Every political party in this State through its State Executive Committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party; provided that no person shall ever be denied the right to participate in a primary in this State because of former political views or affiliations or because of membership or nonmembership in organizations other than the political party. [As reenacted Acts 1927, 40th Leg., 1st C. S., p. 193, ch. 67, § 1.]

Section 1 of Acts 1927, 40th Leg., 1st C. S., p. 193, ch. 67, repeals Rev. St. 1925, art. 3107, but gives the new article the same number.

Art. 3108. [3094] Expenses of primary.—At the meeting of the county executive committee provided in Article 3117, the county committee shall also carefully estimate the cost of printing the official ballots, renting polling places where same may be found necessary, providing and distributing all necessary poll books, blank stationery and voting booths required, compensation of election officers and clerks and messengers, to report the result in each precinct to the county chairman, as provided for herein, and all other necessary expenses of holding such primaries in such counties, and shall apportion such cost among the various candidates for nomination for county and precinct offices only as herein defined, and offices to be filled by the voters of such county, or precinct only, (candidates for State offices excepted), in such manner as in their judgment is just and equitable, giving due consideration to the importance and emoluments of each such office for which a nomination is to be made, and shall, by resolution, direct the chairman to immediately mail to each person whose name has been requested to be placed on the official ballot a statement of the amount of such expenses so apportioned to him, with the request that he pay the same to the county chairman on or before the fourth Monday in June thereafter. [Acts S. S. 1905, p. 549.]

Art. 3109. [3095] Ballot at primaries.—The vote at all general primaries shall be by official ballot, which shall have printed at the head the name of the party, and under such head the names of all candidates, those for each nomination being arranged in the order determined by the various committees as herein provided for, beneath the title of the office for which the nomination is sought. The voter shall erase or mark out all names he does not wish to vote for. The official ballot shall be printed in black ink upon white paper, and beneath the name of each candidate thereof for State and district offices, there shall be printed the county of his residence. The official ballot shall be printed by the county committee in each county, which shall furnish to the presiding officer of the general primary for each voting precinct at least one and one-half times as many of such official ballots as there are poll taxes paid for such precinct, as shown by the tax collector's list. Where two or more candidates are to be nominated for the same office, to be voted for by the qualified voters of the same district, county or justice precinct, such candidates shall be voted for and nominations made separately, and all nominations shall be separately designated on the official ballots by numbering the same, "1," "2," "3," etc., printing the word "No.," and the designating number after the title of the office for which such nominations are to be made. Each candidate for such nomination shall designate in the announcement of his candidacy, and in his request to have his name placed on the official ballot, the number of the nomination for which he desires to become a candidate, and the names of all candidates so requesting shall have their names printed beneath the title of the office and the number so designated. Each voter shall vote for only one candidate for each such nomination. [Id.]

Art. 3110. [3096–7] Test on ballot.—No official ballot for primary election shall have on it any symbol or device or any printed matter, except a uniform primary test, reading as follows: "I am a .....(inserting name of political party or organization of which the voter is a member) and pledge

myself to support the nominee of this primary;" and any ballot which shall not contain such printed test above the names of the candidates thereon, shall be void and shall not be counted.

Art. 3111. [3098–9] Request to go on ballot.—The request to have the name of any person affiliating with any party placed on the official ballot for a general primary as a candidate for the nomination of such party for any State office shall be governed by the following:

1. Such request shall be in writing signed and duly acknowledged by the person desiring such nomination, or by twenty-five qualified voters. It shall state the occupation, county of residence and post-office address of such person, and if made by him shall also state his age.

2. Any such request shall be filed with the State chairman not later than the first Monday in June preceding such primary, and shall be considered filed if sent to such chairman at his post-office address by registered mail from any point in this State.

3. On the second Monday in June preceding each general primary, the State committee shall meet at some place to be designated by its chairman who shall not less than three days prior to such meeting notify by mail all members of said committee and all persons whose names have been requested to be placed upon the official ballot of such designation. Such committee at this meeting by resolution shall direct their chairman to certify to each county chairman the names and county of residence of such candidates as shown by such requests. Copies of such certificates shall be immediately furnished to each newspaper in the State desiring to publish the same, and one copy shall at once be mailed to the chairman of the executive committee of each county. [Id.; secs. 108–9.]

Art. 3112. [3100] Request for district office.—Any person desiring his name to appear on the official ballot as a candidate for the nomination for chief justice or associate justice of the Court of Civil Appeals, or for representative in Congress, or for State Senator, or for representative, or district judge or district attorney in representative or judicial districts composed of more than one county, shall file with the chairman of the executive committee of the party for the district, said request with reference to a candidate for a State nomination, or if there be no chairman of such district executive committee, then with the chairman of each county composing such district, not later than the first Monday in June preceding the general primary. Such requests may likewise be filed not later than said date by any twenty-five qualified voters resident within such district, signed and duly acknowledged. Immediately after said date each such district chairman shall certify the names of all persons for whom such requests have been filed to the county chairman of each county composing such district. [Id.; sec. 110.]

Art. 3113. [3101] Candidate for county office.—Any person desiring his name to appear on the official ballot for the general primary, as a candidate for the nomination for any office to be filled by the qualified voters of a county or a portion thereof, or for county chairman, shall file with the county chairman of the county of his residence, not later than Saturday before the third Monday in June preceding such primary, a written request for his name to be printed on such official ballot as a candidate for the nomination or position named therein, giving his occupation and post-office address, giving street and number of his residence, if within a city or town, such request to be signed and acknowledged by him before some officer authorized to take acknowledgment to deeds. Such request similarly signed and acknowledged by any twenty-five qualified voters resident in the county may be filed on or before said date, requesting that the name of any person named therein may be placed on the official ballot as a candidate for any county or precinct office or chairmanship, with like effect as if such request was filed by the person named as a candidate therein; which request shall be endorsed by the candidate named therein, showing his consent to such candidacy, if nominated. [Id. sec. 111.]

Art. 3114. [3102] Certificates to county committee.—At the meeting of the county executive committee provided for in Article 3117, the county chairman shall present to the committee the certificates of the chairman of the State and the various district executive committees, showing the names of all persons whose names are to appear on the official ballot as candidates for State and district offices. [Id.]

Art. 3115. [3103] Primary committee.—Subject to the approval of the committee, the county chairman shall appoint a subcommittee of five members to be known as the primary committee, of which he shall be ex-officio chairman. This subcommittee shall meet on the second Monday in July and make up the official ballot for such general primary in such county, in accordance with the certificates of the State and district chairman and the request filed with the county chairman, and place the name of the candidates for nomination for State, district, county and precinct officers thereon in the order determined by the county executive committee as herein provided. [Id.]

Art. 3116. [3104] Must pay.—No person's name shall be placed on the ballot of a district, county or precinct office who has not paid to the county executive committee the amount of the estimated expense of holding such primary, apportioned to him by the county executive committee, as hereinbefore provided. Provided, however, that no candidates for nomination for chief justice or associate justice of a Court of Civil Appeals or for representative in Congress or for district judge or district attorney or any other district office in representative or judicial districts composed of four or more counties shall be required to pay more than one ($1.00) dollar to any county executive committee or other person for any particular county as his portion of such expense for holding such primary and shall not be required to pay any other sum or sums to any other person or committee to have their name placed on the ticket as such candidate. No candidates for nomination for State Senator or Representative in the Legislature shall be required to pay more than one ($1.00) dollar to any county executive committee or any other person or any particular committee, as his portion of such expense for holding such primary. Candidates for United States Senator or for Congressman-at-Large and all those who are candidates for State offices to be voted upon by the qualified voters of the whole State shall pay to the chairman of the State executive committee one hundred ($100.00) dollars, and shall not be required to pay any other sum or sums to any other person or committee to have their names placed on the ticket as such candidate. [Id.; Acts 3rd C. S. 1923, p. 170; Acts 1927, 40th Leg., p. 77, ch. 54, § 1.]

Art. 3117. [3105–6] Order of names on ballot.—The various county committees of any political party, on the third Monday in June preceding each general primary, shall meet at the county seat and determine by lot the order in which the names of all candidates for all offices requested to be printed on the official ballot shall be printed thereon. [Acts 1st C. S. 1905, p. 549.]

Art. 3118. [3107–9] County executive committees.—There shall be for each political party required by this law to hold primary elections for nomination of its candidates, a county executive committee, to be composed of a county chairman, and one member from each election precinct in such county; the committeeman from such election precinct shall be chairman of his election precinct, and the said county chairman shall be elected on the general primary election day; the county chairman by the qualified voters of the whole county, and the precinct chairman by the qualified voters of their respective election precincts. Said county and precinct chairman shall assume the duties of their respective offices on Saturday following the run-off primary immediately after the

committee has declared the results of the run-off primary election. Said county chairman shall be ex-officio a member of the executive committee of all districts of which his county is a part, and the district committee thus formed shall elect its own chairman. Any vacancy in the office of chairman, county or precinct, or any member of such committee shall be filled by a majority vote of said executive committee. The list of election precinct chairmen and the county chairmen so elected, shall be certified by the county convention to the county clerk, along with the other nominees of said party. If there are no requests filed for candidates for county and precinct chairman, a blank space shall be left on the ticket beneath the designation of such position. [Acts 1st C. S. 1905, p. 549.]

Art. 3119. [3112–13] Supplies.—The executive committee shall have a general supervision of the primary in such county, and shall be charged with the full responsibility for the distribution to the presiding judge of all supplies necessary for holding same in each precinct. If the duly appointed presiding officer shall fail to obtain from the executive committee the supplies for holding such election, such committee shall deliver the same to the precinct chairman for such precinct, and, if unable to deliver the same to such presiding officer or precinct chairman not less than twenty-four hours prior to the time of opening the polls for such primary, such committee shall deliver the same to any qualified voter of the party residing in such precinct, taking his receipt therefor, and appointing him to hold such election in case such presiding officer or precinct chairman shall fail to appear at the time prescribed for opening the polls. [Id.]

Art. 3120. [3114] Booths used for primary.—The voting booths, ballot boxes and guard rails, prepared for a general election, may be used for the organized political party nominating by primary election that cast over one hundred thousand votes at the preceding general election. [Id.]

Art. 3121. [3115–6–7] Lists of voters.—The county tax collector shall deliver to the chairman of the county executive committee of each political party, for its use in primary elections, at least five days before election day, certified and supplemental lists of the qualified voters of each precinct in the county, arranged alphabetically and by precincts, and such chairman shall place the same for reference in the hands of the election officers of each election precinct before the polls are open. No primary election shall be legal, unless such list is obtained and used for reference during the election. Opposite the name of every voter on said list shall be stamped, when his vote is cast, with a rubber or wooden stamp, or written with pen and ink the words, "primary—voted," with the date of such primary under the same. For each list of all the qualified voters of the county who have paid their poll taxes or received their certificates of exemption, the collector shall be permitted to charge not more than five dollars, the same to be paid by the party or its chairman so ordering said lists; provided, that the charge of five dollars shall be in full for the certified lists of all the voters of the county arranged by precincts, as herein provided. [Id.]

Art. 3122. [3118] Precaution against fraud.—The same precautions required by law to secure the purity of the ballot box in general elections, in regard to the ballot boxes, locking the ballot boxes, sealing the same, watchful care of them, the secrecy in preparing the ballot in the booth or places prepared for voting shall be observed in all primary elections. [Id. sec. 135.]

Art. 3123. [3121] Return of ballots.—Returns shall be made within four days to the chairman of the executive committee by the precinct judges, of the ballot boxes containing the ballots voted, locked and sealed, tally sheets, return sheets, ballots mutilated and defaced, and ballots not voted, for which he shall account to the executive committee of the county. [Id. sec. 136.]

Art. 3124. [3122] Returns of election.—All returns of precinct primary elections, properly signed and certified as correct by the judges and clerks thereof, showing the vote cast for each candidate, shall be sealed and immediately delivered, after such primary election, to the chairman of the county executive committee of the party. Such party chairman shall give notice to the members of the county executive committee to assemble at the county seat of the county on the first Saturday after the first primary election; and said returns shall then be opened under the direction of such executive committee and canvassed by them. [Id. sec. 131.]

Art. 3125. [3123–25] Canvass of result.—Each county executive committee shall meet the first Saturday after each primary election to canvass the result of such election, make a list of the candidates who have received the highest vote for office, and the chairman of the executive committee shall certify to the same and deliver it to the county clerk of the county.

Art. 3126. [3124] Tie in primary.—If it appears that for a county or precinct office, the largest vote has been cast for two candidates for the same office, and that they have each received the same number of votes, the chairman of the executive committee shall, in the presence of the executive committee or the county convention, as the case may be, cast lots for the nomination in such manner as they may direct and in the presence of rival candidates, if they desire to be present, and declare and certify the name of that candidate who is successful by lot. [Id. sec. 133.]

Art. 3127. [3126–7] Tabulated statement.—The chairman of the executive committee in each county shall, as soon as the vote cast in the primary election has been counted and canvassed as herein provided for, prepare a tabulated statement of the votes cast in his county for each candidate for each nomination for a State, district, county or precinct office, and of that cast for county chairman, as shown by the canvass made by the county executive committee, and shall immediately mail such statement as to a State or district office, in a sealed envelope by registered letter, to the chairman of the State executive committee, and district executive committee, respectively, who shall present the same to the State and district committee at its meeting to be held as herein provided. As to candidates for Governor, or for an office to be filled by all the voters of the State, or of any district composed of more than one county, the chairman of the county executive committee and its secretary shall certify the number of votes cast for each of such candidates and cause the same to be published in some newspaper of the county, if there be one, and deliver his certificate of the vote cast for each candidate for such office to the president of the next State convention of the party of the manner required in this title, and certify the vote cast for each district office to the chairman of the district committee. [Id. secs. 117–131.]

Art. 3128. [3129] Boxes and ballots returned.—Ballot boxes after being used in primary elections shall be returned with the ballots cast, or contained in each box as they were deposited by the election judges, locked and sealed, to the county clerk, and, unless there be a contest for a nomination in which fraud or illegality is charged, they shall be unlocked and unsealed by the county clerk and their contents destroyed by the county clerk and the county judge without examination of any ballot, at the expiration of sixty days after such primary election. [Id. sec. 143.]

Art. 3129. [3130] To publish nominees.—The county clerk shall cause the names of the candidates who have received the necessary vote to nominate, as directed by the county executive committee, for each office, to be printed in some newspaper published in the county, and if none, then he shall post a list of such names in at least five public places in the county, one of which shall be upon the courthouse door. [Id. sec. 131.]

Art. 3130. [3131] Objections to nomination.—All objections to the regularity or validity of the nomination of any person, whose name appears in said list, shall be made within five days after such printing

or posting, by a written notice filed with the county clerk, setting forth the grounds of objections. In case no such objection is filed within the time prescribed, the regularity or validity of the nomination of no person whose name is so printed or posted, shall be thereafter contested.

Art. 3131. [3132] Name printed on ballot.—After said names have been so printed or posted for the period above required, the said clerk shall cause the names to be printed on the official ballot in the column for the ticket of that party. [Id. sec. 131.]

Art. 3132. [3133] To post names of candidates.—Each county clerk shall post in a conspicuous place in his office, for the inspection of the public, the names of all candidates that have been lawfully certified to him to be printed on the official ballot, for at least ten days before he orders the same to be printed on said ballot; and he shall order all the names of the candidates so certified printed on the official ballot as otherwise provided in this title. [Id. sec. 132.]

Art. 3133. [3110] Referendum on platform demands.—No political party in this State, in convention assembled, shall place in the platform or resolutions of the party they represent any demand for specific legislation on any subject, unless the demand for such specific legislation shall have been submitted to a direct vote of the people, and shall have been endorsed by a majority of all the votes cast in the primary election of such party; provided, that the State executive committee shall, on petition of ten per cent of the voters of any party, as shown by the last primary election vote, submit any such question or questions to the voters at the general primary next preceding the State convention. [Acts 1907, p. 328.]

Art. 3134. [3134] County and precinct conventions.—On the first Saturday after primary election day for 1926, and each two years thereafter, there shall be held in each county a county convention of each party, to be composed of one delegate from each precinct in such county for each twenty-five votes, or a major fraction thereof, cast for the party's candidate for Governor at the last preceding election, which delegates shall be elected by the voters of each precinct on primary election day, in such manner as may be prescribed by the county executive committee at their meeting on the second Monday in June, which convention shall elect one delegate to the State and several district conventions for each three hundred votes, or a major fraction thereof, cast for the party's candidate for Governor in such county at the last preceding general election; and the delegates to said convention so elected, or such of them as may attend the said convention, shall cast the vote of the county in such conventions. Immediately upon the adjournment of each such county convention, the president thereof shall make out a certified list of the delegates to each of said conventions chosen by such county convention and shall sign the same, the secretary of such convention attesting his signature, and shall forward such certified list by sealed registered letter to the chairman of the State and district executive committees, who shall present the same to the respective committees at its meeting prior to the convention; and from such certified list, the respective committees shall prepare a temporary roll of those selected as delegates to such convention; provided, that no proxies shall be allowed to, or recognized in, any convention held by authority of this title, where a delegate from the county is present in the convention. [Id. sec. 115.]

Art. 3135. [3136] District conventions.—On the fourth Saturday in August succeeding each general primary, there shall be held in each district within the State in which any candidate or candidates for any district office are to be elected at the succeeding general election, a district convention, which shall be composed of delegates from the county or counties composing such district, selected in the manner herein provided; notice of the time and place of holding such convention shall be given by the executive committee of such district at least ten days prior to such meeting. Before such convention assembles, the executive committee of such district shall meet and elect a chairman of such committee, shall prepare a list of the delegates from the various counties composing such district which have been certified to the district committee by the chairman of the various county committees; shall tabulate the vote cast in the various counties for each candidate for district office, which has been certified to such committee as provided in this chapter and shall also prepare a statement, showing the number of convention votes which each county in such district is entitled to cast in said convention upon the basis set forth in Article 3141, and shall present such list of delegates, tabulated vote and convention vote to the convention when it assembles. The district convention shall then canvass the returns of the votes cast in all of the counties of the district for each candidate as presented to them by the district committee, and shall declare the person found to have received the largest number of votes at the primary in the district for such office the nominee of the party for such office; and the chairman and the secretary of the convention shall forthwith certify such nomination to the Secretary of State, who shall certify all district nominations to the various county clerks. But, in the event there is only one name on the ballot for a district office without an opponent, the district chairman shall, as soon as practicable after the primary election, certify that the person on the ballot is the nominee of the party and that there shall be no convention held for the purpose of declaring the result; provided further that it shall be the duty of the county clerk of each county of this State to certify to the Secretary of State on or before the fourth Saturday in August succeeding any general primary the total vote cast in his county for each and every district officer; in the event no district convention be held as herein provided for, the Secretary of State shall ascertain from the returns so certified who has received the largest vote for such office, and shall certify such fact to each county clerk in such district not later than October first of such year. In the event a district is composed of one county only, no district convention shall be held and in addition to certifying to the Secretary of State, the number of votes cast for candidates for any district office in said county at the first general primary, the county clerk of said county shall, within fifteen days following a second primary, certify to the Secretary of State the name of the nominee for said District office as declared by the executive committee of said county. [Id. p. 547; Acts 1907, p. 329; Acts 1915, p. 26; Acts 1927, 40th Leg., p. 280, ch. 196, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 280, ch. 196, repeals all conflicting laws and parts of laws.

Art. 3136. [3137] Place for State convention.—At the meeting of the State executive committee held on the second Monday in June preceding each general primary election, the said committee shall decide upon and publish the place where the State convention of the party shall be held on the first Tuesday after the third Monday after the fourth Saturday in August, A. D. 1928. [Acts 1st C. S. 1905, p. 545, sec. 109; Acts 1927, 40th Leg., 1st C. S., p. 27, ch. 15, § 1.]

Art. 3137. [3138] State committee to canvass.—On the third Monday after the fourth Saturday in July 1928, and every two years thereafter the State executive committee shall meet at a place selected at the meeting held on the second Monday in June preceding, and shall open and canvass the returns of the primary elections held on the fourth Saturday in July as to candidates for State offices, as certified by various county chairmen, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the State committee and certified by its chairman. If such returns show that for any State office no candidate received a majority of all the votes cast for all candidates for such office, such committee shall prepare a list of the two candidates receiving the highest vote for each office for which no candidate received a majority of votes cast at such primary for such office and shall certify same to the county chairmen of the several counties to be placed

upon the official ballot as candidates for office at the second primary election to be held on the fourth Saturday in August thereafter. On the third Monday after the fourth Saturday in August 1928, and every two years thereafter, the State executive committee shall meet at the place selected for the meeting of the State convention and shall open and convass the returns of the second primary election held to nominate candidates for State offices as certified by the various county chairman [chairmen] to the State chairman, and shall prepare a tabulated statement showing the number of votes received by each such candidate in each county, which statement shall be approved by the State committee and certified by its chairman. At this meeting the State committee shall also prepare a complete list of the delegates elected to the State conventions from each county, as certified to the State chairman by each county chairman. The State chairman shall present said tabulated statement and said list of delegates to the chairman of the State convention immediately after its temporary organization on the following day, for its approval or disapproval. [Id. sec. 119; Acts 4th C. S. 1918, p. 192; Acts 1927, 40th Leg., 1st C. S., p. 27, ch. 15, § 2.]

Art. 3138. [3139] State convention to canvass.—The State convention shall canvass the vote cast in the entire State for each candidate for each State office as shown by the statement thereof presented to it by the State committee, and shall declare the candidates for each State office who has received a majority of votes cast for all candidates for such office in the first primary election, if any candidate receives a majority of all the votes cast for all the candidates for such office at said primary election, and if no candidate received such majority, then it shall declare the candidate who received a majority of all votes cast for such office at the second primary election, the nominee of the party for such office; and the chairman and the secretary of the State convention shall forthwith certify all such nominations to the Secretary of State. [Acts 1st C. S. 1905, p. 550; Acts 2nd C. S. 1905, p. 4; Acts 1907, p. 329; Acts 4th C. S. 1918, p. 193.]

Art. 3139. [3140] State convention.—All party State conventions to announce a platform of principles and announce nominations for Governor and State offices shall, except as otherwise provided, meet at such places as may be determined by the parties respectively on Tuesday after the third Monday after the fourth Saturday in August 1928, and every two years thereafter and they shall remain in session from day to day until all nominations are announced and the work of the convention is finished. Said convention shall elect a chairman of the executive committee and thirty-one members thereof, one from each senatorial district of the State, the members of said committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold said office until his successor is elected; and, in case of a vacancy, a majority of the members of said committee shall fill the same by electing some eligible person thereto. [Acts 1st C. S. 1905, p. 549; Acts 4th C. S. 1918, p. 193; Acts 1927, 40th Leg., 1st C. S., p. 27, ch. 15, § 3.]

Art. 3140. [3141] Certificate of nomination.—Every certificate of nomination made by the president of the State convention, or by the chairman of any executive committee, must state when, where, by whom, and how the nomination was made. [Acts S. S. 1905, p. 549.]

Art. 3141. [3142] Convention vote.—Each county in the State or district convention shall be entitled to one vote for each five hundred votes, or major fraction thereof, cast for the candidate for Governor of the political party holding the convention, at the last preceding primary election. In case, at such primary election, there were cast for such candidate for Governor less than five hundred votes in any county, then all such counties shall have one vote. [Acts 1907, p. 329.]

Art. 3142. [3143] Mandamus.—Any executive committee or committeeman or primary officer, or other person herein charged with any duty relative to the holding of the primary election, or the canvassing, determination or declaration of the result thereof, may be compelled by mandamus to perform the same in accordance with the provisions of this title. [Acts S. S. 1905, p. 557.]

Art. 3143. [3144] Spirit of law.—No immaterial error made by any officer of a primary election, or any immaterial violation of the primary election laws by an elector, shall vitiate any election held under this title, nor be the cause of throwing out the vote of any election precinct. [Id. sec. 137.]

Art. 3144. [3145] Statement of expenses.—Within ten days after a final election, all candidates for office at such election shall file a written itemized statement, under oath, with the county judge of the county of their residence, of all the expenses incurred during the canvass for the office, and for the nomination, including amounts paid to newspapers, hotel and traveling expenses, and such statement shall be sworn to and filed, whether the candidate was elected or defeated, which shall at all times be subject to the inspection of the public. [Id. sec. 90.]

Art. 3145. [3146] Expenses of manager.—Every person who manages any political headquarters for any political party, or for any candidate before any election, and every clerk or agent of such manager for such headquarters or candidate, and every other person whomsoever who expends money, gives any property or thing of value, or promises to use influence, or give a future reward to promote or defeat the election of any candidate, or to promote or defeat the success of any political party at any election, shall, within ten days after such election, file with the county judge of the county in which the political headquarters was located, and with the county judge of the county where such manager, clerk, or other person, as the case may be, resides, an itemized statement of all moneys or things of value thus given or promised, for what purpose, by whom supplied, in what amount and how expended, and what reward was given or promised, by whom and to whom, and what influence was promised, by whom promised, and to whom said promise was given. He shall state whether he has been informed, or has reason to believe, that the person thus aiding or attempting to defeat a party or candidate was an officer, stockholder, agent or employé of, or was acting for or in the interest of any corporation, giving his name, and, if so, what corporation; and he shall if he has no positive knowledge, state the source of his information or the reasons for his belief, as the case may be; all of which shall be sworn to and subscribed before the county judge, who shall file and preserve the same, which shall at all times be subject to the inspection of the public. [Id. sec. 89.]

Art. 3146. [3147] Contest of primary.—In all contests for a primary election or nomination of a convention based on charges of fraud or illegality in the method of conducting the elections or in selecting the delegates to the convention, or in certifying to the convention, or in nominating candidates in State, district, county, precinct or municipal conventions, or in issuing certificates of nomination from such conventions, the same shall be decided by the executive committee of the State, district, or county, as the nature of the office may require, each executive committee having control, in its own jurisdiction, or in term time or vacation by the district court of the district where the contestee resides; said executive committee and the district courts having concurrent jurisdiction. [Acts 2d C. S. 1909, p. 452, sec. 141.]

Art. 3147. [3148] Place for hearing contests.—In all contests between candidates for State office, the committee shall hold its hearing in the city of Austin unless some other place is agreed upon by the parties; and in all contests between candidates for any district, county, municipal or precinct office,

the committee may hold its hearing, at its election, either in the county of the residence of the contestee or in any county where the fraud or illegality complained of is alleged to have occurred, or at such other place as the parties may agree upon. [Id. sec. 141.]

Art. 3148. [3149] Contest before executive committee.—The complaining candidate, if he desires to file a contest with the executive committee, shall, within five days after the result has been declared by the committee or convention, cause a notice to be served on the chairman or some member of the executive committee, in which he shall state specifically the ground of his contest; also shall serve or cause to be served on the opposing candidate a copy of such notice, at least five days prior to the date set for hearing by the committee. If special charges of fraud or illegality in the conduct of the election, or in the manner of holding the convention, or in the manner of making nominations, are made, and not otherwise, the chairman, or, in case he fails or refuses, any member of the committee, shall within twenty days after the primary election, or the convention, convene the executive committee, who shall then examine the charges, hear evidence and decide in favor of the party who in their opinion was nominated in the primary election, or in the convention; provided, that, before any advantage can be taken of the disregard or violation of any directory provision of the law, it must appear that, but for such disregard or violation, the result would have been different. [Id.]

Art. 3149. [3150–3155] Ballot boxes opened.—Either the district court or the executive committee may, if in its opinion the ends of justice require it, unlock and unseal the ballot boxes used in the precinct where fraud or illegality is charged to have been used, and examine their contents, after which they shall be sealed and delivered to the county clerk. [Id.]

Art. 3150. [3151–2] To certify findings.—When the committee has decided the contest, unless notice of appeal to the district court is given, the executive chairman shall certify its findings to the officers charged with the duty of providing the official ballot; and the name of the candidate in whose favor the executive committee shall find shall be printed on the official ballot for the general election. If such appeal is not perfected in the manner and time as herein provided, the chairman of the executive committee trying such contest shall certify the name of the party held by the executive committee to have been nominated to the proper office, to be placed on the official ballot. [Id.]

Art. 3151. [3153] Appeal to district court.—Where contests are originally filed with the executive committee, either party shall have the right to appeal from the final decision of the executive committee to the district court having jurisdiction; and said contest shall there be tried de novo by said court. The party taking such appeal shall, within three days from the final decision of the executive committee, file written notice of such appeal with the chairman or secretary of such executive committee. Upon the filing of such notice of appeal, the secretary of said executive committee shall prepare a certificate showing that such contest had been tried and determined by such executive committee, the decision of such committee, and that notice of appeal had been given, and shall file same, together with all papers filed in such contest, in the district court, or with the district judge in vacation, of the district having jurisdiction of such appeal, within ten days after the decision of the executive committee is rendered; and the filing of such certificate and papers in said court, or with said judge in vacation, shall be held to perfect such appeal. And if for any cause the secretary of said executive committee shall fail or refuse to file such certificate and other papers pertaining to such appeal, in the district court of such district, or with the judge of such district, within ten days after such decision has been rendered by said committee, then in such event the contestant may prepare a brief statement of the action of said committee in such contest, and perfect his appeal by filing same with said district court, or with the judge of said district, within fifteen days after such decision by the executive committee. [Id. sec. 141.]

Art. 3152. [3154 to 3157] By district court.—In State, district, county or precinct offices, the certificate of the nomination issued by the president or chairman of the nominating convention, or chairman of the county executive committee, shall be subject to review, upon allegations of fraud or illegality, by the district court of the county in which the contestees reside; provided, that such allegations are filed in said court within ten days after the issuance of said certificate; and when said allegations are so filed, or the appeal from the decision of the executive committee is perfected, the judge of the district court must set down for hearing, in term time or vacation at the earliest practical time; and a copy of said grounds for contest, together with the notice of the date set for hearing, shall be prepared and issued by the district clerk and be served upon the contestee five days before the hearing before said court, and the parties to said contest shall have the right to summon witnesses. The said court shall determine said contest; and the decision of said court shall be final as to all district, county or precinct offices. A certified copy of the judgment of said court shall be transmitted by the clerk thereof to the officers charged with the duty of providing the official ballot, and the name of the candidate in whose favor said judgment shall be rendered shall be printed in the official ballot for the general election; provided, however, that a contest of the certificate of nomination for district judge shall be brought in the district court of the adjoining district, the county seat of which is nearest the residence of the contestee when only one district court is in said county. Providing further, that in counties having two or more district courts, the contest shall be filed in any district court in said county except in the court of the contestee, and an appeal from the decision of the executive committee in a case filed there shall be taken to such court. [Id.; Acts 1927, 40th Leg., p. 24, ch. 19, § 1.]

Art. 3153. [3158] Appeal from district court.—In all contests for State offices before the district court, exercising either its original or appellate jurisdiction, either party may appeal to the Court of Civil Appeals. Such appeal shall be advanced on the docket of said appellate court and have precedence of all other cases. [Id.]

2. BY PARTIES OF 10,000 AND LESS THAN 100,000 VOTES

Art. 3154. [3159] May nominate.—Each political party, whose nominee for Governor in the preceding general election received as many as ten thousand and less than one hundred thousand votes, may nominate candidates for State, district and county offices under the provisions of this law by primary election, and they may nominate candidates for State offices at a State convention, which shall be held the second Tuesday in August, and which shall be composed of delegates selected in the various counties and county conventions held on the first Saturday after primary election day, which shall be composed of delegates from the general election precinct in such counties elected therein at primary conventions, held in such precincts on the fourth Saturday in July. [Acts S. S. 1905, p. 542, sec. 99.]

Art. 3155. [3160] State committee to determine mode.—The State committee of all such parties shall meet at some place in the State to be designated by the chairman thereof on the second Tuesday in May, and shall decide, and by resolution declare, whether they will nominate State, district and county officers by convention or primary elections, and shall certify their decision to the Secretary of State. [Id.]

Art. 3156. [3161] For district offices.—Nominations for district offices made by such parties shall be made by conventions held on the same days as herein prescribed for district conventions of other par-

ties, composed of delegates elected thereto at county conventions held on the same day herein prescribed for such county conventions of other parties all of which county conventions shall nominate candidates for county offices of such party. [Id.]

Art. 3157. [3162] Nominations certified.—All nominations so made by a State or district convention shall be certified by the chairman of the State or district committee of such party to the Secretary of State, and a nomination made by a county convention, by the chairman of the county committee. [Id.]

Art. 3158. [3163] Illegal participation.—No person shall be allowed to participate in any such convention who has participated in the convention or primary of any other party held on the same day. [Id.]

3. NON-PARTISAN AND INDEPENDENT CANDIDATES

Art. 3159. [3164] Non-partisan and independent candidates.—The name of a non-partisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters addressed to the Secretary of State and delivered to him within thirty days after primary election day as follows: If for a State office to be voted for throughout the State, one per cent of the entire vote of the State cast at the last preceding general election; if for a congressional, supreme judicial, senatorial, representative, flotorial or judicial district office, three per cent of the entire vote cast in any such district at the last preceding general election; provided, that the number of signatures need not exceed five hundred for any congressional, senatorial or judicial office, nor for any other office that is not filled by all the voters of the State. No application to the Secretary of State shall contain the name of more than one candidate, and no citizen shall sign such application, unless he has paid his poll tax or received his certificate of exemption; provided, that, if the office is one to which two or more persons are to be elected, his application may be for as many candidates as there are persons to be elected to that office; and provided, also that no person who has voted at a primary election shall sign an application in favor of any one for an office for which a nomination was made at such primary election. [Id. secs. 94-95.]

Art. 3160. [3166] Oath to application.—To every citizen who signs such application, shall be administered the following oath, which shall be reduced to writing and attached to such application, viz: "I know the contents of the foregoing application; I have participated in no primary election which has nominated a candidate for the office for which I (here insert the name) desire to be a candidate; I am a qualified voter at the next general election under the constitution and laws in force, and have signed the above application of my own free will." One certificate of the officer before whom the oath is taken may be so made as to apply to all to whom it was administered. [Id. sec. 96.]

Art. 3161. [3167] Must consent to run.—The Secretary of State shall, on receipt of the application which conforms to the above requirements, issue his instruction to the county clerks of this State, or of the district, as the case may require, directing that the name of the citizen, in whose favor the application is made, shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that the citizen, in whose favor the application is made, shall first file his written consent with the Secretary of State to become a candidate, within thirty days after primary election day. [Id. sec. 97.]

Art. 3162. [3168] Independent candidates.—Independent candidates for office at a county, city or town election may have their names printed upon the official ballot on application to the county judge, if for a county office, or to the mayor, if for a city or town office, such application being in the same form and subject to the same requirements herein prescribed for applications to be made to the Secretary of State in case of State or district independent nomination; provided, that a petition of five per cent of the entire vote cast in such county, city or town at the last general election shall be required for such nomination. [Id. sec. 98.]

4. BY PARTIES WITHOUT STATE ORGANIZATIONS

Art. 3163. [3169] Parties without State organization.—Any political party without a State organization desiring to nominate candidates for county and precinct offices only may nominate such candidates therefor under the provisions of this title by primary elections or by a county convention held on the legal primary election day, which convention shall be composed of delegates from various election precincts in said county, elected therein at primary conventions held in such precincts between the hours of eight a. m. and ten p. m. of the preceding Saturday. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties so certified, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge, signed and sworn to by three per cent of the entire vote cast in such county at the last general election. [Id. sec. 100.]

5. FOR CITY AND TOWN ELECTIONS

Art. 3164. [3170] Executive committee.—Each incorporated city or town in this State, whether incorporated under the general or special laws, may make nominations for office in the following manner: In each of said cities and towns there shall be an executive committee for each political party, consisting of a city chairman and one member for each ward in such city or town, and in case such city or town is not divided into wards, for either political or election purposes, then there shall be selected four members of said committee, in addition to the city chairman. If any city or town shall be divided into wards, for either political or election purposes, or both, then such party executive committee shall consist of one member from each ward and a city chairman of such executive committee. Provided, however, that no city or town in this State shall have a smaller number than four executive committeemen and a chairman of such executive committee. In all cities and towns which now have no executive committee, the county chairman of the party desiring to make nominations in such cities and towns shall appoint an executive committee to serve until the next city election shall be held, and in each city and town in this State in which a political party may desire to make nominations, there shall be held, at least thirty days prior to the regular city election, an election at which there may be nominated by such political party, officers to be elected at the next city election, and at which election there shall be selected the executive committee for such party in said city or town herein provided for, and in all such city primary elections, the provisions of the law relating to primary elections and general elections shall be observed. The executive committee herein provided for may decide whether or not nominations shall be made by such political party in such city or town; provided, that upon petition being made to said city or county chairman, signed by twenty-five per cent of the voters of the party in such city, as shown by the last general State election, requesting that party nominations be made for city officers, then said city executive committee, through an order of its chairman, shall order a primary election or mass convention of the qualified voters of the party, as may be petitioned for by the voters presenting said petition, and it shall thereupon be the duty of said city executive committee to grant such request as shall be contained

in such petition, and such primary election or mass convention shall be ordered, and it shall be mandatory upon such city or county chairman to order such election or mass convention to be held within ten days from the time such petition is presented. At such primary election or mass convention a new executive committee shall be selected to serve during the ensuing term; provided that this law shall not be construed so as to prevent independent candidates for city offices from having their names upon the official ballot, as provided for by law. This article shall not repeal the provisions of any charter heretofore or hereafter specially granted to any city in this State. [Id.; Acts 1911, p. 18.]

6. MISCELLANEOUS

Art. 3165. [3172–3] Nomination declined.—A nominee may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed, ten days before the election, if it be for a city office, and twenty days in other cases, a declaration in writing, signed by him before some officer authorized to take acknowledgments. Upon such declination (or in case of death of a nominee), the executive committee of a party, or a majority of them for the State, district or county, as the office to be nominated may require, may nominate a candidate to supply the vacancy by filing with the Secretary of State in the case of State or district officers, or with the county judge in the case of county or precinct officers, a certificate duly signed and acknowledged by them, setting forth the cause of the vacancy, the name of the new nominee, the office for which he was nominated and when and how he was nominated. No executive committee shall ever have power of nomination, except where a nominee has died or declined the nomination as provided in this article. [Id. sec. 118.]

Art. 3166. [3174] Party name.—No new political party shall assume the name of any pre-existing party; and the party name printed on the official ballot shall not consist of more than three words. [Id.]

Art. 3167. [3175] National convention.—Any political party desiring to elect delegates to a national convention, shall hold a State convention at such place as may be designated by the State executive committee of said party, on the fourth Tuesday in May, 1928, and every four years thereafter. Said convention shall be composed of delegates duly elected by the voters of said political party in the several counties of the State at primary conventions to be held on the first Saturday in May 1928, and every four years thereafter. Said primary conventions shall be held between the hours of ten o'clock a. m. and eight o'clock p. m. These primary conventions shall elect delegates to the county conventions of the several counties, which shall be held on the first Tuesday after the first Saturday in May 1928, and every four years thereafter. The qualified voters of each voting precinct of the county shall assemble on the date named, and shall be presided over by a chairman who shall have been previously appointed by the county executive committee of the party, and shall be a qualified voter in said election precinct. Said convention may elect from among their number a secretary and such other officers as may be necessary to conduct its business. The chairman of said convention shall possess all the power and authority that is given to election judges under the provisions of this title. Before transacting any business, the chairman shall cause to be made a list of all qualified voters present. The name of no person shall be entered upon said list, nor shall he be permitted to vote or to participate in the business of such convention, until it is made to appear that he is a qualified voter in said precinct, from a certified list of the qualified voters, the same as is required in conducting a general election. After the convention is so organized it shall elect its delegates to the county convention and transact such other business as may properly come before it. The officers of said convention shall keep a written record of its proceedings, including a list of the delegates elected to the county conventions, which shall constitute the returns from said convention. The same shall be signed officially, sealed up and safely transmitted by the officers thereof to the chairman of the county executive committee of the party to be used by them in making up the roll of the delegates to the county convention. [Acts 1st C. S. 1905, p. 555, sec. 139.]

CHAPTER FOURTEEN

LIMITING EXPENDITURES IN PRIMARY

Art.
3168. Definitions.
3169. Appointing manager.
3170. Limiting expenditures.
3170a. Money paid by candidates.
3171. Campaign contributions.
3172. Sworn statement.
3173. Leave name off ticket.

Article 3168. Definitions.—The word "candidate" shall mean any person who has announced to any other person or to the public that he is a candidate for the nomination for any office which the laws of this State require to be determined by a primary election. The words "county nomination" shall mean the nomination for any office to be filled by the choice of the voters residing in only one county or less than one county. The words "district nomination" shall mean the nomination for any office to be filled by the choice of the voters residing in more than one county. The words "State nomination" shall mean the nomination for any office to be filled by the choice of the voters of the entire State. In all cases where second primary elections may be held in compliance with any law of this State, the first and second primary elections shall for the purposes of this law be considered together as one primary election. [Acts 1919, p. 139.]

Art. 3169. Appointing manager.—Every candidate for a State or district nomination may designate a campaign manager by written appointment filed with the Secretary of State. Every candidate for a county nomination may designate a campaign manager by written appointment to be filed with the county clerk of his county, and each candidate for State or district nomination, or the lawfully designated campaign manager of such candidate, may also designate an assistant campaign manager for each county affected by such candidacy by written appointment to be filed with the county clerk of the county. Any campaign manager or assistant campaign manager designated as provided in this article may be removed by the designation of a successor, and all vacancies occurring by such removal or by death, resignation or otherwise, may be filled in the manner provided for original designations. [Id.]

Art. 3170. Limiting expenditures.—No candidate for any nomination to be determined by primary election and no campaign manager for such candidate shall himself or by or through any other person or persons, or on behalf of any other person or persons, directly or indirectly, give, pay or expend any money or pay or give anything of value or promise to give, pay or expend any money or to pay or to give anything of value, or authorize any expenditure or assume any pecuniary liability in furthering or opposing the candidacy of any persons for any nomination to be determined by a primary election in this State, except for the following purposes only, to-wit:

1. For the traveling expenses of the candidate, or of his campaign manager or assistant campaign manager as defined by this chapter, or of a secretary for such candidate.
2. The payment of fees or charges for placing the name of the candidate upon the primary ballot, and for holding and making returns of the election.
3. The hire of clerks and stenographers and the cost of clerical and stenographic work and of addressing, preparing and mailing campaign literature.
4. Telegraph and telephone tolls, postage, freight and express charges.
5. Printing and stationery.

6. Procuring and formulating lists of voters.
7. Headquarters or office rent.
8. Newspaper and other advertising and publicity.
9. Renting of halls or providing places for public meetings and all expenses of advertising and other expenses usually incident to holding such meetings.

No expenditures authorized by this article may lawfully be made or authorized or liability therefor incurred by any person other than a candidate himself, or his lawfully designated campaign manager or assistant campaign manager, or by some clerk or other agent lawfully authorized, in writing, by a campaign manager or assistant campaign manager, provided that no campaign manager or assistant campaign manager shall have more than one person so authorized to act for him at the same time.

The expenditure of any money or the giving, paying or promising to give or pay any money or anything of value, directly or indirectly by any candidate for nomination or by any campaign manager or assistant campaign manager or any authorized clerk or other employé of such campaign manager or assistant campaign manager, in furthering or opposing the candidacy of any person for nomination in a primary election, except in the manner and for the purposes authorized by the provisions of this article is expressly prohibited, and the total amount expended and authorized for these purposes and for any and all purposes connected with furthering or opposing the candidacy of any person for a nomination to be determined by a primary election by any candidate or campaign manager, shall not exceed the following amounts for each candidate for each of the following offices, to-wit:

For United States Senator	$10,000.00
For Governor	10,000.00
For all other officers to be chosen by voters of the entire State, including Judges of Courts of Last Resort, district members of Congress, and members of Congress at large	2,500.00
For members of the Court of Civil Appeals	1,500.00
For district attorney or district judge	600.00
For member of the State Senate	1,000.00
For member of the House of Representatives	300.00
For county officers in counties having a population of 50,000 or more	750.00
For county officers in counties having a population of 30,000 or more, and less than 50,000	500.00
For county officers in counties having a population of less than 30,000	300.00
(The preceding Federal census to determine the population of a county.)	
For any other position which the law may provide shall be chosen in primary election	100.00

Four-fifths of the sums stipulated in this article as the limits of expenses to be incurred by candidates and their campaign managers may be expended in the campaign preceding the first primary, and the remainder in the campaign preceding the second primary.

The limits fixed by this article for all State and district nominations shall include and cover all amounts expended or authorized to be expended by such candidate or his campaign manager and also all amounts paid or distributed to assistant campaign managers for use of expenditure in their respective counties. Any such assistant campaign manager may himself and through his lawfully authorized agent, expend in his county out of contributions made to the campaign fund by citizens of his county and collected by him or out of monies furnished him by the candidate or his campaign manager or from all such sources together, for lawful purposes permitted by this chapter, a sum which shall not exceed ten dollars for each one hundred qualified voters on the current poll tax list of such county, provided that such sum shall in no event exceed in the aggregate the sum of five hundred dollars for any county. The aggregate sums stipulated in this article as the maximum amounts that may be expended by candidates and their campaign managers shall be construed to embrace all expenditures herein authorized to be made in counties by assistant campaign managers. The expenditure of any money or the giving or promising to give or pay any money or any thing of value by any candidate or by any campaign manager or his clerk or agent, or assistant campaign manager or his clerk or agent in furthering of or opposition to the candidacy of any person for any nomination in a primary election in excess of the amount fixed and prescribed by this article, is hereby prohibited and declared to be unlawful. [Id.]

Art. 3170a. Money paid by candidates.—The amount of money paid to the State, district or county committee of any political party by any candidate for political nomination to office for the purpose of placing his or her name upon the primary ballot of such political party, shall not be included in the amount of money limited by law for campaign expenses. [Acts 1925, p. 334.] [39th Leg., ch. 131, § 1.]

Art. 3171. Campaign contributions.—It shall be lawful for any person other than a corporation to make campaign contributions to be paid directly to the candidate or his lawfully designated and appointed campaign manager or by citizens of any county to the lawfully designated and appointed assistant campaign manager for such county, such contributions to be used for lawful purposes. It shall be lawful for any one or more citizens residing in any locality to raise by voluntary contributions a fund not exceeding fifty dollars for the purpose of defraying the expenses of any political meeting to be held in such locality, such expense to include the cost of advertising such meeting, or hiring halls or providing other places for holding the same, or providing music therefor, or the bona fide traveling expenses and hotel bills of speakers, provided that a statement of all receipts and disbursements for such purposes signed and sworn to by the person or persons receiving and disbursing the same shall be filed with the county clerk of the county in which such meeting is held, within twenty-four hours after it is held. It shall be lawful for any person to expend a sum which shall not in the aggregate exceed ten dollars for postage, or telegraph or telephone tolls, or for cost of any correspondence or any other lawful purpose out of his own funds where the sum is not to be repaid to him in behalf of any one candidate. It shall be lawful for any person to contribute bona fide his own personal services and personal traveling expenses, including hotel bills while traveling, to the support of any candidacy. Except as expressly permitted by the foregoing provisions of this article, it shall be unlawful for any person other than candidates for nomination to be determined by primary elections or the campaign managers or assistant campaign managers of such candidates lawfully designated as provided in this chapter, or the agents of such campaign managers or assistant campaign managers lawfully authorized as provided in this chapter, either himself or by or through any other person or on behalf of any other person directly or indirectly to give, pay or expend any money or give or pay anything of value, or promise to give, pay or expend, any money, or authorize any expenditure or assume any pecuniary liability for the purpose of aiding or defeating or helping to defeat the nomination at any such primary election of any candidate for any nomination to be determined thereby. [Id.]

Art. 3172. Sworn statement.—Each candidate for nomination in a primary election and every campaign manager or assistant campaign manager for any such candidate, is hereby required to keep an accurate record of all funds received and disbursed for campaign purposes, which record shall be preserved for a period of twelve months, and shall be open to inspection of all opposing candidates and qualified voters. Every candidate and campaign manager is hereby required to file a sworn statement of all mon-

eys previously received or disbursed by him, including money borrowed and liabilities incurred but not paid, not more than thirty nor less than twenty-five days prior to the date of the primary election, and not more than twelve nor less than eight days prior to the date of the primary election, and not more than ten days after the date of the primary election. Each such statement shall include all items contained in all statements previously made in accordance with the requirements of this article, if any, and shall include the names of all contributors to any campaign fund handled by the party making the same, and the names of all persons from whom any money has been received or from whom any money has been borrowed for such fund, and the names of all persons to whom disbursements exceeding ten dollars in amount have been made and the purpose of such disbursements. Such statement shall also set forth that it is as full and explicit as the party making it is able to make, and the party making it shall make the following affidavit, which shall be filed with said statement:

"I do solemnly swear that the foregoing statement, filed herewith, correctly shows all moneys received by me and disbursed by me or in my behalf or with my knowledge or consent through or by any other person in connection with the candidacy of ——— for the nomination for ——— before the ——— primary election, and that I have neither directly nor indirectly arranged or assented to, encouraged or connived at the spending of any money other than as shown in said statement, and that I have not violated any provision of the laws of Texas governing primary elections or the expenditure of funds in connection with a candidacy for a nomination in such primary election in letter or in spirit."

Such statements and oaths shall be filed within the times required by this article by candidates for State and district nominations and their campaign managers with the Secretary of State, and by candidates for county nominations and their campaign managers and by the assistant campaign managers of candidates for State and district nominations with the county clerk of the county in which they reside. [Acts 1913, p. 144; Acts 1919, p. 143.]

Art. 3173. Leave name off ticket.—Any candidate who shall knowingly violate, or who shall knowingly permit or assent to the violation of any provision of this chapter by any campaign manager or assistant campaign manager, or other person, shall thereby forfeit his right to have his name placed upon the primary ballot, or if nominated in the primary election, to have his name placed on the official ballot at the general election. Proceedings by quo warranto to enforce the provisions of this article, or to determine the right of any candidate alleged to have violated any provision of this chapter, to have his name placed on the primary ballot, or the right of any nominee alleged to have violated any provision of this chapter to have his name placed upon the official ballot for the general election, may be instituted at the suit of any citizen in the district court of any county, the citizens of which are entitled to vote for or against any candidate who may be charged in such proceedings with any such violation. All such proceedings so instituted shall be advanced, and summarily heard and disposed of by both the trial and appellate courts. [Id.]

TITLE 51

ELEEMOSYNARY INSTITUTIONS

Chap.
1. General provisions.
2. State Hospitals.
3. Other institutions.

CHAPTER ONE

GENERAL PROVISIONS

Art.
3174. Management.
3175. Duties of superintendent.
3176. Powers of superintendent.
3177. Accounts.
3178. Reports.
3179. Funds.
3180. Duty of Treasurer.
3181. Interest in contracts.
3182. Disbursements.
3183. Support and maintenance.

Article 3174. Management.—Each eleemosynary institution established by law shall be managed and controlled in accordance with the provisions of this title. The general control, management and direction of the affairs, property and business of such institutions is vested in the State Board of Control.

Art. 3175. Duties of superintendent.—Each superintendent shall: 1. Receive and discharge patients and pupils, superintend repairs and improvements, and see that all moneys intrusted to him are judiciously and economically expended. He shall keep an accurate and detailed account of all moneys received and expended by him, specifying the sources from which they were received, and to whom and on what account paid out.

2. Keep a register of all patients and pupils received and discharged and a full record of all operations of the institution.

3. On November 1st, of each year, submit to the Board an inventory of all the personal property belonging to the asylum, in which the estimated value shall be set opposite each article.

Art. 3176. Powers of superintendent.—The Superintendent shall be the administrative head of the institution to which he is appointed. He shall have the following powers:

1. To establish such rules and regulations for the government of the institution in his charge, as he deems will best promote the interest and welfare of its inmates.

2. Where not otherwise provided by law, to appoint the subordinate officers, teachers, attendants, and other employés, and to fix their salaries.

3. To remove for good cause, with the consent of the Board, any officer, teacher or employé.

4. The care and custody of the buildings, grounds, furniture, and other property pertaining to the institution.

Art. 3177. Accounts.—The superintendent of each asylum shall be the chief disbursing officer of the institution and subject to the rules of the Board of Control, shall have general charge over everything connected with the institution over which he presides. He shall attend to the enforcement of the laws relating to such institution and to the by-laws provided by such Board, and shall see that the employés faithfully perform their duties. He shall admit members of the Board into every part of the asylum, and exhibit to them at their request, all books, papers and accounts of the institution pertaining to its business, management, discipline and government, and shall furnish the Board copies, abstracts and reports as it may require.

Art. 3178. Reports.—On January 1st, and July 1st, of each year, the superintendent of each institution shall report to the Governor and to the Board of Control, a full sworn statement of all moneys and choses of action received by such superintendent and how disbursed or otherwise disposed of. Such report shall show in detail the operations of the institution for the term, accompanied with such suggestions and recommendations as the superintendent may deem important to the well-being of the institution, the number of employés and the salaries of each, the number of inmates received and discharged and the number still in said institution. The report shall state the general condition of the inmates, and contain an estimate of the appropriations needed for maintenance.

Art. 3179. Funds.—All funds of every character received by or belonging to the institutions, other than money appropriated for their support from time to time by the Legislature, shall as soon as received, be paid over to the State Treasurer by the Board, su-

perintendent or other person receiving them. The Treasurer shall place such sums to the credit of the general revenue fund.

Art. 3180. Duty of Treasurer.—The State Treasurer shall keep an exact account of the moneys received by him belonging to the institutions, from what source received, and to whom paid out and on what account. To each annual report that he may be required by law to make to the Governor or to the Legislature, he shall append a full report of such account showing the receipts and expenditures thereof for the year for which such report is made.

Art. 3181. [128] Interest in contracts.—No member of the Board of Control, superintendent or other person connected with the asylums shall sell or be in any way concerned in the sale of any merchandise, supplies or other articles to the asylums, or have any interest in any contract therewith.

Art. 3182. [129] Disbursements.—The appropriations made from time to time by the Legislature for the maintenance of the asylums shall remain on deposit in the State Treasury and be paid out as are other public funds upon the warrant of the Comptroller. The Comptroller shall not draw his warrant upon the Treasurer unless the account upon which such warrant is drawn is certified as just and correct by the superintendent and is approved by the Board. [Act 1875, p. 67.]

Art. 3183. Support and maintenance.—The Legislature from time to time shall make suitable provision in the general appropriation bill or otherwise for the proper support and maintenance of each asylum and eleemosynary institution of this State.

CHAPTER TWO

STATE HOSPITALS

Art.
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PASTEUR HOSPITAL

3197. Admission to.
3198. Expenses of patients.
3199. Laws applicable.
3200. Disposition of fees.
3201. Compensation of assistant physician.

Article 3184. Superintendent.—The superintendent of each State hospital shall be a married man, a skilled physician, and experienced in the treatment of insanity. He shall reside at the asylum with his family, and shall devote his time exclusively to the duties of his office, and may be removed by the State Board of Control for good cause.

Art. 3185. Name.—The names of the various insane hospitals and asylums, and the State Epileptic Colony and the State Colony for Feeble Minded, shall be changed, and those institutions which have been heretofore created for the care and treatment of the insane, epileptic and feeble minded, shall hereafter be designated as follows:

(a) The East Texas Hospital for Insane, which is located at Rusk in Cherokee County, Texas, shall hereafter be known as the Rusk State Hospital; and it is hereby so named.

(b) The Northwest Texas Insane Asylum which is located at Wichita Falls in Wichita County, Texas, shall hereafter be known as the Wichita Falls State Hospital; and it is hereby so named.

(c) The North Texas Hospital for the Insane which is located at Terrell in Kaufman County, Texas, shall hereafter be known as the Terrell State Hospital; and it is hereby so named.

(d) The Southwestern Insane Asylum which is located at San Antonio in Bexar County, Texas, shall hereafter be known as the San Antonio State Hospital; and it is hereby so named.

(e) The State Lunatic Asylum which is located at Austin, in Travis County, Texas, shall hereafter be known as the Austin State Hospital; and it is hereby so named.

(f) The State Colony for Feeble Minded which is located at Austin, in Travis County, Texas, shall hereafter be known as the Austin State School; and it is hereby so named.

(g) The State Epileptic Colony which is located at Abilene in Taylor County, Texas, shall hereafter be known as the Abilene State Hospital; and it is hereby so named.

Art. 3186. [144] Discharged convict.—When a convict shall be discharged from any State penitentiary and is insane at the time of his discharge and shall be adjudged by a court of competent jurisdiction within thirty days after his discharge to be insane and that he should be placed under restraint, he shall be delivered to the superintendent of the State penitentiary to be conveyed to one of the State hospitals. The expenses incurred in such adjudication and in keeping and conveying such patient to the hospital including such clothing as shall be necessary for his comfort, shall be paid by the State upon the certificate of the superintendent. [Acts 1895, p. 164.]

Art. 3187. Applicable to other institutions.—All laws now in force in any way affecting the East Texas Hospital for the Insane, the Northwest Texas Insane Asylum, the North Texas Hospital for Insane, the Southwestern Insane Asylum, the State Lunatic Asylum, the State Colony for Feeble Minded and the State Epileptic Colony, shall apply to the Rusk State Hospital, the Wichita Falls State Hospital, the Terrell State Hospital, the San Antonio State Hospital, the Austin State Hospital, the Austin State School and the Abilene State Hospital, subject to such changes in said laws as shall be hereinafter made.

Art. 3188. Divide into districts.—The Board of Control shall divide the State into hospital districts, may change the districts from time to time, and shall designate the State Hospitals to which insane, epileptic and feeble minded persons from each district shall be admitted and may transfer patients from one institution to another. All such persons within any such districts committed, shall be committed to the State Hospital designated for that district.

Art. 3189. Price for care.—The Board of Control, directly or through an authorized agent or agents, may make contracts fixing the price for the support of patients in any State hospital or psychopathic hospital at a sum not to exceed the actual cost of such patient or for such part thereof as such relative or estate may be able and agree to pay, and binding the persons making such contracts to payment thereunder. The Board of Control is authorized to demand investigation to determine whether or not a patient is possessed of or entitled to property and whether or not some other person is legally liable for his support and to pay therefor. The county judge having jurisdiction, may from time to time, upon the request of the Board of Control, cite the guardian of such patient, or other persons legally liable for his support, to appear at some regular term of the county court of civil business, then and there to show cause why the State should not have judgment for the amount due it for the support and maintenance of such patient; and, if sufficient cause be not shown, judgment may be entered against such

guardian or other persons for the amount found to be due the State, which judgment may be enforced as in other cases. The certificate of the superintendent of the State hospital or psychopathic hospital wherein such patient is being treated, as to the amount due shall be sufficient evidence to authorize the court to render judgment. The county attorney shall appear and represent the State in all cases provided for in this section.

Art. 3190. Board of Control shall appoint.—The superintendent of the psychopathic hospitals hereinafter mentioned shall be appointed by the Board of Control. Each superintendent shall be a well qualified physician thoroughly trained in psychiatry, and experienced in hospital management. He shall reside at the hospital and shall devote his whole time exclusively to the duties of his office. Each superintendent shall be appointed for an indefinite time, his continuance in service being determined by the character of administration rendered by the hospital, and shall receive a salary of ($4,000.00) dollars per annum, payable monthly; provided that any superintendent may be dismissed by the Board of Control for good cause, the reasons for such dismissal to be specified in writing, and filed with the Secretary of State.

Art. 3191. Clinic.—The Board of Control may through its agents and institutions, develop a mental hygiene clinic service for co-operation with the State Department of Public Instruction and local boards of education in the study of the mental and physical health of children who are seriously retarded in school progress or in mental development, and of all children who present problems in personality development.

Art. 3192. State psychopathic hospital.—There shall be established and maintained a Psychopathic Hospital at Galveston to be known as the Galveston State Psychopathic Hospital, and one at Dallas to be known as the Dallas State Psychopathic Hospital. The Galveston State Psychopathic Hospital shall be a hospital for the treatment of nervous and mental diseases both in the hospital and out patient clinic, and shall be available as a part of the teaching facilities in mental medicine for the State Medical College. The Dallas State Psychopathic Hospital shall be a hospital for the treatment of nervous and mental diseases both in the hospital and in out patient clinic.

Art. 3193. Who may be admitted.—A person alleged to be insane, and who is not held on a criminal charge, may be committed to and confined in an institution for the custody and treatment of the insane and of other persons suffering from mental illnesses upon an order made by a county judge of the county in which the alleged insane person resides or may be, adjudging such person to be insane, upon a certificate of insanity made by two properly qualified and licensed physicians, accompanied by a verified petition therefor, or upon such certificate and petition and after a hearing to determine such question, as hereinafter provided. The Board of Control shall prescribe and furnish forms for such certificates and petitions, which shall be made only upon such forms. An insane person shall be committed only to an institution for the treatment of insane and of other persons suffering from mental illnesses, or to the care and custody of a relative; provided, that any person or someone for him may demand a jury trial as to his mental state.

Art. 3193a. Necessary certificate.—No person shall be committed to any institution for the treatment of the insane and other mentally ill persons, unless there has been filed with the county judge a certificate of the insanity of such person by two properly qualified and licensed physicians, nor without an order therefor, signed by the county judge, stating that he finds that the person committed is insane, and is a proper subject for treatment in a hospital for the insane, and either that he has been an inhabitant of the State for the six months immediately preceding such time or that provision satisfactory to the Board of Control has been made for his maintenance, or that by reason of insanity he would be dangerous if at large. The order of commitment shall also authorize the custody of the insane person either at the institution to which he shall first be committed or at some other institution to which he may be transferred by order of the Board of Control. Neither of the physicians mentioned in this section shall be a relative of the person applying for the order, or of the person alleged to be insane, nor shall he be a manager, superintendent, proprietor, officer, stockholder, or have any pecuniary interest, directly or indirectly, or be an attending physician in the institution to which it is proposed to commit such alleged insane person.

Art. 3193b. Jury not necessary.—The judge to whom such application for commitment is made, may, if no demand is made for a jury trial in behalf of the alleged insane person, proceed forthwith to determine the question of insanity, and if satisfied that the alleged insane person is insane, may immediately issue and [an] order for the commitment of such person to an institution for the custody and treatment of the insane.

Upon the demand of any relative or near friend in behalf of such alleged insane person, the judge shall, or he may upon his own motion, issue an order directing the hearing of such application before him at a time not more than five days from the date of such order, which shall be served upon the parties interested in the application and upon such other persons as the judge, in his discretion may name. Upon such day, or upon such other day to which the proceedings shall be legally adjourned, he shall hear the testimony introduced by the parties and examine the alleged insane person if deemed advisable, at some place which may be either in the court house of the county or at the residence or place of detention of the person named, and render a decision in writing as to such person's insanity. If it be determined that such person is insane the judge shall forthwith issue his order committing him to an institution for the custody and treatment of the insane and other mentally ill persons, or make such other order as is herein provided for; provided in any proceedings under this Act the person alleged to be insane and appearing before the county judge, or any person interested in such person, shall have the right to demand for such alleged insane person a trial by jury, which shall be granted as in other cases, or the county judge may, in his discretion, issue a warrant to the sheriff or his deputy, directing him to summon a jury of six men to hear and determine whether the alleged insane person is insane.

Art. 3193c. Confinement in jails.—In no case shall any insane person be confined in any other place than an institution for the treatment of the insane and other mentally ill persons, for a period longer than thirty days, nor shall such person be committed as a disorderly person to any prison, jail or lockup for criminals, except when in the judgment of the county health officer no other quarters suitable for the detention of such insane person can be provided. The county health officer in the county wherein an insane or alleged insane person may be shall see that such person is cared for in a place suitable for the comfortable, safe and humane confinement of such person, pending the determination of the question of his insanity and until his transfer to an institution for the treatment of the insane and other mentally ill person. If, in case of emergency, any such person is so placed or detained in a jail or other lockup, he shall forthwith be examined by a physician and shall be furnished suitable medical care and nursing. The reasonable expense for board, lodging, medical care, nursing, clothing and all other necessary expenses incurred by the county health officer under this section, shall be allowed by the commissioners' court and paid out of the general fund of the county. In all cases of commitment of an insane person to jail or other place of temporary restraint, a notice of such commitment, giving the name and condition of patient and character of place to which he is committed, shall be sent immediately to the State Board of Control by the judge ordering the commitment.

Art. 3193d. [161] Warrant to sheriff.—Immediately after any person is adjudged insane the county judge shall communicate with the superintend-

ent of the State Hospital or Psychopathic Hospital of the district in which said person resides or may be at the time, and if notified by the latter that there is a vacancy in the institution, he shall issue a warrant to the sheriff or some other suitable person, directing him to convey the insane person to the hospital without delay. The county judge may permit, by special order, the assistance of one additional person to such office in cases where he deems such assistance necessary. Each female committed to any institution for the treatment of the insane and of other mentally ill persons shall be accompanied by a female attendant, unless accompanied by her father, brother, husband or son, during conveyance to such institution.

Art. 3193e. Certificate of physicians.—If a person is found by two properly qualified and licensed physicians to be in such mental condition that his commitment to an institution for the treatment of the insane and other mentally ill persons is necessary for his proper care or observation, he may be committed by the county judge to a State Hospital for thirty-five days pending the determination of his insanity; within thirty days after such commitment, the superintendent of the institution to which the person has been committed shall discharge him if he is not insane, and shall notify the judge who committed him, or if he is insane he shall report the patient's mental condition to the judge with the recommendation that he shall be committed as an insane person or discharged to the care of his guardian, relatives, or friends, if he is harmless and can properly be cared for by them, within the said thirty-five days, the committing judge may authorize a discharge as aforesaid, or he may commit the patient to the institution as an insane person, if, in his opinion, such commitment is necessary. If in the opinion of the judge, additional medical testimony as to the mental condition of the alleged insane person is desirable, he may appoint a physician to examine and report thereon.

Art. 3193f. Certificate of physician.—The superintendent of any institution for the treatment of the insane and other mentally ill person, may, without the order of the county judge, receive into his custody and detain in such institution for not more than five days any person whose case is certified to be one of violent and dangerous insanity, or of other emergency, by two properly qualified and licensed physicians, which certificate shall be filed with a county judge as the certificate required in Article 3193a. Any peace officer shall, upon the request of the applicant or of one of the said physicians, cause the arrest and delivery of such person to such superintendent. The person apply- [applying] for such admission shall within five days cause the alleged insane person to be committed to or removed from the institution, and upon his failure so to do, he shall be liable to the State for the expenses incurred and to a penalty of fifty dollars ($50.00), which may be recovered by the State.

Art. 3193g. Received temporarily.—The superintendent of any institution for the care of the insane and of other mentally ill persons, may, when requested by a physician or by a health officer, or peace officer, receive and care for as a patient in such institution, for a period not exceeding ten days, any person needing immediate care and treatment because of mental derangement other than delirium tremens or drunkenness. Such request for admission of a patient shall be put in writing and shall be filed at the institution at the time of the patient's reception or with[in] twenty-four hours thereafter, together with the applicant's statement in the form procured or approved by the Board of Control giving such information as it deems advisable. Any such patient deemed by the superintendent as unsuitable for such care shall, upon the request of the superintendent, be removed forthwith from the institution by the party requesting his reception, and if he is not so removed, such person shall be liable to the State for all reasonable expenses incurred under this article on account of the patient, which may be recovered by the State. The superintendent shall cause every such patient either to be examined by two physicians, properly qualified and licensed, who shall cause application to be made for this admission or commitment to such institution, or to be removed therefrom before the expiration of said period of ten days unless he signs a request to remain therein as a voluntary patient as hereinafter provided. Reasonable expenses incurred for the examination of the patient and his transportation to the institution shall be allowed by the commissioners' court and paid out of the general fund of the county in which the patient resides or may be at the time of application.

Art. 3193h. Private patients.—The superintendent of any institution to which an insane or other mentally ill person may be committed, may receive and detain therein as a boarder and patient any person who is desirous of submitting himself to treatment, and who, being mentally competent to make such application, makes written application therefor; and any such person who desires to so submit himself for treatment may make such written application. No such person shall be detained more than three days after having given written notice of his intention or desire to leave the institution. Whenever any such person is received into any institution, the superintendent thereof shall give immediate notice of such reception to the Board of Control.

Art. 3193i. Temporary absence.—The superintendent of any institution, after the examination as hereinafter provided, may permit any inmate thereof temporarily to leave such institution in charge of his guardian, relatives, friends, or by himself, for a period not exceeding twelve months, and may receive him when returned by any such guardian, relative, friend, or upon his own application, within such period, without any further order of commitment, but no patient, who has been charged with, or convicted of, some offense and been adjudged insane in accordance with the provisions of the code of criminal procedure, shall be permitted to temporarily leave such institution without the approval of the governor, nor shall such permission terminate or in any way affect the original order of commitment. The superintendent may require as a condition of such leave of absence, that the person in whose charge the patient is permitted to leave the institution, shall make reports to him of the patient's condition. Any such superintendent, guardian, relative or friend may terminate such leave of absence at any time and authorize the arrest and return of the patient. Any peace officer of this State shall cause such patient to be arrested and returned upon the request of any such superintendent, guardian, relative or friend. Any patient, except such as are charged with, or convicted of some offense, and have been adjudged insane in accordance with the provisions of the code of criminal procedure, who has returned to the institution at the expiration of twelve months may be granted an additional leave by the superintendent or upon his recommendation.

Art. 3193j. Money and clothing.—No patient in a State hospital shall be discharged therefrom or permitted to leave on a temporary visit without suitable clothing; and the Board of Control may furnish the same, and such an amount of money, not exceeding twenty dollars ($20.00) as they may consider necessary. Inquiry shall be made into the future situation of every patient about to be discharged or permitted to be temporarily absent, and precautionary medical advice shall be given him. No patient shall be discharged or permitted to be temporarily absent from any institution without a personal examination of his mental condition made by one of the hospital physicians within forty-eight hours of his departure, the result of which shall be entered in his case record.

Art. 3193k. Restraining patients.—No restraint in the form of muffs, waist straps, wristlets, anklets, camisoles, lock chairs, lock cribs, protection sheets or other devices interfering with free movement shall be imposed upon any patient in any institution unless applied in the presence of the superintendent or of the physician or of an assistant physician of the institution, or on his written order, which order shall be

preserved in the files or records of the institution. Such device shall be applied only in cases of extreme violence, active, homicidal and suicidal condition, physical exhaustion, infectious disease or following an operation or acts which have caused serious bodily injury; except that in case of emergency, restraint may be imposed without the presence of the superintendent, physician or assistant physician and without a written order; but each emergency case after the imposition of such restraint shall be immediately reported to the superintendent or to the physician or assistant physician of the institution who shall immediately investigate the case and approve or disapprove of the restraint imposed.

Art. 3193*l*. Instruments of restraint.—The superintendent or head physician of every institution, or in his absence, one of the assistant physicians shall personally keep under lock and key all implements or devices of restraint not in actual use.

Art. 3193m. Record of restraints.—The superintendent or head physician of each institution shall cause to be kept in a book provided for the purpose, records of all cases wherein restraint is used. Such record shall be open for inspection at all times by the director of the division of mental hygiene, by the Board of Control and by all other persons having control of the institution and other State officers, and shall contain a complete record relative to the restraint, including the cause for the same, the form used, the name of the patient, the time when the patient was placed under restain [restraint] and the time when he [was] released. Restraint as here used shall include therapeutic and chemical restraint and confinement in a strong room as well as seclusion in solitary confinement, except when patients are placed in single rooms at night but shall not include the prolonged bath, the hot or cold pack, or a medication when it is used as a remedial measure and not as a form of restraint.

Art. 3193n. Guardians of insane.—Nothing herein shall be held to affect or repeal the provisions of any law now existing or hereafter enacted relating to the appointment of guardians of insane persons, or persons of unsound mind.

Art. 3193*o*. Constitutionality.—In the event that any article or provision of this Act should for any reason be held unconstitutional by the courts of this State, the same shall not affect any other article or provision of this Act, and the Legislature does hereby declare that it would have enacted each and all of the provisions of this Act without reference to any other article or provision. [Acts 1925, p. 407.] 39th Leg., ch. 174, § 25.]

Art. 3194. [145] [146] Transportation.—The expenses of conveying all public patients to the asylum shall be borne by the counties respectively from which they are sent; and said counties shall pay the same upon the sworn account of the officer or person performing such service, showing in detail the actual expenses incurred in the transportation. In case any public patient is possessed of property sufficient for the purpose, or any person legally liable for his support is so possessed of property, the county paying the expenses of such transportation shall be entitled to reimbursement out of the estate of the lunatic or the property of the person legally liable for his support, which may be recovered by the county on suit brought therefor. [Acts 1876, p. 140.]

Art. 3195. [147] [149] Transportation home.—The expense of conveying to their homes public patients discharged from the asylums, and the necessary clothing furnished to them at the time of their discharge, shall be paid by the State. Any officer who may convey a patient to the asylum in accordance with the provisions of the preceding article shall be paid for such service out of the funds of the asylum at the rate of ten cents per mile for himself and each necessary guard he may employ, going and returning and the same for the patient going, the distance to be determined by the superintendent, according to the most direct traveled route. [Id. p. 119.]

Art. 3196. [148] Escape.—If any person confined in the asylum shall escape therefrom, it shall be the duty of any peace officer to apprehend and detain him and report the same to the county judge of the county, and also to the superintendent of the asylum, and upon the order of either to convey such patient back to the asylum. [Id. p. 119.]

PASTEUR HOSPITAL

Art. 3197. [166] Admission to.—Any person affected with hydrophobia within this State shall be admitted to the Pasteur Hospital or department for the treatment of hydrophobia, under the management of the Austin State Hospital, such admission to be upon the certificate of a practicing physician and the recommendation of any county judge in this State. [Acts 1903, p. 195.]

Art. 3198. [167] Expense of patients.—All indigent persons afflicted with hydrophobia in the State shall be treated at the expense of the State at said Pasteur Hospital, but the county in which such indigent persons reside shall pay the traveling expenses of such persons to and from Austin and the necessary living expenses of such persons while in Austin undergoing said treatment, such expenses to be paid upon the order of the commissioners court of the county in which such persons reside when satisfactory showing is made to said court as to indigency and the reasonableness and the necessity of the expense. All non-indigent persons shall be kept, treated and maintained at said hospital at their own expense or that of the relatives, friends or guardians. [Id. Acts 1907, p. 321; 1917, p. 359.]

Art. 3199. [168] Laws applicable.—Laws pertaining to the introduction and control of said patients shall be the same as those applying to the Austin State Hospital. [Acts 1907, p. 320.]

Art. 3200. [169] Disposition of fees.—All fees collected from non-indigent patients shall be used as the Board and superintendent may direct for the support and maintenance of said hospital. [Id.]

Art. 3201. [170] Compensation of assistant physician.—The board may allow such additional compensation, not to exceed two hundred and fifty dollars per annum, to the assistant physician who does the work of this department, out of such fees collected as may be justified by the extra labor done by said assistant. [Id.]

CHAPTER THREE

OTHER INSTITUTIONS

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Article 3202. [195] Application for admission.—Application for the maintenance, care and education of all deaf, dumb and blind children shall be made by the parent or guardian of such child or children to the superintendent of the asylum under such rules as may be prescribed. [Acts 1st C. S. 1901, p. 20.]

DEAF AND DUMB ASYLUM

Art. 3203. [190] To teach printing.—A certain number of the pupils at the Deaf and Dumb Asylum, to be designated by the superintendent, shall each year receive instruction in the art of printing in all its branches; and the studies of such pupils shall be so arranged as not to interfere with such instruction and the execution of any public printing by them for the State. [Acts 1875, p. 91.]

Art. 3204. [193] Public printing.—Any public printing for the State may be executed at the Deaf and Dumb Asylum without regard to any contract with an individual to do the public printing thereof. [Id. Acts 1875, S. S. p. 35.]

Art. 3205. [191] [192] Instructor.—The board shall employ a competent practical printer as instructor at said asylum in the art of printing; and the person so employed shall also discharge such other duties as the Board may require. His compensation shall not exceed one thousand dollars annually, and he may be discharged at any time by the Board. [Acts 1875, p. 91.]

TEXAS SCHOOL FOR THE BLIND

Art. 3206. Board of Trustees.—The Board of Trustees of the Texas School for the blind shall be composed of the Governor, the Lieutenant Governor and the Attorney General of Texas, of which Board the Governor shall be chairman, and the superintendent of the Texas School for the Blind shall be secretary; and said Board shall take the title to any real estate acquired under this law to "The Board of Trustees of the Texas School for the Blind," and their successors as trustees, for the use and benefit of the State of Texas. [Acts 1st C. S. 1915, p. 36.]

Art. 3207. [188] [189] Oculist.—The Board of Control shall appoint a skilled oculist for the blind asylum. Such oculist must be married and shall attend regularly at the asylum and administer treatment to all cases of curable blindness among its pupils. He shall hold his office for two years, and the Board of Control may remove him for good cause. [Acts 1883, p. 109.]

STATE ORPHAN HOME

Art. 3208. [197] [200] Duties of Superintendent.—The superintendent shall keep a carefully prepared list containing the name and age of each child, as well as such other data concerning the history of said child as the Board may prescribe, and said lists shall be recorded in a well-bound book for said purpose, and subject to the inspection of all persons who may desire to examine its contents. He shall annually deliver to the proper authorities a list of all children within the scholastic age, and see that their pro rata of the public free school fund is set aside to their credit, and that they are provided with proper educational facilities. He shall promptly answer all inquiries, by mail or otherwise concerning the orphans under his charge, and promptly inform the Board when an opportunity is presented to secure a good and permanent home for any child under his charge. [Acts 1887, p. 129; 1899, p. 303.]

Art. 3209. [198] Industrial manager.—The Board shall elect an industrial manager for said home whose duties and salary shall be prescribed by the Board, subject to legislative appropriation, not to exceed fifteen hundred dollars per annum. [Id.]

Art. 3210. [203] Matron.—A matron of said Home shall be chosen by the superintendent, with the consent of the Board, whose salary shall not exceed forty-five dollars per month. [Acts 1887, p. 129.]

Art. 3211. [199] Children admitted.—All children under the age of fourteen years, shall be admitted subject only to such restrictions as the Board may deem requisite to the welfare of said Home. [Id.]

Art. 3212. [201] Removal of children.—No person shall be permitted to remove a child from said home except under such lawful rules and regulations as the Board may adopt. In no case shall a child be removed therefrom by any person other than the natural guardian of said child, or the duly qualified guardian of the person of such child, or the parent of said child by adoption. [Id.]

CONFEDERATE HOME

Art. 3213. [205] Duties of Board.—The State Board of Control shall be governed in its regulations of the affairs of the Confederate Home by the laws relative to the Deaf, Dumb and Blind institutions of this State so far as the same may be applicable, and shall make such rules and regulations as may be necessary for the internal government, discipline and management of the home, and shall have power to enforce compliance with said rules and regulations by discharging from the home, if in its judgment it be necessary, any inmate who may violate said rules and regulations. Said Board shall make such examination from time to time as it may deem necessary, as to the qualifications and record as a soldier in the Confederate army or navy of any inmate, and discharge at once any inmate who procured admission to the home by fraud or misrepresentation. Said board shall, every three months, cause to be examined by a board of physicians consisting of the home physician

and two others not connected with the home, any inmate who may be designated by the superintendent and the home physician or by any member or the Board as to the physical condition of such inmate and if it be shown from said examination and report of said examining board of physicians that any inmate so examined has sufficiently recovered from his disabilities to be able to earn a living, such inmate shall be given an honorable discharge from the home, with transportation to the place from which he entered the home; provided, however, that such inmate be given twenty days notice of his dismissal, and that he be subject to all rules and regulations governing the home during said twenty days, or such part of that time as he may remain in the home after said notice of dismissal be given. The two physicians assisting the home physician in such examination shall be selected by the board, and shall be paid for such service two dollars and fifty cents each for each examination so made. Said Board shall also have charge of all the property received from the John B. Hood Camp Confederate Veterans, or from any other source for the maintenance of said home. [Acts 1891, p. 14; 1895, p. 42.]

Art. 3214. [206] Superintendent.—The Board shall appoint a superintendent who shall be an ex-Confederate soldier or the son of an ex-Confederate soldier, whose duties of office shall be the supervision of the affairs of said home, keeping the accounts of same, and its general management, under the direction of the Board. He shall be under the control of said Board. He shall keep in a book prepared for that purpose, the name and age of each inmate, date of admission to the home, the company and regiment or other command or capacity in which the military service was performed, and the State from which he entered the service, and such other data concerning the history of the inmates as the Board may prescribe. [Acts 1895, p. 42; 1921, p. 154.]

Art. 3215. [207] Secretary to the superintendent.—The superintendent of said home shall be authorized to employ one secretary who shall keep the books of the institution and discharge such other duties as may be required of him by the superintendent. He shall be furnished board and lodging similar to other employés of the home. [Acts 1903, p. 54.]

Art. 3216. [208] Application for admission.—All applications for admission to said home must show on the oath of the applicant:

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

Art. 3217. Wife of inmate.—Any woman who is the wife of a Confederate soldier and who is an inmate of the Confederate Woman's Home, and whose husband is an inmate of the Confederate Home, and who became the wife of such soldier prior to his admission into the Confederate Home, may on her request be transferred from the Confederate Woman's Home to the Confederate Home and may remain as an inmate of the Confederate Home with her husband as long as her husband remains an inmate of that institution, and while such inmate she shall be entitled to the same care, support, maintenance and privileges, and be subject to the same discipline, rules and regulations as other inmates of that institution; but the wife of any Confederate soldier so transferred to the Confederate Home shall be immediately transferred back to the Confederate Woman's Home on the death of her husband, or whenever for any reason her husband ceases to be an inmate of the Confederate Home or whenever in the judgment of the Board it will be to the interest of the individual or of the institution to make such transfer. [Acts 1921, p. 95.]

CONFEDERATE WOMAN'S HOME

Art. 3218. Home established.—There shall be established in or near the city of Austin, a home for the indigent wives and widows who are over sixty years of age, of disabled ex-Confederate soldiers and sailors who entered the Confederate service from Texas, or who came to the State prior to January 1, 1880, and whose disability is the proximate result of actual service in the Confederate army for at least three months, and also for women who aided the Confederacy. This institution shall be known as the Confederate Woman's Home. [Acts 1911, p. 50.]

Art. 3219. Duties and powers of Board.—The Board shall make suitable rules and regulations for the admission of women to the benefits of said home and for the internal government and management of said home. The Board shall also provide such attendants and nurses as may be deemed necessary in the management of the Home, and fix their compensation. The Board shall appoint a superintendent for the Confederate Woman's Home, with the approval of the Governor. [Id.]

Art. 3220. Superintendent.—Said superintendent must be the widow or daughter of a Confederate soldier, and shall reside in the Home and receive free board and lodging. She may hold office for a term of two years. [Id.]

DEAF, DUMB AND BLIND ASYLUM FOR COLORED YOUTHS

Art. 3221. [210] Powers and duties of Board.—The Board shall make all necessary rules and regulations for the government of the Deaf, Dumb and Blind Asylum for Colored Youths, to comport as nearly as may be practicable with the rules and regulations of the asylums for like purposes in this State. Said Board shall prescribe the duties of all subordinate officers or assistants in said asylum; shall appoint and may remove all such officers or assistants, determine their duties and their compensation. The admission of all applicants to said asylum, their treatment, instruction and continuance therein, all questions relating to their dismissal or removal, or voluntary departure from said asylum, or employment therein, or thereabout, shall be governed by the rules and regulations of the State asylums for white youths for the deaf and dumb and blind. [Acts 1887, p. 150.]

Art. 3222. [209] Superintendent.—The Board shall appoint a superintendent of said asylum. Said superintendent shall be a man of mature years and experienced and familiar with the duties required. [Id.]

ABILENE STATE HOSPITAL

Art. 3223. [232] Support and management.—The support and general management of the Abilene State Hospital shall be the same as is now provided for other branch asylums of this State. The Board and superintendent shall prepare and adopt by-laws, rules and regulations for the government of the hospital. [Acts 1899, p. 4; 1900, p. 16; 1901, p. 11; 1925, p. 408.] [39th Leg., ch. 174, p. 407, § 1.]

Art. 3224. [213–218–219–220] Who admitted.—All persons afflicted with epilepsy who have been bona fide residents of this State for one year next preceding the filing of his application with the county judge as herein provided, shall be admitted into the Abilene State Hospital under the provisions of this subdivision, with the following exceptions:

1. Idiots and imbeciles who are afflicted with epilepsy.
2. Those who are infirm and bedridden or suffering from contagious or infectious disease.
3. By "idiot" and "imbecile" are meant children or persons who, by arrest of development before or soon after birth, have but little or no mind.

The classification of all patients admitted to the hospital shall be as follows:

1. Indigent public patients.
2. Non-indigent public patients.
3. Private patients.

Indigent public patients are those who possess no property of any kind, and have no one legally liable for their support and able to reimburse the State.

Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have some one legally liable for their support and able to reimburse the State. [Acts 1903; Acts 1925, p. 408.] [39th Leg., ch. 174, p. 408, § 1.]

Art. 3225. [228] Preference in admission.—When there is room in the hospital, the superintendent shall receive such patient, and when application is made for more patients than can be admitted, he shall give preference to indigent public patients over non-indigent public patients, and shall at all times give preference to both of the classes mentioned over private patients. [Id.]

Art. 3226. [214–15–16] Transfer of insane patients.—When any person is admitted to any insane asylum, and it shall be found that such person is an epileptic, such person shall at once be transferred to said hospital, and when so transferred shall have the same classification as that given him upon his admission to the insane asylum. The superintendents of the insane asylums shall transmit to the superintendent of the said hospital all transcripts of legal proceedings and histories of all epileptics transferred which they may have. The expenses of the transportation of all patients and necessary attendants so transferred shall be paid out of the apportionment for the maintenance of the hospital. [Id.]

Art. 3227. [221] Admission of private patients.—Private patients may be admitted into said hospital upon application of parent, guardian or friend under such regulations as the Board and superintendent may prescribe, not in conflict with the provisions of this subdivision. Such patients shall be kept and maintained at the hospital at their own expense, or at the expense of their guardian, relatives or friends, and for the board and care of such patients, the superintendent may make a special contract at a rate of not less than five dollars per week; and at the time of the admission of any such patient into the hospital, his board must be paid in advance for six months and bond and security given for the prompt payment of all future expenses of such patient. All moneys so collected, shall be paid directly into the State Treasury and placed in the general fund. [Id.]

Art. 3228. [222] Application for public patients.—The parent, guardian, or friend of any epileptic not seeking admission as a private patient may make application in writing and under oath to the county judge of the county wherein such epileptic resides, for the admission of the epileptic into said hospital, which application shall show:

1. The name of the epileptic.
2. Sex.
3. Age and nativity.
4. Whether possessed of any property, and if so, what, and the estimated value thereof.
5. Whether the epileptic has any one legally liable for his support, if so, whom, what property possessed by such person, and the estimated value thereof.
6. Residence of the epileptic for the year next preceding the date of application.
7. Occupation, trade or employment.
8. Parent or parents, if living, or guardian, if any.
9. Name of husband or wife, if any.
10. Children, if any, number, age and sex.
11. Relatives similarly affected, insane, inebriate, consumptive or criminal. [Id.]

Art. 3229. [223] Certificate of examination.—Said application shall be accompanied with a certificate of a reputable practicing physician, stating that he has carefully examined the person for whose admission application is made and that such person is afflicted with epilepsy, and which certificate shall also show:

1. The age of the epileptic at first attack.
2. The date of last attack.
3. Physical condition.
4. Accompanying bodily disorders. [Id.]

Art. 3230. [223–224–225–226–227–229] Duties of county judge.—The county judge shall certify that the physician making such certificate is a reputable physician actively engaged in the practice of his profession, and has complied with the laws of this State granting license to physicians to practice medicine. If such judge is not satisfied as to the showing made in said application and certificate, or either, he may subpœna witnesses and examine them under oath touching such matters. If it be made to appear to the county judge that such epileptic is entitled to admission into the hospital under the provisions of this subdivision, he shall forward an application to the superintendent of the hospital for admission of such epileptic as an indigent or non-indigent patient, as the judge shall determine upon careful investigation, which application shall be accompanied with full copy of the proceedings had in such case, and the original shall be filed in the office of the county clerk. The county judge shall see that each patient admitted to the hospital is supplied with three full suits of substantial clothing. For all services needed in connection with such matters in each case, the county judge shall be paid three dollars by the county. [Id.]

Art. 3231. [230–231] Transportation, etc.—The expense of such clothing and the transportation of indigent public patients and necessary escort, and compensation to such escort, shall be paid by the county from which the patient shall be sent. Non-indigent public patients shall pay for such clothing, transportation and escort. In no case shall such escort be entitled to charge or receive more than two dollars per day and expenses actually necessary in going to and returning from the colony. [Id.]

Art. 3232. [219–220] Expense of public patients.—Indigent public patients shall be supported entirely at the expense of the State. Non-indigent public patients shall be kept and maintained at the expense of the State in the first instance; but in such cases the State shall have the right to be reimbursed for the support of such non-indigent patients, and the claim of the State for such support shall constitute a valid indebtedness against any such patient, or in case he has a guardian, against his estate, or against the person or persons who may be legally liable for his support and financially able to contribute thereto, and such claim may be collected by suit or other proceedings in the name of this State by the county or district attorney of the county from which said patient is sent, against such patient, his guardian, or the person or persons liable for his support as the case may be; such suit or proceeding to be instituted upon the written request of the superintendent of the hospital, accompanied by his certificate as to the amount due the State, which shall in no case exceed five dollars per week for board. In all such suits or proceedings the certificate of the superintendent shall be sufficient evidence of the amount due the State for the support of such patient. Said attorney, upon such

request being made, shall institute and conduct such suit or proceedings, and for which he shall be entitled to a commission of ten per cent of the amount collected. All moneys so collected, less such commission, shall be by the county attorney paid into the State Treasury and placed in the general funds. [Id.]

AUSTIN STATE SCHOOL

Art. 3233. Feeble minded persons defined.—A feeble minded child, as defined herein, is one of such feeble mental or moral powers as to be unable to profit by the ordinary methods of education as employed in the common schools. A feeble minded adult is one who is unable under ordinary circumstances to protect and support himself as a law abiding citizen because of lack of mental power. [Acts 1915, p. 143.]

Art. 3234. Duties and powers of board.—The Board shall employ a superintendent and fix his salary and his duties, and for cause deemed sufficient by the Board, may remove him. The superintendent shall be a man of education, with training and experience in the work of institutions of this kind; he shall have power to appoint and remove the subordinate officers and employés; he shall be responsible to the Board for the details of management of the colony, and shall only exercise the power conferred upon him by law with the approval and consent of the Board. The Board shall also determine the number and fix the salaries of other officers and employés connected with the colony. [Id.]

Art. 3235. Accommodation for inmates.—The Board shall provide accommodations for only such number of inmates from year to year as can be advantageously cared for with the appropriation granted for that year, giving preference first to girls and women of child bearing age, and to those of both sexes who are most likely to profit by the special education and training. [Id.]

Art. 3236. Release and parole of inmates.—All persons committed or admitted to said institution shall remain in its custody as permanent wards of this State until released by the management thereof. The superintendent and Board may in their discretion and subject to revocation at any time, parole any such person in the custody of parent or guardian for an indefinite period. Notice of all paroles of longer duration than thirty days shall be sent by the superintendent on the date of the parole to the committing court. [Acts 1923, p. 172.]

Art. 3237. Escape and apprehension.—Any person who may escape or be enticed or taken from the colony without being released, or who may be detained under parole after the expiration or termination of such parole, shall be apprehended and detained by any peace officer, who shall report the same to the county judge of the county where such person is found, and also to the superintendent of the school, and upon the order of either, convey such person back to the colony, and no writ shall be necessary therefor. Notice of such escape or detention shall be immediately sent to the committing court by the superintendent. Any officer who may convey a patient back to such institution under the provisions of this article shall be paid for such service out of the funds of the institution in the same manner as provided for conveying lunatics to asylums. [Id.]

Art. 3238. Expenses of inmates.—In all cases in which the parent or guardian of a feeble minded person is financially able to pay the expenses of supporting and training such feeble minded person in the school, in whole or in part, he shall be required to do so. In all other cases there shall be no fees or charges. [Acts 1915, p. 143; Acts 1925, p. 407.]

STATE TUBERCULOSIS SANATORIUM

Art. 3239. Duties of Board.—The State Board of Control shall prepare and adopt by-laws, rules and regulations for the government of the entire colonies, prescribing the duties of all officers and employés, and for enforcing the necessary discipline and restraint of all patients. The Board shall appoint for each of said colonies a regularly licensed physician. The Board shall supply each colony with the necessary cooks, waiters, yard men, nurses, etc., for the operation and maintenance of such colonies. Each physician so appointed shall be superintendent of the institution under his control and shall have power to remove at will, and without assigning any cause whatever, any person employed in any colony over which he has such authority. All such physicians shall hold their office for two years and shall be removed only for just cause to be determined by the Board. [Id.]

Art. 3240. Who admitted.—Persons afflicted with tuberculosis who shall have been citizens of this State and of the county from which he or she comes at the time of filing of their application with the county judge as hereinafter provided, shall be admitted to said institutions. A citizen of this State is defined to be any person who has actually resided therein with the bona fide intention of being a citizen thereof for a period of twelve months next preceding the date of such application. [Id.]

Art. 3241. Classification of patients.—Patients admitted to said institutions shall be of three classes, to-wit:

1. Indigent public patients.
2. Non-indigent public patients.
3. Private patients.

Indigent public patients are those who possess no property of any kind nor have any one legally responsible for their support, and who are unable to reimburse the State. This class shall be supported at the expense of the State.

Non-indigent public patients are those who possess some property out of which the State may be reimbursed, or who have some one legally liable for their support. This class shall be kept and maintained at the expense of the State, as in the first instance, but in such case the State shall have the right to be reimbursed for the support of such patients, and the claim of the State shall constitute a valid lien against any property of any such patient or in case he has a guardian, against any property of his which is in the possession of said guardian, or against the person or persons who may be legally liable for his support and financially able to contribute as herein provided; and such claim may be collected by suit or other proceedings in the name of the State of Texas by the county or district attorney of the county from which said patient is sent, against such patient or his guardian or the person or persons liable for his support; and the suit may be brought in the county from which such patient was sent. Such suit shall be instituted upon the written request of the superintendent of said colony accompanied by a certificate as to the amount due the State, which in no case shall exceed five dollars per week for the board of such patient, together with the necessary cost incident to his transportation to said colony. In all suits or proceedings, the certificate of the superintendent shall be sufficient evidence of the amount due the State for the support of such patient. It shall be the duty of said attorney upon such request being made to institute and conduct such proceedings and for which he shall be entitled to a commission of ten per cent of the amount collected. All moneys so collected less such commission shall be by the county attorney paid to the superintendent of said colony, who shall receive and receipt for the same and shall use the same for the maintenance and improvement of said property.

Private patients may be admitted into said colonies upon application of parent or guardian or friend, under such regulations as the Board may prescribe, not in conflict with this law. Such patients shall be kept and maintained at the colony at their own expense for the board and care of such patients. The Board may make special contracts for private patients at a rate not to exceed ten dollars per week, payable in advance. All moneys collected shall be paid to the superintendent of such institution, who shall account for the same

and for its use in the maintenance and improvement of said colony at which the same is received. [Id.]

Art. 3242. Application for admission.—The parent, guardian or friend of any patient seeking admission may make application in writing and under oath to the county judge of the county wherein such patient resides, for admission of said patient into said State Colony, which application shall show:

1. The name of the patient.
2. The sex.
3. Age and nativity.
4. Whether possessing any property; if so, what, and the estimated value thereof, and where located.
5. Whether the patient has any one legally liable for his support; if so, whom; what property possessed by such person; the estimated value thereof, and where located.
6. Residence of patient for two years next preceding the date of application.
7. Occupation, trade or employment.
8. Parent or parents, if living, or guardian, if any.
9. Name of husband or wife, if any.
10. Children, if any; number, age and sex.
11. Relatives similarly affected, insane, invalid, consumptive and such other information as may be required by the Board.

Art. 3243. Certificate of examination.—Said application shall be accompanied by the certificate of a reputable practicing physician, or in the case of indigent patients, by a certificate from the county physician, stating that he has thoroughly examined the person for whose admission application has been made, and that such person is suffering from tuberculosis, and the duration of said disease if known, and the accompanying bodily disorders. No person afflicted with any contagious, infectious or transmissible disease, other than tuberculosis, shall be admitted. It shall be the duty of the county judge to certify that the physician making the certificate is a reputable physician actively engaged in the practice of his profession, and has complied with the law of this State governing licenses to practice medicine. [Id.]

Art. 3244. Duties of county judge.—If the county judge is not satisfied as to the showing made in said application and certificate or either, he may subpœna witnesses and examine them under oath touching such matters, and if it be made to appear to the judge that such person is entitled to admission into the colonies under the provisions of this law, he shall forward an application for admission, together with the application hereinbefore described, to the State Health Officer. If such county judge shall find that the person for whom application is made is in fact not indigent, then he shall make application for such person as a non-indigent patient. [Id.]

Art. 3245. Duties of State Health Officer.—The State Health Officer shall receive such applications, alphabetically index and file the same in his office where they shall become a permanent record. If the county judge shall determine not to make such application for any person, then such person may make an application direct to the State Health Officer, and if in the judgment and opinion of the State Health Officer such patient is entitled to admission into such colony, then he shall order him to be admitted upon his own motion, which order must be by him written, signed and filed with the superintendent of the institution into which such patient is admitted. [Id.]

Art. 3246. No preference in admission.—No patient in any State colony shall be discriminated against by virtue of the fact that he is an indigent, non-indigent or private patient, but they shall be treated alike, given equal facilities, equal attention and equal treatment. No patient in any such institution shall be permitted to give any officer, servant, agent or employé in any such institution any tip, pay or reward of any kind, and if such patient does so, it shall be a cause for his expulsion from said colony, and the discharge of any servant accepting the same; and the Board shall see that this provision is rigidly enforced. [Id.]

Art. 3247. Regulation of admission.—The State Health Officer shall keep on file an alphabetical index of applications of all patients, and patients shall be admitted according to their file number; reserving at all times not less than one-half of the accommodations afforded at each colony for indigent consumptives; one-fourth of the accommodations for non-indigent patients, and one-fourth for the accommodations for the private or pay patients; subject, however, to the control and discretion of the Board. If any applicant who complies with the provisions of this law applies for admission and said sanatoriums are full of patients, then such applicant shall have the right to furnish his own tent, bedding, and enter said sanatorium by paying the regular charges for board and treatment and complying in every respect with the law, rules and regulations governing said sanatorium. [Id.]

Art. 3248. Clothing, etc., expenses.—The county judge shall see that each patient admitted to the colony is supplied with three full suits of underwear and one neat top coat, all being such as may be prescribed by the State Health Officer; and the expenses of the clothing and transportation of public indigent patients shall be paid by the county from which the patient is sent. If any patient is admitted directly upon the certificate of the State Health Officer as an indigent patient, then the State Health officer shall supply such patient with such clothing and his certificate thereof shall be full evidence that the same was so supplied and of the value thereof, and the county from which said patient came shall be chargeable with said clothes and shall pay the same upon presentation of said certificate. Non-indigent public patients shall pay for their clothing and transportation themselves. [Id.]

Art. 3249. Private additions to sanatorium.—The Board is hereby authorized, on request of any charitable fraternity or society in this State, to permit the erection, furnishing and maintenance by such fraternities or societies upon the grounds of said sanatorium, of dormitories and such other accommodations as may be desired by any such fraternity or society for the proper treatment and care or [of] any member or members of such fraternity or society or for any members of their families, or for the widows and children of deceased members of such fraternity or society, who may be afflicted with tuberculosis, and which accommodations so erected shall be reserved for the preferential use of such members and members of their families and of the widows and children of deceased members of the fraternity or society so erecting, furnishing and maintaining such accommodations hereunder. The State shall be at no expense whatever in the erection, furnishing or maintenance of such accommodations, and the fraternity or society entering a patient or patients shall provide such pro rata part for the maintenance of such patient or patients as may be found just and equitable pending the next succeeding appropriation to be made by the Legislature for the maintenance of said Tuberculosis Sanatorium. "Children" under this article shall mean any minor child of a deceased member of such fraternity or society. Such accommodations or any part of them not being used or required by those entitled to such preference, may be used and occupied by other patients in said sanatorium at the discretion of the superintendent thereof and without any charge therefor against the State. [Acts 1917, p. 408.]

Art. 3250. Plan of buildings.—All matters pertaining to the location, construction, style or character of buildings, term of their existence and all other questions arising in connection with the granting of the permission to erect and maintain the accommodations contemplated in the preceding article, shall be arranged and agreed upon in writing by and between the Board on the part of the State, and the properly authorized officers, board or committee of each respective charitable fraternity or society, and such written agreement in each case shall be recorded at length upon the minutes of the Board and be duly reported to the State Health Officer in the next succeed-

ing report of the superintendents of the sanatorium, accompanied with all documents pertaining to the matter, or full copies thereof. [Id.]

Art. 3251. Rules of admission.—The members of such charitable fraternities or societies, members of their families and the widows and children of deceased members thereof, shall be classified as indigent public patients, non-indigent public patients or private patients, according to the facts, the same as other patients of said Sanatorium are classified, and shall be admitted, maintained, cared for and treated in said sanatorium upon the same terms and conditions and under the same regulations as all other patients therein, save and except that they shall at all times have the preference and right to occupy the accommodations erected and maintained hereunder by their several and respective fraternities or societies, when not already filled with others having the same preferential right. [Id.]

AMERICAN LEGION MEMORIAL SANATORIUM

Art. 3252. Management and control.—The State tuberculosis sanatorium known as the American Legion Memorial Sanatorium of Texas, shall be operated, controlled and managed by the State Board of Control, and said Board shall appoint a superintendent for said sanatorium who shall reside at the sanatorium and who shall have authority to appoint and employ necessary employés, assistants and servants. The salary of each superintendent shall be five thousand dollars per annum and in addition thereto he shall be entitled to living quarters, heat, light, fuel and water. Said superintendent shall be required to give bond in the sum of five thousand dollars, conditioned upon the faithful performance of his duties and shall take the official oath.

The Board is hereby authorized to enter into negotiations and make any agreement with the accredited representatives of the United States Government, the United States Public Health Service or other Federal agent or agency for the purpose of leasing, and said Board is empowered to lease to the United States Government any or all of said Sanatorium for disabled tubercular ex-service men and women, for such time and on such terms as in the judgment of the Board may seem proper. In the event that no such lease is entered into, then said Sanatorium shall be operated, controlled and managed as herein provided. [Acts 1921, p. 37; 1921, 2nd C. S. p. 222.]

Art. 3253. Advisory Board.—The Governor shall appoint three competent licensed physicians, citizens of this State, experienced in the treatment of tuberculosis, who with the State Health Officer as chairman shall constitute the advisory board to advise with the superintendent in the management of the sanatorium and in the treatment and care of the patients. The members of said advisory board shall serve without compensation, but shall be entitled to be reimbursed for necessary traveling expenses, including hotel bills incurred in the actual performance of their duties. [Acts 1921, p. 37.]

Art. 3254. Admission of patients.—The superintendent and advisory board are hereby authorized to promulgate rules and regulations for the operation and maintenance of the Sanatorium, and shall prescribe rules for the admission of patients; provided in all cases priority and preferential rights of admission shall always be given to honorably discharged veterans of the World War. After such preference and priority shall be given, if there should be further available beds, then any bona fide citizen of this State who has been such for at least six months next preceding the date of his application, having tuberculosis, shall be entitled to be admitted upon application to the superintendent; provided that if such person shall make affidavit, which affidavit shall never be required of any honorably discharged veteran of the World War, that he or she is unable to pay for admission and treatment, such person shall be admitted and treated free of charge. Such affidavit shall be prima facie evidence of the fact that such person is unable to pay. In the event the applicant shall not make an affidavit and is able to pay not exceeding five dollars per week, a charge of not exceeding five dollars per week shall be made for treatment of each such person. If the applicant is able to pay more than five dollars per week, he shall be required to pay not exceeding ten dollars per week.

The superintendent shall enter into contract or agreement with the United States Government or any authorized agent, agencies or representatives thereof to accept into said Sanatorium and treat any person otherwise eligible having tuberculosis, whereby the Sanatorium shall be compensated for treatment or service rendered such person, in such sum as may be agreed upon by both parties and as authorized and provided for by the laws of the United States; and the rules and regulations as are now or may be hereafter promulgated by the United States Public Health Service or other Federal agent or agency.

STATE HOME FOR DEPENDENT AND NEGLECTED CHILDREN

Art. 3255. Superintendent and officers.—The State Board of Control shall employ as superintendent of the State Home for Dependent and Neglected Children a person of previous experience in a similar institution. Said board shall fix the salary of the superintendent and all employés, and shall have authority to remove the superintendent for cause, and its decision in such matters shall be final. Said Board shall also appoint a physician for said Home. [Acts 1919, p. 301.]

Art. 3256. Rules and regulations.—The board shall make necessary rules and regulations for the proper government of said Home, and shall see that the time of the children is properly distributed between the school of letters and the industrial and domestic pursuits according to what is deemed for their best interests and the facilities at hand. The superintendent shall from time to time make such recommendation to said board as may seem to the best interests of all the children committed to said home. It shall be the duty of said controlling board to give diplomas or certificates of proficiency for grades made in any school that may be established by the board. [Id.]

Art. 3257. Commitment of child.—Whenever any child under sixteen years of age is brought before any juvenile court upon petition of any person within this State, charged with being a dependent or neglected child, the court may, if in the opinion of the judge the Home for Dependent and Neglected children is the proper place for said child, commit such child to said Home during its minority. No child who is feebleminded, epileptic, insane or afflicted with a venereal, tubercular or other communicable disease shall be assigned to this institution until cured of such disease. No child shall be admitted to the Home until he has been examined by the physician of the Home and such physician has issued a certificate showing the exact condition in reference to said qualifications. The court committing any child to said Home shall prepare a transcript of all proceedings and attach thereto a certificate of the county health officer of such county to said transcript. If it be a girl or baby or infant committed to said Home, the judge of the court shall designate some reputable woman to convey said girl, baby or infant to said institution. The cost of conveying any child to said institution shall be paid out of the general fund of the county from which it may be committed but no compensation shall be allowed beyond actual and necessary expenses of the party conveying and the child conveyed. [Id.]

Art. 3258. Unruly child excluded.—All juvenile courts shall give preference to those children of tender age, and said courts shall not commit to said Home children under the age of sixteen years who are known to be habitual violators of the laws of this State or who have been committed to any other institution of this State or to the State School for the Training of Juveniles. The Board is authorized to refuse admittance to such juveniles, or if, after they are committed to said Home their conduct should be of such nature and character as to contaminate the interests of other

children in said Home, the Board upon proper application, shall have the authority to transfer, and it shall be the duty of the superintendent of the State School for the Training of Juveniles to accept said child in said institution. [Id.]

Art. 3259. Dismissal of child.—No child shall be dismissed until some suitable home has been found for it, or it has become able to be self supporting and only then upon the written recommendation of the superintendent to the Board, or when any ward committed to said institution has become married with the consent of the Board and superintendent. Children may be placed for adoption only in homes where proper support and training can and will be given. Any child above the age of ten years and not adopted, but who goes out from this Home either under the custody of some adult or as self-supporting, shall continue under the supervision and guidance of the Board which shall require that the person or persons under whose care the child is placed or the child himself shall write biweekly letters to the controlling board for the first six months and monthly thereafter. The board, the superintendent, or some other employé of said Home may visit the place where said child is adopted, living or employed, and it shall be the duty of the person having said child in adoption or custody to answer all questions asked by said visiting committee concerning the conduct, employment, treatment or conditions of said child. If in the judgment of the Board it should be to the best interests of said child that it be returned to said Home, the Board is hereby empowered to have it returned. [Id.]

Art. 3259a. Colored girls training school established and maintenance provided.—Sec. 1. The State Board of Control is hereby authorized and directed to locate and establish in this State at some suitable place a school upon the cottage plan for the care, education and training of dependent and delinquent colored girls, provided such location is approved by the Governor.

Sec. 2. It shall be the purpose of this home and school to provide an institution of training and care of colored girls who by their own misconduct or by their unfavorable surroundings have become dependent or delinquent and need care and attention not otherwise provided; and in the accomplishment of the purpose of this Act the Board of Control shall provide adequate and proper quarters and exercise and diversion, and shall make provision for training of such girls in such of the useful arts and sciences to which women are adapted in order to prepare them for future usefulness and economic independence. Among other things, in connection with said institution a provision shall be made for instruction in nursing, sanitation and hygiene. Proper provision shall be made for the moral and religious training of such girls.

Sec. 3. The colored girls' training school provided for in this Act shall be under the control and management of the State Board of Control, who shall appoint a superintendent, and manage and control the same through such superintendent in similar manner as the Girls' Training School at Gainesville is operated and controlled under the laws of this State.

Sec. 4. The Board of Control shall employ as superintendent of said school a colored woman of previous experience and training. The superintendent and the Board of Control shall have as their advisers [advisors] in connection with said school a board of five members, all of whom shall be women, who shall be nominated by the Board of Control and confirmed by the Governor and who shall act in an advisory capacity, but shall not have power to manage or control said institution.

There shall be held semi-annually a joint conference of the Board of Control and said Advisory Board of this institution, for the purpose of considering all matters pertaining to the policies and general welfare of the institution.

The Board of Control shall fix the salary of the superintendent and all employees of said school. The superintendent or any other employee of the institution may be removed by the Board of Control on account of inefficiency, incompetency, inattention to his or her duties, misconduct or malfeasance in office, and the decision of the Board of Control as to such matters necessitating removal shall be final.

Sec. 5. Any colored girl between the ages of seven and eighteen years may be adjudicated to be a dependent or delinquent child in the same manner as provided in Title 43 of the Revised Civil Statutes of 1925 relating to dependent and neglected children. In such a proceeding the charge may be that such a child is a dependent or delinquent child as evidenced by the conduct of such child, and enough of the facts shall be alleged and proved to substantiate said charge. The court may, if it is the opinion of the Judge that the Colored Girls' Training School is a suitable place for the girl complained against, commit the defendant to said colored girls' training school for any period not to exceed the balance of her minority. No girl shall be committed to said school who is feeble-minded, epileptic or insane. Any girl committed to said school who is suffering with any communicable disease shall be assigned to a distinct and separate building of the institution and shall not be allowed to associate with other children or persons not so afflicted. No girl shall be admitted to said institution until she has been examined by the physician at said school, and such physician shall issue a certificate showing her exact physical and mental condition before she is admitted to the institution.

Sec. 6. It shall be the duty of the court committing any girl to said school in addition to the commitment to annex thereto a carefully prepared transcript of the trial to aid the officials of the institution in better understanding in classifying the girl.

The Court shall also designate some reputable woman to convey the girl to the institution. The cost of conveying any girl committed to said institution shall be paid by the county from which she is committed; provided that no compensation shall be allowed beyond the actual and necessary expenses of the person conveying and the girl so conveyed.

Sec. 7. No girl shall be dismissed or paroled from said school until some suitable home has been found for her, and then only upon the written recommendation of the superintendent of the school to the Board of Control, or unless she has become married with the consent of the superintendent of said institution and the Board of Control; provided that no provision of this act shall be construed to interfere with the power of the Governor in the exercise of executive clemency to any such girl when in his judgment it may be best. The State Board of Control shall have authority to parole, subject to the limitations of this Act. Any girl who is thus paroled from the institution shall be under the supervision and guidance of the superintendent for the remainder of the time for which she was committed and the superintendent shall require that said girl write letters twice per week to the superintendent of the school for the first six months after leaving the institution, and monthly letters thereafter. The Board of Control shall also see to it that the person under whose care or employ the girl is placed shall write monthly letters to the superintendent of the school for the first six months, and semi-annually thereafter.

Sec. 8. The Board of Advisors herein provided for, the superintendent of said school, any member of the Board of Control, or other person designated by the Board of Control, may visit the place where the girl is living or is employed, and it shall be the duty of the person having the girl in charge to answer all questions asked by said visitors concerning the conduct, employment or training of said girl. If, in the judgment of the Board of Control, it shall be for the best interest of the girl that she be returned to said school, the Board is hereby empowered to have her returned.

Sec. 9. The superintendent, with the assistance of the Advisory Board, in an advisory capacity only, with the approval of the Board of Control, shall make all necessary rules and regulations for the government and management of the Training School, and shall provide that the time of the pupils is properly distributed between academic subjects and industrial and domestic

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

subjects and employment according to the needs of the various pupils and the facilities at hand.

Provision shall be made for giving diplomas or certificates of proficiency for graduates from the Nurses' Training School, or any other school or departments of learning that may be established and operated in connection with said institution.

Sec. 10. The Advisory Board provided for in this Act shall not be entitled to any compensation, but shall be paid out of the support and maintenance fund of said institution actual expenses incurred in traveling to and from said institution, or to and from any place where such a delinquent or neglected child is located upon authority of the Board of Control.

Sec. 12. Any city or county in this State is hereby authorized to donate money to said institution to the extent that such county or city may be interested in the same.

Sec. 13. Any and all funds which may be donated for the benefit of said institution shall be placed in the State Treasury and expended in the same manner as other State moneys are expended, upon warrants drawn by the Comptroller upon the order of the Board of Control. Any of said moneys are hereby appropriated for the purpose of carrying out this Act. [Acts 1927, 40th Leg., p. 441, ch. 293.]

STATE HOSPITAL FOR CRIPPLED AND DEFORMED CHILDREN

Art. 3260. Hospital established.—There is hereby established a State Hospital for Crippled and Deformed Children. The gift to the State of Texas by the Texas Public Health Association of the Walter Colquitt Memorial Children's Hospital, also known as the children's ward of the John Sealy Hospital on the premises of the University of Texas at Galveston, Texas, is hereby accepted by the State, and this hospital shall be the State Hospital for Crippled and Deformed Children. The term "crippled and deformed children" as used herein shall include children suffering from disease from which they may become crippled or deformed. [Acts 1915, p. 32.]

Art. 3261. Management and Control.—Said hospital shall be under the control and management of the Board of Regents of the University of Texas, which is hereby authorized and empowered to lease said hospital building to the city of Galveston in the same manner as the John Sealy Hospital buildings, and to require that provision be made in such hospital for the care and treatment of crippled and deformed children, who may be benefited or cured by treatment in said hospital, and for such other cases or patients as may be required in the interest of scientific study by the faculty and students of the Medical Department of the University of Texas.

Said Board of Regents may in its discretion receive in said hospital any sick or afflicted child who is not crippled or deformed, and who is not suffering from any communicable disease. [Id.]

Art. 3262. Rules and regulations.—The Board of Regents shall adopt such rules and regulations as it may deem necessary and proper for the admission, discharge, care and treatment of such children. It may require their parents or guardians to pay all or a part of the expenses of the care and treatment of patients when able to do so, otherwise it may require such payment of their home counties or cities. [Id.]

Art. 3263. Donations.—Said Board of Regents is authorized to accept donations for the support of crippled or deformed patients, and for the improvement of the hospital and building. [Id.]

TITLE 52

EMINENT DOMAIN

Art.

3264. Procedure.
3264a. Eminent domain by counties.
3265. Rule of damages.
3266. General provisions.
3267. How costs awarded.
3268. Damages paid first.
3269. Practice in case specified.
3270. Property, how construed.
3271. Property vested by judgment.

Article 3264. [6506] [6528] Procedure.—The exercise of the right of eminent domain shall in all cases be governed by the following rules:

1. When real estate is desired for public use by the State or by a county, or a political subdivision of a county, or by a city or town, or by the United States Government, or by a corporation having the right of eminent domain, the party desiring to condemn the property after having failed to agree with the owner of the land on the amount of damages shall file a statement in writing with the county judge of the county in which the land or a part thereof is situated. It shall describe the land sought to be condemned, state the purpose for which it is intended to be used, the name of the owner if known, and that the plaintiff and the owner have been unable to agree upon the value of the land or the damages. Where the land lies in two or more counties, in one of which the owner resides, the statement shall be filed in the county of the owner's residence.

2. When such statement is filed with the county judge, he shall, either in term time or vacation, appoint three disinterested freeholders of said county as special commissioners to assess said damages, giving preference to those that may be agreed upon between the parties.

3. The commissioners shall be sworn to assess said damages fairly and impartially and in accordance with law.

4. The commissioners shall promptly set a time and place for hearing the parties, and the day appointed shall be the earliest practicable day, and the place selected shall be as near as practicable to the property in controversy or at the county seat of the county in which the property is situated.

5. Notice in writing shall be issued by the commissioners to each of the parties interested, notifying them of the time and place selected for the hearing.

6. The notices shall be served upon the parties at least five days before the day set for the hearing, exclusive of the day of the service, and may be served by any person competent to testify, by delivering a copy of such notice to the party, his agent or attorney.

7. When the property sought belongs to the estate of a deceased person or a minor, or other person laboring under disability, and the estate has a legal representative, the notice shall be served upon such representative.

8. When the property belongs to a non-resident of the State, or if the owner is unknown, or if the residence of the owner is unknown, or the owner secretes himself so that the process of law cannot be served upon him, such notice may be served by publication in the manner provided for such service of citation by publication in other civil cases in the district or county court. When the owner is a non-resident of the State the notice may be served as provided in paragraph six hereof.

9. The person serving notice shall return the original to the commissioners on or before the day set for the hearing, with his return in writing thereon, stating how and when it was served.

10. When service of notice has been perfected, the commissioners shall at the time and place appointed or at any other time and place to which the hearing may be adjourned, proceed to hear the parties.

11. Commissioners shall have the power to compel the attendance of witnesses and production of testimony, administer oaths, and punish for contempt as fully and in the same manner as is provided by law for judges of the county courts.

Art. 3264a. Eminent domain by counties.—The right of Eminent Domain is hereby conferred upon counties of the State of Texas for the purpose of condemning and acquiring land, right of way or easement in land, private or public, except property used for cemetery purposes, where said land, right of way

or easement is necessary in the construction of jails, courthouses, hospitals, delinquent and dependent schools, poor farms, libraries or for other public purposes, where such purpose is now or may hereafter be authorized by the Constitution or Statutes of this State.

All such condemnation proceedings shall be instituted under the direction of the commissioners' court, and in the name of the county, and the assessing of damages shall be in conformity to the Statutes of the State of Texas for condemning and acquiring right of way by railroads. That no appeal from the finding and assessment of damages by the commissioners appointed for that purpose shall have the effect of causing the suspension of work by the county in connection with which the land, right of way, easement, etc., is sought to be acquired. In case of appeal, counties shall not be required to give bond, nor shall they be required to give bond for costs. [Acts 1925, p. 300.] [Acts 39th Leg., ch. 116, § 1.]

Art. 3265. [6518–28] Rule of damages.—1. The commissioners shall hear evidence as to the value of the property sought to be condemned and as to the damages which will be sustained by the owner, if any, by reason of such condemnation and as to the benefits that will result to the remainder of such property belonging to such owner, if any, by reason of the condemnation of the property, and its employment for the purpose for which it is to be condemned, and according to this rule shall assess the actual damages that will accrue to the owner by such condemnation.

2. When the whole of a tract or parcel of a person's real estate is condemned, the damages to which he shall be entitled shall be the market value of the property in the market where it is located at the time of the hearing.

3. When only a portion of a tract or parcel of a person's real estate is condemned, the commissioners shall estimate the injuries sustained and the benefits received thereby by the owner; whether the remaining portion is increased or diminished in value by reason of such condemnation, and the extent of such increase or dimination [diminution] and shall assess the damages accordingly.

4. In estimating either the injuries or benefits, as provided in the preceding article, such injuries or benefits which the owner sustains or receives in common with the community generally and which are not peculiar to him and connected with his ownership, use and enjoyment, of the particular parcel of land, shall not be considered by the commissioners in making their estimate.

5. When the commissioners have assessed the damages, they shall reduce their decision to writing, stating therein the amount of damages due the owner, if any be found to be due, and shall date and sign such decision and file it together with all other papers connected with the case promptly with the county judge.

Art. 3266. [6507–28] General provisions.—1. When the county judge is disqualified to act in the case, and the parties fail to agree upon a special judge, he shall certify such disqualification upon the petition or statement filed with him, and file it with the county clerk, who shall make a certified copy thereof and of the endorsement thereon and forward the same to the Governor, who shall appoint some person learned in the law to act as special judge, and such special judge when appointed and qualified, shall proceed with the case to its final conclusion, or the parties may agree upon a special judge.

2. The county judge may appoint other commissioners when one or more of those appointed shall fail to serve.

3. Commissioners shall receive for their services three dollars for each day they may be engaged in the performance of their duties, and may withhold their decision until their fees are paid.

4. The party seeking to condemn the property shall pay the expense of serving notice upon the owner, but may recover from the owner such expenses when it is decided that the owner shall pay the costs.

5. The commissioners may adjudge the costs against either party, and shall make a statement in writing of all the costs which have accrued and state therein the party against whom such costs have been adjudged, and shall sign such statement and deliver it with the other papers.

6. If either party be dissatisfied with the decision, such party may within ten days after the same has been filed with the county judge file his objection thereto in writing, setting forth the grounds of his objection, and thereupon the adverse party shall be cited and the cause shall be tried and determined as in other civil causes in the county court.

7. If no objections to the decision are filed within ten days, the county judge shall cause said decision to be recorded in the minutes of his court, and shall make the same the judgment of the court and issue the necessary process to enforce the same.

Art. 3267. [6529] [4470] [4204] How costs awarded.—The costs of the proceedings before the commissioners and in the court shall be determined as follows, to-wit: If the commissioners shall award greater damages than the plaintiff offered to pay before the proceedings commenced, or if objections are filed to the decision in the county court under the provisions of this title, and the judgment of the court is for a greater sum than the amount awarded by the commissioners, then the plaintiff shall pay all costs; but if the amount awarded by the commissioners as damages or the judgment of the county court shall be for the same or less amount of damages than the amount offered before proceedings were commenced, then the costs shall be paid by the owner of the property.

Art. 3268. [6530] [4471] [4205] Damages paid first.—If the plaintiff in the condemnation proceedings should desire to enter upon and take possession of the property sought to be condemned, pending litigation, it may do so at any time after the award of the commissioners, upon the following conditions, to-wit:

1. It shall pay to the defendant the amount of damages awarded or adjudged against it by the commissioners, or deposit the same in money in court, subject to the order of the defendant, and also pay the costs awarded against it.

2. In addition thereto, it shall deposit in said court a further sum of money equal to the amount of the damages awarded by the commissioners, and which shall be held, together with the award itself, should it be deposited in court instead of being paid, exclusively to secure all damages that may be awarded or adjudged against the plaintiff; and it shall also execute a bond with two or more good and solvent sureties, to be approved by the judge of the court in which such condemnation proceedings are pending, conditioned for the payment of any further costs that may be adjudged against it, either in the court below or upon appeal.

3. Should it be determined on final decision of the case that the right to condemn the property in question does not exist, the plaintiff shall surrender possession thereof, if it has taken possession pending litigation, and the court shall so adjudge and order a writ of possession for the property in favor of the defendant, and the court may also inquire what damages, if any, have been suffered by the defendant by reason of the temporary possession of the plaintiff, and order the same paid out of the award or other money deposited; provided, that in any case where the award paid the defendant or appropriated by him exceeds the value of the property as determined by the final judgment, the court shall adjudge the excess to be returned to the plaintiff.

If the cause should be appealed from the decision of the county court, the appeal shall be governed by the law governing appeals in other cases; except the judgment of the county court shall not be suspended thereby. [Const. art. 1. sec. 17; Acts 1899, p. 105.]

Art. 3269. [6531] [4472] Practice in case specified.—When those having the right of eminent domain are sued for property or for damages to property occupied by it for the purpose for which it has

the right to exercise such power, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of property, upon petition or cross-bill asking such remedy by defendant, but the plea for condemnation shall be admission of the plaintiff's title to such property. [Acts 1899, p. 18.]

Art. 3270. [6532] [4473] [4206] Property, how construed.—Except where otherwise expressly provided by law, the right secured or to be secured to any corporation or other plaintiff in this State, in the manner provided by this law, shall not be so construed as to include the fee simple estate in lands, either public or private, nor shall the same be lost by the forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter without a new condemnation. [Acts 1861, p. 12.]

Art. 3271. [6534] [4475] [4208] Property vested by judgment.—Whenever acquired as hereinbefore provided, the judgment of the court shall vest such right in the company acquiring the same.

TITLE 53

ESCHEAT

Art.
3272. When estates shall escheat.
3273. Petition for escheat.
3274. Citation.
3275. Citation by publication.
3276. Claimants may appear and plead.
3277. If no person appears.
3278. Issue and trial.
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3281. Execution of writ.
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3283. Claimant not served may sue.
3284. Appeal or writ of error.
3285. Comptroller to keep accounts.
3286. Heir may sue.
3287. Order in favor of claimant.
3288. Review of probate decree.
3289. Suit for assets.

Art. 3272. [3186] [1821] [1770] When estates shall escheat.—If any person die seized of any real estate or possessed of any personal estate, without any devise thereof, and having no heirs, or where the owner of any real or personal estate shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devisee of his estate, such estate shall escheat to and vest in the State. Where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be prima facie evidence of the death of the owner without heirs. Any one paying taxes to the State on such property, either personally or through an agent, shall be held to be exercising lawful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party by personal service of citation, to such escheat proceedings, if a resident of this State, and his address can be secured by reasonable diligence, but, if he be a nonresident of the State or can not be found, the personal service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable diligence, can be found; such diligence to include an investigation of the records of the office and inquiry of the tax collector and tax assessor of the county in which the property sought to be escheated is situated. [Acts 1885, p. 35, G. L. vol. 9, p. 655; Acts 1907, p. 111.]

Art. 3273. [3187] [1822] [1771] Petition for escheat.—When the district or county attorney shall be informed, or have reason to believe, that any estate, real or personal, is in the condition specified in the preceding article, he shall file a sworn petition which shall set forth a description of the estate, the name of the person last lawfully seized or possessed of same, the name of the tenants or persons in actual possession, if any, and the names of the persons claiming the estate, if any such are known to claim or whose claim may be discovered by the exercise of reasonable diligence, and the facts or circumstances in consequence of which such estate is claimed to have escheated and the diligence exercised to discover the claimants of same, praying that such property be escheated and for a writ of possession therefor in behalf of the State. [Id.]

Art. 3274. [3188] [1823] [1772] Citation.—The district clerk shall issue citation as in other civil causes for each defendant alleged in the petition to hold possession of or claim such estate and for each other person required by this title to be cited. [Id.]

Art. 3275. [3189] [1824] [1773] Citation by publication.—The clerk shall also issue a citation, setting forth briefly the contents of the petition, for all persons interested in the estate to appear and answer at the next term of court, which citation shall be published as required in other civil suits. [Acts 1885, p. 35; G. L. vol. 9, p. 655.]

Art. 3276. [3190] [1825] [1774] Claimants may appear and plead.—All persons named in such petitions as tenants or persons in actual possession or claimants of the estate, and any other person claiming an interest in such estate, may appear and plead to such proceedings, and may traverse the facts stated in the petition. [Acts 1848, p. 211; G. L. vol. 3, p. 211.]

Art. 3277. [3191] [1826] [1775] If no person appears.—Judgment shall be rendered by default in behalf of the State if no person after due notice shall plead within the time fixed by law. [Id.]

Art. 3278. [3192] [1827] [1776] Issue and trial.—If any person appears and denies the title set up by the State, or traverses any material fact in the petition, issue shall be made up and tried as other issues of fact. A survey may be ordered, as in other cases where the titles or boundaries of land are drawn in question. [Id.]

Art. 3279. [3193-95] Judgment for State.—If it appears upon the facts found that the property is subject to escheat, judgment shall be rendered that the State recover the same and at the discretion of the court, recover the costs against the defendant. If such judgment is for real estate, the court shall fix the minimum price at which the same shall be sold, and a writ of possession shall be awarded as in other civil suits, but shall not issue until after the expiration of two years from the date of the final judgment. If such judgment be for personal property, a writ of possession shall issue as in other cases of judgment for the recovery of personal property. Such writ of possession shall contain such description of the property as shall identify the same. [Id.; Acts 1907, p. 112.]

Art. 3280. [3194] [1829] [1778] Costs against State.—If it appears that the State is not entitled to such estate, the costs of such proceedings shall be taxed against the State, and certified by the clerk. The Comptroller shall, on such certificate being filed in his office, issue a warrant therefor on the treasury. [Acts 1848, p. 211; G. L. vol. 3, p. 211.]

Art. 3281. Execution of writ.—Upon receiving the writ of possession for land provided in this title, the sheriff shall seize and advertise the same as is required for selling real estate under execution. If the price bid be less than the price fixed by the judge before whom the cause was tried, which minimum valuation shall be distinctly stated in the advertisement, there shall be no sale and the writ shall be returned to the court showing the same, and thereafter said real estate may be sold by the Attorney General in the same manner that lands bid in are sold. The proceeds of such sale, less the costs incurred in such suit including his commission, shall be paid by the sheriff into the State Treasury.

Art. 3282. [3197] [1831] [1780] Writ of seizure.—If the property recovered be personal property, a writ shall issue to the sheriff commanding him

to seize such property and he shall dispose of the same by public auction in the manner provided by law for the sale of personal property under execution, and pay the proceeds of such sale less the costs of the court, into the State Treasury. [Acts 1885, p. 35. G. L. vol. 9, p. 655.]

Art. 3283. [3196] [1830] [1779] Claimant not served may sue.—When title to real property, or any part thereof, is adjudged to the State, it shall be subject to divestiture at the suit of any claimant not personally served with citation in such escheat proceedings, who shall institute suit therefor against the State within two years after such judgment has become final, who shall, upon trial of such issue, be adjudged the owner of the property or any part thereof, for the recovery of which the suit is brought. [Acts 1907, p. 112.]

Art. 3284. [3198] [1832] [1781] Appeal or writ of error.—Any party who has appeared in any such proceedings, and also the district or county attorney on behalf of the State, shall have the right to prosecute an appeal or writ of error upon such judgment. [Acts 1848, p. 212. G. L. vol. 3, p. 212.]

Art. 3285. [3199] [1833] [1782] Comptroller to keep accounts.—The Comptroller shall keep an account of money paid into the treasury, and of lands vested in the State under any provision of this title. [Id.]

Art. 3286. [3200] [1834] [1783] Heir may sue.—If any person appears after the death of the testator or intestate and claim any money paid into the treasury under this title, as heir, or devisee, or legatee thereof, he may file a petition against the State in the district court of the county where the estate was sold, stating the nature of his claim and praying that such money be paid to him. A copy of such petition shall be served on the district or county attorney at least twenty days previous to the return day of the process. [Id.]

Art. 3287. [3201] [1835] [1784] Order in favor of claimant.—If the court shall find that such person is entitled to recover such money as heir, devisee, legatee, or legal representative, it shall make an order directing the Comptroller to issue his warrant on the Treasury for the payment of the same, but without interest or costs; a copy of which order under the seal of the court shall be sufficient voucher for issuing such warrant. [Acts 1895, p. 189; G. L. vol. 10, p. 919.]

Art. 3288. [3203–4] Review of probate decree.—When an estate owning property claimed by the State to be subject to escheat, shall have been administered in a probate court in this State, the State may have the judgment of such probate court reviewed in the district court, upon petition alleging that such administration was obtained by fraud or mistake of fact, and the case shall be tried in the manner prescribed by law for the revision and correction of any decree of the probate court. [Act Nov. 13, 1866, p. 236; G. L. vol. 5, p. 1154.]

Art. 3289. [3205] [1839] [1788] Suit for assets.—All suits brought for the collection of the assets turned over to the Treasurer, under this title, shall be brought in the name of the State of Texas. [Id.]

TITLE 54

ESTATES OF DECEDENTS

Chap.

1. Jurisdiction.
2. Record books.
3. General provisions.
4. Applications for the Probate of Wills and for Letters.
5. Probate of wills.
6. Granting letters.
7. Temporary administration.
8. Oath and bond of executors and administrators.
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10. Inventory, appraisement and list of claims.
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12. Administration under a will.
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14. Withdrawing estates from administration.
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19. Classification and payment of claims.
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22. Report of sales, etc.
23. Heirship, etc.—Adjudication of.
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27. Administration of community property.
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CHAPTER ONE

JURISDICTION

Art.

3290. Of the county court.
3291. Of district court.
3292. Proceedings before death.
3293. Venue for probate.
3294. Concurrent jurisdiction.

Article 3290. [3206] 1840] [1789] Of the county court.—The county court shall have general jurisdiction of a probate court. It shall probate wills, grant letters testamentary or of administration, settle the accounts of executors and administrators, and transact all business appertaining to the estates of deceased persons, including the settlement, partition and distribution of such estates. [Const. art. 5, sec. 16.]

Art. 3291. [3207] [1841] [1790] Of district court.—The district court shall have appellate jurisdiction and general control in probate matters over the county court for the probating of wills, granting letters testamentary or of administration, settling the accounts of executors and administrators and for the transaction of business appertaining to estates, and original jurisdiction and general control over executors and administrators under such regulations as may be prescribed by law. [Const. art. 5, sec. 8.]

Art. 3292. [3208] [1842] [1791] Proceedings before death.—The probate of a will, or administration of an estate of a living person shall be void; but the bonds of the executor or administrator shall not be void but may be recovered upon.

Art. 3293. [3209] [1843] 1792] Venue for probate.—Wills shall be admitted to probate, and letters testamentary or of administration shall be granted:

1. In the county where the deceased resided, if he had a domicile or fixed place of residence in the State.

2. If the deceased had no domicile or fixed place of residence in the State, but died in the State, then either in the county where his principal property was at the time of his death, or in the county where he died.

3. If he had no domicile or fixed placed of residence in the State, and died without the limits of the State, then in any county in this State where his nearest of kin may reside.

4. But if he has no kindred in this State, then in the county where his principal estate was situated at the time of his death. [Acts 1876, p. 93; G. L. vol. 8, p. 929.]

Art. 3294. [3210] [1844] [1793] Concurrent jurisdiction.—When two or more courts have concurrent jurisdiction of an estate, the court in which application for letters testamentary or of administration thereon is first filed shall have and retain jurisdiction of such estate to the exclusion of such other court or courts.

CHAPTER TWO

RECORD BOOKS

Art.

3295. Judges probate docket.
3296. Probate minutes.
3297. Claim docket.
3298. Probate fee book.

Art.
3299. Index.
3300. Shall be evidence.
3301. Papers to be recorded.

Article 3295. [3211] 1845] [1794] Judges probate docket.—The clerk of the county court shall keep a record book to be styled, "Judge's Probate Docket," and enter therein:

1. The name of each deceased person upon whose estate proceedings are had or sought to be had.

2. The name of the executor or administrator of such estate, or of the applicant for letters.

3. The date of the filing of the original application for the probate of a will, or for letters testamentary or of administration.

4. A minute of all orders, judgments, decrees and proceedings had in the estate, with the date thereof.

5. Each estate shall be numbered upon the docket in the order in which the proceedings therein have been commenced, and each paper filed in an estate shall be numbered with the docket number of such estate.

Art. 3296. [3212] [1846] [1795] Probate minutes.—The clerk shall keep a record book, styled "Probate minutes," and enter therein in full all the orders, judgments, decrees and proceedings of the court, and record therein all papers of estates required by law to be recorded.

Art. 3297. [3213] [1847] [1796] Claim docket.—He shall also keep a record book to be styled, "Claim docket," and enter therein all claims presented against an estate for approval by the court. This docket shall be ruled in sixteen columns at proper intervals from top to bottom, with a short note of the contents at the top of each column. One or more pages shall be assigned to each estate. The following information shall be entered in the respective columns beginning with the first or marginal column: The names of claimants in the order in which their claims are filed; the amount of the claim; its date; when due; the date from which it bears interest; the rate of interest; when allowed by the executor or administrator; the amount allowed; the date of rejection; the date of filing; when approved; the amount approved; when disapproved; the class to which the claim belongs; when established by judgment of a court; the amount of such judgment. [Acts 1870, p. 169; P. D. 5673; G. L. vol. 6, p. 343.]

Art. 3298. [3214] [1848] [1797] Probate fee book.—He shall keep a record book, styled, "Probate Fee Book," and enter therein each item of costs which accrues to the officers of the court, together with witness fees, if any, showing the party to whom such costs or fees are due, the date of the accrual of the same, and the estate or party liable therefor.

Art. 3299. [3215] [1849] [1798] Index.—He shall properly index each record book, and shall keep it open for public inspection, but shall not let it out of his office.

Art. 3300. [3216] [1850] [1799] Shall be evidence.—Said record books or certified copies therefrom shall be evidence in any court of this State.

Art. 3301. [3217] [1851] [1800] Papers to be recorded.—The following papers shall be recorded in the probate minutes:

1. All applications for the probate of wills when the probate has been granted.

2. The citation and return thereon.

3. The will and the testimony upon which the same was admitted to probate.

4. All bonds and oaths of executors and administrators.

5. The notice to persons holding claims against an estate.

6. All inventories and appraisements and lists of claims.

7. All exhibits and accounts.

8. All reports of hiring, renting or sale.

9. All applications for the sale of real estate.

10. All reports of commissioners of partition. [P. D. 5772.]

CHAPTER THREE
GENERAL PROVISIONS

Art.
3302. County court decrees.
3303. Shall avoid delay.
3304. Trial by jury.
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3318. Judge to sign minutes.
3319. Attachment for property.
3320. Accounts of executors.
3321. Filing accounts.
3322. Executor, how qualified.
3323. Valid title through executor.
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Article 3302. [3218–19] County court decrees.—All decisions, orders, decrees and judgments of the county court in probate matters shall be rendered in open court at a regular term for civil and probate business, unless otherwise specially provided; and the same shall be entered on the records of the court during the term at which same are rendered.

Art. 3303. [3220] [1854] [1802a] Shall avoid delay.—The probate docket when taken up shall be disposed of with dispatch, without an adjournment of the court for more than three days at any time. The reason for an adjournment must appear upon the minutes. [Acts 1881, p. 31; G. L. vol. 9, p. 123.]

Art. 3304. [3221] [1855] [1803] Trial by jury.—There shall be no trial by jury in probate matters in the county court.

Art. 3305. [3222] [1856] [1804] Clerk to file papers.—The county clerk shall file all applications, complaints, partitions and all other papers permitted or required by law to be filed in said court in estates of decedents, and shall indorse on each paper the date filed, with the proper docket number and sign the same officially.

Art. 3306. [3223] [1857] [1805] Clerk shall issue notices.—The clerk shall issue necessary notices, citations, writs and process from said court in probate matters, without any order from the county judge, unless such order is required by some provision of this title. [Acts 1876, p. 129; G. L. vol. 8, p. 965.]

Art. 3307. [3224] [1858] [1806] Judge may enforce obedience.—The county judge may enforce obedience to all his lawful orders against executors and administrators, by attachment and imprisonment, but no such imprisonment shall exceed three days for any one offense, except as hereinafter provided. [Id.]

Art. 3308. [3225] [1859] [1807] Withholding will from probate.—On written complaint that any person has the last will of any testator or testatrix, or any papers belonging to the estate of a testator or intestate, the county judge shall cause said person to be cited to appear before him, either in term time or vacation, and show cause why he should not deliver such will to the court for probate, or why he should not deliver such papers to the executor or administrator. Upon the return of such citation served, unless such delivery is made or good cause shown, if satified [satisfied] that such person had such will or papers at the time of filing the complaint, such judge may cause him to be arrested and imprisoned until he shall so deliver them. [Id.]

Art. 3309. [3226] [1860] [1808] Executions.—Executions in probate matters shall be directed to the sheriff or any constable of a county, made returnable in sixty days, and shall be tested and signed by the clerk officially under the seal of the court. All proceedings under such executions shall be

governed by the laws regulating proceedings under executions issued from the district court so far as applicable. [Id.]

Art. 3310. [3228] [1862] [1810] Citation in probate.—Citations in probate matters shall be in writing, dated and signed by the clerk officially under the seal of the court, and shall state substantially the nature of the proceeding which the party to be cited is called upon to answer, and the time and place he is required to appear.

Art. 3311. [3229–32] Service of citation.—A citation is served either by posting, by delivery in person or by publication, and the mode of service shall be governed by the following rules:

1. When the mode is not expressly provided by law, it must be served upon the party to be cited in person by delivering to him a true copy of such citation at least ten days exclusive of the day of service before the day upon which he is required to appear and answer.

2. When a citation is required to be posted, it shall be posted for ten days exclusive of the day of posting before the day upon which the party is required to appear and answer, at three of the most public places in the county, one of which must be at the courthouse door and no two in the same city or town unless otherwise provided by law.

3. When a citation is required to be posted, the original with three copies thereof shall be delivered by the clerk to the sheriff or constable of the proper county who shall post such copies in the manner prescribed in the preceding subdivision and return the original to the clerk stating in a written return thereon the time when and the place where he posted such copies.

4. Where a person is to be cited by publication, the publication shall be made in the same manner as in suits in the district court. [Acts 1876, p. 129; G. L. vol. 8, p. 965.]

Art. 3312. [3233] [1867] [1815] Common law applicable.—The rights, powers and duties of executors and administrators shall be governed by the principles of the common law, when the same do not conflict with the provisions of the statutes of this State. [Id.]

Art. 3313. [3234–44] Evidence.—In proceedings arising under the provisions of this title, the rules relating to witnesses and evidence that govern in the district court shall apply so far as applicable except that where a will is to be probated and in other proceedings in estates where there is no opposing party or attorney of record upon whom notice and copies of interrogatories may be had, service may be had by posting notice of intention to take depositions for a period of twenty days as provided by laws governing posting of notices. When such notice is filed with the clerk, a copy of the interrogatories shall also be filed, and at the expiration of twenty days commission may issue for taking the depositions and the judge may file cross interrogatories where no one appears, if he so desires.

Art. 3314. [3235] [1869] [1817] Transfer of estate at death.—When a person dies, leaving a lawful will, all of his estate devised or bequeathed by such will shall vest immediately in the devisees or legatees; and all the estate of such person, not devised or bequeathed, shall vest immediately in his heirs at law; subject however, to the payment of the debts of the testator or intestate, except such as may be exempted by law; and, whenever a person dies intestate, all of his estate shall vest immediately in his heirs at law, but with the exceptions aforesaid shall still be liable and subject in their hands to the payment of the debts of the intestate; but upon the issuance of letters testamentary or of administration upon any such estate, the executor or administrator shall have the right to the possession of the estate as it existed at the death of the testator or intestate, with the exception aforesaid; and he shall recover possession of and hold such estate in trust to be disposed of in accordance with law. [Id.]

Art. 3315. [3236] [1870] [1818] Contestant.—Any person interested in an estate may, at any time before any character of proceeding is decided upon by the court, file opposition thereto in writing, and shall be entitled to process for witnesses and evidence, and to be heard upon such opposition as in other suits.

Art. 3316. [3237] [1871] [1819] Call of dockets.—The county judge, at each regular term of his court for probate business, shall call the estates in their regular order upon both the probate and claim dockets and make such orders as may be necessary. He shall also see that the executors, administrators and officers perform the duties enjoined upon them by law in all matters pertaining to such estates.

Art. 3317. [3238] [1872] [1820] Definitions.—When a term of the county court is mentioned in this title, a regular term of said court for probate business is meant, and when the word "docket" is used, the probate docket is meant, and when the word, "minutes" is used, the probate minutes are meant.

Art. 3318. [3239] [1873] [1821] Judge to sign minutes.—The county judge, whenever he enters an order upon the minutes in vacation, shall date and sign the same officially; and, at the close of each term of his court, he shall in open court sign the minutes of such term officially, after all orders, judgments, decrees and proceedings of the term have been properly entered, and all papers required to be recorded therein have been so recorded.

Art. 3319. [3240] [1874] [1822] Attachment for property.—Whenever complaint in writing, under oath, shall be made to the county judge, by any person interested in the estate of a decedent, that the executor or administrator is about to remove said estate, or any part thereof beyond the limits of the State, such judge may order a writ to issue, directed to the sheriff or any constable of any county in the State, commanding him to seize such estate, or any part thereof, and hold the same subject to such further orders as such judge may make on such complaint. No such writ shall issue unless the complainant shall give bond, in such sum as the said judge may require, payable to the executor or administrator of such estate conditioned for the payment of all damages and costs that may be recovered for the wrongful suing out of such writ. [Acts 1876, p. 129; G. L. vol. 8, p. 965.]

Art. 3320. [3241] [1875] Accounts of executors.—Executors and administrators shall make annual exhibits under oath, fully showing the condition of the estate; they shall make final settlement of the estates they represent within three years from the grant of letters, unless the time be extended by the court after satisfactory showing made under oath; and, upon failure in either case, shall be removed as provided by law. [Acts 1881, p. 31; G. L. vol. 9, p. 123.]

Art. 3321. [3242] [1876] [1823] Filing accounts.—All exhibits made by executors or administrators, showing a list of claims allowed and approved, or established against the estate they represent, or showing the condition of said estate, and an account of all money received and paid out on account of said estate, returned to the court before the filing of the account for final settlement, shall be filed with the clerk. Notice of such filing shall be posted at the court house door for twenty days from the posting, after which time the county judge shall, in term time, examine said exhibit, and, if the same is found to be correct, render judgment of approval thereon and order said exhibit to be recorded. [Acts 1876, p. 109; G. L. vol. 8, p. 945.]

Art. 3322. [3243] [1877] [1824] Executor; how qualified.—An executor or administrator shall be deemed to have duly qualified when he shall have taken the oath and given the bond required by law, and when said bond has been approved and filed. In case of an executor where no bond is required, he

shall be deemed to have been duly qualified when he shall have taken the oath required by law.

Art. 3323. [3245] [1879] [1826] Valid title through executor.—When an executor or administrator, legally qualified as such has performed any acts as such executor or administrator in conformity with his authority and law, such acts shall continue to be valid to all intents and purposes, so far as regards the rights of innocent purchasers of any of the property of the estate from such executor or administrator, for a valuable consideration, in good faith, and without notice of any illegality in the title to the same, notwithstanding such acts or the authority under which they were performed may afterward be set aside, annulled and declared invalid.

Art. 3324. [3518–19–20] Enforcement of specific performance.—When any person shall sell property and enter into bond or other written agreement to make title thereto, and shall depart this life without having made such title, the owner of such bond or written agreement or his legal representatives, may file a complaint in writing in the county court of the county where the letters testamentary or of administration were granted and cause the executor or administrator to be cited to appear at a regular term of the court, and show cause why a specific performance of such bond or other written agreement should not be decreed. Such bond or other written agreement shall be filed with such complaint, or good cause shown under oath why the same can not be so filed; and if it can not be so filed, the same or the substance thereof shall be set forth in the complaint. After service of the citation, the court shall hear such complaint and the evidence thereon, and, if satisfied from the proof that such bond or written agreement was legally executed by the testator or intestate, and that the complainant has a right to demand a specific performance thereof, a decree shall be made ordering the executor or administrator to make title to the property, according to the tenor of the obligation, fully describing the property in such decree. When a conveyance is made under the provisions of this article, it shall recite the decree of the court authorizing it, and, when delivered, shall vest in the person to whom made all the right and title which the testator or intestate had to the property conveyed; and such conveyance shall be prima facie evidence that all requirements of the law have been complied with in obtaining the same. [Acts 1876, p. 108; G. L. vol. 8, p. 944.]

CHAPTER FOUR

APPLICATIONS FOR THE PROBATE OF WILLS AND FOR LETTERS

Art.
3325. Time to file.
3326. Limitation.
3327. Settlement not barred.
3328. Requirements.
3329. Written wills.
3330. When written will cannot be produced.
3331. Nuncupative will.
3332. Letters of administration.

THE CITATION

3333. Contents.
3334. Service.
3334a. Validation.
3335. When will cannot be produced.
3336. Service of citation.
3337. Service by publication.
3338. No action until service.
3339. Application made by whom.
3340. Administration prevented.
3341. Bond to be filed.
3342. One creditor may apply for several.
3343. Lien upon estate.

Article 3325. [3247] [1880] [1827] Time to file.—All applications for the grant of letters testamentary or of administration upon an estate must be filed within four years after the death of the testator or intestate and not later. [Acts 1876, p. 94; Acts 1899, p. 244; P. D. 5505; G. L. vol. 8, p. 930.]

Art. 3326. [3248] [1881] [1828] Limitation.—No will shall be admitted to probate after the lapse of four years from the death of the testator unless it be shown by proof that the party applying for such probate was not in default in failing to present the same for probate within the four years aforesaid; and in no case shall letters testamentary be issued where a will is admitted to probate after the lapse of four years from the death of the testator.

Art. 3327. [3249] [1882] [1829] Settlement not barred.—Where letters testamentary or of administration shall have once been granted, any person interested in the administration may proceed, after any lapse of time, to compel settlement of the estate when it does not appear from the record that the administration thereof has been closed. [P. D. 5507.]

Art. 3328. [3250] [1883] [1830] Requirements.—All applications for probate of wills, or for letters testamentary or of administration, shall be in writing and filed with the county clerk of the proper county. [Acts 1876, p. 94; G. L. vol. 8, p. 930.]

Art. 3329. [3251–52] Written wills.—A written will shall be filed with the application for the probate thereof, and shall remain in the office of the clerk unless removed therefrom by order of the county or district court. An application for the probate of a written will produced in court shall state:

1. The name of the testator and that he is dead, and the time and place of his death.
2. The facts necessary to show that the court has jurisdiction of the estate.
3. The nature and probable value of the estate.
4. The name and residence of the executor named in the will, if any, and if none be named in the will, then the name and residence of the applicant.
5. That such executor or applicant is not disqualified by law from accepting letters, if letters be desired.

Art. 3330. [3253] [1886] [1833] When written will cannot be produced.—When a written will cannot be produced in court, in addition to the requirements of the preceding article, the application shall state:

1. The reason why such will cannot be produced.
2. The contents of such will, as far as known.
3. The date of such will and the executor appointed therein, if any, and the names of the subscribing witnesses thereto, if any.
4. The names and residences, if known, of all the heirs at law of the testator, and if not known, that fact shall be stated. Such application shall be sworn to by the applicant or some other credible person.

Art. 3331. [3254] [1887] [1834] Nuncupative will.—An application for the probate of a nuncupative will, in addition to the requirements of the second preceding article, shall state:

1. The substance of the testamentary words spoken.
2. The name and residence of the witness thereto.
3. The names and residence, if known, of the heirs at law of the testator, and, if not known, that fact shall be stated.
4. Such application shall be sworn to by the applicant or some other credible person.

Art. 3332. [3255] [1888] [1835] Letters of administration.—An application for letters of administration shall state:

1. The name of the deceased; that he is dead, and the time and place of his death, and that he died intestate.
2. The facts necessary to show that the court has jurisdiction of the estate.
3. The nature and probable value of the estate.
4. That a necessity exists for an administration upon such estate, setting forth the facts which show such necessity.
5. That the applicant is not disqualified by law to act as administrator.

THE CITATION

Art. 3333. [3256] [1889] [1836] Contents.—When an application for the probate of a writ-

ten will, or for letters of administration, is filed with the clerk he shall issue a citation to all parties interested in such estate, which citation shall state:

1. That such application has been filed, and the nature of it.
2. The name of the deceased and of the applicant.
3. The time when, and the court by which, the application will be acted upon.
4. It shall cite all persons interested in the estate to appear at the time therein named and contest said application, should they desire to do so.

Art. 3334. [3257] [1890] [1837] Service.—The citation shall be served by posting for at least ten days, exclusive of the day of posting before the first day of the term of the court to which it is returnable, provided if publication of such citation be made as provided by Article 28, Revised Civil Statutes of 1925, such publication shall be sufficient service of citation without posting said notices. [As amended Acts 1927, 40th Leg., p. 123, ch. 81, § 1.]

Section 4 of Acts 1927, 40th Leg., p. 123, ch. 81, repeals all conflicting laws and parts of laws and provides that if any provision be held invalid it shall affect the remainder of the act.

Art. 3334a. Validation.—In all cases where written wills produced in court have been probated after publication of citation as provided by Article 28 of the Revised Civil Statutes of Texas without service of notice by posting, such service of citation and the action of the court in admitting said wills to probate, is hereby validated in so far as service of citation is concerned. [Acts 1927, 40th Leg., p. 123, ch. 81, § 2.]

See note to article 3334.

Art. 3335. [3258] [1891] [1838] When will cannot be produced.—When the application is for the probate of a noncupative will, or a written will which cannot be produced in court, the citation shall contain substantially the statements made in the application for probate, and the time when, place where, and the court before which such application will be acted upon.

Art. 3336. [3259] [1892] [1839] Service of citation.—If the heirs of the testator be residents of this State, and their residence be known, the citation provided for in the preceding article shall be served upon them by delivering to each of them in person a true copy of such citation, at least ten days, exclusive of the day of service, before the first day of the term of court to which such citation is returnable. [As amended Acts 1927, 40th Leg., p. 123, ch. 81, § 3.]

See note to article 3334.

Art. 3337. [3260] [1893] [1840] Service by publication.—Service of such citation may be made by publication for four successive weeks previous to the first day of the term of the court to which such citation is returnable, in the following cases:

1. When the heirs are non-residents of this State.
2. When their names or their residences are unknown.
3. When they are transient persons.

Art. 3338. [3261] [1894] [1841] No action until service.—No application shall be acted upon until the service of citation has been made in the manner and for the length of time in such case provided.

Art. 3339. [3262] [1895] [1842] Application made by whom.—Applications for the probate of a will may be made by the testamentary executor, or by any person interested in the estate of the testator, and application for letters of administration upon an estate may be made by any person. [Acts 1876, p. 95; G. L. vol. 8, p. 931.]

Art. 3340. [3263] [1896] [1843] Administration prevented.—When application is made for letters of administration upon an estate by a creditor, and those interested in the estate do not desire an administration thereupon, they can defeat such application:

1. By the payment of the claim of such creditor.
2. By proof to the satisfaction of the court that such claim is fictitious, fraudulent, illegal or barred by limitation.
3. By executing a bond payable to, and to be approved by, the county judge in double the amount of such creditor's debt, conditioned that the obligors will pay the debt of such applicant upon the establishment thereof by suit in any court having jurisdiction of the amount in the county having jurisdiction of such estate. [P. D. 5558.]

Art. 3341. [3265] [1898] [1845] Bond to be filed.—The bond provided for, when given and approved, shall be filed with the clerk of the county court and recorded in the minutes, and any creditor, for whose protection it was executed, may sue thereon in his own name for the recovery of his debt.

Art. 3342. [3264] [1897] [1844] One creditor may apply for several.—Several creditors may authorize one of their number to apply for letters in behalf of them all; and, in such case, the grant of letters cannot be defeated without complying with the requirements of the two preceding articles as to all claims so represented. [P. D. 5559.]

Art. 3343. [3266] [1899] [1846] Lien upon estate.—A lien shall exist on all of the estate in the hands of the distributees of such estate, and those claiming under them with notice of such lien, to secure the ultimate payment of the bond provided herein.

CHAPTER FIVE

PROBATE OF WILLS

Art.
3344. Proof of written will produced in court.
3345. Proof of written will not produced.
3346. Proof of nuncupative will, when.
3347. Nuncupative will proved.
3348. Facts which must be proved.
3349. Will which cannot be produced in court.
3350. Testimony committed to writing.
3351. Order entered; will, etc., recorded, when.
3352. Will probated in another State.

Article 3344. [3267] [1900] [1847] Proof of written will produced in court.—A written will produced in court may be proved:

1. By the affidavit of one of the subscribing witnesses thereto, taken in open court and subscribed by such witness.
2. If all the witnesses are non-residents of the county, or those resident of the county are unable to attend court, by the testimony of any one or more of them taken by deposition.
3. If none of the witnesses are living, by two witnesses to the handwriting of the subscribing witnesses thereto, and of the testator, if signed by him, proof may be either by affidavit taken in open court and subscribed by the witnesses, or by deposition.
4. If the will was wholly written by the testator, by two witnesses to his handwriting, which may be made by affidavit taken in open court and subscribed to by the witnesses, or by deposition. [Acts 1876, p. 94; G. L. vol. 8, p. 930.]

Art. 3345. [3268] [1901] [1848] Proof of written will not produced.—A written will which cannot be produced in court, may be proved in the same manner as provided in the preceding article, and the same amount and character of testimony shall be required to prove such will as is required to prove a written will produced in court.

Art. 3346. [3269] [1902] [1849] Proof of nuncupative will, when.—No nuncupative will shall be proved within fourteen days after the death of the testator; nor shall any such will be probated after six months have elapsed from the time of speaking the purported testamentary words, unless the same or the substance thereof, shall have been committed to writing within six days after making such will; nor shall any such will be probated, unless it be made in the time of the last sickness of the deceased, at his habitation, or where he has resided for ten days next preceding, except when the deceased is taken sick away from home and dies before he returns to such habitation. [Id.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 3347. [3270] [1903] [1850] Nuncupative will proved.—No nuncupative will shall be probated, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import, and if the testimony of such witnesses differs materially as to the testamentary words spoken, or as to the testator's calling upon some one to witness the same, the will shall not be admitted to probate.

Art. 3348. [3271] [1904] [1851] Facts which must be proved.—Before admitting a will to probate, it must be proved to the satisfaction of the court:

1. That the testator, at the time of executing the will, was at least twenty-one years of age, or was married, that he was of sound mind, and that he is dead.
2. That the court has jurisdiction of his estate.
3. That citation has been served and returned in the manner and for the length of time required by law.
4. That the testator executed the will with the formalities and solemnities and under the circumstances required by law to make it a valid will.
5. That such will has not been revoked by the testator.

Art. 3349. [3272] [1905] [1852] Will which cannot be produced in court.—If the will be a written will which cannot be produced in court, the cause of its non-production must be proved, and such cause must be sufficient to satisfy the court that it cannot by any reasonable diligence be produced, and the contents of such will must be substantially proved by the testimony of a credible witness who has read it or heard it read.

Art. 3350. [3273] [1906] [1853] Testimony committed to writing.—All testimony taken in open court upon the hearing of an application to probate a will shall be committed to writing at the time it is taken, and subscribed in open court by the witness or witnesses, and filed by the clerk. [Acts 1876, p. 95; G. L. vol. 8, p. 931.]

Art. 3351. [3274] [1907] [1854] Order entered; will, etc., recorded, when.—Upon the hearing of an application for the probate of a will, if the court be satisfied from the evidence that such will should be admitted to probate, an order to that effect shall be entered upon the minutes; and such will, together with the application for probate thereof, and all the testimony in the case, shall be recorded in the minutes; provided, that the substance only of depositions shall be so recorded. A certified copy of such record of testimony may be read in evidence on the trial of the same matter in any other court when taken there by appeal or otherwise. [As amended Acts 1927, 40th Leg., p. 142, ch. 92, § 1.]

Art. 3352. [3276] [1909] [1856] Will probated in another State.—When application is made for the probate of a will which has been probated according to the laws of any of the United States or territories or of any country out of the limits of the United States, a copy of such will and the probate thereof attested by the clerk of the court in which such will was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court, that the said attestation is in due form, may be filed and recorded in the court, and shall have the same force and effect as the original will, if probated in said court; provided, that the validity of such will may be contested in the same manner as the original might have been. [Id.]

CHAPTER SIX

GRANTING LETTERS

Art.
3353. Persons disqualified.
3354. Letters testamentary granted.
3355. When administration granted.
3356. Administration not granted.
3357. Letters granted in order.
3358. Applicants equally entitled.
3359. May waive right.
3360. Letters revoked and granted to another.
3361. Letters revoked and granted to executor upon attaining lawful age.
3362. Executor absent from State.
3363. Letters shall not be revoked except.
3364. When will is discovered after administration.
3365. Executor of will proved in another State.
3366. Bond required.
3367. Further administration.
3368. Executor, etc., removed; not reappointed.
3369. Letters testamentary.
3370. Letters of administration.
3371. Order of court.
3372. Grant of letters may be opposed, etc.

Article 3353. [3277] [1910] [1857] Persons disqualified.—Letters testamentary or of administration shall not be granted to any person of unsound mind or who is under twenty-one years of age, except a surviving husband or wife who may be under twenty-one years of age. [Acts 1876, p. 96; G. L. vol. 8, p. 932.]

Art. 3354. [3278] [1911] [1858] Letters testamentary granted.—When a will has been probated, the court shall within twenty days thereafter, grant letters testamentary, if permitted by law, to the executor or executors appointed by such will, if any there be, or to such of them as are not disqualified, and are willing to accept the trust and qualify according to law. [Id.]

Art. 3355. [3279] [1912] [1859] When administration granted.—When any person shall die intestate, or where no executor is named in a will, or where the executor named shall fail or neglect to accept and qualify within twenty days after the probate of the will, or shall neglect for a period of thirty days after the death of the testator to present the will for probate, then administration of the estate of such intestate, or administration with the will annexed of the estate of such testator shall be granted, should administration appear to be necessary.

Art. 3356. [3280] [1913] [1860] Administration not granted.—No administration upon any estate shall be granted unless there exists a necessity therefor, such necessity to be determined by the court hearing the application.

Art. 3357. [3281] [1914] [1861] Letters granted in order.—Letters testamentary or of administration shall be granted to persons who are qualified to act, in the following order:

1. To the person named as executor in the will of the deceased.
2. To the surviving husband or wife.
3. To the principal devisee or legatee of the testator.
4. To any devisee or legatee of the testator.
5. To the next of kin of the deceased, the nearest in the order of descent first, and so on.
6. To a creditor of the deceased.
7. To any person of good character residing in the county.

Art. 3358. [3282] [1915] [1862] Applicants equally entitled.—When applicants are equally entitled, letters shall be granted to the applicant who, in the judgment of the court, is most likely to administer the estate advantageously, or they may be granted to any two or three of such applicants. [P. D. 5512.]

Art. 3359. [3283] [1916] [1863] May waive right.—The surviving husband or wife, or, if there be no such survivor the heirs or any one of the heirs of the deceased, to the exclusion of any person not equally entitled, may, in open court, or by power of attorney, duly authenticated and filed with the clerk of the county court of the county having jurisdiction of the estate, renounce his right to the administration in favor of some other qualified person, and thereupon the court may grant letters to such other person.

Art. 3360. [3284] [1917] [1864] Letters revoked and granted to another.—Where letters have been granted to one, and another whose right thereto is prior and who has not waived such right and who is not disqualified, makes application for let-

ters, the letters previously granted shall be revoked and other letters shall be granted to the person thus entitled.

Art. 3361. [3285] [1918] [1865] Letters revoked and granted to executor upon attaining lawful age.—Whenever any person named as executor in a will is under age, and letters of administration with the will annexed have been granted to any other person, such executor shall, upon proof that he has attained the age of twenty-one years and is not disqualified otherwise, be entitled to have such letters of administration revoked and letters testamentary granted to him. And when two or more persons are named executors in a will, any one or more of whom are minors when such will is admitted to probate, and letters testamentary have been issued to such only as are of full age, such minor or minors, upon attaining the age of twenty-one years, if not disqualified, shall be permitted to qualify and receive letters. [Id.]

Art. 3362. [3286] [1919] [1866] Executor absent from State.—Whenever a person named as executor in a will was absent from the State when the testator died, or when the will was proved, and was prevented from presenting the will for probate within thirty days after the death of the testator, or from accepting and qualifying as executor within twenty days after the probate of the will or when he shall have been prevented by sickness from so presenting the will or from so accepting and qualifying, he may accept and qualify as executor within sixty days after his return or recovery from sickness, upon proving to the court that he was so absent or prevented by sickness; and, if in the meantime letters of administration have been granted, such letters shall be revoked. [Id.]

Art. 3363. [3287] [1920] [1867] Letters shall not be revoked except.—Letters shall not be revoked and other letters granted under the provisions of either of the four preceding articles, unless application therefor has been filed and the executor or administrator has been cited to appear at a regular term of the court and show cause why such application should not be granted; but in such cases, when the letters are revoked, other letters may be granted without the posting of citation as in other cases.

Art. 3364. [3288] [1921] [1868] When will is discovered after administration.—Whenever letters of administration shall have been granted upon an estate, and it shall afterwards be discovered that the deceased left a lawful will, such will may be proved in the manner provided for the proof of wills; and, if an executor is named in such will, and he is not disqualified, he shall be allowed to qualify and accept as such executor, and the letters previously granted shall be revoked; but if no such executor be named in the will, or if the executor named be disqualified, or shall renounce the executorship, or shall neglect to accept and qualify within twenty days after the date of the probate of the will, or shall neglect for a period of thirty days after the discovery of such will to present it for probate, then administration with the will annexed of the estate of such testator shall be granted as in other cases. All acts done by the first administrator, previous to the qualification of the executor or administrator with the will annexed shall be as valid as if no such will had been discovered. [Id.]

Art. 3365. [3289] [1922] [1869] Executor of will proved in another State.—When a will has been admitted to probate in any State of the United States or territories thereof or in the District of Columbia or in any country without the limits of the United States, and the executor named in such will has qualified, and a duly certified copy of such will and the probate thereof has been filed and recorded in any county court in this State having jurisdiction of the estate, together with the application of such foreign executor for the probate of such will, the same shall be admitted to probate; and letters testamentary shall be granted to such applicant and an order to that effect shall be entered upon the minutes of the court as in other cases; and if letters of administration have been previously granted by such court in this State to any person other than such foreign executor, such letters shall be revoked upon the application of such executor after service of citation upon the person to whom such letters were granted as required in other cases.

Art. 3366. [3290] [1923] [1870] Bond required.—In the case provided for in the preceding article, the executor shall be required to give bond as in other cases, notwithstanding any provision to the contrary in the will, and the order revoking the former letters shall not take effect until such executor has qualified in accordance with law. [P. D. 5517.]

Art. 3367. [3291] [1924] [1871] Further administration.—Whenever any estate is unrepresented by reason of the death, removal or resignation of the executor or administrator, the court shall grant further administration upon such estate when necessary, and with the will annexed, where there is a will, in the same manner and under the same regulations provided for the appointment of the original executors or administrators.

Art. 3368. [3292] [1925] [1872] Executor, etc., removed; not reappointed.—Whenever any person has been removed from the executorship or administration of an estate, he shall not afterward be appointed administrator thereof. [Id.]

Art. 3369. [3293] [1926] [1873] Letters testamentary.—Before granting letters testamentary, it must appear to the court:

1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That the will has been proved as prescribed by law.
5. That the person to whom the letters are to be granted is named as executor in the will.
6. That the person named as executor is not disqualified by law.

The first three subdivisions of this article have no application where letters of administration upon such estate have been previously granted in said court. [Id.]

Art. 3370. [3294] [1927] [1874] Letters of administration.—Before granting letters of administration, it must appear to the court:

1. That the person is dead.
2. That four years have not elapsed since his decease prior to the application.
3. That the court has jurisdiction of the estate.
4. That there is a necessity for an administration upon such estate.
5. That the person to whom the letters are about to be granted is entitled thereto by law and is not disqualified.

The first three subdivisions of this article have no application when letters testamentary or of administration have been previously granted upon such estate by said court. [Id.]

Art. 3371. [3295] [1928] [1875] Order of court.—When letters testamentary or of administration are granted by the court, an order to that effect shall be entered upon the minutes, which order shall state:

1. The name of the testator or intestate.
2. The name of the person to whom the grant of letters is made.
3. If bond is required, the amount thereof.
4. The order shall require the clerk of the court to issue letters in accordance with such order, when the person to whom such letters are granted shall have qualified according to law.

Art. 3372. [3296] [1929] [1876] Grant of letters may be opposed, etc.—When application is made for letters of administration, any person may at any time before the said application is granted, file his opposition thereto in writing, and may apply for the grant of letters to himself or to any other person; and, upon the trial, the court shall grant letters to the person that may seem best entitled to them, having

regard to the provisions of this title, without further notice than that of the original application.

CHAPTER SEVEN

TEMPORARY ADMINISTRATION

Art.
3373. Temporary administrator; appointed, when.
3374. Appointment without application.
3375. Appointment perpetuated.
3376. Citation.
3377. If contested.
3378. Judge may appoint temporary administrator.
3379. Powers of temporary administrator.
3380. List, return of sales, etc.
3381. List, acted upon by the court.

Article 3373. [3297] [1930] [1877] Temporary administrator; appointed, when.—Whenever it appears to the county judge that the interest of an estate requires the immediate appointment of an administrator, he shall, either in open court or in vacation, by writing under his hand and the seal of the court, attested by the clerk, appoint a suitable person temporary administrator with such limited powers as the circumstances of the case may require; and such appointment may be made permanent, as herein provided. [Acts 1876, p. 98; G. L. vol. 8, p. 934; Acts 1921, p. 139.]

Art. 3374. [3298–99] Appointment without application.—Such appointment may be made either upon written application or none, and without citation. It shall define the powers conferred, and such appointment shall not become effective until the order of the court has been recorded in the minutes, and when the clerk has indorsed thereon a certificate that it has been so recorded, he may deliver it to the person appointed upon his taking the oath and making the bond required by law. [Acts 1876, p. 98; G. L. vol. 8, p. 934.]

Art. 3375. [3300] [1933] [1880] Appointment perpetuated.—The order of the court in making such appointment shall state that unless the same is contested at the next regular term of the court, after service of citation, the same shall be made permanent, provided the court is of the opinion that a permanent administrator is necessary. [Id.; Acts 1921, p. 140.]

Art. 3376. Citation.—Immediately after such appointment, the clerk shall issue citation; which shall state the name of the person appointed, when appointed, and the name of the deceased estate, and shall cite all persons interested in the welfare of the estate to appear at the term of the court named in such citation, and contest such appointment if they so desire; and, that, if such appointment is not contested at the term of court so named in the citation, then the same shall become permanent. [Acts 1921, p. 140.]

Art. 3377. If contested.—If such appointment is contested, the court shall hear and determine the same, and during the pendency of such contest, the person so appointed as temporary administrator shall continue to act; and, if such appointment is set aside, the court shall require the person so appointed to file in court, under oath, a complete exhibit of the condition of such estate, and what disposition, if any, he has made of the same, or any portion thereof. [Id.]

Art. 3378. [3301] [1934] [1881] Judge may appoint temporary administrator.—Pending a contest relative to the probate of a will, or the granting of letters of administration, the county judge may appoint a temporary administrator, with such limited powers as the circumstances of the case may require; and such appointment may continue in force until the termination of the contest and the appointment of an executor or administrator with full powers. [Acts 1876, p. 98; G. L. vol. 8, p. 934.]

Art. 3379. [3302] [1935] [1882] Powers of temporary administrator.—Temporary administrators shall have and exercise only such rights and powers, as are specifically expressed in the order of the court appointing them, and any acts performed by them as such administrators that are not so expressly authorized shall be void.

Art. 3380. [3303] [1936] [1883] List, return of sales, etc.—At the expiration of the time for which a temporary administrator has been appointed, he shall file with the clerk of the court, duly verified, a list of all property of the estate which has come to his hands, a return of all sales made by him, and a full exhibit and account of all his acts as such administrator.

Art. 3381. [3304] [1937] [1884] List, acted upon by the court.—The list, return, exhibit and account filed by the temporary administrator, shall be acted upon by the court, and whenever temporary letters shall expire, or cease to be of effect from any cause, the court shall immediately, either in term time or vacation, enter an order upon the probate minutes requiring such temporary administrator to forthwith deliver the estate remaining in his possession to the person legally entitled to the possession of the same.

CHAPTER EIGHT

OATH AND BOND OF EXECUTORS AND ADMINISTRATORS

Art.
3382. Oath of executor or administrator.
3383. Oath of administrator.
3384. Oath of temporary administrator.
3385. Oaths filed with clerk.
3386. Bond of executors and administrators.
3387. Form of bond.
3388. Oath and bond.
3389. When no bond required.
3390. Bond of married woman.
3391. Husband or wife who is a minor.
3392. When new bond may be required.
3393. Judge to require new bond.
3394. Person interested may demand new bond.
3395. Sureties may ask to be discharged.
3396. Citation.
3397. Order requiring new bond.
3398. Functions of executor suspended.
3399. Sureties discharged.
3400. Bond shall not be void.

Article 3382. [3305] [1938] [1885] Oath of executor or administrator.—Before the issuance of letters testamentary or of administration with the will annexed, the person named as executor or appointed administrator with the will annexed shall take and subscribe an oath in form as follows: "I do solemnly swear that the writing which has been offered for probate is the last will of ———, so far as I know or believe, and that I will well and truly perform all the duties of executor of said will (or of administrator with the will annexed, as the case may be) of the estate of said ———." [Acts 1876, p. 100; G. L. vol. 8, p. 936.]

Art. 3383. [3306] [1939] [1886] Oath of administrator.—Before the issuance of letters of administration, the person appointed administrator shall take and subscribe an oath in form as follows: "I do solemnly swear that ——— deceased, died without leaving any lawful will, so far as I know or believe, and that I will well and truly perform all the duties of administrator of the estate of said deceased." [Id.]

Art. 3384. [3307] [1940] [1887] Oath of temporary administrator.—Before the issuance of temporary letters of administration, the person appointed temporary administrator shall take and subscribe an oath in form as follows: "I do solemnly swear that I will well and truly perform the duties of temporary administrator of the estate of ———, deceased, in accordance with law, and with the order of the court appointing me such administrator." [Id.]

Art. 3385. [3308] [1941] [1888] Oaths filed with clerk.—The oaths prescribed by the three preceding articles may be taken before any officer authorized to administrator [administer] oaths, and shall be filed with the clerk of the court granting the letters, and recorded in the minutes of such court.

Art. 3386. [3309] [1942] [1889] Bond of executors and administrators.—Before the issuance of letters testamentary or of administration, the person to whom letters are granted shall enter into bond, to be approved by, and payable to, the county judge of the county, in such penalty as he may direct, not less than double the estimated value of the estate of the testator or intestate, except in case of temporary administrator, when the bond shall be in such sum as the county judge may direct; provided, bonds of executors and administrators may be made by either domestic or foreign corporations permitted to do business in this State, for the purpose of issuing surety, guaranty or indemnity bonds, guaranteeing the fidelity of executors, administrators and guardians, and may be accepted by the county judge. The cost of any such bond of an executor or administrator may be paid out of the estate being administered. [Acts 1876, p. 100; Acts 1897, p. 58; G. L. vol. 8, p. 936; G. L. vol. 10, p. 1112; Acts 1927, 40th Leg., p. 223, ch. 152, § 1.]

Art. 3387. [3310] [1943] [1890] Form of bond.—The following form, or the same in substance, may be used for the bonds of executors and administrators:

"The State of Texas,
"County of.....

"Know all men by these presents, that we, A. B. as principal, and C. D. and E. F. as sureties, are held and firmly bound unto the county judge of the county of ....., and his successors in office, in the sum of..... dollars; conditioned that the above bound A. B. who has been appointed executor of the last will and testament of J. C. deceased, (or has been appointed by the county judge of ..... County, administrator with the will annexed of the estate of J. C. deceased, or has been appointed by the county judge of ..... County, administrator of the estate of J. C. deceased, or has been appointed by the county judge of ..... County, temporary administrator of the estate of J. C. deceased, as the case may be), shall well and truly perform all the duties required of him under said appointment." [Acts 1876, p. 101; G. L. vol. 8, p. 937.]

Art. 3388. [3311–12] Oath and bond.—The oath of an executor or administrator may be taken and subscribed, or his bond may be given and approved, either in term time or vacation, at any time before the expiration of twenty days from the probate of the will or the order granting the letters, or before his letters shall have been revoked for a failure to qualify within the time allowed, and such bonds shall be filed and recorded in the minutes of the court. [Id.]

Art. 3389. [3313] [1946] [1893] When no bond required.—When any testator directs in his will that no security shall be required of the person named therein as the executor, letters testamentary shall be issued to such person without any bond being required, when a will is probated in a Texas court. [Id.]

Art. 3390. [3314] [1947] [1894] Bond of married woman.—When a married woman is appointed executrix or administratrix, she may, jointly with her husband, or without her husband, if he be absent from the State, or insane, or refuses to join with her, execute such bond as the law requires and acknowledge the same before the county judge, county clerk or any notary public of the county where the will was proved or letters were granted; and such bond shall bind her separate estate, but shall not bind her husband as surety unless signed by him and it is approved as such. [Id.]

Art. 3391. [3315] [1948] [1895] Husband or wife who is a minor.—When a surviving husband or wife under twenty-one years of age shall wish to accept and qualify as executor or executrix, or administrator or administratrix, he or she may execute such bond as the law requires and acknowledge the same before the county judge, county clerk or a notary public of the county in which the will was proved or letters of administration were granted, and such bonds shall be as valid as if he or she were of lawful age. [Id.]

Art. 3392. [3316] [1949] [1896] When new bond may be required.—An executor or administrator may be required to give a new bond in the following cases:

1. When the sureties upon the bond or any one of them shall die, remove beyond the limits of the State, or become insolvent.
2. When, in the opinion of the county judge, the sureties upon any such bond are insufficient.
3. When, in the opinion of the county judge, any such bond is defective.
4. When the amount of any such bond is insufficient.
5. When the sureties or any one of them petition the court to be discharged from future liability upon such bond.
6. When the bond and the record thereof have been lost or destroyed. [Id.]

Art. 3393. [3317] [1950] [1897] Judge to require new bond.—When it shall be known to him that any such bond is in any respect insufficient or that it has, together with the record thereof, been lost or destroyed, he shall without delay cause the executor or administrator to be cited to show cause why he should not give a new bond.

Art. 3394. [3318] [1951] [1898] Person interested may demand new bond.—Any person interested in an estate may, upon application in writing filed with the county clerk of the county where the administration is pending, alleging that the bond of the executor or administrator is insufficient or defective, or has been, together with the record thereof, lost or destroyed, cause such executor or administrator to be cited to appear and show cause why he should not give a new bond. [Id.]

Art. 3395. [3319] [1952] [1899] Sureties may ask to be discharged.—The sureties upon the bond of an executor or administrator, or any one of these, may, at any time, present a petition to the county judge praying that such executor or administrator may be required to give a new bond and that he or they may be discharged from all liability for the future acts of such executor or administrator, whereupon such executor or administrator shall be cited to appear and give a new bond. [Id.]

Art. 3396. [3320] [1953] [1900] Citation.—The citations may be issued either in term time or in vacation, and require the party cited to appear before the county judge on some day named therein, not later than ten days from the date of such citation, either in term time or in vacation, and five days personal service thereof, exclusive of the day of service, shall be sufficient.

Art. 3397. [3321] [1954] [1901] Order requiring new bond.—Upon the return of any such citation served, the county judge shall, on the day named therein for the hearing of the matter, whether in term time or vacation, proceed to inquire into the sufficiency of the reasons for requiring a new bond, and if satisfied that a new bond should be required he shall enter an order to that effect, stating in such order the amount of such new bond, and the time within which it shall be given, which shall not be later than twenty days from the date of such order. [Id.]

Art. 3398. [3322] [1955] [1902] Functions of executor suspended.—When an executor or administrator is required to give a new bond, the order requiring such bond shall have the effect to suspend the powers of such executor or administrator, and he shall not thereafter pay out any money of said estate or do any other official act, except to preserve the property of the estate, until such new bond has been given and approved. [Id.]

Art. 3399. [3323] [1956] [1903] Sureties discharged.—When a new bond has been given and approved, the sureties upon the former bond of such executor or administrator are thereby discharged from all liability for the future acts of such executor or administrator, and an order to that effect shall be entered upon the minutes of the court. [Id.]

Art. 3400. [3324] [1957] [1904] Bond shall not be void.—The bonds of executors and administrators shall not become void upon the first recovery, but may be put in suit and prosecuted from time to time until the whole amount thereof shall have been recovered.

CHAPTER NINE

ISSUANCE OF LETTERS

Art.
3401. Clerk shall issue letters.
3402. What constitutes letters.
3403. Letters or certificate made evidence.
3404. Letters shall issue to each.
3405. Other letters.

Article 3401. [3325] [1958] [1905] Clerk shall issue letters.—Whenever an executor or administrator has been qualified in the manner required by law, the clerk of the court granting the letters testamentary or of administration shall forthwith issue and deliver the letters to such executor or administrator. [Acts 1876, p. 97; G. L. vol. 8, p. 933.]

Art. 3402. [3326] [1959] [1906] What constitutes letters.—Letters testamentary or of administration shall be a certificate of the clerk of the court granting the same, attested by the seal of such court, and stating that such executor or administrator, as the case may be, has duly qualified as such as the law requires, the date of such qualification and the name of the deceased. [Id.]

Art. 3403. [3327] [1960] [1907] Letters or certificate made evidence.—Such letters or a certificate of the clerk of the court which granted the same, under the seal of such court, that such letters have been issued, shall be sufficient evidence of the appointment and qualification of an executor or administrator and of the date of such qualification. [Id.]

Art. 3404. [3328] [1961] [1908] Letters shall issue to each.—When two or more persons qualify as executors or administrators, letters shall be issued to each of them so qualifying. [Id.]

Art. 3405. [3329] [1962] [1909] Other letters.—When letters have been destroyed or lost, the clerk may issue other letters in their stead, which shall have the same force and effect as the original letters.

CHAPTER TEN

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Art.
3406. Appointment of appraisers.
3407. Failure to serve.
3408. Inventory and appraisement.
3409. Appraisement sworn to.
3410. List of claims.
3411. Inventory and list sworn to.
3412. Returned within sixty days.
3413. Courts shall approve or disapprove same.
3414. Order of approval.
3415. Order of disapproval.
3416. Duty of executor.
3417. May be cited to make, etc.
3418. Order of the court.
3419. Erroneous inventory or list.
3420. New appraisement.
3421. Order for same.
3422. Replaces original appraisement.
3423. Not more than one re-appraisement.
3424. Evidence.
3425. More than one executor or administrator.

Art. 3406. [3330] [1963] [1910] Appointment of appraisers.—When letters testamentary or of administration shall be granted, the county judge shall, by an order entered on the minutes of the court, appoint three or more disinterested persons, citizens of the county, any two of whom may act, to appraise the estate of the deceased. [Acts 1876, p. 103; G. L. vol. 8, p. 939.]

Art. 3407. [3331] [1964] [1911] Failure to serve.—If from any cause such appointment be not made, or if the appraisers, or any of them so appointed fail to act, or if from any other cause a new appointment is required, the county judge shall by a like order, either in term time or vacation, appoint another appraiser or appraisers, as the case may require.

Art. 3408. [3332] [1965] [1912] Inventory and appraisement.—Every executor or administrator shall, immediately after he has qualified, with the assistance of any two or more of the appraisers appointed by the judge, make, or cause to be made, a full inventory and appraisement of all the estate of the testator or intestate, both real and personal, specifying in such inventory what portion of the estate is the separate property of the deceased, and what portion, if any, is represented as common property. [Id.]

Art. 3409. [3333] [1966] [1913] Appraisement sworn to.—The appraised value of each article of property shall be stated opposite such article in the inventory; and such appraisement shall be duly sworn to and subscribed by the appraisers making the same. [Id.]

Art. 3410. [3334] [1967] [1914] List of claims.—Such executor or administrator shall also make and attach to said inventory a full and complete list of all claims due or owing to the testator or intestate, stating the nature of such claims, the name of the parties owning [owing] the same, the date thereof and the date when due, and the rate of interest each one bears, and shall also specify what portion of such claims is the separate property of the deceased, and what portion, if any, is represented as common property. [Id.]

Art. 3411. [3335] [1968] [1915] Inventory and list sworn to.—Such executor or administrator shall also attach to such inventory and list his affidavit sworn to before some officer of the county authorized by law to administer oaths, that the said inventory and list is a full and complete inventory and list of the property and claims of his testator or intestate that have come to his knowledge. [Id.]

Art. 3412. [3336] [1969] [1916] Returned within sixty days.—The inventory, appraisement and list shall be returned to the court granting the letters, either in term time or vacation, within sixty days from the date of granting such letters.

Art. 3413. [3337] [1970] [1917] Courts shall approve or disapprove same.—Upon return of such inventory, appraisement and list, the judge, either in term time or in vacation, shall examine the same and either approve or disapprove the same. [Id.]

Art. 3414. [3338] [1971] [1918] Order of approval.—Should the inventory, appraisement and list be approved by the judge, he shall cause an order to that effect to be entered upon the minutes, either in term time or vacation, and shall cause such inventory and list to be recorded upon said minutes.

Art. 3415. [3339] [1972] [1919] Order of disapproval.—Should the inventory, appraisement and list, or either of them, be disapproved, an order to that effect shall be entered upon the minutes, either in term time or in vacation, and such order shall further require the executor or administrator to return another inventory, appraisement and list, or either of them, within a time which shall be specified in such order, not to exceed ten days from the date of such order; and the judge may also, if he deems it necessary, appoint new appraisers.

Art. 3416. [3340] [1973] [1920] Duty of executor.—Whenever property or claims of the testator or intestate other than such as may be included in the inventory and list, which have been returned, shall come to the knowledge of the executor or administrator, he shall make and return an additional inventory or list, or both, of such newly discovered property or claims, or both, without delay; and, upon the return of any such additional inventory, the county judge shall, either in term time or vacation appoint appraisers and cause the property named in such additional inventory to be appraised as in the case of original appraisement. [Id.]

Art. 3417. [3341] [1974] [1921] May be cited to make, etc.—Any executor or administrator, on the written complaint of any person interested in

the estate, shall be cited to appear before the court in which the administration was granted, at a regular term thereof, and show cause why he should not be required to make and return an additional inventory or list of claims, or both. [Id.]

Art. 3418. [3342] [1975] [1922] Order of the court.—After hearing such complaint, the court shall, on sufficient proof that any property or claims of the estate have not been included in the inventory and list returned, require an additional inventory or list or both, to be made and returned, including such property or claims, in like manner as original inventories and lists, and within such time as may be fixed by the court by an order to that effect entered upon the minutes. [Id.]

Art. 3419. [3343] [1976] [1923] Erroneous inventory or list.—Any executor or administrator, on complaint in writing of any person interested in the estate, setting forth that an error has been made in the inventory or list of claims returned, and pointing out such error, shall be cited to appear at a regular term of the court and show cause why such alleged error should not be corrected; and, if upon hearing of such complaint it appear to the satisfaction of the court that such inventory or list is in any particular erroneous, such error shall be corrected and an order to that effect shall be entered upon the minutes, specifying such error and the correction thereof.

Art. 3420. [3344] [1977] [1924] New appraisement.—Any person interested in the estate who may deem any appraisement returned therein unjust or erroneous, may, upon complaint in writing, cause the executor or administrator to appear at a regular term of the court and show cause why a new appraisement should not be made. [Id.]

Art. 3421. [3345] [1978] [1925] Order for same.—Upon the hearing of such complaint, if the court be satisfied that such appraisement was erroneous, an order shall be entered upon the minutes appointing appraisers and requiring a new appraisement to be made and returned in like manner as original appraisements. [Id.]

Art. 3422. [3346] [1979] [1926] Replaces original appraisement.—When any such new appraisement is made, returned and approved by the court, it shall stand in place of the original appraisement. [Id.]

Art. 3423. [3347] [1980] [1927] Not more than one reappraisement.—Not more than one reappraisement shall be made, but any person interested in the estate may contest the approval of any appraisement by filing his objections thereto in writing at any time before such appraisement has been approved by the court. [Id.]

Art. 3424. [3348] [1981] [1928] Evidence.—All inventories and appraisements and lists of claims which have been taken, returned and approved in accordance with the provisions of this chapter, or the record thereof, or certified copies of either the originals or the record thereof, may be given in evidence in any of the courts of this State in any suit, by or against the executor or administrator, but shall not be conclusive for or against him, if it be shown:

1. That there is other property belonging to the estate not inventoried; or,
2. That there are other claims belonging to the estate other than those named in the list; or,
3. That certain property or claims named in the list did not belong to the estate; or
4. That the property was not separate or common property as specified in such inventory or list; or,
5. That the property or any part thereof was sold legally and in good faith for less than the appraised value thereof. [Id.]

Art. 3425. [3349] [1982] [1929] More than one executor or administrator.—If there be more than one executor or administrator qualified as such, any one or more of them, on the neglect of the others, may return an inventory and appraisement and list of claims; and the executor or administrator so neglecting shall not thereafter interfere with the estate or have any power over the same; but the executor or administrator so returning shall have the whole administration, unless within sixty days after the return the delinquent or delinquents shall assign to the court in writing and under oath some reasonable excuse which the court may deem satisfactory; and, if no such sufficient excuse shall be assigned within said time, an order shall be entered upon the minutes removing such delinquent or delinquents and revoking his or their letters. [Id.]

CHAPTER ELEVEN

RIGHTS, DUTIES AND POWERS OF EXECUTORS AND ADMINISTRATORS

Art.
3426. Care of property of estate.
3427. Duty as to plantation, etc.
3428. Action of executor.
3429. Diligence to collect claims and recover property.
3430. May purchase and compromise.
3431. Acts valid.
3432. Conveyance of real estate.

Article 3426. [3350] [1983] [1930] Care of property of estate.—The executor or administrator shall take such care of the property of the estate of his testator or intestate as a prudent man would take of his own property, and if there be any buildings belonging to the estate, he shall keep the same in tenable repair, extraordinary casualties excepted, unless directed not to do so by an order of the court. [Acts 1876, p. 104; G. L. vol. 8, p. 940.]

Art. 3427. [3351] [1984] [1931] Duty as to plantation, etc.—If there be a plantation, manufactory or business belonging to the estate and the disposition thereof is not specially directed by will, and, if the same be not required to be at once sold for the payment of debts, the executor or administrator shall carry on the plantation, manufactory or business, or cause the same to be done, or rent the same, as shall appear to be for the best interests of the estate. He shall consider the condition of the estate and the necessity that may exist for future sale of such property for the payment of claims or legacies and shall not extend the time of renting any of the property beyond what may be consistent with the speedy settlement of the estate. [Id.]

Art. 3428. [3352] [1985] [1932] Action of executor.—Any person interested in the estate may, upon written complaint, after citation to the executor or administrator, at a regular term of the court upon good cause shown, obtain an order of the court, which shall be entered upon the minutes, controlling the action of such executor or administrator in regard to such plantation, manufactory or business. [Id.]

Art. 3429. [3353] [1986] [1933] Diligence to collect claims and recover property.—Every executor or administrator shall use ordinary diligence to collect claims due the estate and to recover possession of property of the estate and, if any executor or administrator shall wilfully neglect to use such diligence, he and the sureties on his bond shall be liable, at the suit of any person interested in the estate, for the use of the estate, for the amount of such claims or the value of such property as may have been lost by his neglect to use such diligence. [Id.]

Art. 3430. [3354–55] May purchase and compromise.—When an executor or administrator deems it for the interest of the estate to purchase or exchange property, or to take any claims or property for the use and benefit of the estate in payment of any debt due the estate, or to compound bad or doubtful debts due the estate, or to make compromises or settlements in relation to property or claims in dispute or litigation, he shall present an application in writing to the county court, at a regular term thereof, representing the facts; and, if the court is satisfied that it will be to the interest of the estate to grant the same, an order shall be entered showing the authority

granted. The executor or administrator may also release mortgages upon payment of the debt secured thereby. [Id.]

Art. 3431. [3356] [1989] [1936] Acts valid.—Should there be more than one executor or administrator of the same estate at the same time, the acts of one of them as such executor or administrator shall be as valid as if all had acted jointly; and, in case of the death, resignation or removal of an executor or administrator, if there be a co-executor or co-administrator of such estate, he shall proceed with the administration as if no such death, resignation or removal had occurred.

Art. 3432. [3357] [1990] [1937] Conveyance of real estate.—The preceding article shall not be construed to authorize one of several executors to convey real estate, but in such case all the executors who have qualified as such and who are acting as such shall join in such conveyance.

CHAPTER TWELVE

ADMINISTRATION UNDER A WILL

Art.
3433. Directions in will to be executed.
3434. Citation to executor.
3435. Order of the court.
3436. Testator may provide that no action be had in court, etc.
3437. Creditor may sue executor.
3438. Executor without bond may be required to give bond.
3439. Order requiring bond.
3440. Bond in such case.
3441. Failure to give bond.
3442. Estate may be partitioned.
3443. Heirs required to give bond, when.
3444. Failing to give bond, estate administered how.
3445. Bond filed and recorded.
3446. Creditor may sue on bond.
3447. Costs of such proceeding.
3448. Executor may sell property.
3449. Administration under will.
3450. Rights of legatee or devisee.
3451. Effect of naming an executor in a will.

Article 3433. [3358–59] Directions in will to be executed.—When a will has been probated, its provisions and directions shall be specifically executed, unless annulled or suspended by order of the court probating the same in a proceeding instituted for that purpose by some person interested in the estate. Such proceeding shall be by application in writing, filed with the clerk of the court, setting forth the objectionable provisions and directions in the will, and the grounds of objections. [P. D. 5623.]

Art. 3434. [3360] [1993] [1940] Citation to executor.—Upon the filing of such application, the clerk shall issue a citation for the executor or administrator to appear at a regular term of such court and answer such application; the substance of the application shall be stated in the citation; and such citation shall further direct such executor or administrator to refrain from executing the provisions and directions in the will that are objected to, until such application has been heard and decided by the court.

Art. 3435. [3361] [1994] [1941] Order of the court.—If it appears upon the hearing of such application that no material injury to the interests of the applicant will be occasioned by executing the provisions and directions of the will, and that such provisions and directions are legal, the objections shall be overruled, and the provisions and directions objected to shall be confirmed and executed, and an order to that effect shall be entered upon the minutes; otherwise, an order shall be entered upon the minutes of the court annulling the provisions and directions in the will to which objections are sustained, or suspending the execution of the same until the further order of the court.

Art. 3436. [3362] [1995] [1942] Testator may provide that no action be had in court, etc.—Any person capable of making a will may so provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisement and lists of claims of his estate. [Acts 1876, p. 124; G. L. vol. 8, p. 960.]

Art. 3437. [3363] [1996] [1943] Creditor may sue executor.—Any person having a debt or claim against the estate may enforce the payment of the same by suit against the executor; and, when judgment is recovered against the executor, the execution shall run against the estate of the testator in the hands of the executor that may be subject to such debt. The executor shall not be required to plead to any suit brought against him for money until after one year from the date of the probate of such will. [Id.]

Art. 3438. [3364] [1997] [1944] Executor without bond may be required to give bond.—Where no bond is required of an executor, any person having a debt, claim or demand against the estate, to the justice of which oath has been made by himself, his agent or attorney, or any person interested in such estate, whether in person or as the representative of another, may by complaint in writing filed in the court where such will is probated, cause such executor to appear at a regular term of the court and show cause why he should not be required to give bond. [Id.]

Art. 3439. [3365] [1998] [1945] Order requiring bond.—Upon hearing such complaint, if it appears to the court that such executor is wasting, mismanaging or misapplying such estate, and that thereby a creditor may probably lose his debt, or some person his interest in the estate, the court shall enter an order upon the minutes requiring such executor to give bond within ten days from the date of such order. [Id.]

Art. 3440. [3366] [1999] [1946] Bond in such case.—Such bond shall be for an amount equal to double the full value of the estate, to be approved by, and payable to, the county judge, conditioned that said executor will well and truly administer such estate, and that he will not waste, mismanage or misapply the same; which bond shall be filed, and approved by the county judge, and recorded in the minutes. [Id.]

Art. 3441. [3367] [2000] [1947] Failure to give bond.—Should the executor fail to give such bond within ten days after the order requiring him to do so, then the county judge, without citation, either in term time or in vacation, shall remove such executor and appoint some competent person in his stead, who shall administer the estate according to the provisions of such will, and who, before he enters upon the administration of said estate, shall take the oath required of executors and shall give the bond required in the preceding article. [Id.]

Art. 3442. [3368] [2001] [1948] Estate may be partitioned.—If such will does not distribute the entire estate of the testator, or provide a means for partition of said estate, the executor may file his final account in the court in which the will was probated, and ask partition and distribution of the estate; and the same shall be partitioned and distributed in the manner provided for the partition and distribution of estates administered under the direction of the court. [Id.]

Art. 3443. [3369] [2002] [1949] Heirs required to give bond, when.—When it is provided in a will that no action shall be had in the county court, except to probate and record the will and return an inventory of the estate, any person having a debt against such estate may, by written complaint filed in the court where such will was probated, cause all the persons entitled to any portion of such estate under the will or as heirs at law to be cited to appear before such court at some regular term and execute an obligation, for an amount equal to the full value of such estate as shown by the inventory and list of claims, such obligation to be payable to the county judge, and to be approved by him, and conditioned that all obligors shall pay all debts that may be established against such estate in the manner provided by law. [Id.]

Art. 3444. [3370] [2003] [1950] Failing to give bond, estate administered how.—Upon the return of the citation served, unless such persons so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such obligation to the satisfaction of the county judge, such estate shall thereafter be administered and settled under the direction of the court as other estates are required to be settled. [Id.]

Art. 3445. [3371] [2004] [1951] Bond filed and recorded.—If the obligation is executed and approved, it shall be filed and recorded in the minutes of the court, and the administration shall proceed as hereinbefore provided. [Id.]

Art. 3446. [3372] [2005] [1952] Creditor may sue on bond.—Creditors of the estate may sue on such obligation, and shall be entitled to judgment thereon for the amount of their debt, or they may have their action against those in possession of the estate. [Id.]

Art. 3447. [3373] [2006] [1953] Costs of such proceeding.—All costs of such proceeding shall be paid by the persons entitled to the estate, according to their respective interests therein. [Id.]

Art. 3448. [3374] [2007] [1954] Executor may sell property.—Whenever by the term of a will an executor is authorized to sell any property of the testator, no order of the county judge shall be necessary to authorize the executor to make such sale, and, when any particular directions are given by a testator in his will respecting the sale of any property belonging to his estate, the same shall be followed, unless such directions have been annulled or suspended by order of the court.

Art. 3449. [3376] [2009] [1956] Administration under will.—The administration of an estate under a will shall in all respects be governed by the provisions of the law respecting the administration of intestates' estates, except where it is otherwise provided by law or by the provisions and directions of the will.

Art. 3450. [3377] [2010] [1957] Rights of legatee or devisee.—Any devisee or legatee may obtain from the county judge of the county where the will was proved an order for the executor or administrator to deliver to him the property devised or bequeathed, provided that there will remain in the hands of such executor or administrator, after such delivery, a sufficient amount of the estate for the payment of all debts against said estate. Such devisee shall first cause the executor or administrator, and the other devisees or legatees, if any, and the heirs, if any, to be cited to appear and show cause why such order should not be made. [Id.]

Art. 3451. [3378] [2011] [1958] Effect of naming an executor in a will.—The naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against him; and. in all cases where an executor or administrator may be indebted to his testator or intestate, he shall account for the debt in the same manner as if it were cash in his hands; provided, however, that if said debt was not due at the time of receiving letters, he shall only be required to account for it from the date when it shall become due. [Id.]

CHAPTER THIRTEEN

SUBSEQUENT EXECUTORS AND ADMINISTRATORS

Art.
3452. Subsequent administrator under will.
3453. Powers.
3454. Shall proceed, how.
3455. Executor after administration.
3456. Inventories to be returned.

Article 3452. [3379] [2012] [1959] Subsequent administrator under will.—When an administrator of the estate not administered has been, or shall be hereafter, appointed, he shall succeed to all the rights, powers and duties of the former executor or administrator, except such rights and powers conferred on the former executor by the will of the testator as are different from those conferred by this title in executors generally. [Acts 1876, p. 98; G. L. vol. 8, p. 934.]

Art. 3453. [3380] [2013] [1960] Powers.—Such administrator may make himself, and may be made, a party to suits prosecuted by or against the former executor or administrator of the estate. He may settle with the former executor or administrator, and receive and receipt for all such portion of the estate as remains in his hands. He may bring suit on the bond or bonds of the former executor or administrator, in his own name as administrator, for all the estate that has not been accounted for by such former executor or administrator. [Id.]

Art. 3454. [3381] [2014] [1961] Shall proceed, how.—Such administrator shall proceed to administer such estate in like manner as if his administration was a continuation of the administration of the former executor or administrator, with the exceptions hereinbefore named. [Id.]

Art. 3455. [3382] [2015] Executor after administration.—Whenever an executor shall accept and qualify as such after letters of administration shall have been granted upon the estate, such executor shall, in like manner, succeed to the previous administrator, and he shall administer the estate in like manner as if his administration was a continuation of the former one, subject, however, to any legal directions of the testator contained in his will, in relation to the estate. [Id.]

Art. 3456. [3383] [2016] [1963] Inventories to be returned.—An executor or administrator who has been qualified as such to succeed a prior executor or administrator shall make and return to the court an inventory and appraisement and list of claims of the estate, within one month after being qualified, in like manner as is required of original executors and administrators; and they shall also in like manner return additional inventories and lists of claims. [Id.]

CHAPTER FOURTEEN

WITHDRAWING ESTATES FROM ADMINISTRATION

Art.
3457. Executor or administrator may be cited.
3458. May give bond.
3459. Bond filed and recorded.
3460. Partition.
3461. Lien on property.
3462. Creditor may sue on bond.
3463. Other creditors may sue.
3464. Creditor may sue distributee.
3465. Order of discharge.

Article 3457. [3384] [2017] [1964] Executor or administrator may be cited.—At any time after the return of inventory, appraisement and list of claims of a deceased person, any one entitled to a portion of the estate, may, by a written complaint, filed in the court where such case is pending, cause the executor or administrator of the estate to be cited to appear at a regular term of the court and render an exhibit under oath of the condition of the estate. [Acts 1876, p. 126; G. L. vol. 8, p. 962.]

Art. 3458. [3385] [2018] [1965] May give bond.—Upon the return of such citation served, the persons so entitled to such estate, or any of them, or any persons for them, may execute and deliver to the county judge an obligation payable to him, to be approved by such county judge for an amount equal to at least double the appraised value of the estate as ascertained by the appraisement and list of claims returned, conditioned that the persons who execute such obligation shall pay all the debts against the estate not paid that have been allowed by the executor or administrator and approved by the county judge, or that may have been established by suit, or that may be established by suit against said estate, and will pay to the executor or administrator any balance that may

be found to be due him by the judgment of the court on his exhibit. [Id.]

Art. 3459. [3386] [2019] [1966] Bond filed and recorded.—When such bond has been given and approved, it shall be filed and recorded in the minutes; and the court shall thereupon enter an order upon the minutes directing and requiring the executor or administrator to deliver forthwith to such person or persons the portion or portions of such estate to which he or they are entitled. [Id.]

Art. 3460. [3387] [2020] [1967] Partition.—Any person so entitled to any portion of the estate may on written application to the court cause a partition and distribution of such estate to be made among the persons entitled thereto, in accordance with the provisions of this title respecting the partition and distribution of estates. [Id.]

Art. 3461. [3388] [2021] [1968] Lien on property.—A lien shall exist on all of said estate in the hands of the distributees, and those claiming under them, with notice of such lien, to secure the ultimate payment of the aforesaid obligation. [Id.]

Art. 3462. [3389] [2022] [1969] Creditor may sue on bond.—Any creditor of such estate whose claim is unpaid, but has been allowed by the executor or administrator, and approved by the county judge or established by suit against the executor or administrator previous to the filing of such obligation, shall have the right to sue on such obligation in his own name, and shall be entitled to judgment thereon for the amount of his claim. [Id.]

Art. 3463. [3390] [2023] [1970] Other creditors may sue.—Any other creditor of such estate whose claim is not barred by limitation shall have the right to sue on such obligation, and shall be entitled to judgment thereon for such debt as he may establish against the estate. [Id.]

Art. 3464. [3391] [2024] [1971] Creditor may sue distributee.—Any creditor may sue any distributee, or he may sue all the distributees together, who have received any of the estate; but no one of such distributees shall be liable beyond his just proportion according to the estate he may have received in the distribution. [Id.]

Art. 3465. [3392] [2025] [1972] Order of discharge.—When an estate has been withdrawn from further administration under the provisions of this chapter, an order shall be entered upon the minutes discharging the executor or administrator and declaring the administration closed.

CHAPTER FIFTEEN

REMOVAL AND RESIGNATION

1. REMOVAL

Art.
3466. Without notice.
3467. With notice.
3468. Citation not served.
3469. Order to state cause.

2. RESIGNATION

3470. Application to resign.
3471. Citation.
3472. Exhibit and account.
3473. Approval of same.
3474. Order of discharge.
3475. Requisites of discharge.

1. REMOVAL

Article 3466. [3393] [2026] [1973] Without notice.—An executor or administrator may be removed by the county judge without notice, at a regular term of the court, in the following cases:

1. When he neglects to qualify in the manner and within the time required in this title.

2. When he neglects to return to the court an inventory and appraisement and list of claims of the estate, in the manner and within the time required in this title.

3. When he has been required to give a new bond and neglects to do so within the time prescribed by the court.

4. When he absents himself from the State for a period of three months at one time, without permission of the court.

5. In such other cases as are specially provided for in this title. [Acts 1876, p. 99; G. L. vol. 8, p. 935.]

Art. 3467. [3394] [2027] [1974] With notice.—An executor or administrator may be removed by the county judge on his own motion, or on the complaint of any person interested in the estate, after being cited to answer such motion or complaint at a regular term of the court in the following cases:

1. When there shall appear sufficient grounds to believe that he has misapplied, embezzled or removed from the State, the property or any part thereof, committed to his charge, or that he is about to misapply, embezzle or remove from the State any of such property.

2. When it is proved that he has been guilty of gross neglect, or mismanagement in the performance of his duties as such executor or administrator.

3. When he fails to obey any order of the court consistent with this title, made in relation to the estate committed to his charge.

4. When he becomes of unsound mind, or from any other cause he is incapable of performing the duties of his trust.

5. When he fails to make an annual exhibit fully showing the condition of the estate he represents, or fails to make to the court any exhibit he is required to make by law.

6. When he fails to make a final settlement for three years after the grant of letters, unless the time be extended by the court, after satisfactory showing being made under oath. [Acts 1881, p. 31; G. L. vol. 9, p. 123.]

Art. 3468. [3395] [2028] [1975] Citation not served.—In the cases enumerated in the preceding article, when proof is made that the executor or administrator has removed from the State, or is eluding the process of the court, the motion or complaint may be heard, though the citation be not served. [Acts 1876, p. 99; G. L. vol. 8, p. 935.]

Art. 3469. [3396] [2029] [1976] Order to state cause.—When an executor or administrator is removed, the order to that effect shall set forth the cause of such removal. [Id.]

2. RESIGNATION

Art. 3470. [3397] [2030] [1977] Application to resign.—An executor or administrator may resign the administration of an estate, and in such case, he shall present to the court in which the administration is pending, a written application stating such wish, and accompany said application with a full and complete exhibit of the condition of the estate, together with his administration account; which exhibit and account shall both be verified by affidavit. [Acts 1876, p. 100; G. L. vol. 8, p. 936.]

Art. 3471. [3398–99] Citation.—Upon the filing of such application, exhibit and account, the clerk shall make out a citation returnable to some regular term of the court; which citation shall state the presentation of such application, exhibit and account, the term of the court at which the same will be acted upon, and shall require all those interested in the estate to appear and contest the exhibit and account if they see proper. Such citation shall be published for at least twenty days in a newspaper printed in the county, if there be one; if not, then by posting copies thereof for a like period in the manner required for posting other citations. [Id.]

Art. 3472. [3400] [2033] [1980] Exhibit and account.—At the return term of such citation, or at some other term to which it may have been continued, upon the county judge being satisfied that such citation has been published or posted, as the case may be, he shall proceed to examine such exhibit and account, and to hear all proof that may be offered in

support of the same, and all objections, exceptions and proof offered against the same, and shall, if necessary, restate such exhibit and account, and shall audit and settle the same. [Id.]

Art. 3473. [3401] [2034] [1981] Approval of same.—If the court is satisfied that such executor or administrator has accounted for all said estate according to law, the county judge shall enter an order approving such exhibit and account, and requiring such executor or administrator to deliver the estate, remaining in his possession, to some person qualified by law to receive it. [Id.]

Art. 3474. [3402] [2035] [1982] Order of discharge.—When the estate has been delivered in accordance with the order of the court, the court shall enter an order either in term time or in vacation accepting the resignation of such executor or administrator and discharging him from such trust. [Id.]

Art. 3475. [3403] [2036] [1983] Requisites of discharge.—No executor or administrator shall be discharged until the exhibit and account required have been made, returned, settled and approved as provided in this chapter, nor until he has delivered the estate, if there be any remaining in his possession, as hereinbefore required.

CHAPTER SIXTEEN

ALLOWANCE TO WIDOW AND MINOR CHILDREN

Art.
3476. Allowance to widow and minors.
3477. Amount of allowance.
3478. Not made, when.
3479. Order fixing allowance.
3480. To whom paid.
3481. May take property for.
3482. Sale ordered.
3483. Allowance preferred.
3484. Allowance apportioned.

Article 3476. [3404] [2037] [1984] Allowance to widow and minors.—At the first regular term of the court after the original grant of letters testamentary or of administration, or at a subsequent term, thereafter within twelve months after the grant of such original letters, the court shall fix an allowance for the support of the widow and minor children of the deceased. [Acts 1876, p. 105; G. L. vol. 8, p. 941.]

Art. 3477. [3405] [2038] [1985] Amount of allowance.—Such allowance shall be of an amount sufficient for the maintenance of such widow and minor children for one year from the time of the death of the testator or intestate. Such allowance shall be fixed with regard to the facts existing during the first year after such death. [Acts 1887, p. 73; G. L. vol. 9, p. 871.]

Art. 3478. [3406] [2039] [1986] Not made, when.—No such allowance shall be made for the widow when she has separate property adequate to her maintenance; nor shall such allowance be made for the minor children when they have property in their own right adequate to their maintenance. [Id.; Acts 1876, p. 105; G. L. vol. 8, p. 941.]

Art. 3479. [3407] [2440] [1987] Order fixing allowance.—When an allowance has been fixed, an order shall be entered stating the amount thereof, and directing the executor or administrator to pay the same in accordance with law.

Art. 3480. [3408] [2041] [1988] To whom paid.—The executor or administrator shall pay such allowance:

1. To the widow, if there be one, for the use of herself, and the minor children, if such children be hers.

2. If the widow is not the mother of such minor children, or some of them, the portion of such allowance necessary for the support of such minor child or children, of which she is not the mother, shall be paid to the guardian or guardians of such minor child or children.

3. If there be no widow, the allowance to the minor child or children shall be paid to the guardian or guardians of such minor child or children.

Art. 3481. [3409] [2042] [1989] May take property for.—The widow, or the guardian of the minor children, as the case may be, shall have the right to take in payment of such allowance, or any part thereof, any of the personal property of the estate at its appraised value as shown by the appraisement returns. [Id.]

Art. 3482. [3410] [2043] [1990] Sale ordered.—If there be no personal effects of the deceased that the widow or guardian is willing to take for such allowance, or not a sufficiency of them, and if there be no funds or not sufficient funds in the hands of such executor or administrator to pay such allowance, or any part thereof, then the county judge, so soon as the inventory and appraisement and list of claims are returned and approved, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require. [Id.]

Art. 3483. [3411] [2044] [1991] Allowance preferred.—The allowance made for the support of the widow and minor children of deceased shall be paid in preference to all other debts or charges against the estate, except expenses of the funeral and last sickness of deceased.

Art. 3484. [3412] [2045] [1992] Allowance apportioned.—The said allowance shall be paid as follows:

1. If there be both widow and minor child or children, the widow shall be entitled to one-half and the minor child or children to the other half.

2. If there be a widow and no minor child or children, the widow shall receive the whole.

3. If there be a minor child or children and no widow, such minor child or children shall receive the whole.

CHAPTER SEVENTEEN

SETTING APART THE HOMESTEAD AND OTHER EXEMPT PROPERTY TO WIDOW AND CHILDREN

Art.
3485. Court to set apart exempt property.
3486. Allowance in lieu of exempt articles.
3487. Allowance limited.
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3491. Sale to raise allowance.
3492. Liens have preference.
3493. When estate is solvent.
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3495. Exempt property, not considered.
3496. When homestead not partitioned.
3497. When homestead partitioned.
3498. Separate and community homestead.
3499. Homestead not liable for debts, except.
3500. Exempt property liable for debts.
3501. Homestead rights of surviving husband.

Article 3485. [3413] [2046] [1993] Court to set apart exempt property.—At the first term of the court after an inventory, appraisement and list of claims have been returned, the court shall by an order entered upon the minutes, set apart for the use and benefit of the widow and minor children and unmarried daughters remaining with the family of the deceased, all such property of the estate as may be exempt from execution or forced sale by the constitution and laws of the State with the exception of any exemption of one year's supply of provisions. [Acts 1876, p. 106; G. L. vol. 8, p. 942.]

Art. 3486. [3414] [2047] [1994] Allowance in lieu of exempt articles.—In case there should not be among the effects of the deceased all or any of the specific articles so exempted, the court shall make a reasonable allowance in lieu thereof, to be paid to such widow and children, or such of them as there may be, as hereinafter directed. [Id.]

Art. 3487. [3415] [2048] [1995] Allowance limited.—The allowance in lieu of a homestead shall in no case exceed five thousand dollars and the allowance for other exempted property shall in no

case exceed five hundred dollars, exclusive of the allowance provided in the preceding chapter. [Id.]

Art. 3488. [3416] [2049] [1996] To whom delivered.—The exempted property set apart to the widow and children shall be delivered by the executor or administrator without delay as follows:

1. If there be a widow and no children, or if the children be the children of the widow, the whole of such property shall be delivered to the widow.

2. If there be children and no widow, such property shall be delivered to such children if they be of lawful age, or to their guardian if they be minors, or the same may be equally divided among them, except the homestead.

3. If there be children of the deceased of whom the widow is not the mother, the share of such children in such exempted property, except the homestead, shall be delivered to such children if they be of lawful age, or to their guardian, if they be minors, or may be equally divided between them.

4. In all cases, the homestead shall be delivered to the widow, if there be one, and if there be no widow, to the guardian of the minor children and unmarried daughters, if any, living with the family.

Art. 3489. [3417] [2050] [1997] Allowance paid, how.—The allowances made in lieu of any of the exempted property shall be paid either in money out of the funds of the estate that may come to the hands of the executor or administrator, or in any property of the deceased that such widow or children if they be of lawful age, or their guardian if they be minors, may choose to take at the appraisement, or a part thereof, or both, as they may select. [Id.]

Art. 3490. [3418] [2051] [1998] To whom paid.—Such allowance shall be paid by the executor or administrator in the following manner:

1. If there be a widow and no children, the whole to be paid to such widow.

2. If there be children and no widow, the whole to be paid to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them.

3. If there be both widow and children, the whole to be paid to such widow if she be the mother of such children, but if she be not the mother of such children, one-half to be paid to such widow and the other half to such children if they be of lawful age, or to their guardian if they be minors, or to be equally divided among them. [Id.]

Art. 3491. [3419] [2052] [1999] Sale to raise allowance.—If there be no property of the deceased that such widow or children are willing to take for such allowance, or not a sufficiency, and there be no funds, or not sufficient funds of the estate in the hands of such executor or administrator to pay such allowance, or any part thereof, the county judge, on the application in writing of such widow and children, shall order a sale of so much of the estate for cash as will be sufficient to raise the amount of such allowance, or a part thereof, as the case may require. [Id.]

Art. 3492. [3420] [2053] [2000] Liens have preference.—No property upon which there is a valid subsisting lien or encumbrance, shall be set apart to the widow or children as exempt property, or appropriated to make up allowances made in lieu of exempt property, or for the support of the widow or children, until the debts secured by such liens are first discharged. This article applies to all estates whether solvent or insolvent. [Id.; Acts 1917, p. 60.]

Art. 3493. [3421] [2054] [2001] When estate is solvent.—If, upon a final settlement of such estate, it shall appear that the same is solvent, the exempted property, except the homestead, which has been set apart to the widow or children or both, together with any allowance that has been received by them in lieu thereof, shall be subject to partition and distribution among the heirs and distributees of such estate in like manner as the other property of the estate. [Acts 1876, p. 106; G. L. vol. 8, p. 942.]

Art. 3494. [3422] [2055] [2002] When estate is insolvent.—Should the estate, upon final settlement, prove to be insolvent, the title of the widow and children to all the property and allowances set apart or paid to them, under the provisions of this and of the preceding chapter, shall be absolute, and shall not be taken for any of the debts of the estate except as hereinafter provided. [Id.]

Art. 3495. [3423] [2056] [2003] Exempt property, not considered.—In ascertaining whether an estate is solvent or insolvent, the exempt property set apart to the widow or children, or the allowance in lieu thereof, and the allowance provided for in the preceding chapter, shall not be estimated or considered as assets of the estate.

Art. 3496. [3424] [2057] [2004] When homestead not partitioned.—The homestead shall not be partitioned among the heirs of the deceased during the lifetime of the widow, or so long as she may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted under the order of the proper court having jurisdiction, to use and occupy the same. [Const. art. 16, sec. 52.]

Art. 3497. [3425] [2058] [2005] When homestead partitioned.—When the widow dies or sells her interest in the homestead, or elects to no longer use or occupy the same as a homestead, and when the proper court no longer permits the guardian of the minor children to use and occupy the same as a homestead, it may be partitioned among the respective owners thereof in like manner as other property held in common.

Art. 3498. [3426] [2059] [2006] Separate and community homestead.—The homestead rights of the widow and children of the deceased are the same whether the homestead be the separate property of the deceased or community property between the widow and the deceased, and the respective interests of such widow and children shall be the same in one case as in the other.

Art. 3499. [3427] [2060] [2007] Homestead not liable for debts, except.—The homestead shall not be liable for the payment of any of the debts of the estate, except for the purchase money thereof, the taxes due thereon or for work and material used in constructing improvements thereon; and in this last case only when the work and material are contracted for in writing, with the consent of the wife, given in the same manner as required in making a sale and conveyance of the homestead. [Const. art. 16, sec. 50.]

Art. 3500. [3428] [2061] [2008] Exempt property liable for debts.—The exempted property, other than the homestead, or any allowance made in lieu thereof, shall be liable for the payment of the funeral expenses and the expenses of last sickness of deceased, when presented within the time prescribed therefor, but such property shall not be liable for any other debts of the estate.

Art. 3501. [3429] [2062] [2009] Homestead rights of surviving husband.—On the death of the wife, leaving a husband surviving, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of such surviving husband, or so long as he may elect to use or occupy the same as a homestead. [Const. art. 16, sec. 51.]

CHAPTER EIGHTEEN

PRESENTMENT OF CLAIMS

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3505. Notice to holders of recorded claims.
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3507. One notice sufficient.
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3527. Action of court thereon, etc.
3528. Application of law.
3529. Claims not allowed.
3530. No judgment in favor of claim.

Article 3502. [3430] [2063] [2010] Notice.—Executors or administrators within one month after receiving letters, shall publish in some newspaper printed in the county where the letters were issued, if there be one, a notice requiring all persons having claims against the estate of the testator or intestate to present the same within the time prescribed by law; which notice shall state the time of the original grant of letters testamentary or of administration, and the residence and post-office address of such executor or administrator, and shall be published once a week for four successive weeks. [Acts 1876, p. 106; G. L. vol. 8, p. 942.]

Art. 3503. [3431] [2064] [2011] Copy of notice, filed and recorded.—A copy of such printed notice, together with the affidavit of the publisher, duly sworn to and subscribed before a proper officer, to the effect that it was published once a week for four consecutive weeks, shall be filed and recorded in the court where the cause is pending. [Id.]

Art. 3504. [3432] [2065] [2012] Posting of notice.—When no newspaper is printed in the county, the notice required shall be posted at the courthouse door of the county where the letters were issued, for four consecutive weeks, and a copy of such notice, with the return that such notice has been posted according to law, shall be filed and recorded. [Id.]

Art. 3505. Notice to holders of recorded claims.—An executor or administrator within four months after receiving letters shall give notice of the issuance of such letters, to each and all persons having a claim for money against the testator or intestate at the time of death, provided:

1. That such claim is secured by a deed of trust, mortgage, or vendors, mechanics or other contractors lien upon real estate belonging to such testator or intestate.

2. That the instrument creating, extending, or transferring such lien is duly recorded prior to the death of such testator or intestate in the county in which the real estate covered by such lien is situated, and,

3. That the instrument creating, extending, or transferring such lien shall contain a statement of the residence and post-office address of the holder of such claim (whether original payee or transferee). Said notice stating the original grant of letters testamentary or of administration shall be given by mailing same by registered letter addressed to the record holder of such indebtedness or claim at the post-office address given in said instrument creating such lien, or in the last recorded extension or transfer of said lien in case same has been transferred of record. [Acts 1913, p. 253.]

Art. 3506. Notice and affidavit to be filed.—A copy of such notice together with return receipt and accompanied by the affidavit of the executor or administrator, stating that said notice had been mailed as required by law, and giving the name of the person to whom sent, shall be filed and recorded in the court from which the letters issued. [Id.]

Art. 3507. [3433] [2066] [2013] One notice sufficient.—If such notices have been given by a former executor or administrator, or by one where several are acting, it shall be sufficient. [Id.; Acts 1876, p. 106; G. L. vol. 8, p. 942.]

Art. 3508. [3434] [2067] [2014] Penalty for neglect to give notice.—If the executor or administrator fails to give or cause such notices to be given, he and his sureties upon his bond shall be liable for any damage which any person may sustain by reason of such neglect, unless it appears that such person had such notice otherwise; and such executor or administrator shall be removed by the county judge at any regular term of the court on the complaint of any person interested in the estate after being cited to answer such complaint. [Id.]

Art. 3509. [3435] [2068] [2015] Claims postponed if not presented in one year.—All claims for money against a testator or intestate shall be presented to the executor or administrator within one year after the original grant of letters testamentary or of administration, otherwise the payment thereof shall be postponed until the claims which have been presented within one year and allowed by the executor or administrator and approved by the county judge have been first entirely paid. [Id.]

Art. 3510. [3435] [2068] [2015] Exception.—If the notice to holders of recorded claims has not been given by the executor or administrator as provided in this title, then failure of such holder to present his claim within one year shall not postpone the payment thereof, as provided in the preceding article, nor shall any of the provisions of said article apply to such claim. [Id.]

Art. 3511. [3436] [2069] [2016] Claims for funeral expenses.—Claims for funeral expenses and expenses of last sickness of the deceased shall be presented within sixty days after the original grant of letters testamentary or of administration or the exempted property set apart to the widow and children, or allowances made them under the provisions of this title shall no longer be liable to the payment of such claims or any part thereof.

Art. 3512. [3437] [2070] [2017] Absence of executor.—If the executor or administrator absent himself from the State, the period of such absence shall not be computed in estimating the time mentioned in the three preceding articles. [Id.]

Art. 3513. [3438] [2071] Joint obligation.—When two or more persons are jointly bound for the payment of a debt, or for any other purpose, upon the death of either of said persons so bound, his estate may be charged by virtue of such obligation in the same manner as if the obligors had been bound severally as well as jointly. [Acts 1887, p. 17; G. L. vol. 9, p. 815.]

Art. 3514. [3439] [2072] [2018] Affidavit to claim.—No executor or administrator shall allow claim for money against his testator or intestate, nor shall the county judge approve the same, unless such claim is accompanied by an affidavit that the claim is just and that all legal offsets, payments and credits known to affiant have been allowed. Such affidavit, if made by any other person than the owner of the claim, shall state further that the affiant is cognizant of the facts contained in his affidavit. [Acts 1876, p. 106; G. L. vol. 8, p. 942.]

Art. 3515. [3440–1–2] Claim lost or destroyed.—If a claim is lost or destroyed, the claimant, or some one for him, may make affidavit to the fact of such loss or destruction, stating the amount, date and nature of such claim and when due, and that the same is just, and that all legal offsets, payments and credits known to affiant have been allowed, and that the claimant is still the owner of the same; and it must be proved by disinterested testimony taken in open court, or by deposition, before such claim is allowed. If such a claim is allowed or approved without such affidavit and proof, such allowance or approval shall be void.

Art. 3516. [3443] [2076] [2022] Memorandum of allowance or rejection.—When any claim for money against an estate is presented to the

executor or administrator, properly authenticated, he shall indorse thereon or annex thereto a memorandum in writing signed by him, stating the time of its presentation, and that he allows or rejects the claim, or what portion thereof he allows or rejects, as the case may be. [Id.]

Art. 3517. [3444] [2077] [2023] Failure to indorse or annex memorandum.—When a claim for money against an estate is presented to the executor or administrator for his action, and he shall fail to indorse thereon, or annex thereto, such memorandum as required by the preceding article, such failure shall operate as a rejection of the claim, and shall authorize the claimant to bring suit to establish it, as if such claim had been rejected; and such executor or administrator shall be removed on the complaint of any person interested in such claim, after being cited to appear and answer such complaint, and upon proof of such failure. [Id.]

Art. 3518. [3445] [2078] [2024] When claim is allowed.—If a claim or a part thereof, be allowed by an executor or administrator, it shall be presented within twelve months after the issuance of original letters testamentary or of administration to the county clerk of the proper county who shall enter the same in its proper place upon the claim docket, and unless such claim is so presented within said time, the payment thereof, should it be approved either in whole or in part, shall be postponed until all other claims which have been allowed and approved within the time prescribed have been first entirely paid.

Art. 3519. [3446] [2079] [2025] Claim shall be acted upon.—All claims that have been allowed by the executor or administrator and entered upon the claim docket for the period of ten days shall be acted upon by the court at a regular term, and either approved in whole or in part or rejected, and they shall also at the same time be classified by the court.

Art. 3520. [3447] [2080] [2026] Action of the court.—When the court has acted upon a claim, such action shall be entered upon the claim docket and the date thereof, and the judge shall also indorse upon such claim or annex thereto, a memorandum in writing, dated and signed by him officially, stating the action of the court upon such claim, whether approved or disapproved, or if approved in part and rejected in part, stating the amount approved, and also stating the classification of such claim.

Art. 3521. [3448] [2081] [2027] May oppose approval of claim.—Any person interested in an estate may, at any time before the court has acted upon a claim, appear and object to the approval of the same, or any part thereof, in writing, and in such case the court shall hear proof and render judgment thereon.

Art. 3522. [3449] [2082] [2028] May sue on rejected claim.—When a claim for money against an estate has been rejected by the executor or administrator, either in whole or in part, the owner of such claim may, within ninety days after such rejection, and not thereafter, bring suit against the executor or administrator for the establishment thereof in any court having jurisdiction of the same. [Id.]

Art. 3523. [3450] [2083] [2029] Judgment filed, etc.—No execution shall be issued on a judgment obtained in such suit, but a certified copy of such judgment shall be filed with the county clerk of the county where the estate is pending within thirty days after the rendition of such judgment, and entered upon the claim docket, and shall be classified by the county judge, and have the same force and effect as if the amount thereof had been allowed by the executor or administrator, and approved by the county judge. [Id.]

Art. 3524. [3451] [2084] [2030] Costs of suit against claimant, when.—In suits to establish a claim after rejection, if the holder fails to recover judgment thereon for a greater amount than was allowed by the executor or administrator, he shall be adjudged to pay all costs of such suit. [Id.]

Art. 3525. [3452] [2085] [2031] Action of court on claim a judgment.—The action of the court in approving or disapproving a claim shall have the force and effect of a final judgment, and when the claimant, or any person interested in the estate, shall be dissatisfied with such action, he may appeal therefrom to the district court, as from other judgments of the county court rendered in probate matters.

Art. 3526. [3453] [2086] [2032] Claim of executor or administrator.—The provisions of this chapter respecting the presentations of claims against an estate shall not be construed to apply to any claim of the executor or administrator against his testator or intestate; but an executor or administrator holding such claim shall file the same in the court granting his letters, verified by affidavit as required in other cases, within six months after he has qualified, or such claim shall be barred. [Id.]

Art. 3527. [3454] [2087] [2033] Action of court thereon, etc.—When such claim has been entered upon the claim docket, and acted upon by the court as in other cases of claims, an appeal from the judgment of the court may be taken as in other cases.

Art. 3528. [3455] [2088] [2034] Application of law.—The provisions of this chapter respecting the presentation of claims shall not be so construed as to apply to the claim of any heir, devisee or legatee when claiming as such, nor to any claim that accrues against the estate after the granting of letters testamentary or of administration for which the executor or administrator has contracted. [Id.]

Art. 3529. [3456] [2089] [2035] Claims not allowed.—No claim for money against his testator or intestate shall be allowed by an executor or administrator, nor shall any suit be instituted against him on any such claim after an order for partition and distribution has been made; but the owner of a claim not barred by the laws of limitation shall have his action thereon against the heirs, devisees or legatees of the estate, limited to the value of the property they may receive in such partition and distribution. [Id.]

Art. 3530. [3457] [2090] [2036] No judgment in favor of claim.—No judgment shall be rendered in favor of a claimant upon any claim for money which has not been legally presented to the executor or administrator, and rejected by him, either in whole or in part. [P. D. 5683.]

CHAPTER NINETEEN

CLASSIFICATION AND PAYMENT OF CLAIMS

Art.
3531. Classification of claims.
3532. Claims paid pro rata.
3533. Order of payment of claims.
3534. Claim not paid, unless, etc.
3535. Owner may obtain order for payment.
3536. Proceeds of sale of mortgaged property.
3537. Exhibit of condition after twelve months.
3538. Penalty.
3539. Payment of claims in full.
3540. Payment of claims pro rata.
3541. Claims presented after twelve months.
3542. Exhibit required.
3543. Liability of executor.
3544. Executor not to purchase claim.

Art. 3531. [3458] [2091] [2037] Classification of claims.—The claims against an estate shall be classed and have priority of payment as follows:

1. Funeral expenses and expenses of last sickness.

2. Expenses of administration and expenses incurred in the preservation, safe-keeping and management of the estate.

3. Claims secured by mortgage or other liens so far as the same can be paid out of the proceeds of the property subject to such mortgage or other lien, and when more than one mortgage or lien shall exist upon the same property, the oldest shall be first paid; but

no preference shall be given to such claims secured by mortgage or other lien further than regards the property subject to such mortgage or other lien.

4. All claims legally exhibited within one year after the original grant of letters testamentary or of administration.

5. All claims legally exhibited after the lapse of one year from the original grant of letters testamentary or of administration. [Acts 1876, p. 115; P. D. 5674; G. L. vol. 8, p. 951.]

Art. 3532. [3459] [2092] [2038] Claims paid pro rata.—Where there is a deficiency of assets to pay all claims of the same class, they shall be paid pro rata; and no executor or administrator shall be allowed to pay any claims, whether the estate is solvent or insolvent, except with their pro rata amount of the funds of the estate that have come to hand. [Id.]

Art. 3533. [3460] [2093] [2039] Order of payment of claims.—Executors and administrators, when they have funds in their hands belonging to the estate, shall pay:

1. Funeral expenses and expenses of last sickness, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or of administration, but if not presented within such time their payment shall be postponed until the allowances made to the widow and children, or either, are paid.

2. Allowances made to the widow and children, or either.

3. Expenses of administration and the expenses incurred in the preservation, safe-keeping and management of the estate.

4. Other claims against the estate in the order of their classification.

Art. 3534. [3461] [2094] [2040] Claim not paid, unless, etc.—No claim for money, or any part thereof, shall be paid until it has been approved by the county judge or established by the judgment of a court of competent jurisdiction.

Art. 3535. [3462] [2095] [2041] Owner may obtain order for payment.—When an executor or administrator has funds of the estate in his hands sufficient to pay a claim, or a part thereof, and fails to make such payment when required to do so by the owner, such owner may obtain an order of the court, at a regular term, directing such payment to be made, by making proof that such executor or administrator has funds of the estate in his hands which should be paid upon such claim, and that he has failed to make such payment; provided, such executor or administrator shall have first been cited on the written complaint of such claimant, filed with the clerk, to appear and show cause why such order should not be made. [Id.]

Art. 3536. [3463] [2096] [2042] Proceeds of sale of mortgaged property.—Whenever an executor or administrator has in his hands the proceeds of a sale that has been made for the satisfaction of a mortgage or other lien, and such proceeds, or any part thereof, are not required for the payment of any debts against the estate that have a preference over such mortgage or other lien, he shall within twelve months after the grant of letters testamentary or of administration, pay such proceeds to the creditor or creditors having a right thereto; and, if he shall fail to do so, such creditor or creditors, upon proof thereof, may obtain an order from the county court, directing such payment to be made. [Id.]

Art. 3537. [3464] [2097] [2043] Exhibit of condition after twelve months.—At the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, the executor or administrator shall return to the court an exhibit in writing, sworn to and subscribed by him, setting forth a list of all claims against the estate that were presented to him within twelve months after said original grant of letters testamentary or of administration, specifying which have been allowed by him, which have been rejected and the date when rejected, which have been sued upon and the condition of the suit, also setting forth fully the condition of the estate. [Id.]

Art. 3538. [3465] [2098] [2044] Penalty.—Should such executor or administrator fail to return such exhibit, any person interested in the estate may, upon written complaint, filed with the clerk, cause him to be cited to appear at a regular term of the court and show cause why his letters should not be revoked and why he should not be fined for such failure; and, upon the hearing of such complaint, unless good cause be shown for such failure, the court shall revoke the letters of such executor or administrator and shall fine him in a sum not to exceed one hundred dollars. [Id.]

Art. 3539. [3466] [2099] [2045] Payment of claims in full.—If it shall appear from the exhibit, or from other evidence, that the estate is wholly solvent, and that the executor or administrator has in his hands sufficient funds for the payment of all character of claims against the estate, the county judge shall order immediate payment to be made of all claims allowed and approved or established by judgment. [Id.]

Art. 3540. [3467] [2100] [2046] Payment of claims pro rata.—If it appear that the funds on hand are not sufficient for the payment of all the said claims, or if the estate is insolvent and the executor or administrator has any funds in his hands, the county judge shall order such funds to be applied to the payment of all claims having a preference in the order of their priority, if they, or any of them, be still unpaid, and then to the payment pro rata of the other claims allowed and approved or established, taking into consideration also the claims that were presented within twelve months, and in suit or on which suit may yet be instituted. [Id.]

Art. 3541. [3468] [2101] [2047] Claims presented after twelve months.—Claims for money against the estate presented to the executor or administrator after the expiration of twelve months from the original grant of letters, and allowed and approved or established by judgment, shall be paid by the executor or administrator at any time before the estate is finally closed, when he has funds of the estate in his hands over and above what may be sufficient to pay all debts of every kind against the estate that were presented within the twelve months and allowed and approved or established by judgment, or that may be so established; and an order for the payment of any such claim, upon proof that the executor or administrator has such funds, may be obtained from the county judge in like manner as is provided in this chapter for creditors to obtain payment. [Id.]

Art. 3542. [3469] [2102] [2048] Exhibit required.—At the third regular term after the expiration of twelve months from the original grant of letters testamentary or of administration, or at any term of the court thereafter, any person interested in the estate may, by a complaint in writing, filed in the county court, cause the executor or administrator to be cited to appear at a regular term of the court and make an exhibit in writing, under oath to the court, setting forth fully, in connection with the previous exhibits, the condition of the estate he represents; and if it shall appear to the court by said exhibit, or by other evidence, that said executor or administrator has any funds of the estate in his hands subject to distribution among the creditors of the estate, the county judge shall order the same to be paid out to them according to the provisions of this chapter; or any executor or administrator may voluntarily present such exhibit to the court, and, if he has any of the funds of the estate in his hands subject to distribution among the creditors of the estate, a like order shall be made. [Id.]

Art. 3543. [3470] [2103] [2049] Liability of executor.—Where an order is made by the county judge, for an executor or administrator to pay over money to any person other than the State Treasurer, and such executor or administrator shall neglect to make such payment when it is demanded by the per-

son entitled thereto, his agent or attorney, such executor or administrator shall be liable on his official bond to the person in whose favor such order of payment was made, for damages upon the amount he shall so neglect to pay, at the rate of five per cent per month for each month he shall so neglect to make such payment after the same was so demanded, such damages to be recovered by suit against such executor or administrator and the sureties upon his bond before any court having jurisdiction of the amount claimed, exclusive of interest and such damages. [Id.]

Art. 3544. [3471] [2104] [2050] Executor not to purchase claim.—No executor or administrator shall purchase for his own use, either directly or indirectly, any claim against the estate he represents; and, should he do so, any person interested in the estate may upon written complaint, cause him to be cited to appear before the court; and upon proof of such complaint, the court shall enter an order upon the minutes canceling the claim so purchased; and such executor or administrator shall not be allowed to receive from the estate any portion of such claim. [Id.]

CHAPTER TWENTY

HIRING AND RENTING

Art.
3545. Executor may hire or rent property.
3546. May obtain order to hire or rent.
3547. Without order of court.
3548. Security shall be taken.
3549. Report of hiring or renting.
3550. Action of court on report.
3551. Who may file complaint.

Article 3545. [3472] [2105] [2051] Executor may hire or rent property.—When an executor or administrator thinks it would be to the interest of the estate to hire out any of the personal property of the estate, or to rent any of the real estate, he shall do so either at public auction or privately, for cash or credit, as he may deem most advantageous to the estate. [Acts 1876, p. 104; G. L. vol. 8, p. 940.]

Art. 3546. [3473] [2106] [2052] May obtain order to hire or rent.—An executor or administrator if he prefers, may file a written application with the county clerk setting forth the property which he thinks should be hired or rented; and if the county judge be of the opinion that it would be to the interest of the estate to grant the application, he shall do so by an order entered upon the minutes, either in term time or in vacation, which order shall name the property to be hired or rented, and state whether such hiring or renting shall be at public auction or privately, and whether for cash or credit, and if on credit, the length of such credit, and shall also state the period of time for which such property shall be hired or rented.

Art. 3547. [3474] [2107] [2053] Without order of court.—When an executor or administrator hires or rents property belonging to an estate without an order of the court authorizing him to do so, he shall be held responsible to the estate for the reasonable value of the hire or rent of such property, to be ascertained by the court by satisfactory evidence.

Art. 3548. [3475] [2108] [2054] Security shall be taken.—When property is hired or rented on credit, possession thereof shall not be delivered to the person hiring or renting the same until such person has executed and delivered to the executor or administrator a note with good personal security for the amount of such hire or rent; and any executor or administrator who shall deliver possession of any property so hired or rented on credit without first receiving such note with good personal security shall be responsible upon his bond as such executor or administrator for the full amount of such hire or rent.

Art. 3549. [3476] [2109] [2055] Report of hiring or renting.—When any property of the estate has been hired or rented, the executor or administrator shall, within thirty days thereafter, return to the court a written report, signed by him and duly sworn to, stating:

1. The property hired or rented.
2. When the same was so hired or rented, and whether at public auction or privately.
3. Whether for cash or on credit, and, if on credit, the length of such credit.
4. The name of the person hiring or renting the same.
5. The amount for which the same was hired or rented.

Art. 3550. [3477] [2110] [2056] Action of court on report.—When such report is returned to the court, it shall be filed, and, at a regular term thereafter, it shall be examined, and if found to be just and reasonable, it shall be approved and confirmed by order of the court entered upon the minutes, and shall be recorded in the minutes; but if disapproved by the court, an order to that effect shall be entered, and also adjudging against the executor or administrator the reasonable value of the hire or rent of such property where it appears that, by reason of any fault of such executor or administrator, such property has not been hired or rented for its reasonable value.

Art. 3551. [3478] [2111] [2057] Who may file complaint.—Any person interested in an estate may, upon written complaint filed in the county court, cause an executor to be cited to appear at a regular term of such court and show cause why he should not hire or rent any of the property belonging to the estate, and upon the hearing of such complaint the court shall make such order as may seem for the best interest of the estate.

CHAPTER TWENTY-ONE

SALES

Art.
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3578. Who may oppose application.
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3581. Public sale may be continued.
3582. Notice of private sale.

Article 3552. [3479] [2112] [2058] Advantage considered.—All sales for the payment of the debts owing by the estate shall be ordered to be made of such property as may be deemed most advantageous to such estate to be sold. [Acts 1876, p. 112; G. L. vol. 8, p. 948.]

Art. 3553. [3480] [2113] [2059] Court must order sales.—No sale of any property of an estate shall be made by an executor or administrator without an order of the court authorizing the same.

Art. 3554. Mineral lease.—Upon written application by the executor or administrator, or any heir, devisee or legatee of a deceased person, or by any creditor of the estate whose claim has been allowed and approved or established by suit, the county court may, by an order entered on the minutes of the court either in term time or in vacation, direct the lease of real property belonging to the estate of a deceased person, or any part thereof, for the purpose of drilling, mining, and operating for gas, oil or other minerals or metals. Such order shall state the minimum bonus,

if any, to be received by the executor or administrator under such lease, the minimum royalty to be reserved to the estate under such lease in no event less than one-eighth royalty on oil, and such other terms of such lease as the court may embody in such order. [Acts 1919, p. 251.]

Art. 3555. Notice of application.—Before such application shall be heard by the court, notice of the application shall be given by the executor or administrator by publication of such notice in one issue of a newspaper published in the county where the property is situated, which notice shall appear subsequent to filing of such application and not less than ten days prior to hearing thereon, and shall describe the property with sufficient accuracy to identify it and shall state the time and place of hearing on such application. [Id.]

Art. 3556. Report on application.—The executor or administrator shall in term time or vacation report to the court the lease made by him in accordance with such order within ten days after entry of order authorizing such lease, and shall embody in such report, or attach thereto, a full copy of the proposed contract of lease, and such lease shall be approved by the court, with such amendments, if any, as the court may direct, or shall be disapproved by the court at any time within ten days after the filing of such report either in term time or vacation by an order of approval or disapproval entered on the minutes of said court. If such lease is approved, the order of approval shall direct the executor or administrator to execute and deliver the lease contract approved on compliance by the other party or parties thereto with the terms thereof; provided that no lease executed under the provisions of this chapter shall be binding upon heirs, legatees, or distributees of any estate, or on purchasers from such estate unless actual development has been commenced by the time said estate is partitioned and distributed and is being and continues to be prosecuted with reasonable diligence thereafter. [Id.]

Art. 3557. [3481] [2114] [2060] Terms of sale.—The court may order a sale of property, to be made for cash or on credit, at public auction or privately, as it may consider most to the advantage of the estate, except when herein otherwise specially provided. [Acts 1876, p. 112; G. L. vol. 8, p. 948.]

Art. 3558. [3482] [2115] [2061] Sale at public auction.—All sales of personal property at public auction shall be governed by the rules governing sales of personal property under execution, unless herein otherwise provided. [Id.]

Art. 3559. [3483] [2116] [2062] When sold on credit.—When personal property is sold on credit, it shall not be for a longer time than six months from the date of such sale, and the purchaser shall be required to give his note for the amount of such purchase, with good and solvent personal security, before such property shall be delivered to him.

Art. 3560. [3484] [2117] [2063] Sale of perishable property.—Whenever there is property belonging to the estate of a deceased person that is perishable or liable to waste, upon written application of the executor or administrator, or an heir, devisee, legatee or creditor of the deceased, whose claim has been allowed and approved or established by suit, the county judge, by an order entered on the minutes, either in term time or vacation, may direct the sale of such property, or any part thereof. [Id.]

Art. 3561. [3485] [2118] [2064] Sale of crops.—The county judge may, either in term time or in vacation, by an order entered on the minutes, direct the crops belonging to the estate of a deceased person, or any part thereof, to be sold for their market value at private sale, upon written application of the executor or administrator, or any heir, devisee, legatee or creditor of the deceased, whose claim has been allowed and approved or established by suit. [Id.]

Art. 3562. [3486] [2119] [2065] Executor to sell personal property.—The executor or administrator, as soon as practicable after his qualification as such, shall sell, at public or private sale, as the court may order, all personal property belonging to the estate, except bonds, securities or other personal property, which in the opinion of the county judge may not be liable to waste or loss, and except property exempt from forced sale, specific legacies and personal property necessary to carry on a plantation, manufactory or business, which it may be thought best to carry on, giving such credit as such executor or administrator or county judge may deem most advantageous to the estate, not exceeding six months, and taking notes with one or more sufficient sureties for the purchase money. [Id.]

Art. 3563. [3487] [2120] [2066] Sale of stock.—If the executor or administrator shall represent to the court on oath in writing that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes with good and sufficient sureties for the purchase money: and such sale shall be advertised, made, returned and confirmed in the same manner as the sale of real property. [Id.]

Art. 3564. [3488] [2121] [2067] Sale of mortgaged property.—Any creditor of a deceased person holding a claim secured by a mortgage or other lien, which has been allowed and approved or established by suit, may, at a regular term thereof, obtain from the county court where the estate is pending, an order for the sale of such property or so much thereof as may be required to satisfy his claim. The application shall be in writing and the executor or administrator shall be cited to appear and answer the same. If the lien is on real property, the same notice shall be given of the application as is required to obtain an order for the sale of real property. [Id.]

Art. 3565. [3489] [2122] [2068] Sale of real estate, how made.—The executor or administrator, when necessary, shall apply to the county judge, at a regular term of the court, for an order to sell so much of the real estate belonging to the estate as is sufficient to pay the local charges and claims against the estate. [Id.]

Art. 3566. [3490] [2123] [2069] Requisites of application to sell.—Such application shall be made in writing and shall describe the real estate sought to be sold, and shall be accompanied by an exhibit in writing, verified by the affidavit of the executor or administrator, showing fully and particularly the charges and claims against said estate that have been approved or established by suit or that have been rejected and may yet be established, and the amount of each, and the estimated expenses of administration, and the property of said estate remaining on hand liable for the payment of such charges and claims. [Id.]

Art. 3567. [3491] [2124] [2070] Citation in such case.—Upon the filing of such application and exhibit, the clerk shall issue a citation to all persons interested in the estate, describing the land sought to be sold, and requiring such persons to appear at the term named in such citation, and show cause why such sale should not be made should they choose to do so. [Id.]

Art. 3568. [3492] [2125] [2071] Posting and return of citation.—Such citation shall be posted in the manner required for other citations for at least twenty days before the first day of the term of the court at which the application is to be heard, and the citation and return shall be recorded, as other citations and returns. [Id. Acts S. S. 1909, p. 336.]

Art. 3569. [3493] [2126] [2072] Action of court on application.—The court shall hear such application and evidence thereon at a regular term and if satisfied that a necessity exists therefor, shall order the sale to be made; otherwise he may refuse to order the sale and may, if he deems best, order the sale of other property of the estate that it would be more to the interest of the estate to have sold. The

order to that effect shall be entered into the minutes. [Acts 1876, p. 112; G. L. vol. 8, p. 948.]

Art. 3570. [3494] [2127] [2073] Real estate sold on credit.—All sales of real estate for the payment of debts shall be made at public auction to the highest bidder on a credit of twelve months, except when otherwise specially provided by law. [Id.]

Art. 3571. [3495] [2128] [2074] Sold for cash.—Sales of real estate may be made at public auction for cash or on such credit as the county judge may direct not exceeding twelve months, in the following cases:

1. When the sale is made for the purpose of raising the amount, or any part thereof, of any allowance made to the widow and children, or either, under the provisions of this title.
2. When the sale is made for the satisfaction of a mortgage or other lien upon such real estate.
3. When such sale is made in accordance with directions contained in a will. [Id.]

Art. 3572. [3496] [2129] [2075] Private sale.—The county judge may order a sale of real estate to be made at a public or private sale for cash, or for part cash and part credit, and if sold for part cash and part credit, then upon the terms to be determined by him. One-fifth of the purchase price must be paid in cash, and the executor or administrator shall retain a lien upon the premises to secure the deferred payment. It must be shown, in addition to the other requirements, that said sale was made for a fair price, and the judge may require personal security should he deem it necessary. [Id. Acts 1915, p. 87.]

Art. 3573. [3497–8] Notice of sale.—All public sales of real estate shall be advertised at least twenty days before the day of sale, by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale in a newspaper published in the county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Such notice shall state the time and place of sale, the terms of sale, shall describe the property to be sold, and shall be signed by the executor or administrator. [Acts 1876, p. 113; G. L. vol. 8, p. 949.]

Art. 3574. [3499] [2132] [2078] Time and place of sale.—All public sales of real estate shall be made in the county where the letters testamentary or of administration were granted, at the courthouse door of such county, or at the place in such county where sales of real estate are specially authorized by law to be made; and all such sales shall be made on the first Tuesday of the month, between the hours of ten a. m. and four p. m.

Art. 3575. [3500] [2133] [2079] Where sale may be ordered.—If deemed advisable, the county judge may order a public sale of real estate to be made in the county where it is situated. If made in any other county than that in which the letters testamentary or of administration were granted, such sale shall be advertised in both counties. [Id.]

Art. 3576. [3501] [2134] [2080] Order of court.—Whenever any property of an estate is ordered to be sold by the county judge, such order shall be entered on the minutes of the court, shall describe the property to be sold, the time and place of sale, and the terms of such sale. [Id.]

Art. 3577. [3502] [2135] [2081] Who may apply for order of sale.—When an executor or administrator shall neglect to apply for an order to sell sufficient property of the estate to pay the charges and claims against the estate that have been allowed and approved or established by suit, any person interested in the estate may, upon written application, cause such executor or administrator to be cited to appear at a regular term of the court and make a full exhibit of the condition of such estate, and show cause why a sale of the property should not be ordered; and, upon hearing such application, if the court is satisfied from the proof that a necessity exists for the sale, the same shall be ordered. [Id.]

Art. 3578. [3503] [2136] [2082] Who may oppose application.—When an application for an order of sale is made, any person interested in the estate may, before an order is made thereon, file his opposition to the sale, in writing, or may make application for the sale of other property of the estate; and, after hearing the controversy, the county judge shall make such order thereon as the circumstances of the case may require. [Id.]

Art. 3579. [3504] [2137] [2083] Executor or administrator not to purchase.—No executor or administrator shall buy the estate of his testator or intestate, or any part thereof, at its appraised value, or become the purchaser, either directly or indirectly of any property of the estate sold by him. If an executor or administrator should either directly or indirectly become the purchaser of any of the property of his testator or intestate, at a sale made by him or his co-executor or co-administrator, upon the written complaint of any person interested in the estate, and service of citation upon any such executor or administrator, and, upon proof of such complaint, such sale shall be declared void by the county judge, and such executor or administrator decreed to hold the property so purchased in trust as assets of the estate, and an order to that effect shall be entered upon the minutes. [Id.]

Art. 3580. [3505] [2138] [2084] Failure of bidder to comply, etc.—When any person shall bid off property offered for sale, rent or hire, at public auction, by an executor or administrator, and shall fail to comply with the terms of sale, renting or hiring, such property shall be readvertised and sold, rented or hired without any further order; and the person so failing to comply shall be liable to pay such executor or administrator for the use of the estate ten per cent on the amount of his bid, and also the deficiency in price on the second sale, renting or hiring, if any, to be recovered by such executor or administrator. [Id.]

Art. 3581. [3506] [2139] [2085] Public sale may be continued.—Public sales may be continued from day to day, in case the day set apart for such sale shall be insufficient to complete the same, by giving public notice of such continuance at the conclusion of the sale of each day, and the continued sale shall commence and close within the same hours. [Id.]

Art. 3582. [3507] [2140] [2086] Notice of private sale.—When property is ordered by the court to be sold at private sale, no notice of such sale shall be required, unless the court ordering such sale shall direct otherwise.

CHAPTER TWENTY–TWO

REPORT OF SALES, ETC.

Art.
3583. Report of sale.
3584. Action on report.
3585. Decree vests title.
3586. Conveyance.
3587. Conveyance delivered.
3588. Penalty for neglect.
3589. Vendor's lien.

Art. 3583. [3508–9–10] Report of sale.—All sales of property of an estate shall be reported to the court ordering the same within thirty days after the sales are made. The report of sale shall be in writing and shall be subscribed and sworn to by the executor or administrator. Said report may be made in term time or in vacation, and when returned shall be filed by the clerk and the filing thereof noted upon the judge's docket, and shall show:

1. The time and place of the sale.
2. The property sold, describing the same.
3. The name of the purchaser of such property.
4. The amount for which each article of property sold.
5. The date of the order of the court authorizing the sale.

6. The terms of the sale, and whether at public auction or made privately. [Acts 1876, p. 113; G. L. vol. 8, p. 949.]

Art. 3584. [3511–12] Action on report.—After the expiration of five days from the filing of a report of sale, the county judge at a regular term of his court, shall inquire into the manner in which the sale was made, and hear evidence in support of or against such report; and, if satisfied that the sale was fairly made, and in conformity with law, he shall enter upon the minutes a decree confirming such sale, and order the report of sale to be recorded by the clerk, and a conveyance of the property to be made by the executor or administrator to the purchaser upon compliance with the terms of sale. If the court is not satisfied that the sale was fairly made and in conformity with law, an order shall be entered upon the minutes setting the same aside and ordering a new sale to be made if necessary. [Id.]

Art. 3585. [3513] [2146] Decree vests title.—No conveyance of personal property shall be necessary, but the decree of the court confirming the sale shall vest the right and title of the testator or intestate in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making the sale. [Id.]

Art. 3586. [3514] [2147] [2092] Conveyance.—After a sale has been confirmed by the court, upon the purchaser complying with the terms of the sale, the executor or administrator shall execute and deliver to him a proper conveyance of the property. Real estate shall be conveyed by deed, and shall recite the decree of the court confirming the sale and ordering the conveyance to be made, and such conveyance shall vest the right and title that the testator or intestate had in such real estate in the purchaser, and shall be prima facie evidence that all the requirements of the law have been complied with in making such sale. [Id.]

Art. 3587. [3515] [2148] [2093] Conveyance delivered.—No conveyance of real estate shall be executed and delivered by the executor or administrator until the terms of sale have been complied with by the purchaser; and if the sale is made on credit, the executor or administrator before delivering the conveyance shall take from such purchaser a note with good personal security, together with a mortgage containing power of sale upon the property sold to secure the payment of the purchase money, and shall file such mortgage for record in the county where such real estate is situated.

Art. 3588. [3516] [2149] [2094] Penalty for neglect.—Should the executor or administrator neglect to take such note, security and mortgage, and file such mortgage for record in the proper county before delivery of the deed, he and the sureties on his bond shall be liable at the suit of any person interested in the estate, for the use of the estate, for the full amount of such sale. [Id.]

Art. 3589. [3517] [2150] [2095] Vendor's lien.—All notes executed for the purchase money of real estate purchased under the provisions of this title shall hold the vendor's lien on the real estate for which they were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not, and such lien shall in no case be waived. [Id.]

CHAPTER TWENTY-THREE

HEIRSHIP, ETC.—ADJUDICATION OF

Art.
3590. Actions to declare heirship.
3591. Who may maintain action, etc.
3592. Notice, citation, etc.
3593. Hearing and procedure.
3594. Judgment.
3595. Effect.
3596. Certified copy of judgment filed.
3597. Chapter cumulative.

Article 3590. [3521] Actions to declare heirship.—When a person dies, intestate, owning or entitled to real or personal property in Texas, and there shall have been no administration in this State upon his estate, and when there has been a will probated in this State or elsewhere, or an administration in this State upon the estate of such decedent, and any real or personal property in this State has been omitted from such will or from such administration, or no final disposition thereof has been made in such administration, the county court of the county in which such proceedings were last pending, or in the event, no will of such decedent has been admitted to probate in this State, and no administration has been granted in this State upon the estate of such decedent, then the county court of the county in which any of the real property belonging to such estate is situated, or, if there be no such real property, then of the county in which any personal property belonging to such estate may be found, may determine and declare in the manner hereinafter provided in this chapter, who are the heirs and only heirs of such decedent, and their respective shares and interests, under the laws of this State, in the estate of such decedent, and actions therefor shall be known as actions to declare heirship. [Acts 1907, p. 230.]

Art. 3591. [3522] Who may maintain action, etc.—Such action may be instituted and maintained in any of the instances enumerated in the preceding article by any person or persons claiming to be the owner of the whole or a part of the estates of such decedent. In such case a petition shall be filed in a proper court stating the name, time and place of the death and the names and residences of the heirs of the decedent, if known to the petitioners, and, if the time and place of the death or the names and residence of all the heirs of such decedent be not definitely known to such petitioners or any of them, then the petition shall set forth all of the material facts and circumstances within the knowledge or information of such petitioners, or any of them, as may reasonably tend to show the time and place of the death of the decedent and the names and places of residence of the heirs, and the true share and interest of each petitioner, and of each heir, in the estate of such decedent. Such petition shall, so far as is known to any of the petitioners, contain a general description of all the real property of the decedent and a general description of all the personal property belonging to the estate of the decedent. Such petition shall be supported by the affidavit of each petitioner to the effect that, in so far as is known to such petitioner, all the allegations of such petition are true in substance and in fact and that no such material fact or circumstance has, within affiant's knowledge, been omitted from such petition. The unknown heirs of such decedent, all persons who may be named in the petition as heirs of such decedent, and all persons who may, at the date of the filing of the petition, be shown by the deed records of the county in which any of the real property described in such petition may be situated, to own any share or interest in any such real property shall be made parties defendant in such action. [Id.]

Art. 3592. [3523] Notice, citation, etc.—Due notice of the filing of such petition shall be given in the manner and for the length of time and in accordance with the provisions of law now in force concerning the issuance and service of citations upon resident defendants, and notice to non-resident defendants, and citation by publication for unknown heirs respectively; and, in so far as they are applicable thereto, all provisions of laws now in force in this State, relative to or concerning suits wherein citation by publication is provided for, shall apply to and govern in suits provided for in this chapter. If an administration upon the estate of any such decedent shall be granted in this State, or if the will of such decedent shall be admitted to probate in this State, after the institution of such action, the court in which such action may be pending, shall, by an order entered of record therein, transfer the cause to the county court of the county in which such administration shall have been granted, or such will shall have been probated, and, thereupon, the clerk of the court in

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

which such action was originally filed shall send to the clerk of the court named in such order, a certified transcript of all docket entries and orders of the court in such cause. The clerk to which such cause shall be transferred shall file the transcript and record the same in the minutes of the court, and shall docket such cause, and same shall thereafter proceed as though originally filed in that court. [Id.]

Art. 3593. [3524] Hearing and procedure.—Upon the hearing of such cause, the trial court may require the issues involved to be duly framed and submitted, and shall confine the proof to such issues; and all the evidence shall be reduced to writing, and shall be subscribed and sworn to by the witnesses, respectively, and filed in the cause, and recorded in the minutes of the court. [Id.]

Art. 3594. [3524] Judgment.—The judgment of the court in such cause shall declare the names and places of residence of the heirs of the decedent, and their respective shares and interests in the real and personal property of such decedent, and shall state in what respects, if any, the evidence presented upon such hearing failed to develop such issues, or any of them; and all issues in the cause which may be framed by the court, or under its direction shall be embodied in the judgment. [Id.]

Art. 3595. [3524] Effect.—As between the parties to such cause who may have been personally served with citation or notice, and as to non-resident defendants and all bona fide purchasers of the property described in the judgment for value from them, or any of them, such judgment shall be conclusive, and as to any and all other persons such judgment shall be prima facie evidence that the heirs of such decedent and that their respective interest in the property described in such judgment are as therein stated; but such judgment shall not preclude any suit against the persons therein named as heirs of such decedent, or any one or more of them, based upon the allegation that such heir or heirs have received more than his or their proper and just share of the property of such decedent. Such judgment shall have the force and effect of a final judgment of such court; and any party or parties to such cause may appeal from such judgment in like manner and under the same conditions as is or may be provided by law in other cases arising under the probate laws of this State. [Id.]

Art. 3596. [3525] Certified copy of judgment filed.—A certified copy of such judgment may be filed for record in the office of the county clerk of the county in which any of the real property described in such judgment may be situated, and recorded in the deed records of such county, and indexed in the name of such decedent as grantor and of the heirs named in such judgment as grantees; and, from and after such filing, such judgment shall constitute constructive notice of the facts set forth in such judgment. [Id.]

Art. 3597. [3526] Chapter cumulative.—The provisions of this chapter are cumulative of and do not repeal existing laws. [Id.]

CHAPTER TWENTY-FOUR

PARTITION AND DISTRIBUTION

Art.
3598. Application.
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Article 3598. [3527] [2154] [2099] Application.—Anyone interested in an estate may make application for the partition and distribution of the estate; it shall be in writing and filed with the clerk of the court in which the administration of the estate is pending, and shall state:

1. The name of the person whose estate is sought to be partitioned and distributed.

2. The names and residences of all persons entitled to a share of such estate, and whether adults or minors, and if these facts be unknown to the applicant, it shall be so stated in the application. [Acts 1876, p. 120; G. L. vol. 8, p. 956.]

Art. 3599. [3528] [2155] [2100] Citation.—Upon the filing of such application, the clerk shall issue a citation returnable to a regular term of the court; the citation shall state the name of the person whose estate is sought to be partitioned and distributed, the term of the court to which such citation is returnable, and shall require all persons interested in the estate to appear and show cause why such partition and distribution should not be made. [Id.]

Art. 3600. [3529] [2156] [2101] Service of citation.—Such citation shall be personally served by leaving a copy thereof with each person residing in the State entitled to a share of the estate, who is known; and, if there be any who are not known, or who are not residents of this State, such citation shall be published for at least four successive weeks in some newspaper printed in the county, if there be one, if not, then in like manner in one of the nearest newspapers published in the State. A copy of such publication, and the affidavit of the publisher or printer attached thereto, shall accompany the report of the officer serving such citation. [Id.]

Art. 3601. [3530] [2157] [2102] Executor.—When the application is made by any other person than the executor or administrator of the estate, such executor or administrator shall be cited to appear and answer such application, and to file in court a verified exhibit and account of the condition of the estate, as in case of final settlement of an estate.

Art. 3602. [3531] [2158] [2103] Application made.—After the first term of the court after the expiration of twelve months from the original grant of letters testamentary or of administration, the heirs, devisees or legatees of the estate, or any of them, may, by written application filed in the county court, cause the executor or administrator, and the heirs, devisees and legatees of the estate, to be cited to appear at a regular term of the court and show cause why a partition and distribution of the residue of such estate should not be made. [Id.]

Art. 3603. [3532] [2159] [2104] Court shall proceed, etc.—After service of citation, the court shall ascertain whether the whole, or any part, of such property is susceptible of partition, also the value of the property, and that there is a residue of the estate on hand subject to partition and distribution, and shall proceed to have such residue partitioned and distributed among the persons entitled thereto in the manner hereinafter provided. [Id.]

Art. 3604. [3533] [2160] [2105] Shall ascertain facts.—In proceeding to partition an estate, the court shall ascertain:

1. The residue of the estate subject to partition and distribution, which shall be ascertained by deducting from the entire assets of such estate remaining on hand the amount of all debts and expenses of every kind which have been approved or established by judgment or which may yet be established by judgment, and also the probable future expenses of administration.

2. The persons who are by law entitled to partition and distribution, and their respective shares.

3. Whether advancements have been made to any of the persons so entitled, their nature and value, and shall require the same to be placed in hotchpotch as required by the law governing descents and distributions. [Id.]

Art. 3605. [3534] [2161] [2106] Guardians for minors, etc.—Where there are minors having no guardian in this State who are entitled to a portion of an estate, or whose guardians also have an interest in the estate, the court shall appoint a guardian ad litem to represent such minors and shall appoint an attorney to represent non-resident and unknown parties having an interest, if there be any. [Id.]

Art. 3606. [3535] [2162] [2107] Decree of partition.—The court shall then proceed to enter a decree, which shall state:

1. The name and residence, if known, of each person entitled to a share of the estate, specifying those who are known to be minors, and the name of their guardian, or guardian ad litem, and the name of the attorney appointed to represent those who are unknown or are not residents of the State.

2. The proportional part of the estate to which each is entitled.

3. It shall contain full description of all the estate to be distributed.

4. It shall direct the executor or administrator to retain in his hands for the payment of all debts and expenses of administration a sufficient amount of money or property for that purpose, specifying the amount of money or the property to be so retained. [Id.]

Art. 3607. [3536] [2163] [2108] If estate consists of money or debts only.—If the estate to be distributed shall consist only of money or debts due the estate, or both, the court shall fix the amount to which each distributee is entitled, and order the payment and delivery thereof by the executor or administrator. [Id.]

Art. 3608. [3537] [2164] [2109] To appoint commissioners.—If the estate does not consist entirely of money or debts due the estate, or both, the court shall appoint three or more discreet and disinterested persons as commissioners, to make a partition and distribution of the estate, unless the court has already determined that the estate is incapable of partition. [Id. Acts 1905, p. 108.]

Art. 3609. [3538] [2165] [2110] Writ of partition.—When commissioners are appointed, the clerk shall issue a writ of partition directed to the commissioners appointed, commanding them to proceed forthwith to make such partition and distribution in accordance with the decree of the court, a copy of which decree shall accompany the writ, and also commanding them to make due return of said writ, with their proceedings under it at some term of the court to be named in the writ. [Acts 1876, p. 120; G. L. vol. 8, p. 956.]

Art. 3610. [3539] [2166] [2111] Service of writ.—Such writ shall be served by delivering the same and the accompanying copy of the decree of partition to any one of the commissioners appointed, and by notifying the other commissioners, verbally or otherwise, of their appointment, and such service may be made by any person.

Art. 3611. [3540] [2167] [2112] Partition by commissioners.—The commissioners shall make a fair, just and impartial partition and distribution of the estate in the following order:

1. Of the land or other property by allotment to each distributee of a part in each parcel or of parts in one or more parcels, or of one or more parcels either with or without the addition of a part or parts of other parcels as shall be most for the interest of the distributees; provided, the real estate is capable of being divided without manifest injury to all or any of the distributees.

2. If the real estate is not capable of a fair, just and equal division in kind, but may be made so by alloting to one or more of the distributees a proportion of the money or other personal property to supply the deficiency or deficiencies, the commissioners shall have power to make, as near as may be, an equal division of the real estate and supply the deficiency of any share or shares from the money or other property.

3. The commissioners shall proceed to make a like division in kind, as near as may be, of the money and other personal property, and shall determine by lot, among equal shares to whom each particular share shall belong. [Id.]

Art. 3612. [3541] [2168] [2113] Report of commissioners.—Said commissioners having divided the whole, or any part of the estate, shall make to the court a written sworn report containing a statement of the property divided by them, and also a particular description of the property allotted to each distributee and its value. And, if it be real estate that has been divided, the report shall contain a general plat of said land with the division lines plainly set down and a number of acres in each share. [Id.]

Art. 3613. [3542] [2169] [2114] Action of court.—Upon the return of such report, the court, at some regular term, shall examine the same carefully and hear all exceptions and objections thereto, and evidence in favor of or against the same, and, if it be informal, shall cause said informality to be corrected. If such division shall appear to have been fairly made according to law, and no valid exceptions are taken to it, the court shall approve it and order it to be recorded, and shall enter a decree vesting title in the distributees of their respective shares or portions of the property as set apart to them by the commissioners, otherwise the court may set aside said report and division and order a new partition to be made. [Id.]

Art. 3614. [3543] [2170] [2115] Special finding.—When the whole or any portion of the estate is in the opinion of the court not capable of fair and equal division among the distributees, the court shall make a special finding in writing, specifying therein the property that is incapable of division, and the value of the same as found. [Id. Acts 1905, p. 109.]

Art. 3615. [3544] [2171] [2116] Property incapable of division.—Upon such special finding of the court, and not less than twenty days after such finding, and before any exception thereto is filed, or after such exception is acted upon by the court, any one or more of the distributees at a regular term of the court by the payment to the executor or administrator of the value of the property found by the court, that is incapable of division, shall have the right to take such property. [Id.]

Art. 3616. [3545] [2172] [2117] May take it on credit.—With the approval of the court, any one or more of such distributees shall have the right to take said property by executing his or their obligation in favor of each of the other distributees for their share of the appraised value of such property, payable at such time, not exceeding twelve months from the date thereof, as the court may designate; and, when such obligations are executed, a lien shall exist upon such property by operation of law to secure the payment of the same. [Acts 1876, p. 120; G. L. vol. 8, p. 956.]

Art. 3617. [3546] [2173] [2118] Decree of court.—Should any one or more of the distributees take the property, the court shall enter upon the min-

utes a decree stating the facts; and, upon the entry of such decree all the right and title of the deceased in the property shall vest fully and absolutely in the person or persons taking the same, subject to the purchase money lien. [Id.]

Art. 3618. [3547] [2174] [2119] New appraisement.—Any distributee shall have the right to file his exception to said finding within twenty days thereafter, and the court shall hear proof of same; and, if satisfied that its finding is erroneous, it may make such additional or amendatory finding so as to conform to the proof. [Id. Acts 1905, p. 109.]

Art. 3619. [3548] [2175] [2120] Property sold.—If no distributee take the property, the court shall order the sale of same, either for cash or on a credit, and the proceeds of sale when collected shall be distributed by the court among those entitled thereto. [Acts 1876, p. 120; G. L. vol. 8, p. 956.]

Art. 3620. [3549] [2176] [2121] Distributee purchasing.—At such sale, if any distributee shall buy any of the property, he shall be required to pay or secure only such amount of his bid as may exceed the amount of his share of such property. [Id.]

Art. 3621. [3550] [2177] [2122] Court may order sale.—When any portion of the estate to be partitioned lies in another county and cannot be fairly partitioned without prejudice to the interests of the distributees, the commissioners may report such facts to the county judge in writing; whereupon at some regular term of the court, if satisfied that the said property cannot be fairly divided, or that its sale would be more advantageous to the distributees, he may order a sale thereof for cash, or on a credit of not more than twelve months. [Id.]

Art. 3622. [3551] [2178] [2123] Commissioners in each county.—If the court is not satisfied that such property can be fairly and advantageously divided, or that its sale would be more advantageous to the distributees, three or more commissioners may be appointed in each county where any portion of the estate so reported is situated, and the same proceedings shall be had thereon as is provided in this chapter for commissioners to make partition. [Id.]

Art. 3623. [3552] [2179] [2124] Majority may act.—Where commissioners to make partition are appointed under this chapter, the report of a majority of them shall be sufficient. [Id.]

Art. 3624. [3553] [2180] [2125] Delivery of property.—When the report of commissioners to make partition has been approved and ordered to be recorded, the court shall order the executor or administrator to deliver to the distributees their respective shares of the estate on demand, including all the title deeds and papers belonging to the same. [Id.]

Art. 3625. [3554] [2181] [2126] To whom delivered.—If any distributee be a minor, his share shall be delivered to his guardian; if he has no guardian and is a resident of this State, the executor or administrator shall retain it until a guardian is appointed; if a distributee be a minor and resides out of this State, and has a guardian in the State where he resides, the executor or administrator in this State shall settle with and pay or deliver the estate of the minor to such guardian. Said guardian, before he receives such estate, shall make a bond as guardian in the matter of the guardianship so pending, conditioned and for the amount prescribed by the court having jurisdiction of such guardianship; and he shall produce to the court wherein administration has been, or may be granted in this State a certified copy of the bond and of the record of his appointment as guardian, with certificates from the clerk and judge of the court in which said guardianship is pending that said appointment and bond are in due and legal form under the laws of said State; also a copy of his bond as guardian; and if the court shall be satisfied that said guardian has been legally appointed and otherwise complied with the requirements herein, such court shall order same to be recorded in the office of the county clerk, whereupon the guardian shall settle for the amount due his ward. [Id. Acts 1895, p. 150.]

Art. 3626. [3555] [2182] [2127] Damages for neglect to deliver.—If any executor or administrator shall neglect to deliver to the person entitled thereto, when demanded, any portion of an estate ordered to be delivered, such executor or administrator shall be liable to pay out of his own estate to the person so entitled damages on the amount or value of the share so withheld, at the rate of ten per cent per month for each and every month he shall so neglect to deliver such share after such demand. [Id.]

Art. 3627. [3556] [2183] [2128] Of common property.—When a husband or wife shall die leaving any common property, the survivor may, at any time after letters testamentary or of administration have been granted, and an inventory, appraisement and list of the claims of the estate have been returned, make application in writing to the court which granted such letters for a partition of such common property, which application shall be acted upon at some regular term of the court. [Id.]

Art. 3628. [3557] [2184] [2129] Action and bond in such case.—The surviving husband or wife shall execute and deliver to the county judge an obligation with two or more good and sufficient sureties, payable to and approved by said county judge, for an amount equal to the value of his or her interest in such common property, conditioned for the payment of one-half of all debts existing against such common property, and the county judge shall proceed to make a partition of said common property into two equal moieties, one to be delivered to the survivor and the other to the executor or administrator of the deceased. The provisions of this chapter respecting the partition and distribution of estates shall apply to such partition so far as the same may be applicable. [Id.]

Art. 3629. [3558] [2185] [2130] Lien upon property delivered.—Whenever such partition is made, a lien shall exist upon the property delivered to the survivor to secure the payment of the aforesaid obligation; and such obligation shall be filed with the clerk and recorded in the minutes of the court; and any creditor of said common property may sue in his own name on such obligation, and shall have judgment thereon for one-half of such debt as he may establish, and for the other half he shall be entitled to be paid by the executor or administrator of the deceased. [Id.]

Art. 3630. [3559] [2186] [2131] Property held by executor.—Until such partition is applied for and made, the executor or administrator of the deceased shall recover possession of all such common property and hold the same in trust for the benefit of the creditors and others entitled thereto. [Id.]

Art. 3631. [3560] [2187] [2132] Joint owners may have partition.—Any person having a joint interest with the estate of a decedent, in any property, real or personal, may make application to have the county court from which letters testamentary or of administration have been granted thereon to have a partition thereof; whereupon the court shall make a partition of said property between the applicant and the estate of the deceased; and all the rules and regulations contained herein in relation to the partition and distribution of estates shall govern partitions under this article so far as the same are applicable. [Id.]

Art. 3632. [3561] [2188] [2133] Expense of partition.—Expense of partition of estates shall be paid by the parties interested pro rata. The portion of the estate allotted to each distributee shall be liable for his portion of such expenses, and if not paid the court may order execution therefor in the names of the persons entitled thereto. [Id.]

Art. 3633. [3562] [2189] [2134] May appoint another guardian.—Where the county judge shall appoint a guardian ad litem for minors, or an attorney to represent a distributee who is absent from the State or unknown, under the provisions of this title, if such guardian ad litem, or attorney, shall

neglect to attend to the duties of such appointment, the county judge shall appoint others in their places by an order entered on the minutes of the court; and such guardian ad litem and attorney shall be allowed by the county judge a reasonable compensation for their services, to be paid out of the estate of the person they represent, and an order to that effect shall be entered upon the minutes, and if such an allowance is not paid an execution may issue therefor in the name of the person entitled thereto. [Id.]

CHAPTER TWENTY-FIVE

FINAL SETTLEMENT, ETC.

Art.
3634. Final account.
3635. Description.
3636. Executor cited.
3637. Citation shall issue.
3638. Service of citation.
3639. May order other notice.
3640. Action upon account.
3641. Partition.
3642. Executor discharged.
3643. Order for discharge.

Article 3634. [3563–3564] Final account.—When all the debts known to exist against the estate of a deceased person have been paid, or when they have been paid so far as the assets of the estate in the hands of the executor or administrator of such estate will permit, he shall present to the court his account for final settlement of the estate verified by affidavit. Such accounts shall show:

1. The property which has come into the hands of such executor or administrator belonging to the estate.
2. The disposition that has been made of any such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining on hand.
6. The persons entitled to receive any portion of such estate, and their residence, if known, and whether adults or minors, and if minors, the names of their guardians.
7. Any advancements or payments that may have been made by the executor or administrator from such estate to any such person.
8. Said account shall be accompanied by proper vouchers in support of each item thereof, and such account and vouchers shall be filed with the clerk either in term time or vacation. [Acts 1876, p. 117, G. L. vol. 8, p. 953.]

Art. 3635. [3565] [2192] [2137] Description.—It shall be sufficient under the preceding article to refer to the inventory without giving each item in detail; also to refer to and adopt report of sales, exhibits and accounts of the executor or administrator, including vouchers which have been approved and filed, without re-stating the items thereof.

Art. 3636. [3566] [2193] [2138] Executor cited.—Should the executor or administrator neglect to present such account, the county judge, either of his own motion or upon the complaint of any person interested in the estate, shall cause such executor or administrator to be cited to present such account within the time specified in such citation. [Id.]

Art. 3637. [3567] [2194] [2139] Citation shall issue.—Upon the presentation of an account for final settlement, the clerk shall issue a citation, which shall state the presentation of said account, the term of the court when it will be acted on, and shall require all persons interested to appear and contest the same if they see proper. [Id.]

Art. 3638. [3568] [2195] [2140] Service of citation.—Such citation shall be published for at least twenty days in a newspaper printed in the county, if there be one, if not, then by posting such notice at the courthouse and at two public places in the county, not in the same town or city, for at least twenty days. When the citation has been published, the affidavit of the publisher or printer attached to a copy thereof that the same has been published for at least twenty days, shall accompany the return of the officer who executes such citation. When the citation has been posted, the original citation, with the return of the officer posting the same indorsed thereon or attached thereto, shall be filed.

Art. 3639. [3569] [2196] [2141] May order other notice.—In addition to the citation required in the two preceding articles, the county judge may order such notice to be given as he shall deem expedient, by an order entered upon the minutes. [Id.]

Art. 3640. [3570] [2197] [2142] Action upon account.—Upon return being made that the citation has been served in the manner required, the court shall examine said account and the vouchers accompanying the same, and after hearing all exceptions thereto and the evidence, shall re-state said account if necessary, and audit and settle the same. [Id.]

Art. 3641. [3571] [2198] [2143] Partition.—Upon a settlement of an estate, if there be any of the estate remaining in the hands of the executor and administrator, and the heirs, devisees or legatees of the estate, or their assignee, or either of them, are present or represented in court, the county judge shall order a partition and distribution of the estate to be made among them. [Id.]

Art. 3642. [3572] [2199] [2144] Executor discharged.—If upon such settlement, there be none of the estate remaining in the hands of the executor or administrator, he shall be discharged from his trust by an order of the court, and such order shall declare said estate closed. [Id.]

Art. 3643. [3573] [2200] [2145] Order for discharge.—Whenever the executor or administrator has fully administered the estate in accordance with the provisions of this title, and in accordance with the order of the court, and has filed proper vouchers, it shall be the duty of the court to enter upon the minutes an order discharging said executor or administrator from his trust and declaring said estate to be closed.

CHAPTER TWENTY-SIX

PAYMENT OF ESTATES INTO THE TREASURY

Art.
3644. Paid to State Treasurer.
3645. Property uncalled for sold.
3646. Executor shall make report.
3647. While property under control of executor.
3648. Order for payment to treasurer.
3649. Certificate of postmaster.
3650. Penalty for neglect.
3651. Receipt of Treasurer.
3652. Distributees may recover.
3653. Mode of recovery.
3654. Citation to attorney.
3655. Proceedings.
3656. Costs.
3657. Penalty in certain cases.
3658. Treasurer may apply.
3659. Treasurer may sue.
3660. To represent State.

Article 3644. [3574–5] Paid to State Treasurer.—If any person entitled to a portion of an estate, except a resident minor without a guardian, shall not demand his portion from the executor or administrator within six months after an order approving the report of commissioners of partition, the county judge by an order entered upon the minutes shall require the executor or administrator to pay so much of said portion as may be in money to the State Treasurer; and such portion as may be in other property he shall order the executor or administrator to sell on such terms as the court may think best, and, when the proceeds of such sale are collected, he shall order the same to be paid to the State Treasurer, in all such cases allowing the executor or administrator reasonable compensation for his services. Upon the settlement of the final account of any executor or administrator, if the heirs, devisees or legatees of the estate, or assignees, or any of them, do not appear or are not represented in the court, and there are any funds of

such estate remaining in the hands of the executor or administrator, the county judge shall enter an order upon the minutes requiring such executor or administrator to pay such funds to the State Treasurer. [Acts 1876, p. 124; G. L. vol. 8, p. 960.]

Art. 3645. [3576] [2203] [2148] Property uncalled for sold.—If in such case there shall be any property of the estate that has not been sold, or any debts due the estate that may be collected, the county judge shall by an order entered upon the minutes, require the executor or administrator to sell such property under the direction of the county judge, and to collect such debts and to pay the proceeds of such sale and amount collected of such debts to the State Treasurer in all such cases allowing to the executor or administrator reasonable compensation for his services. [Id.]

Art. 3646. [3577] [2204] [2149] Executor shall make report.—The executor or administrator, while he has any of such estate under his control, shall from time to time, as he receives money, report the same to the court in writing under oath, and, should he neglect to report to the court the condition of the estate at reasonable periods of time, the court shall cause him to be cited to appear and make such report either in term time or in vacation, and the court shall thereupon make proper orders.

Art. 3647. [3578] [2205] [2150] While property under control of executor.—While such estate, or any portion thereof, remains under the control of the executor or administrator, the heirs, devisees, legatees or their assigns, or any of them, may obtain from the county judge, at a regular term of the court an order to have the same partitioned and distributed among them, according to their respective interests, upon causing the executor or administrator to be cited. [Id.]

Art. 3648. [3579] [2206] [2151] Order for payment to treasurer.—Whenever an order shall be made by the county judge for an executor or administrator to pay any funds to the State Treasurer, under the provisions of this chapter, the clerk of the court, in which such order may be made, shall mail to said Treasurer a certified copy of such order within thirty days after said order has been made. [Id.]

Art. 3649. [3580] [2207] [2152] Certificate of postmaster.—Whenever the clerk mails such copy, he shall take from the postmaster with whom it is mailed a certificate stating that such certified copy was mailed in his office, directed to the State Treasurer, at the seat of government, and the date when it was mailed, which certificate shall be recorded in the minutes of the court. [Id.]

Art. 3650. [3581] [2208] [2153] Penalty for neglect.—Any clerk who shall neglect to transmit a certified copy of such order within the time prescribed, and to take such certificate and have it so recorded, as required in the preceding article, shall be liable in a penalty of one hundred dollars, to be recovered in an action in the name of the State, on the information of any citizen of the county, one-half of which penalty shall be paid to the informer and the other half to the State. [Id.]

Art. 3651. [3582] [2209] [2154] Receipt of Treasurer.—Whenever an executor or administrator pays the State Treasurer any funds of the estate he represents, under the provisions of this chapter, he shall take from such Treasurer a receipt for such payment, with his official seal attached, and file the same with the clerk of the court ordering such payment; and such receipt shall be recorded in the minutes of the court. [Id.]

Art. 3652. [3583] [2210] [2155] Distributees may recover.—When funds of an estate have been paid to the State Treasurer, any heir, devisee or legatee of such estate, or their assignees, or any of them, may recover the portion of such funds to which he or they would have been entitled. [Id.]

Art. 3653. [3584] [2211] [2156] Mode of recovery.—The person claiming such funds shall institute his suit therefor, by petition filed in the county court of the county in which the estate was administered, against the State Treasurer, setting forth the petitioner's right to such funds, and the amount claimed by him. [Id.]

Art. 3654. [3585] [2212] [2157] Citation to attorney.—Upon the filing of such petition, the Clerk shall issue a citation for the County Attorney of the county or the District Attorney of the district to appear and represent the interest of the State in such suit, and it shall be the duty of such County or District Attorney to do so. [As amended Acts 1927, 40th Leg., p. 74, ch. 50, § 1.]

Art. 3655. [3586] [2213] [2158] Proceedings.—The proceedings in such suit shall be governed by the rules for other civil suits; and should the plaintiff establish his right to the funds claimed, he shall have a judgment therefor, which shall specify the amount to which he is entitled; and a certified copy of such judgment shall be sufficient authority for the Treasurer to pay the same.

Art. 3656. [3587] [2214] [2159] Costs.—The costs of any such suit shall in all cases be adjudged against the plaintiff, and he may be required to secure the costs. [Id.]

Art. 3657. [3588] [2215] [2160] Penalty in certain cases.—When an executor or administrator fails to pay to the Treasurer any funds of an estate which he has been ordered by the county judge so to pay, within three months after such order has been made, such executor or administrator shall be liable to pay out of his own estate to the State Treasurer damages thereon at the rate of five per cent per month for each month he may neglect to make such payment after the three months from such order. [Id.]

Art. 3658. [3589] [2216] [2161] Treasurer may apply.—The State Treasurer shall have the right in the name of the State to apply to the court in which the order for payment was made, by application in writing, to enforce the payment of such funds, together with the payment of any damages that may have accrued under the provisions of the preceding article; and the court shall enforce such payment in like manner as other orders of payment are required to be enforced. [Id.]

Art. 3659. [3590] [2217] [2162] Treasurer may sue.—The Treasurer shall also have the right to institute suit in the name of the State against such executor or administrator and the sureties on his bond for the recovery of the funds so ordered to be paid and damages, if any have accrued. [Id.]

Art. 3660. [3591] [2218] [2163] To represent State.—The county or district attorney, as the case may be, shall attend to and represent the interests of the State in all matters arising under any provision of this chapter.

CHAPTER TWENTY-SEVEN

ADMINISTRATION OF COMMUNITY PROPERTY

Art.
3661. Community property.
3662. Where there is no child.
3663. When husband shall have management.
3664. Application for community administration.
3665. Court appoints appraisers.
3666. Inventory, appraisement, etc.
3667. Bond of survivor.
3668. Action of the court.
3669. Survivor has control.
3670. Survivor shall keep account.
3671. New appraisement and bond.
3672. Survivor to pay debts.
3673. Creditor may require exhibit.
3674. Action of court upon exhibit.
3675. Sureties on bond cited, when.
3676. Creditor may sue.
3677. Action of court.
3678. Surviving wife.
3679. "Survivor."
3680. Rights of wife cease when.
3681. May have partition.
3682. Recovery of insane spouse.
3683. Duty of guardians.

Article 3661. [3592] [2219] [2164] Community property.—The community property of the husband and wife except such as is exempt from forced sale, shall be liable for all the debts contracted during marriage. And, in the settlement of such community estates, the survivor, executor or administrator shall keep a separate and distinct account of all the community debts allowed or paid in the settlement of such estates. [Acts 1876, p. 124; G. L. vol. 8, p. 960.]

Art. 3662. [3593] [2220] [2165] Where there is no child.—Where the husband or wife dies intestate, or becomes insane, having no child or children, and no separate property, the common property passes to the survivor, charged with the debts of the community; and no administration thereon or guardianship of the estate shall be necessary. [Id. Acts 1893, p. 89; P. D. 5498, G. L. vol. 10, p. 519.]

Art. 3663. [3594] [2221] [2166] When husband shall have management.—Where the wife dies or becomes insane, leaving a surviving husband and child, or children, the husband shall have exclusive management, control and disposition of the community property in the same manner as during her lifetime, or sanity; and it shall not be necessary that the insane wife shall join in conveyances of such property, or her privy examination and acknowledgment to be taken to such conveyances, subject, however, to the provisions of this chapter. [Id.]

Art. 3664. [3595] [2222] [2167] Application for community administration.—The husband shall, within four years after the death of the wife, or her being declared insane, when there is a child or children, file a written application in the county court of the proper county stating:

1. The death of his wife, or that she has been declared insane by a court of competent jurisdiction, and the time and place of her death or of such declaration.
2. That she left a child or children, giving the name, sex, residence and age of each child.
3. That there is a community estate between the deceased or insane wife and himself.
4. Such facts as show the jurisdiction of the court over the estate.
5. Asking for the appointment of appraisers, to appraise such estate. [Id.]

Art. 3665. [3596] [2223] [2168] Court appoints appraisers.—Upon the filing of such application, the county judge shall, without citation, and either in term time or in vacation, by an order entered upon the minutes of the court appoint appraisers to appraise such estate as in other administrations. [Acts 1876, p. 124; G. L. vol. 8, p. 960.]

Art. 3666. [3597] [2224] [2169] Inventory, appraisement, etc.—The surviving husband or wife (of community estates) with the assistance of any two of the appraisers, shall make out a full, fair and complete inventory and appraisement of the community estate; and the survivor shall attach thereto a list of all community debts due the estate, and shall also attach thereto a list of all indebtedness due by said community estate to other parties, giving the amount of each debt and the name of the party or parties to whom it is due, and his or their post-office address; and such inventory, list of claims, and list of indebtedness of such community estate shall be sworn to by said survivor; and the inventory, appraisement and list of claims due said community estate shall be sworn to by said appraisers; and said inventory, appraisement, list of claims due said estate and list of indebtedness due by said estate shall be returned to the court within twenty days from the date of the order appointing appraisers in like manner as other administrations. [Id. Acts 1905, p. 336.]

Art. 3667. [3598] [2225] [2170] Bond of survivor.—The surviving husband shall, at the time he returns the inventory, appraisement, and list of claims, present to the court his bond with two or more good and sufficient sureties, payable to and to be approved by the county judge, in a sum equal to the whole of the value of such community estate as shown by the appraisement, conditioned that he will faithfully administer such community estate, and pay over one-half the surplus thereof after the payment of the debts with which the whole of such property is properly chargeable to such person or persons as shall be entitled to receive the same. [Acts 1876, p. 124, G. L. vol. 8, p. 960.]

Art. 3668. [3599] [2226] [2171] Action of the court.—When such inventory, appraisement, list of claims and bond are returned to the county judge, he shall, either in term time or vacation, examine the same and approve or disapprove them by an order to that effect entered upon the minutes of the court, and, when approved, they shall be recorded upon the minutes of the court, and the order approving them shall also authorize such survivor to control, manage and dispose of such community property in accordance with the provisions of this chapter.

Art. 3669. [3600] [2227] [2172] Survivor has control.—When the order mentioned in the preceding article has been entered, such survivor, without any further action in the county court, shall have the right to control, manage and dispose of such community property as may seem for the best interest of the estate and of suing and being sued with regard to the same, in the same manner as during the lifetime of the deceased; and a certified copy of the order of the court mentioned in the preceding article shall be evidence of the qualification and right of such survivor. [P. D. 4648.]

Art. 3670. [3601] [2228] [2173] Survivor shall keep account.—The survivor shall keep a fair and full account and statement of all community debts and expenses paid by him, and of the disposition made of such community property; and, upon final partition of said estate, shall account to the legal heirs of the deceased for their interest in such estate, and the increase and profits of the same, after deducting therefrom all community debts, unavoidable losses, necessary and reasonable expenses, and a reasonable commission for the management of the same. [P. D. 4648.]

Art. 3671. [3602] [2229] [2174] New appraisement and bond.—Any person interested in such community estate may cause a new appraisement to be made of the same, or a new bond may be required of the survivor for the same causes and in like manner as provided in other administrations.

Art. 3672. [3603] [2230] [2175] Survivor to pay debts.—The survivor shall pay all just and legal community debts as soon as practicable, and according to the classification and in the order prescribed for the payment of debts in other administrations.

Art. 3673. [3604] [2231] [2176] Creditor may require exhibit.—Any creditor of the estate whose claim has not been paid in full, after the lapse of one year from the filing of the inventory, appraisement, list of claims and bond by the survivor, may cause such survivor to be cited to appear at a regular term of the court in which such bond has been filed, and make an exhibit to the court in writing and under oath, showing fully and specifically:

1. The debts that have been presented to him against such community estate and their class.
2. The debts that have been paid by him and those that remain unpaid and the class of each.
3. The property that has been disposed of by him and the amount received therefor.
4. The property remaining on hand.
5. An account of losses, expenses and commissions.

Art. 3674. [3605] [2232] [2177] Action of court upon exhibit.—When such exhibit has been returned to the court and filed, the court shall, at a regular term, examine the same and hear exceptions and objections thereto, and evidence in support of or against the same; and, if satisfied that the estate has been fairly administered and in conformity to law, and that there remains no further property of such estate for the payment of debts, the court shall enter

an order upon the minutes, approving such exhibit and directing the same to be recorded in the minutes, and shall also in such order declare such administration closed.

Art. 3675. [3606] [2233] [2178] Sureties on bond cited, when.—Should it appear to the court from such exhibit or from other evidence that such estate has been improperly administered, or that there are still assets of said estate that are liable for the payment of the applicant's debt, or any part thereof, and if said debt be for the amount of one thousand dollars or less, exclusive of interest, the court shall order citation to issue for the sureties upon the bond of such survivor, citing them to appear before such court at a regular term thereof, and show cause why judgment should not be rendered against them for such debt and costs, which citation shall be returnable as in other civil suits; and the proceedings in such case shall be the same as in other civil suits in said court.

Art. 3676. [3607] [2234] [2179] Creditor may sue.—Should the amount due and payable to such creditor exceed one thousand dollars, exclusive of interest, the court shall enter an order upon the minutes requiring the survivor to pay such debt, or a part thereof, as the evidence may show to be proper; and, should he neglect to pay the same for thirty days after the date of such order, the creditor may have his action in the district court of the county where the survivor's bond is filed against such survivor, and the sureties upon his bond.

Art. 3677. [3608] [2235] [2180] Action of court.—Should the survivor, after being duly cited, fail to file an exhibit as required, the court shall proceed, in accordance with the provisions of the two preceding articles, as if the creditor's right to the payment of his claim had been fully established.

Art. 3678. [3609] [2236] [2181] Surviving wife.—The wife may retain the exclusive management, control and disposition of the community property of herself and deceased, or insane husband in the same manner, and subject to the same rights, rules and regulations as provided in the case of the husband and until she shall, in the event of the death of the husband, marry again, and in such event her right to manage, control and dispose of the community property shall cease; provided, however, that when no administration is had upon the estate of the deceased husband, as is provided under Article 3680, she may renew, and extend the maturity date, of valid existing debts of the community estate, and any lien securing same. [Acts 1925, p. 253.] [39th Leg., ch. 82, § 1.]

Art. 3679. [3610] [2236a] "Survivor."—The use of the words, "survivor" or "surviving" in the foregoing articles of this chapter, where no other designation is given, shall be held to apply as well to a sane person representing an insane person. [Acts 1893, p. 89; G. L. vol. 10, p. 519.]

Art. 3680. [3611] [2237] [2182] Rights of wife cease when.—Upon the marriage of the surviving wife, she shall cease to have control and management of said estate or the right to dispose of the same; and said estate shall be subject to administration as in other cases of deceased persons' estates.

Art. 3681. [3612] [2238] [2183] May have partition.—After the lapse of twelve months from the filing of the bond by the survivor, the persons entitled to the deceased's share of such community estate, or any portion thereof, shall be entitled to have a partition and distribution thereof in the same manner as in other administrations.

Art. 3682. [3613] [2238] Recovery of insane spouse.—Whenever such insane husband or wife shall have recovered sanity, then all action hereunder shall cease, and a report shall be made under oath of all transactions had and done under said proceedings; and said report shall be filed and recorded in the court where such proceedings were had, and with the other papers of the case. [Id.]

Art. 3683. [3614] [2238] Duty of guardians.—Persons now acting as guardians of the estate of persons of unsound mind shall turn over the estates of their wards, where the wards shall be married persons, upon the qualification of the same [sane] spouse, as provided in this chapter. [Id.]

CHAPTER TWENTY-EIGHT

TRANSFER OF ADMINISTRATION

Art.
3684. Administration transferred.
3685. Fees.
3686. Order for transfer.
3687. Clerk to record papers.
3688. Administration when transferred.

Article 3684. [3615] [2239] [2184] Administration transferred.—The county judge of any county from which any county, or part thereof, has been taken, upon the written application of the executor, administrator, or the majority of the heirs of an estate, shall transmit all original papers relating to the settlement of a deceased person's estate who was at the time of his decease a resident of that part of the territory of the county which has been, or may hereafter be, taken to form any new county, or that may be added to any other county, to the county court of such new county, or county to which such territory has been added; and he shall also transmit with such original papers a transcript, certified by the clerk under the seal of the court, of the records of all orders, judgments and decrees of the court had in relation to such estate. [Acts 1876, p. 125; G. L. vol. 8, p. 961.]

Art. 3685. [3616] [2240] [2185] Fees.—At the time of filing such application, the applicant shall pay all fees due on account of such estate; and the order for the transfer of such estate shall not be made until such fees have been paid. [Id.]

Art. 3686. [3617] [2241] [2186] Order for transfer.—When the fees due have been paid, the county judge shall, either in term time or in vacation, hear such application; and, if satisfied that the facts exist which authorize the transfer of such estate, he shall enter an order upon the minutes directing such transfer, and ordering all original papers of the estate that have not been recorded to be recorded previous to such transfer.

Art. 3687. [3618] [2242] [2187] Clerk to record papers.—Upon the entry of such order, the clerk shall record all original papers belonging to the estate that have not been previously recorded, for which the same fee shall be allowed him as is allowed for other recording; which fees shall be paid by the applicant before any such transfer shall be made. [Id.]

Art. 3688. [3619] [2243] [2188] Administration when transferred.—Where papers and proceedings relating to the settlement of an estate shall be transmitted to any court in the manner provided for in this chapter such papers and proceedings shall be filed in such court; and the estate shall be proceeded with and settled in such court in like manner as if the settlement of such estate had been originally commenced in such county. [Id.]

CHAPTER TWENTY-NINE

COSTS

Art.
3689. Commission.
3690. No commissions.
3691. Expenses allowed.
3692. Expense account.
3693. Costs of appraisers.
3694. Costs of commissioners.
3695. Costs adjudged against executor.
3696. Costs on contests.
3697. Security for costs.

Article 3689. [3621] [2245] [2190] Commission.—Executors and administrators shall be entitled to receive and may retain in their hands five per cent on all sums they may actually receive in cash, and the same per cent on all sums they may pay out

in cash in the course of their administration. [Acts 1876, p. 126; G. L. vol. 8, p. 961.]

Art. 3690. [3622] [2246] [2191] No commissions.—The commissions shall not be allowed or received for receiving any cash which was on hand at the time of the death of the testator or intestate, nor for paying out money to the heirs or legatees as such. [Id.]

Art. 3691. [2623] [2247] [2192] Expenses allowed.—Executors and administrators shall also be allowed all reasonable expenses necessarily incurred by them in the preservation, safe-keeping and management of the estate, and all reasonable attorney's fees, that may be necessarily incurred by them in the course of the administration. [Id.]

In catch line of this article, "2623" should read "3623."

Art. 3692. [3624] [2248] [2193] Expense account.—All expense charges shall be made in writing, showing specifically each item of expense and the date thereof and shall be verified by the affidavit of the executor or administrator, and filed with the clerk and entered upon the claim docket, and shall be acted upon by the court in like manner as other claims against the estate.

Art. 3693. [3625] [2249] [2194] Costs of appraisers.—Appraisers appointed under the provisions of this title shall be entitled to receive two dollars per day each for every day that they may be necessarily engaged in the performance of their duties as such appraisers.

Art. 3694. [3626] [2250] [2195] Costs of commissioners.—Commissioners appointed to partition and distribute an estate, shall be entitled to receive two dollars each for every day that they are necessarily engaged in the performance of their duties as such commissioners, to be taxed and paid as other costs in cases of partition.

Art. 3695. [3627–8] [2251–2] [2196–7] Costs adjudged against executor.—When an executor or administrator neglects the performance of any duty required by this title, and any costs are incurred thereby, he and the sureties on his bond shall be liable for such costs. When an executor or administrator is removed for cause, the costs of such proceedings shall be adjudged against him and the sureties upon his bond. [Id.]

Art. 3696. [3629] [2253] [2198] Costs on contests.—When a party files an application, complaint or opposition in court, and shall fail to sustain the object thereof, all costs occasioned by the filing of the same shall be adjudged against him. [Id.]

Art. 3697. [3630] [2254] [2199] Security for costs.—When any person other than the executor or administrator files an application, complaint or opposition in relation to the estate, the clerk may require him to give security for the probable costs of such proceedings before filing the same; or any one interested in the estate, or any officer of the court may, at any time before the trial of such application, complaint or opposition, obtain from the court, upon written motion, an order requiring such party to give security for the costs of such proceedings, and the rules governing the proceedings in civil suits in the county court respecting this subject shall govern in such case.

CHAPTER THIRTY

APPEALS TO THE DISTRICT COURT

Art.
3698. Right of appeal.
3699. Appeal bond; requisites of.
3700. Bond not required of executor, etc.
3701. Appeal on affidavit.
3702. Papers sent to district court.
3703. Certified copy of judgment.

Article 3698. [3631] [2255] [2200] Right of appeal.—Any person who may consider himself aggrieved by any decision, order, decree or judgment of the county court, shall have the right to appeal therefrom to the district court of the county upon complying with the provisions of this chapter; provided that in appeals from orders or judgments, appointing administrators or temporary administrators, the administrators shall continue the prosecution of suits then pending in favor of the estate, and if on appeal from probate court a different administrator shall be appointed, he shall be substituted in such case. [Acts 1876, p. 128; G. L. vol. 8, p. 964; Acts 1921, p. 222.]

Art. 3699. [3632] [2256] [2201] Appeal bond: requisites of.—He shall, within fifteen days after such decision, order, judgment or decree shall have been rendered, file with the county clerk a bond with two or more good and sufficient sureties, payable to the county judge in any amount to be fixed by the county judge, conditioned that the appellant shall prosecute said appeal to effect and perform the decision, order, decree or judgment which the district court shall make thereon, in case the cause shall be decided against him. [Acts 1876, p. 128; G. L. vol. 8, p. 964; Acts 1909, S. S. p. 282.]

Art. 3700. [3633] [2257] [2202] Bond not required of executor, etc.—When an appeal is taken by an executor or administrator, no bond shall be required, unless such appeal personally concerns him, in which case he must give the bond.

Art. 3701. [3634] [2258] [2203] Appeal on affidavit.—Where the party who desires to appeal is unable to give the appeal bond, it shall be sufficient if he file with the county clerk, within the time prescribed for giving such bond, an affidavit that he has made diligent efforts to give such bond and is unable to do so by reason of his poverty, and such affidavit shall operate a perfection of the appeal in respect to the matter of costs. [P. D. 6180.]

Art. 3702. [3635–6–7–8] Papers sent to district court.—Upon such appeal bond or affidavit being filed with the county clerk, he shall immediately transmit all the original papers in said proceedings to the clerk of the district court together with the appeal bond or affidavit and a certified copy of the order or decree appealed from on or before the first day of the next term of such district court, if possible, otherwise to the next succeeding term thereof, and the district clerk shall immediately file and docket the cause in the district court. Such cases shall be tried de novo in the district court, and shall be governed by the same rules of procedure as other civil cases in said court.

Art. 3703. [3639] [2263] [2208] Certified copy of judgment.—A certified copy of the judgment of the district court when rendered shall forthwith be transmitted by the clerk of the district court to the clerk of the county court from which the case was appealed for the observance of such court, and the original papers shall be returned to the clerk of the county court who shall file such certified copy of the judgment and record it upon the minutes of the court and note it upon the docket; and the county judge shall make such order as may be necessary for the enforcement of such judgment. [Id. Acts 1923, p. 168.]

TITLE 55

EVIDENCE

1. WITNESSES AND EVIDENCE

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1. WITNESSES AND EVIDENCE

Article 3704. [3640] [2264] [2209] Witnesses subpœnaed.—The clerk of the district or county court, or justice of the peace, as the case may be, at the request of any party to a suit pending in his court, or of any agent or attorney, shall issue a subpœna for any witness or witnesses who may be represented to reside within the county or be found therein at the time of the trial. [Acts 1846, p. 353; P. D. 3719; G. L. vol. 2, p. 1671.]

Art. 3705. [3641] [2265] [2210] Form of subpœna.—The style of the subpœna shall be "The State of Texas." It shall state the names of the parties to the suit, the court in which the same is pending, the title [time] and place at which the witness is required to appear, and the party at whose instance he is summoned. It shall be dated and tested by the clerk or justice, but need not be under the seal of the court, and the date of its issuance shall be noted thereon. It may be made returnable forthwith, or on any day for which trial of the cause may be set. [Id.]

Art. 3706. [3642] [2266] [2211] Service of.—Subpœnas may be executed and returned at any time before the trial of the cause, and shall be served by being read to the witness; and service thereof may be accepted by any witness by a written memorandum, signed by him, attached to the subpœna. [Id. sec. 16; P. D. 1434.]

Art. 3707. [3643] [2267] [2212] Witness shall attend.—Every witness summoned in any suit shall attend the court from day to day, and from term to term, until discharged by the court or party summoning him. If any witness, after being duly summoned, shall fail to attend, he may be fined by the court as for a contempt of court, and an attachment may issue against the body of such witness to compel his attendance; but no such fine shall be imposed, nor shall such attachment issue in a civil suit until it shall be shown to the court, by affidavit of the party, his agent or attorney, that his lawful fees have been paid or tendered to such witness. [Id. P. D. 3720.]

Art. 3708. [3644] [2268] [2213] Fees of witnesses.—Witnesses shall be allowed a fee of one dollar for each day they may be in attendance on the court, and six cents for every mile they may have to travel in going to and returning therefrom, which shall be paid on the certificate of the clerk, by the party summoning them; which certificate shall be given on the affidavit of the witness before the clerk. Such compensation and mileage of witnesses shall be taxed in the bill of costs as other costs. [Id.]

Art. 3709. [3645] [2269] [2214] Refusal to testify.—Any witness refusing to give evidence may be committed to jail, there to remain without bail until he shall consent to give evidence. [Id. P. D. 3725.]

Art. 3710. [3646] [2270] [2215] Privileged from arrest.—Witnesses shall be privileged from arrest, except in cases of treason, felony and breach of the peace, during their attendance at court, and in going to and returning therefrom, allowing one day for each twenty-five miles from their place of abode. [Id.]

Art. 3711. [3647] [2271] [2216] Party as a witness.—Either party to a suit may examine the opposing party as a witness, and shall have the same process to compel his attendance as in the case of any other witness. His examination shall be conducted and his testimony shall be received under the same rules applicable to other witnesses. [Acts 1858, p. 110, sec. 3; P. D. 3754; G. L. vol. 4, p. 982.]

Art. 3712. [3648] [2272] [2217] Interpreters.—The court may, when necessary, appoint interpreters, who may be summoned in the same manner as witnesses, and shall be subject to the same penalties for disobedience. [Acts 1846, p. 363; P. D. 3761.]

Art. 3713. [3687] [2299] [2245] Common law rules.—The common law of England as practiced and understood shall, in its application to evidence, be followed and practiced by the courts of this State, so far as the same may not be inconsistent with this title or any other law. [Acts 1836, Dec. 20; P. D. 3706.]

Art. 3714. [3688] [2300] [2246] Color or interest does not disqualify.—No person shall be incompetent to testify on account of color, nor because he is a party to a suit or proceeding or interested in the issue tried. [Acts 1871, p. 108; P. D. 6826.]

Art. 3715. [3689] [2301] [2247] Husband or wife not disqualified.—The husband or wife of a party to a suit or proceeding, or who is interested in the issue to be tried, shall not be incompetent to testify therein, except as to confidential communications between such husband and wife.

Art. 3716. [3690] [2302] [2248] In actions by or against executors, etc.—In actions by or against executors, administrators, or guardians, in which judgment may be rendered for or against them as such, neither party shall be allowed to testify against the others as to any transaction with, or statement by, the testator, intestate or ward, unless called to testify thereto by the opposite party; and the provisions of this article shall extend to and include all actions by or against the heirs or legal representatives of a decedent arising out of any transaction with such decedent. [Id. P. D. 6827.]

Art. 3717. Witness not disqualified.—No person shall be incompetent to testify in civil cases on account of his religious opinion, or for the want of any religious belief, or by reason of having been convicted of a felony. [Acts 1925, p. 146.] [39th Leg., ch. 28, § 1.]

Art. 3718. [3692] [2304] [2250] Printed statutes.—The printed statute books of this State, of

the United States, of the District of Columbia, or of any State or territory of the United States or of any foreign government, purporting to have been printed under the authority thereof, shall be received as evidence of the acts and resolutions therein contained. [Acts 1846, p. 388; P. D. 3712; G. L. vol. 2, p. 1694.]

Art. 3719. [3693] [2305] [2251] Certified copies of acts, etc.—A certified copy under the hand and seal of the Secretary of State of this State, of any act or resolution contained in any of such printed statute books deposited in his office, or of any law or bill, public or private, deposited in his office in accordance with law, shall be received as evidence thereof. [Id.]

Art. 3720. [3694] [2306] [2252] Copies of records of officers and courts.—Copies of the records and filed papers of all public officers and custodians of records of minutes of boards, etc., and courts of this State, certified to under the hand, and the seal if there be one, of the lawful possessor of such records, shall be admitted as evidence in all cases where the records themselves would be admissible. Translated copies of all records in the land office certified to under the hand of the translator, and the Commissioner of the General Land Office, attested with the seal of said office, shall be prima facie evidence in all cases where the original records would be evidence. [Id. P. D. 3715.]

Art. 3721. [3695] [2307] [2252a] Record of surveys.—Each county surveyor shall record in a well-bound book each survey in the county for which he was elected, with the plat thereof that he may make, whether private or official, and certified copies of such record, under the official signature of the surveyor, may be used in evidence in any court of this State. [Acts 1881, p. 71; G. L. vol. 9, p. 163.]

Art. 3722. [3696] [2308] [2253] Copies and certificates from certain officers.—The Secretary of State, Attorney General, Land Commissioner, Comptroller, Treasurer, Adjutant General, Commissioner of Agriculture, Commissioner of Insurance, Banking Commissioner, and State Librarian shall furnish any person applying for the same with a copy of any paper, document or record in their offices, and with certificates under seal certifying to any fact contained in the papers, documents or records of their offices; and the same shall be received in evidence in all cases in which the originals would be evidence. [Acts March 20, 1848; P. D. 3806; G. L. vol. 3, p. 184.]

Art. 3723. [3697] [2309] [2254] Notarial acts and copies thereof.—All declarations and protests made and acknowledgments taken by notaries public, and certified copies of their records and official papers, shall be received as evidence of the facts therein stated in any court of this State. [Acts 1876, p. 30; P. D. 4697; G. L. vol. 8, p. 865.]

Art. 3724. [3698] [2310] [2255] Transcript from Comptroller's Office.—In suits by the State against any officer or agent thereof, on account of any delinquency or failure to pay to the State any money, a transcript from the papers, books, records and proceedings of the office of the Comptroller purporting to contain a true statement of accounts between the State and such party, authenticated under the seal of said office, shall be admitted as prima facie evidence; and the court trying the cause may thereupon render judgment accordingly. All copies of bonds, contracts or other papers relating to, or connected with, any account between the State and an individual, sued as aforesaid, when certified by the Comptroller to be true copies of the originals on file in said office, and authenticated under the seal of said office, may be annexed to such transcript and shall be entitled to the same degree of credit that would be due to the original papers if produced and proved in court; but, when such suit is brought upon a bond or other written instrument, and the defendant shall by plea under oath deny the execution of such instrument, the court shall require the production and proof thereof. [Acts 1861, p. 14; P. D. 3704; G. L. vol. 5, p. 351.]

Art. 3725. [3699] [2311] [2256] Copies of certain ancient instruments.—Copies of all conveyances and other instruments of writing between private individuals, which were filed in the office of any alcalde or judge in Texas previous to the first Monday in February, 1837, shall be admissible in evidence, and shall have the same force and effect as the originals thereof; provided, such copies are certified under the hand and official seal of the officer with whom the originals are now deposited [Acts May 13, 1846, p. 365; P. D. 3717; G. L. vol. 2, p. 1671.]

Art. 3726. [3700] [2312] [2257] Recorded instruments admitted without proof.—Every instrument of writing which is permitted or required by law to be recorded in the office of the Clerk of the County Court, and which has been, or hereafter may be, so recorded, after being proved or acknowledged in the manner provided by the laws of this State in force at the time of its registration, or at the time it was proved or acknowledged, or every instrument which has been, or hereafter may be, actually recorded for a period of ten years in the book used by said Clerk for the recording of such instruments, whether proved or acknowledged in such manner or not, shall be admitted as evidence in any suit in this State without the necessity of proving its execution, provided, no claim adverse or inconsistent to the one evidenced by such instrument shall have been asserted during that ten years; provided, that the party to give such instrument in evidence shall file the same among the papers of the suit in which he proposes to use it at least three days before the commencement of the trial of such suit, and give notice of such filing to the opposite party, or his attorney of record; and unless such opposite party, or some other person for him, shall, within three days before the trial of the cause, file an affidavit stating that he believes such instrument of writing to be forged. And, whenever any party to a suit shall file among the papers of the cause an affidavit stating that any instrument of writing, recorded as aforesaid, has been lost, or that he cannot procure the original, a certified copy of the record of any such instrument shall be admitted in evidence in like manner as the original could be. And after such instrument shall have been actually recorded as herein provided for a period of ten years, it shall be no objection to the admission of same, or a certified copy thereof, as evidence, that the certificate of the officer who took such proof or acknowledgment, is not in form or substance such as required by the laws of this State; and said instrument shall be given the same effect as if it were not so defective. [Acts 1846, p. 387; Acts 1907, p. 308; P. D. 3716; G. L. vol. 2, p. 1693; Acts 1927, 40th Leg., 1st C. S., p. 198, ch. 73, § 1.]

Art. 3726a. Recorded instruments as to family history as prima facie evidence.—That the statement of facts concerning any family history and showing who were the legal heirs of any deceased person when contained in either an affidavit or any instrument legally executed and acknowledged, when any such affidavit or instrument has been of record in the Deed Records of any County in the State of Texas in which the property affected is situated for five years or more shall be received in any suit as prima facie evidence of the facts therein stated, but if there be any error in the statement of facts in such recorded affidavit or instrument the true facts may be proven by any one interested in the proceeding in which said affidavit or instrument is offered in evidence. [Acts 1927, 40th Leg., p. 362, ch. 244, § 1.]

Art. 3727. [3701] Old record books declared valid.—All volumes constituting a portion of the records of any county organized prior to January 1, 1882, wherein are recorded deeds, mortgages or trust deeds, or other muniments of title to real estate situated in such county, which volumes and records are now and have been constantly among the archives of such county, as records thereof, shall be in all respects lawful and valid records of such counties respectively, for

all purposes whatsoever relating to titles to real estate, as effectively as if such books and records were originally records of such counties, respectively, and as fully and completely as if such counties had been duly organized at the dates of the filing for record of the instruments recorded therein, as shown therein. Certified copies of the instruments recorded in said volumes, made in accordance with law, shall have the force and effect that certified copies of original records have in organized counties, and same may be used for all purposes lawful for certified copies of original records in ordinary cases in organized counties. [Acts 1905, p. 36.]

Art. 3728. [3703] [2319] [2263] Copies of transcribed records.—Where a county has been or may be created out of the territory of any organized county, and the records of deeds and other instruments required or permitted by law to be recorded, relating to lands or other property in such new county, have been transcribed and placed on record in such new county, in accordance with law, certified copies of such transcribed records in the new county may be admitted in evidence with like effect as certified copies of the original records. [Acts 1879, p. 106; G. L. vol. 8, p. 1406.]

Art. 3729. [3705] [2313] Certain abstracts.—All abstracts of land titles, or land abstract books to lands in this State, compiled from the records of any county in this State, prior to the year 1890, which said records were partially or wholly destroyed or lost from any cause during the month[s] of May, 1874, March, 1876, and January, 1889, shall be competent prima facie evidence of the truth of the data or memoranda therein contained and compiled prior to the year 1890, and shall be admissible in evidence in the courts of this State; provided, that the compiler or compilers of such abstracts of land titles or land title abstract books, shall have made heretofore, or before offered in evidence, affidavit to the effect that said abstracts of land titles, or land title abstract books, were compiled by him from the records of the county prior to their destruction or loss, and that they contain a true and correct statement of the matters and things to which they relate. Any testimony is admissible which tends to discredit or substantiate the reliability of such abstract of land titles or land title abstract books, or tends to show the compiler thereof to have been incompetent or unreliable, or competent and reliable. A copy of such abstract shall be filed in the papers of the cause in which it is sought to be used, and notice given to the opposite party at least five days before the trial, and the same defense may be made as if copies of the original record had been filed; provided, that the party offering such abstracts of land titles, or land title abstract books, in evidence, shall himself, or by his agent or attorney, have made affidavit that the original instrument to which the said data or memorandum relates is not then on record; and that he has made diligent search and inquiry for the same in places and from persons where and in whose possession it would most probably be found, and has been unable to find the same; that, to his best knowledge and belief, the same is lost or destroyed; and provided, further, that the owner of said abstracts of land titles, or of land title abstract books, shall have filed with the county commissioners court his application in writing (which may be granted or refused, in the discretion of said court, and if refused, this article shall not become of force as to said application so refused) for an order of said court admitting to record in said court the contract of the said owner in writing, wherein the said owner shall bind himself, his heirs and assigns, as follows: That said owner, his heirs or assigns, will, whenever requested in writing, setting forth the data required by any party to any suit interested in introducing said abstracts of land titles, or land title abstract books, produce the same without charge on the day demanded for introducing in evidence, and upon the trial of any cause in this State; provided, that if said owner, his heirs or assigns, are required to produce said abstracts of land titles, or land title abstract books, in courts of any other county than that to the lands of which said abstract of land titles, or land title abstract books pertain, they shall be, by the party at whose instance such production is required, reasonably compensated in advance for the time and expense of the said owner, his heirs or assigns. And the said owner in said contract shall bind himself, his heirs and assigns, to answer in full damages to any party damaged by the failure or default of the said owner, his heirs or assigns, without good cause, to produce said abstracts of land titles or land title abstract books, as herein provided. Said contract shall further stipulate that no charge shall ever be made by said owner, his heirs or assigns, in excess of one dollar for each instrument or remove in any title, in the compilation of a complete abstract or title to the lands in the county to which said abstracts of land titles, or land title abstract books, pertain, and that said owner, his heirs and assigns, will, upon request and payment of the fees therefor by any person, either make, compile and certify, or cause to be made, compiled or certified, within a reasonable time, a complete abstract of title to any land to which said abstracts of land titles, or land title abstract books, pertain. The provisions of this article shall not apply if it can be shown by competent evidence that any such deeds were improperly recorded. Whenever any person, company or corporation has heretofore complied with the law which is amended hereby, in order to make an abstract evidence, the said person, company or corporation shall not be required to do anything more or further under this article in order to have the benefits thereof. [Acts 1891, p. 136; Acts 1897, p. 146; Acts 1901, p. 44.]

Art. 3730. [3706] [2314] [2258] Certified copy of instrument sued on.—If suit be brought on any instrument or note in writing filed in any suit brought thereupon in any other court of this State, a certified copy of such instrument or note in writing, under the hand and seal of the clerk of the court in which the original may be filed, shall be admitted as evidence in like manner as such original might be; but if the defendant shall plead, and file an affidavit that such original instrument or note in writing has not been executed by him, or by his authority, the clerk of the court having the custody of such original shall, on being summoned as a witness, attend with the same on trial of the cause. [Acts 1891, p. 136; Acts 1846, p. 365; P. D. 3718; G. L. vol. 2, p. 1692.]

Art. 3731. [3707] [2315] [2259] Certified copies from heads of departments.—Certified copies, under the hands and official seals of the heads of departments, of all notes, bonds, mortgages, bills, accounts, or other documents, properly on file in any department of this State, shall be received in evidence on an equal footing with the originals, in all suits now pending, or which may be hereafter instituted, in this State, where the originals of such notes, bonds, mortgages, bills, accounts or other documents would be evidence. [Acts 1870, p. 62; P. D. 6825; G. L. vol. 6, p. 236.]

Art. 3732. [3708] [2316] [2260] Assessment or payment of taxes.—Whenever in any cause it may be material to prove the assessment of any property for taxes, or the payment of any taxes, the certificate of the Comptroller of such assessment from the rolls deposited in his office, or that the payment of such taxes is shown by the records of his office, shall be admissible in evidence to prove the same. [P. D. 3708.]

Art. 3733. [3709] [2317] [2261] Rate of interest presumed.—The rate of interest in any other State, territory or country is presumed to be the same as that established by law in this State, and may be recovered accordingly without allegation or proof thereof, unless the rate of interest in such other country be alleged and proved. [Acts 1858, p. 112; G. L. vol. 4, p. 984.]

Art. 3734. [3710] [2318] [2262] Execution of written instruments presumed.—When any petition, answer, or other pleading shall be founded, in whole or in part, on any instrument or note in writing

charged to have been executed by the other party or by his authority, and not alleged therein to be lost or destroyed, such instrument or note in writing shall be received as evidence without the necessity of proving its execution, unless the party by whom or by whose authority such instrument or note in writing is charged to have been executed, shall file his affidavit denying the execution thereof; and the like rule shall prevail in all suits against indorsers and sureties upon any note or instrument in writing. When any such instrument or note in writing is charged to have been executed by any testator or intestate, it shall be received in evidence in like manner, unless some suspicion is cast upon it by an affidavit of the executor or administrator of such testator or intestate. [Acts 1846, p. 386; P. D. 1443; G. L. vol. 2, p. 1692.]

Art. 3735. [3711] [2321] [2264] Appointment and qualification of executor, etc.—Whenever it may be necessary to make proof of the appointment and qualification of an executor, administrator or guardian, the letters issued to them in the manner provided by law, or a certificate of the proper clerk under his official seal that such letters have been issued, shall be sufficient evidence of the appointment and qualification of such executor, administrator or guardian. [Acts 1863, p. 5; G. L. vol. 5, p. 593.]

Art. 3736. [3712] [2323] [2266] Suit on sworn account.—When any action or defense is founded upon an open account, supported by the affidavit of the party, his agent or attorney, taken before some officer authorized to administer oaths, to the effect that such account is, within the knowledge of affiant, just and true, that it is due, and that all just and lawful offsets, payments and credits have been allowed, the same shall be taken as prima facie evidence thereof, unless the party resisting such claim shall, before an announcement of ready for trial in said cause, file a written denial, under oath, stating that such account is not just or true, in whole or in part, and if in part only, stating the items and particulars which are unjust; provided, that when such counter affidavit shall be filed on the day of the trial, the party claiming under such verified account shall have the right to continue such cause until the next term of court; when he fails to file such affidavit, he shall not be permitted to deny the account, or any item therein as the case may be. [Acts 1883, p. 110; G. L. vol. 9, p. 416.]

Art. 3737. [3713] [677] [601] Records of corporation.—The records of any company incorporated under the provisions of any statute of this State, or copies thereof duly authenticated by the signature of the president and secretary of such company, under the corporate seal thereof, shall be competent evidence in any action or proceedings to which such corporation may be a party. [Id. P. D. 5967.]

Art. 3737a. Records of closed bank as evidence.—Sec. 1. Whenever an insolvent state bank shall come into the hands of the Banking Commissioner of Texas for liquidation, all books, records, documents and papers of such failed bank received by the Commissioner and held by him in the course of the liquidation, or certified copies thereof, under the hand and official seal of the Commissioner, shall be received in evidence in all cases without proof of the correctness of the same and without other proof, except the certificate of the Commissioner that same were received from the custody of the failed bank, or found among its effects.

Sec. 2. That such original books, records, documents and papers, or certified copies thereof, or any part thereof, when received in evidence shall be prima facie evidence of the facts disclosed thereby. [Acts 1927, 40th Leg., p. 290, ch. 203.]

2. DEPOSITIONS

Art. 3738. [3649] [2273] [2218] Depositions of witnesses.—Depositions of witnesses may be taken when the party desires to perpetuate the testimony of a witness, and, in all civil suits heretofore or hereafter brought in this State, whether the witness resides in the county where the suit is brought or out of it; provided, the failure to secure the deposition of a male witness residing in the county in which the suit is pending shall not be regarded as want of diligence where diligence has been used to secure his personal attendance by the service of subpœna or attachment, under the rules of law, unless by reason of age, infirmity or sickness, or official duty, the witness will be unable to attend the court, or unless he is about to leave, or has left the State or county in which the suit is pending and will not probably be present at the trial. [Acts 1846, p. 363; P. D. 3726; Acts 1879, p. 126; G. L. vol. 2, p. 1671; G. L. vol. 8, p. 1426.]

Art. 3739. [3650] [2274] [2219] Notice and service.—The party wishing to take the deposition of a witness in a suit pending in court shall file with the clerk or justice of the peace, as the case may be, a notice of his intention to apply for a commission to take the answers of the witness to interrogatories attached to such notice. The notice shall state the name and residence of the witness, or the place where he is to be found, and the suit in which the deposition is to be used; and a copy thereof and of the attached interrogatories shall be served upon the adverse party, or his attorney of record, five days before the issuance of a commission. Whenever the adverse party is a corporation or joint stock association, service may be made upon the president, secretary or treasurer of such corporation or association, or upon the local agent representing such corporation or association in the county in which the suit is pending, or by leaving a copy of the notice and attached interrogatories at the principal office of such corporation or association during office hours. [Acts 1879, p. 126; Acts 1887, p. 27; G. L. vol. 8, p. 1426; G. L. vol. 9, p. 825.]

Art. 3740. [3651] [2275] [2220] Notice by publication.—In all civil suits where it shall be shown to the court, by affidavit filed therein, that either party is beyond the jurisdiction of the court, or that he cannot be found, or has died since the commencement of the suit and such death has been suggested at a prior term of the court, so that the notice and copy of interrogatories cannot be served upon him for the purpose of taking depositions, and such party has no attorney of record upon whom they can be served, or if he be deceased and all the persons entitled to claim by or through such deceased defendant have not made themselves parties to the suit, and are unknown, the party wishing to take depositions may file his interrogatories in the court where said suit is pending, and the clerk of such court or justice of the peace shall thereupon cause a notice to be published in some newspaper for thirty days, stating the number of the suit, the names of the original parties, in what court the suit is pending, name and residence of the witness to whom the interrogatories are propounded, and that a commission will issue on or after the thirtieth day after such publication to take the deposition of such witness; at the expiration of which time such clerk or justice shall, on the application of the party filing such interrogatories, his agent or attorney, issue a commission as in other cases. [Id. P. D. 3737.]

Art. 3741. [3652] [2276] [2221] When served by publication.—In suits where service of citation has been made by publication, and the defendant has not answered within the time prescribed by law, service of notice of filing interrogatories may be made at any time after the day when the defendant is required to answer, by filing such notice among the papers of the suit at least twenty days before the issuance of a commission; service of notice may also be made in the manner prescribed in the preceding article. [Acts 1861, p. 26; P. D. 3738.]

Art. 3742. [3653] [2277] [2222] To perpetuate testimony.—When any person may anticipate the institution of a suit in which he may be interested, and may desire to perpetuate the testimony of a witness to be used in such suit, he, his agent or attorney, may file a written statement in the proper court of the county where such suit could be instituted,

representing the fact and the names and residences, if known, of the persons supposed to be interested adversely to said person; a copy of which statement and writ shall be served on the persons interested adversely; or, where such person, his agent or attorney, shall at the time of filing such statement make affidavit that the names and residences of the heirs, successors or legal representative of any deceased person are unknown to the affiant, or reside beyond the jurisdiction of the State, the clerk of the court or justice shall issue a like writ, which shall be served on such unknown or non-resident persons by publication in some newspaper in the mode and manner provided by law for the service of original citation upon non-residents or unknown parties; after which the depositions of such witnesses may be taken and returned by the parties making the said statement in the form and under the rules prescribed for taking testimony by deposition; and such testimony may be used in any suit which may be thereafter instituted by or between any of the parties to the statement, or those claiming under them, in like manner as if such depositions had been taken after the institution of such suit. An application or petition for the probate of a will, or an anticipated application or petition for the probate of a will, shall be considered as a suit within the meaning and purport of this article; and, whenever any person in this state shall desire to perpetuate testimony for use in an anticipated application for the probate of a will, notice thereof shall be given in the mode and manner now provided by law for the giving of notices in probate, as provided in Articles 3333 and 3334 of Chapter 4, Title 54, Revised Civil Statutes of 1925. When such suit has been instituted, all such depositions so taken and returned shall be subject to the like exceptions as other depositions. [Acts 1874, p. 103; P. D. 6829b; G. L. vol. 8, p. 105; Acts 1927, 40th Leg., p. 76, ch. 53, § 1.]

Art. 3743. [3654] [2278] [2223] Cross-interrogatories.—Whenever one party may file interrogatories for the purpose of taking the deposition of a witness, the opposite party may file cross-interrogatories at any time before the commission issues, and a copy of the same shall accompany the direct interrogatories, and shall be answered and returned therewith. [Id. sec. 72; P. D. 3731.]

Art. 3744. [3655] [2279] [2224] Commission.—After the service of the notice of filing the interrogatories has been completed, the clerk or justice shall issue a commission to take the deposition of the witness named in the notice. [Id. P. D. 3736.]

Art. 3745. [3656] [2280] [2225] Requisites of.—The style of the commission shall be "The State of Texas." It shall be dated and tested as other process; be addressed to the several officers named in the succeeding article, and shall authorize and require them, or either of them, to summon the witness before him forthwith, and to take his answers under oath to the direct and cross-interrogatories, if any, a copy of which shall be attached to such commission, and to return without delay the commission and interrogatories, and the answers of the witness thereto, to the clerk or justice of the proper court, giving his official and post-office address. [Id.]

Art. 3746. [3657] [2281] [2226] Officers authorized to execute.—The commission shall be addressed to the following officers, either of whom may execute and return the same:

1. If the witness be alleged to reside or be within the State, to any clerk of the district court, any judge or clerk of the county court, or any notary public of the proper county.

2. If the witness be alleged to reside or be without the State, and within the United States, to any clerk of a court of record having a seal, any notary public, or any commissioner of deeds duly appointed under the laws of this State within some other State or territory.

3. If the witness is alleged to reside or be without the United States, to any notary public or any minister, commissioner or charge d'affairs of the United States resident in, and accredited to, the country where the deposition may be taken, or any consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States resident in such country. [P. D. 3726, 3736.]

Art. 3747. [3658] [2282] [2227] Subpœna for witness.—Upon the receipt of such commission by any officer to whom it is addressed, residing in this State, if the witness does not voluntarily appear, he shall issue a subpœna, directed to the sheriff or any constable of the county, requiring him to summon the witness to appear and answer interrogatories at a time and place named in the subpœna. [Acts 1905, p. 107; Acts 1874, p. 103; Acts 1907, p. 186; P. D. 3727; G. L. vol. 8, p. 105.]

Art. 3748. [3659] [2283] [2228] May be attached.—If the witness, after being duly summoned, shall fail to appear, or, having appeared, shall refuse to answer the interrogatories, such officer shall have power to issue an attachment against such witness and to fine and imprison him in like manner as the district and county courts are empowered to do in like cases. [Acts 1874, p. 103.]

Art. 3749. [3660] [2284] [2229] Execution of commission.—Upon the appearance of the witness the officer to whom the commission is directed shall proceed to take his answers to the interrogatories, reduce to writing, and shall cause the same to be signed and sworn to by the witness. The officer shall certify that the answers were signed and sworn to by the witness before him, and shall seal them up in an envelope, together with the commission and interrogatories and cross-interrogatories, if any, write his name across the seal, and indorse on the envelope the names of the parties to the suit and of the witnesses, and shall direct the package to the clerk of the court or justice from which the commission issued. If the depositions be sent by mail, the officer taking the same shall certify on the envelope enclosing the depositions that he in person deposited same in the mail for transmission, stating the date when and the post office in which the same are so deposited. [Acts 1905, p. 107; Acts 1874, p. 103; Acts 1907, p. 187; G. L. vol. 8, p. 105.]

Art. 3750. [3661] [2285] [2230] Interpreter.—The officer executing such commission shall have authority, when he deems it expedient, to summon and swear an interpreter to facilitate the taking of the deposition.

Art. 3751. [3662] [2286] [2231] Return of depositions.—Depositions may be returned to the court either by mail, or by a party interested in taking the same, or by any other person; and the clerk or justice taking them from the postoffice shall indorse on them that he received them from the postoffice, and sign his name thereto. If not sent by mail, the person delivering them into court shall make affidavit before the clerk or justice that he received them from the hands of the officer before whom they were taken; that they have not been out of his possession since, and that they have undergone no alteration. [Acts 1848, p. 106; P. D. 3729; G. L. vol. 3, p. 106.]

Art. 3752. [3663] Oral deposition.—The testimony of any witness and of any party to a suit by oral deposition and answer may be taken in any civil case in any district or county court of this State, in any instance where depositions are now authorized by law to be taken. [Acts 1907, p. 187; Acts 1919, p. 5.]

Art. 3753. [3664] Notice.—Ten days' notice must be given in writing by the party, or his attorney, proposing to take such deposition, to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition. In all cases in rem, the person having the agency or possession of the property at the time of the seizure shall be deemed the adverse party until a claim shall have been put in. [Acts 1907, p. 187.]

Art. 3754. [3665] Compelling appearance.—Any person may be compelled to appear and depose,

as provided by this law, in the same manner as witnesses may be compelled to appear and testify in court; provided, that when such depositions are to be taken at a point more than one hundred miles distant from the court where the suit is pending, the party to whom such notice is given may, by notice to the adverse party or his attorney, require the deposition to be taken upon commission and written interrogatories, unless the judge or court before whom said suit is pending shall, upon proper application, after notice, made either in term time or vacation, otherwise direct. [Id.]

Art. 3755. [3666] Request for issuance.—After said notice of taking depositions by oral examination and answer shall have been served, the party serving the same shall note on a true copy thereof the date and hour of such service, upon whom served, the manner of service, and sign the same. The party desiring such deposition shall file such true copy with the clerk of the court in which such cause is pending, with request for the issuance of a commission to take such deposition, whereupon said clerk shall, after the expiration of ten days from the date of the service of such notice, as noted on said true copy, issue a commission to take such deposition. [Id.]

Art. 3756 [3667] Commission, requisites of.—Such commission shall be styled, addressed, dated and tested as provided for in case of written interrogatories, and shall authorize and require the officer or officers to whom the same is addressed, or either of them, to examine said witness before him on the date named in the notice and commission and to take his answers under oath to such questions as may be propounded to him by the respective parties or their attorneys to the suit or proceeding. Such commission shall require such witness to remain in attendance from day to day until such deposition is begun and completed. [Id.]

Art. 3757. [3668] Power of officer taking depositions.—Said officer shall have the same power and authority to enforce the attendance of the witness, and to compel him to testify, as in cases of written interrogatories. [Id.]

Art. 3758. [3669] Written cross-interrogatories filed.—The party upon whom the notice is served may file with the clerk of the court written interrogatories to the witness, a certified copy of which interrogatories shall be attached to the commission and answers thereto taken at the time of taking the oral testimony. [Id.]

Art. 3759. [3670] Witness sworn.—Every person so deposing shall be first cautioned and sworn to testify the truth, the whole truth and nothing but the truth. [Id.]

Art. 3760. [3671] Examination.—The witness shall be carefully examined, his testimony shall be reduced to writing or typewriting by the officer taking the deposition, or by some person under his personal supervision, or by the deponent himself in the officer's presence, and by no other person, and shall, after it has been reduced to writing or typewriting, be subscribed by the deponent. [Id.]

Art. 3761. [3672] Objections to testimony.—The officer taking such oral deposition shall not sustain objections or exceptions to any of the testimony taken, nor exclude same; but any of the parties or attorneys engaged in taking the testimony may have any objections they may make recorded with the testimony and reserved for the action of the court in which the cause is pending, but any such court shall not be confined to the objections made at the taking of the testimony. [Id.]

Art. 3762. [3673] Depositions certified and returned, how, rules as to use, etc.—Such depositions shall be certified and returned by the officer taking the same, and opened and used as is provided in case of depositions on written interrogatories. [Acts 1907, p. 188.]

Art. 3763. [3674] [2287] [2232] Depositions opened.—Depositions, after being filed, may be opened by the clerk or justice at the request of either party or his counsel; and the clerk or justice shall indorse on such depositions upon what day and at whose request they were opened, signing his name thereto, and they shall remain on file for the inspection of either party. [Acts 1846, p. 363; P. D. 3741; G. L. vol. 2, p. 1671.]

Art. 3764. [3675] [2288] [2233] Either party may use depositions.—When cross-interrogatories have been filed and answered, either party has the right to use the depositions on the trial. [Id. sec. 76; P. D. 3740.]

Art. 3765. [3676] [2289] [2235] Objections to deposition.—When a deposition shall have been filed in the court at least one entire day before the day on which the case is called for trial, no objection to the form thereof, or to the manner of taking the same, shall be heard, unless such objections are in writing and notice thereof is given to the opposite counsel before the trial commences. Such objection shall be made and determined at the first term of the court after the deposition has been filed, and not thereafter. [Id. Acts 1893, p. 5; P. D. 3742.]

Art. 3766. [3677] [2290] [2236] Depositions as evidence.—Depositions may be read in evidence upon the trial of any suit in which they are taken, subject to all legal exceptions which might have been made to the interrogatories and answers, were the witness personally present before the court giving evidence. [Acts 1848, p. 106; P. D. 3733; G. L. vol. 3, p. 106.]

Art. 3767. [3678] [2291] [2237] Matter not responsive.—If any deposition shall contain any testimony not pertinent to the direct and cross-interrogatories propounded, such matter shall be deemed surplusage, and may be stricken out by the court upon objection thereto. [Acts 1846, p. 365; G. L. vol. 2, p. 1671.]

Art. 3768. [3679] [2292] [2238] One's own deposition.—The deposition of either party to a suit who is competent to testify therein may be taken in his own behalf in the same manner and with like effect with the depositions of other witnesses.

Art. 3769. [3680 to 3686] Of adverse party.—These rules shall govern the taking of the deposition of the adverse party:

1. Either party to a suit may examine the opposing party as a witness, upon interrogatories filed in the cause, and shall have the same process to obtain his testimony as in the case of any other witness.

2. No notice of the filing of the interrogatories is necessary.

3. A commission to take the answers of the party to the interrogatories shall be issued by the clerk or justice, and be executed and returned by any authorized officer as in other cases.

4. A copy of the interrogatories need not be served on the adverse party before a commission shall issue to take the answers thereto.

5. The examination of the adverse party shall be conducted and testimony received in the same manner and according to the same rules which apply in the case of any other witness, subject to the provisions of this article.

6. The party interrogated may, in answer to questions propounded, state any matter connected with the cause and pertinent to the issue to be tried; and the adverse party may contradict the answers by any other competent testimony in the same manner as he might contradict the testimony of any other witness.

7. If the party interrogated refuses to answer, the officer executing the commission shall certify such refusal; and any interrogatory which the party refuses to answer, or which he answers evasively, shall be taken as confessed.

8. The party interrogated may, upon the trial of the case, take exception to the interrogatories on the ground that they are not pertinent, and to the answers that they are not competent evidence.

9. It shall be no objection to the interrogatories that they are leading in their character.

10. Where any party to a suit is a corporation, such corporation shall not be permitted to take ex-parte depositions, nor shall any ex-parte deposition be taken of the agents of such corporation, but if there are more than two parties to the suit ex-parte depositions may be taken by or of any such parties to the suit, except the corporation or its agents. It is hereby expressly provided that any party to a suit wherein a corporation is a party shall have the right to take written and oral depositions of any party to such suit or of any witness, after giving notice and complying with the other requirements of that statutes [statute] of the State of Texas, as to the taking of written and oral depositions of witnesses. It is further hereby expressly provided that when any ex-parte deposition is taken in any suit whatever, either the party taking the same or the party giving the same shall have the right to introduce the deposition in evidence, subject to the general rules of evidence without regard to whether the person offering the same has crossed the interrogatories or not, and without regard to whether or not the witness who gave the deposition is present in court or has testified in the case. [Acts 1925, p. 448.] [39th Leg., ch. 179, § 1.]

TITLE 56

EXECUTION

Art.
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Article 3770. [3714] [2324] [2267] Execution on judgment.—After the adjournment of a district or county court, the clerk thereof shall tax the costs in every case in which a final judgment has been rendered, and issue execution to enforce such judgment and collect such costs. [Act June 4, 1873, p. 209; P. D. 3772; G. L. vol. 7, p. 661.]

Art. 3771. [3715] [2325] [2268] Execution before adjournment.—After the expiration of twenty days from and after the rendition of a final judgment in the district or county court, and after the overruling of any motion therein for a new trial or in arrest of judgment, if no supersedeas bond on appeal or writ of error has been filed and approved, the clerk shall issue execution upon such judgment upon application of the successful party. [Id.]

Art. 3772. [3716] [2326] [2269] Execution superseded.—When such execution has been issued and a supersedeas bond is afterward filed and approved within the time prescribed by law, the clerk shall immediately issue a writ of supersedeas suspending all further proceedings under such execution.

Art. 3773. [3717] [2326a] Dormant judgment.—If no execution is issued within twelve months after the rendition of a judgment in any court of record, the judgment shall become dormant and no execution shall issue thereon unless such judgment be revived. If the first execution has issued within the twelve months, the judgment shall not become dormant, unless ten years shall have elapsed between the issuance of executions thereon, and execution may issue at any time within ten years after the issuance of the preceding execution. [Acts 1895, p. 2; G. L. vol. 10, p. 732.]

Art. 3774. [3719] [2328] [2271] On removal of property, etc.—Upon the filing of an affidavit that the party against whom a judgment for money has been rendered, is about to remove his property out of the county, or is about to transfer or secrete his property for the purpose of defrauding his creditors, the clerk may issue execution immediately. [Act Jan. 27, 1842, p. 66; P. D. 3774; G. L. vol. 2, p. 738.]

Art. 3775. [3720] On death of plaintiff.—Where a sole plaintiff, or one of several plaintiffs, shall die after judgment, execution shall issue on such judgment in the name of the legal representative of such deceased sole plaintiff, or in the name of the surviving plaintiffs, and the legal representative of the deceased plaintiff, as the case may require, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of such representative under the hand and seal of the clerk of the court wherein such appointment was made; provided that if there be no administration upon the estate of such deceased sole plaintiff or plaintiffs, and none necessary as shown by an affidavit filed with the clerk of the court in which judgment was obtained, execution shall issue in the name of all the plaintiffs, both living and deceased, as shown in the judgment, and all money or moneys collected thereunder by the officer levying such execution, and paid unto the registry of the court, out of which such execution issued shall be partitioned among and paid to parties entitled to the same, and in the proportions to which they are entitled to the same under proper order of the presiding judge of said court. [Acts 1925, p. 450.] [39th Leg., ch. 181, § 1.]

Art. 3776. [3721] [2330] [2273] On death of executor, etc.—When an executor, administrator, guardian or trustee of an express trust dies or ceases to be such executor, administrator, guardian or trustee after judgment, execution shall issue on such judgment in the name of his successor, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of such successor, under the hand and seal of the clerk of the court wherein such appointment was made. [Id.]

Art. 3777. [3722] [2331] [2274] On death of nominal plaintiff.—When a person in whose favor a judgment is rendered for the use of another dies after judgment, execution shall issue in the name of the party for whose use the suit was brought, upon an affidavit of such death being filed with the clerk.

Art. 3778. [3723] [2332] [2275] On money of deceased.—If a sole defendant dies after judgment for money against him, execution shall not issue

thereon, but the judgment may be proved up and paid in due course of administration. [Act Feb. 5, 1853, p. 20; G. L. vol. 3, p. 1304; P. D. 14.]

Art. 3779. [3724] [2333] [2276] On property of deceased.—In any case of judgment other than a money judgment, where the sole defendant, or one or more of several joint defendants, shall die after judgment, upon an affidavit of such death being filed with the clerk, together with the certificate of the appointment of a representative of such decedent under the hand and seal of the clerk of the court wherein such appointment was made, the proper process on such judgment shall issue against such representative. [Id.]

Art. 3780. [3726] [2335] [2278] Issuance of execution for money.—Where the execution requires that the judgment shall be made out of the property of the debtor, it shall be issued in the first instance to the county in which the judgment is rendered, and upon the return thereof that no property can be found, or not sufficient to satisfy the same, execution may be issued to any other county in the State. [Act Jan. 27, 1842, p. 66; P. D. 3874; G. L. vol. 2, p. 738.]

Art. 3781. [3727] [2336] [2279] Issuance of execution for property.—Where the execution, or any writ in the nature thereof, requires the sale or delivery of specific real or personal property, it may be issued to the county where the property, or some part thereof, is situated.

Art. 3782. [3728] [2337] [2280] To different counties.—Process in the nature of an execution which requires only the delivery of real or personal property may be issued at the same time to different counties.

Art. 3783. [3729] [2338] [2281] Requisites of execution.—The style of the execution shall be "The State of Texas." It shall be directed to the sheriff or any constable of the proper county, and shall be signed by the clerk or justice officially, and bear the seal of the court, if issued out of the district or county court. It shall correctly describe the judgment, stating the court wherein and the time when rendered, the names of the parties, the amount, if it be for money, and the amount actually due thereon, if less than the original amount, the rate of interest, if other than six per cent, and shall have the following requisites:

1. The several items of the bill of costs to be collected under the execution shall be endorsed thereon in intelligible words and figures.
2. If the judgment be for money simply, it shall require the officer to satisfy the judgment out of the property of the debtor, subject to execution.
3. If the judgment commands the sale of particular property for the satisfaction thereof, the writ shall be framed accordingly.
4. If the judgment be for the delivery of the possession of real or personal property, the writ shall require the officer to deliver the possession of the same, particularly describing it, to the party entitled thereto, and may, at the same time, require the officer to satisfy any costs, damages or rents and profits recovered by the same judgment, out of any property subject to execution of the party against whom it is rendered.
5. If the judgment be for the recovery of personal property or its value, the writ shall command the officer, in case a delivery thereof cannot be had, to levy and collect the value thereof for which the judgment was recovered, to be specified therein out of any property of the party against whom the judgment was rendered, liable to execution.
6. It shall require the officer to satisfy the costs adjudged against the party, and the further costs of executing the writ, out of any property liable to execution of the party against whom the judgment was rendered.
7. When an alias or pluries execution is issued, it shall show upon its face the number of previous executions which have been issued on the judgment. [Const. art. 5, sec. 12; Act June 4, 1873, p. 209; P. D. 3772; G. L. vol. 7, p. 661.]

Art. 3784. [3730] [2339] [2282] Returnable, when.—The execution shall be returnable to the first day of the next term of the court, or in thirty, sixty or ninety days, if so directed by the plaintiff, his agent or attorney. [Act 1873, p. 209; G. L. vol. 7, p. 661; P. D. 3775.]

Art. 3785. [3731] [2340] [2283] Indorsements by officer.—The officer receiving the execution shall indorse thereon the exact hour and day when he received it. If he receives more than one on the same day against the same person, he shall number them as received; and, on failure to do so, or in case of false indorsement, he and his sureties shall be liable on motion in the court from whence the execution is issued, three days' notice being given, to a judgment in favor of the plaintiff in execution for twenty per cent on the amount of the execution, together with such damages as the plaintiff in execution may have sustained by such failure or such false indorsement. [Act Jan. 27, 1842, p. 66; P. D. 3780; G. L. vol. 2, p. 738.]

Art. 3786. [3732] [2341] [2284] Execution on property of surety.—If it appear upon the face of an execution, or by the indorsement of the clerk, that of those against whom it is issued any one is surety for another, the levy of the execution shall first be made upon the property of the principal subject to execution and situate in the county in which the judgment is rendered. If property of the principal cannot be found which will, in the opinion of the officer, be sufficient to make the amount of the execution, the levy shall be made on so much property of the principal as may be found, and upon so much of the property of the surety as may be necessary to make the amount of the execution. [Act Feb. 5, 1858, p. 110; P. D. 4786; G. L. vol. 4, p. 982.]

Art. 3787. [3733] [2342] [2285] On death, etc., of officers.—If the officer receiving an execution die or go out of office before the return of any execution, his successor, or other officer authorized to discharge the duties of the office in such case, shall proceed therein in the same manner that such officer should have done.

Art. 3788. [3734] [2343] [2286] Enforced without delay.—When an execution against the property of any person is issued to an officer, he shall proceed without delay to levy the same upon the property of the defendant not exempt from execution, unless otherwise directed by the plaintiff, his agent, or attorney. [R. S. 1879, 2286.]

Art. 3789. [3735] [2344] [2287] Levy of execution.—The officer shall first call upon the defendant, if he can be found, or, if absent, upon his agent within the county, if known, to point out property to be levied upon; and a levy shall first be made upon the property designated by the defendant or his agent; provided that if it be personal property, the defendant or his agent shall deliver the same into the officer's possession; or, if it be real estate situated in whole or in part within the county, he shall deliver to the officer a description thereof by metes and bounds. If, in the opinion of the officer, the property so designated will not sell for enough to satisfy the execution and costs of sale, he shall notify the defendant or his agent thereof; whereupon an additional designation may be made. [Act June 4, 1873, p. 209; P. D. 3775; G. L. vol. 7, p. 661.]

Art. 3790. [3736] [2345] [2288] Failure to designate property.—If no property be thus designated, or if an insufficient amount of property be designated, it shall be the duty of the officer to levy the execution upon the property of the debtor, subject to execution in the following order:

1. On personal or movable property.
2. On uncultivated lands; and,
3. Upon cultivated lands. [Id.]

Art. 3791. [3737] [2346] [2289] Property not to be designated.—A defendant in execution shall

not point out property which he has sold, mortgaged or conveyed in trust, or property exempt from forced sale.

Art. 3792. [3738] [2347] [2290] Property exempt.—Property which the judgment debtor has sold, mortgaged or conveyed in trust shall not be seized in execution, if the purchaser, mortgagee or trustee shall point out other property of the debtor in the county sufficient to satisfy the execution.

Art. 3793. [3739–40] Levy.—In order to make a levy on real estate, it shall not be necessary for the officer to go upon the ground, but it shall be sufficient for him to indorse such levy on the writ. Levy upon personal property is made by taking possession thereof, when the defendant in execution is entitled to the possession; where the defendant in execution has an interest in personal property, but is not entitled to the possession thereof, a levy is made thereon by giving notice thereof to the person who is entitled to the possession, or one of them when there are several.

Art. 3794. [3741] [2250] [2293] On stock running at large.—A levy upon livestock running at large in a range, and which cannot be herded and penned without great inconvenience and expense, may be made by designating by reasonable estimate the number of animals and describing them by their marks and brands, or either; such levy shall be made in the presence of two or more credible persons, and notice thereof shall be given in writing to the owner or his herder or agent, if residing within the county and known to the officer.

Art. 3795. [3742] [2351] [2294] Levy on shares of stock.—A levy on the stock of any corporation or joint stock company is made by leaving a notice thereof with any officer of such company. [Act March 13, 1875, p. 102; G. L. vol. 8, p. 474.]

Art. 3796. [3743] [2352] [2295] Interest of partner.—A levy upon the interest of a partner in partnership property is made by leaving a notice with one or more of the partners or with a clerk of the partnership.

Art. 3797. [3744] [2353] [2296] Goods pledged or mortgaged.—Goods and chattels pledged, assigned or mortgaged as security for any debt or contract, may be levied upon and sold on execution against the person making the pledge, assignment or mortgage subject thereto; and the purchaser shall be entitled to the possession when it is held by the pledgee, assignee or mortgagee, on complying with the conditions of the pledge, assignment or mortgage.

Art. 3798. [3745] [2354] [2297] Shares of stock sold.—Shares of stock in any joint stock or incorporated company may be sold on execution against the person owning such stock. [Act March 13, 1875, p. 102, G. L. vol. 8, p. 474.]

Art. 3799. [3746] [2355] [2298] Duty of officer.—The officer shall keep securely all personal property levied on by him for which no delivery bond has been given. If any injury or loss should result by his negligence to any party interested, he and his sureties shall be liable to pay the value of the property so lost or the amount of the injury sustained, and ten per cent thereon, to be recovered by the party injured on motion, three days notice being given in the court from which the execution issued. [Act Jan. 27, 1842; P. D. 3782; G. L. vol. 2, p. 738.]

Art. 3800. [3747] [2356] [2299] Expense of keeping property.—The officer shall be authorized to retain out of the proceeds of personal property sold upon execution all reasonable expenses incurred by him in making the levy and keeping the property. [Id.]

Art. 3801. [3748] [2357] [2300] May give delivery bond.—Any personal property taken in execution may be returned to the defendant by the officer upon the delivery by the defendant to him of a bond, payable to the plaintiff, with two or more good and sufficient sureties, to be approved by the officer, conditioned that the property shall be delivered to the officer at the time and place named in the bond, to be sold according to law, or for the payment to the officer of a fair value thereof, which shall be stated in the bond. [Act Jan. 27, 1842; P. D. 3778, G. L. vol. 2, p. 738.]

Art. 3802. [3749] [2358] [2301] Property may be sold by defendant.—Where property has been replevied, as provided in the preceding article, the defendant may sell or dispose of the same, paying the officer the stipulated value thereof.

Art. 3803. [3750] [2359] [2302] Forfeited delivery bond.—In case of the non-delivery of the property according to the terms of the bond, and non-payment of the value thereof, the officer shall forthwith return the bond indorsed, "forfeited" to the clerk of the court from which execution issued; whereupon, if the judgment remain unsatisfied in whole or in part, the clerk shall issue execution against the principal debtor and the sureties on the bond for the amount due, not exceeding the stipulated value of the property, upon which execution no delivery bond shall be taken, which fact shall be indorsed by the clerk on the execution. [Id. P. D. 3779.]

Art. 3804. [3751] [2360] [2303] Sale of real property.—Real property taken by virtue of any execution shall be sold at public auction, at the courthouse door of the county, on the first Tuesday of the month, between the hours of ten o'clock, a. m. and four o'clock, p. m. [Id. P. D. 3776.]

Art. 3805. [3752] [2361] [2304] Sales made elsewhere.—Where by law the public sales of lands in any county are directed to be made at any other place than the courthouse door, the sales herein provided to be made at the courthouse door shall be made at the place designated by such law.

Art. 3806. [3753] [2362] [2305] Sale of city lots.—If real property situated in any town or city, taken in execution, consist of several lots, tracts or parcels, each shall be offered separately, unless the same be not susceptible of a separate sale by reason of the character of the improvements thereon.

Art. 3807. [3754 to 3756] Sale of rural property.—When lands not situated in any town or city or taken in execution, the defendant in such writ in whom the legal or equitable title to such land may be vested, shall have the right to present to the officer holding such execution, at any time before the sale so as not to delay the same being made as advertised, a plat of said land as actually surveyed, in lots of not less than fifty acres, by the county surveyor of the county wherein said premises are situated. The plat shall be accompanied by the field notes of each lot as numbered, with the certificate of the county surveyor that the same are correct, and the defendant shall have the right to designate the order in which the lots shall be sold. When a sufficient number of such lots are sold to satisfy the amount due on the execution, the sale shall cease. All of the expenses attending the survey and sale of said land in lots shall be paid by the defendant, and shall in no case constitute any additional cost in the case. [Acts 1875, p. 50, G. L. vol. 8, p. 422.]

Art. 3808. [3757] [2366] [2309] Notice of sale of real estate.—The time and place of sale of real estate under execution, order of sale, or venditioni exponas, shall be advertised by the officer by having the notice thereof published in the English language once a week for three consecutive weeks preceding such sale, in some newspaper published in said county. The first of said publications shall appear not less than twenty days immediately preceding the day of sale. Said notice shall contain a statement of the authority by virtue of which the sale is to be made, the time of levy, and the time and place of sale; it shall also contain a brief description of the property to be sold, and shall give the number of acres, original survey, locality in the county, and the name by which the land is most generally known, but it shall not be necessary for it to contain field notes. Publishers of newspapers shall receive for publishing said sales

fifty cents per square for the first insertion and thirty cents per square for subsequent insertions, to be taxed and paid as other costs; for such publication, ten lines shall constitute a square, and the body of no such advertisement shall be printed in larger type than brevier. No fee for advertising any property in a newspaper under the provisions of this article shall exceed the sum of five dollars. If there be no newspaper published in the county, or none which will publish the notice of sale for the compensation herein fixed, the officer shall then post such notice in writing in three public places in the county, one of which shall be at the courthouse door of such county, for at least twenty days successively next before the day of sale. The officer making the levy shall give the defendant or his attorney written notice of such sale, either in person or by mail, which notice shall substantially conform to the foregoing requirements. [Acts 1895, p. 168; G. L. vol. 10, p. 898; Acts 1842, p. 66; G. L. vol. 2, p. 738; Acts 1903, p. 104.]

Art. 3809. [3758] [2368] [2310] "Courthouse door."—By the term "courthouse door" of a county is meant either of the principal entrances to the house provided by the proper authority for the holding of the district court. If from any cause there is no such house, the door of the house where the district court was last held in that county shall be deemed to be the courthouse door. Where the courthouse, or house used by the court, has been destroyed by fire or other cause, and another has not been designated by the proper authority, the place where such house stood shall be deemed to be the courthouse door.

Art. 3810. [3759] [2369] [2310a] Sales under deed of trust.—All sales of real estate made under powers conferred by any deed of trust or other contract lien shall be made in the county in which such real estate is situated. Where such real estate is situated in more than one county then notices as herein provided shall be given in both or all of such counties, and the real estate may be sold in either county, and such notice shall designate the county where the real estate will be sold. Notice of such proposed sale shall be given by posting written notice thereof for three consecutive weeks prior to the day of sale in three public places in said county or counties, one of which shall be made at the courthouse door of the county in which such sale is to be made, and if such real estate be in more than one county, one at the courthouse door of each county in which said real estate may be situated, or the owner of such real estate may, upon written application, cause the same to be sold as provided in said deed of trust or contract lien. Such sale shall be made at public vendue between the hours of 10 o'clock a. m. and 4 o'clock p. m. of the first Tuesday in any month. When any such real estate is situated in an unorganized county, such sale shall be made in the county to which such unorganized county is attached for judicial purposes. [Acts 1889, p. 143; G. L. vol. 9, p. 1171; Acts 1st C. S. 1915, p. 32; Acts 1915, p. 84.]

Art. 3811. [3760] [2370] [2311] Sale of personal property.—Personal property taken in execution shall be sold on the premises where it is taken in execution, or at the courthouse door of the county, or at some other place, if owing to the nature of the property, it is more convenient to exhibit it to purchasers at such place. [Act Jan. 27, 1842, p. 66; G. L. vol. 2, p. 738; P. D. 3776.]

Art. 3812. [3761] [2371] [2312] Notice of sale of personal property.—Previous notice of the time and place of the sale of any personal property on execution shall be given for ten days successively, by posting up written or printed notices thereof in at least three public places in the county, one of which shall be at the courthouse door of the county, and one at the place where the sale is to be made. [Id.]

Art. 3813. [3762] [2372] [2313] Shall exhibit personal property.—Personal property shall not be sold, unless the same be present and subject to the view of those attending the sale, when it is susceptible of being thus exhibited, except shares of stock in joint stock or incorporated companies, and in cases where the defendant in execution has merely an interest without right to the exclusive possession in which case the interest of the defendant may be sold and conveyed without the presence or delivery of the property.

Art. 3814. [3763] [2373] [2314] Sale of stock running in range.—When a levy is made upon livestock running at large in the range, it is not necessary that such stock, or any part thereof, should be present at the place of sale, and the purchaser at such sale is authorized to gather and pen such stock and select therefrom the number purchased by him.

Art. 3815. [3764] [2374] [2315] When execution not satisfied.—When the property levied upon does not sell for enough to satisfy the execution, the officer shall proceed anew, as in the first instance, to make the residue.

Art. 3816. [3765] [2375] [2316] Conveyance to purchaser.—When a sale has been made and the terms thereof complied with, the officer shall execute and deliver to the purchaser a conveyance of all the right, title, interest and claim which the defendant in execution had in and to the property sold. [Id. P. D. 3795.]

Art. 3817. [3767] [2377] [2317] Conveyance after death of purchaser.—If the purchaser, having complied with the terms of the sale, shall die before a conveyance was executed to him, the officer shall nevertheless convey the property to the purchaser, and the conveyance shall have the same effect as if it had been executed in the lifetime of the purchaser.

Art. 3818. [3768] [2378] [2318] Purchaser deemed innocent.—A purchaser at a sale under execution shall be deemed to be an innocent purchaser without notice in all cases where he would be deemed to be such had the sale been made voluntarily by the defendant in person.

Art. 3819. [3769] [2379] [2319] Penalty for unlawful sale.—Any officer who shall sell any property without giving the previous notice herein directed, or who shall sell the same otherwise than in the manner prescribed herein, shall forfeit and pay to the party injured not less than ten nor more than two hundred dollars in addition to such other damages as the party may have sustained, to be recovered on motion, five days notice thereof being given such officer and his sureties.

Art. 3820. [3770] [2380] [2320] Officer shall not purchase.—If any officer or his deputy making sale of property on execution, shall, directly or indirectly, purchase the same, the sale shall be void.

Art. 3821. [3771] [2381] [2321] Purchaser failing to comply.—If any person shall bid off property at any sale made by virtue of an execution, and shall fail to comply with the terms of the sale, he shall be liable to pay the plaintiff in execution twenty per cent on the value of the property thus bid off, besides costs, to be recovered on motion, five days notice of such motion being given to such purchaser; and should the property on a second sale bring less than on the former, he shall be liable to pay to the defendant in execution all loss which he sustains thereby, to be recovered on motion as above provided. [Acts 1842, p. 66; G. L. vol. 2, p. 741; P. D. 3786.]

Art. 3822. [3772] [2382] [2322] Resale of property.—When the terms of the sale shall not be complied with by the bidder, the sheriff shall proceed to sell the property again on the same day, if there be sufficient time; but if not, he shall readvertise and sell the same as in the first instance. [Id. P. D. 3787.]

Art. 3823. [3773] [2383] [2323] Return of execution by mail.—When an execution is issued to any county other than the one in which the judgment is rendered, return may be made by mail; but money cannot be thus sent except by direction of the party entitled to receive the same or his attorney of record.

Art. 3824. [3774–75] Money to be paid over.—When an officer has collected money on execution, he shall pay the same to the party entitled thereto at

the earliest opportunity. If an officer fails or refuses to pay money collected under an execution when demanded by the person entitled to receive the same, he shall be liable to pay to such person the amount so collected, with damages at the rate of five per cent per month thereon, besides interest and costs, which may be recovered of him and his sureties by the party entitled to receive the same on motion before the court from which said execution issued, five days previous notice thereof being given to said officer and his sureties.

Art. 3825. [3776] [2386] [2326] Failure to levy or sell.—Should an officer fail or refuse to levy upon or sell any property subject to execution, when the same might have been done, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs, to be recovered on motion before the court from which said execution issued, five days previous notice thereof being given to said officer and his sureties.

Art. 3826. [3777] [2387] [2327] Failure to return execution.—Should an officer neglect or refuse to return any execution as required by law, or should he make a false return thereon, he and his sureties shall be liable to the party entitled to receive the money collected on such execution for the full amount of the debt, interest and costs to be recovered as provided in the preceding article. [Id. P. D. 3769.]

Art. 3827. [3778] [2388] [2328] Surplus to be paid to defendant.—If, on the sale of property, more money is received than is sufficient to pay the amount of the execution or executions in the hands of the officer, the surplus shall be immediately paid over to the defendant, his agent or attorney.

Art. 3828. [3779] [2389] [2329] Return of execution.—Every execution shall be returned forthwith if satisfied by the collection of the money, or upon order of the plaintiff or his attorney indorsed thereon.

Art. 3829. [3780] [2390] [2330] Death of defendant.—The death of the defendant after the execution is issued shall operate as a supersedeas thereof; but the lien, when one has been acquired by a levy, shall be recognized and enforced by the county court in the payment of the debts of the deceased.

Art. 3830. [3781] [2391] [2331] Death of the plaintiff.—An execution shall not be abated by the death of the plaintiff therein after the execution has been issued, but shall be executed and returned in the same manner as if the plaintiff was still living.

Art. 3831. [3782 to 3784] Execution docket.—The clerk of each court shall keep an execution docket in which he shall enter a statement of all executions as they are issued by him, specifying the names of the parties, the amount of the judgment, the amount due thereon, the rate of interest when it exceeds eight per cent, the costs, the date of issuing the execution, to whom delivered. and the return of the officer thereon, with the date of such return. Such docket entries shall be taken and deemed to be a record. The clerk shall keep an index and cross-index to the execution docket. When execution is in favor or against several persons, it shall be indexed in the name of each person. Any clerk who shall fail to keep said execution docket and index thereto, or shall neglect to make the entries therein, shall be liable upon his official bond to any person injured for the amount of damages sustained by such neglect. [Id.]

TITLE 57

EXEMPTIONS

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1. PROPERTY EXEMPT FROM FORCED SALE

Article 3832. [3785] [2395] [2335] Property exempt to family.—The following property shall be reserved to every family, exempt from attachment or execution and every other species of forced sale for the payment of debts, except as hereinafter provided:

1. The homestead of the family.
2. All household and kitchen furniture.
3. Any lot or lots in a cemetery held for the purpose of sepulture.
4. All implements of husbandry.
5. All tools, apparatus and books belonging to any trade or profession.
6. The family library and all family portraits and pictures.
7. Five milk cows and their calves.
8. Two yoke of work oxen, with necessary yokes and chains.
9. Two horses and one wagon.
10. One carriage or buggy.
11. One gun.
12. Twenty hogs.
13. Twenty head of sheep.
14. All saddles, bridles, and necessary harness for the use of the family.
15. All provisions and forage on hand for home consumption.
16. All current wages for personal services. [Const. art. 16, secs. 28, 50; Acts 1870, p. 127; Acts 1874, p. 137; P. D. 6834, 6003; G. L. vol. 6, p. 301; G. L. vol. 8, p. 138.]

Art. 3833. [3786] [2396] [2336] "Homestead."—The homestead of a family, not in a town or city, shall consist of not more than two hundred acres, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village shall consist of a lot or lots, not to exceed in value five thousand dollars at the time of their designation as a homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the head of a family. Any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired. [Acts 1897, p. 131; G. L. vol. 10, p. 1185.]

Art. 3834. [3787] [2396] [2336] Proceeds exempt.—The proceeds of the voluntary sale of the homestead shall not be subject to garnishment or forced sale within six months after such sale. [Id.]

Art. 3835. [3788] [2397] [2337] Exempt to others than family.—The following property shall be reserved to persons who are not constitutents [constituents] of a family, exempt from attachment, execution and every other species of forced sale:

1. A lot or lots in a cemetery, held for the purpose of sepulture.
2. All wearing apparel.

3. All tools, apparatus and books belonging to any trade or profession.
4. One horse, saddle and bridle.
5. Current wages for personal services. [Acts 1870, p. 127; Const., art. 16, sec. 28; P. D. 6834; G. L. vol. 6, p. 301.]

Art. 3836. [3789] [2398] [2338] Ferryman.—There shall be reserved to every ferryman exempt from attachment, execution and every other species of forced sale, except as hereinafter provided, one ferryboat, keel, or flat-boat used as a ferryboat, with the necessary tackle for operating the same, not exceeding in value five hundred dollars. Such exemption shall not apply to any recovery for damages sustained by the negligence or other improper conduct on the part of such ferryman. [Acts 1858, p. 210; P. D. 3802; G. L. vol. 4, p. 1082.]

Art. 3837. [3790] [2399] [2339] Public property.—The property of counties, cities and towns, owned and held only for public purposes, such as public buildings and the sites therefor, fire engines and the furniture thereof, and all property used and intended for extinguishing fires, public grounds and other property devoted exclusively to the use and benefit of the public, shall be exempt from forced sale. [Const. art. 11, sec. 9.]

Art. 3838. [3791] [2400] [2340] Public libraries.—All public libraries shall be exempt from attachment, execution and every other specie of forced sale.

Art. 3839. [3792] [2401] [2341] Exemption does not apply.—The exemption of the homestead provided for in this title shall not apply where the debt is due:
1. For the purchase money of such homestead or a part of such purchase money.
2. For taxes due thereon.
3. For work and material used in constructing improvements thereon; but in this last case such work and material must have been contracted for in writing, and the consent of the wife, if there be one, must have been given in the same manner as is by law required in making a sale and conveyance of the homestead. [Const. art. 16, sec. 50.]

Art. 3840. [3793] [2402] [2342] Claim for rent, etc.—The exemption of personal property above provided for shall not apply when the debt is due for rents or advances made by a landlord to his tenant, or to other debts which are secured by a lien on such property. [Acts 1874, p. 55; G. L. vol. 8, p. 57.]

2. EXCESS OVER HOMESTEAD SET APART

Art. 3841. [3794] [2403] [2343] Voluntary designation.—When the homestead of a family, not being in a town or city, is a part of a larger tract or tracts of land than is exempt from forced sale as such homestead, it shall be lawful for the head of the family to designate and set apart the homestead, not exceeding two hundred acres, to which the family is entitled under the constitution and laws of this State. [Acts 1873, p. 64; P. D. 6994a; G. L. vol. 7, p. 516.]

Art. 3842. [3795] [2404] [2344] Mode of setting it apart.—The party desiring so to designate and set apart the homestead shall file for record with the county clerk of the county in which the land, or a part thereof, may be, an instrument of writing containing a description by metes and bounds, or other sufficient description to identify it, of the homestead so claimed by him, stating the name of the original grantee and the number of acres, and if more than one survey, the number of acres in each.

Art. 3843. [3796] [2405] [2345] Recorded, etc.—Such instrument shall be signed by the party and acknowledged or proved as other instruments for record, and shall state that the party has designated and set apart as his homestead the tract or tracts of land so claimed by him; and such instrument shall be recorded in the record of deeds of said county.

Art. 3844. [3797] [2406] [2346] Subject to execution.—Where the owner of a homestead, a part of a larger tract, has failed to so designate and set apart his homestead, the excess of such tract or tracts of land over and above the homestead exemption may be partitioned and separated from such homestead and subjected to levy and sale under execution, if otherwise subject, as hereinafter directed. [Id.]

Art. 3845. [3798–3799] Notice to set apart.—The sheriff or constable holding an execution against the owner of such excess of land, over and above his exempted homestead, and not separated and partitioned therefrom, may on his own motion, and shall, if required by the plaintiff in execution, his agent or attorney, notify the defendant in execution to designate and set apart his homestead from the remainder of the land so owned and occupied by him, and that on failure to do so within ten days the sheriff or constable will proceed to have such partition made as provided by law. Such notice shall be written or printed, and shall be signed by the sheriff or constable. [Id.]

Art. 3846. [3800–1–2] Service and return.—Such notice may be served on the defendant by such officer by reading it to him, or by leaving a copy of it at his place of residence with some person over fourteen years of age. The officer shall return said notice to the court from which the execution issued, with his return indorsed thereon, showing how he executed the same. Such notice and return shall be filed by the proper officer of the court, and shall be prima facie evidence of the facts stated. [Id.]

Art. 3847. [3803] [2412] [2352] Defendant may designate.—On the service of such notice, the defendant in execution shall have the right within ten days thereafter, to designate and set apart his homestead, and deliver such designation to the sheriff or constable. [Id.]

Art. 3848. [3805] [2414] [2354] Designation recorded.—The sheriff or constable shall deliver the designation or setting apart of the homestead so made to the county clerk of the county in which such homestead, or a part thereof, is, and such clerk shall forthwith record the same in the record of deeds of his said county. [Id.]

Art. 3849. [3806] [2415] [2355] Effect of.—Such designation and setting apart of the homestead made by the defendant under any preceding article shall operate as a relinquishment of all right of homestead in the excess of land so partitioned from the homestead, and shall be binding on the defendant, and all others in privity with him, and the same, or a certified copy of the record thereof, shall be admitted in evidence of the facts stated therein. [Id.]

Art. 3850. [3807] [2416] [2356] May appoint commissioners.—If the defendant in execution shall fail or refuse, within ten days after such notice, to so designate and set apart his homestead, the officer holding such execution shall forthwith summon either verbally or in writing three disinterested freeholders of the county as commissioners to designate a homestead for the defendant. [Id.]

Art. 3851. [3808] [2417] [2357] Commissioners to designate.—The commissioners shall forthwith proceed to partition the homestead of the defendant from the remainder of the tract or tracts, and may, if they deem it necessary, call in a surveyor to assist them. The action of such commissioners shall be reduced to writing and signed by them, or a majority of them and shall be duly sworn to, which shall be sufficient to admit the same of record. [Id.]

Art. 3852. [3809] [2418] [2358] Requisites of designation.—The designation of the homestead by such commissioners shall contain each requisite prescribed for a designation and setting apart by the defendant, and, shall also state that the commis-

sioners making the same were summoned by the sheriff or constable holding said execution to perform such duty and that the designation of the homestead made by them is fair and just to the best of their judgment and belief. [Id.]

Art. 3853. [3810] [2419] [2359] Returned and recorded.—The commissioners shall return such designation to the sheriff or constable, who shall deliver the same to the county clerk to be recorded; and such designation, or a certified copy thereof, shall have the same effect as if the defendant had made the same under the provisions of this title. [Id.]

Art. 3854. [3811] [2420] [2360] Sheriff's return.—Whenever a homestead is designated under the provisions of this title, the sheriff or constable holding said execution shall make due return thereon, showing:

1. That notice to designate his homestead was given to the defendant in execution, referring to said notice and return thereon, which shall be returned with said execution.

2. That the designation of his homestead was delivered to him by the defendant, and has been filed with the county clerk, stating the dates of such delivery and filing.

3. If the defendant has failed or refused to deliver to him the designation of his homestead within the time prescribed by law, the return shall show that fact, and also that the commissioners were duly appointed by him, and that the designation made by such commissioners was filed by him with the county clerk, stating the times when said acts were done. Such return shall be prima facie evidence of the facts therein stated. [Id.]

Art. 3855. [3812–13–14] Fees and expenses.—The commissioners shall be entitled to receive two dollars a day for their services, and the surveyor five dollars per day, to include pay for chain carriers. The sheriff or constable and clerk should be entitled to such fees as are allowed by law. Such fees and expenses shall be taxed as part of the costs of the execution against the defendant and collected as other costs. [Id.]

Art. 3856. [3815] [2424] [2364] Excess to be sold.—Whenever the homestead of the defendant in execution has been designated in either of the modes prescribed in this title, the officer holding said execution may proceed to sell the excess over and above the homestead, in accordance with the law governing sales under execution. [Id.]

Art. 3857. [3816] [2425] [2365] Defendant may change, etc.—The defendant may, at any time after his homestead has been designated and set apart in either of the modes pointed out in this title, change the boundaries of his said homestead by an instrument executed and recorded as in cases of setting apart the homestead, but such change shall not impair the rights of parties acquired prior to such change.

Art. 3858. [3817] [2426] [2366] Law cumulative.—The provisions of this title in regard to the designation of the homestead are cumulative, and shall not be construed so as to interfere with, or abrogate any other mode or remedy now known to the law for subjecting the excess of the homestead tract of land over and above the exemption to forced sale, or any mode known to the law for producing partition by the purchaser at such execution sale, between himself and the owner of the homestead. [Id.]

Art. 3859. [3818] [2427] [2367] Personal property designated.—Where there is more personal property of the same kind than is exempt from execution, the head of the family, or other person entitled to such exemption, may point out the portions to be levied on. If he fails to do so within a reasonable time after being requested by the officer holding the execution, such officer may make the selection for himself; but such notice shall only be necessary when the defendant is at the time to be found within the county.

TITLE 58

EXPRESS COMPANIES

Art.
3860. Declared common carriers.
3861. Regulation.
3862. Penalty for overcharge.
3863. Powers of commission.
3864. General office.
3865. To give notice, etc.
3866. Penalty.

Article 3860. [3819] [2428] Declared common carriers.—Each person, firm or corporation which shall do the business of an express company, upon railroads or otherwise, in this State, by the carrying of any kind of property, money, papers, packages or other things, are hereby declared to be common carriers, and shall receive, safely carry and promptly deliver at the express office nearest destination every such article as may be tendered to them, and in the carriage of which they are engaged. No such company shall be compelled to carry any gunpowder, dynamite, kerosene, naptha, gasoline, matches or other dangerous or inflammable oils, acids or materials, except under such regulations as may be prescribed by the Railroad Commission. No person, firm or corporation so engaged shall demand or receive for such services other than reasonable compensation. [Acts 1891, p. 48; G. L. vol. 10, p. 50.]

Art. 3861. [3820] [2429] Regulation.—The Railroad Commission of Texas shall have power, and it shall be its duty, to fix and establish reasonable and just rates of charges for each class or kind of property, money, papers, packages and other things, to be received and charged for by each express company, and, which, by the contract of carriage, are to be transported by such express company between points wholly within this State. Such rates shall be made to apply to all such companies, and may be changed or modified by said Commission from time to time in such manner as may become necessary. Said Commission shall have the same power to make and prescribe such rules and regulations for the government and control of such express companies as is, or may be, conferred upon said Commission for the regulation of railroads.

Art. 3862. [3821] [2430] Penalty for overcharge.—Every express company doing business in this State which shall demand or receive a greater compensation than that which may be prescribed and fixed by said Commission for the transportation within this State of any class or kind of property, money, papers, packages or things, shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not to exceed five hundred dollars for each offense. If it shall appear that such violation was not wilful, said company shall have ten days to refund such overcharges or damages, in which case the penalty shall not be incurred. The said Commission shall have authority and it shall be its duty to sue for the same in such manner as may be prescribed by law for like suits against railroad companies.

Art. 3863. [3822] [2431] Powers of Commission.—The said Commission shall have authority, and it shall be its duty to call upon such express companies for reports, and investigate their books in the same manner as may be prescribed by law for the regulation of railroad companies, and the said Commission shall have power and authority to institute suits, sue out such writs and process as may be applicable and authorized for the regulation of railroad companies. All laws, rules and regulations made and prescribed for the government and control of railroads, when applicable, shall be of equal force and effect as to express companies.

Art. 3864. [3823–3824] General office.—Every incorporated express company doing business in this State shall keep a general office in this State at some place on the line of its transportation, in which it shall keep its charter, books, papers, accounts and contracts, or copies thereof, showing the value of

its property of all kinds, its receipts and disbursements on account of business done in this State, and its indebtedness. It shall make a full annual statement of all such matters as shown by its books to the Railroad Commission of Texas, and such additional statements as may be required by such Commission, which statements shall be certified to be correct and sworn to by the president and secretary, or general manager in Texas of such company. Such company shall permit any member of the Railroad Commission of Texas or its authorized agent to examine at any time, any and all books, papers and contracts in its said office. [Acts 1897, p. 14; G. L. vol. 10, p. 1068.]

Art. 3865. [3825] To give notice, etc.—Every express company doing business in this State shall give notice in writing to the Railroad Commission of the name, and official designation, of the person or persons, officer or officers charged with the management of its general office in this State, the location of its general office in this State, and shall from time to time give like notice in writing of any change in location of such general office, and of the person or persons, officer or officers in charge thereof. [Id.]

Art. 3866. [3823–3824–3825] Penalty.—Failure to comply with any provision of this title shall subject the offending company and any officer, agent, or employé thereof, so offending, to a penalty of not less than one hundred nor more than five hundred dollars, to be recovered by suit therefor. The Railroad Commission shall notify the Attorney General of any violation of any provision of this title which shall come to its knowledge. In addition to said penalty, a failure to comply with any provision of this title shall be sufficient cause to cancel the permit of any express company so offending. [Id.]

TITLE 59

FEEBLE MINDED PERSONS—PROCEEDINGS IN CASE OF

Art.
3867. Jurisdiction.
3868. Petition and affidavit.
3869. Citation.
3870. Hearing.
3871. Commitment.

Article 3867. Jurisdiction.—The county courts shall have original jurisdiction in all cases coming within the terms of this title, and shall at all times be deemed in session for the disposition of the same. In all trials under this title any person interested therein may demand a jury, or the judge of the court, of his own motion, may order a jury. Any person interested in any such case shall have the right to appear therein and be represented by counsel. [Acts 1923, p. 172.]

Art. 3868. Petition and affidavit.—Any resident citizen having knowledge of a person in his county who appears to be feeble minded may file with the county clerk a sworn complaint, which may be made upon information and belief, setting forth that such person is feeble minded. If such alleged feeble minded person be a minor, such complaint shall set forth the names of the parents, if known, and their residence, or if such person has no parent living, then the name and residence of his guardian, if any. Upon the filing of such complaint, the county judge shall fix the day and time for the hearing. [Id.]

Art. 3869. Citation.—If the alleged feeble minded person be a minor and it shall appear that one or both of such parents, or guardian if there be no parents, reside in said county, the clerk of said court shall immediately issue citation. Such citation shall include a brief statement of the complaint which shall be served on such parent, parents or guardian, if either can be found in said county, not less than two days before the time fixed for such hearing, requiring them to appear before the court on said day and time to show cause, if any, why such person should not be declared to be feeble minded. Such citation shall be served by the sheriff or any constable of the county. If it appears that neither of said parents is living or that they do not reside in said county, and that said person has no guardian residing in said county, or in case one or both of such parents or the guardian, in case there be no parent, shall endorse on said complaint a request that such person be declared feeble minded, then such citation need not be issued, and the court may thereupon proceed to hear the case. If such alleged feeble minded person is above the age of twenty-one years, citation shall be served upon him in the manner provided above. [Id.]

Art. 3870. Hearing.—Upon the hearing of such case, the alleged feeble minded person shall be brought before the court. The court shall appoint an attorney to represent such person, unless he be otherwise suitably represented by parent, guardian or attorney. The procedure, duties and powers of the court and officers in such case shall be the same as provided by law in other civil cases. It shall be the duty of the county attorney when requested by the court or petitioner to appear in any such hearing in behalf of the petitioner. [Id.]

Art. 3871. Commitment.—If such person be found to be feeble minded, the court shall enter its order so adjudging him, and that he be committed to the custody of the Austin State School. Upon the entry of such order, the judge shall cause to be prepared a transcript of the proceedings and evidence, which shall show the age, sex, race, status and mental condition of the patient, all of which he shall certify to be correct, and transmit the same to the superintendent of such school. If the patient is entitled to be received into the school, and there is sufficient room therein, the superintendent shall notify said judge thereof, whereupon the judge shall arrange to send such person to said school in like manner in all respects as is provided for the sending of insane patients to an asylum. [Id. Acts 1925, p. 407.] [39th Leg., ch. 174, § 2.]

TITLE 60

FEEDING STUFF

Art.
3872. Tag and certificate.
3873. "Feeding stuff."
3874. To file statement and deposit samples.
3875. Inspection tax tag.
3876. To furnish list of names or trade marks.
3877. Analysis.
3878. "Importer."
3879. Adulterated feeding stuff.
3880. Director of experiment station.
3881. Weights.

Article 3872. [5894] Tag and certificate.—Every lot or parcel of feeding stuff, used for feeding farm live stock, sold, offered or exposed for sale in this State, for use within the State, shall have attached a tag, described in Article 3875, carrying a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of materials of which such weight is composed where the contents are of mixed nature, the name, brand or trade mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by Article 3879, if any, and a chemical analysis stating the minimum percentage it contains of crude protein, allowing one per cent of nitrogen to equal six and one-quarter per cent of protein, of crude fat, of nitrogen-free extract, and the maximum percentage it contains of crude fiber; these constituents to be determined by the methods adopted at the time by the Association of Official Agricultural Chemists of North America. [Acts 1905, p. 207; Acts 1927, 40th Leg., p. 20, ch. 14, § 1.]

Art. 3873. [5895] [5896] "Feeding stuff."—The term "feeding stuff," as used in this title, is defined to mean and include wheat bran, wheat shorts, linseed meal, cotton seed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, malt sprouts,

hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, oat feeds, corn and oat chops, corn chops, ground beef or mixed fish feeds, and all other materials of similar nature, but shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat or broomcorn, or any other whole or unground grains or seed. [Acts 1905, p. 208.]

Art. 3874. [5897] To file statement and deposit samples.—Before any feeding stuff is so offered or exposed for sale, the importer, manufacturer or party who causes it to be sold, or offered for sale within this State for use within the State, shall, for each feeding stuff bearing a distinguishing name or trade mark, file with the director of the Texas Agricultural Experiment Station a certified copy of the statement named in Article 3872, and shall also deposit with said director a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This does not apply to farmers who grind their own feeding stuff and who do not adulterate same. [Acts 1907, p. 243, sec. 4.]

Art. 3875. [5898] Inspection tax tag.—The manufacturer, importer, agent or seller of each feeding stuff shall, before the article is offered for sale, pay to the director of the Texas Agricultural Experiment Station an inspection tax of ten cents for each ton of such feeding stuff sold, or offered for sale, in this State for use within the State, and shall affix to each lot shipped in bulk, and to each bag, barrel or other package of such feeding stuff, a tag to be furnished by said director, stating that all charges specified in this article have been paid. The director of said experiment station is hereby empowered to prescribe the form of such tags, and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a feeding stuff shall have filed a statement made as provided for in Article 3872, and paid the inspection tax, no agent or seller of said manufacturer, importer or shipper shall be required to file such statement or pay such tax. The amount of the inspection tax and penalties received by said director shall be paid into the State Treasury. So much of the inspection tax and penalties collected under this title shall be paid by the State Treasurer to the treasurer of the Texas Agricultural and Mechanical College as the director of the Texas Agricultural Experiment Station may show by his bills has been expended in performing the duties required by this title, but in no case to exceed the amount of the inspection tax and penalties received by the State Treasurer under this title. [Id. sec. 5.]

Art. 3876. [5899] To furnish list of names or trade-marks.—All manufacturers and importers of feeding stuff, or dealers in same, shall, on request, furnish the director of the Texas Experiment Station with a complete list of names or trade-marks of such feeding stuff. [Acts 1905, p. 207, sec. 8.]

Art. 3877. [5900] Analysis.—The director of the Texas Agricultural Experiment Station shall cause one analysis or more to be made annually of each feeding stuff sold or offered for sale under any provision of this title. Said director is hereby authorized in person or by deputy to take a sample not exceeding two pounds in weight for analysis from any lot or package of feeding stuff which may be in the possession of any manufacturer, importer, agent, dealer or buyer in this State; but said sample shall be drawn or taken in the presence of said party or parties in interest, or their representatives, and shall be taken from a parcel, lot or number of parcels which shall not be less than five per cent of the whole lot inspected, and shall be thoroughly mixed and, if requested, divided into two samples, and placed in glass or metal vessels carefully sealed, and a label placed on each, stating the name or brand of the feeding stuff, or material sampled, the name of the party from whose stock the sample was drawn, and the date and place of taking such sample. Said label shall be signed by the director or his deputy and the party or parties at interest, or their representative present at the taking and sealing of said sample. Where the party or parties at interest refuse to be present and take part in the sampling of the said feeding stuff, the director or his deputy may take said samples in the presence of two disinterested witnesses, one of said duplicate samples shall be retained by the director, and the other shall be left with the party whose stock was sampled. The sample or samples retained by the director shall be for comparison with the certified statements made as provided for in this title. The result of the analysis of the sample or samples so prescribed, together with such additional information as circumstances advise shall be published in reports or bulletins by the Texas Agricultural and Mechanical College from time to time. [Acts 1905, p. 207, sec. 9.]

Art. 3878. [5901] "Importer."—The term "importer" means all persons who shall bring into or offer for sale within this State feeding stuff manufactured without this State. [Acts 1905, p. 207.]

Art. 3879. [5902] Adulterated feeding stuff.—A feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented to be, or if any rice hulls or chaff, peanut shells, corncobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith. No wholesome mixture of feeding stuff shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package and made known to the buyer at the time of the sale. It shall be the duty of the director of the experiment station to examine, or have examined for adulteration all suspicious samples of feeding stuff, and such other samples as may be desirable. [Acts 1905, p. 207; Acts 1907, p. 243, sec. 11.]

Art. 3880. [5903] Director of experiment station.—The director of said experiment station is empowered to adopt standards or definitions for feeding stuff, and such other regulations as may be necessary for the enforcement of any provision of this title. Said director shall have the power to refuse the registration of any feeding stuff, under a name which would be misleading as to materials of which it is made up, or which does not conform to the standards or definitions aforesaid. Should any said feeding stuffs be registered and it is afterwards discovered that they are in violation of the above provisions, said director shall have the power to cancel the registration ten days after notice. [Acts 1907, p. 243.]

Art. 3881. Weights.—Feeding stuff shall have the following standard net weights per sack or container; one hundred pounds, or the following fractions thereof, three-fourths, one-half, one-fourth, one-sixth, one-eighth, one-tenth, one-twelfth, one-sixteenth, and one-twentieth; and rice bran may also be sold in sacks of one hundred and forty-three pounds. No tax tags shall be issued for any feeding stuff which does not conform to the weights herein prescribed.

TITLE 61

FEES OF OFFICE

Chap.

1. General provisions.
2. Enumeration.

CHAPTER ONE

GENERAL PROVISIONS

Art.

3882. To take out commission.
3883. Maximum fees.
3883a. Fees in certain counties.
3884. Maximum for deputies.
3885. District attorneys of districts of two or more counties.
3886. District attorneys of large counties.

Art.
3887. County attorney.
3888. County judge.
3889. Census to govern.
3890. State or county not liable.
3891. Disposition of fees.
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3893. District clerks.
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3896. To keep accounts.
3897. Sworn statement.
3898. Fiscal year.
3899. Expense account.
3900. Not to report.
3901. Collector and assessor.
3902. Deputies—appointment of.
3902B. Compensation of assistant county attorneys.
3903. Special deputy district clerk.
3904. No fee allowed.
3905. Fee for acknowledgment.
3906. No fee for copy.
3907. Fee book.
3908. To itemize costs.
3909. Extortion.
3910. Fees posted.
3911. Officer to execute process.
3912. Other fees of office.

Article 3882. [3880] To take out commission.—No official who fails or refuses to take out a commission shall be entitled to collect or receive either from the State or from individuals any money as fees of office or compensation for official services. Neither the Comptroller, commissioners court, county auditor nor any other person shall approve or pay any claim or account in favor of any such officer who has so failed or refused. The Secretary of State shall from time to time, as such commissions are issued by him, furnish a list thereof to each commissioners court, each county auditor and to the Comptroller, with the name of the county in which such officers reside. Each State, district, county and precinct officer is required to apply for and receive his commission. [Acts 1907, p. 501; Acts 1919, p. 80.]

Art. 3883. [3881 to 3883] Maximum fees.—Except as otherwise herein provided, the maximum annual fees that may be retained by county officers mentioned in this article shall be as follows:

1. In counties containing less than twenty-five thousand inhabitants:

County judge	$2250
Sheriff	2750
County clerk	2250
County attorney	2250
District clerk	2250
Tax collector	2250
Tax assessor	2250
Justice of the Peace	2000
Constable	2000

[Acts 1st C. S. 1897, pp. 9-43; Acts 1913, p. 246.]

2. In counties containing as many as twenty-five thousand and less than thirty-seven thousand five hundred inhabitants in which there is no city containing over twenty-five thousand inhabitants:

County judge	$2500
Sheriff	3000
County clerk	2400
County attorney	2400
District attorney	2500
District clerk	2400
Tax assessor	2400
Tax collector	2400

[Id.]

3. In counties containing as many as thirty-seven thousand five hundred inhabitants or containing a city of over twenty-five thousand inhabitants:

County judge	$3500
Sheriff	3500
County clerk	2750
County attorney	3500
District attorney	2500
District clerk	2750
Tax collector	2750
Tax assessor	2750

Compensation herein fixed for sheriffs of any county shall be exclusive of any reward received for the apprehension of criminals or fugitives from justice. The maximum fixed for the compensation of each district attorney shall be inclusive of the salary allowed him by the Constitution. [Id. Acts 1917, p. 333; Acts 3rd C. S. 1920, p. 68.]

Art. 3883a. [3883] Fees in certain counties.—Maximum fees in counties of 37,000 inhabitants or containing cities of 25,000; in counties containing a city of over twenty-five thousand inhabitants, or in such counties as shown by the United States census of 1910, shall contain as many as thirty-seven thousand inhabitants, the following amount of fees shall be allowed, viz: County judge, an amount not exceeding thirty-five hundred dollars per annum; sheriff an amount not exceeding thirty-five hundred dollars per annum; clerk of the county court, an amount not exceeding twenty-seven hundred and fifty dollars per annum; county attorney, an amount not exceeding thirty-five hundred dollars per annum; district attorney an amount not exceeding twenty-five hundred, inclusive of the five hundred dollars allowed by the Constitution and paid by the State; clerk of the district court an amount not exceeding twenty-seven hundred and fifty dollars per annum; collector of taxes an amount not exceeding the sum of twenty-seven hundred and fifty dollars per annum; assessor of taxes an amount not exceeding the sum of twenty-seven hundred and fifty dollars per annum; justice of the peace an amount not exceeding twenty-seven hundred and fifty dollars per annum, exclusive of the amount allowed for holding inquests, which shall be paid as ex-officio fees; constables an amount not exceeding the sum of twenty-seven hundred and fifty dollars per annum; provided, the compensation fixed herein for sheriffs, constables and their deputies, shall be exclusive of any rewards received for the apprehension of criminals or fugitives from justice. [Acts 1925, p. 152.] [39th Leg., ch. 32, § 1.]

Art. 3884. [3903] Maximum for deputies.—The maximum annual compensation allowed each Deputy or assistant to any officer named in art. 3883a of the Revised Statutes of 1925 shall be as follows:

1. In Counties having a population less than thirty-seven thousand five hundred, and not containing a city of over twenty-five thousand:

First Assistant or Chief Deputy	$1800
Other Assistants or Deputies	1500

2. In Counties having a population of over thirty-seven thousand five hundred to one hundred thousand and containing no city with a population of twenty-five thousand inhabitants:

First Assistant or Chief Deputy	$2100
Heads of Departments	1800
Other Assistants or Deputies	1500

3. In Counties containing a population of over thirty-seven thousand five hundred to one hundred thousand and containing a city of over twenty-five thousand inhabitants, or counties containing a population of more than one hundred thousand:

First Assistant or Chief Deputy	$2700
Heads of Departments	2400
Other Assistants or Deputies	1800

[Acts 1921, p. 186; Acts 1927, 40th Leg., p. 153, ch. 102, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 153, ch. 102, repeals all conflicting laws and parts of laws.

Art. 3885. District attorneys of districts of two or more counties.—(See Code of Criminal Procedure.) Art. 2010.

Reference is evidently intended to Code of Criminal Procedure, art. 1021.

Art. 3886. District attorneys of large counties.—In any county having a population in excess of one hundred and fifty thousand inhabitants, the district attorney or criminal district attorney thereof

shall receive all fees, commissions and perquisites earned by such office; provided that the amount of said salary, fees, commissions and perquisites to be so received and retained by him including the five hundred dollars provided by the Constitution shall not exceed the sum of six thousand dollars in any one year. All salaries, fees, commissions and perquisites so earned and received by such office in excess of six thousand dollars during each and every fiscal year shall be paid into the county treasury of said county in accordance with the terms and provisions of the Maximum Fee Bill, except as to such portion of such excess as shall be used and expended in the payment of salaries to deputies, stenographers, investigators or other employés as herein provided. Each such district attorney may appoint seven assistant district attorneys, one of whom shall receive a salary not to exceed thirty-six hundred dollars per annum; two of whom shall receive a salary of not to exceed three thousand dollars per annum each; two of whom shall receive a salary not to exceed twenty-four hundred dollars per annum, each; two of whom shall receive a salary not to exceed twenty-one hundred dollars per annum each. He may employ one stenographer who shall receive a salary not to exceed two thousand four hundred dollars per annum, and one stenographer who shall receive a salary not to exceed one thousand eight hundred dollars per annum. He may employ two investigators, one of whom shall receive a salary not to exceed two thousand four hundred dollars per annum; and the other shall receive a salary of not to exceed one thousand eight hundred dollars per annum. The salaries of assistants, deputies, stenographers and investigators and other employés above provided for shall be paid monthly by said county, by warrants drawn from the general funds thereof. Should such district attorney be of the opinion that the number of deputies, assistants, stenographers, investigators or other employés above provided for are inadequate for the proper investigation of crime and the efficient performance of the duties of said office, he may appoint such additional assistants and employés and fix their salaries, provided such salaries shall in no event exceed the maximum provided herein to be paid to such assistants or other employés, but such additional assistants and employés so appointed, before qualifying and entering upon the duties of such office and employment, shall be confirmed by the commissioners court of the county in which such appointments are made. The salaries for such additional assistants and employés shall be paid monthly out of the excess fees collected by such district attorney and his office which would otherwise go to said county, a detailed sworn itemized statement of which he shall include in his annual report, as provided to be made in the Maximum Fee Bill. In no event shall said county be liable for the salaries of such additional assistants or employés. Any such assistant, deputy, stenographer, investigator or employé, whether regular or additional shall be subject to removal at the will of said district or criminal district attorney. [Acts 1911, p. 116; Acts 1917, pp. 69, 94, 123; Acts 1919, p. 83; Acts 1923, p. 373.]

Acts 1917, 35th Leg., p. 123, ch. 64, in so far as applicable to the 34th Judicial District, consisting of El Paso, Hudspeth, and Culberson counties, was amended by Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9, arts. 326a-326e, which see.

Art. 3887. County attorney.—In any county having a population in excess of one hundred thousand inhabitants, where there is no district attorney, the county attorney of such county shall be allowed to retain out of the fees earned and collected by him four thousand dollars per annum, and in addition thereto one-fourth of the excess of such fees collected by him, provided that such additional amount retained by him out of the excess fees shall not exceed two thousand dollars per year, the remainder to be paid into the county treasury. In arriving at the amount collected by him he shall include the fees arising from all classes of criminal cases whether felony or misdemeanor arising in any court in such county including habeas corpus hearing and fines and forfeitures; provided that said county attorney shall not receive any moneys from any source whatsoever in excess of the six thousand dollars above provided for. Such fees, however, to be included in the reports provided for by law, and to be taken into consideration in arriving at the total maximum compensation provided in this article, and except as herein specifically provided otherwise, all provisions of this chapter shall apply. [Acts 1st C. S. 1917, p. 55.]

Art. 3888. [2765–3886] County judge.—In a county where the county judge acts as superintendent of public instruction, he shall receive for such services such salary not to exceed nine hundred dollars a year as the commissioners court may provide. [Acts 1st C. S. 1897, p. 44; Acts 3rd C. S. 1920, p. 101.]

Art. 3889. Census to govern.—The preceding Federal census shall govern as to population in all cases under any provision of this chapter.

Art. 3890. [3888] State or county not liable.—The amounts allowed to each officer mentioned in Article 3883 may be retained out of the fees collected by him under existing laws; but in no case shall the State or county be responsible for the payment of any sum when the fees collected by any officer are less than the maximum compensation allowed by this chapter, nor be responsible for the pay of any deputy or assistant. [Acts 1907, p. 50.]

Art. 3891. [3889] Disposition of fees.—Each officer named in this chapter shall first, out of the fees of his office, pay or be paid, the amount allowed him, under the provisions of this chapter, together with the salaries of his assistants or deputies. If the fees of such office collected in any year be more than the amount needed to pay the amount allowed such officer and his assistants and deputies, same shall be deemed excess fees, and of such excess fees such officer shall retain one-fourth in counties having between twenty-five thousand and thirty-eight thousand inhabitants until such one-fourth amounts to the sum of twelve hundred and fifty dollars; and counties in which the population exceeds thirty-eight thousand until such one-fourth amounts to the sum of fifteen hundred dollars. All fees collected by officers named in Article 3883 during any fiscal year in excess of the maximum amount allowed by law, and of the one-fourth of the excess of the maximum amount allowed for their services, and for the services of their deputies or their assistants as herein provided for shall be paid into the county treasury of the county where the excess accrued, provided that in counties of less than twenty-five thousand inhabitants and which counties constitute a separate judicial district, the chief deputy or first assistant of the officers named in this chapter shall receive a sum not to exceed a rate of eighteen hundred dollars per annum, and the other deputies or assistants a sum not to exceed a rate of fifteen hundred dollars per annum, and the limitations as to the pay of deputies and assistants elsewhere provided in this chapter shall not apply in such counties. [Acts 1923, p. 398.]

Art. 3892. [3890] Failure to collect maximum.—Any officer mentioned in Article 3883 who does not collect the maximum amount of his fees for any fiscal year and who reports delinquent fees for that year, shall be entitled to retain, when collected, such part of such delinquent fees as is sufficient to complete the maximum compensation for the year in which delinquent fees were charged, and also retain one-fourth of the excess belonging to him, and the remainder of the delinquent fees for that fiscal year shall be paid as herein provided for when collected. [Acts 1907, p. 50.]

Art. 3893. [3891] District clerks.—In counties having more than one judicial district, the district clerks thereof shall in no case be allowed fees in excess of the maximum fees allowed clerks in counties having only one district court. [Id.]

Art. 3894. [3892] Delinquent fees.—All fees due and not collected as shown in the report required by Article 3897 shall be collected by the officer to whose office the fees accrued; and, out of such part of delinquent fees as may be due the county, the officer making such collection shall be entitled to ten per cent of

the amount collected by him, and the remainder shall be paid into the county treasury as provided in Article 3891. [Acts 1st C. S. 1897, p. 10.]

Art. 3895. [3893] Ex-officio services.—The commissioners court is hereby debarred from allowing compensation for ex-officio services to county officials when the compensation and excess fees which they are allowed to retain shall reach the maximum provided for in this chapter. In cases where the compensation and excess fees which the officers are allowed to retain shall not reach the maximum provided for in this chapter, the commissioners court shall allow compensation for ex-officio services when, in their judgment, such compensation is necessary, provided, such compensation for ex-officio services allowed shall not increase the compensation of the official beyond the maximum of compensation and excess fees allowed to be retained by him under this chapter. [Acts 1st C. S. 1897, p. 10; Acts 1913, p. 248.]

Art. 3896. [3894] To keep accounts.—Those officials named in the first six articles of this chapter shall keep a correct statement of the sums coming into their hands as fees and commissions, in a book to be provided for them for that purpose, in which the officer at any time when any fees or moneys shall come into his hands shall enter the same; and it shall be the duty of the grand jury (and the district judge shall so charge the grand jury) to examine these accounts at the session of the district court next succeeding the last day of December of each year, and make a report on same to the district court at the conclusion of the session of the grand jury. [Acts 1st C. S. 1897, p. 10.]

Art. 3897. [3895] Sworn statement.—Each officer mentioned in Article 3883 shall, at the close of each fiscal year, make to the district court of the county in which he resides a sworn statement showing the amount of fees collected by him during the fiscal year, and the amount of fees charged and not collected, and by whom due, and the number of deputies and assistants employed by him during the year, and the amount paid, or to be paid each. [Id. Acts 1907, p. 50.]

Art. 3898. [3896] Fiscal year.—A fiscal year, within the meaning of this chapter, shall begin on January first of each year; and each officer named in Article 3883 shall file the reports and make the settlement required in this chapter on January first of each year. Whenever such officer serves for a fractional part of a fiscal year, he shall nevertheless file his report and make settlement for such part of a year as he serves, and shall be entitled to such proportional part of the maximum allowed as the time of his services bears to the entire year. However, an incoming officer elected at the general election, who qualifies prior to January first next following, shall not be required to file any report or make any settlement before January first of the following year; but his report and settlement shall embrace the entire period dated from his qualification. [Acts 1923, p. 223.]

Art. 3899. [3897] Expense account.—At the close of each month of his tenure of such office each officer whose fees are affected by the provisions of this law shall make as a part of the report now required by law, an itemized and sworn statement of all the actual and necessary expenses incurred by him in the conduct of his office, such as stationery, stamps, telephone, traveling expenses and other necessary expense. If such expense be incurred in connection with any particular case, such statement shall name such case. Such expense account shall be subject to the audit of the county auditor, if any, and if it appear that any item of such expense was not incurred by such officer, or that such item was not necessary thereto, such item may be by such auditor or court rejected. In which case the correctness of such item may be adjudicated in any court of competent jurisdiction. The amount of such expense referred to in this paragraph, shall not be taken to include the salaries of assistants or deputies which are elsewhere herein provided for. The amount of such expense shall be deducted by the officer in making each such report, from the amount, if any, due by him to the county under the provisions of this law. The commissioners court of the county of the sheriff's residence may upon the written sworn application of the sheriff stating the necessity therefor, allow one or more automobiles to be used by the sheriff in the discharge of his official duties, which if purchased shall be bought by the county in the manner prescribed by law for the purchase of supplies, and paid for out of the general fund, and they shall be and remain the property of the county. The expense of the maintenance and operation of such automobile or automobiles as may be allowed shall be paid for by the sheriff, and the amount thereof shall be reported by the sheriff on the report above provided for, and shall be deducted by him from the amount, if any, due by him to the county in the same manner as the other expenses are deducted which are provided for in this law. [Acts 1923, p. 405.]

Art. 3900. Not to report.—The officers named in Article 3883 in those counties having a population of twenty-five thousand or less inhabitants shall not be required to make a report of fees as provided in Article 3879, or to keep the statement provided for in Article 3896; provided that all district attorneys shall be required to make the reports and keep the statements required in this chapter. [Acts 1923, p. 399.]

Art. 3901. [3899] Collector and assessor.—Each tax collector and tax assessor at the time of his settlement with the Comptroller, shall file with him a copy of the sworn statement required under Article 3897. [Acts 1st C. S. 1897, p. 11.]

Art. 3902. [3903] Deputies—appointment of.—Whenever any officer named in Article 3883 shall require the services of deputies or assistants in the performance of his duties, he may apply to the county commissioners' court of his county for authority to appoint such deputies or assistants, setting out by sworn application the number needed, the positions sought to be filled, and the amount to be paid. Said application shall be accompanied by a statement showing the probable receipts and disbursements of the office; and said court may make its order authorizing the appointment of such deputies and fix the compensation to be paid them and determine the number to be appointed, provided that in no case shall said commissioners' court or any member thereof attempt to influence the appointment of any person as deputy or assistant in any office. Upon the entry of such order, the officers applying for such deputies shall be authorized to appoint them as now provided by law, provided that said compensation shall not exceed the maximum amounts hereinafter set out. In counties having a population in excess of one hundred thousand inhabitants, the district attorney in the county of his residence or the county attorney, where there is not a district attorney, shall be allowed by order of the commissioners' court of the county where such official resides such amount as said court may deem necessary to pay for the proper administration of the duties of such office, not to exceed seventy-five dollars per month; such amount to be allowed upon affidavit of said district or county attorney showing a necessity for such expenses and for all the amounts so incurred. Said commissioners' court may also require any other evidence as it may deem necessary to show the necessity of such expenditure, and its judgment in allowing same shall be final.

The maximum compensation which may be allowed for deputies or assistants to the officers named in said Article 3883 for their services, shall be as follows, to-wit:

First assistant or chief deputy not to exceed eighteen hundred dollars per annum; other assistants or deputies not to exceed fifteen hundred dollars per annum each.

Provided, that in counties having a population of from thirty-seven thousand five hundred to one hundred thousand inhabitants, the maximum compensation which may be allowed such deputies or assistants for their services shall be as follows, to-wit:

First assistant or chief deputy not to exceed twenty-one hundred dollars per annum; heads of such de-

partment not to exceed eighteen hundred dollars per annum each; other deputies or assistants not to exceed fifteen hundred dollars per annum each.

Provided, that in counties having a population of from thirty-seven thousand five hundred to one hundred thousand, and containing a city of over twenty-five thousand, the maximum compensation that may be allowed such deputies or assistants for their services shall be as follows, to-wit:

First assistant or chief deputy not to exceed twenty-four hundred dollars per annum; heads of each department not to exceed twenty-one hundred dollars per annum each, other deputies or assistants not to exceed eighteen hundred dollars per annum each.

Provided, that in counties having a population in excess of one hundred thousand inhabitants the maximum compensation that may be allowed such deputies or assistants for their services shall be as follows, to-wit:

First assistant or chief deputy not to exceed twenty-four hundred dollars per annum, provided the commissioners' court may increase said amount to not exceed a rate of three thousand dollars per annum, where a necessity therefor is shown, and where the person to be appointed has been previously the head of a department for not less than one year, or has been in the continuous service of the county for a period of not less than two years.

Heads of departments may be allowed by the court, when in their judgment such are necessary, not to exceed a rate of twenty-four hundred dollars per annum, when such heads of departments sought to be appointed shall have previously served the county for not less than two continuous years. Other heads of departments shall receive not to exceed twenty-one hundred dollars per annum; provided, that no head of a department shall be created except where the person sought to be appointed is to be in actual charge thereof, with deputies or assistants under his supervision, or a department approved by the court and only in offices capable of a bona fide subdivision into departments.

Deputies or assistants other than those above provided for may be allowed, the number to be determined by the commissioners' court, and their salaries based as far as possible on a graduated scale according to service, ability and qualifications. Fifty per cent of the number so appointed may be authorized at a rate not to exceed twenty-one hundred dollars per annum, provided such rate shall be allowed only to deputies in service for two years or more, and all others so appointed at a rate not to exceed eighteen hundred dollars per annum.

Provided further, that in determining the number of inhabitants in each of the instances heretofore mentioned, the number of inhabitants as shown by the last United States census shall control.

The county commissioners court in each order granting authority to appoint deputies or assistants shall state the number of deputies or assistants authorized and the amount of compensation to be allowed each deputy or assistant, which compensation shall be paid out of the fees of the office to which such deputies or assistants may be appointed and assigned, and shall not be included in estimating the maximum fees of the officers prescribed in said Article 3883. The salaries referred to shall not be paid by the county, but are to be paid out of the fees of the office in the following manner:

First, out of any current fees collected, and second, if such fees are not sufficient, then out of any delinquent fees collected which are due the county after all legal deductions are made and if there be any balance remaining after payment of the maximum fee, compensation and excess fees due such officer or officers and the compensation of such deputy or deputies, such balance shall be paid to the county treasurer.

Provided, however, that nothing in this Act shall be construed to repeal H. B. No. 196, passed by the Regular Session of the Thirty-sixth Legislature, same being known as Chapter 47, of the Acts of the Regular Session of the Thirty-sixth Legislature, page 83, and any Acts amendatory thereof, relating to fixing salaries of district attorneys, their deputies, assistants and stenographers in counties having a population of more than one hundred thousand.

Provided, that in counties of two hundred thousand inhabitants and over and containing a city with a population of over one hundred and sixty thousand inhabitants according to the last United States census, and in which counties there are more than one district court, including criminal district courts, the clerk of the district court shall appoint a special deputy for each such court when directed so to do by the judge of any such court, except in instances where there is one now provided for by law; provided further that any such special deputy shall be paid out of the general fund of the county, a salary not in excess of the maximum salary per annum provided for deputies now by law, payable monthly, and such compensation shall not be paid out of the fees of [or] compensation of the district clerk, and shall not be taken into consideration in arriving at the maximum compensation and excess fees allowed the clerk of the district courts. [Acts 1925, p. 189.] [39th Leg., ch. 52, § 1.]

Art. 3902B. Compensation of assistant county attorneys.—Provided, that in Counties having a population of more than 70,000 and less than 100,000, as shown by the latest United States Census, and containing two or more cities of more than 20,000 population each, as shown by said United States Census, and composing two or more Judicial Districts with courts of general jurisdiction and having no District Attorney, the maximum compensation that may be allowed the assistants, heads of departments and other assistants to the County Attorney in such counties, shall be as follows: First Assistant, not to exceed the sum of Thirty-six Hundred Dollars per annum: Heads of Departments or Second Assistants, not to exceed the sum of Three Thousand Dollars per annum: and other assistants, not to exceed the sum of Twenty-four Hundred Dollars per annum. The Compensation herein provided for and the amounts thereof, shall be fixed by the Commissioners' Courts of such Counties, not in any event to exceed said maximum amounts, upon application of the County Attorney of such Counties, which said application shall show the necessity therefor, and said assistants or heads of departments shall not be required to have rendered official service in such Counties or to have been the head of a department therein. Said compensation, when fixed and allowed, by the order of the Commissioners' Court of such Counties, shall be paid in monthly installments out of the fees of the office of the County Attorney, and the Counties shall in no case be liable for the payment of such compensation. [Acts 1927, 40th Leg., p. 410, ch. 272, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 410, ch. 272, repeals all conflicting laws and parts of laws.

Art. 3903. [3903] Special deputy district clerk.—In counties of two hundred thousand inhabitants and over containing a city of over one hundred and sixty thousand inhabitants, and in which counties there are more than one district court, including criminal district courts, the clerk of the district courts shall appoint a special deputy for each court when directed so to do by the judge of any such court. Any such special deputy shall be paid out of the general fund of the county, a salary not in excess of the maximum salary per annum provided herein for deputies, payable monthly and such compensation shall not be paid out of the fees or compensation of the district clerk, and shall not be taken into consideration in arriving at the maximum compensation and excess fees allowed the clerk of the district courts. [Acts 1925, 39th Leg., p. 189, ch. 52, § 1.]

Art. 3904. [3906–7–12–23] No fee allowed.—No clerk or justice of the peace shall be entitled to any fee for the examination of any paper or record in his office, nor for filing any process or paper issued by him and returned into court, nor for motions or judgments upon motions for security for costs, nor for

taking and approving a bond for costs. A judgment containing several orders shall be considered as one judgment, and only one fee shall be charged by said clerk or justice for entering or rendering the same. [Acts 1876, p. 285; G. L. vol. 8, p. 1120.]

Art. 3905. [3908] [2478] [2414] Fee for acknowledgment.—Officers authorized by law to take acknowledgment or proof of deeds or other instruments of writing shall receive the same fees for taking such acknowledgment or proof as are allowed notaries public for the same services. [Id.]

Art. 3906. [3911] [2481] [2417] No fee for copy.—No copy of a paper not required by law to be copied shall be taxed in the bill of costs. [Id.]

Art. 3907. [3913] [2483] [2419] Fee book.—Every officer entitled by law to charge fees for services shall keep a fee book, and shall enter therein all fees charged for services rendered, which fee book shall, at all times be subject to the inspection of any person wishing to see the amount of fees therein charged. [Id.]

Art. 3908. [3914] [2484] [2420] To itemize costs.—None of the fees mentioned in this title shall be payable to any person whomsoever until there be produced, or ready to be produced, unto the person owing or chargeable with the same, a bill or account in writing containing the particulars of such fees, signed by the clerk or officer to whom such fees are due, or by whom the same are charged, or by the successor in office, or legal representative of such clerk or officer. [Id.]

Art. 3909. [3915] [2485] [2421] Extortion.—If any officer named in this title shall demand and receive any higher fees than are prescribed to them in this title, or any fees that are not allowed by this title, such officer shall be liable to the party aggrieved for fourfold the fees so unlawfully demanded and received by him. [Id.]

Art. 3910. [3916] [2486] [2422] Fees posted.—County judges, clerks of the district and county courts, sheriffs, justices of the peace, constables and notaries public of the several counties shall keep posted up, at all times, in a conspicuous place in the [their] respective offices a complete list of fees allowed by law to be charged by them respectively. [Id.]

Art. 3911. [3917] [2487] [2423] Officer to execute process.—Officers receiving any process to be executed shall not be entitled in any case to demand their fees for executing the same in advance of such execution, but their fees shall be taxed and collected as other costs in the case. [Id.]

Art. 3912. Other fees of office.—Any other fees of office which any article or statute expressly provides are not to be accounted for as fees of office shall not be affected by the provisions of this title.

CHAPTER TWO

ENUMERATION

Art.
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Article 3913. [3833 to 36] Certain State officers.—The Secretary of State, Land Commissioner, Comptroller, State Treasurer, Commissioner of Agriculture, Commissioner of Insurance, Banking Commissioner, State Librarian, Adjutant General, and the Attorney General, shall furnish to any person who may apply for the same with a copy of any paper, document or record in their respective offices, or with a certificate under seal, certifying to any fact or facts contained in the papers, documents or records of their offices; provided neither of said officers shall demand nor collect any fee from any officer of the State for copies of any papers, documents or records in their offices, or for any certificate in relation to any matter in their offices, when such copies are required in the performance of any of the official duties of such office. Each of said officers shall keep a fee book in his office in which he shall enter all the fees received for any service named in this title, and shall quarterly file with the Comptroller a verified account of all fees so received by them, respectively, and such officers shall also at the end of each quarter pay over to the State Treasurer all money received by them, respectively, under the provisions of this title. Each said officer shall be entitled to demand and receive the following fees for the services mentioned, except as otherwise provided by this title:

For copies of any paper, document, or record in their offices, in the English language, including certificate and seal, for each hundred words	$ .15
For copies of any paper, document or record in their offices, in any other language than the English, including certificate and seal, for each hundred words	.25
For each translated copy of any paper, document, or record in their offices, including certificate and seal, for each hundred words	.30
For the copy of any plat or map in their offices, such fee as may be established by the officer in whose office the same is made, to be determined with reference to the amount of labor required.	
For each certificate not otherwise provided for..	$ .50

[Acts 1848, p. 184; G. L. vol. 3, p. 184; Acts 1907, p. 283.]

Art. 3914. [3837] [2439] Secretary of State.—The Secretary of State is authorized and required to charge for the use of the State the following other fees:

For each charter, amendment or supplement thereto of a private corporation created for the purpose of operating or constructing a railroad, magnetic telegraph line or street railway or express company, authorized or required by law to be recorded in said department, a fee of two hundred dollars to be paid when said charter is filed, provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars, it shall be required to pay an additional fee of fifty cents for each one thousand dollars authorized capital stock, or fractional part thereof, after the first one hundred thousand; and provided further that such fee shall not exceed twenty-five hundred dollars.

For each charter, amendment or supplement thereto, of a private corporation intended for the support of public worship, any benevolent, charitable, educational, missionary, literary or scientific undertaking, the maintenance of a library, the promotion of painting, music or other fine arts, the encouragement of agriculture or horticulture, the maintenance of public parks, the maintenance of a public cemetery not for profit, a fee of ten dollars to be paid when the charter is filed.

For filing the charter of a corporation organized to aid its member stockholders in producing and marketing agricultural products, or for acquiring, raising, breeding, fattening or marketing livestock, ten dollars; and for filing the semi-annual financial statement of such corporation, ten dollars which shall include the annual license fee.

For each charter, amendment or supplement thereto of a channel and dock corporation, a fee of two hundred dollars shall be paid to the Secretary of State when the charter, amendment or supplement thereto is filed for record; provided, that if the authorized capital stock of said corporation shall exceed one hundred thousand dollars it shall be required to pay an additional fee of fifty cents for each one thousand dollars of its authorized capital stock or fractional part thereof in excess of one hundred thousand dollars; and provided further that such fee shall not exceed twenty-five hundred dollars.

Each building and loan association shall pay to the Secretary of State the following fees: for filing articles of association, by-laws, amendments or any other paper, one dollar; for making and certifying to articles of association, by-laws or any other paper required to be filed with the Secretary of State, twenty cents per one hundred words; for making the annual examination required by law, one seventy-fifth part of one per cent of the gross amount of assets of such association, which fee shall not be less than twenty nor more than one hundred dollars in any one year, to be paid at the time of filing its annual statement; and shall at the same time pay said officer an annual franchise tax of ten dollars.

For each charter, amendment or supplement thereto, of a private corporation created for any other purpose intended for mutual profit or benefit, a fee of fifty dollars shall be paid when said charter is filed, provided that if the authorized capital stock of said corporation shall exceed ten thousand dollars it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars of its authorized capital stock or fractional part thereof after the first, provided that such fee shall not exceed twenty-five hundred dollars.

Each foreign corporation that files with the Secretary of State a certified copy of its articles of incorporation and any amendments thereto and obtains a permit to do business in this State, or which shall hereafter obtain a permit to do business in this State, that shall subsequently file with the Secretary of State a certified copy of any amendment or supplement to its articles of incorporation, shall pay to the Secretary of State as filing fees the following: fifty dollars for the first ten thousand dollars of its capital stock actually subscribed, and ten dollars for each additional ten thousand dollars or fractional part thereof; provided that in no event shall such fee exceed twenty-five hundred dollars; provided, that the fee required to be paid by any foreign corporation for a permit to engage in the manufacture, sale, rental, lease or operation of all kinds of cars, or to engage in conducting, operating or managing any telegraph line in this State, shall in no event exceed twenty-five hundred dollars.

For each commission to every officer elected or appointed in this State, one dollar.

For each official certificate, one dollar.

For each warrant of requisition, two dollars.

For every remission of fine or forfeiture, one dollar.

For copies of any paper, document or record in his office, for each one hundred words, fifteen cents.

For recording each contract for the conditional sale, lease or hire of railroad equipment and rolling stock, and for recording each declaration of performance of such contract, five dollars; and for entering such declaration on the margin of the record of such contract, one dollar.

For recording each certificate of consolidation of cities, and for recording each certificate of adoption of a city charter or amendment under the "Home Rule Act," fifteen cents per one hundred words, provided such fee shall not be less than two dollars. [Acts 1919, p. 79.]

Art. 3915. [3838] Certain foreign corporations.—All foreign building and loan associations shall pay to the Secretary of State the following fees: for filing each application for admission to do business in this State, fifty dollars; for each certificate of authority and annual renewal of the same, twenty-five dollars; and an annual franchise tax of two hundred and fifty dollars. The fee required to be paid by any foreign corporation for a permit to do the business of loaning money in this State shall in no event exceed one thousand dollars. [Acts S. S. 1909, p. 267; Acts 1st C. S. 1913, p. 72.]

Art. 3916. [3840] Disposition of fees.—All fees mentioned in the two preceding articles shall be paid in advance into the office of the Secretary of State, and shall be by him paid into the State Treasury monthly. [Id.]

Art. 3917. [3841] [2440] [2375] Attorney General.—The Attorney General shall be entitled to the following fees:

For each affirmance of judgment in cases to which the State may be a party involving pecuniary liabilities to the State, ten per cent on the amount collected if under one thousand dollars, and five per cent for all above that sum, to be paid out of the money when collected.

For all cases involving the forfeiture of charters, heard on appeal before the Supreme Court or Courts of Civil Appeals, twenty-five dollars.

But the whole amount of fees allowed the Attorney General shall not exceed the sum of two thousand dollars per annum, and the excess of such fees over two thousand dollars per annum shall be paid into the State Treasury. [Acts 1876, p. 284; G. L. vol. 8, p. 1120.]

Art. 3918. [3842] [2441] [2376] Land Commissioner.—The Land Commissioner is authorized and required to charge for the use of the State the following fees:

FILING FEES

Deed transferring one tract of land or a decree of Court relating to one tract of land	$ .50
Each additional tract in a deed or decree	.25
Affidavit of ownership	.50
Original field notes	1.00
Transfer of mineral claims, permits, relinquishments, leases[,] contracts, etc.	1.00
Certificates of facts covering one tract of land	1.00
Each additional tract	.50
Certificate of occupancy on the home section	1.00
Each additional tract shown in a certificate on the home tract	.50
Each other certificate not otherwise provided for	.50

CERTIFIED COPIES

Certificate of the class of Toby Scrip	$2.50
All other land certificates	1.00
Application for survey	1.00
Field notes	1.00
Mineral application	1.00
Mineral permit or mineral lease	2.00
Purchase application and obligation	1.25
Purchase application	1.00
Obligation for deferred payment on land	.50
File wrapper	1.00
Proof of occupancy	1.50
Deed, Bond for title, power of attorney, decree of court or other similar instrument	1.50
Patent	1.25
Affidavit of settlement, non-settlement and rebuttal affidavits, each	1.00
Other affidavits	1.00
Lease application or contract not exceeding five tracts	.75
Each additional tract add	.25
Letters and impressions of letters, one page	.50
Letters and impressions of letters, more than one page	1.00

Extract of muster roll, traveling land board reports, clerk's returns relating to land certificates, patent delivery books, school land sales, records and books and other similar records, each	2.00
For copy of any record, document or papers in the English language not otherwise provided for herein, 20 cents for each 100 words; provided that no charge shall be less than	1.00
Plain or certified copy of any other paper, document or record in any other language than the English, 40 cents for each 100 words; provided no charge shall be less than	1.00
Blue print, white print, or other cloth map of any county except lithograph	3.00
Lithograph map	.50
Plain or certified copy of a portion of a map or sketch or plat made by print or hand, and for a working sketch, the charge shall be determined by the amount of material used and time consumed at the rate of, per hour	1.00
For examination of any filed papers, for each survey	.50
When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one person or where search is necessary to compile information, minimum fee to be charged of 50 cents, and if the examination is extended beyond thirty minutes an additional sum shall be charged at the rate of, per hour	1.00

PATENT FEES

Eighty acres or less	$3.00
Each additional 80 acres or fractional part thereof contained in a patent	1.00

[Acts 1919, p. 86.]

Art. 3919. [3843] [2442] [2377] Comptroller.—The Comptroller shall charge the following fees:

For examinations in which the State, or any county, has no interest, for each hour or fraction of an hour spent in such examination	$ .50
For each sealed certificate issued	.50

[Acts 1875, p. 182; G. L. vol. 8, p. 554.]

Art. 3920. [3844] [2443] [2378] Commissioner of Insurance.—The Commissioner of Insurance shall charge and receive for the use of the State the following fees:

For filing each declaration or certified copy of charter of insurance company	$ 25.00
For filing the annual statement of an insurance company, or certificate in lieu thereof	20.00
For certificate of authority and certified copy thereof	1.00
For every copy of any paper filed in his department, for each 100 words	.20
For affixing his official seal and certifying to the same	1.00
For valuing policies of life insurance companies, for each one million of insurance or fraction thereof	10.00
For official examination of companies under the law, the actual expenses incurred, and ten dollars a day, not to exceed	250.00

[Acts 1907, p. 127; Acts 1876, p. 223; G. L. vol. 8, p. 1059.]

Art. 3921. Banking Commissioner.—The Banking Commissioner shall charge and receive for the use of the State the following fees:

For making an investigation of an application for the organization of a State Bank, not to exceed	$50.00

For each charter, amendment or supplement thereto, of a bank or bank and trust company, a fee of fifty dollars shall be paid when said charter is filed, and if the authorized capital stock of such corporation exceeds ten thousand dollars, it shall be required to pay an additional fee of ten dollars for each additional ten thousand dollars of its authorized capital stock or fractional part thereof after the first, provided such fee shall not exceed twenty-five hundred dollars. [Acts 1913, p. 212; Acts 1917, p. 469; Acts 1919, p. 169; Acts 3rd C. S. 1920, p. 89.]

Art. 3922. [3845] Railroad Commission.—The Railroad Commission of Texas shall be authorized to charge fees for copies of all papers furnished by it, except such as may be furnished to some department of the State government, as follows:

For copies of any paper, document or record in its office, including certificate and seal, to be applied by the secretary, for each one hundred words, fifteen cents; provided, that this article shall not be construed to authorize the charging of such fees for railroad companies or other persons for tariff sheets for their own use, which such tariff sheets are in force.

The fees so charged and collected shall be accounted for by the secretary of the Railroad Commission and paid into the Treasury as provided in Article 3913. [Acts 1899, p. 297.]

Art. 3923. [3846] [2445] [2380] Clerk of Supreme Court.—The clerk of the Supreme Court shall receive the following fees:

Entering appearance of either party, in person or by attorney, to be charged but once	$ .50
Docketing each cause, to be charged but once	.50
Filing the record in each cause	.50
Entering each rule or motion	.25
Entering the order of the court upon any rule or motion, or entering any interlocutory judgment	.50
Administering an oath or affirmation without a certificate	.15
Administering an oath or affirmation and giving certificate thereof, with seal	.25
Entering each continuance	.20
Entering each final judgment or decree	1.00
Each writ issued	1.00
Making out and transmitting the mandate and judgment of the Supreme Court to any inferior court	1.50
Making copies of any papers or records in their offices, including certificate and seal, for each 100 words	.15
Recording the opinions of the judges, for each 100 words	.20
Taxing the bill of costs in each case with copy thereof	.50
Issuing attorney's license	1.00

[Acts 1876, p. 285; G. L. vol. 8, p. 1121; Acts 1919, p. 64.]

Art. 3924. [3847] [1011] Clerk of Civil Appeals.—The clerks of the Courts of Civil Appeals shall receive the following fees:

Entering appearances of either party, in person or by attorney, to be charged but once	$ .50
Docketing each cause, to be charged but once	.50
Filing the record in each cause	.50
Entering each rule or motion	.25
Entering the order of court upon any rule or motion, or entering any interlocutory judgment	.50
Administering an oath or affirmation, without a certificate	.15
Administering an oath or affirmation and giving a certificate thereof with seal	.25
Entering each continuance	.20
Entering each final judgment or decree	1.00
Each writ issued	1.00
Making out and transmitting the mandate and judgment of the court to any inferior court	1.50
Making copies of any papers or records in their offices, including certificate and seal, for each 100 words	.10
Recording the opinions of the judges, for each 100 words	.15
Taxing the bill of costs in each case	.50
Filing each brief, or other paper necessary to be filed	.10

For certificate and seal, where same is necessary .50
Recording sheriff's return on execution..... .50
For issuing copies of each notice ordered by court ..... .50
[Acts 1893, p. 165; G. L. vol. 10, p. 595.]

Art. 3925. [3849] [2447] [2383] County judge.—The county judge shall receive the following fees in probate matters:

Probating a will..... $2.00
Granting letters testamentary, of administration or of guardianship..... .50
Each order of sale..... .50
Each approval and confirmation of sale..... .50
Each decree refusing order of sale, or refusing confirmation of sale..... .50
Each decree of partition and distribution..... 2.00
Each decree approving or setting aside the report of commissioner of partition and distribution 2.00
Each decree removing an executor, administrator or guardian to be paid by such executor, administrator or guardian..... 1.00
Each fiat or certificate..... .50
Each continuance ..... .10
Each order, not otherwise provided for..... .50
Administering oath or affirmation with certificate and seal..... .50
Administering oath or affirmation without certificate and seal..... .25
[Acts 1876, p. 284; G. L. vol. 8, p. 1120.]

Art. 3926. [3850 to 3853] Other fees of county judge.—The county judge shall also receive the following fees:

1. A commission of one-half of one per cent upon the actual cash receipts of each executor, administrator or guardian, upon the approval of the exhibits and the final settlement of the account of such executor, administrator or guardian, but no more than one such commission shall be charged on any amount received by any such executor, administrator or guardian.

2. For each case of lunacy disposed of by him, three dollars, to be paid out of the county treasury. For each civil cause finally disposed of by him by trial or otherwise, three dollars, to be taxed aainst [against] the party cast in the suit; provided, that if said party has filed his oath of inability to pay costs during the progress of the cause, or be unable to pay costs, then the county judge shall be allowed by the commissioners court such compensation as it may deem proper, not to exceed three dollars for each State case.

3. For presiding over the commissioners court, ordering elections and making returns thereof, hearing and determining civil causes, and transacting all other official business not otherwise provided for, he shall receive such salary from the county treasury as the commissioners court may allow him by order.

4. For testing any steelyard, balance or beam, fifty cents, and for every weight or measure, ten cents.

5. For examining and approving the bond of a live stock commission merchant, one dollar. [Id. Acts 1921, p. 176.]

Art. 3927. [3855] [2453] [2389] District clerk.—The clerks of the district courts shall receive the following fees in civil cases for their services:

For copy of petition including certificate and seal, for each 100 words..... $ .20
Each writ of citation..... .75
Each copy of citation..... .50
Docketing each cause, to be charged but once... .20
Every other order, judgment or decree, not otherwise provided for..... .75
Docketing each rule or motion, including rule for cost ..... .15
Filing each paper..... .15
Entering appearance of each party to a suit, to be charged but once..... .15
Each continuance..... .12
Swearing each witness..... .10
Administering an oath, affirmation, or taking affidavit, certificate and seal; provided, that he shall only be allowed pay for one certificate to each witness claim for attendance in behalf of plaintiff, and one each in behalf of defendant, at any one term of court..... .50
Each subpœna issued..... .25
Each additional name inserted in subpœna..... .15
Approving bond (except for cost)..... 1.50
Swearing and impaneling a jury..... .35
Receiving and recording a verdict of a jury.... .35
Each commission to take depositions..... .75
Taking depositions, each 100 words..... .15
Issuing copies of interrogatories with certificate and seal, per 100 words..... .15
Each final judgment..... 1.00
Where judgment exceeds 300 words, an additional fee for each 100 words in excess of 300 words ..... .15
For each order of sale..... 1.00
For each execution..... .75
For each writ of possession or restitution..... .75
For each injunction writ..... .75
Each copy of injunction writ..... .75
For every other writ not otherwise provided for .75
For each copy of writ not otherwise provided for .50
Recording returns of any writ, where such return is required by law to be recorded, including the return on all writs, except subpœnas.. .50
Each certificate to any facts contained in his office ..... .75
Making out and transmitting the records and proceedings in a cause to any inferior court, for each 100 words..... .10
Making out and transmitting mandate or judgment of the district court upon appeal from the county court..... 1.00
Filing a record in a cause appealed to the district court..... .50
Transcribing, comparing and verifying record books of his office, payable out of the county treasury, upon warrants issued upon the order of commissioners court, for each 100 words ..... .15
Making transcript of records and papers in any cause upon appeal, or writ of error, with certificate and seal, for each 100 words..... .15
Making copy of all records of judgments or papers on file in his office, for any party applying for same, with certificate and seal, for each 100 words..... .15
Taxing the bill of costs in any case with copy of same ..... .25
Filing and recording the declaration of intention to be a citizen of the United States..... 2.00
Issuing certificate of naturalization..... 2.50
[Acts 1901, p. 24.]

Art. 3928. [3856–7–8] Other fees of district clerk.—The district clerk shall also receive the following fees:

1. Whenever in any suit a certified copy of any petition or any other instrument is necessary in the district court, it shall be lawful for the plaintiff or defendant to prepare such true and correct copy thereof and submit the same to the district clerk who shall compare the same, and if found correct he shall attach his certificate of true copy. For such services he shall receive fifty cents for each certificate and seal, and ten cents per 300 words to the page.

2. In matters relating to estates of deceased persons and minors, when the same are transacted in the district court, he shall receive the same fees that are allowed therefor to county clerks.

3. For the care and preservation of the records of his office, keeping the necessary indexes, and other labor of the like kind, to be paid out of the county treasury on the order of the commissioners court, such sum as said court shall determine. [Id. Acts 1879, p. 92; G. L. vol. 8, p. 1392.]

Art. 3929. [3859–63] Clerks assessing damages.—No district or county clerk shall receive any

compensation for assessing damages in any case. [Acts 1st C. S. 1897, p. 13.]

Art. 3930. [3860] [2457] [2393] County clerk.—Clerks of the county court shall receive the following fees:

Filing each paper	$ .05
Issuing notices, including copies for posting or publication	.75
Docketing each application, complaint, petition or proceeding, to be charged but once	.10
Each writ or citation, including copy thereof	.50
Each copy of any paper that is required to accompany any writ or citation, with certificate and seal, for each 100 words	.10
Issuing letters testamentary, of administration or guardianship	.50
Each final judgment or decree	.50
Every other order or decree, not exceeding 100 words	.15
Where such other order or decree contains 100 words and not more than 200 words	.25
When any final judgment or decree or any other order or decree exceeds 200 words, an additional fee for each 100 words in excess of 200 words	.10
Recording all papers required to be recorded by them in relation to estates of decedents or wards, for each 100 words	.10
Administering oath to executor, administrator or guardian	.10
Administering oath in other cases without certificate and seal	.15
Administering oath with certificate and seal	.25
Entering each order of the court approving or disapproving a claim against an estate	.25
Filing each paper, except subpœnas	.05
Each appearance, to be charged but once	.05
Entering each continuance, except in estates	.10
Each subpœna	.25
Each additional name inserted in a subpœna	.05
Approving bond, except bond for costs and notarial bond	1.00
Approving notarial bond	.50
Swearing each witness	.10
Swearing and empaneling a jury	.25
Receiving and recording a verdict	.25
Each commission to take depositions	.50
Taking depositions, each 100 words	.15
Each execution, order of sale, writ of possession, restitution or other writ not otherwise provided for	.50
For recording return of any writ, when any such return is required by law to be recorded	.50
Where the return exceeds 300 words, for each 100 words in excess of 300 words	.10
Copies of interrogatories, cross-interrogatories and all other papers or records required to be copied by him, including certificate and seal, where the copy does not exceed 200 words, for each 100 words	.15
Where the copy exceeds 200 words, for each additional 100 words in excess of 200 words	.10
Transcript in any case where appeal or writ of error is taken, with certificate and seal, for each 100 words	.10
Each certificate to any fact or facts contained in the records of his office, with certificate and seal, when not otherwise provided for	.50
For filing, recording and certifying to each tax receipt	.25
Taxing the bill of costs in each cause, with a copy thereof	.25
For recording attachments and returns, the same fees allowed for recording deeds.	
For filing and recording each rental lien or chattel mortgage deposited	.25
For entering satisfaction of chattel mortgages	.25
Recording all papers required or permitted by law to be recorded, not otherwise provided for, including certificate and seal, for each 100 words	.10
Transcribing records for new counties and added territory, for each 100 words	.15
Transcribing, comparing and verifying record books of his office, payable out of the county treasury upon warrant issued under the order of the commissioners court, for each 100 words	.10
Issuing and recording marriage license	1.00
Recording each mark and brand or either	.25
Issuing each license, other than marriage license, where the law provides for him to issue same	1.00
Recording and certifying bills of sale under the stock laws, for each 100 words	.15
Recording each mark and brand and giving certificate thereof	.75
Revising the list of marks and brands, such compensation as the commissioners court may allow.	
Qualifying a notary public	.50
For filing and recording the bond and sworn statement of a live stock commission merchant	1.00
For making a certified copy of such bond and statement	1.00

[Acts 1st C. S. 1897, p. 13; Acts 1919, p. 170; Acts 1921, p. 177.]

Art. 3931. [3861] [2458] [2394] County clerk: preserving records.—At each term of his court the county judge shall inquire into and examine the amount of labor actually and necessarily performed by the clerk of his court in the care and preservation of the records of his office, in making and keeping necessary indexes thereto, and other labor of a like class, and allow said clerk a reasonable compensation therefor, not to exceed the fees allowed him by law for like services, and not to exceed one hundred dollars annually, to be paid out of the county treasury upon the sworn account of such clerk, approved in writing thereon by the county judge. [Acts 1876, p. 287; G. L. vol. 8, p. 1123.]

Art. 3932. [3862] [2459] [2395] County clerk: ex-officio services.—For all ex-officio services in relation to roads, bridges and ferries, issuing jury scrip, county warrants, and taking receipts therefor, services in habeas corpus cases, making out bar dockets, keeping record of trust funds, filing and docketing all papers for commissioners court, keeping road overseer's book and list of hands, recording all collection returns of delinquent insolvents, and list of lands sold to individuals for taxes, recording county treasurers' reports, recording reports of justices of the peace, recording reports of animals slaughtered, and services in connection with all elections, and all other public services not otherwise provided for, to be paid upon the order of the commissioners court out of the treasury, the county clerk shall receive not less than ten dollars nor more than twenty-five dollars per annum for each one thousand inhabitants of his county; provided, that the total amount paid the clerk in any one year shall not be less than fifty nor more than five hundred dollars, said amount to be paid quarterly. No county clerk shall be compelled to file or record any instrument of writing permitted or required by law to be recorded until after payment or tender of payment of all legal fees for such filing or recording has been made. Nothing herein shall be held to include papers or instruments filed or recorded in suits pending in the county court. [Acts 1881, p. 99; G. L. vol. 9, p. 191.]

Art. 3933. [3864] [2460] [2396] Sheriff.—Sheriffs shall receive the following fees:

Serving each original citation in a civil suit	$1.00
Summoning each witness	.50
Levying and returning each writ of attachment or sequestration	2.00
Copy of attachment writ and return for recording	1.00
Levying each execution	1.00
Return of execution	1.00
Serving each writ of garnishment or other process not otherwise provided for	1.00

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Serving each writ of injunction	1.50
Taking and approving each bond, and returning same to the proper court when necessary	1.00
Indorsing the forfeiture of any bond required to be indorsed by him	.50
Executing and returning each writ of possession or restitution	3.00
Posting the advertisements for sale under the execution or any order of sale	1.00
Posting any other notices required by law and not otherwise provided for	1.00
Executing a deed to each purchaser of real estate under execution or order of sale	2.00
Executing a bill of sale to each purchaser of personal property under an execution or order of sale, when demanded by purchaser	2.00
For each case tried in the district or county court, a jury fee shall be taxed for the sheriff of	.50
For services in designating a homestead	2.00

For traveling in the service of any civil process, sheriffs and constables shall receive seven and one-half cents for each mile going and coming; if two or more persons are mentioned in the writ, he shall charge for the distance actually and necessarily traveled in the service of same.

Collecting money on an execution or an order of sale, when the same is made by a sale, for the first one hundred dollars or less, four per cent; for the second one hundred dollars, three per cent; for all sums over two hundred dollars and not exceeding one thousand dollars, two per cent; for all sums over one thousand dollars and not exceeding five thousand dollars, one per cent; for all sums over five thousand dollars, one-half of one per cent.

When the money is collected by the sheriff without a sale, one-half of the above rates shall be allowed him.

For every day the sheriff or his deputy shall attend the district or county court, he shall receive four dollars a day to be paid by the county for each day that the sheriff by himself or a deputy shall attend said court. [Acts 1923, p. 397.]

Art. 3934. [3865–6] Sheriff: other compensation.—Sheriffs shall also receive the following compensation:

1. For all process issued from the Supreme Court or Courts of Civil Appeals, and served by them, the same fees as are allowed them for similar service upon process issued from the district court.

2. For summoning jurors in district and county courts, serving all election notices, notices to overseers of roads and doing all other public business not otherwise provided for, not exceeding one thousand dollars per annum to be fixed by the commissioners court at the same time other ex officio salaries are fixed, and to be paid out of the general funds of the county; provided, that no such ex officio salary shall be allowed any sheriff who had received the maximum salary allowed by law. [Acts 1875, p. 70; G. L. vol. 8, p. 442; Acts 3rd C. S. 1920, p. 82.]

Art. 3935. [3867] [2463] [2399] Justice of the peace.—Justices of the peace shall receive the following fees:

Each citation	$ .50
Each subpœna for one witness	.25
Each additional name inserted in a subpœna	.05
Docketing each cause	.10
Filing each paper	.05
Each continuance	.10
Each bond not otherwise provided for	.50
Swearing each witness in court	.10
Administering an oath without a certificate	.10
Administering an oath with certificate	.25
Administering the oath, approving bond and issuing a writ of attachment or sequestration	1.50
Issuing any other writ or process not otherwise provided for	.50
Causing a jury to be summoned and swearing them	.25
Receiving and recording verdict of jury	.25
Each order in a cause not otherwise provided for	.25
Each final judgment	.50
Each application to set aside a judgment or for a new trial, with the final judgment thereon	.50
Each appeal bond	.25
Each commission to take depositions	.50
Copy of interrogatories or cross-interrogatories, for each 100 words, including certificate	.10
Making and certifying a transcript of the entries on his docket, and filing the same, together with the original papers in the case, in the proper court, in each case of appeal or certiorari	1.50
Each execution or order of sale	.60
Each writ of possession or restitution	.75
Receiving and recording the return on each execution, order of sale, writ of possession or restitution, if a levy is returned or the writ executed	.30
If no levy is returned or the writ not executed	1.10
Making copies of any papers or records in his office for any person applying for the same, for each 100 words including certificate	.10
Taxing costs, including copy thereof, in each case	.10
Each certificate not otherwise provided for	.25
Taking acknowledgment for stay of judgment	.50

[Acts 1st C. S. 1897, p. 13.]

Art. 3936. [3868–9] Constable.—Constables shall receive the following fees for services rendered in business connected with courts of justices of the peace:

Serving each citation in civil suit	$ .70
Serving each garnishment	.70
Serving each notice for the taking of depositions and copy of interrogatories	.70
Serving each subpœna	.50
Levying and returning each writ of attachment or sequestration	1.50
Copy of attachment writ and return for recording	1.00
Levying each execution	.70
Executing each order of sale, writ of possession or restitution	1.00
Returning each execution, order of sale, writ of possession or restitution	.40
Taking and approving each bond	1.00
Summoning a jury in justice's court	1.00
Advertising sale under execution or order of sale	.70
Making title to purchaser of real estate under execution or order of sale	2.00
Making title to purchaser of personal property under execution or order of sale, when demanded by purchaser	.50

Taking care of property levied upon by virtue of any legal process, all reasonable and necessary expenses, to be taxed and allowed by the court to which such process is returnable. Collecting money under an execution or order of sale, when a sale is made, four per cent on the amount actually collected by him. When the money is collected by him without a sale, two per cent on the amount actually collected by him.

For all services performed by constables in business connected with the district and county courts, the same fees allowed sheriffs for the same services. [Acts 1889, p. 80; Acts 1876, p. 291; G. L. vol. 8, p. 1127.]

Art. 3937. [3871] Tax assessor.—Each assessors [assessor] of taxes shall receive the following compensation for his services, which shall be estimated upon the total value of the property assessed as follows: For assessing the State and county taxes; on all sums for the first two million ($2,000,000.00) dollars, or less, five cents (5c) for each one hundred ($100.00) dollars of property assessed; on all sums in excess of two million ($2,000,000.00) dollars, and less than five million ($5,000,000.00) dollars, two and one-half cents (2½c) on each one hundred dollars ($100.00) and on all sums in excess of five [million] ($5,000,000.00) dollars, two and one-fourth cents (2¼c) on each

one hundred ($100.00) dollars; one-half of the above fee shall be paid by the State, and one-half by the county; for assessing the taxes in all drainage districts, road districts, or other political subdivisions of the county, the assessor shall be paid three-fifths (3/5) of one cent for each one hundred ($100.00) dollars of the assessed values of such districts of [or] subdivisions; provided such compensation as is paid to the assessor shall be prorated among the various drainage districts, road districts and other political subdivisions of the county according to the value of the property assessed in each district, or other political subdivision; and for assessing the poll tax, five cents (5c) for each poll which shall be paid by the State.

The commissioners' court shall allow the assessor of taxes such sums of money to be paid monthly from the county treasury, as may be necessary to pay for clerical work, taking assessments and making out the tax rolls of the county, (such sums so allowed to be deducted from the amount allowed to the assessor as compensation upon the completion of said tax rolls); provided, the amount allowed the assessor by the commissioners' court shall not exceed the compensation that may be due by county to him for assessing. [Acts 1925, p. 358.] [39th Leg., ch. 150, § 1.]

Art. 3937a. Tax assessor in counties having large city.—That hereafter there shall be paid to county tax assessors in counties containing a city with a population of over 125,000 according to the last United States census, where the county assessor of taxes compiles and makes a transfer book or card index compiled from the real estate transfers recorded in the county clerk's office showing the names transferred to, last owner assessed to, volume and page, description of property, assessed valuation and the consideration in the transfer; keeps a building permit record or card index of all building permits issued, showing name of owner, date of permit, description of property on which building is located, description of the improvement, the permit valuation and the final valuation of the building inspector; keeps a record of the builder's liens recorded in the county clerk's office; and also keeps a card index file of all automobiles, busses, and trucks, licensed and owned on January 1st of each year, showing owner of auto, owner's address, State Highway license number, make and year model of auto, all of said information for the facilitating of the work in said assessor's office and for the more correctly assessing such classes of property and for the purpose of keeping a close check on same, by the Commissioners' Court to said assessor who compiles and uses such records, extra compensation not to exceed Three Thousand Dollars annually beginning with the fiscal year 1927, to be paid in twelve monthly payments, same to be retained by said assessor as ex-officio salary exclusive of the maximum salary allowed by law. [Acts 1927, 40th Leg., 1st C. S., p. 100, ch. 33, § 1.]

Section 2 of Acts 1927, 40th Leg., 1st C. S., p. 100, ch. 33, repeals all conflicting laws and parts of laws.

Art. 3938. [7584–5] Payment of assessor.—The Comptroller, on receipt of the rolls, shall give the assessor an order on the collector of his county for the amount due him by the State for assessing the State taxes, to be paid out of the first money collected for that year. The commissioners court shall issue an order on the county treasurer of their county, to the assessor, for the amount due him for assessing the county tax of their county, to be paid out of the first money received from the collector on the rolls of that year. [Acts 1876, p. 272; G. L. vol. 8, p. 1108.]

Art. 3939. [3872–7654–5] Tax collector.—There shall be paid for the collection of taxes as compensation for the services of the collector, beginning with the first day of September of each year, five per cent on the first ten thousand dollars collected for the State, and four per cent on the next ten thousand dollars so collected for the State, and one per cent on all collected over that sum; for collecting the county taxes, five per cent on the first five thousand dollars of such taxes collected, and four per cent on the next five thousand dollars collected, and one and one-fourth per cent on all such taxes collected over that sum. For collecting the taxes in all drainage districts, road districts, or other political subdivisions of the county, the tax collector shall be paid one-half of one per cent on all such tax collected; provided that the amount to be paid the tax collector shall be paid by the various drainage districts, road districts, or other political subdivisions of the county on a pro rata basis in accordance with the amount collected for such districts; and in counties owing subsidies to railroads the collector shall receive only one per cent for collecting such railroad taxes, and in cases where property is levied upon and sold for taxes he shall receive the same compensation as allowed by law to sheriffs or constables on making the levy and sale in similar cases, but in no case to include commission on such sales; and on all occupation and license taxes collected, five per cent. [Acts 1919, p. 300.]

Art. 3940. [7656] [5208] [4768] Charge for one levy only.—In making levies upon different tracts of land belonging to the same individual, corporation or company, the collector shall be entitled to charge for only one levy; and in all cases of advertisement of lands for tax sales he shall be entitled to charge for any one tract the exact proportion of the amount paid for the whole advertisement which said tract bears to all other tracts advertised, and no more.

Art. 3941. [3873] [2467] [2403] County treasurer.—The county treasurer shall receive commissions on the moneys received and paid out by him, said commissions to be fixed by order of the commissioners court as follows: For receiving all moneys, other than school funds, for the county, not exceeding two and one-half per cent, and not exceeding two and one-half per cent for paying out the same; provided, that he shall receive no commissions for receiving money from his predecessor nor for paying over money to his successor in office. [Acts 1st C. S. 1897, p. 8.]

Art. 3942. [3874] [2468] Treasurer: other commissions.—The treasurers of the several counties shall be treasurers of the available public free school fund and also of the permanent county school fund for their respective counties. The treasurers of the several counties shall be allowed for receiving and disbursing the school funds one-half of one per cent for receiving, and one-half of one per cent for disbursing, said commissions to be paid out of the available school fund of the county; provided, no commissions shall be paid for receiving the balance transmitted to him by his predecessor, or for turning over the balance in his hands to his successor; and provided, that he shall receive no commissions on money transferred. [Acts 1891, p. 147; G. L. vol. 10, p. 149.]

Art. 3943. [3875] [2469] [2405] Treasurer; commissions limited.—The Commissions allowed to any county treasurer shall not exceed two thousand dollars annually; provided, that in all counties in which the assessed value of the property of such counties shall be one hundred million dollars or more as shown by the preceding assessment roll, the treasurers thereof shall receive as their commissions a sum not exceeding two thousand seven hundred dollars annually; provided that in all counties having a population of one hundred and fifty thousand or more and less than two hundred and ten thousand according to the last United States census, the Treasurers thereof shall receive as their commissions a sum not exceeding two thousand seven hundred dollars annually, and shall be allowed an assistant at a salary not to exceed one thousand dollars per annum. [Acts 3rd C. S. 1920, p. 60; Acts 1927, 40th Leg., p. 341, ch. 230.]

Art. 3944. [3876] [2470] [2406] County surveyor.—County surveyors shall receive the following fees:

Inspecting and recording the field-notes and plat of a survey for any tract of land over one-third of a league	$3.00
One-third of a league	2.00
Less than one-third of a league	1.00

For recording surveys and plats required by law to be placed upon the map of a new county, for each 100 words..... .20
Examination of papers and records in his office at the request of any person..... .25
Copies of all field-notes and plats, or any other papers or records in his office, for each 100 words, including certificate..... .20
Surveying any tract of land, including all expenses in making the survey, and returning the plat and field notes of the survey, for each English lineal mile actually run..... 3.00
Surveying any tract of land, including all expenses of making the survey, and returning the plat and field notes, when the distance actually run is less than one English lineal mile 2.50
For services in designating a homestead, to include pay for chain carriers, for each day's service 5.00
[Acts 1881, p. 71; G. L. vol. 9, p. 163; Acts 1st C. S. 1897, p. 8.]

Art. 3945. [3878] [2472] [2408] Notary public.—Notaries public shall receive the following fees:

Protesting a bill or note for non-acceptance or non-payment, register and seal..... [$] 1.00
Each notice of protest..... .25
Protesting in all other cases, for each 100 words ..... .25
Certificate and seal to such protest..... .50
Taking the acknowledgment or proof of any deed or other instrument in writing, for registration, including certificate and seal..... .50
Taking an acknowledgment of a married woman to any deed or other instrument of writing authorized to be executed by her, including certificate and seal..... .50
Administering an oath or affirmation with certificate and seal..... .50
All certificates under seal not otherwise provided for..... .50
Copies of all records and papers in their office, including certificate and seal, if less than 200 words ..... .50
If more than 200 words, for each 100 words in excess of 200 words, in addition to the fee of fifty cents..... .25
All notarial acts not provided for..... .50
Taking the depositions of witnesses, for each 100 words..... .15
Swearing a witness to depositions, making certificate therefor with seal, and all other business connected with taking such deposition.. .50
[Acts 1915, p. 36.]

Art. 3946. [3879] [2473] [2409] Public weighers.—Public weighers shall receive the following fees:

For each bale of cotton weighed, not exceeding $ .10
When he shall run a cotton yard in connection with his weighing, his compensation shall not exceed, as yardage for the first month after same is received for storage, per bale..... .15
Thereafter per bale per month, not exceeding... .10
For each bale or sack of wool, or hogshead of sugar or wagon load of hay, pecans or grain.. .10
For each part of a wagon load of hay, grain or pecans, not exceeding..... .05
For each barrel weighed..... .10
For each bale of hides weighed..... .10
For each loose hide weighed..... .02

And he shall not be obligated to deliver any such articles so weighed until his fee therefor shall have been paid. [Acts 1903, p. 217.]

TITLE 62

FENCES

Art.
3947. "Sufficient fence."
3948. Complaint of trespass.
3949. Stock impounded.
3950. Owner not liable.
3951. Persons injuring stock.
3952. Removing adjoining fence.
3953. How to separate fence.
3954. Adjacent owner to remove fence.

Article 3947. [3927] [2496] [2431] "Sufficient fence."—Every gardener or farmer, except as otherwise provided by law, shall make a sufficient fence about his cleared land in cultivation, at least five feet high, and make such fence sufficiently close to prevent hogs passing through the same; but it shall be unlawful for any person whomsoever, by joining fences or otherwise, to build or maintain more than three miles lineal measure of fence running in the same general direction without a gateway in the same, which gateway must be at least ten feet wide, and shall not be locked. [Act Feb. 5, 1840, p. 179; Acts 1884, p. 18; Acts 1887, p. 90; G. L. vol. 2, p. 353; G. L. vol. 9, p. 550 and 888.]

Art. 3948. [3928] [2497] [2432] Complaint of trespass.—When any trespass shall have been done by any cattle, horses, hogs or other stock, on the cleared and cultivated ground of any person, such person may complain thereof to any justice of the peace of the county where such trespass shall have been done, and such justice upon such complaint being filed shall cause two disinterested and impartial freeholders to be summoned, who, with such justice, shall view and examine on oath whether complainant's fence be sufficient or not, and what damages he has sustained by such trespass, and certify the same in writing; and if it shall so appear that said fence be sufficient, then the owner of such cattle, horses, hogs or other stock shall make full satisfaction for the trespass to the party injured to be recovered by suit therefor.

Art. 3949. [3929] [2498] [2433] Stock impounded.—In case of a second trespass by the same cattle, horses, hogs or other stock, the owner, lessee or proprietor of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises, or the crops growing thereon, cause such stock to be penned and turned over to the sheriff or constable and held responsible to the person damaged for all damages caused by said stock and all costs thereon.

Art. 3950. [3930] [2499] [2434] Owner not liable.—If it appears that the said fence is insufficient, then the owner of such cattle, horses, hogs or other stock, shall not be liable to make satisfaction for such damages.

Art. 3951. [3931] [2500] [2435] Persons injuring stock.—If any person whose fence shall be adjudged insufficient shall, with guns, dogs or otherwise maim, wound or kill any horses, cattle, hogs or other stock, or cause or procure the same to be done, such person so offending shall be liable to the person injured for all damages by such person sustained.

Art. 3952. [3932] [2501] Removing adjoining fence.—It shall be unlawful for any person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to, or connected with any fence owned or controlled by any other person to remove the same, except by mutual consent or as hereinafter provided. [Act March 17, 1887; Act April 6, 1889, p. 45; G. L. vol. 9, p. 30 and 1073.]

Art. 3953. [3933] [2502] How to separate fence.—Any person who is the owner or part owner of any fence connected with or adjoined to any fence owned in part or in whole by any other person, shall have the right to withdraw or separate his fence or part of fence from the fence of any other person, upon giving notice in writing to such person, his agent, attorney, or lessee, of his intention to separate or withdraw his fence, or part thereof, for at least six months prior to the time of such intended withdrawal or separation. [Id.]

Art. 3954. [3934] [2503] Adjacent owner to remove fence.—Whoever is the owner of any fence

wholly upon his land to which the fence of another is adjoined or connected in any manner, may require the owner of such fence to disconnect and withdraw the same back on his own land by giving notice in writing, for at least six months, to such person, his agent, attorney, or lessee, to disconnect and withdraw his fence back on his own land. [Id.]

TITLE 63

FIRE ESCAPES

Art.
3955. Owner to provide.
3956. Hotels, theaters, etc.
3957. Offices and plants.
3958. Warehouses and mills.
3959. State, county and city buildings.
3960. Officials to provide.
3961. "Owner" defined.
3962. "Story" defined.
3963. "Adequate fire escape."
3964. Location.
3965. Guide signs and exit lights.
3966. Minimum specifications.
3967. Painting.
3968. Tests.
3969. Affidavit.
3970. Completion before occupancy.
3971. Inspection.
3972. Injunction.

Article 3955. Owner to provide.—The owner of each building, which is or may be constructed within this State, three or more stories in height, constructed, used or intended to be used in whole or in part as any of the following buildings, shall provide and equip such building with at least one adequate fire escape, and such additional fire escapes, as provided in the three succeeding articles. [Acts 1923, p. 361.]

Art. 3956. Hotels, theaters, etc.—For each hospital, seminary, college, academy, school house, dormitory, hotel, lodging house, apartment house, rooming house, boarding house, house for the accommodation of transient guests, lodge hall, theater, public place of amusement, or hall or place used for public gatherings, having a lot area in excess of five thousand square feet, there shall be provided one additional adequate fire escape for each five thousand square feet of such excess or fraction thereof if such fraction exceeds two thousand square feet. [Id.]

Art. 3957. Offices and plants.—For each office building, wholesale or retail mercantile establishment or store, work shop, or manufacturing establishment or industrial plant, having a lot area in excess of six thousand square feet, there shall be provided one additional adequate fire escape for each six thousand square feet of such excess or fraction thereof if such fraction exceeds twenty-five hundred square feet. [Id.]

Art. 3958. Warehouses and mills.—For each warehouse, storage house or mill building, having a lot area in excess of eight thousand square feet, there shall be provided one additional adequate fire escape for each eight thousand square feet of such excess, or fraction thereof if such fraction exceeds thirty-five hundred square feet. The provisions of this title requiring the construction of standard fire escapes, shall not apply to grain elevators of steel, or steel and concrete construction, nor to wooden elevators where less than five persons are employed. [Id.]

Art. 3959. State, county and city buildings.—Each building which is or may be constructed within this State three or more stories in height, which is owned by this State, or by any city, county or school district, and in which building public assemblies are permitted or intended to be permitted, or in which schools of any kind are conducted, or in which sleeping apartments are permitted or intended to be permitted on any floor above the first, shall be provided and equipped with at least one adequate fire escape if the lot area of such building shall not exceed five thousand square feet, and one additional adequate fire escape for each five thousand square feet, or fraction thereof if such fraction exceeds two thousand square feet in excess of the first five thousand square feet of lot area. [Id.]

Art. 3960. Officials to provide.—Each board, commission, official or person having charge or supervision of any building included in the preceding article, or having charge or supervision of the letting of contracts for the construction of such buildings, shall fully comply with the provisions of this title relating to providing and equipping such buildings with adequate fire escapes. [Id.]

Art. 3961. "Owner" defined.—The term "owner" within the meaning of this title shall include persons, firms, associations, and private corporations. [Id.]

Art. 3962. "Story" defined.—The word "story" as used in this title, shall be construed to have its usual and ordinary meaning as applied to architecture, and in addition thereto shall be construed to include a basement of any building that extends five feet or more above grade line on one or more sides of such building, a balcony or mezzanine floor of any building, a roof of any building used as a roof garden, and an attic of any building used for any purpose. [Id.]

Art. 3963. "Adequate fire escape."—An "adequate fire escape" within the meaning of this title, is defined to be an exterior iron, steel or concrete stairway type fire escape, or an exterior iron or steel straight chute type fire escape, or an exterior iron or steel spiral chute type fire escape, or a combination of said three types, or an interior type fire escape enclosed with non combustible material and having self-closing fireproof shutters on all door and window openings thereof. Each type of such fire escape shall be so constructed and arranged as to permit exit upon such fire escape from each floor of the building above the first floor and shall provide a continual egress upon it from such building to grade, and the material, construction, erection and test of such fire escapes shall comply at least with the minimum specifications for each respective type thereof, as hereinafter set forth. [Id.]

Art. 3964. Location.—All such fire escapes shall, consistent with accessibility, be located as far as possible from stairways, elevator hatchways and other openings in the floors, and where possible, they shall be located at the ends of hallways or corridors or unobstructed passageways, and as far as is consistent with the construction and location of the building. [Id.]

Art. 3965. Guide signs and exit lights.—In all such buildings there shall be installed and maintained therein in good condition at all times, at least one red light at each exit to each fire escape, and one guide sign at each hall or corridor intersection, and one additional guide sign for every twenty-five lineal feet of hallway or corridor leading to such fire escape. All exit lights shall have painted thereon the words "Fire Escape Exit," and all guide signs shall have painted thereon the words "Fire Escape," and an arrow or hand pointing to the nearest fire escape exit. It shall be unlawful for any person to obstruct any fire escape in any manner that would prevent free access thereto or free use thereof, or to obstruct any hallway, corridor or entrance leading to such fire escape by means of any door provided with locks requiring a key to operate, or by partitions or by any objects of any kind whatsoever. [Id.]

Art. 3966. Minimum specifications.—The minimum specifications for the several types of adequate fire escapes required by this law are as follows:

Exterior Stairway Type:

(1) Shall consist of balconies and stairways on the exterior of the building and be constructed of iron, steel or reinforced concrete, and shall be in superimposed form, or straight run form, or superimposed form with intermediate balconies, or a combination of any such form and type.

(2) Balconies: Balconies for stairs in superimposed form attached to the building at two or more floors, shall equal in length the horizontal length of the stair runs, plus an amount at each end equal to the width of the stairs, and shall be as long as the width of the opening for exit in the building wall and shall be at least fifty inches wide inside of railings. Balconies

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for stairs in superimposed form with intermediate balconies attached to the building at two or more floors shall be not less in width than the combined width of the stairways connected therewith leading both up and down, and the landings at the head and the foot of the stairs shall be as deep as the width of the stairs, and shall be as long as the width of the opening for exit in the building wall. Balconies for stairs in straight run form shall be not less in width than the width of the stairs and as long as the width of the opening for exit in the building wall. The minimum unobstructed width of any exterior passageway in the entire fire escape, whether parallel to the building or at right angles to it, shall be twenty-four inches. The floors of iron or steel balconies shall be solid or of slats and if solid, shall have scoriated surface to prevent slipping and pitched not less than one-half inch in ten feet to secure drainage, or if of slats, shall be placed not more than three-quarters of an inch apart and secured in place with rivets or bolts. Material in floors shall be not less than three-sixteenths of an inch thick. Railing enclosures of all balconies shall be not less than two feet nine inches high, and if of vertical and horizontal slat or grill construction, no space shall have the horizontal width of more than eight inches, and if of truss construction the span of each panel shall not exceed three feet. No opening in railing enclosures on any construction shall exceed two square feet in area. All railing enclosures throughout their lengths shall be free from obstructions tending to break handholds and the passage space shall be smooth and free from obstructions or projections. All railing enclosures shall be designed to withstand a horizontal pressure of two hundred pounds per running foot of railing without serious deflection. Balconies shall be anchored to building with bolts not less than one inch in diameter, extending through the wall and provided with wall bearing plate on the inside not less than five inches square and three-eighths inch thick or anchored by such bolts set in concrete or masonry or made integral in new buildings. Balconies shall never be placed above and not more than one foot below the top of the sill of the opening for exit in building wall, preferably level with sill. Concrete balconies shall comply with all requirements herein set forth and be made of reinforced concrete, the concrete to be one part cement, two parts sand and four parts stone or gravel. Railing enclosures of concrete balconies shall be as herein specified, or of reinforced concrete, with balusters spaced not over one foot apart.

(3) Stairs: The pitch of stairways shall not exceed forty-five degrees. Treads shall be not less than eight inches wide, exclusive of nosings, and not less than twenty-four inches long and placed so that the rise, either open or closed, shall not exceed eight inches and if solid shall have scoriated surface, and if made of slats they shall be placed not more than three-quarters of an inch apart and be well secured in place by bolts or rivets. Material in treads shall be not less than three-sixteenths of an inch thick. Railings shall be provided on both sides of stair, not less than two feet nine inches high as measured vertically from the center of the stair treads, and supported by balusters spaced not exceeding five feet apart. Intermediate rail shall be provided midway between top rail and stair stringers, or if intermediate rail is omitted, balusters shall be placed not over one foot apart. Railings on stairs shall permit not less than twenty-four inches unobstructed passageway, and shall be designed to withstand a horizontal pressure of two hundred pounds per running foot of railing without serious deflection. Concrete stairs shall comply with all requirements herein set forth and be made of reinforced concrete, concrete mixture to be as herein specified for concrete balconies. Railing enclosures of concrete stairs shall be as herein specified, or of reinforced concrete balustrade with balusters spaced not over one foot apart. Stairways shall be built stationary to grade where possible, and this shall be required in such buildings as schools and hospitals. Where fire escapes terminate over streets, alleys or private driveways, or like condition, and shall terminate in a hinged and counter-balanced section of stairway, the construction of such section of stair shall conform with the stationary parts of stairways and shall be so balanced that the weight of one person on third or fourth tread will lower same to landing. Bearings for such counter-balanced stairs shall be either bronze bushings or have sufficient clearance provided to prevent sticking on account of corrosion. No latch or lock shall be attached to the counter-balanced stair in up position but latch shall be provided to hold stair in down position when same has once been swung to ground. The connection between stair railings on the stationary part and the counter-balanced part of stairways shall be designed to prevent probability of injury to persons using said fire escape. Where necessary a suitable opening shall be provided in any awning, roof or other intervening obstruction, to admit counter-balanced stair and permit passage of persons thereon.

(4) Roof Connection: Exterior stairway type fire escapes shall be connected with the roof of building to which attached. If the roof of the building is such that escape by way of the roof might be necessary the fire escape shall extend to the roof. If the connection is only for fire department use, it shall be made with a ladder of the goose neck type, the stringers of which shall be of material at least three-eighths of an inch thick and the rungs shall be at least three quarters of an inch in diameter sixteen inches long and not exceeding fourteen inches apart. Said ladder shall be anchored to the wall.

(5) Clearance: The minimum clearance at all points on balconies and stairs as measured vertically shall be six feet six inches.

Exterior Chute Type:

(1) Shall consist of balconies and straight gravity chutes on the exterior of the building and constructed of iron or steel and placed at an angle not to exceed forty-five degrees and shall be in superimposed form, parallel to or at right angles to the building, or straight run form, parallel to or at right angles to the building, or a combination of these two forms.

(2) Balconies: Shall be the same as herein specified in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escape.

(3) Chute: Shall be made of material of not less than number fourteen gauge iron or steel, blue annealed or equal, and shall be such as will take a smooth or polished surface. The chute shall be twenty inches wide and eighteen inches deep, inside dimensions, and free of obstructions or sharp edges throughout its length, and in cross section shall have concave bottom and straight sides. The top edges of the chute shall be stiffened and protected throughout its length with iron or steel angles, free from any sharp edges, and the angles of size necessary to carry the maximum loading possible and the chute shall be reinforced crosswise underneath with iron or steel angles. A landing of same material as the chute shall be provided at the lower end of the chute, and shall be of sufficient length, in proportion to the length of the chute and the concavity of its surface, to check the momentum attained through gravity and afford a safe stop. Such landing shall be six inches wider on each side than the chute, where wall construction will not interfere, and there shall be no sharp edges or ragged projections exposed, and said landing shall rest upon, and be anchored to concrete base not less than six inches thick. All rivets exposed inside of chute and on top side of landing to be countersunk and ground down smooth. Intervening balconies, and the chute also, shall be so constructed that a continuous gravity slide will be afforded from the top floor to the grade, and the chute shall be accessible at all floors.

Exterior Spiral Chute Type:

(1) Shall consist of balconies in superimposed form and spiral gravity chute on the exterior of the building and constructed of iron or steel.

(2) Balconies: To be the same as herein specified in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escape.

(3) Chute: Slideway shall be made of material of not less than number sixteen guage iron or steel, blue annealed or equal, and shall be such as will take a

smooth or polished surface. The chute shall be not less than thirty inches wide inside, with the slideway banked at the outer edge to prevent a passenger being thrown against guard rail or enclosure, and enclosed by either a continuous wall or a guard rail, the material of which shall not be less than number eighteen guage iron or steel and said guard rail shall be not less than thirty inches high. The entire slideway shall be free from obstructions or sharp edges and all rivets exposed inside to be countersunk and ground down smooth. The chute shall be constructed in helical or spiral form around a central column, resting on and anchored to concrete base not less than eighteen inches thick. The chute shall terminate not more than two feet above the grade and be so constructed and arranged that normal landing will be in a standing position. Intervening balconies, and the chute also, shall be so constructed that a continuous gravity slide will be afforded from the top floor to the grade, and the chute shall be accessible at all floors.

Interior Type:

(1) Shall be a stairway type constructed of iron, steel or concrete or straight chute type constructed of iron or steel or spiral chute type constructed of iron or steel, either of which types erected on the interior of the building to be enclosed with non-combustible material and all door and window openings in such enclosure protected with self-closing fireproof shutters.

(2) Balconies or Landings: Balconies or landings to be the same construction as specified for balconies in subdivision two of specifications for exterior iron, steel or concrete stairway type fire escapes, except that such balconies shall permit not less than forty inches unobstructed passageway, and such balconies or landings shall be provided and erected on the interior of the enclosing walls on a level with the floors of the building to be served.

(3) Stairway Type: Stairs to be same construction as specified for stairs in subdivision three of specifications for exterior iron, steel or concrete stairway type fire escapes, except that such stairs shall permit not less than forty inches unobstructed passageway in all its parts. Stairs known as "spirals" or "winders" shall not be permitted.

(4) Straight chute type: The chute to be same as herein specified in subdivision three of specifications for exterior iron or steel straight chute type fire escape.

(5) Spiral chutes: The chute to be same as herein specified in subdivision three of specifications for exterior iron or steel spiral chute type fire escape.

(6) Access: They shall be accessible from all parts of the building which they are designed to serve, and all lobbies, halls and passageways on each floor leading to fire escapes and in connection therewith, shall be not less than thirty-six inches wide, and not less than six feet six inches high, and shall be level with the floor upon which it opens and serves. They shall be so constructed at lower end as to permit direct egress to the outside of the building at grade. All interior stairway type fire escapes shall be continuous starting at ground floor and shall never descend to any basement, and shall extend through roof of the building and terminate in a pent house constructed of non-combustible material with self-closing fire door as herein specified.

(7) Enclosing walls: The following materials may be used for enclosing walls of interior escapes:

(a) Brick or plain solid concrete not less than eight inches in thickness for the uppermost thirty feet, increasing four inches in thickness for each lower section of thirty feet or part thereof, or eight inches in thickness for the entire height when wholly supported at intervals not exceeding thirty feet.

(b) Reinforced stone or gravel concrete not less than five inches in thickness for the uppermost thirty feet, increasing two inches in thickness for each lower section of thirty feet or part thereof, or three inches in thickness for entire height when supported at vertical intervals not exceeding twenty feet, and braced where necessary with lateral supports or suitable steel uprights.

(c) Reinforced cinder concrete not less than five inches in thickness for the entire height when supported at vertical intervals not exceeding fifteen feet, and braced where necessary with lateral supports or suitable steel uprights.

(d) Hollow terra cotta blocks laid in cement mortar not less than five inches thick over all, or hollow concrete blocks of either stone or cinder concrete mortar, not less than five inches thick over all, or solid or hollow blocks consisting of gypsum containing not more than twenty-five per cent by weight of cinders, asbestos fibre, wood chips or vegetable fibre, laid in gypsum plaster or cement mortar tempered with lime, not less than five inches thick over all, or metal lath on steel studding covered with Portland cement mortar or gypsum plaster of a finished thickness of not less than two inches in the case of solid partitions, nor less than three inches in the case of hollow partitions. All openings in such walls or partitions shall have substantial steel framing, the vertical members of which shall be securely attached to the floor construction above and below.

(8) Door and window openings: All door openings shall be protected by the use of an automatic or self-closing fire doors of standard manufacture, bearing Underwriters label, and where automatic fire doors are used the same shall be enclosed in recess partitions. All doors shall be so arranged and equipped to remain in closed positions at all times and under all conditions except during actual use. All window openings shall have metal sash, bearing Underwriters label, and wire glass.

(9) Lighting: All interior fire escapes shall be provided with not less than one light at each landing equal to a ten watt electric globe, in a separate circuit from that of the building, arranged to operate should the regular lighting system of the building be disabled. [Id.]

Art. 3967. Painting.—All fire escapes of any type constructed of iron or steel shall have at least two coats of good metalic [metallic] paint when erected and shall be painted as frequently thereafter as may be necessary to preserve from rust or climatic influences and at least once every two years. The sliding surface of either the straight chute or spiral chute type fire escape shall be thoroughly cleaned and painted at least once each year.

Art. 3968. Tests.—Upon completion and before final approval of any fire escape of any of the types specified herein, both exterior and interior, such fire escape shall be tested by the erector by the application of a live load of one hundred and sixty pounds per square foot of area of balcony floor and stair treads, or a dead load of two hundred and forty pounds per square foot of area of balcony floor and stair treads, in either case simultaneously imposed upon each balcony and the stairways connected therewith leading both up and down. Sand, gravel, concrete blocks or any other suitable commodity may be used in applying these tests, but the load must be accurately weighed and applied as specified herein. By the dead load is meant a load placed in position in whole or in part by any mechanical means and without any person being on the fire escape at the time the test is made, and by live load is meant a load placed in position by mechanical means or by persons and with persons on the fire escape as part of the load at the time the test is made. [Id.]

Art. 3969. Affidavit.—Such tests shall be conducted in the presence of the State Fire Marshal or a representative duly appointed by him, or the chief of any fire department, or the city fire marshal of an [any] city or town. If the State Fire Marshal or his representative or a chief of a fire department, or a city fire marshal cannot be present to witness such test, such officials may permit the erector to furnish an affidavit setting forth that the minimum test herein specified has been made and that the fire escape has fully withstood said test and may accept such affidavit in lieu of the personal presence of such officials. [Id.]

Art. 3970. Completion before occupancy.—All buildings constructed hereafter and within the provi-

sions of this title providing for the equipment of buildings with fire escapes, shall be so provided and equipped, and otherwise meet all requirements of this law, before such buildings are occupied or used in whole or in part. [Id.]

Art. 3971. Inspection.—All fire escapes, extensions and additions to fire escapes constructed and erected under the provisions of this law, shall be inspected by the State Fire Marshal, or any inspector of the State Insurance Commission, or the chief of the fire department of any city or town, or any city fire marshal, before being approved, and no fire escape, extension or addition shall be approved, unless the same conforms to and meets all the provisions of this law. [Id.]

Art. 3972. Injunction.—The Attorney General, or the county attorney of any county in which any building is maintained in violation of any provision of this title, or the district attorney of any district in which such building is located, may proceed by suit or injunction against the owner, or person, board, commission or official having charge of such buildings, to enforce the provisions of this title. Such suit or injunction shall be brought in the name of this State in the district court of the county in which such building is located. Such suit or injunction may be prosecuted by the Attorney General, county or district attorney upon their own motion or upon the relation of any individual, or of any person mentioned in the preceding article. District courts and the judges thereof may issue mandatory injunctions and other writs against any such owner, person, board, commission or official, to enforce the provisions of this title. A disobedience of such injunction shall constitute a contempt of court and be punishable as now provided by law for contempts. Injunctions in such cases may be heard and granted either in term time or vacation, after the defendant has been given ten days notice of the time and place set for the hearing of same. [Id.]

TITLE 64

FORCIBLE ENTRY AND DETAINER

Art.
3973. When action lies.
3974. "Forcible entry."
3975. Other cases.
3976. May sue for rent.
3977. Citation.
3978. Complainant may have possession.
3979. Requisites of complaint.
3980. Service of citation.
3981. Docketed.
3982. Demanding jury.
3983. Trial postponed.
3984. Only issue.
3985. Trial.
3986. Judgment and writ.
3987. May appeal.
3988. Form of appeal bond.
3989. Transcript.
3990. Damages.
3991. Judgment by default.
3992. Judgment on appeal.
3993. Writ of restitution.
3994. No bar.

Article 3973. [3940–43] When action lies.—If any person (1) shall make an entry into any lands, tenements or other real property, except in cases where entry is given by law, or (2) shall make any such entry by force or (3) shall wilfully and without force hold over any lands, tenements or other real property after the termination of the time for which such lands, tenements or other real property were let to him, or to the person under whom he claims, after demand made in writing for the possession thereof by the person or persons entitled to such possession, such person shall be adjudged guilty of forcible entry and detainer, or of forcible detainer, as the case may be. Any justice of the peace of the precinct where the property is situated shall have jurisdiction of any case arising under this title. [Acts 1876, p. 155; G. L. vol. 8, p. 991.]

Art. 3974. [3941] [2520] [2441] "Forcible entry."—A "forcible entry," or an entry where entry is not given by law, is:

1. An entry without the consent of the person having the actual possession.

2. As to a landlord, an entry upon the possession of his tenant at will or by sufferance, whether with or without the tenant's consent. [Id.]

Art. 3975. [3942] [2521] [2442] Other cases.—A person shall be adjudged guilty of forcible detainer also in the following cases:

1. Where a tenant at will or by sufferance refuses, after demand made in writing as aforesaid, to give possession to the landlord after the termination of his will.

2. Where the tenant of a person who has made a forcible entry refuses to give possession, after demand as aforesaid, to the person upon whose possession the forcible entry was made.

3. Where a person who has made a forcible entry upon the possession of one who acquired it by forcible entry refuses to give possession on demand, as aforesaid, to him upon whose possession the first entry was made.

4. Where a person who has made a forcible entry upon the possession of a tenant for a term refuses to deliver possession to the landlord upon demand as aforesaid, after the term expires; and, if the term expire whilst a writ of forcible entry sued out by the tenant is pending, the landlord may, at his own cost and for his own benefit, prosecute it in the name of the tenant. It is not material whether the tenant shall have received possession from his landlord or have become his tenant after obtaining possession. [Id.]

Art. 3976. May sue for rent.—A suit for rent may be joined with an action of forcible entry and detainer, wherever the suit for rent is within the jurisdiction of the justice court. In such case the court in rendering judgment in the action of forcible entry and detainer, may at the same time render judgment for any rent due the landlord by the renter; provided the amount thereof is within the jurisdiction of the justice court. [Acts 1911, p. 28.]

Art. 3977. [3944] [2523] [2444] Citation.—When the party aggrieved, or his authorized agent, shall file his written sworn complaint with such justice he shall immediately issue citation to the sheriff or any constable of the county, commanding him to summon the person against whom complaint is made to appear before such justice at a time and place named in such citation, such time being not more than ten days nor less than six days from the date of service of such citation. [Acts 1876, p. 155; G. L. vol. 8, p. 991; Acts 1917, p. 363; Acts 4th C. S. 1918, p. 176.]

Art. 3978. [3944] [2523] [2444] Complainant may have possession.—If the party aggrieved shall, at the time of filing his complaint, execute a bond, to be approved by the justice, in such an amount as the justice may fix as the probable amount of the costs of suit and of the damages which may result to defendant in the event the suit has been improperly instituted, and conditioned that the plaintiff will pay defendant all such costs and damages as shall be adjudged against him, the officer serving such citation shall place the aggrieved party in possession of the property sued for, unless the defendant shall, within six days from the service of the citation, execute and deliver to such officer a bond in an amount double the amount of the bond given by the plaintiff, to be approved by the officer serving such citation, and conditioned that the defendant in case judgment is rendered against him will pay all the costs of suit and the reasonable rental or value of the use of the property during the time he has withheld possession of the same from plaintiff to the time of making such bond and in addition will also pay the reasonable value or rental of such property while such suit is pending and until it is finally disposed of. [Id.]

Art. 3979. [3945] [2524] [2445] Requisites of complaint.—The complaint shall describe the

lands, tenements or premises, the possession of which is claimed, with certainty sufficient to identify the same, and it shall also state the facts which entitle the complainant to the possession and authorize the action under the first three articles of this title. [Acts 1876, p. 155; G. L. vol. 8, p. 991.]

Art. 3980. [3946] [2525] [2446] Service of citation.—The officer receiving such citation shall execute the same by reading it to the defendant, or by leaving a copy thereof with some person over the age of sixteen years, at his usual place of abode, at least five days before the return day thereof; and, on the day assigned for trial he shall return such citation, with his action written thereon, to the justice who issued the same. [Id.]

Art. 3981. [3949–52] Docketed.—The cause shall be docketed and tried as other cases; and the justice shall have authority to issue subpœnas for witnesses, to enforce their attendance, and to punish for contempt. [Id. Acts 1897, p. 16; G. L. vol. 10, p. 1070.]

Art. 3982. [3947–48] Demanding jury.—Either party shall have the right of trial by jury, by making demand to the justice on or before the day for which the case is set for trial, and paying the jury fee of three dollars. When a jury is demanded they shall be summoned as in other cases in justice court. [Id.]

Art. 3983. [3951] [2530] [2451] Trial postponed.—For good cause shown, supported by affidavit of either party, the trial may be postponed not exceeding six days. [Acts 1876, p. 155; G. L. vol. 8, p. 991.]

Art. 3984. [3950] [2529] [2450] Only issue.—In cases of forcible entry or of forcible detainer under this title, the only issue shall be as to the right to actual possession; and the merits of the title shall not be inquired into. [Acts 1897, p. 16; G. L. vol. 10, p. 1070.]

Art. 3985. [3952–53] Trial.—If no jury is demanded, the justice shall try the case. If a jury is demanded by either party, the jury shall be impaneled and sworn as in other cases; and, after hearing the evidence, they shall return their verdict of guilty or not guilty of the charge as stated in the complaint. [Id. Acts 1876, p. 155; G. L. vol. 8, p. 991.]

Art. 3986. [3954–55] Judgment and writ.—If the defendant be found guilty, the justice shall give judgment for the plaintiff for restitution of the premises and costs; and he shall award his writ of restitution. If the defendant be found not guilty, judgment shall be given in favor of the defendant and against the plaintiff for all costs. No writ of restitution shall issue until the expiration of two days from the rendition of the judgment. Execution may issue for costs. [Id.]

Art. 3987. [3956] [2534] [2455] May appeal.—Either party may appeal from a final judgment in such case, to the county court of the county in which the judgment is rendered, by giving notice thereof in open court and by filing with the justice within five days after the rendition of said judgment, a bond to be approved by said justice, and payable to the adverse party, conditioned that he will prosecute his appeal with effect, or pay all costs and damages which may be adjudged against him; and no motion for a new trial shall be necessary to authorize such appeal. [Acts 1876, p. 155; G. L. vol. 8, p. 991.]

Art. 3988. [3957] [2535] Form of appeal bond.—The appeal bond made in the preceding article may be substantially as follows:

"The State of Texas,

"County of ———.

"Whereas, upon a writ of forcible entry (or forcible detainer) in favor of A B, and against C D, tried before ———, a justice of the peace of ——— county, a judgment was rendered in favor of the said A B on the —— day of ——— A. D. ——, and against the said C D, from which the said C D has appealed to the county court; now, therefore, the said C D and ——— his sureties, covenant that he will prosecute his said appeal with effect and pay all costs and damages which may be adjudged against him.

"Given under our hands this ——— day of ——— A. D. ———." [Id.]

Art. 3989. [3958–59] Transcript.—When such appeal bond is filed, the justice shall stay all further proceedings on the judgment, and immediately make out a transcript of all the entries made on his docket of the proceedings had in the case; and he shall file the same, together with the original papers, with the clerk of the county court of the county in which the trial was had, on or before the first day of the first term of said court, or, if there be insufficient time, on or before the first day of the next succeeding term thereof. The county clerk shall docket the cause, and the trial shall be de novo. [Id.]

Art. 3990. [3960] [2538] [2459] Damages.—On the trial of the cause in the county court the appellee shall be permitted to prove the damages for withholding the possession of the premises from the appellee during the pendency of the appeal and the reasonable expenses of the appellee in prosecuting or defending the cause in the county court; and, if the possession of the premises be not adjudged to the appellant said court shall render judgment also in favor of the appellee and against said appellant and the sureties on his bond for the damages proven and all costs. [Id.; Acts 1927, 40th Leg., p. 74, ch. 51, § 1.]

Art. 3991. [3961] [2539] [2460] Judgment by default.—If the defendant fails to enter an appearance upon the docket of the county court on appearance day, and before the case is called regularly for trial, the facts alleged in the complaint may be taken as admitted and judgment by default may be entered accordingly. [Id.]

Art. 3992. [3962] [2540] [2461] Judgment on appeal.—The judgment of the county court finally disposing of the cause shall be conclusive of the litigation, and no further appeal shall be allowed, except where the judgment shall be for damages in an amount exceeding one hundred dollars.

Art. 3993. [3963] [2541] [2462] Writ of restitution.—The writ of restitution, or execution, or both, shall be issued by the clerk of the county court according to the judgment rendered, and the same shall be executed by the sheriff or constable, as in other cases; and such writ of restitution shall not be suspended or superseded in any case by appeal from such final judgment in the county court.

Art. 3994. [3964] [2542] [2463] No bar.—The proceedings under a forcible entry, or forcible detainer, shall not bar an action for trespass, damages, waste, rent or mesne profits.

TITLE 65

FRAUDS AND FRAUDULENT CONVEYANCES

Art.
3995. Writing required.
3996. Conveyance to defraud.
3997. Voluntary conveyance.
3998. Gift.
3999. Loan of chattels.
4000. Chattel mortgage.
4001. Sales in bulk.
4002. Liability of purchaser.
4003. Exceptions.
4004. Actionable fraud.

Art. 3995. [3965] [2543] [2464] Writing required.—No action shall be brought in any court in any of the following cases, unless the promise or agreement upon which such action shall be brought, or some memorandum thereof, shall be in writing and signed by the party to be charged therewith or by some person by him thereunto lawfully authorized:

1. To charge any executor or administrator upon any promise to answer any debt or damage due from his testator or intestate, out of his own estate; or,

2. To charge any person upon a promise to answer for the debt, default or miscarriage of another; or,

3. To charge any person upon any agreement made upon consideration of marriage; or,

4. Upon any contract for the sale of real estate or the lease thereof for a longer term than one year; or,

5. Upon any agreement which is not to be performed within the space of one year from the making thereof. [Acts 1840, p. 28; P. D. 3875; G. L. vol. 2, p. 202.]

Art. 3996. [3966] [2544] [2465] Conveyance to defraud.—Every gift, conveyance, assignment, or transfer of, or charge upon, any estate real or personal, every suit commenced, or decree, judgment or execution suffered or obtained and every bond or other writing given with intent to delay, hinder or defraud creditors, purchasers, or other persons of or from what they are, or may be, lawfully entitled to, shall, as to such creditors, purchasers or other persons, their representatives or assigns, be void. This article shall not affect the title of a purchaser, for valuable consideration, unless it appear that he had notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor. [Id. P. D. 3876; Acts 1927, 40th Leg., p. 42, ch. 30, § 1.]

Art. 3997. [3967] [2545] [2466] Voluntary conveyance.—Every gift, conveyance, assignment, transfer or charge made by a debtor, which is not upon consideration deemed valuable in law, shall be void as to prior creditors, unless it appears that such debtor was then possessed of property within this State subject to execution sufficient to pay his existing debts; but such gift, conveyance, assignment, transfer or charge shall not on that account merely be void as to subsequent creditors, and though it be decreed to be void as to a prior creditor, because voluntary, it shall not for that cause be void as to subsequent creditors or purchasers. [Id. P. D. 3876–77.]

Art. 3998. [3968] [2546] [2467] Gift.—No gift of any goods or chattels shall be valid unless by deed or will, duly acknowledged or proven up and recorded, or unless actual possession shall have come to, and remained with, the donee or some one claiming under him. [Id. P. D. 3876.]

Art. 3999. [3969] [2547] [2468] Loan of chattels.—Where any loan of goods or chattels [chattels] shall be pretended to have been made to any person with whom, or those claiming under him, possession shall have remained for the space of two years without demand made and pursued by due process of law on the part of the pretended lender; or when any reservation or limitation shall be pretended to have been made of a use of property, by way of condition, reversion, remainder or otherwise in goods and chattels, the possession whereof shall have remained in another as aforesaid, the same shall be taken as to the creditors and purchasers, of the persons aforesaid so remaining in possession, to be fraudulent, within this title, and that the absolute property is with the possession, unless such loan, reservation or limitation of use of property were declared by will, or by deed or other instrument in writing, duly acknowledged or proved and recorded. [Id.]

Art. 4000. [3970] [2548] Chattel mortgage.—Every mortgage, deed of trust or other form of lien attempted to be given by the owner of any stock of goods, wares or merchandise daily exposed to sale, in parcels, in the regular course of business of such merchandise, and contemplating a continuance of the possession of said goods and control of said business, by sale of said goods by said owner, shall be deemed fraudulent and void. [Acts 1879, p. 60; G. L. vol. 8, p. 1360.]

Art. 4001. [3971] Sales in bulk.—The sale or transfer in bulk of any part or the whole of a stock of merchandise, or merchandise and fixtures pertaining to the conducting of said business otherwise than in the ordinary course of trade, and in the regular prosecution of the business of the seller or transferor, shall be void as against the creditors of the seller or transferor, unless the purchaser or transferee demand and receive from the transferor a written list of names and addresses of the creditors of the seller or transferor with the amount of the indebtedness due or owing to each and certified by the seller or transferor under oath to be a full, accurate and complete list of his creditors, and of his indebtedness; and unless the purchaser or transferee shall at least ten days before taking possession of such merchandise or merchandise and fixtures, or paying therefor, notify personally or by registered mail each creditor whose name and address is stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms and conditions thereof. Any purchaser or transferee who shall not conform to the provisions of this law shall, upon application of any of the creditors of the seller or transferor become a receiver, and be held accountable to such creditors for all goods, wares, merchandise and fixtures that have come into his possession by virtue of such sale or transfer. [Acts 1909, p. 66; Acts 1915, p. 171.]

Art. 4002. [3972] Liability of purchaser.—Any purchaser or transferee who shall conform to the provisions of the preceding article, shall not in any way be held accountable to any creditor of the seller or transferor for any of the goods, wares, merchandise or fixtures that have come into possession of said purchaser or transferee by virtue of such sale or transfer. [Id.]

Art. 4003. [3973] Exceptions.—The two preceding articles shall not apply to sales by executors, administrators, receivers or any public officer conducting a sale in his official capacity, nor to a sale or transfer of stocks of merchandise and fixtures for the payment of bona fide debts, where all creditors share in proportion to their respective claims, and without preference in the sale or transfer or the proceeds thereof. [Id.]

Art. 4004. Actionable fraud.—Actionable fraud in this State with regard to transactions in real estate or in stock in corporations or joint stock companies shall consist of either a false representation of a past or existing material fact, or false promise to do some act in the future which is made as a material inducement to another party to enter into a contract and but for which promise said party would not have entered into said contract. Whenever a promise thus made has not been complied with by the party making it within a reasonable time, it shall be presumed that it was falsely and fraudulently made, and the burden shall be on the party making it to show that it was made in good faith but was prevented from complying therewith by the act of God, the public enemy or by some equitable reason. All persons guilty of such fraud shall be liable to the person defrauded for all actual damages suffered, the rule of damages being the difference between the value of the property as represented or as it would have been worth had the promise been fulfilled, and the actual value of the property in the condition it is delivered at the time of the contract. All persons making the false representations or promises and all persons deriving the benefit of said fraud, shall be jointly and severally liable in actual damages, and in addition thereto, all persons willfully making such false representations or promises or knowingly taking the advantage of said fraud shall be liable in exemplary damages to the person defrauded in such amount as shall be assessed by the jury, not to exceed double the amount of the actual damages suffered. [Acts 1919, p. 77.]

TITLE 66

FREE PASSES, FRANKS AND TRANSPORTATION

Art.
4005. Free passes prohibited.
4006. Exceptions.
4007. Definitions.
4008. Special rates.
4009. Free transportation.
4010. Advertising.
4011. Discrimination as to persons.
4012. Evidence of authority.
4013. Discrimination by device.
4014. Reports, etc.
4015. Penalty.

Article 4005. Free passes prohibited.—No steam or electric railway company, street railway company, interurban railway company or other chartered transportation company, express company, sleeping car company, telegraph company, telephone company or person or association of persons operating the same, nor any receiver or lessee thereof, nor any officer, agent or employee or receiver of any such company in this State shall knowingly haul or carry any property free of charge, or give or grant to any person, firm or association of persons a free pass, frank, privilege or substitute for pay or a subterfuge which is used or which is given to be used instead of the regular fare or rate of transportation or any authority or permit whatsoever to travel or to pass or convey or transport any person or property free, nor sell any transportation for anything except money, or for any greater or less rate than is charged all persons under the same conditions, over any railway or transportation lines or part of line in this State; or shall knowingly permit any person to transmit any message free in this State; or shall give any frank or right or privilege to transmit any message free in this State or property free of charge or for greater or less fare or rate than is charged other persons in this State for similar service, except as hereinafter provided in this title.

Art. 4006. Exceptions.—The preceding article shall not be held to prevent any steam or electric interurban railway, telegraph company or chartered transportation company or sleeping car company or the receivers or lessees thereof or persons operating same or the officers, agents or employees thereof from granting or exchanging free passes or free transportation, franks, privileges, substitutes for pay, or other thing prohibited by the provisions of the preceding article to any of the following named persons: The actual bona fide employees of any such person or corporation, company, association, or the members of their families; persons actually employed on sleeping cars and express cars; newsboys employed on trains; railway mail service employees and their families; furloughed, pensioned; and superanuated [superannuated] employees; persons who have been disabled or who have become infirm in the service of an [any] such corporation, company, association or person; the remains of any person killed in the employment of a common carrier; members of the family of persons killed while in the service of any such common carrier; the family or any person who was, for a period of ten years or more, an employee of such common carrier and who died while in the service of the same; ex-employees traveling for the purpose of entering the service of any such common carrier; post office inspectors; the chairman of bona fide members of grievance committees of employees: bona fide custom and immigration inspectors employed by the government; State Health Officer and one assistant; Federal Health Officers; county health officers; members of the Industrial Accident Board or any employee thereof; State Railroad Commissioners; Secretary of the Railroad Commission; Engineer of the Railroad Commission; Inspector of the Railroad Commission; Auditor of the Railroad Commission; State Game, Fish and Oyster Commissioner and his two chief deputies; government representatives from the Texas fish hatcheries; shipments of fish for free distribution in the waters of this State; the necessary caretakers while en route and return of any shipments of live stock, poultry, fruit, melons or other perishable produce; trip passes to indigent poor when application therefor is made by any religious or charitable organization; sisters of charity, or members of any religious society of like character; any minister of religion on intrastate trips in this State; any citizen of the State who served in the war between the States of the Union either on the Confederate side or on the Union side of said war, veterans of the Spanish-American war, and the wife or widow of any such citizen or veteran; veterans of the Texas ranger force who served the State prior to the year 1900, and their wives or widows; delegates to different farmers' institutes, farmers' congresses and farmers' unions; delegates to State and district firemen's conventions from volunteer fire companies; managers of Young Men's Christian Associations, or other eleemosynary institutions while engaged in charitable work; the officers or employees of industrial fairs during the continuance of any said fair and six months prior thereto, provided that no more than four officers or employees of any one fair or fair association shall receive free passage in any one year; persons injured in wrecks upon the road of any such company immediately after such injury, and the physicians and nurses attending such persons at the time thereof; persons and property carried in cases of general epidemic, pestilence, or other calamitous visitation at the time thereof or immediately thereafter; United States Marshals and no more than two of the deputies of each such marshal; State rangers; the Adjutant General and Assistant Adjutant General of this State; members of the State militia in uniform and when called into the service of the State; sheriffs and no more than two of their deputies; constables and no more than two of their deputies; chiefs of police or city marshals, whether elected or appointed; members of the Livestock Sanitary Commission of Texas and their inspectors not to exceed twenty-five in number for any one year; and any other bona fide peace officer when his duty is to execute criminal process; bona fide policemen or firemen in the service of any city or town in Texas when such policemen or firemen are in the discharge of their public duty, but this provision shall not be construed so as to apply to persons holding commissions as special policemen or firemen.

Art. 4007. Definitions.—The word "employee" as used in this title shall be held to include all officers, agents or employees, actually employed and engaged in the service of such corporation, company, association of persons, including its officers, bona fide ticket and freight agents, physicians, surgeons and general attorneys, and attorneys who appear in court to try cases and receive a reasonable annual salary therefor. The word "family" as used in this title shall include the wife, minor children and dependents of any such employé or person. The words "minister of religion" shall be construed to mean only those whose principal occupation is that of a minister of religion, priest or rabbi.

Art. 4008. Special rates.—Nothing in this title shall be held to prevent any corporation, association or person mentioned in the first article of this title from granting transportation at the rate of one cent per mile to veterans mentioned in the preceding article, or their wives or widows; honorably discharged soldiers, sailors, marines and Red Cross nurses of the late world war to or from the annual convention, Department of Texas American Legion; any minister of religion for intrastate trips, or from granting to ministers of religion reduced rates of one-half the regular fare, or to prohibit the making of special rates for special occasions or under special conditions, provided authority therefor shall first be obtained from the Railroad Commission of Texas; or to prohibit transportation between points wholly within this State at the reduced rate of one cent per mile while traveling on official business connected with their respective offices, the following named peace officers, to wit: Adjutant General of this State; State rangers; the sheriff of any county, his deputies to be designated by him; constables; chiefs of police and assistant chiefs and captains; city marshals, chief of the detectives of any county or city, and assistant detectives. [Acts 1907, p. 94; Acts 1911, p. 151; Acts 1921, pp. 171, 191, 214; Acts 1923, p. 175; Acts 2nd C. S. 1923, p. 100.]

Art. 4009. Free transportation.—Nothing in this title shall be construed to prohibit any express company from hauling or carrying free of charge any package or property of its actual bona fide officers, attorneys, agents and employees while in the service of such express company, nor to prevent any article being sent free to any orphan home or other charitable institution, nor to prohibit any telegraph or telephone company from transmitting free of charge any message of its bona fide officers, attorneys, agents or employees and their families while in the actual employment of such

company or its receiver or lessee; provided the actual bona fide officers and employees upon annual salaries of railway telephone companies and telegraph companies are hereby permitted to exchange frank privileges and free transportation over their respective lines of railway and telegraph or telephone.

Art. 4010. Advertising.—Nothing in this title shall be construed to prevent any of the parties named in the first article hereof, publishers, editors or proprietors of newspapers or magazines, from making an exchange of mileage for advertising space in such newspaper or magazine, provided the contract between the railway companies and publishers, editors or proprietors of such newspapers or magazines shall be at the same rate as is charged the public generally for like service, providing that such contract shall be in writing and shall not be operative until approved by the Railroad Commission of this State, and filed in the office of such Commission, subject at all times to a reasonable public inspection.

Art. 4011. Discrimination as to persons.—If any corporation, company, association, or person mentioned in Article 4005 shall grant to any sheriff, constable, or marshal a free pass over its lines of railroad, it shall issue like free transportation to each and every sheriff, constable, or marshal who may make application therefor. [As amended Acts 1927, 40th Leg., 1st C. S., p. 239, ch. 87, § 1.]

Art. 4012. Evidence of authority.—Any veteran of any of the wars mentioned in this title, their wives, widows or members of their families, and any minister of religion, or any fireman, sister of charity or member of any religious society of like character, who desires to receive the benefits of free or reduced transportation as mentioned in this title shall present to the president, manager, officer, or person authorized to issue such transportation satisfactory evidence that he or she is entitled thereto, as herein provided. The officers entitled to the benefits of this law shall, when presenting themselves to the agent of any such railway or interurban railway company for the purchase of a ticket or to pay his fare, exhibit to such agent in case of the Adjutant General and State Rangers a certificate of the Secretary of State under seal, in case of sheriffs and constables and their deputies a certificate under seal of the county judge of the county where they hold office and in case of officers of a city or town a certificate under seal of the mayor of such city or town stating that such person is entitled to the reduced fare herein provided for. Sheriffs and constables shall designate in writing the two deputies entitled to the reduced rates herein provided for. If the sheriff or constable has designated two deputies who are entitled to such reduced rates, then no deputy of such sheriff or constable shall be entitled to free transportation under the provisions of the pass laws of this State. [Acts 1921, p. 171.]

Art. 4013. Discrimination by device.—No corporation, company or person mentioned in the first article of this title shall directly or indirectly, by any special rate, rebate, drawback, or other device, demand, exchange, collect or receive from any person, firm, association or corporation a greater or less or different compensation for any service rendered or to be rendered, in the transportation of passengers, properties or messages, than it or he charges, demands, collects or receives from any other corporation, person, firm or association of persons doing business in this State for a like service under substantially similar circumstances and conditions except as is provided in this title, nor shall grant any free transportation or franking privilege to any corporation or person except as provided in this title. [Acts 1907, p. 96.]

Art. 4014. Reports, etc.—Each corporation, company or person subject to the provisions of this title shall report annually, on such dates as may be fixed by the Railroad Commission of Texas, the name and residence of each person to whom free transportation or right thereto was given to travel or to have his property or messages transported or transmitted free over the transportation, express, sleeping car, railway or telegraph or telephone line, and the name and address of each person to whom has been granted the right to travel over any such railway lines at a reduced rate; any company violating this provision shall be deemed guilty of a misdemeanor, and for each offense on conviction shall pay to the State of Texas a penalty of one thousand dollars. (Note: See Art. 165, Penal Code.)

Art. 4015. Penalty.—Any corporation, company, association of persons or any person named in the first article of this title violating any provision of this title, except Article 4014, shall forfeit and pay to the State of Texas a penalty of five thousand dollars for each violation, to be recovered in suit by the State, brought by the Attorney General or by any county or district attorney under the direction of the Attorney General.

TITLE 67

FISH, OYSTER, SHELL, ETC.

Chap.
1. Commissioner and deputies.
2. Fish and other marine life.
3. Marl, sand and shell.

CHAPTER ONE

COMMISSIONER AND DEPUTIES

Art.
4016. The Commissioner.
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4019. To report to Governor.
4020. To keep record.
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Article 4016. The Commissioner.—The Game, Fish and Oyster Commissioner shall have his office in the State Capitol in the city of Austin, Texas, during his term of office which shall be two years, the first term to begin September 1, 1925.

From Acts 1925, 39th Leg., ch. 178, p. 438, § 1.

Art. 4017. Oath and bond.—The Game, Fish and Oyster Commissioner shall file with the Secretary of State a good and sufficient bond to be approved by that official in the sum of ten thousand ($10,000.00) dollars, with a surety company, conditioned that he will faithfully perform the duties of his office; the premium on such bond to be paid from any available funds appropriated to the use of the Game, Fish, and Oyster Commission. He shall take the oath prescribed for sheriffs, and when he shall file said bond and take said oath, he shall enter on the duties of his office. Said bond shall not be void on the first recovery, but may be sued on from time to time in the name of the State or any person injured, until the whole amount has been recovered. [Acts 1925, p. 438.] [39th Leg., ch. 178, § 1.]

Art. 4018. [3879] Duties and powers.—The duties of the Commissioner shall be in the execution of the laws relating to game, fish, oysters and marine life, and such further duties as are imposed upon him by legislation. In the execution of these laws he shall exercise the power and authority given to sheriffs. The Commissioner is authorized to collect and enforce the payment of all taxes, licenses, fines and forfeitures, and all money due his department, by deputies or persons employed for that purpose, and to inspect all products so taxed, and to verify the weights and measures thereof; to examine, or have examined, all streams, lakes or ponds when requested to do so, for the purpose of stocking such waters with fish best suited to such locations and he shall superintend and have control in the propagation of fish in the State fish hatchery and the distribution of such fish, and he shall have superintendence and control of the propagation and distribution of birds and game in the State reservation over which he may have control, or which may be established for such propagation. The Commis-

sioner, or any of his deputies, may arrest without warrant anyone found violating any of the fish, game or oyster laws of Texas, and shall have the same right to execute original process as sheriffs. [Id. p. 192; Acts 1907, p. 255.]

Art. 4019. [4003] To report to Governor.—The Commissioner shall make on the 31st day of August of each year, or as soon as practicable, not later than October 1st, a report to the Governor, showing the condition of the fish and oyster industry, which shall show the special taxes collected, the number and class of all boats engaged in the fish and oyster trade, the number of licenses issued and license fees collected, the number, place and acreage of private oyster beds and rents received therefor, and all other amounts collected from whatever source and the disbursements therefor, with such observations as pertain to the industry. The report shall contain a statement of all stock furnished, to whom furnished, the cost of same, the streams, lakes or ponds stocked, the number and kind of fish used in each, and the condition of such plants, with any other data he may obtain on the subjects. The Governor shall order a sufficient number of copies of such report to be printed and filed in the Secretary of State's office for the purpose of free distribution to parties interested therein. For failure to make such report within the time specified, the Commissioner may, in the discretion of the Governor, be dismissed from his office. [Id. p. 212.]

Art. 4020. [4001] To keep record.—The Commissioner shall keep a well bound record book in which shall be recorded all special taxes collected, all licenses issued and license fees collected, all certificates issued for location of private oyster beds, showing the date of certificate and application, when and how the applications were executed and the manner in which the bottoms were examined and rents collected for such locations, showing also all stock fish furnished, to whom furnished, and the cost of same, the streams, lakes or ponds stocked and the number and kinds of fish used in each; and showing all collections and disbursements in and from his office. The Commissioner shall keep an account with each person, firm or corporation holding certificates for the location of private oyster beds in this State, showing the amounts received as rents, etc. [Id. p. 213.]

Art. 4021. Fish and Oyster Deputies.—The Commissioner is authorized to appoint deputies for each of the vessels owned by the State and employed in the Fish and Oyster Department, and such other shore and interior deputies as he may deem necessary for the enforcement of the law. All such deputies shall have and exercise the same powers and duties as the Commissioner, and be at all times subject to his orders, and shall hold their office at his pleasure. Each Deputy Fish and Oyster Commissioner shall be ex-officio game commissioner. No person shall hold such office of Deputy Commissioner who is not a citizen of the United States and of this State. All such Deputy Commissioners shall make a monthly report to the Commissioner of all funds collected by them, remitting along with said report all moneys collected by them during the said month. [Acts 2nd C. S. 1919, p. 213.]

Art. 4022. Oath and bond of deputies.—Before entering upon the duties of his office, each deputy shall file with the Commissioner a good and sufficient bond, with two or more sureties, in the sum of one thousand dollars, and take the same oath of office as the Commissioner, and said bond and oath shall be governed by the provisions of Article 4017. [Id.]

Art. 4023. Salaries and expenses.—Out of any available funds, the Commissioner and all Fish and Oyster Deputies and employees of the Game, Fish and Oyster Commission shall be paid their salaries and expenses monthly, upon approval of the Commission, the Comptroller drawing his warrant in favor of each of said persons on the special funds appropriated for said purposes as follows: The Commissioner, thirty-six thousand dollars per annum, and not more than fifteen hundred dollars per annum for traveling and other expenses, to be paid on vouchers approved by the Governor, showing that such amounts have been actually expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State Laws and charts necessary to the execution of the duties of his office; the chief deputy game, fish and oyster commissioner and all other deputy fish and oyster commissioners and employees of the Game, Fish, and Oyster Commission, except special game deputies, deputies employed at fresh water fish hatcheries and sand, shell and gravel deputies, shall be paid their salaries and expenses monthly upon approval of the Game, Fish and Oyster Commissioner out of the fish and oyster fund, the Comptroller drawing his warrant in favor of each of said persons on the fish and oyster fund, appropriated for said purposes, as follows: chief deputy game, fish and oyster commissioner, twenty-five hundred dollars per annum; deputies on boats, not to exceed one hundred twenty-five dollars per month; mates on boats, eighty dollars per month; shore deputies, not to exceed one hundred twenty-five dollars per month; lake deputies, not to exceed one hundred twenty-five dollars per month; assistant lake deputies, not to exceed seventy-five dollars per month; supervisor of coastal fisheries not to exceed one hundred fifty dollars per month. It shall be the duty of the Game, Fish and Oyster Commissioner to collect all taxes, licenses and fines as imposed by law, and enforce their payment, to inspect all products so taxed, and to verify the weights and measures thereof, to collect license fees, to collect all rents on locations for planting oysters, to examine or have examined, all streams, lakes or ponds, when requested to do so, for the purpose of stocking such waters with fish best suited to such locations, and he shall superintend and have control in the propagation of fish in the State fish hatcheries, and the distribution of such fish, and he shall have superintendence and control of the propagation and distribution of birds and game in the State reservations over which he may have control, or which may be established for such propagation. He shall also be allowed a sum not to exceed fifteen hundred dollars per annum for traveling and other expenses to be paid on vouchers showing that such amounts have actually been expended in the performance of his duties of said office, and he shall be allowed all stationery, books, blanks, tags, State laws and charts necessary to the execution of the duties of his office. [Id. p. 446.]

Art. 4024. [4017] Fees of Commissioner.—In making arrests, summoning witnesses and serving process, the Commissioner or his deputies shall be allowed the same fees and mileage as sheriffs, the same to be charged and collected as are sheriff's fees. [Acts 1895, p. 70.]

Art. 4025. [4013] Disposition of money.—Of all fines collected for infraction of the fish and oyster laws, ten per cent shall go to the prosecuting attorney, and the residue thereof shall go to the general fund of this State. All funds collected by deputy commissioners along the coast for register certificates, licenses, and rents for locating private oyster beds, and such other charges relating to the fish and oyster laws as may be prescribed, shall be by such deputies paid over weekly to the Commissioner, who in turn shall deposit the same monthly in the State Treasury to the credit of the general revenue fund. [Acts 1913, p. 297; Acts 1923, 2nd C. S. p. 61.]

CHAPTER TWO

FISH AND OTHER MARINE LIFE

Art.
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4036. Examining location.
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Article 4026. Property of State.—All fish and other aquatic animal life contained in the fresh water rivers, creeks and streams and in lakes or sloughs subject to overflow from rivers or other streams within the borders of this State are hereby declared to be the property of the people of this State. All of the public rivers, bayous, lagoons, creeks, lakes, bays and inlets in this State, and all that part of the Gulf of Mexico within the jurisdiction of this State, together with their beds and bottoms, and all of the products thereof, shall continue and remain the property of the State of Texas, except in so far as the State shall permit the use of said waters and bottoms, or permit the taking of the products of such bottoms and waters, and in so far as this use shall relate to or affect the taking and conservation of fish, oysters, shrimp, crabs, clams, turtle, terrapin, mussels, lobsters, and all other kinds and forms of marine life, or relate to sand, gravel, marl, mud shell and all other kinds of shell, the Game, Fish and Oyster Commissioner shall have jurisdiction over and control of, in accordance with and by the authority vested in him by the laws of this State. [Acts 1925, p. 438.] [39th Leg., ch. 178, § 1 (art. 7).]

Art. 4027. Oyster beds.—All oyster beds not designated private shall be public. All natural oyster beds and reefs of this State shall be public. A natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found therein within twenty-five hundred square feet of any position of said reef or bed; and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Commissioner, but this shall not apply to a reef or bed that has been exhausted within a period of eight years. [Acts 1919, p. 289.]

Art. 4028. Riparian rights prescribed.—Whenever any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location of land in this State, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting or sowing oysters. The Commissioner may require the owner of oysters claimed to be produced on such lands, when such oysters are offered for sale, to make an affidavit that such oysters were produced on such lands. If said creek, bayou, lake or cove is not so included, then the exclusive right of the riparian owner shall, wherever the width of such creek, bayou, lake or cove is two hundred yards or less, extend to the middle thereof, and wherever the width of such waters is more than two hundred yards, extend one hundred yards from shore. The right of the riparian owner for planting oysters along any bay shore in this State shall extend one hundred yards into the bay from high water mark or where the land survey ceases. The riparian owner's right to any natural oyster bed located on such one hundred yard reservation shall not be exclusive. [Acts 1895, p. 70.]

Art. 4029. Private fresh waters.—Such of the fresh water lakes, rivers, creeks and bayous within this State as may be embraced in any survey of private land shall not be sold, but shall remain open to the public. If the Commissioner stocks them with fish, he is authorized to protect same for such time and under such rules as he may prescribe. [Acts 2nd C. S. 1919, p. 216.]

Art. 4030. Fish and oyster fund.—All funds collected by the Game, Fish and Oyster Commission from the sale of commercial fishermans' licenses, fish dealers licenses, taxes on fish, crabs, oysters and shrimp, and all other taxed marine life, and all fines and penalties collected for any infraction of any laws relating to commercial fishermen, shall be placed in the State Treasury to the credit of a fund to be known as "Fish and Oyster Fund" and, together with the money now to the credit of this fund, is hereby appropriated and shall be used by the Game, Fish and Oyster Commissioner in the enforcement of the fish and oyster laws of this State, and in the dissemination of useful information pertaining to the economic value of fish and oyster marine life; the making of scientific investigations and surveys of the principal sea food fishes and marine life for purpose of the better protection and conservation of same, the propagation and distribution of sea food fishes, oysters, and other marine life; the purchase, repair and operation of boats and the employment of deputies to carry out and enforce the provisions of this Act. [Acts 1925, p. 446.] [39th Leg., ch. 178, § 2.]

Art. 4031. Tax deposit.—The applicant for any license under this chapter based upon fish and oysters handled shall, upon the issuance of such license, deposit with the Commissioner, if required to do so by such officer, an amount of money to be fixed by the Commissioner, in addition to the ten dollars required of him as a wholesale dealer as defined in the preceding article, sufficient to cover the estimated amount of tax that would be due by applicant upon monthly business of applicant, and against which deposit the tax due may be charged by the Commissioner, and said applicant shall make additional deposits in sufficient amounts to at all times maintain a deposit sufficient to cover the estimated tax that may be due by applicant, which additional deposit shall be made upon request of the Commissioner. [Acts 2nd C. S. 1919, p. 197.]

In this article, "wholesale dealer as defined in the preceding article" refers to Acts 1925, 39th Leg., p. 438, ch. 178, § 1, art. 16 (Penal Code, art. 936).

Art. 4032. License to fish.—Any person who is an American citizen, or an alien who has filed his intention papers and shows his desire to become an American citizen, desiring to fish in the public waters of this State, or fish for oysters, fish, shrimp, turtle, terrapin, clams, crabs or other marine animal life, for the purpose of selling them, shall procure from the Commissioner a license to do so, and such person shall pay the fee of one dollar for such license, which shall be for one year from the date thereof and obligate the holder to observe all the laws of the State enacted to conserve the marine life of such public waters. [Id. p. 200.]

Art. 4032a. License to fish and fees.—Sec. 1. No person shall fish with artificial lures of any kind in the waters of this State without first having procured from the Game, Fish and Oyster Commissioner of Texas, or his deputy, or from a county clerk in Texas, or other legally authorized agent, a license to fish.

Sec. 2. Any officer, deputy of [or] legally authorized agent, issuing any license to fish under the provisions of this Act, shall collect from the person to whom the license is issued the following fees:

(1) If issued to a resident, the sum of One Dollar and Ten Cents ($1.10), of which amount he shall retain as his fee Ten (10c) Cents, the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner on or before the 10th day of the month next succeeding that during which said license was issued.

(2) If issued to a non-resident or an alien, the sum of Five Dollars ($5.00), of which amount he shall retain as his fee Twenty Five (25c) cents, the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner as required under subdivision One (1) of this section; provided that he may issue to such nonresident a license good for only five (5) days, including the day of issuance, upon payment by the

licensee of One Dollar and Ten Cents ($1.10), of which amount the officer so issuing said license shall retain as his fee Ten (10c) Cents, and the balance of which amount he shall remit to the Game, Fish and Oyster Commissioner as provided for in subdivision One (1) of this section.

The officer issuing such license shall keep a complete and correct record of each fishing license issued, showing the name and place of residence of each licensee and the serial number and date of issuance of said license, on such form as the Game, Fish and Oyster Commissioner may prescribe; and the stubs of such licenses and the record thereof shall belong to the State of Texas and shall be filed with said Commissioner as and when he may direct.

The licenses provided for herein shall entitle the holder thereof to fish in the waters described in this Act until and including August 31st next succeeding the date of issuance thereof, except that the five (5) days license shall be good only for the five days from and including the day of the issuance thereof; and every license issued under the provisions of this Act shall contain; the true date of issuance thereof, the name of licensee, his age, hight [height], weight, color of hair, color of eyes, county of residence, if a resident of Texas, State or County of residence, if a non-resident of Texas or an alien, and such other information as the Commissioner may deem advisable to require, and the licensee shall sign upon said license a pledge to obey the laws of Texas as to fishing.

Sec. 3. Any person required under the provision of this Act to procure a license to fish who shall fish in, or who shall take by any means fish, oysters, shrimp or other marine life in any of the waters of this State in violation of the provisions of this Act without first procuring such license, or who shall fail, or refuse on demand by any officer, to show such officer his fishing license required of him by this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than One ($1.00) Dollar nor more than Ten ($10.00) Dollars; provided the provisions of this Act shall not apply to a resident citizen of Texas who holds a license for commercial fishing under Article 4032 of the Revised Civil Statutes of Texas of 1925, so long as he does only commercial fishing.

Sec. 4. By the term non-resident, as used in this Act, shall be meant any citizen of the United States of America who is not a citizen of the State of Texas, who has continuously for four months next preceding the issuance of the fishing license to him been an actual bona fide resident of the State of Texas.

Sec. 5. All funds obtained from the sale of the licenses provided herein, after the payment of the fees allowed under this Act, shall be deposited by the Game, Fish and Oyster Commissioner in a special fund to be known as the Special Fish Propagation and Protection Fund; and this fund shall be used for the purpose of building and maintaining fish hatcheries, fairly distributed over the State of Texas and for the propagation, distribution and protection of fish in the State of Texas. [Acts 1927, 40th Leg., p. 396, ch. 268.]

Art. 4033. Registering boat.—Any person who is a citizen of the United States wishing to use a boat in catching or taking fish, green turtle, terrapin or shrimp, or gathering oysters or other marine life for market in public waters of this State, shall apply to the Commissioner for permission to do so. Such applicant shall furnish said officer under oath his name, place of residence, the name and kind of boat to be used by him, together with the number of men to be employed by him. Thereupon the officer shall register such boat which register number shall be distinctly painted, as the Commissioner may designate, on such boat, for which registration he shall pay said officer one dollar and fifty cents and said officer shall furnish the applicant with a certificate of such registration, valid for twelve months from date of issuance. [Acts 2nd C. S. 1919, p. 194.]

Art. 4034. License for boat.—Any captain or master of any boat wishing to engage in the business of catching or taking any fish, turtle, terrapin, shrimp or oysters or other marine life from the waters of the State for market shall, before engaging in such business, secure from the Commissioner a license for such business by making written application to the commissioner. Such applicant shall set forth under oath that he is a citizen of the United States and the name, class and register number of his boat. If the application be for a license to use seines and nets, the applicant shall state the number, class and length of the seines and nets to be used by him, and if the application be for a license to gather oysters, he must state the number of tongs to be used by him, and the applicant shall agree that all such products shall at all times be subject to inspection by the Commissioner and that said application shall authorize said Commissioner to enter at any time the boat or any house or place where he may have such products, and shall further agree to pay to the State a special tax provided for in Article 4030. Upon receipt of such duly executed application, accompanied by the applicant's registration certificate and one dollar, the Commissioner shall issue to the applicant a license to engage in the business set forth in his application, and the license shall be subject to such limitations and control as prescribed by the law. Said license must state the name of the licensee, name and class of his boat, and the date of issuance. Such license shall be for twelve months, if for fishing for fish, turtle, or shrimp; and from September first to April first following the date of license, if for gathering oysters; and from November first to February first inclusive, if for the purpose of catching terrapin. The license so issued shall be kept on the boat subject to the inspection of the Commissioner, and it shall not be transferable without the consent of the Commissioner having been first had, which consent or assignment shall be written across the face of said license. If such licensed captain or master shall violate any fish and oyster law of this State, or shall refuse to comply with any provision made in his application for license, the Commissioner is authorized to cancel said license and the boat registration certificate, notice of which shall be given by the Commissioner in writing and delivered to the licensee, and such license to such captain and the registration of such boat shall not be renewed for three years. Any person wishing to engage in the taking or catching of any fish, turtle, terrapin, shrimp, oysters or other marine life, for market, as employé of the owner or as a part of the crew of any registered boat, shall procure from the Commissioner a license to do so; such person, to obtain such license, must make written application to said Commissioner, setting forth under oath that he is a citizen of the United States or must offer proof that he has already filed his proper intention papers as required by the Federal Government, and shall thereafter be vigilant in the securing of his final citizenship papers. One license issued to a captain or master of a boat under this article shall authorize such licensee to engage in the taking or catching of the products named herein. [Acts 1923, p. 294.]

Art. 4035. Application for oyster bed.—Any person who is a citizen of the United States or any domestic corporation shall have the right of obtaining a location for planting oysters and making private oyster beds within the public waters of this State, by making written application to the Commissioner describing the location desired. A fee of twenty dollars cash must accompany such application. [Acts 2nd C. S. 1919, p. 197.]

Art. 4036. Examining location.—When the application and fee provided for in the preceding article have been received by the Commissioner he shall examine thoroughly the location desired, as soon as practicable, with tongs, dredge or any other efficient means. If the same be not a natural oyster bed or reef, and exempt from location by any article of this chapter, he shall have the location surveyed by a competent surveyor. In making said location, said surveyor shall plant two iron stakes or pipes on the shore line nearest to the proposed location, one at each end of the proposed location, which said stakes or pipes

shall be not less than two inches in diameter, and be set at least three feet in the ground. Said stakes or pipes shall be placed with reference to bearings of not less than three natural or permanent objects or land marks. And the locator shall place and maintain under the direction of the Commissioner a buoy at each corner of his oyster claim farthest from the land. No person shall locate water or ground covered with water for planting oysters along any bay shore in this State, nearer than one hundred yards from shore. [Id. p. 197.]

Art. 4037. Locator's certificate.—The Commissioner shall give the locator a certificate signed and sealed by the Commissioner. Such certificate shall show the date of application, date of survey, number, description of metes and bounds with reference to the points of the compass and natural and artificial objects by which said location can be found and verified. The locator shall, before such certificate is delivered to him, pay the Commissioner surveyor's fees and all other expenses connected with establishing such location. If such sums, as costs of the location and establishment of the claim, are less than the twenty dollar paid to the Commissioner, the difference in amount shall be returned to such locator by the Commissioner. If such expenses amount to more than twenty dollars, the deficit shall be paid to the Commissioner by the locator.

At any time not exceeding sixty days after the date of such certificate of location, the locator must file the same with the county clerk of the county in which the location is situated, who shall record the same in a well bound book kept for that purpose, and the original with a certificate of registration shall be returned to the owner or locator; the clerk shall receive for the recording of such certificate the same fee as for recording deeds; the original or certified copies of such certificate shall be admissible in evidence under the same rule governing the admission of deeds or certified copies thereof. [Id. p. 198.]

Art. 4038. Rights of locator.—Any person who shall be granted a certificate of location as provided for in the preceding article shall be protected in his possession thereof against trespass thereon in like manner as freeholders are protected in their possessions, as long as he maintains all stakes and buoys in their original and correct position, and complies with all laws, rules and regulations governing the fish and oyster industries. [Id. p. 198.]

Art. 4039. Limiting location.—No person, firm or corporation shall ever own, lease or otherwise control more than one hundred acres of land covered by water, the same being oyster locations under this chapter, and within the public waters of this State; and any person, firm or corporation that now holds more than one hundred acres of oyster locations, shall not be permitted hereafter to acquire, lease or otherwise control more; provided that no corporation shall lease or control any such lands covered by water unless such corporation shall be duly incorporated under the laws of this State. [Id. p. 198.]

Art. 4040. To maintain markings.—Any person, firm or corporation who has secured, or may hereafter secure a location for a private oyster bed in this State, shall keep the two iron stakes or pipes and buoys as provided for by law, in place, and shall preserve the marks so long as he is the lessee of said location, and this shall apply also to any person, firm or corporation acquiring any location by purchase or transfer of any nature, and said locator or the assignee of any locator shall have the right to fence said location or any part thereof; provided that said fence does not obstruct navigation through or into a regular channel or cut leading to other public waters. [Id. p. 198.]

Art. 4041. Rental on location.—The owner or locator of private oyster beds under the foregoing provisions shall not be required to pay any rentals on such locations for a period of five years, or till such time as he shall begin to market or sell oysters from such location or bed. When such locator shall begin to sell or market oysters from such location, he shall pay the State one dollar and fifty cents per acre per annum and two cents a barrel on oyster sales. Failure to pay such rental by the first day of March of each year shall annul and be a forfeiture of his lease. And if oysters are not marketed or sold from such location within five years from the date of location, such location shall become void. [Id. p. 199.]

Art. 4042. Oyster permit.—Any person who is a citizen of the State of Texas, or any corporation chartered by the State to engage in the culture of oysters or transact business in the purchase and sale of oysters and fish, and composed of American citizens, wishing to plant oysters on their own oyster locations or to take oysters from oyster reefs and public waters of the State for the purpose of preparing them for market, shall make application to the Commissioner for permission to do the same. In such application the applicant shall set out distinctly the purpose for which he desires such oysters and also the number or amount that he desires to take from the beds and waters mentioned. The Commissioner may grant such permit or he may refuse to do so. If he should grant such permit, he shall require the applicant to take the oysters he is authorized to take from beds or reefs designated by such Commissioner and name them in the permit, and it shall be unlawful for any person to take oysters of less size than three and one-half inches from hinge to mouth from any such designated beds or reefs unless authorized to do so by the Commissioner; he shall mark off the exact area of such beds or reefs from which such oysters shall be taken; he shall designate the bottoms on which such oysters shall be deposited, if they are taken to be prepared for market; he shall require the applicant to cull the oysters on the grounds where they are to be located; he shall state what implements such as tongs and dredges shall be used in taking such oysters, and he shall make and enforce all other regulations he may think necessary to protect and conserve the oysters on such public reefs or beds. All oysters taken from or deposited in the public waters of this State as herein provided shall become the personal property of the person or corporation so taking or depositing them. Such person or corporation shall, by buoys or stakes or by fences, clearly and distinctly mark the boundaries of the private bed planted, or the boundaries of the deposit of oysters made for preparation for market; and no prosecution of any one shall be permitted for taking such oysters unless the boundaries of such beds and deposits are established and maintained. [Id. p. 199.]

Art. 4043. Shipment of oysters.—It shall be unlawful for any transportation company operating within this State, its officers, agent or employees, to receive for shipment, or to ship, within the boundaries of this State from the first day of May to the first day of September of any year, any oysters from any public bed or reef for depositing or for marketing. Nothing in this chapter shall be construed as to prohibit any such transportation company, its officers, agents or employés, from shipping or receiving for shipment, any oysters taken from a private bed located under the laws of this State, offered for shipment by the owner or owners, locator or locators, of such bed; such fact to be established by the affidavit of the person or persons offering such oysters for shipment. [Id. p. 203.]

Art. 4044. Permit to use seine.—All seines and nets used in the salt waters of this State shall be examined by the Commissioner to see that they conform to the requirements of Title 13, Chap. 6, of the Penal Code as to length and size of mesh. If they are found to conform to such requirements, the Commissioner shall tag such seines or nets with a metal tag on which shall be indented the number of such seine and net, and it shall be the duty of the owner of such seine or net to keep the tag attached thereto; the cost of such tag, tweny-five cents, to be paid by the owner of such seine or net. The Commissioner shall then issue to the owner a permit to use such seine or net for one year from the date of such permit. And such permit shall state the name of the owner of such net, the date on which it was issued, the size of the mesh and

the length and kind of such net. The Commissioner shall keep a record book in which the date of issuance of such permit, the name of the owner, the number of the tag, the size of the mesh and the length of such seine or net shall be kept. The Commissioner shall have power to seize and keep in his possession all seines which do not conform to the requirements of such article as evidence until trial of defendant, and no suit shall be maintained against him therefor. [Acts 1923, p. 296.]

Art. 4045. Seining, etc., in closed waters.—It shall be unlawful for any person at any time to place, to set or drag any seine or net, or to carry on, over or into the waters hereinafter referred to, or to have in his possession or to carry such seine or net by vehicle or in any other way to any point or place within one mile of such waters, or to use any other device or method for taking fish, other than the ordinary pole and line or cast-net or minnow-seine of not more than twenty feet in length for catching bait, within the waters described in Article 941 of the Penal Code. Nothing in this article shall prevent the use of spear or gig and light for the purpose of securing flounders from such passes as are therein enumerated at any time of the year except during the months of November and December, which months shall constitute a closed season on flounders in all coastal waters of the State. The Commissioner, when he has reason to believe it is best for the protection and increase of fish life, or to prevent their destruction in the bays or parts thereof, or such tidal water, is hereby authorized to close such waters against fishing with any seine, net, spear, gig, light or other devices, except with a hook and line or cast-net or minnow-seine of not more than twenty feet in length. Before so closing any such waters, the Commissioner shall give notice of his intention to do so at least two weeks prior to such closing, giving the reason why action is deemed necessary, and which notice shall contain a designation of the area which it is proposed to close, a statement that after the date indicated in such notice it shall be unlawful to drag a seine or set a net or use a gig or spear and light in taking fish from such waters for the period which the Commissioner in said notice shall declare same to be closed. The Commissioner shall have the authority, when proper hearing has been had and investigation been made, and he has determined that any such closed area in the tidal waters of this State does not promote conservation of fish, to open such area to seining, netting, gigging and fishing of all sorts. The Commissioner shall have power to seize and keep such seines as are used in violation of any provision of this article, in his possession as evidence until trial of defendant, and no suit shall be maintained against him therefor. [Acts 1923, p. 297.]

Art. 4046. Seining for drum.—Any person leasing an oyster claim or oyster reef in waters where seining is prohibited may apply to the Commissioner for permission to seine for drum fish in such waters. In his application for permission to seine for drum he shall make oath that such fish are seriously damaging his oysters, and that if he is permitted to seine for such fish in such waters, he will not take or destroy any other food fish, but will throw them back into the water. If the Commissioner is satisfied that such damage is being done, he may grant such permission, specifying in such permit the length of time in which it is to be used, and the claim or reef on which it is to be used. Such Commissioner shall assign a deputy fish and oyster commissioner to superintend such seining, and no seine shall be dragged except in his presence, and for which a person obtaining the permission to seine as set forth above, shall pay to the Commissioner two dollars and fifty cents per day. [Id., p. 202.]

Art. 4047. Permit to use shrimp seine.—The Commissioner may permit the use of any shrimp seine or other device for catching shrimp in the tidal waters of this State. Any person desiring to use such seine shall apply to the Commissioner for a permit to use such seine, net or other device for catching shrimp, and the Commissioner shall fix and establish the mesh, construction, depth and length of such seine or net or other device so that it shall not be used for other purposes than in taking shrimp, and he shall tag such seine or other device officially and issue such permit, and shall designate in what waters and localities such seines or nets shall be used. Any such nets or seines or devices used in violation of this article shall be declared a nuisance and the Commissioner shall abate and destroy the same, and no suit shall be maintained in the courts for such abatement and destruction. [Id. p. 205.]

Art. 4048. Dredging reefs or beds.—Any person who is an American citizen or any firm or corporation composed of American citizens desiring to use scrapers or dredges in removing oysters from the natural oyster reefs of this State shall procure from the Commissioner a license to do so, and such applicant shall pay to the Commissioner a license fee of five dollars when using scrapers or hand dredges, and fifteen dollars when using power-dredges, which license shall be for one year from the date of issuance thereof, and shall obligate the holder to observe all the laws of the State enacted to conserve the marine life of such public waters. Whenever the Commissioner believes that a natural oyster reef or bed is too open and exposed to be fished with hand-tongs, and that such reef or bed can be improved by the use of dredges, he may grant the use of dredges on such reef or bed regardless of the depth of the body of water or exposure thereof, but only under the supervision and direction of a deputy fish and oyster commissioner; and the Commissioner is authorized to purchase boats and implements and employ labor to work such public oyster reefs and beds as he may think can be improved thereby, the expense of which shall be paid on warrants issued by the Comptroller on the sworn statement as to the correctness of such expense by the Commissioner. [Acts 1923, p. 298.]

Art. 4049. Protection of reservation.—It shall be unlawful to bring into or keep on any fish hatchery or reservation for the propagation or exhibition of any birds, fowls or animals, any cat, dog or other predacious animal, and any such animal found on the grounds of such hatcheries or reservation is held to be a nuisance, and the deputy in charge shall abate and destroy it as a nuisance, and no suit for damages shall be maintained therefor. [Acts 2nd C. S. 1919, p. 209.]

Art. 4049a. Hatcheries and propagation.—The Game, Fish and Oyster Commissioner of this State is hereby authorized to construct and maintain salt water hatcheries, and propagation farms for fish, oysters and game, or either of same, on islands owned by the State of Texas in the costal waters of the Gulf of Mexico touching this State; and the cost and expenses thereof shall be borne out of the money available to said Commissioner for the enforcement of the game, fish and oyster laws of this state. [Acts 1927, 40th Leg., p. 258, ch. 180, § 1.]

Art. 4050. May take brood fish.—It shall be lawful for the Commissioner or the United States Commissioner of Fisheries and his duly authorized agents to take at any time and in any manner from the public fresh waters of this State all brood fish required by them in operation of the State and Federal Hatcheries. [Acts 2nd C. S. 1919, p. 214.]

CHAPTER THREE

MARL, SAND AND SHELL

Art.
4051. Property of the State.
4052. Powers of Commissioner.
4053. Permit to use marl, etc.
4053a. Condemnation for access to marl, mudshell, etc.
4053b. Condemnation proceedings.
4053c. Partial invalidity.
4053d. Sale of marl, gravel, sand, etc.
4053e. Partial invalidity.
4054. Use in municipal road work.
4054a. Material for protective work along coast.
4055. Condemnation of land.
4056. License for mussels, etc.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Article 4051. Property of the State.—All the islands, reefs, bars, lakes, and bays within the tide-water limits from the most interior point seaward co-extensive with the jurisdiction of this State, and such of the fresh water islands, lakes, rivers, creeks and bayous within the interior of this State as may not be embraced in any survey of private land, together with all the marl and sand of commercial value, and all the shells, mudshell or gravel of whatsoever kind that may be in or upon any island, reef or bar, and in or upon the bottoms of any lake, bay, shallow water, rivers, creeks and bayous and fish hatcheries and oyster beds within the jurisdiction and territory herein defined, are included within the provisions of this chapter, and are hereby placed under the management, control and protection of the Commissioner. None of the marl, gravel, shells, mudshells or sand included herein shall be purchased, taken away or disturbed, except as provided herein, nor shall any oyster beds or fish hatcheries within the territory included herein be disturbed except as herein provided. [Acts 2nd C. S. 1919, p. 216.]

Art. 4052. Powers of Commissioner.—The Commissioner is hereby invested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion over all matters pertaining to the sale, the taking, carrying away or disturbing of all marl, sand or gravel of commercial value, and all gravel and shells or mudshell and oyster beds and their protection from free use and unlawful disturbing or appropriation of same, with such exceptions as may be provided herein. [Acts 2nd C. S. 1919, p. 216.]

Art. 4053. Permit to use marl, etc.—Anyone desiring to purchase any of the marl and sand of commercial value and any of the gravel, shells or mudshell included within the provisions of this chapter, or otherwise operate in any of the waters or upon any island, reef, bar, lake, bay, river, creek or bayou included in this chapter, shall first make written application therefor to the Commissioner designating the limits of the territory in which such person desires to operate. If the Commissioner is satisfied that the taking, carrying away or disturbing of the marl, gravel, sand, shells or mudshell in the designated territory would not damage or injuriously affect any oysters, oyster beds, fish inhabiting waters thereof or adjacent thereto and that such operation would not damage or injuriously affect any island, reef, bar, channel, river, creek or bayou used for frequent or occasional navigation, nor change or otherwise injuriously affect any current that would affect navigation, he may issue a permit to such person after such applicant shall have complied with all requirements prescribed by said Commissioner. The permit shall authorize the applicant to take, carry away or otherwise operate within the limits of such territory as may be designated therein, and for such substance or purpose only as may be named in the permit and upon the terms and conditions of the permit. No permit shall be assignable, and a failure or refusal of the holder to comply with the terms and conditions of such permit shall operate as an immediate termination and revocation of all rights conferred therein or claimed thereunder. No special privilege or exclusive right shall be granted to any person, association of persons, corporate or otherwise, to take or carry away any of such products from any territory or to otherwise operate in or upon any island, reef, bay, lake, river, creek, or bayou included in this chapter. [Acts 2nd C. S. 1919, p. 216.]

Art. 4053a. Condemnation for access to marl, mudshell, etc.—That where the State of Texas, through the Game, Fish and Oyster Commissioner, has issued a permit to excavate and take from any island, reef, bar, lake, river, creek, bayou or bay of this State[,] marl, mudshell, oyster shell, sand and gravel, the State, at the request of the permit holder, shall have the right and power to enter upon and condemn and appropriate the lands, right of ways, easements and property of any person or corporation for the purpose of erecting dredges and necessary equipment and for the purpose of laying and maintaining the railway spurs to the nearest railroad, and for the purpose of operating and maintaining necessary roads and passageways to said place of operations, including all such lands, right of ways, easements and property aforesaid for the purpose of establishing and maintaining landing places and providing moorings for barges and dredges and all equipments as may be determined by said permit holder necessary in carrying on said business, provided that such right of way should not invade improvements such as buildings or orchards; and provided, further, the manner and method of such condemnation and assessment and payment of damages therefor shall be the same as provided for by law in the case of railroads. [Acts 1925, 39th Leg., ch. 74, p. 231, § 1.]

Art. 4053b. Condemnation proceedings.—Condemnation suits brought under this Chapter shall be brought in the name of the State by the county attorney of the county in which the property or a part thereof affected is situated and the county attorney shall receive a fee of $10.00 for his services upon the institution of such proceedings, the same to be taxed and collected as a part of the cost in such suit. All costs in such proceedings shall be paid either by the permit holder, at whose instance such proceedings are had, or by the person against whom such proceedings are had, to be determined as in case of railroad condemnation proceedings, and all damages and pay for property awarded in such proceedings shall be paid by the permit holder and in no event shall the State be liable for any cost, damages or any sum whatsoever with respect to such proceedings. [Acts 1925, 39th Leg., ch. 74, p. 232, § 2.]

Art. 4053c. Partial invalidity—The importance of this legislation to the people of this State on account of scarcity of available sand, gravel and shell to be used in building and highway construction in Texas, creates an emergency and an imperative public necessity that the constitutional rule requiring that bills be read on three several days in each House be suspended, and that this Act shall take effect and be in force from and after its passage and said rule is hereby suspended, and it is so enacted. [Acts 1925, 39th Leg., ch. 74, p. 232, § 3.]

Art. 4053d. Sale of marl, gravel, sand, etc.—The Game, Fish and Oyster Commissioner by and with the approval of the Governor, may sell the marl, gravel, sand, shell or mudshell included within this Act, upon such terms and conditions as he may deem proper, but for not less than four (4c) cents per ton, and payment therefor shall be made to said Commissioner. The proceeds arising from such sale shall be transmitted to the State Treasurer and be credited to a special fund hereby created to be known as the sand, gravel and shell fund of the State, and may be expended by the said Commissioner in the enforcement of the provisions of the sand, shell and gravel laws and in the establishment and maintenance of fish hatcheries, when provided by legislative appropriation, and in the payment of refunds provided for in Section 7, Chapter 161, of the General Laws of the Regular Session of the Thirty-eight Legislature, to counties, cities or towns or any political subdivision of a county, city or town, as provided for in Section 7, Chapter 161, of the General Laws of the Regular Session of the Thirty-eighth Legislature. And also providing that the authorization of refunds on sand, gravel and shell shall be extended to include refunds to the State Highway Commission of money paid the State through the Game, Fish and Oyster Commission for sand, gravel and shell used by the State Highway Commission on public roads upon application for such refunds in the manner prescribed for cities and counties. Provided further that not less than seventy-five per cent of the proceeds derived therefrom, after refunds above referred to have been cared for, shall go for the establishment and maintenance of fish hatcheries; and the sand, gravel, and shell fund is hereby appropriated for the purpose of carrying out the provisions of this Act. Said hatch-

eries to be established from time to time in the State of Texas by the Fish, Game and Oyster Commission, when in their judgment a suitable location is secured and arrangements therefor have been completed. [Acts 1925, 39th Leg., ch. 183, p. 452, § 1.]

Art. 4053e. Partial invalidity.—If any section of this bill shall be held unconstitutional, it shall not affect any other section of this bill, and all sections, save the one that may be declared unconstitutional, shall continue to be in full force and effect, and all laws in conflict are hereby repealed. [Acts 1925, 39th Leg., ch. 183, p. 453, § 2.]

Art. 4054. Use in municipal road work.—If any county, or subdivision of a county, city or town should desire any marl, gravel, sand, shell or mudshell included in this chapter for use in the building of any road or street, which work is done by said county, or any subdivision of a county, city or town, such municipality may be granted a permit without charge and shall have the right to take, carry away or operate in any waters or upon any islands, reefs or bars included herein; such municipality to do the work under its own supervision, but shall first obtain from the Commissioner a permit to do so, and the granting of same for the operation in the territory designated by such municipality shall be subject to the same rules, regulations and limitations and discretion of the Commissioner as are other applicants and permits. When such building of roads or taking of such products is to be done by contract, then the said municipality may obtain a refund from the Commissioner of the tax levied and collected on said products as fixed by the Commissioner at the time of the taking thereof, by warrant drawn by the Comptroller upon itemized account sworn to by the proper officer representing such municipality and approved by the Commissioner, and under such other rules and regulations as may be prescribed by the Commissioner. [Acts 1923, p. 342.]

Art. 4054a. Material for protective work along coast.—If any county, city or town authorized by Title 118 of the Revised Civil Statutes of 1925 to construct, extend, protect, strengthen, maintain, keep in repair and otherwise improve any seawall or breakwater, levee, dike, floodway and drainway, shall desire any marl, gravel, sand, shell or mudshell, included in this Chapter, for use in the building, constructing, extending, protecting, strengthening, maintaining keeping in repair and otherwise improving any such seawall, or breakwater, levee, dike, floodway and drainway, such municipality shall be granted a permit without charge, and shall have the right, without payment therefor by such county, city or town to the Game, Fish and Oyster Commissioner, or to the State of Texas, to appropriate, dredge, take and carry away any such marl, gravel, sand, shell or mudshell from any of the waters, reefs, or bars included herein; provided that such permit shall be granted and such marl, gravel, sand, shell or mudshell shall be taken under such rules and regulations as the Commissioner may make and establish. Provided, further, that none of the benefits accruing under and by virtue of this Act shall inure to any person, firm or corporation holding a contract at the present time where marl, gravel, shell or mudshell shall be used as herein provided. [Acts 1927, 40th Leg., p. 265, ch. 186, § 1.]

Art. 4055. Condemnation of land.—Where the State, through the Commissioner, has issued a permit to excavate and take from any island, reef, bar, lake, river, creek bayou or bay of this State, marl, mudshell, oyster shell, sand and gravel, the State, at the request of the permit holder, shall have the power to enter upon and condemn and appropriate the lands, right of way, easements and property of any person or corporation, for the purpose of erecting dredges and necessary equipment, and for the purpose of laying and maintaining railway spurs to the nearest railroad, and for the purpose of opening and maintaining necessary roads and passageways, to said place of operations; provided, that such right of way shall not invade improvements such as buildings or orchards.

Such condemnation suits shall be brought in the name of the State by the Attorney General in the county where the area included in said permit, or some part of such area, is situated. All costs in such proceedings shall be paid either by the permit holder at whose instance such proceedings are had or by the person against whom such proceedings are had, to be determined as in the case of condemnation proceedings, and all damages and pay for property awarded in such proceedings shall be paid by the permit holder. In no event shall the State be liable for any costs, damages or any sum whatsoever with respect to such proceedings. [Acts 2nd C. S. 1923, p. 11.]

Art. 4056. License for mussels, etc.—It shall be unlawful for any person, firm or corporation to take from the public waters of the State for sale any mussels, clams, or naiad or shells thereof without first obtaining a license from the Commissioner to do so. Said license shall expire one year from the date of issuance, and shall be in such form as prescribed by the Commissioner, but shall state the water in which the licensee may operate. The applicant shall pay to the Commissioner, as a license fee, the sum of ten dollars and in addition thereto the sum of twenty-five dollars for permission to use a dredge. [Acts 2nd C. S. 1919, p. 214.]

Articles 4057 to 4075.

[Note.—Articles 4057 to 4075, inclusive, have been omitted in the Acts of 1925. For additional legislation on subject "Game, Fish and Oysters," see Penal Code, pp. 195 to 234, inclusive.]

TITLE 68

GARNISHMENT

Art.
4076. Who may issue and when.
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Article 4076. [271] [217] [183] Who may issue and when.—The clerks of the district and county courts and justices of the peace may issue writs of garnishment, returnable to their respective courts, in the following cases:

1. Where an original attachment has been issued.

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

3. Where the plaintiff has a valid, subsisting judgment and makes affidavit that the defendant has not, within his knowledge, property in his possession within this State, subject to execution, sufficient to satisfy such judgment. [Acts 1874, p. 113; P. D. 157-3785; G. L. vol. 8, p. 115.]

Art. 4077. [272] [218] [184] Bond.—In the case mentioned in subdivision two of the preceding article, the plaintiff shall execute a bond, with two or more good and sufficient sureties, to be approved by the officer issuing the writ, payable to the defendant in the

suit, in double the amount of the debt claimed therein, conditioned that he will prosecute his suit to effect and pay all damages and costs that may be adjudged against him for wrongfully suing out such garnishment. [Id.]

Art. 4078. [273] [219] [185] Application for the writ.—Before the issuance of the writ of garnishment, the plaintiff shall make application therefor, signed by him, stating the facts authorizing the issuance of the writ, and that the plaintiff has reason to believe, and does believe, that the garnishee, stating his name and residence, is indebted to the defendant, or that he has in his hands effects belonging to the defendant, or that the garnishee is an incorporated or joint stock company, and that the defendant is the owner of shares in such company or has an interest therein. [Id.]

Art. 4079. [274] [220] [186] Case docketed, etc.—When the foregoing requisites have been complied with, the judge, or clerk, or justice of the peace, as the case may be, shall docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant; and shall immediately issue a writ of garnishment, directed to the sheriff or any constable of the county where the garnishee is alleged to reside or be, commanding him forthwith to summon the garnishee to appear before the court out of which the same is issued, on the first day of the ensuing term thereof, to answer upon oath what, if anything, he is indebted to the defendant, and was when such writ was served, and what effects, if any, of the defendant he has in his possession, and had when such writ was served, and what other persons, if any, within his knowledge, are indebted to the defendant or have effects belonging to him in their possession. [Acts 1875, p. 102; P. D. 157; G. L. vol. 8, p. 474.]

Art. 4080. [275] [221] [187] When writ is to subject shares, etc.—Where it appears from the plaintiff's affidavit that the garnishee is an incorporated or joint stock company, in which the defendant is the owner of shares, or is interested therein, the writ of garnishment shall further require the garnishee to answer upon oath what number of shares, if any, the defendant owns in such company, or owned when such writ was served, and what interest, if any, he has in such company, or had when such writ was served. [Id.]

Art. 4081. [276] [222] [188] Form of writ.—The following form of writ may be used:

"The State of Texas:

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

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

Art. 4082. [277] [223] [189] Delivery of writ.—The writ of garnishment shall be dated and tested as other writs, and may be delivered to the sheriff or constable by the officer who issued it, or he may deliver it to the plaintiff, his agent or attorney, for that purpose.

Art. 4083. [278] [224] [190] Execution and return of writ.—The sheriff or constable receiving the writ of garnishment shall immediately proceed to execute the same by delivering a copy thereof to the garnishee, and shall make return thereof as of other citations.

Art. 4084. [279] [225] [191] Effect of service of writ.—From and after the service of such writ of garnishment, it shall not be lawful for the garnishee to pay to the defendant any debt or to deliver to him any effects; nor shall the garnishee, if an incorporated or joint stock company in which the defendant is alleged to be the owner of shares or to have an interest, permit or recognize any sale or transfer of such shares or interest; and any such payment or delivery, sale or transfer, shall be void and of no effect as to so much of said debt, effect, shares, or interest as may be necessary to satisfy the plaintiff's demand. The defendant may, at any time before judgment, replevy any effects, debts, shares, or claims of any kind seized or garnisheed, by giving bond, with two or more good and sufficient sureties to be approved by the officer who issued the writ of garnishment, payable to the plaintiff, in double the amount of the plaintiff's debt, and conditioned for the payment of any judgment that may be rendered against the said garnishee in such suit, which when properly approved shall be filed among the papers in the cause in the court in which the suit is pending. In all proceedings in garnishment where the defendant gives bond as herein provided for, such defendant may make any defense which the defendant in garnishment could make in such suit. [Acts 1889, p. 1; G. L. vol. 9, p. 1029.]

Art. 4085. [280] [226] [192] Answer to the writ.—The answer of the garnishee shall be under oath, in writing, and signed by him, and shall make true answers to the several matters inquired of in the writ of garnishment.

Art. 4086. [281] [227] [193] Garnishee discharged.—If it appears from the answer of the garnishee that he is not indebted to the defendant, and was not so indebted when the writ of garnishment was served on him, and that he has not in his possession any effects of the defendant and had not when the writ was served, and when the garnishee is an incorporated or joint stock company in which the defendant is alleged to be the owner of any shares of stock or interested therein, if it further appears from such answer that the defendant is not and was not, when the writ was served, the owner of any such shares, or interested in such company, should the answer of the garnishee not be controverted as hereinafter provided, the court shall enter judgment discharging the garnishee.

Art. 4087. [282] [228] [194] Judgment by default.—The garnishee shall in all cases after lawful service file an answer to the writ of garnishment on or before appearance day of the term of the court to which such writ is returnable, and should the garnishee fail to file such answer to said writ as herein required, it shall be lawful for the court, at any time after judgment shall have been rendered against defendant, and on or after appearance day, to render judgment by default, as in other civil cases against such garnishee for the full amount of such judgment against the defendant, together with all interest and costs that may have accrued in the main case and also in the garnishment proceedings. The answer of such garnishee may be filed as in any other civil case at any time before such default judgment is rendered. [Acts 1921, p. 207.]

Art. 4088. [293] [239] [205] Judgment when garnishee is indebted.—Should it appear from the answer of the garnishee or should it be otherwise

made to appear and be found by the court that the garnishee is indebted to the defendant in any amount, or was so indebted when the writ of garnishment was served, the court shall render judgment for the plaintiff against the garnishee for the amount so admitted or found to be due to the defendant from the garnishee, unless such amount is in excess of the amount of the plaintiff's judgment against the defendant with interest and costs, in which case, judgment shall be rendered against the garnishee for the full amount of the judgment already rendered against the defendant, together with interest and costs of the suit in the original case and also in the garnishment proceedings. If the garnishee fail or refuse to pay such judgment rendered against him, execution shall issue thereon in the same manner and under the same conditions as is or may be provided by law for the issuance of execution in other cases. [Id.]

Art. 4089. [294] [240] [206] Judgment for effects.—Should it appear from the garnishee's answer, or otherwise, that the garnishee has in his possession, or had when the writ was served, any effects of the defendant liable to execution, the court shall render a decree requiring the garnishee to deliver up to the sheriff or any constable presenting an execution in favor of the plaintiff against the defendant, such effects or so much of them as may be necessary to satisfy such execution.

Art. 4090. [295] [241] [207] Refusal to deliver effects.—Should the garnishee adjudged to have effects of the defendant in his possession, as provided in the preceding article, fail or refuse to deliver them to the sheriff or constable on such demand, the officer shall immediately make return of such failure or refusal, whereupon on motion of the plaintiff, the garnishee shall be cited to show cause at the next term of the court why he should not be attached for contempt of court for such failure or refusal. If the garnishee fails to show some good and sufficient excuse for such failure or refusal, he shall be fined for such contempt and imprisoned until he shall deliver such effects.

Art. 4091. [296] [242] [208] Judgment against company.—Where the garnishee is an incorporated or joint stock company, and it appears from the answer, or otherwise, that the defendant is, or was when the writ of garnishment was served, the owner of any shares of stock in such company, or any interest therein, the court shall render a decree, ordering the sale under execution, in favor of the plaintiff against the defendant, of such shares or interest of the defendant in such company, or so much thereof as may be necessary to satisfy such execution. [Acts 1875, p. 103; G. L. vol. 8, p. 475.]

Art. 4092. [297] [243] [209] Sales of shares of stock.—The sale so ordered shall be conducted in all respects as other sales of personal property under execution; and the officer making such sale shall execute a transfer of such shares or interest to the purchaser, with a brief recital of the judgment of the court under which the same was sold. [Id.]

Art. 4093. [298] [244] [210] Effect of such sale.—Such sale shall be valid and effectual to pass to the purchaser all right, title and interest which the defendant had in such shares of stock, or in such company; and the proper officers of such company shall enter such sale and transfer on the books of the company in the same manner as if the same had been made by the defendant himself. [Id. p. 104.]

Art. 4094. [299–300] [245–246] [211–212] May traverse answer.—If the plaintiff should not be satisfied with the answer of any garnishee, he may controvert the same by his affidavit stating that he has good reason to believe, and does believe, that the answer of the garnishee is incorrect, stating in what particular he believes the same is incorrect. The defendant may also, in like manner, controvert the answer of the garnishee.

Art. 4095. [301] [247] [213] Trial of issue.—If the garnishee whose answer is controverted, is a resident of the county in which the proceeding is pending, an issue shall be formed under the direction of the court and tried as other cases.

Art. 4096. [302] [248] [214] Trial when garnishee is nonresident.—Should the garnishee be a foreign corporation, not incorporated under the laws of this State, and should its answer be controverted, the issues thus formed shall be tried in the court where the main suit is pending, or was tried; but if the garnishee whose answer is controverted, resided in some county other than the one in which the main case is pending or was tried, and is not a foreign corporation, then upon the filing of a controverting affidavit by any party to the suit, the plaintiff may file in any court in the county of residence of the garnishee having jurisdiction of the amount of the judgment in the original suit, a duly certified copy of the judgment in such original suit and of the proceedings in garnishment, including a certified copy of the plaintiff's application for the writ, the answer of the garnishee, and the affidavit controverting such answer. The court wherein such certified copies are filed shall try the issues made as provided by law. [Acts 1921, p. 207.]

Art. 4097. [303–4] Docketed and notice.—The clerk of such court or the justice of the peace, on receiving such certified copies, shall docket the case in the name of the plaintiff as plaintiff, and of the garnishee as defendant, and issue a notice to the garnishee, stating that his answer has been so controverted, and that such issue will stand for trial at the next term of court. Such notice shall be directed to the sheriff or any constable of the county, be dated and tested as other process from such court, and served by delivering a copy thereof to the defendant.

Art. 4098. [305] [251] [217] Issue tried as other cases.—Upon the return of such notice served, an issue shall be formed under the direction of the court and tried as other cases.

Art. 4099. [306] [252] [218] Current wages.—No current wages for personal service shall be subject to garnishment; and where it appears upon the trial that the garnishee is indebted to the defendant for such current wages, the garnishee shall nevertheless be discharged as to such indebtedness. [Const., art. 16, sec. 28.]

Art. 4100. [307] [253] [219] Costs.—Where the garnishee is discharged upon his answer, the costs of the proceeding, including a reasonable compensation to the garnishee, shall be taxed against the plaintiff; where the answer of the garnishee has not been controverted and the garnishee is held thereon, such costs shall be taxed against the defendant and included in the execution provided for in this chapter; where the answer is contested, the costs shall abide the issue of such contest.

Art. 4101. [308] [254] [220] Garnishee discharged on proof.—It shall be a sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of such garnishee, or on the possession by him of any effects, or where the garnishee is an incorporated or joint stock company in which the defendant was the owner of shares of stock or other interest therein, for the garnishee to show that such indebtedness was paid, or such effects were delivered, or such shares of stock or other interest in such company were sold under the judgment of the court in accordance with the provisions of this title.

TITLE 69

GUARDIAN AND WARD

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4. Oath and bond of guardians.
5. Inventory, appraisement and list of claims.
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CHAPTER ONE

GENERAL PROVISIONS

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Article 4102. [4043] [2550] [2469] Jurisdiction of county court.—The County Court shall appoint guardians of minors, persons of unsound mind and habitual drunkards, and other persons where it is necessary that a guardian be appointed to receive funds or money due such persons from the Federal Government, settle accounts of guardians, and transact all business appertaining to the estates of minors, persons of unsound mind, habitual drunkards, and other persons for whom a guardian is appointed. [Const. art. 5, sec. 16; Acts 1876, p. 19; G. L. vol. 8, p. 855; Acts 1927, 40th Leg., p. 257, ch. 179, § 1.]

Art. 4103. [4044] [2551] [2470] Jurisdiction of district court.—The district court shall have appellate jurisdiction over the county court in all matters of guardianship, and original control and jurisdiction over guardians and wards, under such regulations as may be prescribed by law. [Const. art. 5, sec. 8.]

Art. 4104. [4045–6–7–54] Definitions.—As used in this title:

1. A term of the county court means a term of such court held for the transaction of probate business.

2. Females under twenty-one years of age who have never been married and males under said age are minors.

3. Idiots, lunatics or insane persons are persons of unsound mind.

4. An habitual drunkard is one whose mind has become so impaired by the use of intoxicating liquors or drugs that he is incapable of taking care of himself.

Art. 4105. [4048] [2555] [2474] Record books.—The record books used for the business of estates of decedents shall also be used for the business of guardianships.

Art. 4106. [4049] [2556] [2475] Registration.—The following papers shall be copied at length into the minutes of the court:

1. All applications, citations and returns upon citations.

2. All notices, whether published or posted, with the returns thereon.

3. All bonds and official oaths.

4. All inventories, appraisements and lists of claims, after the same have been approved by the court.

5. All reports of sales approved by the court, renting or leasing of property, and of loaning or investing money.

6. All accounts and exhibits of the guardian, after approved by the court. [Id. p. 191.]

Art. 4107. [4050] [2557] [2476] Orders of court.—Each decision, order, and judgment of the court in matters of guardianship, shall be rendered in open court at a regular term thereof except in cases where it is otherwise specially provided.

Art. 4108. [4051] [2558] [2477] Laws applicable.—The provisions, rules and regulations which govern estates of decedents shall apply to and govern such guardianships, whenever the same are applicable and not inconsistent with any provision of this title.

Art. 4109. [4052] [2559] [2479] May contest proceedings.—Any person has the right to appear and contest the appointment of a particular person as guardian, or to contest any proceeding which he deems to be injurious to the ward, or to commence any proceeding which he considers beneficial to the ward, such person being liable for the costs occasioned by him in the case of his failure. [Id. p. 170.]

Art. 4110. [4053] [2560] [2479] Call of docket.—The county judge, at each regular term of his court, shall call each case of guardianship upon his docket, and make such orders therein as may be necessary, and see that such orders, together with all papers required to be recorded, are entered upon the minutes, and hold guardians and the officers of his court to a strict accountability for the performance of their duties with reference to guardianships.

Art. 4111. [4056–60] Venue.—A proceeding for the appointment of a guardian shall be begun:

1. For the estate of a minor in the county where the parents of such minor reside, or in the county where the parent having custody of the minor resides when the parents do not reside in the same county.

2. For the person and estate of an orphan, or of either, in the county where the last surviving parent of such orphan resided at the time of the death of such parent, or where such orphan is found, or where the principal estate of such orphan may be.

3. For the person and estate, or of either, of a person of unsound mind or an habitual drunkard, in the county where such person resides.

4. Where a guardian has been appointed by will, proceedings for letters of guardianship shall be begun in the county where the will has been admitted to probate.

5. For the estate of a person requiring the appointment of a guardian to receive funds or money from the Federal Government, in the County where such person resides. [Acts 1876, p. 176; G. L. vol. 8, p. 1012; Acts 1927, 40th Leg., p. 257, ch. 179, § 2.]

Art. 4112. Unnecessary publications avoided.—The provisions of this title relating to citations and notice shall be held as special provisions complete within themselves, and no other or further publication of citation or notice in a newspaper than those provided for herein shall be required, the provisions of any other law to the contrary notwithstanding.

CHAPTER TWO

COMMENCEMENT OF PROCEEDINGS

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Article 4113. [4061–62] Application.—A proceeding for the appointment of a guardian is begun by written application, filed in the county court of the county having jurisdiction thereof. Any person may make such application. It shall state:

1. The name, sex, age and residence of the minor.

2. The estate of such minor, if any, and the probable value thereof.

3. Such facts as show the jurisdiction of the court. [Acts 1876, p. 177; G. L. vol. 8, p. 1013.]

Art. 4114. [4063] [2570] [2489] Notice.—Upon the filing of such application, the clerk shall issue a notice which shall state that an application has been filed for the guardianship of the person, or estate, or both, as the case may be, of the minor, naming such minor, and by whom filed, which notice shall cite all persons interested in the welfare of such minor to appear at the named term of the court and contest such application if they see proper.

Art. 4115. [4064–5] [2571–2] [2490–1] Service and return.—Such notice shall be served by posting copies thereof for not less than ten days before the first day of the term of the court at which the application is to be acted upon, one of which copies shall be posted at the courthouse door and two other

copies at two other public places in the county, not in the same city or town. The sheriff or other officer posting such notices shall return the original signed officially, stating thereon, in writing, the time and places, when and where, he posted such copies.

Certain notices in guardianship proceedings, under Art. 28, were validated by Acts 1927, 40th Leg., ch. 232, p. 346.

Art. 4116. [4066] [2573] [2492] Personal citation.—A minor fourteen years of age or over shall be personally served with citation to appear and answer such application, or such minor by writing filed with the clerk may waive the issuance of such citation and make choice of a guardian. [Id.]

Art. 4117. [4067] [2574] [2493] By judge.—Whenever it comes to the knowledge of the county judge that there is within his county a minor without a guardian of his person or estate, he shall cause a notice to be posted citing all persons interested in the welfare of such minor to show cause at a regular term of the court why a guardian of such minor should not be appointed. A minor fourteen years or over shall be personally cited. [Id.]

CHAPTER THREE

APPOINTMENT OF GUARDIANS

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1. REGULAR APPOINTMENTS

Article 4118. [4068–69–70] Natural guardian.—If the parents live together, the father is the natural guardian of the person of the minor children by the marriage. If one parent is dead, the survivor is the natural guardian of the person of the minor children. The natural guardian is entitled to be appointed guardian of their estates. The rights of parents who do not live together are equal; the guardianship of their minor children shall be assigned to one or the other, taking into consideration the interest of the child alone. [Acts 1876, p. 175; G. L. vol. 8, p. 1011.]

Art. 4119. [4071] [2578] [2497] By will.—The surviving parent of a minor may, by will or written declaration, appoint any person qualified to be guardian of the persons of his or her children after the death of such parent; and such person shall also be entitled to be appointed guardian of their estates, after the death of such parent. [Id.]

Art. 4120. [4072–75] Orphans.—These rules shall govern as to orphans:

1. If the parent has appointed no guardian, the nearest ascendant in the direct line of such minor is entitled to the guardianship of both the person and estate of such minor.

2. If there be more than one ascendant in the same degree in the direct line, they are equally entitled. The guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the orphan alone.

3. If the orphan has no ascendant in the direct line, the guardianship shall be given to the nearest of kin in the collateral line who comes immediately after the presumptive heir or heirs of the orphan. If there be two or more in the same degree, the guardianship shall be given to the one or the other, according to circumstances, taking into consideration the interest of the orphan alone.

4. If there be no relative of the minor qualified to take the guardianship, or if no person entitled to such guardianship applies therefor, the court shall appoint some proper person to be such guardian. [Id.]

Art. 4121. [4076] [2583] [2502] Person of unsound mind.—In the case of a person of unsound mind, or an habitual drunkard, the nearest of kin to such person, who is not disqualified, shall be entitled to the guardianship. Where two or more are equally entitled the guardianship shall be given to one or the other, according to circumstances, taking into consideration the interest of the ward alone. If such ward have a husband or wife who is not disqualified, such husband or wife shall be entitled to the guardianship in preference to any other person.

Art. 4122. [4078] [2585] [2504] Persons disqualified.—The following persons shall not be appointed guardians:

1. Minors, except the father or mother.
2. Persons whose conduct is notoriously bad.
3. Persons of unsound mind.
4. Habitual drunkards.
5. Those who are themselves or whose father or mother are parties to a lawsuit, on the result of which the condition of the minor or part of his fortune may depend.
6. Those who are debtors to the minor, unless they discharge the debt prior to such appointment; but this subdivision does not apply to the father or mother of such minor. [Id.]

Art. 4123. [4080–81] What facts must appear.—At a regular term of the court, after notice as required by law, the court may proceed to the appointment of a guardian. Before appointing a guardian, the court must be satisfied:

1. That the person for whom a guardian is sought to be appointed is either a minor, a person of unsound mind, an habitual drunkard, or a person for whom it is necessary to have a guardian appointed to receive funds or money due such person from the Federal Government.

2. That the court has jurisdiction of the case.

3. That the person to be appointed guardian is not disqualified to act as such and is entitled thereto; or, in case no person who is entitled thereto applies therefor, that the person appointed is a proper person to act as such guardian.

4. That the rights of persons or property are to be protected. All issues herein shall be determined by the court on hearing, unless a jury is demanded, but it shall not be a prerequisite to such appointment that there has been a jury trial, verdict and judgment that the person is of unsound mind, or is an habitual drunkard, nor is such person required to be present at the trial.

The remedy herein provided is cumulative of that provided in Chapter 12 hereof, for the guardianship of persons of unsound mind and habitual drunkards, and may be resorted to without invoking the latter remedy. [Acts 1921, p. 15; Acts 1927, 40th Leg., p. 257, ch. 179, § 3.]

Art. 4124. [4082] [2589] [2508] Single appointment.—Only one guardian can be appointed of the person or estate; but one person may be appointed guardian of the person, and another of the estate, whenever the court shall be satisfied that it will be for the advantage of the ward to do so. Nothing in this article shall be held to prohibit the joint appointment of husband and wife. [Acts 1870, p. 141; G. L. vol. 6, p. 315.]

Art. 4125. [4083] [2590] [2509] Order of appointment.—The order of the court appointing a guardian shall be entered upon the minutes of the court and shall specify:

1. The name of the person appointed.

2. The name of the ward.
3. Whether the guardian of the person, of the estate, or of both the person and estate of such ward.
4. The amount of the bond required of such guardian.
5. If it be the guardianship of the estate, the order shall also appoint three or more disinterested persons to appraise such estate, and return such appraisement to the court.
6. It shall direct the clerk to issue letters of guardianship to the person appointed when such person has qualified according to law.

Art. 4126. [4084] [4079] Minor may select.—A minor upon attaining the age of fourteen years, may select another guardian either of his person or estate, or both, if such minor has a guardian appointed by the court, or if, having a guardian appointed by will or written declaration of the parent of such minor, such last named guardian dies, resigns or is removed from guardianship; and the court shall, if satisfied that the person selected is suitable and competent, make such appointment and revoke the letters of guardianship to the former guardian. Such selection may be made in open court, in person, or by attorney, by making application therefor as provided by law.

Art. 4127. [4085] [2592] [2511] Failure to qualify.—If a person appointed guardian fails to qualify as such according to law, or dies, resigns, or is removed, the court shall appoint another guardian in his stead.

Art. 4128. [4086–87] Term of appointment.—The guardian of a minor continues in office, unless sooner discharged according to law, until the minor dies or becomes twenty-one years of age, or being a female, marries. The guardian of a person of unsound mind or of an habitual drunkard shall continue as such, unless sooner discharged according to law, until the ward shall die or be restored to sound mind or to sober habits. [Acts 1876, p. 178; G. L. vol. 8, p. 1014.]

Art. 4129. [4088] [2595] Receiver.—When from any cause, the estate of a minor, person of unsound mind or of an habitual drunkard is without a guardian, and such estate is likely to injure or waste, the county judge shall, with or without application, in term time or in vacation, appoint some suitable person to take charge of such estate, as receiver, until a guardian can be regularly appointed, and shall make such other orders as may be necessary for the preservation of such estate. Such appointment and orders shall be recorded in the minutes of the court, and shall specify the duties and powers of such receiver. The provisions of the law governing in the case of a temporary administration upon the estate of a decedent shall govern in the case of a receiver appointed under this article, so far as the same are applicable. [Acts 1885, p. 81; G. L. vol. 9, p. 702.]

Art. 4130. [4088] [2595] Receivership; expenditures.—If, during the pendency of such receivership, the wants of such minor, person of unsound mind or habitual drunkard should require the use of the means of such estate for their subsistence, clothing or education, the county judge, with or without application, in term time or in vacation, shall appropriate, by an order entered upon the minutes, out of the effects of such estate, an amount sufficient for such purpose; said amount to be paid by such receiver upon such claims for such subsistence, clothing or education as may have been presented to such county judge and approved, and by him ordered to be paid. [Id.]

Art. 4131. [4088] [2595] Receivership; loans.—If, at any time, the receiver shall have on hand any money belonging to such estate beyond what may be necessary for the present necessities and the current expenses of the beneficiary of said estate, he may, under the direction of the county judge, loan said money for such length of time as such judge may direct, for the highest legal rate of interest that can be obtained therefor, in the manner and upon the security and terms provided in Chapter 7 of this title. [Id.]

Art. 4132. [4089] [2596] [2515] Non-resident minor.—When a non-resident minor or person of unsound mind owns property in this State, guardianship of such estate may be granted when it is made to appear that a necessity exists therefor, in like manner as if such minor or person of unsound mind resided in this State. The court making such grant of guardianship shall take all such action and make all such orders in reference to the estate of the ward, for the maintenance and support or education and care of such ward, out of the proceeds of such ward's estate, in like manner as if the ward had resided in this State and guardianship of the person of said ward had been granted by said court, and the ward had been sent abroad by order of court for education or treatment. [Acts 1876, p. 176; G. L. vol. 8, p. 1012.]

Art. 4133. [4090] [2597] [2516] Letters of guardianship.—When a person appointed guardian has qualified as such, by taking the oath and giving the bond required by law, the clerk shall issue to him a certificate under seal, stating the fact of such appointment and qualification and date thereof; which certificate shall constitute letters of guardianship, and be evidence of the authority of such person to act as guardian.

2. TEMPORARY APPOINTMENTS

Art. 4134. [4091–94] Temporary guardian.—Whenever it appears to the county judge that the interest of any minor and his or her estate, or either, requires immediate appointment of a guardian, he shall, either in term time or in vacation, without citation and with or without written application therefor, appoint some suitable person temporary guardian of the person of such minor and his or her estate or either. Such appointment shall not take effect until such appointee has taken the oath and given the bond required by law. The appointment so made may be made permanent. [Acts 1905, p. 18.]

Art. 4135. [4092] Order.—The order of the court in making such appointment shall state that unless the same is contested at the next regular term of the court, after notice, the same shall be made permanent. [Id.]

Art. 4136. [4093] Contest.—If such appointment is contested, the court shall hear and determine the same as the law and the facts require. During the pendency of such contest, the person so appointed as temporary guardian shall continue to act as such. If such appointment is set aside, the court shall require the person so appointed to make out and file in court a complete sworn exhibit of the condition of such minor's estate, and what disposition he has made of the same. [Id.]

Art. 4137. [4095] Notice.—Immediately after the appointment of a temporary guardian, the clerk of the court shall issue notice which shall state the name of the person appointed and when so appointed, and the name of the minor, or minor's estate, or both, which notice shall cite all persons interested in the welfare of such minor to appear at the term of court named in such notice, and contest such appointment if they so desire; and, that, if such appointment is not contested at the term of court so named in the citation, then the same shall become permanent. [Id.]

Art. 4138. [4096] Provisions applicable.—All the provisions of this title relating to the guardianship of the persons and estates of minors shall apply to temporary guardianship of the persons and estates of minors, in so far as the same are applicable. [Id.]

CHAPTER FOUR

OATH AND BOND OF GUARDIANS

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Article 4139. [4097] [2598] [2517] Oath of guardian.—The guardian shall take an oath to discharge faithfully the duties of guardian of the person (or of the estate, or of the person and estate, as the case may be) of the ward, according to law; which oath shall be indorsed on the bond of such guardian. [Acts 1876, p. 177; G. L. vol. 8, p. 1013.]

Art. 4140. [4098] [2599] [2518] Guardian of person: bond.—The bond of a guardian of the person of a ward shall be in an amount to be fixed by the court granting such guardianship, not to exceed one thousand dollars, and shall be made payable to and to be approved by the county judge of the county where such guardianship is pending, conditioned that such guardian will faithfully discharge the duties of guardian of the person of such ward. [Id.]

Art. 4141. [4099] [2600] [2519] Guardian of estate, bond.—The bond of the guardian of the estate of a ward shall be in amount equal to double the estimated value of the personal property belonging to such estate, plus a reasonable amount to be fixed at the discretion of the county judge, to cover rents, revenues and income derived from the renting or use of real estate belonging to such estate. Such bond shall be payable to and approved by the county judge of the county where such guardianship is pending, and conditioned that such guardian will faithfully discharge the duties of guardian of the estate of such ward according to law. It shall be the duty of such county judge to annually examine into the condition of the estate of the ward and the solvency of such guardian's bond, and to require such guardian at any time it may appear that such bond is not ample security to protect such estate and the interests of his ward, to execute another bond in accordance with law. In such case, he shall notify the guardian as in other cases; and should damage or loss result to the estate of any ward through the negligence of such county judge to perform such duties, such county judge shall be liable on his official bond, payable to such ward, in an amount equal to the loss due to such negligence. [Acts 1895, p. 223; Acts 1913, p. 321; G. L. vol. 10, p. 953.]

Art. 4142. [4100] [2601] [2520] Sureties.—Any bond required by the provisions of this chapter to be given by a guardian shall be subscribed by such guardian, and at least two good and sufficient sureties, to be approved by the county judge of the county in which the guardianship is pending; or such bond shall be subscribed by such guardian and by one or more corporations authorized to execute surety bonds. [Acts 1897, p. 52; Acts 1899, p. 229.]

Art. 4143. [4101] [2601] [2520] Premium.—If such bond is made by a corporation authorized to issue and execute guaranty or indemnity bonds, the premium on such bond shall be paid by the guardian, and shall not be paid out of the estate of his ward. [Acts 1897, p. 52; G. L. vol. 10, p. 1106.]

Art. 4144. [4103] [2602] [2521] Of person and estate.—Where one person is appointed guardian of both the person and estate of a ward, only one bond shall be given by such guardian. [Acts 1876, p. 177; G. L. vol. 8, p. 1013.]

Art. 4145. [4104] [2603] [2522] Appointee under will.—When the surviving parent of a minor has provided by will, regularly probated, that a guardian appointed by such will shall not be required to give bond for the management of the estate devised by such will, the direction shall be observed, unless it be made to appear at any time that such guardian is mismanaging the property, or is about to betray his trust; in which case, upon proper proceedings had for that purpose, such guardian may be required by the court to give bond as in other cases. [Id.]

Art. 4146. [4105] [2604] [2523] Married woman, bond.—Where a married woman is appointed guardian, she may, either jointly with her husband or without him, if he is absent from the State or refuses to join in the bond with her, execute a bond as guardian, and acknowledge the same before a proper officer. Such bond, when signed by her, alone, shall bind her estate in the same manner as if she were unmarried. [Id.]

Art. 4147. [4106] [2605] [2524] Parents under age.—A bond executed by the father or mother of a minor, as guardian of such minor, when such father or mother is under twenty-one years of age, shall be as valid as if he or she were of full age. [Id.]

Art. 4148. [4107] [2606] [2525] New bond.—The county judge shall have power to require new bonds of guardians in any case where he has the power to require new bonds of executors or administrators, and under the same rules and regulations, and with like effect.

Art. 4149. [4108] [2607] [2526] Temporary disqualification.—When a guardian has been required to give a new bond, he shall thereafter refrain from acting as such guardian except to preserve the property in his charge, until he gives such new bond and the same has been approved, as such guardian. [Id.]

Art. 4150. [4109] [2608] [2527] Release of surety.—A surety upon the bond of a guardian may be relieved from his bond in the same manner and with like effect, as is provided in the case of a surety upon the bond of an executor or administrator. [Id.]

Art. 4151. [4110–11] Oath and bond.—The oath and bond of a guardian shall be presented to the county judge within twenty days after the order appointing such guardian, either in term time or vacation, for the action of such judge. If approved, the same shall be immediately filed with the county clerk and recorded in the minutes of said court and safely preserved.

Art. 4152. [4112] [2611] [2530] Sureties on old bond.—When a new bond has been given and approved, the sureties upon the former bond of such guardian shall not be liable for the acts of such guardian occuring [occurring] after the approval of such new bond. [Id.]

CHAPTER FIVE

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Art.
4153. Inventory.
4154. List of claims.
4155. Affidavit.
4156. Property held in common.
4157. Additional inventory.
4158. Appraisers appointed.
4159. May order supplement.
4160. Corrections.
4161. Inventories.

Article 4153. [4113] [2612] [2531] Inventory.—It shall be the duty of every guardian of an estate, as soon as he shall have collected the estate, and within thirty days after he has taken the oath and given bond, with the assistance of any two of the appraisers appointed by the court, to make and return to the court a correct inventory of all the property, real and personal belonging to said estate, which has come to his knowledge. Each article of such property shall be appraised by such appraisers, and the appraised value thereof stated opposite the same in the inventory; and the same shall be subscribed and duly

sworn to by such appraisers. [Acts 1876, p. 179; G. L. vol. 8, p. 1015.]

Art. 4154. [4114] [2613] [2532] List of claims.—The guardian shall also make out and attach to such inventory and appraisement a list of all claims belonging to the estate. Such list shall state:

1. The name of each person indebted to the estate.
2. The nature of such indebtedness, whether by note, bill, bond or other written obligation, or by account or verbal contract.
3. The date of such indebtedness, and the date when the same was due or will be due.
4. The amount of each claim and the rate of interest thereon, and the time for which the same bears interest. [Id.]

Art. 4155. [4115] [2614] [2533] Affidavit.—The guardian shall annex to the inventory, appraisement, and list of claims, an affidavit in substance as follows: "I, A. B., guardian of the estate of C. D., do solemnly swear that the inventory and list of claims annexed hereto are a true and perfect inventory and list of all the property, real and personal, belonging to said estate that has come to my knowledge;" which affidavit shall be subscribed and sworn to by such guardian.

Art. 4156. [4116] [2615] [2534] Property held in common.—If any property be held or owned by the ward in common with another, it shall be distinctly stated in the inventory or list of claims, the items thereof that are so held or owned, the names and the relationship, if any, of the other part owner or owners, and the interest or share of such ward in such property. [Id.]

Art. 4157. [4117] [2616] [2535] Additional inventory.—Whenever any guardian of an estate shall discover any property belonging to such estate which has not been inventoried and appraised, or any claim that has not been embraced in the list of claims, he shall forthwith make out and return to the court an additional inventory or list of claims, embracing such property or claims. [Acts 1848, p. 285; P. D. 3899; G. L. vol. 3, p. 285.]

Art. 4158. [4118] [2617] [2536] Appraisers appointed.—Where an additional inventory of property has been returned by the guardian, the court shall appoint appraisers to appraise such property as in the case of original inventories, or such appraisers may be appointed before the return of such additional inventory either in term time or in vacation, by an order of the court. [Id.]

Art. 4159. [4119] [2618] [2537] May order supplement.—Whenever it shall be shown to the county judge that any guardian has not returned to the court an inventory and appraisement and list of claims of all the property belonging to his ward, such judge shall cause such guardian to be cited, either in term time or in vacation, and require him to return to the court an additional inventory and appraisement, or an additional list of claims, as the case may be, in the same manner as in the case of original inventories and appraisements and lists of claims are required to be returned, and within the same time; but such inventory and appraisement and list of claims shall only embrace such property as has been omitted in previous inventories and appraisements and lists of claims. [Id.]

Art. 4160. [4120] [2619] [2538] Corrections.—Erroneous inventories, appraisements and lists of claims may be corrected, and new appraisements may be ordered, under the same rules and regulations as are provided in the case of estates of decedents.

Art. 4161. [4121] [2620] [2539] Inventories.—All inventories, appraisements, or lists of claims, when approved by the court, or the record thereof, or copies of the same or the record thereof, duly certified under the seal of the county clerk, may be given in evidence in any suit by or against such guardian, but shall not be conclusive against the ward, if it be shown that there is other property or claims of such ward not included therein, or that the estate or claims were actually worth more than the value at which they are set down in such inventories, appraisements or lists. [Id. P. D. 3900.]

CHAPTER SIX

POWERS AND DUTIES

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4162. Of the person, powers.
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4169. Discharge of debt.
4170. Expenses of ward.
4171. Education of ward, etc.
4172. Property held in common.
4173. Ward's title.

Article 4162. [4122] [2621] [2540] Of the person, powers.—The guardian of the person is entitled to the charge and control of the person of the ward, and the care of his support and education, and his duties shall correspond with his rights. [Acts 1876, p. 181; G. L. vol. 8, p. 1017.]

Art. 4163. [4123] [2622] [2541] Of the person, duties.—It is the duty of the guardian of the person of a minor to take care of the person of such minor, to treat him humanely, and to see that he is properly educated, and, if necessary for his support, that he learn a trade or adopt some useful profession. [Id.]

Art. 4164. [4124] [2623] [2542] Of the estate, powers.—The guardian of the estate is entitled to the possession and management of all property belonging to the ward, to collect all debts, rents or claims due such ward, to enforce all obligations in his favor, to bring and defend suits by or against him; but in the management of the estate, the guardian shall be governed by the provisions of this title. [Id.]

Art. 4165. [4126] [2625] [2544] Of the estate, duties.—It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits and revenues as the estate would have produced by such prudent management. [Id.]

Art. 4166. [4125] [2624] [2543] Of person and estate.—The guardian of both person and estate has all the rights and powers and shall perform all the duties of the guardian of the person and of the guardian of the estate. [Id.]

Art. 4167. [4127] [2626] [2545] Records.—The guardian of the estate, immediately after receiving letters, shall collect, and take into possession, the personal property, books, title papers, and other papers belonging to the estate. [Id.]

Art. 4168. [4128] [2627] [2546] To collect claims, etc.—The guardian of the estate shall use due diligence to collect all claims or debts owing to the ward, and to recover possession of all property to which the ward has a title or claim; provided, there is a reasonable prospect of collecting such claims or debts, or of receiving such property; and if he neglects to use diligence, he and his sureties shall be liable for all damages occasioned by such neglect. [Id.]

Art. 4169. [4129] [2628] [2547] Discharge of debt.—The guardian of the estate may receive property in payment of debts due to the ward, if he believes the interests of his ward will be advanced thereby, being responsible for the prudent exercise of the discretion hereby conferred. [Id.]

Art. 4170. [4130] [2629] [2548] Expenses of ward.—When different persons have the guardianship of the person and estate of a ward, the guardian of the estate shall pay to the guardian of the person, semi-annually, a sum fixed by the court, for the education and maintenance of the ward, and, on failure, shall be compelled to do so by order of the court, after being duly cited. [Id.]

Art. 4171. [4131] [2630] [2549] Education of ward, etc.—The court may direct the guard-

ian of the person to expend, for the education and maintenance of his ward, a sum in excess of the income of the ward's estate; otherwise the guardian shall not be allowed, for the education and maintenance of the ward, more than the clear income of the estate. [Id.]

Art. 4172. [4132] [2631] [2550] Property held in common.—If the wards hold or own any property in common, or as part owner with another, the guardian shall be entitled to possession thereof in common with the other part owner or owners in the same manner as other owners in common or joint owners would be entitled. [Id.]

Art. 4173. [4133] [2632] [2551] Ward's title.—The guardian, or his heirs, executors, administrators or assigns shall not dispute the right of the ward to any property that came into the possession of such guardian, as guardian, except such property as shall have been recovered from the guardian, or there be a personal action pending on account of it. [Id.]

CHAPTER SEVEN

FISCAL MANAGEMENT

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Article 4174. [4134] [2633] [2552] Continuation of business.—If there be a farm, plantation, manufactory or business belonging to the estate, and if the same be not required to be at once sold for the payment of debts, the guardian of such estate, upon order of the court, shall carry on such farm, plantation, manufactory or business, or rent the same, as shall appear for the best interest of the estate. In deciding, the court shall take into consideration the condition of the estate, and the necessity that may exist for the future sale of such property for the payment of debts, or the education and maintenance of the ward, and shall not extend the time of renting such property beyond what may be consistent with the interests of the estate and of the ward. [Acts 1876, p. 182, G. L. vol. 8, p. 1018.]

Art. 4175. [4135] [2634] [2553] Rentals.—When an order of the court is made directing property to be rented, it shall be the duty of the guardian to obey such order and rent the property for the best price that can be obtained therefor, taking good security for the payment of the rent, and that the tenant will not commit nor permit any other person to commit waste on the rented premises. [Id.]

Art. 4176. [4136] [2635] [2554] Without order.—The guardian may rent the improved property of the ward other than such property named in the second preceding article without an order of the court therefor, and either at public or private renting. When he rents without an order of the court, he shall be required to account to the estate of the ward for the reasonable value of the rent of such property for the time the same was so rented.

Art. 4177. [4137] [2636] [2555] Under order.—The court may order the farm, plantation, manufactory, business, or any improved property of the estate to be rented, either at public or private renting, for any length of time, not exceeding one year, and upon such terms and conditions as the court may deem for the best interests of the ward.

Art. 4178. [4138] [2637] [2556] Unimproved land.—If the ward own wild or unimproved real property, the guardian may let out the same on improvement leases, under order of the court, for such length of time, and upon such terms and conditions as the court may direct in its order. [Id.]

Art. 4179. [4139] [2638] [2557] Guardian may be cited.—Any person upon complaint in writing filed with the county clerk may cause the guardian of the estate of a ward to be cited to appear at a regular term of the court and show cause why he should not be required to rent out the farm, plantation or other improved property of the ward, or why he should not be required to lease for improvement the wild or unimproved lands of the ward. Upon the hearing of such complaint, the court shall make such order as he may deem to be for the best interest of the estate.

Art. 4180. [4140] [2639] [2558] Investments.—If, at any time, the guardian of the estate shall have on hand money belonging to the ward beyond what may be necessary for the education and maintenance of such ward, he shall invest such money in bonds of the United States, of the State of Texas, of any county or of any district or subdivision in Texas, or of any incorporated city or town in Texas, or loan the same for the highest rate of interest that can be obtained therefor. [Acts 1913, p. 321.]

Art. 4181. [4141-42] [2640] [2559] Security for loan.—The guardian shall take the note of the borrower for money loaned, secured by mortgage with power of sale on unincumbered real estate situated in this State, worth at least twice the amount of such note, or on collateral notes secured by vendor's lien notes, as collateral, or may purchase vendor's lien notes; provided that at least one-half has been paid in cash or its equivalent, on the land for which said notes were given. When the guardian loans or invests the money of his ward he shall not pay over or transfer any money in consummation of such investment, loan or purchase until he shall have submitted all bonds, notes, mortgages, documents, abstracts and other papers pertaining to such investment, loan or purchase to some reputable attorney for examination, and shall have received a written opinion from such attorney, to the effect that all papers pertaining to such investment, loan or purchase are regular and that the title to such bonds, notes or real estate is good. The attorney making such examination shall be paid a reasonable fee, not to exceed one per cent of the amount so invested or loaned, which shall be paid by the guardian out of the funds of the ward. [Acts 1876, p. 182; Acts 1897, p. 196; Acts 1913, p. 321; G. L. vol. 8, p. 1018; G. L. vol. 10, p. 1250.]

Art. 4182. [4143] [2641] [2560] Investing in real estate.—When the guardian may think it best for his ward to have a surplus of money on hand invested in real estate, he shall file a written application in the court where the guardianship is pending, asking for an order of such court authorizing him to make such investment sought to be made, and the reasons why the guardian is of the opinion that it would be for the benefit of the ward to have the same made. [Acts 1876, p. 182; G. L. vol. 8, p. 1018.]

Art. 4183. [4144] [2642] [2561] Action of court.—When such application is filed, the attention of the judge of the court shall be called thereto, and he shall make such investigation as may be necessary to obtain all the facts concerning the investment; but shall not render an opinion or make any order on the application until after the expiration of five days from date of filing. [Acts 1876, p. 182; Acts 1913, p. 321; G. L. vol. 8, p. 1018.]

Art. 4184. [4145] [2643] [2562] Order of court.—Upon the hearing of such application, either in term time or vacation, if the court is satisfied that such investment will be beneficial to the ward, an order authorizing the same shall be made. Such order shall specify the investment to be made, and shall contain such other directions as the court may think advisable. [Id.]

Art. 4185. [4146] [2644] [2563] Approval of contract.—When any contract has been made for the investment of money in real estate under order of the court, such contract shall be reported in writing to the court by the guardian, and the court shall inquire fully into the same, and if satisfied that such investment will benefit the estate of the ward and that the title to such real estate is valid and unincumbered, the court may approve the contract and authorize the guardian to pay over the money in performance of the same; but no money shall be paid out by the guardian on any such contract until such contract has been approved by the court by an order to that effect. Such order may be made at a regular term or in vacation. [Id.]

Art. 4186. [4147] [2645] [2564] Title.—When the money of the ward has been invested in real estate, the title to such real estate shall be made to such ward; and such real estate shall be inventoried, appraised, managed and accounted for by the guardian as other real estate of the ward.

Art. 4187. [4148] [2646] [2565] Surplus.—When there is any surplus money of the estate in the hands of the guardian, any person may, by written complaint filed in the court in which such guardianship is pending, cause such guardian to be cited to appear at a regular term of such court to show cause why such surplus money should not be invested or loaned at interest, in accordance with the provisions of this chapter. Upon the hearing of such complaint, the court shall enter such order as the law and the facts may require.

Art. 4188. [4149] [2647] [2566] Duty of county judge.—When there is surplus money belonging to the ward in the hands of the guardian, the county judge shall cause such guardian to be cited to appear at a regular term of the court and show cause why said money should not be invested or be loaned at interest, under the provisions of this chapter.

Art. 4189. [4150] [2648] [2567] Liability for surplus.—If the guardian neglects to invest or loan surplus money on hand at interest when he can do so by the use of reasonable diligence, he shall be liable for the principal and also for the highest legal rate of interest upon such principal for the time he so neglects to invest or loan the same. [Id.]

Art. 4190. [4151] [2649] [2568] Liability for loans.—The guardian shall not be personally responsible for money loaned under the direction of the court, on security approved by the court, when the borrower is unable to pay the same, or because of failure of the security, unless such guardian has been guilty of fraud or negligence in respect to such loan or the collection of the same; in which case, he and the sureties upon his bond shall be liable for whatever loss his ward may have sustained by reason of such fraud or negligence. [Id.]

Art. 4191. [4152] [2650] [2569] Report.—The guardian shall report to the court in writing, verified by his affidavit, the renting or leasing of property or the investment or loaning of money belonging to the estate, within thirty days after such transaction, stating fully the facts thereof.

Art. 4192. Mineral lease.—Guardians of the estate of minors, and other persons, appointed under the laws of this State, may make oil and gas and other mineral leases upon the real estate belonging to the estates of their wards under the following rules:

1. The guardian shall file his sworn application with the County Clerk of the County where such Guardianship is pending for authority to make such oil and gas or mineral lease, and the County Judge either in term time or vacation shall hear such application and shall require proof as to the necessity or advisability of such lease, and if he shall approve the same he shall enter an order authorizing the guardian to make such oil and gas or mineral lease, which order shall set out the consideration for which said land may be leased for oil and gas or mineral purposes, shall give the name of the lessee and said order shall contain a copy of said oil and gas or mineral lease authorized to be made.

2. Previous notice thereof shall be given by the guardian for one week prior to the time the County Judge shall hear such application by publishing same in some newspaper of general circulation in the County where such guardianship is pending for one issue of said paper. Said notice shall say when and where such application shall be heard. If no such paper should be published in the County where such notice is required to be given, then said notice may be given by posting such notice at the Court House door of such County for seven days next preceding the date of such hearing. And said publishing or posting as herein provided may be shown by the return of the Sheriff or Constable or by the affidavit of any credible person made on a written copy of the notice so published or posted showing the fact of such publishing or posting.

3. No notice thereof shall be given by the County Clerk but such notice must be given by the Guardian as herein provided and when such an application is filed the Clerk shall immediately call the attention of the Judge of the Court in which such Guardianship is pending, to the filing of such application and the Judge shall designate a date to hear such application, and such date shall not be within seven days after the filing of said application and such hearing may be continued from time to time until he is satisfied concerning the application.

4. After hearing of said application and the granting of the same by the Court said guardian shall be fully authorized to make the oil and gas or mineral lease upon the real estate of the ward, in accordance with the judgment of the Court thereon, but such oil and gas or mineral lease shall not be valid until said guardian files a good and sufficient bond in double the amount of the cash bonus that may be paid for said oil and gas or mineral lease, or in the event no cash bonus is paid, then such sum as may be fixed by the County Judge, which bond shall be approved by the County Judge, filed with the County Clerk and recorded in the minutes of such Court. When such order has been made and such bond has been executed and approved, the guardian shall be fully authorized to execute and deliver such lease, and it shall not be necessary for the Court to make any order confirming said lease.

5. No such lease shall extend beyond the time that the ward shall become twenty-one years of age, unless at that time the lessee shall have discovered such minerals as are specified in the lease, or any of such minerals, upon the premises described in such lease, in which event the same shall remain in full force so long as such minerals or any of them shall be produced in paying quantities. The marriage of the female ward shall not terminate any lease made hereunder until such ward actually reaches the age of twenty-one years. [Acts 1913, p. 261; Acts 1915, p. 85; Acts 1919, p. 185; Acts 1927, 40th Leg., p. 237, ch. 164, § 1.]

CHAPTER EIGHT

SALES

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1. MODE

Article 4193. [4153] [2651] [2570] Perishable property.—The guardian of the estate, after appraisement, shall promptly apply for an order of the court to sell at public or private sale, for cash or on credit not exceeding six months, all the personal property belonging to the ward that is liable to perish, waste or deteriorate in value, or that will be an expense or disadvantage to the estate to keep. [Acts 1876, p. 181; G. L. vol. 8, p. 1017.]

Art. 4194. [4154] [2652] [2571] Wild stock.—If he shall represent to the court on oath that there is stock belonging to the estate which he is unable to collect or command, the court may order that the same be sold at public auction, on such credit as the court may deem reasonable, not exceeding twelve months, taking notes bearing interest at the rate of ten per cent per annum from the date of sale, with good and sufficient security for the purchase money. Such sale shall be advertised, made, returned and acted upon by the court the same as sales of real estate. [Id.]

Art. 4195. [4155] Guardian may sell real estate.—When the income of the ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay the debts against the estate, the guardian, or any person holding a valid claim against the estate, may, by written application to the court in which such guardianship is pending, ask for an order for a sufficient amount of real estate to be sold to make up the deficiency, or when the property of the ward consists in whole or in part of an undivided interest in real estate and the guardian believes it to be the best interest of the estate of the ward to sell such real estate, he may, by written application to the court in which such guardianship is pending, ask for an order for such real estate to be sold; or when the real estate of such minor is encumbered by a valid lien to secure a debt which is due or is about to become due, or when the taxes are due on the property of said ward, or when the holder of such debt has applied for or is threatening to apply for an order of sale of the real estate of the minor and the guardian has not in his hands sufficient funds to pay such debts, such guardian may by written application to the court in which such guardianship is pending, apply in writing for an order to obtain an extension of such debt and to secure the same by a mortgage or deed of trust on the real estate of such minor; or if the real estate of such minor or any part thereof is not revenue producing, or the revenue therefrom could be increased by making improvements or additional improvements or repairs thereon, such guardian may make a written application to such court to make such improvements or repairs on such real estate as he may deem beneficial to the ward, and to secure the payment for the same by mortgage, deed of trust, mechanics contracts and materialmen lien.

From Acts 1925, 39th Leg., p. 338, c. 134, § 1, unchanged.

Art. 4195a. Sale of unproductive real estate.—Whenever the estate of a minor consists in part of real estate, and any part or parcel of such real estate produces no revenue or does not produce sufficient revenue to make a fair return upon the value of such part or parcel of said real estate, and the Guardian of said estate does not deem it advisable or advantageous to said estate to improve such part or parcel of said estate, and said Guardian believes the sale of such part or parcel of said real estate and the investment of the money derived therefrom would be to the best interests of said estate under all the circumstances, said guardian may make a written application to the court in which such guardianship is pending, stating such facts and asking for an order to sell such part or parcel of said real estate, and the Court on hearing of such application, after notice as provided in Article 4197 may order the sale of said real estate, in whole or in part. [Acts 1927, 40th Leg., p. 43, ch. 31, § 2.]

Art. 4196. [4156] Application for sale.—The guardian shall apply for such order as is provided in the preceding article, whenever it appears that a necessity exists therefor, and set forth fully in his application with an exhibit, under oath, showing fully the condition of the estate. [Acts 1925, p. 338.] [39th Leg., ch. 134, § 1.]

Art. 4197. [4157] [2655] [2574] Guardian cited.—When the application for the sale of real estate is made by any other person than the guardian of the estate, the guardian of the estate shall be cited to appear at a regular term of the court and show cause why the order should not be made and also to present to the court an exhibit, under oath, showing fully the condition of the estate.

Art. 4198. [4158] [2656] [2575] Hearing on application.—Whenever an application for the sale of real estate is filed, the clerk shall immediately call the attention of the judge of the court in which such guardianship is pending to the filing of the application, and the judge shall designate a day to hear such application, which may be heard in term time or vacation, provided such application shall remain on file at least five days before any orders are made, and the judge may continue such hearing from time to time until he is satisfied concerning the application. [Acts 1876, p. 181; Acts 1913, p. 321; G. L. vol. 8, p. 1017.]

Art. 4199. [4160] [2658] [2577] Advantage of estate.—When a sale of real estate is ordered, it shall be of the property which the court may deem most advantageous to the estate to be sold. [Id.]

Art. 4200. [4161] [2659] [2578] Terms of sale.—A sale of real estate may be for cash, or for part cash and part credit, at public auction or private sale, as may appear to the court to be the best interest of the estate. [Acts 1892, C. S., p. 9; Acts 1913, p. 321; G. L. vol. 10, p. 373.]

Art. 4201. [4162] [2660] [2579] Order of sale.—An order for the sale of real estate shall state:

1. The property to be sold, giving such description of it as will identify it.
2. Whether it is to be sold at public auction or at private sale, and if at public auction, the time and place of such sale.
3. The necessity and purpose of such sale.
4. It shall require the guardian to file a good and sufficient bond, subject to the approval of the court, in an amount equal to twice the amount for which such real estate is sold.
5. It shall require the sale to be made and the report thereof to be returned to the court in accordance with law. [Acts 1876, p. 180; Acts 1913, p. 321; G. L. vol. 8, p. 1016.]

Art. 4201a. Validating sales.—1. Wherever it shall appear that lands of a ward have been conveyed by a guardian of such ward, under an order of the county court, entered in the minutes of the county court, authorizing the making of such conveyance, and it shall appear that the order of sale in such proceeding failed to require the guardian to file the bond as provided by Subdivision No. 4, of Article 4201, or that the bond was not filed and approved by the court as required by Article 4191 [4216] either the guardian of the ward whose lands were conveyed, or the owner or anyone having an interest in the land, may, while the guardianship is still pending, apply to the county court of the county where the proceeding for the sale of the land was had, at a regular term of said court for an order confirming the sale and validating the title attempted to be conveyed by the gurdian [guardian] in the earlier proceeding. Such application shall state the name, age and residence of the ward and name and

residence of the guardian, description of the property, date when sold, and reference to the proceedings formerly had.

2. Upon the filing of such application the clerk shall immediately issue citation which shall state that the application has been filed, by whom, a description of the property, and the purpose of the application, and shall name the ward, and guardian, if the applicant be other than the guardian, and shall cite all persons interested in the welfare of the ward, or having any interest in the property, to appear at a term of the court named in the citation, and contest such application if they see proper. Such citation shall be served as required for service of other citations in guardianship proceedings.

3. At a regular term of the county court, after citation has been properly served, the court shall inquire into the facts and hear evidence in support of the application, and if it shall appear to the satisfaction of the court that the sale was made for the reasonable value of the property at the time of sale, and that the guardian received the proceeds of the sale, the court shall require the guardian to make and file a satisfactory bond to be approved by the court in an amount equal to twice the amount for which the property was sold, and upon the making, filing and approval of such bond the court shall enter an order confirming such sale, and upon the entry of such order in the minutes of such court such sale shall be, and hereby is, validated.

4. Nothing in this Act shall be construed as attaching any liability to the sureties on the general bonds of guardians heretofore made that did not exist prior to the enactment of this Act.

From Acts 1925, 39th Leg., c. 119, p. 303, §§ 1-4, unchanged except the substitution of "article 4191" for "article 4177, as amended," which should be article 4216 hereof.

Art. 4202. [4163] [2661] [2580] Place of sale.—All private sales of real estate shall be made in the county where the guardianship is pending; all public sales of real estate shall be made in the county where the real estate is situated. [Acts 1876, p. 180; Acts 1913, p. 321; G. L. vol. 8, p. 1016.]

Art. 4203. Notice of sale of real estate.—The time and place of making a public sale of real estate by a guardian under an order of the court shall be advertised by the officer by having notice thereof published in the English language once a week for three consecutive weeks preceding such sale in some newspaper published in the county where the land is situated. The first of said publications shall appear not less than twenty days immediately preceding the day of sale; said notice shall contain a statement of the authority by virtue of which the sale is to be made, and the time and place of sale. It shall also contain a brief description of the property to be sold, the number of acres of original survey, locality in the county and the name by which the land is most generally known. It shall not contain the field notes. If no newspaper is published in the county, or if published in the county refuses to publish the notice, the officer shall post notices in writing in three public places in the county, one of which shall be at the courthouse door, for at least twenty days successively next before the day of the sale. The publisher's fee shall be fifty cents per square for the first insertion and thirty cents per square for the subsequent insertions. Ten lines shall constitute a square. In no case shall the fee exceed five dollars.

Art. 4204. [4164] [2662] [2581] Credit sale.—When real estate is sold partly on credit, the cash payment shall not be less than one-third of the purchase price, and the purchaser shall execute notes for the deferred payments maturing in equal annual amounts, the last note to mature not later than five years from date of deed, to bear interest from date at a rate not less than six per cent, payable annually. Default of the payment of principal or interest or any part thereof when due, shall mature the whole debt; all notes for the deferred payments to be secured by vendor's lien, retained in deed and notes upon the property sold, and further secured by deed of trust upon the property sold with usual provisions for foreclosure and sale upon failure to make payments provided in deed and notes. [Acts 1892, C. S., p. 9; Acts 1913, p. 321; G. L. vol. 10, p. 373.]

Art. 4205. [4165] [2663] [2582] Purchase by guardian.—The guardian shall not become the purchaser either directly or indirectly of any property of the estate sold by him. If any guardian shall, directly or indirectly, become the purchaser of any property of his ward, at a sale made by such guardian, upon written complaint of any person, and after service of citation upon such guardian, and upon proof, such sale shall be held void and by the court set aside by order to that effect. The costs of such sale, and of suit, shall be adjudged against such guardian individually.

Art. 4206. [4166] [2664] [2583] Bidder's liability.—When any person shall bid off property offered for sale by a guardian, and shall fail to comply with the terms of the sale, the facts shall be reported to the court by the guardian; and such person so failing to comply shall be liable to pay such guardian for the use of the estate, ten per cent on the amount of his bid; and, also, the deficiency, if any, in price on the second sale of such property, to be recovered by suit in the county where such sale was made.

Art. 4207. [4167] [2665] [2584] May continue sale.—Public sales may be continued from day to day in case the day set apart for any such sale shall be insufficient to complete the same, by giving public notice verbally of such continuance at the conclusion of the sale each day. The continued sale shall commence and conclude within the hours prescribed for public sales under execution.

Art. 4208. [4169] [2667] [2586] Private sale.—Notice of a private sale of the property of the ward to be made by a guardian is not required to be given.

Art. 4209. [4170] [2668] [2587-2588] Mortgaged property.—Any person holding a claim against the estate of a ward, secured by mortgage or other lien, may obtain an order for the sale of the property upon which he has such mortgage or other lien, or so much thereof as may be required to satisfy the claim, by causing notice to be posted and the guardian to be cited to appear at a regular term of the court and show cause why such order should not be made. Such sale shall be made upon such terms as the court may direct, which shall be stated in the order of sale. The notice and other proceedings shall be the same as in other sales by guardians. [Id.]

Art. 4210. [4171] [2669] [2589] Lien, discharge of.—If it appears to the court that the discharge of such mortgage or other lien out of the general assets would be beneficial to the estate, the payment may be ordered to be so made, instead of ordering a sale of the property. [Id.]

Art. 4211. [4172] [2670] Interest on ward's debts.—Should an estate in the hands of a guardian be involved in debt, and it appears to the court that the guardian can discharge existing debts to the advantage of the estate by the hypothecation or mortgage of real estate at a lower rate of interest, or court may, in its discretion, by order, allow the guardian to pay off and discharge existing debts by the execution of a mortgage or deed of trust upon real estate to secure the person furnishing the money for that purpose; acts of guardians under this article shall be reported to the court and approved as in case of sales. No guardian shall renew any indebtedness or evidence thereof except by order of the court made upon application and notice as in case of sales of land. [Acts 1892, C. S., p. 10; G. L. vol. 10, p. 374.]

Art. 4212. [4173] [2671] May renew debt.—Should a guardian not have sufficient funds in hand belonging to the estate of his ward to pay and discharge any existing debt, he may renew the evidence of the same in like manner as his ward could if able to act; and such act of the guardian shall have the

same force and effect with reference to such novated paper as if done by the ward. No such guardian shall renew the evidences of any debt against the estate of his ward barred by the statutes of limitations; nor shall such guardian renew the evidences of any debt that may have been made or contracted by his ward during his minority or other disability. [Acts 1892, C. S., p. 10; Acts 1913, p. 321; G. L. vol. 10, p. 374.]

2. REPORTS AND APPROVAL OF SALES

Art. 4213. [4174] [2672] [2590] Time of report.—All sales of the property of the ward shall be reported by the guardian to the court in which the guardianship is pending within thirty days after the sale is made.

Art. 4214. [4175] [2673] [2591] Report of sale.—Reports of sale shall be in writing, and subscribed and sworn to by the guardian. They shall show:

1. The time and place of the sale.
2. The property sold, describing it.
3. The name of the purchaser of the property.
4. The amount for which each article or property was sold.
5. The date of the order of sale.
6. Whether such sale was at public auction or a private sale.
7. The terms of the sale.
8. Whether the purchaser has complied with the terms of the sale.

Art. 4215. [4176] [2674] [2592] Filing report.—A report of sale may be made in term time or vacation, and, when returned, shall be filed by the clerk, and the filing thereof noted in the case upon the judge's docket.

Art. 4216. [4177] [2675] [2593] Action of the court.—At any time after the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which such sale was made, and hear evidence in support of or against such report, and if satisfied that such sale was fairly made and in conformity with law, and that the guardian has filed bond as required herein, which has been duly approved by the court, the court shall cause to be entered a decree confirming such sale, and order the report of sale to be recorded by the clerk, and the proper conveyance of the property sold to be made by the guardian to the purchaser, upon compliance by such purchaser with the terms of sale. [Acts 1876, p. 185; Acts 1913, p. 321; G. L. vol. 8, p. 1021.]

Art. 4217. [4178] [2676] [2594] Order for resale.—If the court is not satisfied that the sale was fairly made, and in conformity with law, order shall be entered, setting the same aside, and ordering the property to be again sold if necessary.

Art. 4218. [4179] [2677] [2595] Conveyances.—After a sale has been confirmed by a decree of the court, and after the purchaser has complied with the terms of the sale, the guardian shall execute and deliver to the purchaser a proper conveyance of the property. In sales of personal property, no conveyance shall be necessary; but the decree of the court confirming the sale shall vest the title of the ward to the property sold in the purchaser, and shall be prima facie evidence that the law has been complied with in making such sale. [Id.]

Art. 4219. [4180] [2678] [2596] Conveyance of real estate.—If real estate be sold, the conveyance shall be by deed, and shall refer to the decree of the court confirming the sale and ordering the conveyance to be made, by giving the date and term of the court of such order. Such conveyance shall vest the right and the title of the ward to such real estate in the purchaser, and shall be prima facie evidence that the law has been complied with in making such sale. [Id.]

Art. 4220. [4181] [2679] [2597] Prerequisites of grant.—No conveyance of real estate sold shall be executed and delivered by the guardian to the purchaser until the terms of the sale shall have been complied with by such purchaser. When such sale has been made for part cash and part credit, the guardian shall, before delivering a conveyance of the property to the purchaser, take from such purchaser a note or notes for the deferred payment, bearing interest at the rate of not less than six per cent per annum, payable annually, secured by vendor's lien and a deed of trust, with usual provisions for foreclosure and sale, as additional security, and to file such deed of trust for record in the county where such real estate is situated. [Acts 1913, p. 321.]

Art. 4221. [4182] [2680] [2598] Penalty.—Should the guardian neglect to take the note, security and mortgage, and file such mortgage for record in the proper county before delivering a deed to the purchaser, such guardian and sureties upon his bond shall be liable for whatever loss may accrue to the estate of the ward by reason of such neglect.

Art. 4222. [4183] [2681] [2599] Vendor's lien.—All notes executed for the purchase money of real estate, under the provisions of this chapter, shall hold the vendor's lien on the real estate for which such notes were given against all persons having notice, express or implied, in favor of the estate, whether the mortgage be recorded or not; and such lien shall in no case be waived.

Art. 4223. [4184] [2682] [2600] Failure to sell.—If, from any cause, the guardian shall fail to sell any real estate ordered to be sold at the time specified in the order, he shall report under oath the facts to the court or judge, and the judge in term time or vacation may by an order appoint another day for such sale. [Id.]

CHAPTER NINE

ANNUAL ACCOUNTS

Art.
4224. Guardian of person.
4225. Annual account.
4226. Annual account, requisites of.
4227. Failure to return.

Article 4224. [4185] [2683] [2601] Guardian of person.—The guardian of the person, where there is a separate guardian of the estate, shall annually return to the court his sworn account showing each item of expenditure since the last account for the education and maintenance of the ward. [Acts 1876, p. 186; G. L. vol. 8, p. 1022.]

Art. 4225. [4186] [2684] [2602] Annual account.—The guardian of an estate shall annually return to the court an account showing:

1. Any property that may have come to his knowledge belonging to his ward which has not been previously inventoried or listed.
2. Any changes in the property of the ward which have not been previously reported.
3. A complete account of receipts and disbursements since the last annual account.
4. All claims that have been allowed by him against the estate since the last annual account that are still unpaid.
5. All claims that have been rejected by him since the last annual account, and whether the same have been sued upon or not.
6. The money and property still on hand, and the condition of such property, and the use that is being made of the same.
7. Such other facts as may be necessary to show the true and exact condition of the estate.

Annexed to such account, shall be a certificate by an executive officer of any bank or trust company in which the money on hand is deposited showing the amount thereof, and the affidavit of the guardian that such account contains a correct and complete statement of the matters to which it relates. Where the ward is a beneficiary of the United States Veterans Bureau or the United States Pension Bureau, a complete certified copy of annual and other accounts of the guardians, certified to by the clerk of the couret [court] shall be mailed by said clerk to the United States Veterans Bureau or Pension Bureau, as the case may

be, within ten days after filing. [Acts 1925, p. 367.] [39th Leg., ch. 156, § 1.]

Art. 4226. [4187–8–9–90] Annual account, requisites of.—These rules shall govern an annual account:

1. When presented, it shall be filed, and the filing thereof noted upon the judge's docket, and before being acted on shall remain on file five days.

2. At any time after five days from the filing of an annual account, the judge may act thereon, and may continue the hearing thereon until fully advised as to all items of such account.

3. The guardian must produce and file proper vouchers for each item of credit claimed by him in his account, or support the same by satisfactory evidence.

4. If the account be found incorrect, it shall be corrected. When correct, it shall be approved by an order of the court. [Id. Acts 1913, p. 321.]

Art. 4227. [4191–2] Failure to return.—If the guardian fails to return an annual account, he shall be cited to return the same at the next term of the court, and to show cause for such failure. If the guardian fails to return such account after being so cited, or fails to show good cause for such failure, he may be fined by the court not exceeding five hundred dollars, for the use of the county; and he and his sureties shall be liable for any fine imposed and all damages sustained by reason of such failure. [Id.]

CHAPTER TEN

DEATH, RESIGNATION AND REMOVAL

Art.
4228. Death.
4229. Resignation.
4230. Notice.
4231. Service.
4232. Resignation: proceedings.
4233. Removal without notice.
4234. Removal after citation.
4235. Order of removal.
4236. Disqualification.
4237. Transfer of property.
4238. Subsequent guardian.

Article 4228. [4194] [2691] [2609] Death.—When a guardian dies, the court, on application, shall appoint another. [Acts 1876, p. 179; G. L. vol. 8, p. 1015.]

Art. 4229. [4195] [2692] [2610] Resignation.—A guardian who wishes to resign shall present his written application to that effect to the court accompanied by a full and complete sworn account of the condition of the estate and of his guardianship. [Id.]

Art. 4230. [4196] [2693] [2611] Notice.—Upon the filing of such application and account, the clerk shall issue a notice to all persons interested in such guardianship stating:

1. That such guardian has filed his application for leave to resign the guardianship, accompanied by an account for final settlement thereof.

2. It shall notify all persons interested in the guardianship that they may appear at a certain term of the court and contest the account of the guardian. [Id.]

Art. 4231. [4197] [2694] [2612] Service.—Three copies of such notice shall be duly posted for at least twenty days before the return term thereof, in three public places in the county, one at the courthouse door, and the others at two public places, not in the same city or town. The officer posting such notices shall make due return of such posting. [Id.; Acts 1927, 40th Leg., p. 22, ch. 16, § 1.]

Art. 4232. [4198] [2695] [2613] Resignation: Proceedings.—Upon the hearing of such application and account, if it appear that such guardian has accounted for all the estate according to law, the court shall enter an order that he deliver the estate remaining in his possession, or the person of his ward, or both, to some person who has or may be appointed and qualified as guardian in his place. Upon compliance with such order and surrender of his letters of guardianship, such guardian shall be permitted to resign his trust and be discharged, and an order to that effect shall be made by the court. [Id.]

Art. 4233. [4199] [2696] [2614] Removal without notice.—Guardians shall be removed in the following cases, without notice, at a regular term of the court:

1. When they fail to return, within thirty days after qualification, an inventory and list of claims of the property of the estate which has come to their knowledge.

2. When they have been required to give a new bond, and fail to do so within the time prescribed.

3. When they have removed from the State. [Id.]

Art. 4234. [4200] [2697] [2615] Removal after citation.—A guardian may be removed by the court of its own motion, or on the motion of any person interested in the ward, or his estate, after being cited to answer:

1. When he fails to return any account which is required to be returned by any provision of this title.

2. When he fails to obey any proper order of the court or judge.

3. When there is good cause to believe that he has misapplied, embezzled or removed, or is about to misapply, embezzle or remove from the State, the property committed to his charge, or any part thereof.

Art. 4235. [4201] [2698] [2616] Order of removal.—The order removing a guardian shall state the cause of such removal, and shall require such guardian to surrender his letters of guardianship, and shall further require such guardian to deliver the person of the ward, or his estate, or both, to some person who has been appointed and has qualified as guardian in his place.

Art. 4236. [4202] [2699] [2617] Disqualification.—A person removed from the guardianship of the person or estate of a ward shall not be reappointed to such guardianship. [Id.]

Art. 4237. [4203] [2700] [2618] Transfer of property.—If a guardian die, resign, or be removed, he or his legal representatives shall account for, pay and deliver to the person legally entitled to receive the same, all the property of every kind belonging to the estate of the ward at such time and in such manner as the court shall order. In case of refusal to comply with such order, the same may be enforced by contempt proceedings. [Id.]

Art. 4238. [4204–5] Subsequent guardian.—When a guardian succeeds another, he shall be required to account for all the estate which came into the hands of his predecessor and shall be entitled to any order or remedy which the court has power to give, in order to enforce the delivery of the estate, and the liability of the sureties of his predecessor for so much as is not delivered. Such subsequent guardian shall be excused from accounting for such of the estate as he has failed to recover after the use of due diligence. A subsequent guardian shall succeed to all the rights, powers, and duties of his predecessor, and shall proceed with the guardianship as if it were a continuation of the same by the former guardian. [Id.]

CHAPTER ELEVEN

CLAIMS AGAINST THE ESTATE

Art.
4239. Payment.
4240. Claim of corporation.
4241. Affidavit of officer.
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4266. Citation and judgment.

Article 4239. [4206–7–8] Payment.—A guardian may pay an unauthenticated claim against the estate of his ward which he knows to be just. Otherwise he shall not allow, and the court shall not approve, a claim unless it be accompanied by an affidavit of the claimant that the claim is justly due, that nothing has been paid or delivered toward the satisfaction of such claim, except what is mentioned or credited; that there are no counter claims known to affiant which have not been allowed. If the claim is not founded on a written instrument or account, the affidavit must also state the facts upon which the claim is founded. [Acts 1876, p. 179; G. L. vol. 8, p. 1015.]

Art. 4240. [4209] [2706] [2624] Claim of corporation.—The cashier, treasurer or managing agent of a corporation shall make the affidavit required to authenticate a claim of a corporation. [Id.]

Art. 4241. [4210] [2707] [2625] Affidavit of officer.—When an affidavit authenticating a claim is made by an officer of a corporation, or an executor, administrator, trustee, assignee, agent or attorney, it shall be sufficient to state in such affidavit that he has made diligent inquiry and examination and that he believes that nothing has been paid and delivered toward the satisfaction of such claim except the amount credited, that there are no counter claims which have not been allowed, and that the sum claimed is justly due. [Id.]

Art. 4242. [4212] [2709] [2627] Indorsement by guardian.—When a duly authenticated claim is presented to the guardian, he shall indorse thereon or annex thereto a written memorandum signed by him, stating the time of its presentment, and that he allows or rejects it, or what portion thereof he allows, if any. [Id.]

Art. 4243. [4213] [2710] [2628] Failure to endorse.—The failure of a guardian to indorse on, or annex to, a claim presented to him, his allowance or rejection thereof, shall be deemed a rejection of such claim. In such case, if the claim be established, the costs shall be adjudged against the guardian to be paid out of his own estate. [Id.]

Art. 4244. [4214] [2711] [2629] Rejected claim: suit.—When a claim or a part thereof has been rejected by the guardian, the claimant shall institute suit thereon within ninety days after such rejection, or the same shall be barred. [Id.]

Art. 4245. [4215] [2712] [2630] Memorandum evidence.—When a rejected claim is sued upon, the indorsement of its rejection thereon or annexed thereto shall be taken to be true without proof unless it be denied under oath. [Id.]

Art. 4246. [4216] [2713] [2631] Allowance of claim.—After a claim has been presented to the guardian and allowed, the claimant shall present it to the clerk of the court in which the guardianship is pending, who shall enter it upon the claim docket. [Id.]

Art. 4247. [4217] [2714] [2632] Examination of claim.—At each regular term of the court, all claims which have been allowed and entered on the claim docket shall be examined by the court and approved or disapproved, in the same manner as is provided for claims against the estates of decedents. [Id.]

Art. 4248. [4218] [2715] [2633] May contest claim.—Any person may contest the approval of a claim, or any part thereof, and shall be entitled to process for witnesses and the production of testimony as in ordinary suits. [Id.]

Art. 4249. [4219] [2716] [2634] Hearing.—Although a claim be properly authenticated and allowed, if the court is not satisfied that it is just, he shall examine the claimant and guardian under oath and hear other evidence. If not then entirely convinced by evidence other than the testimony of the claimant that the claim is just, it shall be disapproved. [Id.]

Art. 4250. [4220–22] Court indorsement.—When a claim is acted on by the court, he shall indorse thereon, or annex thereto, a memorandum in writing, signed officially, stating the action of the court upon such claim, and shall also enter such action upon the claim docket. Such order of approval or disapproval shall have the force and effect of a judgment. [Id.]

Art. 4251. [4223] [2720] [2638] Lost claim.—When a claim has been lost, the claimant may make an affidavit of the facts and present it to the guardian, with the same effect as the claim itself; but in such case, before the court shall approve it, the claim must be proved by competent testimony, other than such claimant's affidavit or oath, produced in court or taken by deposition. [Id.]

Art. 4252. [4221] [2718] [2636] Appeal.—When a claimant or any person interested in a ward shall be dissatisfied with the action of the court in approving or disapproving a claim in whole or in part, he may appeal therefrom to the district court, as in other cases.

Art. 4253. [4224] [2721] [2639] Guardian's claim.—A claim which the guardian held against the ward at the time of his appointment, or which has since accrued, is exhibited by being filed, verified by the affidavit of the guardian; after which it takes the same course as other claims. [Id.]

Art. 4254. [4225] [2722] [2640] "Exhibited claim."—A claim is said to be legally exhibited:

1. When it is properly presented to the guardian, and after being allowed by him, is filed.
2. When, after being rejected, suit is commenced thereon. [Id.]

Art. 4255. [4226] [2723] [2641] "Established claim."—A claim is said to be established:

1. When it has been allowed by the guardian and approved by the court.
2. When in a suit thereon, it has been sustained by the judgment of the proper court. [Id.]

Art. 4256. [4227] [2724] [2642] Time of exhibit.—Claims which have not been legally exhibited within the year may be exhibited at any time afterward, before the estate is closed, or suit on such claims will be barred by the general law of limitation. [Id.]

Art. 4257. [4228] [2725] [2643] Limitation interrupted.—The general law of limitations is interrupted:

1. By filing a claim which has been allowed.
2. By bringing a suit upon a rejected or disapproved claim within ninety days after such rejection or disapproval.

Art. 4258. [4229] [2726] [2644] Purchase by guardian.—It shall be unlawful for a guardian, either directly or indirectly, to purchase for his own use any claim against the estate of his ward. Upon satisfactory proof of the violation of this provision, the court shall disapprove the claim.

Art. 4259. [4230] [2727] [2645] Filing claim.—When a claim has been established by judgment, a certified copy of such judgment shall be filed with the clerk of the court in which the guardianship is pending, and entered upon the claim docket as other claims are entered. [Id.]

Art. 4260. [4231] [2728] [2646] Cost of exhibition, etc.—The costs incurred in the exhibition and establishment of claims shall be taxed as follows:

1. If a claim be allowed and approved, the estate shall pay the costs.
2. If a claim be allowed, but disapproved, the claimant shall pay the costs.
3. If a claim which has been rejected be established, the estate shall pay the costs. [Id.]

Art. 4261. [4232] [2729] [2647] Claim docket.—The claim docket required to be kept in the estates of decedents shall be used also for the estates of wards under the same rules as far as applicable.

Art. 4262. [4233] [2730] [2648] Payment of claims.—The guardian shall pay all claims against the estate of his ward that have been allowed and approved, or established by suit, as soon as practicable. The court may, either in term time or vacation, direct the order in which the claims against the estate shall be paid, and the amount to be paid on each claim, when the funds are not sufficient to pay them all in full.

Art. 4263. [4234] [2731] [2649] Order for payment.—Any creditor of an estate whose claim has been approved by the court, or established by judgment, may, upon written application to the court at a regular term thereof, obtain an order for the payment of such claim, where there are funds in the hands of the guardian subject thereto, or, if there be no funds, or not sufficient for the payment of such claim, and if to await the receipt of funds from other sources would involve an unreasonable delay, an order shall be made for the sale of property of the estate sufficient to pay the debt. [Id.]

Art. 4264. [4235] [2732] [2650] Execution against guardian.—If a guardian shall fail on demand to pay a claim ordered by the court to be paid, upon affidavit of the demand and failure to pay being filed with the clerk of the court making such order, an execution shall be issued for the amount ordered to be paid such claimant, and for the costs of such proceeding against the property of such guardian. [Id.]

Art. 4265. [4236] [2733] [2651] Sureties cited.—If such execution be returned not satisfied, the sureties upon such guardian's bond may be cited to appear at a regular term of the court from which such execution issued to show cause why judgment should not be rendered against them for such debt, interest and costs. [Id.]

Art. 4266. [4237] [2734] [2652] Citation and judgment.—Citation in such case may be issued to any county in the State; and upon the return thereof duly served, if good cause to the contrary be not shown, the court shall render judgment against the sureties so served in favor of the claimant for the amount of the claim ordered to be paid as aforesaid, and remaining unpaid, and ten per cent damages thereon, together with interest and costs; and execution may issue thereon. [Id.]

CHAPTER TWELVE

LUNATICS AND DRUNKARDS

Art.
4267. Warrant.
4268. Duty of county officer.
4269. Requisites of information.
4270. Jury impaneled.
4271. Proceedings and trial.
4272. Appointment of guardian.
4273. New trial.
4274. Provisions applicable.
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4277. Confinement of ward.
4278. Apprehension.
4279. Liability for maintenance.
4280. Expenses of confinement.
4281. County may recover.
4282. Restoration.
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4284. Order of discharge.

Article 4267. [4238] [2735] [2653] Warrant.—Upon information that any person of the county is of unsound mind, or is an habitual drunkard, and is without a guardian, if satisfied that there is a good cause for the exercise of his jurisdiction, the county judge shall, either in term time or in vacation, issue a warrant to the proper officer commanding that such person be brought before him at a time and place named in such warrant. [Acts 1876, p. 187; G. L. vol. 8, p. 1023.]

Art. 4268. [4239] [2736] [2654] Duty of county officer.—Any county officer who may discover any person who resides in the county to be of unsound mind, and without a guardian, shall file information thereof with the county judge, who shall issue a proper warrant.

Art. 4269. [4240] [2737] [2655] Requisites of information.—Such information shall state that to the best of the knowledge and belief of affiant that such person is of unsound mind, or is an habitual drunkard, and shall state the name of the person so charged; or if unknown, such person shall be described and such information shall be subscribed and duly sworn to by the informant.

Art. 4270. [4241] [2738] [2656] Jury impaneled.—When the person charged is brought before the judge he shall, either in term time or in vacation, cause to be impaneled a qualified jury to try the case and decide whether such person is of unsound mind, or is an habitual drunkard.

Art. 4271. [4242] [2739] [2657] Proceedings and trial.—The case shall be docketed in the name of the county as plaintiff, and the person against whom the information is filed as defendant, and the proceedings and trial therein shall be governed by the same rules that govern in ordinary suits in the county court.

Art. 4272. [4243] [2740] [2658] Appointment of guardian.—If it be found by the jury that the defendant is of unsound mind or is an habitual drunkard, as charged, the court shall proceed, immediately and without further notice, to appoint a guardian of the person and estate of such defendant in the same manner as in the case of a minor. [Id.]

Art. 4273. [4244] [2741] [2659] New trial.—The court may, for good cause shown, at any time within ten days after the verdict has been returned, set aside such verdict and grant a new trial to either party; but, when two juries have concurred in a case, the second verdict shall not be set aside. [Id.]

Art. 4274. [4245] [2742] [2660] Provisions applicable.—Each provision of this title relating to the guardianship of the persons and estates of minors shall apply to the guardianship of the persons and estates of persons of unsound mind, and habitual drunkards, in so far as the same are applicable.

Art. 4275. [4246] [2743] [2661] Support of ward's family.—The court by which any person of unsound mind or habitual drunkard is committed to guardianship may make orders for the support of his family and the education of his children when necessary. [Id.]

Art. 4276. [4247] [2744] [2662] Prior right.—If the person committed to guardianship is married, the husband or wife of such person, as the case may be, shall be entitled first in order to the guardianship.

Art. 4277. [4248] [2745] [2663] Confinement of ward.—If any person shall be furiously mad, or so far disordered in his mind as to endanger his own person or the person or property of others, the guardian or other person under whose care he may be, and who is bound to provide for his support, shall confine him in some suitable place until the first regular term of the county court of his county, when the court shall make such order for the restraint, support and safe-keeping of such ward as the circumstances may require. [Id.]

Art. 4278. [4249] [2746] [2664] Apprehension.—If any such person of unsound mind as is specified in the preceding article shall not be confined by those having charge of him, or if there be no person having such charge, any magistrate may cause such insane person to be apprehended and may employ any person to confine him in some suitable place until the county court shall make further order thereon. [Id.]

Art. 4279. [4250] [2747] [2665] Liability for maintenance.—Where the person of unsound

mind or habitual drunkard has no estate of his own, he shall be maintained:

1. By the husband or wife of such person, if able to do so.

2. By the father or mother of such person, if able to do so.

3. By the children and grandchildren of such person, if able to do so.

4. By the county in which said person has his residence. [Id.]

Art. 4280. [4251] [2748] [2666] Expenses of confinement.—The expenses attending the confinement of an insane person shall be paid by the guardian out of the estate of the ward, if he has an estate; and if he has none, such expense shall be paid by the person bound to provide for and support such insane person; and, if not so paid, the county shall pay the same. [Id.]

Art. 4281. [4252] [2749] [2667] County may recover.—In all cases of appropriations out of the county treasury for the support and confinement of any person of unsound mind or habitual drunkard, the amount thereof may be recovered by the county from the estate of such person, or from any person who, by law, is bound to provide for the support of such person, if there be any such person able to pay for same. [Id.]

Art. 4282. [4253] [2750] [2668] Restoration.—If any person shall allege in writing and under oath that a person who has been adjudged to be of unsound mind or an habitual drunkard has been restored to his right mind or to sober habits, the guardian of the person and of the estate of such ward shall be cited to appear before the county judge on a day and at a place named in such citation, either in term time or in vacation, and show cause why such ward should not be discharged from further guardianship, or the guardian may appear without such citation. [Id.]

Art. 4283. [4254] [2751] [2669] Trial.—If the facts of such alleged restoration be doubtful, the court shall, either in term time or in vacation, cause a qualified jury to be impaneled to try the issue as in the first instance, and if such jury finds that the ward has been restored to his right mind, or has reformed, he shall be discharged from guardianship by an order to that effect; and the guardian shall immediately settle his accounts and deliver all the property remaining in his hands to such ward. [Id.]

Art. 4284. [4255] [2752] [2670] Order of discharge.—If the fact of such alleged restoration be not doubtful, the court may, without the intervention of a jury, make the order discharging the ward from guardianship, as provided in the preceding article. [Id.]

CHAPTER THIRTEEN

NON-RESIDENT GUARDIANS AND WARDS

Art.
4285. Letters of guardianship.
4286. May remove property.
4287. Delivery of property.
4288. Requisites of removal.
4289. Reciprocity.

Article 4285. [4256] [2753] [2671] Letters of guardianship.—Where a guardian and his ward are non-residents, such guardian may file in the county court of any county a full and complete transcript from the records of a court of competent jurisdiction where he and his ward reside, showing that he has been appointed and has qualified as guardian of the estate of such ward; which said transcript shall be certified by the clerk of the court in which the proceedings were had, under the seal of such court, if there be one, together with a certificate from the judge, chief justice or presiding magistrate of such court, as the case may be, that the attestation of such transcript is in due form; and upon the filing of such transcript the same may be recorded, and the guardian shall be entitled to receive letters of guardianship of the estate of such minor situated in this State, upon filing a bond with sureties as provided in Article 4141. [Acts 1876, p. 180; G. L. vol. 8, p. 1011; Acts 2nd C. S. 1923, p. 13.]

Art. 4286. [4257] [2754] [2672] May remove property.—Upon the recovery of the property of the ward, if it be personal property, such guardian may remove the same out of the State, unless such removal would conflict with the tenure of such property, or the terms and limitations under which it is held; and if it be real property, he may obtain an order for the sale of it and remove the proceeds. Such sale shall be made, returned and acted upon by the court as other sales of real estate by a guardian made in accordance with this title. [Id.]

Art. 4287. [4258] [2755] [2673] Delivery of property.—Any resident executor, administrator or guardian, having any of the estate of such ward may be ordered by the court to deliver the same to such non-resident guardian. [Id.]

Art. 4288. [4259] [2756] [2674] Requisites of removal.—There shall be no removal from the State of any of such property, until all debts known to exist against the estate have been paid, or the payment thereof secured by bond payable to the county judge and approved by the clerk. [Id.]

Art. 4289. [4260] [2757] [2675] Reciprocity.—The benefit of the provisions of this chapter shall not extend to the residents of any State, territory, district or county in which a similar law does not exist in favor of the residents of this State. [Id.]

CHAPTER FOURTEEN

REMOVAL OF GUARDIANSHIP

Art.
4290. Application.
4291. Citation to sureties.
4292. Action of court.
4293. Transcript.
4294. Prerequisites.
4295. Guardianship continued.

Article 4290. [4261] [2758] [2676] Application.—When a guardian desires to remove the transaction of the business of the guardianship from one county to another, he shall file in the court where such guardianship is pending a written application asking for authority to do so, and state in such application his reasons for desiring such removal. [Acts 1876, p. 185; G. L. vol. 8, p. 1021.]

Art. 4291. [4262] [2759] [2677] Citation to sureties.—Upon the filing of such application, the clerk shall issue citation to the sureties upon the bond of such guardian citing them to appear at a regular term of the court, to be named in such citation, and show cause why such application should not be granted. [Id.]

Art. 4292. [4263] [2760] [2678] Action of court.—Upon the hearing of the application, if no good cause be shown to the contrary, and if it appears that the removal of the guardianship would be to the interest of the ward, the court shall enter an order authorizing such removal upon the payment of all costs that have accrued.

Art. 4293. [4264] [2761] [2679] Transcript.—When such order of removal has been made the clerk shall record all papers of the guardianship required to be recorded, and that have not already been recorded, and shall make out a full and complete certified transcript of all the orders, decrees, judgments and proceedings in such guardianship, and, upon the payment of his fees therefor, shall transmit such transcript, together with all the original papers in the case, to the county clerk of the county to which such guardianship has been removed.

Art. 4294. [4265] [2762] [2680] Prerequisites.—The order removing a guardianship shall not take effect until such transcript has been filed in the office of the county clerk of the county to which such guardianship has been ordered removed, and until a certificate of that fact from the clerk filing the same,

under his official seal, has been filed in the court making such order of removal.

Art. 4295. [4266] [2763] [2681] Guardianship continued.—When a guardianship has been removed from one county to another, in accordance with the provisions of this chapter, it shall be proceeded with in the court to which it has been removed as if it had been originally commenced in said court; but it shall not be necessary to record any of the papers in the case that have been recorded in the court from which the same has been removed.

CHAPTER FIFTEEN

FINAL SETTLEMENT

Art.
4296. When settled.
4297. Account.
4298. Guardian may be cited.
4299. Citation to ward.
4300. Citation to executor.
4301. Publication of citation.
4302. Action of the court.
4303. Restatement of account.
4304. Proof of account.
4305. Ward's attorney.
4306. Bad debts.
4307. Offsets and credits.
4308. Failure of guardian.

Article 4296. [4267] [2764] [2682] When settled.—When the ward dies, or if a minor, arrives at the age of twenty-one years, or if a female, marries, or, if a person of unsound mind or habitual drunkard, is restored and discharged from guardianship, the guardianship shall be immediately settled and closed and the guardian discharged, as provided in this chapter.

Art. 4297. [4268] [2765] [2683] Account.—The guardian shall file with the clerk of the court in which the guardianship is pending his account for final settlement of such guardianship; which account shall show fully and completely:

1. The property, rents, revenues and profits received by the guardian and belonging to his ward during his guardianship.
2. The disposition made of such property, rents, revenues, and profits.
3. The expenses and debts, if any, against the estate remaining unpaid.
4. The property of the estate remaining in the hands of such guardian, if any.
5. Such other facts as may be necessary to a full and definite understanding of the exact condition of the guardianship.
6. Such account shall be subscribed and duly sworn to by the guardian.

Art. 4298. [4269] [2766] [2684] Guardian may be cited.—If the guardian fails to file his account for final settlement at the proper time, the court shall, upon its own motion, or upon the written complaint of any one interested in the estate, cause such guardian to be cited to appear at a regular term of the court and file such account.

Art. 4299. [4270] [2767] [2685] Citation to ward.—Upon the filing of an account for final settlement, the clerk shall, if the ward be living and resident in the State, and his residence be known, issue a citation notifying such ward of the filing of such account, and of the term of court at which the same will be acted upon, and that he may appear and contest such account.

Art. 4300. [4271] [2768] [2686] Citation to executor.—If the ward be not living but there is an executor or administrator of his estate legally qualified, such executor or administrator shall be cited as provided in the preceding article.

Art. 4301. [4272] [2769] [2687] Publication of citation.—If the ward be not living, and there be no executor or administrator of his estate, or if the ward be a non-resident of the State, or if his residence be unknown, citation shall be published once a week for three successive weeks in some newspaper published in the county if there be one regularly published therein; if not, then such citation shall be duly posted for at least twenty days before the return term thereof.

Art. 4302. [4273] [2770] [2688] Action of the court.—After citation has been duly served, the court shall proceed to examine the account for final settlement, and to hear any exception or objection thereto, and the evidence in support of or against such account, and if the same is found to be just and correct, an order shall be entered approving it and directing the guardian to deliver the estate remaining in his hands to the ward or other person legally authorized to receive the same. Upon compliance with such order, the guardian shall be discharged, and such guardianship closed by an order to that effect entered upon the minutes.

Art. 4303. [4274] [2771] [2689] Restatement of account.—If the account be found to be incorrect in any particular, the court shall cause the same to be corrected and restated, and make such order in relation thereto as may be necessary to a full and fair settlement of the guardianship.

Art. 4304. [4275] [2772] [2690] Proof of account.—The guardian must produce and file proper vouchers for every item of credit claimed by him in his account, or support the same by other satisfactory evidence.

Art. 4305. [4276] [2773] [2691] Ward's attorney.—When the ward is dead and there is no executor or administrator of his estate, or when the ward is a non-resident, or his residence is unknown, the court shall appoint an attorney to represent the interest of such ward in the final settlement with the guardian, and shall allow such attorney reasonable compensation for his services out of the ward's estate.

Art. 4306. [4277] [2774] [2692] Bad debts.—In the settlement of the account of the guardian, all debts due the estate which the court is satisfied could not have been collected by due diligence, and which have not been collected, shall be excluded from the computation. [Id.]

Art. 4307. [4278] [2775] [2693] Offsets and credits.—In the settlement of any of the accounts of the guardian, he shall account for the reasonable value of the labor or services of his ward, or the proceeds thereof, if any such labor or services have been rendered by such ward. The guardian shall be entitled to reasonable credits for the board, clothing and maintenance of his ward.

Art. 4308. [4279] [2776] [2694] Failure of guardian.—When a guardian who has been ordered by the court, upon final settlement, to deliver the estate to the ward or other person legally authorized to receive the same fails to obey such order, he may be attached and punished as for a contempt of court.

CHAPTER SIXTEEN

COSTS OF GUARDIANSHIP

Art.
4309. Guardian of person.
4310. Commissions of guardian.
4311. Extra compensation.
4312. Expenses.
4313. Pay of appraisers.
4314. Costs against guardian.
4315. Costs against applicant.
4316. Unsound mind.
4317. Laws applicable.

Article 4309. [4280] [2779] [2697] Guardian of person.—The guardian of the person alone is entitled to no compensation. [Acts 1876, p. 187; G. L. vol. 8, p. 1023.]

Art. 4310. [4281] [2780] [2698] Commissions of guardian.—The guardian of the estate shall not be entitled to or receive any fee or commission on the estate of the ward when first delivered to him; but shall be entitled to a fee of five per cent on the gross income of the ward's estate and five per cent on all money paid out. The term "money paid out"

shall not be construed to include any money loaned or invested or paid over on the settlement of the guardianship. [Acts 1876, p. 187; Acts 1913, p. 321; G. L. vol. 8, p. 1023.]

Art. 4311. [4282] [2781] [2699] Extra compensation.—If the guardian manages a farm, plantation, manufactory or other business of his ward, the court may allow him a reasonable compensation for such services. [Id.]

Art. 4312. [4283] [2782] [2700] Expenses.—All necessary and reasonable expenses incurred by the guardian in the preservation and management of the ward's estate, and in collecting or attempting to collect claims or debts due the ward, and in recovering or attempting to recover property to which the ward has a title or claim, and all reasonable attorneys' fees necessarily incurred in the management of such guardianship, shall be allowed the guardian, to be paid out of the estate on satisfactory proof thereof being made to the court. [Id.]

Art. 4313. [4284] [2783] [2701] Pay of appraisers.—Appraisers appointed by the court to appraise the property of the ward shall be allowed two dollars each for each day that they are necessarily engaged in the performance of such duty, to be paid out of the estate.

Art. 4314. [4285] [2784] [2702] Costs against guardian.—In any case where the guardian shall neglect the performance of any duty required of him and shall be cited to appear before the court on account thereof, he shall pay all costs of such proceeding out of his own estate; and the court shall adjudge the same against him. [Id.]

Art. 4315. [4286] [2785] [2703] Costs against applicant.—In any case where a party shall make any application or opposition, and on the trial thereof shall be defeated, all costs occasioned by such application or opposition shall be adjudged against such party by the court. [Id.]

Art. 4316. [4287–8] Unsound mind.—When any person is found to be of unsound mind or to be an habitual drunkard, the cost of the proceeding shall be paid out of his estate; or, if his estate be insufficient to pay the same, such costs shall be paid out of the county treasury, and the judgment of the court shall be accordingly. If the defendant be discharged, the person at whose instance the proceeding was had shall pay the costs of such proceeding; unless the informant be an officer acting in his official capacity in filing the information, in which case the costs shall be paid out of the county treasury. [Id.]

Art. 4317. [4289] [2788] [2706] Laws applicable.—The provisions of law regulating costs and security therefor shall apply to matters of guardianship when not expressly provided in this title. [Id.]

CHAPTER SEVENTEEN

APPEAL

Art.
4318. Right of appeal.
4319. Notice of appeal.
4320. Transcript on appeal.
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4325. Judgment of district court.
4326. Judgment dismissing appeal.
4327. Trial of appeals.
4328. Bill of review.
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Article 4318. [4290] [2789] [2707] Right of appeal.—Any person who may consider himself aggrieved by any decision, order or judgment of the court, or by any order of the judge thereof, in relation to guardianships, may appeal to the district court, as a matter of right, without bond. [Acts 1876, p. 192; G. L. vol. 8, p. 1028.]

Art. 4319. [4291] [2790] [2708] Notice of appeal.—An appeal is taken by causing an entry of notice thereof to be made on the record during the term at which such decision, order or judgment is entered; or, if such decision, order or judgment be made in vacation, by causing the entry of such notice to be made before the close of the next regular term of the court thereafter. [Id.]

Art. 4320. [4292] [2791] [2709] Transcript on appeal.—When notice of appeal has been given, the clerk shall make out a certified transcript of the proceedings and send it to the district court of the county; such transcript shall not contain anything that does not relate to the decision, order or judgment appealed from. [Id.]

Art. 4321. [4293] [2792] [2710] Joint appeals.—When notice of appeal has been given by the same person from more than one decision, order or judgment of the court in the same guardianship, at the same term, all of the appeals may be embraced in the same transcript. [Id.]

Art. 4322. [4294] [2793] [2711] Submission of transcript.—If there be not time to make out such transcript before the first day of the next term of the district court after such appeal is taken, it shall be sent to such court within sixty days after such appeal is taken. [Id.]

Art. 4323. [4295] [2794] [2712] Appeal bond.—The appeal shall not suspend the decision, order or judgment except in the cases mentioned in the succeeding article, unless the appellant, within twenty days after the entry of notice of appeal, shall file a bond in an amount fixed by the court at the time of entry of appeal, signed by two or more good and sufficient sureties, payable to and approved by the clerk, conditioned that the appellant shall perform the orders and judgment which the district court may make therein, in case the decision be against him. [Id.]

Art. 4324. [4296] [2795] [2713] Judgment suspended.—An appeal suspends the decision, order or judgment without bond:

1. When taken by a claimant from the disapproval of his claim.
2. When taken by the guardian or trustee, except where the controversy is respecting the rights of guardianship or the settlement of an account. [Id.]

Art. 4325. [4297] [2796] [2714] Judgment of district court.—When a certified copy of the judgment of the district court in the case is received, it shall be entered of record upon the minutes of the county court as the judgment of such county court. [Id.]

Art. 4326. [4298] [2797] [2715] Judgment dismissing appeal.—Where a certified copy of the judgment of the district court dismissing an appeal or quashing a supersedeas is received, it shall be entered of record on the minutes of the county court, and the decision, order or judgment of the county court which was appealed from shall stand as if no appeal or supersedeas had been taken or obtained. [Id.]

Art. 4327. [4299] [2798] [2716] Trial of appeals.—Appeals from the decision, order or judgment of the county court or county judge to the district court in cases of guardianship shall be tried in the district court de novo. The judgment of the district court therein shall be certified to the county court to be carried into effect. [Acts 1846, p. 378; G. L. vol. 2, p. 1684.]

Art. 4328. [4300] [2799] [2717] Bill of review.—Any person interested may, by a bill of review, filed in the court in which the proceedings were had, have any decision, order or judgment rendered by such court, or by the judge thereof, revised and corrected on showing error therein. But no process or action under such decision, order or judgment shall be stayed except by writ of injunction. [Id.]

Art. 4329. [4301] [2800] [2718] Certiorari.—Any person interested may also have any decision, order or judgment of the county court or county judge revised and corrected by writ of certiorari from the district court under the same rules and regulations as are provided in estates of decedents.

TITLE 70

HEADS OF DEPARTMENTS

Chap.
1. Secretary of State.
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CHAPTER ONE

SECRETARY OF STATE

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4331a. Duties as to records of receivers.
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4333. Advance sheets.
4334. Reports sent to whom.
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4337. May sell copies of laws.
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4339. Receipt for books.
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Article 4330. [4302–3] Appointment and bond.—By and with the advice and consent of the Senate, the Governor shall appoint a Secretary of State who shall continue in office during the term of service of the Governor by whom he was appointed. Such appointee shall first give a bond in the sum of twenty-five thousand dollars payable to and to be approved by the Governor, conditioned that he will faithfully execute the duties of his office. [Acts 1899, p. 3.]

Art. 4331. [4304–5–6–7–8–13–17–18] General duties.—Among other duties the Secretary of State shall:

1. Keep his office in the City of Austin or other place where the sessions of the Legislature may be held.

2. Appoint a chief clerk and such number of assistant clerks as may be authorized by law.

3. Affix the seal of the State to all certificates of official character that may emanate from his office.

4. Keep a fair register of all the official acts of the Governor, and when required shall lay the same and all minutes and other papers in relation thereto before the Legislature or either branch thereof.

5. Keep in a separate suitable book a complete register of all the officers appointed and elected in this State, and commission them when not otherwise provided by law.

6. Arrange and preserve all the books, maps, parchments, records, documents, and all papers that have been or may be properly deposited there, and sealed with the seal of the State, and also similar copies of any act, law or resolution of the United States, or either of them, from the originals in his office, which copies shall be as legal and conclusive in evidence, and to all intents and purposes, in the courts of this State, as the originals would have been; and furnish on request such copies to the Governor, the Legislature or either branch thereof.

7. Attend at every session of the Legislature to receiving bills which have become laws, and immediately after the close thereof cause all enrolled joint resolutions thereof and all such bills to be bound together in a volume to be kept in his office, the date of the session to be placed thereon, and deliver a certified copy thereof and index thereof to the Board of Control, and carefully examine and compare the printed copy with the certified copy and correct each error contained in the former.

8. Distribute to the Governor and heads of departments, and to each member of the Legislature, a copy of the printed journals of both houses; and forward to the county judge of each county two copies of said journals, one to be deposited in the office of the clerk of the district court and the other in the office of the county clerk for the use of said courts respectively.

9. Turn over to the person in charge of the State Library, immediately upon their receipt, all books, maps, charts or other publications of a political or miscellaneous character received at his office, and all printed volumes of the statutes or laws of any Nation, State or Territory, and in like manner turn over to the Supreme Court Librarian all volumes of reports of any courts of any other Nation, State or Territory received by him.

10. Forward to the Librarian of Congress, the Secretary of State of the United States, the Secretary of the Treasury of the United States, and the executive departments of each State of the Union, to each foreign librarian or government with whom a system of library exchange may be established, as he may deem advisable, copies of all laws and judicial reports printed and published by order of the Legislature at the expense of the State.

11. Forward to each county clerk for the use of the county one copy of each Act of Congress which may be received in his office.

Art. 4331a. Duties as to records of receivers.—That it shall be the duty of the Secretary of State, on the payment of the sum of two dollars and fifty cents, to record in a well bound book to be kept in his office, the names of all trustees appointed by any State organization of any church communion in the State, provided such appointment is duly authenticated by some officer authorized by law in this State to take acknowledgment of deeds; and it shall be the further duty of the Secretary of State to furnish a certified copy of said appointments to any court in this State on application for the same by any judge or clerk of any court in this State, and the sum of one dollar and fifty cents shall be taxed as cost for copy in any proceeding in which such copy may be used, to be collected and paid for as any other costs; and it shall be the duty of the judge of any court before making the appointment of any receiver, to apply to the Secretary of the State to be furnished with such certified copy before such appointments are made. That any communion shall have the right from time to time to change, appoint or elect its trustee or trustees. [Acts 1927, 40th Leg., p. 68, ch. 45, § 4.]

Art. 4331b. Exchange of reports.—The Secretary of State is hereby authorized and directed in addition to the exchanges he is now authorized to make under existing law, to make exchanges of the reports of the several appellate courts of this State, of the Supreme Court and the Court of Criminal Appeals, of the Session Acts of the Legislature, of the existing and future revised Civil and Criminal Statutes of this State, and of other State publications and department reports of this State, for the court reports, session acts, revised statutes, civil and criminal, and other State publications and department reports of the United States Government, of the other States of the Union, and of foreign countries, for the benefit of the law library of the University of Texas, provided that the Secretary of State shall always keep on hand a sufficient number of copies of all State publications to meet the reasonable current demands of the State. [Acts 1927, 40th Leg., p. 92, ch. 66, § 1.]

Art. 4332. Sale of reports.—The Secretary of State shall receive from the Supreme Court Reporter the printed and bound volumes of the Supreme Court Reports and the Reports of the Court of Criminal Appeals; he may sell single copies of such reports for the sum of the contract price for printing, exclusive of postage or express charges; he shall deliver to the State Treasurer the proceeds of all sales made by him, and shall make a full statement of such sales in his biennial report. [Acts 1919, p. 60.]

Art. 4333. Advance sheets.—The Secretary of State may transmit advance sheets of the reports as the publishing progresses, upon receipt of the price for the volume. The purchaser may return all the forms of the volume to the Secretary of State without further expense except the cost of transmitting the same to and from the State Department. [Id.]

Art. 4334. [4309] [2807] Reports sent to whom.—The Secretary of State shall deliver, by mail

or otherwise, to each appellate judge, the Attorney General, the Governor, each district judge, each professor of law of the University of Texas, the librarian of said University, and to the county judge of each county for the use of the counties, one copy of the reports of said appellate courts hereafter issued; also furnish to each district judge of the United States for Texas one copy of each of said reports for each branch of his courts; and, when it appears that any of the reports of either of said courts have been heretofore furnished and not returned to the Department of State, or when they are hereafter delivered by the State to either of said officers or authorities, the Secretary shall have no authority to send another copy, except on proof that the same have been destroyed by fire, or have been rendered valueless by long use, to be evidenced by the certificate of the officer demanding to be resupplied with such report. [Acts 1887, p. 114; G. L. vol. 9, p. 912.]

Art. 4335. [4310] [2808] Officers entitled to laws.—The following officers shall be entitled to receive one copy of each of all general and special laws hereafter passed by the Legislature, to-wit: The Governor and heads of departments, each member of the Legislature, the judges of the several courts throughout the State, and the clerks of said courts, and each county attorney. The following officers shall be entitled to receive one copy each of all general laws hereafter passed by the Legislature, to-wit: county treasurer, county surveyor, sheriff, assessor of taxes, tax collector, inspector of hides and animals, justice of the peace, constable and county commissioner. [Acts 1885, p. 68; G. L. vol. 9, p. 688.]

Art. 4336. [4311] [2809] How distributed.—The Secretary of State shall distribute the printed laws of each session of the Legislature to the officers named in the preceding article, as follows: He shall mail or deliver in person to the Governor and heads of departments, and to all State or District officers, a copy each, and shall forward to the county judge of each county a sufficient number of said laws to supply each county officer named in the preceding article with a copy. [Acts 1850, p. 99; P. D. 4585; G. L. vol. 3, p. 537.]

Art. 4337. [4312] [2810] May sell copies of laws.—Said Secretary is authorized to sell copies of the general and special laws of the State of Texas that have or may be published at a price not exceeding twenty-five per cent above cost of publishing; provided, that a sufficient number of all laws published be reserved from sale for the use of the State. Any money realized in excess of the costs attending such sale shall be placed to the account of the general revenue in the State Treasury. [Acts 1883, p. 33; G. L. vol. 9, p. 339.]

Art. 4338. [4314–15] Revision.—Whenever a revision of the laws of the State has been or shall be subscribed for, or published by the State, a sufficient number of copies of each volume thereof shall be forwarded to the county judge of each county to furnish one of said copies to each judge of the appellate and district courts, to each clerk of the district and county courts, and appellate courts, and to each justice of the peace that may be a resident in said county. The Secretary of State shall also deliver to each executive officer at the seat of government one of said copies. [Id.]

Art. 4339. [4316] [2811] Receipt for books.—Whenever any officer shall receive a copy of any report, statute, digest or journal, he shall receipt for the same to the officer distributing it, who shall file such receipt in his office. Said books shall be deemed to belong to the office of said officer to whom they are delivered, and shall, at all reasonable hours, be subject to the examination of any citizen of this State. If any said officer fails or refuses to deliver any said book to his successor in office when demanded by him, the officer so failing or refusing shall be liable to pay such successor the costs and charges that may be necessary to supply the office of such successor with any said book that he shall so fail or refuse to deliver. [Id. P. D. 4588.]

Art. 4340. [4319] [2817] Chief Clerk; Assistant Secretary of State.—The office of Chief Clerk to the Secretary of State is hereby abolished, and the office of Assistant Secretary of State is hereby created. The Assistant Secretary of State shall be an attorney-at-law, and he shall have had at least five (5) years actual practice in this State prior to his appointment and shall perform all the duties required by law to be performed by the Secretary of State when the said Secretary of State is absent or unable to act for any reason. Such assistant shall perform such other duties as shall be required of him by the Secretary of State and his compensation shall be four thousand dollars per annum. There is hereby appropriated out of the State Treasury the sum of $2,500.00 to pay the compensation of said Assistant Secretary of State for the remainder of this fiscal year ending August 31, 1927, and this appropriation shall supersede the present appropriation for the compensation of the Chief Clerk in the Secretary of State's office for the remainder of said fiscal year. The said Assistant Secretary of State shall serve as such so long as the Secretary of State appointing him is in office. [As amended Acts 1927, 40th Leg., p. 55, ch. 39, § 1.]

Art. 4341. Commission.—The Secretary of State shall not be required to forward copies of laws to nor attest the authority of any officer in this State who fails or refuses to take out his commission. [Acts 1919, p. 80.]

CHAPTER TWO

COMPTROLLER OF PUBLIC ACCOUNTS

Art.
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Article 4342. [4320] Election and term.—At each biennial general election a Comptroller of Public Accounts shall be elected for a term of two years. The word "Comptroller", whenever used in any law of this State, shall mean the Comptroller of Public Accounts of the State of Texas. [Acts 3rd C. S. 1910, p. 37.]

Art. 4343. [4322] Bond.—Within twenty days after receipt of notice of his election or appointment and before he enters upon the duties of his office, the Comptroller shall give a bond with not less than six good sureties, in the sum of seventy-five thousand dollars, payable to and to be approved by the Governor, conditioned that he will faithfully execute the duties of his office. [Id.]

Art. 4344. Certain duties.—Among other duties the Comptroller shall:

1. Procure a seal with words "Comptroller's office, State of Texas" engraved around the margin and a five-pointed star in the center, which shall be used as the seal of his office to authenticate all his official acts, except warrants drawn on the State Treasury.

2. Adopt such regulations not inconsistent with the constitution and laws as he may deem essential to the speedy and proper assessment and collection of the revenues of the State.

3. Superintend the fiscal concerns of the State, as

the sole accounting officer thereof, and manage the same in the manner required by law.

4. Require all accounts presented to him for settlement not otherwise provided for by law to be made on forms prescribed by him, all such accounts to be verified by affidavit as to their correctness, and he may administer the oath himself in any case in which he may deem it necessary.

5. Prescribe and furnish the form to be used by all persons in the collection of the public revenue and the mode and manner of keeping and stating their accounts.

6. Prescribe forms of the same class, kind and purpose so as to be uniform in size, arrangement, matter and form.

7. From time to time require all persons receiving money or having the disposition or management of any property of the State, of which an account is kept in his office, to render statements thereof to him.

8. Require all persons who have received and not accounted for any money belonging to the State to settle their accounts.

9. Keep and settle all accounts in which the State is interested, including all moneys received by the State as interest and other payments on land and office fees of his and other departments of the State government, and all other moneys received by the State from whatever source and for whatever purpose.

10. Examine and settle the accounts of all persons indebted to the State and certify the amount or balance to the Treasurer, and direct and superintend the collection of all moneys due the State.

11. Audit the claims of all persons against the State in cases where provision for the payment thereof has been made by law, unless the audit of any such claim is otherwise specially provided for.

12. Keep a book to register and index all audited claims against the State, and on the meeting of the regular session of the Legislature make a minute report of the same to both houses thereof, giving the names and amounts of all audited claims.

13. Keep and state all accounts between this State and the United States.

14. Keep journals through which all entries are made in the ledger.

15. Remit or make an allowance to each tax collector in the auditing of his accounts for all sums of money which, in his judgment, have been illegally assessed.

16. Draw warrants on the Treasurer for the payment of all moneys directed by law to be paid out of the Treasury.

17. Suggest plans for the improvement and management of the general revenue.

18. Preserve the books, records, papers and other things belonging in his office and deliver the same in good condition to his successor. [Id.]

Art. 4345. [4336] Account of Comptroller.—The account of the Comptroller against the State shall not be passed to the Treasurer until approved by the Secretary of State. [Id.]

Art. 4346. [4337] Custodian of obligations.—Except as otherwise specially provided, all deeds to the State, all liens, mortgages, bonds, notes and other securities for money given to the State or any officer for the use of the State, contracts involving pecuniary obligations to the State, and all other documents or instruments creating a pecuniary obligation in favor of the State, shall be deposited in the office of the Comptroller.

Art. 4347. [4339] When accounts closed.—The accounts of the Comptroller shall be annually closed on the last day of August; and he shall exhibit all books, papers, vouchers, and all other matters pertaining to his office, for the examination of either branch of the Legislature, or any committee which may be by them appointed, whenever required by them to do so. [Acts 3rd C. S. 1910, p. 37.]

Art. 4348. [4340] Statement to Governor.—In addition to the reports required by the Constitution, the Comptroller shall exhibit to the Governor, on the first Monday of November of each year, and at such other times as he shall require, an exact and complete statement of the funds of the State, of its revenues, and of the public expenditures during the preceding year (or for such other times as may be required), with a detailed estimate of the expenditures to be defrayed from the Treasury for the ensuing year, specifying therein each object of the expenditures and distinguishing between such as are provided for by general or special appropriation, and such as are required to be provided for by law, and showing the means from which such expenditures are to be defrayed. [Id.]

Art. 4349. [4330–1] Special claims.—Each sheriff, attorney or other party holding claims against the State for which no warrant has been issued, and the appropriation for which has been exhausted, shall present them to the Comptroller for his consideration at least thirty days before the meeting of each regular session of the Legislature. The Comptroller shall not audit any such claim not presented within said time until all claims presented prior to that time have been considered and passed upon by him. [Id.]

Art. 4350. [4332] Warrants on Treasurer.—Every warrant shall refer to the law under which it is drawn. No warrant shall be issued to any person indebted to the State, or to his agent or assignee, until such debt is paid. [Id.]

Art. 4351. [4342] Notified of deficiencies.—All heads of departments, managers of State institutions or other persons intrusted with the power or duty of contracting for supplies, or in any manner pledging the credit of the State for any deficiency that may arise under their management or control, shall, at least thirty days before such deficiency shall occur, make out a sworn estimate of the amount necessary to cover such deficiency until the meeting of the next Legislature. Such estimate shall be immediately filed with the Governor, who shall thereupon carefully examine the same and approve or disapprove the same in whole or in part. When such deficiency claim, or any part thereof, has been so approved by the Governor he shall indorse his approval thereon, designating the amount and items thereof approved and the items disapproved, and file same with the Comptroller; and the same shall be authority for the Comptroller to draw his deficiency warrant for so much thereof as may be approved; but no claim, or any part thereof, shall be allowed or warrants drawn therefor by the Comptroller, or paid by the Treasurer, unless such estimate has been so approved and filed. If there is a deficiency appropriation sufficient to meet such claims, then a warrant shall be drawn therefor and the same shall be paid; but, if there is no such appropriation, or if such appropriation be so exhausted that it is not sufficient to pay such deficiency claim, then a deficiency warrant shall issue therefor; and such claim shall remain unpaid until provision be made therefor at some session of the Legislature thereafter. The provisions of this article shall not apply to fees and dues for which the State may be liable under the general laws. When any injury or damage shall occur to any public property from flood, storm or any unavoidable cause, the estimate may be filed at once but must be approved by the Governor as provided in this article. [Id.]

Art. 4351a. Limiting amount of deficiency warrants.—It shall be lawful for the Governor to approve deficiency warrants as provided for in Article 4351, Revised Civil Statutes, 1925, to any amount, the aggregate of which does not exceed Two Hundred Thousand ($200,000.00) Dollars, for all purposes for which he is permitted to approve such deficiency warrants. If any deficiency warrants are approved above this amount, such warrants are invalid and unredeemable by the State Treasurer. [Acts 1927, 40th Leg., p. 232, ch. 158, § 1.]

Art. 4352. [4343] Chief clerk.—The Comptroller shall appoint a chief clerk, who shall take the official oath and give bond in the sum of ten thousand dollars payable in like manner as the bond of the Comptroller, conditioned for the faithful performance of his duties. Said clerk shall perform the duties of

the Comptroller when the Comptroller may be unavoidably absent or incapable, from sickness or other cause, to discharge said duties, and, under the direction of the Comptroller supervise the keeping of the books, records and accounts of the department, and perform such other duties as may be required of him by law and by the Comptroller. If the office of the Comptroller should become vacant by death, resignation or otherwise, said chief clerk shall act as Comptroller until a Comptroller is appointed and qualified. [Acts 3rd C. S. 1910, p. 37.]

Art. 4353. [4344] Deposit warrants.—The Comptroller shall have printed uniform deposit warrants, which shall be of four classes: "State revenue," "available school" "permanent school" and "miscellaneous;" and which shall be prepared in triplicate and marked "original," "duplicate" and "triplicate" respectively. Each class shall be separately serially numbered, and shall be on paper of a different color from the other classes. He shall provide for the use of his department a warrant register for each class of deposit warrants, each volume of which shall be appropriately designated by number or otherwise, and the pages of which shall be ruled and the lines numbered consecutively. When a deposit warrant is prepared, it shall be registered in the deposit warrant register for the class to which it belongs and on the line in such register corresponding in number with the number of the deposit warrant registered. A distribution of the amount stated in each deposit warrant shall be posted in detail to the ledger containing accounts for each source of revenue. The triplicate deposit warrant shall be, on receipt by the Treasurer of the amount stated therein, receipted by the Treasurer and delivered to the person making the deposit, the original to the Treasurer, who shall file the same numerically; and the duplicate shall be, on the receipt of the amount stated therein, receipted by the Treasurer, and by him returned to the Comptroller, who shall file same numerically. The printed forms for these warrants shall be so prepared and arranged that the original, duplicate and triplicate may, by use of carbon sheets, all be prepared at one and the same writing. No deposit shall be received into the State Treasury on any account, except upon a deposit warrant issued as herein provided. [Id.]

Art. 4354. [4345] Deposit receipts.—The Comptroller shall have printed uniform deposit receipts, to be issued by the Comptroller to cover moneys and other securities received and held by the State Treasurer for which no deposit warrant is issued, or the issuance of a deposit warrant which is deferred, except office fees of the State Treasurer. Such receipts shall be prepared in duplicate and marked "original" and "duplicate," respectively, and shall be serially numbered. The printed form for these receipts shall be so prepared and arranged that the original and duplicate may, by the use of carbon sheets, both be prepared at one and the same writing. The duplicate shall be receipted by the Treasurer, and by him returned to the Comptroller, and the original delivered to, and retained by the State Treasurer. He shall provide his office with separate registers, prepared in like manner and form as the register provided for in this chapter, in which he shall register the deposit receipts, issued in like manner as is provided for the registration of deposit warrants, and shall provide a separate ledger in which shall be kept appropriate accounts for all matters for which such deposit receipts are issued. [Id.]

Art. 4355. [4346]. Claims and accounts.—All claims and accounts against the State shall be submitted on forms prescribed by the Comptroller and in duplicate, when required by him, except claims for pensions, and shall be so prepared as to provide for the entering thereon, for the use of the Comptroller's Department, as well as other appropriate matters, the following:

1. Signature of the head of the department or other person responsible for incurring the expenditure, or of the person on whose account the expenditure was incurred.
2. Appropriation number.
3. Initials of the person ascertaining if there are funds available.
4. Initials of the person auditing the claim.
5. Number and date of warrant issued with the initials of the person preparing the warrant.
6. Initials of the person posting to ledger.
7. Initials of the person comparing the claim and warrant. [Id.]

Art. 4356. [4347] Claims classified.—There shall be three classes of claim forms as follows:

1. "General" which shall consist of: (a) payrolls, covering departmental and institutional services; (b) traveling expense vouchers; (c) purchases and services other than personal; and (d) sheriff and court claims; and under the head of sheriff and court claims the Comptroller may provide for different forms, such as those for sheriffs, county attorneys, district attorneys, district clerks, district judges, witnesses and all other like claims relating to the judiciary.
2. "Special," covering all claims for which special warrants are issued.
3. "Pensions," the form for which shall be prescribed by the Comptroller. [Id.]

Art. 4357. [4348] List of claims to be kept.—When claims and accounts are received, it shall be ascertained if there are funds available therefor; and the person making the examination shall indicate such fact by marking his initials upon such claim; and if there are no funds available, that fact shall be written or stamped upon such claim; and the same shall be held to await the authority to issue a proper warrant therefor. When a claim has been audited and warrant drawn therefor, the claim shall be numbered with the same number as the warrant; and such claim shall be filed numerically according to class, "general," "special," "pension," respectively. There shall be kept, either in book form or in the form of a card index, an alphabetical index of claimants; but, as to payrolls, the department or institution shall be the claimant. The index shall show only the name of the claimant and the number of the claim. After the expiration of two years, such claims shall be removed from the files and otherwise securely stored and preserved as records. [Id.]

Art. 4358. [4349] Pay warrants.—The Comptroller shall have printed uniform pay warrants, which shall be of three classes, "general," "special," and "pension." Such warrants shall be prepared in duplicate, and shall be marked "original" and "duplicate," respectively; and each class shall be serially numbered and shall be of a color of paper different from the other class. Such warrants shall be prepared so as to provide for entering thereon, in addition to other appropriate matter, the following:

1. Initials of the person in the Comptroller's department comparing the warrant with the claim.
2. Initials of the person in the Comptroller's department registering the warrant.
3. Designation of the fund against which the warrant is drawn. [Id.]

Art. 4359. [4350] Pay warrants register.—The Comptroller shall provide a pay warrant register for each class of pay warrants, each volume of which shall be appropriately designated by number or otherwise, and the pages of which shall be ruled, and the lines numbered consecutively. When a pay warrant is prepared, it shall be registered in the pay warrant register for the class to which it belongs; and such entries in those registers shall be on the line corresponding in number with the number on the pay warrant register; and such registry shall consist only of an entry of the amount and name of the payee of such warrant. If a warrant is erroneously prepared and not issued, or is cancelled, or is properly shown to be lost or destroyed, such fact shall be noted in the register opposite the number of such warrant in the register. One person shall be designated by the Comptroller as warrant clerk and such person shall prepare or be responsible for the preparation of all pay warrants, and shall be accountable to the Comptroller for warrants coming into his possession. No warrant shall

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

be prepared except on presentation to the warrant clerk of a properly verified and audited claim, the proper auditing of which claim shall be evidenced by the initials written thereon by the person auditing the same; and such claim so verified and audited shall be sufficient and the only authority for the preparation of a warrant or warrants. When a warrant has been properly prepared, the claim upon which it was prepared shall be initialed with initials of the warrant clerk, and such warrant shall be registered as herein provided; and the fact of the registration thereof shall be shown by writing thereon the initials of the person registering the same. When a warrant is properly prepared, it shall be, with the claim upon which it is based, passed to the Comptroller for his signature or the signature of such person as may be authorized by law to sign the same in his stead. Such warrant shall then be passed to, and registered in, the Treasurer's department and signed by the State Treasurer, or some person authorized by law to sign for him, and returned to the Comptroller's department. Such warrant shall then be delivered by the Comptroller to the person entitled to receive it; and he shall at his option take a receipt from such person therefor and file it in his office. The printed forms for these warrants shall be so prepared and arranged that the original and duplicate shall by the use of carbon sheets be prepared at one writing. [Id.]

Art. 4360. [4351] Pension warrants.—Applications for pensions and the issuance of pension warrants shall not be subject to the provisions of this chapter. Such warrants shall be separately serially numbered. [Id.]

Art. 4361. [4352] Registration of bonds.—The Comptroller shall procure for the use of his department suitable books to be known as "bond registers," the volumes of which shall be separately designated by number or otherwise, in which he shall register alphabetically all State, county, school, municipal and drainage or such other bonds required by law to be registered by him. Neither the bonds nor opinion of the attorney general, nor the record or other papers or documents relative thereto, shall be recorded in full; but only the name of the authority issuing and the names and official capacities of the officers signing such bonds, the date of the issue, date of registration, amount of principal, date of maturity, number, time of option of redemption, rate of interest and day of the month of each year when the interest shall fall due, of each bond so registered, shall be entered upon such register. On the same line where such entry is made, shall be provided blank spaces in which shall be entered the date of payment or redemption of each bond when the same is paid or redeemed. When any bond is paid or redeemed the proper officer or the authority paying such bond shall notify the Comptroller of the fact and date of such payment or redemption, and all papers and documents pertaining to such bonds shall be filed and appropriately numbered. [Id.]

Art. 4362. Bond Clerk.—The Comptroller shall appoint a bond clerk whose term of office shall be at the pleasure of the Comptroller, and who shall first take the official oath and give bond in the sum of ten thousand dollars payable to the Comptroller, conditioned upon the faithful performance of his duties. Such clerk shall under the supervision, direction and authority of the Comptroller, perform all duties with reference to the registration of bonds imposed upon the Comptroller by the provisions of the preceding and succeeding articles, and shall have authority to sign the name of the Comptroller to all certificates of registration of bonds required by law to be registered by the Comptroller, and which bonds are registered by such bond clerk, as provided herein. In the absence of the bond clerk the duties herein imposed upon such bond clerk may be performed in like manner by the chief clerk. [Acts 2nd C. S. 1923, p. 23.]

Art. 4363. [4353] Account by funds kept separate.—The Comptroller shall keep appropriate accounts by funds, showing a short description of the essential features of each, of each bond or of each purchase of similar or like bonds, or other securities purchased by and belonging to the permanent school and other funds of the State; each of which accounts shall be charged with the principal of such bond or purchase; and, with each separate item of interest payments to accrue thereon, and shall be credited with payments as made. He shall also keep controlling or total accounts of such bonds or other securities; which accounts shall be kept with respect to the total amount of bonds or other securities belonging to each separate fund; each of which controlling accounts shall be balanced quarterly at the same time as, and the balance of which shall correspond with, like accounts kept by the State Treasurer. [Acts 3rd C. S. 1910, p. 37.]

Art. 4364. [4354–5–6–7] Ledgers.—The Comptroller shall maintain a double entry system of book-keeping to be in charge of the chief book-keeper. The Comptroller shall keep the following ledgers:

1. State General Ledger.—The accounts of each fund shall be opened in a State general ledger. No entry shall be made in the ledger except by means of the double entry system. An accourt [account] shall be opened with the State Treasurer and charged with the cash on hand and the balance in depositories. Each charge shall represent the aggregate amount of cash held by him for the various funds. Warrants issued shall be charged in monthly totals to the fund account. An account shall be opened for the purpose of showing the amount of outstanding pay warrants from time to time, which shall be credited with the warrants issued and charged with the warrants paid. The Comptroller shall charge the State Treasurer in totals of all deposit warrants as issued, and credit him with warrants paid, so that the balance in the Treasurer's hands, together with the balance in the State depositories, shall agree with the balance shown by this account.

2. Revenue ledger.—A "revenue ledger" in which a distribution shall be made of the revenues derived by the State from all sources, and the amounts derived from each source as stated. The sources of revenue printed on the back of the duplicate in each deposit warrant issued therefor by the Comptroller shall be posted to this ledger, and its balances periodically agreed with the deposit warrants issued.

3. Accounts of Tax Collectors.—One ledger for current taxes, and one ledger for delinquent and insolvent taxes, each to be made self balancing by means of controlling accounts, in which he shall keep the accounts of tax collectors.

4. Account of State Treasurer.—A suspense ledger in which the accounts of the State Treasurer shall be stated in respect to moneys held by him pending the issuance of deposit warrants and moneys and securities held, other than those for State purposes, for all of which the Comptroller shall issue deposit receipts, posting the same in totals to this ledger. It shall also include the accounts with heads of departments for all moneys received by them and not deposited with the State Treasurer; which accounts shall be kept in monthly totals based upon monthly reports furnished to the Comptroller by each of the heads of departments. [Id.]

Art. 4365. [4359] Duplicate warrants.—The Comptroller, when satisfied that any original warrant drawn upon the State Treasurer has been lost or destroyed, or when any certificate or other evidence of indebtedness approved by the auditing board of the State has been lost, is authorized to issue a duplicate warrant in lieu of the original warrant or a duplicate or a copy of such certificate, or other evidence of indebtedness in lieu of such original; but no such duplicate warrant, or other evidence of indebtedness, shall issue until the applicant has filed with the Comptroller his affidavit, stating that he is the true owner of such instrument, and that the same is in fact lost or destroyed, and shall also file with the Comptroller his bond in double the amount of the claim with two or more good and sufficient sureties, payable to the Governor, to be approved by the Comptroller, and conditioned that the applicant will hold the State harmless

and return to the Comptroller, upon demand being made therefor, such duplicates or copies, or the amount of money named therein, together with all costs that may accrue against the State on collecting the same. After the issuance of said duplicate or copy if the Comptroller should ascertain that the same was improperly issued, or that the applicant or party to whom the same was issued was not the owner thereof, he shall at once demand the return of said duplicate or copy if unpaid, or the amount paid out by the State, if so paid; and, upon failure of the party to return same or the amount of money called for, suit shall be instituted upon said bond in Travis County. [Id.]

Art. 4366. [4361] To examine and cancel warrants.—The Comptroller shall examine the disbursements of the Treasurer at the end of each quarter, and shall, together with the Treasurer, cancel the warrants which have been paid in such manner as to prevent their future circulation, and shall examine if the receipts acknowledged by the Treasurer during the quarter correspond with the deposits, and if the balance of money reported to be in his possession is actually in his hands. [Id.]

CHAPTER THREE

STATE TREASURER

Art.
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Article 4367. [4362] [2849] Election and term.—At each biennial general election a State Treasurer shall be elected for a term of two years. [Acts 2nd C. S. 1909, p. 438.]

Art. 4368. [4364] [2850] Bond.—The State Treasurer shall, within twenty days after he shall have received notice of his election, and before he enters upon the duties of his office, give a bond payable to and to be approved by the Governor, in the sum of seventy thousand dollars with a good and solvent surety company authorized to do business in this State, conditioned that he will faithfully execute the duties of his office. All expense necessary and incident to the execution of such bond shall be paid by the State by appropriation. [Acts 1923, p. 310.]

Art. 4369. [4365–6] New bond required.—The Attorney General, with the Comptroller, shall on the first days of June and December of every year, examine the bond of the Treasurer and make diligent inquiry into the condition of the sureties on said bond; and, if in the opinion of the Attorney General, said bond is not sufficient to secure the State in her rights, then, the Attorney General shall notify said Treasurer in writing of the insufficiency of said bond; and, should said Treasurer fail for the space of twenty days from the date of such notice to furnish a sufficient new bond, the Governor shall forthwith suspend said Treasurer from office. If the Treasurer be so suspended from office the Governor shall appoint some suitable person as Treasurer who shall give bond as required by the provisions of the preceding article. The appointee shall perform the duties of Treasurer until the suspended officer shall give a new bond to be approved by the Governor. [Acts 1873, p. 62; G. L. vol. 7, p. 514; Acts 2nd C. S. 1909, p. 438.]

Art. 4370. [4367] [2854] To receive moneys from Comptroller.—The Treasurer shall receive, on the warrants of the Comptroller, all moneys which shall from time to time be paid into the State Treasury, receipting for the same upon duplicate and triplicate warrants; which duplicate shall be deposited with the Comptroller, and the triplicate given to the person depositing such money. [Acts 1846, p. 10; G. L. vol. 2, p. 1316.]

Art. 4371. [4368] [2855] Money paid out, how.—He shall countersign and pay all warrants drawn by the Comptroller on the Treasury which are authorized by law. No money shall be paid out of the Treasury except on the warrants of the Comptroller. [Id.]

Art. 4372. [4369–70] To keep accounts.—He shall keep true accounts of the receipts and expenditures of the public moneys of the Treasury, and close his accounts annually on the thirty-first day of August, with the proper legal vouchers for the same, distinguishing between the receipts and disbursements of each fiscal year. He shall also open an account in the Treasury for all appropriations of money made by law, so that the appropriations and the application in pursuance thereof may clearly and distinctly appear. [Id. P. D. 5287.]

Art. 4373. [4371] [2859] Annual exhibit to Governor.—In addition to the reports required by the Constitution, the Treasurer shall submit to the Governor on the first Monday of November of each year, and at such other times as he shall require, an exact statement of the condition and situation of the Treasury, and of the balance of money remaining therein to the credit of the State, with a summary of the receipts and payments of the Treasury during the preceding year, or for such other period of time as may be specially required, and shall exhibit all books, papers, vouchers and other matters pertaining to his office, for the examination of the Legislature, or either branch thereof, or any committee which may be by them appointed, whenever required by them to do so. [Id. P. D. 5288.]

Art. 4374. [4372] [2860] Only public moneys to be kept.—All moneys received by the Treasurer shall be kept in the safes and vaults of the Treasury; and the Treasurer shall not keep or receive into the building, safes or vaults of the Treasury any money, or the representative of money, belonging to any individual except in cases expressly provided for by law; nor shall said Treasurer appropriate to his own use, or lend, sell or exchange any money, or the representative of money, in his custody or control as such Treasurer. [Id. P. D. 5290.]

Art. 4375. [4373] [2861] Employés.—The Treasurer shall appoint a Chief Clerk who shall be required to give bond with a good and solvent surety company authorized to do business in this State, in the sum of twenty-thousand dollars, payable to and to be approved by the Governor, and conditioned as is the bond of the State Treasurer, and shall appoint such other employés and clerks as may be authorized by law. All such employés, whether clerks or otherwise, who, as a part of their duties, handle any money, drafts, checks, bills of exchange, warrants, or securities or other evidences of debt which are, or may be, convertible into money, shall give bond with a good and solvent surety company authorized to do business in this State, payable to the Treasurer in such sum as he may require, conditioned that he or she will faithfully execute and perform the duties of his or her position. The cost and expense incident to the execution of the bond of the chief clerk and of the bonds of the respective employés shall be paid by the State by appropriation. [Acts 1923, p. 310.]

Art. 4376. [4374] [2862] Chief clerk to act.—Whenever the Treasurer from sickness, unavoidable absence or other cause is not able to act, the chief clerk shall sign his own name as "Acting Treas-

urer" and do such other acts and things as the State Treasurer himself might legally do. The legal acts and signatures of such chief clerk as Acting Treasurer, shall be as valid as the acts and signatures of the Treasurer himself. [Acts 2nd C. S. 1909, p. 438.]

Art. 4377. [4375] [2863] Delivery to successor.—The Treasurer shall, at the close of his term of office, deliver into the possession of his successor the moneys, securities and all other property of the State together with books, vouchers, papers and evidences of property in his possession, and all other matters and things which pertain to that office. [Acts 1846, p. 10; G. L. vol. 2, p. 1316; Acts 1909, 2nd C. S. p. 438.]

Art. 4378. [4376–7] School fund bonds.—The Treasurer shall be the custodian of all bonds in which the school funds of the State have been or may hereafter be invested, and shall keep said bonds in his custody until the same have been paid off, discharged or otherwise disposed of by the proper authorities of this State, and shall upon the payment of any installment of interest see that the proper credit is given, and the coupons on said bonds, when paid, shall be properly separated therefrom and canceled by him. [Acts 1895, p. 9; G. L. vol. 10, p. 739; Acts 2nd C. S. 1909, p. 440.]

Art. 4379. [4378] Money returned to counties.—Whenever there is money in the State Treasury for the purpose of paying off any obligation due by any county, city or town, and it is made to appear to the Comptroller by certified copy of the records of the commissioners court, or by other satisfactory evidence, that said obligations are no longer outstanding against such county, city or town, then the Comptroller shall draw a warrant on the State Treasury in favor of such county, city or town, for the amount of money so remaining in the Treasury; and the Treasurer shall pay such money on said warrant of the Comptroller to the Treasurer of such county, city or town, for the benefit of its general fund. [Acts 1901, p. 19.]

Art. 4380. [4379] Deposit warrant register.—The Treasurer shall cause to be prepared a deposit warrant register designed with columns for State revenue, available school fund, and miscellaneous; all warrants to be entered consecutively and distributed to the proper columns. [Acts 2nd C. S. 1909, p. 438.]

Art. 4381. [4380] Shall post daily totals.—The State Treasurer shall cause the daily totals of State revenue and all available school deposit warrants to be posted to the fund accounts in the ledger, and the items in the miscellaneous column to be posted in detail, except that deposit warrants for bonds sold or redeemed shall be posted in a bond book. [Id.]

Art. 4382. [4381] Register of warrants issued.—The Treasurer shall keep registers of warrants issued, one for general warrants, and one for special warrants. In case of pensions, the Comptroller shall furnish a list of those issued; which list shall be compared with the warrants and shall constitute the Treasurer's register of pension warrants issued. The date of payment of all warrants shall be stamped on the above registers. The Treasurer shall keep a "warrants paid register" with columns headed "general," "special," and "pensions." In this register the general and special warrants shall be entered when paid in detail and the pension warrants in one daily total. [Id.]

Art. 4383. [4382] Other accounts.—He shall keep accounts called "warrants payable, general," "warrants payable, special," and "warrants payable, pensions," to which shall be credited the daily totals of the several registers of warrants issued and charged with the daily total of warrants paid of each class, so that the balance of these accounts shall represent the aggregate amount of outstanding warrants. [Id.]

Art. 4384. [4383] Outstanding warrants.—Outstanding warrants shall be listed each month from the registers of warrants issued, and a list thereof sent to the Comptroller for his record. With this list the Treasurer shall furnish a statement showing the aggregate amount of general, special and pension warrants paid during the month. [Id.]

Art. 4385. [4384] General revenue account.—He shall charge the daily totals of the general warrants issued from the register to "general revenue" accounts in the ledger. The daily total of pension warrants issued shall be similarly treated; while the special warrants issued shall be charged to the fund account to which they apply, except that those issued for bonds purchased shall be posted in the bond book. [Id.]

Art. 4386. Certain special funds abolished.—All warrants on the State Treasury shall be general warrants, and shall be on an equal basis with each other except that in the event of a question and necessity arising as to the priority of payment of any such warrants, they shall be paid in order of their serial number, such warrants to be numbered at all times in the order of receiving the accounts in the Comptroller's office. This article shall not apply to warrants drawn on the Special Game Fund nor on funds collected for and appropriated to the State Highway Department nor to any special fund created or provided in the State Constitution, nor shall it apply to any special fund consisting of taxes set aside and remitted or donated by the Legislature to any county, city or locality. Such constitutional funds and special tax remitting funds and the warrants against the same shall be handled under present laws. [Acts 2nd C. S. 1923, p. 61.]

Art. 4387. [4385] Appropriation ledger.—The State Treasurer shall charge all pay warrants issued under the authority of appropriations in detail to the "appropriation ledger," an account being kept for each appropriation, which shall be credited with the amount of the appropriation. The total of the appropriation so credited shall be charged to an account called "appropriation voted." The daily totals of the general warrants issued shall be credited to this account, so that the balance shall represent the aggregate amount of unused appropriation. [Id.]

Art. 4388. [4386] Daily statement from Land Office.—He shall receive daily from the General Land Office a detailed list of remitters of money for interest, principal and leases of school, university and asylum lands together with the actual remittances, which he shall cash and deposit in his vault, if the necessity arises. A deposit receipt shall be issued by the Comptroller for the daily total of such remittances; and the cashier of the Treasurer's department shall keep a cash book, to be called "suspense cash book," in which to enter these deposit receipts, and any others issued for cash received for which no deposit warrants can be issued, or when their issuance is delayed. When deposit warrants are issued, they shall be credited in this cash book, as well as any refunds, and the balance shall represent the aggregate of the items still in suspense. Refunds shall be made in a manner similar to that in present use, except that they shall be made on the Comptroller's authority. [Id.]

Art. 4389. [4387] Office fee book.—The Treasurer shall keep an office fee book in which shall be entered in detail all fees earned by the Treasury department; which fees shall be deposited in the Treasury to the credit of the general revenue at the end of each month on a deposit warrant issued by the Comptroller. [Id.]

Art. 4390. [4388] Cash balancing book.—He shall keep a book, to be called "cash balancing book," for the purpose of arriving at the daily cash balance, in which shall be entered the daily totals of all receipts and disbursements. [Id.]

Art. 4391. [4389] Ledger.—The ledger kept by the Treasurer shall contain accounts for each fund, which shall be credited with the existing balances and with the daily totals of deposit warrants except those issued for bonds. The pay warrants issued, except those for bonds, shall be charged to the several fund accounts from the warrant register in daily totals. [Id.]

Art. 4392. [4390] Bond book.—He shall keep a bond book, with columns for each fund, which shall start with the aggregate amount of bonds now held and be charged with all subsequent additions and credited with all bonds sold or redeemed. The entries in the bond book shall be posted from the deposit warrant and special warrant registers, being the deposit warrants issued for bonds sold or redeemed and special warrants for bonds purchased. He shall also keep a bond register, in which shall be entered the essential details of all bonds held by him and belonging to any State fund. [Id.]

Art. 4393. [4391] Securities register.—He shall keep a suitable register in which to enter all bonds, cash and other securities lodged with him by bond investment, surety and insurance companies, and State depository banks, and all other bonds lodged with him under the provisions of the statutes, the registration of which is not otherwise provided for by law. The relinquishment of these securities shall be on the authority of the Comptroller. The Treasurer shall keep a separate bond book in which to enter all these transactions consecutively, posting each item to the register; which book shall be opened with the aggregate of securities now held. [Id.]

CHAPTER FOUR

ATTORNEY GENERAL

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Article 4394. [4411–30] Election and term.—At each biennial general election an Attorney General shall be elected for a term of two years. He shall reside and keep his office in the city of Austin.

Art. 4395. [4413] [2886] To represent State in higher courts.—The Attorney General shall prosecute and defend all actions in the Supreme Court or the Courts of Civil Appeals in which the State may be interested. [Act May 11, 1846, p. 206; P. D. 198; G. L. vol. 2, p. 1512.]

Art. 4396. [4415–16] Collection suits.—He shall transmit to the proper district or county attorney, with such instructions as he may deem necessary, any certified account, bond or other demand which the Comptroller has delivered to him for prosecution and suit. He shall require the several district and county attorneys to report to him at the close of the courts of their respective districts and counties, in such form as he may prescribe, precise information of the situation of all suits instituted by them for the collection of public money. He shall report to the Comptroller annually, on the last day of October and at such other times as the Comptroller may request, a full and correct statement of the status of all such suits. [Id.]

Art. 4397. [4417] [2890] To prepare forms.—He shall whenever requested by the Comptroller, prepare proper forms for contracts, obligations and other instruments which may be wanted for use of the State. [Id.]

Art. 4398. [619] To examine bonds.—He shall carefully examine all county and municipal bonds sent to him as provided by Article 709, in connection with the facts and the Constitution and laws on the subject of the execution of such bonds, and if, as the result of such examination, he shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon the county, city, or town, by which they are executed, he shall so officially certify. [Acts 1893, p. 84; G. L. vol. 10, p. 514.]

Art. 4399. Whom to advise.—The Attorney General at the request of the Governor, or the head of any department of the State government, including the heads and boards of penal and eleemosynary institutions, and all other State boards, regents, trustees of the State educational institutions, committees of either branch of the Legislature, and county auditors authorized by law, shall give them written advice upon any question touching the public interest, or concerning their official duties. He shall advise the several district and county attorneys of the State, in the prosecution and defense of all actions in the district or inferior courts, wherein the State is interested, whenever requested by them, after said attorney shall have investigated the question, and shall with such question, also submit his brief. He shall advise the proper legal authorities in regard to the issuance of all bonds that the law requires shall be approved by him. He is hereby prohibited from giving legal advice or written opinions to any other than the officers or persons named herein. [Acts 1917, p. 376.]

Art. 4400. [4419] [2892] Shall inspect accounts.—He shall at least once a month inspect the accounts of the offices of the State Treasurer and the Comptroller, of all officers and persons charged with the collection or custody of funds of the State. He shall proceed immediately to institute, or cause to be instituted, against any such officer or person who is in default or arrears, suit for the recovery of funds in his hands. He shall also institute immediately criminal proceedings against whoever has violated the laws by misapplying, or retaining in his hands, funds belonging to the State.

Art. 4401. [4420] [2893] To attend sales and bid in land.—If any property shall be sold by virtue of any execution, order or sale issued upon any judgment in favor of the State or sale by virtue of any deed of trust—except executions issued upon judgments in cases of scire facias the agent representing the State by and with the advice and consent of the Attorney General is hereby authorized and required to attend such sales and bid on and buy in for the State said property when it shall be deemed proper to protect the interest of the State in the collection of such judgment and debt. His bid shall not exceed the amount necessary to satisfy said judgment and debt and all costs due thereon. [Acts 1879, S. S., pp. 9–10; G. L. vol. 9, p. 41; Acts 1927, 40th Leg., p. 361, ch. 243, § 1.]

Art. 4402. [4421] [2894] To execute deeds.—In all cases where property is so purchased by the State, the officer selling the same shall execute and deliver to the State a deed to the same, such as is prescribed for individuals in similar cases. [Id. sec. 2.]

Art. 4403. [4422] [2895] May sell such property.—The agent or attorney of the State buying for the State such property at such sales shall be authorized by and with the advice and consent of the Attorney General, at any time to sell or otherwise dispose of said property so purchased in the manner acquired and upon such terms and conditions as he may deem most advantageous to the State. If sold or disposed of for a greater amount than is necessary to pay off the amount due upon the judgment or debt, and all costs accrued thereon, the remainder shall be paid into the State Treasury to the credit of the general revenue. When such sale is made, the Attorney General shall, in the name of the State, execute and deliver to the purchaser a deed of conveyance to said property, which deed shall vest all the rights and title to the same in the purchaser thereof. [Id. sec. 3; Acts 1927, 40th Leg., p. 361, ch. 243, § 1.]

Art. 4404. [4423] [2896] Agent to bid and sell.—When any such property is sold under execution or order of sale issued upon any judgment in favor of the county, including executions issued upon judg-

ments in cases of scire facias in the name of the State, the attorney or agent so representing the county, by and with the advice and consent of the commissioner's court, shall have the same authority to buy and dispose of such property for the county as the agent or attorney for the State is given in this law in similar cases. When any property is so purchased by the agent or attorney of the county, the officer so selling the same shall execute and deliver to the county a deed of conveyance to the same. Whenever the property so bought in for the county is sold, the commissioner's court shall execute and deliver to the purchaser thereof a deed in the name of the county to such property. [Id. sec. 4.]

Art. 4405. [4424] [2897] Judgments against insolvents.—If the principal and sureties upon any judgment held by the State are insolvent, so that under any existing process of law said judgment or any part thereof cannot be collected, there shall be, and is hereby constituted a board consisting of the Attorney General, Comptroller and State Treasurer, who are hereby empowered and authorized by such advertising as they may deem necessary to offer for sale at public outcry, or by private sale, as they may deem to the best interest of the State, all the right of the State to such judgment; and, if by public sale, the amount bid on the same shall not be deemed sufficient, they shall refuse to accept the same, and dispose of the same in any manner deemed by them to the best interest of the State, and upon sale shall make a proper assignment of said judgment to the purchaser. [Id. sec. 5.]

Art. 4406. [4425] [2898] [2803] Official register.—The Attorney General shall keep in proper books a register of all his official acts and opinions, of all actions and demands prosecuted or defended by him or any district or county attorney, in which any portion of the revenue of the State is involved, and of all proceedings had in relation thereto, and shall deliver the same to his successor in office [Acts 1846, p. 204; Id. sec. 12; P. D. 209; G. L. vol. 2, p. 1512.]

Art. 4407. [4426] [2899] [2804] Collections.—He shall immediately pay into the State Treasury all money received by him for debts due or penalties. [Id. P. D. 208.]

Art. 4408. [4427] [2900] [2805] Forfeiture of charters.—The Attorney General, unless otherwise expressly directed by law, whenever sufficient cause exists therefor shall seek a judicial forfeiture of the charters of private corporations. He shall at once take steps to seek such forfeiture in any case where satisfactory evidence is laid before him that any corporation receiving State aid has, by the non-performance of its charter conditions or any violation of its charter, or by any act or omission, mis-user or non-user, forfeited its charter or any rights thereunder. [Acts 1876, p. 312; G. L. vol. 8, p. 1148.]

Art. 4409. [4428] [2901] [2806] Inquiry into charter rights.—He shall also inquire into the charter rights of all private corporations and, in the name of the State, take such legal action as may be proper and necessary to prevent any private corporation from exercising any power or demanding or collecting any species of taxes, tolls, freight or wharfage not authorized by law. [Const. Art. 4, sec. 22.]

Art. 4410. Escheats.—The Attorney General shall institute and prosecute, or cause to be instituted and prosecuted, all suits and proceedings necessary to recover for and on behalf of the State all properties, real, personal or mixed, that have escheated or may escheat to the State under the laws of the State. [Acts 1917, p. 376.]

Art. 4411. [4429] [2902] [2807] No admission to prejudice.—No admission, agreement or waiver, made by the Attorney General, in any action or suit in which the State is a party, shall prejudice the rights of the State. [Acts 1846, p. 206; P. D. 211; G. L. vol. 2, p. 1148.]

Art. 4412. [4431] First office assistant.—In case of the absence or inability of the Attorney General to act, the first office assistant of the Attorney General shall discharge the duties which devolve by law upon the Attorney General. [Act 1903, p. 117.]

Art. 4413. Biennial report.—The Attorney General shall report to the Governor biennially on the first Monday in December next preceding the expiration of his official term the number of indictments which have been found by grand juries in this State for the two preceding years; the offenses charged, the number of trials, convictions and acquittals for each offense; the number of dismissals and also a summary of the judgments rendered on conviction, the nature and amount of penalties imposed and the amount of fines collected. This report shall also give a general summary of all the business, civil and criminal, disposed of by the Supreme Court and Court of Criminal Appeals, so far as the State may be a party, and all civil causes to which the State is a party prosecuted or defended by him in any other courts, State or Federal. [Acts 1885, p. 61; G. L. vol. 9, p. 681.]

TITLE 71

HEALTH—PUBLIC

Chap.

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CHAPTER ONE

HEALTH BOARDS AND LAWS

Art.

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4415a. Composition of State Board of Health, appointment, term of office.
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Article 4414. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 11.]

Art. 4414a. State department of health established.—To better protect and promote the health

of the people of Texas, there is hereby established the State Department of Health, which Department shall consist of a State Board of Health, a State Health Officer and his administrative staff, and which shall have the general powers and duties authorized and imposed by the provisions of this act [Arts. 4414a, 4415a, 4416a. 4417a, 4418a to 4418f]. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 1.]

Section 11 of Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, repeals Rev. Civ. St. 1925, arts. 4414–4418, 4465, and vests the powers and duties of the Director of the Food and Drug Division of the State Department of Health in the State Health Officer, to be exercised by him or by a division director within his Department and subject to his control. It further continues in force all other laws or parts of laws now in force, relating to the State Health Department, the State Board of Health and the State Health Officer, and all other laws relating to public health, sanitation and the control and prevention of communicable, contagious, and infectious diseases, except, insofar as the same may be in conflict with the provisions of this Act.

Section 12 of said Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, provides that if any part or section of the act is held invalid, such holding shall not affect the remainder.

Art. 4415. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 11.]

Art. 4415a. Composition of State Board of Health, appointment, term of office.—The State Board of Health shall consist of six members, who shall be appointed by the Governor, and confirmed by the Senate and who shall have the following qualifications: All of the members shall be legally qualified, practicing physicians, who shall have had not less than five years' experience in the actual practice of medicine within the State of Texas, of good professional standing, and graduates of recognized medical colleges. Of the six members of the Board first appointed under the provisions of this Act [Arts. 4414a, 4415a, 4416a, 4417a, 4418a to 4418f], two shall serve for a period of two years, two for a period of four years, and two for a period of six years, or until their successors shall be appointed and shall have qualified, unless sooner removed for cause. Immediately after this Act [Arts. 4414a, 4415a, 4416a, 4417a, 4418a to 4418f] becomes effective, the Governor shall appoint six members to constitute the new State Board of Health created by this Act [Arts. 4414a, 4415a, 4416a, 4417a, 4418a to 4418f] and, in the act of appointment, shall designate the respective terms of the members first appointed. The terms of office of the members of the State Board of Health shall be six years, after the terms of the members first appointed shall have expired. The State Health Officer shall be a member ex-officio and shall act as Chairman of the State Board of Health, but shall not have the right to vote as a member of such Board except in cases of a tie vote; provided, that in no event shall he be entitled to a vote in the matter of selecting the State Health officer. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 2.]

Art. 4416. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 11.]

Art. 4416a. Organization and meetings of State Board of Health.—A majority of the members of the State Board of Health, exclusive of the members ex-officio, shall constitute a quorum for the transaction of business. The Board shall elect one of its members a Vice-Chairman, who shall proceed in the absence of the Chairman. The Board shall meet at Austin quarterly, on a date to be fixed by the Board, and shall hold such special meetings as may be called by the State Health Officer or any two members of the Board. Timely notice of such special meetings shall be given to each member. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 3.]

Art. 4417. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 11.]

Art. 4417a. Compensation of members of State Board of Health.—The six members of the State Board of Health, excepting the member ex-officio, shall receive no fixed salary, but each member shall be allowed, for each and every day in attending the meetings of the Board, the sum of Twenty Dollars ($20.00), including time spent in travel to and from such meetings, and said members shall be allowed traveling and other necessary expenses while in the performance of official duty, to be evidenced by vouchers approved by the State Health Officer, provided no member shall receive more than Five Hundred Dollars ($500.00) annually, including expenses. The members of the State Board of Health and the State Health officer shall qualify by taking the constitutional oath of office before an officer authorized to administer oaths within this State, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue Commissions to them, which shall be evidence of their authority to act as such. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 4.]

Art. 4418. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 11.]

Art. 4418a. Powers and duties of the State Board of Health.—The State Board of Health shall have the following powers and duties:

(1) To elect, by a majority vote of the whole membership of the Board, a State Health Officer, who shall be executive of the State Department of Health, subject to the further provisions of this Act [Arts. 4414a, 4415a, 4416a, 4417a, 4418a to 4418f]; and to suspend or remove said officer for good and sufficient cause, sustained by a majority of the Board membership; provided, that said officer shall not be removed until he has been given a hearing before said Board, if he so elects. Immediately after the appointment of a new State Board of Health, as provided in this Act [Arts. 4414a, 4415a, 4416a, 4417a, 4418a to 4418f], said Board shall organize, and appoint a State Health Officer, who shall serve as such, unless sooner removed as above provided, until the last regular quarterly meeting of the Board in 1928; and at such meeting, and every two years thereafter, the State Board of Health shall appoint a State Health Officer, who shall serve, unless sooner removed as above provided, for a term of two years and until his successor shall be appointed and shall have qualified.

(2) To investigate the conduct of the work of the State Department of Health, and for this purpose to have access, at any time, to all books and records thereof, and to require written or oral information from any officer or employee thereof.

(3) To adopt rules, not inconsistent with law, for its own procedure, a copy of which rules shall be filed in the State Department of Health. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 5.]

Art. 4418b. State Health Officer, qualifications, appointment, compensation.—The State Health Officer shall be a legally qualified physician, who shall have had not less than five years' experience in the actual practice of medicine within the State of Texas, of good professional standing, and a graduate of a recognized medical college. The State Health Officer shall be the executive head of the State Department of Health; he shall devote his whole time to the duties of this office, and shall not engage in the private practice of medicine during his term of office. He shall receive an annual salary of Four Thousand Five Hundred Dollars ($4,500.00), and shall be allowed his actual traveling expenses while in the performance of official duties away from the Capitol, to be evidenced by vouchers approved by the State Board of Health; provided, that he shall be permitted to charge against his traveling expense account any expenses incurred in travel outside of this State on official business; said out-of-State traveling expenses not to exceed Five Hundred Dollars ($500.00) per annum. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 6.]

Art. 4418c. State Health Officer to execute bond.—The State Health Officer shall execute a bond, in the sum of Ten Thousand Dollars ($10,000.00), payable to the Governor, with two or more good and sufficient sureties thereon, or with some Surety Company authorized to do business in this State, as surety, conditioned for the faithful performance of his official duties, the bond to be approved by the Governor and filed in the office of the Secretary of State. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 7.]

Art. 4418d. Duties of State Health Officer.—The State Health Officer shall be the executive head of the State Department of Health, and he shall, subject to the provisions of this Act [Arts. 4414a, 4415a, 4416a, 4417a, 4418a to 4418f], exercise all the powers and discharge all the duties now vested by law in the Texas State Department of Health and the State Health Officer, as well as all powers now vested by law in any officer, assistant, director or bureau head of the State Department of Health, excepting only such powers as may be conferred by this Act [Arts. 4414a, 4415a, 4416a, 4417a, 4418a to 4418f] upon the State Board of Health hereby created. The State Health Officer, with the approval of the State Board of Health, may organize and maintain within his Department such divisions of service as are deemed necessary for the efficient conduct of the work of the Department. From time to time, he shall appoint directors of such divisions, as well as other employees of the Department, and shall designate the duties and supervise the work of all such directors and employees. He shall have the power, with the approval of the State Board of Health, to prescribe and promulgate such administrative rules and regulations, not inconsistent with any law of the State, as may be deemed necessary for the effective performance of the duties imposed by this or any other law upon the State Department of Health and its several officers and divisions. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 8.]

Art. 4418e. Acting State Health Officer.—The State Health Officer, with the approval of the State Board of Health, shall from time to time designate one of the directors of the Department Divisions, who is a legally qualified physician, as acting State Health Officer, and the persons so designated shall have the full authority and perform the duties of the State Health Officer in the event of his absence from the Capitol or inability to act. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 9.]

Art. 4418f. Commissioners' Court to make appropriations.—It shall be lawful for the State Department of Health to accept donations and contributions, to be expended in the interest of the public health and the enforcement of public health laws. The Commissioners Court of any County shall have the authority to appropriate and expend money from the general revenues of its County for and in behalf of public health and sanitation within its County. [Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 10.]

Art. 4419. [4528] General duties and powers.—The State Board of Health shall have general supervision and control of all matters pertaining to the health of citizens of this State, as provided herein. It shall make a study of the causes and prevention of infection of contagious diseases affecting the lives of citizens within this State and except as otherwise provided in this chapter shall have direction and control of all matters of quarantine regulations and enforcement and shall have full power and authority to prevent the entrance of such diseases from points without the State, and shall have direction and control over sanitary and quarantine measures for dealing with all diseases within the State and to suppress same and prevent their spread. The president of the board shall have charge of and superintend the administration of all matters pertaining to State quarantine. [Acts 1909, 1st C. S., p. 340; Acts 1913, p. 147.]

Art. 4420. [4536] May enter and inspect.—The members of the State Board of Health or any person duly authorized by them, upon presentation of proper authority in writing, are hereby empowered, whenever they may deem it necessary in pursuance of their duties, to enter into, examine, investigate, inspect and view any ground, public building, factory, slaughter house, packing house, abbatoir, dairy, bakery, manufactory, hotel, restaurant and any other public place and public building where they deem it proper to enter for the discovery and suppression of disease and for the enforcement of the rules of the sanitary code for Texas and of any health law, sanitary law or quarantine regulation of this State. [Acts 1909, 1st C. S. p. 340.]

Art. 4421. [4537] Investigations by board.—The members of said Board of Health and its officers are severally authorized to administer oaths and to summon witnesses and compel their attendance in all matters proper for said board to investigate, such as the determination of nuisances, investigation of public water supplies, of any sanitary conditions, of the existence of infection, or the investigation of any matter requiring the exercise of the discretionary powers invested in said board and its officers and members, and in the general scope of its authority invested by this chapter. The several district judges and courts are hereby charged with the duty of aiding said board in its investigations and in compelling due observance of the provisions of this chapter; and if any witness summoned by said board or any of its officers or members shall prove disobedient or disrespectful to the lawful authority of such board, officer or member, such person shall be punished by the district court of the county in which such witness is summoned to appear, as for contempt of said court. [Id.]

Art. 4422. [4538] No county physician.—The office of county health officer shall be filled by a competent physician legally qualified to practice under the laws of this State and of reputable professional standing. [Id.]

Art. 4423. [4539] County health officer.—The commissioners court by a majority vote in each organized county shall biennially appoint a proper person for the office of county health officer for his county, who shall hold office for two years. Said county health officer shall take and subscribe to the official oath, and shall file a copy of such oath and a copy of his appointment with the Texas State Board of Health; and, until such copies are so filed, said officer shall not be deemed legally qualified. Compensation of said county health officer shall be fixed by the commissioners court; provided, that no compensation or salary shall be allowed except for services actually rendered. [Id.]

Art. 4424. [4540] No city physician.—The office of city physician is abolished, and instead the office of city health officer is created. The office of city health officer shall be filled by a competent physician, legally qualified to practice medicine within this State, of reputable professional standing. [Id.]

Art. 4425. [4541] City health officer.—The governing body of each incorporated city and town within this State shall elect a qualified person for the office of city health officer by a majority of the votes of the governing body, except in cities which may be operated under a charter providing for a different method of selecting city physicians, in which event the office of city health officer shall be filled as is now filled by the city physician, but in no instance shall the office of city health officer be abolished. The city health officer, after appointment, shall take and subscribe to the official oath, and shall file a copy of such oath and a copy of his appointment with the Texas State Board of Health, and shall not be deemed to be legally qualified until said copies shall have been so filed. [Id.]

Art. 4426. [4542] Health officers appoint [appointed] by board, when.—If said authorities shall fail, neglect or refuse to fill the office of county or city health officer as in this chapter provided then the State Board of Health shall have the power to appoint such county or city health officer to hold office until the local authorities shall fill said office, first having given ten days notice in writing to such authority of the desire for such appointment. [Id.]

Art. 4427. [4543] Duties of county health officer.—Each county health officer shall perform such duties as have been required of county physicians, with relation to caring for the prisoners in county jails and in caring for the inmates of county poor farms, hospitals, discharging duties of county quarantine and other such duties as may be lawfully required of the county physician by the commissioners court and other officers of the county, and shall discharge any additional duties which it may be proper for county au-

thorities under the present laws to require of county physicians; and, in addition thereto, he shall discharge such duties as shall be prescribed for him under the rules, regulations and requirements of the Texas State Board of Health, or the president thereof, and is empowered and authorized to establish, maintain and enforce quarantine within his county. He shall also be required to aid and assist the State Board of Health in all matters of local quarantine, inspection, disease prevention and suppression, vital and mortuary statistics and general sanitation within his county; and he shall at all times report to said State board, in such manner and form as it shall prescribe, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction; and he shall make such other and further reports in such manner and form and at such times as said State board shall direct; touching on such matters as may be proper for said State board to direct; and he shall aid said State board at all times in the enforcement of its proper rules, regulations, requirements and ordinances, and in the enforcement of all sanitary laws and quarantine regulations within his jurisdiction. [Id.]

Art. 4428. [4544] Removal of county health officer.—In all matters with which the State Board of Health may be clothed with authority, said county health officer shall at all times be under its direction; and any failure or refusal on the part of said county health officer to obey the authority and reasonable commands of said State Board of Health shall constitute malfeasance in office, and shall subject said county health officer to removal from office at the relation of the State Board of Health; and pending charges for removal, said county health officer shall not receive any salary or compensation. Said cause shall be tried in the district court of the county in which such county health officer resides. [Id.]

Art. 4429. [4546] Charges against county health officer.—If any county health officer shall fail or refuse to properly discharge the duties of his office, as prescribed by this chapter, the State Board of Health shall file charges with the commissioners court for the proper county, specifying wherein such officer has failed in the discharge of his duties; and at the same time the State Board of Health shall file a protest with the county clerk and the county treasurer against the payment of further fees, salary or allowance to said county health officer; and, pending such protest and charges, it shall not be lawful for such county health officer to be paid or to receive any subsequently earned salary, fees or allowances on account of his office, unless such charges are shown to be untrue and are not sustained. After five days notice in writing to said county health officer, the commissioners court shall hear the charges, at which hearing the county judge shall preside, and the State Board of Health may be represented. Either party, the State Board or the county health officer, may appeal from the decision of said court to the district court of the county; and, pending such appeal, no salary, fees or allowances shall be paid to said county health officer for any subsequently earned salary; and, if the charges shall be sustained, the county health officer shall be adjudged to pay all costs of court, and shall forfeit all salary, fees and allowances, earned subsequently to the date of filing the charges and protests. [Id.]

Art. 4430. [4548] Duties of city health officer.—Each city health officer shall perform such duties as may be required of him by general law and city ordinances with regard to the general health and sanitation of towns and cities, and perform such other duties as shall be legally required of him by the mayor, governing body or the ordinances of his city or town. He shall discharge and perform such duties as may be prescribed for him under the directions, rules, regulations and requirements of the State Board of Health and the president thereof. He shall be required to aid and assist the State Board of Health in all matters of quarantine, vital and mortuary statistics, inspection, disease prevention and suppression and sanitation within his jurisdiction. He shall at all times report to the State Board of Health, in such manner and form as said board may prescribe, the presence of all contagious, infectious and dangerous epidemic diseases within his jurisdiction, and shall make such other and further reports in such manner and form and at such times as said State board shall direct, touching all such matters as may be proper for said board to direct, and he shall aid said State board at all times in the enforcement of proper rules, regulations and requirements in the enforcement of all sanitary laws, quarantine regulations and vital statistics collection, and perform such other duties as said State board shall direct. [Id.]

Art. 4431. [4549] City health officer removed.—In all matters in which the State Board of Health may be clothed with authority, said city health officer shall at all times be governed by the authority of said board, and failure or refusal on the part of said city health officer to properly perform the duties of his office as prescribed by this chapter shall constitute malfeasance in office, and shall subject said city health officer to removal from office at the relation of the State Board of Health. Said cause shall be tried in the district court of the county in which such city health officer resides. [Id.]

Art. 4432. [4550] Charges against city health officer.—If said city health officer fails or refuses to properly discharge his duties of his office, the State Board of Health shall file charges against said city health officer with the governing body of the proper town or city, which shall specify in what particulars said city health officer has failed in respect to the discharge of his duties, and shall at the same time file a protest with the city secretary and city treasurer against the payment to said city health officer of further fees, salary or allowance; and, pending such charges and protest, no further salary, fees or allowance shall be paid to said city health officer, unless such charges are shown to be untrue and not sustained. After five days notice in writing to said city health officer, the charges shall be heard before the mayor and governing body of the town or city in which said city health officer shall reside, at which hearing the State Board of Health may be represented, and either the city health officer or the State Board of Health shall have the right of appeal to the county court of the county in which the city or town is situated. If said charges be sustained, said city health officer shall be adjudged to pay all costs of court, and forfeit all salary, fees and allowances accrued subsequent to the date of filing of the charges and protest originally and which may be due him on account of his office. [Id.]

Art. 4433. [4552] Annual conference.—An annual conference of county and city health officers of this State shall be held at such time and place as the State Board of Health shall designate, at which conference the president or some member of said State board shall preside. The several counties, towns and cities may provide for and pay the necessary expense of its county health officer or city health officer for attendance upon said conference. [Id.]

Art. 4434. [2251] [1547] Co-operation.—The municipal authorities of towns and cities, and commissioners courts of the counties wherein such towns and cities are situated, may co-operate with each other in making such improvements connected with said towns, cities and counties as said authorities and courts may deem necessary to improve the public health and to promote efficient sanitary regulations; and, by mutual arrangement, they may provide for the construction of said improvements and the payment therefor. [Acts S. S. 1879, p. 9; G. L. vol. 9, p. 41.]

Art. 4435. [2248–49] In unincorporated towns.—The commissioners court of any county in which an unincorporated town or village may be situated, shall have power to designate the lines of such town or village, and may appoint a board of health for it, consisting of three persons, two or more of whom shall be regular practicing physicians. Said

court when such appointments are made shall at once notify the State Health Officer. Said board shall elect one of their members as presiding officer; and such presiding officer, if the premises of any citizen residing within the prescribed limits of said town or village are in an unclean or unhealthy condition, shall notify him of the fact, and that he must proceed at once to clean the same. [Acts 1889, p. 139; Acts 1st C. S. 1901, p. 29.]

Art. 4436. [984] Health control in certain cities.—In cities of thirty-five thousand population, or over, the governing body of a city or town whether acting under a special charter or incorporated under the general laws of Texas, shall have the power to require the filling up, drainage, and regulating of any lot or lots, grounds or yards, or any other places in the city or town which shall be unwholesome, or have stagnant water therein, or from any other cause be in such condition as to be liable to produce disease; to cause all premises to be inspected and to impose fines on the owners of houses under which stagnant water may be found, or upon whose premises such stagnant water may be found, and to pass such ordinances as they may deem necessary for the purposes aforesaid and for making, filling up, altering or repairing of all sinks, and privies, and directing the mode and material for constructing them in the future, and for cleaning and disinfecting the same; and for cleansing of any house, building, establishment, lot, yard or ground from filth, carrion or other impure or unwholesome matter of any kind; to require the owner of any lot or lots within such city or town to keep the same free from weeds, rubbish, brush and any and all other objectionable, unsightly or unsanitary matter of whatever nature, and if such owner fails or refuses to do so, within ten days after notice in writing, or by letter addressed to such owner at his post-office address, or by publication as many as two times within ten consecutive days, if personal service may not be had as aforesaid, or the owner's address be not known, such city or town may do such work or may cause the same to be done and may pay therefor and charge the expenses incurred in doing or having such work done or improvements made, to the owner of such property as herein provided; and to punish any owner or occupant violating the provisions of any ordinance so passed, as aforesaid; and the governing body of such town or city shall also, in addition to the foregoing remedy, have the power to cause any of the improvements above mentioned to be done at the expense of the city or town, on account of the owners, and cause the expense thereof to be assessed on the real estate, or lot or lots upon which such expense is incurred. On filing with the county clerk of the county in which the city or town is situated, a statement by the mayor or city health officer of such city or town of such expenses, such city or town shall have a privileged lien thereon, second only to tax liens and liens for street improvements to secure the expenditures so made, and ten per cent interest on the amount from the date of such payment. For any such expenditures, and interest, as aforesaid, suit may be instituted and recovery and foreclosure had in the name of the corporation; and the statement so made, as aforesaid, or a certified copy thereof, shall be prima facie proof of the amount expended in any such work or improvements. [Acts 1875, p. 113; G. L. vol. 8, p. 485; Acts 1917, p. 405.]

Art. 4437. Hospitals.—If by will or otherwise a fund of fifty thousand dollars or more was or may be left to establish and maintain a hospital in a city of ten thousand or more inhabitants, in which hospital the sick and wounded of such city or of this State may be admitted and receive medical and surgical attention, the commissioners court of the county and the governing body of the city in which said hospital shall be established, either or both, may from time to time appropriate and pay toward the maintenance of such hospital such sums of money as in the judgment of such court or body making such appropriation may be proper to provide hospital accommodations and medical and surgical attention for the sick and wounded of such county or city who are indigent. [Acts 1921, p. 93.]

Art. 4437a. Hospital control in large counties.—Sec. 1. That all counties in Texas having a population of 210,000 inhabitants, as shown by the census of 1920, in which are established hospitals jointly owned and operated by any city and county, in which said hospital is located, the said counties or cities under the terms of a mutual agreement, and not otherwise, are hereby authorized to designate either the county or city government for the purpose of taking over the entire ownership and control of such hospitals upon such terms as may be mutually agreed upon between the city and county owning such hospitals and operating the same, and providing further that such portions of the tax hereinafter referred to shall, if voted by a majority of the qualified voters, be used to take care of the interest and sinking fund required by law on all outstanding bonds of the city or county heretofore issued which have been incurred against the building or maintenance of said hospitals or that may hereafter be issued. That in case it is determined by said mutual agreement for the city to take over the said hospitals and operate the same, the board of managers may be appointed by the governing body of the city in accordance with the terms of its charter or in accordance with its judgment.

Sec. 2. That if in the judgment of the combined boards of County Commissioners and City Councils of such cities, as may be part owners of such hospitals, a countywide election to determine the future ownership and operation of the hospitals is desirable, such countywide election may be ordered on the initiative of such combined boards, and a majority vote on the questions submitted shall govern the future ownership and operation of the hospitals, the expense of such election to be paid by the Commissioners' Court from county funds.

Sec. 3. A direct tax of not over ten cents (10¢) on the valuation of One Hundred Dollars ($100.00) may be authorized and levied by the Commissioners' Court of such county for the purpose of erecting buildings or other improvements and for maintaining such hospitals; provided, that all such levy of taxes shall be submitted to the qualified taxpaying voters of the county, and a majority vote shall be necessary to levy the tax.

Sec. 4. The Board of Managers or Directors of such hospital shall be elected, when so taken over, by the County Commissioners' Court, and said Board shall consist of not less than three members, or more than nine members, and when so elected shall be responsible for and have full and complete control of the management of the conduct of such hospital or hospitals, giving a report of their management at least once every quarter to the Commissioners' Court, and as much oftener as said Court may request, upon any and all acts, rules and regulations performed by them. They shall also give a quarterly financial statement to the Commissioners' Court showing all money expended and received by them and showing fully for what purposes the money has been expended.

Sec. 5. The said hospital or hospitals shall give free service to all sick and injured indigent citizens of the entire county.

Sec. 6. Said Board of Managers shall be appointed for such terms that the terms of one-third of the number of the members of the Board will expire every two years and the term of office for such members of the Board shall be for six years. [Acts 1927, 40th Leg., p. 322, ch. 219.]

Art. 4438. [2247] [1543] [1520] Indigent sick.—If there is a regular established public hospital in the county, the commissioners court shall provide for sending the indigent sick of the county to such hospital. If more than one such hospital exists in the county, the indigent patient shall have the right to select which one of them he shall be sent to. [Acts 1876, p. 51; G. L. vol. 8, p. 890.]

Art. 4439. Isolation of lepers.—The unexpended sum remaining in the State treasury heretofore

appropriated for the purpose of establishing a home for lepers, is hereby appropriated and made available to be expended by and under the direction of the State Health Officer for the isolation and care of persons in this State now known and who may hereafter be found to be afflicted with leprosy. [Acts 1909, p. 334; Acts 1st C. S. 1917, p. 29; Acts 1919, pp. 261 and 262.]

Art. 4440. [4545] Indigent consumptives.—When any indigent person suffering from tuberculosis is sojourning in any other county than his residence and makes application for financial relief to any county health officer or commissioners court or to the mayor or health officer of any city, before any relief is granted, he shall make an affidavit that he is indigent and unable to provide for himself. When such affidavit is made, the county health officer, mayor, city health officer or county judge shall forthwith notify the State Health Officer of the case, giving the name of the patient and the place of his residence. If such patient is a bona fide citizen of any county within this State, it shall be the duty of the State Health Officer, and he shall have the power, to purchase a ticket for said patient and furnish him with sufficient means to purchase food en route to his former home, and return such patient thereto. [Acts 1st C. S. 1909, p. 337.]

Art. 4441. Protecting eyes of new-born.—All doctors, midwives, nurses, or those in attendance at child birth, shall use prophylactic drops in the child's eyes of a one per cent solution of silver nitrate or other prophylactic solution approved by the State Board of Health, to prevent opthalmia neonatorum in the new-born, and said board shall furnish such solution or other prophylactic drops free of cost to the poor of the State, namely those upon whom it would work a hardship to buy the same. [Acts 1921, p. 172.]

Art. 4442. Maternity home.—1. Every individual, firm, association, or corporation, owning, keeping, conducting or managing an institution or home for the boarding or sheltering of infant children, or so-called "Baby Farm," or any lying-in hospital, hospital ward, maternity home or other place for the reception, care and treatment of pregnant women, and charging a fee or receiving or expecting compensation in the way of room rent or board, shall obtain an annual license which shall be issued by the State Board of Health without fee, shall not be transferable to other persons or other premises, and shall expire on the thirty-first day of December next following the issuance. The application for such license shall state the name and address of the licensee, the specific location of the building used, and the number of inmates which may be boarded there at one time, and shall be approved by the local health officer. No greater number of inmates shall be housed at one time in the building than is authorized by the license, and no pregnant woman or infant shall be kept in a building or place not designated in the license. A record of licenses issued shall be kept by the State Board of Health.

2. Whenever any such license is issued, the board shall forthwith give notice of the granting and terms to the local health officer, who shall keep informed of the nature and reputation of every such institution in his jurisdiction, and shall visit and inspect the same from time to time, and for such purposes shall at all reasonable hours be given free and unrestricted access to such institution.

3. Every such licensee shall report to the local health officer, within twenty-four hours next after it occurs, the birth of any child, including stillborn or prematurely born children at such institution; the arrival of any child, stating the name, sex, age, color, and from whom received; and the removal of any child, stating its name, age, and disposition made of it.

4. Whenever a keeper, manager or owner of any such institution as is defined in this article shall be convicted of keeping or conducting a "disorderly house" as that term is defined in the Penal Code, the State Board of Health shall forthwith revoke the license issued authorizing the keeping of such house; and should any such manager, keeper, or owner refuse to permit any person authorized by this article to inspect such house at any reasonable hour, or should they fail to make such reports to the local health officer within the time and in the manner required by this article, then said State Board of Health may suspend said license for any period of time not to exceed six months. Upon any subsequent failure to permit such visits of inspection or to make said reports, said State Board of Health is authorized to revoke the license issued for the conducting of such house. [Acts 1921, p. 146.]

Art. 4443. Child hygiene.—The State of Texas hereby accepts the provisions of the Act of Congress approved November 23, 1921, entitled "An Act for the promotion of the welfare and hygiene of maternity and infancy, and for other purposes," and the State Board of Health is hereby authorized and directed through its Bureau of Child Hygiene to co-operate with the Federal Children's Bureau in the administration of the provisions of said Act of Congress and do all things necessary to entitle the State of Texas to receive all the benefits thereof. Provided that no official, agent or representative of the Bureau of Child Hygiene, or any department having to do with the administration of this law, shall, by virtue hereof, have any right to enter any home over the objection of the owner thereof, or to take charge of any child over the objection of the parents, or either of them, or of the person standing in loco parentis, or having the custody of such child, or without the express permission of the owner of such home, or the parents, or either of them, or the person standing in loco parentis, or having the custody of such child. Nothing in this article shall be construed as limiting the power of the parent or guardian or person standing in the position of loco parentis to determine what treatment or correction shall be provided for the child, or the agency or agencies to be employed for such purpose. All correspondence between the Bureau of Child Hygiene or any official agent or representative thereof, and any parent, owner of a home, or person standing in loco parentis of any child, shall be held confidential, and not publicly disclosed, except by the permission of such parent, owner of the home or person standing in loco parentis, unless the public welfare shall demand that it be disclosed or used in furtherance of public welfare. The State Treasurer is hereby designated as the custodian of all funds allotted to the State of Texas from appropriations made by Congress or in pursuance of said Act to be disbursed in accordance with law through the State Health Board. [Acts 1923, p. 68.]

Art. 4443a. Federal aid accepted.—Sec. 1. That the State of Texas hereby accepts the provisions of the Act of Congress mentioned in the caption hereof and the State Board of Health is hereby authorized and directed through its bureau of Child Hygiene to co-operate with the Federal Childrens' Bureau in the administration of the provisions of said Act of Congress and do all things necessary to entitle the State of Texas to receive all the benefits thereof. Provided that no official, agent, or representative of the Bureau of Child Hygiene, or any department having to do with the administration of this Act, shall, by virtue of this Act, have any right to enter any home over the objection of the owner thereof, or to take charge of any child over the objection of the parents, or either of them or of the person standing in loco parentis, or having the custody of such child, or without the express permission of the owner of such home, or the parents or either of them or the person standing in loco parentis, or having the custody of such child. Nothing in this Act shall be construed as limiting the power of the parent or guardian or person standing in the position of loco parentis to determine what treatment or correction shall be provided for the child, or the agency or agencies to be employed for such purpose.

All correspondence between the Bureau of Child Hygiene or any official agent or representative thereof, and any parent, owner of a home, or person standing in loco parentis of any child, shall be held confidential,

and not publicly disclosed, except by the permission of such parent, owner of the home or person standing in loco parentis, unless the public welfare shall demand that it be disclosed, or used in furtherance of public welfare.

Sec. 2. The Treasurer of the State of Texas is hereby designated as the custodian of all funds allotted to the State of Texas from appropriations made by Congress or in pursuance of said Act to be disbursed in accordance with law through the State Health Board. [Acts 1927, 40th Leg., p. 260, ch. 182.]

Section 4 of Acts 1927, 40th Leg., p. 260, ch. 182, provides that the purpose of the act is not to approve the policy of the Federal government to extend its control to subjects over which the Constitution gives Congress no control, but such aid is accepted to secure as large portion of the taxes paid by the citizens of the state as it may.

Art. 4444. Polluting public body of water.—No person, firm or corporation, private or municipal, shall pollute any water course or other public body of water, by throwing, casting or depositing or causing to be thrown, cast or deposited any crude petroleum, oil or other like substance therein, or pollute any water course, or other public body of water from which water is taken for the uses of farm livestock, drinking and domestic purposes, in this State, by the discharge, directly or indirectly, of any sewage or unclean water or unclean or polluting matter or thing therein, or in such proximity thereto that it will probably reach and pollute the waters of such water course or other public body of water from which water is taken, for said uses. Drain ditches, where waste oil finds its way into water courses or public bodies of water, shall be equipped with traps of sufficient capacity to arrest the flow of oil. In so far as concerns the protection of fish and oysters, the Game, Fish and Oyster Commissioner or his deputies, may have jurisdiction in the enforcement hereof. This article shall not apply to any place or premises of manufacturing plants whose affluents contain no organic matter that will putrify, or any poisonous compounds, or any bacteria dangerous to public health or destructive of the fish life of streams or other public bodies of water. Upon the conviction of any person for violating this law, the court or judge thereof in which such conviction is had, shall issue a writ of injunction enjoining and restraining the person or corporation responsible for such pollution. For a violation of such injunction, the said court and the judge thereof shall have the power of fine and imprisonment as for contempt of court within the limits prescribed by law in other cases, and this remedy by injunction and punishment for violation thereof shall be cumulative of the fine imposed. The State Board of Health shall enforce the provisions of this article. The Governor shall appoint an inspector to act under the direction of said board and the State Health Officer, and said inspector shall make such investigations, inspection and reports and perform such other duties in respect to the enforcement hereof as the said health officer may require. [Acts 1913, p. 90; Acts 1915, p. 38; Acts 1923, p. 177.]

Art. 4445. Venereal diseases.—Syphilis, gonorrhea and chancroid, hereinafter designated venereal diseases, are hereby declared to be contagious, infectious, communicable, and dangerous to the public health:

Sec. 1. Any physician or other person who makes a diagnosis in, or treats, a case of syphilis, gonorrhea or chancroid, and every superintendent or manager of a hospital, dispensary, or charitable or penal institution, in which there is a case of venereal disease, shall report such case immediately, in writing, to the local health officer, stating the name and address or the office number, age, sex, color, and occupation of the diseased person, and the date of the onset of the disease, and the probable source of infection, provided that the name and address of the diseased person need not be stated, except as hereinafter specifically required in Section 5, and provided, further, that all information and reports concerning persons having venereal disease shall be held secret in accordance with provisions in Section 8. The report shall be enclosed in a sealed envelope and sent to the local health officer who shall report weekly on the prescribed form to the State Board of Health, all cases reported to him. The physicians and others residing in cities having no city health officer, shall make reports required in this section direct to the county health officer, where there is a county health officer in the county in which they reside, and where there is no county health officer, all such reports shall be made direct to the State Board of Health.

Sec. 2. It shall be the duty of every physician and of every other person who examines or treats a person having syphilis, gonorrhea or chancroid, to instruct him in measures for preventing the spread of such disease, and of the necessity for treatment until cured, and to hand him a copy of the circular of information obtainable for this purpose from the State Board of Health.

Sec. 3. All city, county, or other health officers shall use every available means to ascertain the existence of, and to investigate all cases of syphilis, gonorrhea, and chancroid within their several territorial jurisdictions, and to ascertain the sources of such infections. Local health officers are hereby empowered and directed to make such examinations of persons reasonably suspected of having syphilis, gonorrhea or chancroid as may be necessary for carrying out the provisions of this law. Owing to the prevalence of such diseases among prostitutes and persons associated with them, all such persons are to be considered within the above class.

Sec. 4. Upon receipt of a report of a case of venereal disease, the local health officer shall institute measures for protection of other persons from infection by such venereally diseased person:

1. Local health officers are authorized and directed to quarantine persons who have, or are reasonably suspected of having syphilis, gonorrhea, or chancroid, whenever, in the opinion of said local officer, or the State Board of Health, or its executive officer, quarantine is necessary for the protection of the public health. In establishing quarantine the local health officer shall designate and define the limits of the area in which the person known to have, or reasonably suspected of having syphilis, gonorrhea, or chancroid, and his immediate attendant, are to be quarantined, and no person other than the attending physician, shall enter or leave the area of quarantine without the permission of the local health officer.

No one but the local health officer shall terminate said quarantine, and this shall not be done until the quarantined person has become non-infectious, as determined by the local health officer or his authorized deputy through clinical examination and all necessary laboratory tests, or until permission has been given him to do so by the State Board of Health or its executive officer.

2. The local health officer shall inform all persons who are about to be released from quarantine for venereal disease, in case they are not cured, what further treatment should be taken to complete their cure. Any person not cured, before released from quarantine, shall be required to sign the following statement after the blank spaces have been filled to the satisfaction of the health officer:

"I ——— residing at ——— hereby acknowledge the fact that I am at this time infected with ———; and agree to place myself under the medical care of ———, (name of physician or clinic) ——— (address) within ——— hours, and that I will remain under the treatment of said physician or clinic until released by the health officer of ——— or until my case is transferred, with the approval of said health officer, to another regular licensed physician or an approved clinic.

"I hereby agree to report to the health officer within four days after beginning treatment as above agreed, and will bring with me a statement from the above physician or clinic of the medical treatment applied in my case, and thereafter will report as often as may be demanded of me by the health officer.

"I agree further, that I will take all precautions recommended by the health officer to prevent the spread of the above disease to other persons and that

I will not perform any act which will expose other persons to the above disease.

"I agree, until finally released by the health officer, to notify him of any change of address and to obtain his consent before moving my abode outside of his jurisdiction.

Signature.

Date

All such agreements shall be filed with the health officer and kept inaccessible to the public.

The commissioners courts of the various counties and the governing body of all incorporated towns and cities are hereby empowered and directed to provide suitable places for the detention of persons who may be subject to quarantine and who should be segregated for the execution of the provisions of this law; and such commissioners courts and governing bodies of incorporated cities and towns are hereby authorized to incur, on behalf of their said counties, cities or towns, the expenses necessary to the enforcement of this law.

Sec. 5. 1. When a person applies to a physician or other person for the diagnosis or treatment of syphilis, gonorrhea or chancroid, it shall be the duty of the physician or person so consulted to inquire of, and ascertain from, the person seeking such diagnosis or treatment, whether such person has heretofore consulted with, or has been treated by, any other physician or person, and if so, to ascertain the name and address of the physician or person last consulted. It shall be the duty of the physician or other person whom the applicant consults to notify the physician or other person last consulted of the change of advisers. Should the physician or person previously consulted fail to receive such notice within ten days after the last date upon which the patient was instructed by him to appear, it shall be the duty of such physician or person to report to the local health officer the name and address of such venereally diseased person.

2. If an attending physician or other person knows or has good reasons to suspect that a person having syphilis, gonorrhea, or chancroid is so conducting himself or herself as to expose other persons to infection, or is about so to conduct himself or herself, he shall notify the local health officer of the name and address of the diseased person and the essential facts in the case.

Sec. 6. All local and State health officers are directed to co-operate with proper officials whose duty it is to enforce laws directed against prostitution, and otherwise to use every proper means for the repression of prostitution.

Sec. 7. Physicians, health officers, and all other persons are prohibited from issuing certificates of freedom from venereal disease, provided this section shall not prevent the issuance of statements of freedom from infectious diseases written in such form, or given under such safeguards, that their use for solicitation for sexual intercourse would be impossible.

Sec. 8. All information and reports concerning persons infected with venereal diseases shall be inaccessible to the public except in so far as publicity may attend the performance of the duties imposed by the laws of the State.

Sec. 9. Any health officer or other physician who shall willfully fail to perform the duties required of him in this article shall, in addition to the fines imposed by law, forfeit his right and license to practice medicine within this State; and the district courts of the State shall have jurisdiction of suits for the forfeiture of such license in such cases, and the suit may be filed by any citizen of the State in a court having jurisdiction, under the ordinary rules of venue, and it shall be the duty of the county and district attorneys to represent the petitioners in such suit. [Acts 4th C. S. 1918, p. 179.]

Art. 4446. [4547–53] Legal proceedings.—In all matters wherein the State Board of Health shall invoke the aid of the courts, the action shall run in the name of the State of Texas. The Attorney General shall assign a special assistant to attend to all legal matters of the board. Upon demand of the board, the Attorney General shall furnish the necessary assistance to the board to attend to all its legal requirements. No bond for costs, or bond on appeal or writ of error, shall be required of the State Board of Health or State officials in any action brought or maintained under this chapter. [Id. Acts 1909, 1st C. S., p. 340.]

Art. 4447. Charbon districts.—All of that portion of this State in which charbon or anthrax has been prevalent or any district of this State in which charbon or anthrax may become prevalent, shall be known as charbon districts and shall be subject to the following provisions:

1. Bacteriologist.—The State Board of Health shall employ a bacteriologist at a salary of not more than $300.00 per month and during the time that charbon or anthrax is prevalent he shall make an examination and analysis and a scientific research for the purpose of combating with said disease and he may be kept in the district affected by charbon as many months each year as said board deems necessary.

2. Visits and isolation.—The State Board of Health acting through one of the members or through the local health office in the county where charbon is reported to be prevalent shall in person or through some one employed by them, visit all stock reported to have charbon or anthrax and see that proper steps be taken for the isolation of same from other stock, and also isolate other stock which have been exposed to said disease and so keep same isolated for such period as it may deem necessary.

3. Proclamation.—The proclamation of the county health officer shall be sufficient if it name the kinds or classes of stock to which it shall apply. It shall be published in some newspaper published in the county, if there be one; and if none, it shall be posted in three public places in said county, one of which shall be at the courthouse door of such county if the proclamation pertains to the whole county, but if only a subdivision of the county, then in any three public places in such subdivision. One insertion in a newspaper shall be sufficient, and such proclamation shall be effective three days after such notice is given.

4. Elections.—In all counties now or which may become affected with charbon or anthrax, the qualified voters of such county or any political subdivision thereof may, in the manner hereinafter provided, prohibit the running at large of cattle, horses, sheep, goats and hogs or any of such animals within such county or subdivision thereof; upon the petition of ten per cent of the qualified voters of such county or subdivision thereof presented to the commissioners court of such county in open session, requesting such court to order an election to be held in such county or political subdivision thereof, said petition to state the territory within which an election is requested, the kinds of animals to be affected, and also for what portions of the year it is desired to prohibit such stock from running at large, or whether the entire year, said court shall order such election to be held within such territory as may be petitioned for, naming the kinds of animals to be affected thereby and as designated in the order for such election; and the court shall also designate in said order of election the time within which such stock is to be prohibited from running at large, whether for the entire year or for portions thereof; which the said court is hereby authorized to do in accordance with the petition therefor. It is made the duty of said court to provide for the holding of such elections and compensation of officers thereof. The expense of such election shall be borne by the county wherein such election is ordered and held. In any such election so to be held the ballots shall read as follows:

"For the Running at Large of Domestic Animals," and

"Against the Running at Large of Domestic Animals."

Returns of such election shall be made by the presiding officers of the precinct or precincts of the county where such election is held, to the county judge of such county, who shall forthwith call the commissioners court together for the purpose of canvassing the

returns; and if it shall be found by the commissioners court, upon a canvass of such returns, that a majority of the qualified voters of the county or subdivision thereof wherein such election was held, is in favor of prohibiting the running at large of such domestic animals as herein named, then said court shall forthwith declare the result of said election and give public notice thereof by proclamation of such court to be issued and posted within three public places of the county or subdivision thereof in which such election has been held. [Acts 1913, p. 147.]

CHAPTER TWO

SPECIAL QUARANTINE REGULATIONS

Art.
4448. Governor's proclamation.
4449. May issue proclamation.
4450. Local quarantine.
4451. Local subordinate to State authorities.
4452. Shelter to those detained.
4453. Expenses of quarantine.
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4456. Incoming vessels stopped.
4457. Vessels from infected ports.
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4459. Local quarantine.
4460. County quarantine.
4461. Health officer at Galveston.
4462. To prescribe rules, etc.
4463. Sale of condemned property.
4464. Vessels disinfected.

Article 4448. [4554] [4321] Governor's proclamation.—The Governor is empowered to issue his proclamation declaring quarantine on the coast, or elsewhere within this State, whenever in his judgment quarantine may become necessary; and such quarantine may continue for any length of time as in the judgment of the Governor the safety and security of the people may require. [Acts 1891, p. 188; G. L. vol. 10, p. 190.]

Art. 4449. [4555] [4324] May issue proclamation.—Whenever the Governor has reason to believe that the State of Texas is threatened at any point or place on the cost [coast] border or elsewhere within the State with the introduction of [or] dissemination of yellow fever contagion, or any other infectious and contagious disease that can and should, in the opinion of the Texas State Board of Health, be guarded against by State quarantine, he shall by proclamation, immediately declare said quarantine against any and all such places, and direct the State Board of Health to promptly establish and enforce the restrictions and conditions imposed and indicated by said quarantine proclamation; and when from any cause the Governor can not act, and the exigencies of the threatened danger require immediate action, the Texas State Board of Health is empowered to declare quarantine as prescribed in this article, and maintain the same until the Governor shall officially take such action as he may see proper. [Acts 1891, p. 189; G. L. vol. 10, p. 191.]

Art. 4450. [4556] [4326] Local quarantine.—The law in regard to local quarantine by the inhabitants of any point or points on the coast or elsewhere in the State shall remain in full force when in conformity with this title; provided, that in all differences and disputes between any such points, contiguous or remote, within this State, such differences and disputes shall be immediately by the local health authorities, if any, and if none, by the inhabitants themselves, reported and submitted to the Governor; and, on the receipt of such report, he shall forthwith order the State Health Officer to such points with instructions to investigate the same and report the exact condition of things, and upon investigation of such report shall issue his proclamation declaring the determination of the issue, and by said proclamation the aforesaid differences shall be governed and determined. [Id.]

Art. 4451. [4557] [4328] Local subordinate to State authorities.—Whenever quarantine is declared by the Governor or by any county or corporate authorities in the State, such authorities shall establish a quarantine station or stations where any person may be detained for such length of time as, in the discretion of the quarantine officers, the public safety may demand; provided, that all county and municipal quarantine shall be subordinate, subject to and regulated by such rules and regulations as may be prescribed by the Governor or Texas State Board of Health. [Id.]

Art. 4452. [4558] [4329] Shelter to those detained.—The State Board of Health shall furnish persons detained by them with necessary shelter and subsistence (not including crews of vessels, except such as are removed by the quarantine officers from infected vessels), and provide all other things essential for the protection and comfort of those held in quarantine, and all such expenses authorized by the said board and approved by the Governor shall be paid by the State. [Id.]

Art. 4453. [4559] [4330] Expenses of quarantine.—All quarantine officers appointed by the Governor shall be selected and commissioned by the Governor, and shall be paid by the State, and all health authorities of the State, or of any county or city thereof, shall obey the rules and regulations prescribed by the Governor or State Board of Health. The regular officers in charge of regular established quarantine stations on the coast shall be allowed one hundred and fifty dollars per month while on duty at their respective stations; except that the officer in charge of the station at Galveston shall receive two hundred dollars per month. Temporary officers, or those commissioned by the Governor to guard against threatened epidemics, and those stationed at railway crossings on the Rio Grande shall receive one hundred and fifty dollars per month while on duty, and such other pay for extra expenses actually incurred as may be deemed just by the Governor and the State Board of Health. [Acts 1891, p. 188; G. L. vol. 10, pp. 188 and 872; Acts 1895, p. 142.]

Art. 4454. [4560] [4331] Stations provided.—Each county, town or city authority upon the coast or elsewhere in Texas, at as early a day as practicable after the promulgation of the Governor's proclamation declaring quarantine, shall provide suitable stations where they are not now provided, at sufficient distance from the usual places of landing of vessels, or the depots of railroads coming into their respective counties, towns, or cities, and select, appoint and employ a competent physician as health officer, subject to the approval of the Governor, at such stations, and furnish said officer with such guards, employés and other things as may be necessary to render such quarantine effective; and said county, town or city authorities may provide for the establishment and maintenance of quarantine, subordinate, subjected to, and regulated by, such rules and regulations as the Governor and State Board of Health may prescribe. [Acts 1883, p. 17; G. L. vol. 9, p. 323.]

Art. 4455. [4561] [4332] Local health officer.—Whenever on the coast of Texas or elsewhere in this State the authorities of any county, town or city fail, refuse or neglect to establish quarantine as provided in the preceding article, then the Governor shall appoint a health officer and prescribe such regulations for the government of the same as he may deem necessary. [Acts 1891, p. 190; G. L. vol. 10, p. 192.]

Art. 4456. [4562] [4333] Incoming vessels stopped.—All health officers and all quarantine authorities shall, if deemed necessary, stop each and every vessel from any infected port or district, tho the said vessel may have a clean bill of health. Such health officers or quarantine authorities shall have power to take the affidavit of the master of said vessel as to the health of himself and crew from the time of sailing from said infected port or district. Such officers and authorities shall detain said vessel at quarantine for such length of time as the Governor and State Board of Health may prescribe in their rules and regulations governing quarantine. All such officers and authorities may use force if necessary in order to discharge the duties imposed upon them by the provisions of this title and the rules and regula-

tions of the Governor and Texas State Board of Health. [Acts 1883, p. 17; G. L. vol. 9, p. 323.]

Art. 4457. [4563–64] Vessels from infected ports.—Any vessel arriving at any quarantine station of this State, designated by the proper authorities, from any infected port or district, without a clean bill of health from the proper officers from said port or district, shall be taken possession of by the health officer or other quarantine authority at the station at which said vessel arrives, and be held by the same until all fines that may have been assessed against the master of said vessel for a violation of the quarantine laws, rules and regulations have been paid, or until said vessel shall have been replevied in accordance with law. The payment of the fine which may be assessed against the master of such vessel shall not operate as a release or discharge of the vessel from quarantine, but the same rules shall apply as in case of other vessels placed in quarantine. [Acts 1891, p. 190; G. L. vol. 10, p. 192.]

Art. 4458. [4565] [4336] Expenses itemized.—The county, town or city authorities aforesaid, as soon as quarantine ceases to exist, shall forward to the Comptroller an itemized account of all receipts and expenditures made by them, and when approved by the Governor and State Board of Health, said Comptroller shall draw his warrant upon the treasurer for the payment of any balance that may be due said authorities, or either of them, and pay into the treasury any excess of receipts over expenditures. [Acts 1883, p. 18; G. L. vol. 9, p. 324.]

Art. 4459. [4566] [4337] Local quarantine.—No provision of this title shall be construed to prevent any town, city or county from establishing any quarantine which they may think necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of this title, and be consistent with, and subordinate to, said provisions and the rules and regulations prescribed by the Governor and State Board of Health. [Id.]

Art. 4460. [4568] [4340] County quarantine.—Whenever the commissioners court of any county has reason to believe that they are threatened at any point within or without the county limits with the introduction or dissemination of a dangerous, contagious or infectious disease that can and should be guarded against by quarantine they may direct their county health officer to declare and maintain said quarantine against any and all such dangerous diseases; to establish, maintain and supply stations or camps for those held in quarantine; to provide hospitals, tents or pest houses for those sick of contagious and infectious disease; to furnish provisions, medicine and all other things absolutely essential for the comfort of the well and the convalescence of the sick. The county physician shall keep an itemized account of all lawful expenses incurred by local quarantine, and his county shall assume and pay them as other claims against the county are paid. Chartered cities and towns are embraced within the purview of this article, and the mere fact of incorporation does not exclude them from the protection against epidemic diseases given by the commissioners court to other parts of their respective counties. The medical officers of chartered cities and towns may perform the duties granted or commanded in their several charters, but must be amenable and obedient to rules prescribed by the State Board of Health. This article, however, must not be construed as prohibiting any incorporated town or city from declaring, maintaining and paying for local quarantine. [Id.]

Art. 4461. [4569] [4341] Health officer at Galveston.—The quarantine or health officer at Galveston shall give bond, with two or more good and sufficient sureties, payable to the Governor, in the sum of ten thousand dollars, conditioned for the care and preservation of any steam vessel or vessels belonging to the State at his station, and for the faithful performance of his duty. [Id.]

Art. 4462. [4570] [4342] To prescribe rules, etc.—The Governor and State Board of Health shall prescribe such rules and regulations as may be necessary for the disinfection of all vessels and their cargoes and passengers arriving at any port on the coast of Texas from any infected port or district, the object of such rules and regulations being to provide safety for the public health of the State without unnecessary restrictions upon commerce and travel. [Id.]

Art. 4463. [4571] [4342a] Sale of condemned property.—The State Health Officer is hereby authorized, with the advice and consent of the Governor, to sell to the best advantage of the State, for cash, any property in the quarantine service that is useless, and to apply the proceeds thereof to the general revenue of this State, and make due report of said sale or sales to the Governor. [Acts 1895, p. 2; G. L. vol. 10, p. 732.]

Art. 4464. [4572] Vessels disinfected.—Any vessel arriving at a port of this State, and required to be disinfected by the terms of the Governor's quarantine proclamation, shall be disinfected by the quarantine officer of such port and before being released from quarantine shall pay to such quarantine officer such fees as the Governor may prescribe. All vessels boarded by the quarantine officer of any port shall pay to such officer such fees as the Governor prescribes. The quarantine officer receiving such fees shall give bond in such sum as may be prescribed by the Governor for the safe keeping of such collections and shall report and remit them to the State Board of Health at least once every month. [Acts 1901, p. 266.]

CHAPTER THREE

FOOD AND DRUGS

Art.
4465. [Repealed.]
4465a. Public health laws continued in force.
4466. Duties.
4467. Administration and expenses.
4468. Bulletins.
4469. Registration.
4470. Condemnation.
4471. Adulterated or misbranded food or drug.
4472. Definitions.
4473. Preservatives added.
4474. Milk.
4475. Baking powder compound.
4476. Self-rising flour.

Article 4465. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 131, ch. 42, § 11.]

Art. 4465a. Public health laws continued in force.—Articles 4414, 4415, 4416, 4417, and 4418, Revised Civil Statutes of 1925, are hereby repealed, Article 4465, Revised Civil Statutes of 1925, is hereby repealed, and the powers and duties vested by Chapter 3 of Title 71, R. S. 1925, in the Director of the Food and Drug Division of the State Department of Health are hereby vested in the State Health Officer, to be hereafter exercised by him or by a division director within his Department and subject to his control under the terms of this Act. All other laws or parts of laws now in force, relating to the State Health Department, the State Board of Health and the State Health Officer, and all other laws relating to public health, sanitation and the control and prevention of communicable, contagious and infectious diseases, shall remain in full force and effect, except insofar as the same may be in conflict with the provisions of this Act. [Acts 1927, 40th Leg., 1st C. S. p. 131, ch. 42, § 11.]

Art. 4466. Duties.—The director shall:

1. Keep his office and laboratory in Austin.

2. Make, publish and enforce rules consistent with this law, and adopt standards for foods, food products, beverages, drugs, etc., and the modern methods of analysis authorized as official by the Federal Department of Agriculture.

3. Inquire into the quality of the foods and drug products manufactured or sold or exposed for sale, or offered for sale in this State, and for such purpose he may enter any creamery, factory, store, salesroom, drug store or laboratory or place where he has reason

to believe foods or drugs are made, prepared, sold or offered for sale or exchange, and open any cask, tub, jar, bottle or package containing or supposed to contain any article of food or drug and examine or cause to be examined the contents thereof, and he shall take samples therefrom and make analysis thereof. When making such inspection he shall seal and mark such sample and tender to the vendor or person having custody of same the value thereof, and a written statement stating the reason for taking such sample.

4. Make complaint and institute proceedings against any manufacturer or person who violates any provision of the food and drug laws of this State. He need not give security for costs in proceedings so instituted.

5. Report to the Governor on or before the 31st day of August of each year, showing the entire work of his office for the preceding year, the number of factories and other places inspected and by whom, the number of specimens of food and drug articles analyzed, and the number of complaints entered for violations of such laws, the number of convictions had, and the amount of fines imposed therefor, together with recommendations relative to the laws in force. Such report shall be published at the expense of the State. [Acts 1911, p. 76.]

Art. 4467. Administration and expenses.—The Director may appoint two inspectors who shall make inspections and perform such duties as he may require. With the consent of the State Health Officer he may appoint two assistant chemists, who shall each enter into bond in the sum of five thousand dollars, payable, approved and conditioned as the Director's bond. The Director may appoint one stenographer, and such additional inspectors, chemists, clerks and other assistants as he deems necessary. The actual and necessary expenses of the Director and his assistants and deputies shall be paid by the State, the amounts thereof to be audited by the Comptroller. [Id.]

Art. 4468. Bulletins.—The Director may issue bulletins quarterly, or as often as he deems advisable, showing the work of his division.

Art. 4469. Registration.—All manufacturers of foods and drugs doing business in Texas, or all such persons as shall bring into and offer for sale in this State any article of food or drug, shall annually register with the Director and pay him a fee of one dollar for such registration on or before the first day of each September. The Director shall promptly remit such fees as collected to the State Treasurer. [Id.]

Art. 4470. Condemnation.—Any article of food or drug that is adulterated or misbranded within the meaning of this law shall be liable to be condemned, confiscated and forfeited by a suit to be brought in the district court of the county where said article of food or drug is located, in the name of the State of Texas as plaintiff, and in the name of the owner thereof as defendant, if said owner be known; if he be unknown, then in the name of said article of food or drug, and service shall be obtained as in civil cases. Upon a trial of said case, if it be determined by the court or jury trying said case that said article of food or drug is misbranded or adulterated, or of a poisonous or deleterious character within the meaning of this law, the same shall be disposed of by destruction or sale in accordance with the judgment of the court, and the proceeds thereof, if sold, less the legal cost and charges, shall be paid into the State Treasury. District and county attorneys shall file forfeiture and condemnation suits under this law at the request of the Director. Said attorney shall be entitled to a fee of $15.00, to be paid out of the proceeds arising from the sale of the property condemned, said fee to be in addition to all other fees allowed by law, and shall be over and above the fees allowed under the General Fee Act of this State. Upon payment of the costs of such forfeiture or condemnation proceeding by the owner of the property proceeded against and by his executing and delivering a good and sufficient bond in double the value of the goods proceeded against, payable to the State of Texas, conditioned that said articles shall not be sold or otherwise disposed of contrary to the provisions of this law, the court may by order direct that said goods be delivered to the owner thereof. In all proceedings begun under this article, either party may demand trial by jury, of any issue of fact joined in any such case. [Id.]

Art. 4471. Adulterated or misbranded food or drug.—No person, firm or corporation shall within this State manufacture for sale, have in his possession with the intent to sell, offer or expose for sale, or sell or exchange any article of food or drug which is adulterated or misbranded within the meaning of this chapter. The term "food" shall include all articles used by man for food, drink, flavoring, confectionary or condiment, whether simple, mixed or compounded. The term "drug" shall include all medicines and preparations for internal or external use recognized in the United States Pharmacopoeia or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animal. [Id.]

Art. 4472. Definitions.—The terms "adulterated" and "misbranded," as used in this chapter, shall be held to have the same meaning as is given those terms in chapter two of title 12 of the Penal Code. [Id.]

Art. 4473. Preservatives added.—No person shall manufacture, sell, offer or expose for sale or exchange any article of food to which has been added formaldehyde, boric acid or borates, benzoic acid or benzoate sulphurous acids or sulphites, salicylic acid or salicylates, abrastal, beta naphthal, flourine compounds, dulcin, glucin, cocaine, sulphuric acid or other mineral acid except phosphoric acid, any preparation of lead or copper or other ingredient injurious to health. Nothing herein shall be construed as prohibiting the sale of catsups, sauces, concentrated fruits, fruit juices, and like substances preserved with one tenth of one per cent benzoate of soda, or the equivalent benzoic acid, when a statement of such fact is plainly indicated upon the label. The oxides of sulphur may be used for bleaching, clarifying and refining food products. [Id.]

Art. 4474. Milk.—No person either by himself or agent shall sell or expose for sale or exchange any unwholesome, watered, adulterated, or impure milk, or swill milk, or colostrum, or milk from cows kept upon garbage, swill, or any other substance in a state of putrefaction or other deleterious substances, or from sick or diseased cows, or from cows kept in connection with any family in which there are infectious diseases. Skim milk may be sold if on the container from which such milk is sold, the words "skim milk" are distinctly printed in letters not less than one inch in length. [Id.]

Art. 4475. Baking powder compound.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange or sells any baking powder or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound a label distinctly printed in plain capital letters in the English language, containing the name and residence of the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than 10 per cent of available carbon dioxide shall be deemed to be adulterated. [Id.]

Art. 4476. Self-rising flour.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange, or sells any Self-rising Flour, or compound intended for use as a Self-rising Flour, under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can, sack or package containing such Self-rising Flour or like mixture or compound, a label distinctly printed in plain capital letters in the English language, containing the name and domicile of the manufacturer or dealer, and the percentage by weight of each of the chemical leavening ingredients of the contents thereof. Such Self-rising Flour or any compound so termed or styled, when sold for use shall produce not

less than one-half of one per cent, by weight, of available carbon dioxide gas, and there shall not be contained in such Self-rising Flour more than three and one-half per cent of chemical leavening ingredients, otherwise such flour or compound shall be deemed adulterated. Self-rising Flour is defined to be a combination of flour, salt, and chemical leavening ingredients. The flour shall be of the grade of "straight" or better, and the chemical leavening ingredients shall be Bicarbonate of Soda, and either Calcium Acid Phosphate, Sodium Aluminum Sulphate, Cream of Tartar, Tartaric Acid or combinations of the same. [Acts 1923, p. 96.]

CHAPTER FOUR

SANITARY CODE

Art. 4477. Sanitary code.—The following rules are hereby enacted as the "Sanitary Code for Texas," adopted for the promotion and protection of the public health and for the general amelioration of the sanitary and hygienic condition within this State, for the suppression and prevention of infectious and contagious diseases, and for the proper enforcement of quarantine, isolation and control of such diseases, to wit:

QUARANTINE AND DISINFECTION

Rule 1. Physician to report.—Every physician in this State shall report in writing or by an acknowledged telephone communication to the local health authority, immediately after his or her first professional visit, each patient he or she shall have or suspect of suffering with any contagious disease. If such disease is of a pestilential nature, he shall notify the President of the State Board of Health at Austin by telegraph or telephone at State expense, and report to him every death from such disease immediately after it shall have occurred. The attending physician is authorized to and he shall place the patient under restrictions of the character described herein in the case of each respective disease.

Rule 2. "Local health authority."—For the purpose of these regulations, the term "local health authority" shall be held to designate the city or county health officer, or local board of health, within their respective jurisdictions.

Rule 3. "Contagious diseases."—The term "contagious disease" as used in these regulations shall be held to include the following diseases, whether contagious or infectious; and as such shall be reported to all local health authorities and by said authority reported in turn to the President of the State Board of Health: Asiastic cholera, bubonic plague, typhus fever, yellow fever, leprosy, smallpox, scarlet fever (scarlatina), diphtheria (membranous croup), epidemic cerebrospinal meningitis, dengue typhoid fever, epidemic dysentery, trachoma, tuberculosis and anthrax.

Rule 4. Health officers to keep record.—City and county health authorities shall keep a careful and accurate record of all cases of contagious diseases as reported to them, with the date, name, age, sex, race, location and such other necessary data as may be prescribed by the State Board of Health. They shall also make a monthly report of all contagious diseases of which they may be cognizant, to the President of the State Board of Health, before the fifth of the following month, upon blank forms provided by the State Board of Health. The reports on tuberculosis are to be privately kept and are to be considered in the light of a confidential communication, not for the purpose of isolation, but with the object of education in sanitary precautions, and to supply literature of the State Board of Health.

Rule 5. Rules to quarantine and disinfection.—The following rules of instruction for the regulation of quarantine, isolation and disinfection in the several contagious diseases, hereinbefore mentioned, are to be observed by all boards of health, health officers, physicians, school superintendents and trustees, and others. All health authorities of counties, cities, and towns in this State are hereby directed and authorized to establish local quarantine, hold in detention, maintain isolation and practice disinfection as hereinafter provided for, of all such infected persons, vehicles or premises which are infected or are suspected of being infected with any of the above named diseases whenever found.

(a) Absolute quarantine includes, first, absolute prohibition of entrance to or exit from the building or conveyance except by officers or attendants authorized by the health authorities, and the placing of guards if necessary to enforce this prohibition; second, the posting of a warning placard stating "contagious disease," in a conspicuous place or places on the outside of the building or conveyance; third, the prohibition of the passing out of any object or material from the quarantined house or conveyance; fourth, provision for conveying the necessaries of life under careful restrictions to those in quarantine.

(b) Modified quarantine includes prohibition of entrance and exit, and in absolute quarantine except against certain members of the family authorized by the health authorities to pass in and out under certain definite restrictions; the placing of a placard as before; isolation of patient and attendant; prohibition of the carrying out of any object or material unless the same shall have been thoroughly disinfected.

(c) Absolute isolation includes, first, the confinement of the patient and attendants to one apartment or suite of apartments, to which none but authorized officers or attendants shall have admission; second, screening of room and entire house if necessary with not less than 16-mesh wire gauze; third, the prohibition of passing out of the sick room of any object or material until the same has been thoroughly disinfected; fourth, protection of the air of the house by hanging a sheet, kept constantly moist with a disinfectant solution, over the doorway of the patient's room or rooms and reaching from the top of the door; fifth, if in the opinion of the local health authority the patient can not be treated, with reasonable safety to the public, at home, the removal of the patient and exposures to a contagious disease hospital or pest house.

(d) Modified isolation includes the confinement of the patient and attendants to one room or suite of rooms, to which none but authorized officers or attendants shall have admission, but allowing the attendants to pass out of the room after disinfection of person and complete change of clothing; screening as above mentioned; the prohibition of passing any object or material out of the sick room until it has been disinfected; protection of the doorway as before.

(e) Special isolation includes, first, prohibition of patient from attending any place of public assemblage; second, the providing of separate eating utensils for the patient; third, prohibition of sleeping with others, or using the same towels or napkins.

(f) By complete disinfection is meant disinfection during illness, under direction of attending physician, of patient's body, of all excretions or discharges of patient and of all articles of clothing and utensils used by patient, and after recovery, death or removal, the disinfection of walls, woodwork, furniture, bedding, etc.

(g) By partial disinfection is meant disinfection of discharges or excretions of patients and their clothing and the room or rooms occupied by the patient during illness.

Rule 6. Disinfection.—All disinfection prescribed in these regulations shall be a part of the control of the disease, and shall be done according to the direction of the Texas State Board of Health in its circular on disinfection.

Rule 7. Health authority shall placard all houses where contagious diseases exist.—Upon notice that smallpox, diphtheria, scarlet fever, or other quarantinable disease exists within his jurisdiction, it shall be the duty of the local health authority to have the house in which such disease prevails placarded by placing a yellow flag or card not less than eight inches wide and twelve inches long with the words "contagious disease" and the quarantine regulations printed thereon in a conspicuous place on said house.

Rule 8. Going to or leaving quarantined premises.—After the house is flagged or placarded, all persons except the attending physician or health officer are forbidden from going in or leaving such premises, without the permission of the local health authority, and the carrying off, or causing to be carried off, of any material whereby such disease may be conveyed, is prohibited until after the disease has abated and the premises, dwelling and clothing have been disinfected and cleaned as the local health authority may direct.

Rule 9. Person exposed to diseases shall obey authority.—It shall be the duty of all persons infected with any contagious disease, or who, from exposure to contagion from such disease, may be liable to endanger others who may come in contact with them, to strictly observe such instructions as may be given them by any health authority of the State, in order to prevent the spread of such contagious disease, and it shall be lawful for such health authorities to command any person thus infected or exposed to infection to remain within designated premises for such length of time as such authority may deem necessary.

Rule 10. Certain persons not allowed on thoroughfares.—All persons having any quarantinable disease are prohibited from riding on any public vehicle or conveyance, and from being upon public thoroughfares or in public assemblages.

Rule 11. Placard not to be destroyed or removed.—No person shall alter, deface, remove, destroy or tear down any card posted by a local health authority. The occupant or person having possession or control of a building upon which a quarantine notice has been placed shall within twenty-four hours after the destruction or removal of such notice by other than the proper health authority, notify the local health authority of such destruction or removal.

Rule 12. Quarantinable pestilential disease.—In the management and control of the following pestilential diseases: cholera, plague, typhus fever and yellow fever, the house must be placarded, premises placed in absolute quarantine, patient in absolute isolation and a complete disinfection done upon death or recovery taking place.

Rule 13. Dangerous contagious diseases; modified quarantine.—In the management and control of leprosy, smallpox, scarlet fever (scarletina) [scarlatina] diphtheria (membranous croup), and dengue, it is required that the house be placarded, premises placed in modified quarantine, patient in modified isolation, and complete disinfection done upon death or recovery.

Rule 14. Non-quarantinable contagious disease.—The management and control of typhoid fever, cerebro-spinal meningitis (epidemic), epidemic dysentery, trachoma (acute catarrhal conjunctivitis), tuberculosis and anthrax require special isolation and partial disinfection.

Rule 15. Quarantinable for school purposes.—Persons suffering from measles, whooping cough, mumps, German measles (rotheln) and chickenpox, shall be required to be barred from school for twenty-one days (at the discretion of the local health officer) from date of onset of the disease, with such additional time as may be deemed necessary; and may be readmitted on a certificate by him attesting to their recovery and non-infectiousness.

Rule 16. Minor diseases to be excluded during illness.—Those actually suffering from tonsilitis, scabies (itch), impetigo contagiosa, favus, shall be excluded from school during such illness and be readmitted on the certificate of the attending physician attesting to their recovery and non-infectiousness.

Rule 17. Rules not exclusive.—The above requirements shall in no sense be construed as abrogating any additional precautionary measures enforced by local health authorities, but it is expected that additional restrictive measures will be taken at the discretion of the local health authority when the necessity arises, more especially in the more densely populated cities and towns, or when violations of quarantine occur.

Rule 18. Authorities to investigate reported cases.—Whenever a local health authority is informed or has reason to suspect that there is a case of smallpox, scarlet fever, or other reportable disease within the territory over which he has jurisdiction, he shall immediately examine into the facts of the case and shall adopt the quarantine or employ the sanitary measures as herein provided.

Rule 19. Shall see that quarantine and disinfection is carried out.—Within his jurisdiction, each and every local health authority shall see that the quarantine or disinfection of any house, building, car, vessel, or vehicle, or any part thereof, and of any articles therein likely to retain infection, is carried out, and that all persons who have been in quarantine are required to take a disinfecting bath before the same are released. In the event of the disease having been smallpox, all persons exposed shall be isolated for eighteen days from the time of last exposure unless successfully vaccinated.

Rule 20. Premises to be disinfected before re-occupied.—No person shall offer for hire or cause or permit any one to occupy apartments, previously occupied by a person ill with smallpox, scarlet fever, diphtheria or tuberculosis, or any quarantinable disease, until such apartments shall have been disinfected under the supervision of the local health authority.

Rule 21. Placard premises on failure to disinfect.—Whenever these rules and regulations, or whenever the order or direction of the local health authority requiring the disinfection of articles, premises or apartments, shall not be complied with, or in case of any delay, said authority shall forthwith cause to be placed upon the door of the apartment or premises a placard as follows: "These apartments have been occupied by a patient suffering with a contagious disease and they may have become infected. They must not again be occupied until my orders directing the renovation and disinfection of same have been complied with. This notice must not be removed, under penalty of the law, except by an authorized health official."

Rule 22. Nurses to report redness of eyelids or inflammation.—Whenever any nurse, midwife or other person not [a] legally qualified practitioner of medicine shall notice inflammation of the eyes or redness of the lids in a new-born child under his or her care, it shall be the duty of such person to report the same to the local health authority or in his absence, any reputable physician, within twelve hours of the time the disease is first noticed.

Rule 23. Householders to report contagious diseases.—Every hotel proprietor, keeper of a boarding house or inn, and householder or head of a family in a house wherein any case of reportable contagious disease (including tuberculosis) may occur, shall report the same to the local health authority within twelve hours of the time of his or her first knowledge of the nature of such disease, unless previous notice has been given by the physician in attendance; and in cases of quarantinable diseases until instructions are received from the said local health authority shall not permit any clothing or other article which may have been exposed to infection to be removed from the house; nor shall any occupant of said house change his residence elsewhere without the consent of the said local health authority.

Rule 24. Employés with reportable diseases.—No person who resides in a house in which there exists a case of smallpox, scarlet fever, diphtheria, or typhoid fever, shall work or be permitted in or about any dairy, or any establishment for the manufacture of food products, until the local health authority has given such a person a written certificate to the effect that no danger to the public will result from his or her employment or presence in such establishment.

Rule 25. To send physician printed matter.—Immediately after being notified of any case of smallpox, scarlet fever, diphtheria, typhoid fever, or tuberculosis, the local health authority shall send to the attending physician, or with his approval directly to the

patient the printed matter published by the State Board of Health relative to the prevention and control of such diseases.

Rule 26. Persons excluded from schools.—Persons afflicted with trachoma, granulated lids, or contagious catarrhal conjunctivitis must be excluded from schools, public assemblages, and from close association with other individuals, unless they are under the constant care and strict supervision of a competent physician, and hold a certificate from said physician stating that active inflammation has subsided, said certificate to be countersigned by a local health authority.

Rule 27. Schools temporarily closed.—A schoolhouse wherein a child suffering from smallpox, scarlet fever or diphtheria has been present, shall be deemed infected and must be temporarily closed and thoroughly disinfected and cleaned under the supervision of the local health authority before reopening of the school.

Rule 28. School to open after disinfection.—In the event of the aforementioned disease being smallpox and in the case the Board of Trustees having passed a regulation requiring a successful vaccination of all teachers and pupils, the school may be reopened immediately after the disinfection and cleaning, and all teachers and pupils who have been successfully vaccinated may return; otherwise the school shall be kept closed eighteeen days or until the local health authority directs otherwise.

Rule 29. To notify superintendents of pupils from infected houses.—The local health authority shall notify the superintendent or principal of any school of the location of quarantinable diseases, and if the superintendent or principal finds any attendants in such school who live in said houses, he shall deny them admission to the said schools, only admitting them again upon presenting a certificate from the attending physician, countersigned by the local health authority, that there is no longer danger from contagion.

Rule 30. Children with diseases shall not attend school.—No superintendent, principal or teacher of any school, and no parent, master or guardian of any child or minor, having the power and authority to prevent, shall permit any child or minor, having any quarantinable disease, or any child residing in any house in which any such disease exists or has recently existed, to attend any public, private, parochial, church or Sunday school until the requirements of these rules have been complied with.

Rule 31. Health authorities to assume control of quarantine.—In all incorporated cities and towns the city health authorities shall assume control and management of contagious diseases and exposures and practice quarantine, isolation and disinfection as herein provided. In those portions of all counties outside of incorporated cities and towns the county health officer shall assume management and control of contagious diseases and exposures and practice quarantine, isolation and disinfection as herein provided.

Rule 32. These rules not to prevent local rules.—These regulations shall not be construed to prevent any city, county or town from establishing any quarantine which they deem necessary for the preservation of the health of the same; provided, that the rules and regulations of such quarantine be not inconsistent with the provisions of these regulations and be subordinate to said provisions, and the rules and regulations prescribed by the Governor and State Board of Health. The local health authority shall at once furnish the President of the State Board of Health with a true copy of any quarantine orders and regulations adopted by said local authorities.

Rule 33. Authorities may pass through quarantine lines.—All health authorities shall be allowed to pass through all quarantine lines, whether instituted at the instance of State or local authorities, they first requesting permission and acquainting the officers or guards in charge with the fact of their being properly authorized health officers, and with the additional statement that they are fully acquainted with the nature of the disease that they are visiting, and further that they will take proper precautions to prevent carrying the infection themselves.

VITAL STATISTICS

Rule 34. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 34a. State department of health.—That the State Department of Health shall have charge of the registration of births and deaths; shall prepare the necessary instructions, forms and blanks for obtaining and preserving such records and shall procure the faithful registration of the same in each primary registration district as constituted in Section 3 of this Act [rule 36a], and in the central bureau of vital statistics at the capitol of the state. The said department shall be charged with the uniform and thorough enforcement of the law throughout the state, and shall from time to time recommend any additional legislation that may be necessary for this purpose. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 1.]

Section 24 of Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, repeals Rules 34–57, Rev. St. 1925, art. 4477, and all conflicting laws.

Rule 35. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 35a. State health officer and registrar of vital statistics.—That the State Health Officer shall have general supervision over the central bureau of vital statistics, which is hereby authorized to be established by said department, and which shall be under the immediate direction of the state registrar of vital statistics, whom the State Health Officer shall appoint within thirty days after the taking effect of this law, and who shall be a medical practitioner of not less than five years' practice in his profession, and a competent vital statistician.* The state registrar of vital statistics shall hold office for two years and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other causes. Any vacancy occurring in such office shall be filled for the unexpired term by the State Health Officer. At least ten days before the expiration of the term of office of the state registrar of vital statistics, his successor shall be appointed by the State Health Officer. The state registrar of vital statistics shall receive an annual salary at the rate of Four Thousand dollars ($4,000.00) from the date of his entering upon the discharge of the duties of his office. The State Department of Health shall provide for such clerical and other assistants as may be necessary for the purposes of this Act [Rules 34a–55a, P. C., art. 781a], who shall serve during the pleasure of said department, and shall fix the compensation of persons thus employed within the amount appropriated therefor by the legislature. The Board of Control shall provide suitable offices for the bureau of vital statistics in the state capitol or in other suitable public building at Austin, which shall be properly equipped with fireproof vault and filing cases for the permanent and safe preservation of all official records made and returned under this Act [Rules 34a–55a, P. C., art. 781a]. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 2.]

Rule 36. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 36a. Registration districts.—That for the purposes of this Act [Rules 34a–55a, P. C., art. 781a] the state shall be divided into registration districts as follows: Each city, each incorporated town, and each justice precinct shall constitute a primary registration district, provided, that the State Department of Health may combine two or more primary registration districts when necessary to facilitate registration. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 3.]

Rule 37. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 37a. Local registrar—That within ninety days after the taking effect of this Act [Rules 34a–55a, P. C., art. 781a], or as soon thereafter

as possible, the State Health Officer shall appoint a local registrar of vital statistics for each registration district in the State. The term of office of each local registrar so appointed shall be two years, and until his successor has been appointed and has qualified, unless such office shall sooner become vacant by death, disqualification, operation of law, or other causes; provided, that in cities where health officers or other officials are, in the judgment of the State Health Officer, conducting effective registration of births and deaths under local ordinances or state law at the time of the taking effect of this Act [Rules 34a–55a, P. C., art. 781a], such officials may be appointed as registrars in and for such cities, and shall be subject to the rules and regulations of the state registrar, and to all of the provisions of this Act [Rules 34a–55a, P. C., art. 781a]. Any vacancy occurring in the office of local registrar of vital statistics shall be filled for the unexpired term by the State Health Officer. At least ten days before the expiration of the term of office of any such local registrar, his successor shall be appointed by the State Health Officer.

Any local registrar who, in the judgment of the State Health Officer fails or neglects to discharge efficiently the duties of his office as set forth in this Act [Rules 34a–55a, P. C., art. 781a], or to make prompt and complete returns of births and deaths as required thereby, shall be forthwith removed by the State Health Officer, and such other penalties may be imposed as are provided under Section 22 of this Act [P. C., art. 781a].

Each local registrar shall, immediately upon his acceptance of appointment as such, appoint a deputy, whose duty it shall be to act in his stead in case of his absence or disability; and such deputy shall in writing accept such appointment, and be subject to all rules and regulations governing local registrars. And when it appears necessary for the convenience of the people in any rural district, the local registrar, when directed by the state registrar to do so, shall appoint one or more suitable persons to act as subregistrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the district as may be designated; and each subregistrar shall note, on each certificate, over his signature, the date of filing, and shall forward all certificates to the local registrar of the district within ten days, and in all cases before the third day of the following month; provided, that each subregistrar shall be subject to the supervision and control of the state registrar, and may be by him removed for neglect or failure to perform his duty in accordance with the provisions of this Act [Rules 34a–55a, P. C., art. 781a] or the rules and regulations of the state registrar, and shall be subject to the same penalties for neglect of duty as the local registrar. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 4.]

Rule 38. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 38a. Dead bodies—That the body of any person whose death occurs in this state, or which shall be found dead therein, shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, or be temporarily held pending further disposition more than 72 hours after death, unless a permit for burial, removal, or other disposition thereof shall have been properly issued by the local registrar of the registration district in which the death occurred or the body was found. And no such burial or removal permit shall be issued by any registrar until, wherever practicable, a complete and satisfactory certificate of death has been filed with him as hereinafter provided; provided, that when a dead body is transported from outside the State into a registration district in Texas for burial, the transit or removal permit, issued in accordance with the law and health regulations of the place where the death occurred shall be accepted by the local registrar of the district into which the body has been transported for burial or other disposition, as a basis upon which he may issue a local burial permit; he shall note upon the face of the burial permit the fact that it was a body shipped in for interment, and give the actual place of death, and no local registrar shall receive any fee for the issuance of burial or removal permits under this Act [Rules 34a–55a, P. C., art. 781a] other than the compensation provided in Section 20 [Rule 53a]. [Acts 1927, 40th Leg., 1st C. S. p. 116, ch. 41, § 5.]

Rule 39. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 39a. Report of stillborn.—That a stillborn child shall be registered as a birth and also as a death, and separate certificates of both the birth and the death shall be filed with the local registrar, in the usual form and manner, the certificate of birth to contain in place of the name of the child, the word "stillbirth"; provided, that a certificate of birth and a certificate of death shall not be required for a child that has not advanced to the fifth month of uterogestation. The medical certificate of the cause of death shall be signed by the attending physician, if any, and shall state the cause of death as "stillborn," with the cause of the stillbirth, if known, whether a premature birth, and, if born prematurely, the period of uterogestation, in months, if known; and a burial or removal permit of the prescribed form shall be required. Midwives shall not sign certificates of death for stillborn children; but such cases, and stillbirths occurring without attendance of either physician or midwife, shall be treated as deaths without medical attendance, as provided in Section 8 of this Act [Rule 41a]. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 6.]

Rule 40. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 40a. Death certificates.—That the certificate of death shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

(1) Place of death, including state, county, precinct, town or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given instead of the street and house number. If in an industrial camp, the name of the camp to be given.

(2) Full name of decedent. If an unnamed child, the surname preceded by "Unnamed."

(3) Sex.

(4) Color or race—as white, black, mulatto (or other negro descent), Indian, Chinese, Japanese, or other.

(5) Conjugal condition—as single, married, widowed or divorced.

(6) Date of birth, including the year, month, and day.

(7) Age, in years, months and days. If less than one day the hours or minutes.

(8) Occupation. The occupation to be reported of any person, male or female, who had any remunerative employment, with the statement of (a) trade, profession or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(9) Birthplace; at least state or foreign country, if known.

(10) Name of father.

(11) Birthplace of father; at least state or foreign country, if known.

(12) Maiden name of mother.

(13) Birthplace of mother; at least state or foreign country, if known.

(14) Signature and address of informant.

(15) Official signature of registrar, with the date when certificate was filed, and registered number.

(16) Date of death, year, month, and day.

(17) Certification as to medical attendance on decedent, fact and time of death, time last seen alive, and the cause of death, with contributory (secondary) cause of complication, if any, and duration of each, and whether attributed to dangerous or insanitary conditions of employment; signature and address of physician or official making the medical certificate.

(18) Length of residence (for inmates of hospitals and other institutions; transients or recent residents)

at place of death and in the state, together with the place where disease was contracted, if not at place of death, and former or usual residence.

(19) Place of burial or removal; date of burial.

(20) Signature and address of undertaker or person acting as such.

The personal and statistical particulars (Items 1 to 13) shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts.

The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such.

The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive and the hour of the day at which death occurred. And he shall further state the cause of death, so as to show the course of disease or sequence of causes resulting in the death, giving first the name of the disease causing death (primary cause) and the contributory (secondary) cause, if any, and the duration of each. Indefinite and unsatisfactory terms, denoting only symptoms of disease or conditions resulting from disease, will not be held sufficient for the issuance of a burial or removal permit; and any certificate containing only such terms, as defined by the state registrar, shall be returned to the physician or persons making the medical certificate for correction and more definite statement.

Causes of death which may be the result of either disease or violence shall be carefully defined; and if from violence, the means of injury shall be stated, and whether (probably) accidental, suicidal, or homicidal. And for deaths in hospitals, institutions, or of nonresidents, the physician shall supply the information required under this head (Item 18), if he is able to do so, and may state where, in his opinion, the disease was contracted. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 7.]

Rule 41. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 41a. Death without medical attendance.—That in case of any death occurring without medical attendance, it shall be the duty of the undertaker or person acting as such to notify the local registrar of such death, and when so notified the registrar shall, prior to the issuance of the permit, inform the local health officer and refer the case to him for immediate investigation and certification; provided that when the local health officer is not a physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; provided, further, that if the registrar or the local health officer, as the case may be, has reason to believe that the death may have been due to unlawful act or neglect, or otherwise is one properly referable to the coroner, he shall then refer the case to the coroner or other proper officer for his investigation and certification. And the coroner or other proper officer whose duty it is to hold an inquest on the body of any deceased person, and to make the certificate of death required for a burial permit, shall state in his certificate the name of the disease causing death, if from external causes, (1) the means of death; and (2) whether (probably) accidental, suicidal, or homicidal; and shall, in any case, furnish such information as may be required by the state registrar in order properly to classify the death. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 8.]

Rule 42. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 42a. Undertaker's certificate.—That the undertaker, or person acting as undertaker, shall file the certificate of death with the local registrar of the district in which the death occurred and obtain a burial or removal permit prior to any disposition of the body; provided that any person who furnishes a casket, coffin or box in which to bury the dead and who renders service like or similar to that usually rendered by an undertaker, shall for the purposes of this Act [Rules 34a–55a, P. C., art. 781a] be deemed an undertaker. He shall obtain the required personal and statistical particulars from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer, justice of peace, or coroner, as directed by the local registrar, for the medical certificate of the cause of death and other particulars necessary to complete the record, as specified in Sections 7 [Rule 40a] and 8 [Rule 41a]. And he shall then state the facts required relative to the date and place of burial or removal, over his signature and with his address, and present the completed certificate to the local registrar in order to obtain a permit for burial, removal or other disposition of the body. The undertaker or person acting as such shall deliver the burial permit to the person in charge of the place of burial, before interring or otherwise disposing of the body; or shall attach the removal permit to the box containing the corpse, when shipped by any transportation company; said permit to accompany the corpse to its destination, where, if within the state of Texas, it shall be delivered to the person in charge of the place of burial.

Every person, firm, or corporation selling a casket, coffin or box for burial, shall keep a record showing the name of the purchaser, purchaser's postoffice address, name of deceased, date of death, and place of death of deceased, which record shall be open to inspection of the state registrar at all times. On the first day of each month the person, firm, or corporation, selling caskets, coffins or burial boxes, shall report to the state registrar each sale for the preceding month, on a blank provided for that purpose; provided, however, that no person, firm or corporation selling caskets, coffins or burial boxes to dealers or undertakers only shall be required to keep such record nor shall such report be required from undertakers when they have direct charge of the disposition of a dead body.

Every person, firm, or corporation selling a casket, coffin, or burial box, at retail, and not having charge of the disposition of the body, shall inclose within the casket, coffin or burial box a notice furnished by the state registrar calling attention to the requirements of the law, a blank certificate of death, and the rules and regulations of the State Department of Health, concerning the burial or other disposition of a dead body. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 9.]

Rule 43. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 43a. Burial permit within state.—That if the interment, or other disposition of the body is to be made within the state, the wording of the burial or removal permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permissions granted to inter, remove, or dispose otherwise of the body, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state registrar. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 10.]

Rule 44. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 44a. Report as to interment.—That no person in charge of any premises on which interments are made shall inter or permit the interment or other disposition of any body unless it is accompanied by a burial removal or transit permit, as herein provided. And such person shall indorse upon the permit the date of interment, over his signature, and shall return all permits so indorsed to the local registrar of his district within ten days from the date of interment, or within the time fixed by the local health authorities. He shall keep a record in a permanent bound book of all bodies interred or otherwise disposed of on the premises under his charge, in each case stating the name of each deceased person, place of death, date of burial or disposal, and name and ad-

dress of the undertaker and such other information as the state registrar may direct; which record shall at all times be open to official inspection; and he shall before the tenth day of the following month make a report to the state registrar of all deceased persons deposited in the premises during the preceding month; provided, that the undertaker or person acting as such, when burying a body in a cemetery or burial ground having no person in charge, shall sign the burial or removal permit, giving the date of burial, and shall write across the face of the permit the words, "No person in charge," and file the burial or removal permit within ten days with the registrar of the district in which the cemetery is located. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 11.]

Rule 45. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 45a. Births.—That the birth of each and every child born in this state shall be registered as hereinafter provided. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 12.]

Rule 46. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 46a. Birth certificates.—That within five days after the date of each birth, there shall be filed with the local registrar of the district in which the birth occurred a certificate of such birth, which certificate shall be upon the form adopted by the State Department of Health with a view to procuring a full and accurate report with respect to each item of information enumerated in Section 14 [Rule 47a] of this Act.

In each case where a physician, midwife, or person acting as midwife, was in attendance upon the birth, it shall be the duty of such physician, midwife, or person acting as midwife, to file in accordance herewith the certificate herein contemplated.

In each case where there was no physician, midwife, or person acting as midwife, in attendance upon the birth, it shall be the duty of the father or mother of the child, the householder or owner of the premises where the birth occurred or the manager or superintendent of the public or private institution where the birth occurred, each in the order named, within five days after the date of such birth, to report to the local registrar the fact of such birth. In such case and in case the physician, midwife, or person acting as midwife, in attendance upon the birth is unable, by diligent inquiry, to obtain any item or items of information contemplated in Section 14 of this Act [Rule 47a], it shall then be the duty of the local registrar to secure from the person so reporting, or from any other person having the required knowledge, such information as will enable him to prepare the certificate of birth herein contemplated, and it shall be the duty of the person reporting the birth or who may be interrogated in relation thereto to answer correctly and to the best of his knowledge all questions put to him by the local registrar which may be calculated to elicit any information needed to make a complete record of the birth as contemplated by said Section 14 [Rule 47a], and it shall be the duty of the informant as to any statement made in accordance herewith to verify such statement by his signature, when requested so to do by the local registrar. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 13.]

Rule 47. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 47a. Contents of birth certificate.—That the certificate of birth shall contain the following items, which are hereby declared necessary for the legal, social, and sanitary purposes subserved by registration records:

(1) Place of birth, including state, county, precinct, town, or city. If in a city, the ward, street, and house number; if in a hospital or other institution, the name of the same to be given, instead of the street and house number.

(2) Full name of child. If the child dies without a name, before the certificate is filed, enter the words "Died unnamed." If the living child has not yet been named at the date of filing certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report, as hereinafter provided.

(3) Sex of child.

(4) Whether a twin, triplet, or other plural birth. A separate certificate shall be required for each child in case of plural births.

(5) For plural births, number of each child in order of birth.

(6) Whether legitimate or illegitimate.

(7) Date of birth, including the year, month, and day.

(8) Full name of father.

(9) Residence of father.

(10) Color or race of father.

(11) Age of father at last birthday, in years.

(12) Birthplace of father; at least state or foreign country, if known.

(13) Occupation of father. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(14) Maiden name of mother.

(15) Residence of mother.

(16) Color or race of mother.

(17) Age of mother at last birthday, in years.

(18) Birthplace of mother; at least state or foreign country, if known.

(19) Occupation of mother. The occupation to be reported if engaged in any remunerative employment, with the statement of (a) trade, profession, or particular kind of work; (b) general nature of industry, business or establishment in which employed (or employer).

(20) Number of children born to this mother, including present birth.

(21) Number of children of this mother living.

(22) The certification of attending physician or midwife as to attendance at birth, including statement of year, month, day (as given in Item 7), and hour of birth, and whether the child was born alive or stillborn. This certification shall be signed by the attending physician or midwife with date of signature and address; if there is no physician or midwife in attendance, then by the father or mother of the child, householder owner of the premises, or manager or superintendent of public or private institution where the birth occurred, or other competent person, whose duty it shall be to notify the local registrar of such birth, as required by Section 13 of this Act [Rule 46a].

(23) Exact date of filing in office of local registrar, attested by his official signature, and registered number of birth, as hereinafter provided.

(24) Whether prophylactic precautions were taken at time of birth to prevent ophthalmia neonatorium. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 14.]

Rule 48. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 48a. Child's name.—That when any certificate of birth of a living child is presented without the statement of the given name, then the local registrar shall make out and deliver to the parents of the child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the local registrar as soon as the child shall have been named. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 15.]

Rule 49. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 49a. Registration of physicians, midwives and undertakers.—That every physician, midwife, and undertaker shall, without delay, register his or her name, address and occupation with the local registrar of the district in which he or she resides, or may hereafter establish a residence; and shall thereupon be supplied by the local registrar with a copy of this Act [Rules 34a–55a, P. C., art. 781a], together with such rules and regulations as may be prepared by the state registrar relative to its en-

forcement. Within thirty days after the close of each calendar year each local registrar shall make a return to the state registrar of all physicians, midwives, and undertakers or persons who have acted as such who have been registered in his district during the whole or any part of the preceding calendar year; provided, that no fee or other compensation shall be charged by the local registrars to physicians, midwives, or undertakers or persons acting as such for registering their names under this section or making returns thereof to the state registrar. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 16.]

Rule 50. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 50a. Records of inmates of hospitals and institutions.—That all superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of diseases, confinement, or are committed by process of law, shall make a record of all the personal and statistical particulars relative to the inmates in their institutions at the date of approval of this Act [Rules 34a–55a, P. C., art. 781a], which are required in the forms of the certificates provided for by this Act [Rules 34a–55a, P. C., art. 781a], as directed by the state registrar; and thereafter such record shall be, by them, made for all future inmates at the time of their admittance. And in case of persons admitted or committed for treatment of disease, the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself if it is practicable to do so; and when they can not be so obtained, they shall be obtained in as complete a manner as possible from relatives, friends, or other persons acquainted with the facts. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 17.]

Rule 51. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 51a. Blanks and registration forms.—That the State Department of Health shall prepare, print, and supply to all registrars all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this Act [Rules 34a–55a, P. C., art. 781a], and each city and incorporated town shall print and supply its local registrar, and each county shall print and supply all local registrars serving in its areas outside of cities and incorporated towns, with permanent record books, in form approved by the state registrar, for the recording of all births and deaths occurring within their respective jurisdictions. The state registrar shall prepare and issue such detailed instructions as may be required to procure the uniform observance of its provisions and the maintenance of a perfect system of registration; and no other forms shall be used than those approved by the State Department of Health. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory he shall require such further information to be supplied as may be necessary to make the record complete and satisfactory. And all physicians, midwives, informants, or undertakers, and all other persons having knowledge of the facts, are hereby required to supply, upon a form provided by the State Department of Health or upon the original certificate, such information as they may possess regarding any birth or death upon demand of the state registrar, in person, by mail, or through the local registrar; provided, that no certificate of birth or death, after its acceptance for registration by the local registrar, and no other record made in pursuance of this Act [Rules 34a–55a, P. C., art. 781a], shall be altered or changed in any respect otherwise than by the amendments properly dated, signed, and witnessed. The state registrar shall further arrange, bind and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive index of all births and deaths registered; said index to be arranged alphabetically, in the case of deaths, by the name of decedents, and in the case of births, by the names of fathers and mothers. He shall inform all registrars what diseases are to be considered infectious, contagious, or communicable and dangerous to the public health, as decided by the State Department of Health, in order that when deaths occur from such diseases proper precautions may be taken to prevent their spread. If any cemetery company or association, or any church or historical society or association, or any other company, society or association, or any individual, is in possession of any record of births or deaths which may be of value in establishing the genealogy of any resident of this state, such company, society, association or individual, may file such record or a duly authenticated transcript thereof with the state registrar, and it shall be the duty of the state registrar to preserve such record or transcript and to make a record and index thereof in such form as to facilitate the finding of any information contained therein. Such record and index shall be open to inspection by the public, subject to such reasonable conditions as the State Department of Health may prescribe. If any person desires a transcript of any record filed in accordance herewith, the state registrar shall furnish the same upon application, together with a certificate that it is a true copy of such record, as filed in his office, and for his services in so furnishing such transcript and certificate he shall be entitled to a fee of (ten cents per folio) (fifty cents per hour or fraction of an hour necessarily consumed in making such transcript) and to a fee of twenty-five cents for the certificate, which fees shall be paid by the applicant; provided, that before the issuance of any such transcript, the registrar shall be satisfied that the applicant is properly entitled thereto, and that it is to be used only for legitimate purposes. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 18.]

Rule 52. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 52a. Duties of local registrars.—That each local registrar shall supply blank forms of certificates to such persons as require them. Each local registrar shall carefully examine each certificate of birth or death when presented for record in order to ascertain whether or not it has been made out in accordance with the provisions of this act and the instructions of the state registrar; and if any certificate of death is incomplete or unsatisfactory, it shall be his duty to call attention to the defects in the return, and to withhold the burial or removal permit until such defects are corrected. All certificates, either of birth or death, shall be written legibly, in durable black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein, or satisfactorily account for their omission. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; provided, that in case the death occurred from some disease which is held by the State Department of Health to be infectious, contagious, or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be issued by the registrar, except under such conditions as may be prescribed by the State Department of Health. If a certificate of birth is incomplete, the local registrar shall immediately notify the informant, and require him to supply the missing items of information if they can be obtained. He shall number consecutively the certificates of birth and death, in two separate series, beginning with number 1 for the first birth and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and each death certificate registered by him in a record book supplied in accordance with provisions of Section 18 of this Act [Rule 51a], to be preserved permanently in his office as the local record, in such manner as directed by the state registrar, or in the event that local ordinances require that all re-

ports of births and deaths be made in duplicate, he may permanently bind the duplicate reports and index them in the manner prescribed in section 18 [Rule 51a] for the state registrar. And he shall, on the tenth day of each month, transmit to the state registrar all original certificates registered by him for the preceding month. And if no births or no deaths occurred in any month, he shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for such purposes. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 19.]

Rule 53. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 53a. Fees.—That each local registrar shall be paid the sum of twenty-five cents for each birth certificate and each death certificate properly and completely made out and registered with him, and correctly recorded and promptly returned by him to the state registrar, as required by this Act [Rules 34a–55a; P. C., art. 781a]; that in case no births or no deaths were registered during any month, the local registrar shall be paid the sum of twenty-five cents for each report to that effect, but only if such report be made promptly as required by this Act [Rules 34a–55a; P. C., art. 781a]; provided, that if the local registrar receives any salary from state, city or county for his services, then the fees herein provided for shall not be allowed. All amounts payable to a local registrar in a city or incorporated town, under the provisions of this section, shall be approved by the city council, or city commission, as the case may be, and also shall bear the approval of the state registrar, and the same shall be paid out of the general fund of the city; and all amounts payable to a local registrar serving in a district outside of cities and incorporated towns shall be approved by the commissioners' court of the county or the county auditor, as the case may be, and also shall bear the approval of the state registrar, and the same shall be paid by the county treasurer out of the general fund of the county. A subregistrar shall be paid from the monies paid to the local registrar, under whom he serves, and it shall be the duty of the local registrar to make these payments on the following basis: For each certificate of birth and each certificate of death properly and completely made out, received by the subregistrar and promptly filed by him with the local registrar under whom he serves, the subregistrar shall be entitled to the sum of ten cents, to be paid by the local registrar out of monies he receives under the provisions of this Act [Rules 34a–55a; P. C., art. 781a]; provided, that if the local registrar, by reason of other official salaries, receive none of the registration fees provided by this Act [Rules 34a–55a; P. C., art. 781a], then the subregistrar shall be entitled to the sum of ten cents for each certificate of birth and death properly filed for him with the local registrar under whom he serves, the amount earned to be certified to by the local registrar concerned, approved by the state registrar, approved by the commissioners' court or county auditor, as the case may be, and then to be paid to the subregistrar out of the general fund of the county. Nothing in this Section shall be construed as relieving the local registrar of duties relating to the proper recording and preservation of all birth and death records filed with him, including those received from subregistrars. And the state registrar shall annually certify to the city councils or city commissions, as the case may be and to the commissioners' court or county auditor, as the case may be, the number of births and deaths properly registered, with the name of the local registrars and subregistrars and the amounts due each at the rates fixed herein. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 20.]

Rule 54. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 54a. Copies of records.—That the state registrar shall, upon request, supply to any properly qualified applicant a certified copy of the record of any birth or death registered under provisions of this Act [Rules 34a–55a; P. C., art. 781a], for the making and certification of which he shall be entitled to a fee of fifty cents, to be paid by the applicant. And any such copy of the record of a birth or death, when properly certified by the state registrar, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional part of an hour of time of search, said fee to be paid by the applicant. And the state registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the state treasurer at the close of each month, and all such fees shall be kept by the State Treasurer in a special and separate fund, to be known as the "Vital Statistics Fund," and the amounts so deposited in this fund may be used for defraying expenses incurred in the enforcement and operation of this Act [Rules 34a–55a; P. C., art. 781a]; Provided, That the state registrar shall, upon request of any parent or guardian, supply, without fee, a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment. And provided further, that the United States Census Bureau may obtain, without expenses to the state, transcripts or certified copies of births and deaths without payment of the fees herein prescribed. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 21.]

Rule 55. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

Rule 55a. Reports of violations of Act.—That each local registrar is hereby charged with the strict and thorough enforcement of the provisions of this Act [Rules 34a–55a; P. C., art. 781a] in his registration district, under the supervision and direction of the state registrar. And he shall make an immediate report to the state registrar of any violation of this law coming to his knowledge, by observation or upon complaint of any person, or otherwise.

The state registrar is hereby charged with the thorough and efficient execution of the provisions of this act [Rules 34a–55a; P. C., art. 781a] in every part of the state, and is hereby granted supervisory power over local registrars, deputy local registrars, and subregistrars, to the end that all of its requirements shall be uniformly complied with. The state registrar, either personally or by an accredited representative, shall have authority to investigate cases of irregularity or violation of law, and all registrars shall aid him, upon request, in such investigations. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this Act [Rules 34a–55a; P. C., art. 781a] to the county attorney, with a statement of the facts and circumstances; and when any such case is reported to him by the state registrar, the county attorney shall forthwith initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation of law. And upon request of the state registrar, the attorney general shall assist in the enforcement of the provision of this Act [Rules 34a–55a; P. C., art. 781a]. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 23.]

Rules 56 and 57. [Repealed by Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 24.]

DEPOTS, COACHES AND SLEEPERS

Rule 58. Diseases barred from public vehicles.—No person known to be suffering with any contagious diseases such as smallpox, scarlet fever, diphtheria, measles, or whooping cough shall be allowed to enter or ride in any day coach, sleeping car, interurban car or street car, and when any such person is discovered to be in any car as mentioned above, it shall be the duty of the conductor or other person in charge of said car to notify the nearest or most accessible county or city health officer and the latter shall remove and isolate said patient as is proper in such case.

Rule 59. Ventilation and heat.—Each depot, railway coach, sleeping car, interurban car and street car while in use for the accommodation of the public shall be properly ventilated, and, if necessary, heated, and a sufficient amount of heat shall be furnished in time of need so that fresh air can be supplied without causing it to become unduly uncomfortably cold; and the janitor, conductor or other person in charge shall see to it that the air is replenished with fresh air from time to time as needed to prevent the same from becoming foul, unsanitary and oppressive.

Rule 60. Cuspidors.—Cuspidors must be provided in adequate numbers in all waiting rooms of depots and railway stations; each day coach shall be provided with one cuspidor for each seat or every two chairs and two in each smoking apartment, except in each parlor car there may be as few as one cuspidor to every three seats and two cuspidors used in the smoking apartment; in each sleeping car shall be placed one cuspidor to each section and three cuspidors in the smoking apartment, one of which cuspidors, in the absence of a dental lavatory, shall be of an unusually large size and placed near the wash basin for use in washing the teeth; each said cuspidor shall contain not less than one-third of a pint of an approved disinfectant solution, and the cuspidor shall be emptied, washed in a similar solution and replenished each trip or every twenty-four hours.

Rule 61. Dry cleaning prohibited.—Dry cleaning and dry sweeping is prohibited at all times in waiting rooms of depots and railway stations, or in railway coaches, sleeping cars, interurban cars and street cars.

Rule 62. Coaches.—Railway day coaches shall be thoroughly cleaned at the end of each trip, and in no instance shall the day coach go uncleaned longer than two days when such coach is in use; the thorough cleaning of day coaches shall consist as follows:

(a) Windows and doors shall be first opened and the aislestrip, if any, removed and when possible thoroughly sunned.

(b) All upholstery shall be dusted and brushed, using the vacuum process cleaning apparatus whenever possible.

(c) The floor shall be mopped or swept after it has been sprinkled with an approved disinfectant solution or preferably cleaned by sprinkling with sawdust moistened with said disinfectant and sweeping. After cleaning as described, the floor must be scrubbed with soap and water, to which may be added the same disinfectant solution.

(d) Closet floors, urinals, toilet bowls, and walls must be cleaned by washing, scouring and wiping with an approved disinfectant solution, to which soda ash or other cleansing agent may be added.

(e) All arms of seats and window ledges must be wiped free of dust with a damp cloth, preferably one wet with disinfectant solution.

(f) Provided, that where the vacuum cleaning apparatus is installed and coaches are thoroughly cleaned with this method daily, the afore-mentioned method of brushing, cleansing and scrubbing may be used as seldom as once in each period of seven days.

Rule 63. Railway stations.—The sanitary method of cleaning as prescribed in the foregoing rule must be followed in the sanitation of waiting rooms of depots and railway stations once in every twenty-four hours.

Rule 64. Parlor, buffet and dining cars.—Parlor, buffet and dining cars must be cleaned at cleaning terminals, as set forth in the article relating to day coaches. Carpets and draperies to be removed, dusted, sunned and aired. Food boxes, refrigerators, closets, drawers and cupboards to be cleaned, scalded and treated with a solution containing 2 per cent formaldehyde or other approved disinfectant.

Rule 65. Interurban and street cars.—Interurban and street cars must be washed with a hose and scrubbed thoroughly once every twenty-four hours, and must be disinfected with formaldehyde gas under the supervision of the local health authority immediately after any case of contagious disease has been discovered therein.

Rule 66. Sleeping cars.—All sleeping cars shall be cleaned at cleaning terminals according to the methods set forth in the article relating to day coaches at least twice during a period of every seven days; shall be disinfected with formaldehyde gas at least twice during a period of seven days; upon routes designated by the President of the State Board of Health all sleeping cars shall be disinfected as seldom as once during a period of seven days. In addition to the foregoing all sleeping cars shall be disinfected immediately after any case of contagious or infectious disease is discovered therein. All blankets used in sleeping cars must be thoroughly sterilized and washed at intervals of not more than ninety days.

Rule 67. Record of disinfection.—On each passenger car operated in this State a disinfection record must be kept and preserved and on same the following records are to be entered and kept: (1) place and date of each disinfection; (2) length of time devoted to each such thorough disinfection; and (3) each item in said record shall be inserted immediately after each act recorded, and the signature of the person or persons doing said cleaning or disinfection must appear beneath the said records.

Rule 68. Water coolers.—All depots, railway coaches, sleeping cars or interurban cars must be provided with a water cooler for the use of patrons and the traveling public; such water cooler must be so constructed as to be easily removed for the purpose of cleaning; must be emptied, rinsed and cleaned, and must be scalded and sunned when possible once in each period of twenty-four hours, and must be filled with good and wholesome drinking water when in service. Ice for use in water coolers must not be dumped on floors, sidewalks or car platform, but must be washed and must be handled with ice-tongs.

Rule 69. Expectorating on floors.—Expectorating on the floor or walls or furniture of any waiting room in any depot, on any depot platform, in any railway coach, sleeping car, interurban car, or street car is prohibited. Placards calling attention of passenger[s] and employés shall be hung in a conspicuous place in each of the said rooms and cars.

Rule 70. Expectorating in basins.—Brushing of teeth or expectorating in basins used for lavatory purposes is prohibited, and placards calling attention of passengers and employés shall be hung in a conspicuous place in the dressing room of passenger coaches.

Rule 71. Separate compartment for porter.—Sleeping car companies shall provide compartments and bedding for their negro porters separate from those provided for their white passengers.

Rule 72. Negro porter not to sleep in berth.—Negro porters shall not sleep in sleeping car berths nor use bedding intended for white passengers.

Rule 73. Certain floor covering prohibited.—No waiting room in any depot or railway station shall be floored in part or entirely with burlap, cocoa matting or sacking cloth.

Rule 74. Water closets.—All depots and railway stations shall provide adequate urinals and water closets for patrons and the traveling public; must keep them in proper sanitary condition, and if within five hundred feet of any public sewer must make permanent sanitary connection with same. Any privy or box closet furnished by such railway company shall be protected from flies by screening or other effective method including hinged lids or other device for covering the opening in the seats of said closets. Such privies and closets as are not in connection with a sanitary sewer shall be provided with a water-tight box or other receptacle underneath, and when full or at any time when its condition shall create a nuisance or become unsanitary, it must be emptied, and in no instance shall such box closet go longer than one month before it must be emptied and disinfected with 5 per cent carbolic acid solution or other approved disinfectant solution.

Rule 75. Railway premises shall be drained.—The premises of all depots and railway stations shall be thoroughly drained so that no stagnant water will collect on said premises.

Rule 76. Water containers screened.—All cisterns, fire water barrels, or other water containers upon the premises of any depot or railway station shall be screened with not less than 16 mesh wire gauze.

TRANSPORTATION OF DEAD BODIES

Rule 77. Bodies dead of pestilential diseases.—No body or [of] any person dead of Asiatic cholera, bubonic plague, typhus fever or smallpox shall be transported except in a hearse or undertaker's wagon unless said body shall have been cremated.

Rule 78. Bodies dead of contagious diseases.—The bodies of those who have died of diphtheria (membranous croup), scarlet fever (scarlatina, scarlet rash), glanders, anthrax or leprosy, shall not be accepted for transportation unless prepared for shipment by being thoroughly disinfected by (a) arterial and cavity injection with an approved disinfectant fluid, (b) disinfecting and stopping all orifices with absorbent cotton, and (c) washing the body with the disinfectant, all of which must be done by a licensed embalmer, holding a certificate as such. After being disinfected as above, such body shall be encased in an air-tight zinc, tin, copper or lead-lined coffin, or iron casket, all joints and seams hermetically soldered, and all enclosed in a strong, tight wooden box. Or, the body being prepared for shipment by disinfecting as above, may be placed in a strong coffin or casket and said coffin or casket enclosed in an air-tight copper or tin case, all joints and seams hermetically soldered and all enclosed in a strong outside wooden box.

Rule 79. Bodies dead of non-quarantinable contagious disease.—The bodies of those dead of typhoid fever, puerperal fever, erysipelas, tuberculosis and measles, or other dangerous communicable disease, other than those specified in rules 77 and 78, may be received for transportation when prepared for shipment by filling cavities with an approved disinfectant, washing the exterior of the body with the same, and stopping all orifices with absorbent cotton and encased in an air-tight coffin or casket; provided, that this shall apply only to bodies which can reach their destination within forty-eight hours from time of death. In all other cases such bodies shall be prepared for transportation in conformity with Rule 78. But when the body has been prepared for shipment by being thoroughly disinfected by an embalmer holding a certificate, as in Rules 78, the air-tight sealing may be dispensed with.

Rule 80. Bodies dead of other diseases.—The bodies of those dead of diseases that are not contagious, infectious or communicable may be received for transportation when encased in a sound coffin or casket and enclosed in a strong outside box; provided, they reach their destination within thirty hours from time of death. If the body can not reach its destination within thirty hours from time of death, it must be prepared for shipment by filling cavities with an approved disinfectant, washing the exterior of the body with the same, and stopping all orifices with absorbent cotton, and encased in an air-tight coffin or casket. But when the body has been prepared for shipment by being thoroughly disinfected by a licensed embalmer as in Rule 78, the air-tight sealing may be dispensed with.

Rule 81. Perons accompanying bodies dead of contagious diseases.—In cases of contagious or infectious diseases, the body must not be accompanied by persons or articles which have been exposed to the infection of the disease, unless certified by the health officer as having been properly disinfected; and before selling passage tickets, agents shall carefully examine the transit permit and note the name of the passenger in charge and of any other proposing to accompany the body, and see that all necessary precautions have been taken to prevent the spread of disease. The transit permit in such cases shall specifically state who is authorized by the health authorities to accompany the remains. In all cases where bodies are forwarded under Rule 78, notice must be sent by telegraph to health officer at destination, advising the date and train on which the body may be expected. This notice must be sent by or in the name of the health officer of the initial point, and is to enable the health officer at destination to take all necessary precautions at that point.

Rule 82. Bodies not shipped by express.—Every dead body not shipped by express must be accompanied by a person in charge, who must be provided with a passage ticket and also present a full first-class ticket marked "corpse" for the transportation of the body, and a transit permit showing physician's or coroner's certificate, name of deceased, date and hour of death, age, place of death, cause of death, and if of a contagious or infectious disease, the point to which the body is to be shipped, and when death is caused by any of the diseases specified in rule 78, the names of those authorized by the health authorities to accompany the body. The transit permit must be made in duplicate, and the signatures of the physician or coroner, health officer and undertaker must be on both the original and duplicate copies. The undertaker's certificate and paster of the original shall be detached from the transit permit and pasted on the end of the coffin box. The physician's certificate and transit permit shall be handed to the passenger in charge of the corpse. The whole duplicate copy shall be sent to the official in charge of the baggage department of the initial line and by him to the Secretary of the State Board of Health at Austin.

Rule 83. Bodies shipped by express.—When dead bodies are shipped by express, the whole original transit permit shall be pasted upon the outside box, and the duplicate forwarded by the express agent to the Secretary of the State Board of Health at Austin.

Rule 84. Disinterred bodies treated as contagious.—Every disinterred body, dead from any disease or cause, shall be treated as contagious or dangerous to the public health and shall not be accepted for transportation unless removal has been approved by the State or local health authorities having jurisdiction where such body is disinterred, and the consent of the health authorities of the locality to which the corpse is consigned has first been obtained; and all such disinterred remains shall be enclosed in a hermetically sealed (soldered) zinc, tin or copper-lined coffin or box. Bodies deposited in receiving vaults shall be treated and considered the same as buried bodies.

Rule 85. Transfer of bodies in transit.—When necessary to transfer dead bodies in transit from one railway train to another, or from one station to another, or from a station to a ferry, the affidavit of the undertaker and permit of the local health officer accompanying the remains shall be in all cases sufficient authority for such transfer.

Rule 86. Certificate by undertaker.—No common carrier shall accept for transportation any body unless a certificate is furnished by the undertaker preparing such body for shipment to the effect that the foregoing rules have been complied with in the preparation for transportation of said body. [Acts 1911, p. 173; Acts 1917, p. 328.]

CHAPTER FIVE

COUNTY HOSPITALS

Art.
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Article 4478. Authority.—The commissioners court of any county shall have power to establish a county hospital and to enlarge any existing hospitals for the care and treatment of persons suffering from any illness, disease, or injury, subject to the provisions of this chapter. At intervals of not less than twelve months, ten per cent of the qualified property tax paying voters of a county may petition such court to provide for the establishing or enlarging of a county hospital, in which event said court within the time designated in such petition shall submit to such voters at a special or regular election the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital. Whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital and shall have the following powers:

1. To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings.

2. To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital. The plans for such erection, alteration, or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

3. To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof, and for all other necessary expenditures therefor.

4. To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital and for all other necessary permanent improvements in connection therewith; to do all other things that may be required by law in order to render said bonds valid.

5. To appoint a board of managers for said hospital.

6. To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift. [Acts 1913, p. 71.]

Art. 4479. Board of managers.—When the commissioners' court shall have acquired a site for such hospital and shall have awarded contracts for the necessary buildings and improvements thereon, it shall appoint six resident property taxpaying citizens of the county who shall constitute a board of managers of said hospital. The term of office of each member of said board shall be two years, except that in making the first appointments after this Act takes effect three members shall be appointed for one year and three members for two years so that thereafter three members of said board will be appointed every two years. In case of a tie vote of said board the deadlock may be voted off one way or the other by the county judge of the county. Appointments to fill vacancies occurring by death, resignation or other cause shall be made for the unexpired term. Failure of any manager to attend three consecutive meetings of the board shall cause a vacancy in his office, unless said absence is excused by formal action of the board of managers. The managers shall receive no compensation for their services, but shall be allowed their actual and necessary traveling and other expenses within this State to be audited and paid by the commissioners' court in the same manner as other expenses of the hospital. Any manager after being cited may at any time for cause be removed from office by said court. [Id.; Acts 1927, 40th Leg., p. 268, ch. 189, § 1.]

Art. 4480. Powers of board.—The board of managers shall elect from among its members a president, and one or more vice-presidents and a secretary and a treasurer. It shall appoint a superintendent of the hospital who shall hold office at the pleasure of said board. Said superintendent shall not be a member of the board, and shall be a qualified practitioner of medicine, or be specially trained for work of such character.

The board shall also appoint a staff of visiting physicians who shall serve without pay from the county, and who shall visit and treat hospital patients at the request either of the managers or of the superintendent.

Said board shall fix the salaries of the superintendent and all other officers and employés within the limit of the appropriation made therefor by the commissioners court, and such salaries shall be compensation in full for all services rendered. The board shall determine the amount of time required to be spent at the hospital by said superintendent in the discharge of his duties. The board shall have the general management and control of the said hospital, grounds, buildings, officers and employees thereof; of the inmates therein, and of all matters relating to the government, discipline, contracts and fiscal concerns thereof; and make such rules and regulations as may seem to them necessary for carrying out the purposes of such hospital. They shall maintain an effective inspection of said hospital and keep themselves informed of the affairs and management thereof; shall meet at the hospital at least once in every month, and at such other times as may be prescribed in the by-laws; and shall hold an annual meeting at least three weeks prior to the meeting of the commissioners court at which appropriations for the ensuing year are to be considered. [Id.]

Art. 4481. Clinics.—The board of managers may also establish and operate an outpatient department or free dispensary and clinic at the hospital or in the city nearest to which the hospital is located, with branch dispensaries or clinics in every city or town in the county of five thousand population and over. They shall appoint a physician or physicians, who shall serve at such dispensaries or clinics, and shall determine the amount of time required to be spent at such dispensaries or clinics by such physicians, and shall fix the salaries, if any, of such physicians. Said board shall also appoint one or more trained visiting nurses to serve in connection with each such dispensary or clinic, and in connection with the hospital, and shall fix their salaries within the limits of the appropriation made therefor by the commissioners court. [Id.]

Art. 4482. School for children.—The board may also establish, at the hospital or in the city nearest to which the hospital is situated, or in the largest city in the county, a special and separate school for the education, care and treatment of children suffering from tuberculosis. Said school shall be conducted as a branch of the hospital and the pupils and inmates of said school shall be considered as inmates of the hospital and subject to all the provisions of this law. Said board shall appoint a teacher or teachers, specially qualified, to instruct and care for the pupil inmates of said school. Said board shall delegate the superintendent of the hospital, a member or members of the staff of visiting physicians, a physician or physicians in attendance upon any county dispensary, or shall employ a physician, to attend the inmates of said school, and to supervise their care and treatment, and shall delegate one of the hospital nurses, or a visiting nurse, or shall employ a nurse to assist in the care and treatment of said pupils. [Id.]

Art. 4483. Health bulletins.—The State Board of Health, from time to time, shall make rules and regulations for the care of persons suffering from communicable disease and for the prevention and spread of such diseases; and prepare bulletins and other publications giving information as to the cause, nature, treatment and prevention of disease. The board of managers, shall from time to time, purchase from the State Board of Health, at the actual cost of

printing, printed copies of such rules and regulations, bulletins and other publications, or shall have same printed, and shall send or deliver such copies to all practicing physicians in the county, to all public schools and to such private schools as request such copies, and such organizations, churches, societies, unions and individuals as may present written requests for copies of circulars, pamphlets, bulletins and such other publications prepared by the State Board of Health.

Art. 4484. Records.—The board of managers shall keep in a book provided for that purpose a proper record of its proceedings, which shall be open at all times to the inspection of its members, to the members of the commissioners court and to any citizen of the county. The board shall certify all bills and accounts, including salaries and wages, and transmit them to the commissioners court, who shall provide for their payment in the same manner as other charges against the county are paid.

The board of managers shall make to the commissioners court annually, and at such times as said court shall direct, a detailed report of the operation of the hospital dispensaries and school during the year, showing the number of patients received and the methods and results of their treatment, together with suitable recommendations and such other matter as may be required of them, and shall furnish full and detailed estimates of the appropriations required during the ensuing year for all purposes, including maintenance, the erection of buildings, repairs, renewals, extensions, improvements, betterments or other necessary purposes. [Id.]

Art. 4485. Superintendent.—The superintendent shall be the chief executive officer of the hospital, but shall at all times be subject to the by-laws, rules and regulations thereof, and to the powers of the board of managers.

He shall, with the consent of the board of managers, equip the hospital with all necessary furniture, appliances, fixtures and all other needed facilities for the care and treatment of patients, and for the use of officers and employés thereof, and shall purchase all necessary supplies, not exceeding the amount provided for such purposes by the commissioners court.

He shall have general supervision and control of the records, accounts and buildings of the hospital, and all internal affairs, and maintain discipline therein, and enforce compliance with and obedience to all rules, by-laws and regulations adopted by the board of managers for the government, discipline and management of said hospital and the employés and inmates thereof. He shall make such further rules, regulations and orders as he may deem necessary, not inconsistent with law or with the rules, regulations and directions of the board of managers. He shall, with the consent of the board of managers, appoint such resident officers and such employés as he may think proper and necessary for the efficient performance of the business of the hospital, and prescribe their duties; and for cause stated in writing, he may discharge any such officer or employé at his discretion, after giving such officer or employé an opportunity to be heard.

He shall cause proper accounts and records of the business and operations of the hospital to be kept regularly from day to day in books and on records provided for that purpose; and shall see that such accounts and records are correctly made up for the annual report as required by this law, and present the same to the board of managers who shall incorporate them in their report to the commissioners court.

He shall receive into the hospital, under the general direction of the board of managers, in order of application, or according to the urgency of need of treatment, any person found to be suffering from any illness, disease or injury, who has been an actual resident and inhabitant of the county for a period of at least one year prior to his application for admission to said hospital. He shall also receive into the hospital, patients sent by the commissioners court of any adjacent county, which has contracted with the board for the care and treatment of its sick and diseased and injured persons, resident in such counties for a period of at least one year. Such patients shall not be received and cared for unless there is sufficient provision for the care of the sick, diseased and injured of the county in which the hospital is situated. Said superintendent shall cause to be kept proper accounts and records of the admission of all patients, their names, age, sex, color, marital condition, residence, occupation and place of past employment.

He shall cause a careful examination to be made of the physical condition of all persons admitted to the hospital and provide for the treatment of each such patient according to his need; and shall cause a record to be kept of the condition of each patient when admitted and from time to time thereafter.

He shall temporarily or permanently discharge from said hospital any patient who shall wilfully or habitually violate the rules thereof; or who is found not to be sick, diseased or injured; or who is found to have recovered therefrom; or who for any other reason is no longer a suitable patient for treatment therein; and shall make a full report thereof at the next meeting of the board, and the said board shall make such final disposition of the case as they may think proper. From the decision of the board of managers there shall be no appeal.

He shall collect and receive all moneys due the hospital, keep an accurate account of the same, report the same at the monthly meeting of the board of managers, and transmit the same to the county collector within ten days after such meeting.

He shall before entering upon the discharge of his duties, give a bond in such sum as the board of managers may determine, to secure the faithful performance of the duties of his office. [Id.]

Art. 4486. Admission of patients.—Any resident of the county in which the hospital is situated, desiring treatment in such hospital, may apply in person to the superintendent or to any reputable physician for examination, and such physician, if he finds such person is suffering from any illness, disease or injury may apply to the superintendent of the hospital for his admission. Blank forms for such application shall be provided by the hospital and shall be forwarded by the superintendent thereof free to any reputable physician in the county upon request. So far as practicable, applications for admission to the hospital shall be made upon such forms. The superintendent upon receipt of such application, if it appears therefrom that the patient is suffering from illness, disease or injury, and if there be a vacancy in said hospital, shall notify the person named in such application to appear in person at the hospital. If, upon personal examination of such patient, or of any patient applying in person for admission, the superintendent is satisfied that such person is suffering from any illness, disease or injury, he shall admit him to the hospital as a patient. All such applications shall state whether, in the judgment of the physician, the person is able to pay in whole or in part for his care and treatment while at the hospital. Every application shall be filed and recorded in a book kept for that purpose in the order of its receipt. No discrimination shall be made in the accommodations, care or treatment of any patient because of the fact that the patient or his relatives contribute to the cost of his maintenance, in whole or in part. No patient shall be permitted to pay for his maintenance in such hospital a greater sum than the average per capita cost of maintenance therein, including a reasonable allowance for the interest on the cost of the hospital. No officer or employee of such hospital shall accept from any patient thereof, any fee, payment or gratuity whatsoever for his services. [Id.]

Art. 4487. Support of patients.—Whenever a patient has been admitted to said hospital from the county in which the hospital is situated, the superintendent shall cause inquiry to be made as to his circumstances, and of the relatives of such patient legally liable for his support. If he finds that such patient or said relatives are liable to pay for his care and

treatment in whole or in part, an order shall be made directing such patient, or said relatives to pay to the treasurer of such hospital for the support of such patient a specified sum per week, in proportion to their financial ability, but such sum shall not exceed the actual per capita cost of maintenance. The superintendent shall have power and authority to collect such sum from the estate of the patient, or his relatives legally liable for his support, in the manner provided by law for the collection of expenses of the last illness of a deceased person. If the superintendent finds that such patient, or said relatives are not able to pay, either in whole or in part, for his care and treatment in such hospital, the same shall become a charge upon the county. Should there be a dispute as to the ability to pay, or doubt in the mind of the superintendent, the county court shall hear and determine same, after calling witnesses, and shall make such order as may be proper, from which there shall be no appeal. [Id.]

Art. 4488. Inspection.—The resident officer of the hospital shall admit the managers into every part of the hospital and the premises and give them access on demand to all books, papers, accounts, and records pertaining to the hospital, and shall furnish copies, abstracts, and reports whenever required by them. All hospitals established or maintained under the provisions of this law shall be subject to inspection by any duly authorized representative of the State Board of Health, or any State board of charities that may hereafter be created, and of the commissioners court of the county; and the resident officers shall admit such representatives into every part of the hospital and its buildings and give them access on demand to all records, reports, books, papers and accounts pertaining to the hospital. [Id.]

Art. 4489. Poorhouse.—Wherever a county hospital for the care and treatment of persons suffering from any illness, disease or injury exists in connection with, or on the grounds of a county poorhouse or elsewhere, the commissioners' court shall appoint a board of managers for such hospital, and such hospital and its board of managers shall thereafter be subject to each provision of this law, in like manner as if it had been originally established hereunder. Any hospital which may hereafter be established by any commissioners court shall in like manner be subject to each provision of this law. [Id.]

Art. 4490. Additional hospitals.—When deemed advisable by the commissioners court, and approved by the State Board of Health, a county may maintain more than one county hospital for the purpose aforesaid. [Id.]

Art. 4491. Contract with hospital.—Any commissioners court of any county which has no city with a population of more than ten thousand persons, may contract for a period not exceeding one year, with any regularly incorporated society or hospital or municipality within the county maintaining a hospital, or with any other adjacent county, for the care of any or all of the sick, diseased or injured inhabitants of the county, upon such terms and conditions as they may by agreement think proper. Where a county has established such hospital, the board of managers may contract with any regularly incorporated society or hospital or city or town within the county maintaining a hospital, for the care of some of the sick, injured or diseased persons applying for admission to the county hospital. [Id.]

Art. 4492. Contracts with cities.—Any commissioners court may co-operate with and join the proper authorities of any city having a population of ten thousand persons or more in the establishment, building, equipment and maintenance of a hospital in said city, and to appropriate such funds as may be determined by said court, after joint conference with the authorities of such city or town, and the management of such hospital shall be under the joint control of such court and city authorities. [Id.]

Art. 4493. Adequate facilities.—Where no county hospital is now provided for the purpose aforesaid, or where such provision is inadequate, the commissioners court of each county which may have a city with a population of more than ten thousand persons, within six months from the time when such city shall have attained such population, such population to be ascertained by such court in such manner as may be determined upon resolution thereof, shall provide for the erection of such county hospital or hospitals as may be necessary for that purpose, and provide therein a room or rooms, or ward or wards for the care of confinement cases, and a room or rooms or ward or wards for the temporary care of persons suffering from mental or nervous disease, and also make provision in separate buildings for patients suffering from tuberculosis and other communicable diseases, and from time to time add thereto accommodations sufficient to take care of the patients of the county. This time may be extended by the State Board of Health for good cause shown. Unless adequate funds for the building of said hospital can be derived from current funds of the county available for such purpose, issuance of county warrants and script, the commissioners court shall submit, either at a special election called for the purpose, or at a regular election, the proposition of the issuance of county bonds for the purpose of building such hospital. If the proposition shall fail to receive a majority vote at such election said court may be required thereafter at intervals of not less than twelve months, upon petition of ten per cent of the qualified voters of said county, to submit said proposition until same shall receive the requisite vote authorizing the issuance of the bonds. [Id.]

Art. 4494. Counties may join.—Where found to be more practicable, and when approved by the State Board of Health, two or more adjacent counties, having each a population of less than fifteen thousand persons, may join for the purposes of this law, and erect one or more hospitals for their joint use, under the terms and conditions above set forth for a single county.

In such cases such combined counties shall have the same powers and be subject to the same liabilities as a single county, herein provided for. [Id.]

CHAPTER SIX

MEDICINE

Art.

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Article 4495. [5733] Medical board.—The Board of Medical Examiners for the State of Texas shall consist of eleven men learned in medicine, legal and active practitioners in this State, who shall have resided and practiced medicine in this State under a diploma from a legal and reputable college of medicine of the school to which said practitioner shall belong for more than three years prior to their appointment. No school shall have a majority representation on said board. Said board shall be appointed biennially by the Governor within ninety days after his inauguration, and the term of office of its members shall be two years. No member of said board shall be a stockholder or a member of the faculty or a board of trustees of any medical school. The word "medicine" as used in this article shall have the same meaning and scope as given to it in the article defining it. [Acts 1907, p. 224, sec. 1.]

Art. 4496. [5734] Organization and meetings.—Each member of said board shall qualify by tak-

ing the official oath in the county of his residence. At the first meeting of said board after each biennial appointment, the board shall elect a president, vice-president and secretary-treasurer. Regular meetings shall be held at least twice a year, at such times and places as the board shall deem most convenient for applicants. Due notice of such meetings shall be given by publication in such papers as may be selected by the board. Special meetings may be held upon a call of three members of the board. The board may prescribe rules, regulations and by-laws, in harmony with the provisions of this title, for its own proceedings and government for the examination of applicants for the practice of medicine and obstetrics. [Id. sec. 2.]

Art. 4497. [5735] Board shall keep register. —The board shall preserve a record of its proceedings in a book kept for that purpose, showing name, age, place and duration of residence of each applicant, the time spent in medical study in respective medical schools, and the year and school from which degrees were granted; said register shall also show whether applicants were rejected or licensed, and shall be prima facie evidence of all matters contained therein. The Secretary of the board shall on March 1 of each year, transmit an official copy of said register to the Secretary of State for permanent record, a certified copy of which, with hand and seal of the secretary of said board, or the Secretary of State, shall be admitted in evidence in all courts. [Id. sec. 3.]

Art. 4498. [5736] Physicians to register.— No person shall practice medicine in any of its branches upon human beings within the limits of this State who has not registered in the district clerk's office of the county in which he resides, lawful authority to so practice medicine as herein prescribed, together with an affidavit subscribed and sworn to by him before said clerk stating his age, post-office address, place of birth, school of practice to which he professes to belong, that he is the identical person to whom the license offered for registration was issued, and that the same has not been canceled. The fact that said oath was so made, and said license so recorded, shall be endorsed by the district clerk upon the license. The holder of the license must in similar manner have the same recorded upon each change of residence to another county, and shall in each instance be required to make the affidavit provided above. The absence of such record in the office of the district clerk shall be prima facie evidence that no such license exists, and of failure to comply with the law in reference to the registration of license to practice medicine. [Acts 1923, p. 292.]

Art. 4499. [5737] Medical Register.—Every district clerk shall keep as a permanent record of his office a book of suitable size, to be known as the "Medical Register," and shall record therein all licenses to practice medicine issued by the State Board of Medical Examiners which shall be presented to him for registration and all the matters and things required by the preceding article to be recorded, and shall, as required by law, make therein notation of the cancellation of licenses so registered, and of the death and removal from the county of physicians whose licenses are so registered. When any district court shall cancel the license of any person to practice medicine, the clerk of said court shall, if said license is registered in his county, note the cancellation of said license upon the medical register of said county, and shall forthwith certify to the Secretary of the Board of Medical Examiners, under the seal of said court, the fact that said license was so canceled by said court, giving the exact date of said cancellation, and shall tax the fee for making said certificate as part of the costs of the suit to cancel said license. Each county health officer shall keep informed of the death and removal of all registered physicians residing in the county where he resides, and upon the death or removal of any such physician from said county shall certify such death or removal, giving the name of the physician who has died, or so removed, the date, or approximate date of such death or removal, and shall date and sign such certificate and deliver the same either in person or by registered mail, to the district clerk of said county, and said clerk shall forthwith make notation of said death or removal in said Medical Register, and notify the Secretary of the State Board of Medical Examiners of the said death or removal. The notation of such cancellation, if made by a district court, shall consist of writing in large, legible letters across the face of the record of the license cancelled the words "Cancelled by the district court of ———— County, on the ——— day of ————, 19—," (filling the blanks so as to correctly indicate the name of the county and the date of the cancellation) and such notation shall be dated and signed officially by the clerk. The notation of the death or removal of a registered physician by the district clerk shall consist of noting the fact of such death or removal upon the record of the license of the physician who has died or removed from the county in large, legible letters, the date of said notation, and the official signature of the clerk. The district clerk shall collect from each physician who presents a license for registration the sum of one dollar at the time such license is presented to him for registration, and that sum shall be full compensation for recording said license and making all notations in the medical register required by law to be so made in reference to the physician named in said license. All matters pertaining to each physician shall be kept and written upon one page of said medical register, and no other entry or registration shall ever be made on said page. It shall be unlawful for any district clerk to make a certified copy of any page or entry in said medical register, or any part thereof, which is not an exact copy of the entire page, or which does not include all notations regarding the cancellation of license, death, or removal of the physician in question, appearing in the office of said clerk. A copy from the medical register pertaining to any person whose license is registered therein certified to by the district clerk having the custody of said medical register under the seal of said court shall be competent evidence in all trial courts. The certificate of a district clerk under the seal of his office certifying that the person named in said certificate is not registered as a physician in the office of said district clerk shall also be prima facie evidence in all trial courts. [Acts 1907, p. 224; Acts 1923, p. 285.]

Art. 4500. [5738] Reciprocal arrangements. —The State Board of Medical Examiners may in its discretion, upon payment by the applicant for registration of a fee of fifty dollars, grant license to practice medicine to any reputable physician who is a graduate of a reputable medical college or has qualified on examination for the certificate of medical qualification for a commission in the medical corps of the United States Army or Navy, and to licentiates of other states or territories having requirements for medical registration and practice equal to those established by this law. Applications for license under the provisions of this article shall be in writing, and upon a form to be prescribed by the State Board of Medical Examiners. Said application shall be accompanied with a diploma or a photograph thereof, awarded to the applicant by a reputable medical college, or a certified transcript of the certificate or license or commission issued to the applicant by the medical corps of the United States Army or Navy, or by a license or a certified copy of license to practice medicine, lawfully issued to the applicant by some other State or territory; and also be accompanied by an affidavit from a executive officer of the medical corps of the United States Army or Navy, the president or secretary of the Board of Medical Examiners who issued the said license, or by a legally constituted medical registration officer of the State or territory in which the certificate or license was granted upon which the application for medical registration in Texas is based. Said affidavit shall recite that the accompanying certificate or license has not been cancelled or revoked except by honorable discharge from the medical corps of the United States Army or Navy, and that the statement of qualifications made in the application for medical registration in Texas is true and correct. Applicants for

license under the provisions of this article shall subscribe to an oath in writing, which shall be a part of said application, stating that the license, certificate, or authority under which the applicant practiced medicine in the state or territory from which the applicant removed was at the time of such removal in full force and not suspended or cancelled; that the applicant is the identical person to whom the said certificate, license or commission and the said medical diploma were issued, and that no proceeding was pending at the time of such removal, or is at the present time pending against the applicant for the cancellation of such certificate, license, or authority to practice medicine in the State or territory in which the same was issued, and that no prosecution was then, or is at the time of the application pending against the applicant in any State or Federal court for any offense which under the law of Texas is a felony. [Acts 1907, p. 224; Acts 1915, p. 112; Acts 1923, p. 286.]

Art. 4501. [5739] Examination.—All applicants for license to practice medicine in this State, not otherwise licensed under the provisions of law, must successfully pass an examination before the Board of Medical Examiners established by this law. Applicants, to be eligible for examination, must present satisfactory evidence to the board that they are more than twenty-one years of age, of good moral character, and graduates of bona fide, reputable medical schools. Such school shall be considered reputable within the meaning of this law, whose entrance requirements and course of instruction are as high as those adopted by the better class of medical schools of the United States, whose course of instruction shall embrace not less than four terms of eight months each. Application for examination must be made in writing under affidavit to the secretary of the board, on forms prepared by the board, accompanied by a fee of twenty-five dollars; except when an applicant desires to practice obstetrics alone, the fee of which shall be five dollars. Such applicant shall be given due notice of the date and place of examination. Applicants to practice obstetrics in this State, upon proper application, shall be examined by the board in obstetrics only, and upon satisfactory examination shall be licensed to practice that branch only; provided, this shall not apply to those who do not follow obstetrics as a profession, and who do not advertise themselves as obstetricians or midwives, or hold themselves out to the public as so practicing. If any applicant, because of failure to pass examination, be refused a license, he or she shall, at such time as the Board of Medical Examiners shall fix, be permitted to take a subsequent examination upon such subjects required in original examinations as the said board may prescribe, upon the payment of such part of twenty-five dollars as the said board may determine and state; and said board may, in the event satisfactory grades shall be made in the subjects prescribed and taken in such re-examination, grant to the applicant license to practice medicine. [Acts 1907, p. 224; Acts 1915, p. 112; Acts 1923, p. 287.]

Art. 4502. [5740] Disposition of fees.—The fund realized from the aforesaid fees shall be applied first to the payment of necessary expenses of the board of examiners; any remaining funds shall be applied by the order of the board to compensating members of the board in proportion to their labors. [Acts 1907, p. 224.]

Art. 4503. Details of examinations.—All examinations to practice medicine shall be conducted in writing in the English language and in such manner as shall be entirely fair and impartial to all individuals and to every school, or system of medicine, the applicants being known to the examiners only by numbers, without names or other method of identification on examination papers by which members of the board may be able to identify such applicants, or examinees, until after the general averages of the examinees' numbers in the class have been determined and license ordered, granted or refused. Examinations shall be conducted on anatomy, physiology, chemistry, histology, pathology, bacteriology, diagnosis, surgery, obstetrics, gynecology, hygiene, and medical jurisprudence. Upon satisfactory examination under the rules of the board, applicants shall be granted license to practice medicine. All questions and answers, with grades attached, shall be preserved in the executive office of the board for one year. All applicants examined at the same time shall be given identical questions in each of the above named branches. All certificates shall be attested by the seal of the board and signed by all members of the board, or a quorum thereof. The board may in its discretion give its examination for license in two parts. The first part shall include such of the required scientific branches of medicine named above as may be prescribed by the board. The second, or final part of the examination shall not be given until the applicant has graduated and received a diploma from a reputable medical college. This, the second or final part of the examination shall include all of the scientific branches of medicine prescribed by this law not included and passed by the applicant in the first, or partial, examination, but no license to practice medicine shall issue to such an applicant or examinee unless and until he or she has been examined in all of the scientific branches of medicine prescribed by this law and made the general average or averages required by the board. The application for the first partial examination shall be accompanied by an affidavit from the dean or registrar of a reputable medical college, stating that the applicant has successfully completed the work of the first two years of the college course, and a fee of fifteen dollars; the application for the second, or final, part of the examination shall include an affidavit showing that the applicant is a graduate of a reputable medical college, in good standing with this board, and a fee of twenty-five dollars. The board is authorized to make all rules as to credit to be given for partial examinations, and re-examinations of failed examinees in partial or complete examinations, and changes in procedure necessary to conduct the examination for license in two parts. But it shall be optional with the applicant for examination for license whether he or she shall take the twelve branches of medicine prescribed by this law in one examination session of the board or in two separate sessions. All applicants for examination by said board who cannot speak or write the English language must pay an additional charge of thirty dollars for the services of an interpreter, who shall fairly and accurately translate to the applicant each question propounded to applicants in such examination, and receive from said applicant full answer to said question and translate the said answer fully and with accuracy for the applicant and write the answer thus translated in the answers to said questions furnished to the board for examination and grading. [Acts 1907, p. 224; Acts 1923, p. 288.]

Art. 4504. [5742] Construction of this law.—Nothing in this law shall be so construed as to discriminate against any particular school or system of medical practice, nor to affect or limit in any way the application or use of the principles, tenets or teachings of any church in the ministration to the sick or suffering by prayer without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with, and that no charge is made therefor, directly or indirectly. The provisions of this chapter do not apply to dentists legally qualified and registered under the laws of this State who confine their practice strictly to dentistry; nor optometrists who confine their practice strictly to optometry, as defined in this title; nor to nurses who practice only nursing; nor to masseurs in their particular sphere of labor who publicly represent themselves as such; nor to commissioned or contract surgeons of the United States Army, Navy or Public Health and Marine Hospital Service in performance of their duties, but shall not engage in private practice without license from the Board of Medical Examiners; nor to legally qualified physicians of other States called in consultation, but who do not open office or appoint places in this State where patients may be met or called to see. This law shall be so construed as to

apply to persons other than licensed druggists of this State not pretending to be physicians who offer for sale on the streets or other public places remedies which they recommend for the cure of disease. [Acts 1907, p. 224, Acts 1923, p. 289.]

Art. 4505. [5743] May refuse to admit certain persons.—The State Board of Medical Examiners may refuse to admit persons to its examinations, or to issue the certificate provided for in this law, for any of the following causes:

1. The presentation to the board of any license, certificate or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination.

2. Conviction of a crime of the grade of a felony, or one which involves moral turpitude, or procuring or aiding or abetting the procuring of a criminal abortion.

3. Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public; or for habits of intemperance or drug addiction calculated to endanger the lives of patients; provided, that any applicant who may be refused admittance to examination before said board shall have his right of action to have such issue tried in the district court of the county in which some member of the board shall reside. [Id. sec. 11.]

Art. 4506. [5744] Revocation of license.—The right to practice medicine in this State may be revoked by any court of competent jurisdiction, upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the State Board of Medical Examiners is authorized to refuse to admit persons to its examinations as provided in the preceding article; and it shall be the duty of the several district and county attorneys of this State to file and prosecute appropriate judicial proceeding in the name of the State, on request of any member of said board. [Id. sec. 12.]

Art. 4507. To suspend or cancel license.—The district courts of the State shall have the authority to cancel or supend [suspend] the license of any practitioner of medicine when it shall appear to the satisfaction of said court, upon hearing that such practitioner of medicine has been convicted in a State or Federal court of an offense, which in this State is a felony, or for any offense involving moral turpitude, or that the practitioner obtained his examination for license upon a diploma, certificate, or license which had been illegally or fraudulently obtained, upon a fictitious or bogus certificate, license, or diploma, or one issued to a person other than the applicant, or that the practitioner was guilty of fraud, false swearing, or deception in obtaining examination by the board, or in passing examination for medical license, or in procuring the issuance of a license to him or in securing registration of his license by a district clerk, or that the practitioner has, in the judgment of the court, been guilty of grossly improper or dishonorable conduct of a character likely to deceive or defraud the public, or when it shall be shown to the satisfaction of the court that he is addicted to the habitual use of narcotics, or to habits of intemperance reasonably calculated to endanger the lives of his patients. When complaint is made to the court by any county or district attorney, as provided in the preceding article, said court shall order the practitioner of medicine to show cause why his license shall not be suspended or revoked. Such complaint shall be made in writing, the charge and the grounds thereof shall be set out distinctly and the same shall be subscribed and sworn to by the prosecutor and filed with the clerk of the court. Citation thereon shall be issued in the name of the State of Texas, and in manner and form as in other cases, and the same shall be served upon the defendant at least ten days before the trial day set therein. Upon the return of said citation executed, if the defendant shall appear and deny the charge, the cause shall be docketed for trial, and conducted in the name of the State of Texas against the defendant. The State shall be represented by the county or district attorney. A jury of twelve men shall be impaneled unless waived by the defendant, and the cause shall be tried in like manner as other cases. If the said practitioner of medicine be found guilty, or shall fail to appear and deny the charge after being cited as aforesaid, the said court may, by proper order entered on the minutes, suspend his license for a time, or revoke and cancel it entirely, and may also give proper judgment for costs. [Acts 1919, p. 231, Acts 1921, p. 145, Acts 1923, p. 290.]

Art. 4508. Duty of Attorney General.—Upon the application of the Board of Medical Examiners, or a majority thereof, to the Attorney General, setting forth that the county or district attorney of a county or district has failed to prosecute or proceed against any person violating the terms of this chapter, setting forth that application and request has been made of such county or district attorney and that such request or application has been neglected or refused, the Attorney General shall proceed against such a person in the county of residence of the person complained against, either by civil or criminal proceedings. [Acts 1923, p. 291.]

Art. 4509. Injunction.—The actual practice of medicine in violation of the provisions of this title, or in violation of any provision of Title 12, chapter 6, of the Penal Code, shall be enjoined at the suit of the State, but such suit for injunction shall not be entertained in advance of the previous final conviction of the party sought to be enjoined of the violation of any provision of said chapter of the Penal Code. In such suits for injunction, it shall not be necessary to show that any person is personally injured by the acts complained of. Any person who may be or about to be so unlawfully practicing medicine in this State, may be made a party defendant in said suit. The Attorney General, the district attorney of the district in which the defendant resides, the county attorney of the county in which the defendant resides, or any of them, shall have the authority, and it shall be their duty, and the duty of each of them, to represent the State in such suits. No injunction, either temporary or permanent, shall be granted by any court, until after a hearing on complaint is had by a court of competent jurisdiction on its merits. In such suit no injunction or restraining order shall be issued until final trial and final judgment on the merits of the suit. If on the final trial it be shown that the defendant in such suit has been unlawfully practicing medicine, or is about to practice medicine unlawfully, the court shall by judgment perpetually enjoin the defendant from practicing or continuing the practice of medicine in violation of law as complained of in said suit. Disobedience of said injunction shall subject the defendant to the penalties provided by law for the violation of an injunction. The procedure in such cases shall be the same as in any other injunction suit as nearly as may be. The remedy by injunction given hereby shall be in addition to criminal prosecution. Such causes shall be advanced for trial on the docket of the trial court, and shall be advanced and tried in the appellate courts in the same manner and under the same laws and regulations as other suits for injunction. [Acts 1923, p. 291.]

Art. 4510. [5745] Who regarded as practicing medicine.—Any person shall be regarded as practicing medicine within the meaning of this law:

1. Who shall publicly profess to be a physician or surgeon and shall treat, or offer to treat, any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof;

2. Or who shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method, or to effect cures thereof and charge therefor directly or indirectly, money or other compensation. [Acts 1907, p. 224.]

Art. 4511. [5746] Definitions.—The terms, "physician," and "surgeon," as used in this law, shall be construed as synonymous, and the terms, "practitioners," "practitioners of medicine," and, "practice of

medicine," as used in this law, shall be construed to refer to and include physicians and surgeons. [Acts 1907, p. 224.]

Art. 4512. [5747] Malpractice cause for revoking license.—Any physician or person who is engaged in the practice of medicine, surgery, osteopathy, or who belongs to any other school of medicine, whether they use the medicines in their practice or not, who shall be guilty of any fraudulent or dishonorable conduct, or of any malpractice, or shall, by any untrue or fraudulent statement or representations made as such physician or person to a patient or other person being treated by such physician or person, procure and withhold, or cause to be withheld, from another any money, negotiable note, or thing of value, may be suspended in his right to practice medicine or his license may be revoked by the district court of the county in which such physician or person resides, or of the county where such conduct or malpractice or false representations occurred, in the manner and form provided for revoking or suspending license of attorneys at law in this State. [Acts 1905, p. 370.]

CHAPTER SEVEN

NURSES

Art.
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Article 4513. Board of Examiners.—The Governor shall biennially appoint a Board of Nurse Examiners to consist of five members, two of whom shall be appointed for three years and three for two years. Each member of said board shall be a registered graduate nurse of at least twenty-five years of age, of good moral character and a graduate of a school of nursing connected with a general hospital or sanitarium of good standing presided over by a graduate registered nurse, where a two or more years training with a systematic course of instruction is given, and shall have had at least three years experience in educational work among nurses. The members of the board and the educational secretary shall each make and subscribe to the official oath and the same shall, within thirty days after their appointment, be filed with the Secretary of State. [Acts 1923, p. 413.]

Art. 4514. Organization of board.—The members of the said board shall elect from their number a president, and a secretary who shall also act as treasurer. Special meetings of said board shall be called by the president or by the secretary upon the written request of any two members. The board may make such by-laws and rules as may be necessary to govern its proceedings and to carry into effect the purpose of this law. The secretary shall be required to keep a record of each meeting of said board, including a register of the names of all nurses registered under this law, which shall at all times be open to public inspection. Said board shall assist the proper legal authorities in the prosecution of all persons violating any provision of this law. [Id.]

Art. 4515. Salaries.—The members of said board shall receive such per diem as may be fixed by the board, not to exceed ten dollars per day for each day they are actually engaged in the work of the board, and the board may defray all necessary traveling and other expenses incurred by its members in attending meetings. [Id.]

Art. 4516. Educational secretary.—The board shall appoint an educational secretary, who shall be at least thirty years old, and shall have had at least five years experience in educational work among nurses. The duties of said secretary shall be to visit all schools of nursing in the State at least once a year to confer with superintendents of hospitals and superintendents of nursing schools as to the system of instruction given and as to accommodations and rules governing said school in reference to its students. The board shall prescribe such methods and rules of visiting, and such methods of reporting by said secretary as may in its judgment be deemed proper. [Id.]

Art. 4517. Bond and salary of secretary.—The secretary-treasurer of the board shall, within thirty days of her election by the board, execute a bond in the sum of one thousand dollars payable to the Governor, conditioned that she shall faithfully perform the duties of her office and account for all funds coming into her hands as secretary-treasurer; said bond to be signed by two or more good and sufficient sureties or by a surety company authorized to do business in this State, to be approved by the president of said board. The salary of the secretary shall be fixed and paid by the board and shall be exclusive of such traveling and other expenses as may be incurred with the approval of the board in the discharge of the official duties of said secretary. [Id. p. 414.]

Art. 4518. Qualifications of applicants.—Applicants for registration under this law must have had two years continuous training under a registered nurse in a school of nursing from which she has graduated. Such school of nursing must be an accredited school approved by the board. Said school of nursing, if located in Texas, must be presided over by a nurse registered in Texas. Applicants who have had two years training in nursing schools connected with a special hospital may be accepted for registration, provided he or she shall have had additional training in an accredited school of nursing connected with a general hospital of at least one year. [Id.]

Art. 4519. Examination and fee.—Upon filing application for examination each applicant shall pay an examination fee of fifteen dollars which shall in no case be returned to applicant. If the applicant passes the examination, then no further fee shall be required for registration. Any applicant for registration who fails to successfully pass the examination herein provided for shall have the right after six months and within one year to stand a second examination on those subjects wherein he or she has failed to make a grade of seventy per cent, without payment of any additional fees. If more than three examinations are necessary, an additional fee of two dollars shall be charged for each. A grade of not less than seventy on any one subject shall be required to pass the examination. The examination shall be of such character as to determine the fitness of the applicant to practice professional nursing. If the result of the examination be satisfactory to the board, a certificate shall be issued to the applicant, signed by the president and secretary and attested by the seal of said board, which certificate shall qualify the person receiving the same to practice professional nursing in this State. [Id.]

Art. 4520. Exempt from examination.—No nurse who is engaged in professional nursing at the time of the passage of this law and who has qualified under any previous law of this State and received a certificate from the board under such provisions of law regulating professional nursing, shall be required to stand any further examination under this law, but shall register with the county clerk in the county where she then resides. [Id.]

Art. 4521. Certificate from another State.—Any applicant of good character who holds a registration certificate as a professional nurse from another State whose requirements are equal to those of Texas, and whose individual qualifications shall be equivalent to those required in this law, may be granted a license to practice nursing in this State without examination, provided a fee of fifteen dollars is paid to the board by such applicant. [Id.]

Art. 4522. Use of "R. N."—A nurse who has received his or her license or permit according to the provisions of this law shall be styled a "registered nurse," and may use the title or abbreviation "R. N." [Id.]

Art. 4523. Temporary permit.—The board shall issue to graduate nurses from accredited schools of nursing who are actually engaged in the pursuit of their profession, a temporary permit to practice their profession until such time as the applicant can qualify for registration. A fee of two dollars shall be paid upon filing application for such permit. [Id.]

Art. 4524. Recording certificate.—Every person receiving a certificate of registration as provided in this law shall within thirty days thereafter file the same for record with the county clerk of the county where such person resides, together with a certificate of his or her identity as the person to whom the same was issued, and his or her place of residence at the time of the examination and registration. The county clerk shall record such certificate together with the certificate of identity, in a book kept for that purpose, for which service he shall be paid by the holder of such certificate a fee of fifty cents. The county clerk shall furnish annually on the first day of January to the Board of Nurse Examiners, upon blanks supplied by said Board, a duplicate list of all certificates so recorded by him during the preceding year, including therein the date of recording and the name and residence of the person filing the same, for which the board shall pay him a fee of two and one-half dollars. [Id.]

Art. 4525. Revoking certificate.—The Board of Nurse Examiners may by unanimous vote file a complaint against any registered nurse in the county court where such certificate is recorded, charging gross incompetency, malpractice, dishonesty, intemperance or any other act derogatory to the morals and standing of the profession of nursing. Thereupon the person against whom such complaint is filed shall be cited in writing to appear before said court on a date named in such citation not less than ninety days from the issuance of said notice, to which citation there shall be attached a certified copy of the complaint so filed. If such court shall decree a revocation of the certificate of such nurse, he or she shall have the right to appeal to the district court of such county. Such certificate shall upon such appeal remain in full force and effect until the same shall be disposed of by such district court, the decision of which shall be final. Upon the revocation of any certificate as herein provided, the secretary of said board shall strike the name of the holder of such certificate from the roll of registered nurses kept by such board. [Id.]

Art. 4526. Re-registration.—On or before the first day of March of each year, the secretary of the board shall mail to each nurse registered in this State a blank application for re-registration, addressing the same to the post-office address as shown by the records of said board. Upon receipt of such application blank, which shall contain space for such information as the board shall deem necessary, he or she shall sign and swear to the accuracy of the same before some officer authorized to administer oaths, after which he or she shall forward such sworn statement and application for renewal of his or her registration certificate to the secretary of the board, together with a fee of fifty cents. Upon receipt of such application and fee and having verified the accuracy of the same by comparison with the applicant's initial registration statements, the secretary of the board shall issue and mail to the applicant a certificate of re-registration which shall render the holder thereof a legally qualified registered nurse for the ensuing year. In case of refusal, notice of such fact shall be given. Certificates of re-registration shall bear the date of April of the year of issue, and shall expire on the last day of March in the year following. Should any registered nurse continue to practice nursing and caring for the sick beyond the time for which he or she is registered or re-registered, he or she shall be deemed to be an illegal practitioner and his or her license may be suspended or revoked by the board. All nurses already registered in this State at the time of the passage of this law shall make application to the secretary of the board for a re-registration blank, upon receipt of which he or she shall, in the manner hereinbefore prescribed, make application for re-registration, failing which the delinquent may be dealt with as provided in regard to the suspension or revocation of license. [Id.].

Art. 4527. Fees.—All fees received by said Board under this law shall be paid to the treasurer thereof; who shall pay the same out only on vouchers issued and signed by the president and secretary of said board. All money so received and placed in said fund may be used by said board in defraying its expenses in carrying out the provisions of this law. No expenses incurred by said board shall be paid by the State. [Id.]

Art. 4528. Exceptions.—This law shall not be construed to apply to the gratuitous nursing of the sick by friends, nor any person nursing the sick for hire who does not in any way assume or profess to practice as a graduate certified registered nurse. [Id.]

Art. 4528a. Employment for public schools and compensation.—Sec. 1. That the Commissioners Court of the various Counties in the State of Texas shall have the authority, when in their judgment it shall be deemed to be necessary or advisable, to employ one or more Graduate Registered nurses whose duty it shall be to visit the public schools in the county in which they are employed, and to investigate the health conditions and sanitary surroundings of such schools, and the personal, physical and health condition of pupils therein, and to co-operate with the duly organized Board of Health and local health authorities in general public health nursing and perform such other and further duties as may be required of them by the Commissioners Court.

Sec. 2. That said nurses when so appointed shall be employed on a monthly salary to be fixed by the Commissioners Court and shall at all times be subject to removal by the Commissioners Court without prior notice.

Sec. 3. The Commissioners Court shall be empowered to appropriate from any funds of the respective Counties the necessary money to cover the salary of such nurses, not to exceed the sum of $1,800.00 to each nurse, and in addition thereto may appropriate additional funds to cover all expenses that may be proper and necessary in the visiting of such schools, and General Public Health Nursing including transportation and other incidental expenses. [Acts 1927, 40th Leg., p. 243, ch. 169.]

CHAPTER EIGHT

PHARMACY

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Article 4529. [6286] Appointment of board.—The Governor shall biennially on or before September 1st after his inauguration appoint five persons to constitute a board to be styled "The Texas State Board of Pharmacy," hereinafter referred to as the board. Any member of said board may be removed by the Governor for good cause shown. Each member of said board shall be a licensed pharmacist and shall have been actively engaged in the practice of pharmacy in this State at the time of his appointment and for the five years immediately preceding such appointment. No one who is connected in any way with any school or college of pharmacy shall be appointed as a mem-

ber of said board. No two members of the board shall reside in the same county. [Acts 1907, p. 349.]

Art. 4530. [6287] Organization of board.—The board shall within thirty days after their appointment and annually thereafter, meet and organize by the election of a president, secretary and a treasurer, who shall hold office for one year from the date of their election. The president and the treasurer shall be members of the board, but the secretary need not be a member. The secretary shall receive such salary as the board may prescribe, and his necessary expense while engaged in the performance of his official duties. The treasurer and the secretary shall give bond, payable to the Governor, in such sum as the board may determine, conditioned for the faithful performance of all duties imposed by law or by order of the board, which at no time shall be for less amount than the sum handled by them annually. The board shall pay the expense of making such bonds. The secretary shall collect all money due the board from all sources, and pay the same over to the treasurer within ten days, taking his receipt therefor. The board shall prescribe the pay of the members thereof, but at no time shall the amount exceed five dollars per day for each member, to be paid to them for such days during which they are actually engaged in the discharge of their official duties, and shall pay them the amounts they actually incur for expenses in the discharge of their duties for mileage, hotel bills, stamps and stationery. No bill either of services or expense of such member shall be paid until an itemized statement of such service and each item of expense has been made out and duly sworn to by such member of such board, and such account has been filed with and approved by said board. The State shall never be liable for the salary and expense of any member of said board. [Id.]

Art. 4531. [6289] Duty of board.—The board shall adopt such by-laws and regulations not inconsistent with the provisions of this law as they deem necessary to carry out such provisions, and shall examine all applications for registration of such persons as may be entitled to the same under the provisions of this law. It shall make an annual report to the Governor, a copy of which shall be furnished to the Texas State Pharmaceutical Association, upon the condition of pharmacy in Texas; which report shall embrace all the proceedings of the board, and give an itemized account of all money received and disbursed by said board, and shall show to whom paid and for what purpose it was paid, and also show the names of all pharmacists duly registered under this law. The board shall deliver all money on hand at the end of the term of each board, after all outstanding debts have been paid, over to their successors in office. [Id.]

Art. 4532. [6290] Meetings for examination.—The board shall hold meetings for the examination of applicants for registration, and for the transaction of such other business as may legally come before it, at least once in four months, and such additional meetings as may be necessary. Said regular meetings shall be held on the third Tuesday of January, May and September of each year, in such places as the board may select, or places as shall be deemed most convenient for applicants. Due notice of such meetings thirty days in advance thereof, shall be given by publication in such papers as the board may select. [Id.]

Art. 4533. [6294] Application for license.—Every person who desires to be licensed as a pharmacist, shall file with the secretary of the board of pharmacy an application upon blanks furnished by the board of pharmacy for that purpose, duly verified under oath, setting forth the name and age of the applicant, the place or places at which and the time spent in the study of the science and art of pharmacy, the experience in compounding physician's prescriptions which the applicant has had under the direction of a legally licensed pharmacist, and shall appear at a time and place designated by the board of pharmacy, and submit to an examination as to his or her qualifications for registration as a licensed pharmacist or assistant pharmacist. If any applicant should fail to pass a satisfactory examination, he or she may at any subsequent meeting of the board of pharmacy, within six months, be permitted to be re-examined without cost. [Id.]

Art. 4534. [6295] Qualifications of applicants.—In order to be licensed as a pharmacist, each applicant shall be not less than twenty-one years of age, and shall have been licensed as an assistant pharmacist for not less than two years prior to his application for license as a pharmacist, or he shall present to the board satisfactory evidence that he is a graduate of a reputable school or college of pharmacy, or that he has had four years practical experience in pharmacy under the instruction of a pharmacist; and he shall also pass a satisfactory examination by or under the direction of a board of pharmacy. In order to be licensed as an assistant pharmacist, an applicant shall not be less than eighteen years of age and shall have a sufficient preliminary general education, and shall have had not less than two years experience in pharmacy, and shall pass a satisfactory examination by or under the direction of the board of pharmacy. In the case of persons who have attended a reputable school or college of pharmacy, the actual time of attendance at school or college of pharmacy may be deducted from the time of experience required of a pharmacist and assistant pharmacist, but in no case shall less than two years experience be required for registration as a licensed pharmacist. [Id.]

Art. 4535. [6296] Board to issue license.—If the applicant for license as a pharmacist or assistant pharmacist has complied with each requirement of this law, the board shall enroll his name upon the register of pharmacists or assistant pharmacists, and issue to him a license which shall entitle him to practice as pharmacist or assistant pharmacist for a period of two years from the date of said license. The board may refuse to grant a license to any person who has been convicted of a felony or who has been guilty of gross immorality, or who is addicted to the use of alcoholic liquors or narcotic drugs to such extent as to render him unfit to practice. The board after due notice, may revoke a license for like cause, or may revoke any license which has been procured by fraud. [Id.]

Art. 4536. [6291] Temporary certificate.—Upon satisfactory proof that the applicant is competent, any member of the board may issue a temporary certificate which shall be null and void after the first meeting of the board next after granting said certificate. Only one such certificate shall be granted to any one person.

Art. 4537. [6296] Renewal of license.—Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession shall, within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof, accompanied by the fee hereinafter prescribed. If the board shall find that the applicant has been legally licensed in this State and is entitled to renewal of license, or to a renewal of such permit, it shall issue to him a certificate attesting the fact. If any pharmacist or assistant pharmacist shall fail, for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacist or assistant pharmacist; and such person, in order to become registered as a licensed pharmacist or assistant pharmacist, shall be required to pay the same fee as in the case of original registration. [Id.]

Art. 4538. [6297] Applicant registered in foreign country.—The board may issue license to practice as pharmacist or assistant pharmacist in this State, without examination, to such persons as have been legally registered or licensed as pharmacists or assistant pharmacists in other states, or foreign countries; provided, the applicant for such license shall present satisfactory evidence of qualifica-

tions equal to those required from licentiates in this State, and that he was registered or licensed by examination in such other state, or foreign country, and that the standard of competency required in such other state, or foreign country, accords similar recognition to the licentiates of this State. Applicants for license under this article shall, with their application, forward to the secretary of the board the same fees as are required of other candidates for license. [Id.]

Art. 4539. [6298] License to be posted.—Every certificate of license to practice as pharmacist or assistant pharmacist, and every license to any proprietor or employee to conduct a drug store in towns of not more than one thousand inhabitants and every renewal of such license shall be conspicuously exposed in the pharmacy, drug store or place of business of which the pharmacist or assistant pharmacist or other person to whom it is issued is the owner or manager, or in which he is employed. [Id.]

Art. 4540. [6293] Pharmacists to be licensed.—No person not licensed as a pharmacist, within the meaning of this law, shall conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business, for the retailing, compounding or dispensing of any drug, chemical or poison, or for the compounding of physician's prescriptions, or keep exposed for sale at retail any drug, chemical or poisons, except as hereinafter provided. No person not licensed as a pharmacist or assistant pharmacist, within the meaning of this law, shall compound, dispense or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician or otherwise, or compound physician's prescriptions, except as an aid to or under the supervision of a person licensed as a pharmacist under this law. No owner or manager of a pharmacy or drug store, or other place of business, shall cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense, or sell at retail any medicine or poison, except as an aid to or under the supervision of a person licensed as a pharmacist. Nothing in this article shall be construed to prevent any person from engaging in the business herein described as proprietor and owner thereof, provided such proprietor or owner shall have employed in his business to conduct same some one qualified under this chapter, nor to interfere with any legally registered practitioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper, nor with exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist, nor with the selling at retail of non-poisonous domestic remedies, nor with the sale of patent or proprietary preparations, when sold in unbroken packages, nor with the sale of poisonous substances which are sold exclusively for use in the arts, or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "poison" and the names of at least two readily obtainable antidotes. [Id.]

Art. 4541. [6290] Record and register.—The board shall keep a record of its proceedings and a register of all persons to whom certificates or license as pharmacist or assistant pharmacist and permits have been issued, and all renewals thereof. The books and register of the board, or a copy of any part thereof certified by the secretary, shall be accepted as competent evidence in all the courts. [Id.]

Art. 4542. [6292] Fees of board.—The board shall be entitled to charge the following fees: For the examination of an applicant for license as a pharmacist, five dollars; for the examination of an applicant for license as an assistant pharmacist, two dollars and fifty cents. Every registered pharmacist and every registered assistant pharmacist in the meaning of this law, who desires to continue in the pursuit of pharmacy in this State shall annually, after the expiration of the first year of registration and on or before the first day of January of each year, pay to the secretary of the board a renewal fee to be fixed by the board which shall not exceed three dollars, in return for which a renewal of registration shall be issued. The board shall each year turn over to the State Pharmaceutical Association for the advancement of the science and arts of pharmacy out of the annual fees collected by it, such sum as it may deem advisable, not to exceed two dollars for each pharmacist and assistant pharmacist who shall have paid his renewal fee during such year. Those holding a certificate of pharmacy and not engaged in the active practice of pharmacy, shall be issued a renewal certificate upon payment of an annual fee of one dollar. Said Association shall report annually to said board on the condition of pharmacy in the State. [Acts 2nd C. S. 1919, p. 88.]

CHAPTER NINE

DENTISTRY

Art.
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Article 4543. Appointment and qualification.—The State Board of Dental Examiners shall consist of six practicing dentists, to be appointed biennially by the Governor. Each member shall serve two years. No person shall be eligible to appointment unless he has been actively engaged in the practice of dentistry for the three years next preceding his appointment. Before entering upon the duties of his office, each member of the board shall make written oath that he will faithfully and impartially discharge the duties incumbent upon him to the best of his ability; said oath shall be filed with the county clerk of the county in which affiant resides; and such clerk shall duly record the same on the records of his office, and shall receive fifty cents therefor. The board shall elect one member president and one secretary. [Acts 1919, p. 50.]

Art. 4544. Duty of Board.—The Board shall have authority to examine all applicants for license to practice dentistry or dental surgery in this State, and shall examine and grade all papers submitted by such applicants and report thereon to such applicant within thirty days from the time of the meeting of such board. The applicant upon passing a satisfactory examination before said board on the subjects pertaining to dentistry shall be granted a license to practice dentistry or dental surgery in this State. The board shall meet at least twice in each year. The proceedings shall be open to the public. [Id.]

Art. 4545. Qualifications of applicants—Each applicant shall be not less than twenty-one years of age, and shall present a diploma from a reputable dental college and evidence of good moral character. Any person upon proof satisfactory to the board that he or she has been regularly engaged in the legal practice of dentistry in any State of the United States for at least three years next preceding the application shall be entitled to an examination without presentation of a diploma. A dental college shall be held reputable whose entrance requirements and courses of instructions are as high as those adopted by the better class of dental colleges of the United States. The decision of the board as to whether a college is reputable shall be final. [Id.]

Art. 4546. To record license.—Every person to whom license is issued by the Board of Examiners shall, before beginning the practice of dentistry in this State, present the same to the county clerk of the county in which he or she resides or expects to practice; who shall record said license in a book provided for that purpose and receive fifty cents therefor. [Id.]

Art. 4547. Persons already licensed.—Any person who has heretofore been licensed, authorized, or granted permission to practice dentistry or dental surgery under the laws of this State, and who has so practiced under said license, authorization or permit, previous to the passage of this law, and who desires to obtain a license of authority from the board created under this law, upon presentation and surrender to the board of said license, authorization or permit, and an affidavit that he is the same person to whom same was originally granted, shall be granted a license under this law. No person shall be required to surrender an old license for a new one unless he so desires. If any license issued under this or any former law in Texas shall be lost or destroyed, the holder of said license may present his application to the board for a duplicate license together with his affidavit of such loss or destruction and that he is the same person to whom said license was issued, and shall be granted a license under this law. If the records of said board fail to show that such person was ever licensed, the board may exercise its discretion in granting said duplicate license. [Id.]

Art. 4548. License required to practice.—No person shall practice or offer, or attempt to practice dentistry or dental surgery in this State, without first having obtained a license from the State Board of Dental Examiners, as provided for in this law, provided that physicians and surgeons may, in the regular practice of their profession, extract teeth or make application for the relief of pain. Nothing herein applies to any person legally engaged in the practice of dentistry in Texas at the time of the passage of this law. [Id.]

Art. 4549. Revoking license.—Any member of the Board of Examiners when it shall be made to appear to said member by satisfactory evidence that any person who has been granted a license to practice dentistry or dental surgery in this State has been convicted of a felony, or has been guilty of any fraudulent or dishonorable conduct or malpractice, or any deception or misrepresentation for the purpose of soliciting or obtaining business, shall report the same to the county or district attorney, who shall, if in his judgment the evidence is sufficient, file a complaint to the district court of said county, requiring accused to appear before said court, at a regular term of said court, and upon the trial of said cause, if the defendant is found guilty of said charge, said court shall revoke the license of said defendant. No one shall be required to stand trial, unless a copy of said charge shall have been furnished him at least ten days before said trial, and he shall be cited to appear under the same rules as govern other civil cases in said court. [Id.]

Art. 4550. Record of Board.—Said Board shall keep a record in which shall be registered the name and residence or place of business of all persons authorized under this law to practice dentistry or dental surgery in this State. [Id.]

Art. 4551. Fees and expenses.—Each applicant for examination for license under this law shall pay to the Secretary of the Board twenty-five dollars which shall not be returned to said applicant. For each license of authority and each duplicate license issued the board shall receive a fee of one dollar.

Each member of the board shall receive for his services five dollars per day for each day actually engaged in the duties of his office, together with all legitimate expenses incurred in the performance of such duties. All expenses of said board shall be paid from money received by the board from applicants as provided for in this law. No money shall ever be paid to any member of the board from any fund in the State Treasury. Any excess money remaining in the hands of the board, after all expenses in the performance of their duty have been paid, shall be kept in the hands of the secretary for the proper enforcement of this law, and for other legitimate expenses of the board. The secretary shall be required to give bond payable to the board in such sum as the board may require for the faithful performance of his duty in the safekeeping of and the proper delivery of said money. [Id.]

CHAPTER TEN

OPTOMETRY

Art.
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Article 4552. "Optometry."—The practice of optometry is defined to be the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drugs or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the laws of this State. [Acts 1st C. S. 1921, p. 159.]

Art. 4553. Board of Examiners.—The Texas State Board of Examiners in Optometry shall be composed of five members who shall possess the necessary qualifications to practice optometry and who shall have been residents of this State, actually engaged in the practice of optometry for at least five years immediately preceding their appointment. The board may prescribe rules, regulations and by-laws in harmony with the provisions of this chapter for its own proceedings and government and for the examination of applicants for license to practice optometry. [Id.]

Art. 4554. Term of office.—The members of the Board, to be appointed by the Governor, shall be divided into three classes: one, two and three, and their term of office shall be determined by lot at the first meeting of the board. Two members shall hold their offices for two years, two members for four years, and one member for six years, respectively, from the time of their appointment. The members of one of the above classes of said board shall thereafter be appointed biennially by the Governor and shall hold office for six years. Only optometrists licensed under the laws of Texas and actively engaged in the practice of optometry shall be eligible for appointment on said board. [Id.]

Art. 4555. Organization and meetings.—The Board shall elect a president, a vice-president, and a secretary-treasurer biennially, at its first meeting after the appointment of a member of said board. Regular meetings shall be held at least twice a year, at such time and place as shall be deemed most convenient for applicants for license. Not less than ten days notice of such meeting shall be given by publication in at least three daily newspapers of general circulation to be selected by the board. Special meetings may be held upon call of three members of the board. [Id.]

Art. 4556. Record of proceedings.—The Board shall preserve a record of its proceedings in a book kept for that purpose, showing the name, age, place and present residence of each applicant, the name and location of any school of optometry from which he holds credentials, and the time devoted to the study and practice of same, together with such other information as the board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters contained therein. The secretary of the board shall on

March first of each year send a certified copy of said record to the Secretary of State for permanent record a certified copy from which, with hand and seal of the secretary of said board, or the Secretary of State, shall be admitted as evidence in all courts. When a license or certificate is issued it shall be numbered and recorded in a book kept by the secretary of the board. [Id.]

Art. 4557. Application for license.—Whoever desires to begin the practice of optometry shall make application for license by presenting to the secretary of the board, on forms furnished by the board, satisfactory sworn evidence that he or she has attained the age of twenty-one years, is of good moral character, and has graduated from a school of optometry maintaining a standard which meets with the requirements of said board, or has studied optometry in Texas not less than two years in the office of an optometrist licensed under this law before taking the examination which shall be prescribed by the board. [Id.]

Art. 4558. Subjects of examinations.—Said examinations shall consist of tests in practical, theoretical, and physiological optics, in theoretical and practical optometry, and in the anatomy, physiology, and pathology of the eye as applied to optometry. Every candidate successfully passing examination shall be registered by the board as possessing the qualifications required by this law, and shall receive from said board a license to practice optometry in this State. [Id.]

Art. 4559. Examinations.—Each applicant shall be given due notice of the date and place of examination. All examinations shall be conducted in writing and by such other means as the board shall determine adequate to ascertain the qualifications of applicants, and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. All applicants examined at the same time shall be given identical questions. The board may refuse to admit persons to its examination or to issue licenses for any of the following reasons:

1. The presentation to the board of any untrue statement or any document or testimony which was illegally or fraudulently obtained, or when fraud or deceit has been practiced in passing the examination.

2. Conviction of a felony, or of a misdemeanor which involves moral turpitude.

3. Other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public, or for habits of intemperance or drug addiction. Any applicant who may be refused an examination or a license, after legal notice and a full and impartial hearing, shall have his right of action to have such issue tried in the district court of any county in which one of the members of the board shall reside. [Id.]

Art. 4560. Reciprocity.—The board shall have authority, at its discretion, to recognize the license which has been issued, after full examination, by State Boards of Examiners in Optometry of other states having a standard satisfactory to the Texas State Board of Examiners in Optometry and may issue to such persons a license to practice optometry in Texas, or in its discretion, may admit for full examination any person presenting an unrevoked certificate of examination from the Board of Examiners of any other state. [Id.]

Art. 4561. To record license.—It shall be unlawful for any person to begin to practice optometry within the limits of this State who has not registered in the county clerk's office of the county in which he resides, and in each county in which he practices, his license for so practicing as herein prescribed, together with his age, post-office address, place of birth, subscribed and verified by his oath. The fact of such oath and record shall be endorsed by the county clerk upon the license. The absence of record of such license in the county clerk's office shall be prima facie evidence of the lack of possession of such license to practice optometry. [Id.]

Art. 4562. Optometry register.—Each county clerk in this State shall purchase a book of suitable size to be known as the "Optometry Register" of such county, and set apart at least one full page for the registration of each optometrist, and record in said Optometry Register the name and record of each optometrist who presents for record a license or certificate issued by the State Board of Examiners in Optometry. The county clerk shall receive one dollar for each document registered as provided in this article, which shall be his full compensation for all duties herein required. When an optometrist shall have his license revoked, said county clerk, upon being notified by the board, shall make a note of the fact beneath the record in the Optometry Register, which entry shall close the record. On the first day of January in each year, said county clerk shall, upon the request of the board, certify to the secretary of the board a correct list of the optometrists then registered in the county, together with such other information as said board may require. [Id.]

Art. 4563. Revocation of license.—The right herein to practice optometry in this State may be revoked by any district court upon proof of the violation of the law in any respect in regard thereto, or for any cause for which the State Board of Examiners in Optometry is authorized to refuse to admit persons to examinations or to issue licenses as provided herein, and it shall be the duty of the several district and county attorneys of this State to file and prosecute proceedings in the name of the State upon request of any member of said board. [Id.]

Art. 4564. Duty of licensee.—Every person practicing optometry in this State shall display his license or certificate in a conspicuous place in the principal office where he practices optometry, and whenever required, exhibit such license or certificate to said board, or its authorized representative, and whenever practicing said profession of optometry outside of, or away from said office or place of business, he shall deliver to each person fitted with glasses a bill, which shall contain his signature, post-office address, and number of his license or certificate, together with a specification of the lenses and material furnished and the prices charged for the same respectively. [Id.]

Art. 4565. Fees and expenses.—The board shall charge a fee of fifteen dollars for examining an applicant for license, which fee must accompany the application. If an applicant, because of failure to pass examination, be refused a license, he shall, after six months, be permitted to take a second examination without additional fee. The fee for issuing a license or certificate shall be five dollars, to be paid to the secretary of the board. The fund realized from fees shall first be applied to the payment of all necessary expenses of the board and the remainder be applied, by order of the board, to compensating members of the board in proportion to their labors. Said compensation shall in no case exceed twenty dollars per day for the time occupied. The board shall defray all expenses under this law from fees provided in this title and no part of same shall be paid from the State Treasury, nor shall any appropriation ever be made from the State Treasury for any expenditures made necessary by this law. All fees in excess of five thousand dollars remaining in the hands of the board at the end of any fiscal year shall be paid into the general fund of this State. [Id.]

Art. 4565a. Fee.—On or before January 1st, 1926, and on or before January 1st, of each year thereafter, every licensed optometrist in this State shall pay to the secretary-treasurer of the Texas State Board of Examiners in Optometry, an annual renewal fee of $5.00 for the renewal of his or her license to practice optometry for the current year. Practicing optometry without an annual renewal certificate for the current year, as provided, shall be subject to all penalties prescribed by this Act, for practicing optometry without a license.

When an optometrist shall have failed to pay his annual renewal fee and said annual renewal fee has

been due and unpaid for a period of one year, it shall be the duty of the board to notify such optometrist or optometrists by notifying him or them by notice sent by registered mail, and the return receipt to be the only valid evidence that said notice has been delivered and that he or they have been notified that said annual renewal fee is due and unpaid. Thirty days after date of receipt of such notice it shall be the duty of the board, under this Act, to declare the license void for non-payment of annual renewal fee. After a license has been declared void by the board for non-payment of annual renewal fee, it shall be the duty of the county clerk, of the county, in which such license may have been registered, upon receipt of notice from said board, to enter upon the optometry register of such county the fact that such license is void for non-payment of annual renewal fee and to notify the board in writing that such entry has been made. After the board has declared a license void, as provided for in this section, the board may thereafter, at its discretion, refuse to issue a new license until such optometrist, whose license has been declared void for non-payment of annual renewal fee, has passed the regular examination for license as provided for by this Act.

Art. 4565b. Renewal license.—On the receipt of said annual renewal fee by the Texas Board of Examiners in Optometry, it shall issue an annual renewal certificate, bearing the number of the license, the year for which renewed and other information from the records of the board that the said board may deem necessary to the proper enforcement of this Act.

Art. 4565c. Defining terms.—For the purpose of this Act, the words "Ascertaining and measuring the powers of vision of the human eye," as employed in Article 4552, shall be construed to include:

(1) The examination of the eye to ascertain the presence of defects or abnormal conditions which may be corrected, remedied, or relieved, or the effects of which may be corrected, remedied or relieved by the use of lenses or prisms, or

(2) The employment of any objective or subjective, means to determine the accommodative or refractive condition, or the range or powers of vision of muscular equilibrium of the human eye, or

(3) The employment of any objective or subjective means for the examination of the human eye for the purpose of ascertaining any departure from the normal, measuring its power of vision or adapting lenses or prisms for the aid or relief thereof, and it shall be construed as a violation of this Act, for any person not a licensed optometrist or a licensed physician to do any one act or thing, or any combination of acts or things, named or described in this article; provided, that nothing herein shall be construed to permit optometrists to treat the eye for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever, unless said optometrist is a duly licensed physician and surgeon, under the laws of this State.

Art. 4565d. "Fitting Lenses."—For the purpose of this Act the words "and fitting lenses or prisms," as employed in Article 4552, shall be construed to include:

(1) Prescribing or supplying, directly or indirectly, lenses or prisms, by the employment of objective or subjective means or the making of any measurements whatsoever involving the eyes or the optical requirements thereof;

(2) The adaptation or supplying of lenses or prisms to correct, relieve or remedy any defect or abnormal condition of the human eye or to correct, relieve or remedy or attempt to correct, relieve or remedy the effect of any defect or abnormal condition of the human eye.

(3) It shall be construed as a violation of this Act for any person not a licensed optometrist or a licensed physician to do any one thing or act, or any combination of things or acts, named or described in this article.

Art. 4565e. Selling as merchandise.—For the purpose of this Act the words "Pesons [Persons] who sell spectacles and eye-glasses as merchandise," as employed in Article 4566, shall be construed to mean merchants who do not practice optometry, or offer to practice optometry, but who sell spectacles or eye-glasses as merchandise, after they have been selected by their customers alone without aid from the merchant, either in person or indirectly, or by the provision of any mechanical or eye-testing machine or self-testing eye-machine, either for purposes of exhibition or use, or offering to provide or providing any self-testing system or methods, or other means, either for purposes of exhibition of [or] use, other than the particular and complete and ready-to-wear spectacles or eye-glasses selected by the customer in person from trays or other containers, containing such merchandise, and any other method of sale or delivery shall be construed as practicing optometry.

Art. 4565f. Acts unlawful.—In the interest of public health, welfare, safety, and comfort, after the passage of this Act, it shall be unlawful, and a violation hereof to:

(1) Sign or cause to be signed, a prescription for an ophthalmic lens without first making a personal examination of the eyes of the person prescribed for, or

(2) For any person licensed under this Act to practice optometry, when he, or she, is knowingly suffering from a contagious or infectious disease.

Art. 4565g. Optical mechanics.—Nothing in this Act shall be so construed as to prevent an optical mechanic from doing the merely mechanical work of manufacturing ophthalmic lenses or to prevent the sale of such ophthalmic lenses to those who are licensed and legally qualified to prescribe them, nor to prevent such optical machanic [mechanic], who does not practice optometry, from following the specific directions of a competently and legally signed prescription where he does no more than manufacture or dispense the spectacles or eye-glasses, or component parts thereof, called for by such prescription. Nor shall this Act be so construed as to prevent selling ready-to-wear spectacles or eye-glasses as merchandise at wholesale to merchants for purposes of re-sale as merchandise, as provided for in this Act when neither the wholesaler nor merchant to whom he sells practices optometry.

Art. 4565h. Spectacles as premiums.—It shall be unlawful for any person in this State to give, or cause to be given, deliver, or cause to be delivered, in any manner whatsoever, any spectacles or eye-glasses, separate or together, as a prize or premium, or as an inducement to sell any book, paper, magazine or any work of literature or art, or any item of merchandise whatsoever.

Art. 4566. Exceptions.—Nothing in this Act shall be construed to apply to persons who sell spectacles and eye-glasses as merchandise; officers or agents of the United States or the State of Texas, in the discharge of their official duties; nor to prevent physicians and surgeons, duly licensed as such under the laws of the State of Texas regulating the practice of medicine, from treating the human eye or prescribing lenses or glasses, or fitting lenses or glasses for the aid thereof. [Acts 1925, p. 149.] [39th Leg., ch. 31.]

CHAPTER ELEVEN

CHIROPODY

Art.
4567. Definitions.
4568. Selecting board of examiners.
4569. Subjects of examination.
4570. Examinations.
4571. Licenses.
4572. Reciprocity.
4573. Revoking license.
4574. Compensation and expenses.
4575. Exceptions.

Article 4567. Definitions.—"Chiropody" means the diagnosis, medical and surgical treatment of the human foot. A chiropodist is one who practices chiropody. [Acts 1923, p. 357.]

Art. 4568. Selecting Board of Examiners.—At the regular annual meeting of the State Board of Medical Examiners, it shall each year select two physicians from its own membership and two graduate chiropodists, residents of this State, and actively engaged in the practice of chiropody, who together with the Secretary of the State Medical Examiners shall constitute the State Board of Chiropody Examiners which shall serve for a period of one year. [Id.]

Art. 4569. Subjects of Examination.—Any person, other than those exempt from examination under this law desiring a license to practice chiropody shall be examined by the Board of Chiropody Examiners in the following subjects: anatomy, chemistry, dermatology, diagnosis, materia medica, pathology, physiology, therapeutic clinical and orthopedic chiropody, limited in their scope to the treatment of the human foot. If the applicant possesses the qualifications required and shall pass the examination prescribed with a general average of seventy-five per cent in all subjects, and not less than fifty per cent in any one subject, he shall be issued a license by the said Chiropody Board to practice chiropody in this State. Each applicant before taking the examination shall pay to the secretary of said Chiropody Board an examination fee of fifty dollars. Any applicant failing in the examination, and being refused a license shall be entitled, at the expiration of six months from the time of such refusal, to a re-examination without the payment of an additional fee for such examination. [Id.]

Art. 4570. Examinations.—Examinations to procure a license to practice chiropody in this State shall be held semi-annually at such times and places as the Board of Chiropody Examiners shall fix. All applicants for a license to practice chiropody under the provisions of this law shall have attained the age of twenty-one years and shall be of good moral character; they shall have had at least one year of instruction in and be graduates of some school of chiropody recognized as being in good standing by the Board of Chiropody Examiners. No school of chiropody shall be accredited by said board as a school of good standing which does not require for graduation a course of study of at least two years. [Id.]

Art. 4571. Licenses.—All licensees shall be designated as "Registered Chiropodists," and shall not use any title or abbreviations thereof without the designation "Registered Chiropodist, practice limited to the foot," shall not mislead the public as to their limited professional qualifications to treat human ailments. All licenses shall be recorded in the same manner as medical licenses in the office of the district clerk of the county in which the licensee practices. Every registered chiropodist shall renew his license on July 1st, of each year by the payment to the secretary of the State Board of Chiropody Examiners for the State of Texas, a fee of one dollar, and if such renewal fee is not paid within three months subsequent to July 1st. of each year such license shall be considered revoked and shall be reissued upon another application and examination, and the payment of the examination fee of fifty dollars. All licenses granted under this Act shall be conspicuously displayed at the office or other place of practice of the licensee. [Acts 1923, p. 358.]

Art. 4572. Reciprocity.—Upon the payment of a fee of fifty dollars a license without examination may be issued to chiropodists of other states, removing to this state, maintaining statutory requirements equal to those fixed in this law for the practice of chiropody and extending the same reciprocal privileges for the practice of chiropody, to this State. [Id.]

Art. 4573. Revoking license.—The board may, after due hearing, refuse to grant or renew and may revoke any license issued under the provisions of this law to a person, otherwise qualified, who obtained such license by fraudulent representation or dishonesty in taking an examination; or who makes use of untruthful and improbable statements to patients or in his advertising, or for habitual intoxication, or for unprofessional and immoral conduct; or who gives away or sells drugs or alcohol for other than legitimate purposes in his practice; or who may be convicted of amputating the human foot or toe or of using an anesthetic other than local. When a license has been granted it shall not be revoked or the renewal thereof refused without at least fifteen days notice to the licensee, who shall be entitled to a hearing by the board, and shall have the right to be represented by counsel. At least ten days prior to the date of such hearing the licensee shall be notified of the filing of the charges and of the nature thereof. Any person licensed to practice chiropody in this State whose license shall be cancelled by such board may, within thirty days after the cancellation thereof, and not thereafter, have his right of action for reinstatement against such board in the district court of Travis county. If the person whose license has been canceled by the board shall, within ten days after receiving information of such cancellation, give written notice to the secretary of the board of his intention to file such suit, the action of the board in cancelling the license of such person shall be suspended for a period of thirty days, but unless such suit shall be filed within said time, the action of the board shall be final. If suit shall be filed against the board to reinstate such license within said time, the action of the board shall remain suspended until the validity of the license in question shall be determined by the court. In such suit the burden shall be upon the plaintiff to show cause for reinstatement of his license. The board may, at its discretion, in case license has been revoked or the renewal thereof refused, reissue such license at the expiration of six months from the time such license was revoked. [Id.]

Art. 4574. Compensation and expenses.—Each member of the board shall receive for his services ten dollars a day and necessary traveling and incidental expenses, while actually engaged in the service of the board. The secretary shall receive his necessary expenses for services actually performed for the board. All printing, postage and other contingent expenses, necessarily incurred in administering this law shall be paid from the fees received by the board, and all expenses shall be itemized, verified, audited and an account kept thereof by the secretary of the board, who shall pay the same out of said fees which accrue to it. [Id.]

Art. 4575. Exceptions.—This law shall not apply to the physicians licensed by the State Board of Medical Examiners, nor to surgeons of the United States Army, Navy and United States Public Health Service, when in actual performance of their official duties. [Id.]

CHAPTER TWELVE

EMBALMING [BOARD]

Art.
4576. Embalming board.
4577. Duties and powers.
4578. Application for license.
4579. Renewal of license.
4580. License revoked.
4581. Department self-sustaining.
4582. Provisions do not apply.

Article 4576. [4596–7–8] Embalming board.—The State Board of Embalming shall consist of five members, the term of each to be two years, to be appointed biennially by the State Board of Health on or before the first day of June. The members of said board shall be practical embalmers having experience in said business and the care and disposition of dead human bodies. The appointing board shall remove any such appointee for neglect of duty, incompetency or improper conduct. All temporary vacancies on such board shall be filled by the Board of Health for the unexpired term. The Board of Health shall furnish each appointee a certificate of appointment upon which shall be noted that such appointee has taken the official oath. [Acts 1903, p. 123.]

Art. 4577. [4599] Duties and powers.—The Board of Embalming shall have the power and it shall be its duty:

1. To prescribe and maintain a standard of proficiency as to the qualifications of those engaged, and who may engage in the practice of embalming in connection with the care and disposition of dead human bodies in this State, and shall have the right, to be exercised at its discretion, to employ capable and efficient lecturers and demonstrators in the science of embalming for the benefit of all licensed embalmers in this State. The said lecturers and demonstrators shall meet not more than once in each year with annual session of the Texas Funeral Directors' and Embalmers' Association.

2. To meet in regular session once a year at such time and place as may be determined by said board at its previous annual meeting. Special meetings may be held at such time and place as may be determined by the president of said board. Notice of such special meetings shall be given in at least three daily newspapers published in different cities in the State. The board shall make an annual report to the State Health Officer on or before June first of each year on the condition of embalming in Texas, which shall embrace all the proceedings of the board and give an itemized account of money received and paid out and for what purpose; also the names of all embalmers duly licensed under this chapter. A copy of said report shall be furnished to each licensed embalmer in this State. The secretary of said board shall deliver all money on hand at the end of the term of each board to his successor in office.

3. To elect a president and secretary from the members of said board who shall serve for one year, or until their successors shall be elected and qualified.

4. To adopt rules, regulations and by-laws from time to time not inconsistent with the laws of this State or the United States, whereby the performance of all the duties of said board and the practice of embalming dead human bodies shall be regulated. [Id. Acts 1915, p. 211.]

Art. 4578. [4600] Application for license.—Any person engaged or desiring to engage in the practice of embalming in connection with the care and disposition of dead human bodies within this State shall make a written application to the State Board of Embalming for a license, accompanying the same with a license fee of ten dollars, whereupon the applicant shall come before said board at its regular annual meeting or at a special meeting thereof. If the board finds that the applicant is of good moral character, possessed of knowledge of the arterial system, the location of the heart, lungs, and other organs of the human body, and the location of abdominal, pleural and thoracic cavities, location of the carotid bracharal, radial, ulner, femoral and tibinal arteries, a knowledge of the science of embalming and the care and disposition of the dead, and has a reasonable knowledge of sanitation and the disinfection of the bodies of diseased persons, and the apartment, clothing and bedding in case of death by infectious or contagious diseases, the board shall issue to said applicant a license as a duly licensed embalmer, authorizing him to practice the science of embalming. Such license shall be signed by a majority of the board. All persons receiving license under the provisions of this law shall have said license registered in the county clerk's office in the county in which it is proposed to carry on said practice, and shall display said license conspicuously in the place of business of the licensee. [Id. Acts 1915, p. 180.]

Art. 4579. [4601] Renewal of license.—Every registered embalmer, who desires to continue the practice of his profession, shall annually thereafter during the time he shall continue in such practice, on such date as said board may determine, pay to the secretary of said board a fee of five dollars for the renewal of said license. [Id.]

Art. 4580. [4602] License revoked.—The Board of Embalming is hereby authorized for good cause to revoke any license issued by it subject to the right of appeal to the State Board of Health, whose decision shall be final. [Acts 1903, p. 123.]

Art. 4581. [4603] Department self-sustaining.—All expenses, salaries and per diem to the members of this board shall be paid from fees received under the provisions of this law, and shall in no manner be an expense to the State. All moneys received in excess of per diem allowance, and other expenses provided for, shall be held by the secretary of said board as a special fund for meeting the expenses of the board. [Id.]

Art. 4582. [4605] Provisions do not apply.—Nothing in this law shall apply to, or in any manner interfere with, the duties of any municipal, county and State officer, or State institution, nor apply to any person simply engaged in the furnishing of burial receptacles for the dead, but only to such person or persons engaged in the business of embalming in connection with the care and disposition of the dead. [Id.]

CHAPTER THIRTEEN

ANATOMICAL BOARD

Art.
4583. Board and duties.
4584. Regulations for delivering bodies.
4585. Distribution of bodies to institutions.
4586. Regulations for moving bodies.
4587. May dissect bodies.
4588. Parties receiving bodies to give bond.
4589. Expenses.
4590. Compensation of board.

Article 4583. [5756] Board and duties.—The professor of anatomy and the professor of surgery of each of the medical schools or colleges now incorporated, and of the several medical and dental schools and colleges which may hereafter be incorporated in this State are constituted a board, to be known as the Anatomical Board of the State of Texas, for the distribution and delivery of dead human bodies, hereinafter described, to and among such institutions as, under the provisions of this law, are entitled thereto. The board shall have power to establish rules and regulations for its government, and to appoint and remove proper officers of such board, and shall keep full and complete minutes of its transactions. Records sufficient for identification shall also be kept, under its direction, of all bodies received and distributed by said board and of persons to whom the same may be distributed, which minutes and records shall be open at all times to the inspection of each member of said board and of any district attorney or county attorney of this State. [Act 1907, p. 117, sec. 1.]

Art. 4584. [5757] Regulations for delivering bodies.—All public officers, agents, and servants, and all officers, agents and servants of any county, city, town, district, or other municipality, and of any and every almshouse, prison, morgue, hospital, or any other public institution, other than the State Orphan's Home, the Confederate Home, the State Blind Institute, and the State Deaf and Dumb Institute, insane asylum, and epileptic colony, or any other home for the indigent, or other eleemosynary institution maintained by the State, having charge or control of dead human bodies required to be buried at public expense, are hereby required, after notification in writing by said board or its duly authorized officers, or persons designated by the authorities of said board, then and thereafter to announce to said board, its authorized officer or agent, whenever such body or bodies come into his or their possession, charge or control, and shall without fee or reward greater than the value of such fee as was paid in any county, city, town, or municipality on the third day of April, 1907, for the burial of pauper bodies, deliver such body or bodies, and permit the said board and its agents and the physicians and surgeons, from time to time designated by them, who may comply with the provisions of this law, to take and remove all such bodies as are not desired for post mortem examinations by the medical staff of public hospitals or institutions for the insane, to be used within this State for the advancement of medical science; but no such notice need be given, nor any such body be delivered, if any person claiming to be and satisfying the authorities in charge of such

body that he or she is of a kindred or is related by marriage to the deceased, or is a bona fide friend or representative of an organization of which the deceased was a member, shall claim the said body for burial, but it shall be surrendered without cost to such claimant for interment, or shall, upon such claimant's request, be interred in the manner provided for the interment of bodies not coming within the operation of this law. No notice shall be given for the body to be delivered, if the deceased died of contagious disease, save tuberculosis, or syphilis; nor shall notice be given if such deceased person were a traveler who died suddenly, in which cases the body shall be buried. It is further required that due effort be made by those in charge of such almshouse, prison, morgue, hospital or other public institution having charge or control of such dead human bodies, to find kindred or relatives of such deceased and notify him or her of the death; and failure to claim such body by kindred or relation within twenty-four hours after receipt of such notification shall be recognized as bringing such body under the provisions of this law, and delivery shall be made as soon thereafter to said board, its officers, or agents as may be possible. Such person in charge of such public institution shall file with the county judge an affidavit that he has made diligent inquiry to find the kindred or relatives of the deceased, stating such inquiry as he has made. In case a body is claimed by relatives within ten days after it has been delivered to an institution or person entitled to receive the same under the provisions of this law, it shall be delivered to them for burial and without cost. [Id. sec. 2.]

Art. 4585. [5758] Distribution of bodies to institutions.—The board, or their duly authorized agents, may take and receive such bodies so delivered as aforesaid, and shall, upon receiving them, distribute and deliver them to and among the schools, colleges, physicians and surgeons aforesaid in the manner following: Those bodies needed for lecture and demonstration in the said incorporated schools and colleges shall first be supplied; the remaining bodies shall then be distributed proportionately and equitably, the number assigned to each to be based upon the number of students receiving instruction or demonstration in normal or morbid anatomy and operative surgery, which number shall be certified by the dean of each school or college to the board at such times as it may direct. Instead of receiving and delivering said bodies themselves through their agent or servant, the said board may, from time to time, either directly or by their designated officer or agent authorize physicians and surgeons to receive them, and the number which each shall receive. [Id. sec. 3.]

Art. 4586. [5759] Regulations for moving bodies.—The board may employ public carriers for the conveyance of said bodies, which shall be carefully deposited, with the least possible public display. The sender shall keep on permanent file a description by name, color, sex, age, place and cause of death of each body transmitted by him; or where the body shall be one of a person unknown, the color, age, sex, place and supposed cause of death; and any other data available for identification, such as scars, deformities, etc., shall be put on record. A duplicate of this description shall be mailed, or otherwise safely conveyed, to the person or institution to whom the body is being sent; and the person or institution receiving such body shall, without delay, safely transmit to the sender a receipt for the same in the full terms of the description furnished by the sender. All these records shall be filed in a manner to be determined by the board so that they may be at any time available for inspection by the board, or any district or county attorney of this State. [Id. sec. 4.]

Art. 4587. [5760] May dissect bodies.—Any and all schools, colleges, and persons who may be designated by said Anatomical Board shall be authorized to dissect, operate upon, examine, and experiment upon such bodies hereinbefore described and distributed for the furtherance of medical science; and such dissections, operations, examinations, and experiments shall not be considered as amenable under any existing laws for the prevention of mutilation of dead human bodies. Such persons, schools, or colleges shall keep a permanent record, sufficient for identification of each body received from such anatomical board or agent, which record shall be subject to inspection by the board, or its authorized officer or agent. The board shall also have power to authorize incorporated schools or colleges and individual physicians and surgeons to experiment on the lower animals under bond as hereinafter designated. [Id. sec. 5.]

Art. 4588. [5761] Parties receiving bodies to give bond.—No school, college, physician, or surgeon shall be allowed or permitted to receive any such body or bodies until bond shall have been given to the State by such physician or surgeon, or by or in behalf of such school or college, to be approved by the clerk of the county court in and for the county in which such physician or surgeon may reside, or in which such school or college may be situated, and to be filed in the office of said clerk; which bond shall be in the penal sum of one thousand dollars, conditioned that all such bodies which the said physician or surgeon, or said college, shall receive thereafter shall be used, and that all experiments on the lower animals shall be conducted only for the promotion of medical science. [Id. sec. 6.]

Art. 4589. [5762] Expenses.—Neither the State, nor any county, nor municipality, nor any officer, agent or servant thereof, shall be at any expense by reason of the delivery or distribution of any such body; but all expense thereof, and of said board of distribution, shall be paid by those receiving the bodies in such manner as may be specified by said Anatomical Board, or otherwise agreed upon. [Id. sec. 7.]

Art. 4590. [5763] Compensation of board.—No compensation other than actual traveling expenses shall be received for their services in this capacity by members of this board. [Id. sec. 9.]

TITLE 72

HOLIDAYS—LEGAL

Art.
4591. Enumeration.
4591a. Texas Pioneers' Day.

Article 4591. [4606] [2939] Enumeration.—The first day of January, the twenty-second day of February, the second day of March, the twenty-first day of April, the third day of June, the fourth day of July, the first Monday in September, the twelfth day of October, the eleventh day of November, and the twenty-fifth day of December, of each year, and all days appointed by the President of the United States, or by the Governor, as days of fasting and thanksgiving and every day on which an election is held throughout the State, are declared legal holidays, on which all the public offices of the State may be closed, and shall be considered and treated as Sunday or the Christian Sabbath for all purposes regarding the presenting for payment or acceptance and of protesting for and giving notice of the dishonor of bills of exchange, bank checks and promissory notes placed by the law upon the footing of bills of exchange. [Acts 1893, p. 4; Acts 1911, p. 52; Acts 1921, p. 99.]

Art. 4591a. Texas Pioneers' Day.—The 12th of August of each year hereafter shall be designated and observed as Texas Pioneers' Day, and the Governor of Texas shall issue a proclamation at least thirty days in advance of such date each year, in which he shall call upon the people of the State of Texas to assemble in mass-meetings preferably to be held in the open air and in the form of Pioneers' Picnics and Old Settlers' Reunions and similar celebrations, to do honor to the memory of the heroic pioneers who by their sacrifices and hardships converted the primeval wilderness into the great empire of peace and plenty which we today enjoy;

The purpose of these celebrations shall be patriotic and educational, to preserve the traditions and memories of pioneer days, and in nowise of a political, sectarian or partisan nature;

The State Association of Texas Pioneers is hereby requested to assume the initiative in the organization of Pioneer Day celebrations each year and to prepare and circulate suitable programs for the observance of the same.

Nothing in this resolution shall be construed to make Texas Pioneers' Day a legal holiday. [Acts 1925, 39th Leg., p. 689, H. C. R. No. 12.]

TITLE 73

HOTELS AND BOARDING HOUSES

Art.
4592. Liability for valuables.
4593. Gratuitous bailee.
4594. Lien.

Article 4592. Liability for valuables.—Any hotel, apartment hotel or boarding house keeper, who constantly has in his hotel, apartment hotel or boarding house a metal safe or vault in good order and fit for the custody of money, jewelry, articles of gold or silver manufacture, precious stones, personal ornaments, or documents of any kind, and who keeps on the doors of the sleeping rooms used by guests suitable locks or bolts and proper fastening on the transom and window of said room, shall not be liable for the loss or injury suffered by any guest on account of the loss of said valuables in excess of the sum of fifty dollars, which could reasonably be kept in the safe or vault of the hotel, unless said guest has offered to deliver such valuables to said hotel, apartment hotel or boarding house keeper for custody in such metal safe or vault, and said hotel, apartment hotel or boarding hotel or boarding house keeper has omitted or refused to deposit said valuables in such safe or vault and issue a receipt therefor; provided, such loss or injury does not occur through the negligence or wrong doing of said hotel, apartment hotel or boarding house keeper, his servants, or employés, and that a printed copy of this law is posted on the door of the sleeping room of such guest. [Acts 1923, p. 317.]

Art. 4593. Gratuitous bailee.—Whenever any person shall allow his baggage or other property to remain in any hotel, apartment hotel or boarding house after the relation of innkeeper and guest has ceased without checking same, or shall leave his baggage or other property in the lobby of any hotel, apartment hotel or boarding house prior to checking it or becoming a guest, or shall forward any baggage to such hotel, apartment hotel or boarding house before becoming a guest, said hotel, apartment hotel or boarding house keeper may, at his option, hold such baggage or other property at the risk of said owner. If any person should check his baggage or other property at any hotel, apartment hotel or boarding house and leave it there free of charge for a period of one week without being a guest, said hotel, apartment hotel or boarding house keeper may, after the expiration of such time and in the absence of any special agreement, hold such baggage or other property at the risk of the owner. [Id.]

Art. 4594. [5663] [3318] [3182] Lien.—Proprietors of hotels or boarding houses shall have a lien on the baggage and other property of guests in such hotel or boarding house, for all sums due for board, lodging, extras furnished or money advanced at the request of such guest, and shall have the right to retain possession of such baggage or other property until the amount of such charges is paid. Such baggage and other property shall be exempt from attachment or execution while in the possession of such proprietor. [Acts 1874, p. 200; G. L., vol. 8, p. 202; Acts 1919, p. 117.]

Art. 4595. Sale to satisfy lien.—The keeper of the inn, boarding house or hotel shall retain such baggage and other property upon which he has a lien for a period of thirty days, at the expiration of which time if such lien is not satisfied, he may sell such baggage or other property, at public auction, first giving notice of the time and place of sale by posting at least three notices thereof in public places in the county where the inn, hotel or boarding house is situated and also by mailing a copy of such notice to said guest or boarder at the place of residence shown on the register of such inn or hotel, if shown. After satisfying the lien and any costs that may accrue, the residue shall on demand, within sixty days be paid such guest or boarder. If not demanded within sixty days, from date of sale, such residue shall be deposited by such keeper with the treasurer of the county in which said hotel, inn or boarding house is located, accompanied with a sworn true and correct statement. Such residue shall be retained by the county treasurer and if not claimed within one year by the owner thereof, such treasurer shall pay the same into the State Treasury, and it shall be placed to the credit of the escheat fund. [Acts 1919, p. 117.]

Art. 4596. Definition.—As used herein, a hotel or inn includes rooming houses, and is a place where the business is to furnish food and lodging or either, to all who apply and pay therefor. [Id.]

TITLE 74

HUMANE SOCIETY

Art.
4597. Appointment of Bureau.
4598. Duty of Bureau.
4599. Annual meeting.
4600. Annual Report.
4601. Distribution of Report.

Article 4597. Appointment of Bureau.—The Governor shall appoint a State Bureau of Child and Animal Protection which shall not have less than nine nor more than twenty-one members from the members of the directorate of the Texas State Humane Society. The Governor, the Superintendent of Public Instruction and the Attorney General shall be ex-officio members of the Board of Directors of said State Bureau. [Acts 1913, p. 108.]

Art. 4598. Duty of Bureau.—It shall be the duty of said bureau to secure the enforcement of the laws for the prevention of wrongs to children and dumb animals as now or hereafter defined by law; to appoint local and State agents to assist in this work; to assist the organization of district and county societies, and to give them representation in the State Bureau; to aid such societies and agents in the enforcement of the laws for the prevention of wrongs to children and dumb animals as prescribed by law; and to promote the growth of education and sentiment favorable to the protection of children and dumb animals. [Id.]

Art. 4599. Annual meeting.—Said bureau shall hold its annual meeting on the second Monday in November in each year, at the State capitol, for the transaction of its business and the election of officers, at which meeting all questions relating to child and animal protection may be considered. [Id.]

Art. 4600. Annual report.—The said bureau shall make an annual report before the first day of January of each year to the Secretary of State, embracing the proceedings of the Bureau for the preceding year, and statistics showing the work of the Bureau and its agents and county and district societies throughout the State, together with such papers, facts and recommendations as they may deem useful to the interests of the children and dumb animals in the State, said report to be fully prepared for publication. The Secretary of State shall cause the same to be published in pamphlet or book form by the State, under the supervision of the Bureau. [Id.]

Art. 4601. Distribution of Report.—The number of copies of said report to be published shall not be less than five thousand, all bound in uniform style, every two years in one volume, and shall be distributed by the Secretary of State as follows: ten copies, each,

to the Governor, Secretary of State, Comptroller and State Treasurer, five to each judge of the Supreme Court, and the Attorney General, two to each member of the Legislature, and one to each judge and clerk of the district, county and federal courts, one to each county commissioner, one to each newspaper office in the State, ten each to the State University, State Industrial Schools, and the Warden of the penitentiary, two to each college of learning in the State, two to each of the other State Boards, and the remainder to the Bureau of Child and Animal Protection. [Id.]

TITLE 75

HUSBAND AND WIFE

Chap.

1. Celebration of marriage.
2. Marriage contracts.
3. Rights of married women.
4. Divorce.

CHAPTER ONE

CELEBRATION OF MARRIAGE

Art.

4602. Who authorized to celebrate.
4603. Who shall not marry.
4604. License.
4605. Consent of parent or guardian.
4606. Record and return of license.
4607. Certain intermarriages prohibited.
4608. Marriages by bond, etc.
4609. Cohabitation of slaves.

Article 4602. [4608] [2954] [2838] Who authorized to celebrate.—All licensed or ordained ministers of the gospel, Jewish rabbis, judges of the district and county courts, and justices of the peace are authorized to celebrate the rites of matrimony between persons legally authorized to marry. [Acts 1866, p. 72; Acts 1891, p. 96; P. D., 7119; G. L., vol. 5, p. 990; G. L., vol. 10, p. 98.]

Art. 4603. [4609] [2955] [2839] Who shall not marry.—Males under sixteen and females under fourteen years of age shall not marry. [Id.]

Art. 4604. [4610] [2956] [2840] License.—Persons who desire to marry shall procure from the county clerk a license directed to all persons authorized by law to celebrate the rites of matrimony, which shall be sufficient authority to celebrate such marriage. [Acts 1837, p. 234; G. L., vol. 1, p. 1294.]

Art. 4605. [4611] [2957] [2841] Consent of parent or guardian.—No clerk shall issue a license without the consent of the parent or guardian of the parties applying, if there be a guardian. Such consent may be given in person, or in writing signed and acknowledged by said parent or guardian before an officer authorized to take acknowledgments, unless the parties so applying are, in the case of the male twenty-one years of age, and in case of the female eighteen years of age. If there be any doubt in the mind of the clerk, he shall not issue said license unless there shall be presented to him a sworn certificate from the parent or guardian or some person other than the contracting parties that the contracting parties have attained the ages aforesaid. Nothing herein shall be construed to affect the issuance of marriage license in seduction prosecution. If a minor has neither parent nor guardian, then the clerk shall not issue a license without the consent of the county judge of the county of the residence of such minor, such consent to be in writing and signed and acknowledged by such county judge. [P. D., 4667; Acts 1911, p. 63.]

Art. 4606. [4612] [2958] [2842] Record and return of license.—The clerk shall record all licenses so issued by him in a well bound book kept for that purpose. It shall be the duty of the person solemnizing the rites of matrimony to indorse the same on the license and return it to the county clerk within sixty days after the celebration aforesaid; such return shall be recorded with the license. [P. D., 4668.]

Art. 4607. [4613] [2959] [2843] Certain intermarriages prohibited.—It shall not be lawful for any person of Caucasian blood or their descendants to intermarry with Africans or the descendants of Africans. If any person shall violate any provision of this article, such marriage shall be null and void. [P. D., 4670; P. C., 346.]

Art. 4608. [4614–15] [2960–61] [2844–45] Marriages by bond, etc., validated.—All marriages by bond or those performed by officers of justice not authorized to celebrate the rites of matrimony, and those marriages celebrated agreeably to the custom of the times, which occurred prior to the passage of an Act approved June 5, 1837, regulating marriages and for other purposes, are legal and valid, and the issue of such persons are legitimate children capable of inheritance. [Acts 1841, p. 126; P. D., 4671; G. L., vol. 2, p. 640.]

Art. 4609. [4616] [2962] [2846] Cohabitation of slaves.—All persons who at any time heretofore have lived together as man and wife, and both of whom by the laws of bondage, were precluded from the rites of matrimony, and continue to live together until the death of one of the parties shall be considered as having been legally married, and the issue of such cohabitation is declared legitimate; and all such persons as were so living together in such relation on the fifteenth day of August, 1870, shall be considered as having been legally married, and the children born of such cohabitation are declared legitimate. [Acts 1870, p. 127; P. D., 7120; G. L., vol. 6, p. 301.]

CHAPTER TWO

MARRIAGE CONTRACTS

Art.

4610. Stipulations.
4611. How authenticated.
4612. Reservation by wife recorded.

Article 4610. [4617–19] Stipulations.—Parties intending to marry may enter into such stipulations as they may desire, provided they be not contrary to good morals or to some rule of law; and in no case shall they enter into an agreement, or make any renunciation, the object of which would be to alter the legal orders of descent, either with respect to themselves, in what concerns the inheritance of their children or posterity, which either may have by any other person, or in respect to their common children; nor shall they make any agreement to impair the legal rights of the husband over the persons of their common children. No matrimonial agreement shall be altered after the celebration of the marriage. [Acts 1840, p. 3; P. D., 4632; G. L., vol. 2, p. 177.]

Art. 4611. [4618] [2964] [2848] How authenticated.—Every matrimonial agreement must be acknowledged before an officer authorized to take acknowledgments to deeds and attested by at least two witnesses; the minor capable of contracting matrimony may give his consent to any agreement which this contract is susceptible of, but such agreement must be made by the written consent of both parents, if both be living; if not, by that of the survivor; if both be dead, then by the written consent of the guardian of such minor. [P. D., 4633.]

Art. 4612. [4620] [2966] [2850] Reservation by wife recorded.—When the wife, by a marriage contract, reserves to herself any property, or rights to property, whether such rights be in esse or expectancy, such reservation to be valid as to the subsequent purchasers or creditors of her husband, must be acknowledged and recorded as provided by law. [P. D., 4635.]

CHAPTER THREE

RIGHTS OF MARRIED WOMEN

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Article 4613. [4621] [2967] [2851] Husband's separate property.—All property of the husband, both real and personal, owned or claimed by him before marriage, and that acquired afterwards by gift, devise, or descent, as also the increase of all lands thus acquired, and the rents and revenues derived therefrom, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife, either before or after marriage, except for necessaries furnished herself and children after her marriage with him, nor for torts of the wife. During marriage the husband shall have the sole management, control and disposition of his separate property, both real and personal. [Acts 1848, p. 77; G. L., vol. 3, p. 77; Const., Art. 16, sec. 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251.]

Art. 4614. [4621] [2967] [2851] Wife's separate property.—All property of the wife, both real and personal, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, as also the increase of all lands thus acquired, and the rents and revenues derived therefrom, the interest on bonds and notes belonging to her and dividends on stocks owned by her, shall be the separate property of the wife. The wife shall have the sole management, control and disposition of her separate property, both real and personal; provided however, the joinder of the husband in the manner now provided by law for conveyances of the separate real estate of the wife shall be necessary to the incumbrance or conveyance by the wife of her lands, and the joint signature of the husband and wife shall be necessary to a transfer of stocks and bonds belonging to her or of which she may be given control by this law. [Id.]

Art. 4615. Compensation for personal injuries to wife.—All property or moneys received as compensation for personal injuries sustained by the wife shall be her separate property, except such actual and necessary expenses as may have accumulated against the husband for hospital fees, medical bills and all other expenses incident to the collection of said compensation. [Acts 1915, p. 103.]

Art. 4616. [4621] [2967] [2851] Wife's separate property protected.—Neither the separate property of the wife, nor the rents from the wife's separate real estate, nor the interest on bonds and notes belonging to her, nor dividends on stocks owned by her, nor her personal earnings, shall be subject to the payment of debts contracted by the husband nor of torts of the husband. [Acts 1848, p. 77; G. L., vol. 3, p. 77; Const., Art. 16, sec. 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 251.]

Art. 4617. [4621] [2967] [2851] When wife may convey, etc.—If the husband be insane or shall have permanently abandoned his wife, or shall refuse to join in such encumbrance, conveyance or transfer of such property, the wife may apply to the district court of the county of her residence, and the court, in term time or vacation, upon satisfactory proof that such encumbrance, conveyance or transfer would be advantageous to the interests of the wife, shall make an order granting her permission to make such encumbrance, conveyance or transfer without the joinder of her husband, and she may then encumber, convey or transfer said property without such joinder. [Id.]

Art. 4618. [4621] [2967] [2651] Sale of homestead.—The homestead, whether the separate property of the husband or wife, or the community property of both, shall not be disposed of except by the joint conveyance of both the husband and the wife, except where the husband is insane or has permanently abandoned the wife, in which instances the wife may sell and make title to any such homestead, if her separate property, in the manner herein provided for conveying or making title to her other separate property. [Id.]

Art. 4619. [4622–3] Community property.—Sec. 1. All property acquired by either the husband or wife during marriage, except that which is the separate property of either, shall be deemed the common property of the husband and wife; and all the effects which the husband and wife possess at the time the marriage may be dissolved shall be regarded as common effects or gains, unless the contrary be satisfactorily proved. During coverture the common property of the husband and wife may be disposed of by the husband only; provided, however, if the husband shall have disappeared and his whereabouts shall have been and remain unknown to the wife continuously for more than twelve months, the wife shall after such twelve month period and until the husband returns to her and the affidavit hereinafter provided for is made and filed for record, have full control, management and disposition of the community property, and shall have the same powers with reference thereto as are conferred by law upon the husband, and her acts shall be as those of a feme sole.

Sec. 2. If the wife shall hereafter desire to exercise any of the powers herein conferred upon her, she shall file a petition in writing under oath in the district court of the county in which the husband resided at the time of such disappearance, if he then resided in this State, or in the district court of the county in which the wife resided, if the husband was a nonresident of this State at the time of disappearance, or of any county in which the community property or part thereof is situated in which petition the wife shall set forth the facts entitling her to control, manage and dispose of the community property under the provisions of this article.

Sec. 3. After the filing of said petition the judge of said court shall set the same down for hearing, either in term time or vacation.

Sec. 4. Notice of the filing of said petition and the date set for the hearing thereon shall be issued by the clerk of the court in which the petition is filed and the same shall be published in some newspaper of general circulation published in the county in which the petition is filed, if there be a newspaper published in said county, but if not then in the nearest county where a newspaper of general circulation is published, once in each week for two consecutive weeks previous to the date set for said hearing, the first of which publications shall be not less than ten days prior to such date set for such hearing.

Sec. 5. If, upon the hearing of said petition, the judge shall be satisfied that the facts alleged therein are true, and that facts exist which entitle the wife to control, manage and dispose of the community property under the provisions of Section 1 of this Act, he shall make his order finding and setting out such facts, and thereafter the wife shall have the same powers over the community property as are conferred by law upon the husband, until the husband shall have returned to the wife, and until either the husband or wife shall make and file for record in the office of the county clerk of the county in which said petition was filed, his or her affidavit stating the fact of such return. Said affidavit shall be recorded in the deed records of said county and may be recorded in the deed records of other counties in which the property of said community estate may be situated. [Acts 1840, p. 3; G. L. vol. 2, p. 177; Acts 1913, p. 61; Acts 1927, 40th Leg., p. 219, ch. 148.]

Section 6 of Acts 1927, 40th Leg., p. 219, ch. 148, provides that if any provision or provisions of the act be held invalid such holding shall not affect the validity of the other provisions.

Art. 4620. [4627] [2973] [2857] Community property liable for debts.—The community property of the husband and wife shall be liable for their debts contracted during marriage, except in such cases as are specially excepted by law. [Acts 1856, p. 51; G. L. vol. 4, p. 469; P. D. 4646.]

Art. 4621. [4621] [2967] [2851] Community property not liable.—The community property of the husband and wife shall not be liable for debts or damages resulting from contracts of the wife except for necessaries furnished herself and children, unless the husband joins in the execution of the contract; provided, that her rights with reference to the community property on permanent abandonment by the husband shall not be affected by this provision. [Acts 1848, p. 77; Const. art. 16, sec. 15; Acts 1913, p. 61; Acts 1917, p. 436; Acts 1921, p. 252.]

Art. 4622. [4622] [2968] [2852] Funds in bank.—Funds on deposit in any bank or banking institution, whether in the name of the husband or wife, shall be presumed to be the separate property of the party in whose name they stand, regardless of who made the deposit, and unless said bank or banking institution is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account. [P. D. 4642; Acts 1913, p. 61.]

Art. 4623. [4624] [2970] [2854] Subject to debts of wife.—Neither the separate property of the husband nor the community property other than the personal earnings of the wife, and the income, rents and revenues from her separate property, shall be subject to the payment of debts contracted by the wife, except those contracted for necessaries furnished her or her children. The wife shall never be the joint maker of a note or a surety on any bond or obligation of another without the joinder of her husband with her in making such contract. [Id. Acts 1848, p. 77; G. L. vol. 3, p. 77.]

Art. 4624. [4625] [2971] [2855] Judgment and execution.—Upon the trial of any suit as provided for in the preceding article, if it shall appear to the satisfaction of the court and jury that the debts so contracted or expenses so incurred were for the purposes enumerated in said article, and also that the debts so contracted or expenses so incurred were reasonable and proper, the court shall decree that execution may be levied upon either the common property or the separate property of the wife at the discretion of the plaintiff. [P. D. 4644.]

Art. 4625. [4628] [2974] [2958] Female emancipated by marriage.—Every female under the age of twenty-one years who shall marry in accordance with the laws of this State, shall, from and after the time of such marriage, be deemed to be of full age and shall have all the rights and privileges to which she would have been entitled had she been at the time of her marriage of full age. [Acts 1848, p. 77; G. L. vol. 3, p. 77.]

Art. 4626. Application to be feme sole.—Any married woman within this State may, with the consent of and joined by her husband, apply by written petition addressed to the district court of the county in which she may be a bona fide resident for judgment or orders of the said court removing her disabilities of coverture and declaring her feme sole for mercantile and trading purposes. Such petition shall set out the causes which make it to the advantage of said married woman to be so declared feme sole, and shall be filed and docketed as in other cases, and at any time thereafter the district court may, in term time, take up and hear said petition and evidence in regard thereto. If upon a hearing of said petition and evidence relating thereto, it appears to the court that it would be to the advantage of the woman applying, then said court shall enter its decree declaring said married woman feme sole for mercantile or trading purposes, and thereafter she may, in her own name, contract and be contracted with, sue and be sued, and all of her separate property not exempt from execution under the laws of Texas shall thereafter be subject to her debts and liable under execution therefor, and her contracts and obligations shall be binding on her. [Acts 1911, p. 92.]

Art. 4627. [4629] [2975] [2859] Rights of persons married elsewhere.—The marital rights of persons married in other countries who may remove to this State shall, in regard to property acquired in this State, during the marriage, be regulated by the laws of this State. [P. D. 4639.]

CHAPTER FOUR

DIVORCE

Art.
4628. Annulment.
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4631. Residence of plaintiff.
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4638. Division of property.
4639. Children.
4640. Remarriage.
4641. Costs.

Article 4628. [4630] [2976] [2860] Annulment.—The marriage relation may be dissolved where the causes alleged therefor shall be natural or incurable impotency of body at the time of entering into the marriage contract, or any other impediment that renders such contract void, and the court may decree the marriage to be null and void. [Acts 1841, p. 19; G. L. vol. 2, p. 483.]

Art. 4629. [4631–2] Grounds for divorce.—Except where the husband or wife is insane, a divorce may be decreed in the following cases:

1. Where either party is guilty of excesses, cruel treatment or outrages toward the other, if such ill treatment is of such a nature as to render their living together insupportable.
2. In favor of the husband, where his wife shall have been taken in adultery, or where she shall have voluntarily left his bed and board for the space of three years with the intention of abandonment.
3. In favor of the wife, where the husband shall have left her for three years with intention of abandonment, or where he shall have abandoned her and lived in adultery with another woman.
4. Where a husband and wife have lived apart without cohabitation for as long as ten years.
5. In favor of either the husband or wife, when the other shall have been convicted, after marriage, of a felony and imprisoned in the State penitentiary; provided, that no suit for divorce shall be sustained because of the conviction of either party for felony until twelve months after final judgment of conviction, nor then if the Governor shall have pardoned the convict; provided that the husband has not been convicted on the testimony of the wife; nor the wife on the testimony of the husband. [Acts 1876, p. 16; G. L. vol. 8, p. 852; Acts 1913, p. 183.]

Art. 4630. [4632–5] Adultery and seduction.—In any suit for divorce for the cause of adultery, if it shall be proved that the complainant has been guilty of the like crime, or has admitted the defendant into conjugal society or embraces after he or she knew the criminal fact, or that the complainant, if the husband, connived at his wife's prostitution, or exposed her to lewd company, whereby she became ensnared to the crime aforesaid, it shall be a good defense and a perpetual bar against said suit; or if it appears that the adultery complained of is occasioned by collusion of the parties, and done with the intention to procure a divorce, or where both parties shall be guilty of adultery, then no divorce shall be decreed. A man who to escape prosecution for seduction marries the woman he seduced shall not be entitled to a divorce for any cause within three years after such marriage. [Acts 1873, p. 117; G. L. vol. 7, p. 569; Acts 1913, p. 183.]

Art. 4631. [4632] [2978] [2862] Residence of plaintiff.—No suit for divorce shall be maintained in the courts of this State unless the petitioner for such divorce shall at the time of exhibiting his or her petition, be an actual bona fide inhabitant of this State for a period of twelve months, and shall have resided in the county where the suit is filed for six months next preceding the filing of same. A citizen

of this State who is or has been absent from this State for more than six months in the military or naval service of the United States or of this State, shall be entitled to sue for divorce in this State and in the county in which such person had his or her residence before entering such service. [Acts 1921, p. 163; Id.]

Art. 4632. [4632–3] Procedure.—Suit shall not be heard or divorce granted before the expiration of thirty days after the same is filed. In all such suits the defendant shall not be compelled to answer upon oath nor shall the petition be taken as confessed for want of answer, but the decree of the court shall be rendered upon full and satisfactory evidence, upon the judgment of the court affirming the material facts alleged in the petition. Either party may demand a jury. [Id.]

Art. 4633. [4633] [2979] [2863] Testimony of husband or wife.—In all such suits and proceedings the husband and wife shall be competent witnesses for and against each other, but neither party shall be compelled to testify as to any matter that will criminate himself or herself; and where the husband or wife testifies, the court or jury trying the case shall determine the credibility of such witness and the weight to be given such testimony; but no divorce shall be granted upon the evidence of either husband or wife, if there be any collusion between them.

Art. 4634. [4637] [2983] [2867] Debts created after suit.—On and after the day on which the suit for divorce shall be brought, it shall not be lawful for the husband to contract any debts on account of the community, nor to dispose of the lands belonging to the same; and any alienation made by him after that time shall be null and void, if it be proved to the satisfaction of the court that such alienation was made with a fraudulent view of injuring the rights of the wife. [P. D. 3457.]

Art. 4635. [4638] [2984] [2868] Inventory and appraisement.—At any time during a suit for divorce the wife may, for the preservation of her rights, require an inventory and an appraisement to be made of both real and personal estate which are in the possession of the husband, and an injunction restraining him from disposing of any part thereof in any manner. [P. D. 3458.]

Art. 4636. [4639] [2985] [2869] Temporary orders.—Pending suit for a divorce the court, or the judge thereof, may make such temporary orders respecting the property and parties as shall be deemed necessary and equitable. [P. D. 3454.]

Art. 4637. [4640] [2986] [2870] Alimony.—If the wife, whether complainant or defendant, has not a sufficient income for her maintenance during the pendency of the suit for a divorce, the judge may, either in term time or in vacation, after due notice, allow her a sum for her support in proportion to the means of the husband, until a final decree shall be made in the case. [P. D. 3456.]

Art. 4638. [4634] [2980] [2864] Division of property.—The court pronouncing a decree of divorce shall also decree and order a division of the estate of the parties in such a way as the court shall deem just and right, having due regard to the rights of each party and their children, if any. Nothing herein shall be construed to compel either party to divest himself or herself of the title to real estate. [P. D. 3452.]

Art. 4639. [4636–41] Children.—A divorce shall not in anywise affect the legitimacy of the children of the parents so divorced. The court shall have power, in all divorce suits, to give the custody and education of the children to either father or mother, as the court shall deem right and proper, having regard to the prudence and ability of the parents, and the age and sex of the children, to be determined and decided on the petition of either party; and in the meantime to issue any injunction or make any order that the safety and well-being of any such children may require. [P. D. 3461.]

Art. 4640. [4632] [2978] [2862] Remarriage.—Neither party to a divorce suit, where a divorce is granted upon the ground of cruel treatment, shall marry any other person for a period of twelve months next after such divorce is granted, but the parties so divorced may marry each other at any time. In all other cases either party may marry again after the dissolution of the marriage. [Acts 1873, p. 117; G. L. vol. 7, p. 569; Acts 1913, p. 183; Acts 1921, p. 163.]

Art. 4641. [4642] [2988] [2872] Costs.—The court may award costs to the party in whose behalf the sentence or decree shall pass, or that each party shall pay his or her own costs, as the court shall deem reasonable.

TITLE 76

INJUNCTIONS

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1. IN GENERAL

Article 4642. [4643] [2989] Grounds for.—Judges of the district and county courts shall, in term time or vacation, hear and determine applications for and may grant writs of injunction returnable to said courts in the following cases:

1. Where the applicant is entitled to the relief demanded and such relief or any part thereof requires the restraint of some act prejudicial to him.

2. Where a party does some act respecting the subject of pending litigation or threatens or is about to do some act or is procuring or suffering the same to be done in violation of the rights of the applicant when said act would tend to render judgment ineffectual.

3. Where the applicant shows himself entitled thereto under the principles of equity, and the provisions of the statutes of this State relating to the granting of injunctions.

4. Where a cloud would be put on the title of real estate being sold under an execution against a party having no interest in such real estate subject to the execution at the time of the sale, or irreparable injury to real estate or personal property is threatened, irrespective of any legal remedy at law. [Acts 1907, p. 206; Acts 1909, p. 354; Const., Art. 5, secs. 8, 16.]

Art. 4643. [4643] [2989] Issuance by non-resident judge.—No district judge shall grant a writ of injunction returnable to any other court than his own except in the following cases:

1. Where the resident judge cannot hear and act upon the application by reason of his absence, sickness, inability, inaccessibility, disqualification or refusal to act, when such facts are fully set out in the application or in an affidavit accompanying same, and if such judge refuses to act, such refusal shall be indorsed by said judge on such writ with his reasons

therefor. In such case no district judge shall grant the writ when the application therefor has once been acted upon by another district judge of this State.

2. To stay execution, or to restrain foreclosure, sales under deeds of trust, trespasses, the removal of property, or acts injurious to or impairing riparian or easement rights, when satisfactory proof is made to such non-resident judge that it is impracticable for the applicant to reach the resident judge and procure his action in time to effectuate the purpose of the application.

3. When the resident judge cannot be reached by the ordinary and available means of travel and communication in sufficient time to effectuate the purpose of the writ sought. In such case the applicant or his attorney seeking a writ on the ground of such inaccessibility shall attach to his application an affidavit fully stating the facts of such inaccessibility and his efforts made to reach and communicate with said judge, and the result thereof, and unless such efforts appear to have been fair and reasonable the application shall not be heard. Such injunction may be subsequently dissolved upon it being shown that the petitioner did not first make reasonable efforts to procure a hearing upon said application before the resident judge. [Id.]

Art. 4644. Against well or mine operator.—No injunction or temporary restraining order shall ever be issued prohibiting sub-surface drilling or mining operations on the application of an adjacent land owner claiming injury to his surface or improvements or loss of or injury to the minerals thereunder, unless the party against whom drilling or mining operations is alleged as a wrongful act is shown to be unable to respond in damages for such injury as may result from such drilling or mining operations; provided, however, that the party against whom such injunction is sought shall enter into a good and sufficient bond in such sum as the judge hearing the application shall fix, securing the complainant in the payment of any injuries that may be sustained by such complainant as the result of such drilling or mining operations. The court may, when he deems it necessary to protect the interests involved in such litigation, in lieu of such bond, appoint a trustee or receiver with such powers as the court may prescribe, to take charge of and hold the minerals produced from the lands of those complained against or the proceeds thereof subject to the final disposition of such litigation. [Acts 1919, p. 311.]

Art. 4645. [4647] [2990] Against a judgment.—No injunction shall be granted to stay any judgment or proceeding at law, except so much of the recovery or cause of action as the complainant shall in his petition show himself equitably entitled to be relieved against and so much as will cover the costs. [Acts 1848, p. 363; P. D. 3930.]

Art. 4646. [4648] [2991] To stay execution.—No injunction to stay an execution upon any valid and subsisting judgment shall be granted after the expiration of one year from the rendition of such judgment, unless it be made to appear that an application for such injunction has been delayed in consequence of the fraud or false promises of the plaintiff in the judgment, practiced or made at the time, or after rendition, of such judgment, or unless for some equitable matter or defense arising after the rendition of such judgment. If it be made to appear that the applicant was absent from the State at the time such judgment was rendered and was unable to apply for such writ within the time aforesaid, such injunction may be granted at any time within two years from the date of the rendition of the judgment. [Id. P. D. 3931.]

Art. 4647. [4649] [2992] Sworn petition.—No writ of injunction shall be granted unless the applicant therefor shall present his petition to the judge verified by his affidavit and containing a plain and intelligible statement of the grounds for such relief. [P. D. 3929.]

Art. 4648. [4650] [2993] Indorsement of judge.—If it shall appear to the judge from the facts stated in the petition that the applicant is entitled to the writ, he shall indorse thereon or annex thereto his written order directing the clerk of the proper court to issue the writ of injunction prayed for, upon such terms and under such modifications, limitations and restrictions as may be specified in said order. The judge shall also specify in such order the amount of the bond to be given by the applicant as a prerequisite to the issuance of the writ. If the injunction be applied for to restrain the execution of a money judgment or the collection of a debt, the bond shall be fixed in double the amount of such judgment or debt. [P. D. 3933.]

Art. 4649. [4654] [2997] Applicant's bond.—Upon the filing of the petition and order of the judge and before the issuance of the writ of injunction, the complainant shall execute and file with the clerk a bond to the adverse party, with two or more good and sufficient sureties, to be approved by such clerk in the sum fixed in the order of the judge granting the writ, conditioned that the complainant will abide the decision which may be made therein, and that he will pay all sums of money and costs that may be made therein, and that he will pay all sums of money and costs that may be adjudged against him if the injunction be dissolved in whole or in part. [P. D. 3933.]

Art. 4650. [4652] [2995] Filing and docketing.—Upon the grant of a writ of injunction, the party to whom the same is granted shall file his petition therefor, together with the order of the judge granting the same, with the clerk of the proper court; and, if such writ of injunction does not pertain to a pending suit in said court, the cause shall be entered on the civil docket of the court in its regular order in the name of the party to whom the writ is granted as plaintiff and of the opposite party as defendant.

Art. 4651. [4656] [2999] Requisites of writ.—The writ of injunction shall be sufficient if it contains substantially the following requisites:

1. Its style shall be, "The State of Texas."

2. It shall be directed to the person or persons enjoined.

3. It must state the names of the parties to the proceeding, plaintiff and defendant, and the nature of the plaintiff's application, with the action of the judge thereon.

4. It must command the person or persons to whom it is directed to desist and refrain from the commission or continuance of the act enjoined, or to obey and execute such order as the judge has seen proper to make.

5. It shall state the term of the court to which it is returnable.

6. It shall be dated and signed by the clerk officially, and attested with the seal of his office and the date of its issuance must be indorsed thereon.

Art. 4652. [4655–7–8] Clerk to issue writ.—When the petition, order of the judge and bond are filed, the clerk shall issue the writ of injunction directed in such order, in conformity with the terms thereof, and deliver the same to the sheriff or any constable of the county of the residence of the person enjoined. If several persons are enjoined, residing in different counties, the writ shall issue to each such county.

Art. 4653. [4659] [3002] Service and return.—The officer receiving a writ of injunction shall indorse thereon the date of its receipt by him, and shall forthwith execute the same by delivering to the party enjoined a true copy thereof. The original shall be returned to the court from which it issued on or before the return day named therein with the action of the officer indorsed thereon or annexed thereto showing how and when he executed the same.

Art. 4654. [4651] [2994] Notice.—If it appear to the judge that delay will not prove injurious to either party, and that justice may be subserved thereby, he may cause notice of such application to be served upon the opposite party, his agent or attorney, in some manner as he may direct, and fix a time and place for the hearing of such application.

Art. 4655. [4662] [3005] Citation on independent writ.—On the issuance of a writ of injunction not pertaining to a suit pending in the court, the clerk of such court shall issue a citation to the defendant as in other civil cases, which shall be served and returned in like manner as ordinary citations issued from said court. No citation shall be necessary when notice is given as provided in the preceding article.

Art. 4656. [4653] [2996] Jurisdiction for trial.—Writs of injunction granted to stay proceedings in a suit, or execution on a judgment, shall be returnable to and tried in the court where such suit is pending, or such judgment was rendered; writs of injunction for other causes, if the party against whom it is granted be an inhabitant of the State, shall be returnable to and tried in the district or county court of the county in which such party has his domicile, according as the amount or matter in controversy comes within the jurisdiction of either of said courts. If there be more than one party against whom a writ is granted, it may be returned and tried in the proper court of the county where either may have his domicile. [Acts 1846, p. 363; P. D. 3932; G. L. vol. 2, p. 1669.]

Art. 4657. [4663] [3006] The answer.—The defendant to an injunction proceeding may answer as in other civil actions; but no injunction shall be dissolved before final hearing because of the denial of the material allegations of the plaintiff's petition, unless the answer denying the same is verified by the oath of the defendant. [P. D. 3929.]

Art. 4658. [4664] [3007] Dissolution.—In all cases of injunction, motions to dissolve the same without determining the merits, may be heard after answer filed, in vacation or in term time, at least ten days notice of such motion being first given to the opposite party or his attorney. In such cases, the proceedings upon such hearing, including the action of the judge upon the motion, shall be entered upon the minutes of the proper court by the clerk thereof, on or before the first day of the succeeding term of such court, and thereafter shall constitute a part of the record of the same. [P. D. 3934.]

Art. 4659. [4665–66] Bond on dissolution.—Upon the dissolution of an injunction restraining the collection of money, by an interlocutory order of the court or judge, made in term time or vacation, if the petition be continued over for trial, the court or judge shall require of the defendant in such injunction proceedings a bond, with two or more good and sufficient sureties, to be approved by the clerk of the court, payable to the complainant in double the amount of the sum enjoined, and conditioned to refund to the complainant the amount of money, interest and costs which may be collected of him in the suit or proceeding enjoined if such injunction is made perpetual on final hearing. If such injunction is so perpetuated, the court, on motion of the complainant, may enter judgment against the principal and sureties in such bond for such amount as may be shown to have been collected from such complainant.

Art. 4660. [4667] [3010] Damages for delay.—Upon the dissolution of an injunction, either in whole or in part, on final hearing, where the collection of money has been enjoined, if the court be satisfied that the injunction was obtained only for delay, damages thereon may be assessed by the court, at ten per cent on the amount released by the dissolution of the injunction exclusive of costs. [P. D. 3935.]

Art. 4661. [4661–8–9–70] Disobedience.—An injunction restrains the attorneys, agents, servants and employés of the party enjoined, as well as the party himself, effective from the service or notice of the injunction and during its continuance in force. Disobedience of an injunction may be punished by the court or judge, in term time or in vacation, as a contempt. In case of such disobedience, the complainant, his agent or attorney, may file in the court in which such injunction is pending or with the judge in vacation, his affidavit stating the person guilty of such disobedience and describing the acts constituting the same; and thereupon the court or judge shall cause to be issued an attachment for such person, directed to the sheriff or any constable of the proper county, and requiring such officer to arrest the person therein named and have him before the court or judge at the time and place named in such writ. On return of such attachment, the judge shall proceed to hear proof; and if satisfied that such person has disobeyed the injunction, either directly or indirectly, he shall be committed to jail without bail until he purges himself of such contempt, in such manner and form as the court or judge may direct.

Art. 4662. [4644–5–6] Appeals.—Any party to a civil suit wherein a temporary injunction may be granted or refused or when motion to dissolve has been granted or over-ruled, under any provision of this title, in term time or in vacation, may appeal from such order or judgment to the Court of Civil Appeals by filing the transcript in such case with the clerk of the said appellate court not later than twenty days after the entry of record of such order or judgment. Such appeal shall not have the effect to suspend the order appealed from unless it shall be so ordered by the court or judge who enters the order. Such case may be heard in the Court of Civil Appeals or Supreme Court on the bill and answer and such affidavits and evidence as may have been admitted by the judge of the court below. If the appellant desires to file a brief in said appellate court he shall furnish the appellee with a copy thereof not later than two days before the case is called for submission in such court, and the appellee shall have until the day the case is called for submission to answer such brief. Such case may be advanced in the Court of Civil Appeals or Supreme Court on motion of either party, and shall have priority over other cases pending therein. [Acts 1909, p. 354; Acts 1907, p. 206; Acts 1919, p. 22.]

Art. 4663. [4671] [3014] Principles of equity applicable.—The principles, practice and procedure governing courts of equity shall govern proceedings in injunctions when the same are not in conflict with the provisions of this title or other law.

2. IN PARTICULAR CASES

Art. 4664. Nuisance.—Any hotel, rooming house or boarding house, country club, garage, rent car stand or other place to which the public commonly resort for board or lodging or commonly congregate for business or pleasure, where intoxicating liquors are kept, possessed, sold, manufactured, bartered or given away, or to which persons resort in assembling of two or more persons to the room for the purpose of drinking intoxicating liquor, or where intoxicating liquors are furnished to minors or to students of any educational institution, or where persons resort for the purpose of gambling, or for the purpose of prostitution, is hereby declared to be a common nuisance. Any person who knowingly maintains or assists in maintaining such a place is guilty of maintaining a nuisance. [Acts 2nd C. S. 1923, p. 57.]

Art. 4665. Nuisance; evidence.—Proof that any of said prohibited acts are frequently committed in any of said places shall be prima facie evidence that the proprietor knowingly permitted the same, and evidence that persons have been convicted of committing any said act in a hotel, boarding house or rooming house, is admissible to show knowledge on the part of the defendants that this law is being violated in the house. The original papers and judgments or certified copies thereof in such cases of convictions may be used in evidence in the suit for injunction and oral evidence is admissible to show that the offense for which said parties were convicted was committed in said house. Evidence of general reputation of said houses shall also be admissible to prove the existence of said nuisance. [Id.]

Art. 4666. Nuisance; prosecution.—Whenever the Attorney General, or the district or county attorney has reliable information that such a nuisance exists, either of them shall file suit in the name of this

State in the county where the nuisance is alleged to exist against whoever maintains such nuisance to abate and enjoin the same. If judgment be in favor of the State, then judgment shall be rendered abating said nuisance and enjoining the defendants from maintaining the same, and ordering that said house be closed for one year from the date of said judgment, unless the defendants in said suit, or the owner, tenant or lessee of said property make bond payable to the State at the county seat of the county where such nuisance is alleged to exist, in the penal sum of not less than one thousand nor more than five thousand dollars, with sufficient sureties to be approved by the judge trying the case, conditioned that the acts prohibited in this law shall not be done or permitted to be done in said house. On violation of any condition of such bond, the whole sum may be recovered as a penalty in the name and for the State in the county where such conditions are violated, all such suits to be brought by the district or county attorney of such county. [Id.]

Art. 4667. [4685–93] Gaming and disorderly houses.—The habitual use, actual, threatened or contemplated, of any premises, place or building or part thereof, for any of the following uses shall be enjoined at the suit of either the State or any citizen thereof:

1. For gaming or keeping or exhibiting games prohibited by law.

2. For keeping, being interested in, aiding or abetting the keeping of a bawdy or disorderly house, as those terms are defined in the Penal Code.

3. For carrying on bucket shops as defined in the Penal Code, or the habitual use by or permitting to remain in any such bucket shop, any telegraph or telephone wires or instruments, under circumstances prohibited by the Penal Code.

Any person who may use or be about to use, or who may aid or abet another in the use of any such premises for any purpose mentioned in this article may be made a party defendant in such suit. The Attorney General or any district or county attorney may bring and prosecute all suits that either may deem necessary to enjoin such uses, and need not verify the petition; or any citizen of this State may sue in his own name and shall not be required to show that he is personally injured by the acts complained of.

Art. 4668. Pool halls.—No person acting for himself or others shall maintain or operate a pool hall within this State. The term "Pool Hall," as used herein, includes any room, hall, building or part thereof, tent or enclosure of any kind similar to those named, or any inclosed open space, in which are exhibited for hire, revenue, fees or gain of any kind, or for advertising purposes of any kind, any pool or billiard table or stand or structure of any kind or character on which may be played pool or billiards, or any game similar to pool or billiards played with balls, cues or pins or any similar device. Any such table, stand or structure of any kind used or exhibited in connection with any place where goods, wares or merchandise or other things of value are sold or given away or where or upon which any money or thing of value is paid or exchanged shall be regarded as a place where is exhibited the same for hire, revenue or gain. The habitual, actual, or contemplated use of any premises, place, room, building or part thereof or tent, or any kind or character of enclosure similar to those named, or any uninclosed open space for the purpose of exhibiting any table, stand or structure of any kind described in this article may be enjoined at the suit of either the State or any citizen thereof. The Attorney General of this State, or any district or county attorney, or any citizen of any county in which any pool hall is maintained, operated or contemplated may, either in term time or vacation, apply to the district judge of the district in which is located the place where such pool hall is maintained, operated or contemplated, or to any district judge in Travis County, for an injunction to prohibit the maintenance and operation of any such pool hall. Such judge upon the presentation of a petition for such injunction shall issue a temporary injunction or restraining order, and, if upon final hearing thereof the fact be shown that the defendant is guilty of keeping, maintaining, or operating a pool hall, or of contemplating such act, the court before which the case is tried shall grant a permanent injunction against such party as prayed for in the petition. Any person operating or contemplating the operation of any pool hall in violation of any provision of this article, or anyone aiding or abetting such person may be made a party defendant in such suit. [Acts 1919, p. 18.]

Art. 4669. [4672] [3015] Revenue laws.—The full right, power and remedy of injunction may be invoked by the State at the instance of the county or district attorney or Attorney General, to prevent, prohibit or restrain the violation of any revenue law of the State. [Acts 1888, p. 8; G. L. vol. 9, p. 1006.]

Art. 4670. Procedure.—The procedure in any suit under this subdivision shall be the same as near as may be as in other suits for injunction.

TITLE 77

INJURIES RESULTING IN DEATH

Art.
4671. Cause of action.
4672. Character of wrongful act.
4673. Exemplary damages.
4674. Crime no bar.
4675. Institution of suit.
4676. Executor, etc., made party, when.
4677. Damages apportioned.
4678. Death in foreign State.

Article 4671. [4694] [3017] [2899] Cause of action.—No agreement between any owner of any railroad, street railway, steamboat, stage-coach or other vehicle for transporting passengers or goods, or any industrial or public utility plant, or other machinery, and any person, corporation, trustee, receiver, lessee, joint stock association or other person in control of, or operating the same, shall release such owner, person, trustee, lessee, corporation or joint stock association from any liability fixed by the provisions of this article. An action for actual damages on account of the injuries causing the death of any person may be brought in the following cases:

1. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness, or default of another person, association of persons, joint stock company, corporation or trustee or receiver of any person, corporation, joint stock company, or association of persons, his, its or their agents or servants, such persons, association of persons, joint stock company, corporation, trustee or receiver, shall be liable in damages for the injuries causing such death. The term "corporation," as used in this article, shall include all municipal corporations, as well as all private and public and quasi public corporations, except counties and common and independent school districts.

2. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness, or default of the proprietor, owner, charterer or hirer of any industrial or public utility plant, or any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or by the unfitness, wrongful act, neglect, carelessness, unskilfulness or default of his, their or its servants or agents, such proprietor, owner, charterer or hirer shall be liable in damages for the injuries causing such death.

3. When an injury causing the death of any person is caused by the wrongful act, neglect, carelessness, unskilfulness or default of the receiver, trustee or other person in charge of or in control of any railroad, street railway, steamboat, stage-coach, or other vehicle for the conveyance of goods or passengers, or any industrial plant, public utility plant, or any other machinery, or by the wrongful act, neglect, carelessness, unfitness, unskilfulness or default of his or their servants or agents, such receiver, trustee, or other person shall be liable in damages for the injuries causing

such death, and the liability here fixed against such receiver, trustee, or other person shall extend to all cases in which the death is caused by reason of any bad or unsafe condition of the railroad, street railway or other machinery under the control or operation of such receiver, trustee or other person, and to all other cases in which the death results from any other reason or cause for which an action may be brought for damages on account of personal injuries, the same as if said railroad, street railway or other machinery were being operated by the owner thereof. [Acts 1860, p. 32; G. L. vol. 4, p. 1394; Acts 1887, p. 44; G. L. vol. 9, p. 842; Acts 1913, p. 288; Acts 1921, p. 212.]

Art. 4672. [4695] [3018] [2900] Character of wrongful act.—The wrongful act, negligence, carelessness, unskilfulness or default mentioned in the preceding article must be of such character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury. [Acts 1860, p. 32; Acts 1887, p. 44; Acts 1st C. S. 1892, p. 5; G. L. vol. 10, p. 369.]

Art. 4673. [4696] [3019] [2901] Exemplary damages.—When the death is caused by the wilful act or omission, or gross negligence of the defendant, exemplary as well as actual damages may be recovered. [Const., Art. 16, sec. 26.]

Art. 4674. [4697] [3020] [2902] Crime no bar.—The action may be commenced and prosecuted, although the death has been caused under circumstances amounting in law to a felony, and without regard to any criminal proceedings that may or may not be had in relation to the homicide. [Id.]

Art. 4675. [4698–9–4700] Institution of suit.—Actions for damage arising from death shall be for the sole and exclusive benefit of and may be brought by the surviving husband, wife, children, and parents of the person whose death has been caused or by either of them for the benefit of all. If none of said parties commence such action within three calendar months after the death of the deceased, the executor or administrator of the deceased shall commence and prosecute the action unless requested by all of such parties not to prosecute the same. The amount recovered shall not be liable for the debts of the deceased. [Id.; Acts 1927, 40th Leg., p. 356, ch. 239, § 2.]

Art. 4676. [4703] Executor, etc., made party, when.—If the defendant die pending the suit, or if the person or persons against whom such suit might have been instituted, if alive, die before the suit is instituted, his or their executors or administrators may be made a party or parties defendant, and the suit instituted and prosecuted to judgment as though such defendant or person or persons had continued to live. The judgment in such case, if rendered in favor of the plaintiff, shall be, to be paid in due course of administration. [Acts 1925, p. 298.] [39th Leg., ch. 115, § 1.]

Art. 4677. [4704] [3027] [2909] Damages apportioned.—The jury may give such damages as they think proportionate to the injury resulting from such death. The amount so recovered shall be divided among the persons entitled to the benefit of the action, or such of them as shall then be alive, in such shares as the jury shall find by their verdict. [Id.]

Art. 4678. Death in foreign State.—Whenever the death or personal injury of a citizen of this State or of the United States, or of any foreign country having equal treaty rights with the United States on behalf of its citizens, has been or may be caused by the wrongful act, neglect or default of another in any foreign State or country for which a right to maintain an action and recover damages thereof is given by the statute or law of such foreign State or country, such right of action may be enforced in the courts of this State within the time prescribed for the commencement of such actions by the statutes of this State. The law of the forum shall control in the prosecution and maintenance of such action in the courts of this State in all matters pertaining to the procedure. [Acts 1913, p. 338; Acts 1917, p. 365.]

TITLE 78

INSURANCE

Chap.

1. Commissioner of Insurance.
2. Incorporation of Insurance Companies.
3. Life, Health and Accident Insurance.
4. Texas Securities and Gross Receipts Tax.
5. Assessment or Natural Premium Companies.
6. Mutual Assessment Accident Companies.
7. Mutual Life Insurance Companies.
8. Fraternal Benefit Societies.
9. Mutual Insurance Companies.
10. State Insurance Commission.
11. Fire and Marine Companies.
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16. Surety and Trust Companies.
17. Employers Liability Insurance Companies.
18. General Casualty Companies.
19. Lloyd's Plan.
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CHAPTER ONE

COMMISSIONER OF INSURANCE

Art.

4679. [Repealed.]
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4680. Clerks.
4681. Ineligibility of certain persons.
4682. Duties of Commissioner.
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4684. When parties refuse to testify.
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Article 4679. [Repealed by Acts 1927, 40th Leg., p. 329, ch. 224, § 7.]

Art. 4679a. Board of Insurance Commissioners.—There is hereby created a Board of Insurance Commissioners, who shall be appointed by the Governor with the advice and consent of the Senate. There shall be three members of the said Board, one of whom shall be known as the Life Insurance Commissioner, who shall also be the Chairman of the Board; there shall be a Fire Insurance Commissioner, and there shall be a Casualty Insurance Commissioner. [Acts 1927, 40th Leg., p. 329, ch. 224, § 1.]

Section 7 of Acts 1927, 40th Leg., p. 329, ch. 224, repeals articles 4679, 4876, 4877, and all conflicting laws or parts of laws.

Art. 4679b. Terms of office.—Until their present terms shall expire the present Commissioner of Insurance shall be the Life Insurance Commissioner and Chairman of the Board. The Secretary of the State Insurance Commission shall be the Fire Insurance Commissioner, and the State Fire Marshal shall be the Casualty Insurance Commissioner. At the expiration of such present terms the Governor shall appoint a Casualty Insurance Commissioner, whose term of office shall expire on February 10, 1929; a Fire Insurance Commissioner whose term of office shall expire on February 10, 1931; and a Life Insurance Commissioner whose term shall expire on February 10, 1933. At the conclusion of the initial terms the regular terms of such offices shall thereupon commence, and thereafter shall run for six years, so that each membership shall run for six years, and so that one membership of said Board shall expire every two years. Vacancies occurring in any office during any term shall with the advice and consent of the Senate be filled by appointment of the Governor, which ap-

pointment shall extend only to the end of the unexpired term. [Acts 1927, 40th Leg., p. 329, ch. 224, § 2.]

Art. 4679c. Duties of commissioners.—Generally, the Life Insurance Commissioner shall have supervision of matters relating to Life Insurance, to the chartering of companies, certificates of authority, and as to the solvency of persons and corporations engaged in the Insurance business; the Fire Insurance Commissioner shall have general supervision of matters relating to Fire Insurance; and the Casualty Insurance Commissioner shall have general supervision of matters relating to casualty, workmen's compensation, fidelity, guaranty and miscellaneous insurance. The Board shall nevertheless operate as a whole, and a majority vote of the members shall be necessary to official action. [Acts 1927, 40th Leg., p. 329, ch. 224, § 3.]

Art. 4679d. Bond.—Sec. 6. Each of the members of the Board of Insurance Commissioners shall, before entering upon the duties of his office, give a good bond to the State of Texas in the sum of five thousand ($5,000.00) dollars, to be approved by the Governor, conditioned upon the faithful discharge of the duties of his office.

Sec. 6A. Compensation to be paid the Commissioners shall be such sums as are provided for by the appropriation bills from time to time.

Sec. 6B. Nothing in this bill [Arts. 4679–4679c, 4681, 4682a, 4876, 4877] shall be construed to in any manner affect the duties now imposed by law on the Industrial Accident Board or to take from said board the performance of the duties now imposed on said board by law. [Acts 1927, 40th Leg., p. 329, ch. 224.]

Art. 4680. [4489–90] Clerks.—The Commissioner may appoint a chief clerk and such other clerks as the work of his office may require. All clerks shall be removable at the will of the Commissioner. The chief clerk shall possess all the power and perform all the duties attached by law to the office of Commissioner during the necessary absence of the Commissioner, or his inability to act from any cause. The Commissioner shall be responsible for the acts of his chief clerk, who shall, before entering upon the duties of his position, take the oath required of the Commissioner; he may also be required by the Commissioner to enter into bond with security, payable to said Commissioner, for the faithful performance of the duties of his position. [Id.]

Art. 4681. [4492] [2915] [2818] Ineligibility of certain persons.—No person who is a director, officer or agent of, or directly or indirectly interested in any insurance company, except as insured, shall be a Commissioner or a Clerk. [As reenacted Acts 1927, 40th Leg., p. 329, ch. 224, § 4.]

Art. 4682. [4493] [3050] Duties of Commissioner.—In addition to the other duties required of the Commissioner, he shall perform duties as follows:

1. Shall execute the laws.—See that all laws respecting insurance and insurance companies are faithfully executed.

2. File articles of incorporation and other papers.—File and preserve in his office all acts or articles of incorporation of insurance companies and all other papers required by law to be deposited with him, and, upon application of any party interested therein, to furnish certified copies thereof upon payment of the fees prescribed by law.

3. Calculate net value of policies.—He shall, as soon as practicable in each year, calculate or cause to be calculated in his office by an officer or employé of his department, the net value on the thirty-first day of December of the previous year of all the policies in force on that day in each life or health insurance company doing business in the State, upon the basis and in the manner prescribed by law.

4. See that net value of policies are [is] on hand.—Having determined the net value of all the policies in force, he shall see that the company has in safe securities of the class and character required by the laws of this State the amount of said net value of all its policies, after all its debts and claims against it and at least one hundred thousand dollars of surplus to policy holders have been provided for.

5. May accept valuation of other States.—He may accept the valuation made by the insurance commissioner of the State under whose authority a life insurance company was organized, when such valuation has been properly made on sound and recognized principles, as a legal basis as above. The company shall furnish to him a certificate of the insurance commissioner of such States, setting forth the value calculated on the data designated above of all the policies in force in the company on the previous thirty-first day of December, and stating that, after all other debts of the company and claims against it at that time, and one hundred thousand dollars surplus to policy holders, were provided for, the company had, in safe securities of the character required by the laws of this State an amount equal to the net value of all its policies in force, and that said company is entitled to do business in its own State.

6. That company furnishes certificate.—Every life insurance company doing business in this State during the year for which the statement is made that fails promptly to furnish the certificate aforesaid shall be required to make full detailed lists of policies and securities to the Commissioner, and shall be liable for all charges and expenses consequent upon such failure.

7. Shall calculate reserve on fire insurance.—For every company doing fire insurance business in this State, he shall calculate the reinsurance reserve for unexpired fire risks by taking fifty per cent of the premiums received on all unexpired risks that have less than one year to run, and a pro rata of all premiums received on risks that have more than one year to run. When the reinsurance reserve, calculated as above, is less than forty per cent of all the premiums received during the year, the reinsurance reserve in this case shall be the whole of the premiums received on all of its unexpired risks. For every company transacting any kind of insurance business in this State, for which no basis is prescribed by law, he shall calculate the reinsurance reserve upon the same basis prescribed in this article as to companies transacting fire insurance business.

8. Shall charge premiums.—In marine and inland insurance, he shall charge all the premiums received on unexpired risks as a reinsurance reserve.

9. When company's capital is impaired.—Having charged against a company other than life, the reinsurance reserve, as prescribed by the laws of this state, and adding thereto all other debts and claims against the company, he shall, in case he finds the capital stock of the company impaired to the extent of twenty per cent, give notice to the company to make good its whole capital stock within sixty days, and, if this is not done, he shall require the company to cease to do business within this State, and shall thereupon, in case the company is organized under authority of the State, immediately institute legal proceedings to determine what further shall be done in the case.

10. Shall publish results of investigation.—The Commissioner shall publish the result of his examination of the affairs of any company whenever he deems it for the interest of the public.

11. Shall suspend or revoke certificate.—He shall suspend the entire business of any company of this State, and the business within this State of any other company, during its noncompliance with any provision of the laws relative to insurance, or when its business is being fraudulently conducted, by suspending or revoking the certificate granted by him. He shall give notice thereof to the Insurance Commissioner or other similar officer of every state, and shall publish notice thereof. He shall give such company at least ten days notice in writing of his intention to suspend its right to do business or revoke the certificate of authority granted by him, stating specifically the reason why he intends such action.

12. Report to Attorney General.—He shall report promptly and in detail to the Attorney General any

violation of law relative to insurance companies or the business of insurance.

13. Shall furnish blanks.—He shall furnish to the companies required to report to him the necessary blank forms for the statements required.

14. Shall keep records.—He shall preserve in a permanent form a full record of his proceedings and a concise statement of the condition of each company or agency visited or examined.

15. Give certified copies.—At the request of any person, and on the payment of the legal fee, he shall give certified copies of any record or papers in his office, when he deems it not prejudicial to public interest, and shall give such other certificates as are provided for by law.

16. Report to Governor.—He shall report annually to the Governor the names and compensations of his clerks, the receipts and expenses of his department for the year, his official acts, the condition of companies doing business in this State, and such other information as will exhibit the affairs of said department.

17. Send copies of reports to.—He shall send a copy of such annual report to the Insurance Commissioner or other similar officer of every state and to each company doing business in the State.

18. Report laws to other States.—On request, he shall communicate to the Insurance Commissioner or other similar officer of any other State, in which the substantial provisions of the law of this State relative to insurance have been, or shall be, enacted, any facts which by law it is his duty to ascertain respecting the companies of this State doing business within such other State.

19. See that no company does business.—He shall see that no company is permitted to transact the business of life insurance in this State whose charter authorizes it to do a fire, marine, lightning, tornado or inland insurance business, and that no company authorized to do a life or health insurance business in this State be permitted to take fire, marine or inland risks.

20. Admit mutual companies.—He shall admit into this State mutual insurance companies organized under the laws of other states and who have two hundred thousand dollars assets in excess of liabilities engaged in cyclone, tornado, hail and storm insurance. [Acts 1909, p. 211, sec. 59.]

Art. 4682a. Duties of the Commission.—All the powers, duties and prerogatives heretofore vested in or devolving upon the Commissioner of Insurance or the State Insurance Commission or any member thereof as now constituted by statute shall hereafter be had, enjoyed, and exercised by the Board of Insurance Commissioners as herein created. The duties heretofore placed upon and the powers and privileges heretofore exercised by the State Fire Marshal are now to be placed upon and exercised and enjoyed by the Fire Insurance Commissioner. [Acts 1927, 40th Leg., p. 329, ch. 224, § 5.]

Art. 4682b. Fixing rate of automobile insurance.—Sec. 1. Every insurance company, corporation, inter-insurance exchange, mutual, reciprocal, association, Lloyds or other insurer writing automobile insurance in this State, hereinafter called the insurer, shall file with the Commissioner of Insurance, hereinafter called the Commissioner, within 90 days after this Act takes effect, its classification of risks and premium rates, none of which shall take effect until the Commissioner shall have approved the same as just, reasonable and adequate for the risks to which they respectively apply, and not confiscatory as to the class of insurance carriers authorized by law to write such insurance in this State. The Commissioner may withdraw his approval of any rate, made or used by any insurer, if in his judgment such rate is unjust, unreasonable or inadequate to provide for the obligations assumed by the insurer.

Sec. 2. On and after the filing and effective date of such classification of such risks and rates, no such insurer shall issue or renew any such insurance at premium rates which are greater or less than, or different from, those approved by the Commissioner as just, reasonable and adequate for the risks to which they respectively apply, and not confiscatory as to any class of insurance carriers authorized by law to write such insurance.

Sec. 3. To insure the adequacy and reasonableness of rates the Commissioner may take into consideration experience gathered from a territory sufficiently broad to include the varying conditions of the risks involved and the hazards and liabilities assumed, and over a period sufficiently long to insure that the rates determined therefrom shall be just, reasonable and adequate, and to that end the Commissioner may consult any rate making organization or association that may now or hereafter exist.

Sec. 4. The Commissioner is hereby authorized and empowered to require sworn statements from any insurer affected by this Act, showing its experience on any classification or classifications of risks and such other information which may be necessary or helpful in determining proper classifications and rates, or other duties or authority imposed by law. The Commissioner shall prescribe the necessary forms for such statements and reports, having due regard to the rules, methods and forms in use in other states for similar purposes in order that uniformity of statistics may not be disturbed.

Sec. 5. In addition to the duty of approving classifications and rates, the Commissioner shall prescribe policy forms for each kind of insurance uniform in all respects except as necessitated by the different plans on which the various kinds of insurers operate, and no insurer shall thereafter use any other form in writing automobile insurance in this State; provided, however, that any insurer may use any form of endorsement appropriate to its plan of operation, provided such endorsement shall be first submitted to and approved by the Commissioner; and any contract or agreement not written into the application and policy shall be void and of no effect and in violation of the provisions of this Act, and shall be sufficient cause for revocation of license of such insurer to write automobile insurance within this State.

Sec. 6. Nothing in this Act shall be construed to prohibit the operation hereunder of any stock company, mutual company, reciprocal or inter-insurance exchange or Lloyds association or to prohibit any stock company, mutual company, reciprocal or inter-insurance exchange or Lloyds association issuing participating policies; provided no distribution of profits or dividends to insured shall take effect or be paid until the same shall have been approved by the Commissioner; and provided further that no such distribution shall be approved until adequate reserves shall have been provided, such reserves to be computed on the same basis for all classes of insurers operating under this Act.

Sec. 7. It shall be unlawful for any insurer, as defined in this Act, or its officers, directors, general agent, State agents, special agents, local agents or other representatives, to grant to or contract with insured for any special favor or advantage in dividends or other profits, or any commissions or divisions of commissions or profits to accrue thereon, or any compensation or any valuable consideration not specified in the policy contract, or any inducement not specified in the policy contract, for the purpose of writing the insurance of any insured. Nothing in this Section, however, shall be construed to prohibit an insurer from sharing its profits after the same have been earned with its policy holders under and in accordance with an agreement as to such profit sharing contained in its policy contract. Any profit sharing under any policy with insured shall be uniform as between such insured, and shall consist only and solely of an equitable distribution under and in accordance with the terms of the policy of earnings between such insured, and no such insurer shall discriminate in any distribution of profits between insured of a class, and no classes for such distribution shall be made or established except on the approval of the Commissioner. No part of any profit shall be distributed to any insured under any such policy until the expiration of

the policy contract. Any violation of the terms of this Section shall constitute unjust discrimination and shall constitute rebating, and shall be sufficient grounds for the revocation of the permit of the insurer or of the license of the agent being guilty of such unjust discrimination and rebating.

Sec. 8. No insurer coming within the terms of this Act shall, in its business in this State, make or permit any distinction or discrimination in favor of the insured having a like hazard, in the matter of the charge of premiums for insurance, or in dividends or other benefits payable under any policy, nor shall any such insurer or agent make any contract of insurance, or agreement as to such insurance, other than expressed in the policy, nor shall any such insurer or its agents or representatives pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insured, any rebate payable upon the policy or any special favor or advantage in dividends or other benefits to accrue, or anything of value whatsoever, not specified in the policy; provided that nothing in this Act shall be construed to prohibit the modification of rates by an experience rating plan designed to encourage the prevention of accidents and to take account of the peculiar hazards of individual risks, provided such plan shall have been approved by the Commissioner; and provided further that only one such plan shall be approved for each form of insurance hereunder.

Sec. 9. The Commissioner is hereby empowered to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of this Act as are necessary to carry out its provisions, including full power and control over any administrative agencies and/or stamping office which may be organized or established by insurer with his approval to carry into effect the provisions of this Act.

Sec. 10. Any policyholder or insurer shall have the right to a hearing before the Commissioner on any grievance occasioned by the approval or disapproval by the Commissioner of any classification, rate or endorsement or policy form, or any rule or regulation established under the terms hereof, such hearing to be held in conformity with rules prescribed by the Commissioner. Upon receipt of request that such hearing is desired, the Commissioner shall forthwith set a date for the hearing, at the same time notifying all interested parties in writing of the place and date thereof, which date, unless otherwise agreed to by the parties at interest, shall not be less than ten nor more than thirty days after the date of said notice. Any party aggrieved shall have the right to apply to any Court of competent jurisdiction to obtain redress.

No hearing shall suspend the operation of any classification, rate or policy form unless the Commissioner shall so order.

Sec. 11. Until the insurer shall file, as provided herein, its classification of risks and rates, and the same shall be approved or become effective under the terms hereof, and the Commissioner shall have approved other or different rates, classifications, policy forms, rules and regulations under the Act, the rates, classifications, policy forms, rules and regulations now in use by the insurers now writing automobile insurance in this State shall remain in effect. [Acts 1927, 40th Leg., p. 373, ch. 253.]

Section 13 of Acts 1927, 40th Leg., p. 373, ch. 253, provides that if any part is held invalid, such holding shall not affect the remainder. Acts 1927, 40th Leg., p. 373, ch. 253, §§ 1–7, abolish the Commissioner of Insurance and confer his duties on the Board of Insurance Commissioners.

Art. 4683. [4494] May change form of annual statement.—The Commissioner may, from time to time make such changes in the forms of the annual statements required of insurance companies of any kind, as shall seem to him best adapted to elicit a true exhibit of their condition and methods of transacting business. Such form shall elicit only such information as shall pertain to the business of the company. [Acts 1909, p. 213, sec. 60.]

Art. 4684. [4495] When parties refuse to testify.—If any person refuses to appear and testify or to give information authorized by this chapter to be demanded by the Commissioner, such Commissioner may file his sworn application with any district judge or district court within this State, where said witness is summoned to appear; and said judge shall summon said witness and require answers to such questions. [Id. sec. 63.]

Art. 4685. [4496] Officers shall execute service.—Peace officers shall execute process directed to them by the Commissioner and make return thereof to him, as in the case of process issued from any court. [Id. sec. 64.]

Art. 4686. [4497] Shall issue certificate of authority.—Should the Commissioner be satisfied that any company applying for a certificate of authority has in all respects fully complied with the law, and that, if a stock company, its capital stock has been fully paid up, that it has the required amount of capital or surplus to policy holders, it shall be his duty to issue to such company a certificate of authority under his seal, authorizing such company to transact insurance business, naming therein the particular kind of insurance, for the period of not less than three months nor extending beyond the last day of February next following the date of such certificate. [Id. sec. 40.]

Art. 4687. [4497] Revocation of certificate.—If any such insurance company organized under the laws of any State or country, after having obtained a certificate of authority from the Commissioner or other officer authorized to issue such permit to do business in this State, shall bring in any Federal court any suit or action against any citizen of this State, or shall remove any suit or action heretofore or hereafter commenced in any court of this State, to which it is a party, to any Federal court, the Commissioner shall forthwith revoke and recall the certificate of authority of such insurance company to transact business in this State. No renewal of authority shall be granted to such insurance company to do business in this State for a period of three years after such revocation; and such insurance company shall be prohibited from transacting any business in this State until again duly authorized by law. [Id. sec. 40.]

Art. 4688. [4498] To compute reserve liability.—The Commissioner, as soon as practicable in each year, shall compute the reserve liability on the thirty-first day of December of the preceding year of every company organized under the laws of this State, or authorized to transact business in this State, which has outstanding policies of insurance on the lives of citizens of this State in accordance with the following rules:

1. The net value on the first day of December of the preceding year of all outstanding policies of life insurance in the company issued prior to the first day of January, 1910, shall be computed according to the terms of said policies on the basis of the American Experience Table of Mortality, and four and one-half per cent interest per annum.

2. The net value on the last day of December, of the preceding year, of all policies of life insurance issued after the thirty-first day of December, 1909, upon the basis of the Actuary's or Combined Experience Table of Mortality, with four per cent interest per annum. The policies of any such life insurance company thereafter issued upon the reserve basis of an interest rate lower than four per cent shall be computed upon the basis of the American Experience Table of Mortality with interest at such lower rate per annum.

3. In every case in which the actual premium charged for an insurance is less than the net premium for such insurance computed according to its respective tables of mortality and rate of interest aforesaid, the company shall also be charged with the value of annuity, the amount of which shall equal the difference between the premium charged and that required by the rules above stated, and the term of which in years shall equal the number of future annual payments due on the insurance at the date of the valuation. [Id. sec. 15.]

Art. 4689. [4499] To calculate reinsurance reserve.—On the thirty-first day of December of each and every year, or as soon thereafter as may be practicable, the Commissioner shall have calculated in his office the reinsurance reserve for all unexpired risks of all insurance companies organized under the laws of this State, or transacting business in this State, transacting any kind of insurance other than life, fire, marine, inland, lightning or tornado insurance, by taking fifty per cent of the gross premiums on all unexpired risks that have less than one year to run and a pro rata of all premiums received on risks that have more than one year to run. [Id. sec. 53.]

Art. 4690. [4500] To examine companies.—The Commissioner shall, at the end of each two years, or oftener if he deems necessary, in person or by one or more examiners commissioned in writing, visit each company organized under the laws of this State, and examine its financial condition and its ability to meet its liabilities. He shall have free access to all the books and papers of the company or agents thereof relating to the business and affairs of such company, and shall have power to summon and examine under oath the officers, agents and employees of such company and any other person within the State relative to the affairs of such insurance company. He may revoke or modify any certificate of authority issued by him when, any conditions or requirements prescribed by law for granting it no longer exist. He shall give such company at least ten days written notice of his intention to revoke or modify such certificate of authority issued by him, stating specifically the reasons why he intends to revoke or modify such certificate. The expense of every such examination shall be paid by the company so examined. The Commissioner shall not make any charge for services except for traveling or other actual expenses and shall furnish the company with an itemized statement of such expense. [Id. sec. 41.]

Art. 4691. [4501] In case of examination.—The Commissioner, for the purpose of examination authorized by law, has power either in person or by one or more examiners by him commissioned in writing:

1. To require free access to all books and papers within this State of any insurance companies, or the agents thereof, doing business within this State.

2. To summon and examine any person within this State, under oath, which he or any examiner may administer, relative to the affairs and conditions of any insurance company.

3. To visit at its principal office, wherever situated, any insurance company doing business in this State, for the purpose of investigating its affairs and conditions, and shall revoke the certificate of authority of any such company, in this State refusing to permit such examination. The reasonable expenses of all such examinations shall be paid by the company examined.

4. He may revoke or modify any certificate of authority issued by him when any conditions prescribed by law for granting it no longer exist.

5. He shall also have power to institute suits and prosecutions, either by the Attorney General or such other attorneys as the Attorney General may designate, for any violation of the law of this State relating to insurance. No action shall be brought or maintained by any person other than the Commissioner for closing up the affairs or to enjoin, restrain or interfere with the prosecution of the business of any such insurance company organized under the laws of this State. [Id. Sec. 66.]

Art. 4692. [4502] [3054] Transfer of securities by Commissioner.—No transfer by the Commissioner of securities of any kind, in any way held by him in his official capacity, shall be valid unless countersigned by the State Treasurer. [Acts 1876, p. 224, vol. 8, G. L., p. 1060.]

Art. 4693. [4503] [3055] Duty of State Treasurer.—It is the duty of the State Treasurer:

1. To countersign any such transfer presented to him by the Commissioner.

2. To keep a record of all transfers, stating the name of the transferee, unless transferred in blank, and a description of the security.

3. Upon countersigning, to advise by mail the company concerned, the particulars of the transaction.

4. In his annual report to the legislature, to state the transfers and the amount thereof, countersigned by him. [Id.]

Art. 4694. [4504] [3056] Free access to records.—To verify the correctness of records, the Commissioner shall be entitled to free access to the treasurer's records, required by the preceding article, and the Treasurer shall be entitled to free access to the books and other documents of the insurance department relating to securities held by the Commissioner. [Id. Sec. 14.]

Art. 4695. [4505] [3057] Instruments and copies evidence.—Every instrument executed by the Commissioner of Insurance of this or any other State, in which the substantial provisions of the laws of this State relating to insurance have been or shall be enacted pursuant to authority conferred by law, and authenticated by his seal of office, shall be received as evidence; and copies of papers and records in his office certified by him, and so authenticated, shall be received as evidence with the same effect as the originals. [Id. p. 223, Sec. 11.]

Art. 4696. [4506] [3058] To make inquiries of company.—The Commissioner is authorized to address any inquiries to any insurance company in relation to its business and condition, or any matter connected with its transactions which he may deem necessary for the public good or for a proper discharge of his duties. It shall be the duty of the addressee to promptly answer such inquiries in writing. [Act Feb. 17, 1875, p. 39, vol. 8, G. L. p. 411.]

Art. 4697. [4507] [3059] Annual statement to legislature.—The Commissioner shall cause the information contained in the annual statements of companies to be arranged in tabular form and prepare the same for printing in a single document and submit the same to the legislature as a portion of his regular report to that body. [Id. p. 43, Sec. 28.]

Art. 4698. Co-operative Savings Companies.—All assets arising from the business of the liquidation of Co-operative Savings and Contract Loan Companies created under the provisions of Chapter Five of the General Laws of Texas passed at the First Called Session of the Thirty-fourth Legislature and Chapter Forty-five of the General Laws passed at the Fourth Called Session of the Thirty-fifth Legislature, shall remain under the supervision and control of the Insurance Commissioner. Such corporations shall continue in existence until June 14, 1933, within which time the officers of such respective corporations shall liquidate the same, but such corporations, from and after June 14, 1923, shall not sell any further contracts or receive further payments on any contract heretofore sold. [Acts 1923, p. 336.]

CHAPTER TWO

INCORPORATION OF INSURANCE COMPANIES

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Article 4699. [4705] [3028] [2910] Formation of company.—Any number of persons desiring to form a company for the purpose of transacting in-

surance business shall adopt and sign articles of incorporation, and submit the same to the Commissioner who in turn shall submit the same to the Attorney General. If said articles shall be found by the Attorney General to be in accordance with the law of this State, and of the United States, he shall attach thereto his certificate to that effect, whereupon such articles shall be deposited with the Commissioner of Insurance.

Art. 4700. [4706] [3029] [2911] Articles of incorporation.—Such articles of incorporation shall contain:

1. The name of the company; and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public.

2. The locality of the principal business office of such company.

3. The kind of insurance business in which the company proposes to engage.

4. The amount of its capital stock, which shall in no case be less than one hundred thousand dollars.

Art. 4701. [4707] [3030] [2912] Certificate of authority.—When the said articles of incorporation have been deposited with the Commissioner, and the law in all other respects has been complied with by the company, the Commissioner shall make or cause an examination to be made by some competent and disinterested person appointed by him for that purpose; and if it shall be found that the capital stock of the company, to the amount required by law, has been paid in, and is possessed by it, in money, or in such stocks, notes, bonds or mortgages, as are required by law, and that the same is the bona fide property of such company, and that such company has in all respects complied with the law relating to insurance, then the Commissioner shall issue to such company a certificate of authority to commence business as proposed in their articles of incorporation. [Act Feb. 17, 1875, p. 33; G. L. vol. 8, p. 405.]

Art. 4702. [4708] [3031] [2913] Oath as to capital.—The corporators or officers of any such company shall be required to certify under oath to the Commissioner that the capital exhibited to the person making the examination is the bona fide property of such company. The certificate shall be filed and recorded in the office of the Commissioner. [Id.]

Art. 4703. [4709] [3032] [2914] Certificate of examiner.—If the examination be made by one other than the Commissioner, the finding shall be certified under the oath of the examiner. Such finding and certificate shall be filed and recorded in the office of the Commissioner. [Id.]

Art. 4704. [4710] [3033] [2915] Shares of stock.—The stock of any insurance company organized under the laws of this State shall be divided into shares of not less than ten dollars each and not more than one hundred dollars each. [As amended Acts 1927, 40th Leg., p. 155, ch. 104, § 1.]

Art. 4705. [4711] [3034] [2916] Items of capital stock.—The capital stock of any such company shall consist:

1. In lawful money of the United States; or

2. In the bonds of this State or any county or incorporated town or city thereof, or the stock of any national bank; or

3. In first mortgages upon unincumbered real estate in this State, the title to which is valid, and the market value of which is double the amount loaned thereon, exclusive of buildings, unless such buildings are insured in some responsible company and the policy or policies transferred to the company taking such mortgage. [Acts 1889, p. 11; G. L. vol. 9, p. 1039.]

Art. 4706. [4712] [3035] [2917] Investment of surplus money.—The surplus money of any such company over and above its paid up capital stock may be invested in, or loaned upon the pledge of public stocks or bonds of the United States, or any of the States, or stocks, bonds, or other evidence of indebtedness of any solvent dividend paying corporations, or in bills of exchange or other commercial notes or bills, except its own stock. The current market value of such stocks, bonds, notes, bills, or other evidences of indebtedness, shall be at all times during the continuance of such loans at least twenty per cent more than the sum loaned thereon. [Acts 1875, p. 33; G. L. vol. 8, p. 405.]

Art. 4707. [4713] [3036] [2918] Re-investment of capital stock.—Any such company may exchange and re-invest its capital stock in like securities, as occasion may require. [Id.]

Art. 4708. [4714–15–16] Directors.—The affairs of any insurance company organized under the laws of this State shall be managed by not fewer than seven directors, all of whom shall be stockholders in the company. Within thirty days after the subscription books of the company have been filed, a majority of the stockholders shall hold a meeting for the election of directors, each share entitling the holder thereof to one vote. The directors then in office shall continue in office until their successors have been duly chosen and have accepted the trust. The annual meeting for the election of directors of any such company shall be held during January, as the by-laws of the company may direct. [Id.; Acts 1927, 40th Leg., p. 155, ch. 104, § 1.]

Art. 4709. [4717] [3040] [2922] Special meeting to elect directors.—If from any cause the stockholders should fail to elect directors at an annual meeting, they may hold a special meeting for that purpose, by giving thirty days notice thereof in some newspaper in general circulation in the county in which the principal office of the company is located. The directors chosen at such special meeting shall continue in office until their successors are duly elected and have accepted. [Id.]

Art. 4710. [4718] [3041] [2923] Quorum of stockholders.—No meeting of stockholders shall elect directors or transact such other business of the company, unless there shall be present, in person or by proxy, a majority in value of the stockholders equal to two-thirds of the stock of such company. [Id.]

Art. 4711. [4719] [3042] [2924] Directors shall choose officers.—The directors shall choose by ballot from their own number a president and such other officers as the by-laws require, who shall perform such duties, receive such compensation and give such security as the by-laws may require. [Id.]

Art. 4712. [4720] [3043] [2925] May ordain by-laws.—The directors may establish such by-laws and regulations, not inconsistent with law, as shall appear to them necessary for regulating and conducting the business of the company. [Id.]

Art. 4713. [4721] [3044] [2926] Business records.—The directors shall keep a full and correct record of their transactions, to be open during business hours to the inspection of stockholders and others interested therein. [Id.]

Art. 4714. [4722] [3045] [2927] Shall fill vacancies; quorum.—The directors shall fill any vacancy which occurs in the board or in any office of such company. A majority of the board shall be a quorum for the transaction of business.

Art. 4715. [4723] [3046] [2928] Governed by other laws.—The laws governing corporations in general shall apply to and govern insurance companies incorporated in this State in so far as the same are not inconsistent with any provision of this title.

CHAPTER THREE

LIFE, HEALTH AND ACCIDENT INSURANCE

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Article 4716. [4724] Terms defined.—A life insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned on the continuance or cessation of human life, or involving an insurance, guaranty, contract or pledge for the payment of endowments or annuities. An accident insurance company shall be deemed to be a corporation doing business under any charter involving the payment of money or other thing of value, conditioned upon the injury, disablement or death of persons resulting from traveling or general accidents by land or water. A health insurance company shall be deemed to be a corporation doing business under any charter involving the payment of any amount of money, or other thing of value, conditioned upon loss by reason of disability due to sickness or ill-health. When consistent with the context and not obviously used in a different sense, the term "company," or "insurance company," as used herein, includes all corporations engaged as principals in the business of life, accident or health insurance. The term "home," or domestic company, as used herein, designates those life, accident or life and accident, health and accident, or life, health and accident insurance companies incorporated and formed in this State. The term "foreign company," means any life, accident or health insurance company organized under the laws of any other state or territory of the United States or foreign country. The term "home office" of a company means its principal office within the State or country in which it is incorporated and formed. The "insured" or "policy holder" is the person on whose life a policy of insurance is effected. The "beneficiary" is the person to whom a policy of insurance effected is payable. By the term, "net assets" is meant the funds of the company available for the payment of its obligations in this State, including uncollected premiums not more than three months past due and deferred premiums on policies actually in force, after deducting from such funds all unpaid losses and claims, and claims for losses, and all other debts, exclusive of capital stock. The "profits" of a company are that portion of its funds not required for the payment of losses and expenses, nor set apart for any other purpose required by law. [Acts 1909, p. 192, sec. 1.]

Art. 4717. [4725] Who may incorporate.—Any three or more citizens of this State, may associate themselves for the purpose of forming a life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company. No such company shall transact more than one of the foregoing classes of business except in separate and distinct departments. In order to form such a company, the corporators shall sign and acknowledge its articles of incorporation and file the same in the office of the Commissioner. Such articles shall specify:

1. The name and place of residence of each of the incorporators.

2. The name of the proposed company, which shall contain the words, "Insurance Company" as a part thereof.

3. The location of its home office.

4. The kind or kinds of insurance business it proposes to transact.

5. The amount of its capital stock, not less than $100,000, all of which capital stock must be subscribed and fully paid up and in the hands of the corporators before said articles of incorporation are filed.

6. The period of time it is to exist, which shall not exceed five hundred years.

7. The number of shares of such capital stock.

8. Such other provisions not inconsistent with the law as the corporators may deem proper to insert therein. [Id. sec. 2.]

Art. 4718. [4726] Charter and organization.—When such articles of incorporation are filed with the Commissioner, together with an affidavit made by two or more of its incorporators that all the stock has been subscribed in good faith and fully paid for, together with a charter fee of twenty dollars, it shall be the duty of the Commissioner to submit such articles of incorporation to the Attorney General for examination; and if he approves the same as conforming with the law, he shall so certify and deliver such articles of incorporation, together with his certificate of approval attached thereto, to the Commissioner, who shall, upon receipt thereof, record the same in a book kept for that purpose; and upon receipt of a fee of one dollar, he shall furnish a certified copy of the same to the corporators, upon which they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders, who shall adopt by-laws for the government of the company, and elect a board of directors not less than five, composed of stockholders; which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this State. The board of directors so elected shall serve until the second Tuesday in March thereafter, on which date annually thereafter, there shall be held a meeting of the stockholders at the home office, and a board of directors elected for the ensuing year. At all meetings of the stockholders, each stockholder shall be entitled to one vote for each share of stock fully paid up appearing in his name on the books of the company, which vote may be given in person or by written proxy. The majority of the paid up capital stock at any meeting of the stockholders shall be a quorum. [Id. sec. 3.]

Art. 4719. [4727] Amendment of charter.—At any regular or called meeting of the stockholders, they may by resolution, provide for any lawful amendment to the charter or articles of incorporation; and such amendment, accompanied by a copy of such resolution duly certified by the president and secretary of the company, shall be filed and recorded in the same manner as the original charter, and shall thereupon become effective. Stockholders representing a majority of the capital stock of any such company may in such manner also increase or reduce the amount of its capital stock. The capital stock shall in no case, be reduced to less than one hundred thousand dollars fully paid up. A statement of any such increase or reduction shall be signed and acknowledged by two officers of the company and filed and recorded along with the certified copy of the resolution of the stockholders provided therefor in the same manner as the charter or amendment thereto. For any such increase

or reduction, the company may require the return of the original certificates as other evidence of stock in exchange for new certificates issued in lieu thereof. The shares of stock of such company shall be transferable on its books, in accordance with law and the by-laws of the company, by the owner in person or his authorized agent. Every person becoming a stockholder by such transfer shall succeed to all rights of the former holder of the stock transferred, by reason of such ownership. [Id. sec. 3.]

Art. 4720. [4728] Examination by Commissioner.—When the first meeting of the stockholders shall be held and the officers of the company elected, the president or secretary shall notify the Commissioner; and he shall thereupon immediately make, or cause to be made, at the expense of the company, a full and thorough examination thereof. If he finds that all of the capital stock of the company, amounting to not less than one hundred thousand dollars, has been fully paid up and is in the custody of the officers, either in cash or securities of the class in which such companies are authorized by this chapter to invest or loan their funds, he shall issue to such company a certificate of authority to transact such kind or kinds of insurance business within this State as such officers may apply for and as may be authorized by its charter; which certificate shall expire on the last day of February next after the date of its issuance. Before such certificate is issued, not less than two officers of such company shall execute and file with the Commissioner a sworn schedule of all the assets of the company exhibited to him upon such examination, showing the value thereof, together with a sworn statement that the same are bona fide, the unconditional and unencumbered property of the company and are worth the amounts stated in such schedule. No original or first certificate of authority shall be granted, except in conformity herewith, regardless of the date of filing of the articles of incorporation with the Commissioner. [Id. sec. 4.]

Art. 4721. [4729] Shall file annual statement.—Each life insurance company, or accident insurance company, or life and accident, health and accident, or life[,] health and accident insurance company, organized under the laws of this State, shall, after the first day of January of each year and before the first day of March following, and before the renewal of its certificate of authority to transact business, prepare, under oath of two of its officers, and deposit in the office of the Commissioner, a statement accompanied with the fee for filing annual statements of ten dollars, showing the condition of the company on the thirty-first day of December the next preceding, which shall include a statement in detail showing the character of its assets and liabilities on that date, the amount and character of business transacted, moneys received and how expended during the year, and the number and amount of its policies, in force on that date in Texas, and the total amount of its policies in force. [Id. sec. 5.]

Art. 4722. [4830] Renewal certificate.—Whenever any such company, transacting insurance business in this State, shall have filed its annual statement in accordance with the preceding article, showing a condition which entitles it to transact business in this State in accordance with the provisions of this chapter, the Commissioner shall, upon a receipt of a fee of one dollar, issue a renewal certificate of authority to such company, which shall expire on the last day of February of the subsequent year. [Id. sec. 6.]

Art. 4723. [4731] Copy of certificate for agents.—Any such company organized under the laws of this State, having received authority from the Commissioner to transact business in this State, shall receive from such Commissioner, upon written request therefor, a certified copy of its certificate of authority for each of its agents in this State. [Id. sec. 7.]

Art. 4724. [4732] To sue and be sued.—Actions may be maintained by a company organized under the laws of this State against any of its policyholders, stockholders, or other person for any cause relating to the business of such company. Suits may also be prosecuted and maintained by any policyholder or his heirs or his legal representatives against the company for losses which accrue on any policy. No action shall be brought or maintained by any person other than the Commissioner for the enjoining, restraining or interfering with the prosecution of the business of the company. [Id. sec. 8.]

Art. 4725. [4734] May invest in what securities.—A life insurance company organized under the laws of this State may invest in or loan upon the following securities, viz:

1. It may invest any of its funds or accumulations in the bonds of the United States or of any State, county, or city of the United States, or the bonds of any independent or common school district, or first mortgage bonds of any independent or common school district, or first mortgage bonds of any dividend paying railroad or electrical railway company duly incorporated under the laws of the United States, or any State thereof.

2. It may loan any of its funds and accumulations, taking as security therefor such collateral as under the previous subdivision it may invest in, and upon first liens upon real estate, the title to which is valid and the value of which is double the amount loaned thereon. If any part of such value is in buildings, such buildings shall be insured against loss by fire for at least fifty per cent of the value thereof, with loss clause payable to such company. It may also make loans upon the security of or purchase of its own policies. No loan on any public policy shall exceed the reserve value thereof. No investment or loan, except policy loans, shall be made by any such insurance company, unless the same shall first have been authorized by the board of directors, or by a committee charged with the duty of supervising such investments or loans. No such company shall subscribe to, or participate in, any underwriting of the purchase or sale of securities or property, or enter into any such transaction for such purpose, or sell on account of such company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property; but the disposition of its property shall be at all times within the control of its board of directors. [Id. sec. 10.]

Art. 4726. [4735] May hold real estate.—Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

1. One building site and office building for its accommodation in the transaction of its business and for lease and rental.

2. Such as have been acquired in good faith by way of security for loans previously contracted or for moneys due.

3. Such as have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings.

4. Such as have been purchased at sales under judgment or decrees of court, or mortgage or other liens held by such companies.

All such real property specified in sub-divisions 2, 3, and 4, of this article which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold and disposed of within five years after the company shall have acquired title to the same, or within five years after the same shall have ceased to be necessary for the accommodation of its business. It shall not hold such property for a longer period, unless it shall procure a certificate from the Commissioner that its interests will suffer materially by the forced sale thereof; in which event the time for the sale may be extended to such time as the Commissioner shall direct in such certificate. [Id. Sec. 11.]

Art. 4727. [4736] Director not to do certain things.—No director or officer of any insurance com-

pany transacting business in or organized under the laws of this State, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property, or any loan from such company, nor be pecuniarily interested, either as principal, co-principal, agent or beneficiary in any such purchase, sale or loan. Nothing in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower, not in excess of the reserve value thereof. [Id. Sec. 12.]

Art. 4728. [4737] May reinsure.—Any life insurance company organized under the laws of this State may reinsure in any insurance company authorized to transact business in this State, any risk or part of a risk which it may assume. No such company shall have the power to so reinsure its entire outstanding business until the contract therefor shall be submitted to the Commissioner, and be by him approved, as protecting fully the interests of all the policy holders. [Id. Sec. 13.]

Art. 4729. [4738] Dividends to be paid from profits.—No life insurance company organized under the laws of this State shall declare or pay any dividends to its policy holders, except from the profits made by such company. This shall not prohibit the issuance of policies guaranteeing a definite payment or reduction in premiums, not exceeding the expense loading on said premiums. Where said reduction exceeds said expense loading, the proper reserve therefor must be held by the company to provide for the deficiency so arising in the net premium, but this shall not apply to payments to holders of special or board contracts heretofore issued. No such life insurance company shall declare or pay any dividends to its stockholders, except from the profits made by said company, not including surplus arising from the sale of stock. [Id. Sec. 14.]

Art. 4730. [4739] Salaries.—No domestic life insurance company shall pay any salary, compensation or emolument to any officer, trustee, or director thereof, nor any salary, compensation or emolument amounting in any year to more than five thousand dollars to any person, firm or corporation, unless such payment be first authorized by a vote of the board of directors of such company. The limitation as to time contained herein shall not be construed as preventing a life insurance company from entering into contracts with its agents for the payment of renewal commissions. No such company shall grant any pension to any officer, director or trustee thereof, or to any member of his family after his death. [Id. Sec. 20.]

Art. 4731. [4740] Disbursements by vouchers.—No domestic life insurance company shall make any disbursement of one hundred dollars or more, unless the same be evidenced by a voucher signed by, or on behalf of, the person, firm or corporation receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements, the voucher shall set forth the service rendered and statement of the disbursement made. If the expenditure be in connection with any matter pending before any legislature or public body, or before any department or officer of any State or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained, the expenditure shall be evidenced by a paid check or an affidavit describing the character and object of the expenditure and stating the reason for not obtaining such voucher. [Id. Sec. 21.]

Art. 4732. [4741] Policies shall contain what.—No policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company organized under the laws of this State, unless the same shall contain provisions substantially as follows:

1. That all premiums shall be payable in advance either at the home office of the company or to an agent of the company upon delivery of a receipt signed by one or more of the officers who are designated in the policy.

2. For a grace of at least one month for the payment of every premium after the first, which may be subject to an interest charge, during which month the insurance shall continue in force, which may stipulate that if the insured shall die during the period of grace, the overdue premium will be deducted in any settlement under the policy.

3. That the policy, or policy and application, shall constitute the entire contract between the parties and shall be incontestable not later than two years from its date, except for nonpayment of premiums; and which provision may or may not, at the option of the company, contain an exception for violations of the conditions of the policy relating to naval and military services in time of war.

4. That all statements made by the insured shall, in the absence of fraud be deemed representations and not warranties.

5. That if the age of the insured has been understated, the amount payable under the policy shall be such as the premium paid would have purchased at the correct age.

6. That after three full years premiums have been paid, the company at any time while the policy is in force, will advance upon proper assignment of the policy and upon the sole security thereof at a specified rate of interest a sum equal to, or at the option of the owner of the policy less than, the legal reserve at the end of the current policy year on the policy and on any dividend addition thereto, less than a sum not more than two and one-half per cent of the amount insured by the policy, and of any dividend additions thereto; and that the company may deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year, which provision may also provide that such loans may be deferred for not exceeding six months after application therefor is made. It shall also be stipulated in the policy that failure to repay any such advance, or to pay interest, shall not void the policy until the total indebtedness thereon to the company shall equal or exceed the loan value. No condition other than as herein provided shall be exacted as a prerequisite to any such advance. This provision shall not be required in term insurances, nor in pure endowments issued or granted as original policies, or in exchange for lapsed or surrendered policies. No provision herein shall compel any company to loan on any policy an amount greater than ninety-seven and one-half per centum of the face value thereof, including net dividend additions thereto.

7. A provision which, in event of default in premium payments, after premiums shall have been paid for three full years, shall secure to the owner of the policy a stipulated form of insurance, the net value of which shall be at least equal to the reserve at the date of default on the policy, and on any dividend additions thereto, specifying the mortality table and rate of interest adopted for computing such reserve, less a sum not more than two and one-half per cent of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy. Such provisions shall stipulate that the policy may be surrendered to the company at its home office within one month from date of default for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance, as aforesaid, and may stipulate that the company may defer payment for not more than six months after the application therefor is made. This provision shall not be required in term insurances.

8. A table showing in figures the loan values, and the options available under the policies each year, upon default in premium payments during the first twenty years of the policy or the period during which premiums are payable, beginning with the year in which such values and options become available.

9. That if, in event of default in premium pay-

ments, the value of the policy shall be applied to the purchase of other insurances; and if such insurance shall be in force and the original policy shall not have been surrendered to the company and canceled, the policy may be reinstated within three years from such default upon evidence of insurability satisfactory to the company and payments of arrears of premiums with interest.

10. That when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of or not later than two months after due proof of death and the right of the claimant to the proceeds.

11. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

Any foregoing provision not applicable to single premium policies, shall, to that extent, not be incorporated therein. [Id.]

Art. 4733. [4742] Policies shall not contain what.—No policy of life insurance shall be issued or delivered in this State, or be issued by a life insurance company incorporated under the laws of this State, if it contains any of the following provisions:

1. A provision limiting the time within which any action at law or in equity may be commenced to less than two years after the cause of action shall accrue.

2. A provision by which the policy shall purport to be issued or to take effect more than six months before the original application for the insurance was made, if thereby the insured would rate at any age younger than his age at date when the application was made, according to his age at nearest birthday.

3. A provision for any mode of settlement at maturity of less value than the amounts insured on the face of the policy, plus dividend additions, if any, less any indebtedness to the company on the policy, and less any premium that may, by the terms of the policy, be deducted. Any company may issue a policy promising a benefit less than the full benefit in case of the death of the insured by his own hand while sane or insane, or by following stated hazardous occupations. This provision shall not apply to purely accident and health policies. No foregoing provision relating to policy forms shall apply to policies issued in lieu of, or in exchange for, any other policies issued before July 10, 1909. [Id. Sec. 23.]

Art. 4734. [4743] Policies of foreign companies.—The policies of a life insurance company not organized under the laws of this State may contain any provision which the law of the State, territory, district or county under which the company is organized, prescribes shall be in such policies when issued in this State; and the policies of a life insurance company organized under the laws of this State may, when issued or delivered in any other State, territory, district or country, contain any provision required by the laws of the State, territory, district or country in which the same are issued, anything in this chapter to the contrary notwithstanding. [Id. Sec. 24.]

Art. 4735. [4745] Service of process.—Process in any civil suit against any domestic life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, may be served only on the president, or any active vice president, or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company during business hours. [Id. Sec. 34.]

Art. 4736. [4746] Losses shall be paid promptly.—In all cases where a loss occurs and the life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company liable therefor shall fail to pay the same within thirty days after demand therefor, such company shall be liable to pay the holder of such policy, in addition to the amount of the loss, twelve per cent damages on the amount of such loss together with reasonable attorney fees for the prosecution and collection of such loss. [Id. Sec. 35.]

Art. 4737. [4747] Certificate null and void, when.—If any life insurance company, accident insurance company, life and accident, health and accident or life, health and accident insurance company fails to pay off and satisfy any execution that may lawfully issue on any final judgment against said company within thirty days after the officer holding such execution has demanded payment thereof from any officer or attorney of record of such company, in this State, or out of it, such officer shall immediately certify such demand and failure to the Commissioner; and thereupon the Commissioner shall forthwith declare null and void the certificate of authority of such company; and such company shall be prohibited from transacting any business in this State until such execution shall be fully satisfied and discharged, and until such Commissioner shall renew his certificate of authority to such company. [Id. Sec. 36.]

Art. 4738. [4748] Limitation of business.—It shall be unlawful for any life insurance company, accident insurance company, life and accident, health and accident, and life, health and accident insurance company to take any kind of risks or issue any policies of insurance, except those of life, accident or health; nor shall the business of life, accident or health insurance in this State be in any wise conducted or transacted by any company which in this or any other State or country, is engaged or concerned in the business of marine, fire, or inland insurance. [Id. Sec. 37.]

Art. 4739. [4749] Deposit of securities.—Any life insurance company, accident insurance company, life and accident, health and accident, or life health and accident insurance company, organized under the laws of this State, may at its option, deposit with the State Treasurer securities equal to the amount of its capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited in the treasury in lieu thereof other securities equal in value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the Commissioner. When any such deposit is made, the Treasurer shall execute to the company making the deposit a receipt therefor, giving such description to such securities as will identify the same; and such company shall have the right to advertise such fact, or print a copy of the treasurer's receipt on the policies it may issue; and the proper officers or agents of each insurance company making such deposit shall be permitted, at all reasonable times, to examine such securities and to detach coupons therefrom and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the Treasurer, and the Commissioner. Such deposit when made by any company shall thereafter be maintained as long as said company shall have outstanding any liability to its policy holders. For the purpose of State, county, and municipal taxation, the situs of all personal property belonging to such companies shall be at the home office of such company. [Id. Sec. 38.]

Art. 4740. [4750] Deposits for benefit of insured.—Any life insurance company now or which may hereafter be incorporated under the laws of this State may deposit with the Commissioner for the common benefit of all the holders of its policies and annuity bonds, securities of the kinds in which, by the laws of this State, it is permitted to invest or loan its funds, equal to the legal reserve on all its outstanding policies in force, which securities shall be held by said Commissioner in trust for the purpose and objects herein specified. Any such company may deposit lawful money of the United States in lieu of the securities above referred to, or any portion thereof, and may also, for the purposes of such deposit, convey to said Commissioner in trust the real estate in which any portion of its said reserve may be lawfully invested. In such case, said Commissioner shall hold the title thereto in trust until other securities in lieu thereof shall be deposited with him, whereupon he

shall reconvey the same to such company. Said Commissioner may cause any such securities or real estate to be appraised and valued prior to their being deposited with, or conveyed to, him in trust as aforesaid, the reasonable expense of such appraisement or valuation to be paid by the company. [Acts 2nd C. S. 1909. p. 448.]

Art. 4741. [4751] Effect and value of deposits.—After making the deposit mentioned above, no company shall thereafter issue a policy of insurance or endowment or annuity bond, except policies of industrial insurance, unless it shall have upon its face a certificate substantially in the following words: "This policy is registered, and approved securities equal in value to the legal reserve hereon are held in trust by the Commissioner of Insurance of the State of Texas," which certificate shall be signed by such Commissioner and attested by his seal. All policies and bonds of each kind and class issued and the forms thereof filed in the office of said Commissioner shall have printed thereon some appropriate designating letter or figure, combination of letters or figures or terms identifying the particular form of contract, together with the year of adoption of such form. Whenever any change or modification is made in the form of contracts, policy or bond, the designating letters, figures or terms and the year of adoption thereon shall be correspondingly changed. The Commissioner shall prepare and keep such registers thereof as will enable him to compute their value at any time. Upon written proof attested by the president or vice president and secretary of the company which shall have issued such policies or annuity bonds that any of them have been commuted or terminated, the Commissioner shall commute or cancel them upon his register. Until such proof is furnished all registered contracts shall be considered in force for the purposes of this chapter. The net value of every policy or annuity bond, according to the standard prescribed by the laws of this State for the valuation of policies of life insurance companies, when the first premium shall have been paid thereon, less the amount of such liens as the company may have against it (not exceeding such value), shall be entered opposite the record of said policy or annuity bond in the register aforesaid at the time such record is made. On the first day of each year, or within sixty days thereafter, the Commissioner shall cause the policies and annuity bonds of each company accepting the terms of this chapter to be carefully valued; and the actual value thereof at the time fixed for such valuation, less such liens as the company may have against it, not exceeding such value, shall be entered upon the register opposite the record of such policy or bond, and the Commissioner shall furnish a certificate of the aggregate of such value to the company. The Commissioner shall cancel mutilated or surrendered policies and annuity bonds issued by any such company, and register other like policies or bonds issued in lieu thereof. Each company, which shall have made the deposit herein provided for, shall make additional deposits from time to time, in amounts not less than five thousand dollars, and of such securities as are permitted by this chapter to be deposited, so that the market value of the securities deposited shall always be equal to the net value of the policies and annuity bonds issued by said company, less such liens as the company may have against them, not exceeding such net value. So long as any company shall maintain its deposits as herein prescribed at an amount equal to, or in excess of, the net value of its policies and annuity bonds as aforesaid, it shall be the duty of said Commissioner to sign and affix his seal to the certificates before mentioned on every policy and annuity bond presented to him for that purpose by any company so depositing. The Commissioner shall keep a careful record of the securities deposited by each company, showing by item the amount and market value thereof. If at any time it shall appear therefrom that the value of the securities held on deposit is less than the actual value of the policies and annuity bonds issued by such company and then in force, it shall be unlawful for the Commissioner to execute the certificate on any additional policies or annuity bonds of such company until it shall have made good the deficit. Any company depositing under the provisions of this chapter may increase its deposits at any time by making additional deposits of not less than five thousand dollars of such securities as are authorized by this chapter. Any such company whose deposits exceed the net value of all policies and annuity bonds it has in force less such liens (not exceeding such net value) as the company may hold against them, may withdraw such excess; and it may withdraw any of such securities at any time by depositing others of equal value and of the character authorized by this chapter in their stead; and it may collect the interest coupons, rents and other income on the securities deposited as the same accrue.

The securities deposited under this chapter by each company shall be placed and kept by the Commissioner in some secure safe-deposit, fire-proof box or vault in the city or town in or near which the home office of the company is located. The officers of the company shall have access to such securities for the purpose of detaching interest coupons and crediting payment and exchanging securities as above provided, under such reasonable rules and regulations as the Commissioner may establish. [Id. Sec. 2.]

Art. 4742. [4752] Fees for making deposits.—Every company making deposit under the provisions of this chapter shall pay to the Commissioner for each certificate placed on registered policies or annuity bonds issued by the company, after the original or first deposit is made hereunder, a fee of twenty-five cents; and the fee so received shall be disposed of by said Commissioner as follows:

1. The payment of the annual rent or hire of the safety deposit fire-proof box above provided.

2. Payment for the services of a competent and reliable representative of said Commissioner, to be appointed by him, who shall have direct charge of the securities and safety box containing the same, and through whom, and under whose supervision, the insurance company may have access to its securities for the purposes above provided. The sum paid such representative shall not exceed sixty dollars per annum for each company.

3. The balance of such fees shall be paid to the State Treasurer to the credit of the general fund. [Id. Sec. 3.]

Art. 4743. [4753] What deposits may include.—Any life insurance company organized under the laws of this State and making the deposit provided for by this chapter, may include, as a part thereof, securities representing its capital stock, and any deposits of its securities heretofore or hereafter made in compliance with the laws of this State representing its capital stock, and shall only be required to deposit in addition thereto the remainder of its total reserve on outstanding policies and annuity bonds after deducting therefrom the amount of its capital stock securities so deposited. Deposits of securities made hereunder to the value of the reserve on all outstanding policies and annuity bonds shall be added to, and maintained from time to time as the reserve values increase, by the company issuing such contracts, or by any company which may reinsure or assume them; and such securities shall be held by the Commissioner and his successors in office in trust for the benefit of such policies and annuity bonds so long as the same shall remain in force. No company making the deposit provided for herein shall reinsure its outstanding business, or the whole of any one or more of its risks, except in or with a company or companies incorporated and organized under the laws of this State. or a company having permission to do business in this State. [Id. Secs. 4 and 5.]

Art. 4744. [4754] Extra hazardous policies.—If any life insurance company doing business under the laws of this State has written or assumed risks that are sub-standard or extra hazardous and has charged therefor more than its published rates of premium, the Commissioner shall in valuing such policies compute and charge such extra reserves thereon

as is warranted by reason of the extra hazard assumed and the extra premium charged. [Id. Sec. 6.]

Art. 4745 [4755] No commissions paid officers.—No life insurance company transacting business in this State shall pay, or contract to pay, directly or indirectly, to its president, vice president, secretary, treasurer, actuary, medical director or other physician charged with the duty of examining risks or applications for insurance or to any officer of the company other than an agent or solicitor, any commission or other compensation contingent upon the writing or procuring of any policy of insurance in such company, or procuring an application therefor by any person whomsoever, or contingent upon the payment of any renewal premium, or upon the assumption of any life insurance risk by such company. Should any company violate any provision of this article, it shall be the duty of the Commissioner of Insurance to revoke its certificate of authority to transact business in this State. [Id. Sec. 7.]

Art. 4746. [4756] Co-operative companies.—The provisions of the six preceding articles shall likewise apply to and govern co-operative life insurance companies organized under the laws of this State. [Id. Sec. 8.]

Art. 4747. [4757] To deposit funds in name of company.—Any director, member of a committee, or officer, or any clerk of a home company, who is charged with the duty of handling or investing its funds, shall not deposit or invest such funds, except in the corporate name of such company; shall not borrow the funds of such company; shall not be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; shall not take or receive to his own use any fee, brokerage, commission, gift or other consideration for, or on account of, a loan made by or on behalf of such company. [Act 1909, p. 192; Sec. 39.]

Art. 4748. [4758] Impairment of capital stock.—Any such insurance company transacting business within this State, whose capital stock shall become impaired to the extent of thirty-three and one-third per cent thereof, computing its liabilities according to the terms of this chapter, shall make good such impairment within sixty days, by reduction of its capital stock, (provided such capital stock shall in no case be less than one hundred thousand dollars), or otherwise; and failing to make good such impairment within said time shall forfeit its right to write new business in this State until said impairment shall have been made good. The Commissioner may apply to any court of competent jurisdiction for the appointment of a receiver to wind up the affairs of such company when its capital stock shall become impaired to the extent of fifty per cent thereof, computing its policy liabilities according to the American experience table of mortality and four and one-half per cent interest. No company shall write new business in Texas when its net surplus to policy holders is less than one hundred thousand dollars. [Id. Sec. 43.]

Art. 4749. [4759] Form of policies to be filed.—Life insurance companies shall, within five days after the issuance of, and the placing upon the market, any form of policies of life insurance, file a copy of such form of policy with the Insurance Department. [Id. Sec. 44.]

Art. 4750. [4760] Commissioner to approve policy.—No insurance company transacting business in this State shall hereafter be permitted to issue or sell any policy of industrial life insurance, or any policy of accident or health insurance, until the form thereof has been submitted to the Commissioner. If the Commissioner shall approve the form of such policy as complying with the laws of this State, the same may thereafter be issued and sold. If he shall disapprove the same, any such company may institute a proceeding in any court of competent jurisdiction to review his action thereon. [Id. Sec. 45.]

Art. 4751. [4761] Must have certificate of authority.—No foreign or domestic insurance company shall transact any insurance business in this State, other than the lending of money, unless it shall first procure from the Commissioner a certificate of authority, stating that the laws of this State have been fully complied with by it, and authorizing it to do business in this State. Such certificate of authority shall expire on the last day of February in each year, and shall be renewed annually so long as the company shall continue to comply with the laws of the State, such renewals to be granted upon the same terms and considerations as the original certificate. [Id. Sec. 46.]

Art. 4752. [4762] Limited capital stock companies.—Companies may be incorporated in the manner prescribed by this chapter for the incorporation of life, accident and health insurance companies generally, which shall have power only to transact business within this State, and to write insurance only on the weekly or monthly premiums plan, and to issue no policy promising to pay more than one thousand dollars in the event of death of the insured from natural causes, nor more than two thousand dollars in the event of death of any person from accidental causes, which may issue, combined or separately, life, accident or health insurance policies with not less than an actual paid up capital of twenty-five thousand dollars. All such companies shall be subject to all the laws regulating life insurance companies in this State not inconsistent with the provisions of this article. Such companies shall not be permitted to invest their assets in other than Texas securities as defined by the laws of this State regulating the investments of life insurance companies. [Id. Sec. 56.]

Art. 4753. [4763] Unlawful dividends.—It shall not be lawful for any insurance company organized under the laws of this State to make any dividend, except from surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom the lawful reserve on all unexpired risks and also the amount of all unpaid losses, whether adjusted or unadjusted, and all other debts due and payable, or to become due and payable, by the company. Any dividends made contrary to any provision of this article shall subject the company making them to a forfeiture of its charter; and the Commissioner shall forthwith revoke its certificate of authority. He shall give such company at least ten days notice in writing of his intention to revoke such certificate, stating specifically the reasons why he intends to revoke same. [Id. Sec. 61.]

Art. 4754. [4764] Taxation of domestic company.—Insurance companies incorporated under the laws of this State shall hereafter be required to render for State, county and municipal taxation all of their real estate as other real estate is rendered. All personal property of such insurance companies shall be valued as other property is valued for assessment in this State in the following manner: From the total valuation of its assets shall be deducted the reserve being the amount of the debts of insurance companies by reason of their outstanding policies in gross, and from the remainder shall be deducted the assessed value of all real estate owned by the company and the remainder shall be the assessed taxable value of its personal property. Home insurance companies shall not be required to pay any occupation or gross receipt tax. [Id. Sec. 25.]

Art. 4755. [4765] Foreign companies, statement.—Any life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated under the laws of any other State, territory or country, desiring to transact the business of such insurance in this State, shall furnish said Commissioner with a written or printed statement under oath of the president or vice president, or treasurer and secretary of such company, which statement shall show:

1. The name and locality of the company.
2. The amount of its capital stock.
3. The amount of its capital stock paid up.

4. The assets of the company, including: first, the amount of cash on hand and in the hands of other persons, naming such persons and their residence; second, real estate unincumbered, where situated and its value; third, the bonds owned by the company and how they are secured, with the rate of interest thereon; fourth, debts due the company secured by mortgage, describing the property mortgaged and its market value; fifth, debts otherwise secured, stating how secured; sixth, debts for premiums; seventh, all other moneys and securities.

5. Amount of liabilities to the company, stating the name of the person or corporation to whom liable.

6. Losses adjusted and due.

7. Losses adjusted and not due.

8. Losses adjusted.

9. Losses in suspense and for what cause.

10. All other claims against the company, describing the same.

The Commissioner may require any additional fact to be shown by such annual statement. Each such company shall be required to file a similar statement not later than March 1 of each year. [Act 1909, p. 192, Sec. 26.]

Art. 4756. [4766] Articles of incorporation, filed.—Such foreign life insurance company, or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company shall accompany such statement with a certified copy of its acts or articles of incorporation, and all amendments thereto, and a copy of its by-laws, together with the name and residence of each of its officers and directors. The same shall be certified under the hand of the president or secretary of such company. [Id. Sec. 27.]

Art. 4757. [4767] Paid up capital stock.—No such foreign life insurance company, accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, shall transact any business of insurance in this State, unless such company is possessed of at least one hundred thousand dollars of actual paid up cash money capital invested in such securities as provided under the laws of the State, territory or country of its creation. No mutual life insurance or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company operating on the old line or legal reserve basis, shall transact any business of insurance in this State, unless such company is possessed of at least one hundred thousand dollars of net surplus assets invested in securities provided for under the laws of the State[,] territory or country of its creation. [Id. Sec. 28.]

Art. 4758. [4768] Deposits required.—Whenever the existing or future laws of any other State or territory of the United States, or of any other country, shall require of life insurance companies, accident insurance companies, or life and accident, health and accident, or life, health and accident insurance companies, incorporated by this State, any deposit of securities in such other State, territory or country before transacting insurance business therein, then, and in every such case, all insurance companies of such State shall, before doing any insurance business in this State, be required to make the same deposit of securities with the Treasurer of this State. [Id. Sec. 29.]

Art. 4759. [4769] Alien companies to deposit.—No foreign life insurance company or accident insurance company, or life and accident, health and accident, or life, health and accident insurance company, incorporated by or organized under the laws of any foreign government, shall transact business in this State, unless it shall first deposit and keep deposited with the Treasurer of this State, for the benefit of the policy holders of such company, citizens or residents of the United States, bonds or securities of the United States or the State of Texas to the amount of one hundred thousand dollars. [Id. Sec. 30.]

Art. 4760. [4770] Deposit liable for judgment.—The deposit required by the preceding article shall be held liable to pay the judgments of policy holders in such company, and may be so decreed by the court adjudicating the same. [Id. Sec. 30.]

Art. 4761. [4771] When alien companies need not deposit.—If the deposit required by Article 4759 has been made in any State of the United States, under the laws of such State, in such manner as to secure equally all the policy holders of such company who are citizens and residents of the United States, then no deposits shall be required in this State; but a certificate of such deposit under the hand and seal of the officer of such other State with whom the same has been made shall be filed with the Commissioner. [Id. Sec. 32.]

Art. 4762. [4772] Assets invested.—The assets of any company not organized under the laws of this State shall be invested in securities or property of the same classes permitted by the laws of this State as to home companies or by other laws of this State in other securities approved by the Commissioner as being of substantially the same grade. [Id. Sec. 57.]

Art. 4763. [4773] Shall file power of attorney.—Each life insurance company engaged in doing or desiring to do business in this State shall file with the Commissioner an irrevocable power of attorney, duly executed, constituting and appointing the Commissioner and his successors in office, or any officer or board which may hereafter be clothed with the powers and duties now devolving upon said Commissioner, its duly authorized agent and attorney in fact for the purpose of accepting service for it or being served with citation in any suit brought against it in any court of this State, by any person, or by or to or for the use of the State of Texas, and consenting that the service of any civil process upon him as its attorney for such purpose in any suit or proceeding shall be taken and held to be valid, waiving all claim and right to object to such service or to any error by reason of such service; and such appointment, agency and power of attorney shall, by its terms and recitals, provide that it shall continue and remain in force and effect so long as such company continues to do business in this State or to collect premiums of insurance from citizens of this State, and so long as it shall have outstanding policies in this State, and until all claims of every character held by the citizens of this State, or by the State of Texas, against such company, shall have been settled. Said power of attorney shall be signed by the president or a vice president and the secretary of such company, whose signature shall be attested by the seal of the company; and said officer signing the same shall acknowledge its execution before an officer authorized by the laws of this State to take acknowledgments. The said power of attorney shall be embodied in, and approved by, a resolution of the board of directors of such company, and a copy of such resolution, duly certified to by the proper officers of said company, shall be filed with the said power of attorney in the office of the Commissioner, and shall be recorded by him in a book kept for that purpose, there to remain a permanent record of said department. [Act 1909, p. 240, Sec. 12.]

Art. 4764. [4774] Commissioner's duty in accepting service.—Whenever the Commissioner shall accept service or be served with citation in any suit pending against any life insurance company in this State, he shall immediately enclose the copy of the citation served upon him, or a substantial copy thereof, in a letter properly addressed to the general manager or general agent of the company against whom such service is had, if it shall have a general manager or general agent within this State, and if not, then to the home office of the company, and shall forward the same by registered mail, postage prepaid. No judgment by default shall be taken in any such cause until after the expiration of at least ten days after the general agent or general manager of such company, or the company at its home office, as the case may be, shall have received such copy of such citation; and the presumption shall obtain, until rebutted, that such notice was received by such agent or com-

pany in due course of mail after being deposited in the mail at Austin. [Id. Sec. 13.]

CHAPTER FOUR

TEXAS SECURITIES AND GROSS RECEIPTS TAX

Art.
4765. Investment in Texas securities.
4766. "Texas securities."
4767. Investments, how made.
4768. Report showing amount of reserve.
4769. Report showing gross receipts.
4770. Taxes to be paid before certificate is issued.
4771. Taxes imposed exclusive.
4772. Law deemed accepted.
4773. Companies renewing business.
4774. Failure to renew certificate.
4775. Commissioner may revoke certificate.
4776. Failure to report or invest.
4777. Deposit by domestic company.
4778. Not to apply to certain companies.
4779. Not to apply to fraternal societies.
4780. Companies desiring to loan money.

Article 4765. [4775] Investment in Texas securities.—Each life insurance company now engaged, or that may hereafter engage in transacting the business of life insurance in this State, shall, as a condition of its right to transact such business in this State, invest and keep invested in Texas securities and in Texas real estate as hereinafter provided, a sum of money equal to at least seventy-five per cent of the aggregate amount of the legal reserve required by the laws of the State of its domicile, to be maintained on account of its policies of insurance in force written upon the lives of the citizens of this State, which reserve is hereafter denominated as its "Texas Reserves." And each such company, securing a certificate of authority to do business in this State, shall be deemed to have accepted such certificate subject to all the conditions and requirements of this chapter. [Acts 1909, p. 240.]

Art. 4766. [4776] "Texas securities."—The term "Texas securities," as used in this chapter, shall be held to include all bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916, when such bonds are issued against and secured by promissory notes or other obligations, the payment of which is secured by mortgage, deed of trust or other valid lien upon unincumbered real estate situated in this State; bonds of the State of Texas, or of any county, city, town, school district, or other municipality or subdivision, which is now or may hereafter be constituted or organized and authorized to issue bonds under the constitution and laws of this State, promissory notes and other obligations, the payment of which is secured by a mortgage, deed of trust or other valid lien upon unincumbered real estate situated in this State, the title to which real estate is valid and the market value of which is double the amount loaned thereon, exclusive of buildings, unless such buildings are insured and kept insured in some company authorized to transact business in this State, and the policy or policies transferred to the company taking such mortgage or lien; the first mortgage bonds of any solvent corporation incorporated under the laws of this State and doing business in this State, which has not in five years next preceding the date of the investment by such company in such mortgage bonds, defaulted for more than three months in the payment of interest upon its bonds or indebtedness, the market value of which bonds is equal to the amount invested therein; and loans made to policy holders on the sole security of the reserve values of their policies. The investments required by this chapter may be made by the purchase of not more than one building site, and in the erection thereon of not more than one office building, or in the purchase at its reasonable market value of such office building already constructed and the ground upon which the same is located, in any city of the State of more than four thousand inhabitants. All real estate owned by life insurance companies in this State, on December 31, 1909, and all thereafter acquired under the provisions of this chapter, or by foreclosure of a lien thereon, shall be treated, to the extent of its reasonable market value, as a part of the investments required by this chapter. And "Texas Securities" shall be held to include every character of investment authorized by the terms of this article. [Id. Acts 1917, p. 122.]

Art. 4767. [4777] Investments, how made.—The investments required by this chapter shall be made as follows:

1. Each life insurance company which had a certificate of authority to transact business in this State April 2, 1909, the total amount of whose investments in Texas securities as of December 31, 1908, was equal to or exceeded seventy-five per cent of the amount of its Texas reserves as of that date, shall have so invested not later than January 31, in each year, a sum of money equal to seventy-five per cent of the amount of its Texas reserves as of the preceding December 31.

2. Each life insurance company which had a certificate of authority to transact business in this State on April 2, 1909, the amount of whose investments in Texas securities as of December 31, 1908, was less than seventy-five per cent of the amount of its Texas reserves as of said date, shall have so invested, not later than January 31 in each year, a sum at least equal to seventy-five per cent of the amount by which its Texas reserves as of December 31 preceding exceeded the amount of its Texas reserves as of December 31, 1908, added to the amount of its total investments in Texas securities as of said date; and each such company, shall in addition, have so invested not later than January 31, 1910, a sum at least equal to ten per cent of the amount by which seventy-five per cent of its Texas reserves as of December 31, 1908, exceeded the amount of its investments in Texas securities as of said date, and annually thereafter it shall have invested, not later than January 31, an additional ten per cent of the amount of such excess, until the total amount of its investments in Texas securities shall at least equal seventy-five per cent of its Texas reserves.

3. Each life insurance company not having a certificate of authority to do business in this State on April 2, 1909, or that may thereafter discontinue writing new business under such certificate, shall, if it again obtain a certificate of authority to transact business in this State, be required to have invested in Texas securities annually as above provided, a sum equal to seventy-five per cent of its Texas reserves. If on December 31 preceding the issuance of such certificate of authority, the amount of its investments in Texas securities was less than seventy-five per cent of the amount of its Texas reserves, it shall be required to have so invested annually as above provided, a sum equal to seventy-five per cent of the increase of its Texas reserves since Decmber [December] 31, last preceding the issuance of its certificate of authority, added to the amount of its total investment in Texas securities as of said date; and, in addition, it shall, not later than January 31 in each year after the issuance of its certificate of authority, have so invested ten per cent of the amount by which seventy-five per cent of its Texas reserves as of December 31 preceding the date of said certificate exceeded the amount of its total investments in Texas securities as of that date, and shall have invested annually thereafter, not later than January 31, an additional ten per cent of such excess, until the total amount of its investments in Texas securities shall at least equal seventy-five per cent of the amount of its Texas reserves. The proportionate amount of the Texas reserves required by this section to be invested in Texas securities as of any date shall thereafter be maintained. Such investment shall not be required to be made by any life insurance company after it has ceased to do the business of life insurance or to write policies of life insurance in this State. [Acts 1909, p. 240.]

Art. 4768. [4778] Report showing amount of reserve.—Each life insurance company doing business in this State shall, not later than ten days after January 31 of each year, file with the Commissioner on a blank prepared and furnished by him for that purpose, a report showing the entire amount of the reserve on its entire business in force in this State on

December 31, preceding, and an itemized schedule of its investments in Texas securities, which report shall be sworn to by either the president or a vice president and the secretary of such company. Such report shall contain such other information as may be required by the Commissioner to determine whether or not, such company has continuously and in good faith complied with this law; and for that purpose the Commissioner may, whenever he shall deem it proper, require such special or supplemental reports as he may deem necessary. [Id.]

Art. 4769. [4779] Report showing gross receipts.—Each life insurance company not organized under the laws of this State, transacting business in this State, shall annually, on or before the first day of March, make a report to the Commissioner, which report shall be sworn to by either the president or vice president and secretary or treasurer of such company, which shall show the gross amount of premiums collected during the year ending on December 31, preceding, from citizens of this State, upon policies of insurance. Each such company shall pay annually an occupation tax equal to three per cent of such gross premium receipts. When the report of the investment, in Texas securities, as defined by law, of any such companies as of December 31, of any year, shall show that it has invested on said date as much as thirty per cent of its total Texas reserves, as defined by law, in promissory notes or other obligations secured by mortgage, deed of trust, or other lien on Texas real estate, the rate of occupation tax shall be reduced to two and six-tenths per cent; and, when such report shall show that such company has so invested on said date as much as sixty per cent of its total Texas reserve, the rate of such occupation tax shall be reduced to two and three-tenths per cent; and when such report shall show that such company has so invested, on said date, as much as seventy-five per cent of its total Texas reserve, the rate of such occupation tax shall be reduced to two per cent. All such companies shall in any event make the investments in Texas securities in proportion to the amount of Texas reserves as required by law. Such occupation taxes shall be for and on account of the business transacted within this State during the calendar year in which such premiums were collected, or for that portion thereof during which the company shall have transacted business in this State. [Acts 1st C. S. 1909, p. 264.]

Art. 4770. [4780] Taxes to be paid before certificate is issued.—Upon the receipt of sworn statements showing the gross premium receipts of such company, the Commissioner of Insurance shall certify to the State Treasurer the amount of taxes due by such company for the preceding year, which taxes shall be paid to the State Treasurer for the use of the State, by such company. Upon his receipt of such certificate, and the payment of such tax, the treasurer shall execute a receipt therefor, which receipt shall be evidence of the payment of such taxes. No such life insurance company shall receive a certificate of authority to do business in this State until such taxes are paid. If, upon the examination of any company, or in any other manner, the Commissioner of Insurance shall be informed that the gross premium receipts of any year exceed in amount those shown by the report, thereof, theretofore made as above provided, it shall be the duty of such Commissioner to file with the State Treasurer a supplemental certificate showing the additional amount of taxes due by such company, which shall be paid by such company upon notice thereof. The State Treasurer if, within fifteen days after the receipt by him of any certificate or supplemental certificate provided for by this article, the taxes due as shown thereby have not been paid, shall report the facts to the Attorney General, who shall immediately institute suit in the proper court in Travis County to recover such taxes. [Id.]

Art. 4771. [4781] Taxes imposed exclusive.—No occupation tax other than herein imposed shall be levied by the State or any county, city or town, upon any life insurance company herein subject to the occupation tax in proportion to its gross premium receipts, or its agents. The occupation tax imposed by this law shall be the sole occupation tax which any company doing business in this State under the provision of this chapter shall be required to pay. [Acts 1909, p. 240.]

Art. 4772. [4782] Law deemed accepted.—Each life insurance company not organized under the laws of this State, hereafter granted a certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact such business hereunder subject to the conditions and requirements that, after it shall cease to transact new business in this State under a certificate of authority, and so long as it shall continue to collect renewal premiums from citizens of this State, it shall be subject to the payment of the same occupation tax in proportion to its gross premiums during any year, from citizens of this State, as is or may be imposed by law on such companies transacting new business within this State, under certificates of authority during such year. The rate of such tax to be so paid by any such company shall never exceed the rate imposed by this chapter upon insurance companies transacting business in this State. Each such company shall make the same reports of its gross premium receipts for each such year and within the same period as is or may be required of such companies holding certificates of authority and shall at all times be subject to examination by the Commissioner of Insurance or some one selected by him for that purpose, in the same way and to the same extent as is or may be required of companies transacting new business under certificates of authority in this State, the expenses of such examination to be paid by the company examined. The respective duties of the Commissioner in certifying to the amount of such taxes and of the State Treasurer and Attorney General in their collection shall be the same as are or may be prescribed respecting taxes due from companies authorized to transact new business within this State. [Id.]

Art. 4773. [4783] Companies renewing business.—Any life insurance company which has heretofore been, may now be, or may hereafter be, engaged in writing policies of insurance upon the lives of citizens of this State, which has heretofore ceased, or may hereafter cease writing such policies, and which does not now or may not hereafter have a certificate of authority to transact the business of life insurance in this State, but which has continued or may continue to collect renewal or other premiums upon such policies, shall, before it may again obtain a certificate of authority to transact the business of life insurance in this State, report under oath to the Commissioner the gross amount of premiums so collected from citizens of this State upon policies of insurance during each calendar year since the end of the period covered by the last preceding report by such company of gross premium receipts upon which it paid an occupation tax, and shall pay to the State a sum equal to the percentage of its gross premium receipts for each such year that was required by law to be paid as occupation taxes by companies doing business in this State, during such year or years; and, upon the payment of such sum and securing a certificate of authority to do business in this State, the penalties provided for the failure to pay such taxes and make such report in the past shall be remitted. [Id.]

Art. 4774. [4784] Failure to renew certificate.—Any company which shall fail to renew its certificate of authority or continue to write new business in this State, shall, nevertheless, have the right to maintain agents in Texas for the purpose of collecting renewal premiums on outstanding business written by it under certificate of authority, and also for the purpose of making investments as provided by this chapter. [Id.]

Art. 4775. [4785] Commissioner may revoke certificate.—If any life insurance company, while holding a certificate of authority to transact business in this State, shall fail or refuse to comply with any of the provisions or requirements of this chapter, the Commissioner upon ascertaining such fact, shall notify

such company by actual notice in writing delivered to an executive officer of such company, of his intention to revoke its certificate of authority to transact business in this State at the expiration of thirty days after the mailing of such registered letter, or the date upon which such actual notice is served. If such provisions or requirements are not fully complied with upon the expiration of said thirty days, it shall be the duty of said Commissioner to revoke the certificate of authority of such company. In case of such revocation, such company shall not be entitled to receive another certificate of authority for a period of one year, and until it shall have fully and in good faith complied with all such provisions and requirements of this chapter. Any company feeling itself aggrieved by the action of the Commissioner in revoking its certificate of authority to do business in this State may bring suit against him in Travis County to annul and vacate the order revoking such certificate. [Id.]

Art. 4776. [4786] Failure to report or invest.—If any company shall intentionally fail or refuse to make the investments required by this chapter, or make any report required by this chapter, or to make any special report requested by the Commissioner under authority of this chapter, or generally to comply with any provision or requirements of this chapter, while holding a certificate of authority to transact business in this State, or after it shall cease to write new business or cease to hold such certificate, such failure or refusal shall subject such company, in addition to the penalty provided in the preceding article, in cases to which said article may be applicable, to the payment of a penalty of twenty-five dollars per day for each day that such company shall remain in default after the Commissioner shall notify such company of such default, in the manner provided in the preceding article, to be recovered in a suit that may be brought by the Attorney General in behalf of the State in the District Court of Travis County. In any suit brought to recover such penalty, there shall be a prima facie presumption subject to rebuttal, that any default that may have occurred was intentional; that the notice required by this chapter was given, and the burden of proof shall be on the defendant company to prove that the investments required by this chapter were made as herein required whenever the question of whether or not such investments were thus made is in issue. [Id.]

Art. 4777. [4787] Deposit by domestic company.—Any life insurance company, organized under the laws of this State, may, at its option, deposit with the Treasurer of this State, securities in which its capital stock is invested, or securities equal in amount to its capital stock, of the class in which the law of this State permits insurance companies to invest their capital stock, and may, at its option, withdraw the same or any part thereof, first having deposited with the Treasurer, in lieu thereof, other securities of like class and equal amount and value to those withdrawn. Any such securities, before being so originally deposited or substituted, shall be approved by the Commissioner; and, when any such deposit is made, the Treasurer shall execute to the company making such deposit a receipt therefor, giving such description of said stock or securities as will identify the same, and stating that the same are held on deposit as the capital stock investments of such company; and such company shall have the right to advertise such fact or print a copy of the Treasurer's receipt on the policies it may issue; and the proper officer or agent of each insurance company making such deposit shall be permitted at all reasonable times to examine such securities and to detach coupons therefrom, and to collect interest thereon, under such reasonable rules and regulations as may be prescribed by the Treasurer and the Commissioner. The deposit herein provided for, when made by any company, shall thereafter be maintained so long as said company shall have outstanding any liability to its policy holders in this State. [Id.]

Art. 4778. [4788] Not to apply to certain companies.—The provisions of this chapter requiring investments in Texas securities shall not apply to any life insurance company, the total amount of whose Texas reserves does not exceed five thousand dollars, or to any such company doing only a reinsurance business in this State, but all other provisions of this chapter shall apply to such companies. [Id.]

Art. 4779. [4789] Not to apply to fraternal societies.—Nothing in this chapter shall be held to apply to fraternal benefit societies as defined by the laws of this State. [Id.]

Art. 4780. [4790] Companies desiring to loan money.—Any life insurance company not desiring to engage in the business of writing life insurance in this State, but desiring to loan its funds in this State, may obtain a permit to do so by complying with the laws of this State relating to foreign corporations engaged in loaning money in this State, without being required to secure a certificate of authority to write life insurance in this State. [Id.]

CHAPTER FIVE

ASSESSMENT OR NATURAL PREMIUM COMPANIES.

Art.
4781. Foreign assessment companies.
4782. Fees.
4783. Exceptions.

Article 4781. [4791] Foreign assessment companies.—Companies or associations organized under the laws of any other State of the United States, carrying on the business of life or casualty insurance on the assessment or natural premium plan, having cash assets of a sum not less than one hundred thousand dollars, invested as required by the laws of this State regulating other insurance companies, shall be licensed by the Commissioner to do business in this State, and be subject only to the provisions of this chapter. Such company or association shall first file with said Commissioner a certified copy of its charter, a written agreement appointing said Commissioner and his successor in office, to be its attorney, upon whom all lawful process in any action or proceeding against it may be served; a certificate under oath of its president and secretary that it is paying, and for the twelve months next preceding has paid, the maximum amount named in its policies or certificates in full; a statement under oath of its president and secretary of its business for the year ending on the thirty-first day of December preceding; a certified copy of its constitution and by-laws, and a copy of its policy and application; a certificate from the proper authority in its home State that said company or association is lawfully entitled to do business therein, and has at least one hundred thousand dollars surplus assets subject to its indebtedness. The Commissioner shall issue a license to any company or association complying with the provisions of this chapter. Every such company or association shall annually thereafter before such license is renewed, file with said Commissioner on or before the first day of March, a statement under oath of its president and secretary, or like officers, of its business for the year ending December 31 preceding. [Acts 1889, p. 98; G. L. vol. 9, p. 1126.]

Art. 4782. [4792] Fees.—Every such company or association shall pay to the Commissioner, for the use of the State, the following fees: For filing copy of its charter, twenty-five dollars; for filing statement preliminary to its admission, twenty dollars; for license to company or association, one dollar. [Id.]

Art. 4783. [4793] Exceptions.—The provisions of this chapter shall in no wise apply to mutual benefit organizations doing business in this State through lodges or councils, such as the Knights of Honor, or kindred organizations. [Id.]

CHAPTER SIX

MUTUAL ASSESSMENT ACCIDENT COMPANIES

Art.
4784. Incorporation of.
4785. Charter.
4786. Application.
4787. Ready for business, when.
4788. "Mutual assessment company."
4789. Powers of company.
4790. Notice of by-laws.
4791. Books and papers subject to inspection.
4792. Examination.
4793. Statement to be filed.
4794. Membership fund.
4795. Notices of assessment.
4796. May change beneficiary.
4797. Policy shall specify what.
4798. Forfeiture of charter.
4799. Sick benefits.

Article 4784. [4794] Incorporation of.—Any number of persons, not less than five, may organize a corporation for the purpose of transacting the business of accident insurance, upon the co-operate or mutual assessment plan, without capital stock, by complying with the provisions of this chapter. All such persons shall be bona fide citizens and residents of the State of Texas. [Acts 1903, p. 174.]

Art. 4785. [4795] Charter.—Such persons must sign and acknowledge a written charter setting forth:

1. The name of such corporation.

2. The number of its directors, and the names and residences of those who are to act as such for the first year.

3. The location of its principal office, which must be within this State.

4. It shall state that said corporation shall have no capital stock, and shall give the purpose for which same is organized, and the plan upon which it proposes to do business, by stating that its said business shall be conducted upon the assessment plan, without lodges.

5. The term for which it is to exist, which shall not be for more than fifty years. [Id.]

Art. 4786. [4796] Application.—Said charter shall be presented to the Attorney General, accompanied by affidavits of all said incorporators, showing that they are bona fide citizens of this State, by bona fide applications for insurance in said company from not less than two hundred applicants, for not less than one hundred thousand dollars insurance, by an affidavit by one of its incorporators showing that each of said applicants has deposited with applicant at least eighty cents on each one thousand dollars insurance so applied for by him, and by a certificate of some solvent bank showing that all such advance funds are deposited therein to be turned over to the treasurer of such corporation when organized. The Attorney General shall examine all said instruments. If he finds the same are in conformity with this chapter, he shall give his approval and file the same with the Commissioner. [Id.]

Art. 4787. [4797] Ready for business, when.—When said charter has been filed with the Commissioner, with the approval of the Attorney General, accompanied by a filing fee of twenty dollars, the Commissioner shall record the said charter and certificate of the Attorney General in a book kept for that purpose, and shall, upon the receipt of fee for certifying copy of charter of one dollar, furnish a certified copy of such charter and certificate of the Attorney General to the corporators, and shall return to said corporators all such applications for membership, also a certificate that such charter has been filed and recorded in his office, and that said company is duly incorporated under the laws of this State, and authorized to transact the business set forth in its charter, stating same. Upon filing and recording said charter, said association shall become a body politic and corporate, with the right to transact its said business in this State and elsewhere, according to the provisions of this chapter, to hold property and to alienate same, to contract, sue and be sued under its corporate name, and by that name shall have succession, and may by its board of directors make by-laws not inconsistent with law, and shall carry on its business subject to the provisions of this chapter. [Id. Sec. 3a.]

Art. 4788. [4798] "Mutual assessment company."—Any corporation which issues any certificate, policy or other evidence of interest to its members, whereby, upon his death or total disability, any money is to be paid by such corporation to such member, or beneficiary designated by him, which money is derived from voluntary contributions or from admission fees, dues and assessments, or any of them, collected, or to be collected, from the members thereof, and interest and accretions upon, and wherein the paying of such money is conditioned upon the same being realized in the manner aforesaid, and wherein the money so realized is applied to the uses and purposes of said corporation and the expense of the management and prosecution of its business, and which has no subordinate lodges or similar bodies, shall be held to be engaged in the business of mutual assessment accident insurance as contemplated by this chapter, and shall be subject only to the provisions of this chapter. [Id. Sec. 4.]

Art. 4789. [4799] Powers of company.—Such corporations shall issue no certificate of stock, shall declare no dividends, shall pay no profits; and the salaries of all officers shall be designated in its by-laws. Such by-laws shall provide for annual members' meetings, in which each member shall be entitled to vote, only in person, the amount of insurance held. [Id. Sec. 5.]

Art. 4790. [4800] Notice of by-laws.—Every such corporation must, before the adoption of any by-laws or amendments thereto, cause the same to be mailed to each member and director of such association, together with notice of the time and place when the same will be considered at least ten days before the time for such meeting. The provisions of this article shall not apply to by-laws adopted within sixty days after the incorporation of such company. [Id. Sec. 6.]

Art. 4791. [4801] Books and papers subject to inspection.—All books and papers of such corporation shall, at all reasonable times be open for examination by members and their representatives. [Id. Sec. 7.]

Art. 4792. [4802] Examination.—The Commissioner shall annually or as often as he deems it necessary, in person or by one or more examiners, commissioned in writing, visit each such corporation and examine its financial condition and its ability to meet its liabilities. He shall have free access to all books and papers of the corporation, or agents thereof, and shall have power to examine under oath the officers, agents and employees of such corporation. He may revoke or modify any certificate of authority issued by him, when any conditions prescribed by law for granting it no longer exist. The expense of every such examination shall be paid by the corporation so examined. [Id. Sec. 7a.]

Art. 4793. [4803] Statement to be filed.—Every such corporation shall, on the first day of January of each year, or within sixty days thereafter, make and file with the Commissioner a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding. Such report shall be upon blank forms to be provided by such Commissioner, and shall be verified by the oath of the secretary of such corporation, and shall contain answers to the following questions:

1. Number of certificates or policies issued or members admitted during the year.

2. Amount of indemnity affected thereby.

3. Number of death losses.

4. Number of death losses paid.

5. Number of other losses.

6. Number of other losses paid.

7. The amount received from each assessment in each class.

8. Total amount paid for losses.

9. Number of death claims for which assessments have been made.
10. Number of death claims compromised or resisted, and brief statement of reasons.
11. Number of other claims for which assessment has been made.
12. Number of other claims compromised or resisted, and brief statement of the reasons.
13. Does company charge annual dues, and, if so, how much?
14. Total amount received and the disposition thereof.
15. Does the company use moneys received for payment of claims to pay expense of the company in whole or in part, and, if so, state the amount so used.
16. Give total amount of salaries paid officers, and name of each salaried officer and the amount paid him.
17. Does the company guarantee fixed amount to be paid, regardless of amounts realized from assessments, dues, admissions, fees, etc.
18. If so, state the amount guaranteed and the security therefor.
19. Has the company a reserve fund?
20. If so, how is it created and for what purpose, the amount thereof and in what form and how invested?
21. Has the company more than one class of members?
22. If so, how many and what, and give amount of indemnity in each.
23. Give number of members in each class.
24. State when the company was organized.
25. Number of policies or memberships lapsed during the year.
26. Number of policies of each class at beginning and at the end of the year.
27. All assets applicable to payment of insurance, other than reserve fund, and how invested.
28. Amount received from all sources for payment of losses, and the disposition thereof; and, in case such corporation fails or refuses to make such report in full within said time, its charter and franchise shall be forfeited. The following fees shall be paid annually: Filing annual statement, ten dollars; certificate of authority to corporation, one dollar; each certified copy thereof, one dollar. [Id. Sec. 8.]

Art. 4794. [4804] Membership fund.—Each certificate of membership, policy or other contract of insurance issued by such company shall bear on its face in red letters the following words: "The payment of the benefit herein provided for is conditioned upon its being collected by this company from assessments and other sources as provided in its by-laws." Nothing in this chapter shall be construed to prevent the creation of a reserve fund by any such organization, which fund, or its accretions, or both, are to be used only for the payment of losses or benefits, as provided in the by-laws of such corporation. Such corporation may charge a membership or admission fee of not exceeding three dollars upon each policy issued, the proceeds of which may be placed in the expense fund, and at least sixty per cent of all amounts realized from any other sources shall be used only for the payment of losses or benefits as they occur, or the balance thereof remaining after paying such losses or benefits transferred to such reserve fund. Such membership fee may also apply as a payment or credit upon the initial assessment or premium, if the by-laws of the corporation so provide. [Acts 1905, p. 311, Acts 1915, p. 255.]

Art. 4795. [4805] Notices of assessment.—Each notice of assessments made by such corporation upon its members, or any of them, shall truly state the cause and purpose of such assessment, amount paid on the last claim paid, the cause of disability or death, the name of the member for whose death or disability such payment was made, the maximum face value of the certificate or policy, and, in case of disability, the maximum amount provided for in such policy or certificate for such disability, and, if not paid in full, the reason therefor. [Acts 1903, p. 174.]

Art. 4796. [4806] May change beneficiary.—Any member of such corporation shall have the right at any time, with the consent of such corporation, to change the beneficiary in his policy or certificate, without requiring the consent of such beneficiary; and such corporation shall give consent under such regulations as may be prescribed in its by-laws. [Id. Sec. 11.]

Art. 4797. [4807] Policy shall specify what.—Every policy or certificate issued by any such corporation shall specify the sum of money which it promises to pay upon the contingency insured against, and the number of days after the receipt of satisfactory proof of the happening of such contingency at which such payment shall be made. Upon the happening of such contingency, such corporation shall be liable for the payment of such amount in full at the time so specified, subject to such legal defenses as it may have against same. If the sum realized by it from assessments made in accordance with its by-laws to meet such payment, together with such other sums as its by-laws may provide shall be used for that purpose, shall be insufficient to pay such sum in full, for which it is so liable, then the payment of the full amount so realized shall discharge such corporation from all liability, by reason of the happening of such contingency, and in that event, such corporation shall be liable only for the amount so actually realized. [Id. Sec. 12.]

Art. 4798. [4808] Forfeiture of charter.—If any corporation not incorporated under this chapter shall engage in any branch of mutual assessment accident insurance, as herein defined, or if any corporation organized under the provisions of this chapter shall transact business in any manner except as herein authorized, such corporation shall, in either event, be subject to the forfeiture of its charter and franchises; and the Attorney General of this State shall immediately institute suit to forfeit its charter and dissolve it. [Id. Sec. 13.]

Art. 4799. Sick benefits.—Any corporation now existing or hereafter organized under the provisions of this chapter for the purpose of transacting the business of a mutual assessment accident insurance company shall have and is hereby vested with the authority under its corporate powers to engage in the business, on the assessment plan, as defined in this chapter, of insuring against disability resulting from sickness or disease, and to pay to the beneficiaries of its deceased members a funeral benefit which shall not exceed the sum of one hundred dollars in event of death of any member resulting from sickness or disease. In enforcing compliance with the requirements of the third article of this chapter, applications for insurance against disability or death resulting from sickness or disease shall not be taken into consideration. [Acts 1915, p. 255.]

CHAPTER SEVEN

MUTUAL LIFE INSURANCE COMPANIES

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Article 4800. [4809] Incorporation.—Nine or more persons, residents of this State, may form a mutual life insurance company for the purpose of insuring the lives of individuals on the mutual, level premium, legal reserve plan, subject to the provisions of this chapter, by executing and acknowledging articles of incorporation for that purpose. Such articles of incorporation shall set forth:

1. The name and residence of each incorporator.
2. The name of the proposed company, which shall contain the words, "Mutual Life Insurance Company," as a part thereof.
3. The location of the principal office from which the business of the company is to be transacted.
4. The number of directors and the name and residence of each one who is to serve until the first regular election of directors. [Acts 1921, p. 148.]

Art. 4801. Certificate of authority.—If the Attorney General approves such articles of incorporation, he shall so certify thereon in writing, and return them to the Commissioner, who shall file the same in his office and issue to the company a certificate of authority to which shall be attached a certified copy of the articles of incorporation authorizing such company to receive applications for insurance as provided in this chapter, to collect premiums thereon and to issue receipts therefor. Such certificate shall expressly state that such company is not authorized to issue policies of insurance or transact any business other than that specifically authorized therein until it has received bona fide applications for insurance on the lives of at least two hundred individuals for not less than five hundred dollars each, aggregating at least two hundred thousand dollars of insurance on which the aggregate net premiums shall be at least equal to the largest net risk assumed on any one life, which applications have been approved by a competent physician and on which the first annual premiums at adequate rates have been paid to the company, nor until these facts shall have been fully shown to the Commissioner and he shall have issued to the company a certificate of authority to transact business as a mutual life insurance company. If this showing is not made within six months after the date upon which such articles of incorporation are filed with the Commissioner, it shall be his duty to cancel the certificate of authority of such company to receive applications for insurance, and to notify each incorporator of such action. When the Commissioner shall be notified that any such company has complied with all the provisions of this and the preceding article, he shall make, or cause to be made, at the expense of such company, an examination thereof; and if he shall find that the law has been fully complied with, it shall be his duty to issue to it a certificate of authority to transact the business of a mutual life insurance company, in accordance with the terms of this chapter. [Id.]

Art. 4802. [4810] Directors.—The business of a mutual life insurance company shall be controlled and directed by a board of directors consisting of not less than five nor more than twenty-five members, who shall be elected annually as provided in this chapter. The directors who are to serve until the first annual election shall be named in the charter, and they shall hold office until their successors shall be elected and qualified, or until they shall be removed for improper practices. The board of directors shall elect the officers of the company, which shall be a president, and such number of vice-presidents as their by-laws may provide; a secretary, a treasurer, a medical director and such other officers as the by-laws may provide for; and shall fix the compensation of all such officers. The duties of all officers shall be prescribed by the by-laws. The by-laws governing the company until the date of its first annual meeting shall be adopted by the board of directors at their first meeting after the certificate of authority shall be issued authorizing the company to transact the business of a mutual life insurance company. [Id.]

Art. 4803. Annual meeting of policy-holders.—There shall be an annual meeting of all the policy-holders of each mutual life insurance company at the home office of such company or at such other place as may be properly announced to the policy-holders, on the second Tuesday in March after it shall have received a certificate of authority to transact the business of life insurance, and annually thereafter, at which the directors shall be elected for the succeeding year, and at which by-laws for the government of the company, not inconsistent with the provisions of this chapter or with the laws of this State may be adopted, and at which the existing by-laws may be repealed or amended. At such annual meeting, each policy-holder shall be entitled to one vote for each five hundred dollars of insurance held by him. Any policy-holder may execute his proxy authorizing and entitling the holder to exercise his voting powers, unless such proxy shall be revoked previous to such annual meeting. [Id.]

Art. 4804. Bonds of officers.—The president, secretary and treasurer shall each give bond for the protection of the policy-holders in amount and with securities to be approved by the Commissioner, conditioned for the faithful performance of their respective duties. [Id.]

Art. 4805. Annual statement; renewal certificate.—Such mutual life insurance companies shall file their annual statements with the Commissioner, and receive from him their certificates of authority to transact the business of life insurance. [Id.]

Art. 4806. Annual examination.—The Commissioner shall have made, once in each calendar year, a thorough examination of the affairs of each such mutual life insurance company, the report of which examination shall be made to such Commissioner under oath. The Commissioner, if he approves the report of such examination, shall furnish the company with certificate of approval. The expense of such examination shall be borne by the company examined. [Id.]

Art. 4807. Agents and commissions.—Any such mutual life insurance company which has received authority from the Commissioner to transact business in this State shall receive from such Commissioner, upon written request therefor, a certificate of authority for each of its agents in this State. Contracts between such companies and such agents shall not provide for commissions or other compensation to such agents in excess of the expense loading in the premiums of policies issued upon the applications procured by such agents, collected therefor, and paid to the company in cash. [Id.]

Art. 4808. Annual valuation of policies.—The Commissioner shall annually make valuations of all outstanding policies of mutual life insurance companies as of December 31 of each year, in accordance with the one year preliminary term method based upon the American Experience Table of Mortality and three and one-half per cent interest per annum, assuming an average risk exposure of six months on all new policies issued within each calendar year. [Id.]

Art. 4809. Net premiums.—The net premiums upon all policies issued by any such company shall be computed in accordance with the provisions of the preceding article, the net premiums on all new policies issued to be obtained by deducting from the total premium paid the amount of the preliminary term premium as above provided and allowing the remainder of the first annual premium as expense loading; no portion of such net premium collected upon any such policy shall ever be used or applied for the payment of any expenses of the company of any kind or character, or for any other purpose than the payment of death losses, surrender values, or lawful dividends to policy-holders, loans on policies, or for the purposes of such investments of the company as are prescribed in the laws of this State. [Id.]

Art. 4810. Contingency reserve.—Every such company may maintain and set aside, before declaring any dividends to policy-holders, in addition to an amount equal to the net value of all its policies, computed as required by this chapter, a contingency reserve not exceeding the following respective percentages of said net values, to wit: When said net values are less than one hundred thousand dollars, twenty per cent thereof, or the sum of ten thousand dollars, whichever is the greater; the percentage thereof measuring the contingency reserve shall decrease one-half of one per cent for each one hundred thousand dollars of said net values up to one million dollars,

and thereafter, one-half of one per cent for each additional one million dollars of said net values; provided, that as the said net values of said policies increase, and as the maximum percentage measuring the contingency reserve decreases, such company may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the maximum percentage. [Id.]

Art. 4811. Surplus and dividends.—Each such company shall make an annual accounting and apportionment of divisible surplus to each policy-holder, beginning not later than the end of the second policy year on all policies issued; and each such policy-holder shall be entitled to and credited with or paid, such portion of the entire divisible surplus as has been contributed thereto by his policy. Upon the thirty-first day of December of each year, or as soon thereafter as may be practicable, each such company shall truly ascertain the surplus earned by it during such year; and after setting aside from such surplus the contingency reserve provided for in this chapter, it shall apportion to each of its policies upon which all premiums due and payable for at least one year have been paid, the proportion of the remainder of such surplus which has been contributed by each such policy, and shall immediately submit a detailed report of such apportionment under oath of its president or secretary to the Commissioner. If such Commissioner shall find such apportionment to be equitable and just to the policy-holders and in accordance with the provisions of this chapter, he shall approve the same, and it shall become effective. If he shall not approve such apportionment, he shall make such changes therein as he shall deem equitable and just and necessary to make the same comply with the provisions of this chapter, and shall certify such changes to such company, whereupon such apportionment as changed by the Commissioner shall become effective. Each dividend declared as aforesaid shall be paid in cash, or in the equivalent of its cash value in any option stated in the policy and selected by the policy-holder, notice of which selection by the policy-holder shall be given to the company in writing. [Id.]

Art. 4812. Policies.—Mutual life insurance companies are authorized to transact business throughout this State and in other States to which they may be admitted; they shall issue no policies except upon the participating plan with dividends payable annually as provided in this chapter; the forms of all policies issued by any such company shall be approved by the Commissioner, and all such policies shall have plainly printed on both the face and the reverse sides thereof the words, "The form of this policy is approved by the Commissioner of Insurance of the State of Texas," and the Commissioner shall revoke the certificate of authority of any such company which shall issue any policy except upon such form so approved. No such company shall issue any policy or policies by which, after deducting reinsurance, if any, it shall be bound for more than five thousand dollars upon any one life at any time when the total amount of its insurance in force is less than ten million dollars. [Id.]

Art. 4813 [4819] Unlawful deductions from policy.—Each policy issued by such company shall provide, in the event that premiums are payable other than annually, that no deduction shall be made from the amount due on any policy in the event that the death of the policy-holder shall occur prior to the due date of any premium less than annual. [Id.]

Art. 4814. Table of guaranteed values.—Each policy issued by such company shall contain a table of guaranteed values, which shall become non-forfeitable not later than upon the payment of the third full annual premium; such tables of values shall be drawn in accordance with the law governing life and accident insurance companies. [Id.]

Art. 4815. Incurring debts.—No mutual life insurance company shall have the power except as provided in this chapter, to borrow money for any purpose other than the payment of death losses. No such company shall have the power to incur any debt on any account except under policies issued by it or for money borrowed to pay death losses, for which any portion of its assets over and above that which may represent or be derived from the expense loading of the premiums collected by it, shall, in any event be subject to execution upon a judgment therefor. [Id.]

Art. 4816. Advances to company.—Any officer, director, or policy-holder of a mutual life insurance company, or any other person, may advance to such company any sum of money for the purpose of promoting or conserving its business, or to enable it to comply with any requirement of the law; and such money, together with such interest thereon as may have been agreed upon, not exceeding ten per cent per annum, shall be payable only out of the surplus remaining after providing for all reserves and other liabilities, and shall not otherwise be a liability or claim against the company or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company, and the amount of such advance shall be reported in each annual statement. [Id.]

Art. 4817. Liabilities.—At any time when the liabilities of any such company, computing its reserve liability upon the American Experience Table of Mortality and three and one-half per cent per annum interest, shall be in excess of its assets, the company shall cease the issuance of new policies until the impairment in its reserve shall be made good. Whenever the liabilities of any such company, computing its reserve liability upon the American Experience Table of Mortality and four and one-half per cent interest per annum, exceeds its assets, the Commissioner may request the Attorney General to file suit in the name of the State in the district court of the county in which such company is located for the appointment of a receiver to terminate and liquidate the affairs of the company, and such action may be maintained. In any such action, such district court, or judge thereof, in vacation, shall have the power, if in his opinion the interests of the policy-holders of the company require it, to enter an order for the reinsurance of all outstanding risks of such company in some other life insurance company authorized to do business in this State upon such terms and conditions as may be approved by the Commissioner, and by such court, or the judge thereof, in vacation; and such court or judge may for that purpose direct the conveyance of the entire assets of any such company, or any portion thereof, to such reinsuring company in consideration of such re-insurance. [Id.]

Art. 4818. [4811] Investment of funds.—Mutual life insurance companies shall invest their funds in accordance with the provisions of the third chapter of this title, concerning investments of life insurance companies in this State; all moneys of mutual life insurance companies, coming into the hands of any officer thereof, when not invested as prescribed, shall be deposited in the name of such company in some bank which is subject to either State or national regulation and supervision, and which has been approved by the Commissioner as a depository therefor. [Id.]

Art. 4819. Other laws to govern.—The provisions of chapter 3 of this title when not in conflict with the articles of this chapter, shall apply to and govern mutual life insurance companies organized under the provisions of this chapter. [Id.]

CHAPTER EIGHT

FRATERNAL BENEFIT SOCIETIES

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Article 4820. "Fraternal benefit society."—Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provision for the payment of benefits in accordance with Article 4824 is hereby declared to be a fraternal benefit society. [Acts 1913, p. 220.]

Art. 4821. "Lodge system."—Any society having a supreme governing or legislative body and subordinate lodges or branches by whatever name known, into which members shall be elected[,] initiated and admitted in accordance with the Constitution, laws, rules, regulations and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system. [Id.]

Art. 4822. "Representative form of government."—Any such society shall be deemed to have a representative form of government when it shall provide in its Constitution and laws for a supreme legislative or governing body, composed of representatives, elected either by the members or by delegates elected, directly or indirectly by the members, together with such other members as may be prescribed by its Constitution and laws; provided that elective members shall constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its Constitution and laws. The meetings of the supreme or governing body, and the election of officers, representatives or delegates, shall be held as often as once in four years. The members, officers, representatives or delegates of a fraternal benefit society shall not vote by proxy. [Id.]

Art. 4823. Exemptions.—Except as herein provided, such societies shall be governed by this law, and shall be exempt from all provisions of the insurance laws of this State, not only in governmental relations with the State, but for every other purpose. No law hereafter enacted shall apply to them, unless they be expressly designated therein. [Id.]

Art. 4824. Benefits.—Every society transacting business under this law shall provide for the payment of death benefits and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age. The period of life at which the payment of benefits for disability on account of old age shall commence shall not be under seventy years. Such society may provide for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all or such portion of the face value of his certificate as its laws may provide. Nothing in this law shall be so construed as to prevent the issuing of benefit certificates for a term of years less than the whole of life which are payable upon the death or disability of the member occurring within the term for which the benefit certificates may be issued. Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate, with interest payable or compounded annually at a rate not lower than four per cent per annum. This privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contribution, and to contracts affected by such readjustment. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve not lower than the usual reserve computed by the American Experience Table and five per cent interest may grant to its members extended and paid-up protection, or such withdrawal equities as its Constitution and laws may provide. Such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made. [Id.]

Art. 4825. Benefits upon life of child.—Any fraternal benefit society authorized to do business in this State and operating on the lodge plan, may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death or annuity benefits upon the lives of children between the ages of two and eighteen years at next birthday, for whose support and maintenance a member of such society is responsible. Any such society may at its option organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the society. The total benefits payable as above provided shall in no case exceed the following amounts at ages at next birthday at time of death, respectively as follows:

Between the ages of	Amount	Between the ages of	Amount
2 and 3	$ 34	8 and 9	$200.00
3 and 4	40	9 and 10	240.00
4 and 5	48	10 and 11	300.00
5 and 6	58	11 and 12	380.00
6 and 7	140	12 and 13	460.00
7 and 8	160	13 and 16	520.00
		16 and 18	600.00

[Acts 1917, p. 430.]

Art. 4826. Certificates as to child.—No benefit certificates as to any child shall take effect until after medical examination or inspection by a licensed medical practitioner, in accordance with the laws of the society, nor shall any such benefits [benefit] certificate be issued unless the society shall simultaneously put in force or have in force at time of issue of said certificate at least five hundred such certificates, on each of which at least one assessment has been paid, nor where the number of lives represented by like certificate falls below five hundred. The death benefit contributions to be made upon such certificate shall be based upon the "Standard Industrial Mortality Table" or the "English Life Number Six" and a rate of interest not greater than 4 per cent per annum, or upon a higher standard. Contributions may be waived or returns may be made from any surplus held in excess of reserve and other liabilities, as provided in the by-laws. Extra contributions shall be made if the reserves hereafter provided for become impaired. [Id.]

Art. 4827. Reserve and rights of child.—Any society entering into such insurance agreement shall maintain on all such contracts the reserve required

by the standard of mortality and interest adopted by the society for computing contributions, as provided in the preceding article, and the funds representing the benefit contributions and all accretions thereon shall be kept as separate and distinct funds, independent of the other funds of the society, and shall not be liable for nor used for the payment of the debts and obligations of the society other than the benefits herein authorized. A society may provide that when a child reaches the minimum age for initiation into membership in such society, any benefit certificate issued hereunder may be surrendered for cancellation and exchanged for any other form of certificate issued by the society, provided that such surrender will not reduce the number of lives insured in the branch below five hundred, and upon the issuance of such new certificate any reserve upon the original certificate herein provided for shall be transferred to credit of the new certificate. Neither the person who originally made application for benefits on account of such child, nor the beneficiary named in such original certificate, nor the person who paid the contribution, shall have any vested right in such new certificate, the free nomination of a beneficiary under the new certificate being left to the child so admitted to benefit membership. [Id.]

Art. 4828. Statement as to children.—An entirely separate financial statement of the business transactions and of assets and liabilities arising therefrom shall be made in its annual report to the Commissioner of Insurance by any society availing itself of the provisions hereof. The separation of assets, funds and liabilities required hereby shall not be terminated, rescinded or modified, nor shall the funds be diverted for any use other than as specified in the preceding article as long as any certificates issued hereunder remain in force, and this requirement shall be recognized and enforced in any liquidation, reinsurance, merger, or other change in the condition of the status of the society. [Id.]

Art. 4829. Specified payments.—Any society shall have the right to provide in its laws and the certificate issued hereunder for specified payments on account of the expense or general fund, which payments shall or shall not be mingled with the general fund of the society as its constitution and by-laws may provide. [Id.]

Art. 4830. Child membership.—In the event of the termination of membership in the society by the person responsible for the support of any child, on whose account a certificate may have been issued, as provided herein, the certificate may be continued for the benefit of the estate of the child, provided, the contributions are continued, or for the benefit of any other person responsible for the support and maintenance of such child, who shall assume the payment of the required contributions. [Id.]

Art. 4831. Beneficiaries.—The payment of death benefits shall be confined to wife, husband, relative by blood to the fourth degree, children by legal adoption, mother-in-law, son-in-law, daughter-in-law, stepfather, step-mother, step-children, father-in-law or to a person or persons dependent upon the member. If after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege, with the consent of the society, to make such institution his beneficiary. Within the above restrictions each member shall have the right to designate his beneficiary, and from time to time have the same changed in accordance with the laws, rules or regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member. If a member shall die without designating a beneficiary, or if at the death of the member the beneficiary designated is dead or has no insurable interest in the life of the member, the benefits payable under the certificate shall not be forfeited but shall be paid to the persons named in this article, but in such order as the by-laws of the society shall prescribe; and if such society shall fail to prescribe the order of payment, then the same shall be payable to the persons named in this article and in the order first named. [Acts 1923, p. 116.]

Art. 4832. Organizations as beneficiary.—Fraternal benefit societies, heretofore or hereafter incorporated by the State of Texas or licensed to do business therein, shall be authorized to provide in their constitutions, by-laws or fundamental laws for the issuance of benefit certificates to their members, wherein any association, society or corporation, organized and operated for religious, eleemosynary or educational purposes may be named as beneficiary. [Acts 1917, p. 372.]

Art. 4833. Qualifications for membership.—Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of the society. Any beneficiary member of such society who shall apply for a certificate providing for disability benefits need not be required to pass an additional medical examination therefor. Nothing herein shall prevent such society from accepting general or social members. [Acts 1913, p. 220.]

Art. 4834. Certificate.—Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation or, if a voluntary association, the articles of association, the constitution and laws of the society, and the application for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same, certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof. Any changes, additions or amendments to said charter or articles of incorporation, or articles of association, or constitution or laws duly made or enacted subsequent to the issuance of the benefit certificates shall bind the member and his beneficiaries, and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership. [Id.]

Art. 4835. Funds.—Any society may create, maintain, invest, disburse and apply an emergency surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment of the surrender of any part thereof, except as provided in the fifth article of this chapter. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed shall be derived from periodical or other payments by the members of the society and accretions of said funds. No society, domestic or foreign, shall hereafter be incorporated or admitted to transact business in this State which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the National Fraternal Congress Table of Mortality as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard with interest assumption not more than four per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent per annum. Deferred payments or installments of claims shall be considered as fixed liabilities on the happenings of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments or installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liability regardless of proposed future collections to meet any such liabilities. [Id.]

Art. 4836. Investments.—Every society shall invest its funds only in securities permitted by the laws of this State for the investment of the assets of life insurance companies. Any foreign society permitted or seeking to do business in this State which invests funds in accordance with the laws of the State in which it is incorporated shall be held to meet the requirements of this law for the investment of funds. In case the Constitution and by-laws of the Grand Lodge or governing body of any such association provides that all or any part of the beneficiary or mortuary or insurance fund of such association that is paid in by or collected from the members of such subordinate or local lodge may be retained in the custody of and controlled and managed by such subordinate or local lodge, and designate what officer of such subordinate or local lodge shall have the custody and control of such fund and authorize such local officers to loan or invest the same, and such local officer shall have executed and filed, and shall from time to time when required by the Commissioner, file with such Commissioner such bond or other written instrument to be prescribed and approved in terms and amount by such Commissioner as will indemnify such fund against waste, depletion or loss through loans, investment or otherwise, then such fund so secured shall be exempt from the provisions of this chapter. [Id.]

Art. 4837. Distribution of funds.—Every provision of the laws of the society for payment by members of such society, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which may be used for expenses. No part of the money collected for mortuary or disability purposes or the net accretions of either or any of said funds shall be used for expenses. [Id.]

Art. 4838. Organization.—Seven or more persons, citizens of the United States, and a majority of whom are citizens of this State, who desire to form a fraternal benefit society, as defined by this law, may make and sign, giving their addresses, and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

1. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this State as to mislead the public or to lead to confusion.

2. The purpose for which it is formed, which shall not include more liberal powers than are granted by this law. Any lawful, social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society, and the mode in which its corporate powers are to be exercised.

3. The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

4. Such articles of incorporation and duly certified copies of the Constitution and laws, rules and regulations, and copies of all proposed forms of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the Commissioner, conditioned upon the return of the advance payments, as provided in this article, to applicants, if the organization is not completed within one year, shall be filed with such Commissioner, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this law, and all provisions of law have been complied with, said Commissioner shall so certify and retain and record or file the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the Commissioner, said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its Table of Rates as provided by its Constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. No such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow, to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examination have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten subordinate lodges or branches into which said five hundred applicants have been initiated; nor until there has been submitted to said Commissioner, under oath of the president and secretary or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be sufficient to provide for meeting the mortuary obligation, contracted, when valued for death benefits upon the basis of the National Fraternal Congress Table of Mortality, as adopted by the National Fraternal Congress, August 23, 1899, or any higher standard, at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent per annum; nor until it shall be shown to the Commissioner by the sworn statement of the treasurer or corresponding officer of such society, that at least five hundred applicants have each paid in cash at least one regular monthly payment as herein provided per one thousand dollars of indemnity to be effected, which payments in the aggregate shall amount to at least twenty-five hundred dollars; all of which shall be credited to the mortuary or disability fund on account of such applicants and no part of which may be used for expenses.

Said advanced payments shall, during the period of organization, be held in trust, and if the organization is not completed within one year as hereinafter provided, returned to said applicants.

The Commissioner may make such examination and require such further information as he may deem advisable; and upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The Commissioner shall cause a record of such certificate to be made and a certified copy of such record may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provisions of this article shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the Commissioner upon cause shown; unless the five hundred applicants herein required have been secured and the organization has been completed as herein provided; and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society has completed its organization and commenced business as herein provided. When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void. Every such society shall have the power to make a Constitution and by-laws for the government of the society, the admission

of its members, the management of its affairs and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to, or amend such Constitution and by-laws and shall have such other powers as are necessary and incidental to carrying into effect its object and purposes. [Id.]

Art. 4839. Powers retained—amendments.—Any society now engaged in transacting business in this State may exercise all of the rights conferred hereby, and all of the rights, powers and privileges now exercised or possessed by it under its charter or articles of incorporation not inconsistent with this chapter, if incorporated; or if it be a voluntary association, it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein or in its Constitution and laws, and all such amendments shall be filed with the Commissioner and shall become operative upon such filing, unless a later time be provided in such amendments or in its articles of incorporation, Constitution or laws. [Id.]

Art. 4840. Mergers and transfers.—No domestic society shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the Commissioner, together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies, that such a merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of said societies.

Upon the submission of said contract, financial statements and certificates, said Commissioner shall examine the same, and if he shall find such statements to be correct and the said contract to be in conformity with the provisions of this article, and that such merger or transfer is just and equitable to the members of each of said societies, he shall approve said merger or transfer, issue his certificate to that effect, and thereupon the said contract or merger or transfer shall be of full force and effect. In case such contract is not approved, the fact of its submission and its contents shall not be disclosed by said Commissioner. [Id.]

Art. 4841. Annual license.—Societies which are now authorized to transact business in this State may continue such business until the first day of April next succeeding the passage of this law, and the authority of such societies may thereafter be renewed annually; but in all cases to terminate on the first day of the succeeding April. The license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the Commissioner ten dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this chapter. [Id.]

Art. 4842. Admission of foreign society.—No foreign society now transacting business, organized prior to the passage of this law, which is not now authorized to transact business in this State, shall transact any business herein without a license from the Commissioner of Insurance. Any such society shall be entitled to a license to transact business within this State upon filing with said Commissioner a duly certified copy of its charter or articles of association; a copy of its Constitution and laws, certified by its secretary or corresponding officer; a power of attorney to said Commissioner as hereinafter provided; a statement of its business under oath of its president and secretary or corresponding officers in the form required by said Commissioner, duly verified by an examination made by the supervising insurance official of its home State or other State satisfactory to the Commissioner; a certificate from the proper official in its home State, province or country that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical or other payments by persons holding similar contracts; and upon furnishing the Commissioner such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the State, territory, district, province or country where it is organized, he shall issue a license to such society to do business in this State until the first day of the succeeding April, and such license shall, upon compliance with the provisions of this law, be renewed annually, but in all cases to terminate on the first day of the succeeding April. The license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this State shall have the qualifications required of domestic societies organized under this law and have its assets invested as required by the laws of the State, territory, district, country or province where it is organized. For each such license or renewal the society shall pay the Commissioner of Insurance ten dollars. When said Commissioner refuses to license any society or revokes its authority to do business in this State, he shall reduce his decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of said Commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within the State. Nothing in this or the preceding article shall be construed as preventing any such society from continuing in good faith all contracts made in this State during the time such society was legally authorized to transact business herein. [Id.]

Art. 4843. Service of process.—Every society, whether domestic or foreign, hereafter applying for admission, shall before being licensed, appoint in writing the Commissioner and his successors in office to be its true and lawful attorney upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society and that the authority shall continue in force so long as any liability remains outstanding in this State.

Copies of such appointment certified by said Commissioner shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon said Commissioner or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such society. No such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense in less than thirty days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said Commissioner he shall forthwith forward by registered mail, one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein. [Id.]

Art. 4844. Place of meeting.—Each domestic society shall have its principal office in this State, but may provide that the meetings of its legislative or governing body may be held in any State, district, province or territory wherein such society has subordinate branches. All business transacted at such meetings shall be as valid in all respects as if such meetings were held in this State. [Id.]

Art. 4845. No personal liability.—Officers and members of the supreme, grand or any subordinate

body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society. The same shall be payable only out of the funds of such society and in the manner provided by its laws. [Id.]

Art. 4846. Waiving provisions of law.—The Constitution and laws of the society may provide that no subordinate body nor any of its subordinate officers or members shall have the power or authority to waive any provision of the laws and Constitution of the society, and the same shall be binding on the society and each and every member thereof and on all beneficiaries of members. All grand lodges, by whatever name known, whether incorporated or not, holding charters from any supreme governing body, which were conducting business in this State upon the passage of this law as a fraternal beneficiary association, upon what is known as the separate jurisdiction plan, shall be treated as single State organizations, and all reports required by the provisions of this charter shall be made and furnished by the officers of such supreme State governing body and shall embrace and contain the transactions, liabilities and assets of such State organization. [Id.]

Art. 4847. Benefit not attachable.—No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment, or other process, or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debtor liability of a member or beneficiary or any other person who may have a right thereunder, either before or after payment. [Id.]

Art. 4848. Constitution and laws.—Every society transacting business under this law shall file with the Commissioner a duly certified copy of all amendments of, or additions to its Constitution and laws within ninety days after the enactment of the same. Printed copies of the Constitution and laws, as amended, changed, or added to, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof. [Id.]

Art 4849. Annual reports.—Every society transacting business in this State shall annually, on or before the first day of March, file with the Commissioner in such form as he may require, a statement under oath of its president and secretary or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and its transactions for the year ending on that date, and shall furnish such other information as said Commissioner may deem necessary to a proper exhibit of its business and plan of working. The Commissioner may at other times require any further statement he may deem necessary to be made relating to such society. In addition to such annual report, each society shall annually report to said Commissioner a valuation of its certificates in force on December 31st last preceding, excluding those issued within the year for which the report is filed, in cases where the contribution [contributions] for the first year in whole or in part are used for current mortality and expenses. Such report of valuation shall show as contingent liabilities the present mid-year value of the promised benefits provided in the constitution and laws of such society, under the certificates subject to valuation; and as contingent assets the present mid-year value of the future net contributions provided in the Constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the mean of the terminal values for the end of the preceding and of the current insurance years. Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the Department of Insurance of the home State of the society, and shall be filed with the Commissioner within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the National Fraternal Congress Table of Mortality as adopted by the National Congress, August 23, 1899; or, at the option of the society, any higher table; or, at its option, it may use a table based upon the society's own experience of at least twenty years, and covering not less than one hundred thousand lives with interest assumption not more than four per centum per annum. Each such valuation report shall set forth clearly and fully the mortality and interest basis and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits, the valuation shall be according to tables of reliable experiences, and in such cases a separation of the funds shall not be required. The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities. A report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed, shall be printed and mailed to each beneficiary member of the society not later than June 1st, of each year; or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum. [Id.]

Art. 4850. Provisions to insure security.—If the valuation of the certificates, as hereinbefore provided, on December 31st, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities, such society shall thereafter maintain said financial condition at each succeeding triennial valuation as to the degree of deficiency as shown in the valuation as of December 31, 1917. If at any succeeding triennial valuation such society does not show at least the same condition, the Commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the condition required herein, said Commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, or in the case of a foreign society, its license may be cancelled in the manner provided in this chapter. Any such society, shown by any triennial valuation, subsequent to December 31, 1917, not to have maintained the condition herein required, shall, within two years thereafter, make such improvement as to show a percentage of deficiency not greater than as of December 31, 1917, or thereafter, as to all new members admitted, be subject so far as stated rates of contributions are concerned, to the provisions of this chapter applicable to the organization of new societies. The net mortuary or beneficiary contributions and funds of new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the

succeeding triennial valuation, then the said new members may be placed in a separate class and their certificates valued as an independent society in respect of contributions and funds. [Id.]

Art. 4851. Accumulation basis.—In lieu of the requirements of the two preceding articles, any society accepting in its laws the provisions of this article may value its certificates on a basis herein designated, "accumulation basis," by crediting each member with the net amount contributed for each year and with interest at approximately the next rate earned and by charging him with his share of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this State, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member. Except as specifically provided in its articles or laws or contracts no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit, including the contribution for the year, the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund or contribution especially created or required for such purpose. Any member may transfer to any plan adopted by the society with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society. Certificates issued, rerated or [re]adjusted on a basis providing for adequate rates with adequate reserves to mature such certificates upon assumption for mortality and interest recognized by the law of this State shall be valued on such basis, herein designated the "Tabular Basis." If on the first valuation under this article a deficiency in reserve shall be shown for any such certificate, the same shall be valued on the accumulation basis.

Whenever in any society having members upon the tabular basis and upon the accumulation basis, the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year, the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve or from increased contributions or by an increase in the number of assessments applied to the society, as a whole or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be specified in its laws. If the laws of the society so provide, the assets representing the reserves of any separate class of members may be carried separately for such class as if in an independent society. The required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life, or other plan of insurance, specified in the contract, acording [according] to assumptions for mortality and interest recognized by the law of this State and adopted by the society, shall be filed by the society with each annual report, and also be furnished to each member before July 1st of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis. For this purpose individual bookkeeping accounts for each member shall not be required and all calculation may be made by the actuarial methods.

Nothing herein shall prevent the maintenance of such surplus over and above the credits on the accumulation basis, and the reserves on the tabular basis pursuant to its laws; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its laws; nor as making any such reserve or credits a liability in determining the legal solvency of the society. [Id.]

Art. 4852. Examination of domestic societies.—The Commissioner or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employés or other person in relation to the affairs, transactions and conditions of the society. The expense of such examination shall be paid by the society examined, upon statement furnished by the Commissioner, and the examination shall be made at least once in three years. Whenever after examination the Commissioner is satisfied that any domestic society has failed to comply with any provisions of this chapter, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one year or more, shall have a membership of less than four hundred, or shall determine to discontinue business, said Commissioner may present the facts relating thereto to the Attorney General, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and if it shall then appear upon the trial that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society, and to distribute its funds to those entitled thereto. No such proceedings shall be commenced by the Attorney General against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it, on a date named in said notice, to show cause why such proceeding should not be commenced. [Id.]

Art. 4853. Application for receiver, etc.—No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in the State unless the same is made by the Attorney General. [Id.]

Art. 4854. Examination of foreign societies.—The Commissioner, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this State. The said Commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witnesses under oath and examine its officers, agents and employees and other persons in relation to the affairs, transactions and conditions of the society. He may, in his discretion, accept in lieu of such examination the examination of the Insurance Department of the State, territory, district, province or country where such society is organized. The actual expense of examiners making such examination shall be paid by the society, upon statements furnished by the Commissioner. If any such society or its officers refuse to permit such examination or to comply with the provisions of the law relative thereto, the authority of such society to write new business in this State shall be suspended, or license refused,

until satisfactory evidence is furnished the Commissioner relating to the condition and affairs of the society, and during such suspension the society shall not write any new business in this State. [Id.]

Art. 4855. No adverse publications.—Pending, during, or after an examination or investigation of any such society, either domestic or foreign, the Commissioner shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon such society, at its home office, nor until such society has been afforded a reasonable opportunity to answer any such financial statement or report of finding, and to make such showing in connection therewith as it may desire. [Id.]

Art. 4856. Revocation of license.—When the Commissioner on investigation is satisfied that any foreign society transacting business under this law has exceeded its powers, or has failed to comply with any provision of this chapter, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If, on the date named in said notice, such objections have not been removed to the satisfaction of said Commissioner, or the society does not present good and sufficient reason why its authority to transact business in this State should not at that time be revoked, he may revoke the authority of the society to continue business in this State. All decisions and findings of said Commissioner made under the provisions of this article may be reviewed by proper proceedings in any court of competent jurisdiction. [Id.]

Art 4857. Examination of certain societies.—Nothing in this chapter shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the insurance department of the supreme lodge Knights of Pythias) and the Junior Order of the United American Mechanics (exclusive of their beneficiary degree or insurance branch) or societies which limit their membership to any one hazardous occupation nor to similar societies which do not issue insurance certificates nor to an association of local lodges of a society now doing business in this State which provides death benefits not exceeding five hundred dollars to any one person or disability benefits not exceeding three hundred dollars in any one year to pay one person or both, nor to any contracts of reinsurance business on such plan in this State nor to domestic societies which limit their membership to the employees of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description which do not provide for a death benefit of more than one hundred dollars or for disability benefits of more than one hundred and fifty dollars to any person in one year. The Commissioner may require from any society such information as will enable him to determine whether such society is exempt from the provisions of this law.

Any fraternal benefit society heretofore organized and incorporated and operating within the definition set forth in the first three articles of this chapter, providing for the benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this law and shall have all the privileges and shall be subject to all the provisions and regulations of this law, except that the provisions of this law requiring medical examinations, valuations of benefit certificates and that the certificates shall specify the amount of benefits, shall not apply to such society. [Id.]

Art. 4858. Taxation.—Every fraternal benefit society organized or licensed under this chapter is hereby declared to be a charitable and benevolent institution, and all of its funds and property shall be exempt from all and every State, county, district, municipal and school tax, other than taxes on real estate and office equipment, when same is used for other than lodge purposes. [Id.]

Art. 4859. Exceptions.—The provisions of this chapter shall not apply to incorporated or unincorporated mutual relief or benefit, or burial associations, operating upon the assessment plan, whose business is confined to not more than one county in the State of Texas, or to a territory in two or more adjacent counties included within a radius of not more than fifty miles surrounding the city or town in which its principal office is to be located, which is designated in its charter and which at no time shall have a membership exceeding 2000 members in any one class or group, which are hereby denominated local mutual aid associations; provided that such associations are in no manner directly or indirectly connected, federated or associated with any such association and do not directly or indirectly contribute to the expense or support of any other such association, or to the officers, promoters, or managers thereof; and, provided, that no person or officer shall receive from said association any payment on account of organization or other expenses or salaries who is not a bona fide resident of the county or area in which such association is domiciled. The association above mentioned shall annually, on or before March 1, file a statement with the Commissioner of Insurance which shall be signed and sworn to by the president, secretary and treasurer, or the officer holding position corresponding thereto. Such a statement shall show whether the association has, during the preceding year, done any business outside of the county or area in which it is domiciled, and shall state whether the association has, during the preceding year, done any business outside of the county or area in which it is domiciled, and shall state whether or not said association is associated, federated or directly or indirectly connected with any other, and shall show what, if anything, has been contributed during the preceding year by said association, or the members, to any person or officer, or director thereof for salaries, commissions or promotion expenses, and the name and residence of the party or parties receiving the same. The Commissioner of Insurance may, at his option, and it shall be his duty, if not satisfied with said statement, to demand other and additional statements and examine the books, papers, and records of said association, either himself or by some other suitable person authorized by him. Should it appear to the Commissioner of Insurance that any such local mutual aid association is not carrying on business as set forth in this article, and is not entitled to the exemption therein set forth, such association shall be subject to and comply with all provisions of this chapter as a fraternal beneficiary association. Every such local association claiming to be entitled to the benefit of the exemption created by this article shall plainly state upon its certificates, applications and all advertising matter, in a conspicuous manner, that said association is a local mutual aid association or same shall be deemed subject to all provisions of this chapter concerning fraternal beneficiary associations.

This article and articles 4859a to 4859d are from Acts 1925, 39th Leg., p. 672, ch. 203, § 1.

Art. 4859a. Bond required.—The Commissioner of Insurance shall require the Secretary or other person having charge of the funds of every Local Mutual Aid Association doing business in this State to give bond in an amount not less than $1,000.00 and $1.00 in addition thereto for each member over 1,000 with some surety company having a permit to do business in this State or a sufficient personal surety bond.

Art. 4859b. Amount of Bond.—The secretary or other person having charge of the funds of every Local Mutual Aid Association which is now doing business in Texas or which may hereafter be organized shall be required to furnish either a surety company bond or a personal surety bond to be approved by the president of such Local Mutual Aid Association

which bond shall at no time be less than $1,000.00 and which at all times shall be for an amount not less than $1.00 for each member in good standing in said Local Mutual Aid Association.

Art. 4859c. Penalty for failure to give bond.—Every person organizing a Local Mutual Aid Association who shall fail to execute the bond required herein shall be deemed gulity [guilty] of a misdemeanor and punished by a fine of not less than $100.00 or more than $500.00 or by imprisonment of not less than thirty days or more than six months or both such fine and imprisonment.

Art. 4859d. Bond payable to the president.—Every such Local Mutual Aid Association shall have a president who shall be the presiding officer thereof and to whom the bond provided herein shall be payable for the use and benefit of the members. [Id. p. 672.]

CHAPTER NINE

MUTUAL INSURANCE COMPANIES

Art.
4860. Who may incorporate.
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4863. Certificate of incorporation.
4864. Powers and by-laws.
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4866. Conditions to obtain license.
4867. Corporations may contract with.
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4873. Subject to general laws.
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Article 4860. Who may incorporate.—Any number of persons, not less than twenty, a majority of whom shall be bona fide residents of this State, by complying with the provisions of this chapter, may become, together with others who may hereafter be associated with them or their successors, a body corporate for the purpose of carrying on the business of mutual insurance as herein provided. [Acts 1923, p. 392.]

Art. 4861. Articles of incorporation.—Any person proposing to form any such company shall subscribe and acknowledge articles of incorporation specifying:

1. The location of its principal, or home office, which shall be within this State.

2. The names and addresses of those composing the board of directors in which the management shall be vested until the first meeting of the members.

3. The names and places of residence of the incorporators. [Id.]

Art. 4862. Name of company.—No name shall be adopted by such company which does not contain the word "mutual" or which is so similar to any name already in use by any such existing corporation, company, or association, organized or doing business in the United States, as to be misleading. [Id.]

Art. 4863. Certificate of incorporation.—If such articles are prepared in accordance with this law, the Commissioner shall approve and file the same in his office and issue a certificate of incorporation to the company, which shall constitute their authority to commence business and issue policies as hereinafter provided. Such articles of incorporation may be amended in the manner provided for other corporations, or as may be provided in said certificate. [Id.]

Art. 4864. Powers and by-laws.—The company shall have legal existence from and after the date of issuance of said certificate and shall have such powers as are necessary or incident to the transaction of its business. The board of directors named in such articles may thereupon adopt by-laws, accept applications for insurance, and proceed to transact the business of such company. No insurance shall be put into force until the company has been licensed to transact insurance as provided by this chapter. The by-laws and any change or addition to the by-laws or any amendments thereto shall first be submitted to and be approved by the Commissioner before such changes or amendments shall be adopted by any company. [Id.]

Art. 4865. Kinds of insurance.—Any company organized under any provision of this chapter is empowered and authorized to write such kinds of insurance as may now or hereafter be written in Texas by Stock Fire Insurance Companies. [Id.]

Art. 4866. Conditions to obtain license.—No company organized under this chapter shall issue policies or transact any business of insurance unless it shall comply with the conditions following, nor until the Commissioner has, by formal license, authorized it to do so, which license he shall not issue until the corporation has complied with the following conditions:

1. It shall hold bona fide applications for insurance upon which it shall issue simultaneously or it shall have in force, at least twenty policies to at least twenty members for the same kind of insurance upon not less than two hundred separate risks, each within the maximum single risk described herein.

2. The "maximum single risk" shall not exceed twenty per cent of the admitted assets or three times the average risk, or one per cent of the insurance in force, whichever is the greater, any reinsurance taking effect simultaneously with the policy being deducted in determining such maximum single risk.

3. It shall have collected a premium upon each application the total of which premiums shall be held in cash or securities in which insurance companies are under Texas law authorized to invest and the total net assets shall be equal in case of fire insurance to not less than twice the maximum single risk assumed subject to one fire, or to one loss, nor less than ten thousand dollars, which amount shall be maintained and upon failure to do so, the company shall cease writing new business and immediately report such condition to the Commissioner. [Id.]

Art. 4867. Corporations may contract with.—Any public or private corporation, board or association in this State or elsewhere may make applications, enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee, or legal representative of any such corporation, board, association, or estate may be recognized as acting for or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of so acting. The right of any corporation organized under the laws of this State to participate as a member of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred. [Id.]

Art. 4868. Votes of members.—Each member of the company shall be entitled to one vote, or to a number of votes based upon the insurance in force, the number of policies held, or the amount of premiums paid, as the by-laws may provide. [Id.]

Art. 4869. Provisions of policy.—The policies shall provide for a premium or premium deposit payable in cash and except as herein provided, for a contingent premium at least equal to the premium or premium deposit. Such company may issue a policy without a contingent premium while it has a surplus equal to the capital required of a domestic stock insurance company transacting the same kind of insurance, and in no event shall the holder of any such policy be liable for a greater amount than the premium or premium deposit expressed in the policy, if at any time the admitted assets are less than the unearned premium, reserve and other liabilities, the company shall immediately collect upon policies with a contingent premium a sufficient proportionate part thereof to restore such assets. No member shall be liable for any part of such contingent premium in excess of the amount demanded within one year after the termination of the policy. The Commissioner may, by written order, direct that proceedings to restore such as-

sets be deferred during the time fixed in such order. [Id.]

Art. 4870. May advance money.—Any director, officer or member of such company, or any other person, may advance to such company, any money necessary for the purpose of its business or to enable it to comply with any requirements of the law and such money and interest thereon as may have been agreed upon, not exceeding seven per cent per annum shall be payable only out of the surplus remaining after providing for all reserve and other liabilities and shall not otherwise be a liability or claim against the company, or any of its assets. No commission or promotion expenses shall be paid in connection with the advance of any such money to the company. The amount of such advance shall be reported in each annual statement. [Id.]

Art. 4871. Reserves.—Such company shall maintain unearned premium and other reserves separately for each kind of insurance, upon the same basis as that required of domestic stock insurance companies transacting the same kind of insurance. [Id.]

Art. 4872. Foreign mutual company.—Any such mutual insurance company organized outside of this State and authorized to transact the business of insurance on the mutual plan in any State, district or territory shall be admitted and licensed to transact the kinds of insurance authorized by its charter or articles to the extent and with the powers and privileges specified in this law when it shall be solvent under this law and shall have complied with the following requirements:

1. Filed with the Commissioner a copy of its by-laws certified to by its secretary.

2. Filed with the Commissioner a certified copy of its charter or articles.

3. Appointed the Commissioner its agent for the service of process in any action, suit or proceedings in any court of this State, which authority shall continue as long as any liability shall remain outstanding in this State.

4. Filed a financial statement under oath, in such form as the Commissioner may require, and have complied with other provisions of law applicable to the filing of papers and furnishing information by stock companies on application for authority to transact the same kinds of insurance. [Id.]

Art. 4873. Subject to general laws.—Each such mutual insurance company, whether organized within or without this State, shall be subject except as otherwise provided by law to all general provisions of law applicable to stock insurance companies transacting the same kinds of insurance which relate to annual reports and renewal of licenses, investments, valued policies, policy forms, reciprocal or retaliatory laws, insolvency and liquidation, publication of defamatory statements, and shall make its annual report in such form and submit to such examinations and furnish such information as may be required by the Commissioner. As far as practicable such examinations of mutual insurance companies organized outside of this State shall be made in co-operation with the insurance departments of other States. The forms of annual report shall be such as are in general use throughout the United States. Nothing in this chapter shall be construed to mean that any company or association incorporated or organized hereunder shall be exempt from the provisions of the General Laws of this State, heretofore or hereafter enacted governing the incorporation, organization, regulation and operation of companies or organizations writing insurance in this State. [Id.]

Art. 4874. Re-insurance.—Any such mutual insurance company organized or admitted to transact insurance in this State may by policy, treaty or other agreement cede to, or accept from any insurance company or insurer re-insurance upon the whole or any part of any risk which reinsurance shall be without contingent liability or participation or membership unless the contract provides otherwise, and shall not be effected with any company or insurer disapproved therefor by written order of the Commissioner filed in his office. [Id.]

Art. 4875. Taxes and fees.—Each such company, whether within or without this State shall be subject to such taxes and fees as are now provided by law for such mutual companies. The tax shall be paid upon the gross premiums received for direct insurance upon property, or risks located in this State, deducting amounts paid for re-insurance, premiums upon policies not taken, premiums returned on cancelled policies and any refund or return made to the policy-holders [policyholders] other than for losses. [Id.]

CHAPTER TEN

STATE INSURANCE COMMISSION

Art.
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Article 4876. [Repealed by Acts 1927, 40th Leg., p. 329, ch. 224, § 7].

Art. 4877. [Repealed by Acts 1927, 40th Leg., p. 329, ch. 224, § 7].

Art. 4878. Commission shall fix rates.—The State Insurance Commission shall have the sole and exclusive power and authority and it shall be its duty to prescribe, fix, determine and promulgate the rates of premiums to be charged and collected by fire insurance companies transacting business in this State. Said Commission shall also have authority to alter or amend any and all such rates of premiums so fixed and determined and adopted by it, and to raise or lower the same, or any part thereof, as herein provided. Said Commission shall have authority to employ clerical help, inspectors, experts and other assistants, and to incur such other expenses as may be necessary in carrying out the provisions of this law. Such expenses, including the salaries of the members of the Commission, shall not exceed in the aggregate, for any fiscal year, the sum of one hundred and thirty thousand dollars. Said Commission shall ascertain as soon as practicable the annual fire loss in this State; obtain, make and maintain a record thereof and collect such data with respect thereto as will enable said Commission to classify the fire losses of this State, the causes thereof, and the amount of premiums collected therefor for each class of risks and the amount paid thereon, in such manner as will aid in determining equitable insurance rates, methods of reducing such fire losses and reducing the insurance rates of the State, or sub-divisions of the State. [Acts 1917, p. 136.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 4879. Maximum rate fixed.—A maximum rate of premiums to be charged or collected by all companies transacting in this State the business of fire insurance, as herein defined, shall be exclusively fixed and determined and promulgated by the State Insurance Commission, and no such fire insurance company shall charge or collect any premium or other compensation for or on account of any policy or contract of fire insurance as herein defined in excess of the maximum rate as herein provided for, but may write insurance at a less rate than the maximum rate as herein provided for. When insurance is written for less than the maximum rate, such lesser rate shall be applicable to all risks of the same character situated in the same community. [Acts 1913, p. 195.]

Art. 4880. No company exempt.—Every fire insurance company, every marine insurance company, every fire and marine insurance company, every fire and tornado insurance company, and each and every insurance company of every kind and name issuing a contract or policy of insurance, or contracts or policies of insurance against loss by fire on property within this State, whether such property be fixed or movable, stationary or in transit, or whether such property is consigned or billed for shipment within or beyond the boundary of this State or to some foreign country, whether such company is organized under the laws of this State or under the laws of any other State, territory or possession of the United States, or foreign country, or by authority of the Federal government, now holding certificate of authority to transact business in this State, shall be deemed to have accepted such certificate and to transact business thereunder, upon condition that it consents to the terms and provisions of this chapter and that it agrees to transact business in this State, subject thereto; it being intended that every contract or policy of insurance against the hazard of fire shall be issued in accordance with the terms and provisions of this chapter, and the company issuing the same governed thereby, regardless of the kind and character of such property and whether the same is fixed or movable, stationary or in transit, including the shore end of all marine risks insured against loss by fire. [Id.]

Art. 4881. Statements and books.—Said Commission is authorized and empowered to require sworn statements for any period of time from any insurance company affected by this law, and from any of its directors, officers, representatives, general agents, State agents, special agents and local agents of the rates and premiums collected for fire insurance on each class of risks, on all property in this State and of the causes of fire, if such be known, if they are in possession of such data, and information, or can obtain it at a reasonable expense; and said Commission is empowered to require such statements showing all necessary facts and information to enable said Commission to make, amend and maintain the general basis schedules provided for in this law and the rules and regulations for applying same and to determine reasonable and proper maximum specific rates and to determine and assist in the enforcement of the provisions of this law. The said Commission shall also have the right, at its discretion, either personally, or by some one duly authorized by it, to visit the office whether general, local or otherwise, of any insurance company doing business in this State, and the home office of said company outside of this State, if there be such, and the office of any officers, directors, general agents, State agents, local agents or representatives of such company, and there require such company, its officers, agents or representatives to produce for inspection by said Commission or any of its duly authorized representatives all books, records and papers of such company or such agents and representatives; and the said Commission or its duly authorized agents or representatives shall have the right to examine such books and papers and make or cause to be made copies thereof; and shall have the right to take testimony under oath with reference thereto, and to compel the attendance of witnesses for such purpose. Said Commission shall be further empowered to require the fire insurance companies transacting business in this State or any of them, to furnish said Commission with any and all data which may be in their possession, either jointly or severally, including maps, tariffs, inspection reports and any and all data affecting fire insurance risks in this State, or in any portion thereof and said Commission shall be empowered to require any two or more of said companies, or any joint agent or representative of them, to turn over any and all such data in their possession, or any part thereof, to said Commission for its use in carrying out the provisions of this law. [Id.]

Art. 4882. Schedule and report.—The rates of premium fixed by said Commission in pursuance of the provision of this law shall be at all times reasonable and the schedules thereof made and promulgated by said Commission shall be in such form as will in the judgment of the Commission, most clearly and in detail disclose the rate so fixed and determined by said Commission to be charged and collected for policies of fire insurance. Said Commission may employ and use any facts obtainable from and concerning fire insurance companies transacting business in this State, showing their expense and charges for fire insurance premiums for any period or periods said Commission may deem advisable, which in their opinion will enable them to devise and fix and determine reasonable rates of premium for fire insurance. The said Commission in making and publishing schedules of the rates fixed and determined by it shall show all charges, credits, terms, privileges and conditions which in any wise affect such rates, and copies of all such schedules shall be furnished by said Commission to any and all companies affected by this law applying therefor, and the same shall be furnished to any citizens of this State applying therefor, upon the payment of the actual cost thereof. No rate or rates fixed or determined by the Commission shall take effect until it shall have entered on order or orders fixing and determining same, and shall give notice thereof to all fire insurance companies affected by this law, authorized to transact business in the State. The State Insurance Commission, and any inspector or other agent or employee thereof, who shall inspect any risk for the purpose of enabling the Commission to fix and determine the reasonable rate to be charged thereon, shall furnish to the owner of such risk at the date of such inspection, a copy of the inspection report, showing all defects that may operate as charges to increase the insurance rate. [Id.]

Art. 4883. Analysis of rate.—When a policy of fire insurance shall be issued by any company transacting the business of fire insurance in this State, such company shall furnish the policyholder with a written or printed analysis of the rate or premium charged for such policy, showing the items of charge and credit which determine the rate, unless such policyholder has theretofore been furnished with such analysis of such rate. All schedules of rates promulgated by said Commission shall be open to the public, and every local agent of such fire insurance company shall have and exhibit to the public copies of such schedules covering all risks upon which he is authorized to write insurance. [Id.]

Art. 4884. Change or limit of rate.—Said Commission shall have full power and authority to alter, amend, modify or change any rate fixed and determined by it on thirty days' notice, or to prescribe that any such rate or rates shall be in effect for a limited time, and said Commission shall also have full power and authority to prescribe reasonable rules whereby in cases where no rate of premium shall have been fixed and determined by the Commission, for certain risks or classes of risks, policies may be written thereon at rates to be determined by the company. Such company or companies shall immediately report to said Commission such risk so written, and the rates collected therefor and such rates shall always be subject to review by the Commission. [Id.]

Art. 4885. Petition for change.—Any such fire insurance company shall have the right at any time to petition the Commission for an order changing or modifying any rate or rates fixed and determined by

the Commission, and the Commission shall consider such petition in the manner provided in this law and enter such order thereon as it may deem just and equitable. [Id.]

Art. 4886. Reducing hazard.—The Commission shall have full authority and power to give each city, town, village or locality credit for each and every hazard they may reduce or entirely remove, and also for all added fire fighting equipment, increased police protection, or any other equipment or improvement that has a tendency to reduce the fire hazard of any such city, town, village or locality, and also to give credit for a good fire record made by any city, town, village or locality. Said Commission shall also have the power and authority to compel any company to give any or all policyholders credit for any and all hazards that said policyholder or holders may reduce or remove. Said credit shall be in proportion to such reduction or removal of such hazard and said company or companies shall return to such policyholder or holders such proportional part of the unearned premium charged for such hazard that may be reduced or removed. [Id.]

Art. 4887. Revising rates.—The Commission shall have authority after having given reasonable notice, not exceeding thirty days, of its intention to do so, to alter, amend or revise any rates of premium fixed and determined by it in any schedules of such rates promulgated by it, and to give reasonable notice of such alteration, amendment or revision to the public, or to any company or companies affected thereby. Such altered, amended or revised rates shall be the rates thereafter to be charged and collected by all fire insurance companies affected by this law. No policy in force prior to the taking effect of such changes or amendments shall be affected thereby, unless there shall be a change in the hazard of the risk, necessitating a change in the rate applicable to such risk, in which event such policy shall be subject to the new rates. [Id.]

Art. 4888. Uniform policies.—The Commission shall make, promulgate and establish uniform policies of insurance applicable to the various risks of this State, copies of which uniform policies shall be furnished each company now or hereafter doing business in this State. After such uniform policies shall have been established and promulgated and furnished the respective companies doing business in this State, such companies shall, within sixty days after the receipt of such forms of policies, adopt and use said form or forms and no other; also all companies which may commence business in this State after the adoption and promulgation of such forms of policies, shall adopt and use the same and no other forms of policies. [Id.]

Art. 4889. Standard forms.—The Commission shall prescribe all standard forms, clauses and endorsements used on or in connection with insurance policies. All other forms, clauses and endorsements placed upon insurance policies shall be placed thereon subject to the approval of the Commission. The Commission shall have authority in its discretion to change, alter or amend such form or forms of policy or policies, and such clauses and endorsements used in connection therewith, upon giving notice. [Id.]

Art. 4890. Lien on insured property.—Any provision in any policy of insurance issued by any company subject to the provisions of this law to the effect that if said property is encumbered by a lien of any character or shall after the issuance of such policy become encumbered by a lien of any character then such encumbrance shall render such policy void shall be of no force and effect. Any such provision within or placed upon any such policy shall be null and void. [Id.]

Art. 4891. Co-insurance clauses.—No company subject to the provisions of this law may issue any policy or contract of insurance covering property in this State, which shall contain any clause or provision requiring the assured to take out or maintain a larger amount of insurance than that expressed in such policy, nor in any way providing that the assured shall be liable as a co-insurer with the company issuing the policy for any part of the loss or damage which may be caused by fire to the property described in such policy, and any such clause or provision shall be null and void, and of no effect. The co-insurance clauses and provisions may be inserted in policies written upon cotton, grain or other products in process of marketing, shipping, storing or manufacture. [Id.]

Art. 4892. Complaints of rates or orders.—Any citizen or number of citizens of this State or any policyholder or policyholders, or any insurance company affected by this law, or any Board of Trade, Chamber of Commerce, or other civic organization, or the civil authorities of any town, city, or village, shall have the right to file a petition with the State Insurance Commission, setting forth any cause of complaint that they may have as to any order made by this Commission, or any rate fixed and determined by the Commission, and they shall have the right to offer evidence in support of the allegations of such petition by witnesses, or by depositions, or by affidavits; upon the filing of such petition, the party complained of, if other than the Commission, shall be notified by the Commission of the filing of such petition and a copy thereof furnished the party or parties, company or companies, of whom complaint is made, and the said petition shall be set down for a hearing at a time not exceeding thirty days after the filing of such petition and the Commission shall hear and determine said petition; but it shall not be necessary for the petitioners or any one of them to be present to present the cause to the Commission, but they shall consider the testimony of all witnesses, whether such witnesses testify in person or by depositions, or by affidavits, and if it be found that the complaint made in such petition is a just one, then the matter complained of shall be corrected or required to be corrected by said Commission. [Id.]

Art. 4893. Hearing of protests.—The Commission shall give the public and all insurance companies to be affected by its orders or decisions, reasonable notice thereof, not exceeding thirty days, and an opportunity to appear and be heard with respect to the same; which notice to the public shall be published in one or more daily papers of the State, and such notice to any insurance company to be affected thereby shall be mailed addressed to the State or general agent of such company, if such address be known to the Commission, or if not known, then such letter shall be addressed to some local agent of such company, or if the address of a local agent be unknown to the Commission, then by publication in one or more of the daily papers of the State, and the Commission shall hear all protests or complaints from any insurance company or any citizen or any city, or town, or village or any commercial or civic organization as to the inadequacy or unreasonableness of any rates fixed by it or approved by it, or as to the inadequacy or unreasonableness of any general basis schedules promulgated by it or the injustice of any order or decision by it, and if any insurance company, or other person, or commercial or civic organization, or any city, town or village, which shall be interested in any such order or decision, shall be dissatisfied with any regulation, schedule or rate adopted by such Commission, such company or person, commercial or civic organization, city, town or village shall have the right, within thirty days after the making of such regulation or order, or rate, or schedule or within thirty days after the hearing above provided for, to bring an action against said Commission in the district court of Travis county to have such regulation or order or schedule or rate vacated or modified; and shall set forth in a petition therefor the principal grounds of objection to any or all of such regulations, schedules, rates or orders. In any such suit the issue shall be formed and the controversy tried and determined as in other civil cases. The court may set aside and vacate or annul any or all or any part of any regulation, schedule, order or rate promulgated or adopted by said Commission, which shall be found by the court to be unreasonable, unjust, excessive or inadequate, without disturbing

others. No injunction, interlocutory order or decree suspending or restraining directly or indirectly the enforcement of any schedule, rate, order or regulation of said Commission shall be granted. In such suit, the court, by interlocutory order, may authorize the writing and acceptance of fire insurance policies at any rate which in the judgment of the court is fair and reasonable, during the pending of such suit, upon condition that the party to such suit in whose favor the said interlocutory order of said court may be, shall execute and file with the Commissioner of Insurance a good and sufficient bond to be first approved by said court, conditioned that the party giving said bond will abide the final judgment of said court and will pay to the Commissioner of Insurance whatever difference in the rate of insurance, it may be finally determined to exist between the rates as fixed by the State Insurance Commission complained of in such suit, and the rate finally determined to be fair and reasonable by the court in said suit, and the said Commissioner of Insurance, when he receives such difference in money, shall transmit the same to the parties entitled thereto.

Whenever any action shall be brought by any company under any provision of this article within said period of thirty days, no penalties nor forfeitures shall attach or accrue on account of the failure of the plaintiff to comply with the orders, schedules, rates or regulations sought to be vacated in such action until the final determination of the same.

Either party to any such action, if dissatisfied with the judgment or decree of said court, may appeal therefrom as in other civil cases. No action shall be brought in any court of the United States to set aside any orders, rates, schedules or regulations made by said Commission under the provisions of this law until all of the remedies provided herein shall have been exhausted by the party complaining. [Id.]

Art. 4894. Rebating or discrimination.—No company shall engage or participate in the insuring or re-insuring of any property in this State against loss or damage by fire except in compliance with the terms and provisions of this law; nor shall any such company knowingly write insurance at any lesser rate than the rates herein provided for, and it shall be unlawful for any company so to do, unless it shall thereafter file an analysis of same with the Commission, and it shall be unlawful for any company, or its officers, directors, general agents, State agents, special agents, local agents, or its representatives, to grant or contract for any special favor or advantages in the dividends or other profits to come thereon, or in commissions in the dividends or other profits to accrue thereon, or in commissions or division of commission, or any position or any valuable consideration or any inducement not specified in the policy contract of insurance; nor shall such company give, sell or purchase, offer to give, sell or purchase, directly or indirectly as an inducement to insure or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, partnership or individual, or any dividends or profits accrued or to accrue thereon, or any thing of value whatsoever, not specified in the policy. Nothing in this chapter shall be construed to prohibit a company from sharing its profits with its policyholders, if such agreement as to profit-sharing shall be placed on or in the face of the policy, and such profit-sharing shall be uniform and shall not discriminate between individuals or between classes. No part of the profit shall be paid until the expiration of the policy. Any company, or any of its officers, directors, general agents, State agents, special agents, local agents or its representatives, doing any of the acts in this article prohibited, shall be deemed guilty of unjust discrimination. If any agent or company shall issue a policy without authority, and any policyholder holding such policy shall sustain a loss or damage thereunder, said company or companies shall be liable to the policyholder thereunder, in the same manner and to the same extent as if said company had been authorized to issue said policies, although the company issued said policy in violation of the provisions of this chapter. But this shall not be construed to give any company the right to issue any contract or policy of insurance other than as provided in this chapter. [Id.]

Art. 4895. Not retroactive.—The provisions of this law shall not deal with the collection of premiums, but each company shall be permitted to make such rules and regulations as it may deem just between the company, its agents, and its policyholders; and no bona fide extension of credit shall be construed as a discrimination, or in violation of the provisions of this chapter. All policies heretofore issued which provide that said policies shall be void for nonpayment of premiums at a certain specified time, shall be and the same are in full force and effect, provided, that the company or any of its agents have accepted the premium on said policies after the expiration of the dates named in said provisions fixing the date of payment.

Art. 4896. Duty of Fire Marshal.—The State Fire Marshal, at the discretion of the board, and upon the request of the mayor of any city or village, or the chief of a fire department of any city or village, or any fire marshal where a fire occurs within such city or village, or of a county or a district judge, or of a sheriff or county attorney of any county where a fire occurs within the district or county of the officers making such request, or of any fire insurance company, or its general, State or special agent, interested in a loss, or of a policyholder sustaining a loss, or upon the direction of the Insurance Commission shall forthwith investigate at the place of such fire before loss can be paid, the origin, cause and circumstances of any fire occurring within this State, whereby property has been destroyed or damaged, and shall ascertain if possible whether the same was the result of any accident, carelessness or design, and shall make a written report thereof to the Commission. The State Fire Marshal shall have the power to administer oaths, take testimony, compel the attendance of witnesses and the production of documents. When, in his opinion, further investigation is necessary, he shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have knowledge in relation to the matter under investigation, and shall cause the same to be reduced to writing, and if he shall be of the opinion that there is evidence sufficient to charge any person with arson, or with attempt to commit arson, or of conspiracy to defraud or criminal conduct in connection with such, he shall arrest or cause to be arrested such person, and shall furnish to the proper prosecuting attorney all evidence secured, together with the names of witnesses and all information obtained by him, including a copy of all material testimony taken in the case, and it shall be the duty of the State Fire Marshal to assist in the prosecution of all such complaints filed by him. All investigations held by or under the direction of the State Fire Marshal may, in his discretion, be private and persons other than those required to be present may be excluded from the place where such investigation is held, and the witnesses may be kept separate from each other and not allowed to communicate with such others until they have been examined; and all testimony taken in an investigation under the provisions of this law may, at the election of the State Fire Marshal, be withheld from the public. [Acts 1917, p. 137.]

Art. 4897. Authority of Fire Marshal.—The State Fire Marshal is hereby authorized to enter at any time any buildings or premises where fire occurred or is in progress, or any place contiguous thereto, for the purpose of investigating the cause, origin and circumstances of such fire. The State Fire Marshal, upon complaint of any person, shall, at all reasonable hours, for the purpose of examination, enter into and upon all buildings and premises within this State, and it shall be his duty to enter upon and make or cause to be entered upon and made, at any time, a thorough examination of mercantile, manufacturing and public buildings, and all places of public amusement, or where public gatherings are held, together with the premises belonging thereto. Whenever he shall find any building or

other structure which for want of repair or by reason of age or dilapidated condition, or which for any cause is liable to fire, and which is so situated as to endanger other buildings or property, or is so occupied that fire would endanger persons or property therein, and whenever he shall find an improper or dangerous arrangement of stoves, ranges, furnaces or other heating appliances of any kind whatsoever, including chimneys, flues and pipes with which the same may be connected, or dangerous arrangement or lighting systems or devices, or dangerous storage of explosives, compounds, petroleum, gasoline, kerosene, dangerous chemicals, vegetable products, ashes, combustible, inflammable and refuse materials, or other conditions which may be dangerous in character, or liable to cause or promote fire, or create conditions dangerous to firemen or occupants, he shall order the same to be removed or remedied, and such order shall be forthwith complied with by the occupant or owner of such building or premises, and the State Fire Marshal is hereby authorized, when necessary, to apply to a court of competent jurisdiction for the necessary writs or orders to enforce the provisions of this article and in such case he shall not be required to give bond. [Id.]

Art. 4898. Acting Fire Marshal.—If for any reason the State Fire Marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the State Fire Marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as the State Insurance Commission may allow. If the investigation of a fire is made at the request of an insurance company, or at the request of a policyholder sustaining loss, or at the request of the mayor, town clerk or chief of the fire department of any city, village or town in which the fire occurred, then the expenses of the Fire Marshal, clerical expenses, witnesses and officers fees incident and necessary to such investigation shall be paid by such insurance company, or such policyholder of such city or town as the case may be, otherwise the expenses of such investigation are to be paid as part of the expenses of the State Insurance Commission. The party or parties, company or companies, requesting such investigation, shall before such investigation is commenced deposit with the State Insurance Commission, an amount of money in the judgment of said Commission sufficient to defray the expenses of said Fire Marshal in conducting such investigation. [Acts 1913, p. 198.]

Art. 4899. Result of investigation.—No action taken by the State Fire Marshal shall affect the rights of any policyholder or any company in respect to a loss by reason of any fire so investigated; nor shall the result of any such investigation be given in evidence upon the trial of any civil action upon such policy, nor shall any statement made by any insurance company, its officers, agents or adjusters, nor by any policy holder, or any one representing him, made with reference to the origin, cause or supposed origin or cause of a fire to the Fire Marshal or to any one acting for him, or under his direction, be admitted in evidence or made the basis for any civil action for damages. [Id.]

Art. 4900. To cancel authority.—If any insurance company affected by the provisions of this law shall violate any provision of this chapter, the Commissioner shall, by and with the consent of the Attorney General, cancel its certificate of authority to transact business in this State. [Id.]

Art. 4901. Revocation of certificate.—The Commissioner of Insurance, upon ascertaining that any insurance company or officer, agent or representative thereof has violated any provision of this chapter, may, at his discretion, and with the consent and approval of the Attorney General, revoke the certificate of authority of such company, officer, agent or representative; but such revocation of any certificate shall in no manner affect the liability of such company, officer, agent or representative to the infliction of any other penalty provided by law. Any action, decision or determination of the Commissioner and the Attorney General in such cases shall be subject to the review of the courts of this State as herein provided. [Id.]

Art. 4902. Tax on premiums.—The State of Texas shall assess and collect an additional one and one-fourth per cent of the gross fire insurance premiums of all fire insurance companies doing business in this State, according to the reports made to the Commissioner as required by law; and said taxes when collected shall be placed in a separate fund with the State Treasurer to be expended during the current year, or so much thereof as may be necessary in carrying out the provisions of this chapter. Such expenditures, including the salaries of the members of the Commission, shall not exceed in the aggregate the sum of two hundred and twelve thousand five hundred dollars per annum; and should there be an unexpended balance at the end of any year, the State Insurance Commission shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury, together with said unexpended balance in the Treasury, will not exceed the amount appropriated for the current year, to pay all necessary expenses of maintaining the Commission, which funds shall be paid out upon requisition made out and filed by a majority of the Commission, when the Comptroller shall issue warrants therefor. [Acts 3rd C. S. 1920, p. 105.]

Art. 4903. Exceptions.—This law shall not apply to purely mutual or to purely profit-sharing fire insurance companies incorporated or unincorporated under the laws of this State, and carried on by the members thereof solely for the protection of their property and not for profit; nor to purely co-operative inter-insurance and reciprocal exchange carried on by the members thereof solely for the protection of their property and not for profit. [Id.]

Art. 4904. Compensation of Commission.—The necessary compensation of experts, clerical force, and other persons employed by said Commission, and all necessary traveling expenses, and such other expenses as may be necessary, incurred in carrying out the provisions of this chapter, shall be paid by warrants drawn by the Comptroller upon the State Treasurer upon the order of said Commission. The total amount of all salaries and said other expenses shall not exceed the sum produced by the assessment on the gross premiums of all fire insurance companies doing business in this State. [Acts 1917, p. 136.]

Art. 4905. Additional compensation.—The necessary compensation of experts, the clerical force and other persons employed by the Commission to carry out the purposes of the succeeding articles of this chapter, and all necessary traveling expenses and such other expenses as may be necessarily incurred in carrying out such provisions, shall be paid as provided in the preceding article. [Acts 1923, p. 408.]

Art. 4906. Tax on gross premiums.—To defray the expense of carrying out the provisions of the succeeding articles of this chapter, there shall be annually assessed and collected by the State of Texas from each company and association writing workmen's compensation insurance in this State, in addition to all other taxes now imposed or which may hereafter be imposed by law, a tax of three-fifths of one per cent of the gross premiums collected by such company or association during the preceding year, under workmen's compensation insurance policies written by said companies and associations covering risks in this State, according to the reports made to the Commissioner as required by law. Said taxes when collected shall be placed in a separate fund with the State Treasurer to be expended during the current year in carrying out such provisions. Such expenditures, including the salaries of the members of the Commission, hereunder, shall not exceed in the aggregate the sum assessed and collected from said companies and associations;

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

and, should there be an unexpended balance at the end of any year, it shall be transferred by the State Treasurer to the credit of the general revenue of this State. [Id.]

Art. 4907. Workmen's compensation rates.—The said Commission shall make, establish and promulgate all classifications of hazards and rates of premium respectively applicable to each, contemplated and provided for by Chapter 18 of this title. Said commission shall publish all rates promulgated by it as affecting compensation insurance in this State, and said rates, or any change therein, shall be published fifteen days before they become effective and in force. [Id.]

Art. 4908. To prescribe standard forms.—The Commission shall prescribe standard policy forms to be used by all companies or associations writing workmen's compensation insurance in this State. No company or association authorized to write workmen's compensation insurance in this State shall, except as hereinafter provided for, use any classifications of hazards, rates of premium, or policy forms other than those made, established and promulgated and prescribed by the Commission. [Id.]

Art. 4909. To assemble data.—The Commission shall assemble all necessary data for its use in establishing classifications of hazards and making and promulgating premium rates. [Id.]

Art. 4910. May require statements.—The Commission may require sworn statements from any insurance company or association affected by this law showing the payroll reported to it and incurred losses by classifications and such other information which in the judgment of the Commission may be necessary in determining proper classifications, rates and forms. The Commission shall prescribe the necessary forms for such statements and reports, having due regard to the methods and forms in use in other States for similar purpose in order that uniformity of statistics may not be disturbed. [Id.]

Art. 4911. Experience rating.—The Commission shall determine hazards by classes and fix such rates of premium applicable to the payroll in each of such classes as shall be adequate to the risks to which they apply and consistent with the maintenance of solvency and the creation of adequate reserves and a reasonable surplus, and for such purpose may adopt a system of schedule and experience rating in such manner as to take account of the peculiar hazard of each individual risk, provided such rate shall be fair and reasonable and not confiscatory as to any class of insurance carriers authorized by law to write workmen's compensation insurance in this State. To insure the adequacy and reasonableness of rates, the Commission shall take into consideration an experience gathered from a territory sufficiently broad to include the varying conditions of the industries in which the classifications are involved, and over a period sufficiently long to insure that the rates determined therefrom shall be just, reasonable, and adequate rates. The Commission shall exchange information and experience data with the rate-making bodies of other States and shall consult any national organization or association now or hereafter existing for the purpose of assembling data for the making of compensation insurance rate. [Id.]

Art. 4912. Hearing before Commission.—Any policyholder, insurance company, or association shall have the right to a hearing before the Commission on any grievance occasioned by the promulgation of any classification, rate or policy form by the Commission; such hearing to be held in conformity with rules to be prescribed by the Commission. No hearing shall suspend the operation of any classification, rate, or policy form unless the Commission shall so order. [Id.]

Art. 4913. Uniform policy.—The Commission shall prescribe a uniform policy for workmen's compensation insurance and no company or association shall thereafter use any other form in writing workmen's compensation insurance in this State, provided that any company or association may use any form of endorsement appropriate to its plan of operation, if such endorsement shall be first submitted to and approved by the Commission, and any contract or agreement not written into the application and policy shall be void and of no effect and in violation of the provisions of this chapter, and shall be sufficient cause for revocation of license to write workmen's compensation insurance within this State. [Id.]

Art. 4914. Adequate reserves.—Nothing in this chapter shall be construed to prohibit the operation hereunder of any stock company, mutual company, reciprocal or inter-insurance exchange, or Lloyd's association, to prohibit any stock company, mutual company, reciprocal, or inter-insurance exchange or Lloyd's association, issuing participating policies, provided no dividend to subscribers under the Workmen's Compensation Act shall take effect until the same has been approved by the Commission. No such dividend shall be approved until adequate reserve has been provided, said reserves to be computed on the same basis for all classes of companies or associations operating under this chapter, as prescribed under the insurance laws of the State of Texas. [Id.]

Art. 4915. Commission to make rules.—The Commission is hereby empowered to make and enforce all such reasonable rules and regulations not inconsistent with the provisions of this law as are necessary to carry out its provisions. [Id.]

Art. 4916. Scope of law.—No provision of the Act creating the State Insurance Commission, with regard to the fixing and promulgation of rates for fire insurance or the prescribing of fire insurance policies and forms shall be applicable to the fixing of compensation insurance classifications or the making of compensation insurance rates or the prescribing of compensation insurance policy forms; but the provisions of this Act shall be construed and applied independently of any other law or laws, or parts of laws, having to do with the matter of insurance rates and forms or of fixing the duties of the State Insurance Commission. [Id.]

Art. 4917. Definitions.—The words "Company" and "Association" used in this Act mean the Texas Employers Insurance Association, or any stock company, or any mutual company, or any reciprocal, or any inter-insurance exchange, or Lloyd's association authorized to write Workmen's Compensation Insurance in this State. [Id.]

Art. 4918. Cancellation of license.—The Commissioner shall cancel the license of any insurance company or association of persons to transact workmen's compensation insurance business in this State upon a second conviction of any officer or representative of such company or association for a violation of any provision of this chapter relating to such business. [Id.]

CHAPTER ELEVEN

FIRE AND MARINE COMPANIES

Art.
4919. What may be insured.
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Article 4919. [4862] What may be insured.—It shall be lawful for any insurance company doing business in this State under the proper certificate of authority, except a life or health insurance company, to insure houses, buildings and all other kinds of property against loss or damage by fire; to take all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether on land or water, or any vessel afloat, wherever the same may be;

to lend money on bottomry or respondentia; to cause itself to be insured against any loss or risk it may have incurred in the course of its business and upon the interest which it may have in any property by means of any loan or loans which it may have on bottomry or respondentia; and generally to do and perform all other matters and things proper to promote these objects; insure automobiles or other motor vehicles, whether stationery [stationary] or being operated under their own power, against all or any of the risks of fire, lightning, wind storms, hail storms, tornadoes, cyclones, explosions, transportation by land or water, theft and collisions, upon filing with the Commissioner notification of their purpose to do so. [Acts 1875, p. 34; G. L. vol. 8, p. 406; Acts 1913, p. 209.]

Art. 4920. [4865] [3077] Reduction of capital stock.—Whenever the joint stock of any fire, fire and marine, or marine insurance company of this State becomes impaired, the Commissioner may, in his discretion, permit the said company to reduce its capital stock and par value of its shares in proportion to the extent of impairment. In fixing such reduced capital, no sum exceeding twenty-five thousand dollars shall be deducted from the assets and property on hand, which shall be retained as surplus assets. No part of such assets and property shall be distributed to the stockholders, nor shall the capital stock of a company in any case be reduced to an amount less than one hundred thousand dollars. [Acts 1876, p. 222; G. L., vol. 8, p. 1058.]

Art. 4921. [4864] [3078] Capital stock to be made good.—Any fire, marine or inland insurance company having received notice from the Commissioner to make good its whole capital stock within sixty days shall forthwith call upon its stockholders for such amounts as shall make its capital equal to the amount fixed by the charter of such company. [Id]

Art. 4922. [4865] [3079] Stockholder failing to pay.—If any stockholder of such company shall neglect or refuse to pay the amount so called for, after notice personally given, or by advertisement for such time and in such manner as said Commissioner shall approve, it shall be lawful for said company to require the return of the original certificate of stock held by such stockholder, and in lieu thereof to issue a new certificate for such number of shares as such defaulting stockholders may be entitled to in the proportion that the ascertained value of the funds of said company may be found to bear to the original capital of said company; the value of such shares for which new certificates are issued shall be ascertained under the direction of said Commissioner, and the company shall pay for the fractional parts of shares. [Id.]

Art. 4923. [4866] [3080] New stock.—It shall be lawful for such company to create new stock and dispose of the same and to issue new certificates therefor, to any amount sufficient to make up the original capital of the company. [Id.]

Art. 4924. [4869] [3076] Holding real estate.—No fire, marine or inland insurance company organized under the laws of this State shall purchase or hold any real estate, except—

1. Such as shall be requisite for its convenient accommodation in the transaction of its business.
2. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for money due.
3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the legitimate business of the company or for money due.
4. Such as shall have been purchased at sales under judgments, decrees or mortgages obtained or made for such debts.

All lands purchased or held in violation of this article shall be forfeited to the State. [Id.]

Art. 4925. [4870] Shall file bond.—Every fire insurance company, not organized under the laws of this State, applying for a certificate of authority to transact any kind of insurance in this State, shall, before obtaining such certificate, file with the Commissioner, a bond, with good and sufficient surety or sureties, to be approved by and to be payable to the Commissioner and his successors in office, in a sum equal to twenty-five per cent of its premiums collected from citizens or upon property in this State during the preceding calendar year, as shown by its annual report for such year. The bond in no case shall be less than ten thousand nor more than fifty thousand dollars, conditioned that said company will pay all its lawful obligations to citizens of this State. Such bonds shall be subject to successive suits by citizens of this State so long as any part of the same shall not be exhausted, and the same shall be kept in force unimpaired until all claims of such citizens arising out of obligations of said company have been fully satisfied. Such bonds shall provide that in the event the company shall become insolvent or cease to transact business in this State at any time when it has outstanding policies of insurance in favor of citizens of this State, or upon property in this State, the Commissioner shall have power, after having given ten days notice to the officers of such company, or any receiver in charge of its property and affairs, to contract with any other insurance company transacting business in this State for the assumption and reinsurance by it of all the insurance risks outstanding in this State of such company which is insolvent, or which has ceased to transact business in this State, which contract shall also provide for the assumption by such reinsurance company of all outstanding and unsatisfied lawful claims then outstanding against such company which has become insolvent, or ceased to transact business in this State. In the event of the Commissioner making any such contract, and if the same shall be approved as reasonable by the Attorney General and the Governor of this State, the reinsuring company shall be entitled to recover from the makers of such bond the amount of the premium or compensation so agreed upon for such reinsurance. Any company desiring to do so may, at its option, in lieu of giving the bond required by this article, deposit securities of any kind in which it may lawfully invest its funds with the State Treasurer upon such terms and conditions as will in all respects afford the same protection and indemnity as herein provided for to be afforded by said bond. [Acts 1909, p. 182.]

Art. 4926. [4871] May deposit securities.—Every fire insurance company, not organized under the laws of this State, hereafter issuing or causing or authorizing to be issued, any policy of insurance other than life insurance, shall first have filed with the Commissioner during the calendar year in which such policy may issue, or authorize or cause to be issued, a bond of good and sufficient sureties to be approved by such Commissioner in a sum of not less than ten thousand dollars, conditioned for the payment of all lawful obligations to citizens of this State arising out of any policies or contracts issued by such fire insurance company; which such bonds shall be subject to successive suits by citizens of this State so long as any part of the same shall not be adjusted, and so long as there remains outstanding any such obligations or contracts of such fire insurance company. This article shall not apply to any person, firm or corporation, or association, doing an inter-insurance, cooperative or reciprocal business. [Id.]

Art. 4927. [4872] [3083] Annual statement.—The president or vice-president and secretary of each fire, marine or inland insurance company doing business in this State, annually, on the first day of each year, or within sixty days thereafter, shall prepare under oath and deposit with the Commissioner a full, true and complete statement of the condition of such company on the last day of the month of December preceding. [Act Feb. 17, 1875, p. 37; G. L., vol. 8, p. 409.]

Art. 4928. [4873] [3084] Details of annual statement.—Such annual statement shall exhibit the following items and facts:

1. The name of the company and where located.
2. The names and residence of the officers.

3. The amount of the capital stock of the company.
4. The amount of capital stock paid up.
5. The property or assets held by the company, viz: The real estate owned by such company, its location, description and value as near as may be, and if said company be one organized under the laws of this State, shall accompany such statement with an abstract of the title to the same; the amount of cash on hand and deposited in banks to the credit of the company, and in what bank or banks the same is deposited; the amount of cash in the hands of agents, naming such agents: the amount of cash in course of transmission; the amount of loans secured by first mortgages on real estate, with the rate of interest thereon, specifying the location of such real estate, its value and the name of the mortgagor; the amount of all bonds and other loans, with the rate of interest thereon and how secured; the amount due the company in which judgments have been obtained, describing such judgments; the amount of stock of this State, of the United States, of any incorporated city of this State, and of any other stock owned by the company, describing the same and specifying the amount and number of shares, and the par and market value of each kind of stock; the amount of stock held by such company as collateral security for loans, with amount loaned on each kind of stock, its par and market value; the amount of interest actually due to the company and unpaid; all other securities, their description and value.
6. The liabilities of such company, specifying the losses adjusted and due; losses adjusted and not due; losses unadjusted; losses in suspense and the cause thereof; losses resisted and in litigation; dividends, either in scrip or cash, specifying the amount of each declared but not due; dividends declared and due; the amount required to reinsure all outstanding risks on the basis of forty per cent of the premium on all unexpired fire risks and one hundred per cent of the premium on all unexpired marine and inland transportation risks; the amount due banks or other creditors, naming such banks or other creditors and the amount due to each; the amount of money borrowed by the company, of whom borrowed, the rate of interest thereon and how secured; all other claims against the company, describing the same.
7. The income of the company during the preceding year, stating the amount received for premiums, specifying separately fire, marine and inland transportation premiums, deducting reinsurance; the amount received for interest, and from all other sources.
8. The expenditures during the preceding year, specifying the amount of losses paid during said term, stating how much of the same accrued prior, and how much subsequent, to the date of the preceding statement, and the amount at which losses were estimated in such preceding statement; the amount paid for dividends; the amount paid for return premiums, commissions, salaries, expenses, and other charges of officers, agents, clerks and other employés; the amount paid for local, state, national, internal revenue and other taxes and duties; the amount paid for all other expenses such as fees, printing, stationery, rents, furniture, etc.
9. The largest amount insured in any one risk, naming the risk.
10. The amount of risks written during the preceding year.
11. The amount of risks in force having less than one year to run.
12. The amount of risks in force having more than one and not over three years to run.
13. The amount of risks having more than three years to run.
14. Whether or not dividends are declared on premiums received for risks not terminated. [Id.]

Art. 4929. [4874] [3089] Policy a liquidated demand.—A fire insurance policy, in case of a total loss by fire of property insured, shall be held and considered to be a liquidated demand against the company for the full amount of such policy. The provisions of this article shall not apply to personal property. [Acts 1879, p. 83.]

Art. 4930. Breach by insured.—No breach or violation by the insured of any warranty, condition or provision of any fire insurance policy, contract of insurance, or application therefor, upon personal property, shall render void the policy or contract, or constitute a defense to a suit for loss thereon, unless such breach or violation contributed to bring about the destruction of the property. [Acts 1913, p. 194; Acts 1927, 40th Leg., p. 48, ch. 33, § 1.]

Art. 4931. Interest of mortgagee or trustee.—The interest of a mortgagee or trustee under any fire insurance contract hereafter issued covering any property situated in this State shall not be invalidated by any act of neglect of the mortgagee or owner of said described property or the happening of any condition beyond his control, and any stipulation in any contract in conflict herewith shall be null and void. [Acts 1919, p. 20.]

Acts 1919, p. 20, ch. 15, § 1, from which the above article is taken, reads "act or neglect of the mortgagor," instead of "act of neglect of the mortgagee" in line 5.

Art. 4932. [4875] [3075] Re-insurance.—1. No fire, fire and marine, marine or inland insurance company doing business in this State shall expose itself to any one risk, except when insuring cotton in bales, and grain, to an amount exceeding ten per cent of its paid up capital stock, unless the excess shall be insured by such company in some other solvent insurance company legally authorized to do business in this State.
2. Every fire, fire and marine, marine or inland insurance company doing business in this State may reinsure the whole or any part of any policy obligation in any other insurance company legally authorized to do business in this State. The Commissioner shall require every year from every insurance company doing business in this State a certificate sworn to before an officer in this State to the effect that no part of the business written by such company in this State has been re-insured in whole or in part by any company, corporation, association or society not authorized to do business in this State. Every insurance company doing business shall also furnish the Commissioner with a list of re-insurances during the year in authorized companies, showing the name, amount and premium effected in each company.
3. Any insurance company authorized to transact the business of fire, fire and marine, marine and inland insurance in this State failing to comply with any provisions of this article, shall forfeit its authority to do business for a period of one year. The Commissioner shall investigate any complaint as to such violation and upon satisfactory proof that any company authorized to transact the business of fire, fire and marine, marine or inland insurance in this State has violated any provision of this article, the Commissioner shall revoke the certificate of authority of the offending company.
4. The Commissioner upon payment of license fee of twenty-five dollars, may issue to an agent who is regularly commissioned to represent one or more fire, fire and marine insurance companies authorized to do business in this State, a certificate of authority to place excess lines of insurance in companies not authorized to do business in this State, provided the party desiring such excess insurance shall first file with the Commissioner an affidavit that he has exhausted all the insurance obtainable from companies duly authorized to do business in the State.
5. Before receiving license provided for in section 4 of this article, the party applying for same shall file with the Commissioner a bond in the sum of one thousand dollars, payable to the Governor for the faithful observance of the provisions of this article. Said bond to be approved by the Commissioner, and to be for the benefit of the State of Texas.
6. Every agent so licensed shall report, under oath, to the Commissioner within thirty days from the first day of January and July of each year, the amount of

gross premiums received by him for such excess insurance, and shall pay the Commissioner a tax of five per cent thereon. The agent procuring a license as provided in this article shall keep a separate record of all transactions herein provided open at all times to the inspection of the Commissioner, or his legally appointed representative. In default of the payment of any sum which may be due the State under this article, the Commissioner may sue for the same. [Act Feb. 17, 1875, p. 34; G. L., vol. 8, p. 406; Acts 1905, p. 112.]

CHAPTER TWELVE

FIRE, LIGHTNING, HAIL AND STORM COMPANIES

Art.
4933. May incorporate.
4934. Requisites of application.
4935. Requisites of charter.
4936. Examination.
4937. Statement of condition.
4938. Rights of insured.
4939. Liability of insured.
4940. By-laws.
4941. Investment of funds.
4942. Expenses of company.
4943. Reserve and dividend.
4944. Discretionary examination.
4945. Revocation of license.
4946. Other laws to govern.
4947. Penalty.
4948. Foreign mutual companies.
4949. Filing fees and taxes.

Article 4933. May incorporate.—Any nuumber of persons, not less than seven, who shall be resident citizens of this State, may form and incorporate a company for the purpose of mutual insurance against loss or damage by fire, lightning, hail and storms, and for all or either of such purposes. Each company incorporated under the provisions of this chapter shall embody the word "mutual" in its title, which shall appear upon the first page of every policy, and renewal receipt. [Acts 1913, p. 54.]

Art. 4934. Requisites of application.—When such number of persons desire to organize such mutual insurance company, they shall apply to the Commissioner for permission to solicit insurance on the mutual plan, which application shall contain:

1. The name of the company, and the name selected shall not be so similar to that of any other insurance company as to be likely to mislead the public.
2. The locality of the principal business office of such company.
3. The kind of insurance business the company proposes to engage in.
4. The names and places of residence of not less than seven persons making such application.
5. An affidavit of at least one of said applicants, correctly stating the names and residence of such applicants.

Upon receipt of such application, together with a fee of one dollar for filing it, the Commissioner shall at once file it and issue a permit authorizing said applicant to solicit insurance on the mutual plan, in accordance with the terms of the application, but not to issue policies of insurance. [Id.]

Art. 4935. Requisites of charter.—No such company shall be granted a charter, or be authorized to issue policies of insurance, until insurance upon not less than one hundred separate risks, the total amount of which insurance shall not be less than one hundred thousand dollars, has been applied for and entered on the books of said company, and until an amount equal to not less than fifty per cent of the first premiums for such insurance has been paid in cash to such company, a premium note being taken for the balance, if any, and such premiums must aggregate not less than twice the maximum liability to be incurred on any one risk. No policy of insurance shall be written, or liability, as an insurer, be incurred by said company, until a statement subscribed and sworn to by the president and secretary of said company, stating that the above provisions have been complied with, has been filed with the Commissioner, together with certified copies of the company's proposed charter, and by-laws.

The charter or articles of association of said company shall be signed and acknowledged by at least four of the original applicants for said permit, and shall contain:

1. The purpose for which it is formed.
2. The place or places where its business is to be transacted.
3. The term for which it is to exist.
4. The number of its directors, or trustees, and the names and residences of those who are elected for the first year.

When said applicants have complied with the above requirements, and have filed the necessary copies of their charter and by-laws with the Commissioner, and have paid the fees and taxes required by the laws of the State to be paid, the Commissioner shall record said charter and furnish said company with a certified copy thereof, and shall issue to said company a certificate of authority showing it has complied with the laws of this State, and authorizing it to do business until the last day of the following February. [Id.]

Art. 4936. Examination.—Each mutual fire, lightning, and storm insurance company incorporated in this State shall be under the supervision of the Commissioner, who shall make or cause to be made, an examination of the affairs of each mutual insurance company, at the company's expense, at least once in every two years and at such other times as he deems proper. He shall thoroughly inspect books, accounts and records of the company, and if upon such inspection the affairs of such company are found to be in a sound condition and the company thus solvent and able to fulfill its obligations, he shall issue to the company a certificate showing the result of such examination. If upon examination he is of opinion that the mutual insurance company is insolvent or has exceeded its powers, or has failed to comply with any provision of law governing it, he may suspend the company's permit and shall give such company written notice of that objected to, and failing such being remedied within thirty days, he shall report the same to the Attorney General, who shall at once bring suit to forfeit the charter of such company. [Id.]

Art. 4937. Statement of condition.—Each mutual insurance company transacting business in the State shall, before the month of March in each year, file in the office of the Commissioner a statement showing the exact condition of affairs of the company upon the 31st day of December preceding, such statement being in conformity with such forms as the Commissioner may furnish. [Id.]

Art. 4938. Rights of insured.—Each person to whom a policy of insurance has been issued by a mutual company incorporated in this State shall be a member of such company so long as his policy remains in force and shall be entitled to one vote at the meetings of the members of such companies, and shall further be entitled to his equitable share of all benefits derived from being a member of such company. [Id.]

Art. 4939. Liability of insured.—The by-laws of such companies shall provide that every member, in addition to his annual premium paid in cash, or in cash and premium notes, shall be liable for a sum equal to another annual premium, or it may provide, a sum equal to three or five annual premiums, such additional liability being assessable at the discretion of the Commissioner or the company's board of directors, for the members proprotionate [proportionate] share of losses and expenses should the company's funds become impaired. [Id.]

Art. 4940. By-laws.—The by-laws of such companies shall specifically provide for the rules and regulations of its government, providing for the collection of adequate premiums or assessments, either all in cash or part cash and part by note, such premiums being based upon the greater or less risk attached to the property insured, and they shall state clearly and plainly the extent of each member's liability to other members, shall provide for the accumulation of a surplus fund to which shall be added not less than ten per cent of the annual saving, being made by the com-

pany, shall provide for the bonding of the company's officers and shall name such other provisions and safeguards as may be deemed proper and not contrary to the laws of the state, and a notice in heavy type shall be printed on each policy calling to the attention of the insured that the by-laws are a part of his contract with the company. [Id.]

Art. 4941. Investment of funds.—Funds of mutual companies may be invested in United States bonds, Texas State bonds, county or city bonds of this State, if such bonds are issued by authority of law and interest upon them has never been defaulted, or in first mortgages on improved real estate within the State where the first mortgage does not exceed fifty per cent of the value of the land and improvements thereon. [Id.]

Art. 4942. Expenses of company.—The expenses of such companies must not exceed an amount equal to thirty-five per cent of the annual premiums, and a statement must be made annually to the Commissioner by the president or secretary of the company that they are being so limited. [Id.]

Art. 4943. Reserve and dividend.—In determining the solvency of any such mutual company and in determining the profit or saving to be distributed among members, forty per cent of the actual cash premiums paid on policies in force for one year and a pro rata of all premiums received on risks that have more than one year to run shall be deemed to be a sufficient reserve under the said policies and no dividends to members shall be paid out of this reserve. [Id.]

Art. 4944. Discretionary examination.—If at any time the admitted assets of any such company shall come to be less than the largest single risk for which the company is liable, then the president and the secretary of the company shall at once notify the Commissioner, and he may make an examination into the company's affairs if he deems it best. [Id.]

Art. 4945. Revocation of license.—If, upon examination of the company's affairs, it appears that the largest single risk for which the company is liable exceeds the admitted assets of the company, the Commissioner shall immediately suspend or revoke the license of the company until the assets of the company are increased by assessment or otherwise, sufficiently to meet the requirements. The company shall have thirty days within which to meet this requirement, and if within that time it fails to do so the Commissioner shall refer the matter to the Attorney General, with instructions to institute proper legal proceeding to forfeit the charter of said company. [Id.]

Art. 4946. Other laws to govern.—Each mutual company organized for any purpose mentioned in this chapter shall be amenable to, and subject to, the provisions of all laws of this State governing stock fire insurance companies, in so far as they are applicable to mutual companies, and not in conflict with any provision of this chapter. [Id.]

Art. 4947. Penalty.—Any mutual company that shall wilfully violate, or fail to comply with any provision of this chapter shall be subject to, and liable to pay, a penalty of not less than five nor more than one hundred dollars for each violation thereof. Such penalty may be collected and recovered by suit brought in the name of the State of Texas. For any violation or failure to comply with any provision of this chapter, the Commissioner may suspend a company's permit, or license, and while suspended, such company shall be prohibited from writing or renewing any insurance policies. [Id.]

Art. 4948. Foreign mutual companies.—Mutual companies incorporated under the laws of any other State, or foreign government for any or all of the purposes specified in the first article of this chapter, and duly licensed to transact business in such other States or governments, and that have not less than one hundred thousand dollars assets in excess of liabilities, shall, when they have complied with the requirements and restrictions of this chapter, as far as applicable to them, be admitted to do business in this State, and the Commissioner shall issue to any such company, so complying, a permit authorizing such company to do business in this State until the last day of the following February. [Id.]

Art. 4949. Filing fees and taxes.—Each mutual company operating under this chapter shall pay to the Commissioner, for obtaining a charter, a fee of twenty dollars, and for each license granted, or renewal thereof, a fee of one dollar, and for filing each annual statement a fee of ten dollars annually on the 31st day of each December, and when the Commissioner has certified to the State Treasurer the correct amount to be paid, every mutual company operating under this chapter shall pay to said Treasurer one-half of one per cent of all of the net premiums, or assessments, received by it during the year, and no other tax shall be required of such mutual company, or companies, their officers and agents, except such fees as shall be paid to the Commissioner as required by law. [Id.]

CHAPTER THIRTEEN

MUTUAL HAIL INSURANCE

Art.
4950. Authority to incorporate.
4951. Permit to solicit business.
4952. License to solicit.
4953. Application for charter.
4954. Directors and officers.
4955. Policies on crops.
4956. Premiums and funds.
4957. Fixing rates.
4958. Annual report.
4959. Fees.

Article 4950. Authority to incorporate.—Private corporations may be created without a capital stock within this State by the voluntary association of seven or more persons, resident citizens of this State who collectively own not less than one thousand acres of growing crops of all kinds for the purpose of mutual insurance against loss or damage by hail. Each company incorporated under the provisions of this chapter shall embody the word "mutual" in its title. [Acts 1913, p. 40.]

Art. 4951. Permit to solicit business.—When any number of persons not less than seven desire to organize a mutual hail insurance company, they shall make application to the Commissioner for permission to solicit business under the mutual plan, stating that said company is to be organized for the insurance of growing crops against loss or damage by hail. Upon receipt of said application the Commissioner shall issue said applicants a permit to solicit insurance against loss or damage by hail on the mutual plan in accordance with the terms of the application, but not to issue policies of insurance. Said mutual company shall take from each applicant an obligation specifying the property to be insured, and the amount to be paid as the first assessment, evidenced by a promissory note for such sum and payable on or before the 31st day of the succeeding December, and upon the State granting to said company a charter authorizing it to do business in this State. [Id.]

Art. 4952. License to solicit.—When applications have been secured for insurance with such company from at least two hundred applicants residing in not less than twenty-five different counties of this State, the first assessment or premium on which applications shall amount to at least ten thousand dollars, for which notes of solvent parties founded on actual bona fide applications for insurance payable upon the granting of the charter by the State to said mutual hail insurance company, which premium notes shall be a lien on the crop insured, or otherwise secured and which notes and applications shall be submitted to the Commissioner. If he finds the applications and notes to be genuine and secured by liens on growing crops or otherwise secured, he shall upon the payment of the fee of twenty-five dollars, certify the fact that he has examined and approved said application and notes to such company, and permit said company to incorporate and issue to it a charter. Said Commissioner upon the payment

of the fees required by law, shall issue to said mutual hail insurance company a license to solicit and transact business and issue policies against loss or damage by hail. Each person making application for insurance in such company prior to the granting of a charter to such company and signing a non-negotiable promissory note shall be liable upon the note upon the granting of a charter by the State. If payment is refused, suit may be brought on the same. [Id.]

Art. 4953. Application for charter.—The application for charter shall state the purpose for which it is formed, the term for which it is to exist, the number, name, and residence of its directors for the first year and shall be subscribed and acknowledged by seven or more of the applicants. [Id.]

Art. 4954. Directors and officers.—Upon the issuance of a charter to such mutual hail insurance company, the persons making application for such charter shall constitute a board of directors for the first year which shall consist of not less than seven persons all of whom shall be residents of this State. The officers of such company shall be such as may be provided by the by-laws, and the treasurer or the secretary and treasurer, if such offices should be combined in one, shall execute a bond in the sum of ten thousand dollars payable to the Commissioner and his successors in office conditioned for the faithful performance of his duties and that he will account for all moneys, notes or other assets that may come into his hands. [Id.]

Art. 4955. Policies on crops.—Mutual hail insurance companies organized under the provisions of this chapter may issue policies on growing crops of all kinds against loss or damage by hail only. Any person desiring insurance in such company shall make application on blanks furnished by the company and shall pay the full amount of the premium in cash or secured notes. No contract shall be made providing for payment of any obligation by the insured or for suit on any such obligation of the insured, except those given by the charter members referred to in the preceding article in any county other than in which the insured has his domicile. In case the whole amount of the premium collected by such company for any one year shall be insufficient to pay all losses occurring during said year, after paying the necessary expenses for said year, the persons insured by such company shall receive their proportionate share of the sum realized from said premiums after deducting the expenses therefrom in full satisfaction of their losses. No member shall be liable to the company or to any other person for more than the premium, which shall be paid by him or secured to be paid by him in making his application for insurance. [Id.]

Art. 4956. Premiums and funds.—All companies incorporated under this Act shall set aside sixty per cent of all premiums collected as a policy holder's fund for the payment of losses which fund shall be used for no other purpose, and the remainder of the gross premiums collected shall be used if needed, for paying the expenses of said company, and if not needed for such purpose such remainder not so used shall be added to the policy holder's fund at the end of the current year, and if, at the end of such current year the total of said policy holder's fund has not been appropriated or necessary in the payment of losses to policy holders, then such amount of said fund so remaining may be invested in first mortgage notes on lands in this State, said investment not exceeding fifty per cent of the value of said lands, or in bonds of this State. or in county, city, town or school district bonds of this State which have been approved by the Attorney General, which funds or securities shall be deposited in trust for said policy holders with any bank approved by the Commissioner as a reserve fund, which fund may be used for the payment of policy holders, if necessary, in case of excessive and unprecedented losses. Such company may collect and receive the interest and dividends thereon to be used in defraying the expenses and paying the losses of said company. [Id.]

Art. 4957. Fixing rates.—The board of directors of such company shall fix the rates to be charged for such insurance, and may fix at their discretion different rates for different sections of the State based upon the frequency of hail storms in such sections. [Id.]

Art. 4958. Annual report.—Every such corporation shall on or before January first, or within thirty days thereafter, each year make and file with the Commissioner a report upon forms to be furnished by such Commissioner which report shall be verified by the oath of the secretary of such corporation showing the number of policies issued for the preceding year, the number and amount of losses paid, the gross amount received from premiums, the amount of expenses paid, and the amount set aside or invested during the year as a reserve fund, if any. The books, records and documents of such corporation shall be subject to the inspection and examination of the Attorney General or the Commissioner. [Id.]

Art. 4959. Fees.—The following fees shall be paid by companies organized under this law:

In addition to the application fee and charter fee, an annual franchise tax of fifty dollars; and for filing annual statement, five dollars, certificate of authority to corporation, one dollar. No other fees shall be paid by said companies. [Id.]

CHAPTER FOURTEEN

PRINTERS FIRE AND STORM INSURANCE

Art.
4960. How incorporated.
4961. Certificate to do business.
4962. Report and fee.

Article 4960. [4919] How incorporated.—Private corporations may be created within this State by the voluntary association of three or more persons for the organization of printers mutual fire and storm insurance association without an authorized or subscribed capital stock, for the purpose of insuring against loss by fire or storm only such property as may be owned and operated for the purpose of publishing daily, weekly or other periodical newspapers, or such as may be incident thereto or conducting job printing offices. [Acts 1905, p. 225.]

Art. 4961 [4920] Certificate to do business.—Before beginning operations, such company must obtain from the Commissioner a certificate of authority such as is issued to mutual fire and tornado insurance companies doing business in this State, first making a showing to the Commissioner that the company has fully complied with all the requirements of law applicable to such mutual fire and tornado insurance companies. No officers of such associations shall be required to give a bond, except the treasurers thereof, who shall annually file a bond with good securties [securities] and in amount to be approved by the Commissioner. [Acts 1909, p. 219.]

Art. 4962. [4921] Report and fee.—All such associations, which transact business in only one county, shall report annually, on or before the last day of February, to the Commissioner on blanks prepared by him, and pay five dollars to the Commissioner as a fee for filing the same. Such associations shall not be required to pay the annual franchise tax collected of other corporations under the laws of this State. [Id.]

CHAPTER FIFTEEN

INSURANCE AGAINST THIEVERY

Art.
4963. Companies entitled to license.
4964. Conditions.
4965. Duty of company.
4966. Policy holders.
4967. Commissioner agent for service.
4968. Statement and license.

Article 4963. [4922] Companies entitled to license.—Any insurance company organized and incorporated on the mutual plan, under the laws of this

State, for the purpose of insuring against loss or damage resulting from burglary and robbery, or any attempt thereat, and securing against the loss of money and securities in course of transportation when shipped by registered mail, shall be authorized, admitted and licensed to do business in this State, as provided in this chapter. [Acts 1899, p. 107, sec. 1.]

Art. 4964. [4923] Conditions.—Before any such company shall be authorized to transact business in this State, except to solicit and receive applications for insurance and portions of premiums thereon, as provided in this chapter, it shall have in force five hundred or more policies on which the premiums shall have been paid in cash, or shall be evidenced by the written contracts of the policy holders, on which not less than one-fifth of the amount shall have been paid in cash, and the cash and contracts for premiums shall amount in the aggregate to a sum of not less than one hundred thousand dollars. The premium contracts so held shall constitute a part of the assets of the company. [Id. sec. 2.]

Art. 4965. [4924] Duty of company.—Every such company, association or partnership shall also file a certified copy of its charter, articles of incorporation or deed of settlement, together with a statement under the oath of the president or vice-president and secretary of the company, for which he or they may act, stating the name of the company and place where located, a detailed statement of its assets, showing the number of policy holders, aggregate amount of premium contracts, the amount of cash on hand, in bank or in the hands of agents, the amount of real estate and how the same is encumbered by mortgage, the number of shares of stock of every kind owned by the company, the par and market value of the same, amount loaned on bond and mortgage, the amount loaned on other securities, stating the kind and amount loaned on each, and the estimated value of the whole amount of such securities, and other assets or property of the company, also stating the indebtedness of the company, the amount of losses adjusted and unpaid, the amount incurred and in process of adjustment, the amount resisted by the company as illegal and fraudulent, and all other claims existing against the company; and for a company organized under the laws of any other State, a copy of the last annual report, if any, made under any law of such State. No agent shall be allowed to transact business for any such company whose reinsurance reserve, as required in this chapter is impaired to the extent of twenty per cent thereof, while such deficiency shall continue. No agent shall act for any company referred to in this chapter directly or indirectly, in taking risks or transacting the business of insurance against burglary and robbery, or the insuring of the safe shipping of money and securities by registered mail in this State, without procuring from the Commissioner a certificate of authority stating that such company has complied with all the requirements of this chapter which apply to such companies, and as to companies organized under the laws of any other State, there shall be added the name of the attorney appointed to act for the company. Any company organized, admitted and licensed to transact business in this State under this chapter shall confine its line of business to that stated in Article 4963, and shall confine its business in this State to, and shall not issue any policy or policies to any person, firm or corporation in this State other than banks, bankers, loan companies and county treasurers. Every such company shall set aside a reinsurance reserve of fifty per cent of its premiums, whether collected in cash or represented by the obligations of the policy holders as written in its policies. [Id. secs. 3 and 4.]

Art. 4966. [4925] Policy holders.—Policy holders of any company organized and admitted to transact business in this State under this chapter shall be held liable to pay the membership fee and premium on their insurance as paid, or contracted to be paid, at the time the policy is taken out, and shall not be held liable for any further or other assessments or claims on the part of the company or its policy holders. The membership fees and premiums agreed upon may be collected in cash at the time the policy is issued or evidenced by a written obligation of the policy holder as may be agreed upon by the company and the policy holder. Such payment or obligation shall be the limit of the liability of the policy holder to the company for premium on their insurance. [Id. sec. 5.]

Art. 4967. [4926] Commissioner agent for service.—It shall not be lawful for any insurance company, association or partnership incorporated by, or organized under, the laws of any other State of the United States for any of the purposes specified in this chapter, directly or indirectly, to take risks or transact any business of insurance in this State by any agent in this State until it shall first appoint an attorney in this State, who shall be the Commissioner, on whom process of law can be served, and file in the office of the Commissioner a written instrument duly signed and sealed, certifying such appointment. Any process issued by any court of record in this State, and served upon such attorney by the proper officer of the county in which such attorney may reside or be found, shall be deemed sufficient service of the process upon said company. Service of process upon such company may also be made in any other manner provided by law. [Id. sec. 6.]

Art. 4968. [4927] Statement and license.—The statement and evidences of new membership, assets, and investments required by this chapter shall be renewed from year to year in such manner and form as may be required by said Commissioner with an additional statement of the amount of premiums received in this State during the preceding year, so long as such agency continues. The Commissioner, if satisfied that the membership, assets, securities and investments remain secure, shall furnish a renewal of the certificate. [Id.]

CHAPTER SIXTEEN

SURETY AND TRUST COMPANIES

1. FIDELITY, GUARANTY AND SURETY COMPANIES

Art.
4969. To act as surety.
4970. Bond of surety company.
4971. Requirements to be complied with.
4972. Certificate to issue.
4973. Certificate to be surrendered.
4974. May withdraw from bond.
4975. Venue of suit on bond.
4976. Defaulting company; claims paid.
4977. Who are agents.
4978. Penalty.
4979. Cancellation of bond.
4980. Authority revoked, when.
4981. Charged with public use.

2. TRUST COMPANIES

4982. Powers.
4983. Requirements.
4984. Authority to act.
4985. Other trust powers.
4986. Statutes applicable.

1. FIDELITY, GUARANTY AND SURETY COMPANIES

Article 4969. [4928] To act as surety.—Private corporations may be created to act as trustee, assignee, executor, administrator, guardian and receiver, when designated by any person, corporation or court to do so; to do a general fiduciary and depository business; to act as surety and guarantor of the fidelity of employees, trustees, executors, administrators, guardians or others appointed to, or assuming the performance of any trust, public or private, under appointment of any court or tribunal, or under contract between private individuals or corporations; also upon any bond or bonds that may be required to be filed in any judiciary proceedings; also to guarantee any contract or undertaking between individuals, or between private corporations, or between individuals or private

corporations and the State and municipal corporations or counties or between corporations and individuals; to act as executor and testamentary guardian when designated by such decedents; or to act as administrator or guardian when appointed by any court having jurisdiction; also on any bond or bonds that may be required of any State official, district official, county official or official of any school district or of any municipality, provided that the commissioners courts of each county shall have the right to reject any or all official bonds made by surety companies and in their discretion may require any or all officials to make their official bonds by personal sureties. Any such bond may be accepted and approved by the officer charged by law with the duty of accepting and approving the same without being signed by other securities than such corporation. When any such bond shall exceed fifty thousand dollars in penal sum, the officer charged by law with the duty of approving and accepting such bond, may require that such bond be signed by two or more surety companies, or by one surety company and two or more good and sufficient personal sureties, in the discretion of the principal or official of whom the bond is required, and any statute or law to the contrary, or requiring any such bond to be signed by two or more good and sufficient sureties, shall be governed and controlled by the provisions of this article. Each corporation, making or offering to make any bond under this article, shall publish in some newspaper of general circulation in the county where such company is organized or has its principal office on the first day of February of each year, a statement of its condition on the previous thirty-first day of December, showing under oath its assets and liabilities. A copy of said statement shall be filed with the Commissioner before the 1st day of March of the year following, and a fee of twenty-five dollars be paid to that office for filing the same, and an examination of its affairs may be made at any time by said Commissioner at the expense of the company. Said corporation organized under the provisions of this article shall have a paid up capital stock of not less than $100,000.00 and shall keep on deposit with the State Treasurer money, bonds or other securities in an amount not less than $50,000.00. Said securities shall be approved by the Commissioner and this amount shall be kept intact at all times. All foreign corporations transacting the business of a guaranty and fidelity company in this State shall file with the Commissioner an affidavit showing that such foreign company has on deposit with the State Treasurer of its home state $100,000.00 or more, in money, bonds or other securities for the protection of its policyholders. [Acts 1897, p. 128; 1903, p. 197; 1913, p. 123.]

Art. 4970. [4929] Bond of surety company.—Whenever any bond, undertaking, recognizance or other obligation is, by law or the charter, ordinances, rules and regulations of a municipality, board, body, organization, court, judge or public officer, required or permitted to be made, given, tendered or filed, and whenever the performance of any act, duty or obligation, or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guarantee may be executed by a surety company, qualified as hereinbefore provided; and such execution by such company of such bond, undertaking, obligation, recognizance or guarantee shall be in all respects a full and complete compliance with every law, charter, rule or regulation that such bond, undertaking, obligation, recognizance or guarantee shall be executed by one surety or by one or more sureties, or that such sureties shall be residents, or householders, or freeholders, or either, or both, or possess any other qualification and all courts, judges, heads of departments, boards, bodies, municipalities, and public officers of every character shall accept and treat such bond, undertaking, obligation, recognizance or guarantee when so executed by such company, as conforming to, and fully and completely complying with, every requirement of every such law, charter, ordinance, rule or regulation. Any suit on any bond issued under this and the preceding article shall be brought at the place as provided for in this chapter, and if the corporation issuing the bond sued on has no agent in the county where said bond was issued then the Commissioner is made, by consent of the said company, its agent on whom service of process may be held. [Id.]

Art. 4971. [4930] Requirements to be complied with.—Such company to be qualified to so act as surety or guarantor, must comply with the requirements of every law of this State applicable to such company doing business therein; must be authorized under the laws of the State where incorporated, and under its charter, to become surety upon such bond, undertaking, obligation, recognizance or guarantee; must have a fully paid up and safely unimpaired capital of at least one hundred thousand dollars; must have good available assets exceeding its liabilities, which liabilities for the purpose of this subdivision shall be taken to be its capital stock, its outstanding debts and a premium reserve at the rate of fifty per cent of the current annual premiums on each outstanding bond, undertaking, recognizance and obligation of like character in force; must file with the Commissioner, a certified copy of its certificate of incorporation, a written application to be authorized to do business under this subdivision and also, with such application, and in each year thereafter, a statement verified under oath made up to December 31, preceding, stating the amount of its paid up cash capital particularizing each item of investment, the amount of premiums upon existing bonds, undertakings, recognizances and obligations of like character in force upon which it is surety; the amount of liability for unearned portion thereof estimated at the rate of fifty per cent of the current annual premiums on each such bond, undertaking, recognizance and obligation in force, stating also the amount of its outstanding debts of all kinds, and such further facts as may be by the laws of this State required of such company in transacting business therein. If such company be organized under the laws of any other state it must also have on deposit with a State officer of one of the states of the United States, not less than one hundred thousand dollars in good securities, deposited with and held by such officer for the benefit of the holders of all obligations wheresoever incurred; must also appoint an attorney in this State upon whom process of law can be served, which appointment shall continue until revoked or another attorney substituted, and must file with the Commissioner written evidence of such appointment, which shall state the residence and office of such attorney; and such service of process may also be made upon the Commissioner, by virtue of his office, and shall be as effective as if made upon said attorney; and must, also, have on deposit with the Treasurer of this State at least fifty thousand dollars in good securities worth at par and market value, at least that sum, of the value of which securities the Commissioner shall judge, held for the benefit of the holders of all the obligations of such company wheresoever incurred; said securities so deposited with said Treasurer to remain with him in trust to answer any default of said company as surety upon any such bond, undertaking, recognizance or other obligation established by final judgment in whatsoever court and wheresoever rendered upon which execution may lawfully be issued against said company; said Treasurer and his successors in office being hereby directed to so receive and hereafter retain such deposit under this law in trust for the purposes hereof; such company, however, at all times to have the right to collect the interest, dividends and profits upon such securities, and, from time to time, to withdraw such securities, or portions thereof, substituting therefor others of equally good character and value, to the satisfaction of said Treasurer; and such securities and substitutes therefor shall be, at all times, exempt from and not subject to levy under writ or process of attachment; and shall not be sold under any process against such company until after thirty days notice to said company, specifying the time, place, and manner of such sale, and the process under which and purposes for which

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it is to be made, accompanied by a copy of such process. Whenever any such company, domestic or foreign, has been engaged in this State in the business contemplated by this law, has made a deposit in this state, in trust or otherwise, of securities, to answer any default of such company upon any such bond, undertaking, recognizance, guaranty or stipulation, such securities so deposited shall be by the trustee or custodian thereof transferred and delivered to the State Treasurer in trust for the same purposes and subject to all the rights and equities of all parties interested and to the terms and provisions of this law; and thereupon, such deposit shall remain in trust under and subject to the terms and provisions of this law. Whenever such deposit has been made with a trustee by order of any court or other authority, it shall be the duty of the court or other authority, by order or otherwise, to direct such transfer to said Treasurer; and in case such deposit is less than the sum of fifty thousand dollars, then said company must deposit with said Treasurer securities sufficient to increase said deposit to the sum of fifty thousand dollars as required by this subdivision. Domestic corporations chartered for the purpose of doing business under this subdivision within this State alone shall be required to deposit securities as hereinbefore provided for to the amount of twenty-five thousand dollars. [Acts 1897, p. 244; Acts 1st C. S. 1921, p. 4.]

Art. 4972. [4931] Certificate to issue.—The Commissioner upon due proof by any such company of its possessing the qualifications in this subdivision specified, shall issue to such company a certificate setting forth that such company has qualified, and is authorized for the ensuing year to do business under this subdivision, which said certificate shall be evidence of such qualification of such company, and of its authorization to become and to be accepted as sole surety on all bonds, undertakings, recognizances and obligations required or permitted by law or the charter, ordinance, rules or regulations of any municipality, board, body, organization or public officer, and the solvency or credit of such company for all purposes, and its sufficiency as such surety. [Acts 1897, p. 244.]

Art. 4973. [4932] Certificate to be surrendered.—Any such company, domestic or foreign, may at any time surrender to the Commissioner its said certificate of qualification, and shall thereupon cease to engage in said business of suretyship; and such company shall thereupon be entitled to the release and return of its said deposit as aforesaid in manner following: Said company shall file with said Commissioner a statement in writing, under oath, giving the date, name and amount of all its then existing obligations of suretyship in this State, briefly stating the facts of each case to said commissioner, who after examination of the facts, shall require said company to file with the State Treasurer a bond payable to the State, in a sum equal to the whole amount of its liability in this State, under its contracts, conditioned for the faithful performance and fulfillment of all its outstanding obligations, or it may, at its option, reinsure its risks in some surety company authorized to do business in this State, or cancel all bonds on which it is liable, and return a pro rata of the premium received thereon, whenever such cancellation and return can be done without impairing its obligation to third parties. [Id. sec. 4.]

Art. 4974. [4933] May withdraw from bond.—Any surety company may withdraw from the bond of any trustee, guardian, assignee, receiver, executor, administrator or other fiduciary, in like manner and by like proceeding as is now provided by law in the case of individual sureties. [Id. sec. 5.]

Art. 4975. [4934] Venue of suit on bond.—If any suit shall be instituted upon any bond or obligation of any surety company, the proper court of the county wherein said bond is filed shall have jurisdiction of said cause. Service therein shall be made, either upon the attorney for said company, by this subdivision required to be appointed, or upon the Commissioner; and such service shall be to all intents valid and effectual as service upon said company. Such guaranty, fidelity and surety companies shall be deemed resident of the counties wherever they may do business, and the doing or performing any business in any county shall be deemed an acceptance of the provisions of this subdivision. [Id. sec. 6]

Art. 4976. [4935] Defaulting company; claims paid.—Should any company of the character mentioned in this subdivision fail or refuse to pay any loss by it whatsoever [wheresoever] incurred within sixty days after its liability thereupon shall have been finally determined by the judgment of any court of competent jurisdiction wheresoever rendered, then upon satisfactory proof to the Treasurer of this State of such liability and of its nonpayment, said Treasurer shall, out of the deposits so made with him, as by this subdivision provided, pay said loss and when he shall have done so he shall at once certify to the Commissioner the fact of such default on the part of said company; whereupon said Commissioner shall forthwith cancel and annul the certificate of authority of such company to do business in this State. Such payment shall not operate to release the company from payment of any balance which it still may owe after such payment by the Treasurer of this State has been made. [Id. Acts 1st C. S. 1921, p. 5.]

Art. 4977. [4936] Who are agents.—Any person who solicits business for or on behalf of such corporation, or makes or transmits, for any person other than himself, any application for guaranty or security, or who advertises or otherwise gives notice that he will receive or transmit same, or who shall receive or transmit same, or who shall receive or deliver a contract of guaranty or security, or who shall examine or investigate the character of any applicant for guaranty or security other than himself, or who shall refer any applicant for guaranty or security to such corporation, whether any of said acts shall be done at the instance and request, or by the employment of such corporation or other corporation or person, or any person who shall issue indemnifying bonds or contracts, whose solvency and compliance with his said bonds or obligations is guaranteed, directly or indirectly, by any corporation, shall be held to be the agent of such corporation so far as relates to all the liabilities and penalties prescribed by this subdivision. [Acts 1897, p. 244, sec. 8.]

Art. 4978. [4937] Penalty.—Any person, association of persons, or corporations, who shall accept any corporation created for the purposes, or either of them, mentioned in the first article of this subdivision without such corporation, having previously complied with the provisions and requirements of this subdivision and having received from the Commissioner of Insurance the certificate of authority provided for in this subdivision shall forfeit as a penalty the sum of five hundred dollars to be recovered by suit in the name of the State. [Id. sec. 9.]

Art. 4979. [4938] Cancellation of bond.—When any corporation shall cancel a bond of guaranty or indemnity, or shall notify the employer of the person whose fidelity is guaranteed that said corporation will no longer guarantee or be security for the fidelity of said person, or when said corporation has once guaranteed the fidelity of any person, or acted as security therefor, and on application refuses to do so again, it shall furnish to such person a full statement in writing of the facts on which the action of the corporation is based, and if such action be based in whole or in part on information, all such information. Any such corporation failing or refusing to furnish any such written statement within thirty days after a request therefor, shall be liable to such person injured in the sum of five hundred dollars, in addition to all other damages caused thereby. [Id. sec. 10.]

Art. 4980. [4939] Authority revoked, when.—If any such corporation shall fail or refuse to comply with the provisions of this subdivision, the Commissioner shall revoke its certificate of authority. [Id. sec. 11.]

Art. 4981. [4940] Charged with public use.—Corporations created for the purposes mentioned in Article 4969 are hereby declared to be charged with a public use. [Id. sec. 12.]

2. TRUST COMPANIES

Art. 4982. [540–44] Powers.—Any person or association of persons, any State banking corporation or any other domestic corporation, or any corporation organized under the laws of any other State, provided such foreign corporation complies with the laws of this State relating to insurance other than life, may exercise the following powers by complying with the provisions of this subdivision:

1. Qualify as guardian, curator, executor, administrator, assignee, receiver, trustee by appointment of any court or under will, or depositary of money in court, without giving bond as such.

2. Become sole guarantor or surety in or upon any bond required to be given under the laws of this State, any other statute to the contrary notwithstanding. [Acts 1st C. S. 1905, p. 513.]

Art. 4983. [540–41–43] Requirements.—Those included in the provisions of this subdivision shall:

1. Deposit with the State Treasurer fifty thousand dollars consisting of cash, treasury notes of the United States, or government, State, county, municipal or other bonds, notes, or debentures, secured by first mortgages or deeds of trust, or mortgages or deeds of trust on unencumbered real estate in Texas worth at least double the amount loaned thereon, or such other first class securities as the Commissioner may approve. Said bonds or securities shall not be received or held at a rate above par, but if their market value is less than par they shall not be held above their actual market value. The State Treasurer shall require any such depositor to replace any securities so deposited on which the interest shall not be paid within six months after maturity, by other securities equal in amount to those removed, upon which the interest has not been defaulted. The funds so deposited shall be primarily liable for the obligations of the depositor in any capacity herein authorized, and shall not be liable for any other debt or obligation of the depositor until all such trust liabilities have been discharged.

2. Satisfy the Commissioner of its solvency. The Commissioner shall issue any such depositor, when satisfied it is solvent and has made the required deposit, a certificate showing such facts.

3. Maintain a premium reserve of the amount required to reinsure all outstanding risks, to be determined by taking fifty per cent of the premiums of all unexpired risks that have less than one year to run, and a pro rata of all gross premiums on risks that have more than one year to run.

4. File with the Commissioner, within sixty days after the first day of each January, a report sworn to by its president and secretary or by two of its principal officers, as to the surety and bond business done by the same during the preceding year.

5. Pay taxes on its surety and bond business as required of other surety companies. [Id.]

Art. 4984. [540] Authority to act.—Whenever any such depositor shall exhibit said certificate to the court, judge, clerk or other officer making the appointment herein authorized, or whose duty it is to approve any bond, such court or officer may appoint such depositor to such office or trust, or permit it to become surety on such bond. [Id.]

Art. 4985. [545] Other trust powers.—Those complying with the provisions of this law shall not exercise any other powers conferred by law upon State banking and trust companies, except those herein authorized, unless such depositor shall have, at the time of making such deposit, a paid up capital or surplus of at least one hundred thousand dollars in addition to said deposit. [Id.]

Art. 4986. [542] Statutes applicable.—All articles of the statutes so far as the same are applicable and not inconsistent with the provisions of law governing banks and banking corporations shall apply to all companies doing business hereunder. [Id.]

CHAPTER SEVENTEEN

EMPLOYERS LIABILITY INSURANCE COMPANIES

Art.
4987. Calculation and report of reserve.
4988. Certificates from other States.

Article 4987. [4941] Calculation and report of reserve.—Every insurance company which has for ten years or more undertaken to insure persons, firms or corporations against loss or damage on account of the bodily injury or death by accident of any person, for which loss or damage said persons, firms or corporations are respectively responsible, shall, on or before the first day of October in each year, render to the Commissioner of Insurance a statement in writing of its business transacted in the United States, which shall show separately for each of the five calendar years constituting the first half of the period of ten years next preceding the thirty-first day of December of the year in which the statement is made:

1. The number of persons reported injured under all its forms of liability policies, whether such injuries were reported to the home office of the company or to any of its representatives, and whether such injury resulted in loss to the company or not.

2. The amount that, on or before the thirty-first day of August of the year in which the statement is made, had been paid on account or in consequence of all injuries so reported, including therein all payments on suits arising from such injuries.

3. The number of suits or actions under such policies on account of injuries reported which have been settled, either by payments or compromise.

4. The amount paid in settlement of such suits or actions on or before the thirty-first day of August of the year when the statement is made, including therein all payments made on account or in consequence of injuries from which the suits arose, whether prior to or later than the date when the suits were brought. Every such company shall, in its financial statements hereafter made in this State, use the experience so ascertained for computing its outstanding losses under all its forms of liability policies, irrespective of the date when the policies were issued. The average cost per suit of settling such cases, as computed by the data required in this article, shall be multiplied by the number of suits or actions pending on account of injuries reported prior to eighteen months previous to the date on which the condition of the company is to be ascertained and shown, which suits or actions are being defended for or on account of a holder of any such policy, also the average cost on account of each injured person, determined as aforesaid from the company's experience, shall be multiplied by the number of injuries reported within the eighteen months prior to making the statement of the company's condition, whether such injuries were reported to the home office of the company or to any of its representatives. From the sum of these two products so ascertained there shall be deducted the amount of all payments made on account or in consequence of said injuries reported within eighteen months, this amount so deducted to be taken as of the date at which the said statement is made. The sum remaining after making this deduction shall be charged as the liability of the company on account of outstanding losses. Any admitted company issuing liability contracts, which, by reason of its limited experience in liability underwriting, cannot furnish the information required by this article shall, nevertheless, until it is able to comply with said requirements, be charged with a liability for outstanding losses upon all kinds of its liability policies an amount not less than the amount resulting from the following process:

The number of suits or actions pending on account of injuries reported prior to eighteen months previous

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to the date of making up the statement, whether such injuries were reported to the home office of the company or to any of its representatives, which are being defended on account of the holder of any policy, shall be multiplied by the average cost per suit as shown by the average experience of all other admitted liability companies ascertained from the data required by this article, also the number of injuries reported under said policies at any time within eighteen months of making up the statement, whether reported to the home office of the company or to any of its representatives, and whether such injuries resulted in loss to the company or not, shall be multiplied by the average cost for each injured person as shown by the average of said experience of all other admitted liability companies, ascertained from the data required by this article. From the sum of these two products there shall be deducted the amount of all payments made on account of or in consequence of said injuries reported within eighteen months, this amount to be taken as of the date at which the statement is made. A sum not less than the amount remaining after this deduction shall be charged as a liability for outstanding losses to the liability companies covered by the provisions of this paragraph. The average costs for suits and for injured persons required by this paragraph shall, on or before the first day of December of each year, be furnished by the Commissioner to every such company which has not had an experience of ten years in liability underwriting. Besides the reserve provided for in this article, each such company shall be charged as a liability with all unpaid losses of which the company received notice on or before December 31, and all other debts and liabilities. If the capital stock of any such company, computing its liabilities in accordance with the provisions of this article shall be at any time impaired to the extent of twenty per cent thereof, the Commissioner shall give notice to the company to make good its whole capital stock within sixty days; and, if this is not done, he shall require the company to cease to do business within this State, and shall thereupon, in case the company is organized under the authority of this State, immediately institute legal proceedings to wind up the affairs of such company. [Acts 1909, p. 193.]

Art. 4988. [4942] Certificates from other States.—The Commissioner, in calculating the reserve liability of any such company, may accept the certificate of the officer of any other State charged with the duty of supervising such company as to any such company organized under the laws of such State; provided, such certificate shows that such liability has been computed in accordance with the provisions of Article 4987.

CHAPTER EIGHTEEN

GENERAL CASUALTY COMPANIES

Art.

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Article 4989. May incorporate.—Any three or more persons, a majority of whom are residents of this State, may associate in accordance with the provisions of this chapter and form an incorporated company for any one or more of the following purposes:

1. To insure any person against bodily injury, disablement or death resulting from accident and against disablement resulting from disease.

2. To insure against loss or damage resulting from accident to or injury sustained by an employé or other person for which accident or injury the assured is liable.

3. To insure against loss or damage by burglary, theft or house breaking.

4. To insure glass against breakage.

5. To insure against loss from injury to person or property which results accidentally from steam boilers, elevators, electrical devices, engines and all machinery and appliances used in connection therewith or operated thereby; and to insure boilers, elevators, electrical devices, engines, machinery and appliances.

6. To insure against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers and water pipes.

7. To insure against loss resulting from accidental damage to automobiles or caused accidentally by automobiles.

8. To insure against loss or damages resulting from accident to or injury suffered by any person for which loss and damage the insured is liable; excepting employers liability insurance as authorized under subdivision 2 of this article.

9. To insure persons, associations or corporations against loss or damage by reason of giving or extending of credit.

10. To insure against loss or damage on account of circumstances upon, or defects in the title to, real estate, and against loss by reason of the non-payment of the principal or interest of bonds, mortgages or other evidences of indebtedness.

11. To write marine insurance in which may be included the hazards and perils incident to war.

12. To insure against any other casualty or insurance risk specified in the articles of incorporation which may be lawfully made the subject of insurance and the formation of a corporation for issuing against which is not otherwise provided for by this law, excepting fire and life insurance. [Acts 1911, p. 237; Acts 4th C. S. 1918, p. 33.]

Art. 4990. Articles of incorporation.—Such persons shall associate themselves together by written articles of incorporation for the purpose of forming an accident or casualty insurance company, which articles shall specify the general object of the company, and the proposed duration of the same. [Acts 1911, p. 237.]

Art. 4991. Organization.—When such articles of incorporation are filed with the Commissioner, together with an affidavit made by two or more of its incorporators, that all the stock has been subscribed in good faith and fully paid for together with a charter fee of twenty dollars, the Commissioner shall record the same in a book kept for that purpose, and upon receipt of a fee of one dollar he shall furnish a certified copy of the same to the corporators, upon which they shall be a body politic and corporate, and may proceed to complete the organization of the company, for which purpose they shall forthwith call a meeting of the stockholders who shall adopt by-laws for the government of the company and elect a board of directors composed of stockholders, which board shall have full control and management of the affairs of the corporation, subject to the by-laws thereof as adopted or amended from time to time by the stockholders or directors, and to the laws of this State. [Id.]

Art. 4992. Officers and records.—The subscribers to said articles of incorporation shall choose from their number a President, a Secretary, a Treasurer and such number of directors not less than three who shall continue in office for the period of one year from the date of filing articles of incorporation, and until their successors shall be duly chosen and qualified. They shall open books for the subscriptions of stock in the company at such times and places as they shall

deem convenient and proper, and shall keep them open until the full amount specified in the certificate is subscribed. [Id.]

Art. 4993. Capital and deposits.—Only companies organized and doing business under the provisions of this chapter shall be subject to its provisions. Such company shall have not less than one hundred thousand dollars of capital stock subscribed, paid in in cash, with an additional fifty thousand dollars of capital stock subscribed and fully paid in in cash for every kind of insurance more than one [of] which it is authorized to transact. Such companies with two hundred thousand dollars of capital stock subscribed and fully paid in in cash shall be authorized to transact all and every kind of insurance specified in the first article of this chapter; all of which said capital stock shall be paid up or invested in bonds of the United States, or of this State, or of any county or municipality of this State or in bonds or first liens upon unencumbered real estate in this State or in any other State in which such company may previously have been duly licensed to conduct an insurance business. In either instance such real estate shall be worth at least twice the amount loaned thereon. The value of such real estate shall be determined by a sworn valuation made by two freeholders of the county where the real estate is located. If buildings are considered as part of the value of such real estate they must be insured for the benefit of the mortgage. Upon such company furnishing evidence satisfactory to the Commissioner that the capital stock as herein prescribed has been all subscribed and paid up in cash in good faith, and that such capital stock has been invested as herein prescribed, and upon the deposit of the sum of fifty thousand dollars of such securities or in cash with the State Treasurer, then said Commissioner shall issue to said company a certificate authorizing it to do business. No part of the capital paid in shall be loaned to any officer of said company. In the event any such company shall be required by the law of any other State, country or province as a requirement prior to doing an insurance business therein to deposit with the duly appointed officer of such other State, country or province or with the State Treasurer of this State, any securities or cash in excess of the said deposit of fifty thousand dollars hereinbefore mentioned, such company, at its discretion, may deposit with the State Treasurer securities of the character authorized by this law, or cash sufficient to enable it to meet such requirements. The State Treasurer is hereby authorized and directed to receive such deposit and to hold it exclusively for the protection of all policy holders of the company. Any deposits so made to meet the requirements of any other State, country or province shall not be withdrawn by the company except upon filing with the Commissioner evidence satisfactory to him that the company has withdrawn from business, and has no unsecured liabilities outstanding in any such other State, country or province by which such additional deposit was required, and upon the filing of such evidence the company may withdraw such additional deposit at any time. [Id.]

Art. 4994. Powers.—A corporation organized or doing business under the provisions of this law shall, by the name adopted by such corporation, in law, be capable of suing or being sued, and may make or enforce contracts in relation to the business of such corporation; may have and use a common seal, and in the name of the corporation or by a trustee chosen by the board of directors, shall in law, be capable of taking, purchasing, holding and disposing of real and personal property for carrying into effect the purposes of their organization; and may by their board of directors, trustees, or managers, make by-laws and amendments thereto not inconsistent with the laws or the Constitution of this State or of the United States, which by-laws shall define the manner of electing directors, trustees or managers and officers of such corporation, together with the qualifications and duties of the same, and fixing the term of office. [Id.]

Art. 4995. Annual statement.—The president, vice president and secretary or a majority of directors or trustees of such company organized under the provisions of this law shall annually, on the first day of January or within sixty days thereafter, prepare and deposit in the office of the Commissioner a verified statement of the condition of such company on the 31st day of December of the preceding year, showing:

1. Name and where located, (a) names of officers, (b) the amount of capital stock, (c) the amount of capital stock paid in.

2. Assets, (a) the value of real estate owned by said company, (b) the amount of cash on hand, (c) the amount of cash deposited in bank or trust company, (d) the amount of bonds of the United States, and all other bonds, giving names and amounts with par and market values of each kind, (e) the amount of loans secured by first mortgage on real estate, (f) the amount of all other bonds, loans and how secured, with rate of interest, (g) the amount of notes given for unpaid stock and how secured, (h) the amount of interest due and unpaid, (i) all other credits or assets.

3. Liabilities, (a) the amount of losses due and unpaid, (b) the amount of claims for losses unadjusted, (c) the amount of claims for losses resisted.

4. Income during the year, (a) the amount of fees received during the year, (b) the amount of interest received from all sources, (c) the amount of receipts from all other sources.

5. Expenditures during the year, (a) the amount paid for losses, (b) the amount of dividends paid to stockholders, (c) the amount of commissions and salaries paid to agents, (d) the amount paid to officers for salaries, (e) the amount paid for taxes, (f) the amount of all other payments or expenditures.

6. Miscellaneous, (a) the amount paid in fees during the year, (b) the amount paid for losses during the year, (c) the whole amount of insurance issued and in force on the 31st day of December of the previous year. [Id.]

Art. 4996. Additional information.—The Commissioner is authorized to amend the form of statement and to exact such additional information as he may think necessary in order that a full exhibit of the standing of such companies may be shown. [Id.]

Art. 4997. Failure of duty.—Upon the failure of any company to make such deposit or to file the statement in time, the Commissioner shall notify such company to issue no new insurance until the law is complied with, and it shall be unlawful for any such company to thereafter issue any policy of insurance until such requirements shall be complied with. [Id.]

Art. 4998. Examination.—The Commissioner may at any time make or authorize any suitable person to make a personal examination of the books, papers and securities of any such company. For the purpose of securing a full and true exhibit of its affairs, he or the person selected by him shall have power to examine under oath any officer of said company relative to its business management. [Id.]

Art. 4999. Revoking certificate.—If the Commissioner shall at any time from the report of examination determine that the company has not complied with any provision of this law, he shall revoke its certificate of authority to do business in this State, and shall refer the facts to the Attorney General, who shall proceed to ask the proper court to appoint a receiver for said company, who shall, under the direction of the court, wind up the affairs of said company. In no other way can the Commissioner or any other person restrain or interfere with the prosecution of business of any company doing business under the provisions of this law, except in actions by judgment creditor or in proceedings supplementary to execution. [Id.]

Art. 5000. Change of securities.—Such companies shall have the right at any time to change their securities on deposit with the State Treasurer by substituting for those withdrawn a like amount in other

securities of the character provided for in this law. [Id.]

Art. 5001. Increase of capital.—Any such company may increase its capital stock at any time after the intention to so increase the capital stock shall have been ratified by a two-thirds vote of the stockholders, and after notice of the purpose to so increase the capital stock has been given by publication in some newspaper of general circulation for four consecutive weeks. No increase of capital stock in less amount than fifty thousand dollars is hereby authorized. [Id.]

Art. 5002. Dividends.—The directors of any such company shall not make any dividends except from the surplus profit arising from their business. No dividends shall be declared except at the close of the year. [Id.]

Art. 5003. Interest on deposits.—The State Treasurer shall permit companies having securities on deposit with him under the provisions of this law to collect the interest as the same may become due, and shall deliver to such companies respectively the coupons or other evidences of interest pertaining to such deposits. Upon failure of any company to deposit additional security as called for by the Commissioner, or pending any proceedings to close up or enjoin it, the State Treasurer shall collect the interest as it becomes due and hold the same as additional security in his hands belonging to such company. [Id.]

Art. 5004. Penalty.—Any company organized or doing business under this law without a certificate as provided for in this chapter shall forfeit one hundred dollars for every day it continues to write new business in this State without such certificate. [Id.]

Art. 5005. Suits for penalties.—Suits to recover any penalty provided for in this law shall be instituted in the name of the State of Texas, by the Attorney General or by a district or county attorney under his direction, either in the county where the principal office is situated, or in Travis County. Such penalties, when recovered, shall be paid into the State Treasury for the use of the school fund. [Id.]

Art. 5006. Investment of funds.—No company organized under the provisions of this chapter shall invest its funds over and above its paid up capital stock in any other manner than as follows:

(a) In bonds of the United States or of any of the states of the United States which are at or above par. (b) In bonds or first liens on unencumbered real estate in this State or in any other state, country or province in which such company may be duly licensed to conduct an insurance business, and provided in each instance such real estate shall be worth at least twice the amount loaned thereon. The value of such real estate shall be determined by a valuation made under oath by two freeholders of the county where the real estate is located and if buildings are considered as a part of the value of such real estate they must be insured for the benefit of the mortgages. (c) In bonds or other interest-bearing evidence of indebtedness of any county, incorporated city, town or school or sanitary district in this or any other state in which said company may be duly licensed to conduct an insurance business, if such evidences of indebtedness are issued by authority of law and if interest upon them has never been defaulted. (d) In the stocks or bonds or other evidences of indebtedness of any solvent dividend-paying corporation incorporated under the laws of this State, or of the United States or of any state, country or province in which such company may be duly licensed to conduct an insurance business.

(e) In loans upon the pledge of any mortgage, stock or bonds, or other evidence of indebtedness, acceptable as investments under the terms of this law if the current value of such mortgage stock, bond or other evidence of indebtedness is at least twenty-five per cent. more than the amount loaned thereon. [Id.]

Art. 5007. Real estate.—No such company shall be permitted to purchase, hold or convey real estate, except for the purpose and in the manner herein set forth:

1. For the erection and maintenance of buildings at least ample and adequate for the transaction of its own business.

2. Such as shall have been mortgaged to it in good faith for money due.

3. Such as shall have been conveyed to it in the satisfaction of debts previously contracted in the course of its dealings and which must be taken in by the company on account of the debt secured by such mortgage.

4. Such as shall have been purchased at sales upon judgments, decrees or mortgages obtained or made for such debts. No company incorporated as aforesaid shall purchase, hold or convey real estate in any other cases or for any other purpose. [Id.]

Art. 5008. Sale of real estate.—All real estate so acquired, except as is occupied by buildings used in whole or in part for the accommodation of such companies in the transaction of its business, shall, except as hereinafter provided, be sold and disposed of within ten years after such company shall have acquired title to the same. No such company shall have such real estate for a longer period than that above mentioned, unless the said company shall procure a certificate from the Commissioner that the interests of the company will suffer materially by a forced sale of such real estate, in which event the time for the sale may be extended to such time as the Commissioner shall direct in said certificate. [Id.]

Art. 5009. Certificate of authority.—The Commissioner upon due proof by a company organized under the provisions of this law, of its possessing the qualifications required, shall issue a certificate setting forth that it has qualified and is authorized for the ensuing year to do business under the law, which certificate or a copy thereof shall be evidence of such qualifications and of the company's authority to transact business authorized by this law, and of its solvency and credits. [Id.]

Art. 5010. Fees.—The Commissioner shall charge for filing the preliminary statement and for filing the annual statement required by this chapter, a fee of ten dollars. [Id.]

Art. 5011. Service of process.—Process in any civil suit against any casualty company organized under the laws of this State may be served only on the president, or any active vice president or secretary, or general counsel residing at the city of the home office of the company, or by leaving a copy of same at the home office of such company, during business hours. [Id.]

Art. 5012. Decrease of stock.—Any such company may decrease its capital stock at any time after the intention to so decrease the capital stock shall have been ratified by a majority vote of the stockholders, and after notice of such purpose has been published in some newspaper of general circulation for a period of four consecutive weeks. [Id.]

CHAPTER NINETEEN

LLOYD'S PLAN

Art.
5013. "Underwriters" defined.
5014. "Attorneys" defined.
5015. Application for license.
5016. License.
5017. Assets.
5018. Examination of affairs.
5019. Liability of substitutes.
5020. Assuming risk.
5021. Action on policy.
5022. Revoking or suspending license.
5023. This law exclusive.

Article 5013. "Underwriters" defined.—Individuals, partnerships or associations of individuals, hereby designated "underwriters," are authorized to make any insurance, except life insurance, on the Lloyd's plan, by executing articles of agreement expressing their purpose so to do and complying with the requirements set forth in this chapter. [Acts 1921, p. 238.]

Art. 5014. "Attorneys" defined.—Policies of insurance may be executed by an attorney in fact or other representative, hereby designated "attorney" authorized by and acting for such underwriters under powers of attorney. The principal office of such attorney shall be maintained at such place as may be designated by the underwriters in their articles of agreement. [Id.]

Art. 5015. Application for license.—The attorney shall file with the Commissioner a verified application for license setting forth and accompanied by:

(a) The name of the attorney and the title under which the business is to be conducted, which title shall contain the name Lloyd's and shall not be so similar to any name or title in use in this State as to be likely to confuse or deceive.

(b) The location of the principal office.

(c) The kinds of insurance to be effected, which kinds of insurance may be as follows:

1. Fire insurance, which term shall be construed to include tornado, hail, crop and floater insurance.
2. Automobile insurance, which term shall be construed to include fire, theft, transportation, property damage, collision, liability and tornado insurance.
3. Liability insurance.
4. Marine insurance.
5. Accident and health insurance.
6. Burglary and plate glass insurance.
7. Fidelity and surety bonds insurance.
8. Any other kinds of insurance, not above specified, the making of which is not otherwise unlawful in this State, except life insurance.

(d) A copy of each form of policy or contract by which such insurance is to be effected.

(e) A copy of the form of power of attorney by virtue of which the attorney is to act for and bind the several underwriters and a copy of the articles of agreement entered into between the underwriters themselves and the attorney.

(f) The names and addresses of all underwriters, whose number shall not be less than ten.

(g) A financial statement showing in detail the assets and liabilities accumulated and incurred and the income and disbursements received and made by the attorney for the underwriters.

(h) An instrument executed by each and all of the underwriters specially empowering the attorney to accept service of process for each underwriter in any action on any policy or contract of insurance, and an instrument from the attorney to such Commissioner delegating the attorney's powers in this respect to such Commissioner. [Id.]

Art. 5016. License.—Upon compliance with the requirements of this chapter and upon a showing of assets as provided in the succeeding article, the Commissioner shall, upon payment of a fee of ten dollars, issue a license to any attorney applying therefor specifying the kind or kinds of insurance which he is authorized to make and containing the name of the attorney, the location of his principal office, and the title under which such business is to be conducted. Such license shall continue in force until surrendered by the attorney or revoked or suspended by the Commissioner as authorized by this chapter. [Id.]

Art. 5017. Assets.—No attorney shall be licensed for the underwriters at a Lloyd's under this chapter unless the net assets, including the guarantee fund provided for in the articles of agreement, held by the attorney, committee of underwriters, trustee or other officer, as provided for in the articles of agreement, shall be at least forty thousand dollars in cash or convertible securities; nor shall any attorney be licensed for the underwriters at a Lloyd's to transact more than two kinds of insurance as defined in the third article of this chapter, unless the net assets as above defined and held shall be as much as ten thousand dollars additional for each additional kind of insurance designated in the application for license; provided that if the underwriters have net assets as above described in an amount equal to one hundred thousand dollars, they may write any kind of insurance that may be lawfully written in this State except life insurance. If the Commissioner finds upon any examination of a Lloyd's that the net assets as above defined are less than the amount required, the impairment shall be made good within thirty days from the service of a requisition for that purpose by such Commissioner upon the attorney for the underwriters. If any such attorney or other person shall make any advancement to make good any such impairment, the claim for the same against the assets of the underwriters shall be deferred to claims for losses under policies or contracts of insurance. [Id.]

Art. 5018. Examination of affairs.—The Commissioner may make examinations of the books and affairs of any attorney for underwriters at a Lloyd's, the expense of any such examination to be borne by the underwriters, and the attorney and his deputies shall facilitate such examinations and furnish all information which the Commissioner may reasonably demand. Such Commissioner may revoke or suspend the license of any attorney in case of breach of any of the conditions imposed by this chapter and upon reasonable notice in writing to the attorney so that he may appear and show cause why such license should not be revoked or suspended. [Id.]

Art. 5019. Liability of substitutes.—Additional or substituted underwriters shall be bound in the same manner and to the same extent as original subscribers to the articles of agreement and power of attorney on file with the Commissioner; and the acts of the duly appointed deputy or substitute attorney of any attorney licensed under this chapter in accepting powers of attorney from underwriters and in making and issuing policies and contracts of insurance and in doing any additional acts incident thereto shall be deemed authorized by the license issued to the original attorney. [Id.]

Art. 5020. Assuming risk.—No attorney for underwriters at a Lloyd's shall assume any one insurance risk exceeding one-fifth of the amount of the net assets of the underwriters as defined in this chapter and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured. [Id.]

Art. 5021. Action on policy.—Action on any policy or contract of insurance made by the attorney for the underwriters may be brought against the attorney or against the attorney and the underwriters or any of them. In such action, summons and process shall be served on the Commissioner or on the attorney in fact and when so served shall have the same force and effect as if served on the attorney and on each underwriter personally. A judgment in any such action against the attorney or against any of the underwriters shall be binding upon and be a judgment against each and all of the underwriters as their several liabilities may appear in the contract of insurance in which the action is brought.

Any such summons or other process shall be served in duplicate, and the Commissioner shall forthwith by registered mail send one copy thereof to the attorney for the underwriters at the principal office designated in the application for license or latest amendment thereof. The party commencing any action against the underwriters at a Lloyd's and securing service of process in this manner shall at the time of such service pay to such Commissioner for the use of the Department a fee of two dollars, which he shall be entitled to collect as taxable costs in the action if he shall prevail. [Id.]

Art. 5022. Revoking or suspending license.—All such underwriters, their attorneys, agents and representatives transacting the business of insurance in this State on the Lloyd's plan shall be governed and regulated by the provisions of this chapter and upon violation of any provision hereof the Commissioner may revoke or suspend any license or certificate of authority issued under the provisions of this chapter. [Id.]

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Art. 5023. This law exclusive.—Except as herein provided no other insurance law of this State shall apply to insurance on the Lloyd's plan unless it is specifically so provided in such other law that the same shall be applicable. [Id.]

CHAPTER TWENTY

INDEMNITY CONTRACTS

Art.
5024. May exchange contracts.
5025. Attorney for subscribers.
5026. Declaration of subscribers.
5027. Service of process.
5028. Statement of indemnity.
5029. Reserve.
5030. Financial report.
5031. Any corporation may exchange.
5032. Certificate of authority.
5033. When insurance law applies.

Article 5024. May exchange contracts.—Individuals, partnerships and corporations of this State hereby designated subscribers are hereby authorized to exchange reciprocal or inter-insurance contracts with each other, or with individuals, partnerships and corporations of other States and countries, providing indemnity among themselves from any loss which may be insured against under other provisions of the laws, excepting life insurance. [Acts 1915, p. 269.]

Art. 5025. Attorney for subscribers.—Such contracts may be executed by a duly appointed attorney in fact duly authorized and acting for such subscribers. The office or offices of such attorney may be maintained at such place or places as may be designated by the subscribers in the power of attorney. [Id.]

Art. 5026. Declaration of subscribers.—Such subscribers, so contracting among themselves, shall, through their attorney, file with the Commissioner a declaration verified by the oath of such attorney setting forth:

1. The name or the title of the office at which subscribers propose to exchange such indemnity contracts. Said name or title shall not be so similar to any other name or title previously adopted by a similar organization, or by any insurance corporation or association, as in the opinion of such Commissioner is calculated to confuse or deceive. The office or offices through which such indemnity contracts shall be exchanged shall be classified as reciprocal or inter-insurance exchanges.

2. The kind or kinds of insurance to be effected or exchanged.

3. A copy of the form of policy, contract or agreement under or by which such insurance is to be effected or exchanged.

4. A copy of the form of power of attorney or authority of such attorney under which such insurance is to be effected or exchanged.

5. The location of the office or offices from which such contracts or agreements are to be issued.

6. That applications have been made for indemnity upon at least seventy-five separate risks, aggregating not less than one-half million dollars as represented by executed contracts or bona fide applications to become concurrently effective, or in case of liability or compensation insurance, covering a total payroll of not less than two thousand employés.

7. That there is on deposit with some State or National bank as a depository for the payment of losses not less than the sum of ten thousand dollars. [Id.]

Art. 5027. Service of process.—Concurrently with the filing of such declaration, the attorney shall file with the Commissioner of Insurance an instrument in writing, executed by him for said subscribers, conditioned that, upon the issuance of certificates of authority hereinafter provided for, service or process may be had upon such Commissioner in all suits in this State arising out of such policies, contracts or agreements, which service shall be valid and binding upon all subscribers exchanging at any time reciprocal or inter-insurance contracts through such attorney. Three copies of such process shall be served, and the Commissioner shall file one copy, forward one copy to said attorney, and return one copy with his admission of service. [Id.]

Art. 5028. Statement of indemnity.—Such attorney shall file with the Commissioner a statement under the oath of such attorney showing the maximum amount of indemnity upon any single risk, and such attorney shall, whenever and as often as the same shall be required, file with such Commissioner a statement verified by his oath to the effect that he has examined the commercial rating of such subscribers as shown by the reference book of a commercial agency having at least one hundred thousand subscribers, and that from such examination or from other information in his possession it appears that no subscriber has assumed on any single risk an amount greater than 10 per cent of the net worth of such subscriber. [Id.]

Art. 5029. Reserve.—There shall at all times be maintained as a reserve a sum in cash or convertible securities equal to one-half of the aggregate net annual deposits collected and credited to the accounts of the subscribers on policies having one year or less to run and pro-rata on those for longer periods. For the purpose of said reserve, net annual deposits shall mean the advance payments of subscribers after deducting therefrom the amounts specifically provided in the subscribers' agreements for expenses and reinsurance. Said sum shall at no time be less than ten thousand dollars, and if at any time one-half of the aggregate deposits so collected and credited shall not equal that amount, then the subscribers, or their attorney for them, shall make up any deficiency. [Id.]

Art. 5030. Financial report.—Such attorney shall make an annual report to the Commissioner for each calendar year, which report shall be made on or before March 1st, for the previous calendar year ending December 31, showing the financial condition of affairs at the office where such contracts are issued is in accordance with the standard of solvency provided for herein, and shall furnish such additional information and reports as may be required to show the total premiums or deposits collected, the total losses paid, the total amounts returned to subscribers, and the amounts retained for expenses. Such attorney shall not be required to furnish the name and address of any subscriber. The business affairs and assets of said reciprocal or inter-insurances exchanges, as shown at the office of the attorney thereof, shall be subject to examination by such Commissioner. [Id.]

Art. 5031. Any corporation may exchange.—Any corporation now or hereafter organized under the laws of this State shall, in addition to the rights, powers and franchises specified in its articles of incorporation, have full power and authority to exchange insurance contracts of the kind and character herein mentioned. The right to exchange such contracts is hereby declared to be incidental to the purposes for which such corporations are organized and as much granted as the rights and powers expressly conferred. [Id.]

Art. 5032. Certificate of authority.—Each attorney by whom or through whom are issued any policies of or contracts for indemnity of the character referred to herein shall procure from the Commissioner annually a certificate of authority, stating that all of the requirements have been complied with, and upon such compliance and the payment of the fees required by this law, the Commissioner shall issue such certificate of authority. Such Commissioner may revoke or suspend any certificate of authority issued hereunder in case of breach of any condition imposed by this law after reasonable written notice has been given said attorney so that he may appear and show cause why action should not be taken. Any attorney who may have procured a certificate of authority hereunder shall renew same annually thereafter. Any certificate of authority shall continue in effect until the new certificate of authority be issued or specifically refused. Such attorney shall pay as a fee for the issuance of the certificate of authority herein provided

for the sum of twenty dollars, which shall be in lieu of all license fees and taxes of whatsoever character in this State. [Id.]

Art. 5033. When insurance law applies.—Except as herein provided, no insurance law of this State shall apply to the exchange of such indemnity contracts unless they are specifically mentioned. [Id.]

CHAPTER TWENTY-ONE

GENERAL PROVISIONS

Art.
5034. Must publish certificate.
5035. Publication of notices.
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5037. Live stock, etc.
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5039. Association of companies.
5040. What companies may consolidate.
5041. Consolidation.
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5054. Texas laws govern policies.
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5056. Who are agents.
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5059. Affidavit of company.
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5062. Penalty for violation.
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5065. Certificates for agents.
5066. Revocation of agent's certificate.
5067. Revocation of certificate of authority.
5068. Foreign insurance corporations.
5068a. Exemption of insurance benefits from seizure under process.

Article 5034. [4943] [3086] Must publish certificate.—Every insurance company doing business in this State, whether life, health, fire, marine or inland, shall publish annually, within thirty days after the issuance thereof, a certificate from the Commission that such company has in all respects complied with the laws in relation to insurance.

Art. 5035. [4946] [3082] Publication of notices.—Whenever, by any provision of this title, any notice or other matter is required to be published, it shall, unless otherwise provided, be published for three successive weeks in two newspapers printed in this State which have a general circulation in this State.

Art. 5036. [4967–4868–4944] Unlawful dividend.—No life, health, fire marine or inland insurance company, organized under the laws of this State, shall make any dividend except from the surplus profits arising from its business. In estimating such profits, there shall be reserved therefrom a sum equal to forty per cent of the amount received as premiums on unexpired fire risks and policies, and one hundred per cent of the premiums received on unexpired life, health, marine or inland transportation risks and policies, which amount so reserved is hereby declared to be unearned premiums. There shall also be reserved the amount of all unpaid losses, whether adjusted or unadjusted; all sums due the company on bonds, mortgages, stocks and book accounts, of which no part of the principal or the interest thereon has been paid during the year preceding such estimate of profits, and upon which suit for foreclosures or collections has not been commenced, or which after judgment has been obtained thereon shall have remained more than two years unsatisfied, and upon which interest shall not have been paid. In case of any such judgment, the interest due or accrued thereon and remaining unpaid shall also be reserved. Any dividend made contrary to the provisions of this article shall subject the company making it to a forfeiture of its charter, and the Commissioner shall forthwith revoke its certificate of authority. [Acts 1875, p. 36; G. L. vol. 8, p. 408.]

Art. 5037. Live stock, etc.—Fire, marine, life and live stock insurance companies may be organized under the provisions of this title. Such live stock insurance companies may be organized with an authorized and paid up capital stock of not less than ten thousand dollars. [Acts 1907, p. 292.]

Art. 5038. [4956] Extension of powers.—Corporations may be incorporated under the laws of this State to transact any one or more kinds of insurance business other than life, fire, marine, inland, lightning or tornado insurance business in the same manner, and by complying with the same requirements, as prescribed by law for the incorporation of life insurance companies. No such company shall be incorporated having the power to do a fidelity and surety business or a liability insurance business with a paid up capital stock of less than two hundred thousand dollars. [Acts 1909, p. 192.]

Art. 5039. [4945] [3081] Association of companies.—In the event that any number of insurance companies, whether life, health, fire, marine or inland, should associate themselves together for the purpose of issuing or vending policies or joint policies of insurance, such association shall not be permitted to do business in this State until the taxes and fees due from each of said companies shall have been paid and all the conditions of the law fully complied with by each company; and any company failing or refusing to pay such taxes and fees, and to fully comply with the requirements of law, shall be refused permission by the Commissioner to do business in this State.

Art. 5040. What companies may consolidate.—Any two or more insurance companies doing a similar line of business which are and have been substantially owned by same controlling stockholders and which have never been companies actually competing with each other, and where all of them have been previously organized under the laws of this State, may unite or consolidate upon compliance with the terms of this law. Such consolidation shall not be effectuated in violation of the anti-trust and anti-monopoly laws of this State. Before any such consolidation shall take place the parties holding at least two-thirds of the capital stock of each of the companies shall vote in favor thereof at a separate meeting of the stockholders of each company called for such purpose. Such meeting may be called in the manner provided in the by-laws of the respective companies or the laws under which such companies are organized, for calling special meetings of stockholders, except that each stockholder shall be notified by mail of the time and place and object of such meeting. [Acts 1919, p. 97.]

Art. 5041. Consolidation.—Such companies proposing to consolidate may unite their assets or any part thereof and become incorporated in one body under the name of any one or more of such companies or under any other name that may be agreed upon, and issue stock in such corporation to the stock holders of each of the companies consolidated, the actual value of which stock in the new company shall bear the same proportion to the actual value of the stock surrendered by such stockholders as the entire assets of the company surrendering such stock bears to the entire assets of the new company, which value shall be agreed upon by the board of directors of each company; provided, that said stockholders (holding two-thirds of the stock) may at the meeting provided for in the preceding article, delegate the valuation of assets to a committee of stockholders appointed by their respective boards of directors; or

2. One company may take over all the assets of the other companies proposing to consolidate and issue stock to their stockholders in the proportion that the value of their stock bears to the entire value of the assets of the company in which they are stockholders, and for this purpose the capital stock of such purchasing company may be increased, as now or may be hereafter provided by law.

3. In case of consolidation under the first option pro-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

vided in the first subdivision hereof, the Commissioner shall upon proof furnished of compliance with the terms hereof and being satisfied that the proposed consolidation is for the best interests of the policy holders of the respective companies and made in accordance with law, and upon the filing of articles of incorporation and other due proceedings had as required by the laws of this State, issue and deliver a charter to such new company.

4. Such consolidation shall work a dissolution of the companies absorbed, but shall in no wise prejudice the right of any creditor of any such corporation to have payment of his debt out of the assets and property thereof, nor shall any creditor be thereby deprived of, nor prejudiced in any right of action then pending or existing or which may thereafter arise against said company, and service or summons of the proper officers or agents of such new or reorganized corporation shall be deemed sufficient as to all or any of such companies.

5. All policies of insurance outstanding against all such companies shall by reason of such consolidation be assumed by the reorganized company, and they shall carry out the terms of such policy on the part of the insurer and be entitled to all the rights and privileges thereof and the reserves accumulating on such policy prior to such consolidation.

Art. 5042. [4957] Other laws for certain companies.—No provision of this chapter shall apply to companies carrying on the business of life or casualty insurance on the assessment or annual premium plan, under the provisions of this title. [Id.]

Art. 5043. [4947] Misrepresentation by policy holder.—Any provision in any contract or policy of insurance issued or contracted for in this State, which provides that the answers or statements made in the application for such contract or in the contract of insurance, if untrue or false, shall render the contract or policy void or voidable, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract, unless it be shown upon the trial thereof that the matter or thing misrepresented was material to the risk or actually contributed to the contingency or event on which said policy became due and payable, and whether it was material and so contributed in any case shall be a question of fact to be determined by the court or jury trying such case. [Acts 1903, p. 94.]

Art. 5044. [4948] Notice of misrepresentation.—In all suits brought upon insurance contracts or policies hereafter issued or contracted for in this State, no defense based upon misrepresentations made in the applications for, or in obtaining or securing the said contract, shall be valid, unless the defendant shall show on the trial that, within a reasonable time after discovering the falsity of the representations so made, it gave notice to the assured, if living, or, if dead, to the owners or beneficiaries of said contract, that it refused to be bound by the contract or policy; provided, that ninety days shall be a reasonable time; provided, also, that this article shall not be construed as to render available as a defense any immaterial misrepresentation, nor to in any wise modify or affect Article 5043.

Art. 5045. [4959] Immaterial misrepresentation.—No recovery upon any life, accident or health insurance policy shall ever be defeated because of any misrepresentation in the application which is of an immaterial fact and which does not affect the risks assumed. [Acts 1909, p. 192.]

Art. 5046. [4949] Misrepresenting loss or death.—Any provision in any contract or policy of insurance issued or contracted for in this State, which provides that the same shall be void or voidable, if any misrepresentations or false statements be made in proofs of loss or of death, as the case may be, shall be of no effect, and shall not constitute any defense to any suit brought upon such contract or policy, unless it be shown upon the trial of such suit that the false statement made in such proofs of loss or death was fraudulently made, and misrepresented a fact material to the question of the liability of the insurance company upon the contract of insurance sued on, and that the insurance company was thereby misled, and caused to waive or lose some valid defense to the policy. [Acts 1903, p. 94.]

Art. 5047. Forfeiture of beneficiary's rights.—The interest of a beneficiary in a life insurance policy or contract heretofore or hereafter issued shall be forfeited when the beneficiary is the principal or an accomplice in willfully bringing about the death of the insured. When such is the case, the nearest relative of insured shall receive said insurance. [Acts 1919, p. 21.

Art. 5048. Life insurance beneficiaries.—Any corporation, partnership, joint stock association or any trust estate doing business for profit, may be named beneficiary in any policy of insurance issued by a legal reserve life insurance company on the life of any officer or stockholder of said corporation, joint stock association or trust estate; or any partnership or member thereof may be the beneficiary in any policy of insurance issued by a legal reserve life insurance company upon the life of any member of said partnership; or any religious, educational, eleemosynary, charitable or benevolent institution or undertaking may be named beneficiary in any policy of life insurance issued by any legal reserve life insurance company upon the life of any individual. The beneficiaries aforenamed shall have an insurable interest for the full face of the policy and shall be entitled to collect same. On all policies of life insurance heretofore issued by legal reserve companies in which any of the aforenamed shall have been designated beneficiaries in the policies, said beneficiaries shall have an insurable interest to the full extent of the face of the policy and be entitled to collect same. [Acts 1921, p. 165.]

Art. 5049. [4951] Policies and applications.—Every contract or policy of insurance issued or contracted for in this State shall be accompanied by a written, photographic or printed copy of the application for such insurance policy or contract, as well as a copy of all questions asked and answers given thereto. The provisions of the foregoing articles shall not apply to policies of life insurance in which there is a clause making such policy indisputable after two years or less, provided premiums are duly paid; provided, further, that no defense based upon misrepresentation made in the application for, or in obtaining or securing, any contract of insurance upon the life of any person being or residing in this State shall be valid or enforceable in any suit brought upon such contract two years or more after the date of its issuance, when premiums due on such contract for the said term of two years have been paid to, and received by, the company issuing such contract, without notice to the assured by the company so issuing such contract of its intention to rescind the same on account of misrepresentation so made, unless it shall be shown on the trial that such misrepresentation was material to the risk and intentionally made. [Acts 1903, p. 94.]

Art. 5050. [4953] Policies to contain entire contract.—Every policy of insurance issued or delivered within this State by any life insurance company doing business within this State, shall contain the entire contract between the parties, and the application therefor may be made a part thereof. [Acts 1909, p. 192.]

Art. 5051. [4952] Level premium policies.—No level premium policy of life insurance shall be issued or sold by any company in this State which provides for more than one year preliminary term insurance. [Id.]

Art. 5052. [4958] Misrepresentation of policies.—No life insurance company doing business in this State, and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of

any policy issued by it, or benefits or advantages to be promised thereby, or the dividends or share of surplus to be received thereon. [Id.]

Art. 5053. [4954] Discrimination.—No insurance company doing business in this State shall make or permit any distinction or discrimination in favor of individuals between the insured of the same class and of equal expectation of life in the amount of, or payment of, premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon; nor shall any such company, or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, any rebate of premiums payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for service of any kind, or any valuable consideration or inducement whatever not specified in the policy or contract of insurance; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance, or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision, by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy. Any company or agent violating the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished as provided in the Penal Code; and the said company shall, as an additional penalty, forfeit its certificate of authority to do business in this State, and the said agent shall, as an additional penalty, forfeit his license to do business in this State for one year. The company shall not be held liable under this article for any act of its agent, unless such act was authorized by its president, one of its vice presidents, its secretary or an assistant secretary, or by its board of directors. [Id.]

Art. 5054. [4950] Texas laws govern policies.—Any contract of insurance payable to any citizen or inhabitant of this State by any insurance company or corporation doing business within this State shall be held to be a contract made and entered into under and by virtue of the laws of this State relating to insurance, and governed thereby, notwithstanding such policy or contract of insurance may provide that the contract was executed, and the premiums and policy (in case it becomes a demand) should be payable without this State, or at the home office of the company or corporation issuing the same. [Acts 1903, p. 94.]

Art. 5055. [4960] [3061] [2943] Certificate of authority.—It shall not be lawful for any person to act within this State, as agent or otherwise, in soliciting or receiving applications for insurance of any kind whatever, or in any manner to aid in the transaction of the business of any insurance company incorporated in this State or out of it, without first procuring a certificate of authority from the Commissioner.

Art. 5056. [4961] [3093] Who are agents.—Any person who solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State or foreign government, or who takes or transmits other than for himself any application for insurance or any policy of insurance to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or who shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive, or collect, or transmit any premium of insurance, or make or forward any diagram of any building or buildings, or do or perform any other act or thing in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance or request, or by the employment of such insurance company, or of, or by any broker or other person, shall be held to be the agent of the company for which the act is done, or the risk is taken, as far as relates to all the liabilities, duties, requirements and penalties set forth in this chapter. The provisions of this chapter shall not apply to citizens of this State who arbitrate in the adjustment of losses between the insurers and insured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters who have paid an occupation tax of two hundred dollars for the year in which the adjustment is made nor to practicing attorneys at law in the State of Texas, acting in the regular transaction of their business as such attorneys at law, and who are not local agents, nor acting as adjusters for any insurance company. Any person who shall do any of the acts mentioned in this article for or on behalf of any insurance company without such company having first complied with the requirements of the laws of this State, shall be personally liable to the holder of any policy of insurance in respect of which such act was done for any loss covered by the same. [Acts 1879, S. S. p. 32.]

Art. 5057. [4962] [3094] Assessment of taxes.—Whenever any person shall do or perform within this State any of the acts mentioned in the preceding article for or on behalf of any insurance company therein referred to, such company shall be held to be doing business in this State, and shall be subject to the same taxes, State, county and municipal, as insurance companies that have been legally qualified and admitted to do business in this State by agents or otherwise are subject, the same to be assessed and collected as taxes are assessed and collected against such companies; and such persons so doing or performing any of such acts or things shall be personally liable for such taxes. [Id.]

Art. 5057a. Tax assessment of fire and casualty companies.—That Fire Insurance Companies and Casualty Companies incorporated under the laws of this State shall hereafter be required to render for State, County and Municipal taxation all of their real estate as other real estate is rendered. All personal property of such insurance companies shall be valued as other property is valued for assessment in this State in the following manner: From the total valuation of their assets shall be deducted the reserve and from the remainder shall be deducted the assessed value of all real estate owned by such companies and the remainder shall be the taxable personal property of such companies, to be assessed as other property. [Acts 1927, 40th Leg., p. 269, ch. 190, § 1.]

Art. 5058. [4963] Resident agents.—Any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety, or fidelity insurance company, legally authorized to do business in this State, is hereby prohibited from authorizing or allowing any person, agent, firm or corporation that is a nonresident of the State of Texas to issue, or cause to be issued, to sign or countersign, or to deliver, or cause to be delivered, any policy or policies of insurance on property, person or persons located in this State, except through regularly commissioned and licensed agents of such companies in Texas. This law shall not apply to property owned by the railroad companies or other common carriers. Upon oath made in writing by any person that he can not procure insurance on property through such agents in Texas, it shall be lawful for any insurance company not having an agent in Texas to insure property of any person upon application of said person, upon his filing said oath with the county clerk of the county in which such person resides. [Acts 1903, p. 232.]

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Art. 5059. [4964] Affidavit of company.—Before a certificate or license to any fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company is issued authorizing it to transact business in this State, the Commissioner shall require in every case, in addition to the other requirements already made and provided by the law, that each such insurance company shall file with him an affidavit that it has not violated any provision of this law. [Id.]

Art. 5060. [4965] Commissions to non-residents.—Any person, agent, firm or corporation licensed by the Commissioner to act as a fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent in the State of Texas, is hereby prohibited from paying, directly or indirectly, any commission, brokerage or other valuable consideration on account of any policy or policies covering property, person or persons, in this State, to any person, persons, agent, firm or corporation that is a non-resident of this State, or to any person or persons, agent, firm or corporation not duly licensed by the Commissioner of Insurance of this State as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent. [Id.]

Art. 5061. [4967] Commissioner may examine.—The Commissioner is hereby authorized and it is made his duty, at the expense of the company investigated, to examine at the head office, located within the United States of America, all books, records and papers of such company and also any officers or employees thereof under oath, as to violations of this law, and he is further empowered to examine person or persons, administer oaths, and send for papers and records, and failure or refusal upon the part of any life, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person or persons, agent, firm or corporation, licensed to do business in the State of Texas, to appear before the Commissioner when requested to do so, or to produce records and papers, or answer under oath, shall subject such fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company, person, persons, agent, firm or corporation to the penalties of this law. [Id.]

Art. 5062. [4966] Penalty for violation.—Whenever the Commissioner shall have or receive notice or information of any violation of any provision of this law, he shall immediately investigate, or cause to be investigated, such violation, and if a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance company has violated any of such provisions, he shall immediately revoke its license for not less than three months, nor more than six months for the first offense, and, for each offense thereafter, for not less than one year; and, if any person, agent, firm or corporation licensed by such Commissioner as a fire, fire and marine, marine, tornado, rent, accident, casualty, liability, health, elevator, disability, plate glass, burglary, bonding, title, surety or fidelity insurance agent shall violate or cause to be violated any provision of this law, he shall, for the first offense, have his license revoked for all companies for which he has been licensed, for not less than three months, and for the second offense he shall have his license revoked for all companies for which he is licensed and shall not thereafter be licensed for any company for one year from date of such revocation. [Id.]

Art. 5063. [4968] Solicitor deemed company's agent.—Any person who shall solicit an application for insurance upon the life of another shall in any controversy between the assured and his beneficiary and the company issuing any policy upon such application be regarded as the agent of the company, and not the agent of the insured, but such agent shall not have the power to waive, change or alter any of the terms or conditions of the application or policy. [Acts 1909, p. 192.]

Art. 5064. [4969] Who may not be agents.—No corporation or stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life insurance policies or contracts in the State. No life insurance company shall be granted a certificate of authority to transact business in this State, which has or is bound by any valid subsisting contract with any other corporation, by virtue of which such other corporation is entitled to receive, directly or indirectly, any percentage or portion of the premium or other income of such life insurance company for any period. No person shall be granted a certificate of authority as the agent of any life insurance company who enters into any contract with any corporation other than such life insurance company, by virtue of which such other corporation is entitled to receive, directly or indirectly, any compensation earned by him as agent for such life insurance company, or any percentage or portion thereof for any period. [Id.]

Art. 5065. [4970] Certificates for agents.—Each such foreign insurance company shall, by resolution of its board of directors, designate some officer or agent who is empowered to appoint or employ its agents or solicitors in this State, and such officer or agent shall promptly notify the Commissioner in writing of the name, title and address of each person so appointed or employed. Upon receipt of this notice, if such person is of good reputation and character, the Commissioner shall issue to him a certificate which shall include a copy of the certificate of authority authorizing the company requesting it to do business in this State, and the name and title of the person to whom the certificate is issued. Such certificate, unless sooner revoked by the Commissioner for cause or canceled at the request of the company employing the holder thereof, shall continue in force until the first day of March next after its issuance, and must be renewed annually. [Id.]

Art. 5066. [4971] Revocation of agent's certificate.—Cause for the revocation of the certificate of authority of an agent or solicitor for an insurance company may exist for violation of any of the insurance laws, or if it shall appear to the Commissioner upon due proof, after notice that such agent or solicitor has knowingly deceived or defrauded a policy holder or a person having been solicited for insurance, or that such agent or solicitor has unreasonably failed and neglected to pay over to the company, or its agent entitled thereto, any premium or part thereof, collected by him on any policy of insurance or application therefor. The Commissioner shall publish such revocation in such manner as he deems proper for the protection of the public; and no person whose certificate of authority as agent or solicitor has been revoked shall be entitled to again receive a certificate of authority as such agent or solicitor for any insurance company in this State for a period of one year. [Id.]

Art. 5067. [4508] [3060] Revocation of certificate of authority.—Should any insurance company fail or neglect to pay off and discharge any execution, issued upon a valid final judgment against said company, within thirty days after the notice of the issuance thereof, then in that event the certificate of authority of said company to transact business of insurance shall be revoked, canceled and annulled, and said company shall be prohibited from transacting business of insurance in this State until said execution be satisfied. [Acts 1879, p. 159.]

Art. 5068. [4972] Foreign insurance corporations.—The provisions of this title are conditioned [conditions] upon which foreign insurance corporations shall be permitted to do business within this State, and any such foreign corporation engaged in issuing

contracts or policies within this State shall be held to have assented thereto as a condition precedent to its right to engage in such business within this State. [Acts 1903, p. 94.]

Art. 5068a. Exemption of insurance benefits from seizure under process.—Sec. 1. No money or benefits of any kind to be paid or rendered on a weekly, monthly or other periodic or installment basis to the insured or any beneficiary under any policy of insurance issued by a life, health or accident insurance company, including mutual and fraternal insurance, or under any plan or program of annuities and benefits in use by any employer, shall be liable to execution, attachment, garnishment or other process or be seized, taken or appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of the insured or of any beneficiary, either before or after said money or benefits is or are paid or rendered, except for premiums payable on such policy or a debt of the insured secured by a pledge thereof.

Sec. 2. Wherever any policy of insurance or plan or program of annuities and benefits mentioned in Section 1 of this Act shall contain a provision against assignment or commutation by any beneficiary thereunder of the money or benefits to be paid or rendered thereunder, or any rights therein, any assignment or commutation or any attempted assignment or commutation by such beneficiary of such money or benefits or rights in violation of such provision shall be wholly void. [Acts 1927, 40th Leg., p. 348, ch. 234.]

TITLE 79

INTEREST

Art.
5069. Definitions.
5070. Legal rate applicable.
5071. Limit on rate.
5072. Rate on judgments.
5073. Action on usurious rate.
5074. Usury, how pleaded.

Article 5069. [4973–4974–4975] Definitions.—"Interest" is the compensation allowed by law or fixed by the parties to a contract for the use or forbearance or detention of money: "legal interest" is that interest which is allowed by law when the parties to a contract have not agreed upon any particular rate of interest; and "conventional interest" is that interest which is agreed upon and fixed by the parties to a written contract, not to exceed ten per cent per annum. "Usury" is interest in excess of the amount allowed by law; all contracts for usury are contrary to public policy and shall be void.

Art. 5070. [4977–4978] Legal rate applicable.—When no specified rate of interest is agreed upon by the parties, interest at the rate of six per cent per annum shall be allowed on all written contracts ascertaining the sum payable, from and after the time when the sum is due and payable; and on all open accounts, from the first day of January after the same are made. [Acts 1892, p. 4; G. L. vol. 10, p. 368.]

Art. 5071. [4979–4980] Limit on rate.—The parties to any written contract may agree to and stipulate for any rate of interest not exceeding ten per cent. per annum on the amount of the contract; and all written contracts whatsoever, which may in any way, directly or indirectly, provide for a greater rate of interest shall be void and of no effect for the amount or value of the interest only; but the principal sum of money or value of the contract may be received and recovered. [Id.]

Art. 5072. [4981] Rate on judgments.—All judgments of the courts of this State shall bear interest at the rate of six per cent per annum from and after the date of the judgment, except where the contract upon which the judgment is founded bears a specified interest greater than six per cent per annum and not exceeding ten per cent per annum, in which case the judgment shall bear the same rate of interest specified in such contract and after the date of such judgment. [Id.]

Art. 5073. [4982] Action on usurious rate.—Within two years after the time that a greater rate of interest than ten per cent shall have been received or collected upon any contract, the person paying the same or his legal representative may by an action of debt recover double the amount of such interest from the person, firm or corporation receiving the same. Such action shall be instituted in any court of this State having jurisdiction thereof, in the county of the defendant's residence, or in the county where such usurious interest shall have been received or collected, or where said contract has been entered into, or where the parties who paid the usurious interest resided when such contract was made. [Acts 1907, p. 277.]

Art. 5074. [4983] Usury, how pleaded.—No evidence of usurious interest as a defense shall be received on the trial of any case, unless the same shall be specially pleaded and verified by the affidavit of the party wishing to avail himself of such defense. [Acts 1876, p. 228; G. L. vol. 10, p. 1064.]

TITLE 80

INTOXICATING LIQUOR

Art.
5075. Sale of intoxicating liquor, etc.
5076. Liquor more than one per cent.
5077. Exceptions as to intoxicating liquor.
5078. Exceptions as to other liquor.
5079. Not an accomplice witness.
5080. Possession prima facie evidence.
5081. "Intoxicating liquors" defined.
5082. Liquors included.
5083. Lawful use.
5084. Permit to sell or make.
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5086. No permit for sacramental wine.
5087. Attach label to container.
5088. Record of manufacturer.
5089. Sale by wholesale druggists.
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5096. Pharmacist cited for violation.
5097. Fixing place of sale—Venue.
5098. Advertising liquor.
5099. Liquor places to clean up.
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5101. Concealing nature of shipment.
5102. Soliciting or giving information.
5103. Order to carrier to deliver.
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5105. No property right in liquor.
5106. To rent or keep for unlawful purpose.
5107. Nuisance.
5108. May enjoin nuisance.
5109. Penal article.
5110. Violating injunction.
5111. Witness shall testify.
5112. Seizure.
5113. "Person" includes corporation.
5114. Disposition of intoxicating liquors.

Article 5075. Sale of intoxicating liquor, etc.—It shall be unlawful for any person, directly or indirectly, to possess or receive for the purpose of sale or to manufacture, sell, barter, exchange, transport, export, deliver, take orders for or furnish spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, or any other intoxicant whatever, or to possess, receive, manufacture or knowingly sell, barter, exchange, transport, export, deliver, take orders for or furnish any equipment, still, mash, material, supplies, device or other thing for manufacturing, selling, bartering, exchanging, transporting, exporting, delivering, taking orders for, or furnishing any such liquors, intoxicants or beverages. [Act July 30, 1919, Acts 2nd C. S. 1919, p. 229, Act Sept. 3, 1921, Acts 1st C. S. 1921, p. 233, Act May 28, 1923, Acts 2nd C. S. 1923, p. 53.]

Art. 5076. Liquor more than one per cent.—It shall be unlawful for any person, directly or indirectly, to possess or receive for the purpose of sale, or to

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manufacture, sell, barter, exchange, transport, export, deliver, take orders for, or furnish spirituous, vinous or malt liquors or medicated bitters, or any potable liquor, mixture or preparation containing in excess of one per cent of alcohol by volume, or to possess, receive, manufacture, or knowingly sell, barter, exchange, transport, export, deliver, take orders for, or furnish any equipment, still, mash, material, supplies, device, or other thing for manufacturing, selling, bartering, exchanging, transporting, exporting, delivering, taking orders for, or furnishing any such liquors, intoxicants or beverages. [Acts 2nd C. S. 1919, p. 229, Acts 1st C. S. 1921, p. 233, Acts 2nd C. S. 1923, p. 54.]

Art. 5077. Exceptions as to intoxicating liquor.—It shall not be unlawful for any person to manufacture, sell, barter, exchange, transport, export, deliver, take orders for, furnish, possess or receive for the purpose of sale, barter, exchange, transport, export, or deliver spirituous, vinous, or malt liquors or medicated bitters for medicinal, mechanical, scientific, or sacramental purposes. [Acts Sept. 3, 1921, Acts 1st C. S. 1921, p. 234.]

Art. 5078. Exceptions as to other liquor.—The manufacture, sale, barter, exchange, transportation, exporting, taking orders for, furnishing, and possessing of any of the liquors mentioned in this title, if done for medicinal, mechanical, scientific, or sacramental purposes, shall not be punishable under the terms of this title. [Id.]

Art. 5079. Not an accomplice witness.—Upon a trial for a violation of any provision of this title, the purchaser, transporter, or possessor of any of the liquors prohibited herein shall not be held in law or in fact to be an accomplice, when a witness in any such trial. [Id.]

Art. 5080. Possession prima facie evidence.—Whenever possession or receipt, or possession or receipt for the purpose of sale, is made unlawful by law, proof of possession of mash, or of a still or any device for manufacturing intoxicating liquors, or proof of the possession of more than one quart of intoxicating liquors, shall be prima facie evidence of guilt; but the defendant shall have the right to introduce evidence showing the legality of such possession. [Acts 2nd C. S. 1923, p. 54.]

Art. 5081. "Intoxicating liquors" defined.—The words "intoxicating liquors," or "liquors" hereafter used in this title shall be held to include and comprehend all liquors referred to in the first and second articles of this chapter, and the said liquors prohibited by said articles will hereafter be referred to herein for convenience as "intoxicating liquors." [Acts 2nd C. S. 1919, p. 229.]

Art. 5082. Liquors included.—The various liquors described in the first two articles of this title shall be construed to include all distilled, malt, spirituous, vinous, fermented or alcoholic liquors and all alcoholic liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, which require a federal tax as a beverage, or which contain more alcohol than is necessary to extract the medical properties of the drug contained in such preparation and to hold the medicinal agents in solution and preserve the same. [Acts 2nd C. S. 1919, p. 229.]

Art. 5083. Lawful use.—The provisions of this title shall not prohibit the possession of intoxicating liquor for beverage purposes for use by the owner and members of his family, or bona fide guests, in a bona fide residence, if such liquors were purchased and deposited in such residence before this law goes into effect. Nothing in this title shall prohibit the manufacture, transportation, storage, and sale of denatured or pure ethyd [ethyl] alcohol, or denatured rum for use only in the industrial or mechanical arts or for scientific purposes or in chemical laboratories or hospitals, or to prevent the manufacture, transportation, sale and keeping and storing for sale any medical preparations manufactured in accordance with formulas prescribed by the United States Pharmacopeia or National Formulary or American Institute of Homeopathy, or of alcoholic, patent or proprietary medicines which do not require the payment of the Federal Tax as a beverage and which contain no more alcohol than is necessary to extract the medicinal properties of the drug contained in such preparation, and to hold the medicinal agents in solution, and to preserve the same and which are manufactured and sold for legitimate and lawful purposes and not as beverages, or to prevent the manufacture and sale of bona fide alcohol toilet, or antiseptic preparations and solutions or flavoring extracts which do not require the payment of Federal tax as a beverage and which contain no more alcohol than is necessary for the extraction, solution and preservation of the agents contained therein, and which are manufactured and sold for legitimate and lawful purposes and not as beverages, and upon the outside of the bottle or package of each is printed in English conspicuously and legibly and clearly the quantity by volume of alcohol in such preparation. The manufacturer of flavoring extracts or toilet, medicinal, antiseptic preparations or solutions, patent or proprietary medicines, or preparations permitted to be manufactured by this law shall be permitted to purchase, possess, transport and store alcohol necessary for the manufacture of said article, but not to be sold or given away. Such manufacturer shall secure a permit from the Comptroller and shall make a monthly report to be filed with the Comptroller on or before the 10th day of each month, showing the name and quantity of every such preparation, solution or medicine so manufactured, and the percentage of alcohol contained in each such preparation, solution or medicine. Said manufacturer shall, upon request of the Attorney General, the Comptroller, or the District or County Attorney of the county in which such manufacturer has his place of business, furnish to the officer making such request any information called for by such officer with reference to the manufacture, storage or sale of any such alcoholic preparation, solution or medicine, and any information with reference to the quantities and dates of sale and transportation of any such preparation, solution or medicine to any person or persons designated in such request. Any of the officers herein above named shall have the right at any reasonable time within business hours to examine the books and records and all data in the possession of such manufacturer with reference to the manufacture, storage or sale of such alcoholic preparations. Nothing herein shall prevent the storage in United States bonded warehouses in the custody of a United States collector of internal revenue of all liquors manufactured prior to the taking effect of this law or to prevent the transportation of such liquors for purposes not inhibited by law. [Acts 2nd C. S. 1919, p. 231.]

Art. 5084. Permit to sell or make.—Alcohol for non-beverage purposes and wine for sacramental purposes may be manufactured and sold as follows:

The Comptroller may issue permits to persons, to manufacture and sell equipment for the manufacture of liquor not prohibited herein; to manufacture alcohol and wine; to manufacture alcoholic, patent or proprietary medicine, flavoring extracts and culinary preparations and other nonbeverage alcoholic preparation; to wholesale and retail druggists or pharmacists and to persons permitted to possess alcohol and wine for authorized purposes. Such permits shall not be in conflict with the prohibitions contained herein. [Acts 2nd C. S. 1919, p. 231.]

Art. 5085. Bond.—A permit shall not be issued by the Comptroller to any person who has, within two years next preceding the issuing of the same, been adjudged guilty of violating any provision of this Act, or of any permit, or of any law of this State, or of the United States, prohibiting or regulating the liquor traffic; nor shall a permit be issued for the purpose of selling such liquor at retail, unless such sale be made by a pharmacist designated in the permit and duly licensed by the State Board of Pharmacy, nor until a bond shall be given and approved, and the applicant has

filed written application therefor setting forth the qualifications and the purposes for which the permit will be used, together with such other information as the Comptroller may require. The bond herein required of a retailer shall be made payable to the Governor of this State at Austin, in Travis County, shall be in the sum of one thousand dollars conditioned for the faithful observance of this Act; the bond shall be upon such form as may be drawn and prescribed by the Attorney General and for any breach of the same, suit may be brought in the District Court of Travis County to recover the entire amount of same as a penalty for such violation of the law and breach of the bond. Said bond, if signed by personal sureties, must be signed by two solvent sureties, or, if by a surety company, then by a surety company authorized to transact business in the State of Texas. The bond shall be subject to the approval of the Comptroller and shall be filed in his office. The Attorney General shall bring all actions for breach of said bond in the name of the State. [Acts 2nd C. S. 1919, p. 231.]

Art. 5086. No permit for sacramental wine.—Such permit when issued shall contain date of issue, shall be in writing, signed by the Comptroller, shall name and give the address of the person to whom issued, give location where such liquors, equipment or material is to be manufactured, kept, stored or sold, and fix the maximum quantity of such liquor permitted to be kept or stored and specifically designate and limit the acts permitted, give the name and address of all individuals authorized to do the permitted acts; provided the name and address of the agents, employés and servants of common carrirs [carriers] may be omitted by the Comptroller from such permit, and such permit shall expire on the 31st day of December next succeeding the date of issue thereof. Nothing herein shall be construed as requiring any priest, rabbi or minister of any religious denomination or sect to have a permit in order to purchase or receive shipments of wine for sacramental purposes; and nothing in this title shall make it unlawful for any priest, rabbi or minister or [of] any religious denomination or sect to purchase, order or receive, wine for sacramental purposes or for any common carrier to ship, transport, carry or deliver same to any priest, rabbi or minister of any religious denomination or sect for sacramental purposes only. Where such shipment or purchase is made a record thereof shall be made and kept and the priest, rabbi or minister making such purchase or shipment shall be identified. Such quantities of wine may be purchased and kept on hand for sacramental purposes as may be necessary for the particular church or religious institution for the use and service of which same is purchased or shipped. [Acts 2nd C. S. 1919, Acts 1919, p. 231.]

Art. 5087. Attach label to container.—All persons manufacturing alcohol or wine, or either, shall securely and permanently attach to any container of such liquor as the same is manufactured, and thereafter, persons possessing such liquor in wholesale quantities shall securely keep and maintain thereon, a manufacturer's label, stating name of manufacturer, kind and quantity of liquor contained therein, with a copy of the permit authorizing the manufacture thereof. Every person having in his possession any intoxicating liquor, purchased after this law becomes effective, for permitted purposes, shall have pasted on or permanently attached to the container a copy of the prescription or affidavit as the case may be, upon which authority it was purchased as is provided for in this title. [Acts 2nd C. S. 1919, p. 232.]

Art. 5088. Record of manufacturer.—All persons authorized to manufacture alcohol shall keep a separate record of such liquors manufactured or sold, giving date and quantity of such liquor manufactured and sold, the quantity of such liquor on hand, name and address of persons to whom such liquor was sold, the name and address of all agents in any way connected with such manufacture, sale, or purchase, or the keeping, storing, delivering, consigning, and distribution of such liquor, the name and address of all common, or other carriers, receiving, transporting, and delivering said liquor, and a copy of the application on which the purchase or sale of such liquor was made, and a detailed account of the dispositions of such liquor. A copy of such record shall be sent to the Comptroller every third month by the 10th of the month for the quarter preceding. [Acts 2nd C. S. 1919, p. 232].

Art. 5089. Sale by wholesale druggists.—It shall be unlawful for a wholesale druggist to sell alcohol or wine, except in wholesale quantities, to persons having permits to purchase in such quantities. Such wholesale druggist shall keep an accurate record of all sales and label the containers of such liquor, setting forth the kind of liquor contained therein, by whom manufactured, and the person to whom sold. A copy of such record shall be sent to the Comptroller every third month by the 10th of the month for the quarter preceding. It shall be unlawful for a retail druggist or pharmacist to sell any liquor except alcohol for non-beverage purposes or wine for sacramental purposes. Such druggist or pharmacist shall keep a record giving the name of the doctor issuing the prescriptions containing alcohol, the amount, date of sales, the name and signature of the purchaser, the person making the sale, and a copy of the prescription. [Acts 2nd C. S. 1919, p. 232.]

Art. 5090. Duty of physician prescribing.—Every physician who issues a prescription for ethyl alcohol, or any alcoholic liquor, shall first secure a permit from the Comptroller, except as herein provided, and shall keep a record alphabetically arranged in a separate book provided by the Comptroller, which shall show: Date, amount, to whom issued, directions for use (stating the amount and frequency of dose), and the druggist to whom addressed. Such physician shall send a copy of such record to the Comptroller not later than the fifth day of the month for the quarter preceding. [Acts 2nd C. S. 1919, p. 233.]

Art. 5091. Physician to obey law.—A physician who issues prescriptions must be in active practice, in good standing with his profession, not addicted to the use of any narcotic drug, and have a permit as provided herein for issuing prescriptions. Such physician before issuing any prescriptions must make a careful personal, physical examination of the person to whom the alcohol is prescribed, and in no case issue such prescription to any person whom he has reason to believe will use alcohol for beverage purposes, nor prescribe more than a pint of alcohol to any person at a time. Nor shall such prescriptions be filled at any pharmacy or drugstore in which the physician has any financial interest. For any shift or device by which intoxicating liquors may be improperly prescribed, or for any violation of this article, in addition to the penalty prescribed, for the first offense under this title, the Comptroller may suspend the permit of such physician to issue prescriptions for alcohol for a period of one year, and for the second offense, in addition to the punishment prescribed herein, the permit of such physician shall be deemed revoked forthwith. The revocation of such permit, if revoked by the court, shall be sent to the authority granting the permit and shall act as a ban to the granting of any further permit to such physician to issue prescriptions. [Acts 2nd C. S. 1919, p. 233.]

Art. 5092. Carrier to secure permit.—Every railroad company, express company, or other common carrier that transports any liquor shall secure first a permit from the Comptroller and keep correctly at the place of receipt for shipment, in typewriting or in a clear and legible hand, that the same may be easily read, a permanent alphabetically arranged record of the receipt of such liquors and the name and post-office address, street address, or other description of domicile of the consignor and consignee, and the place of delivery. Nothing herein shall be construed to authorize the transportation of liquor for other than permitted purposes. [Acts 2nd C. S. 1919, p. 233.]

Art. 5093. Delivery by carrier.—Common carriers may deliver liquor to persons who have permits

to manufacture or possess the same in wholesale quantities, upon the presentation of a verified copy of the permits from the Comptroller, and affidavit to the carrier that such liquor will not be used in violation of the law; and the common carrier may also receive for shipment, and ship and deliver, liquor to persons for the uses permitted herein when affidavit is presented to the carrier that such liquor will not be used in violation of the law. The copy of the record hereinbefore mentioned shall be sent by the transportation company to the Comptroller of the State where the delivery was made, not later than the 10th day of the month for the quarter next preceding. [Acts 2nd C. S. 1919, p. 233.]

Art. 5094. Record of carrier.—The record to be kept by the transportation company at the place of delivery shall show: Name of consignor, consignee, kind of liquor and quantity; the number of permit from the Comptroller; and the signature of the consignee. The affidavits of the consignee to be attached to the above record shall be as follows:

State of ——— }
County of ——— } ss

——— being duly sworn, deposes and says, that my address is ——— (or other definite description, giving street number or hotel); I am not a minor, nor of intemperate habits. I am the owner of a package in the office of a common carrier, to wit: ———. It contains (giving amount and kind of liquor) ——— which I have ordered in writing the ——— day of ——— upon the authority of permit No. ———; that the purpose for which I ordered such liquor is ———; that I have not received from any carrier or any person, nor have I had in my control at any place or places, more than ——— (amount) of alcohol or wine within the last three days preceding this date, and I do not have liquor on hand except ———; that I will not use any of such liquor nor allow anyone else to use such liquor for beverage purposes or for purposes other than herein stated.

———

Sworn to and subscribed in my presence ——— day of ———, 19—.

———

The agent of the common carrier is hereby authorized to administer the oath to the foregoing consignee, who, if not personally known to the agent, shall first be identified before the delivery of the liquor to him. The names and addresses of the person identifying the consignee shall be included in the record. The affidavit shall be made in the form prescribed, in a permanent record, and if such permanent record has not been furnished the carrier by the Comptroller, after application for the same, then the affidavit of the consignee shall be pasted or permanently attached at the bottom of the record mentioned therein and a copy attached permanently to the container of such liquor. If such container is enclosed in a package with other material, then such copy shall be attached to it or pasted on it when it is taken from such package and before the liquor is so delivered. [Acts 2nd C. S. 1919, p. 234.]

Art. 5095. Comptroller to furnish form.—The Comptroller shall have printed forms of records, affidavits, and prescriptions, as provided herein, and shall furnish the same at cost to only such persons as are authorized by law to sell, transport, purchase, manufacture or use alcohol. The affidavits or prescriptions to be filed with the druggist shall be printed in book form, numbering such affidavit with a consecutive serial number from one to one hundred. Each book shall be given a number, and a stub in each book shall carry the same number as the affidavit or prescription, showing the copy of the record of such sale. The book containing such stub shall be returned to the Comptroller when the affidavits or prescriptions are used, or not later than six months from the date that such book or affidavits and prescriptions were delivered to such druggist or physician. All unused, mutilated, or defaced blanks shall be returned with the book. No druggist or physician shall make such sale or issue such prescriptions, except on blanks herein provided. The form of such record shall be prescribed by the Comptroller. The Comptroller shall charge a fee of five dollars for each and every character of permit issued by him under this title. [Acts 2nd C. S. 1919, p. 235.]

Art. 5096. Pharmacist cited for violation.—If at any time there shall be filed with the Comptroller a complaint under oath setting forth that any pharmacist, who has a permit to sell alcohol for medical, mechanical, or scientific purposes, or wine for sacramental purposes, is not in good faith conforming to the provisions of this chapter, or is guilty of violating this law, the Comptroller or his agent shall immediately issue an order citing such pharmacist to appear at a place in the State where he resides before the Comptroller, on a day named not more than thirty days, nor fewer than fifteen days, from the issuing of such order, at which time the question of the cancellation of such permit shall be heard. If it be found that such pharmacist is guilty of violating any provision of this law, such permit shall be revoked and no permit shall be granted to such person, firm, or corporation for two years thereafter. [Acts 2nd C. S. 1919, p. 235.]

Art. 5097. Fixing place of sale—Venue.—In case of a sale where a shipment or delivery of such intoxicating liquor is made by a common or other carrier the sale or delivery thereof shall be deemed to be made in the county wherein the delivery is made by such carrier to the consignee, his agent, or employees. A prosecution for such sale or delivery may likewise be had in the county wherein the sale is made or from which the shipment is made, or in any county through which the shipment is made. [Acts 2nd C. S. 1919, p. 235.]

Art. 5098. Advertising liquor.—It shall be unlawful to advertise anywhere, on land or water, by any means or method, intoxicating liquors, or to advertise the manufacture, method of manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom and at what price the same may be obtained. The manufacturer of alcohol or wine and wholesale druggists having a permit under this chapter shall be allowed to send price lists to those to whom they are permitted to sell alcohol or wine under this law; it shall also be unlawful to permit any sign or billboard containing such prohibited advertisement to remain upon one's premises or to circulate any prohibited price list, order blank or other matter designed to induce or secure orders for such intoxicating liquors. The officers charged with the enforcement of this law are authorized to remove, paint over or otherwise obliterate any such advertisement from any sign, billboard, or other place when it comes to his notice, and shall do so upon the demand of any citizen who has first requested the person in charge of such advertisement, or the owner of the property on which it is located to remove the same and such person fails to remove such advertisement as required by law. Any advertisement or notice containing the picture of a brewery, distillery, bottle, keg, barrel, or box or other receptacle represented as containing intoxicating liquors, or designed to serve as an advertisement thereof, shall be within the inhibition of this article. It shall be unlawful for any newspaper or periodical to print in its columns statement concerning the manufacture or distribution of alcoholic liquors directly or indirectly, for which the said newspaper or periodical receives compensation of any kind, without printing at the beginning and at the close of said statement in type of the same size used in the body of the said article the following statement: "Printed as paid advertising." [Acts 2nd C. S. 1919, p. 235.]

Art. 5099. Liquor places to clean up.—Every person except licensed pharmacists, wholesale druggists, manufacturing chemists, or hospitals or other places provided for herein to legally possess liquor, shall remove, or cause to be removed, all intoxicating liquors in his possession for prohibited purposes, and failure to do so shall be evidence that such liquor is

kept therein for the purpose of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title. All screens, stained glass, or other obstructions which prevent a clear view of the interior of any room or place where intoxicating liquors were sold as a beverage within one year before this Act becomes operative shall be removed or changed so as to give a permanent unobstructed view of the interior of said room or place, if beverages of any kind are sold therein. [Acts 2nd C. S. 1919, p. 236.]

Art. 5100. Recipe or formula.—It shall be unlawful to advertise, sell, deliver or possess any preparation, compound, or table from which intoxicating liquor as a beverage is made, or any formula, directions, or recipes for making intoxicating liquors for beverage purposes. [Acts 2nd C. S. 1919, p. 236.]

Art. 5101. Concealing nature of shipment.—No person shall use or induce any railroad company, express company, or any other carrier, or any servant or employé thereof, or any person or persons, to carry[,] transport, or ship any package or receptacle containing liquors without notifying the carrier, its servant or agent, or any person who carries the same, of the true nature and character of the shipment. But failure to notify such carrier shall not be a defense for illegal transportation. [Id.]

Art. 5102. Soliciting or giving information.—No person shall solicit, or receive from any person for the purpose of forwarding for the person from whom received, any orders for intoxicating liquors from any person, or give any information how such prohibited liquors may be received, or where such liquors are, or send for such liquors, except for the purposes permitted by this title. [Acts 2nd C. S. 1919, p. 237.]

Art. 5103. Order to carrier to deliver.—It shall be unlawful to give to any carrier, or any officer, agent or person acting or assuming to act for such carrier, an order requiring the delivery to any person of any liquor or package containing liquors consigned to a person when the purpose of the order is to enable any person not an actual bona fide consignee to obtain such liquors. [Acts 2nd C. S. 1919, p. 237.]

Art. 5104. Information on shipped container.—No person shall transport liquor or receive or possess any liquor from a common or other carrier unless there appears on the outside of the package containing such liquors the following information: Name and address of the consignor or seller, name and address of the consignee or persons receiving the liquor; kind and quantity of liquor contained therein and number of permit. Any consignee accepting or receiving any package containing any such liquors upon which appears a false statement, or any person consigning, shipping, transporting, or delivering any such package, knowing that such statement appearing on the outside is false, shall be deemed guilty of violating the provisions of this title. [Acts 2nd C. S. 1919, p. 237.]

Art. 5105. No property right in liquor.—No property rights of any kind shall exist in any intoxicating liquors manufactured or sold or kept for sale for beverage purposes in violation of law, and in all such cases the same may be searched for, seized and ordered to be destroyed. [Acts 2nd C. S. 1919, p. 237.]

Art. 5106. To rent or keep for unlawful purpose.—No person shall rent to another or keep or be in any way interested in keeping any premises, building, room, boat or place to be used for the purpose of storing, manufacturing, selling, transporting, receiving or delivering, or bartering or giving away intoxicating liquors in violation of this title, and any one who knowingly does so shall be guilty of violating this law and shall be punished accordingly as provided in the penal article of this title. [Acts 2nd C. S. 1919, p. 238.]

Art. 5107. Nuisance.—Any room, house, building, boat, structure, or place of any kind similar or dissimilar to those named, where intoxicating liquor is kept, possessed, sold, manufactured, bartered or given away, or be transported to or transported from in violation of law, and all intoxicating liquors and all property kept in and used in maintaining such place are hereby declared to be a common nuisance and any person who maintains or assists in maintaining such common nuisance shall be guilty of violating this law and shall be punished accordingly. [Acts 2nd C. S. 1919, p. 238.]

Art. 5108. May enjoin nuisance.—The Attorney General or County or District Attorney of the county where such nuisance, as defined in the preceding article exists or is kept or maintained, may maintain an action in the name of the State of Texas to abate and perpetually enjoin such nuisance and upon judgment of the court ordering, such nuisance shall be abated, all intoxicating liquor, containers, utensils and instrumentalities used in the maintenance of such nuisance shall be ordered by the court to be destroyed, same shall be destroyed by any officer authorized to execute civil process; the court shall also order that the place where said nuisance is kept or maintained be closed for one year or until the owner, lessee, tenant or occupant thereof shall file bond with sufficient sureties to be approved by the court making the order in the penal sum of $1,000.00, payable to the State of Texas, at Austin, Texas, and conditioned that intoxicating liquor will not thereafter be manufactured, sold, bartered, stored, transported to or from, or given away in violation of law. In case of the violation of any condition of such bond, the whole sum may be recovered as a penalty in the name and for the State of Texas in the District Courts of Travis County, all suits to be brought by the Attorney General. In all cases where any person has been convicted of a violation of the provisions of this title for acts done in keeping or maintaining the nuisance defined in the preceding article, and such conviction has been final, then a certified copy of such judgment of conviction shall be considered as prima facie evidence of the existence of such nuisance in any action to abate the same. [Acts 2nd C. S. 1919, p. 238.]

Art. 5109. Penal article.—Any corporation violating any provision of this title shall be subject to a penalty in favor of the State of Texas, which shall be recoverable in an action in the name of the State to be brought by the Attorney General in any district court of Travis County or such action may be brought in the district court of any county where the offense is committed, by the Attorney General or by the county or district attorney of such county with the consent and approval of the Attorney General. In any such action for penalties, the State shall recover the sum of Five Hundred Dollars for any violation of the law, provided that each separate violation of the law shall be considered a separate offense within the terms of this article, or where the offense is of a continuing character, then each day shall be considered a separate infraction of the law, for which the penalty may be recovered. The officers, agents or servants of any corporation against which any such penalty suit may be brought shall not be excused from testifying on the ground that their testimony might incriminate them, but where they are called upon by the State to testify and do testify they shall not be prosecuted for their participation in those acts about which they have testified. [Acts 2nd C. S. 1919, p. 239.]

Art. 5110. Violating injunction.—In addition to all other remedies now provided by law and provided in this Act, the Attorney General is hereby authorized to enjoin the violation of any article of this title, and suit therefor may be maintained in the name of the State of Texas in any District Court in Travis County. The district or county attorney of any county, wherein any of the provisions of this Act, are violated, is authorized to institute and maintain, in the district court of any such county, a suit in the name of the State to enjoin and prevent the violation of any article of this title. This remedy by an injunction given in this article shall be cumulative of and in addition to the other provisions of this Act providing penalties or creating and defining crimes and punishments, and may be maintained with or without prose-

cutions or penalty suits herein otherwise provided for. Any person violating the terms of any injunction issued under the provisions of this article shall be punished for contempt by fine of not less than One Hundred nor more than Five Hundred Dollars, and by imprisonment in jail for not less than thirty days, nor more than six months. [Acts 2nd C. S. 1919, p. 240.]

Art. 5111. Witness shall testify.—No person shall be excused from testifying against persons who have violated any provisions of this title for the reason that such testimony will tend to incriminate him, but no person required to so testify shall be punished for acts disclosed by such testimony. [Id.]

Art. 5112. Seizure.—Any animal, automobile, flying machine, airplane, boat, ship, or other vehicle or instrumentality used for the unlawful transportation or storage of intoxicating liquor as defined in this title is declared to be a public nuisance; and any animal, automobile, flying machine, airplane, boat, ship, or other vehicle or instrumentality used in the presence and view of any peace officer of this State for the unlawful transportation or storage of intoxicating liquors as so defined, or for the commission of any act made unlawful by this Act, shall be seized without warrant by such peace officer, which officer shall within twenty-four hours after such seizure file with the county clerk a detailed statement of the time when, the place where and the circumstances under which he seized such property, and shall appraise the value thereof. At any time before the trial of the condemnation suit herein provided for, the owner of said property seized or the person in whose possession or under whose control the same was at the time of seizure, may replevy the same by giving bond with two or more good and sufficient sureties, or a solvent guaranty or surety company, chartered or authorized to do business under the laws of this State, to be approved by the officer making the seizure or by his successor in office, payable to the State of Texas in an amount equal to the reasonable market value of the property replevied as fixed by the appraisal of said officer seizing same, conditioned that should said property in said action be condemned as a nuisance, the obligors in such bond will pay to the State of Texas the reasonable cash market value of the property replevied at the time it was seized, and all costs. In the event the property seized is not replevied, same shall be stored in a bonded warehouse, provided that if there is not a bonded warehouse in the county where such property is seized and within reasonable reach of the officer seizing same, then such property shall under the direction of the district judge having jurisdiction of said suit be stored in a safe place and be safely kept in good condition, to abide the final judgment of the proper court with reference thereto, the fees for storage to be taxed as costs in any proceeding for the condemnation or recovery of said property. The county or district attorney shall after the seizure of said property institute suit in a court of competent jurisdiction to condemn the same as a public nuisance, and to have the same destroyed if the same is not valuable or useful for some legitimate purpose, and if valuable or useful for some legitimate purpose to be sold under order of said court, and the proceeds of such sale shall be immediately paid into the State Treasury. In cases where the property is destroyed the county or district attorney shall receive fifteen dollars in each case, and the sheriff or other officer making the seizure and sale shall receive ten dollars, to be paid by the county in which said condemnation suit is tried. [Acts 2nd C. S. 1923, p. 54.]

Art. 5113. "Person" includes corporation.—The word "person" as used in this Act shall be held to include both natural persons and corporations. Where the offense is committed by a corporation, the corporation shall be subject to the penalties prescribed in this title. [Acts 2nd C. S. 1919, p. 229.]

Art. 5114. Disposition of intoxicating liquors.—In all cases where intoxicating liquors or any personal property used for the purpose of violating any of the intoxicating liquor laws of this State, shall be seized by an officer with or without a search warrant, such officer shall immediately make a written report thereof, which report shall in detail state the name of the officer making the seizure, the place where seized and an inventory of the property, articles or intoxicating liquors so taken into possession. The report shall be in triplicate and signed by the officer seizing, and one witness, if there be a witness present. One copy shall be given to the person from whom the goods are taken, one copy shall be sworn to by the officer who makes the seizure and immediately filed with the county clerk of the county in which the goods are seized, and one copy shall be retained by the officer who makes the seizure. Said officer, if not the sheriff, shall immediately deliver to the sheriff of the county, the goods seized, and take the sheriff's receipt therefor in duplicate. And such sheriff shall retain the intoxicating liquor or personal property so seized and hold the same until the same shall be disposed of by proper orders of the district court of the county in which said property was seized. The duplicate copy of said receipt shall be immediately filed with said county clerk.

"Whenever any intoxicating liquor is adjudged to be destroyed, the district judge may, instead of having the same actually destroyed, order the same to be delivered to the State Board of Control at Austin, Texas, for use for medicinal purposes in the State eleemosynary institutions. When notified that a district judge has so ordered any intoxicating liquor to be so delivered, the Board of Control shall pay the expenses of transporting and delivering the same to said Board of Control.

"All liquors and property so seized shall be preserved for use as evidence in the trial of any action growing out of such seizure and all officers seizing such liquors or property are hereby required to mark the date of the seizure and the name of the person from whom seized. The sheriff shall be liable on his bond for the safe-keeping of all such property so turned over to him under the provisions of this Act." [Acts 1925, p. 346.] [39th Leg., ch. 138, § 1.]

TITLE 81

JAILS

Art.
5115. Jails provided.
5116. Sheriff and jailer.
5117. Marshal may use jail.
5118. Prisoner sent to another jail.

Article 5115. [5108–5111] Jails provided.—The commissioners court shall provide safe and suitable jails for their respective counties, and shall cause the same to be kept in good repair. They shall see that the jails of their respective counties are kept in a clean and healthy condition, properly ventilated, and not over-crowded with prisoners, and that they are furnished with clean and comfortable mattresses and blankets sufficient for the comfort of the prisoners. When there is no jail in a county, the sheriff may rent a suitable house and employ guards, the expense to be paid by the proper county. [Act July 22, 1876, p. 52; G. L. vol. 8, p. 888.]

Art. 5116. [5109] [3133] Sheriff and jailer.—Each sheriff is the keeper of the jail of his county. He shall safely keep therein all prisoners committed thereto by lawful authority, subject to the order of the proper court, and shall be responsible for the safe keeping of such prisoners. The sheriff may appoint a jailer to take charge of the jail, and supply the wants of those therein confined; but in all cases the sheriff shall exercise a supervision and control over the jail. [Act May 12, 1846, p. 268; G. L. vol. 2, p. 1574; Act August 26, 1856, p. 88; G. L. vol. 4, p. 506.]

Art. 5117. [5112–3] Marshal may use jail.—Sheriffs and jailers shall receive into their jails such prisoners as may be delivered or tendered to them by any United States Marshal or his deputy for any district of Texas, and shall safely keep such prisoners until they are demanded by such marshal or his

deputy, or are discharged by due course of law. The marshal by whose authority such prisoners are received and kept shall be directly and personally liable to the sheriff or jailer for the jail fees and all other expenses of the keeping of such prisoners, such fees and expenses to be estimated according to the laws regulating the same in other cases. [Id.]

Art. 5118. Prisoner sent to another jail.—A county to which a prisoner is sent, for want of a safe jail in the proper county, may by suit recover from the county from which such prisoner was sent a sum not exceeding seventy-five cents per day on account of the expense attending the safekeeping of such prisoner.

TITLE 82

JUVENILES

Art.

5119. Instruction of inmates.
5120. The superintendent.
5121. Powers and duties of the superintendent.
5122. Employment of officers, etc.
5123. Religious services.
5124. Conveying male to school.
5125. Who received.
5126. Promotion and discharge of inmates.
5127. Escape and apprehension.
5128. Limitation of term.
5129. Care of inmates.
5130. Punishment of inmates.
5131. School for negro boys.
5132. Girls' Training School.
5133. Superintendent and officers.
5134. Rules and regulations.
5135. Commitment.
5136. Conveying to school.
5137. Dismissal of inmates.
5138. Detention homes and parental schools.
5139. County Juvenile Board.
5140. Powers of Board.
5141. Sessions of Board.
5142. Probation officers—Qualifications, duties, appointment, salaries and removal.
5143. Incorrigible boy.

Article 5119. [5224] Instruction of inmates.—The Board of Control and the Superintendent of the State Juvenile Training School shall provide for and maintain suitable instruction and training of the inmates of said school. Said instruction shall include common school or agricultural branches, or all as may be deemed desirable by said Board and superintendent. The Board and superintendent shall arrange for each inmate to receive a reasonable amount of instruction in the school of letters and industrial branch each year. Each inmate shall be given definite instruction and training in some useful occupation and shall be given such moral training and discipline as he is capable of receiving. [Acts 1st C. S. 1913, p. 7.]

Art. 5120. [5225] The superintendent.—The superintendent shall be a man of high moral character, education and training, and shall have had experience in handling wayward boys. He shall take the official oath and shall give a sufficient bond in the sum of ten thousand dollars payable to the Governor or his successors in office, conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the Secretary of State. [Id.]

Art. 5121. [5226] Powers and duties of the superintendent.—The superintendent shall: 1. Keep a register in which he shall enter the name of each inmate, date of reception, previous moral character, habits and education, so far as can be ascertained, his conduct and department, educational and vocational advancement while in said school, the discharge, death, escape, commutation of time, parolment and punishment of each person admitted to said school.

2. See that the buildings and premises are kept in good and sanitary order.

3. Cause to be kept the books of the institution fully exhibiting all moneys received and disbursed, the source from which received and purposes for which same is expended. All supplies for the school shall be purchased in the same manner as for other similar institutions. Said books shall give a full record of all products produced on the farm, whether sold or consumed, and shall at all times be open for the inspection of the Board or the Governor.

Art. 5122. [5227] Employment of officers, etc.—The superintendent shall employ subordinate officers, teachers and employees necessary to the conduct, administration and maintenance of said institution up to the standards of efficiency and utility essential to accomplish the best results. Any employee who uses tobacco or intoxicating liquor in any form while on duty shall be discharged by the superintendent. The superintendent with the consent of the Board may discharge any employee for cause.

The salaries and compensation of all subordinate officers, teachers and employees shall be fixed by the Board in the form of an itemized account to be sworn to by the superintendent. Such salaries shall not exceed the amounts appropriated for same and shall be paid monthly on the Comptroller's warrants based upon such account. Said account shall contain the name and address of each person and the amount due and for what service. No account for salary shall be presented by said superintendent until the same has been fixed by said Board. [Id.]

Art. 5123. [5228] Religious services.—The Board shall provide for religious services at said institution for the benefit of the inmates thereof, and shall employ a chaplain who shall be an ordained minister of the gospel. The superintendent shall require all inmates in said institution who are physically able to attend at least one religious service on each Sunday. Such chaplain shall, under the direction of the superintendent, devote his time to the religious and moral training and education of said inmates, and to visiting sick inmates whenever necessary, and shall receive an annual salary not to exceed seven hundred and twenty dollars. Such chaplain may also be a teacher, such as is provided in the preceding article. [Acts 1911, p. 211.]

Art. 5124. Conveying male to school.—The officer conveying any male to any State training school shall be paid by the county in which such child was convicted the actual traveling expenses of such officer and child, and five dollars additional. [Acts 1909, p. 100.]

Art. 5125. [5229] Who received.—All male persons under the age of seventeen years who shall be lawfully committed to the State Juvenile Training School as a delinquent child shall be received as inmates of said training school. [Acts 1909, p. 103, 1st C. S. 1913, p. 10; Acts 1927, 40th Leg., p. 316, ch. 214.]

Art. 5126. [5230] Promotion and discharge of inmates.—The Board shall establish and maintain in said school a system of grading and promotion on a basis of the moral, intellectual and industrial advancement of the inmates. When the superintendent is satisfied that any inmate has acquired sufficient self-control, moral habits and industrial efficiency, and suitable employment under a responsible, sober and moral person can be found for said inmate, he shall, with the approval of said Board, grant said inmate "leave of probation." To secure homes and employment for inmates and of visiting and supervising them while on probation, a furlough officer shall be employed who shall, when not engaged with his duties as such officer, assist in teaching and in the general work of the school under the direction of the superintendent. When employment has been secured for any inmate he shall be sent out on a furlough with the condition that the person furloughed and his employer shall send a written report at the end of each month thereafter for a period of twelve months to the furlough officer stating the habits and demeanor of said furloughed person. If each report be favorable the superintendent shall recommend to the Governor that a full release be granted such juvenile and that his term of commitment be terminated. If any monthly report shall be deemed unfavorable, or be not sent as herein provided, and the superintendent should become convinced before the expiration of the said twelve months that said furloughed person should be

returned to the school for further training or discipline, the said inmate shall in that event forfeit his leave of probation, and shall be returned to school. If his employer shall fail or refuse to return said furloughed person to said school it shall be the duty of the furlough officer or any peace officer, upon notice from the superintendent, to take such furloughed person into custody, under the same conditions as if he were an escaped inmate, and return him to said school in the manner prescribed in the succeeding article. The Governor shall at any time have power to grant a pardon to any inmate of said school. [Id.]

Art. 5127. [5234] Escape and apprehension.—If any inmate of said school shall escape therefrom, or if on leave of probation or furlough and is ordered returned and the employer of said furloughed person fails or refuses to return him it shall be the duty of the superintendent of said institution or any officer or employé of same, or any peace officer to apprehend him. Any person may lawfully apprehend such escaped inmate and forthwith deliver him to any peace officer. Any such escaped inmate shall be returned to said school by any furlough, probation or peace officer. The cost of his return shall be paid by the county from which said inmate was committed. [Id.]

Art. 5128. [5231] Limitation of term.—Commitments to such school shall be upon the indeterminate sentence plan. No juvenile shall remain or be detained therein or upon parole under the control of the officers of said school after he becomes twenty-one years old. [Id.]

Art. 5129. [5232] [5233] Care of inmates.—The superintendent shall divide the inmates into such classes and shall house, feed and train them in such manner as he deems best for the development and advancement of the child. All inmates shall be provided with shelter, wholesome food and suitable clothing, books, means of healthful recreation and other material necessary for their training, at the expense of the State, except as otherwise provided by law. [Id.]

Art. 5130. Punishment of inmates.—Corporal punishment in any form shall not be inflicted upon the inmates of said institution except as a last resort to maintain discipline, and then only in the presence of the superintendent and a resident nurse. At no time shall any inmate be struck more than twenty times, and that [then] only with such instrument and in such manner as will inflict reasonable and moderate punishment, considering the age, size and strength of the culprit and the strength of the person administering such punishment. At no time shall any weapon or instrument of torture be used or any instrument which by its make, coupled with the manner of its use, would be calculated to inflict bodily injury. [Acts 1913, 1st C. S. p. 11.]

Art. 5131. [Repealed by Acts 1927, 40th Leg., p. 233, ch. 159, § 1].

Art. 5132. Girls' Training School.—The Girls' Training School for dependent and delinquent girls shall be under the control and management of the State Board of Control which shall provide wholesome and proper quarters and exercise and diversion, and shall make provision for training in all of the useful arts and sciences to which women are adapted, to prepare them for future womanhood and independence, and shall provide instruction in nursing, sanitation and hygiene. [Acts 1913, p. 289.]

Art. 5133. Superintendent and officers.—The Board shall employ as superintendent of such school a woman of previous experience and training in a similar institution, who shall have power to appoint and discharge all subordinate officials and teachers for the school. The Board shall fix the salary of the superintendent and all employees. The Board shall have power to remove the superintendent for cause, and the decision of said Board in such matter shall be final. [Id.]

Art. 5134. Rules and regulations.—The superintendent with the approval of the Board shall make all necessary rules and regulations for the government of the training school, and shall provide that the time of the pupils is properly distributed between the school of letters and the industrial and domestic pursuits, according to the needs of the pupil and the facilities at hand. Provision shall be made for giving diplomas or certificates of proficiency for graduates from the nurses training school or any industrial school that may be established by such Board. [Id.]

Art. 5135. Commitment.—Whenever any girl between the ages of seven and eighteen years shall be tried or brought before any juvenile court upon indictment or information or before the district court on petition of any person in this State or the Humane Society or any institution of a similar purpose or character, charged with being a dependent or delinquent child as these terms are defined in the statutes of this State, the court may, if in the opinion of the judge, the Girls' Training School is the proper place for her, commit such girl to said Girls' Training School during her minority. No girl shall be committed to the Girls' Training School who is feebleminded, epileptic or insane. Any girl committed to said Girls' Training School who is afflicted with a venereal, tubercular or other communicable disease shall be assigned to a distinct and separate building of the institution and shall not be allowed to associate with the other wards until cured of said disease or diseases. No girl shall be admitted to the institution until she has been examined by the School physician, and such physician has issued a certificate showing her exact state or condition in reference to said qualifications hereinabove enumerated. [Id.]

Art. 5136. Conveying to school.—The court committing any girl to the Girls' Training School, in addition to the commitment, shall annex a carefully prepared transcript of the trial to aid the officials of the institution in better understanding and classifying the girl. The court shall also designate some reputable woman to convey the girl to the institution. The cost of conveying any girl committed to this institution shall be paid by the county from which she is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the girl conveyed. [Id.]

Art. 5137. Dismissal of inmates.—No girl shall be discharged or paroled until some suitable home has been found for her and only then upon the written recommendation of the superintendent to the Board, or unless she has become married with the consent of the Board and superintendent. The Governor shall have power to issue a pardon or commute the sentence of any inmate. Any girl who is thus paroled from the school shall be under the supervision and guidance of the superintendent who shall require that she write bi-weekly letters to the superintendent or matron of the school for the first six months and monthly letters thereafter. The person under whose care or employ the girl is placed shall write monthly letters to the superintendent or matron of the school for the first six months and semi-annually thereafter.

The Board, superintendent or any employee of said school may visit the place where the girl is and it shall be the duty of the person having the girl in custody to answer inquiries of said visiting committee concerning the conduct, employment or treatment of said girl. If, in the judgment of the Board, it should be to the best interests of the girl that she be returned to the school, the Board is empowered to have her returned. [Id.]

Art. 5138. Detention homes and parental schools.—All counties in this State may establish detention homes and parental schools for dependent and delinquent juveniles. It shall be lawful for the commissioners court to appropriate from the general fund of the county such sums as may be necessary to establish, equip and maintain such detention homes and parental schools as may be necessary to care for the dependent and delinquent children of the county. In like manner any county in which no such detention home or parental school exists may appropriate such funds as may be necessary to pay for the board and

for the proper care and training of its dependent and delinquent juveniles in the detention home or parental school of any county that may agree to receive them and at such rates of board and tuition as shall be agreed upon by the commissioners courts of the counties concerned. When in the opinion of the commissioners court, it is desirable to levy a special tax for establishing and maintaining such detention home or parental school, or for paying the board and tuition of dependent and delinquent children as herein provided the said court may bring the question of levying such special tax to a vote of the qualified voters of the county at a special election held for that purpose, and the said court must submit the said question to the voters when requested to do so by a petition signed by ten per cent of the qualified voters of the county. All elections held under the provisions of this article shall be governed in all respects not herein specified to the contrary by the laws of this State governing elections for the levy of special school taxes. [Acts 1913, p. 218.]

Art. 5139. County Juvenile Board.—In any county having a population of one hundred thousand or over, according to the preceding Federal census, the judges of the several district and criminal district courts of such county, together with the county judge of such county, are hereby constituted a Juvenile Board for such county. The annual salary of each of the judges of the civil and criminal district courts of such county as members of said board shall be $1,500 in addition to that paid the other district judges of the State, said additional salary to be paid monthly out of the general funds of such county, upon the order of the commissioners court. [Acts 1917, p. 27, Acts 1921, p. 273.]

Art. 5140. Powers of Board.—Such Board shall neither have nor exercise judicial power or function. In the event such Board desires to make inquiry as to whether any child should be adjudged either dependent, neglected or delinquent, it shall have power to direct one of the probation officers of said Board to file complaint against such child in some court of such county having jurisdiction to hear and determine such complaint. Such board or the members thereof may be present at such hearing, either in person or by one or more of its probation officers, and make such inquiry concerning such child as may be proper under the established rules of procedure in such court. [Id.]

Art. 5141. Sessions of Board.—Such Board shall hold meetings in accordance with the rules which it may prescribe, and at intervals of not less than once in three months, and shall keep such records as it desires, and shall hear and consider such facts as may be brought to its attention, under such rules as it may prescribe, concerning the welfare of any child in such county or under the jurisdiction of any of its courts. If such child has been adjudged to be dependent, neglected or delinquent by any court of such county, it may make to the court or person having custody of such child, such recommendation in writing as it may think proper as to the care and custody of such child. [Id.]

Art. 5142. Probation officers—Qualifications, duties, appointment, salaries and removal.—There may be appointed in the manner hereinafter provided, discreet persons of good moral character to serve as juvenile officers, for periods not to exceed two years from date of appointment.

Such officer shall have authority and it shall be their duty to make investigations of all cases referred to them as such by such Board; to be present in court and to represent the interest of the juvenile when the case is heard and to furnish to the court and such Board any information and assistance as such Board may require, and to take charge of any child before and after the trial and to perform such other services for the child as may be required by the court or said Board, and such juvenile officers shall be vested with all the power and authority of police officers or sheriffs incident to their offices.

The clerk of the court shall, when practicable, notify such juvenile officer when any juvenile is to be brought before the court. It shall be the duty of such juvenile officer to make investigation of any such case. to be present in court to represent the interest of the juvenile when the case is tried; to furnish to such court such information and assistance as the court may require and to take charge of any juvenile before and after the trial as the court may direct. In counties having a population of less than seventy-five thousand, one juvenile officer may be appointed by the commissioners' court, when in their opinion, such officer is needed, who shall receive a compensation not to exceed $125.00 per month. Provided that in counties having a population of not less than thirty-five thousand, and not more than one hundred thousand and containing a city of more than twenty-nine thousand population, one juvenile officer may be appointed by the commissioners' court, when in their opinion the services of such officers is needed whose salary shall not exceed $200.00 per month and expenses not to exceed $200.00 per year. The county judge shall select such juvenile officers from a list of three furnished by a nominating committee composed of three members as follows: The county superintendent of public instruction, and the superintendents of the two largest school districts in such county.

Provided that in counties having a population of one hundred thousand and less than one hundred and fifty thousand, the county judge may appoint a juvenile officer, subject to the approval of the county juvenile board for a period not to exceed two years from date of appointment at a salary not to exceed $250.00 per month, and expenses not to exceed $200.00 per year. Such juvenile officers may select assistant juvenile officers, subject to the approval of the county judge and the county juvenile board, the number not to exceed one assistant juvenile officer to each twenty-five thousand population. The salaries of such assistant juvenile officers shall be the same as that fixed by the General Law, in Article 3902 Revised Civil Statutes of Texas, for assistants to other county officials. Such assistant juvenile officers may be allowed expenses, each, not to exceed $200.00 per year.

Provided that in counties having a population of one hundred fifty thousand or more, and containing a city of one hundred thousand or more, the county judge may appoint a juvenile officer, subject to the approval of the county juvenile board, to serve for a period not to exceed two years from the date of appointment, and whose extra duties shall be to make investigations for the commissioners' court on applications for charity, or admittance into detention homes or orphan homes created by such counties. The salary of such juvenile officer shall not exceed $300.00 per month, his allowance for expenses not to exceed $200.00 a year. Such juvenile officer may select assistant juvenile officers, subject to the approval of the county judge and the county juvenile board, the number of such assistant juvenile officers not to exceed one assistant to each twenty-five thousand population. The salaries of such assistant juvenile officers shall be the same as that fixed by the General Law in Article 3902 of the Revised Civil Statutes of Texas, 1925, for assistants to other county officials. Such assistant juvenile officers may be allowed expenses not to exceed $200.00 per year each.

In the appointment of all juvenile officers, the county judge and the county juvenile board may select for such office any school attendance officer or officers of the county, or of school districts in the county, that may be authorized by law, and the salary and expense of such joint juvenile officer or officers and attendance officers shall be paid jointly by the county and school authorities upon any basis of division they may agree upon.

Salaries of paid juvenile officers and their assistants shall be fixed by the commissioners' court, not to exceed the sums herein mentioned, and any bill for the expenses not exceeding the sums herein provided for, shall be certified by the county judge as being necessary in the performance of the duties of a juvenile officer. The commissioners' court of the county shall

provide the necessary funds for the payment of salaries and expenses of the juvenile officers provided for in this Act. The appointment of said juvenile officers shall be filed in the office of the clerk of the county court. Juvenile officers shall take oath to perform their duties and file such oath in the office of the county clerk. As a basis for reckoning the population of any county the preceding federal census shall be used.

Provided that any juvenile officer appointed under the provisions of this Act may be removed from office by the power appointing him, at any time. [Acts 2nd C. S. 1919, p. 130; Acts 1927, 40th Leg., p. 335, ch. 228.]

Art. 5143. Incorrigible boy.—Any parent or guardian of any incorrigible boy under the age of seventeen years, may present a petition to the judge of the juvenile court of the county of his residence, setting forth under oath the age and habits of any such boy and praying that said boy be committed as a delinquent child. The court shall set the case down for hearing and shall take testimony, and if, in his judgment, the child should be committed, said judge may enter an order committing said child to said institution. The parent or guardian shall pay all necessary expenses of carrying said child to said institution and in addition shall pay at least one quarter in advance, the amount necessary for the maintenance of said child at said institution, as estimated by the superintendent of said institution. Said parent or guardian shall also deposit with the superintendent of said institution an amount sufficient to pay the fare of said child from said institution to its home; and, if said parent or guardian shall fail or refuse to make any subsequent quarterly payment for maintenance, in advance, said commitment shall terminate; and the superintendent of said school shall discharge such boy and return him to his home.

The expense of conveying all boys committed to said school shall be paid by the county from which said commitment is made; and the sheriff, probation, or any peace officer, as the court may direct, shall convey all boys committed to said institution to such Training School as the court and said parents or guardians may agree upon. The court may send the boy to school without escort. [Acts 1913, p. 219.]

TITLE 83

LABOR

Chap.

1. Bureau.
2. Labor organizations.
3. Payment of wages.
4. Bond to secure wages.
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CHAPTER ONE

BUREAU

Art.

5144. Appointment of Commissioner.
5145. Duties of Commissioner.
5146. Report.
5147. Preservation of records.
5148. May enter factories, etc.
5149. To report violations.
5150. To take testimony.
5151. Expenses.

Article 5144. [5236] Appointment of Commissioner.—A Commissioner of Labor Statistics, whose office shall be in the Capitol building, shall be biennially appointed by the Governor for a term of two years. The Commissioner may be removed for cause by the Governor, record thereof being made in his office. The Commissioner shall give a good bond in the sum of two thousand dollars, to be approved by the Governor, conditioned for the faithful discharge of the duties of his office. [Acts 1909, p. 59.]

Art. 5145. [5235–6–7] Duties of Commissioner.—The Bureau of Labor Statistics shall be under the charge and control of the Commissioner of Labor Statistics. The Commissioner shall collect, systematize and present in biennial reports to the Governor, statistical details relating to all departments of labor in Texas, especially as bearing upon the commercial, social, educational, and sanitary conditions of the employees and their families, the means of escape from dangers incident to their employment, the protection of life and health in the factories and other places of employment, the labor of women and children, and the number of hours of labor exacted of them, and, in general, all matters and things which affect or tend to affect the prosperity of the mechanical, manufacturing and productive industries of this State, and of the persons employed therein.

Said Commissioner shall, also, as fully as may be done, collect reliable reports and information from each county, showing the amount and condition of the mechanical, mining and manufacturing interest therein, and all sites offering natural or acquired advantages for the location and operation of any of the different branches of industry. He shall, by correspondence with interested parties in other parts of the United States, or in foreign countries, impart to them such information as may tend to induce the location of manufacturing and producing plants within the State, together with such information as may tend to increase the employment of labor and the products of such employment in Texas. Except as hereinafter provided he shall safely keep and deliver to his successor all records, papers, documents, correspondence and property pertaining to or coming into his hands by virtue of his office. [Id.]

Art. 5146. [5238] Report.—In each biennial report, the Commissioner shall give a full statement of the business of the bureau since the last preceding report, and such information as may be of value to the industrial interests and their employees, showing, among other things, the number of laborers and mechanics employed, the number of apprentices in each trade, with the nativity of such laborers, mechanics and apprentices, the wages earned, the savings from the same, the age and sex of the persons employed, the number and character of accidents, the sanitary conditions of places where persons are employed, the restrictions put upon apprentices when indentured, the proportion of married employees living in rented houses, with the average rental paid, the value of property owned by such employees, and a statement as to the progress made in schools in operation for the instruction of students in mechanic arts, and what systems have been found most practical. Such reports shall not contain more than six hundred printed pages, and the same shall be printed and distributed in such manner as may be provided by law. [Id.]

Art. 5147. [5240] Preservation of records.—No report or return made to the bureau under the provisions of this chapter or the Penal Code, and no schedule, record or document gathered or returned by its officers or employees shall be destroyed within two years of the collection or receipt thereof. At the expiration of two years all such reports, returns, schedules, records and documents as shall be considered by the Commissioner to be of no further value, shall be destroyed, if the permission of the Governor therefor be first obtained. [Id.]

Art. 5148. [5241] May enter factories, etc.—Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information in accordance with the provisions of this law, the Commissioner shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place where five or more persons are employed at work when the same is open and in operation, for the purpose of gathering facts and statistics such as are contemplated by this chapter, and for the purpose of examining into

the methods of protecting employees from danger and the sanitary conditions in and around such building or place, of all of which the said Commissioner shall make and return to the Bureau of Labor Statistics a true and detailed record in writing.

Art. 5149. [5242] To report violations.—If the Commissioner shall learn of any violation of the law with respect to the employment of children, or fire escapes, or the safety of employees, or the preservation of health, or in any other way affecting the employés, he shall at once give written notice of the facts to the proper county or district attorney. [Id.]

Art. 5150. [5239] To take testimony.—The Commissioner shall have power to issue subpœnas and take testimony in all matters relating to the duties herein required of said Bureau. Such testimony must be taken in the vicinity of the residence or office of the person testifying. [Id.]

Art. 5151. [5243] Expenses.—The Commissioner shall be allowed necessary postage, stationery, printing, and other expenses to transact the business of the Bureau, and he and any employé of the Bureau shall be allowed his actual necessary traveling expenses while in the performance of duties required by this chapter, and within the limits of the appropriations made therefor. [Id. Acts 1919, p. 164.]

CHAPTER TWO

LABOR ORGANIZATIONS

Art.
5152. Right to organize.
5153. Other rights and privileges.
5154. Organizations excepted.

Article 5152. [5244] Right to organize.—It shall be lawful for any and all persons engaged in any kind of work or labor, manual or mental, or both, to associate themselves together and form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service in their respective pursuits and employments. [Acts 1899, p. 262.]

Art. 5153. [5245] Other rights and privileges.—It shall be lawful for any member or members of such trades union or other organization or association, or any other person, to induce or attempt to induce by peaceable and lawful means, any person to accept any particular employment or to enter or refuse to enter any pursuit or quit or relinquish any particular employment or pursuit in which such person may then be engaged. Such member or members shall not have the right to invade or trespass upon the premises of another without the consent of the owner thereof. [Id.]

Art. 5154. [5246] Organizations excepted.—The two preceding articles shall not be held to apply to any combination or combinations, association or associations of capital, or capital and persons, natural or artificial, formed for the purpose of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade. Nothing herein shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations between employers and employés, or be construed to repeal, affect or diminish the force and effect of any statute on the subject of trusts, conspiracies against trade, pools and monopolies. [Id.]

CHAPTER THREE

PAYMENT OF WAGES

Art.
5155. Pay days.
5156. If not paid on pay day.
5157. Penalty for failure to pay.
5158. Attorneys fees.
5159. Duty of Commissioner.

Article 5155. Pay days.—Each manufacturing, mercantile, mining, quarrying, railroad, street railway, canal, oil, steamboat, telegraph, telephone and express company, employing more than ten persons, and each and every water company not operated by a municipal corporation, and each and every wharf company, and every other corporation engaged in any business within this State, which employs more than ten persons, or any person, firm or corporation engaged in or upon any public work for the State or for any county or any municipal corporation thereof, either as a contractor or a sub-contractor, therewith, shall pay each of its employees the wages earned by him or her as often as semi-monthly, and pay to a day not more than sixteen days prior to the day of payment. [Acts 1915, p. 43.]

Art. 5156. If not paid on pay day.—An employé who is absent at the time fixed for payment, or who for any other reason is not paid at that time, shall be paid thereafter on six days' demand. Any employee leaving his or her employment, or discharged therefrom, shall be paid in full on six days' demand. [Id.]

Article 5157. Penalty for failure to pay.—Every person, partnership or corporation, willfully failing or refusing to pay the wages of any employee at the time and in the manner provided in this statute shall forfeit to the State of Texas the sum of fifty dollars for each and every such failure or refusal. Suits for penalties accruing under this law shall be brought in any court having jurisdiction of the amount in the county in which the employé should have been paid, or where employed. Such suits shall be instituted at the direction of the Commissioner of Labor Statistics by the Attorney General or under his direction, or by the County or District Attorney for the county or district in which suit is brought. [Id.]

Art. 5158. Attorneys fees.—The attorney bringing any such suit shall be entitled to receive and shall receive as compensation for his service therein ten dollars of the penalty or penalties recovered in such suit, and the fees and compensation so allowed shall be over and above the fees allowed to the county or district attorneys under the General Fee Act. [Id.]

Art. 5159. Duty of Commissioner.—The Commissioner of Labor Statistics shall inquire diligently for violations of this chapter and institute prosecutions and see that the same are carried to final termination and generally to see to the enforcement of the provision hereof. [Id.]

CHAPTER FOUR

BOND TO SECURE WAGES

Art.
5160. Bond for wages.
5161. Creditor may sue.
5162. Time to sue.
5163. Prorating claims.
5164. Notice of suit.

Article 5160. Bond for wages.—Any person or persons, firm or corporation entering into a formal contract with this State or its counties or school districts or for subdivisions thereof or any municipality therein for the construction of any public building, or the prosecution and completion of any public work, shall be required, before commencing such work, to execute the usual penal bond, with the additional obligation that such contractor shall promptly make payments to all persons supplying him or them with labor and materials in the prosecution of the work provided for in said contract. Any person, company, or corporation who has furnished labor or materials used in the construction or repair of any public building or public work, and payment for which has not been made, shall have the right to intervene and be made a party to any action instituted by the State or any municipality on the bond of the contractor, and to have their rights and claims adjudicated in said action and judgment rendered thereon, subject, however, to the priority of the claims and judgments of the State or municipality. If the full amount of the liability of the surety on said bond is insufficient to pay the full amount of said claims and demands, then, after paying the full amount due the State or municipality,

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

the remainder shall be distributed pro rata among said intervenors. Provided further, that no person or persons, firm or corporation shall be secured in the payment of any claim contracted prior to the execution of the contract that said bond is given to secure, and provided further that all claims for labor shall be itemized and sworn to by the owner or his authorized agent and filed with the contractor or with the county clerk of the county in which said work is being prosecuted within thirty days from the date that said claim accrued and became payable, and all claims for material shall be itemized and sworn to by the owner or his authorized agent and filed with the contractor or with the county clerk of the county in which said work is being prosecuted within thirty days from the date of the delivery of said material; and any claim filed after said thirty days shall not be secured by said bond. [Acts 1913, p. 185; Acts 1927, 40th Leg., 1st C. S., p. 114, ch. 39, § 1.]

Art. 5161. Creditor may sue.—If no suit should be brought by the State or municipality within six months from the completion and final settlement of said contract, then the person or persons supplying the contractor with labor and materials shall, upon application therefor, and furnishing affidavit to the State or municipality that labor or materials for the prosecution of such work has been supplied by him or them, and the payment for which has not been made, be furnished with a certified copy of said contract and bond, upon which he or they shall have a right of action for his or their use and benefit, against said contractor and his surety, and to prosecute the same to final judgment and execution. [Id.]

Art. 5162. Time to sue.—When suit is instituted by any creditor on the bond of the contractor, it shall not be commenced until after the complete performance of said contract and final settlement thereof, and shall be commenced within one year after the performance and final settlement of said contract, and not later; provided that if the contractor quits or abandons the contract before its consummation, suit may be instituted by any of such creditors on the bond of the contractor, and shall be commenced within one year after abandonment of said contract and not later. Where suit is so instituted by a creditor or by creditors, only one action shall be brought, and any creditor may file his claim in such action and be made party thereto within one year from the completion of the work under said contractor and not later. [Id.]

Art. 5163. Prorating claims.—If the recovery on the bond should be inadequate to pay the amounts found due to all of said creditors, judgment shall be given to each creditor pro rata of the amount of the recovery, subject to the provisions in the first article of this chapter giving to the State or municipality the right of priority in the proceeds of such judgment. The sureties on said bond may pay into court, for distribution among said claimants and creditors, the full amount of the sureties' liability, to-wit: the penalty named in the bond, less any amount which said surety may have had to pay to the State or municipality by reason of the execution of said bond, and upon so doing the surety will be relieved from further liability. [Id.]

Art. 5164. Notice of suit.—In all suits instituted under the provisions of this law notice of the pendency of such suits shall be made by publication in some newspaper of general circulation, published in the county or town where the contract is being performed, for at least three successive weeks, the last publication to be at least one week before the trial of such case. [Id.]

CHAPTER FIVE

HOURS OF LABOR

Art.
5165. Eight hours a day's work.
5166. Violating eight-hour law.
5167. Hours of patrolmen.

Article 5165. Eight hours a day's work.—Eight hours shall constitute a day's work for all laborers, workmen or mechanics who may be employed by or on behalf of the State of Texas, or by or on behalf of any county, municipality, or political subdivision of the State, county or municipality in any one calendar day, where such employment, contract or work is for the purpose of constructing, repairing or improving buildings, bridges, roads, highways, streams, levees, or other work of a similar character, requiring the service of laborers, workmen or mechanics. [Acts 1913, p. 127].

Art. 5166. Violating eight-hour law.—All contracts made by or on behalf of the State of Texas, or by or on behalf of any county, municipality or other legal or political subdivision of the State, with any corporation, persons or associations of persons for performance of any work, shall be deemed and considered as made upon the basis of eight hours constituting a day's work. The time consumed by the laborer in going to and returning from the place of work shall not be considered as part of the hours of work. It shall be unlawful for any corporation, person, or association of persons having a contract with the State or any political subdivision thereof, to require any such laborers, workmen, mechanics or other persons to work more than eight hours per calendar day in doing such work, except in case of emergency, which may arise in times of war, or in cases where it may become necessary to work more than eight hours per calendar day for the protection of property, human life or the necessity of housing inmates of public institutions in case of fire or destruction by the elements. In such emergencies the laborers, workmen, mechanics or other persons so employed and working to exceed eight hours per calendar day shall be paid on the basis of eight hours constituting a day's work. Not less than the current rate of per hour wages for like work in the locality where the work is being performed shall be paid to the laborers, workmen, mechanics or other persons so employed by or on behalf of the State, or for any county, municipality or other legal or political subdivision of the State, county, or municipality, and every contract hereafter made for the performance of work for the State, or for any county, municipality, or other legal or political subdivision of the State, county, or municipality, must comply with the requirements of this chapter. Nothing in the foregoing article shall prevent any person, or any officer, agent, or employee of a person or corporation, or association of persons from making mutually satisfactory contracts as to the hours of labor, at the rates of pay as herein provided. [Acts 1913, p. 127, Acts 1921, p. 229.]

Art. 5167. Hours of patrolmen.—In all incorporated cities and towns however incorporated, having a population of fifty thousand inhabitants or more, according to the preceding Federal census, the patrolmen thereof, or those performing duties ordinarily performed by patrolmen, shall be required to serve on actual duty as patrolmen not longer than eight hours in every twenty-four hours of the day; provided that in case of riot or other emergency, such patrolmen shall perform such duty and for such time as the directing authority of the departments shall require. [Acts 1917, p. 403.]

CHAPTER SIX

FEMALE EMPLOYEES

Art.
5168. Hours of work for female employee.
5169. Hours of female laundry worker.
5170. Hours of cotton goods worker.
5171. Seats for female employees.
5172. Exceptions.

Article 5168. Hours of work for female employee.—No female shall be employed in any factory, mine, mill, workshop, mechanical or mercantile establishment, hotel, restaurant, rooming house, theater, moving picture show, barber shop, telegraph, telephone or other office, express or transportation company, or any State institution, or any other establishment, institution or enterprise where females are em-

ployed, for more than nine hours in any one calendar day, nor more than fifty-four hours in any one calendar week. [Acts 1915, p. 105.]

Art. 5169. Hours of female laundry worker.—No female shall be employed in any laundry for more than fifty-four hours in one calendar week; the hours of such employment to be so arranged as to permit the employment of such female at any time so that she shall not work more than a maximum of eleven hours during the twenty-four hours' period of one day. If such female is employed for more than nine hours in any one day she shall receive pay at the rate of double her regular pay for such time as she is employed for more than nine hours per day. [Id.]

Art. 5170. Hours of cotton goods worker.—No female shall be employed in any factory engaged in the manufacture of cotton, woolen or worsted goods or articles of merchandise manufactured out of cotton goods for more than ten hours in any one calendar day, nor more than sixty hours in any one calendar week. If such female is employed for more than nine hours in any one day she shall receive pay at the rate of double her regular pay for such time as she may be employed for more than nine hours per day. [Id.]

Art. 5171. Seats for female employees.—Every employer owning or operating any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, telegraph or telephone or other office, express or transportation company; the superintendent of any State institution or any other establishment, institution or enterprise where females are employed as provided in the three preceding articles, shall provide and furnish suitable seats, to be used by such employees when not engaged in the active duties of their employment and shall give notice to all such employees by posting in a conspicuous place on the premises of such employment, in letters not less than one inch in height, that all such employees will be permitted to use such seats when not so engaged. [Id.]

Art. 5172. Exceptions.—The four preceding articles shall not apply to stenographers and pharmacists, nor to mercantile establishments, or telegraph or telephone companies in rural districts and in cities or towns or villages of less than 3000 inhabitants as shown by the last preceding Federal census. In cases of extraordinary emergencies, such as great public calamities, or where it becomes necessary for the protection of human life or property, longer hours may be worked, but for such time not less than double time shall be paid such female with her consent. [Id.]

CHAPTER SEVEN

PROTECTION OF FEMALE EMPLOYEES

Art.
5173. Temperature and humidity.
5174. Odors and dust.
5175. Cleaning and wet floors.
5176. Exits and hand rails.
5177. Toilets.
5178. Immoral influences.
5179. Order to correct conditions.
5180. Suit to set order aside.

Article 5173. Temperature and humidity.—In every factory, mill, workshop, mercantile establishment, laundry, or other establishment, adequate measures shall be taken for securing and maintaining a reasonable, and as far as possible, an equable temperature consistent with a reasonable requirement of the manufacturing process. No unnecessary humidity which would jeopardize the health of employees shall be permitted. In every room, apartment, or building used as a factory, mill, workshop, mercantile establishment, laundry or other place of employment, sufficient air space shall be provided for every employee, and which in the judgment of the Commissioner of Labor Statistics or of his deputies and inspectors is sufficient for their health and welfare. [Acts 4th C. S. 1918, p. 132.]

Art. 5174. Odors and dust.—All factories, mills, workshops, mercantile establishments, laundries and other establishments shall be kept free from gas or effluvia arising from any sewer, drain, privy or other nuisance on the premises; all poisonous or noxious gases arising from any process, and all dust which is injurious to the health of persons employed, which is created in the process of manufacturing within the above named establishment, shall be removed as far as practicable by ventilators or exhaust fans or other adequate devices. [Id.]

Art. 5175. Cleaning and wet floors.—All decomposed, fetid or putrescent matter, and all refuse, waste and sweepings of any factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be removed at least once each day and be disposed of in such manner as not to cause a nuisance. All cleaning, sweeping and dusting shall be done as far as possible outside of working hours, but if done during working hours, shall be done in such manner as to avoid so far as possible the raising of dust and noxious odors. In all establishments where any process is carried on which makes the floors wet, the floors shall be constructed and maintained with due regard for the health of the employès, and gratings or dry standing room shall be provided wherever practicable, at points wherever employès are regularly stationed, and adequate means shall be provided for drainage and for preventing leakage or seepage to lower floors. [Id.]

Art. 5176. Exits and hand rails.—All doors used by employés as entrances to, or exits from factories, mills, workshops, mercantile establishments, laundries or other establishments of a height of two stories or over, shall open outward, and shall be so constructed as to be easily and immediately opened from within in case of fire or other emergencies. Proper and substantial hand rails shall be provided on all stairways, and lights shall be kept burning at all main stairs, stair landings and elevator shafts in the absence of sufficient natural light. The provisions of this article shall not apply to any mercantile establishment having seven female employees or less. [Id.]

Art. 5177. Toilets.—Every factory, mill, workshop, mercantile establishment, laundry or other establishment, shall be provided with a sufficient number of water closets, earth closets or privies, and such water closets, earth closets or privies shall be supplied in the proportion of one to every twenty-five male persons, and one to every twenty female persons, and whenever both male and female persons are employed, said water closets, earth closets or privies shall be provided separate and apart for the use of each sex, and such water closets, earth closets, or privies shall be constructed in an approved manner and properly enclosed, and at all times kept in a clean and sanitary condition, and effectively disinfected and ventilated, and shall at all times during operation of such establishment be kept properly lighted.

In case there be more than one shift of not more than eight hours each of employees, the average number of persons in the establishment at any one time should be used in determining the number of toilets required. [Id.]

Art. 5178. Immoral influences.—It shall be unlawful for the owner, manager, superintendent or other person in control or management of any factory, mill, workshop, mercantile establishment, laundry or other establishment where five or more persons are employed, all or part of whom are females, to permit in such place of employment any influence, practices or conditions calculated to injuriously affect the morals of such female employees. [Id.]

Art. 5179. Order to correct conditions.—The Commissioner of Labor Statistics, or any of his deputies or inspectors, shall have the right to enter any factory, mill, workshop, mercantile establishment, laundry, or other establishment where five or more persons are employed, for the purpose of making inspections and enforcing the provisions of this chapter;

and they are hereby empowered, upon finding any violation of this law by reason of unsanitary conditions such as endanger the health of the employees therein employed, or of neglect to remove and prevent fumes and gases or odors injurious to employees, or by reason of the failure or refusal to comply with any requirement of this law, or by reason of the inadequacy or insufficiency of any plan, method, practice or device employed in assumed compliance with any of the requirements of this law, to pass upon and to make a written finding as to the failure or refusal to comply with any requirement of this law, or as to the adequacy or sufficiency of any practice, plan or method used in or about any place mentioned in this law in supposed compliance with any of the requirements of this law, and, thereupon they may issue a written order to the owner, manager, superintendent, or other person in control or management of such place or establishment, for the correction of any condition caused or permitted in or about such place or establishment in violation of any of the requirements of this law, or of any condition, practice, plan, or method used therein or thereabouts in supposed compliance with any requirement of this law, but which are found to be inadequate or insufficient, in any respect, to comply therewith, and shall state in such order how such conditions, practices, plans or methods, in any case, shall be corrected and the time within which the same shall be corrected, a reasonable time being given in such order therefor. One copy of such order shall be delivered to the owner, manager, superintendent or other person in control or management of such place or establishment, and one copy thereof shall be filed in the office of the Bureau of Labor Statistics. Such findings and orders shall be prima facie valid, reasonable and just, and shall be conclusive unless attacked and set aside in the manner provided in the succeeding article. Upon the failure or refusal of the owner, manager, superintendent, or other person in control or management of such place or establishment, to comply with such order within the time therein specified, unless the same shall have been attacked and suspended or set aside as provided for in the succeeding article, the Commissioner of Labor Statistics or his deputy or inspectors shall have full authority and power to close such place or establishment, or any part of it that may be in such unsanitary or dangerous condition or immoral influences in violation of any requirement of this law or of such order, until such time as such condition, practice or method shall have been corrected. [Id.]

Art. 5180. Suit to set order aside.—The owner or owners, manager, superintendent, or other person in control or management, of any place or establishment covered by this law, and directly affected by any finding or order provided for in the preceding article, may, within fifteen days from the date of the delivery to him or them of a copy of any such order as provided for in the preceding article, file a petition setting forth the particular cause or causes of objection to such order and findings in a court of competent jurisdiction against the Commissioner of Labor Statistics. Said action shall have precedence over all other causes of a different nature, except such causes as are provided for in the statutes relating to the Railroad Commission, and shall be tried and determined as other civil causes in said court. If the court be in session at the time such cause of action arises, the suit may be filed during such term and stand ready for trial after ten days' notice. Either party may appeal, but shall not have the right to sue out a writ of error from the trial court. Said appeal shall at once be returnable to the proper appellate court at either of its terms, and shall have precedence in such appellate court over other causes of a different nature, except as above provided for. In any trial under this article the burden shall be upon the plaintiff to show that the findings and order complained of are illegal, unreasonable, or unjust to it or them. [Id.]

CHAPTER EIGHT

CHILD LABOR

Article 5181. Permit for child to work.—Upon application being made to the county judge of any county in which any child over the age of twelve (12) years shall reside, the earnings of which child are necessary for the support of itself, its mother when widowed, or in needy circumstances, or invalid father, or of other children younger than the child for whom the permit is sought, the said county judge may upon the sworn statement of such child or its parents or guardian, that the child for whom the permit is sought is over twelve (12) years of age, that the said child has completed the fifth grade in a public school or its equivalent, and that it shall not be employed in or around any mill, factory, workshop, or other place where dangerous machinery is used, nor in any mine, quarry or other place where explosives are used, or where the moral or physical condition of the child is liable to be injured, and that the earnings of such child are necessary for the support of such invalid parent, widowed mother or mother in needy circumstances, or of younger children, and that such support cannot be obtained in any other manner, and that suitable employment has been obtained for such child, which sworn statement shall be accompanied by the certificate of a licensed physician showing that such child is physically able to perform the work or labor for which the permit is sought, issue a permit for such child to enter such employment. Every person, firm or corporation employing any such child between the ages of twelve (12) years and fifteen (15) years shall post in a conspicuous place where such child is employed, the permit issued by the county judge; provided that no permit shall be issued for a longer period than twelve (12) months, but may be renewed from time to time upon satisfactory evidence being produced that the conditions under which the former permit was issued still exists [exist], and that no physical or moral injury has resulted to such child by reason of its employment. In every case where a permit is sought for any child between the ages of twelve (12) years and fifteen (15) years, the parent, guardian or other person in charge or control of such child shall appear before the county judge in person with such child for whom a permit is sought before such permit shall be issued. There shall be nothing in this Act to prevent the working of school children of any age from June 1 to September 1 of each year except that they shall not be permitted to work in factory, mill, workshop, and the places mentioned in Section 4 of this Act. [Id. page 176.]

CHAPTER NINE

PROTECTION OF WORKMEN ON BUILDINGS

Article 5182. Protection of workmen on buildings.—1. To prevent workmen from falling.—Any building three or more stories in height, in the course of construction or repair, shall have the joists, beams or girders of each and every floor below the floor level where any work is being done, or about to be done, covered with planking laid close together, said planking to be of not less than one and one-half inches of thickness in buildings that have steel framework, and what is commonly known as one-inch plank in all others where joists are set on two foot centers or less, to protect the workmen engaged in the erection or construction of such buildings from falling through joists, girders, and from falling planks, bricks, rivets, tools or other substances, whereby life and limb are endangered. Where any scaffolding is placed on the outside of any of said buildings, over any public street or alley where persons are in the habit of passing, then said scaffolding shall be so constructed as to prevent any material, tools or other things from falling off and endangering the life of passersby. Such flooring shall not be removed until the same is replaced by a permanent flooring in such building.

2. To inclose elevators and shafts.—If elevators, elevating machines or hod hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction, the contractor or owners, or the agents of the owners, shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides, two sides of which must be at least six feet, and two sides where material is taken off or on shall be protected by automatic safety gates.

3. Duty of general contractors.—The general contractor having charge of the erection and construction of such building shall provide for the flooring as herein required, and make such arrangements as may be necessary with the sub-contractor in order that the provisions of this article may be carried out.

4. Duty of owner.—The owner, or the agent of the owner of such building, shall see that the general contractor or sub-contractors carry out the provisions of this article.

5. Owner to see to flooring.—If the general contractor or sub-contractor of such building fails to provide for the flooring of such buildings as herein provided, then the owner or the agent of the owner of such building shall see that the provisions of this article are carried out. [Acts 1919, p. 281.]

CHAPTER TEN

INDUSTRIAL COMMISSION

Art.
5183. Appointment of members.
5184. Expenses.
5185. Officers.
5186. Controversies referred to.
5187. Hearing and report.
5188. Hearing to be public.
5189. Report to Legislature.
5190. Power of Commission.

Article 5183. Appointment of members.—There is hereby created an Industrial Commission, composed of five members, one to represent employers of labor, one to represent the employés or laborers, and three to represent the general public. The members of this commission shall be appointed biennially by the Governor, to hold office for a term of two years. [Acts 4th C. S. 1920, p. 19.]

Art. 5184. Expenses.—The members of this commission shall serve without pay or salary. The actual expenses incurred during hearings had by or before the commission and railway fare and hotel bills incurred by them shall be paid out of appropriations made to the executive office for the payment of rewards and the enforcement of the law, until such time as the Legislature may make appropriations to cover such items.

Art. 5185. Officers.—This commission shall elect one of their members as chairman of the commission, to preside at all hearings had under the provisions of this law, with power and authority usually exercised by chairmen in such capacity. The commission shall have authority to employ and pay a stenographer to act as secretary of such commission. The salary shall be paid out of the fund or funds described in article 5184. [Id.]

Art. 5186. Controversies referred to.—When the Governor becomes convinced or has reason to believe that controversies between employers and employés are of such nature and character as to be of public concern or interest he shall refer, by proclamation, such controversies to the commission here created for hearing and report. [Id.]

Art. 5187. Hearing and report.—The commission, and the members thereof, shall forthwith proceed to the place where the employees in the controversy may be located, or to such other place as may appear best to said commission for the purpose of making investigation and report. The commission shall make investigation and hear testimony concerning the controversy between the employers and employees. After said investigation is completed a full report shall be made to the Governor, covering the facts established by the investigations made and hearing had. Said commission shall make recommendations to the Governor as to what action should be taken in reference to the controversy or the settlement thereof. [Id.]

Art. 5188. Hearing to be public.—All hearings had by this commission shall be open to the public; and the findings and recommendations of the commission shall be furnished to the news agencies and newspapers of the State, to be published by the several papers of this State as news items. [Id.]

Art. 5189. Report to Legislature.—The commission shall also make full report to the Legislature, if in session, and if not in session, then to the succeeding session, setting forth the findings and recommendations, accompanied by a transcript of the testimony taken at the hearings provided for herein. [Id.]

Art. 5190. Power of commission.—The commission shall have power to summon witnesses, to issue subpœnas, to compel attendance of witnesses, to compel production of books and records by witnesses, to punish for contempt, to hold sessions and to take testimony in or out of the State of Texas, and to pay witnesses as paid in felony cases. [Id.]

CHAPTER ELEVEN

STEVEDORES

Art.
5191. "Contracting stevedore."
5192. Bond.
5193. Suits on bond.
5194. License.
5195. Bond and license.

Article 5191. "Contracting stevedore."—A contracting stevedore, within the meaning of this chapter, is any person, firm or association of persons, or corporation that contracts with any ship, agent, owners, masters, managers or captains of vessels, or with any other person or corporation, for the purpose of loading or unloading, or having loaded or unloaded any vessel, ship or water craft. [Acts 1913, p. 153.]

Art. 5192. Bond.—Each contracting stevedore shall make bond in the sum of five thousand dollars, with two or more good and sufficient sureties, who are residents of this State, or with any surety company authorized to transact business in this State, payable to the county judge of the county in which such stevedore pursues his occupation and to his successor in office, as trustee for all persons who may become entitled to the benefits of this law; conditioned that said contracting stevedore will promptly on Saturday of each week pay each laborer his wages for labor performed in loading and unloading any such ship, vessel or water craft according to the scale of wages agreed upon, and that all agreements entered into with each of said laborers in respect to the loading and unloading of said water craft, will be faithfully and truly performed. Such bond shall be approved by the county clerk of the county in which said contracting stevedore is pursuing said business or occupation and by him shall be filed and recorded. [Id.]

Art. 5193. Suits on bond.—Suits may be maintained upon such bond by any person to whom wages are due and unpaid for such labor as is hereinbefore mentioned. The same may be sued upon until the full amount thereof is exhausted, or suits sufficient to exhaust the bond are pending, and when so exhausted, said contracting stevedore shall make and file a new bond in amount and conditioned as provided for the first. [Id.]

Art. 5194. License.—Said contracting stevedore shall, before beginning such business, file written application to such county clerk for a license to pursue the occupation of a contracting stevedore for the county mentioned. On approval of the bond and payment of an occupation tax of five dollars the clerk shall issue a license to pursue said occupation, the license fee to be paid into the general fund of the county. [Id.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 5195. Bond and license.—Such bond shall be made and such license shall be obtained in each county in which said contracting stevedore pursues said occupation. Said contracting stevedore shall be required to execute a new bond and to obtain a new license at the expiration of every year from the issuance of the former license. [Id.]

CHAPTER TWELVE

RESTRICTIONS ON LABOR

Art.
5196. Discrimination.
5197. Discrimination prohibited, etc.
5198. Foreign corporations to forfeit permit.
5199. Liability.
5200. Fees of attorney.
5201. Prima facie evidence of agency.
5202. May examine witnesses.
5203. Sworn statement.
5204. Failure of witness to appear.
5205. Immunity of witness.
5206. Statement of cause of discharge.
5207. Detectives.

Article 5196. [594] Discrimination.—The following shall constitute discrimination against persons seeking employment: Where any corporation, or receiver of same, doing business in this State, or any officer or agent of such corporation or receiver shall discriminate against any person seeking employment on account of his having participated in a strike. [Acts 1907, p. 142, Acts 1909, p. 160.]

Art. 5197. [595] Discrimination prohibited, etc.—Any and all discriminations against persons seeking employment as defined in this chapter are hereby prohibited and are declared to be illegal. [Acts 1907, p. 142.]

Art. 5198. [596] Foreign corporations to forfeit permit.—Any foreign corporation violating any provision of this chapter is hereby denied the right, and is prohibited from doing any business within this State, and it shall be the duty of the Attorney General to enforce this provision, by injunction or other proceeding in the district court of Travis County, in the name of the State of Texas. [Id.]

Art. 5199. [597] Liability.—Each person, company or corporation, who shall in any manner violate any provision of this chapter shall, for each offense committed, forfeit and pay the sum of one thousand dollars, which may be recovered in the name of the State of Texas, in any county where the offense was committed, or where the offender resides, or in Travis County; and it shall be the duty of the Attorney General, or the district or county attorney under the direction of the Attorney General, to sue for the recovery of the same. [Id.]

Art. 5200. [598] Fees of attorney.—The fees of the prosecuting attorney for representing the State in proceedings under this chapter shall not be accounted for as fees of office. [Id.]

Art. 5201. [599] Prima facie evidence of agency.—In prosecutions for the violation of any provision of this chapter, evidence that any person has acted as the agent of a corporation in the transaction of its business in this State shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation. [Id.]

Art. 5202. [600] May examine witnesses.—Upon the application of the Attorney General, or of any district or county attorney, made to any justice of the peace in this State, and stating that he has reason to believe that a witness, who is to be found in the county of which such justice is an officer, knows of a violation of any provision of this chapter, the justice to whom such application is made shall have summoned and examined such witness in relation to such violations. [Id.]

Art. 5203. [601] Sworn statement.—Such witness shall be summoned as provided for in criminal cases. He shall be duly sworn, and the justice shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such statement shall be delivered to the attorney upon whose application the witness was summoned. [Id.]

Art. 5204. [602] Failure of witness to appear.—If the witness summoned as aforesaid fails to appear or to make statements of the facts within his knowledge under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in jail until he shall make a full statement of all facts within his knowledge with reference to the matter inquired about. [Id.]

Art. 5205. [603] Immunity of witness.—Any person so summoned and examined shall not be liable to prosecution for any violation of any provision of this chapter about which he may testify fully and without reserve. [Id.]

Art. 5206. [604] Statement of cause of discharge.—Any written statement of cause of discharge, if true, when made by such agent, company or corporation, shall never be used as the cause for an action for libel, either civil or criminal, against the agent, company or corporation so furnishing same. [Id.]

Art. 5207. [2475–2476] Detectives.—Any person, corporation, or firm who shall employ any armed force of detectives, or other persons not residents of this State, in the State of Texas, shall be liable to pay to the State as a penalty not less than twenty-five nor more than one thousand dollars, to be recovered before any court of competent jurisdiction in this State. Nothing herein shall be construed to deprive any person, firm or corporation of the right of self-defense, or defense of the property of said person, firm, or corporation by such lawful means as may be necessary to such defense. [Acts 1893, p. 159; G. L., vol. 10, p. 589.]

CHAPTER THIRTEEN

EMPLOYMENT AGENTS

Art.
5208. Definitions.
5209. Exceptions.
5210. Application and bond.
5210a. Appropriation of fees collected.
5211. Suits on bond.
5212. Cancellation of license.
5213. Commissioner may examine.
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5215. Overcharging.
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5217. To protect female applicants.
5218. License as evidence.
5219. Authority of commissioner.
5220. Injunction.
5221. Lockout or strike.

Article 5208. Definitions.—The term "Employment Agent" means every person, firm, partnership or association of persons engaged in the business of assisting employers to secure employees, and persons to secure employment, or of collecting information regarding employers seeking employees, and persons seeking employment. The term "Employment Office" means every place or office where the business of giving intelligence or information where employment or help may be obtained or where the business of an employment agent is carried on. The term "Commissioner" means the Commissioner of Labor Statistics of the State of Texas. The term "Deputy or Inspector" means any person who shall be duly authorized by the Commissioner to act in that capacity. [Acts 1923, p. 75.]

Art. 5209. Exceptions.—The provisions of this chapter shall not apply to agents who charge a fee of not more than two dollars for registration only for procuring employment for school teachers; nor to any department or bureau maintained by this State, the United States Government, or any municipal government of this State, nor to any person, firm, partnership, association of persons or corporation or any officer, or employee thereof engaged in obtaining or soliciting help from him, them or it when no fees are charged directly or indirectly the applicant for help or

the applicant for employment; nor to farmers and stockraisers acting jointly or severally in securing laborers for their own use where no fee is collected or charged directly or indirectly, nor to any association or corporation chartered under the laws of Texas conducting a free employment bureau or agency. [Id.]

Art. 5210. Application and bond.—Application and bond for private employment agency license shall be executed on blank forms prescribed and furnished by the Commissioner. Application for license to act as employment agent may be made in person or by mail to the Commissioner upon blank application form which shall be verified by the applicant. Where the application is made by a firm, partnership or association of persons, it must be verified by each person for whose benefit the application is made, and such application shall also be accompanied by affidavits of at least five credible citizens, who have resided in the county in which such applicant desires to conduct the business of an employment agent, for at least three years, to the effect that the applicant or applicants has or have resided within the county in which such person or persons desires to become an employment agent for at least one year prior to the date of the application, and that such person or persons are of good moral character. The Commissioner may require additional evidence of the moral character of applicants; and no license shall be granted to any person except he be of good moral character. Such application shall be examined by the Commissioner, and if he finds that the same complies with the law and that the applicant is entitled to a license, then he shall issue a license to the applicant for each county for which application is made and shall deliver such license to the applicant upon the payment of a license fee of one hundred and fifty dollars for each county in which an employment office is to be maintained by said agent, and upon the presentation to and approval by the Commissioner of a good and sufficient bond executed by the applicant with good and sufficient surety in the penal sum of five thousand dollars, payable to the State of Texas, for each county where an employment office is to be maintained; said bond shall be conditioned that the obligor will not violate any of the duties, terms, conditions and requirements of this law, and that the principal, his agents or representatives, will not make any false representation or statement to any person soliciting any assistance from him for help or employment. Said bond shall further recite that any person injured or aggrieved by any false or fraudulent statement of such agent, or any violation of the provisions thereof by such agent, shall be entitled to bring suit thereon. Not more than one office shall be operated under any one license. Each license issued by the Commissioner shall be for a period of one year. [Acts 1923, p. 75; Acts 2nd C. S. 1923, p. 93.]

Art. 5210a. Appropriation of fees collected.—All fees collected from the issuance of licenses to employment agencies as provided for in Article 5210 of the Revised Civil Statutes of 1925, collected or to be collected on or after September 1, 1926, are hereby appropriated for the use of the Commissioners of Labor of this State for the enforcement of the labor laws wherever it is the duty of such Commissioner to enforce such laws and also for the purpose of carrying on any of the activities or performing any of the duties devolving upon said Labor Commissioner. The life of this appropriation shall be from September 1, 1926, to August 31, 1927. [Acts 1926, 39th Leg., 1st C. S., p. 11, ch. 7, § 1.]

Art. 5211. Suits on bond.—Any person injured or aggrieved by any action, conduct, false representation or false statement of any such employment agent may bring suit for damages against such agent on said bond in any county where such action, conduct, false representation or false statement was made in any court of competent jurisdiction, without the necessity of making the State a party thereto; Where the bond has become impaired by recoveries thereon to the extent of fifty per cent of the penal sum named therein, the Commissioner may, by a notice in writing, demand the execution of a new bond which, if not executed and submitted to the Commissioner within twenty days, for his approval, such failure to execute a new bond shall ipso facto forfeit and cancel the license issued to the principal named in said bond. [Acts 1923, p. 77.]

Art. 5212. Cancellation of license.—The Commissioner shall have the authority, and it shall be his duty, to cancel the license of any employment agent when it shall appear to his satisfaction, upon hearing, that such agent has been convicted in a State or Federal court of an offense which under the laws of this State is a felony, or for any offense involving moral turpitude, or that the agent had obtained his license illegally or fraudulently or was guilty of fraud, false swearing, or deception in securing his license, or has violated any provision of this chapter. The Commissioner shall not cancel the license of any employment agent until complaint in writing made by a credible person, shall be filed with him, specifying in general terms the grounds of the proposed cancellation, and a full and fair hearing given to him thereon. Upon the filing of such complaint, the Commissioner shall fix a time and place, reasonably accessible to the employment agent complained against, for the hearing of said complaint. The Commissioner shall notify the agent so complained against of the time and place fixed for said hearing by a registered letter addressed to him at his postoffice address as the same appears upon his application for license, accompanied by an exact copy of the complaint against him; and mailing of such notice and copy shall be sufficient and conclusive evidence of proper service of the procedure upon the agent so complained against. The employment agent so complained against shall have at least ten days after the date of said notice mailed, exclusive of the day of mailing and day of hearing, before hearing upon said complaint shall be had, and shall have the right to file answer, introduce evidence and to be heard both in person and by counsel. The Commissioner shall have the power to summon and compel the attendance of witnesses before him to testify in relation to any such complaint, and may require the production of any book, paper or document deemed pertinent thereto. Said Commissioner shall also have the power to provide for the taking of depositions of witnesses and evidence may be heard either from witnesses present testifying orally, or by deposition taken under such rules, and in such fair and impartial manner as the Commissioner may prescribe. Said hearing shall be had before the Commissioner and shall be conducted in a fair and orderly manner, and in accordance with rules of procedure to be adopted by the Commissioner. At the conclusion of the hearing the Commissioner shall enter his findings and judgment in writing and the same shall be recorded by him in a permanent record to be kept by him, and a copy thereof furnished to the employment agent complained against. Any employment agent whose license shall be cancelled by the Commissioner may, within thirty days after the cancellation thereof, and not thereafter, have his right of action for reinstatement against the Commissioner in the district court of Travis County. If the agent whose license has been cancelled by the Commissioner shall, within ten days after receiving information of such cancellation, give notice to the Commissioner in writing of his intention to file such suit, the action of the Commissioner in cancelling the said license shall be suspended for a period of thirty days, but unless such suit shall be filed within said time, the action of the Commissioner shall be final. If suit shall be filed against the Commissioner to reinstate said license within said time, the action of the Commissioner shall remain suspended until the validity of the license in question shall be adjusted by the court in said suit. In such suits the burden shall be upon the employment agent to show good cause for reinstatement of his license. [Id.]

Art. 5213. Commissioner may examine.—All the books, correspondence, memoranda, papers and records of every kind and character incident to the business of

an employment agent of each agent licensed under this chapter shall be subject to examination at any time by the Commissioner, his deputies, or inspectors, and the refusal of any agent to permit the Commissioner, his deputies, or inspectors, to inspect such correspondence, memoranda, papers and records at any time shall be sufficient grounds for the Commissioner to cancel the license of such agent in accordance with the provisions of the fifth article of this chapter. [Id.]

Art. 5214. False advertisements.—No employment agent shall publish or cause to be published any false or misleading advertisements or notice relating to his employment agency; nor shall any such employment agent advertise his agency by means of cards, circulars, signs or in newspapers or other publications, unless such advertisements shall set forth the name of the agent and the address of his employment office; nor shall any such licensed person use any letterheads or blanks not containing the name of such employment agent and the address of his employment office. [Id.]

Art. 5215. Overcharging.—Where a fee is charged for obtaining employment, such fee in no event shall exceed the sum of three dollars, which may be collected from the applicant only after employment has been obtained and accepted by the applicant; provided, however, employment agents engaged exclusively in providing employment for skilled, professional or clerical positions may charge, with the written consent of the applicant, a fee, not to exceed twenty per cent of the first month's salary. [Id.]

Art. 5216. Receipt.—A receipt shall be given to the applicant by the employment agent for all fees collected from such applicant. The form of such receipt shall be prescribed by the Commissioner and shall contain the name of the applicant, the amount of the fee paid, the date, the character of the work or the situation secured, the name of the employer, together with his post-office address and the location of the work the applicant is to perform. [Id.]

Art. 5217. To protect female applicants.—No employment agent shall furnish any female for immoral purposes; or send, or cause to be sent any female to enter as servant, inmate, or for any purpose whatsoever, any place of bad repute, house of ill-fame, or assignation house, or any house or place of amusement kept for immoral purposes, the character of which such employment agent could have ascertained by reasonable diligence. [Id.]

Art. 5218. License as evidence.—Any application made by an employment agent for a license, or a certified copy thereof under the hand and seal of the Commissioner, shall be received as evidence in any court in this State without the necessity of proving the execution thereof. [Id.]

Art. 5219. Authority of Commissioner.—The Commissioner and his deputies, or inspectors, shall have the authority of peace officers only in making arrests of any person or persons who violate, in their presence, any provision of this chapter for which a penalty is prescribed, and when such arrest has been made the Commissioner, or his duly appointed deputies or inspectors, may enter any employment office at any time when such employment office is open for business, and inspect the registers and all other records of whatsoever kind and character of such employment agent for the purpose of ascertaining whether the provisions of this law are being violated, and the refusal of any employment agent to permit such inspection shall be sufficient reason for the Commissioner to cancel the license of such agent in accordance with the provisions of Article 5212. [Id.]

Art. 5220. Injunction.—Any person who shall engage in the business of an employment agent, or who shall conduct an employment office, without first procuring a license as required and provided for in this chapter may be enjoined from unlawfully pursuing such business or occupation, and the Attorney General shall bring suit for such purpose in the name of the State of Texas in Travis County, and the district or county attorney of any county wherein such person engages in such business or conducts an employment office in violation of the preceding article is hereby authorized to maintain in the proper court of said county a suit in the name of the State of Texas to enjoin and prevent such person from unlawfully pursuing such occupation. In all such cases it shall not be necessary for the attorney bringing the suit to verify the pleadings or for the State to execute any bond as a condition precedent to the issuing of any injunction or restraining order hereunder. [Acts 2nd C. S. 1923, p. 94.]

Art. 5221. Lockout or strike.—No employment agent shall send any person to a prospective employer who is conducting a "lockout" against all or part of his employees; or whose employees, or a part of them are out on a strike, without first apprising said person of the existence of said "lockout" or strike. [Acts 1923, p. 81.]

TITLE 84

LANDLORD AND TENANT

Art.
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Article 5222. [5475] [3235] Landlord's lien.—All persons leasing or renting lands or tenements at will or for a term of years shall have a preference lien upon the property of the tenant, as hereinafter indicated, upon such premises, for any rent that may become due and for all money and the value of all animals, tools, provisions and supplies furnished by the landlord to the tenant to make a crop on such premises; and to gather, secure, house and put the same in condition for marketing, the money, animals and tools and provisions and supplies so furnished being necessary for that purpose, whether the same is to be paid in money, agricultural products or other property; and this lien shall apply only to animals, tools and other property furnished by the landlord to the tenant and to the crop raised on such premises. This article shall not apply in any way nor in any case where any person leases or rents lands or tenements at will or for a term of years for agricultural purposes where the same is cultivated by the tenant who furnishes everything except the land, and where the landlord charges a rental of more than one-third of the value of the grain and more than one-fourth of the value of the cotton raised on said land; nor where the landlord furnishes everything except the labor and the tenant furnishes the labor and the landlord directly or indirectly charges a rental of more than one-half the value of the grain and more than one-half of the value of the cotton raised on said land, and any contract for the leasing or renting of land or tenements at will or for a term of years for agricultural purposes stipulating or fixing a higher or greater rental than that herein provided for shall be null and void, and shall not be enforceable in any court in this State by an action either at law or in equity, and no lien of any kind, either contractual or statutory, shall attach in favor of the landlord, his estate or assigns, upon any of the property named, nor for the purpose mentioned in this article. If any landlord or any person for him shall violate or attempt to evade any provision of this article by collecting or receiving a greater amount of rent for such land than herein provided shall be col-

lected or received by him upon any contract, either written or verbal, the tenant or person paying the same, or the legal representatives thereof, may, by an action of debt instituted in the county of the defendant's residence or in the county where such rents or money may have been received or collected, or where said contract may have been entered into, or where the party or parties paying the same resided when such contract was made, within two years after such payment, recover from the person, firm or corporation receiving the same, double the full amount of such rent or money so received or collected. [Acts 1874, p. 55; P. D. 7418c; G. L. vol. 8, p. 57; Acts 1915, p. 77.]

Art. 5223. [5477] [3237] When lien expires.—Such preference lien shall continue as to such agricultural products and as to animals, tools and other property furnished to the tenant, as aforesaid, so long as they remain on such rented or leased premises, and for one month thereafter; and such lien as to agricultural products, if stored in public or bonded warehouses controlled or regulated by the laws of the State within thirty days after the removal of said products from said rented premises, shall continue so long as they remain in such warehouses; and such lien, as to agricultural products and as to animals and tools furnished as aforesaid, shall be superior to all laws exempting such property from forced sale. [Id. Acts 1914, 2nd C. S., p. 33.]

Art. 5224. [5478] [3238] Does not apply.—Such lien shall not attach to the goods, wares and merchandise of a merchant, trader or mechanic, sold and delivered in good faith in the regular course of business to the tenant. [Id.]

Art. 5225. [5476] [3236] Tenant not to remove property.—The tenant, while the rent and advances remain unpaid, shall not without the consent of the landlord remove or permit to be removed from the premises so leased or rented any agricultural product produced thereon, or any of the animals, tools or property furnished as aforesaid. [Id.]

Art. 5226. [5478a] [3239] Removal not a waiver.—The removal of the agricultural products with the consent of the landlord for the purpose of being prepared for market shall not be considered a waiver of such lien, but such lien shall continue and attach to the products so removed the same as if they had remained on such rented or leased premises. [Id.]

Art. 5227. [5479] [3240] Distress warrant.—When any rent or advances shall become due, or the tenant shall be about to remove from such leased or rented premises, or to remove his property from such premises, the person to whom the rents or advances are payable, his agent, attorney, assigns, heirs or legal representatives may apply to a justice of the peace of the precinct where the premises are situated, or in which the property upon which a lien for rents or advances exists may be found, or to any justice having jurisdiction of the cause of action, for a warrant to seize the property of such tenant. If a distress warrant shall be issued by any justice, other than the justice of the peace of the precinct in which the rented premises may be situated or in which the defendant may reside, such warrant shall be made returnable to, and the affidavit and bond upon which it is issued shall be transmitted by the justice issuing such distress warrant to some justice of the precinct in which the rented premises may be situated, or in which the defendant may reside. [Acts 1881, p. 98; G. L. vol. 9, p. 190.]

Art. 5228. [5480] [3241] Oath and bond.—The plaintiff, his agent or attorney shall make oath that the amount sued for is rent or advances, such as are mentioned in the first article of this title, or shall produce a writing signed by such tenant to that effect, and shall further swear that such warrant is not sued out for the purpose of vexing and harassing the defendant. The person applying for such warrant shall execute a bond with two or more good and sufficient sureties, to be approved by the justice of the peace, payable to the defendant, conditioned that the plaintiff will pay the defendant such damages as he may sustain in case such warrant has been illegally and unjustly sued out, which bond shall be filed among the papers of the cause; and, in case the suit shall be finally decided in favor of defendant, he may bring suit against the plaintiff and his sureties on such bond, and shall recover such damages as may be awarded to him.

Art. 5229. [5481] [3242] Issuance of distress warrant.—Upon the filing of such oath and bond such justice shall issue his warrant to the proper officer commanding him to seize the property of the defendant, or so much thereof as will satisfy the demand. Such warrant shall be returnable to the court having exclusive jurisdiction thereof, but if the amount in controversy is within the jurisdiction of both the county and district courts, the writ shall be made returnable to either court as the plaintiff in such writ may direct. When the writ is made returnable to the district or county court the justice shall transmit all papers in said cause to the proper court on or before the first day of the next term thereof.

Art. 5230. [5482] [3243] Duty of officer.—The officer to whom such warrant is directed shall seize the property of such tenant, or so much thereof as shall be of value sufficient to satisfy such debt and costs, and safely keep it in his possession unless replevied, and make due return thereof to the court to which the warrant is returnable at the next term thereof.

Art. 5231. [5483] [3244] Defendant may replevy.—The defendant at any time within ten days from the date of levy may replevy the property by giving bond payable to the plaintiff, with two or more good and sufficient sureties in double the amount of the debt, or at his election, for the value of the property so seized, conditioned that if the defendant be cast in the action he shall satisfy the judgment that may be rendered against him or pay the estimated value of the property, with lawful interest thereon from the date of the bond.

Art. 5232. [5484] [3245] Judgment against sureties.—When the property levied on has been replevied and if final judgment is rendered against the defendant, such judgment shall also be against him and his sureties on his replevy bond for the amount of the judgment and interest or for the value of the property replevied and interest, according to the terms of such bond.

Art. 5233. [5485] [3246] Perishable property sold.—If the property is of a perishable or wasting kind, and the defendant fails to replevy as herein provided, the officer making the levy, or the plaintiff, or the defendant, may apply to the court, or judge thereof, to which the warrant is returnable, either in term time or vacation for an order to sell such property; and, if any person other than the defendant apply for such order of sale, the court shall not grant such order, unless the person applying shall file with such court a bond payable to the defendant, with two or more good and sufficient sureties, to be approved by said court, that they will be responsible to the defendant for such damages as he may sustain in case such sale be illegally and unjustly applied for, or be illegally and unjustly made, which sale shall be conducted as sales under execution. [R. S. 1879.]

Art. 5234. [5486] [3247] Citation for defendant.—The justice at the time he issues the warrant shall issue a citation to the defendant requiring him to answer before such justice, if he has jurisdiction to finally try the cause, and upon its being returned served, to proceed to judgment as in ordinary cases; and, if he has not such jurisdiction, the citation shall require the defendant to answer before the court to which the warrant was made returnable, and shall be returned with the other papers to such court. If the defendant has removed from the county without service, the proper officer shall state this fact in his return on the citation; and the court shall proceed to try the

case ex parte, and may enter the proper judgment. [P. D. 7418f.]

Art. 5235. [5487] [3248] Petition.—When the warrant is made returnable to the district or county court, the plaintiff shall file his petition on or before the appearance day of the term of court to which said papers are returnable. [Id.]

Art. 5236. [5488] [3249] Rights of tenant.—Should the landlord, without default on the part of the tenant or lessee, fail to comply in any respect with his part of the contract, he shall be responsible to said tenant or lessee for whatever damages may be sustained thereby; and to secure such damages to such tenant or lessee, he shall have a lien on all the property of the landlord in his possession not exempt from forced sale, as well as upon all rents due to said landlord under said contract. [Acts 1876, p. 137; G. L. vol. 8, p. 973.]

Art. 5237. [5489] [3250] Tenants shall not sub-let.—A person renting said lands or tenements shall not rent or lease the same during the term of said lease to any other person without first obtaining the consent of the landlord, his agent or attorney. [Id.]

Art. 5238. [5490] [3251] Owners of buildings lien.—All persons leasing or renting any residence, storehouse, or other building, shall have a preference lien upon all property of the tenant in such residence, storehouse, or other building for the payment of rents due and to become due provided that in order to secure the lien for rents that are more than six months due, it shall be necessary for the person leasing or renting any storehouse or other building which is used for commercial purposes, to file in the office of the county clerk of the county in which such storehouse or such other building is situated, a sworn statement of the amount of rent due, itemized as to the months for which it is claimed to be due, together with the name and address of the tenant, a description of the rented premises, the date on which the rental contract began and that on which it is to terminate, verified by the person claiming such lien, his agent or attorney, and such statement when so verified shall be recorded by the county clerk in a book to be provided for such purpose. No lien for rent more than six months past due upon any storehouse or other building rented for commercial purposes shall be valid as against bona fide purchasers or unsecured or lien creditors of said tenant, unless said statement shall be verified, filed and recorded as above provided.

Each county clerk shall keep an alphabetical index for the purpose of recording the rental liens above described.

The lien for rents to become due shall not continue or be enforced for a longer period than the current contract years, it being intended by the term "current contract years" to embrace a period of twelve months, reckoning from the beginning of the lease or rental contract, whether the same be in the first or any other year of such lease or rental contract. Such lien shall continue and be in force so long as the tenant shall occupy the rental premises, and for one month thereafter; but this article shall not be construed as in any manner repealing or affecting any Act exempting property from forced sale. [Acts 1889, p. 11; Acts 1919, p. 170.]

Art. 5239. [5491] [3252] Distress warrant.—When any rent shall become due, or the tenant about to remove from such leased or rented buildings, or remove his property therefrom, it shall be lawful for the person to whom the rent is payable, his agent, attorney or assignee, to apply to a justice of the peace of the precinct where the building is situated for a distress warrant, which shall be issued on an affidavit and bond; and the same proceedings shall be had on the issuance, trial and return of such warrant and the same rights conferred on the owners of storehouses and residences as is provided in this title in cases of other landlords. [Acts 1879, p. 128; G. L. vol. 8, p. 1428.]

TITLE 85

LANDS—ACQUISITION FOR PUBLIC USE

1. STATE USE

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5241. State railroad.

2. FEDERAL USE

5242. Authorized uses.
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5245. State land.
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1. STATE USE

Article 5240. [5247–8] Mode of acquisition.—When any land shall be required by the State for any character of public use, the Governor is authorized to purchase said land, or the right to the use thereof, for such purpose; or, failing to agree with the owner on the price therefor, such land may be condemned for such public use in the name of this State. Upon the direction of the Governor, proceedings shall be instituted against the owner of the land by the Attorney General or under his direction by the district or county attorney. Should the award of damages in the opinion of the Governor be excessive, such award shall not be paid but the State shall pay the costs of the proceedings and no further action shall be taken. [Acts 1903, 1st C. S., p. 10.]

Art. 5241. [5251] State railroad.—If any land is acquired by purchase or condemnation to obtain right of way for any railroad or tram road, to be built or extended and operated in connection with, or for the use of, any of the penitentiaries of this State, or any of the farms of this State, and used in connection with the State penitentiaries, the penitentiary board is hereby authorized and required to pay, out of any money authorized by law to be used for the support and maintenance of said penitentiaries, the damages and costs of condemnation, or the purchase price of said property. [Id.]

2. FEDERAL USE

Art. 5242. [5252] Authorized uses.—The United States Government through its proper agent, may purchase, acquire, hold, own, occupy and possess such lands within the limits of this State as it deems expedient and may seek to occupy and hold as sites on which to erect and maintain light houses, forts, military stations, magazines, arsenals, dock yards, custom houses, post offices and all other needful public buildings, and for the purpose of erecting and constructing locks and dams, for the straightening of streams by making cutoffs, building levees, or for the erection of any other structures or improvements that may become necessary in developing or improving the waterways, rivers and harbors of Texas and the consent of the Legislature is hereby expressly given to any such purchase or acquisition made in accordance with the provisions of this law. [Acts 1905, p. 101.]

Art. 5243. [5253] Condemnation proceedings.—Whenever the land owner and the authorized Federal agent cannot agree upon the purchase price, then such agent may institute condemnation proceedings against such owner. [Id.]

Art. 5244. [5271] Immediate occupancy.—Upon the filing of the award of the commissioners with the county judge, if the United States Government shall deposit the amount of the award of the commissioners, together with all costs adjudged against the United States, they may proceed immediately to the occupancy of the said land and to the construction of their said improvements without awaiting the decision of the county court. [Id.]

Art. 5245. [5273] [372] [331] State land.—When this State may be the owner of any land desired by the United States for any purpose specified in this title, the Governor may sell such land to the United States, and upon payment of the purchase money therefor into the Treasury, the Land Commissioner, upon the order of the Governor, shall issue a patent to the United States for such land in like manner as other patents are issued. [Acts 1854, p. 102; P. D. 5450; G. L. vol. 3, p. 1546.]

Art. 5246. [5274] [373] [332] To record title.—All deeds of conveyances, decrees, patents, or other instruments vesting title in lands within this State in the United States, shall be recorded in the land records of the county in which such lands, or a part thereof, may be situated, or in the county to which such county may be attached for judicial purposes and until filed for record in the proper county they shall not take effect as to subsequent purchasers in good faith, for a valuable consideration, and without notice. [Acts 1871, p. 19; P. D. 7693, G. L. vol. 6, p. 921.]

Art. 5247. [5275–6] Federal jurisdiction.—Whenever the United States shall acquire any lands under this title, and shall desire to acquire constitutional jurisdiction over such lands for any purpose authorized herein, it shall be lawful for the Governor, in the name and in behalf of the State, to cede to the United States exclusive jurisdiction over any lands so acquired, when application may be made to him for that purpose, which application shall be in writing and accompanied with the proper evidence of such acquisition, duly authenticated and recorded, containing or having annexed thereto, an accurate description by metes and bounds of the lands sought to be ceded. No such cession shall ever be made except upon the express condition that this State shall retain concurrent jurisdiction with the United States over every portion of the lands so ceded, so far, that all process, civil or criminal[,] issuing under the authority of this State or any of the courts or judicial officers thereof, may be executed by the proper officers of the State, upon any person amenable to the same within the limits of the land so ceded, in like manner and like effect as if no such cession had taken place; and such condition shall be inserted in such instrument of cession. [Acts 1849, p. 12; G. L. vol. 3, p. 450.]

Art. 5248. [5277] [376] [335] Exempt from taxation.—The United States shall be secure in their possession and enjoyment of all lands acquired under the provisions of this title; and such lands and all improvements thereon shall be exempt from any taxation under the authority of this State so long as the same are held, owned, used and occupied by the United States for the purposes expressed in this title and not otherwise. [Acts 1871, p. 19; G. L. vol. 6, p. 921.]

TITLE 86

LANDS—PUBLIC

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CHAPTER ONE

ADMINISTRATION

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1. THE COMMISSIONER

Article 5249. [4392] [2864] Election.—The Commissioner of the General Land Office, hereinafter called the Commissioner, shall be elected at each general election for a term of two years, and shall reside at Austin during his continuance in office. [Const. art. 4, secs. 2, 23.]

Art. 5250. [4394] [2866] Bond.—The Commissioner shall give bond with three or more sureties for fifty thousand dollars, payable to and to be approved by the Governor, conditioned for the faithful discharge of his official duties. All other bonds required by law of employees of the General Land Office shall be executed and approved in like manner. [Acts 1846, p. 232; G. L. vol. 2, p. 1538.]

Art. 5251. [4396–4397] General duties.—The Commissioner shall superintend, control and direct the official conduct of all subordinate officers of the General Land Office, and execute and perform all acts and things touching or respecting the public land of this State or rights of individuals in relation thereto, as may be required by law, and make and enforce suitable rules consistent therewith. He shall give information to the Governor and Legislature concerning the public lands, or the General Land Office, when required.

Art. 5252. [5389] [4215] Abstract clerk.—The Commissioner shall make it the special duty of one of his clerks to constantly correct the abstract of patented, titled and surveyed lands required to be kept in his office according to errors discovered, changes by cancellation of patents, changes of county lines, and creation of new counties, and to add all new patented surveys at the date of the patent. [Acts 1837, p. 62; P. D. 4090; G. L. vol. 1, p. 1404.]

Art. 5253. [5390] [4216] Report to Comptroller.—During August of each year the Commissioner shall make out and furnish to the Comptroller a supplementary abstract of all patents issued from his office during the year ending on the last day of August. [Id.]

Art. 5254. [5391–5392] May print abstracts.—The Comptroller may have not more than fifteen hundred copies of said supplementary abstracts printed and bound for distribution among those officers of the State and counties whose duties require its use, the surplus copies to be sold at a reasonable price to parties applying for them. The costs so incurred shall be paid out of the general appropriation for printing; and the Comptroller shall pay all money received from such sales into the Treasury to the credit of said appropriation. [Id.]

Art. 5255. [4398–4399] Chief clerk.—The Commissioner shall appoint a chief clerk who shall give bond in the sum of twenty thousand dollars. He shall be authorized to perform all of the duties required of the Commissioner in case of his sickness, absence, death or resignation. [Acts 1846, p. 232; G. L. vol. 2, p. 1538.]

Art. 5256. [4400–4401] Spanish translator.—The Commissioner shall appoint a translator who shall thoroughly understand Spanish and English languages, who shall give bond as required of the chief clerk, and take the official oath. He shall translate into English and record in a book all laws and public contracts relating to titles of lands, and all original titles or papers relating thereto on file in the General Land Office, which are written in the Spanish language. [Id.]

Art. 5257. [4402–3–4–5] Receiving clerk.—With the consent of the Governor, the Commissioner shall appoint a suitable person as receiving clerk for

the Land Office. Such person shall give bond in the sum of twenty-five thousand dollars. The receiving clerk shall:

1. Receive all funds required by law to be paid to the Commissioner and give the person depositing money a certificate of deposit stating the amount, name of party, and character of claim upon which deposited; and if any funds are received of a general character in advance of fees and dues, it shall be so stated; and said clerk shall be responsible therefor to the state or individual.

2. Keep books in which he shall enter each deposit separately, giving name of party, number of claim and situation of land sought to be perfected, and shall keep all letters and other vouchers filed in neat and regular order and number corresponding with his books. He shall report to the Treasurer on the last day of each month all funds in his hands due the State, paying the same in kind and taking the receipt in his own name. He shall keep separate columns in his books, showing the amount of specie or the amount of currency or other funds paid in. Upon his removal or resignation, he shall turn over his books, accounts and money in hand to his successor, when properly qualified, or to the Commissioner, taking a receipt for the same.

3. Furnish the Governor, through the Commissioner, on or before the meeting of the Legislature, a correct report of the condition of his office, the money received, giving character of claim, the money paid out and character of payment. [Acts 1866, p. 161; G. L. vol. 5, p. 1079.]

Art. 5258. [4406] [2879] Examination of books.—The Commissioner shall examine the books and accounts of the receiving clerk and note that they are properly kept, and if any defalcation is found he shall at once report the same to the Governor, who shall suspend said clerk from office until an examination is made, and if found guilty he shall be removed and suit instituted for recovery upon his bond. [Id.]

Art. 5259. [4407] [2880] Draftsmen.—The Commissioner shall appoint a chief draftsman and such number of compiling or assistant draftsmen as authorized by law, who shall make out and complete maps of all surveys made in the several counties from the maps furnished by county surveyors; and they shall plot additional surveys upon the proper county maps as forwarded to the Land Office. They shall perform all drafting and other duties required of them by the Commissioner for the benefit of the State or individuals. [Acts 1841, p. 150; G. L. vol. 2, p. 614.]

Art. 5260. [4408–9–10] Conditions of employment.—The Commissioner shall appoint such number of clerks as authorized by legislative appropriation or other law of this State. All clerks and employees of the Land Office shall hold their offices and positions at the pleasure of the Commissioner, and may be removed by him at any time for satisfactory cause.

2. GENERAL LAND OFFICE

Art. 5261. [5280] [4042] Office established.—There shall be one general land office at Austin, where all land titles emanating from the State shall be registered when not prohibited by the Constitution. The term "land office," as used in this title shall mean the General Land Office of this State. [Const. art. 14, sec. 1; Acts 1846, p. 232; G. L. vol. 2, p. 1538.]

Art. 5262. [5281] [4043] Custody of records.—All books, accounts, records, papers, maps and original documents appertaining to land titles and which were termed archives by law, shall be the books and papers of said office, under the control and custody of the Commissioner. He shall keep in the Land Office a copy of each permit, lease or other paper issued by authority of law. [Acts 1837, p. 63; G. L. vol. 1, p. 1405.]

Art. 5263. [5283] Filing papers.—The Commissioner shall adopt the most convenient method for filing papers and preserving the records of said office. A list of all papers in each file shall be retained in the file. Each employee who files a paper shall place his own name thereon. [Acts 1909, p. 429.]

Art. 5264. [5284–5285] Public access to papers.—One desiring to examine any paper, record or file shall first obtain the written consent of the Commissioner or the chief clerk, and an order for the detail of a clerk to be present and superintend such examination. After the examination, the clerk shall carefully examine the papers of said file and see that they are all in place. [Acts 1873, p. 180; G. L. vol. 7, p. 632.]

Art. 5265. [5290] [4053] Removal of papers.—No transfer or deed that may be a link in any chain of title to any certificate on file in the Land Office shall be withdrawn by any one. The Commissioner shall deliver to the interested party on demand certified copies thereof which shall have the same force and effect as the originals. If the genuineness of any such original paper is questioned in any suit, the Commissioner shall deliver the same to the proper party on the order of the court where such suit is pending; and the Commissioner shall retain a duly certified copy thereof, which shall have the same force and effect as the original in the event of its loss. [Acts 1879, p. 40; G. L. vol. 8, p. 1340.]

Art. 5266. [5291] [4061] Receipts for papers.—No paper, certificate, copy or document, other than a patent, shall be delivered to the owner until he has receipted for the same. The receipt shall state his residence and post office, and, if delivered to an agent or attorney, it shall also state his residence and post office. The Commissioner shall file such receipt with the other papers. When the Commissioner has good reason to doubt the genuineness of any transfer, power of attorney, or other paper on file in his office, he shall not permit any one to obtain an official copy thereof until such doubts have been removed. [Id.]

Art. 5267. [5292] [4062] Liability of Commissioner.—The Commissioner and the sureties on his official bond shall be responsible to any party injured by removal, withdrawal or alteration of any record or file in said office, unless said Commissioner can show that such act has taken place by permission of the party owning said file or record. [Id.]

CHAPTER TWO

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1. LICENSED LAND SURVEYORS

Article 5268. Board of Examiners.—The Board of Examiners of Land Surveyors shall be appointed by the Governor, and shall be composed of the Commissioner and two reputable land surveyors of not less than fifteen years practical and active experience in the field as land surveyors. [Acts 2nd C. S. 1919, p. 173.]

Art. 5269. Organization of board.—The board shall organize by electing from their number a chairman and a secretary-treasurer. The concurrence of two members shall be necessary for the adoption or rejection of any question upon which they may be called to pass. The records and books of the board relating to the execution of this law shall be deposited in the Land Office for safe-keeping when not in use by the board. [Id.]

Art. 5270. Duties of board.—The board shall prepare written questions upon the theory of surveying, practical surveying, theory and use of surveyor's instruments, calculation of areas, closing field notes, the law of land boundaries and such other matters pertaining to surveying as the board may deem important. When the questions prepared by the board and the answers thereto shall have been returned to the chairman of the board as herein provided, he shall either convene the board for the purpose of passing upon such answers and the issuance or refusal of the license, or he may transmit the questions and answers to other members of the board for their consideration and action, and shall issue license to the applicant if he shall have passed a successful examination as herein provided. Upon receipt of a written application for license, the board shall forward the same to the custodian of questions for teachers' certificates in the county where such applicant resides, together with the questions prepared by the board, with suitable words on the inclosure indicating the contents. [Id.]

Art. 5271. Examination.—Upon receipt of the questions by the custodian of questions for teachers' certificates as provided herein, he shall hold the same unopened and shall open the same only in the presence of the applicant or applicants at the same time and place as may be required for the examination of applicants for teachers' certificates. Each applicant shall deposit ten dollars with the authority that may be authorized to receive such fees from applicants for teachers' certificates. The authority for conducting the examination for teachers' certificates shall conduct the examination of applicants for license hereunder in the same manner as is provided by law for the examination of applicants for teachers' certificates. When such applicant shall have returned the questions and answers to the source from which they were received, the authority receiving them shall return both questions and answers to the chairman of the Board of Examiners of Land Surveyors, together with eight dollars of the ten dollars deposited by each applicant, retaining the two dollars, which two dollars shall be disposed of as are the fees paid by applicants for teachers' certificates. Such questions and answers shall be deposited in the Land Office and there safely kept for at least one year. If a license be refused an applicant he may take any subsequent examination under the same conditions as in the first instance. [Id.]

Art. 5272. Seal of licensee.—Each licensed land surveyor shall procure a seal of office. Around the margin shall be the words "Licensed State Land Surveyor," and between the points of the star in the said seal shall be the word "Texas." He shall attest with said seal all certificates and other official acts issued under the provisions of this law. No certificate or other instrument issued by such surveyor shall be admitted in evidence or have any legal effect unless such seal is impressed thereon. [Id.]

Art. 5273. License: term of.—A license issued to an applicant under these provisions shall be valid for life unless sooner revoked by the Board for any of the following causes: That the holder has been found by a court of competent jurisdiction guilty of a felony or adjudged to have committed a theft, or fraud, or to be insane or incompetent, or shall be found by the Board to have unlawfully given information concerning any undisclosed public land or to have been directly or indirectly interested in the purchase or in the acquisition of title to any public land or to have been found guilty of any act or default discreditable to the surveying profession. [Id.]

Art. 5274. Revocation of license.—Before any license issued under these provisions shall be revoked, the holder shall have been advised by written notice from the Board, mailed to him at his last known address, at least thirty days before the day fixed for hearing, of any charge against him, stating the charge, and the time and place for such hearing. The evidence adduced on such hearing shall be reduced to writing. If the Board finds the charges sustained by the evidence, the license of such surveyor shall be revoked. The surveyor whose license has been revoked may appeal from such revocation to any district court of the county in which he resides. Upon such appeal the court shall admit in evidence the written record of the Board together with such other evidence as may be offered on either side in accordance with the rules of evidence in such courts. [Id.]

Art. 5275. Oath and bond.—Before one who receives a land surveyor's license shall be authorized to perform the duties of licensed land surveyor, he shall take the official oath, and shall make a good bond in the sum of one thousand dollars payable to the Governor, conditioned that he will faithfully, impartially and honestly perform all the duties of a licensed surveyor, to the best of his skill and ability in all matters wherein he may be employed. Such oath and bond shall be recorded in the office of the county clerk of the county in which the licensee resides, and after being so recorded shall be filed in the Land Office accompanied with one dollar filing fee, and thereupon the licensee shall be authorized to enter upon the discharge of the duties of a licensed land surveyor. [Id.]

Art. 5276. Authority of licensee.—Land surveyors licensed under these provisions are hereby authorized to perform the duties that may be performed by county surveyors, and shall be subject to the direction of the Governor, Land Commissioner, Attorney General and the courts of the State in matters of land surveying in such cases as may come under the supervision of such authorities. The jurisdiction of such licensees shall be coextensive with the limits of the State. They may hold the office of county surveyor, and if so elected shall qualify as provided by law for county surveyors, but such election for any particular county shall not limit the jurisdiction of said surveyor to such county, nor shall the election of a county surveyor for any particular county prevent any licensed surveyor from performing the duties of a surveyor in such county. All field notes made by one licensed under this law shall be signed by such surveyor, followed by the designation, "Licensed land surveyor." [Id.]

Art. 5277. Field notes to be recorded.—Every survey made by any licensed surveyor shall be recorded in the county surveyor's records of the proper county, and for the purpose of such record, and for all other purposes, licensed surveyors shall have free and unrestrained access to the county surveyor's records. The field notes of all surveys and plats of same made by any licensed land surveyor affecting the lines, boundaries and areas of unpatented land shall be forwarded to the Land Office. All field notes made by a licensed land surveyor in any county in this State shall have the same force and effect and be admissible in evidence the same as field notes made by county surveyors. [Id.]

Art. 5278. Undisclosed land.—If a licensed surveyor shall discover an undisclosed tract of public

land he shall not make known that fact to anyone except to such person as may have it enclosed, but he shall forward to the Land Office a report of the existence of such tract and the acreage therein, and its probable value. [Id.]

Art. 5279. Compensation.—A licensed land surveyor shall receive as compensation for his services not to exceed ten dollars per day and other expenses incident to the survey as shall be agreed upon between the surveyor and the interested party, whether the same be a private person, a county, a court or the State. [Id.]

Art. 5280. Certified copies.—Surveyors qualified under this law and county surveyors may make a certificate of any fact shown by the books, documents and records of any county surveyor's office and may make a certified copy of any document or record or entry shown by record of such county surveyor, and said certificate shall be admissible in evidence as to what said records may disclose. For each such certificate the surveyor may charge a fee of one dollar, and for each one hundred words contained in any certified copy thirty-five cents. When a county has a county surveyor such surveyor alone shall be authorized to make certificates and certified copies and receive the fees therefor. [Id.]

Art. 5281. Disposition of fees.—The sum received by the Board or so much thereof as may be necessary shall be used to defray the actual expenses incurred by the members of said Board in the execution of this law, and the remainder shall be deposited annually in the State Treasury. No appropriation shall ever be made to defray the expenses of said Board or to carry into effect any provision of this law. [Id.]

Art. 5282. Experienced surveyors.—Any applicant who is a reputable surveyor of fifteen years actual experience in the field as such surveyor shall receive a license without examination when he shall have applied therefor, accompanying such application to the Board with the affidavits of three credible persons to the effect that such applicant is a reputable land surveyor of fifteen years actual experience in the field, and upon the payment of a fee of two dollars to said Board. [Id.]

2. COUNTY SURVEYORS

Art. 5283. [5300–5325–5326] Election.—A county surveyor shall be elected in each county at each general election for a term of two years. He shall reside in the county and keep his office at the courthouse or some suitable building at the county seat, the rent therefor to be paid by the commissioners' court on satisfactory showing that the rent is reasonable, the office necessary and that there is no available office at the courthouse. [Const., art. 6, sec. 44; Acts 1858, p. 66; Acts 1876, p. 196; G. L. vol. 4, p. 938; vol. 8, p. 1032.]

Art. 5284. [5301] [4069] Bond.—The county surveyor shall first give bond in such sum as the commissioners' court may fix, not less than five hundred nor more than ten thousand dollars, and conditioned that he will faithfully perform the duties of his office. [Acts 1837, p. 63; P. D. 1081, 4522; Acts 1897, p. 26; G. L. vol. 1, p. 1405.]

Art. 5285. [5308] [4076] Deputy.—Each county surveyor may appoint a deputy surveyor as he may deem necessary, and shall administer his official oath and take his bond in the sum of five thousand dollars conditioned for the faithful performance of the duties of his office. The deputy may do all acts authorized or required by law to be done by the county surveyor. [Acts 1837, p. 63; P. D. 4522; G. L. vol. 1, p. 1405.]

Art. 5286. [5309] [4077] Chain carriers.—Each county surveyor may employ persons sixteen years of age or over as chain carriers or markers, and shall administer to each an oath to faithfully perform his duties as such in accordance with the instructions given him. [Id.]

Art. 5287. [5303–5307] Duties.—Each county surveyor shall receive and examine all field notes of surveys made in said county upon which patents are to be obtained, and shall certify to the same according to law and record such field notes in a book to be kept by him for that purpose; and he shall perform such other duties as may be required of him by law. The commissioners' court shall furnish him all necessary books of record. [Id.]

Art. 5288. [5304] [4072] Inclosed school lands.—He shall report to the commissioners' court on the first Monday in June each year the number of sections of public school lands in his county inclosed during the past year, and the names of the persons controlling same, and the number of sections controlled by each person. [Acts 1879, p. 101; G. L. vol. 9, p. 1401.]

Art. 5289. [5343] [4153] Failure to survey.—If any county surveyor fails, neglects or refuses, when the amount of lawful surveying fees of any location of land may be tendered to him by any person legally entitled to the survey, to make or cause such survey to be made within one month after such tender, he and his sureties shall be liable on his official bond to such injured parties in the amount of damages or injury said parties may sustain by reason of such neglect, refusal or failure. [Acts 1837, p. 63; G. L. vol. 1, p. 1405.]

Art. 5290. [5305] [4073] To record field notes.—Each county surveyor shall record in a well bound book all the surveys in his county, with the plats thereof that he may make, whether private or official. Such record shall be open to the inspection of the public. For such service the surveyor may charge in addition to the fees allowed by law for field work, twenty cents per hundred words for such record. [Acts 1881, p. 71; G. L. vol. 9, p. 163.]

Art. 5291. [5306–5312] Record of surveys.—Each county surveyor shall quarterly plat upon the map of his county all surveys made during the preceding quarter and transmit sketches and field notes of same to the Commissioner. Such map shall be free to public inspection. [Acts 1858, p. 66; P. D. 1087; G. L. vol. 4, p. 938.]

Art. 5292. [5328] [4098] Right to examine books.—Any person interested, for himself, or as agent or attorney of another, shall at all times have the right to examine the books, papers, plats, maps or other archives belonging to the office of any surveyor, on the payment of the fee fixed by law. [Id.]

Art. 5293. [5313] [4081] Change of county boundary.—When any county boundaries are changed the surveyor of the county from which territory may be so taken shall furnish the surveyor of the county including such territory with a complete copy of all the field notes of surveys made in the same. [Acts 1840, p. 191; G. L. vol. 2, p. 365.]

Art. 5294. [5324] [4092] Lost records.—Whenever the maps, field notes of surveys, or other records, or any part thereof of the surveyor's office shall from any cause be lost or destroyed, such surveyor shall obtain from the Commissioner a transcript of such lost records certified to as required by law, and which certified copy shall have the same force and effect as the original. Such surveyor shall receive five cents and the State ten cents per hundred words for such transcript to be paid by the commissioners court. [Acts 1885, p. 92; Amend. Sen. Jour. p. 482, 1895; G. L. vol. 9, p. 712.]

Art. 5295. [5330–1] Standards of measure.—Each surveyor shall, in some convenient place at the county seat, establish a true meridian by a substantial monument, to be erected at the expense of the county, and shall adjust to the said meridian all compasses or other such instruments before being used; and shall keep in his office a standard chain of the true measurement of ten varas, to which all of his chains shall be adjusted before being used. All surveyors shall be responsible to parties interested for any cost that may accrue in rectifying any errors that may occur in

their work by reason of neglect or failure to comply with the requirements of this article. [Acts 1873, p. 173; P. D. 7099; G. L. vol. 7, p. 625.]

Art. 5296. [5332] [4103] Removal: delivery of records.—Upon removal from office, or at the expiration of his term of office, each county surveyor shall deliver to his successor all records, books, papers, maps and other things appertaining to his office.

Art. 5297. [5333] [4104] Custody of records in absence.—Whenever an organized county from any cause has not a qualified county surveyor, the county clerk of such county shall take charge of all records, maps and papers belonging to the county surveyor's office and safely keep the same in his office. [Acts 1866, p. 31; G. L. vol. 5, p. 949.]

Art. 5298. [5334] [4105] Bound records.—Whenever the commissioners court deems it necessary it shall order the surveyor's record to be transcribed in good and substantial books, by the surveyor or special deputies sworn to make true copies of the same, for which services they shall be allowed not more than fifteen cents per hundred words, to be paid out of the county treasury. [Acts S. S. 1871, p. 18; G. L. vol. 7, p. 20.]

3. SURVEYS AND FIELD NOTES

Art. 5299. [5335] [4142] Authorized surveys.—All surveys of public lands shall be made by authority of law, and by a surveyor duly appointed, elected or licensed, and qualified.

Art. 5300. [5336] [4144] Field notes; requisites.—The field notes of every such survey shall state:

1. The county in which the land is situated.
2. The authority under or by virtue of which it is made, giving a true description of the same.
3. The land by proper field notes with the necessary calls and connections for identification (observing the Spanish measurement by varas).
4. A diagram of the survey.
5. The variation at which the running was made.
6. The names of the chain carriers.
7. The date thereof, and the signature of the surveyor.
8. The surveyor shall officially certify to the correctness of the survey, that it was made according to law; that such survey was actually made in the field, and that the field notes have been duly recorded, giving book and page.
9. When the survey has been made by a deputy, the county surveyor shall certify officially that he has examined the field notes, has found them correct, and that they are duly recorded giving book and page of record.

Art. 5301. [5337] [4146] Loss of field notes.—When the original field notes of any authorized survey are lost or destroyed, the owner thereof or his agent, on making affidavit of such fact and filing same in the office of the surveyor where the survey was made, may obtain from him a certified copy of the record thereof. Such copy shall be as valid and efficient in law as the original and shall secure to the party all the rights before the Commissioner that the original would have done. [Acts 1841, p. 293; G. L. vol. 2, p. 1599.]

Art. 5302. [5338–9] Surveys on navigable streams.—All lands surveyed for individuals, lying on navigable water courses, shall front one-half of the square on the water course and the line running at right angles with the general course of the stream, if circumstances of the lines previously surveyed under the laws will permit. All streams so far as they retain an average width of thirty feet from the mouth up shall be considered navigable streams within the meaning hereof, and they shall not be crossed by the lines of any survey. All surveys not made upon navigable water courses shall be in a square, so far as lines previously surveyed will permit. [Acts 1837, p. 63; P. D. 4529, G. L. vol. 1, p. 1405.]

Art. 5303. [5340] [4150] Division line: notice.—Before running a division line between two settlers or occupants claiming lands, the surveyor shall give written notice to the interested parties. Any survey made contrary to the true intent and meaning of this article shall be unlawful. [Id.]

Art. 5304. [5341] [4151] Disputed line: trial.—When persons cannot agree to a division line of any land which has never been surveyed agreeably to law, either party may apply to the nearest justice of the peace, and make oath that he has tried and has not been able to settle such dispute, naming the parties thereto; and said justice shall issue a warrant to any lawful officer to summon the parties defendant, together with six disinterested jurors, to meet upon the premises in dispute, together with such witnesses as either party may summon, to give evidence on a certain day, naming the time and place. The justice shall meet the parties, examine all the testimony before the jury, who shall on oath hear and determine the case in dispute and who shall pay the costs. Each juror shall receive two dollars per day for such services, and the other officers such fees as allowed by law for similar services. If the land in dispute is on a county line, a justice of either county in which part of the land lies may act in such case. Either party may appeal to the county court within ten days upon giving bond and security for the costs. [Id.]

Art. 5305. [5344–5–6] Incorrect field notes.—The Commissioner shall cause a plain statement of the errors in any field notes in the land office, with a sketch of the map, to be forwarded by mail, or by the party interested, to the surveyor who made the survey, with a requisition to correct and return the same; and said surveyor shall do so at once without further charge. If the conflict exists only on the map or in the field notes, the surveyor need only officially certify to the facts, and furnish a true sketch of the survey with its connections. [Acts S. S. 1871, p. 11; P. D. 7091; G. L. vol. 7, p. 13.]

CHAPTER THREE

SURFACE AND TIMBER RIGHTS

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1. GENERAL PROVISIONS

Article 5306. [5405] Sale and lease of public lands provided for.—All lands set apart for the benefit of the public free schools, the lunatic asylum, the blind asylum, the deaf and dumb asylum, and the orphan asylum shall be sold and leased under the pro-

visions of this chapter. All tracts of less than eighty acres shall be sold as a whole for cash. All such lands shall be sold without condition of settlement and residence, but shall not be sold to corporations. [Acts 1895, p. 63; G. L. vol. 170, p. 793; Acts 1919, p. 312.]

Art. 5307. [5406] Duties of Commissioner.—The Commissioner is hereby vested with all the power and authority necessary to carry into effect the provisions of this chapter, and shall have full charge and discretion of all matters pertaining to the sale and lease of said lands, and their protection from free use and occupancy and from unlawful inclosure, with such exceptions and under such restrictions as may be imposed by the Constitution and laws of this State. He shall adopt such regulations not inconsistent therewith as may be deemed necessary for carrying into effect the provisions of this chapter, and may alter or amend such regulations so as to protect the public interest; but all such regulations shall first be submitted to the Governor for his approval. The Commissioner shall adopt all forms necessary or proper for the transaction of the business imposed upon him by this chapter, and may call upon the Attorney General to prepare such forms, and said officer shall also furnish the Commissioner with such advice and legal assistance as may be requisite for the due execution of the provisions hereof. The Commissioner shall furnish all available data to the State Board of Education on its request. [Acts 1895, p. 63; G. L. vol. 10, p. 793.]

Art. 5308. [5449] Accounts.—The Commissioner shall retain in his custody as records of his office each application, affidavit, obligation and paper relating to the sales and leases of said lands, and shall cause to be kept accurate accounts with each purchaser or lessee. [Id.]

2. SALES

Art. 5309. Land subject to sale.—On the first day of September, 1925, and the first day of each January, May and September of each year thereafter all of the surveyed public free school land then unsold and portions of same and all tracts theretofore surveyed for which field notes were returned to and filed in the General Land Office and which reverted to the public domain or the public free school fund, and those surveys for which field notes were returned to and filed in the General Land Office and cannot be legally patented under existing law; and such sold public free school and asylum land as may be forfeited or canceled for any cause prior to the sale date for which the land may be advertised and such unsurveyed land as may hereafter be recovered for the public free school fund upon suit by the Attorney General filed prior to the acquisition of rights to purchase the area as unsurveyed land, shall be subject to and offered for sale by the Commissioner of the General Land Office under the regulations and upon the terms and condition[s] provided in this Act.

Art. 5310. [5407] Classification and valuation.—The Commissioner shall from time to time, as the public interest may require, classify or reclassify, value or revalue, any of the lands included in this chapter, designating the same as agricultural, grazing, or timber, or a combination of said classifications, according to the facts in the particular case, and when entry of the classification and the appraisement is made on the records of the Land Office, no further action on the part of the Commissioner, nor notice to the county clerk shall be required to give effect thereto. No land classed as agricultural shall be sold for less than one dollar and fifty cents per acre, and no land classed as grazing shall be sold for less than one dollar per acre. The land included in this chapter shall be sold with the reservation of the oil, gas, coal and all other minerals that may be therein to the fund to which the land belongs, and all applications shall so state. [Acts 1897, p. 184; Acts 1905, p. 159; Acts 1919, p. 312.]

Art. 5311. [5408] Commissioner shall classify and advertise.—In cases where any land included in this Act may be leased and the same may come on the market by reason of the expiration or cancellation of such leases and in cases where land may be sold and become subject to forfeiture or cancellation for non-payment of interest and thereby subject to revert to the fund to which it originally belonged by reason of the forfeiture or cancellation of the sale, it shall be the duty of the Commissioner to classify and value same before some sale date thereafter and adopt such means as may be at his command that will give wide publicity and general information as to when such land will be forfeited or canceled, and when it and other land will be on the market for sale together with the regulations, terms and conditions upon which the land may be purchased if past due interest should not be paid. No tract of land shall be subject to sale, except unsurveyed school land, until it shall have been advertised. If there are no other satisfactory or sufficient means at the command of the Commissioner that will give the necessary publicity he shall have printed at the expense of the State, to be paid out of the appropriation for public printing, lists of the land for free distribution to the public. The list shall contain a brief statement of how one shall proceed to buy the land and also state the year to which delinquent interest must be paid to prevent a forfeiture and cancellation. No corporation shall buy any land under this Act.

Art. 5311a. Sold in whole tracts without settlement.—The land included in this Act shall be sold in whole tracts only and without condition of settlement and residence. Any unsold land may be leased subject to sale, at not less than five cents per acre per annum, payable in advance each year and for a term not to exceed five years. All land so leased shall be subject to sale on any sale date for which it may be advertised to come on the market.

Art. 5311b. Validating sales.—In cases where public free school and asylum land has been advertised as being subject to forfeiture for non-payment of interest and to be forfeited and canceled and come on the market for sale at some future sale date and such land was declared forfeited and the sale canceled on the records of the General Land Office and sale awards issued upon applications filed at such sale date, and said sale award has been held by the Supreme Court to be void and all other sale awards which may be void or voidable or the titles to which may have become defective from any cause, are hereby validated, and when the said land shall be fully paid for together with payment of all fees it shall be patented; provided, in cases where the sale award of the land advertised as aforesaid has not stood one year the owner of said land at date of forfeiture shall have the right to apply to the General Land Office for a re-instatement of said former sale upon the payment of all past due interest at any time within six months after the taking effect of this Act. [Acts 1925, p. 332.] [39th Leg., ch. 130, § 4.]

Art. 5312. [5409] Application to purchase.—One desiring to buy any portion of such surveyed land shall make separate written application to the Commissioner for each tract applied for as a whole, designating the same, and stating the price offered, and make affidavit that he desires to purchase the land for himself and that no other person or corporation is interested in the purchase thereof either directly or indirectly, and pay one-fortieth of the aggregate price offered for the land, and submit his obligation in a sum equal to the amount of the unpaid purchase price offered for the land, binding the purchaser to pay to the State at the General Land Office at Austin, on the first day of each November thereafter until the whole purchase price is paid, one-fortieth of the aggregate price with interest on the unpaid purchase price at the rate of five per cent per annum. Upon receipt and filing of the application, affidavit, obligation and the one-fortieth of the price offered, the sale shall be held effective from that date. [Acts 1895, p. 65; Acts 1919, p. 313.]

Art. 5313. [5410] Application: opening.—The application shall be delivered to the Land Office

in a sealed envelope addressed to the Commissioner at Austin, and the envelope shall have indorsed thereon in effect: "Application to buy land," and date when the land will be on the market. Applications received at the Land Office in envelopes not so indorsed shall nevertheless be valid. All such envelopes shall remain unopened and the applications shall remain unfiled and all shall be safely and securely kept by the Commissioner or his Chief Clerk until the day following the day when the land comes on the market and at ten o'clock a. m. on said day one or both of them shall begin to open the envelopes and file all applications; provided, if the opening day should be Sunday or other legal holiday, the opening shall be postponed until the first work day thereafter. Those desiring to be present at such opening may do so. All sales shall be made to, and date from the filing of the application of, the applicant who offers the most for the land, at a price not less than that fixed by the Commissioner, and shall be made by or under the direction of the Commissioner. Should two or more applicants offer the same price for any tract, the same being the highest price offered therefor on any sale date, all bids shall be rejected and the land offered for sale on the next sale date, but a subsequent bid shall not be considered if less than the former price offered. [Acts 1905, p. 159; Acts 1919, p. 314.]

Art. 5314. [5416] Individual bids.—Land that is or may be on the market, and not filed on as provided in the preceding article, may be filed on and sold to any one any time upon proper applications filed in the Land Office as provided by law, except the envelope enclosing the application shall not be required to have any memorandum thereon, and, if two or more applications should be filed the same day for the same land, the one offering the highest price shall be accepted, but if two or more applicants should offer the same price, the Commissioner shall proceed as herein provided for in the first filing. [Acts 1905, p. 159.]

Art. 5315. [5411] Cash payments, how remitted.—All such applicants shall transmit with their applications the required first payment in the form of money or remittance collectible on demand in Austin, and convertible at par into money on the order of the State Treasurer, without liability; provided, that, should a remittance be made payable to the Commissioner, such payment shall not be invalid for that reason, but the Commissioner shall indorse it to the State Treasurer without incurring liability and the same shall be treated as if payable to the Treasurer. The application shall be void if the payment is not made as required in this article. [Acts 1909, p. 429.]

Art. 5316. [5407] Notice of sale.—The Commissioner shall notify the clerk of the proper county of the sale of each tract, giving the name and address of the purchaser together with the price of the land. When informed of the sale of any land the clerk shall enter on his books opposite the description of the land sold, the name of the purchaser and the date sold, and the notice of such sale and the books of record and entry shall be considered public records. [Acts 1897, p. 184; Acts 1905, p. 159; Acts 1919, p. 312.]

Art. 5317. [5413] Awards.—Notice of awards shall be prepared and issued by the Commissioner, and shall be appropriately numbered and shall be so worded as to constitute a receipt for first payment when signed by the Commissioner. Books shall be prepared containing two copies of the notice of award and a suitable number of coupons to be used by the applicant in making subsequent payments on the land. The notice of awards shall be prepared in duplicate, one to be detached from the book and retained in the Land Office, the other, with the coupons attached, to be sent to the applicant. The coupons in each book shall be prepared in duplicate, each of which shall be numbered with the same number as that on the notice of award. The form of the coupon shall be so prepared as to be suitable for, and shall be used by the remitter in making all subsequent payments on the land, the original to be so worded as to be used as a receipt for remittances when signed as such by the Commissioner. The remitter shall describe each tract of land on which he is making remittance by properly filling in the blanks on both the original and duplicate coupons, and shall enter in the proper blanks the amounts remitted as interest and principal, and both the original and duplicate shall be mailed to the Commissioner with the remittance. [Acts 1909, p. 429.]

Art. 5318. [5415] Purchaser's name to be given.—Persons making payments of interest, principal or lease rentals on land shall give the name of the original purchaser or lessee and sufficiently designate the land. [Id.]

Art. 5319. [5412] First payment accounts.—When an envelope inclosing an application to purchase land is opened and the remittance for the first payment is in the Land Office, the Commissioner shall cause such remittance to be listed in triplicate daily, and in such form as to show the purpose and amount of each remittance, the name and address of the applicant, and transmit the remittance and two of the lists to the Treasurer. On receipt thereof, the Treasurer shall check the remittances with the lists, and, if found correct, he shall receipt one of the lists and return it to the Commissioner and retain the other list; and thereupon the Commissioner shall deliver the third list retained by him to the Comptroller. The Treasurer shall at once collect all collectible remittances and report to the Commissioner and Comptroller all remittances not collectible in Austin. The items not collected shall be returned to the Commissioner. All first payments thus collected by the Treasurer shall be retained by him until he receives notice from the Commissioner of the final disposition of the applications to purchase, and thereupon he shall at once return to each applicant the amount shown to have been paid on his rejected applications. A duplicate of the notice to the Treasurer of accepted and rejected applications and the amount of first payment shall be transmitted to the Comptroller. On the last working day of each month, the Treasurer shall deposit in the Treasury to the credit of the proper fund the sum collected by him on accepted applications during that month. [Id.]

Art. 5320. [5414] Other accounts.—Payments on interest, principal and lease rentals shall be listed and accounted for separate from, but in a similar manner to, first payments. The Treasurer shall deposit eighty per cent of all such remittances received each month to the credit of the probable fund to which they belong, as indicated by the Commissioner; and he shall hold the remaining twenty per cent upon deposit receipts furnished by the Comptroller until receipt of definite notice from the Commissioner of the proper fund, which shall then be credited with the full amount received. The Commissioner shall give such definite notice to the Treasurer and Comptroller immediately after he issues receipts to the remitters. The Commissioner, Treasurer and Comptroller shall each keep an account with each fund according to advices given by them, retaining such advices as permanent records.

Art. 5321. [5429] Timber lands.—Timber on lands shall be sold in full tracts for cash at its fair market value, and the Commissioner shall adopt such regulations for the sale thereof as may be deemed necessary and judicious, subject to the provisions of this chapter. By timbered lands is meant lands valued chiefly for the timber thereon. [Acts 1901, p. 296; Acts 1919, p. 312.]

Art. 5322. [5430] Timber: sale.—Application to purchase timber shall be made in the manner provided for the filing of applications for the purchase of lands. If two or more persons each apply to purchase the timber and land on the same day, the one who offers more for the timber but less for the land than a competitor shall have an option for thirty days to take the land at the highest price offered by such competitor, or he may be awarded the timber without the land. If the timber is so sold without the land such competitor shall have an option for thirty days to purchase the land. If such first party buys neither the

timber nor the land, then the land and timber shall be awarded to the one offering the highest price for the land, and next highest price for the timber. If two or more applications for timber alone be filed on the same day the one offering the most therefor shall be accepted. The purchaser of timber without the land shall have the right of ingress and egress upon the land for a period of five years after date of award to remove or protect all the timber thereon. After that time the title to the timber shall revert to the fund to which the land belonged and be again subject to sale by the State, unless the land shall sooner be sold and fully paid for and patent issued thereon; and in that event the timber shall revert to the owner of the land. [Acts 1907, p. 490; Acts 1919, p. 312.]

Art. 5323. [5432] Unsurveyed school lands.—The rules governing the sale of unsurveyed school lands are:

1. Application.—One desiring to purchase any portion of the unsurveyed land believed to belong to the school fund shall make a written application of inquiry to the Commissioner. The inquiry shall give the applicant's post-office address, state in effect that he desires to buy the land if it is for sale and sufficiently designate it. If it appears from the records of the Land Office that the area belongs to the public free school fund, or if there be doubt as to the existence of the area as public free school land, the applicant shall be advised and given the name and address of an authorized surveyor with whom he may contract for the survey of the land at the expense of the applicant. The applicant shall file an application with the surveyor accompanied by one dollar as a filing fee. The application shall be filed and recorded and sufficiently describe the land. The survey shall be made and returned to the Land Office within ninety days after the date of the Commissioner's advice as to an available authorized surveyor.

2. Suit to require survey.—If the Commissioner declines to recognize the existence of the area as public school land and refuses to authorize a survey to be made, such person may file suit against the county surveyor in the district court of the county in which the land is located, or in the county to which such county may be attached for judicial purposes, to compel him to make the survey and thereupon the surveyor shall implead the claimant of the land and in such proceedings determine if the area be public land. In such proceedings the surveyor shall not be held for any cost incurred. If the final judgment of the court should decree the area or part thereof to be school land the surveyor shall make the survey, and the application, field notes and one dollar filing fee shall be filed in the Land Office within ninety days from the date of the final decree.

3. Classification.—When the surveyor returns the field notes and a plat of the survey to the Land Office, together with one dollar filing fee to be paid by applicant, he shall report under oath the classification and reasonable market value of the land and also the timber thereon and its value, which may be considered in connection with such other evidence as may be required by the Commissioner in determining the price to be given for the land and timber. If upon inspection of the papers the Commissioner is satisfied from the report of the surveyor and the records of the Land Office that the land belongs to the public free school fund and the survey has been made according to law, he shall approve the same by classifying and valuing the land, and mail notice of such action to the applicant, giving the classification, price and terms.

4. Terms of sale.—Any timber on such land shall be sold for cash at its reasonable market value. No award shall be issued for the land until the timber shall have been fully paid for. The applicant shall file in the Land Office his application for the purchase of the land together with one-fortieth of the appraised value fixed thereon within sixty days from the date of the notice of the classification and valuation, together with the applicant's obligation for the balance of the unpaid purchase price bearing interest at the rate of five per cent per annum, and the obligation and other conditions of sale shall be the same as that for surveyed land. If such application should not be filed within the time prescribed herein, the Commissioner shall place the land on the market for sale upon the same terms as are herein provided for other surveyed school land. If upon the inspection of any application, field notes and records of the Land Office, there should appear to be a greater area belonging to the school fund than that included in the application and field notes, the Commissioner may, in his discretion, require the applicant to include the whole area in his field notes. If it appears that another than the applicant claims an unsurveyed area which belongs to the school fund, the Commissioner may, in his discretion, refer the removal of such claim to the Attorney General before making a sale to an applicant. The Commissioner may sell the area though the Attorney General refuses to institute proceedings for the removal of such claim. [Acts 1907, p. 490; Acts 1919, p. 315.]

Art. 5323a. Reclassification of scrap school land.—The Commissioner of the General Land Office is hereby authorized to revalue and to reclassify all tracts of unsold scrap school land that was heretofore valued and classified on March 26, 1926, and which remains unsold when this Act takes effect. Within sixty days after such revaluation and reclassification the person for whom the survey was originally made shall file in the General Land Office his application for the purchase of said land together with the full cash payment for the tract applied for at the value per acre fixed thereon by the said Commissioner. [Acts 1927, 40th Leg., p. 158, ch. 107, § 1.]

Art. 5324. [5434] Sale of gayule and lechuguilla.—The Commissioner may, with the consent and approval of the Governor and Attorney General, sell the gayule or lechuguilla growing or found upon the public free school land, exclusive of timber. The sales may be upon such terms, conditions and limitations as they may deem most advantageous, having in view the protection of the interest of the school fund and the State. They may also enter into such contracts as they may deem wise for the purpose of having determined the commercial properties and value of any and all such material, and for such purpose they may enter into executory contracts of sale; provided, they shall not in such contracts cause the expenditure of public money nor incur any liability on the State. [Acts 1907, p. 251.]

Art. 5325. [5433] Unlawful use of minerals.—If any person who has no authority or right to do so, cuts or removes any mineral, gayule or lechunguilla [lechuguilla] from the school land belonging to the public free school fund, judgment shall be rendered against the defendant in behalf of the State in a sum of money equal to the value of the substance so cut or removed, which shall be collected as under execution; and when collected, the money shall be remitted to the State Treasurer, and by him credited to the fund to which the land belongs. [Acts 1907, p. 490.]

Art. 5326. [5423] Forfeiture for non-payment of interest.—If any portion of the interest on any sale should not be paid when due, the land shall be subject to forfeiture by the Commissioner entering on the wrapper containing the papers "Land Forfeited," or words of similar import, with the date of such action and sign it officially, and thereupon the land and all payments shall be forfeited to the State, and the lands shall be offered for sale on a subsequent sale date. In any case where lands have been forfeited to the State for the non-payment of interest, the purchasers, or their vendees, may have their claims reinstated on their written request, by paying into the Treasury the full amount of interest due on such claim up to the date of reinstatement, provided that no rights of third persons may have intervened. In all such cases, the original obligations and penalties shall thereby become as binding as if no forfeiture had ever occurred. If any purchaser shall die, his heirs or legal representatives shall have one year in which to make payment after the first day of November next after such death.

Nothing in this article shall inhibit the State from instituting such legal proceedings as may be necessary to enforce such forfeiture, or to recover the full amount of the interest and such penalties as may be due the State at the time such forfeiture occurred or to protect any other right to such land. [Acts 1897, pp. 39, 184; Acts 1919, p. 314.]

Following is additional legislative Acts 1925, Chapter 94, p. 267, as amended by Acts 1926, 39th Leg., 1st C. S., p. 43, ch. 25, § 1:

Art. 5326a. Repurchase of land forfeited.—Section 1. In case [of] any of the public free school lands that have been heretofore purchased from the state have been forfeited for nonpayment of interest and have not been resold, and that which may hereafter be forfeited for nonpayment of interest, either with or without advertisement as being subject to forfeiture for nonpayment of interest that may have accrued prior to November 1, 1925, the owner of such land or a part thereof at the date of forfeiture shall have the right for a period of ninety days after the date of the notice of revaluation of such lands as herein provided to repurchase same upon the terms and conditions in this act any or all of the land in whole tracts according to the forfeiture; provided, that two or more portions of the same section or tracts may be combined into one purchase as may be desired by the applicant.

Section 2. Where any of the lands included in the preceding section may hereafter be forfeited for the non-payment of interest in the manner provided by law for such forfeiture and either before or after advertisement of land as being subject to forfeiture for non-payment of interest, the Commissioner of the General Land Office shall forward such list of land to the clerk of the county in which the land is wholly or partly located or to the clerk of the county to which such county may be attached for judicial purposes and include therein such land as may have heretofore been forfeited and remains unsold and on which valid oil and gas applications have not been filed. Within sixty days after a list of such forfeited land was forwarded to the proper clerk the owner or part owner mentioned in the preceding section, who may desire to repurchase such land as provided herein, shall advise the said Commissioner of such desire and pay one cent per acre for each acre such person desires revalued. As soon as practicable after the receipt of such advice and the one cent per acre by the Commissioner, he shall proceed to ascertain the reasonable value of such land and appraise the same accordingly. Duplicate notices of said appraisement shall be prepared and one shall be sent to the person requesting the revaluation and the other shall be retained for the General Land Office. One of two or more part owners of land who request a revaluation shall be deemed as having acted for the other owners, and a repurchase by such one or more persons shall likewise be deemed as made on behalf of all of them and shall inure to the benefit of every owner of a part thereof to the extent of each ones ownership. If such forfeiting owner desires to repurchase the land at the appraised value placed thereon, he shall file his application therefor in the General Land Office within ninety days after the date in the notice of appraisement, together with one-fortieth of the appraised value and his obligation for the remaining portion of the purchase price bearing the same rate of interest per annum as the forfeited purchase bore. The one-fortieth cash payment and future interest and principal payments and forfeiture for non-payment shall be the same and conform to the present or any future law regulating the purchase and forfeiture of public free school land. The one cent per acre received by the Commissioner, or so much thereof as may be necessary, shall be used by him to defray the expenses incident to the revaluation and the remainder, if any, shall be by him returned pro rata to those for whom it was paid into the General Land Office. If land should be purchased under this act by one or more part owners, such purchase shall inure to the benefit of each and every owner at date of forfeiture according to each one's former interest.

Section 3. If the owner at the date of forfeiture shall not exercise his right to repurchase, the Commissioner shall place the land on the market for sale in the manner that is now or may hereafter be provided by law for the sale of other forfeited public free school lands. One-sixteenth of the oil and gas, and all of other minerals in the lands included herein, whether known or unknown, are expressly reserved to the public free school fund in the event the forfeited sale was with mineral reservation. Forfeited land, on which the owner requests a revaluation as herein provided, shall not be subject to oil and gas application until such forfeiting owner fails to repurchase as herein provided.

Section 4. Whenever any land affected by this act is repurchased under the rights of repurchase given herein, any lien, legal or equitable, in behalf of any person or the State, and any valid contractual right in favor of any person or persons existing in and to said land, or any part thereof, at the time of forfeiture, shall remain unimpaired and in full force and effect as if no such forfeiture had occurred; also all forfeitures without advertisement of the land for which land the owner or owners of part thereof requested a revaluation within the time prescribed herein and for which applications to repurchase were filed in the General Land Office in legal form after expiration of the time required by law and on which the first one-fortieth cash payment was made, such forfeitures and applications and [and] the sale and award thereon are hereby authorized and in all things validated and shall not be questioned by the State or any person whose rights did not accrue prior to the taking effect of this Act.

Section 5. The fact that several consecutive years drought in that portion of the State in which most of the public lands are located caused the original enactment of this law and the fact that the validity of forfeitures without first advertising the land as being subject to forfeiture and naming the date of forfeiture and sale as provided in Chapter 130 of an act approved March 28, 1925, has been questioned and the fact that this original Chapter 94 could not have been executed without great expense to the State, except in the manner it has been administered by the General Land Office, which has attained the purpose of the Legislature in its enactment, and the importance of placing land titles beyond question, creates an emergency and an imperative public necessity exists, that the constitutional rule requiring bills to be read on three separate days in each house be suspended and that this be placed upon third reading and final passage, and take effect from and after its passage and it is so enacted. [Acts 1925, 39th Leg., p. 267, ch. 94; Acts 1926, 39th Leg., 1st C. S., p. 43, ch. 25, § 1.]

Art. 5327. Lien.—To secure the payment of all principal and interest due upon any sale of public free school land, University land, and the several asylums land, the State shall have an express lien for the use and benefit of the fund to which the land belongs in addition to any right and remedy that it has for the enforcement of the payment of any principal or interest that may become due and unpaid. [Acts 1917, 3rd C. S., p. 95.]

Art. 5328. Transfer of indebtedness.—If any person, firm or corporation or the Federal Farm Loan Bank with the consent of the owner of any lands mentioned in the preceding article, pays to the State the principal and interest due upon any obligation given for such land, the Commissioner shall be authorized, upon written request of such owner duly acknowledged in the manner required for the conveyance of real estate, coupled with an affidavit of ownership, to execute, acknowledge and deliver a written transfer of the indebtedness held by the State to such person, firm or corporation or the Federal Farm Loan Bank which shall thereupon be subrogated to all the rights, liens and remedies held by the State to secure and enforce the payment on the amount of principal and interest so paid to the State. If the land claimed by the one representing himself to be the owner should be held under such evidence of titles as the law or rules of the Land Office will not authorize or permit to be filed in said office, then the Commissioner may admit the

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

owner to be such person as the person, firm or corporation or the Federal Farm Loan Bank paying the indebtedness shall admit to be the owner, and upon such admission the instrument of transfer shall be executed. Nothing herein shall change in any particular whatever, the law or rules that obtain in the Land Office relative to titles to land and the issuance of patents thereon. [Id.]

Art. 5329. [5435] Transfers.—Owners of public free school land and asylum land purchased from the State may sell their land or a definite portion of the same in any size tract. If in any of the succeeding conditions the land that is desired to be separated from another portion should not be sufficiently designated by metes and bounds in the papers offered for filing, to identify it with certainty, the Commissioner shall require that proper field notes accompany the papers before he files them and separates the land.

1. Personal transfers.—A vendee through personal transfer executed for a whole survey or for a whole portion of a survey purchased from the State as a whole or for a portion of a survey purchased from the State as a whole or in a quantity less than the whole survey, shall have the right to become a substitute purchaser direct from the State in the manner provided herein. With the approval of the Commissioner such vendee may file in said office a complete and valid chain of title through personal transfers which have been duly executed and recorded in the counties in which the land or a part thereof is situated or in the county to which [to] such county or counties may be attached for judicial purposes, and pay the lawful fees. When said papers have been filed in said office the substituted purchaser shall have his portion of land separated from the other portion, if any, on the records of the Land Office and thereby he shall assume and become liable to the State for all unpaid principal and interest due and to become due the State for the land conveyed in the deeds so filed, together with all obligations and penalties attaching to the original purchase the same as was the original purchaser. The obligation of the original purchaser and the obligation of all vendors of such substituted purchaser shall be enforceable against the substituted purchaser the same as if he were the original purchaser from the State, and the obligation of the vendor or vendors of the substituted purchaser shall be deemed canceled.

2. Other transfers.—One who claims title through a source other than by personal transfer, to a definite portion of a survey less than a whole as it was purchased from the State may, with the approval of the Commissioner, have that portion of land so claimed separated from the other portion of the survey upon the records of said office by filing therein such evidence of claims as may be required by said Commissioner and pay the lawful fees for the papers filed as evidence of the claim or a right to a separation of such area.

3. Liability of vendee.—When a separation of the land has been made upon the records of the Land Office in either manner provided for herein, that portion so separated shall be charged and credited with its pro-rata part of the principal and interest due and paid to the first day of November preceding the date of the filing of the transfers or other papers.

4. Patent.—If any owner or claimant of any land included in this chapter, which ownership or claim is shown on the records of said office, should desire a patent upon a portion thereof less than the whole, such owner or claimant may, with the approval of the Commissioner, file field notes with lawful filing fee for that portion on which patent is desired and obtain a patent therefor when the land is fully paid for with all lawful fees. If the ownership should be evidenced by personal transfers the patent shall be issued to such owner and his assigns. If the claimant claims title through other evidence than by personal transfer, the patent shall be issued in the name of the person and his assigns that holds title by original purchase or in the name of the person and his assigns who appears on said records to hold title through the last personal transfer. If a patent should be issued in the name of one other than the legal owner, such patent and the rights granted therein shall inure to the benefit of the legal owner. Where any land has been purchased from the State on condition of residence, no patent shall be issued until proper proof of such residence either by the vendor or vendee, or both consecutively, has been filed and the Commissioner is satisfied therewith. Every vendee before the completion of the required residence by his vendor shall file in the Land Office an application, affidavit and obligation, such as is required of an original purchaser, together with the partial proof of his vendor's continuous residence to the date of the deed of transfer. On the filing of proof of the required three years' residence, the Commissioner shall issue a certificate of its sufficiency upon the payment of the lawful fees. The said certificate may be recorded in the deed records of the proper county, and when so recorded it shall become a muniment of title. After a certificate has been recorded, neither the sale nor the occupancy of said land shall be questioned by the State nor any person whose rights did not accrue prior to the completion of said residence. The effect of the issuance of said certificate shall include and extend to all land purchased as additional to a home tract on which the said certificate may have been issued. No sale made without condition of settlement shall be questioned by the State or any person after one year from the date of such sale. All purchasers shall have the option of paying the purchase price in full at any time, together with full fees, and obtain a patent for the land. [Acts 1907, p. 490; Acts 1919, p. 316; Acts 1921, p. 118.]

Art. 5330. [5438] Patents for town sites.—Whenever a town shall be located and established upon any lands sold under this or any former law, the purchaser or his vendee shall be permitted to pay the entire balance of principal and interest due the State upon such land and obtain a patent therefor at any time; but no such payment shall be permitted or patent issued until such a purchaser or owner of such land shall file in the land office a certified plat of such town, made by a surveyor, which shall be accompanied by the affidavit of the owner of such land, corroborated by the affidavit of five disinterested and credible citizens of the county, to the effect that a town, giving its name, has been located and established upon the land, and that there has been erected therein and is being occupied by bona fide citizens, twenty business and resident houses, or either or both. [Acts 1895, p. 66; G. L. vol. 10, p. 796.]

3. LEASES

Art. 5331. Lease of unsold tracts.—Any unsold land may be leased at any time at not less than five cents per acre, payable in advance each year and for a term not to exceed five years, but all land so leased and unsold shall be subject to sale on each succeeding sale date. [Acts 1919, p. 314.]

Art. 5332. [5451] To advertise lands.—All leases under the provisions of this chapter may be advertised by the Commissioner in such manner as he deems best, and let to the highest responsible bidder in such quantities and under such regulations as he deems to the best interest of the State, not inconsistent with the equities of the occupant. Any bid or offer to lease may be rejected by him prior to signing the lease contract, for fraud or collusion, or other good and sufficient cause.

Art. 5333. [5452] Application and delivery.—One desiring to lease said lands shall make written application to the Commissioner specifying and describing the particular lands he desires to lease; and thereupon the Commissioner shall notify the applicant in writing who offers the highest price, that his proposition to lease is accepted; and shall execute to the lessee in the name and by authority of the State of Texas a lease on such lands. When the lessee has paid the rent for one year in advance, the Commissioner shall deliver said lease to the clerk of the county in which the land is situated, who shall record in a well-bound book kept in his office, a memorandum or abstract of said lease, showing the number of the

survey or surveys leased, the name of the original grantee, the amount leased, the name of the lessee, the date of the lease and the number of years it has to run, and no other record of leases shall be required. The clerk shall be entitled to twenty-five cents for entering said memorandum. Upon payment of said fee, the clerk shall deliver the lease to the lessee. When any such lease is filed for record the clerk shall make the memorandum or abstract above provided for. [Acts 1901, p. 292.]

Art. 5334. [5455] Water supply: option.—Any person desiring to lease any lands on which no permanent water supply exists, shall notify the Commissioner in writing that he desires to lease lands, specifying and describing them, provided he can obtain the necessary supply of water by boring or otherwise, and that he will within ninety days lease said lands, provided such water supply can be obtained; he shall also make and file with the Commissioner his bond, with good and sufficient personal security, to be approved by the Commissioner, in a sum equal to one year's rental of the quantity of land applied for, payable to the State, conditioned that he will diligently and in good faith try to secure water on such land during such ninety days, and if secured will lease the designated lands for the term prescribed herein; and thereupon the Commissioner shall, for such ninety days, withhold such lands from lease to any other person. Within or at the expiration of the said ninety days, and annually thereafter, such applicant shall pay to the State in advance, one year's rental of the land applied for by him; on satisfactory proof of which payment the Commissioner shall execute and deliver to the lessee a lease of the said lands, signed by himself officially, and attested by the seal of the Land Office, together with which he shall deliver up the bond of said lessee, marked, "Satisfied." If said lessee fails to apply for his lease and make the payment aforesaid within said ninety days, and shall also within said ninety days fail to prove to the satisfaction of the Commissioner within that time that he has in good faith diligently used proper means and made proper efforts to secure a water supply on such land and failed, then the Commissioner shall mark said bond, "Forfeited", and shall deliver the same to the Attorney General, who shall at once cause said bond to be sued upon and collected, and paid to the available school fund. The penalty stated in such bond is hereby declared to be liquidated damages, and judgment for that sum shall in all cases be recovered by the State. Proof satisfactory to the Commissioner that proper, suitable and diligent effort has been made by such applicant to secure water, and that sufficient water could not be secured, shall relieve the principal and sureties on said bond from all responsibilities therein, and it shall be marked, "Satisfied", by said Commissioner and delivered to the principal therein. No lease of less than four sections of unwatered pasture lands shall be made, unless such less number includes all unleased land in that vicinity belonging to the several funds mentioned in this chapter. Lessees or their vendees who shall have at their own expense secured water on their leaseholds in accordance with the provisions of this article, shall at the expiration of their lease contract, have a right to a renewal of their leases for another term of five years at the price then provided by law, by giving sixty days written notice to the Commissioner. [Acts 1895, p. 63; G. L. vol. 10, p. 793.]

Art. 5335. [5454] Expired leases.—When a lease expires, or is canceled for any cause within ninety days from any sale date, the Commissioner shall not consider an application to lease the land within said time. An original lessee, or the assignee of an entire leasehold, who was such at the date of the termination thereof, shall have a preference to another lease of the land at the expiration of the ninety days over another applicant to lease, provided he will pay as much therefor as another, after due publicity. [Acts 1905, p. 159; Acts 1919, p. 314.]

Art. 5336. [5456] Forfeiture: lien.—If any lessee fails to pay the annual rent due for any year within sixty days after such rent becomes due, the Commissioner shall cancel said lease by a writing under his hand and seal of office, and filing it with the other papers relating to such lease, when such lease shall immediately terminate. During the continuance of all leases, and after forfeiture, the State shall have a lien upon all property owned by the lessee upon the leased premises to secure the payments of all rents due, which lien shall be superior to all other liens whatsoever. A reservation of such lien in said lease shall not be essential to the preservation or validity thereof. [Acts 1901, p. 29.]

Art. 5337. [5457] Lessees may remove improvements.—All improvements made by lessees on lands leased by them are hereby declared to be personal property, which may be removed by such lessees on the expiration of their lease contracts; and they shall have sixty days after such expiration in which to remove the same. [Id.]

CHAPTER FOUR

OIL AND GAS

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1. UNIVERSITY AND OTHER LANDS

Article 5338. Permit.—Subject to the terms hereof, permits for the development of oil and gas may be issued to any person, firm or corporation upon the following lands: All surveyed public school, University, asylum land and other public lands, fresh water lakes, river beds and channels, belonging to the State and all of said lands, except public school and asylum lands sold or disposed of by the State or by its authority with a reservation of minerals or mineral

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rights therein, and lands purchased with a relinquishment of the minerals therein. [Acts 1917, p. 158; Acts 2d C. S. 1919, p. 241.]

Art. 5339. Application for surveyed lands.—One desiring to obtain the right to prospect for and develop oil and natural gas that may be in any surveyed area included herein shall file with the county clerk a written application designating it sufficiently to identify it. Such clerk shall, upon receipt of one dollar as a filing fee, file and record the application and note the same on his record of surveys opposite the entry of the proper survey, giving the time of filing. When one has obtained four sections, or the equivalent, eligible to be embraced in one permit, such applicant shall not obtain any more land within two miles thereof, but if one obtains less than four sections eligible to be embraced in one permit, such one may obtain such additional area within two miles of the other area as will equal four sections. One shall not obtain more than one thousand acres within one mile of a well producing petroleum. [Acts 1917, p. 158.]

Art. 5340. Unsurveyed lands: application.—One desiring to obtain the right to prospect for and develop oil and natural gas in any unsurveyed areas named in this law shall file with the county surveyor a written application for each area applied for, designating it sufficiently to identify it, but such areas shall not exceed 2,560 acres. Upon receipt of one dollar filing fee the surveyor shall file and record the application. [Id.]

Art. 5341. Issuance of permit.—When the Commissioner receives an application that was filed with the county clerk or with the surveyor and the field notes and plat, one dollar filing fee and ten cents per acre for each acre applied for, which shall also be paid annually thereafter during the life of the permit, and an affidavit by the applicant showing what interest he has in any other permit, lease or patent issued under this law and in good standing, he shall file the same, and if upon examination the application and field notes are found correct and the area applied for is within the provisions of this law, the Commissioner shall issue to the applicant or his assignee a permit conferring upon him an exclusive right to prospect for and develop petroleum and natural gas within the designated area for a term not to exceed two years. [Id.]

Art. 5341a. Extension of permits.—All permits to prospect for oil and gas heretofore issued on river beds or channels, fresh water lakes and islands therein which have not expired and on which as much as twenty-five thousand dollars ($25,000.00) has been spent in prospecting for oil and gas and on which actual work is now being done, are hereby extended for a period of ten years from date the permit was issued, upon condition that the owner will pay annually in advance the acreage rental due thereon under the law as provided in the permit. This Act shall not be construed to relieve the owner of such permits from the obligations to drill such offset wells as are required by the law under which the permit was issued. [Acts 1925, p. 349.] [39th Leg., ch. 141, § 1.]

Art. 5341b. Extension of oil leases.—All oil and gas permits heretofore or hereafter issued upon lands included herein and which have not expired shall be extended for a term of five years from date thereof, conditioned only upon the payment of the annual rental, as provided by law, in advance and whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual rental money. After production is secured in paying quantities, the owner shall be entitled to a lease which shall run so long as the area covered by his lease produces oil or gas in paying quantities, subject to the provisions of this Act. [Acts 1925, p. 351.] [39th Leg., ch. 143, § 1.]

Art. 5342. Development work.—Before the expiration of twelve months after the date of the permit the owner thereof shall in good faith begin actual work necessary to the physical development of said area. If petroleum and natural gas is not sooner developed in commercial quantities the owner or manager shall within thirty days after the expiration of one year from the date of the permit, file in the Land Office an affidavit supported by two disinterested credible persons that such actual work was begun within the first twelve months aforesaid, and that a bona fide effort to develop the said area was made during the twelve months preceding the filing of the statement, and showing what work was done and expenditures incurred and whether or not petroleum or natural gas had been discovered in commercial quantities. A failure to file said affidavit within the time specified, or the filing of an affidavit false in material matters shall subject the permit to forfeiture. The owner of a permit shall not take, carry away or sell any petroleum or natural gas before obtaining a lease therefor; provided such quantity as may be necessary for the continued development of the area before obtaining a lease may be used without accounting therefor. [Id.]

Art. 5342a. Permits extended.—All oil and gas permits issued on other than public school or university land, by the Commissioner of the General Land Office of the State of Texas under date of February 3, 1920, and heretofore extended for three years by act of the Legislature, are hereby renewed and extended for an additional period of two years; provided however, that this Act shall apply only to those permits on which all rentals have been paid and under which, as extended, a well has been drilled to a depth of 3000 or more feet, and on which drilling operations for oil and gas are being actively conducted in good faith. Rights hereunder shall be conditioned on regular payment of annual rentals covering the two year extension period, and also on owner making report to the Commissioner of the General Land Office within sixty days after this Act becomes effective, showing drilling operations and depth of well. [Id.]

Art. 5343. University permits.—The provisions of subdivision 3 of this Chapter, so far as they relate to a combination of permits and extension of time for beginning development and time for development thereunder, shall apply to permits upon University land.

[Following is additional legislation. Acts 1925, Chapter 71, p. 225.]

Section 1. That all university land now unsold and all of said land that has heretofore been sold with reservation of the minerals therein and that which may hereafter be sold with reservation of the minerals therein, whether known or unknown, shall be included in this Act, and leases thereon conferring upon persons, firms and corporations the right to develop the oil and natural gas that may be in said land shall be subject to sale by the Commissioner of the General Land Office in accordance with the provisions of this Act and under such rules and regulations as may be adopted by said commissioner as may be necessary to the proper execution of its purposes; provided, oil and gas permits and leases outstanding, shall not be affected by this Act except as provided in Section 14 hereof.

Sec. 2. Sales of oil and gas leases on the lands included herein shall be made by the Commissioner of the General Land Office not less than once each month, when there is land in demand, and at 10 o'clock A. M. on the day fixed therefor. Sales of leases shall be for ten cents per acre in advance for the first year and twenty-five cents per acre in advance for the second year and fifty cents per acre in advance each year thereafter until production is secured in paying quantities, but not to exceed five years, and a royalty of one-eighth of the gross production of the oil, or the value thereof, produced and saved from the leased premises delivered into such pipe line as the lessee may connect his well, or wells, and one-eighth of the gross production of gas, or the value thereof, produced and sold off of the leased premises, and in addition thereto such sum, of [if] any, that one may pay therefor as provided herein.

Sec. 3. The commissioner shall advertise the land and the time when the mineral lease will be subject to sale, except as elsewhere provided in the event of tie bids.

If there should be no other sufficient means for giving the necessary publicity as to what tracts will be subject to lease and the time when applications may be delivered to the General Land Office, the commissioner shall have lists of such tracts printed for free distribution at the expense of the State, which expense shall be paid out of the appropriation for public printing. Such lists shall contain a brief designation of the tracts subject to lease and the terms upon which they may be leased and the time when applications therefor will be opened and filed in the General Land Office.

Sec. 4. Separate applications for each tract, with one dollar for county clerk recording fee, and the first payment of ten cents per acre and the sum offered in addition thereto, if any, for any tract shall be delivered into the General Land Office on or before the day and hour on which the lease will be subject to sale, in sealed envelopes on which shall be endorsed in substance "Application to buy oil and gas," and in addition thereto the time the lease will be subject to sale. All envelopes so endorsed shall be securely kept by the commissioner or his chief clerk unopened until the date on which applications are to be opened and at said hour either or both of them shall begin to open the envelopes in the presence of such persons as may desire to be present. All applications received up to the opening hour, whether open or sealed, endorsed or not endorsed, shall be considered as properly delivered into the General Land Office. An application which includes two or more tracts or is for a price less than the fixed royalty and ten cents per acre shall be void. When an application shall have been filed and considered and the land found to be subject to lease, the lease shall be issued for a term not to exceed five years to the applicant that pays the most, if any sum, for the area in addition to the ten cents per acre and the stipulated royalty. If production should not be secured in five years the lease shall terminate and another lease on the land again be subject to sale as in the first instance. A duplicate of the lease shall be kept on file in the General Land Office. All leases shall be forwarded by the commissioner, with one dollar recording fee, to the proper county clerk, who shall record same and deliver the lease to the lessor or his agent. If two or more persons should offer the same price for the same area and the same should be the highest price offered, all shall be rejected and a date fixed within the discretion of the commissioner, but not more than fifteen days after rejection, when a lease on the land will be subject to sale as in the first instance; provided no lease shall be sold for a sum less than the tie bid without the tract having been duly advertised and offered for sale on a regular sale date. All sums paid upon rejected applications shall be returned by the State Treasurer.

Sec. 5. Whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual rental. After production is secured in paying quantities, the owner shall be entitled to an absolute lease which shall run so long as the area produces in paying quantities, subject only to the provisions of this Act. Whenever a lease ceases to produce in paying quantities, or the owner fails to pay to the State the royalty due, it shall be subject to forfeiture by the commissioner, and when sufficiently informed of the facts which authorize a forfeiture he shall forfeit it, and the area shall be again offered for sale as in the first instance.

Sec. 6. Royalty of one-eighth of the gross production, as herein provided, shall be paid to the General Land Office for the benefit of the University permanent fund on or before the twentieth day of each month for the preceding month during the life of the lease, and it shall be accompanied by the sworn statement of the owner, manager or other authorized agent showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises, and the market value of the oil and gas together with a copy of all daily gauges of tanks, gas meter readings, if any, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into pipe lines, tanks or pools and gas lines or gas storage. The books and accounts, the receipts and discharges of all lines, tanks, pools and meters, and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at all time[s] be subject to inspection and examination by the Commissioner of the General Land Office, the Attorney General, the Governor or member of the Board of Regents of the University of Texas, or the representative of either.

Sec. 7. Royalty and all other sums shall be due and payable to the State at Austin, Texas, and shall be paid to the Commissioner of the General Land Office, and he shall transmit all remittances in the form received to the State Treasurer, who shall credit the permanent University fund with all amounts received from royalty. All payments shall be in the form of cash, bank draft on some State or National bank in Texas, or post office or express money order, or such other forms as may be collectible in Austin.

Sec. 8. The State shall have a first lien upon all oil and gas produced upon any leased area to secure the payment of all unpaid royalty and other sum or sums of money that may be due and become due under the provisions of this Act and may follow the same and the value thereof into the hands of any purchaser.

Sec. 9. If oil or gas should be produced in commercial quantities in a well on an adjoining area whether privately owned, or covered by separate lease, which well should be within five hundred feet of an area leased under this Act, the owner of the lease on such University area shall, within sixty days after the initial production on such privately owned area, begin in good faith and prosecute diligently the actual drilling of an offset well or wells on the area so leased from the State and such offset well or wells shall be drilled to such depth and under such conditions as may be necessary to prevent the undue drainage of oil and gas beneath such University area. A log of such well, whether producer or non-producer, shall be filed in the General Land Office within thirty days after the well has been completed or abandoned.

Sec. 10. One may transfer his lease at any time or a part thereof in any size tract not less than forty acres, and such transfer shall be recorded in the county or counties in which the area or part thereof is situated, and the recorded transfer or certified copy of same shall be filed in the General Land Office, accompanied by one dollar as filing fee and ten cents per acre for each acre in the transfer, and thereby the assignee shall have his portion separated from the other part and succeed to all the rights and be subject to all the obligations and penalties of the original lessee. The ten cents per acre as a transfer fee shall be deposited into the State Treasury to the credit of the available University fund, and the lease rental and the bonus paid by a purchaser shall be deposited in the State Treasury to the credit of the University permanent fund.

Sec. 11. An owner may relinquish his lease to the State at any time by having the relinquishment recorded in the county or counties in which the area or part thereof is situated, and the recorded relinquishment or certified copy of same shall be filed in the General Land Office, accompanied by one dollar as filing fee, and thereby the owner of such lease shall be relieved of any further obligations to the State, but such relinquishment shall not have the effect to release the owner from any obligations or liabilities theretofore accrued in favor of the State. The area so relinquished shall be subject to lease as in the first instance.

Sec. 12. If the owner of a lease should fail or refuse to make the payment of any sum due thereon either as rental or royalty on the production within thirty days after same shall become due, or if such owner or his authorized agent should make any false return, or false report concerning production, royalty or drilling, or if such owner should fail or refuse to drill any offset well or wells in good faith as required by this Act, or if such owner or his agent should refuse the proper authority access to the records or other data pertaining to the operations under this Act,

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or if such owner or his authorized agent should fail or refuse to give correct information to the proper authority, or fail or refuse to furnish the log of any well as provided herein, such lease shall be subject to forfeiture by the Commissioner of the General Land Office, and when sufficiently informed of the facts which authorized a forfeiture, the commissioner shall forfeit same, and the area shall be subject to lease again after due advertisement; provided, such forfeiture may be set aside and the lease and all rights thereunder reinstated before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this Act and the rules and regulations authorized to be adopted for the purpose of executing its provisions.

Sec. 13. Whenever it may be necessary for the owner of a lease to enter the enclosed land of another for the purpose of ingress and egress to and from the area so leased from the State, and such lessee and owner of enclosure or agent of the owner cannot agree upon the terms or place of entry, the lessee or his agent may petition the commissioners' court of the county or counties in which such enclosure may be situated, in whole or in part, for the opening of such way of ingress and egress aforesaid as may be necessary. Upon the filing of such petition it shall be the duty of said court or courts to proceed to lay out and establish in the manner provided for the laying out of third class public roads, such road or roads as may be necessary for the purposes named herein.

Sec. 14. All oil and gas permits heretofore issued upon lands included herein and now in force shall be extended for a term of five years from date thereof, and whenever production is secured in paying quantities and the payment of royalty begins, the owner shall not pay any further annual money rental. After production is secured in paying quantities the owner shall be entitled to a lease which shall run so long as the area covered by his lease produces oil or gas in paying quantities, subject to the provisions of this Act. [Acts 1925, p. 225.]

Section 14 of the above Act was amended and superseded by Acts 1925, 39th Leg., ch. 143, § 1, which is art. 5341b of these statutes.

Art. 5343a. Withdrawal of University land from lease.—If, in cases now pending in the Supreme Court or in cases hereafter filed, the said Court should decide that the mineral lease or sales Act of March 10, 1925, Chapter 71, Acts Regular Session, 39th Legislature, is invalid or ineffective, then and in that event the minerals in all University land are hereby withdrawn from lease or sale until such time as the Legislature may enact legislation deemed adequate for the protection of the University available and permanent funds; and the Commissioner of the General Land Office shall not, in the event such sales act is declared unconstitutional, thereafter issue any oil and gas permits on said land upon any application heretofore or hereafter filed, until further legislation as to same. [Acts 1927, 40th Leg., p. 368, ch. 249, § 1.]

Art. 5344. Oil leases.—Upon the payment of $2.00 (two dollars) per acre for each acre in the permit a lease shall be issued for a term of ten (10) years, or less, as may be desired by the applicant, and with the option of a renewal or renewals for an equal or shorter period, and immediately after the experation [expiration] of the first year after the date of the lease, the sum of [two] ($2.00) dollars per acre shall be paid during the life of the lease, and in addition thereto, the owner of the lease shall pay a sum of money equal to a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the metre output of all gas disposed of off the premises; provided, however, that the provisions hereof as to the payment of two ($2.00) dollars per acre during the lease period and the life of said lease shall not apply to leases of bays, marshes, reefs, salt-water lakes or other submerged lands containing as much as one hundred (100) acres but not in excess of five hundred (500) acres upon which as many as five wells have been drilled, and upon which an expenditure of as much as one hundred thousand ($100,000.00) dollars has been made. The drilling of said wells and the expenditure of said amount to be established to the satisfaction of the commissioner of the land office. [Acts 1925, p. 348.] [39th Leg., ch. 140, § 1.]

Art. 5344a. Terms of lease.—A lease shall then be issued for a term of ten years or less, with the option of a renewal or renewals for an equal or shorter period, and the owner of the lease shall pay a royalty of one-eighth of the value of the gross production of petroleum. The owner of a gas well shall pay a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises. [Id.]

Art. 5344b. Offset wells.—The permit or lease shall contain the terms upon which it is issued, including the authority of the Commissioner to require the drilling of wells necessary to offset wells drilled upon adjacent private land, and such other matters as the Commissioner may deem important to the rights of the applicant or the State.

Art. 5345. Damages to surface.—If the surface of an area included within the operations of this law, has been acquired by one prior to the filing of an application under the provisions herein, such area shall nevertheless be subject to prospect and lease as provided herein, but the owner of the permit or lease shall pay ten cents per acre to the owner of the surface annually in advance during the life of the permit or lease. The sum so paid and accepted by the surface owner shall be full compensation for all damages to the surface. [Acts 1917, p. 158; Acts 2 C. S., 1919, p. 241.]

Art. 5346. Statement of holdings.—Whoever applies for a permit or lease shall file with the application an affidavit showing what interest the applicant has in any other permit or lease issued by the State and in good standing at the date of the statement. [Id.]

Art. 5347. Distribution of funds.—The proceeds arising from activities under this law, and Chapter 5 thereof, which affect lands belonging to the public free school funds and the permanent fund of the several asylums, shall be credited to the permanent funds of said institutions. All proceeds paid or collected from activities under this law affecting the lands belonging to the Permanent Fund of the University of Texas (except such funds as are required by the Constitution to be credited to the Permanent University Fund) shall be credited by the State Treasurer to the available fund of such institution; Provided that all such funds shall be held by the Board of Regents of the University in a special building fund and shall be expended only for the erection of buildings and equipping same, or for other permanent improvements. All proceeds, including those collected after this Act takes effect and those collected prior to September 1, 1925, now being held in suspense fund, arising from the activities affecting lands other than those belonging in the public free school fund, the University and the several asylums, shall be credited to the General Revenue Fund. Provided that the funds herein apportioned shall not include proceeds and royalties derived from the Sand, Gravel and Shell Fund, the disposition of which is now fixed by Statute. [Id.; Acts 3 C. S. 1920, p. 120(102); Acts 1927, 40th Leg., 1st C. S., p. 135, ch. 43, § 1.]

Art. 5348. General provisions.—The general provisions in this article shall apply to each foregoing provision so far as applicable.

Surveyed lands within the meaning of this law shall include all tracts for which there are approved field notes on file in the Land Office and eighty acre tracts and multiples thereof of such surveys.

Unsurveyed areas within the meaning of this law shall include all areas for which there are no approved field notes on file in the General Land Office.

All applications for surveyed land shall be filed with the clerk of the county in which the tract or a portion thereof is situated, or with the clerk of the county to which such county may be attached for judicial purposes, and shall be filed in the Land Office within thirty days after it was filed with the county clerk.

All applications for unsurveyed areas shall be filed with the county surveyor of the county in which the area or part thereof is situated. The area shall be surveyed within ninety days, and the application, field notes and plat shall be filed in the Land Office within one hundred days after the date of filing of the application.

A separate written application shall be made for the area desired in a permit. No permit or lease shall embrace the area in two or more applications.

No application, permit or lease shall embrace a divided area.

Whole tracts of surveyed lands may be applied for as a whole or in eighty acre tracts or multiples thereof without furnishing field notes therefor.

The area in each permit shall be developed independently of other areas.

When one desires a lease, any one or more whole tracts in the permit may be abandoned by relinquishment filed in the Land Office as herein provided and thereupon obtain a lease upon the remaining area; provided such remaining area is in a solid body.

An owner may relinquish a permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk and filed in the Land Office accompanied by one dollar filing fee. The Commissioner shall mail notice to the proper county clerk of the filing of the relinquishment and when said notice has had time through the due course of mail to reach said clerk the area shall be subject to applications as in the first instance. [Id.]

Art. 5349. Transfer of rights.—The owner of a file or permit or lease under any provision of this subdivision may sell same and the rights secured thereby at any time, also fix a lien of any kind thereon to any person, association of persons, corporate or otherwise, who may be qualified to receive a permit or lease in the first instance; provided, the instrument evidencing the sale or lien shall be recorded in the county where the area or part thereof is situated, or in the county to which such county may be attached for judicial purposes, and same shall be filed in the Land Office within sixty days after the date thereof accompanied with a filing fee of one dollar. If not so filed the contract evidenced by said instrument shall be void and the obligations therein assumed shall not be enforceable. A sublease contract need not be filed in the Land Office. [Acts 1917, p. 165.]

Art. 5349a. Transfer of not less than forty acres.—Owners of oil and gas permits and leases that have heretofore been issued and those that may hereafter be issued on University land may sell and transfer same as a whole or in tracts not less than forty acres, and the assignee may have the instruments evidencing such transfer filed in the General Land Office and that portion so transferred separated from the parent tract or parent subdivision of a tract permit or lease on the records of said office upon the payment of one dollar as a filing fee for each transfer and an additional fee of ten cents per acre for each acre in such transfer. The Commissioner of the General Land Office may, when deemed necessary, require field notes before filing a transfer. All transfers shall be recorded in the county or counties in which the area or a part thereof is located before offering same for filing in the Land Office. The one dollar filing fee shall be turned into the State Treasury to the credit of the general revenue and the acreage fee shall be turned into the State Treasury to the credit of the available fund of the State University. The provisions of this Act shall apply to permits and leases that may be held singly or in combination with other permits or leases. [Acts 1925, p. 23.] [39th Leg., ch. 7, § 1.]

Art. 5349b. May dissolve combination at wish of owner.—Owners of oil and gas permits, and leases based thereon, that were heretofore issued and those that may hereafter be issued that have been combined under the provisions of existing law and those that may hereafter be so combined, may dissolve such combinations in such manner as may be satisfactory to the owners thereof, and conditioned only upon the payment of the fees prescribed herein when transfers are presented for filing in the General Land Office after having been recorded in the county or counties in which the area or part thereof may be located; provided no acreage fee shall be charged under this Act; when a transfer includes a whole permit or a whole lease or a whole tract in a permit or lease. [Id.] [39th Leg., ch. 7, § 2.]

Section 3 hereunder was apparently intended to be a separate article.

Sec. 3. When the transfers provided for herein shall have been filed in the General Land Office the assignee or assignees in such transfer shall become substituted for the original permittee or lessee, as the case may be, and thereby assume all the obligations, pains and penalties that the law imposed upon the original permittee or lessee. [Acts 1925, p. 23.] [39th Leg., ch. 7, § 3.]

Art. 5350. Forfeiture of rights.—If a permit or lease should be issued upon a statement by the applicant which is false or untrue in material matters, or should the owner of a permit fail or refuse to begin in good faith the work necessary to the development of the area within the time required, or to proceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development, or to apply for a lease within the prescribed time, or should the owner of a lease fail or refuse to make proper remittances in payment of royalty or other payments, or to make the proper statement, or to furnish the required evidence of the output and market value and material matters relating thereto when requested, or fail to make the annual payment on the area when requested so to do, the permit or lease, shall be subject to forfeiture. When the Commissioner is sufficiently informed of such facts he may declare the permit or lease forfeited by proper entry upon the duplicate thereof in his office; and he shall mail a notice of that fact to the proper county clerk and the area shall be subject to the application of another than the forfeiting owner when the notice has had time to reach the county clerk through due course of mail; provided, the Commissioner may exercise large discretion in the matter of requiring one to develop gas wells. All forfeitures may, within the discretion of the Commissioner, be set aside and all rights reinstated before the rights of another intervene. [Id.]

Art. 5351. Pollution of streams.—All development in water or on islands, or river beds and channels shall be done under such regulations as will prevent the pollution of the water and for the prevention of such pollution the Commissioner may call upon the Game, Fish and Oyster Commissioner for assistance in the adoption and enforcement of rules and regulations for the protection of the waters from such pollution. The Commissioner of the General Land Office may cancel a permit or lease for a failure or refusal of the owner to comply with such rules and regulations as may be adopted. [Id.]

Art. 5352. Properties taxable.—Rights acquired under this law shall be subject to taxation as is other property. [Id.]

2. GULF LANDS

Art. 5353. Lands subject to lease.—All islands, salt water lakes, bays, inlets, marshes and reefs owned by the State within tide water limits, and that portion of the Gulf of Mexico within the jurisdiction of Texas, and unsold unsurveyed public free school lands, shall be subject to lease by the Commissioner to any person, firm or corporation for the production of oil and natural gas that may be therein or thereunder, in accordance with the provisions of this law. [Acts 2nd C. S. 1919, p. 51; Acts 1st C. S. 1921, p. 112.]

Art. 5354. Notice for bids.—The Commissioner shall fix the day and hour when an area or areas will be subject to lease and advertise or readvertise such areas at least thirty days before such lease date, except as provided in case of tie bids. The Commissioner may give such notice by distributing printed

lists as provided for sales of surface rights of public lands. [Acts 2nd C. S. 1919, p. 51.]

Art. 5355. Application for lease.—Application for separate areas and the first payment thereon shall be delivered into the Land Office on or before the day and hour on which the area will be subject to lease, in sealed envelopes indorsed, "Application to lease Minerals," with the date the area will be subject to lease. All envelopes so indorsed shall be securely kept by the Commissioner or his chief clerk unopened until the date on which applications are to be opened, and at said hour either or both of them shall open the envelopes in the presence of such persons as desire to be present. All applications received up to the opening hour, whether open or sealed, indorsed or not indorsed, shall be considered as properly delivered. An application which includes two or more areas, or is for a price less than the fixed royalty and price per acre shall be void. [Id.]

Art. 5356. Tie bids.—If the highest bid for the same area is made by more than one applicant, all such applications shall be rejected and a date fixed within the discretion of the Commissioner, not later than the fifteenth day of the following month, when the area will be subject to lease as in the first instance, but no bids therefor shall be considered if the price is less than the former sum offered. The State Treasurer shall return all sums paid upon rejected applications. [Id.]

Art. 5357. Acceptance of bid.—When an application has been filed and considered and the area found to be subject to lease, the lease shall be issued for a term not to exceed twenty-five years to the applicant that pays the most for the area in addition to the fixed price per acre and the stipulated royalty. If production should not be secured in ten years, the lease shall terminate and the area again be subject to lease. [Id.]

Art. 5358. Terms of lease.—The areas included herein shall be leased for one-eighth of the gross production of oil, or the value of same, that may be produced and saved, and one-eighth of the gross production of gas or the value of same, that may be produced and sold off of the area, and ten cents per acre in advance for the first year, and thereafter in advance an additional sum of twenty-five cents per acre for the second year, and fifty cents per acre for the third year, and one dollar per acre for each year thereafter. When production has been secured in commercial quantities and the payment of royalty begins and continues to be paid, the owner shall be exempt from further annual payments on the acreage. If production should cease and royalty not be paid, the owner of the lease shall, at the end of the lease year in which royalty ceased to be paid, and annually thereafter in advance, pay one dollar per acre so long as such owner may desire to maintain the rights acquired under the lease, not to exceed ten years from the date of said lease. [Id.]

Art. 5359. Offset wells.—If oil or gas should be produced in commercial quantities in a well on an area privately owned when such well is within one thousand feet of an area leased hereunder, the owner of the lease on such State area shall, within sixty days after the initial production on such privately owned area, begin in good faith and prosecute diligently the drilling of an offset well or wells on the area so leased from the State. Such offset wells shall be drilled to such depth and such means shall be used as may be necessary to prevent the undue drainage of oil or gas from beneath such State area. A log of each well shall be filed in the Land Office within thirty days after the well has been completed or abandoned. [Id.]

Art. 5360. Forfeiture of rights.—The provisions of subdivision 3 of this chapter governing the forfeiture of rights thereunder and a reinstatement thereof, shall apply to leases under this subdivision, and on forfeiture of such lease, after due advertisement, it shall be subject to lease by another than such forfeiting owner. [Id.]

Art. 5361. Access to lands.—Whenever it becomes necessary for the owner of a lease acquired hereunder to enter the inclosed land of another for the purpose of ingress and egress to and from the area so leased from the State, and such lessee and owner or his agent cannot agree upon the place of such entry, nor the conditions thereof, the lessee or his agent may petition the commissioners courts of the counties in which such inclosure is situated in whole or in part for the opening of such way of ingress and egress as may be necessary. Upon the filing of such petition, said courts shall lay out and establish in the manner provided for the laying out of third class public roads, such roads as may be necessary for the purpose named herein. [Id.]

Art. 5362. Assignments of leases.—One may transfer his lease at any time. Such transfer shall be recorded in the counties in which the area or part thereof is situated and within ninety days after the date of its execution the recorded transfer or certified copy of same shall be filed in the Land Office accompanied by one dollar as filing fee, and thereby the assignee shall succeed to all the rights and be subject to all the obligations and penalties of the original lessee. [Id.]

Art. 5363. Relinquishment of lease.—An owner may relinquish his lease to the State at any time by having the relinquishment recorded in the counties in which the area or part thereof is situated, and within ninety days after the date of its execution the recorded relinquishment or certified copy of same shall be filed in the Land Office accompanied by one dollar as filing fee, and thereby the owner of such lease shall be relieved of any further obligations to the State, but such relinquishment shall not have the effect to release the owner from any obligations or liabilities theretofore accrued in favor of the State. [Id.]

Art. 5364. Disposition of payments.—The State Treasurer shall credit the permanent free school fund with all amounts received from the unsurveyed school lands, and with two-thirds of the amount so received from other areas, and shall credit the general revenue fund with the remaining one-third from said other areas. [Id.]

Art. 5365. Classification of surveys.—To administer this law to the best interest of the State, the Commissioner may recognize or decline to recognize any survey heretofore made of any area included herein. Recognized surveys shall be advertised and shall be subject to lease as a whole. Surveys not recognized shall be deemed, together with all adjacent unsurveyed areas, as one unsurveyed area, and the Commissioner shall advertise the whole or designated portions thereof for lease. The Commissioner may require field notes for unsurveyed areas before issuing a lease therefor. [Id.]

Art. 5366. Pollution of streams.—The development of wells and the development and operation upon the areas included herein shall be done so far as practicable in such manner as to prevent such pollution of the water as will destroy fish, oysters and other sea food. The Game, Fish and Oyster Commissioner shall enforce such rules as the Commissioner of the General Land Office may prescribe for that purpose. [Id.]

3. SOLD ASYLUM AND SCHOOL LANDS

Art. 5367. School and asylum lands.—The State hereby constitutes the owner of the soil its agent for the purposes herein named, and in consideration therefor, relinquishes and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas which has been undeveloped and the value of the same that may be upon and within the surveyed and unsurveyed public free school land and asylum lands and portions of such surveys sold with a mineral classification or mineral reservation, subject to the terms of this law. The remaining undivided portion of said oil and gas and its value is hereby reserved for the use of and benefit of the public school fund and the several

asylum funds. [Acts 2nd C. S. 1919, p. 249; Acts 1st C. S. 1921, p. 112.]

Art. 5368. Sale and lease by agent.—The owner of said land is hereby authorized to sell or lease to any person, firm or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions hereof, and he may have a second lien thereon to secure the payment of any sum due him. All leases and sales so made shall be assignable. No oil or gas rights shall be sold or leased hereunder for less than ten cents per acre per year plus royalty, and the lessee or purchaser shall in every case pay the State ten cents per acre per year of sales and rentals; and in case of production shall pay the State the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil. [Acts 2nd C. S. 1919, p. 249.]

Art. 5369. Offset wells.—If oil or gas should be discovered in paying quantities on land not included in this law, and within one thousand feet of land that is so included, the owner, lessee, sub-lessee, receiver or other agent in control of such land included herein, shall in good faith begin the drilling of an offset well or wells upon such land within one hundred days after the first discovery, and prosecute same with diligence to completion. Every offset well shall be drilled to the depth necessary for effective protection against undue drainage by other wells on other lands in that locality. [Id.]

Art. 5370. Failure to drill offset.—If such persons fail or refuse to begin drilling such offset wells within the time required, or to drill such offset well or wells diligently and in good faith, or to drill such wells to the depth necessary for the purpose intended, or to use the means necessary to the development of any well or wells thereon within the time required, or to drill such well drilled thereon, thereupon the relinquishment herein granted shall ipso facto terminate and the rights acquired thereunder shall likewise terminate, and the oil and gas relinquished herein shall revert to and become the property of the State's general revenue fund. When the Commissioner is sufficiently informed of the facts which so terminate such rights, he shall, on the wrapper containing the papers relating to the sale of the land, write and sign officially, words indicating such termination. [Id.]

Art. 5371. Sale of forfeited rights.—When the relinquishment granted herein and the rights acquired thereunder have been so terminated, the Commissioner shall take possession of the land and advertise the oil and gas therein for sale. All such sales shall be made at such times as the Commissioner may determine and in the manner provided for the sale of public free school land. The sale shall be made to the person, firm or corporation that will pay the highest price therefor in addition to one-eighth of the oil and gas produced or the value of the same, which shall be reserved to the public free school fund. The sum received in addition to the reserved one-eighth shall be divided equally between the General Revenue Fund and the owner of the soil, after deducting the expenses incident to the advertisement and sale. Purchasers at such sales shall begin the drilling of the necessary offset wells within sixty days after the acceptance of their offer, and the failure to do so and the failure to comply with the provisions of this law relating to the drilling of offset wells shall likewise operate as a termination of the rights acquired thereunder and the substances therein shall again be subject to sale. [Id.]

Art. 5372. Forfeiture of rights.—If any person, firm or corporation operating under this law shall fail or refuse to make the payment of any sum within thirty days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the Land Office a correct log of any well, the rights acquired under the permit or lease shall be subject to forfeiture by the Commissioner, and he shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and the oil and gas shall be subject to sale in the manner provided for the sale of other forfeited rights hereunder, except that the owner of the soil shall not thereby forfeit his interest in the oil and gas. Such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this law. [Id.]

Art. 5373. Rights of subsequent purchaser.—If one acquires a valid right by permit or lease to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights to any of the oil and gas that may be therein, but when the rights under such permit or lease terminate in the manner provided in the law under which they were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished, and shall be thereafter subject to the provisions of this law. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the State. A relinquishment to the State of a lease producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in said lease. [Id.]

Art. 5374. May combine permits.—Any permits issued upon any land included in this law may upon such terms as the owners may agree, be assigned as a whole into one ownership or may be grouped or combined into one organization, and in one or more groups or combinations not to exceed sixteen sections of 640 acres each, more or less, in one group, for the purpose of developing oil and gas. All such assignments and agreements shall be recorded in the counties in which the land or part thereof is situated and shall be filed in the Land Office within sixty days after the execution of same, with a filing fee of one dollar. [Id.]

Art. 5375. Operation under permit.—The owner of a permit or combination of permits shall have eighteen months from the date or average date thereof in which to begin drilling a well for oil and gas on some portion of the land included therein. The drilling on one permit shall be sufficient protection against forfeiture of all the permits included in a combination. Owners of permits or combination of permits included herein shall have three years after the date or average date thereof in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this law relating to the relinquishment of oil and gas to the owner of the soil. [Id.]

Art. 5376. Lease under permit.—If oil or gas should be produced in paying quantities upon any land included in this law, the owner of the permit shall report the development to the Commissioner within thirty days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased, and accompany the application with a log of the wells, and the correctness of the log shall be sworn to by the owner, manager or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed ten years, subject to renewal or renewals. [Id.]

Art. 5377. Payments under permit.—The owner of a permit or combination of permits who desires to avail himself of the terms of this law, shall pay the State ten cents per acre, annually in advance, for the second and third years, and shall likewise pay the

owner of the soil ten cents per acre for the first year of such permit, before availing himself of the privileges hereof, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the Commissioner, and when sufficiently informed of the facts which subject the permits to forfeiture, said Commissioner shall forfeit the same by an indorsement of forfeiture upon the wrapper containing the papers relating to the permits and sign it officially. The payment of ten cents per acre to the owner of the soil may be made to him or to the county clerk of the county in which the land is situated, and said clerk shall deposit such payment as he receives, in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil refuses to accept such payment, said clerk shall withdraw such deposit and return it to the owner of the permit. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or part owner or county clerk filed among the papers in the Land Office relating to such permits. [Id.]

Art. 5378. Relinquishment under permit.—The owner of a permit or combination of permits may relinquish to the State a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the counties in which the land or part thereof is situated, and by filing it in the Land Office within sixty days after its execution, with one dollar as a filing fee. [Id.]

Art. 5379. Damages to soil.—The payment of the ten cents per acre and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil. [Id.]

4. GENERAL PROVISIONS

Art. 5380. Payment of royalty.—All royalties shall be paid to the State on or before the twentieth day of each month for the preceding month during the life of the lease, accompanied by the affidavit of the owner, manager or other authorized agent, showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the area, and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipe line receipts, gas line receipts and other checks or memoranda of amount produced and put into pipe lines, tanks, or pools and gas lines or gas storage. The books and accounts, receipts and discharges of all lines, tanks, pools and meters and all contracts and other records pertaining to the production, transportation, sale and marketing of the oil and gas shall at any time be subject to inspection and examination by the Commissioner, the Attorney General, the Governor, or the representative of either. [Acts 2nd C. S. 1919, p. 51.]

Art. 5381. Form of payments.—All payments shall be in the form of cash, bank draft on some State or National bank in Texas, post-office or express money order, or such other form as the law may prescribe for making remittances to the State Treasury, and shall be due and payable to the Commissioner at Austin. [Id.]

Art. 5382. Lien.—The State shall have a first lien upon all oil and gas produced upon any lease area to secure the payment of all unpaid royalty and other sums that may become due hereunder. [Id.]

CHAPTER FIVE

MINERALS

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3. GENERAL PROVISIONS

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1. COAL AND LIGNITE

Article 5383. Lands included.—Any person, association of persons, corporate or otherwise that may desire to acquire the right to prospect for and mine coal or lignite in or under any of the following lands: all unsold public free school land, University land, asylum land or any such lands sold with a reservation of minerals therein, and either of said substances that may be in or upon said land that was purchased with the relinquishment of the minerals therein, and all lands of which the mineral rights therein have reverted to this State as the Sovereign Government, and either of said substances that may be in or upon any other public lands including islands and river beds and channels which belong to the State, may do so by complying with the following conditions:

1. Notice of location.—Date and post up a notice to the effect that the applicant has located a coal or lignite mine, stating the area desired, not to exceed 2560 acres or four sections of 640 acres each, more or less, and give the approximate courses and the approximate distances that the lines shall extend from the point at which the notice is posted.

2. Application for survey.—Within thirty days after the date of such posting, the applicant shall file an application for a survey of the claim with one dollar as a filing fee. The application shall state when the claim was first posted. If an applicant files on whole tracts or upon eighty acres or multiples thereof of surveyed land, the application shall be filed in the office of the clerk of the proper county with one dollar as a filing fee, and after being recorded by the clerk shall be filed in the Land Office without field notes within thirty days after being filed with the county clerk, with one dollar as a filing fee.

3. Boundary line.—The application and survey shall not differ so materially from the original posted notice as to defeat the rights of subsequent locators. Lines of previous surveys need not be regarded by an applicant unless he may desire to do so.

4. Application for permit.—Within ninety days from the filing of the application, the surveyor shall survey the area in substantial compliance with the posted notice, record the field notes and make a plat of the survey. The application, field notes and plat shall be filed in the Land Office within one hundred days after the application was filed with the surveyor, accompanied by one dollar as a filing fee and ten cents per acre for each acre included within the area embraced in the field notes or in the application if no field notes are required, and accompanied by a sworn statement by the applicant showing what interest he has in any other permit, lease or patent issued under this law and in good standing. [Acts 1917, p. 161.]

Art. 5384. Permit and lease.—When the foregoing conditions have been complied with and the application, field notes and plat have been approved by the Commissioner, he shall issue to the applicant or his assignee a separate permit for each area applied for, conferring upon him an exclusive right to prospect

for, develop and put out coal and lignite therein upon the following conditions:

1. The permit shall be void after five years from the date of issue.

2. Development work shall commence within the first year and continue until the discovery of such minerals in paying quantities.

3. Within thirty days after the expiration of each year, except the fifth, the owner or manager shall file in the land office a sworn statement supported by the affidavit of two disinterested credible persons, showing a performance in good faith of the development work required in this article, and expenditures thereunder. If the Commissioner is satisfied that such statement is true, the owner shall have the right to prospect the area for another year.

4. During the life of the permit, and within thirty days after the discovery of such minerals in paying quantities, the owner shall apply for a lease to develop and put out such minerals in the area included in the permit, or forfeit all rights under such permit.

5. Such lease may be granted for not to exceed ten years, with right of renewals for the same or less term.

6. Royalty of ten cents a ton on coal, and seven cents a ton on lignite shall be paid monthly on each ton mined under such permit or lease.

7. The owner shall annually pay ten cents per acre in advance for each acre covered by his permit or lease.

8. Each mine shall be kept in reasonably continuous operation, and shall be operated in conformity with rules and regulations prescribed by the State Mining Inspector and the laws relating to such mines.

9. On the termination of the rights under a permit, the area shall again be subject to the prospect and development by another than the forfeiting owner. [Id.]

Art. 5385. Patent.—At any time during the life of a permit but prior to accepting a lease upon any area, the owner of a permit may elect to pay one hundred dollars per acre for the area embraced in his permit and obtain a patent for all the minerals that may be in such area except petroleum and natural gas, in lieu of the payment of the royalty as provided in this law; provided, however, one shall pay the prescribed royalty on all coal or lignite put out and disposed of while developing the area prior to obtaining a patent. [Id.]

Art. 5386. Surface rights.—An owner of any claim may fell and remove for building or mining purposes any timber upon any of the unsold areas included within this law, and shall also have the right to occupy within the limits of his application, permit or lease, so much of the surface thereof as may be necessary for the development of the minerals and substances therein, and shall have the right of ingress to and egress from the area embraced in the file, permit, lease or patent. Ten cents per acre per year in advance shall be paid to the owner of the surface and when accepted by the owner, it shall be deemed full compensation for such damages as may be occasioned to the surface through the occupancy and operation by the owner of the permit, lease or patent. [Id.]

Art. 5387. Laws applicable.—In so far as applicable, the provisions of Subdivision 1 of Chapter 4 governing the sale or transfer of a permit or lease, the forfeiture of rights thereunder for a violation of the conditions of said law, the relinquishment of whole tracts under a permit, and the subjection of rights thereunder to taxation, shall all apply to those operating hereunder.

2. OTHER MINERALS

Art. 5388. Lands and minerals included.—All valuable mineral bearing deposits, placers, veins, lodes and rock carrying metallic or non-metallic substances of value except oil, natural gas, coal and lignite, that may be in any lands included in this chapter shall be subject to development, sale and patenting as provided in this subdivision. [Acts 2nd C. S. 1919, p. 241.]

Art. 5389. Extent of claim.—A mining claim upon mineral lands hereunder may equal, but shall not exceed fifteen hundred feet in length and six hundred feet in width. Such claims may be of unlimited depth, but shall be bounded by four vertical planes from the side and end lines. All claims shall be in the form of a parallelogram unless such form is prevented by adjoining rights. The locator shall be entitled to the use of all superficial area bounded by the enclosed lines of the claim, and to all minerals therein, upon the terms of this law. [Id.]

Art. 5390. Boundary marks.—The locator of any mining claim shall conspicuously post up at the center of one of the end lines of the claim a written notice giving his name and that of the claim, and date of posting, and shall describe the claim by giving the number of feet in length, width and approximate directions the claim lies, in length from the notice, with the section number, if known, and the county; and shall place temporary posts, or stone markers at the four approximate corners of the claim at the time of making the location. The temporary monuments shall be replaced by permanent monuments at the four corners as given by the county surveyor within one hundred days after the issuance of an award to said claim. The permanent monuments shall be of four inch timber posts or their equivalent of stone or concrete, and shall be not less than three feet high. In all conflicts, priority of location shall decide.

Art. 5391. Application for survey.—Within thirty days after posting the required notice the locator shall file with the county surveyor of the county in which the land or part thereof is situated, a written application for the survey of the claim. Such application shall be accompanied by one dollar as a filing fee, and the application shall be recorded by the surveyor. The application shall give the name of the claim and the locator and such description of the boundary and location as will enable the surveyor to identify the area of the land. [Id.]

Art. 5392. Requisites of survey.—In making the survey, the surveyor shall locate and mark the corners of the claim on the ground as described in the location notice, and he shall determine the direction and distance to a corner of a section on which the claim is located, as well as the direction and distance to some prominent and permanent land mark other than a section corner, which may serve as a mineral monument or marker, and in case of any conflict this direction and distance to said prominent and permanent land mark shall have priority over all other distances and directions in serving to locate the mining claim. The directions and distances herein required shall be incorporated in and made a part of the record of the field notes and plat of the survey. The surveyor shall not charge more than ten dollars per day for his services hereunder. [Id.]

Art. 5393. Issue of award.—Within one hundred days after the application for survey has been filed with the surveyor, the application and field notes of the area applied for shall be filed in the Land Office accompanied by the filing fee of one dollar. When the application has been considered and all things have been done in compliance with the law, the Commissioner shall issue to the applicant an award for the area. Nothing in this article shall interfere with the right of the locator to proceed with the development and operation of the property after the posting of the location, if such operation does not conflict with the mineral rights of a prior locator or owner. [Id.]

Art. 5394. Development of claim.—After the date of an award, the owner shall have the exclusive right to the possession and use of the minerals within the area of the claim so long as he continues to do or causes to be done the annual assessment work for each claim consisting of excavation in the form of shaft or tunnel or an open cut to the extent of ten feet in depth or length and at least four feet by five feet for the other dimensions, in event the mineral sought to be mined is such as is usually and customarily produced by means of shafts, tunnels or open cuts, but in

event the mineral sought is usually and customarily produced from drilling holes by means of machinery, except such minerals as oil, natural gas, coal or lignite, then the drilling of a hole to such depth or length in lieu of the digging of shaft or tunnel or open cut shall constitute the annual assessment required. If an award is issued prior to the first day of October of any year the first annual assessment work shall be done before the end of that calendar year, and during the month of January following, such owner shall file in the Land Office his affidavit that such work has been done and shall state the extent thereof. Such owner shall, during each succeeding calendar year beginning January first next after the date of such award, perform the required annual assessment work and file an affidavit thereof as in the first instance. All the assessment work for a contiguous group of claims may be done on one claim. [Id.; Acts 1927, 40th Leg., p. 417, ch. 278, § 1.]

Art. 5395. Rental and royalty.—The owner of each claim shall pay fifty cents per acre annually in advance after the award and during the month of each succeeding January thereafter; and pay two per cent royalty upon the production of such claim as shown by the net smelter, mill, mint, or refinery returns, or of sums arising from the sale of the ore or products from the claim and received by the owner. Royalty payments arising from the sale of ores, mineral or other products shall be due quarterly in January, April, July and October for the quarters preceding. [Id.]

Art. 5396. Joint claimants.—Any mining claim may be filed upon by one or more persons separately or jointly, and if any one or more of them shall fail to perform his part of the conditions, imposed by this law, their right, interest, title and claim shall ipso facto cease, and the same shall revert to the State. The co-owners performing their proportional part of the conditions shall have the prior right within ninety days after such forfeiture to make the delinquent payments and do the work so defaulted, and thereupon they shall have thirty days after the expiration of said ninety days within which to make affidavit to the Commissioner to the effect that all of said conditions have been performed within said time in the same manner as if no location had been made by said defaulting co-owner. [Id.]

Art. 5397. Forfeiture of rights.—Failure of the locator or owner of any claim to comply with any provision of this law prior to receiving patent thereto, shall constitute an ipso facto forfeiture of all his rights in the claim, and the claim shall be open to location by others as prescribed in this law, the same as if no location had ever been made. Any claim which has been forfeited by any locator or owner shall not be relocated either in whole or in part by such forfeiting locator or owner within a period of six months from the time of such forfeiture. [Id.]

Art. 5398. Patent.—At any time after five years from the date of the award, the owner may pay the balance due on the purchase price of the claim and obtain a patent thereto, and after the issuance of the patent no further assessment work shall be required, but the royalty shall be perpetual. The purchase price shall be ten dollars per acre, and the annual payments of fifty cents per acre shall be applied thereon. [Id.]

Art. 5399. Prison and juvenile lands.—All State lands belonging to or under the jurisdiction and control of the Prison Commission or the Board of Control for the State Juvenile Training School, and all other farms belonging to the State and administered by other boards, shall become subject to the provisions of this law; but with the express reservation that in sales of the mineral rights in or under such farms, the annual payments and the royalties shall be made so long as the purchasers of said rights desire to operate their respective claims; and in no event shall a patent issue upon any claim filed upon any such farms belonging to the State, and all rights of the claimant to any land or filings hereunder shall terminate upon permanent cessation by such claimant of operation under such claim. [Id.]

Art. 5399a. Board of Managers for the State Iron Industries near Rusk.—That a board of managers for said State properties be created, said board to consist of the Senator and Representative from the district in which said properties heretofore mentioned are situated together with a third members [member] to be appointed by the Lieutenant Governor of Texas, which board shall exercise full and plenary control and management of said properties. [Acts 1925, 39th Leg., ch. 88, p. 261, § 1.]

Art. 5399b. Transfer of property.—Immediately after the taking effect of this Act it shall be the duty of the Board of Prison Commissions of the State of Texas, upon demand of the Board of Managers of said State properties, to deliver to said Board of Managers the possession of said properties including all lands except such lands as the Board of Control of the State of Texas has heretofore or shall hereafter designate as suitable and necessary for the use of the East Texas Hospital for the Insane at Rusk, Texas, and the necessary conveyances shall be prepared by the Attorney General of the State of Texas. [Acts 1925, 39th Leg., ch. 88, p. 261, § 2.]

Art. 5399c. Sale or lease of property.—The Board of Managers of said State properties is hereby authorized, upon approval of the Governor of the State of Texas, and given full authority to sell or lease any and all of said properties upon the best terms obtainable to any person, firm or corporation and to execute and deliver to the purchaser or purchasers thereof deeds and leases to the same. Said Board of Managers is further authorized to collect any obligations which are now outstanding against said properties and to execute release therefor or to extend such obligations upon such terms as may appear to be to the best interests of the State. And all such contracts shall be prepared by the Attorney General and approved by the Governor of the State of Texas. [Acts 1925, 39th Leg., ch. 88, p. 262, § 3.]

Art. 5399d. Reports to comptroller.—Said Board of Managers shall make reports to the Comptroller of all receipts, expenditures and disbursements, which report shall cover all funds from whatever source received by said board and shall be filed as soon as practicable after the receipt of such funds, said reports shall be accompanied by a remittance to the Comptroller of all moneys so received by said Board of Managers for the sale or lease of any of said property or from the collection of any outstanding indebtedness. [Acts 1925, 39th Leg., ch. 88, p. 262, § 4.]

Art. 5399e. Compensation.—Said Board of Managers shall serve without pay except such actual and necessary expenses incurred while in the performance of their duties as herein defined, and the sum of $5.00 per day for each day the board is actually engaged in the performance of said duties and said board is authorized and directed to deduct the amount of said expenses and per diem from any funds coming into its possession and to include said amount so deducted as part of the report hereinabove required to be made to the Comptroller of Public Accounts. [Acts 1925, 39th Leg., ch. 88, p. 262, § 5.]

Art. 5399f. Report to Legislature.—The said Board of Managers is hereby directed to make a report of all transactions in connection with the sale, lease or management of said properties to the Regular Session of the Fortieth Legislature. [Acts 1925, 39th Leg., ch. 88, p. 262, § 6.]

Art. 5400. Surface rights.—The locator or owner of a mining claim shall have the right to occupy within the limits of his claim so much of the surface ground as is strictly necessary for the use and exploration of the mineral deposits and for the building and works necessary for mining operations and for the treating and smelting of the ore produced on such claims and to occupy within and without the limits of his claim the necessary land for right of way, for ingress and egress to and from his claim for roadways and railways. If the locator or owner cannot agree with the owner or lessee of the surface right in regard to the acquiring of same and in regard to the compensation

for the injury incident to the opening and the working of such mine and the access thereto, he may apply to the county judge of the county in which such mining claim is located by filing a written petition so setting forth with a sufficient description the property and surface right sought to be taken and the purpose for which the same is to be taken. Such judge shall then appoint three disinterested freeholders to examine, pass upon and determine the damages and compensation to be paid to the owner of such surface right or other property necessary to be taken, and all proceedings thereunder shall be had in accordance with the law regulating the exercise of the right of eminent domain. Nothing herein shall give the prospector or locator any grazing right, or rights to any surface or well water in use for livestock, or to any timber rights either on or off the claim, to the detriment of the surface owner or lessee. [Id.]

3. GENERAL PROVISIONS

Art. 5401. Payments.—All royalties and other payments under this chapter shall be paid to the State through the Commissioner at Austin. All royalty payments shall be accompanied by the affidavit of the owner or manager showing the number of tons mined, to whom sold, and the selling price, as shown by copies of smelter, mint, mill, refinery or other returns or documents attached to such statement. All books, accounts, weights, wage contracts, correspondence, and other papers in any way pertaining to any mine being operated hereunder shall be open to the inspection of the Commissioner, or his representative and any representative of the State appointed by the Governor or Attorney General.

Art. 5402. Sale of surface rights.—The issuance of an award, permit or lease on unsold land hereunder shall not prevent the sale of such land without minerals under the laws applicable to such land. In case of such sale after an application has been filed with the Commissioner, the purchaser of such land shall not be entitled to any part of the proceeds of such minerals or mining location nor other compensation, nor shall such purchaser have any action for damages done to such land by or resulting from the proper working of or operation under such award or prospector's location.

Art. 5403. Discovery: right of locator.—If any mineral or substance included in this chapter, other than those included in the permit or lease under which one is operating, be discovered while the area is being worked under such permit or lease, the owner thereof shall have a preference right for sixty days after such discovery in which to file on the area allowed one for such minerals or other substances by complying with the provisions of this law relating to the mineral or substances discovered.

CHAPTER SIX

PATENTS

Art.
5404. Requisites of patent.
5405. Doubtful claim.
5406. Church and schoolhouse sites.
5407. Patents on surveys in two counties.
5408. Conflicting surveys.
5409. Conflicting title: cancellation.
5410. Cancellation: partial conflict.
5411. Purchase money refunded.
5412. Order of issue.
5413. Issuance and delivery.
5414. Deceased patentee.

Article 5404. [5361] [4175] Requisites of patent.—Every patent for land emanating from the State shall be issued in the name and by authority of the State, under the seal of the State and of the land office, signed by the Governor and countersigned by the Commissioner; and before the delivery thereof to the party entitled thereto, it shall be registered in the land office patent book. [Acts 1846, p. 234; G. L. vol. 2, p. 1540.]

Art. 5405. [5363] [4177] Doubtful claim.—Should it appear to the Commissioner from the records of his office or from information on oath given him that there is some illegality in the claim, he shall, if he deems it necessary, refer the matter to the Attorney General, whose written decision shall be sufficient authority for him to issue or withhold the patent.

Art. 5406. [5448] Church and schoolhouse sites.—The Commissioner is hereby authorized to patent in quantities of not less than one nor more than five acres any of the vacant and unappropriated public domain of Texas, or any public school or asylum lands, as sites for cemeteries, churches or schoolhouses. When the land is desired as a location for a schoolhouse, the patent shall issue to the county judge of the proper county and his successors in office in trust for that purpose; and when desired for a church house or a cemetery, it shall be issued to trustees designated by those requesting the patent. If the land has been previously sold by the State and not patented, the owner thereof shall execute a deed therefor to the county judge, or trustees, as the case may be, and cause the same to be recorded in the office of the county clerk of the proper county, and be filed in the Land Office, and shall be entitled to credit on his account with the State for the value thereof. Such land shall be taken from the margin of a tract or section, or of a subdivision thereof, as the case may be. [Acts 1895, p. 68; G. L. vol. 10, p. 798.]

Art. 5407. [5365] [4179] Patents on surveys in two counties.—The Commissioner shall issue patents upon all surveys of land in two or more counties where no conflict between such surveys and others exist, and to which there is no other objection than that of a division in said surveys occasioned by a county boundary passing through them; provided, the field notes have been recorded in the office of the county surveyor of both counties. [Acts 1846, p. 188; G. L. vol. 2, p. 1494.]

Art. 5408. [5367] [4181] Conflicting surveys.—Where conflicts exist between surveys, the Commissioner shall issue patents to such portions of such surveys as are free from conflicts. [Id.]

Art. 5409. [5374] [4189] Conflicting title: cancellation.—Where a patent to land through mistake is issued upon any valid claim for land, which is afterwards found to be in conflict with any older title, it shall be competent for the owner of such patent, or of any part of the land embraced therein, and within such conflict, to return the same to the Commissioner for cancellation, or in case the owner of such land in conflict cannot obtain the patent, then he shall return instead thereof legal evidence of his title to such patent, or part thereof. In either case he shall make and file with said Commissioner an affidavit that he is still the owner of the same, and has not sold or transferred it. If it appears from the Land Office records or from a duly certified copy of a judgment of any court of competent jurisdiction before which the title to such land may have been adjudicated, that such conflict really exists, it shall be lawful for the Commissioner to cancel the patent, or such part thereof as shall appear to belong to the party so applying.

Art. 5410. [5375] [4190] Cancellation: partial conflict.—In cases where there is only a partial conflict, the Commissioner may, under like circumstances and in like manner as provided in the preceding article, cancel any patent presented to him, and issue a patent to the applicant for such portion of the land covered by his patent as may not be in conflict with the older title, where from the field notes the same may be done. [P. D. 4302.]

Art. 5411. [5378–5404] Purchase money refunded.—Upon proper proof that money has been in good faith paid into the State Treasury upon lands for taxes, lease and purchase money, for which, on account of conflicts, erroneous surveys, or illegal sales, patents cannot legally issue, or upon lands on which patents have issued and afterwards are legally canceled, the Comptroller may issue his warrant in favor of the proper parties for the amounts so paid. Proof of such payments may be made upon the certificate of

the Commissioner thereto when such facts are disclosed by the records of the Land Office. This article shall not apply to surveys, the errors in which may be corrected. [Acts 1883, p. 113; G. L. vol. 9, p. 419.]

Art. 5412. [5372] [4186] Order of issue.—The Commissioner shall patent surveys in the order in which they may be made ready for patenting, without regard to the order of filing in the Land Office or the order of application; but an application made for patent on any claim accompanied by the office fees therefor shall have preference over claims for which no application has been made; provided, such surveys have been regularly mapped, or there is sufficient evidence that no previous survey has been legally filed in the land office covering the same ground as represented on the maps of the office. [Acts 1861, p. 51; Acts 1879, p. 23, S. S.; G. L. vol. 5, p. 387.]

Art. 5413. [5376] [4191] Issuance and delivery.—The Commissioner shall issue patents when it appears from the books of his office that full payment for the land has been made where payment is required, and all legal fees due thereon have been paid into said office and not withdrawn, including the legal fees for the recording of said patent in the counties in which the land may be located. When one applies for a patent such person, shall, in addition to all other payments required by law, remit to the land office one dollar for each county in which the land may be wholly or partially located and give the name and address of the owner or agent. When the patent is ready for delivery the Commissioner shall send it by registered mail to the clerk of any such county with the receivers check for one dollar for each such county and accompany the same with the name and address of the owner or his agent. Upon receipt thereof the clerk shall record the patent and send the same by registered mail with such name and address and the remaining fees to the clerk of another proper county until the patent has been recorded in each such county, and thereupon the patent shall be delivered to the proper party by registered mail. [Acts 1891, p. 182; G. L. vol. 10, p. 184; Acts 4th C. S. 1918, p. 119.]

Art. 5414. [5371] [4185] Deceased patentee.—All patents issued in the names of persons deceased at the time of issuance shall convey and secure valid title to the heirs or assignee of such deceased persons. [Acts 1851, p. 21; P. D. 4228a; G. L. vol. 3, p. 899.]

CHAPTER SEVEN

GENERAL PROVISIONS

Art.
5415. Public domain.
5416. School fund.
5417. University fund.
5418. Asylum fund.
5419. Unlawful inclosures.
5420. Adverse claimant: suit.
5421. Suits for minerals and timber.

Article 5415. [5279] [4036] Public domain.—To bring the provisions of law relating to the public domain together, the following extract is made from the joint resolutions of the Congress of the United States for annexing Texas to the United States, approved June 23, 1845: "Said State, when admitted into the Union, ... shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct," etc.

Art. 5416. [5278–5385] School fund.—All lands heretofore set apart under the constitution and laws of Texas, and all of the unappropriated public domain remaining in this State of whatever character, and wheresoever located, including any lands hereafter recovered by the State, except that included in lakes, bays and islands along the Gulf of Mexico within tidewater limits, is set apart and granted to the permanent school fund of the State. All such lands heretofore or hereafter recovered from railway companies, firms, persons, or other corporations by the State, by suit or otherwise, and constituting a part of said school fund as herein provided, shall be disposed of as other school lands, except as otherwise provided by law. In all cases where said land, or any portion thereof, has been surveyed into tracts of six hundred and forty acres, more or less, and field notes thereof returned to and filed in the Land Office, the same is hereby declared a sufficient designation of said land; and the Commissioner shall dispose of the same by the survey and block numbers contained in said field notes. [Acts 1900, p. 29; Acts 1899, p. 123.]

Art. 5417. [5386] [4253] University fund.—After the payment of the amounts due from the State to the common free school fund out of the proceeds of the sales of that portion of the public lands set aside for the payment of the public debt by an Act approved July 14, 1879, and an Act amendatory thereof approved March 11, 1881, and the payment directed to be made to the common school and University funds by an Act approved February 23, 1883, the remainder of said land not to exceed two million acres, or the proceeds thereof, shall one-half thereof constitute a permanent endowment fund for the University of Texas and its branches, including the branch for the instruction of colored youths. [Acts 1883, p. 71; G. L. vol. 9, p. 377.]

Art. 5418. [5387] [4254] Asylum fund.—The four hundred thousand acres of land set apart for the lunatic asylum, the blind asylum, the asylum for the deaf and dumb, and an orphan asylum, in equal portions of one hundred thousand acres for each of said asylums, by the provisions of an act of the legislature entitled, "An Act setting aside and appropriating land for the benefit of asylums," approved August 30, 1856, is hereby recognized and set apart to provide a permanent fund for the support, maintenance and improvement of such asylums. [Const. art. 7; Acts 1856, p. 76; G. L. vol. 8, p. 494.]

Art. 5419. [5467] Unlawful inclosures.—If the Governor shall at any time be credibly informed that any portion of the public lands or the lands belonging to any of the several funds named in this title, have been inclosed or that fences have been erected thereon without authority of law, he is authorized in his discretion to direct the Attorney General to institute suit in the name of the State for the recovery of such lands and damages, and a fee of not less than ten dollars for the attorney when the sum recovered is less than one hundred dollars, and, when it is over that sum, the fee shall be ten per cent, to be paid by the defendant for the use and occupancy of the same, and the removal of such inclosure and fences; and such damages shall not be for a less sum than five cents per acre per annum during such occupancy. In suits provided for in this article the court shall issue a writ of sequestration directed to any sheriff of the State, commanding and requiring such officer to take into his actual custody such land and all property thereon belonging to the persons so unlawfully occupying said lands, and hold the same subject to further orders of the court. Such writ of sequestration may be executed by any sheriff into whose hands it may be delivered, and he shall proceed to execute such writ. The defendant in such suit may replevy as in ordinary cases by giving bond as prescribed by law; and such cases and all appeals therefrom shall have precedence over all other cases; and, if judgment is recovered by the State in such suit, the court shall order such inclosure or fences to be removed, and shall tax the costs of the suit against the defendant; and all property found upon the land belonging to the defendant, not exempt from execution, shall be liable to the payment of such costs and damages in addition to the personal liability of the defendant. [Acts 1895, p. 63, amended p. 75; G. L. vol. 10, pp. 793, 805.]

Art. 5420. [5468] Adverse claimant; suit.—When any public lands are held, occupied or claimed by any person, association or corporation adversely to the State, or to any fund, or when lands are forfeited to the State for any cause, the Attorney General shall institute suit therefor, together for rent thereon, and

for any damages thereto. For the purposes of this and the preceding article, venue is fixed in Travis County, concurrently with the county of defendant's residence and the county where the land lies. [Acts 1900, p. 29.]

Art. 5421. [5469–70–71–72–73–74] Suits for minerals and timber.—The Commissioner and the county attorneys of the State shall report to the Attorney General semi-annually, or oftener if they desire, the name and residence of each person, firm, association of persons or corporation who has cut, used, destroyed, sold or otherwise appropriated any timber from any public lands or taken any minerals or other property of value therefrom, and such other data within their knowledge, and the county attorneys shall assist the Attorney General in whatever way he requests in relation thereto. The Attorney General shall bring suit for the value of such property in any county where the injury or a part thereof occurs, or in the county where the defendant resides, or he may, with the consent of the Governor, compromise and settle with or without suit any of the aforesaid liabilities. The Attorney General shall pay all sums so collected or received to the permanent funds to which they belong. Of all amounts recovered by suit, the Attorney General shall receive a fee of ten per cent, and the county attorney five per cent, and on amounts recovered by compromise, each shall receive one-half of such fees to be taxed against the defendant as costs. No county attorney shall receive compensation from cases not reported by him to the Attorney General. [Acts 1905, p. 38.]

TITLE 87

LEGISLATURE

Art.
5422. Time of meeting.
5423. Who may organize.
5424. Who shall preside.
5425. Duties of clerk.
5426. Credentials.
5427. If no quorum.
5428. Election of Speaker.
5429. Election of officers.

Article 5422. [5505] [3271] Time of meeting.—The Fortieth Legislature shall assemble to hold its biennial session on the second Tuesday in January, A. D. 1927, at 12 o'clock m., and shall meet biennially thereafter on the same day and hour until otherwise provided by law. [Const. art. 3, sec. 5.]

Art. 5423. [5506] [3272] Who may organize.—Those persons receiving certificates of election to the Senate and House of Representatives of the Legislature, and those Senators whose terms of office shall not have terminated, and none others, shall be competent to organize the Senate and House of Representatives. [Acts 1876, p. 311; G. L. vol. 8, p. 1147.]

Art. 5424. [5507–8–16] Who shall preside.—For the purpose of such organization the Secretary of State shall preside at each recurring session of the Legislature. Should there be no Secretary of State, or in case he be absent or unable to attend, the Attorney General shall attend and perform the duties prescribed. He shall attend at the time and place designated for the meeting of the Legislature, and shall appoint a clerk who shall have been chief clerk of the House the preceding session, if he be present, to take a minute of the proceedings.

Art. 5425. [5509–10–11] Duties of clerk.—The clerk, under the direction of the Secretary of State, shall:

1. Call all the counties in alphabetical order. Should returns of election in any county for members of the Legislature not be made to the office of Secretary of State, he shall nevertheless call such county.

2. When the counties are called and the members elect appear and present their credentials, administer to each the official oath.

Art. 5426. [5512] [3278] Credentials.—Any person appearing at said call and presenting the proper evidence of his election shall be admitted or qualified in the same manner as though the return of his election had been made to the office of Secretary of State. [P. D. 5438.]

Art. 5427. [5513] [3279] If no quorum.—If no quorum is in attendance on the day appointed for the meeting of the Legislature, the Secretary of State and clerk shall attend from day to day until a quorum shall appear and be qualified as above. [P. D. 5439.]

Art. 5428. [5514] [3280] Election of Speaker.—When a quorum has appeared and been qualified, the House shall proceed to the election of a Speaker, unless a majority of the members present shall decide to defer said election. [P. D. 5440.]

Art. 5429. [5515] [3281] Election of officers.—When an election for Speaker shall have been had, the Speaker elect shall immediately take the chair, and the House proceed to its further organization by electing the necessary officers, to whom the Speaker shall administer the official oath. [P. D. 5441.]

TITLE 88

LIBEL

Art.
5430. Definitions.
5431. Mitigation of damages.
5432. Privileged matters.
5433. Construction.

Article 5430. [5595] Definitions.—A libel is a defamation expressed in printing or writing, or by signs and pictures, or drawings tending to blacken the memory of the dead, or tending to injure the reputation of one who is alive, and thereby expose him to public hatred, contempt or ridicule, or financial injury, or to impeach the honesty, integrity, or virtue, or reputation of any one, or to publish the natural defects of any one and thereby expose such person to public hatred, ridicule, or financial injury. [Acts 1901, p. 30.]

Art. 5431. [5596] Mitigation of damages.—In any action for libel, in determining the extent and source of actual damage and in mitigation of exemplary or punitive damage, the defendant may give in evidence, if specially pleaded, all material facts and circumstances surrounding such claim of damage and the defense thereto, and also all facts and circumstances under which the libelous publication was made, and any public apology, correction or retraction made and published by him of the libel complained of, and may also give in evidence, if specially pleaded in mitigation of exemplary or punitive damage, the intention with which the libelous publication was made. The truth of the statement, or statements, in such publication shall be a defense to such action. [Id.: Acts 1927, 40th Leg., p. 121, ch. 80, § 1.]

Art. 5432. [5597] Privileged matters.—The publication of the following matters by any newspaper or periodical shall be deemed privileged and shall not be made the basis of any action for libel.

1. A fair, true and impartial account of the proceedings in a court of justice, unless the court prohibits the publication of same when in the judgment of the court the ends of justice demand that the same should not be published and the court so orders, or any other official proceedings authorized by law in the administration of the law.

2. A fair, true and impartial account of all executive and legislative proceedings, including all reports of and proceedings in or before legislative committees and before each and all such committees heretofore appointed by the Legislature or either branch of the Legislature or hereafter to be appointed by such bodies or either of them and of any debate or statement in or before the Legislature or either branch thereof or any of its committees, and including also all reports of and proceedings in or before the managing boards of educational and eleemosynary institutions support-

ed from the public revenue, of city councils or other governing bodies of cities or towns, of the commissioners' court of any county, and of the board of trustees of the public schools of any district, city or county, and of any debate or statement in or before any such body.

3. A fair, true and impartial account of the proceedings of public meetings, dealing with public purposes, including a fair, true and impartial account of statements and discussion in such meetings, and of other matters of public concern, transpiring and uttered at such public meetings.

4. A reasonable and fair comment or criticism of the official acts of public officials and of other matters of public concern published for general information.

5. The privilege provided under Sections 1, 2, 3, and 4, of this article shall extend to any first publication of such privileged matter by any newspaper or periodical, and to subsequent publications thereof by it when published as a matter of public concern for general information; but any re-publication of such privileged matter, after the same has ceased to be a matter of such public concern, shall not be deemed privileged, and may be made the basis of an action for libel upon proof that such matter had ceased to be of such public concern and that same was published with actual malice. [Id.; Acts 1919, p. 34; Acts 1927, 40th Leg., p. 121, ch. 80, § 2.]

Art. 5433. [5598] Construction.—Nothing in this title shall be construed to amend or repeal any penal law on the subject of libel, nor to take away any now or at any time heretofore existing defense to a civil action for libel, either at common law or otherwise, but all such defenses are hereby expressly preserved. [Id. Acts 1917, p. 474.]

TITLE 89

LIBRARY AND HISTORICAL COMMISSION

Art.
5434. Organization.
5435. Purpose.
5436. Powers and duties.
5437. Seal.
5438. Custody of records.
5438a. Historical relics.
5438b. Title to relics.
5438c. Removal of relics.
5439. Exchange of records.
5440. State Librarian.
5441. Duties of Librarian.
5442. Distribution of publications.
5443. Sale of archives.
5444. Legislative reference section.
5445. Assistants.
5446. Report to Governor.

Article 5434. [5600–5601] Organization.—The Governor shall, by, and with the advice and consent of the Senate, appoint five persons who shall constitute the Texas Library and Historical Commission. Appointments shall be made for a term of six years, the classification to continue as constituted by law. The Commission shall be assigned suitable offices at the capitol where they shall hold at least one regular meeting annually, and as many special meetings as may be necessary. Each such member while in attendance at said meetings shall receive five dollars per day and the actual expenses incurred in attending the meetings. [Acts 1909, p. 122; Acts 2nd C. S. 1919, p. 151.]

Art. 5435. [5599] Purpose.—The Commission shall control and administer the State Library, adopt and enforce reasonable rules and regulations governing its administration and control, aid and encourage libraries, collect materials relating to the history of Texas and the adjoining states, preserve, classify and publish the manuscript archives and such other matters as it may deem proper, diffuse knowledge in regard to the history of Texas, encourage historical work and research, mark historic sites and houses and secure their preservation, and aid those who are studying the problems to be dealt with by legislation. [Acts 1909, p. 122.]

Art. 5436. [5602–3] Powers and duties.—The Commission is authorized and empowered to purchase within the limits of the annual appropriation allowed by Act of the Legislature from time to time, suitable books, pictures, etc., the same to be the property of the State. The Commission shall have power and authority to receive donations or gifts of money or property upon such terms and conditions as it may deem proper; provided, no financial liability is thereby entailed upon the State. It shall give advice to such persons as contemplate the establishment of public libraries, in regard to such matters as the maintenance of public libraries, selection of books, cataloging and library management. The Commission shall conduct library institutes and encourage library associations. [Id.; Acts 2nd C. S. 1919, p. 152.]

Art. 5437. Seal.—The style of the Library governed by the Commission shall be "Texas State Library." A circular seal of not less than one and one-half inches, and not more than two inches in diameter, bearing a star of five points, surrounded by two concentric circles, between which are printed the words, "Texas State Library," is hereby designated the official seal of said Library. Said seal shall be used in authentication of the official acts of the State Library. [Acts 2nd C. S. 1919, p. 152.]

Art. 5438. [5604–5] Custody of records.—The custody and control of books, documents, newspapers, manuscripts, archives, relics, mementos, flags, works of art, etc., and the duty of collecting and preserving historical data, is under the control of the Commission. The gallery of the portraits of the Presidents of the Republic and the Governors of this State constitutes a part of the State Library. All books, pictures, documents, publications and manuscripts, received through gift, purchase or exchange, or on deposit, from any source, for the use of the State, shall constitute a part of the State Library, and shall be placed therein for the use of the public. [Acts 1909, p. 122.]

Art. 5438a. Historical relics.—The Texas Library and Historical Commission is hereby authorized in their discretion to place temporarily in the custody of the Daughters of the Republic of Texas and the United Daughters of the Confederacy, Texas Division, all or part of the historical relics belonging to the Texas State Library, under such conditions and terms of agreement as will insure the safekeeping of these relics in the Texas Museum. [Acts 1925, 39th Leg., ch. 146, p. 354, § 1.]

Art. 5438b. Title to relics.—The title of the State to these relics shall not be affected by this transfer. [Acts 1925, 39th Leg., ch. 146, p. 354, § 2.]

Art. 5438c. Removal of relics.—The Texas Library and Historical Commission shall retain the right to remove these relics at any time they may see fit. [Acts 1925, 39th Leg., ch. 146, p. 354, § 3.]

Art. 5439. [5606] Exchange of records.—Any State, county or other official is hereby authorized in his discretion to turn over to the State Library for permanent preservation therein any official books, records, documents, original papers, maps, charts, newspaper files and printed books not in current use in his office, and the State Librarian shall receipt for the same. [Acts 1909, p. 122; Acts 2nd C. S. 1919, p. 152.]

Art. 5440. State Librarian.—The Commission shall elect a State Librarian, not of their number, who shall be a man or woman of at least one year's training in a library school and at least three years' administrative experience as head of a free public or institutional library, or as an assistant of high rank in such library. Said Librarian shall serve at the will of the Commission, and shall give bond in the sum of five thousand dollars for the proper care of the State Library and its equipment. He shall be allowed his actual expenses when traveling in the service of the Commission, on his sworn account showing such expenses in detail. [Acts 2nd C. S. 1919, p. 151.]

Art. 5441. [5606] Duties of Librarian.—The duties of the State Librarian, acting under the direction of said Commission, shall be as follows:

1. He shall record the proceedings of the Commission, keep an accurate account of its financial transactions, and perform such other duties as said Commission may assign him; and he shall be authorized to approve the vouchers for all expenditures made in connection with the State Library.

2. He shall have charge of the State Library and all books, pictures, documents, newspapers, manuscripts, archives, relics, mementos, flags, etc., therein contained.

3. He shall endeavor to collect all manuscript records relating to the history of Texas in the hands of private individuals, and where the originals cannot be obtained he shall endeavor to procure authenticated copies. He shall be authorized to expend the money appropriated for the purchase of books relating to Texas, and he shall seek diligently to procure a copy of every book, pamphlet, map or other printed matter giving valuable information concerning this State. He shall collect portraits or photographs of as many of the prominent men of Texas as possible. He shall endeavor to complete the files of the early Texas newspapers in the State Library; and he shall cause to be bound the current files of not less than ten of the leading newspapers of the State and the current files of not less than four leading newspapers of other states, and of as many county papers, professional journals, denominational papers, agricultural papers, trade journals and other publications of this State as seem necessary to preserve in the State Library an accurate record of the history of Texas.

4. He shall demand and receive from the officers of State departments having them in charge, all books, maps, papers, manuscripts, documents, memoranda and data not connected with or necessary to the current duties of said officers, relating to the history of Texas, and carefully classify, catalogue and preserve the same. The Attorney General shall decide as to the proper custody of such books, etc., whenever there is any disagreement as to the same.

5. He shall endeavor to procure from Mexico the original archives which have been removed from Texas and relate to the history and settlement thereof, and if he cannot procure the originals, he shall endeavor to procure authentic copies thereof. In like manner he shall procure the originals or authentic copies of manuscripts preserved in other archives beyond the limits of this State, in so far as said manuscripts relate to the history of Texas.

6. He shall preserve all historical relics, mementos, antiquities and works of art connected with and relating to the history of Texas, which may in any way come into his possession as State Librarian. He shall constantly endeavor to build up an historical museum worthy of the interesting and important history of this State.

7. He shall give careful attention to the proper classification, indexing and preserving of the official archives that are now or may hereafter come into his custody.

8. He shall make a biennial report to the Commission, to be by it transmitted to the Governor, to be accompanied by such historical papers and documents as he may deem of sufficient importance.

9. He shall ascertain the condition of all public libraries in this State and report the results to the Commission. He is authorized in his discretion to withhold from libraries refusing or neglecting to furnish their annual reports or such other information as he may request, public documents furnished the Commission for distribution, or interlibrary loans desired by such libraries. [Id.; Acts 1909, p. 122.]

Art. 5442. Distribution of publications.—On the requisition of the State Librarian therefor, the Board of Control shall cause to be printed and furnished to the State Library for distribution and exchange the following publications, or such additional number as said Librarian shall request: 150 copies of all annual, biennial and special reports of State departments, boards and institutions, findings of all investigations, bulletins, circulars, laws issued as separates, and legislative manuals, 75 copies of all daily legislative journals, bound journals, bills, resolutions, session laws and compiled statutes, and 150 copies of all other publications, except routine business forms and court reports. All such printed daily legislative journals, bills, resolutions and other legislative documents shall be delivered daily to the State Library, and at the close of each legislative session all daily journals, bills and resolutions in the hands of the sergeant-at-arms of the House and Senate shall be delivered to the State Library to be disposed of at the discretion of the Librarian. No accounts for such printing shall be approved and no warrants shall be issued therefor, until the Board of Control is furnished by the contract printer with the receipt of the Librarian for such publications. [Acts 1913, p. 281; Acts 2nd C. S. 1919, p. 154.]

Art. 5443. Sale of archives.—The Commission is authorized to sell copies of the Texas Archives, printed with funds appropriated for that purpose, at a price not to exceed twenty-five per cent above the cost of publishing, and all moneys received from such sale shall be paid into the State Treasury. One copy of each such volume may be distributed free to the Governor, the members of the Legislature, and to the libraries, indicated in the preceding article. [Acts 1913, p. 281.]

Art. 5444. [5608] Legislative reference section.—The Commission shall maintain for the use and information of the members of the Legislature, the heads of the several State departments, and such other citizens as may desire to consult the same, a section of the State Library for legislative reference and information. This section shall possess available for use, explanatory check lists and catalogues of the current legislation of this and other states, catalogues of the bills and resolutions presented in either branch of the Legislature, check lists of the public documents of the several states, including all reports issued by the various departments, boards and commissions of this State, and digests of such public laws of this and other states as may best be made available for legislative use. Such section shall give the members of the Legislature such aid and assistance in the drafting of bills and resolutions as may be asked. [Acts 1909, p. 122; Acts 2nd C. S. 1919, p. 155.]

Art. 5445. Assistants.—The Commission shall appoint an assistant librarian who shall rank as head of a department and who in the absence of the State Librarian may sign and certify accounts and documents in the same manner and with the same legal authority as the State Librarian. Said assistant shall give bond to the Governor in the sum of three thousand dollars and shall take the official oath. Other assistants in the State Library shall be appointed by the Commission and be divided into four grades: Heads of departments, library assistants, clerks and laborers. Heads of departments and library assistants shall be required to have technical library training; and heads of departments shall have had at least one year of experience in library work prior to appointment. Clerks shall be required to hold a diploma from a first class high school according to the standards of the State Board of Education or the University of Texas, or to present satisfactory evidence of educational training equal to that provided by such high school, and also to present satisfactory evidence of proficiency in stenography and typewriting or book-keeping. Laborers must present satisfactory evidence of education sufficient to do such elementary clerical work as shall be required of them. The archivist must present satisfactory evidence of one year's advanced work in American or Southwestern history in a standard college and of a fluent reading knowledge of Spanish and French; provided, that the archivist shall not be required to have technical library school training or any library experience. [Acts 2nd C. S. 1919, p. 151.]

Art. 5446. [5609] Report to Governor.—The Commission shall make a biennial report to the Governor, which shall include the biennial report of the State Librarian. Said report shall present a compre-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

hensive view of the operation of the Commission in the discharge of the duties imposed by this title, shall present a review of the library conditions in this State, present an itemized statement of the expenditures of the Commission, make such recommendations as their experience shall suggest, and present careful estimates of the sums of money necessary for the carrying out of the provisions of this title. Said report shall be made and printed, and by the Governor laid before the Legislature as other departmental reports. [Acts 1909, p. 122.]

TITLE 90

LIENS

Chap.

1. Judgment liens.
2. Mechanics, contractors and material men.
3. Oil and mineral property.
4. Liens of railroad laborers.
5. Farm, factory and store operatives.
6. Chattel mortgages.
7. Other liens.

CHAPTER ONE

JUDGMENT LIENS

Art.

5447. Abstracts of judgments.
5448. Recording judgments.
5449. Lien of judgment.
5450. Satisfaction of judgment.
5451. Federal court judgments.

Article 5447. [5611–2–3] Abstracts of judgments.—Each clerk of a court, when the person in whose favor a judgment was rendered, his agent, attorney or assignee, applies therefor, shall make out, certify under his hand and official seal, and deliver to such applicant upon the payment of the fee allowed by law, an abstract of such judgment showing:

1. The names of the plaintiff and of the defendant in such judgment.

2. The number of the suit in which the judgment was rendered.

3. The date when such judgment was rendered.

4. The amount for which the judgment was rendered and balance due thereon.

5. The rate of interest specified in the judgment.

Each justice of the peace shall also make and deliver an abstract of any judgment rendered in his court in the manner herein provided, certified under his hand.

Art. 5448. [5610–4–5–9] Recording judgments.—Each county clerk shall keep a well bound book called the "judgment record," and he shall immediately file and therein record all properly authenticated abstracts of judgment when presented to him for record, noting therein the day and hour of such record. He shall at the same time enter it upon the alphabetical index to such judgment record, showing the name of each plaintiff and of each defendant in the judgment, and the number of the page of the book upon which the abstract is recorded. He shall leave a space at the foot of each such abstract for the entry of credits upon and satisfaction of such judgment, and shall enter the same when properly shown.

Art. 5449. [5516–7] Lien of judgment.—When any judgment has been so recorded and indexed, it shall from the date of such record and index operate as a lien upon all of the real estate of the defendant situated in the county where such record and index are made, and upon all real estate which the defendant may thereafter acquire situated in said county. Said lien shall continue for ten years from the date of such record and index; but if the plaintiff fails to have execution issued upon his judgment within twelve months after the rendition thereof, said lien shall cease to exist.

Art. 5450. [5618] Satisfaction of judgment.—Satisfaction of any judgment in whole or in part may be shown:

1. By return upon an execution issued upon said judgment, or by a certified copy of such return, certified by the officer to whom the return is made, such certificate showing the names of the parties to the judgment, the number and style of the suit, the court in which rendered, the date and amount of the judgment, and the dates of the issuance and return of the execution.

2. By a receipt, acknowledgment or release signed by the party entitled to receive payment of the judgment, or his agent, or attorney of record, and acknowledged or proven for record as required for deeds.

Art. 5451. [5620] [3293] Federal court judgments.—An abstract of a judgment rendered in this State by any United States Court may be recorded and indexed in the same manner and with like force and effect as provided for judgments of the Courts of this State, upon the certificates of the clerks of such United States courts.

CHAPTER TWO

MECHANICS, CONTRACTORS AND MATERIAL MEN

Art.

5452. Lien prescribed.
5453. Securing lien.
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5471. Separate sales.
5472. Requisite of sale.
5472a. Lien for material furnished public contractor.
5472b. Retention of funds.

Article 5452. [5621] [3294] Lien prescribed.—Any person or firm, lumber dealer or corporation, artisan, laborer, mechanic or sub-contractor who may labor or furnish material, machinery, fixtures or tools; (a) to erect or repair any house, building or improvement whatever; (b) for the construction or repair of levees or embankments to be erected for the reclamation of overflow lands along any river or creek in this State; (c) or who may furnish any material for the construction or repair of any railroad within this State under or by virtue of a contract with the owner, owners, or his or their agent, trustee, receiver, contractor or contractors; upon complying with the provisions of this chapter shall have a lien on such house, building, fixtures, improvements, land reclaimed from overflow, or railroad, and all of its properties, and shall have a lien on the lot or lots of land necessarily connected therewith, or reclaimed thereby, to secure payment for the labor done, lumber, material, machinery or fixtures and tools furnished for construction or repair. The word "improvement" as used herein shall be construed so as to include clearing, grubbing, draining or fencing of land, and shall include wells, cisterns, tanks, reservoirs or artificial lakes or pools made for supplying or storing water and all pumps, siphons, and wind mills or other machinery or apparatus used for raising water for stock, domestic use or for irrigation purposes. [Acts 1895, p. 194; Acts 1913, p. 252; Acts 1917, p. 383; G. L. vol. 10, p. 924.]

Art. 5453. [5622–3] Securing lien.—The lien provided for in Article 5452 may be fixed and secured in the following manner:

1. Every original contractor, within four months, and every journeyman, day laborer, or other person, within thirty days after the indebtedness accrues, shall file his contract in the office of the county clerk of the county where the property is situated to be recorded in a book kept by the county clerk for that purpose.

2. If a journeyman, day laborer or other person has

no written contract, it shall be sufficient to file an itemized account of the claim supported by affidavit showing that the account is just and correct and that all just and lawful offsets, payment and credits known to affiant have been allowed.

3. Within ninety days after such indebtedness accrues, each person, firm or corporation who furnished material to or performed labor for a contractor or subcontractor to construct or repair a house, building, improvement or railroad or its properties, shall give written notice to the owner of such house, building or improvement, or to his agent, or to such railroad company or its agent or receiver of each and every item furnished and showing how much there is due and unpaid on each bill of lumber or material furnished or labor performed by such person, firm or corporation, and shall file with the county clerk of the county in which such property is located or through or into which such railroad may extend, an itemized account of his or their claim to be recorded by such clerk in a book kept for that purpose.

Art. 5454. [5634] [3307] Owner to furnish contractor with account.—Whenever any such account shall be placed in the hands of such owner, or his authorized agent, it shall be the duty of such owner, or his agent, to furnish his contractor with a true copy of said attested account; and, if said contractor shall not, within ten days after the receipt of said copy of attested account, give the owner written notice that he intends to dispute said claim, he shall be considered as assenting to the demand, which shall be paid by the owner when it becomes due.

Art. 5455. [5624] [3297] Form of claim on unwritten contract.—If there be no written contract in cases where the labor is performed for or the material is furnished to the owner of the building or improvements, or the owner or receiver of a railroad, the following form or the substance thereof may be used for filing the claimant's account, and will be sufficient to fix the meaning contemplated by this chapter:

The State of Texas,

County of ———.

A. B., affiant, makes oath and says that the annexed is a true and correct account of the labor performed (or material furnished) for C. D. of ——— County, Texas, and that the prices thereof as set forth in said account hereto annexed are just and reasonable, and the same is unpaid; that said labor was performed (or material furnished, or both) for said C. D. at the time in said account mentioned, under and by virtue of a contract between affiant (or affiant's principal) and C. D. and that due notice was given by affiant (or his principal) of the labor performed (or material furnished) in accordance with law; and affiant further makes oath and says that he is informed that C. D. was at the time said contract was made and entered into and said labor was performed (or material furnished) the owner of the house (or improvements) described as follows: (Here describe the house or improvements). And the said house (or improvements) is situated upon a certain lot or tract of land which affiant is informed is owned by said C. D. and which is described as follows: (Here describe the lot or lots or the land). And this affiant (or his principal) claims a lien upon said house or improvements and upon said land. (Or if the material was furnished to any railroad company, its agent or receiver, to construct or repair its railroad or other property, then the affiant shall describe said railroad by giving its charter name and the name of the receiver, if any, and the agent of said company, if any, with whom the contract was made, and that affiant or his principal claims a lien on said railroad and its property.) [Acts 1889, p. 110; G. L. vol. 9, p. 1138; Acts 1895, p. 194; G. L. vol. 10, p. 924.]

Art. 5456. [5625] [3298] Form when the debtor is not the owner.—If the labor is performed for, or the material is furnished to a contractor, builder, agent or receiver, and not the owner of the property, then the following form shall be deemed sufficient to fix the lien provided for by this chapter:

The State of Texas,

County of ———,

A. B., affiant, makes oath and says that the annexed is a true and correct account of the labor performed for (or the material furnished to) C. D., a contractor (builder, agent, or receiver) by affiant (or his principal) and the prices therefor as set forth in the annexed account are just and reasonable, and that the same is unpaid (or the sum of $———, as shown by said account, is unpaid) after allowing all just and lawful offsets, payments and credits known to affiant; that said labor was performed (or material furnished, or both) for (or to) said C. D. to be used in the erection of a house (or building or improvements, or in the repair of the house, building or improvement, or in the construction or improvement of the railroad or its property), owned, as affiant is informed and believes, by E. F., of ——— County, Texas, and that said labor was performed (or material furnished, or both) to (or for) said C. D. under and by virtue of his contract between affiant (or his principal) and said C. D. (And in case of material furnished, affiant shall further swear that he has given to the owner, his agent or representative or receiver, notice in writing of each item of said account as required in this chapter as the same was furnished to said C. D.) [Id.]

Art. 5457. [5626–7] [3299–3300] Description of property.—In case the contract is filed and recorded as provided for in Section 1 and 2 of Article 5453, a like description of the house, building or improvement, and the lot or tract of land, shall accompany the same, as is required in the foregoing forms, except that the same is not required to be under oath. When a contract or account is filed and recorded, it shall be deemed sufficient diligence to fix and secure this lien. [Acts 1889, p. 110.]

Art. 5458. [5627] [3300] What included on property in city and country.—If this lien is against land in a city, town or village, it shall extend to or into the lot or lots upon which such house, building or improvement is situated, or upon which such labor was performed; and if the lien is against land in the country, it shall extend to and include fifty acres upon which such house, building or improvements are situated, or upon which such labor has been performed; and, if the lien is against a railroad company, it shall extend to and include all of its property. [Acts 1889, p. 110; Acts 1895, p. 194.]

Art. 5459. [5628] [3301] Priority of lien.—The lien herein provided for shall attach to the house, building, improvements or railroad for which they were furnished or the work was done, in preference to any prior lien or encumbrance or mortgage upon the land upon which the houses, buildings or improvements, or railroad have been put, or labor performed, and the person enforcing the same may have such house, building or improvement, or any piece of the railroad property, sold separately; provided, any lien, encumbrance or mortgage on the land or improvement at the time of the inception of the lien herein provided for shall not be affected thereby, and holders of such liens need not be made parties in suits to foreclose liens herein provided for. [Id.]

Art. 5460. [5631] [3304] Lien on homestead.—When material is furnished, labor performed, or improvements as defined in this title are made, or when erections or repairs are made upon homesteads, if the owner thereof is a married man, then to fix and secure the lien upon the same it shall be necessary for the person or persons who furnish the material or perform the labor, before such material is furnished or such labor is performed, to make and enter into a contract in writing, setting forth the terms thereof, which shall be signed by the owner and his wife, and privily acknowledged by her, as is required in making sale of homestead. And such contract shall be recorded in the office of the county clerk in the county where such homestead is situated, in a well bound book to be kept for that purpose. When such contract has been made and entered into by the husband and wife and the contractor or builder, and the same has been

recorded, as heretofore provided, then the same shall inure to the benefit of any and all persons who shall furnish material or labor thereon for such contractor or builder. [Acts 1889, p. 110; G. L. vol. 9, p. 1138; Acts 1917, p. 383.]

Art. 5461. [5632] [3305] Notice of sub-contractor or laborer to owner of property.—Every person, except the original contractor or builder, or those claiming under Section 3 of Article 5453 who may wish to avail himself of the benefits of this law, shall give at least ten days' notice in writing before the filing of the lien, as herein required, to the owner or owners or agent, that he holds a claim against such house, building or improvement, setting forth the amount, and from whom the same is due; and thereafter said owner, or owners, or agent, shall be authorized to retain in his hands the amount claimed until the same is settled or determined not to be owing. [Acts 1889, p. 110.]

Art. 5462. [5633] [3306] Diligence, what is sufficient.—A compliance with the provisions of the preceding article shall be deemed sufficient diligence to fix the liability of the owner of such house, building or improvement for the payment of such demand, subject to the subsequent provisions of this law. [Id.]

Art. 5463. [5635] [3308] Contractor to defend suits.—When a lien is filed under a provision of this chapter by any person other than the original contractor or builder, the original contractor shall defend the action brought thereupon, at his own expense; and, the owner may detain the amount of money for which such lien is filed and in case of judgment against the owner or his property upon the lien, he shall be entitled to deduct from the amount due the contractor the amount of said judgment and costs; and if he shall have settled with the contractor or builder in full, he shall be entitled to recover from the contractor or builder any amount so paid for which the contractor or builder was originally liable. But the owner shall in no case be required to pay, nor his property be liable for, any money that he may have paid to the contractor before the fixing of the lien or before he has received written notice of the existence of the debt. [Acts 1889, p. 110; G. L. vol. 9, p. 1138.]

Art. 5464. [5635] [3308] Preference lien.—All sub-contractors, laborers and material men shall have preference over other creditors of the principal contractor or builder. [Id.]

Art. 5465. [5635] [3308] Copy of bill furnished to owner.—A copy of each bill of lumber furnished to the contractor or builder as the same is furnished shall be delivered to the owner of said homestead, said bill specifying each item so furnished, how much is paid thereon, and what is due for lumber or material furnished for said contract prior thereto. [Id.]

Art. 5466. [5635] [3308] Relinquishment entered.—When the debt is paid under the contract for such building or improvements, the party for whose interest the contract was recorded shall enter a relinquishment showing a full compliance of said contract to the extent of all money due them from the original contractor or builder on account of labor done or material furnished; and the money due said original contractor or builder from the person owning or having improvements made shall not be garnisheed by other creditors to the prejudice of such sub-contractors, mechanics, laborers or material men. [Acts 1889, p. 110; G. L. vol. 9, p. 1138.]

Art. 5467. [5636] [3309] Accrual of indebtedness.—When labor is performed by the day or week, then the indebtedness shall be deemed to have accrued at the end of each week during which labor is performed. When material is furnished, the indebtedness shall be deemed to have accrued at the date of the last delivery of such material, unless there is an agreement to pay for such material at a specified time. [Acts 1889, p. 110; G. L. vol. 9, p. 1138.]

Art. 5468. [5637] [3310] Equality of liens.—Except as provided in the succeeding article, the liens for work and labor done or material furnished, as provided in this chapter, shall be upon an equal footing without reference to date or filing the account or lien. In case of foreclosure, if the proceeds of the sale of any property described in any account or lien are insufficient to discharge all the liens against the same, such proceeds shall be paid pro rata on the respective liens; provided, such accounts or liens shall have been filed and suit brought as provided by this law. Nothing in this law shall in any manner affect the contract between the owner and original contractor as to the amount, manner or time of payment of said contract price. [Id.]

Art. 5469. [5638] Mechanic's fund.—Whenever any mechanic or artisan shall perform any labor or service for any contractor, sub-contractor, agent or receiver, in the erection or repair of any house, building, fixture or improvement, or as a necessary incident in connection with such work of construction or repair, such owner, or agent or receiver shall retain in his hands during the progress of such work and for thirty days after the completion thereof, to secure the payment of said artisans and mechanics, ten per cent of the contract price of such building, fixture or improvement, or the repair thereof, or ten per cent of the value of such building, fixture or improvement, or the repair thereof, measured by the proportion that the work done bears to the work to be done thereon, and using the contract price or the reasonable value of the completed building, fixture or improvement, or the repair thereof, as a basis of computation of value. All mechanics or artisans who may file a mechanic's lien upon said building, fixture or improvement so made or erected or repaired in accordance with the law applying thereto, shall have ratably among themselves, a preference lien upon said fund so retained in the hands of such owner, or agent, or receiver. If such owner, receiver or agent refuses or fails to comply with the provisions of this law, the mechanics and artisans performing work thereon and in connection therewith, who may file liens thereon in accordance with law, shall have ratably among themselves preference liens, to be preferred above all other liens and claims whatsoever upon such house, building, structure, fixture, or improvement, and all its properties, and on the lot or lots of land necessarily connected therewith to secure payment for such labor thereon. [Acts 1909, p. 184.]

Art. 5470. [5639] [3311] Release.—All parties who are authorized under this law to file a lien, and have done so, and had such lien recorded, shall, when such lien is paid or satisfied, or have received their proper lienable parts for which the owner of the building would be liable under this law, shall record a relinquishment and satisfaction of such lien. [Acts 1876, p. 91; G. L. vol. 8, p. 927; Acts 1889, p. 110; G. L. vol. 9, p. 1138.]

Art. 5471. [5629] [3302] Separate sales.—When the house, building, improvement, or any piece of the railroad's property is sold separately, the officer making the sale shall place the purchaser in possession thereof; and such purchaser shall have the right to remove the same within a reasonable time from the date of purchase. [Acts 1889, p. 110; G. L. vol. 9, p. 1138; Acts 1895, p. 194; G. L. vol. 10, p. 924.]

Art. 5472. [5630] [3303] Requisites of sale.—Every sale must be upon judgment rendered by some court of competent jurisdiction foreclosing such lien and ordering sale of such property. [Acts 1889, p. 110; G. L. vol. 9, p. 1138.]

Art. 5472a. Lien for material furnished public contractor.—That any person, firm or corporation, or trust estate, furnishing any material, apparatus, fixtures, machinery or labor to any contractor for any public improvements in this State, shall have a lien on the moneys, or bonds, or warrants, due or to become due to such contractors for such improvements; provided, such person, firm, corporation, or stock association, shall, before any payment is made to such contractor, notify in writing the officials of the State, county, town or municipality whose duty it is to pay

such contractor of his claim. [Acts 1925, 39th Leg., ch. 17, p. 44, § 1.]

Art. 5472b. Retention of funds.—That no public official, when so notified in writing, shall pay all of said moneys, bonds or warrants, due said contractor, but shall retain enough of said moneys, bonds or warrants to pay said claim, in case it is established by judgment in a court of proper jurisdiction. [Acts 1925, 39th Leg., ch. 17, p. 44, § 2.]

CHAPTER THREE

OIL AND MINERAL PROPERTY

Art.
5473. Contractor's lien.
5474. Sub-contractor's lien.
5475. Priority of lien.
5476. Proceedings to fix lien.
5477. Sale or removal of property.
5478. Extent of liability of owner.
5479. Remedy cumulative.

Article 5473. Contractor's lien.—Any person, corporation, firm, association, partnership, materialman, artisan, laborer or mechanic, who shall, under contract, express or implied, with the owner of any land, mine or quarry, or the owner of any gas, oil or mineral leasehold interest in land, or the owner of any gas pipe line or oil pipe line, or owner of any oil or gas pipe line right of way, or with the trustee, agent or receiver of any such owner, perform labor or furnish material, machinery or supplies, used in digging, drilling, torpedoing, operating, completing, maintaining or repairing any such oil or gas well, water well, mine or quarry, or oil or gas pipe line, shall have a lien on the whole of such land or leasehold interest therein, or oil pipe line or gas pipe line, including the right of way for same, or lease for oil and gas purposes, the buildings and appurtenances, and upon the materials and supplies so furnished, and upon said oil well, gas well, water well, oil or gas pipe line, mine or quarry for which the same are furnished, and upon all of the other oil wells, gas wells, buildings and appurtenances, including pipe line, leasehold interest, and land used in operating for oil, gas and other minerals, upon such leasehold or land or pipe line and the right of way therefor, for which said material and supplies were furnished or labor performed. Provided, that if labor, supplies, machinery, or material is furnished to a leaseholder, the lien hereby created shall not attach to the underlying fee title to the land. [Acts 1917, p. 28.]

Art. 5474. Sub-contractor's lien.—Any person, corporation, firm, association, partnership or materialman who shall furnish such machinery, material or supplies to a contractor or sub-contractor or any person who shall perform such labor under a sub-contract with a contractor, or who as an artisan or day laborer in the employ of such contractor or sub-contractor shall perform any such labor, shall have a lien upon all such property or interest described in the preceding article, including right of way, for which said material and supplies were furnished and labor performed, in the same manner and to the same extent as the original contractor, for the amount due him for material furnished or labor performed. [Id.]

Art. 5475. Priority of lien.—The lien herein provided for shall attach to the machinery, material, supplies and the specific improvements made, in preference to any prior lien or encumbrance or mortgage upon the land or leasehold interest upon which the said machinery, material, supplies or specific improvements are placed or located, provided, however, that any lien, encumbrance, or mortgage upon the land or leasehold interest at the time of the inception of the lien herein provided for shall not be affected thereby, and the holders of such liens upon such land or leasehold interest shall not be necessary parties in suits to foreclose the liens hereby created. [Id.]

Art. 5476. Proceedings to fix lien.—The liens herein created shall be fixed and secured and notice thereof shall be given and such liens shall attach and be enforced in the same manner, and the materialman's statement, or the lien of any laborer herein mentioned shall be filed and recorded within the same time and in the same manner as provided for in the preceding chapter. Whenever any person shall remove any such property to a county other than the one in which the lien has been filed, the lien holder may within ninety days thereafter file an itemized inventory of the property so removed showing the amount due and unpaid thereon, with the clerk of the county to which it has been removed, which shall be recorded in the materialman's lien records of such county, and such filing shall operate as notice of the existence of the lien and the lien shall attach and extend to the land or leasehold and other premises, properties and appurtenances to which said properties so removed shall attach, of the kind and character enumerated in Article 5473. [Id.]

Art. 5477. Sale or removal of property.—When the lien herein provided for shall have attached to the property covered thereby, neither the owner of the land, nor the owner of said oil, gas or mineral leasehold interest therein, nor the owner of any gas or oil pipe line, nor the contractor, nor the sub-contractor, nor the purchaser, nor the trustee, receiver or agent, of any such owner, lessor, lessee, contractor, sub-contractor or purchaser shall either sell or remove the property subject to said lien or cause same to be removed from the land or premises upon which they were to be used, or otherwise sell or dispose of the same, without the written consent of the holder of the lien hereby created; and in case of any violation of the provisions of this article, the said lienholder shall be entitled to the possession of the property upon which said lien exists wherever found, and to have the same then sold for the payment of his debt, whether said debt has become due or not. [Id.]

Art. 5478. Extent of liability of owner.—Nothing in this chapter shall be construed to fix a greater liability against the owner of the land or leasehold interest therein than the price or sum stipulated to be paid in the contract under which such material is furnished, or labor performed. [Id.]

Art. 5479. Remedy cumulative.—The provisions of this law shall not be construed to deprive or abridge materialmen, artisans, laborers, or mechanics of any rights and remedies now given them by law, and the provisions of this law shall be cumulative of the present lien laws. [Id.]

CHAPTER FOUR

LIENS OF RAILROAD LABORERS

Art.
5480. Lien prescribed.
5481. Enforcement.
5482. Venue.

Article 5480. [5640–43] Lien prescribed.—All mechanics, laborers and operatives who may have performed labor, or worked with tools, teams or otherwise, in the construction, operation or repair of any railroad locomotive, car or other equipment of a railroad, and to whom wages are due or owing for such work, or for the work of tools or teams thus employed, or for work otherwise performed, shall have a lien prior to all others upon such railroad and its equipments for the amount due them for personal services, or for the use of tools or teams. Such lien shall cease to be operative in twelve months after its creation, if no steps are sooner taken to enforce it. [Acts 1887, p. 17; G. L. vol. 9, p. 815.]

Art. 5481. [5641] [3313] Enforcement.—In all suits for wages due by a railroad company for such labor, upon proof being satisfactorily made that such labor had been performed, either at the instance of said company, a contractor, or subcontractor or agent of said company, and that such wages are due, and the lien given by the preceding article is sought to be enforced, the court having jurisdiction shall try the same, render judgment for the amount of wages found to be due, and adjudge and order said railroad and equipments, or so much thereof as may be neces-

sary, to be sold to satisfy said judgment. In all suits of this kind, it shall not be necessary for the plaintiff to make other lienholders defendants hereto, but such lienholders may intervene and become parties thereto and have their respective rights adjusted and determined by the court. [Acts 1879, p. 8; G. L. vol. 8, p. 1308.]

Art. 5482. [5642] [3314] Venue.—Such suits may be brought in any county in this State where such labor was performed, or in which the cause of action or part thereof accrued or in the county in which the principal office of such railroad company is situated. [Id.]

CHAPTER FIVE

FARM, FACTORY AND STORE OPERATIVES

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5483. Lien prescribed.
5484. Newspaper office employees.
5485. Payment of wages.
5486. Liens, how fixed.
5487. Right of assignment.
5488. Duration of lien.

Article 5483. [5644] Lien prescribed.—Whenever any clerk, accountant, bookkeeper, artisan, craftsman, factory operator, mill operator, servant, mechanic, quarryman, or common laborer, farm hand, male or female, may labor or perform any service in any office, store, hotel, shop, factory, mine, quarry or mill of any character, or perform any service in the cutting, preparation, hauling, handling, or transporting to any mill, or other point for sale, manufacture or other disposition, logs or timber, or perform any service upon any wagon, cart, tram, or railroad, or other means or methods of transporting such logs or timber, and in the construction or maintenance of such tram or railroad, constructed or used for the transportation of logs or timber to or for such mills to its owner or operator, or to points for sale, shipment or other disposition, or any farm hands, under or by virtue of any contract or agreement, written or verbal, with any person, employer, firm or corporation, or his, her, or their agent, receiver or trustee, in order to secure the payment of the amount due or owing under such contract or agreement, written or verbal, the hereinbefore mentioned employees shall have a first lien upon all products, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, chattels, wagons, carts, tram roads, railroads, rolling stock, and appurtenances, or thing or things of value of whatsoever character that may be created in whole or in part by the labor or that may be used by such person or persons or necessarily connected with the performance of such labor or service, which may be owned by or in the possession or under the control of the aforesaid employer, person, firm, corporation, or his or their agent or agents, receiver or receivers, trustee or trustees, provided, that the lien herein given to a farm hand shall be subordinate to the landlord's lien provided by law. [Acts 1897, p. 218; Acts 1913, p. 151; G. L. vol. 10, p. 1272.]

Art. 5484. Newspaper office employees.—Whenever any newspaper worker in the editorial or reportorial department of any newspaper, publication or periodical, whether daily or otherwise, also any solicitor, clerk or other employee, in the advertising or business office of any newspaper publication or periodical, whether daily or otherwise, shall labor or perform any service in any of the departments or offices of such newspaper or periodical, under or by virtue of any contracts or agreements, written or verbal, with any person, employer, firm or corporation, or his, her or their agent, receiver or trustee, in order to secure the payment of the amount due by such contract or agreement, written or verbal, the hereinbefore mentioned employee shall have a first lien upon all products, papers, machinery, tools, fixtures, appurtenances, goods, wares, merchandise, subscription contracts, chattels, or things of value of whatsoever character that may be created in whole or in part by the labor of such persons, or necessarily connected with the performance of such labor or service, which may be owned by, or in possession of the aforesaid employer, person, firm, corporation, or his, her or their agent, receiver or trustee. [Acts 1917, p. 324.]

Art. 5485. [5646] Payment of wages.—Under the operation of this law, all wages, if service is by agreement performed by the day or week, shall be due and payable weekly, or if by the month, shall be due and payable monthly; all payments to be made in lawful money of the United States. [Acts 1897, p. 218; G. L. vol. 10, p. 1272.]

Art. 5486. [5645] Liens, how fixed.—Whenever any person, employer, firm, corporation, his, her or their agent or agents, receiver or receivers, trustee or trustees, shall fail or refuse to make payments as hereinafter prescribed in this law, the said clerk, accountant, bookkeeper, farm hand, artisan, craftsman, operative, servant, mechanic, quarryman, or laborer, who shall have performed service of any character, shall make or have made duplicate accounts of such service, with amount due him or her for the same, and present, or have presented, to aforesaid employer, person, firm or corporation, his, her, or their agent or agents, receiver or receivers, trustee or trustees, one of the aforesaid duplicate accounts within thirty days after the said indebtedness shall have accrued. The other of the said duplicate accounts shall, within the time hereinbefore prescribed, be filed with the county clerk of the county in which said service was rendered, and shall be recorded by the county clerk in a book kept for that purpose. The party or parties presenting the aforesaid account shall make affidavit as to the correctness of the same. A compliance with the foregoing requirements in this article shall be necessary to fix and preserve the lien given under this law; and the liens of different persons shall take precedence in the order in which they are filed; provided, that all persons claiming the benefit of this law shall have six months within which to bring suit to foreclose the aforesaid lien; and provided, further, that a substantial compliance with the provisions of this article shall be deemed sufficient diligence to fix and secure the lien hereinbefore given; provided, that any purchaser of such products from the owner thereof shall acquire a good title thereto, unless he has at the time of the purchase actual or constructive notice of the claim of such lienholder upon such products, said constructive notice to be given by record of such claim, as provided for in this law, or by suit filed. [Acts 1897, p. 218.]

Art. 5487. [5647] Right of assignment.—Any party entitled to such lien may transfer or assign his rights hereunder, and his assignee or assignees shall have the same rights and privileges as are conferred upon him. [Id.]

Art. 5488. [5648] Duration of lien.—The lien created by this chapter shall cease to be operative after six months after the same is fixed, unless suit is brought within said time to enforce said lien. [Id.]

CHAPTER SIX

CHATTEL MORTGAGES

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5490. Chattel mortgages.
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5496. Property not to be removed.
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5499. Destruction of chattel mortgages.

Article 5489. [5654] [3327] Vendor's security.—All reservation of the title to or property in chattels, as security for the purchase money thereof, shall be held to be chattel mortgages, and shall, when possession is delivered to the vendee, be void as to creditors and bona fide purchasers, unless such reservations be in writing and registered as required of chattel mortgages. Nothing in this law shall be con-

strued to contravene the landlord and tenant law. [Acts 1885, p. 76; G. L. vol. 9, p. 696.]

Art. 5490. Chattel mortgages.—Every chattel mortgage, deed of trust, or other instrument of writing, intended to operate as a mortgage, or lien upon personal property, and every transfer thereof which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the property mortgaged, pledged, or affected by such instrument, shall be absolutely void as against the creditors of the mortgagor or person making same, as against subsequent purchasers and mortgagees or lien holders in good faith, unless such instrument, or a true copy thereof, shall be forthwith deposited with and filed in the office of the county clerk of the county where the property shall then be situated, or if the mortgagor or person making the same be a resident of this State, then, of the county of which he shall at that time be a resident; provided, that written contracts for the conditional sale, lease or hire of railroad equipment and rolling stock, by which the purchase money is therein agreed to be paid at any time or times after the date of such contract, with a reservation of title or lien in the vendor, lessor or bailor until the same has been fully paid, shall be recorded in the office of the Secretary of State, in a book of records to be kept by him for that purpose; and on payment in full of the purchase money and the performance of the terms and conditions stipulated in any such contract, a declaration in writing to that effect may be made by the vendor, lessor or bailor, or his or its assignee, which declaration may be made on the margin of the record of the contract, duly attested, or it may be made by a separate instrument to be acknowledged by the lessor, vendor or bailor, or his or its assignee, and recorded as aforesaid; and for such services the Secretary of State shall be entitled to a fee of five dollars for recording each of said contracts and each of said declaration [declarations], and a fee of one dollar for entering such declaration on the margin of the record.

Art. 5491. Combined with Article 5490.

Art. 5492. [5656] [3329] Duty of clerk.—Upon the receipt of such instrument, the clerk shall indorse thereon the day and hour when the same was deposited in his office for record, and shall keep the same on file in his office for the inspection of all parties interested until satisfaction thereof shall be entered, as provided for in this chapter. If a copy be presented to the clerk for filing, instead of the original instrument, he shall carefully compare such copy with the original, and the same shall not be filed unless it is a true copy thereof, and unless the original has been witnessed by two subscribing witnesses or acknowledged or proven for record and certified as required in case of other instruments for the purpose of being recorded. [Sen. Jour. 1895, p. 479.]

Art. 5493. [5657] [3330] Copy of instrument: evidence.—A certified copy of any such instrument so filed as aforesaid, certified to under the hand and seal of said clerk, shall be admitted in evidence in like manner as the original might be, unless the execution of the original has been denied under oath by the party sought to be charged thereby. The party desiring to use such instrument shall file the same in the papers of the cause before announcing ready for trial, and not afterwards. Such certified copy shall in all cases be received as evidence of filing and entry thereof in the chattel mortgage record according to the indorsement of the clerk thereon. [Id., p. 480.]

Art. 5494. [5658] Chattel mortgage record.—The county clerk shall keep a book in which shall be entered a minute of all such instruments, which shall be ruled off into separate columns, with heads as follows: Time of reception, name of mortgagor, name of mortgagee or trustee and cestui que trust, date of instrument, amount secured, when due, property mortgaged, and remarks; and the proper entry shall be made under each of such heads. Under the head of "property mortgaged" it will be sufficient to enter a general description of the property pledged and the particular place where located, and an index shall be kept in the manner as required for other records. When the instrument is the transfer of a lien the county clerk shall enter on the margin, or under the head "remarks" in connection with the original record of registration of such lien, a notation, "transferred by ——— to ——— this ——— day of ———, 19—," filling the blanks with the names of the parties and the date of such transfer, and note the date it is filed for registration. Provided, however, that the failure of the transferee of any note or lien to have the records so noted shall not operate as a release of the lien then in existence in any manner whatsoever to affect the validity of said lien or to operate so as to give the transferee of said note or lien any less rights than those held by the original payee in the note. [Acts 1925, p. 368.] [39th Leg., ch. 157, § 2.]

Art. 5495. [5659] [3332] Satisfaction to be entered.—When the debt secured by any such instrument has been paid or satisfied, the mortgagee, his assignee, attorney or legal representative shall enter or cause to be entered, and attested by the clerk, as aforesaid, satisfaction thereof, in the record book in which the instrument is entered, which may be done under the head of "remarks." Any instrument acknowledging payment or satisfaction need not be recorded at length, but the entry as above provided showing the same has been paid shall be sufficient, and the original instrument or copy thereof on file shall then be delivered to the mortgagor or maker upon demand, or the clerk may mail the same to him. [Id.]

Art. 5496. [5660] [3333] Property not to be removed.—The person making any such instrument shall not remove the property pledged from the county, nor otherwise sell or dispose of the same, without the consent of the mortgagee; and in case of any violation of the provisions of this article, the mortgagee shall be entitled to the possession of the property, and to have the same then sold for the payment of his debt, whether the same has become due or not. [Id.]

Art. 5497. [5661] [3334] Effect of registration.—Chattel mortgages and other instruments intended to operate as mortgages or liens upon personal property shall not be recorded at length, and all persons shall be thereby charged with notice thereof, and of the rights of the mortgagee, his assignee or representatives thereunder. [Acts 1879, p. 134; Acts 1917, p. 361; G. L. vol. 8, p. 1434.]

Art. 5498. [5661] [3334] Record of chattels on realty.—When any machinery or other manufactured article is susceptible of being attached to the realty in such a way as to become a fixture thereto and is located upon real estate in such manner as the same may be deemed a fixture thereto, and at the time of its location upon such real estate there is a lien or mortgage evidenced by written instrument or any instrument reserving title in such machinery or other manufactured article to secure an indebtedness thereon, executed by the purchaser or owner of such machinery or other manufactured article at the time of its location on such real estate, and the instrument evidencing said lien, mortgage or reservation of title contains a description of said machinery or other manufactured article, as well as the real estate upon which it is to be located or situated, reasonably sufficient to identify said real estate, and such instrument is registered under the provisions of this Act, then the registration of such instrument evidencing said lien, mortgage, or reservation of title as provided for by this Act, shall be notice to all persons thereafter dealing with or acquiring any right or interest in said machinery or other manufactured article, or the realty upon which the same is located or other improvements or property situated on said real estate, of all of the rights of the owners or holders of the indebtedness secured by said instrument the same as if recorded at length in the deed records or records of mortgages upon realty of the county where the real estate is situated, and such lien, mortgage or reservation of title upon or to such machinery or other manufactured

article shall be as to such machinery and other manufactured article superior to any lien or rights existing in any one to said real estate or other improvements or other property located and situated thereon existing at the time of the location of said machinery or other manufactured article thereon, but nothing herein contained shall be held to give the holder of such lien, mortgage or reservation of title any right to or claim upon the real estate save and except the right to establish and foreclose his lien, mortgage or reservation of title upon such machinery or other manufactured article, and to enforce his rights thereto under the instrument evidencing his lien, mortgage or reservation of title, as in other cases of liens upon personal property hereunder. All such instruments shall be endorsed on the back thereof, to wit, "Liens on machinery situated on realty," and shall be registered in the county where the real estate is located in the manner as other chattel mortgages except that there shall be kept, indexed and recorded, as now herein provided for chattel mortgages, a separate book to be endorsed "chattel mortgage records on realty." The record thereof shall in addition to the other requirements of this Act contain a brief description of said real estate to which said fixtures are to be attached. [Acts 1879, p. 134; Acts 1917, p. 361; G. L. vol. 8, p. 1434.]

Art. 5499. [5662] Destruction of chattel mortgages.—All chattel mortgages filed with the county clerks of this State in accordance with law shall be prima facie presumed to have been paid after the expiration of six years from the date of the maturity of the debts such mortgages were intended to secure, unless the owner or holder of such mortgages, his agent or attorney, shall, within three months next before the expiration of said time, file an affidavit in writing with the county clerk stating that such debt has not been paid, and the amount still due thereon. If such affidavit is not filed, the clerk shall, at the expiration of said time, either deliver such mortgage to the maker or destroy the same. [Acts 1907, p. 272.]

CHAPTER SEVEN

OTHER LIENS

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5502. Livery stables, etc.
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5504. Sale of property.
5505. Unclaimed proceeds.
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Article 5500. [5650–51] Lien on vessels.—Every person who may furnish supplies or materials, or do repairs or labor for or on account of any domestic vessel, owned in whole or in part in this State, shall have a lien on such vessel, her tackle, apparel, furniture and freight money for the security and payment of the same. The provisions of this article shall not be construed to alter or affect in any way the general law regulating the liens of seamen on foreign vessels. [Acts Feb. 3, 1848; P. D. 4600, 4601; G. L. vol. 3, p. 22.]

Art. 5501. [5652–53] Stock breeder's lien.—The owner or keeper of any stallion, jack, bull or boar, who keeps the same confined for the purpose of standing him for profit, shall have a preference lien upon the progeny of such stallion, jack, bull or boar to secure the payment for the amount due such owner or keeper for the services of such stallion, jack, bull or boar, and such lien shall exist by reason of the force and effect of the provisions hereof, and it shall never be necessary in order to secure and fix said lien to secure, file or register any contract or statement thereof with any officer, nor shall it be necessary that the owner of such progeny execute any contract whatever, but such preference lien may be foreclosed in the same manner as the statutory landlord's lien is by law enforced; provided, that where parties misrepresent their stock by false pedigree, no lien shall obtain. Said lien shall remain in force for a period of ten months from the birth of said progeny, but shall not be enforced until five months shall have elapsed after such birth. [Acts 1889, p. 115; Acts 1905, p. 24; G. L. vol. 9, p. 1143.]

Art. 5502. [5664] [3319] Livery stables, etc.—Proprietors of livery or public stables shall have a special lien on all animals placed with them for feed, care and attention, as also upon such carriages, buggies or other vehicles as may have been placed in their care, for the amount of the charges against the same; and this article shall apply to and include owners or lessees of pastures, who shall have a similar lien on all animals placed with them for pasturage. [Acts 1874, p. 200; Acts 1895, p. 96; G. L. vol. 8, p. 202; G. L. vol. 10, p. 826.]

Art. 5503. [5665–6] Mechanics may retain property.—Whenever any article, implement, utensil or vehicle shall be repaired with labor and material, or with labor and without furnishing material by any carpenter, mechanic, artisan, or other workman in this State, such carpenter, mechanic, artisan, or other workman is authorized to retain possession of said article, implement, utensil, or vehicle until the amount due on same for repairing by contract shall be fully paid off and discharged. In case no amount is agreed upon by contract, then said carpenter, mechanic, artisan, or other workman shall retain possession of such article, implement, utensil or vehicle, until all reasonable, customary and usual compensation shall be paid in full. [Acts 1874, p. 68; P. D. 711a; G. L. vol. 8, p. 70.]

Art. 5504. [5667–8] Sale of property.—When possession of any of the property embraced in the preceding article has continued for sixty days after the charges accrue, and the charges so due have not been paid, it shall be the duty of the persons so holding said property to notify the owner, if in the State and his residence be known, to come forward and pay the charges due, and on his failure within ten days after such notice has been given him to pay said charges, the persons so holding said property, after twenty days notice, are authorized to sell said property at public sale and apply the proceeds to the payment of said charges, and shall pay over the balance to the person entitled to the same. If the owner's residence is beyond the State or is unknown, the person holding said property shall not be required to give such notice before proceeding to sell. [Id.]

Art. 5505. [5669–70] Unclaimed proceeds.—If the person who is legally entitled to receive the balance mentioned in this chapter is not known, or has removed from the State or from the county in which such repairing was done, or such property was so held, the person so holding said property shall pay the balance to the county treasurer of the county in which said property is held and take his receipt therefor. Whenever such balance shall remain in the possession of the county treasurer for the period of two years unclaimed by the party legally entitled to the same, such balance shall become a part of the county fund of the county in which the property was sold, and shall be applied as any other county fund or money of such county is applied or used. [Id.]

Art. 5506. [5671] [3326] Other liens not affected.—Nothing in this title shall be construed or considered as in any manner impairing or affecting the right of parties to create liens by special contract or agreement, nor shall it in any manner affect or impair other liens arising at common law or in equity, or by any statute of this State, or any other lien not treated of under this title.

TITLE 91

LIMITATIONS

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1. LIMITATIONS OF ACTIONS FOR LANDS

Article 5507. [5672] [3340] [3191] Three years' possession.—Suits to recover real estate, as against a person in peaceable and adverse possession thereof under title or color of title, shall be instituted within three years next after the cause of action accrued, and not afterward. [Acts 1841, p. 119; P. D. 4622; G. L. vol. 2, p. 621.]

Art. 5508. [5673] [3341] [3192] "Title" and "color of title" defined.—By the term "title" is meant a regular chain of transfers from or under the sovereignty of the soil, and by "color of title" is meant a consecutive chain of such transfers down to such person in possession, without being regular, as if one or more of the memorials or muniments be not registered, or not duly registered, or be only in writing, or such like defect as may not extend to or include the want of intrinsic fairness and honesty; or when the party in possession shall hold the same by a certificate of headright, land warrant, or land scrip, with a chain of transfer down to him in possession. [Id.]

Art. 5509. [5674] [3342] [3193] Five years' possession.—Every suit to recover real estate as against a person having peaceable and adverse possession thereof, cultivating, using or enjoying the same, and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after cause of action shall have accrued, and not afterward. This article shall not apply to one in possession of land, who deraigns title through a forged deed. And no one claiming under a forged deed, or deed executed under a forged power of attorney shall be allowed the benefits of this article. [Id., Acts 1879, p. 132; G. L. vol. 8, p. 1432.]

Art. 5510. [5675–5676] [3343] Ten years' possession.—Any person who has the right of action for the recovery of lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward. The peaceable and adverse possession contemplated in this article, as against the person having right of action, shall be construed to embrace not more than one hundred and sixty acres, including the improvements or the number of acres actually enclosed, should the same exceed one hundred and sixty acres; but when such possession is taken and held under some written memorandum of title, other than a deed, which fixes the boundaries of the possessor's claim and is duly registered, such peaceable possession shall be construed to be co-extensive with the boundaries specified in such instrument. [Id.; P. D. 4621–24.]

Art. 5511. [5677] [3345] Land surrounded by other lands.—A tract of land owned by one person, entirely surrounded by a tract or tracts owned, claimed or fenced by another, shall not be considered inclosed by a fence inclosing the circumscribing tract or tracts, or any part thereof; nor shall the possession by the owner or claimant of such circumscribing land of such interior tract be the peaceable and adverse possession contemplated by Article 5510 unless the same be segregated and separated from the circumscribing land by a fence, or unless at least one-tenth thereof be cultivated and used for agricultural purposes, or used for manufacturing purposes. [Acts 1891, p. 76; G. L. vol. 10, p. 78.]

Art. 5512. [5678] [3346] Possession by adjacent owner.—Possession of land belonging to another by a person owning or claiming five thousand acres or more of lands inclosed by a fence in connection therewith, or adjoining thereto, shall not be the peaceable and adverse possession contemplated by Article 5510 unless said land so belonging to another shall be segregated and separated by a substantial fence from said lands connected therewith or thereto adjoining or unless at least one-tenth thereof shall be cultivated and used for agricultural purposes or used for manufacturing purposes, or unless there be actual possession thereof. [Id.]

Art. 5513. [5679] [3347] [3196] Title by possession.—Whenever an action for the recovery of real estate is barred by any provision of this title, the person having such peaceable and adverse possession shall be held to have full title, precluding all claims.

Art. 5514. [5680] [3348] [3197] "Peaceable possession."—"Peaceable possession" is such as is continuous and not interrupted by adverse suit to recover the estate. [Acts 1841, p. 163; P. D. 4621; G. L. vol. 2, p. 627.]

Art. 5515. [5681] [3349] [3198] "Adverse possession."—"Adverse possession" is an actual and visible appropriation of the land, commenced and continued under a claim of right inconsistent with and hostile to the claim of another.

Art. 5516. [5682] [3350] [3199] Possession by different persons.—Peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them.

Art. 5517. [5683] [3351] [3200] Right of the State.—The right of the State shall not be barred by any of the provisions of this title, nor shall any person ever acquire, by occupancy or adverse possession, any right or title to any part or portion of any road, street, sidewalk or grounds which belong to any town, city or county, or which have been donated or dedicated for public use to any such town, city or county by the owner thereof, or which have been laid out or dedicated in any manner to public use in any town, city, or county in this State; provided, this law shall not apply to any alley laid out across any block or square in any city or town. [Id.; P. D. 4622–4; Acts 1887, p. 28; G. L. vol. 9, p. 826.]

Art. 5518. [5684] [3352] Person under disability.—If a person entitled to sue for the recovery of real property or make any defense founded on the title thereto, be at the time such title shall first descend or the adverse possession commence:

1. A person, including a married woman, under twenty-one years of age, or

2. In time of war, a person in the military or naval service of the United States, or

3. A person of unsound mind, or

4. A person imprisoned, the time during which such disability or status shall continue shall not be deemed any portion of the time limited for the commencement of such suit, or the making of such defense; and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title; provided, that notwithstanding a person may be or may have been laboring under any of the disabilities mentioned in this article, one having the right of action for the recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using or enjoying same, shall institute his suit therefor within twenty-five years next after his cause of action shall have accrued and not thereafter. [Acts 1841, p. 163; P. D. 4621–4; Acts 1895, p. 35; Acts 1919, 2nd C. S., p. 139; G. L. vol. 2, p. 627; G. L. vol. 10, p. 765.]

Art. 5519. [5684a] [3352] Action barred in twenty-five years.—No person who has a right of action for the recovery of real estate shall be permitted to maintain an action therefor against any person having peaceable and adverse possession of such real estate for a period of twenty-five years prior to the filing of such action, under claim of right, in good faith, under a deed or deeds, or any instrument or instruments, purporting to convey the same, which deed or deeds or instrument or instruments purporting to convey the same have been recorded in the deed records of the county in which the real estate or a part thereof is situated; and one so holding and claiming such real estate under such claim of title and possession shall be held to have a good marketable title thereto, and on proof of the above facts shall be held to have established title by limitation to such real estate regardless of coverture, minority, insanity or other disability in the adverse claimant, or any person under whom such adverse claimant claims, existing at the time of the accrual of the cause of action, or at any time thereafter. Such peaceable and adverse possession need not be continued in the same person, but when held by different persons successively there must be a privity of estate between them. The adverse possession of any part of such real estate shall extend to and be held to include all of the property described in such deed or instrument conveying or purporting to convey, under which entry was made upon such land or any part thereof, and by instrument purporting to convey shall be meant any instrument in the form of a deed or which contains language showing an intention to convey even though such instrument, for want of proper execution or for other cause is void on its face or in fact. [Acts 1919, 2nd C. S., p. 139; Acts 1927, 40th Leg., p. 369, ch. 250, § 1.]

Art. 5520. [5694] Actions by vendors.—There shall be commenced and prosecuted within four years after the cause of action has accrued and not afterward, all actions of the following description:

1. Actions to recover real estate by virtue of a superior title retained by the vendor in a deed of conveyance or purchase money note.

2. Actions for the foreclosure of the vendor's lien on real estate. [Acts 1905, p. 334; Acts 1913, p. 250.]

Art. 5521. [5694] Presumption of payment.—Purchase money or mortgage lien notes relating to real estate shall conclusively be presumed to have been paid after four years from the date of maturity of such notes unless extended as provided by law. [Id.]

Art. 5522. [5695] Lien continued in force.—When the date of maturity of either debt referred to in either of the foregoing articles is extended, if the contract of extension is signed and acknowledged as provided for in the law relating to the execution of deeds of conveyance by the party or parties obligated to pay such indebtedness as extended and filed for record in the county clerk's office in the county in which the land is situated, the lien shall continue and be in force until four years after maturity of the notes as provided in such extension, the same as in the original contract and the lien shall so continue for any succeeding or additional extension so made and recorded. The date of maturity set forth in the deed of conveyance or deed of trust or mortgage, or the recorded renewal and extension of the same, shall be conclusive evidence of the date of maturity of the indebtedness therein mentioned. Provided the owner of the land and the holder of the note or notes may at any time enter into a valid agreement renewing and extending the debt and lien, so long as it does not prejudice the rights of lien holders or purchasers subsequent to the date such liens became barred of record under laws existing prior to the taking effect of, or under this Act; as to all such lien holders or purchasers any renewal or extension executed or filed for record after the note or notes and lien or liens were, or are, barred of record and before the filing for record of such renewal or extension, such renewal or extension shall be void. [Acts 1925, p. 216.] [39th Leg., ch. 64, § 2.]

Art. 5523. [5693] Limitation as to deeds of trust, etc.—No power of sale conferred by a deed of trust or other mortgage on real estate executed subsequent to the 14th day of July, 1905, and prior to the 1st day of July, 1913, shall be enforced after the expiration of ten years from the maturity date of the indebtedness secured thereby, and no power of sale conferred by any deed of trust or other mortgage on real estate executed on or subsequent to the 1st day of July, 1913, or that may hereafter be executed, shall be enforced after the expiration of four years from the maturity of the indebtedness secured thereby, and any such sale under such powers after the expiration of such times, shall be void, and such sale may be enjoined and the lien created in any such deeds of trust or mortgages as were executed subsequent to the 14th day of July, 1905, and prior to the 1st day of July, 1913, shall cease to exist ten years after the maturity date of the debt secured thereby, and as to all deeds of trust or mortgages as were executed on or subsequent to the 1st day of July, 1913, or that may hereafter be executed, the lien created thereby shall cease to exist four years after the maturity of the debt secured thereby; provided, if several obligations are secured by said mortgage or deed of trust, the same may be enforced at any time prior to four years after the note or obligation last maturing has matured and may be enforced as to all notes and obligations not then barred by the four years statute of limitations; provided, the lien created by such deeds of trust or other mortgages may be extended by an agreement in writing acknowledged by the parties thereto and filed and recorded in the manner provided for the acknowledgment and record of conveyance of real estate.

2. LIMITATION OF PERSONAL ACTIONS

Art. 5524. [5685] [3353] [3202] Actions to be commenced in one year.—There shall be commenced and prosecuted within one year after the cause of action shall have accrued, and not afterward, all actions or suits in courts of the following description:

1. Actions for malicious prosecution or for injuries done to the character or reputation of another by libel or slander.

2. Actions for damages for seduction, or breach of promise of marriage. [Acts 1897, p. 12; Act Feb. 5, 1841; Acts Feb. 2, 1860; G. L. vol. 2, p. 627; G. L. vol. 10, p. 1066.]

Art. 5525. [5686] Survival of cause of action.—All causes of action upon which suit has been or may hereafter be brought for personal injuries, or for injuries resulting in death, whether such injuries be to the health or to the reputation, or to the person of the injured party, shall not abate by reason of the death of the person against whom such cause of action shall have accrued, nor by reason of

the death of such injured person, but, in the case of the death of either or both, all such causes of action shall survive to and in favor of the heirs and legal representatives and estate of such injured party and against the person, or persons liable for such injuries and his or their legal representatives, and may be instituted and prosecuted as if such person or persons against whom same accrued were alive. [Acts 1925, p. 299.] [39th Leg., ch. 115, § 2; Acts 1927, 40th Leg., p. 356, ch. 239, § 1.]

Art. 5526. [5687–98] [3354–63] [3203–12] Actions to be commenced in two years.—There shall be commenced and prosecuted within two years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions of trespass for injury done to the estate or the property of another.
2. Actions for detaining the personal property of another, and for converting such property to one's own use.
3. Actions for taking or carrying away the goods and chattels of another.
4. Actions for debt where the indebtedness is not evidenced by a contract in writing.
5. Actions upon stated or open accounts, other than such mutual and current accounts as concern the trade of merchandise between merchant and merchant, their factors or agents. In all accounts, except those between merchant and merchant, as aforesaid, their factors and agents, the respective times or dates of the delivery of the several articles charged shall be particularly specified, and limitation shall run against each item from the date of such delivery, unless otherwise specially contracted, [Acts 1841, p. 163; G. L. vol. 2, p. 627.]
6. Action for injury done to the person of another.
7. Action for injury done to the person of another where death ensued from such injury; and the cause of action shall be considered as having accrued at the death of the party injured. [Acts 1897, p. 12; Acts 1841, p. 163; Acts 1852, p. 128; P. D. 4604; G. L. vol. 10, p. 1066; G. L. vol. 2, p. 627; G. L. vol. 3, p. 1006.]
8. Actions of forcible entry and forcible detainer.

Art. 5527. [5688] [3356] [3205] What actions barred in four years.—There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for debt where the indebtedness is evidenced by or founded upon any contract in writing.
2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.
3. Actions by one partner against his co-partner for a settlement of the partnership accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together. [Acts 1841, p. 163; P. D. 4604; G. L. vol. 2, p. 627.]

Art. 5528. [5689] [3357] [3206] On bond of executor, administrator or guardian.—All suits on the bond of any executor, administrator or guardian shall be commenced and prosecuted within four years next after the death, resignation, removal or discharge of such executor, administrator or guardian, and not thereafter. [Acts 1876, p. 102; P. D. 1375, 3923; G. L. vol. 8, p. 938.]

Art. 5529. [5690] [3358] [3207] All other actions barred, when.—Every action other than for the recovery of real estate, for which no limitation is otherwise prescribed, shall be brought within four years next after the right to bring the same shall have accrued and not afterward.

Art. 5530. [5691] [3359] [3208] Actions on foreign judgments.—Every action upon a judgment or decree rendered in any other State or territory of the United States, in the District of Columbia or in any foreign country, shall be barred, if by the laws of such State or country such action would there be barred, and the judgment or decree be incapable of being otherwise enforced there; and whether so barred or not, no action against a person who shall have resided in this State during the ten years next preceding such action shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

Art. 5531. [5692] [3360] [3209] Actions for specific performance.—Any action for the specific performance of a contract for the conveyance of real estate shall be commenced within four years next after the cause of action shall have accrued, and not thereafter. [Acts 3rd C. S. 1917, p. 87.]

Art. 5532. [5696] [3361] [3210] Judgment revived, when.—A judgment in any court of record, where execution has not issued within twelve months after the rendition of the judgment, may be revived by scire facias or an action of debt brought thereon within ten years after date of such judgment, and not after. [Acts 1841, p. 163; P. D. 4608; G. L. vol. 2, p. 627.]

Art. 5533. [5697] [3362] [3211] On motion for returning execution.—Where execution has issued and no return is made thereon, the party in whose favor the same was issued may move against any sheriff or other officer and his sureties for not returning the same, within five years from the day on which it was returnable, and not after. [Id.; P. D. 4608.]

Art. 5534. [5699] [3364] [3213] On actions to contest a will.—Any person interested in any will which shall have been probated under the laws of this State may institute suit in the proper court to contest the validity thereof, within four years after such will shall have been admitted to probate, and not afterward. [Acts 1876, p. 94; G. L. vol. 8, p. 930.]

Art. 5535. [5708] [3373] [3222] Limitations against infants.—If a person entitled to bring any action mentioned in this subdivision of this title be at the time the cause of action accrues either a minor, a married woman, a person imprisoned or of unsound mind, the time of such disability shall not be deemed a portion of the time limited for the commencement of the action and such person shall have the same time after the removal of his disability that is allowed to others by the provisions of this title.

Art. 5536. [5700] [3365] [3214] In forgery or fraud.—Any heir at law of the testator, or other person interested in his estate, may institute suit in the proper court to cancel a will for forgery or other fraud within four years after the discovery of such forgery or fraud, and not afterward. [Id.]

3. GENERAL PROVISIONS

Art. 5537. [5702] [3367] [3216] Temporary absence.—If any person against whom there shall be cause of action shall be without the limits of this State at the time of the accruing of such action, or at any time during which the same might have been maintained, the person entitled to such action shall be at liberty to bring the same against such person after his return to the State and the time of such person's absence shall not be accounted or taken as a part of the time limited by any provision of this title. [Act Feb. 5, 1841; G. L. vol. 2, p. 627.]

Art. 5538. [5703–5704] Limitation after death.—In case of the death of any person against whom or in whose favor there may be a cause of action, the law of limitation shall cease to run against such cause of action until twelve months after such death, unless an administrator or executor shall have sooner qualified according to law upon such deceased person's estate; in which case the law of limitation shall only cease to run until such qualification. [Id. P. D. 4606.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 5539. [5705] [3370] [3219] Acknowledgment must be in writing.—When an action may appear to be barred by a law of limitation, no acknowledgment of the justness of the claim made subsequent to the time it became due shall be admitted in evidence to take the case out of the operation of the law, unless such acknowledgment be in writing and signed by the party to be charged thereby. [Act Feb. 5, 1841; G. L. vol. 2, p. 630.]

Art. 5540. [5706] [3371] [3220] Limitation must be pleaded.—The law of limitation shall not be available in any suit unless it be specifically set forth by the party who in his answer invokes it as a defense. [Act Feb. 16, 1852; G. L. vol. 3, p. 1006.]

Art. 5541. [5707] [3372] [3221] Presumption of death.—Any person absenting himself for seven years successively shall be presumed to be dead, unless proof be made that he was alive within that time; but an estate recovered on such presumption, if in a subsequent action or suit the person presumed to be dead shall be proved to be living, shall be restored to him with the rents and profits of the estate with legal interest during such time as he shall be deprived thereof. [Act Feb. 5, 1841; G. L. vol. 2, p. 627; P. D. 23.]

Art. 5542. [5709] [3374] [3223] Action against immigrant.—No action shall be brought against an immigrant to recover a claim which was barred by the law of limitation of the State or country from which he emigrated; nor shall any action be brought to recover money from an immigrant who was released from its payment by the bankrupt or insolvent laws of the State or country from which he emigrated. [Id. sec. 13; P. D. 4618.]

Art. 5543. [5710] [3375] [3224] Debts incurred prior to removal.—No demand against a person who has removed to this State, incurred prior to his removal, shall be barred by the statute of limitation until he shall have resided in this State for the space of twelve months. Nothing in this article shall be construed to affect the provisions of the preceding article. [Id.]

Art. 5544. [5711] [3376] [3225] One disability not tacked to another.—The period of limitation shall not be extended by the connection of one disability with another; and, when the law of limitation shall begin to run, it shall continue to run, notwithstanding any supervening disability of the party entitled to sue or liable to be sued.

Art. 5545. [5713] [3378] Agreement shortening period invalid.—No person, firm, corporation, association or combination of whatsoever kind shall enter into any stipulation, contract, or agreement, by reason whereof the time in which to sue thereon is limited to a shorter period than two years. And no stipulation, contract, or agreement for any such shorter limitation in which to sue shall ever be valid in this State. [Acts 1891, p. 20; G. L. vol. 10, p. 22.]

Art. 5546. [5714] [3379] Notice of claims for damages.—No stipulation in a contract requiring notice to be given of a claim for damages as a condition precedent to the right to sue thereon shall ever be valid unless such stipulation is reasonable. Any such stipulation fixing the time within which such notice shall be given at a less period than ninety days shall be void, and when any such notice is required, the same may be given to the nearest or to any other convenient local agent of the company requiring the same. No stipulation in any contract between a person, corporation, or receiver operating a railroad, or street railway, or interurban railroad, and an employé or servant requiring notice of a claim by an employé or servant for damages for injury received to the person, or by a husband, wife, father, mother, child or children of a deceased employé for his or her death, caused by negligence as a condition precedent to liability, shall ever be valid. In any suit brought under this and the preceding article it shall be presumed that notice has been given unless the want of notice is especially pleaded under oath. [Acts 1891, p. 20; Acts 1907, p. 241.]

TITLE 92

LUNACY—JUDICIAL PROCEEDINGS IN CASES OF

Art.
5547. Apprehension of lunatics.
5548. The writ and its requisites.
5549. Jury summoned.
5550. Cause docketed, etc.
5551. Jury impaneled and sworn.
5552. Special issues submitted.
5553. Verdict.
5554. Judgment.
5555. Reimbursement to the State.
5556. County attorney to represent State.
5557. Warrant to convey lunatic to asylum.
5558. Relative or friend may give bond, etc.
5559. Record of proceedings and notice.
5560. Clothing to be provided.
5561. Officers' fees.

Article 5547. [150] Apprehension of lunatics.—(Repealed, Acts 1925, p. 414.) [39th Leg., ch. 174, § 23.]

Art. 5548. [151] The writ and its requisites.—(Repealed, Acts 1925, p. 414.) [39th Leg., ch. 174, § 23.]

Art. 5549. [152] Jury summoned.—(Repealed, Acts 1925, p. 414.) [39th Leg., ch. 174, § 23.]

Art. 5550. [153] Cause docketed, etc.—The cause shall be docketed on the probate docket of the court in the name of the State of Texas as plaintiff, and of the person charged to be insane as defendant. The county attorney shall appear and represent the State on the hearing, and the defendant shall also be entitled to counsel; and in proper cases the county judge may appoint counsel for that purpose. [Id.]

Art. 5551. [154] Jury impaneled and sworn.—At the time appointed for the hearing or at any other time to which the proceeding may have been postponed, the cause shall be called for trial and a jury of six men impaneled, to whom shall be administered the following oath:

"You and each of you do solemnly swear that upon all the issues about to be submitted to you in the matter of the State of Texas against A B, you will a true verdict render according to the evidence. So help you God."

Art. 5552. [155] Special issues submitted.—After the evidence is heard the county judge shall submit the matter to the jury upon the following special issues:

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

Art. 5553. [156] Verdict.—The jury shall return plain answers in writing to the issues named in the preceding article, but, if they find either the first or second issues in the negative, they need not determine further, and the defendant shall be discharged.

Art. 5554. [157] Judgment.—"Upon return of a verdict finding that the defendant is of unsound mind and that it is necessary that he be placed under restraint, judgment shall be entered adjudging the defendant to be a person of unsound mind and ordering him to be committed for restraint and treatment to any insane asylum operated by the State of Texas in which there may be available room, or delivered into the custody of the United States Veterans' Bureau, or to any other agency or department of the United States Government required or authorized by law to furnish

care or treatment to such person of unsound mind in those cases where such agency of the United States will accept such person." [Acts 1925, p. 234.] [39th Leg., ch. 76, § 1.]

Art. 5555. [158–9] Reimbursement to the State.—(Repealed, Acts 1925, p. 214.) [39th Leg., ch. 174, § 23.]

Art. 5556. [160] County attorney to represent State.—(Repealed, Acts 1925, p. 414.) [39th Leg., ch. 174, § 23.]

Art. 5557. [161] Warrant to convey lunatic to asylum.—"Immediately after any person is adjudged a person of unsound mind, the county judge shall communicate with the superintendents of the insane asylums within this State, and if it is ascertained that there is a vacancy in any of such asylums, or that the patient may be accommodated therein, he shall issue his warrant to the sheriff or to some other suitable person directing him to convey the person of unsound mind to the asylum designated in such warrant, which warrant shall also prescribe the number of guards to be allowed, not to exceed two, and the same shall be executed with all convenient dispatch, provided, that in any case where the United States Veterans' Bureau or any other agency or department of the United States Government will accept such person of unsound mind for care or treatment, that he shall be delivered into the custody of such bureau or department of the United States instead of to the insane asylum of the State; provided further that the State of Texas shall not in any event become liable for any expense in connection with the care or treatment of those persons delivered to the United States Government as provided herein." [Acts 1925, p. 234.] [39th Leg., ch. 76, § 2.]

Art. 5558. [162] Relative or friend may give bond, etc.—No warrant to convey a lunatic to the asylum shall issue if some relative or friend of the lunatic will undertake, before the county judge, his care and restraint and will execute a bond in a sum to be fixed by the county judge, payable to the State of Texas, with two or more good and sufficient sureties to be approved by the county judge, conditioned that the party giving such bond will restrain and take proper care of the lunatic so long as his mental unsoundness continues or until he is delivered to the sheriff of the county or other person, to be proceeded with according to law, which bond shall be filed with and constitute a part of the record of the proceedings, and may be sued and recovered upon by any party injured, in his own name. [Id.]

Art. 5559. Record of proceedings and notice.—"The proceedings in any inquisition to determine whether a person is of unsound mind shall be entered of record in the probate minutes of the county court by the clerk thereof; and before any patient is sent to any asylum or is delivered to the United States for care and treatment as provided in Sections 1 and 2 hereof, the county judge shall cause a complete transcript of the proceedings to be made up and certified by the clerk of the county court under the sale of said court, which transcript he shall forward by mail to the superintendent of the asylum or to the medical officer in charge of the United States Government hospital to which such patient may be sent." [Acts 1925, p. 235.] [39th Leg., ch. 76, § 3.]

Art. 5560. [164] Clothing to be provided.—Before sending any patient to the asylum, the county judge shall take care that the patient is provided with two full suits of substantial summer clothing and one full suit of substantial winter clothing.

Art. 5561. [165] Officers' fees.—In such cases the officers and jurors shall be allowed the same fees upon conviction, as are now allowed for similar services performed in misdemeanor cases in the justice courts, to be paid out of the estate of the defendant if he have an estate, otherwise by the county on accounts approved by the county judge. [Acts 1903, p. 110.]

TITLE 93

MARKETS AND WAREHOUSES

Chap.
1. Commissioner of Markets and Warehouses.
2. Warehouses and warehousemen.
3. Markets and warehouse corporations.
4. Uniform Warehouse Receipts Act.
5. Ginners and cotton.
6. Public weigher.
7. Weights and measures.
8. Marketing associations.

CHAPTER ONE

COMMISSIONER OF MARKETS AND WAREHOUSES

Art.
5562. Appointing Board.
5563. The Commissioner.
5564. Employees and expenses.
5565. May examine affairs.
5566. Statistics.
5567. To establish agencies.

Article 5562. Appointing Board.—The Governor, the Commissioner of Agriculture and the Banking Commissioner shall constitute a board which with the consent of the Senate, shall appoint biennially a suitable person as Commissioner of Markets and Warehouses to fill such office for a term of two years. Said Commissioner may for cause be removed at any time by the board. [Acts 1st C. S. 1917, p. 65.]

Acts 1925, 39th Leg., ch. 13, p. 35, §§ 1–6, abolished the office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department, and the Weights and Measures Department and vested their duties and functions in the Commissioner of Agriculture. Such sections are inserted herein following article 5611.

Art. 5563. The Commissioner.—The word "Commissioner," as used in this title, shall mean the Commissioner of Markets and Warehouses of the State of Texas. He shall be furnished proper quarters to be selected by the Governor, to meet the requirements of his department. He shall give bond in the sum of ten thousand dollars payable to the Governor and conditioned for the faithful performance of his duties. [Id.]

Art. 5564. Employees and expenses.—The Commissioner with the consent of said Board may employ a chief clerk, and such other help as may be necessary. Such help, other than the chief clerk, shall receive such salaries as may be fixed by the Commissioner and approved by the Board. The Commissioner and such employees when traveling on official business shall receive actual necessary expenses. All expenditures, including expenses of administering this department shall be paid by a warrant drawn by the Comptroller on the State Treasurer, on accounts approved by the Commissioner or on his authority. [Id.]

Art. 5565. May examine affairs.—The Commissioner and each person appointed by him shall have authority to administer oaths for the purpose of this law, and under the direction and at the instance of the Commissioner, such persons may, upon their warrants, examine into the affairs of any gin or corporation licensed under this Act. [Id.]

Art. 5566. Statistics.—The Commissioner shall collect, from every source available, information concerning stocks on hand and the probable yield of farm and ranch products, and disseminate the same. [Id.]

Art. 5567. To establish agencies.—The Commissioner shall establish agencies for the sale of farm, orchard, and ranch products, wherever it may be deemed advisable, in which event he is empowered to prescribe all regulations for the conduct of such agencies as may be found necessary. [Id.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

CHAPTER TWO

WAREHOUSES AND WAREHOUSEMEN

Art.
5568. "Public Warehousemen" and "Warehouse."
5569. Certificate and bond.
5570. Receipts and duplicates.
5571. Cotton under lien.
5572. Exchange of receipt.
5573. Delivery must precede receipt.
5574. Delivery from warehouse.
5575. Cannot limit liability.
5576. Receipt negotiable.
5577. Exceptions.

Article 5568. [7819] "Public Warehousemen" and "Warehouse."—Any person, firm, company, or corporation who shall receive cotton, wheat, rye, oats, rice, or any kind of produce, wares, merchandise, or any personal property in store for hire, shall be deemed and taken to be public warehousemen.

A warehouse, within the meaning of this law shall be a house, building, or room in which any of the above mentioned commodities are stored and are protected from damage thereto by action of the elements. [Acts 1901, p. 251, Acts 1st C. S. 1913, p. 93, Acts 2nd C. S. 1919, p. 138.]

Acts 1925, 39th Leg., ch. 13, p. 35, §§ 1-6, abolished the office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department, and the Weights and Measures Department and vested their duties and functions in the Commissioner of Agriculture. Such sections are inserted herein following article 5611.

Art. 5569. [7820] Certificate and bond.—The owner, proprietor, lessee or manager of any public warehouse, whether an individual, firm or corporation, before transacting any business in such public warehouse shall procure from the county clerk of the county in which the warehouse or warehouses are situated, a certificate that he is transacting business as a public warehouseman under the laws of the State of Texas, which certificate shall be issued by said clerk upon a written application, setting forth the location and name of such warehouse or warehouses, and the name of each person, individual or a member of the firm, interested as owner or principal in the management of the same, or, if the warehouse is owned or managed by a corporation, the name of the president, secretary and treasurer of such corporation shall be stated, which application shall be received and filed by such clerk and preserved in his office, and the said certificate shall give authority to carry on and conduct the business of a public warehouse and shall be revocable only by the district court of the county in which the warehouse or warehouses are situated, upon a proceeding before the court, by written petition of any person, setting forth the particular violation of the law, and upon process, procedure and proof, as in other civil cases. The person receiving a certificate, as herein provided for, shall file with the county clerk granting same, a bond payable to the State of Texas, with good and sufficient surety, to be approved by said clerk, in the penal sum of five thousand dollars, conditioned for the faithful performance of his duty as a public warehouseman, which bond shall be filed and preserved in the office of such county clerk. [Acts 1901, p. 251, Acts 1st C. S. 1913, p. 93.]

Art. 5570. [7821] Receipts and duplicates.—On application of the owner or depositor of the property stored in a public warehouse, the warehouseman shall issue over his own signature, or that of his duly authorized agent, a public warehouse receipt therefor, to the order of the person entitled thereto; which receipt shall purport to be issued by a public warehouse, shall bear the date of the day of its issue, and shall state upon its face the name of the warehouse and its location, the description, quantity, number and marks of the property stored. Where such receipt is for cotton it shall state the class and weight, and the date on which it was originally received in warehouse, and that it is deliverable upon return of the receipt properly indorsed by the person to whose order it was issued, and on payment of all charges for storage, and insurance, which charges shall be stated on the face of the receipt. All such receipts shall be numbered consecutively, in the order of their issue. A correct record of such receipts shall be kept in a well bound book, which shall be at all reasonable hours, open to an examination by any interested person. No two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipts be issued, except in the case of a lost or destroyed receipt, in which case the new receipt shall bear the same date and number as the original, and shall be plainly marked on its face, "duplicate." No such duplicate receipt shall be issued by the public warehouseman until adequate security acceptable to the warehouseman be deposited with or to the order of said warehouseman, to protect the party or parties who may finally hold the original receipt in good faith and for a valuable consideration. [Acts 1901, p. 251; Acts 1st C. S. 1913, p. 94.]

Art. 5571. Cotton under lien.—If there is any incumbrance or lien of any kind on said cotton at the time of its storage the nature and amount of same shall be clearly set out and it is hereby made the duty of the public warehouseman or his authorized agent issuing the receipt, to have said blank filled in and signed by the owner of the cotton before issuing a negotiable receipt against same. Such statement need not be made if a non-negotiable receipt is desired, but in such cases the public warehouseman issuing said receipt shall write or stamp across the face thereof the words "not-negotiable." [Acts 1st C. S. 1913, p. 95.]

Art. 5572. Exchange of receipt.—If a person holding a non-negotiable receipt for cotton as is herein provided for, shall desire to obtain a negotiable receipt in lieu thereof, he shall return said non-negotiable receipt to the public warehouse issuing same and thereupon shall comply in every respect with the provisions of this chapter relating to negotiable receipts, and upon compliance therewith a negotiable receipt shall be issued to him in lieu of said non-negotiable receipt, and said negotiable receipt thereupon shall be canceled, and the word "canceled" plainly marked in ink across the face thereof. [Id.]

Art. 5573. Delivery must precede receipt.—No public warehouse receipt shall be issued except upon the actual previous delivery of the goods in the public warehouse or on the premises, and under the control of the public warehouseman by whom it purports to be issued; and the name of the warehouse shall invariably be specified in such receipt. [Id.]

Art. 5574. Delivery from warehouse.—On the presentation and return to the warehouseman of any public warehouse receipt issued by him and properly indorsed, and the tender of all proper warehouse charges upon the property represented by it, such property shall be delivered immediately to the holder of such receipt; but no public warehouseman who shall issue a receipt for goods shall, under any circumstances or upon any order or guarantee whatsoever, deliver the property for which receipts have been issued, until the said receipt shall have been surrendered and canceled except in case of lost receipts. In default of strict compliance with the provisions of this article, he shall be held liable to the legal holder of the receipt for the full value of the property therein described, as it appeared on the day of the default, and shall also be liable to the special penalty herein provided. Upon delivery of the goods from the warehouse, upon any receipt, such receipt shall be plainly marked in ink across its face with the words "Canceled" with the name of the person canceling the same, and shall thereafter be void, and shall not again be put in circulation. [Id.]

Art. 5575. Cannot limit liability.—No public warehouseman shall insert in the public warehouse receipt issued by him any language limiting or modifying his liabilities or responsibilities as imposed by the laws of this State, excepting, "not accountable for leakage or depreciation," or words of like import and meaning. [Id.]

Art. 5576. Receipt negotiable.—The receipt issued against property stored in a public warehouse, as herein provided for shall be negotiable and transferable by endorsement in blank or by special endorse-

ment; and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without other formality; and the transferee or holder of such public warehouse receipt shall be considered and held as the actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to the lien and privilege of the public warehouseman for storage and other warehouse charges; provided, however, that all such public warehouse receipts as shall have the words "not negotiable" plainly written or stamped on the face thereof, shall be exempt from the provisions of this article; and provided, further, that no public warehouseman shall issue a warehouse receipt against his own property in his own warehouse; but, upon sale of such property in good faith may issue to the purchaser his public warehouse receipt in form and manner as herein provided, which issue and delivery of the receipt shall be deemed to complete the sale, and shall constitute the purchaser full owner, as aforesaid, of the property therein described. Nothing in this last clause shall be construed to exempt the issuer of said receipt for his own goods in his own public warehouse, from complying with and being subject in all respects, to all other articles of this chapter. [Id.]

Art. 5577. Exceptions.—Nothing in this law shall be construed to apply to private warehouses or to the issue of receipts by their owners or managers under existing laws, or to prohibit public warehousemen from issuing such receipts as are now issued by private warehousemen under existing laws. Such private warehouse receipts issued by public warehousemen shall never be written on a form or blank indicating that it is issued from a public warehouse, but shall, on the contrary, bear on its face, in large characters, the words, "not a public warehouse receipt." [Id.]

CHAPTER THREE

MARKETS AND WAREHOUSE CORPORATIONS

Art.
5578. Application for charter.
5579. Powers of corporation.
5580. May issue bonds.
5581. Fees and certificate.
5582. Bond.
5583. Breach and new bond.
5584. Directors and meetings.
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5588. Amenable to general laws.
5589. Limitation of authority.
5590. Division of profits.
5591. Failure to obey law.
5592. Certificate of qualification.
5593. Unsafe corporation.
5594. Forced liquidation.
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5596. Warehouse examiners.
5597. Appointment of examiners.
5598. May deny or revoke permit.
5599. Safety first.
5600. Fire insurance.
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5602. Standards of weights and measures.
5603. Liability of corporation.
5604. Lien of corporation.
5605. Satisfaction of lien.
5606. Landlord's lien.
5607. Delivery of goods.
5608. Forms.
5609. Negotiable receipt.
5610. Receipts.
5611. All warehouses included.

Article 5578. Application for charter.—Any number of persons, not less than ten, at least sixty per cent of whom shall be engaged in agriculture, horticulture, or stock-raising as a business, and not less than three-fourths of whom shall be resident citizens of Texas, may apply to the Commissioner of Markets and Warehouses for a charter to permit them to organize and operate as a co-operative association, under the provisions of this chapter. In cities of a population of forty thousand or over, the above provisions shall not apply. The application for such charter shall contain the information required by the general corporation laws, and also state the number of its directors, which shall not be less than three, nor more than twenty-five and the name and residence of those selected for the first year.

The application shall be accompanied by the affidavit of three of such applicants, showing that no less than fifty per cent of the capital stock is actually paid in, which capital stock shall be, in no instance, less than five hundred dollars, divided into shares of five dollars each. If the same has been paid in otherwise than in cash, then a detailed statement as to the kind, character, and value of the property in which paid shall be made a part of the affidavit. [Acts 1st C. S. 1917, p. 65.]

Acts 1925, 39th Leg., ch. 13, p. 35, §§ 1-6, abolished the office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department, and the Weights and Measures Department and vested their duties and functions in the Commissioner of Agriculture. Such sections are inserted herein following article 5611.

Art. 5579. Powers of corporation.—Corporations chartered hereunder shall have the right to act and do, and perform generally, all things which may be done and performed by warehousemen. Such corporations may sell in the market all products of the farm, ranch or orchard, on a commission basis, or such other basis as may be agreed upon by them with their customers. They may purchase, construct or lease all such warehouses, landings and buildings, as may be necessary for their business. They may employ such other instrumentalities and agencies as may be necessary for the storage, preservation and marketing of farm, ranch, and orchard products, to the best advantage of the members and customers. They may loan money upon products placed in their warehouses; provided, that the amount loaned thereon shall not exceed seventy-five per cent of the market value of the property so placed with them. They may loan money upon chattel mortgages, to their members only, for the purpose of enabling them to make and mature their crops, but such chattel mortgages shall always be upon property of at least double the value of money loaned thereon. They may loan money on crop mortgages, but such crop mortgages must always be the first mortgage thereon, exclusive of the landlord's lien, and shall always be secured by an acreage, which, under ordinary general conditions, would produce double the amount loaned thereon. They may invest their capital stock and surplus in a home office building, and may also invest such capital stock, surplus, and undivided profits in United States bonds, Texas State bonds, county, city district, and municipal bonds, and road bonds in the State of Texas; provided, such bonds are issued by authority of law, and interest upon them has never been defaulted. Such corporations shall never receive deposits, nor discount commercial paper generally, but may make such character of loans and investments as are herein provided for; provided, such corporations shall never be permitted to loan money upon chattel mortgages, crop mortgages, or personal security, except to their members, and then only to enable them to make, mature, and gather their crops, or market their farm, ranch or orchard products. They may erect, purchase or lease, and operate warehouses, buildings, elevators, gins, storage tanks, silos, and such other places of storage and security as may be necessary for the storage, grading, weighing and classification of cotton, and all farm products, and for the purpose of preparing such products for the market.

Art. 5580. May issue bonds.—Such corporations shall have authority to contract debts, as have other business corporations, and may issue special bonds, to be known as "sinking fund bonds" as follows: They may invest all or any part of their capital stock in such securities as are herein designated for the payment or investment of their capital, which, when approved by the Commissioner, shall be deposited in the State Treasury. The interest on such investments shall be annually paid into the State Treasury, and be placed to the credit of the sinking fund for the liquidation of bonds of such corporations, and the interest shall be invested from time to time by the Commissioner in similar securities, which in turn shall be deposited in the State Treasury. Such securities, when so de-

posited in the State Treasury, shall remain there as the sinking fund out of which the principal sum of the bonds herein provided for shall be paid, and said securities shall not be used for any other purpose than to liquidate the bonds herein provided for, unless, and until, such sinking fund bonds have been paid; in which event, the securities herein provided for shall be returned to the corporation owning same, and shall become a part of the general assets of the corporation. After the investment in such securities has been made, the Commissioner shall grant authority to the corporation to issue bonds in double the amount of such original capital stock, to bear not greater than six per cent interest, and to run not exceeding thirty years. When said bonds have been issued and signed by the proper officers of the corporation, they shall be registered by the Commissioner. Said bonds shall show on their face that the principal thereon is secured by the securities herein required to be deposited in the State Treasury, and shall have plainly written, printed, lithographed, or engraved, on their face the words, "Sinking Fund Bonds of ——— State Bonded Warehouse," with the post-office address of the corporation, the blank space to be filled in with the name of the corporation. Said bonds shall show on their face that the interest contracted to be paid therein is secured to them by the general assets of the corporation. After said bonds have been issued and registered by the Commissioner they shall be returned to the proper officer of the corporation issuing them, and may then be by such corporation placed on the market and sold; but they shall never be sold at less than ninety per cent of their face value. [Id.]

Art. 5581. Fees and certificate.—When such an application for charter is filed with said Commissioner, and approved by him, the Secretary of State shall, upon notice of such filing and approval, and the payment of the following fees: Five dollars for five thousand dollars, or less; ten dollars for ten thousand dollars, or more than five thousand dollars; and twenty-five dollars for all over that amount, issue a charter to the applicants; and thereupon the Commissioner shall record said charter, and furnish the corporation a certified copy thereof; and he shall issue to the corporation a certificate of authority showing that it has complied with the laws of the State of Texas, and is authorized to do business until the last day of April of the succeeding year. No charter fee shall exceed twenty-five dollars. [Id.]

Art. 5582. Bond.—Before said charter is delivered to the corporation, and before said certificate is furnished, the corporation shall execute, by its proper officers, a bond, payable to the State of Texas, the amount of such bond to be determined by the Commissioner. The amount of any such bond may be changed from time to time, in accordance with the volume of business done or to be done by the corporation; and such bond shall be approved by the Commissioner before it is filed. Such bond shall be conditioned that the corporation will observe all provisions of this law, and the rules of the Commissioner, in so far as its business is regulated and controlled by them; and that the corporation will exercise ordinary care in the storage, preservation, and handling of all farm, ranch, and orchard products intrusted to it for storage or sale, or both; and shall also guarantee the classification, weights, grades and measures made by the corporation, or under its authority, as approximately correct. [Id.]

Art. 5583. Breach and new bond.—The bond herein provided for shall indemnify any person who may be damaged by any statement made by the corporation, or under its authority, in any certificate it may issue for such product stored with it. Such bond may be sued upon by any person sustaining damage by reason of any breach of its condition, growing out of any fault or dereliction of duty by said corporation, or any person authorized to act for it. If any such bond shall become impaired from any cause, the Commissioner may require the maker to furnish a new and sufficient bond, by written notice, and if such impairment is not made good within thirty days after notice, the Commissioner shall have authority to proceed to close the doors of the corporation, liquidate its affairs, and discharge its debts, as is provided for in this chapter. In the event the Commissioner shall take charge of such corporation, he is empowered to collect by suit, or otherwise, the full amount of the bond, or so much thereof as is necessary, which taken with the other assets of the corporation, may be found sufficient to discharge its obligations. [Id.]

Art. 5584. Directors and meetings.—The property and business of corporations chartered hereunder shall be controlled and managed by a board of directors of not less than three, nor more than twenty-five in number, who shall be members of the corporation, and bona fide citizens of Texas, and no member of the board of directors of one such corporation shall be a member of a board of directors of any other such corporation. The directors shall be elected annually, at a general meeting of the directors of such corporation, which meeting shall be held at such time and place as may be prescribed by the by-laws of the corporation. The notice of such meeting shall be mailed to each member at least two weeks before the date set for the same. Each member of the corporation, at all general and special meetings of the same, shall have one vote, and no more. The directors may appoint, or remove any officer or employee at pleasure. [Id.]

Art. 5585. Statement of affairs.—The Commissioner shall, also, at least twice each year, and more if deemed necessary, require each such corporation to file in his office upon forms prescribed by him, a statement of its affairs, showing the condition of its reserve fund, its assets and liabilities, and such other information as he may deem advisable. Such statement shall be made upon the oath of one of the managing officers of the corporation, and shall be attested by at least a majority of its directors. [Id.]

Art. 5586. Examination of affairs.—Every bonded warehouse corporation chartered under the laws of this State shall be subject to the supervision and control of the Commissioner, and he shall make, or cause to be made, an examination of the affairs and dealings of each such corporation, at its expense, at least once each year, and at such other times as the Commissioner may deem necessary. If, upon examination, any such corporation is found to be insolvent, or has exceeded its powers, or its business is being conducted in an unsafe manner, or it has failed to comply with any provision of this chapter within a reasonable time, not to exceed, in any event, thirty days, the Commissioner shall report the condition of the corporation to the Attorney General, who may bring such action as the necessities of the case and law may require.

Art. 5587. Expense of examination.—The expense of each regular and special examination of corporations chartered under this chapter shall be paid by the corporation examined, in such an amount as the Commissioner shall certify to be just and reasonable. Such expense shall be paid in proportion to the capital stock of the various corporations, as follows: Those with a capital stock of less than twenty-five hundred dollars shall not pay more than five dollars; those with a capital stock of two thousand five hundred dollars, and not exceeding ten thousand dollars, not exceeding ten dollars; those with a capital stock of twenty-five thousand dollars, and not less than ten thousand dollars, not exceeding twenty dollars; those with a capital stock of one million dollars or more, shall pay not exceeding two hundred dollars, for each examination. All money collected as examination fees shall be paid by the Commissioner directly into the State Treasury to the credit of the general revenue fund. [Id.]

Art. 5588. Amenable to general laws.—Every corporation organized under this chapter shall be amenable to and subject to all laws of this State governing corporations generally. [Id.]

Art. 5589. Limitation of authority.—No officer or employee shall have power to indorse, sell, pledge, or hypothecate any bond, note or other obliga-

tion received by such corporation, or any property deposited with it as warehousemen, until such power and authority shall have been given such officer or employee by the board of directors, in a meeting of the board, regularly called and held, a written record of which proceedings shall have first been made upon the minutes of the corporation; and all such acts of any officer or employé, indorsing, selling, pledging, or hypothecating any such pledge or property, shall, without the authority of the board of directors, as herein provided, be null and void. [Id.]

Art. 5590. Division of profits.—Every corporation organized hereunder may divide its profits among its members, in proportion to the amount of business transacted for each said member, after having paid dividends to each member, on the amount which each of said members has paid into the capital stock of the company, subject, however, to the following provisions: Twenty per cent of the net profit on each years business shall annually be paid into the reserve fund, until the reserve fund shall equal twice the amount placed in the capital stock at the time the corporation was chartered; the balance of the net profits shall be divided in accordance with the by-laws of the corporation; provided, that the subscribers to the capital stock shall first be entitled to a ten per cent dividend, or such less amount as may be stated in the by-laws for each year, before the remainder thereof is divided among the members in proportion to the amount of business transacted for each member. [Id.]

Art. 5591. Failure to obey law.—If any corporation subject to the provisions of this chapter shall refuse to submit its books, and papers, and correspondence, for inspection, to the Commissioner or any of his authorized examiners; or, if any officer or directors of any such corporation shall refuse to be examined on oath touching the business and property of the corporation; or, if it shall be found to have violated its charter, or any law of the State binding upon it, the Commissioner shall report the facts to the Attorney General, who shall institute such proceedings against such corporation as is authorized to be instituted against insolvent corporations. [Id.]

Art. 5592. Certificate of qualification.—Before any such corporation shall be permitted to open its doors for business and in order for it to continue to transact business, the employé or officer in active management shall obtain a certificate from the Commissioner, certifying that he is qualified and authorized to perform the duties of said corporation. In order to receive such certificate such person must present satisfactory evidence to the Commissioner that he is competent to discharge the duties of such position. Upon receiving satisfactory evidence of qualification, and upon the payment of a filing fee of one dollar, the Commissioner may issue to any applicant therefor a certificate showing that such applicant is qualified. The life of any such certificate shall not exceed two years, at the expiration of which time the applicant must obtain a new certificate. [Id.]

Art. 5593. Unsafe corporation.—Whenever, after examination, the Commissioner shall have reason to believe that the capital stock of any corporation subject to the provisions of this chapter is impaired, he shall, by written notice, require the corporation to make good the impairment. Whenever it shall appear to the Commissioner, from any examination made by an examiner, that such corporation is conducting its business in an unsafe, and unauthorized manner, he shall, by an order under his hand and seal, direct the discontinuance of such unsafe and unauthorized practice, and shall require a strict compliance with the requirements of the law. If wrong entries are made in the books of a corporation, or if wrong or unlawful uses of its funds have been made, the Commissioner shall require that such entries be corrected and such sums as were unlawfully paid out shall be restored to the corporation by the person or persons responsible for the wrongful use thereof. If any corporation shall refuse or neglect to make any such report as hereinafter required, or to comply with any such order as aforesaid, or whenever it shall appear to the Commissioner that it is unsafe or inexpedient for any such corporation to continue to transact business, by reason of neglect or mismanagement, or that any officer or director has abused his trust, or has been guilty of misconduct, or of malversation of his official position, injurious to the institution, or that it has suffered a serious loss by fire, repudiation, or otherwise, the Commissioner shall communicate the facts to the Attorney General, who shall institute such proceedings as the nature of the case may require. [Id.]

Art. 5594. Forced liquidation.—The court, or judge, in term time or vacation, before whom such proceedings may be instituted, shall have power to grant such orders as may be necessary to grant such relief as the evidence and the situation of the parties may require. If, from any examination made by the examiner, it shall be discovered that any such corporation is insolvent, or that its continuance in business will seriously jeopardize the interest of its stockholders or its creditors, the Commissioner shall immediately close such corporation, and shall take charge of all its property and effects. Upon taking charge of any such corporation, the Commissioner shall, as soon as practicable, ascertain by a thorough examination into its affairs, its actual financial condition. If the Commissioner shall become satisfied that such corporation cannot resume business or liquidate its indebtedness to the safety of its shareholders and its creditors, he shall report the fact of its insolvency to the Attorney General. Upon receipt of such notice and information, the Attorney General shall institute proper proceedings, for the purpose of having a receiver appointed to take charge of such corporation, and to wind up its affairs and business for the benefit of its creditors and members; and the court, or judge thereof, in term time or vacation, after such notice and hearing, if it appear necessary, shall appoint a receiver to take possession of the property and effects of said corporation, for the purpose of winding up the business thereof. The Commissioner may appoint a special agent to take charge of the affairs of any such insolvent corporation, until a receiver is appointed. The special agent so appointed shall qualify, give bond, and receive compensation, the same as regularly appointed warehouse examiners; such compensation to be paid by the corporation out of its assets, when allowed by the court as costs in the case of the appointment of a receiver. In no case shall any corporation continue in charge of such special agent for a longer period than sixty days. [Id.]

Art. 5595. Voluntary liquidation.—Any such corporation may place its affairs and effects under the control of the Commissioner, on notice to him, and by posting a notice on its front door as follows: "This institution is in the hands of the Commissioner of Markets and Warehouses of the State of Texas." The posting of this notice, or a similar notice, by the Commissioner, or under his direction, that he has taken possession of any corporation, shall be sufficient to place the property and assets of the corporation, of whatever nature, in possession of said Commissioner and shall operate as a bar to any and all attachment proceedings. [Id.]

Art. 5596. Warehouse examiners.—The Commissioners [Commissioner] shall, from time to time, appoint such number of State warehouse examiners as he may deem necessary to make examination of public warehouses, and corporations chartered under this chapter, which number shall at no time exceed one examiner for each fifty corporations and public warehouses subject to examination under this chapter and laws of this State. As full compensation for the performance of the duties of examiner, each person so appointed shall be entitled to receive a salary of not exceeding two thousand dollars per annum, and all reasonable necessary expenses, including hotel bills. An itemized and sworn account of such expenses shall be presented to the Commissioner for approval. Every warehouse examiner appointed by the Commissioner shall be a cotton grader and classer, and a competent book-keeper. Such examiner shall first make and file with the Commissioner an affidavit that he will make

fair and impartial examinations; that he will not accept directly or indirectly any gift or pay for any service done in the line of his duty other than the pay fixed by law, and that he will not reveal the condition of any corporation or public warehouse examined by him, or give out any information secured in the course of any examination to any one except the Commissioner and except when requested to do so in court. [Id.]

Art. 5597. Appointment of examiners.—No such examiner shall be appointed who is, at the time, an officer or stockholder in any warehouse company or corporation, or who owns any interest in any warehouse; or in any firm or corporation engaged in the purchase or sale of farm, ranch or orchard products, on commission or otherwise. No such examiner shall be appointed receiver of any State bonded or public warehouse company whose papers and affairs he shall have examined. Each such examiner shall give a bond payable to the State of Texas, in the sum of five thousand dollars, to be approved by the Commissioner, conditioned that he will faithfully perform his duties as such examiner. [Id.]

Art. 5598. May deny or revoke permit.—The Commissioner shall have power to deny a permit to do business under this chapter and to revoke a permit when in his judgment there are sufficient warehouse facilities at the point where a new corporation may desire to do business. [Id.]

Art. 5599. Safety first.—The Commissioner shall have power to prohibit the storage of cotton or other inflammable commodities in an unsafe building, or require a storage house to be remodeled within certain specified dates, so as not to unduly hamper the conduct of the business and the convenience of the public. [Id.]

Art. 5600. Fire insurance.—The Commissioner shall require fire insurance by blanket policies or individual policies, in some solvent insurance company chartered under the laws of this State or having a permit to do business in the State, to be carried by all public warehouses and all warehouse corporations operating under this chapter, and to require such other means and methods of protection from fire and weather, or depreciation of warehouse property, as the Commissioner may deem necessary in each case. No fire, fire and marine, marine or inland insurance company, doing business in this State shall expose itself to any one risk, either upon buildings of any character, or their contents, except when insuring cotton in bales, and grain, in an amount exceeding ten per cent of the aggregate of the paid up capital stock, and surplus, unless the excess shall be reinsured by such company in some other solvent insurance company legally authorized to do business in this State. [Id.]

Art. 5601. Charge for storage.—All charges for storage in warehouses operating under the provisions of this and the preceding chapter, shall be subject to limitation and regulation by the Commissioner to the extent of fixing a minimum charge therefor. The charges so fixed need not be the same at all places or at all times, but the Commissioner may take into consideration the local conditions, and the volume of business of each warehouse. In fixing charges for gin compressed cotton, consideration shall be given to the size of the bale. [Id.]

Art. 5602. Standards of weights and measures.—The standards of weights and measures of this State shall be the standards of weights and measures used under the terms and provisions of this chapter. It shall be the duty of the Commissioner to establish standards of classifications of cotton, corn, and other farm and ranch products, of whatever kind and character, which may be subject to classification, and originals of such standards so established shall be maintained, subject to public inspection, in the office of the Commissioner at all reasonable times; and duplicates of such standards as well as the standards of weights and measures, shall be furnished by the Commissioner to all persons who may apply therefor, under the payment of the necessary cost thereof. It shall be the duty of each public warehouse company to keep a duplicate of said standards, as well as the standards of weights and measures, at its warehouse, subject to inspection and comparison of grades and classification by persons storing products therein; provided, that the standards of classification shall always be the standards established by the Government of the United States, or of this State. [Id.]

Art. 5603. Liability of corporation.—The liability of a corporation chartered and operating under this chapter for warehouse purposes, shall be that of a public warehouseman, and it shall have the same rights as a public warehouseman, including a lien for storage, insurance, and other warehouse charges, as well as for charges for any service performed by it. [Id.]

Art. 5604. Lien of corporation.—Such corporation shall also have a lien for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses in relation to such goods; and also, all reasonable charges and expenses for notice and advertisement of sale of goods, where sale has been made in satisfaction of the warehouseman's lien. [Id.]

Art. 5605. Satisfaction of lien.—A warehouseman's lien for a claim which has become due may be satisfied as provided in the succeeding chapter. No publication fee shall be charged in excess of the rate now allotted by statute for the publication of legal notices. One notice of sale shall be placed at the court house door of the county in which the warehouse is located. If any goods are delivered to any person paying for the same and the warehouseman desires it, he may require a bond of indemnity as protection from claims of other persons. [Id.]

Art. 5606. Landlord's lien.—The landlord's lien on cotton or other farm products shall continue so long as the same are on storage in any warehouse, whether the same be a warehouse operated under this law or a private warehouse, provided a negotiable receipt has not been issued therefor. [Id.]

Art. 5607. Delivery of goods.—Upon the presentation and return to the warehouse of any warehouse receipt issued by its manager, and properly endorsed, and the tender of all proper warehouse charges upon the property presented by it, such property shall be delivered immediately to the holder of such receipt; but the manager of such warehouse shall not, under any circumstances, or upon any other guarantee, deliver the property upon which said receipts were issued until such receipts have been delivered and cancelled, except in case of lost receipts. Any such receipt, when returned and cancelled, shall be kept by the manager in his office, until ordered destroyed by the directors, for one year from date of cancellation. Upon delivery of the goods in a warehouse, upon any receipt, such receipt shall be plainly marked, or stamped in ink, across its face, with the word "cancelled," together with the name of the manager cancelling the same; and shall thereafter be void, and shall not again be put into circulation. [Id.]

Art. 5608. Forms.—The Commissioner shall prescribe all the forms of receipts, certificates and records, of whatsoever description necessary in the conduct of warehouses under this chapter, but all such receipts, certificates and forms shall be drawn in accordance with the terms of this title. All warehouse receipts shall be of uniform character, in the same class as prescribed by the Commissioner. [Id.]

Art. 5609. Negotiable receipt.—A negotiable receipt issued against goods or products stored in a warehouse under this chapter shall be negotiable and transferable by endorsement in blank, or by a special endorsement and delivery in the same manner and to the same extent as bills of exchange and promissory notes now are, without any formality. The transferee or holder of such warehouse receipt shall be considered and held as actual and exclusive owner, to all intents and purposes, of the property therein described, subject only to lien and privileges of the warehouse for storage, insurance, and other warehouse charges. All such warehouse receipts with the word "non-negoti-

able" plainly marked or stamped on the face thereof shall be exempt from the provisions of this article. [Id.]

Art. 5610. Receipts.—All receipts shall be numbered consecutively, in the order of their issuance, and a record of such receipt shall be kept at the office of the company. No two receipts bearing the same number shall be issued from the same warehouse during the same year, nor shall any duplicate receipt be issued, except in case of a lost or destroyed receipt, in which case a new receipt shall be issued, which shall bear the same date and number as the original, and shall be plainly marked on its face "Duplicate." In addition to the other provisions, each receipt shall have a blank form on the back thereof, to be filled in and signed by the owner of the cotton or other products for which it is issued, showing whether a preexisting and unsatisfied lien of any kind exists against it. If there be a landlord's lien, or such unsatisfied lien, or incumbrance, or lien of any kind, on said cotton, or other products, at the time of its storage, the amount of the claim shall be clearly set out; and it is made the duty of the manager issuing the receipt to have said blank filled in and signed by the owner of the cotton, or other product before issuing a negotiable receipt for the same; provided, however, such statement may not be made if a nonnegotiable receipt is desired. When cotton grown on rented or leased premises is tendered for storage in a State warehouse, in addition to the foregoing instruments, all receipts issued therefor shall be issued jointly, in the name of the owner and the landlord, showing their respective interests in such cotton, unless the tenant or person storing the same presents authority from the landlord, or from the tenant, as the case may be, requesting the issuance of a receipt in the name of the one or the other, which request shall be in writing, and filed with the manager of the warehouse. If the person holding a non-negotiable receipt desires to obtain a negotiable receipt in lieu thereof, he shall return the non-negotiable receipt to the warehouse issuing the same and thereupon shall comply in every respect with the provisions of this Act, relating to negotiable receipts, and upon compliance with which a negotiable receipt shall be issued to him in lieu of the non-negotiable receipt. When the non-negotiable receipt is surrendered or canceled, the word "canceled" shall be plainly marked or stamped in ink, across the face thereof. No warehouse receipt shall be issued except on the actual previous delivery of the goods in the warehouse or on the premises under the control of the manager thereof. [Id.]

Art. 5611. All warehouses included.—All warehouses now or hereafter operating under an Act passed by the Thirty-third Legislature of Texas, and known as the "Public Warehouse Act," are hereby placed under the management and control of the Commissioner, and all chartered warehouses for the storing of farm, ranch or orchard products, not incorporated under this Act, may, by a majority vote of its stockholders, upon application to the Secretary of State, upon payment of a fee of ten dollars, amend their charter so as to come under this Act. Such warehouses shall make such bonds as the Commissioner may require, and such warehouses shall issue such receipts as are authorized by the Commissioner. [Id.]

Section 1. The office of Commissioner of Markets and Warehouses of the State of Texas is hereby abolished, and the authority, duties, powers, functions, rights, and liabilities, heretofore vesting in said commissioner, shall hereafter vest in and be had and performed by the Commissioner of Agriculture. The Markets and Warehouse Department and the Weights and Measures Department of the State of Texas are hereby abolished, and the duties and functions of the same shall hereafter vest in the Commissioner of Agriculture.

Sec. 2. The board, consisting of the Governor, the Commissioner of Agriculture, and the Commissioner of Insurance and Banking, created by Chapter 5, of the General Laws enacted at the Second Called Session of the Thirty-third Legislature, for the purpose of appointing a Commissioner of Markets and Warehouses, is hereby abolished.

Sec. 3. The Board of Supervisors of Warehouses, consisting of the Governor, Commissioner of Agriculture, and the Commissioner of Insurance and Banking, created by Chapter 5, of the General Laws enacted at the Second Called Session of the Thirty-third Legislature, is hereby abolished, and any authority, duties, powers, functions, rights, and liabilities of said board, existing under the law, shall hereafter vest in and be had and performed by the Commissioner of Agriculture.

Sec. 4. The Commissioner of Agriculture shall hereafter have and perform all the authority, duties, powers, rights, and liabilities heretofore vesting in the Commissioner of Insurance and Banking, or the Banking Commissioner of Texas or the Commissioner of Insurance, if any, relative to warehouses, except such as are conferred upon said Commissioner of Insurance and Banking by the provisions of Chapter 3 of the General Laws of the Second Called Session of the Thirty-third Legislature of this State.

Sec. 5. The power and authority to administer the provisions of Chapter 5 of the General Laws of the Second Called Session of the Thirty-third Legislature; Chapter 41 of the General Laws of the First Called Session of the Thirty-fifth Legislature, and Chapters 116 and 126 of the General Laws of the Regular Session of the Thirty-sixth Legislature and such powers and duties as are conferred upon the Commissioner of Markets and Warehouses by Chapter 22, Acts of the Regular Session of the Thirty-seventh Legislature and Chapter 38 of the Second Called Session of the Thirty-eighth Legislature shall hereafter vest in the Commissioner of Agriculture, and it shall be his duty to administer said laws, or so much of same as may be in force.

Sec. 6. All appropriations heretofore made for the Markets and Warehouse Department and the Weights and Measures Department shall hereafter be available to the Commissioner of Agriculture to expend, as provided by law, in the execution of the work and the performance of the duties herein transferred; provided that the Commissioner of Agriculture shall be authorized to re-apportion and rearrange the duties of the office and of the employees and fix the salaries of said employees, where not fixed by law, and shall be authorized to discontinue any duties, work, or employees, in order to prevent a duplication of work already being performed, or authorized to be performed by the Department of Agriculture. [Id. p. 35.] [Acts 1925, 39th Leg., ch. 13, §§ 1–6.]

The above chapter abolishes the office of Commissioner of Markets and Warehouses and confers some, if not all, of his powers and duties on the Commissioner of Agriculture. Chapters 1, 2 and 3 of Title 93 are retained herein in order that it may be ascertained therefrom what are the powers and duties of the Commissioner of Agriculture under said Chapter 13.

CHAPTER FOUR

UNIFORM WAREHOUSE RECEIPTS ACT

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Article 5612. Issue of warehouse receipts.—Warehouse receipts may be issued by any warehouseman. [Acts 1919, p. 215.]

Acts 1925, 39th Leg., ch. 13, p. 35, §§ 1–6, abolished the office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department, and the Weights and Measures Department and vested their duties and functions in the Commissioner of Agriculture. Such sections are inserted herein following article 5611.

Art. 5613. Form of receipt.—Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

1. The location of the warehouse where the goods are stored.

2. The date of issue of the receipt.

3. The consecutive number of the receipt.

4. A statement whether the goods received will be delivered to a specified person, or to a specified person or his order.

5. The rate of storage charges.

6. A description of the goods or of the packages containing them.

7. The signature of the warehouseman, which may be made by his authorized agent.

8. If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership, and

9. A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the terms herein required.

10. When a negotiable receipt is issued under the terms of this Act for cotton or other agricultural products stored in any warehouse operating under the terms of this Act, it shall, in addition to the other conditions mentioned herein, state the weight, grade, and condition of the same and shall state plainly whether such agricultural products are insured or not. [Id. sec. 2.]

Art. 5614. Conditions of receipt.—A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

1. Be contrary to the provisions of this chapter.

2. In any wise impair his obligation to exercise that degree of care in the safe-keeping of the goods entrusted to him, which a reasonably careful man would exercise in regard to similar goods of his own. [Id. sec. 3.]

Art. 5615. Non-negotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a non-negotiable receipt. [Id. sec. 4.]

Art. 5616. Negotiable receipt.—A receipt in which it is stated that the goods received will be delivered to the order of any person named in such receipt is a negotiable receipt. No provision shall be inserted in a negotiable receipt that it is non-negotiable. Such provision, if inserted shall be void. [Id. sec. 5.]

Art. 5617. Duplicate receipts.—When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damages caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt. [Id. sec. 6.]

Art. 5618. Non-negotiable receipt.—A non-negotiable receipt shall have plainly placed upon its face by the warehouseman issuing it, "non-negotiable," or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable, may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This action shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character. [Id. sec. 7.]

Art. 5619. Bound to deliver goods.—A warehouseman, in the absence of some lawful excuse provided by this law, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with:

1. An offer to satisfy the warehouseman's lien.

2. An offer to surrender the receipt of negotiable, with such indorsements as would be necessary for the negotiation of the receipt, and

3. A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is required by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal. [Id. sec. 8.]

Art. 5620. Justified in delivery.—A warehouseman is justified in delivering the goods, subject to the provisions of the three following articles, to:

1. The person lawfully entitled to the possession of the goods, or his agent.

2. A person who is either himself entitled to delivery by the terms of a non-negotiable receipt issued for the goods, or who has written authority from the person so entitled either endorsed upon the receipt or written upon another paper, or

3. A person in possession of a negotiable receipt by the terms of which the goods are deliverable to him or order or to bearer, or which has been endorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee. [Id. sec. 9.]

Art. 5621. Delivery to wrong person.—Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by Subdivision 1 and 2 of the preceding article and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either:

1. Been requested, by or on behalf of the person lawfully entitled to a right of property in or possession of the goods, not to make such delivery, or

2. Had information that the delivery about to be

made was to one not lawfully entitled to the possession of the goods. [Id. sec. 10.]

Art. 5622. Failure to cancel receipt.—Except as hereinafter provided, where a warehouseman delivers goods for which he has issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman. [Id. sec. 11.]

Art. 5623. Partial delivery; failure to cancel.—Except as hereinafter provided, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered, he shall be liable to any one who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman. [Id. sec. 12.]

Art. 5624. Alteration of receipt.—The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was immaterial, authorized or made without fraudulent intent. If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase. [Id. sec. 13.]

Art. 5625. Loss of receipt.—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient securities to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The Court may also in its discretion order the payment of the warehouseman's reasonable costs. The delivery of the goods under an order of the Court shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. [Id. sec. 14.]

Art. 5626. Effect of duplicate receipt.—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncancelled at the date of the issue of the duplicate, but shall impose upon him no other liability. [Id. sec. 15.]

Art. 5627. Title in warehouseman.—No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt. [Id. sec. 16.]

Art. 5628. May make claimants interplead.—If more than one person claims the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead. [Id. sec. 17.]

Art. 5629. Adverse claim.—If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. [Id. sec. 18.]

Art. 5630. Failure to deliver.—Except as provided otherwise in this chapter, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt. [Id. sec. 19.]

Art. 5631. Relying on labels.—A warehouseman shall be liable to the holder of a receipt for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor. [Id. sec. 20.]

Art. 5632. Must exercise care.—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care. [Id. sec. 21.]

Art. 5633. Care of goods.—Except as provided in the following article, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited. [Id. sec. 22.]

Art. 5634. Mingled goods.—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole. [Id. sec. 23.]

Art. 5635. Care of mingled goods.—The warehouseman shall be severally liable to each depositor for the care and re-delivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate. [Id. sec. 24.]

Art. 5636. Surrender of receipt.—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual posses-

sion of the goods until the receipt is surrendered to him or impounded by the court. [Id. sec. 25.]

Art. 5637. Rights of creditor.—A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from the courts, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process. [Id. sec. 26.]

Art. 5638. Lien of warehouseman.—Subject to the provisions of the second succeeding article, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of goods where default has been made in satisfying the warehouseman's lien. [Id. sec. 27.]

Art. 5639. Lien enforced against goods.—Subject to the provisions of the second succeeding article, a warehouseman's lien may be enforced:

1. Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted, and

2. Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted if such person has been so entrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in the good faith for value would have been valid. [Id. sec. 28.]

Art. 5640. Loss of lien.—A warehouseman loses his lien upon goods by surrendering possession thereof, or by refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this law. [Id. sec. 29.]

Art. 5641. Lien for charges.—If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of this law, although the amount of the charges so enumerated is not stated in the receipt. [Id. sec. 30.]

Art. 5642. May refuse to deliver goods.—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied. [Id. sec. 31.]

Art. 5643. Collection of charges.—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor, for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay. [Id. sec. 32.]

Art. 5644. Satisfaction of lien.—A warehouseman's lien for a claim which has become due may be satisfied as follows: The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

1. An itemized statement of the warehouseman's claims, showing the sum due at the time of the notice and the date or dates when it became due;

2. A brief description of the goods against which the lien exists;

3. A demand that the amount of the claim as stated in the notice, and of such further claims as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; and

4. A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such place is manifestly unsuitable for the purpose, at the nearest suitable place. After the time for the payment of the claim specified in the notice to the depositor has elapsed, an advertisement of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be published once a week for two consecutive weeks in a newspaper published in the place where such sale is to be held. The sale shall not be held less than fifteen days from the time of the first publication. If no newspaper is published in such place, the advertisement shall be posted at least ten days before such sale in not less than six conspicuous places therein. From the proceeds of such sale, the warehouseman shall satisfy his lien, including the reasonable charges of notice, advertisements and sale. The balance, if any, of such proceeds shall be deposited with the county clerk of the county in which the warehouse is located and shall be delivered, on demand, to the person to whom the warehouseman would have been bound to deliver, or justified in delivering the goods, for which the receipt was issued. At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving notices and advertising and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this Act, to the possession of the goods on payment of charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract or deposit. [Id. sec. 33.]

Art. 5645. Perishable or dangerous goods.—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature, will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods, and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without advertising. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made upon the terms of this article shall be disposed of in the same way as the proceeds of sales made under the terms of Article 5644. [Id. sec. 34.]

Art. 5646. Remedy not exclusive.—The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property. [Id. sec. 35.]

Art. 5647. Effect of sale.—After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they

were deposited, even if such receipt be negotiable. [Id. sec. 36.]

Art. 5648. Negotiation and transfer of receipts.—A negotiable receipt may be negotiated by delivery:

1. Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer, or

2. Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or when a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee. [Id. sec. 37.]

Art. 5649. Negotiation by indorsement.—A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. [Id. sec. 38.]

Art. 5650. Non-negotiable receipt.—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable receipt can not be negotiated, and the indorsement of such receipt gives the transferee no additional right. [Id. sec. 39.]

Art. 5651. Who may negotiate receipt.—A negotiable receipt may be negotiated by the owner thereof or by any person to whom the possession or custody thereof has been entrusted by the owner, if, by the terms of the receipt the warehouseman undertakes to deliver the goods to the order of the person to whom the possession or custody of the receipt has been entrusted, or if at the time of such entrusting the receipt is in such form that it may be negotiated by delivery. [Id. sec. 40.]

Art. 5652. Title by negotiation.—A person to whom a negotiable receipt has been duly negotiated acquires thereby:

1. Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value, and

2. The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him. [Id. sec. 41.]

Art. 5653. Title acquired by transfer.—A person to whom a receipt has been transferred but not negotiated, acquires thereby, as against the transferrer, the title of the goods, subject to the terms of any agreement with the transferrer. If the receipt is nonnegotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferrer or transferee of a non-negotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the warehouseman by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer. [Id. sec. 42.]

Art. 5654. Who may compel indorsement.—Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. [Id. sec. 43.]

Art. 5655. Warranty.—A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants:

1. That the receipt is genuine;

2. That he has a legal right to negotiate or transfer it;

3. That he has knowledge of no fact which would impair the validity or worth of the receipt; and

4. That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby. [Id. sec. 44.]

Art. 5656. Liability of indorser.—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations. [Id. sec. 45.]

Art. 5657. Implied warranty.—A mortgagee, pledgee or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described. [Id. sec. 46.]

Art. 5658. Innocent purchaser.—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was induced by fraud, mistake, or duress to entrust the possession or custody of the receipt to such person, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. [Id. sec. 47.]

Art. 5659. Subsequent negotiation.—Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation. [Id. sec. 48.]

Art. 5660. Purchaser for value.—Where a negotiable receipt has been issued for goods, no seller's lien or right or stoppage in transit shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transit. Nor shall the warehouseman be obliged to deliver or justified in delivering the goods to an unpaid seller, unless the receipt is first surrendered for cancellation. [Id. sec. 49.]

Art. 5661. Who may become public warehouseman.—Any person, firm, corporation, partnership, or association of persons, may become a public warehouseman under the provisions of this chapter by filing with the county clerk of the county in which he is located and proposes to do business, a good and sufficient bond in the sum of five thousand dollars conditioned that he will conduct his business in accordance with the provisions of this chapter. Upon the filing and approval of such bond with the county clerk,

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

it shall be the duty of the county clerk to immediately certify such fact to the Commissioner of Markets and Warehouses. Any one injured by the violation of the terms of the bond, and the provisions of this chapter may recover damages to the extent of said bond. Should said bond become impaired by recovery, or otherwise, said Commissioner may require such public warehouseman to file an additional bond, but in no event shall such additional bond be for a greater amount than five thousand dollars. The bond required hereunder shall be good for the term of one year from the date of filing and the right to continue as a public warehouseman shall be conditioned upon the renewal of said bond from year to year, according to the terms of this chapter. The form of the bond required hereunder shall be prescribed by said Commissioner, and the bond may be made by any surety company authorized to do business under the laws of this State; or by two solvent sureties to be approved by the county clerk of the county in which such public warehouseman may desire to do business. [Id. sec. 56.]

Art. 5662. Commissioner to supervise.—The Commissioner may exercise a general supervision over all private warehouses operating under the provisions of this chapter, and may, in his discretion, prescribe rules and regulations for the conduct of same not inconsistent with the provisions of this chapter. [Id. sec. 57.]

Art. 5663. Interpretation.—In any case not provided for in this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern. This law shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [Id. secs. 59 and 60.]

Art. 5664. Definitions.—In this chapter, unless the context or subject-matter otherwise requires:

"Action" includes counter claim, set-off and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is from its nature or by mercantile custom treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

A thing is done "in good faith" within the meaning of this law when it is in fact done honestly, whether it is done negligently or not. [Id. sec. 61.]

Art. 5665. Citation of Act.—This Act may be cited as the Uniform Warehouse Receipts Act. [Id. sec. 63.]

CHAPTER FIVE

GINNERS AND COTTON

Art.
5666. "Ginners."
5667. To obtain license.
5668. Bond.
5669. Suit on bond.
5670. Ginner to take sample.
5671. Certificate with sample.
5672. Certificate of guarantee.
5673. Duty of Commissioner.
5674. Cotton board.
5675. Marking cotton.
5676. Wrapping cotton.
5677. Baling of cotton regulated.
5678. Liability.
5679. Duty of Commissioner.

Article 5666. "Ginners."—All persons, partnerships, joint stock companies or corporations operating in this State any gin ginning cotton for commercial purposes shall be known as ginners, and shall be charged with the public use. [Acts 1st C. S. 1917, p. 65.]

Art. 5667. To obtain license.—All such ginners shall be required to obtain a license as a licensed ginner, from the Commissioner of Markets and Warehouses, which license shall be renewed each year, upon the payment of an annual fee of one dollar. Application for such license shall be made to said Commissioner stating the location and amount of capital of the gin, by whom owned, by whom conducted, and the post-office address of the owner and operator. Such application shall be accompanied by a bond prescribed by the board. [Id.]

Acts 1925, 39th Leg., ch. 13, p. 35, § 1, abolished the office of Commissioner of Markets and Warehouses and vested his duties and functions in the Commissioner of Agriculture. See sections herein following article 5611.

Art. 5668. Bond.—Such bond may be that of a bonding company authorized to do business in Texas, or may be a personal surety bond. In the event of a personal surety bond, such bond shall be renewed once each year. In no event shall a bond less than two hundred nor more than one thousand dollars be required of any ginner for each gin he may own. Said bond shall be payable to the State of Texas, for the use and benefit of all who may have a cause of action against the maker thereof under the provisions of this chapter and shall be conditioned that the cotton ginned by the ginner designated in the bond and in the application for license has been carefully ginned, and that no foreign matter or substance has been placed in the cotton, nor has any water nor anything that would increase the weight thereof been placed therein during the process of ginning or thereafter while the cotton was in the possession of the gin; and that the ginner will separate the dirt from the seed; and that any sample of cotton taken from the bale during the process of ginning, is a fair and true sample of the cotton in the bale. [Id.]

Art. 5669. Suit on bond.—Suit may be brought against the maker thereof on such bond in the name of the aggrieved party, without the necessity of binding the State in the suit. Said bond shall not be void on first recovery but repeated suits may be brought on one bond until the amount of same has been exhausted. When the bond has become impaired by reason of any judgment thereon, the maker thereof shall be required to give a new bond, or make good the impairment; otherwise the board shall cancel his license as a public ginner. [Id.]

Art. 5670. Ginner to take sample.—Each licensed ginner shall take from each bale of cotton ginned by him one fair, true, and correct sample of cotton, unless requested in writing by the owner of the cotton, not to do so. When a sample of cotton is taken, such sample shall weigh not less than four nor more than six ounces; and the ginner shall wrap the same tightly in a sample wrapper, to secure a reasonable degree of compactness. Such sample shall be taken in three draws, as nearly as practicable, representing three parts of a bale. Any ginner who takes a sample from a bale of cotton, under the provisions of this Act, may, at his option, take and file a like sample from such bale for protection under the bond given by such ginner. [Id.]

Art. 5671. Certificate with sample.—With each sample of cotton there shall be placed a certificate, un-

der the signature of the ginner, that same is a fair and true sample, as far as said ginner may be able to determine; and that the ginner guarantees no fraud was practiced in taking such sample; and that it was taken from the bale in such manner as to secure a correct sample of the cotton in the bale. [Id.]

Art. 5672. Certificate of guarantee.—Whether or not a sample of the bale of cotton so ginned shall be requested and taken by the ginner, the ginner shall nevertheless, place with each bale of cotton ginned by him a certificate guaranteeing under his bond that during the process of ginning, or thereafter, while the cotton was in the possession of the ginner, no water or foreign substance of any nature had been placed with such cotton, with intent to defraud. Such certificate shall bear the name and address of the person for whom the cotton was ginned, the number of the bale on the books of the ginner, and the weight of the bale at the gin. [Id.]

Art. 5673. Duty of Commissioner.—The Commissioner shall have power and authority, and it shall be his duty to enforce all provisions of this chapter relating to ginners and to regulate and control them in all matters relating to the performance of their duties as such. [Id.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5667.

Art. 5674. Cotton Board.—All matters relating to the issuance of a ginners license, and all rules and regulations pertaining to gins, ginning, and ginners, as authorized and required by any provision of this chapter shall be subject to review for affirmation, modification or rejection, by a board hereby created to be known as the Cotton Board, which Board shall be composed of the Commissioner of Agriculture, Banking Commissioner, and the Commissioner of Markets and Warehouses. The last named Commissioner shall be chairman of the said board, and shall have the power, and it shall be his duty, to convene said board at all reasonable necessary times, to hear and decide all questions properly coming before it for review and decision. All rules, regulations, and acts of the Commissioner of Markets and Warehouses, or of said board, pertaining to gins, ginners, and ginning, shall be subject to review by any court of competent jurisdiction in this State. [Id.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5667.

Art. 5675. Marking cotton.—Each licensed and bonded ginner shall place in letters and figures, on one side of each bale of cotton ginned by him, in appropriate and distinct letters, the following: "B———" and "B. G.———." The manner of marking for identification may at any time be changed or regulated by the Commissioner. The first blank above indicated shall be filled in by the ginner by placing the same number, numerically, as that of the bale, as shown on the books of the gin ginning the same; and the letter "B," shall stand for "bale." The second blank shall be filled in by the ginner by inserting the number of the gin license assigned to it by the Commissioner; and the letters "B. G.," when so used, shall stand for "Bonded Gin." [Id.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5667.

Art. 5676. Wrapping cotton.—Each bale of cotton ginned by a licensed and bonded ginner in this State shall be so wrapped that the bale will be completely covered when compressed and that the ends of the bale shall be closed and well sewed. The quality of the bagging shall at all times be such that the markings thereon will, under ordinary conditions, remain intact and visible. [Id.]

Art. 5677. [1322] Baling of cotton regulated.—Every person, firm, corporation or association of persons, owning or operating a compress in this State, and their agents and employés, are hereby required, in compressing, recompressing, baling or rebaling cotton bales, to so bind and tie every bale of cotton by them compressed, recompressed, baled or rebaled, that no such bale shall be delivered to any railroad company, or other common carrier, by such person, firm, corporation or association of persons, their agents or employés, unless such bale of cotton shall be free from all or any dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part of the ties, bands, buckles or splices used in tying or binding such bale of cotton. Any such person, firm, corporation or association of persons, who shall fail to bind or tie any such bale of cotton by them compressed, recompressed, baled or rebaled, in the manner above provided, and shall deliver or cause to be delivered, any such bale of cotton to any railroad company, or other common carrier, shall forfeit and pay to the State of Texas not less than fifty nor more than two hundred and fifty dollars, which may be recovered in a civil suit brought in the name of the State. [Acts 4th C. S. 1910, p. 118.]

Art. 5678. [1323] Liability.—Any person, firm, corporation or association of persons, receiving for storage, loading for transportation, or transporting, any such compressed bale or bales of cotton, in this State, containing any dangerously exposed ends of bands or buckles, or any dangerously protruding part or parts of the ties, bands, buckles or splices used in tying or binding such bale or bales of cotton, shall be liable in damages for injury to any person in the employ of such person, firm, corporation or association of persons, occasioned by reason of such dangerously exposed ends of bands or buckles, or any dangerously exposed or protruding part or parts of the ties, bands, buckles, or splices used in tying or binding such bale or bales of cotton while in the discharge of the duties of such employment. The duty of inspection of such bales of cotton shall be on the employer and not the employee. [Id.]

Art. 5679. [1324] Duty of Commissioner.—The Commissioner of Labor Statistics shall see that the provisions of the two preceding articles are observed and enforced. He shall obtain and collect evidence of any violation thereof upon the part of any person, firm, corporation, or association of persons engaged in the business of compressing cotton, who shall fail to comply with said provisions. Said commissioner shall file annual statements with the Governor, showing in detail all expenses incurred by him in connection with his duties under this law. [Id.]

CHAPTER SIX

PUBLIC WEIGHER

Art.
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Article 5680. "Public weigher" defined.—Any person engaged in the business of public weighing for hire, or any person, who shall weigh or measure any commodity, produce or article, and issue therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce or article is based, shall be known as a public weigher, and shall comply with the provisions of this chapter. The provisions of

this article shall not apply to the owners, managers, agents or employees of any compress or any public warehouse in their operation as a warehouseman. This exemption shall not apply in any manner to any Texas port. [Acts 1919, p. 168.]

Acts 1925, 39th Leg., ch. 13, p. 35, §§ 1-6, abolished the office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department, and the Weights and Measures Department and vested their duties and functions in the Commissioner of Agriculture. Such sections are inserted herein following article 5611.

Art. 5681. [7828] [4308] Appointment.—The Governor is authorized and required to appoint five persons as public weighers in every city which receives annually one hundred thousand bales of cotton on sale or for shipment. In all cities and towns which receive as much as fifty thousand bales of cotton, twenty-five thousand tons of cotton seed; one hundred thousand bushels of grain or rice, one hundred thousand pounds of wool; five thousand barrels of sugar, or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient number of public weighers for such city or town to carefully and accurately weigh all produce tendered for the purpose of weighing for shipment. [Acts 1883, p. 83; Acts 1899, p. 264; Acts 1919, p. 124.]

Art. 5682. Recommendation for appointment.—No man shall be appointed as such weigher unless he shall receive the endorsement of the senator and a majority of the representatives from the senatorial district where such appointee would hold such office. [Acts 1919, p. 124.]

Art. 5683. [7828] [4308] Election.—In all counties in which there are no city or cities in which the Governor is authorized to appoint public weighers, there shall be elected at each general election a public weigher for each justice precinct in the manner and form governing the election of other precinct officers. The commissioners court at the regular February term preceding the election may unite two or more justice precincts for the purpose of electing such public weighers. [Id.]

Art. 5683a. Office—in cities not less than 25,600 population.—In and for all counties in this State having a population, according to the United States census of 1920, of not less than 25,600 people and not more than 25,700 people, there is created the office of public weigher, whose official headquarters shall be at the county seat of such county and who shall discharge and perform at the county seat only, all the duties required by law of any public weigher, and whose qualifications shall be the same as required by law of public weighers elected in precincts, and who shall appoint a sufficient number of deputies to enable him to discharge his duties.

2. Such public weigher shall take the oath required by the Constitution of public officers, and shall give a bond in the sum of $2,500.00, payable, conditioned and to be approved as required in cases of bonds of precinct public weighers, and shall procure a like certificate of authority from the Commissioner of Markets and Warehouses. The deputies of such public weigher shall take such oath and give bond in like manner, which bond, however, shall in the case of such deputies be in the sum of $1,000.00.

3. At the first regular term of the commissioners' court of such counties, following the passage of this Act, such commissioners' court shall appoint a public weigher for its county, who shall serve until the next general election when his successor shall be elected.

4. This Act shall not be construed to suspend the operation of the present law, providing for the election of precinct public weighers, in the counties effected [affected] by this law.

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5683b. Office—in cities not less than 55,700 population.—In and for all counties in this State having a population according to the United States census of 1920 not less than 55,700 and not more than 55,800 people, there is created the office of public weigher to be filled by two officers of equal rank, whose official headquarters shall be in the county seat of such county and who shall discharge and perform at the county seat only, all the duties required by law of any public weigher and whose qualifications shall be the same as required by law of public weighers elected in precincts, and who shall appoint a sufficient number of deputies to enable them to discharge their duties.

Sec. 2. Each of said public weighers shall take the oath required by the Constitution of public weighers and give a bond in the sum of $2,500, payable, conditioned and to be approved as required in cases of bonds of precinct public weighers, and shall procure a like certificate of authority from the Commissioner of Markets and Warehouses.

Sec. 3. Such public weighers shall be elected by popular vote of the entire county as other county officers. One of said weighers shall fill a place called Place No. 1 and the other shall fill the place called Place No. 2.

Sec. 4. This Act shall not be construed to suspend the operations of the present law providing for the election of Precinct Public Weighers in the counties affected by this law, except the precinct in which the county seat is located, and it shall not disturb the present Public Weighers, but shall take effect and be in force on and after January 1, A. D. 1927. [As amended Acts 1925, 39th Leg., ch. 91, p. 265, § 4; Acts 1926, 39th Leg., 1st C. S., p. 21, ch. 14, § 1.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5684. [7828] [4308] Qualifications of weigher.—No person shall be appointed or elected public weigher unless he is a qualified voter in the city or precinct for which he is appointed or elected and is of a good moral character and unquestioned integrity. He shall have a fair education and be able to keep an accurate set of books as required by this law. No person shall be appointed or elected public weigher, or deputy public weigher who is interested in the buying or sale of cotton, wool, sugar or grain to be weighed, either as principal, agent, factor, commission merchant or employee. [Id.]

Art. 5685. Term and removal.—All public weighers appointed by the Governor or elected for any precinct shall hold their office for the term of two years. [Id.]

Art. 5686. Abolishing elective office.—When the people of any subdivision of a county that has an elective weigher may wish to abolish said office of public weigher, the commissioners court of said county shall, upon petition to abolish said office signed by qualified voters at least one-third in number of the whole vote cast for Governor at the last preceding election in the weigher's precinct, order an election to decide whether such office of public weigher of the subdivision named in the petition, shall be abolished or not. Said election shall be held in the same manner as other elections. If a majority of the votes of the subdivision of the county ordering said election shall be cast in favor of abolishing any office of public weigher, the commissioners court shall declare such office to be abolished within thirty days after the election; and another election for this purpose shall not be held for two years.

Art. 5687. Bond of appointed weigher.—Every public weigher appointed by the Governor, shall file a bond payable to the State of Texas in the sum of five thousand dollars, conditioned that he will accurately weigh, or measure all produce tendered to him for weighing or measuring, and that all certificates of weights issued by him shall represent a true and accurate weight of the produce so weighed and that he will comply with the laws governing public weighers, and that he will not permit any one to molest, mutilate or destroy any article, produce or commodity while in his possession. Such bond shall not be void on first recovery, but may be sued on by any person injured by such public weigher. All bonds given by such public weighers or their deputies shall be subject to approval

by the Commissioner of Markets and Warehouses. [Acts 1919, p. 122.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5688. [7829] Bond of elective weigher.—Each public weigher elected for a precinct shall execute a bond payable to the county judge in the sum of five thousand dollars to be approved by the commissioners court, conditioned upon the faithful and impartial performance of the duties of his office. The bond of a weigher for a precinct where not over five thousand bales of cotton are received for sale or shipment shall be two thousand five hundred dollars. [Acts 1903, p. 216.]

Art. 5689. Filing bond and oath of office.—Each public weigher, whether elected or appointed, before entering upon his duties as such, shall take and subscribe to the official oath and file said oath and his bond with the county clerk of the county in which he resides. [Id.]

Art. 5690. Certificate of authority.—All public weighers or deputy public weighers, appointed or elected shall obtain from the Commissioner of Markets and Warehouses a certificate of authority to carry on the business of public weigher or deputy public weigher within the city, town, precinct or shipping point for which he was elected or appointed. [Acts 1919, p. 124.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5691. Deputy weighers.—Each public weigher, appointed or elected, shall have the right, and it shall be his duty to appoint a sufficient number of deputies in each precinct, to weigh all produce tendered for the purpose of weighing, at any and all points within such precinct. He shall require of each of said deputies to file a bond in the penal sum of one thousand dollars, under the same terms and conditions as the bond which he filed with the commissioners court of the county in which he resides, before he shall be permitted to engage in the business of deputy public weigher; such bond so filed, shall be payable to the State of Texas, and shall be subject to the approval of the commissioners court of the county in which he resides, and certified to the Commissioner of Markets and Warehouses, before such deputy public weigher shall be entitled to engage in the business of public weighing. Such public weigher shall have the right to appoint a sufficient number of deputies to serve at will of the public weigher, to aid him in weighing or measuring any commodity that is tendered to him for weighing.

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5692. Special weighers.—In all counties of this State in which there are two or more cities, towns or shipping points that receive as much as fifty thousand bales of cotton, or twenty-five tons of cotton seed, or one hundred thousand bushels of grain, or two hundred thousand bushels of rice, or one hundred thousand pounds of wool, or five thousand barrels of sugar, or any other commodity in large quantities, it shall be lawful for the Governor to appoint a sufficient number of weighers for such county to carefully and accurately weigh all commodities tendered for the purpose of weighing for shipment, sale or purchase. This article shall not apply to Galveston and Nueces counties. All such appointments shall be made by the Governor on the recommendation of the Senator from whose senatorial district such appointment is made, together with a majority of the representatives in the Legislature from such senatorial district. No man shall be appointed unless he shall receive the endorsement of the Senator and a majority of the representatives from such district. Every public weigher so appointed shall file a bond payable to the State of Texas, in the sum of five thousand dollars, conditioned that he will accurately weigh, or measure, all commodities tendered to him in said county for weighing or measuring, and that all certificates of weight issued by him shall represent a true and accurate weight of such produce so weighed, and otherwise complying with the law governing the conditions of bonds required of public weighers. Such bonds so given shall not be void upon first recovery but may be sued on successively by any and all persons who are injured by such public weigher. Such public weigher shall have the right to appoint a sufficient number of deputies to aid him in weighing or measuring any commodity that is tendered to him for weighing. All bonds given by such public weighers or their deputies shall be subject to the approval of the Commissioner of Markets and Warehouses, and all bonds and oaths of such public weighers or their deputies shall be filed with said Commissioner. [Acts 1st C. S. 1921, p. 35.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5693. Must comply with law.—No one shall be allowed to pursue the business of weighing for the public or grant a certificate or weight sheet upon which a purchase or sale is made unless he comply with the provisions of this chapter. [Id. Acts 1919, p. 124.]

Art. 5694. Commissioner to supervise.—All public weighers in this State as provided for in this chapter, shall be under the supervision of the Commissioner of Markets and Warehouses and all weights made by them shall be subject to his approval. In any case where any discrepancy arises as to weights or measures of cotton or other farm products, made between public weighers in different sections of this State, or between public and private weighers, the difference shall be subject to review by the Commissioner; and any party who may be dissatisfied with the weights or measures of any public or private weigher, may appeal to the Commissioner, and have such cotton or other farm products re-weighed or re-measured, for the purpose of ascertaining and deciding the correct weight and measure thereof. The scales of all public and private weighers weighing cotton and other products shall at all reasonable times be subject to inspection by the Commissioner, or his duly authorized representative. Compliance with this article shall be absolute prerequisite to the right to institute and maintain any action concerning the subject matter hereof, in any court of this State. The authority herein conferred upon the Commissioner, to review the weights, shall not be construed as in any manner affecting the selection of public weighers or of fixing the charge to the public of such public weighers. [Acts 1st C. S. 1917, p. 68.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5695. Duty of Commissioner.—The Commissioner of Markets and Warehouses shall issue a certificate of authority to all persons engaged in the business of weighing for the public; carefully and accurately test all scales, weights, beams and measures, used by such public weighers at least once every twelve months, and charge such public weigher a fee of five dollars for such inspection, which fee shall be paid, by the Commissioner into the State Treasury; such inspection fee to be collected at the time of the certificate of authority is issued to any public weigher or deputy public weigher in this State, and such fee shall be collected annually thereafter from all persons engaged in the business of public weigher. [Id. p. 126.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5696. Weight certificates.—The Commissioner shall prescribe the form of weight certificate to be used by all public weighers in this State, which certificate shall be known as a State certificate of Weights and Measures. Such certificate shall state thereon the kind of produce; the number of same, the date of the receipt of the produce, the owner, agent, or consignee, the total weight of the produce, the vessel, railroad, or other means by which the produce was received, and any trade or other mark thereon; and such other information as may be necessary to distinguish or identify the produce from a like kind. No certificate other than the one herein prescribed shall be used by any public weigher in this State, and such certificate when so made and properly signed, shall be prima facie evidence of such weight. All certifi-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

cates of weights and measures or weight sheets as provided for in this chapter shall contain the accurate and correct weight of any and all commodities weighed when issued by public weighers. [Id. p. 126.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5697. Seal.—Every public weigher in this State shall provide himself with a seal, consisting of a star of five points, and shall have inscribed on the outer margin thereof the words; "Public Weigher, Precinct No. —, ——— County, Texas" or "Public Weigher, ——— city, Texas" which seal shall be impressed upon each weight certificate issued by such public weigher, or deputy public weigher, on all weight sheets made out by them. [Id. p. 125.]

Art. 5698. Record of weights.—All public weighers shall keep and preserve in a well bound book a correct and accurate record of all weights by them, as provided in this chapter, which record shall at all times be open for inspection to the public and to the Commissioner of Markets and Warehouses, his deputies or inspectors. Such record shall be uniform throughout the State, and the form of such record shall be prescribed by the Commissioner. [Id.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5699. Piled or stored separately.—All amounts, lots, or shipments or consignments of produce, after having been weighed, shall be piled or stored separately as nearly as can be, in order that amounts, lots, shipments or consignments, may be distinguished from other lots, shipments, or consignments of like kind. [Id. p. 127.]

Art. 5700. To tag or mark article.—All public weighers in weighing any commodity, produce, or article, shall immediately tag or mark such commodity, produce or article that has been weighed by him so as to distinguish same from that which has not been weighed. [Id.]

Art. 5701. Re-weighing.—When any doubt or difference arises as to the correctness of the net or gross weight of any amount, or a part of a commodity, produce or article, for which a certificate of weight or measure has been issued, as provided in this State, by the public weigher, the owner, agent or consignee, may, upon complaint to the Commissioner of Markets and Warehouses, have said amount, or part of any commodity, produce or article re-weighed by the Commissioner, or his deputy, or by a public weigher designated by the Commissioner by depositing with the Commissioner sufficient money to defray the cost of re-weighing such article or commodity. If on re-weighing, it is discovered that fraud or carelessness, or any faulty weighing apparatus was the cause of a discrepancy in weights, the cost of re-weighing shall, in all instances, be borne by the public weigher who issued the weight sheet or weight certificate. [Id.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5702. Suspension or dismissal.—Whenever any public weigher or deputy public weigher appointed or elected under the provisions of this chapter shall be guilty of malfeasance in office, or who is grossly incompetent in the performance of his duties, he shall be subject to suspension or dismissal from office by the commissioners court of the county in which he resides, or by the Governor, should he be appointed by the Governor. In all cases it shall be the duty of the Commissioner of Markets and Warehouses, to file with the commissioners court or the Governor the specific charges alleging malfeasance, misfeasance, dishonesty or incompetency or other cause. Such case may be set down for hearing not less than ten nor more than thirty days from the filing of such charges. The accused shall be furnished a copy of such charges and be notified of the date set for hearing of his case. He shall have the right to be represented by an attorney, to introduce evidence in his own behalf, and to have compulsory process for witnesses and the production of records. If he is found guilty, the commissioners court or Governor shall immediately discharge him as a public weigher, provided, he may have the right of appeal to the district court of his county or to the district court of Travis county. [Id.]

The office of Commissioner of Markets and Warehouses is abolished, see note to article 5680.

Art. 5703. [7833] [4314] Factor or commission merchant.—It shall not be lawful for any factor, commission merchant, or other person or persons, to employ any other than a public weigher, or his deputies to weigh cotton, wool, sugar, hay, or grain, or other produce, sold or offered for sale in any city or justice precinct having a public weigher duly qualified. Whoever violates any provision of this article shall be liable at the suit of the public weigher to damages in any sum not less than five dollars for each bale of cotton, bale or sack of wool, ton of hay, or ton of grain, so unlawfully weighed. [Id.]

Art. 5704. [7834] [4316] Owner may weigh, etc.—Nothing in this chapter shall prevent any person, firm or corporation from weighing his own cotton, wool, sugar, hay, grain or pecans in person. In places where there are no public weighers appointed or elected, any person who shall weigh cotton, wool, sugar, grain, hay, or pecans for compensation shall be required before weighing such produce to enter into a bond for twenty-five hundred dollars approved and payable as in case of public weighers referred to in this chapter, and conditioned that he will faithfully perform the duties of his office and turn over all property weighed by him on demand of the owner. This article shall not apply to merchant flouring mills. [Acts 1905, p. 117.]

CHAPTER SEVEN

WEIGHTS AND MEASURES

Art.

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Article 5705. Commissioner to enforce law.—The Commissioner of Markets and Warehouses shall have power and authority to enforce, or cause to be enforced, any provision of this chapter. He shall appoint a chief deputy, who shall be known as Chief Deputy of Weights and Measures. In the absence or inability of the Commissioner, such deputy may perform any duty required by the provisions of this chapter. The Commissioner shall also appoint such additional deputies from time to time to serve as sealers of weights and measures, as may be provided for by appropriation. He may also designate such inspectors, lecturers, or employés, serving under him as Commissioner, as sealers of weights and measures. [Acts 1919, p. 237.]

Acts 1925, 39th Leg., ch. 13, p. 35, §§ 1–6, abolished the office of Commissioner of Markets and Warehouses, the Markets and Warehouse Department, and the Weights and Measures Department and vested their duties and functions in the Commissioner of Agriculture. Such sections are inserted herein following article 5611.

Art. 5706. Expenses.—Such deputies, together with the chief deputy and the Commissioner, shall be entitled to their actual traveling expenses when traveling on business for the State, and the Legislature shall provide from time to time by appropriation other estimated expenses to fully carry out the provisions of this chapter. [Id.]

Art. 5707. Duty of Commissioner.—The Commissioner shall investigate conditions throughout the State, and especially in all the cities and towns in the State, with respect to weights and measures, and the sale of goods, wares and merchandise, commodities, food stuff and feed stuff sold in packages or containers, and also all kinds of feed, fuel or ice that is sold by weight or measure. The Commissioner shall annually report to the Governor, and shall, prior to each regular session of the Legislature, file a copy of such report made by him to the Governor, together with his recommendations, with the Legislature of the State. [Id.]

Art. 5708. Rules and regulations.—The Commissioner shall issue instructions and make such rules and regulations for the government of all State sealers of weights and measures, deputy sealers, inspectors and local sealers, as he may see proper in order to carry out the purposes of this chapter. All such rules and regulations so issued by him shall have the same force and effect as if they were enacted into law. [Id.]

Art. 5709. Jurisdiction.—The jurisdiction of all State sealers, deputy sealers and inspectors appointed by the Commissioner shall be co-extensive with the limits of the State and they shall have a right to inspect weights and measures in any and all districts or localities designated by the Commissioner. The jurisdiction of all local sealers of weights and measures appointed by the governing body of any city in this State shall be co-extensive with the limits of said city. [Id.]

Art. 5710. Same power as peace officer.—The Commissioner, his deputy, sealers or inspectors and all local sealers and their deputies in the performance of their official duties, shall have the same power as peace officers in this State. [Id.]

Art. 5711. Record of acts and reports.—The Commissioner shall keep in his office a complete record of all acts done by him; of all inspections made throughout the State, and a record of all prosecutions for the violation of any provision of this chapter. He shall keep an accurate record of the reports of all the various sealers of weights and measures, deputy sealers and inspectors appointed by him, or under his direction, as well as a record of the inspections of all local sealers of weights and measures appointed by the various cities of the State; such record shall always be open to the inspection of the public. Copies of such record may be had by application therefor, together with the necessary cost of making such copies. [Id.]

Art. 5712. Test of standard.—The standard of weights and measures received from the United States under a resolution of Congress, approved June 14, 1836, and such new weights and measures as shall be received from the United States as standard weights and measures in addition thereto, or in renewal thereof, and such as shall be procured by the State in conformity therewith and certified by the bureau of standards, shall be the State's standards by which all State and municipal standards of weights and measures shall be tried, authenticated, proved and sealed. [Id.]

Art. 5713. To keep and maintain standards.—The standards referred to in the preceding article shall be kept by the Commissioner in a safe and suitable place in his office, from which they shall not be removed except for repairs or certification. He shall maintain such standards in good order and shall submit them, at least once in ten years to the National Bureau of Standards for certification. He shall purchase such apparatus as shall be found necessary to a proper prosecution of the work of the office. [Id.]

Art. 5714. Shall establish tolerances.—The Commissioner shall establish tolerances and specifications for commercial weighing and measuring apparatus for use in this State, similar to the tolerances and specifications recommended by the National Bureau of Standards and he may establish a standard net weight or net count of any commodity, produce, or article, and prescribe such tolerances for same as he may in his best judgment deem necessary for the proper protection of the public. [Id.]

Art. 5715. Copies to cities.—The Commissioner shall, at the request of any city council, town council, city commission or any other such town or city body, furnish to them copies of the standard weights and measures of the State; such copies shall be furnished at the expense of any such city or town requesting the same. He shall, upon request of any such city council, town council, or city commission, test and accurately approve copies of the State's standards of weights and measures procured for the use of any such city or town, to be used by the sealer of weights and measures for such city or town. All copies furnished or copies tested and approved by the Commissioner shall be true and correct; shall be sealed and certified by the Commissioner and stamped with the letter "C." Such copies need not be of the same material or construction as the standards of the State and such copies may be furnished in any suitable materials or construction that the city or town requiring the same may specify, subject, however, to the approval of the Commissioner. [Id.]

Art. 5716. Correcting standards of cities.—The Commissioner shall inspect and correct the standards used by any incorporated city or town in this State at least once every two years and compare the same with others in his possession, and keep a record of the state of inspection and character of weights and measures so compared. [Id.]

Art. 5717. Sale of false devices.—The Commissioner shall have general supervision over all weights and measures and weighing and measuring devices sold or offered for sale in this State. If any false weights or measures are being sold, offered for sale, or about to be sold, he shall have full authority to condemn same and prohibit the sale and distribution of such false weights and measures, or weighing and measuring devices in this State. [Id.]

Art. 5718. Certified standard.—All sealers of weights and measures, or deputy sealers of weights and measures appointed under the terms and provisions of this law are prohibited from using for the purpose of comparison or verification in any official capacity any weights or measures, unless same have been certified to by the Commissioner. All expenses incurred in certifying to the correctness of the weights and measures or copies of the same used by any incorporated city or town in this State shall be paid by such city or town for whom the comparison or test is made. [Id.]

Art. 5719. Copies of original standard.—In addition to the standards heretofore referred to, and required to be kept by the State, the State shall also have a complete set of copies of such original standards of weights and measures adopted by this chapter, which shall be used for adjusting municipal standards by the Commissioner or his deputy in the performance of their duties, and the original standards shall not be used, except for the adjustment of this set of copies and for certification purposes. Additional complete sets of copies for such original standards of weights and measures may be purchased by the Commissioner when the same are necessary for use by any State sealer of weights and measures, or deputy State sealer of weights and measures. In all instances where the State shall furnish true and correct copies of weights and measures for the use of any incorporated city or town in this State, such city or town shall reimburse the State for the actual cost thereof, plus such expenses as are necessary to pay the freight, express and cost of certification thereof. [Id.]

Art. 5720. Tests for State institutions.—The Commissioner or his deputy shall at least once annually, or oftener if requested so to do by the Board of

Control, or board of supervisors, regents or other governing body of any State institution or penitentiary commission or the governing body of any other penal institution of the State, test all scales, weights and measures used in checking the receipt and distribution of supplies of any such institution under the control of the State, and shall report his findings to the Chairman of the Board, or the superintendent of such institution. He shall also test all scales, weights and measures used for any other purpose by such institution. [Id.]

Art. 5721. Charges against city sealer.—The Commissioner, if he finds that any sealer or deputy sealer of weights and measures appointed by any incorporated city or town in this State, by virtue of the authority given them under the law, is neglecting to perform the duties of his office, or has refused to accept the recommendations and instructions of the Commissioner and be guided thereby, or is guilty of any malfeasance in office, or who is incompetent, he shall present to the governing body or officer who has control or supervision of such city sealer of weights and measures, or deputy sealer of weights and measures, a written charge and accusation based upon and clearly stating the offense of such sealer or deputy sealer and request such officer or governing body to hear and determine such accusation. Upon receipt of such charge and accusation, such officer or city commission with whom the same has been filed, shall make an order setting the same for a hearing at a time which shall be not less than ten nor more than twenty days from the date of filing of such charge and accusation and shall in such order fix the time and place for such hearing. A copy of such charge and accusation, together with a copy of such order, shall be served upon the accused at least seven days prior to the time fixed for such hearing. At such hearing the accused shall have the right to be represented by counsel and to produce evidence in his defense. If, upon such hearing, he shall be found guilty of malfeasance, or misfeasance in office or adjudged to be incompetent to perform the duties of the office, the officer or governing body before whom such hearing is had must forthwith remove him from office. Whenever it shall become known to the Commissioner or his deputy that any local sealer of weights and measures for any city or town in this State, or deputy sealer of weights and measures, is guilty of accepting any bribe, gift or money from any one who is interested in procuring false weights and measures, as soon as such fact shall become known, or be made known to the officer or governing body employing such sealer or deputy sealer, he or they shall immediately suspend such sealer from office. [Id.]

Art. 5722. To supervise local sealers.—Every local sealer of weights and measures, or deputy sealer, appointed by any governing body of any town or city shall be under the supervision of the Commissioner, and shall be required to report to him regularly and carry out all the instructions of the Commissioner. Failure or refusal to do so shall be grounds for dismissal from the service. [Id.]

Art. 5723. Duty of sealer and inspector.—Each sealer of weights and measures, deputy sealer, inspector, or local sealer shall carefully preserve all copies of the standards of weights and measures used by him in his inspection work, and keep the same safe and in good order, when not in actual use. He shall keep a record of all work done by him showing the inspections made, for whom made, giving the name and post-office address of each party for whom any measurement, test weight, inspection, condemnation or prosecution is made; such record shall be preserved by him, from which he shall compile his reports at regular intervals to the Commissioner when required to make a report. He shall keep a careful record of all violations of the weights and measures law and report in detail to the Commissioner. [Id.]

Art. 5724. Sealing and marking.—Every person, firm or corporation, or association of persons, using or keeping for use, or having or offering for sale, weights, scales, beams or measures of any kind, instruments or mechanical devices for weighing or measuring, and tools, appliances and accessories connected with any or all of such instruments or measurements within this State, shall cause the same to be sealed and marked by the sealer of weights and measures as to their correctness, and no instrument shall be sold for the purpose of weighing or measuring unless it shall bear the seal of the inspector of weights and measures as to its correctness. [Id.]

Art. 5725. Subject to inspection.—When any weight, scale, beam, measure of any kind, instrument or mechanical device for weighing or measuring; also all tools and appliances necessary or connected with any such instruments of measure have been tested and found correct by any sealer appointed under the provisions of this chapter, the same may be used, kept for use, offered for sale, sold or kept for sale anywhere within this State for one year without being further tested. Any weight, scale, beam, measures of every kind, instruments or mechanical devices for weighing or measuring, or appliances and accessories connected with any or all of such instruments or measure, which have been tested and sealed and certified as correct by the National Bureau of Standards may be kept for sale, sold or offered for sale without being tested and sealed by a sealer under the provisions of this chapter, but all such weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measuring; also all tools and appliances necessary connected with any or all of such instruments or measures shall always be subject to inspection and testing as herein provided, notwithstanding that the same have been tested and sealed, either by a sealer appointed under the provisions of this chapter, or by the National Bureau of Standards. Any scale, beam or mechanical device for weighing or measuring, which, after being sold, and before being used for weighing and measuring, is found necessary to assemble and set up, may be sold, kept for sale or offered for sale without first being tested and sealed, but such scale, beam or measuring device for weighing or measuring, before being used for weighing or measuring, without the consent of the Commissioner, must be tested and sealed as provided in this chapter. [Id.]

Art. 5726. Testing weights and devices.—All sealers, deputy sealers, inspectors, and local sealers shall inspect, try and test all weights, scales, beams, measures of any kind, instruments or mechanical devices for weighing or measuring and all tools, appliances and accessories connected with any or all such instruments or measures kept for the purpose of sale, sold or used by any proprietor, agent, lessee or employee in proving the size, quantity, extent, area, weight or measurement of quantities, things, produce, articles for distribution or consumption, purchased or offered or submitted by such person or persons for sale, hire, or award, and ascertain if the same are correct, and he shall have the power to and shall from time to time weigh or measure packages or amounts of commodities of whatsoever kind kept for the purpose of sale, offered for sale or sold, or in the process of delivery, in order to determine whether the same contains the quantity or amount represented and whether they are being offered for sale or sold in accordance with law and may seize for use as evidence such amounts of commodities or packages which shall be found to contain a less amount than that represented. He shall at least once each year, or as much oftener as may be found necessary, and directed by the Commissioner, see that the weights, measures and all weighing and measuring apparatus, used in any locality to which he is assigned for the purpose of inspection, are correct. All local sealers of weights and measures shall test at least once each year all scales, weights and measures of every kind and device within any such city to which they are appointed, and oftener, if required so to do. Any sealer, or deputy sealer, or inspector for the purposes above mentioned, and in the general performance of his duty may, without warrant, enter, go into or upon any stand, place, building or premises, or stop any vendor, peddler, junk dealer, driver of a coal wagon, ice wagon or delivery wagon

or the driver of any wagon containing commodities for sale or delivery, and if necessary require him to proceed to some place which the sealer may specify for the purpose of making the proper tests. [Id.]

Art. 5727. Marking and tagging.—Whenever a sealer, deputy sealer, or inspector of weights and measures compares weights and measures, or weighing or measuring instruments and finds that they correspond, or causes them to correspond to the standards, he shall seal or mark under his name such weight or measure or weighing or measuring instrument with an appropriate device showing that the weight or measure, or weighing or measuring instrument is correct, and the date of the inspection, which device shall be placed so as to be easily seen. He shall condemn and seize and may destroy incorrect weights and measures and weighing and measuring instruments, which in his best judgment are not susceptible of repair, but any weights and measures, or weighing or measuring instruments which shall be found to be incorrect, but which, in his best judgment are susceptible of repair, he shall cause to be marked with a tag or other suitable device with the words "Out of Order." The owner or user of any weights or measures, or weighing or measuring instruments, which have been marked "Out of Order," as in this article provided, may have the same repaired or corrected within thirty days, but until the same have been repaired or corrected and tested as herein provided, the owner or user thereof must neither use nor dispose of the same in any way, but shall hold the same at the disposal of the Commissioner or any deputy or local sealer. When the same have been repaired or corrected, the owner or user thereof shall notify the Commissioner or his deputy or local sealer and they shall again be tested for the purpose of proving the weight, measure or weighing or measuring instrument which had been found to be incorrect and marked as in this article, and until such weight, measure or weighing or measuring instrument has been re-inspected by the sealer and found correct, the same shall not be used or in any way disposed of by the owner. When any weight, measure or weighing or measuring instrument has been repaired and corrected, and has been re-inspected and found correct by the sealer of weights and measures, the sealer of weights and measures shall remove the tag or device with the words "Out of Order" and shall mark such weight, measure or weighing or measuring instrument in the manner provided for the marking of same where upon inspection they were found to be correct. [Id.]

Art. 5728. Fees.—The Commissioner shall have the right and power to fix and collect a nominal fee for testing all weights, scales, beams and any kind of instruments or mechanical devices for weighing or measuring; all tools, appliances and accessories connected with all such instruments before they are offered for sale; such fee, however, to be reasonable and to be graduated according to the cost of such instrument, and it shall be unlawful for anyone to sell any weights, scales, beams, measuring instruments or mechanical devices for weighing or measuring, or to lease or rent same, unless such instruments have been duly inspected, tested and approved by the Commissioner, or one of his duly accredited deputies. All moneys collected by the Commissioner shall be paid into the State Treasury. [Id.]

Art. 5729. Definitions.—The word "person," whenever used in this chapter, shall be deemed to include person, firm or corporation and all officers, directors and managers of corporations shall comply with the provisions of this chapter on behalf of their respective corporations. [Id.]

Art. 5730. Legal standards.—The standard of weights and measures adopted and used by the Government of the United States is hereby declared the legal standard of weights and measures of this State; provided, that as to commodities for which the Congress of the United States provided no standard of weights or measures, the standards adopted by this State shall be the standards of weights and measures for such commodities. The unit of standard of length and surface, from which all the other measures of extension, whether lineal, superficial or solid, shall be derived and ascertained, is the standard yard designated in this chapter, which is divided into three equal parts called feet, and each foot into twelve equal parts called inches. For measures of cloth, and other commodities commonly sold by the yard, it may be divided into halves, quarters, eighths and sixteenths. The rod, pole or perch contains five and one-half yards; the mile one thousand seven hundred and sixty yards. The Spanish vara, thirty-three and one-third inches. Where land is measured by the English rule, the chain for measuring land shall be twenty-two yards long and divided into one hundred equal parts called links. The acre for land measure shall be measured horizontally and shall contain forty eight hundred and forty square yards; six hundred and forty acres shall constitute a square mile. [Acts 1919, p. 232.]

Art. 5731. Standard of avoirdupois and troy weights.—The units or standards of weight from which all the other weights shall be derived and ascertained shall be the standard of avoirdupois and troy weights designated in this chapter, and avoirdupois pounds shall bear to the troy pounds the ratio of seven thousand to five thousand seven hundred and sixty grains, and the avoirdupois pound shall be divided into sixteen equal parts called ounces. The hundred weight shall consist of one hundred avoirdupois pounds, and twenty hundred weight shall constitute a ton. The troy ounce shall be one twelfth of a troy pound. [Id.]

Art. 5732. Standard for liquids.—The units or standards of measure of capacity for liquids from which all other measures shall be derived and ascertained, shall be the standard gallon and its parts designated in this chapter. The barrel shall constitute thirty-one and one-half gallons and two barrels shall make a hogshead. All other measures of capacity for liquids shall be derived from the liquid gallon by continual division by the number two, so as to make half gallons, quarts, pints, half pints and gills. [Id.]

Art. 5733. Standard for solids.—The unit or standard measure of capacity for substance not liquids from which all measures of such substance shall be derived and ascertained, is the standard half bushel mentioned in this chapter. The peck, half peck, quarter peck, quart and pint measure for measuring commodities which are not liquid shall be derived from the half bushel by successively dividing that measure by two. The standard bushel measure shall constitute two thousand one hundred fifty and forty-two one hundredths cubic inches; the standard half-bushel measure shall contain ten hundred seventy-five and twenty one-hundredths cubic inches; the standard gallon shall contain two hundred thirty-one cubic inches. All measures for measuring dry commodities shall not be heaped but shall be stricken with a straight stick or roller. [Id.]

Art. 5734. Weight per bushel, barrel or ton.—Whenever any of the following articles shall be contracted for, sold or delivered, the weight per bushel or barrel or divisible merchantable quantities of a bushel or barrel shall be as follows: Wheat flour, per barrel 200 pounds; half barrel sack 100 pounds; quarter barrel sack 50 pounds; eight barrel sack 25 pounds Corn meal, per bushel sack 50 pounds; half bushel sack 25 pounds; quarter bushel sack 12½ pounds. Alfalfa Seed, per bushel 60 pounds. Apples, green, per bushel 50 pounds; dried, per bushel 28 pounds. Barley, per bushel 48 pounds. Beans, green or string, per bushel 24 pounds; wax, per bushel 24 pounds; white, per bushel 60 pounds; castor, per bushel 46 pounds. Beets, per bushel 60 pounds. Blue Grass Seed, per bushel 14 pounds. Bran, per bushel 20 pounds by the 100 pounds in 100 pound bags. Buckwheat, per bushel 52 pounds. Carrots, per bushel 50 pounds. Charcoal, per bushel 22 pounds. Clover seed, per bushel 60 pounds. Coal, anthracite, per bushel 80 pounds. Coke, per bushel 40 pounds. Broomcorn Seed, per bushel 48 pounds. Corn meal unbolted, per bushel

48 pounds. Corn, in the ear, per bushel 70 pounds, after December 1st; New crop, before December 1st, 72 pounds; Corn, shelled, per bushel 56 pounds; Kaffir Corn, per bushel 50 pounds. Cotton Seed, per bushel 32 pounds; by the ton 2000 pounds. Cranberries, per bushel 33 pounds. Cucumbers, per bushel 48 pounds. Flax Seed, per bushel 56 pounds. Gooseberries, per bushel 40 pounds. Hair, plastering, unwashed, per bushel 8 pounds; washed, per bushel 4 pounds. Hemp Seed, per bushel 44 pounds. Hickory Nuts, per bushel 50 pounds. Hungarian Grass Seed, per bushel 48 pounds. Indian Corn or maize, per bushel 56 pounds. Lime, unslacked, per barrel 180 pounds net; hydrated, per sack 100 pounds net; hydrated per bag 40 pounds net; agricultural, per sack 100 pounds net; agricultural, per bag 50 pounds net. Milo Maize, per bushel 50 pounds. Millet, per bushel 50 pounds; Japanese barnyard, per bushel 35 pounds. Oats, per bushel 32 pounds. Onions, per bushel 57 pounds. Onion sets, top, per bushel 30 pounds; bottom, per bushel 32 pounds. Orchard Grass Seed, per bushel 14 pounds. Parsnips, per bushel 50 pounds. Peaches per bushel 50 pounds; dried, per bushel 28 pounds. Peanuts, green, per bushel 22 pounds, Georgia or Virginia; Spanish, per bushel 24 pounds; roasted, per bushel 20 pounds. Pears, per bushel 58 pounds. Peas, dried, per bushel 60 pounds; green, in pod, per bushel 32 pounds. Popcorn, in ear, per bushel 70 pounds; shelled, per bushel 56 pounds. Potatoes, Irish, per bushel 60 pounds; sweet, per bushel 50 pounds. Quinces, per bushel 48 pounds. Rape Seed, per bushel 50 pounds. Red Top Seed, per bushel 14 pounds. Rice Bran, per sack 143 pounds; Rice polish, per sack 200 pounds; Rough Rice, per bushel 45 pounds. Rutabagas, per bushel 50 pounds. Rye Meal, per bushel 50 pounds. Rye, per bushel 56 pounds. Salt, coarse, per bushel 55 pounds; fine, per bushel 50 pounds. Shorts, per bushel, 20 pounds; by 100 pounds in 100 pound bags. Sorghum Seed, per bushel 50 pounds. Sudan Grass Seed, No. 1, per bushel 32 pounds; No. 2, per bushel 30 pounds. Sudan Grass Seed, No. 3, per bushel 28 pounds. Spinach, per bushel 12 pounds. Sweet clover seed, unhulled, per bushel 23 pounds. Timothy seed, per bushel 45 pounds. Tomatoes, per bushel 56 pounds. Turnips, per bushel 55 pounds. Walnuts, per bushel 50 pounds. Wheat, per bushel 60 pounds.

Whenever any commodity is sold by the cord it shall mean 128 cubic feet, or the contents of a space eight feet long, four feet wide and four feet high. Whenever anything is sold by the ton, it shall mean two thousand pounds avoirdupois. Whenever any of the following articles are sold by the cubic yard, and the same are weighed, the following weights shall govern: Torpedo sand or gravel, 3,000 pounds equal one cubic yard, and 2,500 pounds of bank sand equals one cubic yard. [Acts 1907, p. 244; Acts 1919, p. 233.]

Art. 5735. Failure to regard unit of measure.—Whoever in buying any of the articles mentioned in the preceding article shall take any greater number of pounds thereof to the bushel, barrel or cubic yard, or divisible, merchantable quantity of bushel, barrel, cubic yard, or lineal yard, or in selling any of said articles shall give any less number of pounds thereof to the bushel, barrel, cubic or lineal yard than is allowed by the laws of this State, with intent to gain an advantage thereby, shall be liable to the party injured in double the amount of the property wrongfully taken, or not given. This article does not apply to cases where the buyer or seller is expressly authorized by special contract or agreement to take more or give less of such articles. [Id.]

Art. 5736. This law to govern contracts.—All contracts hereafter to be executed and made within this State for any work to be done, or for anything to be sold, delivered, done or agreed for, by weight or measure, shall be construed to be made according to the standard weight and measure ascertained as hereinbefore provided, unless there is an express contract to the contrary. In making any adjustment of weights or measures under the laws of this State, the standard given in this chapter shall be taken as the guide for making such adjustment. [Id.]

CHAPTER EIGHT

MARKETING ASSOCIATIONS

Art.
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Article 5737. Declaration of policy.—In order to promote, foster and encourage the intelligent and orderly marketing of agricultural products through co-operation and to eliminate speculation and waste; and to make the distribution of agricultural products as direct as can be efficiently done between producer and consumer; and to stabilize the marketing problems of agricultural products, this law is passed. [Acts 1921, p. 45.]

Art. 5738. Definitions.—(a) The term "Agricultural products" shall include horticultural, viticultural, forestry, dairy, livestock, poultry, bee and any farm and ranch products; (b) the term "member" shall include actual members of associations without capital stock and holders of common stock in associations organized with capital stock; (c) the term "association" means any corporation organized under this Act; and (d) the term "person" shall include individuals, firms, partnerships, corporations and associations. Associations organized hereunder shall be deemed non-profit, inasmuch as they are organized not to make profits for themselves, as such, or for their members, as such, but only for their members as producers. This Act shall be referred to as the "Co-operative Marketing Act." [Id.]

Art. 5739. Who may organize.—Five or more persons engaged in the production of agricultural products may form a non-profit co-operative association, with or without capital stock, under the provisions of this chapter. [Id.]

Art. 5740. Purposes.—An association may be organized to engage in any activity in connection with the marketing or selling of the agricultural products of its members, or with the harvesting, preserving, drying, processing, canning, packing, storing, handling, shipping, or utilization thereof, or the manufacturing or marketing of the by-products thereof; or in connection with the manufacturing, selling or supplying to its members of machinery, equipment or supplies; or in the financing of the above enumerated activities; or in any one or more of the activities specified herein. [Id.]

Art. 5741. Preliminary investigation.—Every group of persons contemplating the organization of an association under this chapter is urged to communicate with the Commissioner of Markets and Warehouses, who will inform it, whatever a survey of the marketing conditions affecting the commodities to be handled by the proposed association indicates, regarding probable success. [Id.]

Art. 5742. Powers.—Each association incorporated under this chapter shall have the following powers:

(a) To engage in any activity in connection with the marketing, selling, harvesting, preserving, drying, processing, canning, packing, storing, handling or utiliza-

tion of any agricultural products produced or delivered to it by its members, or the manufacturing or marketing of the by-products thereof or in connection with the purchase, hiring, or use by its members of supplies, machinery or equipment, or in the financing of any such activities; or in any one or more of the activities specified in this article. No association, however, shall handle the agricultural products of any non-member.

(b) To borrow money and make advances to members.

(c) To act as the agent or representative of any member or members in any of the above mentioned activities.

(d) To purchase or otherwise acquire, and to hold, own and exercise all rights of ownership in, and to sell, transfer, or pledge shares of the capital stock or bonds of any corporation or association engaged in any related activity or in the handling or marketing of any of the products handled by the association. (e) To establish reserves and to invest the funds thereof in bonds or such other property as may be provided in the by-laws. (f) To buy, hold and exercise all privileges of ownership over such real or personal property as may be necessary or convenient for the conducting and operation of any of the business of the association or incidental thereto. (g) To do each and everything necessary, suitable or proper for the accomplishment of any one of the purposes or the attainment of any one or more of the objects herein enumerated; or conducive to or expedient for the interest or benefit of the association; and to contract accordingly; and in addition to exercise and possess all powers, rights and privileges necessary or incidental to the purposes for which the association is organized or to the activities in which it is engaged; and in addition, any other rights, powers and privileges granted by the laws of this State to ordinary corporations, except such as are inconsistent with the express provisions of this Act; and to do any such thing anywhere. [Id.]

Art. 5743. Members.—(a) Under the terms and conditions prescribed in its by-laws, an association may admit as members, or issue common stock, only to persons engaged in the production of the agricultural products to be handled by or through the association, including the lessees and tenants of land used for the production of such products and any lessors and landlords who receive as rent part of the crop raised on the leased premises. (b) If a member of a non-stock association be other than a natural person, such member may be presented by any individual, associate officer or member thereof, duly authorized in writing. (c) One association organized hereunder may become a member or stockholder of any other association or associations organized hereunder. [Id.]

Art. 5744. Articles of incorporation.—Each association formed under this Act must prepare and file Articles of Incorporation, setting forth: (a) The name of the association. (b) The purposes for which it is formed. (c) The place where its principal business will be transacted. (d) The term for which it is to exist, not exceeding fifty years. (e) The number of directors thereof, which must not be less than five and may be any number in excess thereof, and the term of office of such directors. (f) If organized without capital stock, whether the property rights and interests of each member shall be equal or unequal; and if unequal, the Articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules. This provision of the Articles of Incorporation shall not be altered, amended, or repealed except by the written consent or the vote of three-fourths of the members. (g) If organized with capital stock, the amount of such capital stock and the number of shares into which it is divided and the par value thereof. The capital stock may be divided into preferred and common stock. If so divided, the Articles of Incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and privileges granted to each. The Articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this State to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law of this State; and when so filed the said Articles of Incorporation, or certified copies thereof, shall be received in all courts of this State, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association. A certified copy of the Articles of Incorporation shall also be filed with the Commissioner of Markets and Warehouses. [Id.]

Art. 5745. Amendments to articles of incorporation.—The Articles of Incorporation may be altered or amended at any regular meeting or at any special meeting called for that purpose. An amendment must first be approved by two-thirds of the directors and then adopted by a vote representing a majority of all the members of the Association. Amendments to the Articles of Incorporation when so adopted shall be filed in accordance with the provisions of the general corporation law of this State. [Id.]

Art. 5746. By-laws.—Each association incorporated under this Act must, within thirty days after its incorporation, adopt for its government and management, a code of by-laws, not inconsistent with the powers granted by this law. A majority vote of the members or stock-holders, or their assent, is necessary to adopt such by-laws. Each association under its by-laws may also provide for any or all of the following matters: (a) The time, place and manner of calling and conducting its meetings. (b) The number of stockholders or members constituting a quorum. (c) The right of members or stock-holders to vote by proxy or by mail, or by both, and the conditions, manner and effects of such votes. (d) The number of directors constituting a quorum. (e) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof. (f) Penalties for violations of the by-laws. (g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they must be used. (h) The amount which each member or stock-holders [stockholder] shall be required to pay annually or from time to time, if at all, to carry on the business of the association; the charge, if any, to be paid by each member or stock-holder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stock-holders which every member or stock-holder may be required to sign. (i) The number and qualification of members or stock-holders of the association and the conditions precedent to members of ownership of common stock; the method, time and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and of the shares of common stock; the conditions upon which, and time when membership of any member shall cease. The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder, or upon the expulsion of a member or forfeiture of his membership, or, at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member, the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to

him within one year after such expulsion or withdrawal. [Id.]

Art. 5747. General and special meetings.—In its by-laws each association shall provide for one or more regular meetings annually. The board of directors shall have the right to call a special meeting at any time, and ten per cent of the members or stockholders may file a petition stating the specific business to be brought before the association and demand a special meeting at any time. Such meeting must thereupon be called by the directors. Notice of all meetings, together with a statement of the purposes thereof, shall be mailed to each member at least ten days prior to the meeting. The by-laws may require instead that such notice may be given by publication in a newspaper of general circulation published at the principal place of business of the association. [Id.]

Art. 5748. Directors—Election.—The affairs of the association shall be managed by a board of not less than five directors, elected by the members or stock-holders from their own number. The by-laws may provide that the territory in which the association has members shall be divided into districts and that the directors shall be elected according to such districts. In such a case the by-laws shall specify the number of directors to be elected by each district, the manner and method of re-apportioning the directors and of re-districting the territory covered by the association. The by-laws may provide that primary elections should be held in each district to elect the directors apportioned to such districts and the result of all such primary elections must be ratified by the next regular meeting of the association. An association may provide a fair remuneration for the time actually spent by its officers and directors in its service. No director, during the term of his office, shall be a party to a contract for profit with the association differing in any way from the business relations accorded regular members or holders of common stock of the association, or to any other kind of contract differing from terms generally current in that district. When a vacancy on the board of directors occurs, other than by expiration of term, the remaining members of the board, by a majority vote, shall fill the vacancy, unless the by-laws provide for an election of directors by district. In such a case the board of directors shall immediately call a special meeting of the members or stock-holders in that district to fill the vacancy. [Id.]

Art. 5749. Election of officers.—The directors shall elect from their number a president and one or more vice-presidents. They shall also elect a secretary and treasurer, who need not be a director, and they may combine the two latter offices and designate the combined office as secretary-treasurer. The treasurer may be a bank or any depository, and as such shall not be considered as an officer but as a function of the board of directors. In such case the secretary shall perform the usual accounting duties of the treasurer, excepting that the funds shall be deposited only as authorized by the board of directors. [Id.]

Art. 5750. Stock—Membership Certificates.—When a member of an association established without capital stock, has paid his membership fee in full, he shall receive a certificate of membership. No association shall issue stock to a member until it has been fully paid for. The promissory notes of the members may be accepted by the association as full or partial payment. The association shall hold the stock as security for the payment of the note, but such retention as security shall not affect the members' right to vote. Except for debts lawfully contracted between him and the association, no member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof. No stock-holder of a co-operative association shall own more than one-twentieth of the issued common stock of the association; and an association, in its by-laws, may limit the amount of common stock which one member may own to any amount less than one-twentieth of the issued common stock. No member or stock-holder shall be entitled to more than one vote. Any association organized with stock, under this law may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on such terms and conditions as may be provided for by the Articles of Incorporation and printed on the face of the certificate. The by-laws shall prohibit the transfer of the common stock of the association to persons not engaged in the production of the agricultural products handled by the association, and such restrictions must be printed upon every certificate of stock subject thereto. The association may at any time except when the debts of the association exceed fifty per cent of the assets thereof, buy in or purchase its common stock at book value thereof as conclusively determined by the board of directors and pay for it in cash within one year thereafter. [Id.]

Art. 5751. Removal of officer or director.—Any member may bring charges against an officer or director by filing them in writing with the secretary of the association, together with a petition signed by ten per cent of the members, requesting the removal of the officer or director in question. The removal shall be voted upon at the next regular or special meeting of the association, and by a vote of a majority of the members, the association may remove the officer or director and fill the vacancy. The director or officer against whom such charges have been brought shall be informed in writing of the charges previous to the meeting and shall have an opportunity at the meeting to be heard in person or by counsel and to present witnesses; and the person or persons bringing the charges against him shall have the same opportunity. In case the by-laws provide for election of directors by districts with primary elections in each district, then the petition for removal of a director must be signed by twenty per cent of the members residing in the district from which he was elected. The board of directors must call a special meeting of the members residing in that district to consider the removal of the director. By a vote of the majority of the members of that district, the director in question shall be removed from office. [Id.]

Art. 5752. Referendum.—Upon demand of one-third of the entire board of directors, any matter that has been approved or passed by the board must be referred to the entire membership or the stockholders for decision at the next special or regular meeting. A special meeting may be called for that purpose. [Id.]

Art. 5753. Marketing contract.—The association and its members may make and execute marketing contracts, requiring the members to sell, for a period of time, not over ten years, all or any specified part of their agricultural products or specified commodities exclusively to or through the association or any facilities to be created by the association. The contract may provide that the association may sell or resell the products of its members, with or without taking title thereto; and pay over to its members the resale price, after deducting all necessary selling, overhead and other costs and expenses, including interest on preferred stock, not exceeding eight per cent per annum, and reserves for retiring the stock, if any, and other proper reserves; and interest not exceeding eight per cent per annum upon common stock. The by-laws and the marketing contract may fix, as liquidated damages, specific sums to be paid by the member or stockholder to the association upon the breach by him of any provisions of the marketing contract regarding the sale or delivery or withholding of products; and may further provide that the member will pay all costs, premiums for bonds, expenses and fees in case any action is brought upon the contract by the association; and any such provisions shall be valid and enforceable in the courts of this State. In the event of any breach or threatened breach of such marketing contract by a member, the association shall be entitled to an injunction to prevent the further breach of the contract and to a decree of specific per-

formance thereof. Pending the adjudication of such an action and upon filing a verified complaint showing the breach or threatened breach, and upon filing a sufficient bond, the association shall be entitled to a temporary restraining order and preliminary injunction against the member. [Id.]

Art. 5754. Purchasing business of others.—Whenever an association organized hereunder with preferred capital stock, shall purchase the stock or any property, or any interest in any property of any person, firm, or corporation or association, it may discharge the obligations so incurred, wholly or in part, by exchanging for the acquiring interest, shares of its preferred capital stock to an amount which at par value would equal a fair market value of the stock or interest so purchased, as determined by the board of directors. In that case the transfer to the association of the stock or interest purchased shall be equivalent to payment in cash for the shares of stock issued. [Id.]

Art. 5755. Annual reports.—Each association formed under this Act shall prepare and make out an annual report on forms furnished by the Commissioner of Markets and Warehouses, containing the name of the association, its principal place of business and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders of a stock association or the number of members and amount of membership fees received, if a non-stock association; the total expenses of operation; the amount of its indebtedness, or liability, and its balance sheets. [Id.]

Art. 5756. Conflicting laws not to apply.—Any provision of law which is in conflict with this chapter shall not be construed as applying to the associations herein provided for. [Id.]

Art. 5757. Bond.—Each and all officers, employees and agents handling funds or property of the corporation created under the provisions of this chapter, or any property or funds of any person placed under the control of or in the possession of said corporation, shall be required to execute and deliver to the corporation a bond, for the benefit of all members of said corporation, conditioned upon the faithful performance of the duties and obligations of such person, and further conditioned that such person shall faithfully account for any and all funds, moneys and property coming into his or her hands or possession, by reason of such office or employment, and shall promptly remit to the person, or persons, entitled to receive the same, all moneys which may come into his possession by virtue of being such officer, employee or agent, and in case of sale or failure to sell any products under the care of and in the possession of such officer, employé or agent, that he shall promptly make a true and correct report of said sale, or in case of failure to sell, the reasons why said sale is not made. In case the officers and directors of any corporation authorized to be created under the provisions of this law shall fail to have all officers, employees and agents handling such funds or property, execute the bond provided for herein, each and all of said officers and directors shall be personally liable for all losses occasioned by such failure, and which might have been recovered on said bond. [Id.]

Art. 5758. Interest in other corporations or associations.—An association may organize, form, operate, own, control, have an interest in, own stock of, or be a member of any other corporation or corporations, with or without capital stock, and engaged in preserving, drying, pressing, canning, packing, storing, handling, shipping, utilizing, manufacturing, marketing or selling of the agricultural products handled by the association, or the by-products thereof. If such corporations are warehousing corporations, they may issue legal warehouse receipts to the association or to any other person and such legal warehouse receipts shall be considered as adequate collateral to the extent of the current value of the commodity represented thereby. In case such warehouse is licensed or licensed and bonded under the laws of this State or the United States, its warehouse receipts shall not be challenged or discriminated against because of ownership or control, wholly or in part, by the association. [Id.]

Art. 5759. Contracts and agreement with other associations.—Any association may, upon resolution adopted by its board of directors, enter into all necessary and proper contracts and agreements and make all necessary and proper stipulations, agreements and contracts and arrangements with any other co-operative corporation, association or associations, formed in this or any other State for the co-operative and more economical carrying on of its business, or any part or parts thereof. Any two or more associations may, by agreement between them, unite in employing and using or may separately employ and use the same methods, means and agencies for carrying on and conducting their respective businesses. [Id.]

Art. 5760. Associations heretofore organized.—Any corporation or association organized under previously existing statutes, may by a majority vote of its stockholders or members be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed and sworn to by its directors, upon forms supplied by the Secretary of State, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by the provisions of this chapter. Articles of Incorporation shall be filed as required in the eighth article of this chapter, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to Articles of Incorporation. [Id.]

Art. 5761. Breach of contract or false reports.—Any person or persons or any corporation whose officers or employés knowingly induce or attempt to induce any member or stockholder of an association organized hereunder to breach his marketing contract with the association, or who maliciously and knowingly spread false reports about the finances or management thereof shall be liable to the association aggrieved thereby in a civil suit for damages suffered in three times the amount of actual damage proven for each offense. [Id.]

Art. 5762. Associations not in restraint of trade.—No association organized hereunder shall be deemed to be a combination in restraint of trade or an illegal monopoly; or an attempt to lessen competition or fix prices arbitrarily; nor shall the marketing contracts or agreements between the association and its members nor any agreements authorized in this chapter, be considered illegal or in restraint of trade. [Id.]

Art. 5763. Application of general laws.—The provisions of the general corporation laws of this State, and all powers and rights thereunder shall apply to the association organized hereunder, except when in conflict with the express provisions of this chapter. [Id.]

Art. 5764. Fees.—Each association organized hereunder shall pay to the Commissioner an annual licensee fee of ten dollars but shall be exempt from all franchise or license taxes. For filing articles of incorporation, an association organized hereunder shall pay ten dollars, and for filing an amendment thereto, two dollars and fifty cents. [Id.]

TITLE 94

MILITIA

Chap.
1. General provisions.
2. Reserve militia.
3. National guard.
4. State naval militia.

CHAPTER ONE

GENERAL PROVISIONS

Art.
5765. Active and reserve.
5766. Who are subject.
5767. Exemptions.
5768. Commander-in-chief.
5769. Expenditures.

Article 5765. [5764] Active and reserve.—The militia of this State shall be divided into two classes, the active and reserve militia. The active militia shall consist of the organized and uniformed military forces of this State, which shall be known as the Texas National Guard; the reserve militia shall consist of all those liable to service in the militia, but not serving in the Texas National Guard. [Acts 1905, p. 167.]

Art. 5766. [5765] Who are subject.—All able-bodied male citizens, and able-bodied males of foreign birth who have declared their intention to become citizens, who are residents of this State and between eighteen and forty-five years of age, and who are not exempted by the laws of the United States or of this State, shall constitute the militia and be subject to military duty. [Id.]

Art. 5767. [5766] Exemptions.—In addition to those exempted by the laws of the United States, the following persons shall be exempt from military duty in this State:

1. The Lieutenant-Governor and the heads of the several departments.
2. The judges and clerks of all courts of record.
3. The members and officers of both houses of the Legislature.
4. Each sheriff, district attorney, county attorney, county assessor, county collector, county treasurer, and county commissioner.
5. The mayor, aldermen, assessor and collector of incorporated cities and towns.
6. The officers and guards of State prisons, houses of correction, and the officers and instructors and attendants of other State institutions; keepers, attendants and assistants of poor houses; superintendents, nurses, and assistants of all hospitals.
7. The members of any regularly organized and paid fire or police department in any city or town, but no member of the active militia shall be relieved from duty because of his joining any such fire company or department.
8. All ministers of the gospel exclusively engaged in their calling; all teachers engaged in public institutions and public schools.
9. All persons who shall have served in the active militia of this State for the term of seven years, and have been honorably discharged therefrom.
10. Idiots, lunatics, vagabonds, confirmed drunkards, persons addicted to the use of narcotic drugs, and persons convicted of infamous crimes.
11. Any person who conscientiously scruples to bear arms; provided he shall pay an equivalent for personal service.
12. All such exempted persons, except those enumerated in subdivision 10, shall be liable to military duty in case of war, insurrection, invasion or imminent danger thereof. [Id.]

Art. 5768. [5767] Commander-in-chief.—The Governor by virtue of his office, shall be commander-in-chief of the military forces of this State, except such portions as may at times be in the service of the United States. Whenever the Governor is unable to perform the duties of commander-in-chief, the Adjutant General shall command the military forces of this State, except in cases where the Lieutenant-Governor, or the president of the Senate, under the laws of this State is required to perform the duties of Governor. [Id.]

Art. 5769. Expenditures.—All amounts expended from appropriations made for the military forces of this State shall be paid only on itemized accounts sworn to by the party expending the same and showing the time, purpose and for what said amount was expended and by whom, approved by both the Adjutant General and the Governor before their payment. The Comptroller shall not issue warrants upon the State Treasury for any moneys expended under this title until said itemized accounts have been filed in the Comptroller's office. [Id.]

CHAPTER TWO

RESERVE MILITIA

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5775. Drafts: report.
5776. Drafts: substitute.
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Article 5770. [5768] Military duty.—The reserve militia shall not be subject to active military duty, except when called into the service of this State, or of the United States, in case of war, insurrection, invasion, or for the prevention of invasion, the suppression of riot, tumults and breaches of the peace, or to aid the civil officers in the execution of the law and the service of process, in which case, they or so many of them as the necessity requires, may be ordered out for actual service by draft or otherwise as the Governor may direct. The portion of the reserve militia ordered out or accepted shall be mustered into the service for such period as may be required, and the Governor may assign them to existing organizations of the active militia, or organize them as the exigency of the occasion may require. [Acts 1905, p. 167.]

Art. 5771. [5769] Enrollment.—Whenever the Governor deems it necessary, he may order the county tax assessors or may designate other persons to make an enrollment of all persons liable to military duty, other than members of the active militia. Such enrollment shall state the name, residence, age, color and occupation of the persons enrolled. Enrolling officers may question under oath, which they are hereby authorized to administer, any person deemed liable to perform military duty, but who denies the same; and, if any person refuses to be sworn, the enrolling officer shall enroll his name in the same manner as though he had admitted his liability. Said enrolling officers shall, within such time as the Governor may require, prepare and file three copies of such enrollment, properly certifying that he has enrolled all persons residing in his county, who are liable to perform military duty, one copy to be filed in the office of the Adjutant General, one in the office of the county clerk of the county in which the enrollment was made, and one copy retained by the enrolling officer. Upon filing such lists the enrolling officer shall be paid out of the county treasury eight cents for each person so enrolled and notified as hereinafter set out. [Id.]

Art. 5772. [5770] Notice.—The enrolling officer shall at the time of making the enrollment, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him, or leaving it with some person over fourteen years old at his place of residence, or by mailing such notice at the expense of the county to his last known place of residence or abode. All persons claiming exemption, must within ten days after receiving such notice, file a written verified statement of such exemption in the office of the county clerk. Such clerk shall thereupon, if such person be exempted according to law, mark the word "exempt" opposite his name; and the remainder of

all thus enrolled and not thus found to be exempt shall constitute the militia of this State and be subject to military duty. Such clerk shall transmit a copy of such corrected list of enrollment to the Adjutant General within twenty days after the filing of the original list of enrollment for which he shall be allowed two cents for each name on such list, to be paid by the county. The officer highest in rank in the active militia, and the heads of the fire and police departments in each city or town, shall whenever an enrollment is ordered, file within ten days in the office of such county clerk a certified list of the names of all persons in the active militia of such county or in such department. [Id.]

Art. 5773. [5771] Assessment rolls.—Each county assessor shall allow persons appointed to make such enrollment, if persons other than the assessor be appointed, at all times to examine their assessment rolls and make copies thereof. All persons shall, upon the application of any person making such enrollment, give the name of and all other information concerning any person within their knowledge liable to be enrolled, under penalty of ten dollars for every concealment or false information, or refusal to give the information requested, to be recovered in the name of the State of Texas by a judge advocate, district or county attorney in the justice court at Austin, or in the precinct of his residence with costs. The officer making the enrollment shall, within ten days, report to the Adjutant General all persons who fail or neglect to give information. [Id.]

Art. 5774. [5772] Drafts.—Whenever it shall be necessary to call out any portion of the reserve militia for active duty, the Governor may apportion the number by draft according to the population of the several counties of the State, or otherwise, as he shall direct. The Governor shall direct his order to the sheriff of each county from which any draft is required, setting forth the number of persons such county is to furnish. Upon the requisition of the Governor being received by the sheriff, he shall immediately personally notify the county clerk, who shall copy by name or number, from the corrected list of enrollment of such county on file in his office, all persons who are so returned as liable to perform military duty; such names or their corresponding numbers, shall be placed on slips of paper of the same size and appearance, as near as practicable, which slips so named or numbered, shall be placed in a box suitable for that purpose, and the number required to fill such draft or requisition shall be drawn therefrom, in the same manner provided by law for drawing jurors. All persons so drawn and liable to perform military duty shall be determined to be legally held to serve, in the manner and for the purpose and time specified in the requisition; and the sheriff shall notify the persons so drafted by registered letter, or personally in writing, at what time and place they shall appear, for which he shall receive expense of postage and five cents each to be paid by the county. [Id.]

Art. 5775. [5773] Drafts: report.—Every member of the reserve militia ordered out, or who volunteers, or is drafted, under the provisions of this law, who does not appear at the time and place so designated by the sheriff, or his commanding officer within twenty-four hours from such time, or furnish a substitute or who does not produce a sworn statement of physical disability from a physician in good standing of his inability to so appear, shall be deemed to be a deserter and dealt with as prescribed by law for deserters. [Id.]

Art. 5776. [5774] Drafts; substitute.—Any person in the reserve militia of this State, who has been drawn to perform military duty, may at any time, be exempt until again required in his turn to serve, by furnishing an acceptable substitute on or before the day fixed for his appearance; but if during any period of service, any man who is serving in the active militia as a substitute for another, becomes liable to service in his own person, he shall be taken for such service, and his place as substitute shall be supplied by the man in whose stead he was serving, or another substitute. [Id.]

Art. 5777. [5775] Civil officers' duty.—Any sheriff, or constable, county assessor or county clerk who neglects or refuses to perform any duty enjoined upon him by this law, in addition to criminal liability, shall be liable to a penalty of not less than one hundred nor more than one thousand dollars to be recovered against him or his bondsmen in the name of the State by suit instituted by a judge advocate or district or county attorney, in the proper court of Travis County, or the county of which such person is the sheriff, constable, assessor or clerk. [Id.]

Art. 5778. [5776] Power of Governor.—The Governor shall have power in the case of insurrection, invasion, tumult, riot or breach of peace, or imminent danger thereof, to order into the active service of this State any part of the militia that he may deem proper. When the militia of this State, or any part thereof, is called forth under the Constitution and laws of the United States, the Governor shall order out for service the active militia, or such part thereof as may be necessary; and, if the number be insufficient, he shall order out such part of the reserve militia as he may deem necessary. During the absence of organizations of the militia in the service of the United States, their State designations shall not be given to new organizations. [Id.]

Art. 5779. [5777] Muster.—The portion of the reserve militia ordered out or accepted into the service, as indicated in Articles 5770 and 5774 of this chapter, shall be immediately mustered into service for such period as the Governor may direct, and shall be organized into troops, batteries, companies and such other organizations as may be necessary, which may be arranged in squadrons, batallions, regiments or corps, or assigned to organizations of the active militia already existing. The Governor is authorized to appoint the officers necessary to commence or complete, or to command any organization thus created. Such new organization shall be equipped, disciplined and governed according to the military laws and military regulations of this State. [Id.]

CHAPTER THREE

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Article 5780. [5778] Strength.—The Texas National Guard shall consist of the existing military organizations, and such others as may be organized hereafter, and such persons as are held to military duty under the laws of this State, or such persons as are exempt under said laws who may accept appointment or voluntarily enlist therein, or of such persons of the reserve militia as may be mustered therein, but at no time, except in case of war, insurrection, invasion, the prevention of invasion, the suppression of riot, or the aiding of the civil authorities in the execution of the laws of this State, shall the maximum strength thereof exceed seven thousand officers and enlisted men. [Acts 1905, p. 167.]

Art. 5781. [5779] Regulations.—The Governor shall prescribe such regulations as he may see fit for the organization of the Texas National Guard; and he shall, from time to time, as he may deem for the best interests of the service, change such regulations, which shall be in accordance with this chapter, and conform as near as practicable to the organization of the regular army of the United States. He may, at any time for cause deemed good and sufficient by him, muster out of the service or reorganize any portion of the Texas National Guard or the reserve militia, or discharge any officer or enlisted man thereof, and he shall have full control and authority over all matters touching the military forces of this State, its organization, equipment and discipline. [Id.]

Art. 5782. [5780] Publication.—The Governor shall make and publish regulations in accordance with existing military laws, for the government of the military forces of this State, which shall embrace all necessary orders and forms of general character for the performance of all duties incumbent on officers and men in the military service, including the rules for the government of courts martial; the existing regulations to remain in force until the Governor shall have published such regulations. The Governor shall, as he may see fit from time to time, create new regulations, or amend, modify, or repeal existing regulations. [Id.]

Art. 5783. [5781] Governor's staff.—The Governor shall have a staff consisting of the Adjutant General and twelve aides-de-camp. The Adjutant General shall have rank and be appointed as provided by this law; the twelve aides-de-camp shall have the rank of lieutenant-colonel while also serving, and shall be appointed by, and serve during the pleasure of the Governor. Three of the aides-de-camp shall be selected from the officers of the Texas National Guard below the grade of colonel, and nine shall be selected without restriction as to the source of selection; provided, further, that said aides-de-camp shall not be ineligible from holding any office of emolument, trust or honor within this State, nor shall said aides-de-camp be ineligible from serving as chairman or member of any committee of any political party or organization. [Acts 1907, p. 224; Acts 1911, p. 25.]

Art. 5784. [5782] Bodies corporate.—Whenever any troop, battery, company, signal corps or band is mustered into the active militia of this State by the authority of the Governor, such troop, battery, company, signal corps or band shall, from the date of such muster in, be deemed and be held in law a body corporate and politic, with power under its corporate name to take, purchase, own in fee simple, hold, transfer, mortgage, pledge and convey real or personal property to an amount in value, at the time of its acquisition, of two hundred thousand dollars (provided that the natural enhancement in value of any property properly acquired by any such company shall not affect the right of such company to hold or otherwise handle such property), and with like power under its corporate name to sue and be sued, plead and be impleaded, and to prosecute and defend in the courts of this State or elsewhere; to have and use a common seal of such device as it may adopt; to ordain, establish, alter or amend by-laws for the government and regulation of the company affairs not inconsistent with the Constitution and laws of this State and of the United States, and the orders and regulations of the Governor; and generally to do and perform any and all things necessary and proper to be done in carrying out and perfecting the purpose of its organization, of which the officers, and in case of a band, the non-commissioned officers, shall be directors, the senior the president. [Acts 1907, p. 224; Acts 1911, p. 149.]

Art. 5785. [5783] Discipline.—The system of discipline and exercise of the active militia of this State shall conform generally to that of the army of the United States, as prescribed by the President, and

to the provisions of the laws of the United States, except as otherwise provided by law, or by the regulations issued by the Governor. [Acts 1905, p. 167.]

Art. 5786. [5784] Prohibiting organization.—No body of men, other than the regularly organized militia of this State and the troops of the United States, shall associate themselves together as a military company or organization or parade in public with firearms in any city, or town of this State; provided that students in the educational institutions where military science is a prescribed part of the course of instruction, and soldiers honorably discharged from the service of the United States, and Confederate veterans, may, with the consent of the Governor, drill and parade with firearms in public. Nothing herein shall be construed to prevent parades by the active militia of any other State as hereinafter provided. [Id.]

ADJUTANT GENERAL

Art. 5787. [5785–6–7] Department.—The Adjutant General shall be the head of the Adjutant General's Department, and shall have the rank of brigadier general. He shall be biennially appointed for a term of two years by the Governor, by and with the advice and consent of the Senate, if in session. [Id.]

Art. 5788. [5788] Oath and bond.—The person appointed Adjutant General shall first enter into a bond with two or more good and sufficient sureties payable to and to be approved by the Governor, which bond shall be in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of said office. [Id.]

Art. 5789. [5789] Seal.—The device upon the seal of the Adjutant General shall consist of a star of five points with the words, "Office of Adjutant General, State of Texas," around the margin. [Id.]

Art. 5790. [5790] Powers.—The Adjutant General shall be in control of the military department of this State and subordinate only to the Governor in matters pertaining to said department, or the military forces of this State; and he shall perform such duties as the Governor may from time to time entrust to him, relative to the military commissions, the military forces, the military stores and supplies, or to other matters respecting military affairs of this State; and he shall conduct the business of the department in such manner as the Governor shall direct. He shall have the custody and charge of all books, records, papers, furniture, fixtures and other property relating to his department; and shall perform as near as practicable, such duties as pertain to the chief of staff, the military secretary and other chiefs of staff departments, under the regulations and customs of the United States Army. [Id.]

Art. 5791. [5791] Duties.—The Adjutant General shall, from time to time, define and prescribe the kind and amount of supplies to be purchased for the military forces of this State, and the duties and powers respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several camps, stations of companies, or other necessary places for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may, by virtue of such regulations, be entrusted with the same; and shall fix and make reasonable allowance for the store rent and storage necessary for the safe-keeping of all military stores and supplies; and shall control and supervise the transportation of troops, munitions of war, equipment, military property and stores throughout the State. [Id.]

Art. 5792. [5792] Bids.—The Adjutant General may prescribe rules and regulations to be observed in the preparation and submission and opening of bids for contracts under his department; and at his discretion may require any bid to be accompanied by a good bond in such penal sum as he deems advisable, conditioned that the bidder will enter into a contract agreeable to the terms of his bid, if the same be awarded to him, within sixty days from the date of the opening of the bids, or otherwise pay the penalty. No bid shall be withdrawn by the bidder within said period of sixty days. [Id.]

Art. 5793. [5793] Regulations and duties.—The Adjutant General shall prescribe regulations not inconsistent with law for the government of his department and the custody, use and preservation of the records and property appertaining to it whether belonging to this or the United States, such regulations to be operative and in force when promulgated in the form of general orders, circulars or letters of instruction and shall:

1. Superintend the preparation of such returns and reports as may be required by the laws of the United States from this State.
2. Keep a register of all officers of the militia of Texas, and keep in his office all records and papers required to be kept and filed therein.
3. Have printed at the expense of the State, when necessary, the military law and regulations of Texas, and distributed to the commissioned officers, sheriffs, clerks and assessors of the counties of Texas at the rate of one copy to each.
4. Issue to each commissioned officer and headquarters one copy of the necessary text books, and of such annual reports concerning the militia as the Governor may direct.
5. Cause to be prepared and issued all necessary blank books, blanks, forms and notices required to carry into full effect the provisions of this law. [Id.]

Art. 5794. [5793–94] Report to Governor.—He shall report annually to the Governor the following information to be laid before the Legislature:

1. A statement of all moneys received or disbursed by him since his last annual report.
2. An account of all arms, ammunition, and other military property belonging to this State, or in possession of this State, from what source received, to whom issued, and its present condition, so far as he may be informed.
3. The number, condition and organization of the Texas National Guard and reserve militia.
4. Any suggestions which he may deem of importance to the military interests and conditions of this State, and the perfection of its military organization. [Id.]

Art. 5795. [5795–6] Assistants.—The Adjutant General shall have one assistant who shall fill the position of chief clerk, with the rank of colonel, one assistant quartermaster general, with the rank of colonel. All necessary clerks and employees may be employed and laborers hired by the Adjutant General as may be required to carry on the operations of his department. [Id.]

Art. 5796. [5797–8] Assistant Adjutant General.—The Governor shall appoint the Assistant Adjutant General on the recommendation of the Adjutant General. He shall remain in office during the pleasure of the Governor, and shall be entitled to all the rights, privileges and immunities granted officers of like rank in the Texas National Guard. He shall before entering upon the duties of his office, take and subscribe to the oath of office prescribed for officers of the Texas National Guard, which oath shall be deposited in the office of the Adjutant General. He shall aid the Adjutant General by the performance of such duties as may be assigned him, and shall, in case of absence or inability of the Adjutant General to act, perform all such portions of the duties of Adjutant General as the latter may expressly delegate to him, and shall on application and without compensation therefor, administer oaths of office to officers of the active militia, and to employés of the Adjutant General's office required to be taken on their appointment or promotion. [Id.]

Art. 5797. [5799] To issue certificates.—On the muster-in to the active militia of this State of any troop, battery, company, signal corps, or band, the Ad-

jutant General shall issue to such organization a certificate to the effect that such organization has been duly organized in accordance with the laws and regulations of the militia service of this State, and that such organization is entitled to all the rights, powers, privileges and immunities conferred by such laws and regulations. Such certificate shall be in such form as the Adjutant General may prescribe. Such certificate shall be evidence in all the courts of this State that the organization therein named is duly incorporated. [Id.]

Art. 5798. [5800] To purchase stores.—The Adjutant General, after the appropriations are made for that purpose, may purchase and keep ready for use, or issue to the military forces of this State, as the best interests of the service may require, such amount and kind of quartermasters, ordnance, subsistence, medical, signal, engineers, and all other military stores and supplies as shall be necessary; he shall see that all military stores and supplies both the property of this State and of the United States are properly cared for and kept in good order, ready for use; and all accounts which may accrue against this State under the provisions of this chapter shall, if correct, be certified and approved by the Adjutant General and paid out of the State Treasury as other claims are paid. Any military stores belonging to this State which may become unserviceable, obsolete, or unfit for further use, may be disposed of in such manner as the Governor or Adjutant General may prescribe by regulations or order; and the Adjutant General may sell or destroy as he may see fit for the best interests of the service, any unserviceable, or obsolete, or unsuitable military stores belonging to this State, the sums realized from the sale thereof to be turned into the State Treasury, or he may in his discretion, exchange such stores for such other military stores as the interest of the service may require, for the use of the active militia of this State. [Id.]

Art. 5798a. State Service Officer.—Sec. 1. There is hereby created the office of State Service Officer, to be attached to the Adjutant General's Department of the State of Texas, who shall receive a salary of Thirty Six Hundred ($3,600.00) Dollars per annum to be paid in equal monthly installments. He shall likewise be allowed all necessary expenses for the conduct of his office and such as may be incurred in traveling in the state for the purpose of carrying out the provisions of this Act, such expense to be paid by warrants, approved by the Adjutant General.

Sec. 2. As soon as practicable after the taking effect of this Act, the Governor shall appoint some suitable person to the office of State Service Officer, with the advice and consent of the Senate, to serve under the Adjutant General, who shall be experienced in the regulations and departmental rulings applicable to cases before and rulings of the United States Veterans' Bureau, and who shall have served in the military or naval forces of the United States for some time during the period between April 6, 1917, and November 11, 1918, and who shall have been honorably discharged therefrom, who shall serve until August 31, 1927, and who shall be appointed for a term of two years thereafter.

Sec. 3. That the sum of Three Thousand Five Hundred Seventy-Five ($3,575.00) Dollars, or so much thereof as may be necessary, be, and the same is hereby appropriated out of any monies in the State Treasury not otherwise appropriated, to cover the salary of the State Service Officer, traveling and incidental expenses, for the fiscal year ending August 31, 1927.

Sec. 4. The duties of such officer shall be to aid all residents of the State of Texas who served in the Military or Naval Forces of the United States of America during the late World War, their relatives, beneficiaries and dependents to receive from the United States any and all compensation, hospitalization, insurance or other aid or benefit to which they may be entitled under existing laws of the United States, or such as may hereafter be enacted. It shall also be his duty to aid the United States Government to defeat all unjust claims for aid or benefits therefrom. No fee, either directly or indirectly, for any service rendered by such Service Officer shall be charged any applicant nor shall said Service Officer permit the payment of any fee by applicant to any third person for any services that might be rendered by said Service Officer.

Sec. 5. The said officer shall have a seal of office, shall be authorized to administer oath to any person or persons who may desire to swear to the correctness of any statement, or statements, made in connection with any application for compensation, hospitalization, insurance, or other aid or benefit, to which such person or persons, or any other person or persons on whose behalf the affidavits are made may be entitled under existing laws of the United States, or such as may be hereafter enacted; and he shall likewise be authorized and empowered to certify to the correctness of any document, or documents, which may be submitted in connection with any such application or applications. The Service Officer shall be given official entry into the records of the eleemosynary and penal institutions of Texas for the purpose of determining the status of any inmate confined therein as regards compensation, hospitalization, insurance or other aid or benefit and proper decision thereto. [Acts 1927, 40th Leg., p. 210, ch. 141.]

ASSISTANT QUARTERMASTER GENERAL

Art. 5799. [5801] Assistant.—The Assistant Quartermaster General shall be appointed by the Governor on the recommendation of the Adjutant General, and shall remain in office during the pleasure of the Governor. He shall be entitled to all the rights, privileges and immunities granted officers of like rank in the Texas National Guard. He shall first enter into bond in the sum of ten thousand dollars, payable to and to be approved by the Governor, and conditioned faithfully to discharge the duties of his office and disburse and account for all moneys, and to faithfully keep, issue and [and] account for all military stores, supplies and other property of this State, or of the United States, coming into his possession or entrusted to his care for the use of the military forces of this State. He shall take and subscribe the oath of office prescribed for officers of the Texas National Guard. He shall, under the immediate direction of the Adjutant General, perform as near as may be, the duties pertaining to the chiefs of the quartermaster, subsistence, and ordnance department under the regulations and customs of the United States army. Upon assuming his duties he shall receipt to the Adjutant General for all military property of whatever kind belonging to this State, or to the United States, which may be on hand and intended for the use of or issued to the military forces of this State, and receipt to the Adjutant General for such other military property as may be received from the United States or other sources. He shall be responsible for all quartermasters, subsistence, ordnance, medical, signal, and all other military stores and supplies belonging to this State, or which may be issued to this State by the United States, except such of the above mentioned stores and supplies as may be issued to the officers and organizations of the military forces of this State in accordance with the regulations in force. He shall issue and receive such quartermasters, subsistence, ordnance, medical, signal, and all other military stores and supplies as the Governor or the Adjutant General may direct; attend to the care, preservation, safekeeping, and repairing of the arms, ordnance, accoutrements, equipments and all other military property belonging to this State, or issued to this State by the United States, for the purpose of arming and equipping the military forces of this State; prepare such returns of all quartermasters, subsistence, ordnance, medical, signal and other military stores and supplies that have been issued to this State by the United States at the times and in the manner required by the

Secretary of War, and render semi-annually to the Adjutant General returns of all military stores and supplies on hand or issued, in such manner as the Adjutant General may require. He shall render to the Adjutant General annually, or oftener, if required, a statement of all moneys received or disbursed by him since last report. He shall perform the duties of the quartermaster, commissary, and paymaster of the Ranger force, and such other duties as the Governor or the Adjutant General may require of him. [Acts 1905, p. 167.]

COMMISSIONED OFFICERS

Art. 5800. [5802] Term.—All officers of the National Guard of Texas shall be appointed and commissioned by the Governor, and shall hold their positions until they shall have reached the age of sixty-four years, unless sooner retired by reason of resignations, disability or for cause to be determined by a court martial or an efficiency board legally convened for that purpose. [Acts 1905, p. 167; Acts 1917, 1st C. S. p. 3.]

Art. 5801. [5803] Commissions.—All commissions in the military service of this State shall be in the name and by authority of the State of Texas, sealed with the State seal, signed by the Governor and attested by the Secretary of State, and recorded by the Adjutant General in a record book kept in his office for that purpose. No fee for issuing such commissions shall be charged, or collected. [Acts 1905, p. 167.]

Art. 5802. [5804] Qualifications.—Staff officers, including officers of the pay, inspection, subsistence and medical departments, shall have had previous military experience. Vacancies among said officers shall be filled by the appointment from the officers of the militia of the State of Texas. All other officers of the National Guard of Texas shall be selected from the following classes: officers and enlisted men of the National Guard; officers on the reserve or unassigned list of the National Guard; officers, active or retired, and former officers of the United States Army, Navy, and Marine Corps; graduates of the United States Military and Naval Academies, and graduates of schools, colleges and universities where military science is taught under the supervision of an officer of the Regular Army; for the technical branches and staff corps or departments, such other civilians as may be especially qualified for duty therein. [Acts 1905, p. 167; Acts 1st C. S. 1917, p. 3.]

Art. 5803. Other qualifications.—All officers of the National Guard of Texas shall be citizens of the United States, over twenty-one and under sixty-four years of age, and shall take and subscribe the official oath, and shall have successfully passed the physical examination as prescribed by the laws of the United States. [Id.]

Art. 5804. [5805] Examination.—Before receiving a commission consequent upon an original appointment or before commissioned to a higher grade as a result of promotion, each officer must pass a satisfactory examination before a board as to his knowledge of military affairs and general knowledge and fitness for the service. No one failing to pass such examination shall be eligible for an office in the militia of this State, or for promotion, for the period of one year from the date of such failure. Judge advocates, medical officers, and veterinary surgeons shall be examined as to their general and professional knowledge and fitness for such service only. The following are exempt from examination: General officers, chaplains and enlisted men placed on the retired list as brevet second lieutenants. [Acts 1905, p. 167.]

Art. 5805. [5806] Boards of examiners.—Boards of examination under the preceding article shall be appointed by the Governor. Such boards shall consist of not less than three officers, and shall have the same power to take evidence, administer oaths, and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court martial. When returns of appointments are received by a board, the persons appointed shall by it be ordered before it for examination, and the result of the examination, with all papers in the case, shall be forwarded to the Adjutant General. [Id.]

Art. 5806. [5807] Oath.—Every officer duly commissioned shall, within ten days after his commission is tendered him, or within ten days after he shall have been notified personally or by mail that the same is held in readiness for him by a superior officer, take and subscribe the official oath. Such oath shall be taken and subscribed before an officer authorized to administer an oath, or some general or field officer or an officer who shall hold the assimilated grade of a field officer, who has taken the oath himself, and who is hereby authorized to administer the same. In case of neglect or refusal to take and subscribe such oath within the time mentioned such commission shall be canceled by the Governor, and a new appointment shall be made. Such oath of office shall be filed in the office of the Adjutant General. [Id.]

Art. 5807. [5808] Brevet commissions.—The Governor may, upon the recommendation of their commanding officers, confer brevet commissions of a grade higher than the ordinary or brevet commissions ever held by them, upon the officers of the military service of this State for gallant conduct, or meritorious service of not less than twenty-five years. He may also confer upon officers in active service in the military service of this State, who have previously served in the forces of the United States in time of war, brevet commissions of a grade equal to the highest grade in which they previously served. Such commissions shall carry with them only such privileges or rights as are allowed in like cases in the military service of the United States. [Id.]

Art. 5808. [5809] Supernumerary list.—Officers who shall be rendered surplus by reduction or disbandment of organizations, or in any manner provided by this law, shall at the discretion of the Governor, be withdrawn from active service and placed upon the supernumerary list. The Governor may detail supernumerary officers for active duty, in which case they shall rank in their grade from the date of such detail, and he may relieve them from such duty and return them to the supernumerary list at his discretion.

Art. 5809. [5810] Retirement.—Any officer of the active militia who has reached the age of sixty-four years may be placed upon the retired list by the Governor. Any officer who shall have served as an officer in the same grade in the military service of this State for the continuous period of eight years, or as an officer in the military service of this State continuously for ten years, or as an officer in the military service of this State for twelve years or as an officer and enlisted man in the military service of this State for eighteen years may, upon his own request, be placed upon the retired list and withdrawn from active service and command by the Governor. Any officer who becomes disabled, and thereby incapable of performing the duties of his office, shall be withdrawn from active service and placed on the retired list by the Governor. Any officer who becomes unfit or incompetent, and thereby incapable of performing the duties of his office, shall be discharged upon the recommendation of his commanding officer, or the recommendation of an inspecting officer. Such retirement or discharge shall be by order of the Governor, and in either case, shall be subject to the provisions of this article. Before making such order the Governor shall, at his discretion, appoint a board of not less than five commissioned officers, one of whom shall be a surgeon, whose duty it shall be to determine the facts as to the nature and cause of incapacity of such officer as appears disabled or unfit, or incompetent from any cause, to perform military service, and whose case shall be referred to it. No officer whose grade or promotion would be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such

case. Such board is hereby invested with the powers of courts of inquiry and courts martial, and whenever it finds an officer incapacitated for active service, shall report such fact to the Governor, stating cause of incapacity, whether from disability, unfitness, or incompetency, and if he approves such finding such officer shall be placed on the retired list or discharged as herein provided. The members of the board shall first be sworn to honestly and impartially perform their duties as members of such board. No officer shall be placed upon the retired list, or discharged by the action of such board, if appointed by the Governor, without having had a fair and full hearing before the board, if upon notice he shall demand it, and the Governor in his discretion shall think proper to appoint such board. No case need be referred for the action of such board, under this article, unless the officer designated to be placed on the retired list, or discharged shall, within twenty days after being notified that he will be so retired or discharged, serve on the Adjutant General a written notice that he demands a hearing and examination before such board, and the Governor approve such demand. The Governor may withdraw from active service and command and place upon the retired list any officer who has been twenty-five years in the military service of this State, on the recommendation of the commanding officer of the brigade or division. Vacancies created by the operations of this article shall be filled in the same manner as other vacancies. [Id.]

Art. 5810. [5811] Board to examine officers.—The Governor may whenever he may deem that the good of the service requires it, order any officer before a board of examination, to consist of not less than three nor more than five officers above the grade of captain, which is hereby invested with the powers of courts of inquiry and courts martial, and such board shall examine into the moral character, capacity, and general fitness for the service of such officer, and record and return the testimony taken and a record of its proceedings. If the findings of such board be unfavorable to such officer and be approved by the Governor, he shall be discharged from the service. No officer whose grade or promotion would in any way be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Failure to appear when ordered before a board constituted under this article shall be sufficient ground for a finding by such board that the officer ordered to appear be discharged. [Id.]

Art. 5811. [5812] Bond of officers.—When required to do so by the Governor, any officer of the active militia of this State shall give good and sufficient bond in such sum as the Adjutant General may direct, payable to the Governor conditioned faithfully to discharge the duties of his office, and faithfully to expend all public money of this State and account for the same, and to account for and safely keep all public property of this State or of the United States issued and intended for the use of the military forces of this State, which he may receive from time to time, and to promptly turn over the same to whomsoever the Governor may direct. Such bond shall be in such sum as prescribed by the Adjutant General, and shall be approved by him and filed in his office; and such bond shall not apply to the reasonable wear and tear of arms, equipments, and other military supplies, incident to the military service. The commanding officer of every troop, battery, company, or signal corps and the chief musician of every band mustered into the military service of this State shall file such bond in the office of the Adjutant General, before the commission of such officer shall be issued for the use of his organization. When required to do so by the Governor, any noncommissioned officer or enlisted man of the military forces of this State shall make and file the bond as provided by this article. Such bond shall provide for the payment of a reasonable attorney's fee, not to exceed ten per cent, nor be less than ten dollars. [Id.]

Art. 5812. [5813] Records admissible.—Copies of all bonds and other papers filed in the office of the Adjutant General, in accordance with the provisions of any law of this State, certified under the hand and seal of office of the Adjutant General, shall be admitted in evidence in all the courts of this State, in the same manner and with like effect as the original would be if duly proven. [Id.]

Art. 5813. [5814] Pay deductions.—The commanding officer of any troop, battery, company, signal corps or band is hereby authorized to deduct from any pay for military service due any officer or enlisted man of his organization such amount as such officer or enlisted man may owe his organization for dues and fines, as provided by the by-laws of such organization. [Id.]

Art. 5814. [5815] Company funds.—The commanding officer of each company shall be the custodian of the company fund, and shall receive, safely keep, and properly disburse, as may be required by the Governor, all money that may be entrusted to his care, and to render on June 30 and December 31 of each year, to the Adjutant General, an itemized statement of all money by him received and disbursed for the preceding six months. [Id.]

Art. 5815. [5816] Absence of commander.—The duties assigned to an officer by title in this chapter shall devolve in case of absence or disability to command of the officer named, upon the line officer next in rank, except as otherwise provided in this chapter. [Id.]

Art. 5816. [5817] Absence of men.—The officer ordering any military duty may excuse any officer or enlisted man for absence therefrom upon good and sufficient grounds. [Id.]

Art. 5817. [5818] To furnish arms, etc.—Every commissioned officer shall provide himself with the arms, uniforms, and equipments prescribed and approved by the Governor. [Id.]

Art. 5818. [5819] Examination exemption.—Any person who graduates from any college or school of this State, wherein there is a prescribed course of military instruction under the supervision of an officer of the United States army, or any officer of the active militia of this State shall, if he applies for appointment as a commissioned officer in the active militia of this State, in the grade of second lieutenant, within two years after graduation, be exempt from examination in all military subjects, except the militia law of this State, and examination as to personal qualifications and physical condition. In no case shall such graduate be drafted to serve in any capacity other than that of commissioned officer; provided, that when an officer of the active militia of this State is a military instructor, the Adjutant General shall prescribe the course of military instruction to be given, and when such colleges or schools do not follow the course of instructions so prescribed, the graduates thereof shall not be entitled to the exemptions and privileges specified in this article. [Id.]

NON-COMMISSIONED OFFICERS AND ENLISTED MEN

Art. 5819. [5820] Enlistment.—Any male citizen of the United States, or any male who has declared his intention to become such citizen, who is a resident of this State, if more than eighteen or less than forty-five years of age, able-bodied, free of disease, and of good character and temperate habits, may voluntarily enlist in the active militia of this State; provided, persons not within such ages may enlist on the written authority of the Adjutant General. [Id.]

Art. 5820. [5821] Three year enlistment.—All enlistments in the active militia of this State shall be for the term of three years. No soldier shall be again enlisted in the active militia of this State whose service during his last preceding term of enlistment has not been honest and faithful. [Id.]

Art. 5821. [5822] Oath.—Every person who enlists or reenlists in the active militia of this State shall sign and make oath to an enlistment paper, which shall be filed in the office of the Adjutant General. Such oath may also be taken and subscribed to before a field officer, or the commanding officer of a signal corps, troop, battery or company, who are hereby authorized to administer such oaths. [Id.]

Art. 5822. [5830] Administering oaths.—No civil or military officer shall be entitled to charge or receive any fee or compensation for administering or certifying any oath administered or certified under any provision of this title. [Id.]

Art. 5823. [5823] Disqualifications.—No minor shall be enlisted without the written consent of his parents or guardian. One who has been expelled or dishonorably discharged from military service of this State or of the United States shall not be eligible for enlistment or re-enlistment, unless he produce the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged, and of the commanding officer who approved such expulsion, or issued such dishonorable discharge. [Id.]

Art. 5824. Federal laws applicable.—The terms of and requirements for enlistments and the qualifications of enlisted men in the National Guard shall be that prescribed by the laws of the United States. [Acts 1st C. S. 1917, p. 3.]

Art. 5825. [5824] Officers, how appointed.—Commanding officers of regiments and of battalions and squadrons not part of regiments shall appoint and warrant the non-commissioned staff officers of their respective regiments, battalions, or squadrons, and they shall, in their discretion, warrant the non-commissioned officers of the troops, batteries and companies of their respective regiments, battalions and squadrons from the members thereof, upon the written nomination of the commanding officer of the troops, batteries and companies, respectively. In troops, batteries and companies not a part of a regiment, battalion or squadron, and in signal and hospital corps, the non-commissioned officers shall be warranted by the commanding officer of the brigade or division, in his discretion, to which such organization may be attached, from the members of such organization upon the written nomination of the commanding officer of the troop, battery, company, signal or hospital corps. To be eligible for appointment as sergeant, first class of the hospital corps, a candidate must be a registered pharmacist. A sergeant of the hospital corps must be appointed from the hospital corps. The officer warranting a non-commissioned officer shall have power to reduce to the ranks for good and sufficient reasons the non-commissioned officers herein named. [Acts 1905, p. 167.]

Art. 5826. [5825] Re-enlistments.—Men who have been discharged by reason of disbandment may be re-enlisted, and shall then receive credit for the period served at the time of such disbandment. A man discharged from [for] physical disabilities shall, if such disability cease, and he again enlists, or a man discharged upon his own request shall, if he again enlists, receive credit for the period served prior to such discharge. [Id.]

Art. 5827. [5826] Second lieutenants.—The Governor may appoint and commission enlisted men, who have served well and faithfully in the active militia of this State for a period of not less than twenty-five years, without examination, second lieutenants by brevet; provided, such enlisted men, so appointed and commissioned, shall be immediately placed on the retired list. [Id.]

Art. 5828. [5827] Physical examination.—No applicant for appointment or enlistment in the active militia of this State will be commissioned or enlisted without first passing a satisfactory physical examination. [Id.]

Art. 5829. [5828] Assignment of pay.—No assignment of pay by any officer or an enlisted man shall be valid, except as otherwise provided by the Governor. [Id.]

SERVICE AND DUTIES

Art. 5830. [5831] Governor may call.—When an invasion of, or an insurrection in, this State is made or threatened, or when the Governor may deem it necessary for the enforcement of the laws of this State, he shall call forth the active militia or any part thereof, to repel, suppress, or enforce the same, and if the number available is insufficient he shall order out such part of the reserve militia as he may deem necessary. [Id.]

Art. 5831. [5832] Impending riot.—When there is in any county, city or town in this State tumult, riot or body of men acting together by force with intent to commit a felony, or breach of the peace, or to do violence to person or property, or by force to break or resist the laws of this State, or when such tumult[,] riot, mob or other unlawful act or violence is threatened and that fact is made to appear to the Governor, he may issue his order to any commander of a division, brigade, regiment, squadron, battalion, troop, battery or company of the active militia of this State to appear at the time and place directed, to aid the civil authorities to suppress or prevent such violence and in executing the laws; provided, whenever the necessity for military aid in preventing or suppressing such violence and in executing the law is immediate and urgent, and when it is impracticable to furnish such information to the Governor in time to secure military aid by his order, the district judge of the judicial district in which the disturbance occurs, or the sheriff of such county, or the mayor of such city or town, may call in writing for aid upon the commanding officer of the active militia stationed therein, or adjacent thereto; and the civil officer making the call shall at once notify the Governor of his action. [Id.]

Art. 5832. [5833] Mobilization order.—The officer to whom the order of the Governor, or the call of the civil authority, is directed shall, upon its receipt, forthwith order his command, or such portion thereof as may be ordered or called for, to parade at the time and place appointed, and shall immediately notify the Governor of his action. [Id.]

Art. 5833. [5834] Commanding officer's duty.—When such troops have appeared at the appointed place, the commanding officer thereof shall obey and execute such general instructions, which shall be in writing, if practicable, otherwise verbal instructions given in the presence of two or more credible witnesses, as he may there and then receive from the civil authorities charged by law with the suppression of riot, or tumult or the preservation of the public peace, but such commanding officer shall exercise his discretion as to the proper method of practically accomplishing the instructions received; the kind and extent of force to be used, and the particular means to be employed to accomplish the object specified by the civil authority shall be left solely to such commanding officer. [Id.]

Art. 5834. [5835] Active militia.—The Governor may order the active militia, or any part thereof, to assist the civil authorities in guarding prisoners, or in conveying prisoners from and to any point in this State, or discharging other duties in connection with the execution of the law as the public interest or safety at any time may require. [Id.]

Art. 5835. [5836] Sale of arms.—Whenever any part of the active militia of this State is on active duty pursuant to the order of the Governor, or call of civil authority, to aid in the enforcement of the law, the commanding officer of such troops may order the closing of any place where arms, ammunition, dynamite or other explosives are sold, and forbid the sale, barter, loan or gift of any said article so long as any of the troops remain on duty in such place, or in the vicinity where such place may be located. [Id.]

Art. 5836. [5837] Regular training.—Officers and enlisted men of each troop, battery, and company of the active militia of this State shall assemble for and undergo drill and instruction at company, battalion, or regimental armories (troop, squadron, or battery armories for cavalry or field artillery) or rendezvous or for target practice, not less than twenty-four times during each calendar year preceding the annual allotment of funds under Section 1661 Revised Civil Statutes of the United States as amended. During the same period there shall be at least one inspection of each troop, battery, and company by an officer of the active militia of this State, or by an officer of the regular army of the United States, at such times as the Governor may direct. In addition to such drills and parades, the commanding officer of any organization may require the officers and enlisted men of his command to meet for parade, drill or instruction at such times and places as he may appoint. [Id.]

Art. 5837. [5838] Practice marches, etc.—Each troop, battery or company of the active militia of this State, not especially excused by the Governor, will be required to participate for at least five consecutive days annually in practice marches or camps of instruction, under such regulations as the Governor may prescribe, and under such instructors as he may appoint. [Id.]

Art. 5837a. President's call of National Guard.—The State of Texas recognizes the right of the President of the United States to call into the military service of the United States, the Texas National Guard and Texas National Guard Reserve for service within or without the United States, and when Congress shall have authorized the use of the armed land forces of the United States for any purpose requiring the use of troops in excess of those of the Regular Army, the right and power of the President of the United States is recognized under such regulations as he may prescribe, to draft the military service of the United States to serve therein for the period of the war or emergency unless sooner discharged, the Texas National Guard and the Texas National Guard Reserve. On the termination of the emergency all persons so called or drafted who shall be discharged from the army shall resume their membership in Texas National Guard and in the Texas National Guard Reserve, and shall continue to serve until the dates upon which their commissions or enlistments entered into prior to the call or draft, would have expired if uninterrupted, unless sooner discharged. [Acts 1927, 40th Leg., p. 262, ch. 183, § 2.]

COMPENSATION AND PRIVILEGES

Art. 5838. [5839] Active militia service.—The military forces of this State when called into active service of this State in time of war, insurrection, invasion, or imminent danger thereof, or the prevention of invasion, shall during their time of service, be entitled to the same pay, rations, and allowances for clothing as is now or may hereafter be established by the laws for the army of the United States. [Acts 1905, p. 167.]

Art. 5839. [5840] Enumeration.—When the military forces of this State, or any part thereof, are called into active service under the fifth, sixth, seventh or eighth articles, officers shall, during their term of service, receive the same pay as now or may be established by law for the army of the United States, and enlisted men shall be paid for such time per day as follows: Chief musician of cavalry, artillery, infantry and engineers, three dollars; first class sergeants of signal corps, two dollars and seventy-five cents, battalion sergeants major of engineers, battalion quartermaster sergeants of engineers, sergeants major of artillery senior grade, first sergeant of engineers, company quartermaster sergeants of engineers, sergeants of engineers, sergeants of signal corps, regimental quartermaster sergeants, regimental commissary sergeants, and regimental sergeants, two dollars and fifty cents; sergeants major of artillery, junior grade, first sergeants of infantry, cavalry and artillery, sergeants of hospital corps, drum majors, sergeant major of squadron and battalion, color sergeants, chief trumpeters of cavalry, artillery, infantry and engineers, two dollars and twenty-five cents; corporals of engineers, and signal corps, cooks of engineers and signal corps, sergeants and cooks of infantry, cavalry, artillery and bands, mechanics of coast artillery, stable sergeants of field artillery, privates of hospital corps, company quartermaster sergeants of cavalry, artillery and infantry, two dollars; first class privates of engineer and signal corps, corporals of cavalry, artillery, infantry and bands, artificers of field artillery and infantry, farriers, blacksmiths, saddlers and waggoners of cavalry, one dollar and seventy-five cents; privates of cavalry, artillery, infantry, signal corps and bands, second class privates of engineers, musicians of artillery, infantry and engineers, trumpeters cavalry, one dollar and fifty cents. [Id.]

Art. 5840. [5841] Tax exemptions.—All officers and enlisted men of the active militia of this State, who comply with their military duties as prescribed by this chapter, shall be entitled to exemption from the payment of all poll taxes, except the poll tax prescribed by the Constitution for the support of the public schools; exemption from the payment of any road or street tax, and from any road duty whatsoever under the laws of this State, and exemption from jury service or duty of every character and description. [Id.]

Art. 5841. [5842] Poll tax exemptions.—To entitle any troop, battery, company, signal corps, or band of the active militia of this State to the exemption from the payment of poll taxes as specified in the preceding article, the commanding officer of such organization shall, between the first days of January and April of each year, file with the assessor of taxes for his county a list of all members of his command who have discharged the military duties required of them for the preceding year, and who have been present for at least twenty-four drills or parades, or have been excused for non-attendance thereof by reason of illness or other necessary cause; such list shall be certified to by such commanding officer, and the persons whose names appear on such list, shall not be assessed for any poll taxes whatever, other than the poll tax of one dollar prescribed by the Constitution for the support of public schools for the current year; and each assessor with whom such lists are filed shall note the exemptions on his assessment roll as set forth in such lists, and furnish such information to all concerned as may be necessary in carrying out the provisions of this article. [Id.]

Art. 5842. [5843] Road and jury exemptions.—To entitle any troop, battery, company, signal corps or band of the active militia of this State to exemption from the payment of road or street taxes, jury service or duty, and road duty as specified in Article 5840 of this chapter, the commanding officer of such organization shall, between the first and thirty-first days of January of each year, file lists similar to that set forth in the preceding article, certified to him, one copy with clerk of the district court of his county and one copy with the clerk of the county court of his county; and the names appearing on such lists shall thereafter be exempt from jury service or duty of every character and description, from the performance of any road duty, and from the payment of any road or street tax in such county for the current year. County clerks shall furnish information of those so exempt to the proper road overseers and to all others concerned. [Id.]

Art. 5843. [5844] Staff officers exempt.—To entitle any general, field or staff officer of the active militia of this State to said exemptions as set forth in this chapter, such officer shall between the first days of January and April of each year, file with the assessor of taxes for his county his certificate to the effect that he is an officer of the active militia of this State in good standing, and that he has faithfully discharged all the military duties required of him during

the preceding year, and, on filing the certificate as herein required, such officer shall not be assessed for any poll tax whatever other than the poll tax of one dollar prescribed by the Constitution for the support of public schools for the current year; and such officer shall file similar certificates between the first and thirty-first days of January of each year, with the district and county clerks of his county, and on filing such certificates, shall thereafter be exempt from jury service or duty of every character and description, from the performance of any road duty and from the payment of any road or street tax in such county for the current year. [Id.]

Art. 5844. [5845] Non-commissioned officers exempt.—To entitle any non-commissioned staff officer, member of the engineer or hospital corps, or any other enlisted man of the active militia of this State not belonging to the regular organization, to the exemptions as set forth in the fourth preceding article, such non-commissioned officer or soldier shall prepare and file affidavits similar to the certificate provided in the preceding article for officers, with the assessor, district and county clerks of his county; such affidavits shall be filed during the same period and in the same manner as set forth above for officers. On filing such affidavits, such non-commissioned officer or soldier shall be entitled to the same exemptions in the same manner as provided for such officers. [Id.]

Art. 5845. [5846] Disabled men.—Every member of the military forces of this State who shall be wounded or disabled while in the service of this State, in case of riot, tumult, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, shall be taken care of and provided for at the expense of this State. [Id.]

Art. 5846. [5847] Transportation, etc.—The State shall make suitable provision for the pay, transportation, subsistence and quarters of all troops of this State who may attend at any annual encampment, or when called into active service of this State. [Id.]

Art. 5847. [5848] Exempt from arrest.—No persons belonging to the active militia of this State shall be arrested on any civil process while going on duty or returning from any place at which he may be required to attend for military duty, except in cases of treason, felony or breach of the peace. [Id.]

ARMS, EQUIPMENT, ETC.

Art. 5848. [5849] To return property.—An enlisted man who has not returned all the public property for which he is responsible, shall under no circumstances, receive a full and honorable discharge. [Id.]

Art. 5849. [5850] Liable for damage.—The cost of arms, equipment, and all other military supplies and stores, and the cost of repairs or damages done to arms, equipment and all other military supplies and stores, shall be deducted from the pay of any officer or soldier in whose care or use the same were when such loss, destruction or damage occurred, if said loss, destruction or damage was occasioned by the carelessness, neglect or abuse of said officer or soldier. [Id.]

Art. 5850. [5851] Private use.—No officer or enlisted man of the active militia of this State having property in charge shall lend for private use, or permit to be used for any other purpose than the legitimate purpose intended, any public property that he may be responsible for to the Governor. All property issued to a brigade, regimental, battalion, or company commander, or to any band, corps, or auxiliary squad or to any military organization whatever, when not in legitimate use, shall be carefully stored and protected from waste, theft, loss or injury. [Id.]

Art. 5851. [5852] Provided by State.—All organizations shall be provided by this State with such arms, equipments, books of instruction and of record and other supplies as may be necessary for the proper performance of the duty required of them by this chapter. Each organization shall keep such property in proper repair and in good condition. [Id.]

Art. 5852. [5853–54] Warrant for seizure.—Whenever it comes to the knowledge of the Governor, on the affidavit of a credible person, that the persons having arms, equipment, or other military property issued by this State for the use of the military forces of this State without authority of law, fail or refuse to deliver up such property, he shall issue his warrant to the sheriff of the county where such persons may be or reside, commanding such sheriff to seize and take into his possession such arms, equipments, or other military property, and keep the same subject to the further order of the Governor. Any sheriff receiving such warrant shall without delay execute the same as directed, and in executing such warrant he may summon to his aid the power of the county and any command of the active militia of this State that may be convenient. [Id.]

Art. 5853. [5855] Sheriff to collect arms.—Each sheriff shall, from time to time, collect such arms or property as may be liable to loss or in the hands of unauthorized persons, and such property when collected shall be kept safely subject to the order of the Governor, to whom a report of such collection shall be made. The official bond of sheriffs shall extend to and include the faithful performance of their duties under this and the preceding articles. [Id.]

Art. 5854. [5856] Exempt from execution.—Arms, equipments, clothing or other military supplies issued by this State to organizations or members of the active militia for military purposes, shall be exempt from levy and sale by virtue of an execution for debt, or any other legal proceedings. [Id.]

Art. 5855. [5857] Governor to draw arms.—The Governor in his official capacity is authorized to draw from the United States government all arms, equipment, munitions, or other military stores to which this State may, from time to time, be entitled, for the use of the militia, and may execute such bonds in the name of the State as may be necessary or requisite to secure their issuance. [Id.]

Art. 5856. [5858] Storing arms.—The Governor shall cause all arms, equipment, munitions, or other military property belonging to or under the control of this State, to be stored at such points as he may deem to the best interests of this State. [Id.]

Art. 5857. [5859] Uniform.—The uniform for officers and enlisted men of the active militia of this State shall be the same as that prescribed for the United States army, with such modifications as the Governor may deem necessary from time to time. All uniforms and other military property issued by this State shall be used for military purposes only, and when issued shall be receipted for, and kept and accounted for in such manner as the Adjutant General may prescribe. [Id.]

ARTICLES OF WAR

Art. 5858. [5860] Rules.—The military forces of this State shall be governed by the following rules known as articles:

The word "officer" as used therein, shall be held to designate commissioned officers: the word "soldier" includes non-commissioned officers, musicians, artificers, privates and enlisted men; the word, "company" shall be understood to include troops, batteries, companies, signal corps, hospital corps, bands and detachments, and the convictions mentioned therein shall be understood to be convictions by court martial.

1. Enlistment in the active militia of this State shall be vountary, and every person who enlists therein shall take and subscribe an oath in the following form:

"I, ..., do solemnly swear that I will bear true faith and allegiance to the State of Texas and to the United States of America; that I will serve them honestly and faithfully against all their enemies

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

whomsoever, and that I will obey the orders of the Governor of Texas, and the orders of the officers appointed over me, according to the laws, rules and articles for the government of the military forces of the State of Texas."

2. Every officer who knowingly enlists or musters into the military service of this State any minor over the age of sixteen years without the consent of his parents or guardian, or any minor under the age of sixteen years, or any insane or intoxicated person, or any deserter from the military service of this State or of the United States, or any person who has been convicted of any infamous crime, shall upon conviction, be dismissed from the service or suffer such other punishment as a court martial may direct.

3. No enlisted man, duly sworn, shall be discharged from service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the Governor, the Adjutant General, or by order of a court martial.

4. Any officer who knowingly musters as a soldier a person who is not a soldier, shall be deemed guilty of knowingly making a false muster, and punished as a court martial may direct.

5. Any officer who takes money, or other thing by way of gratification, on mustering any regiment or company, or on signing muster rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment, civil or military, in the service of the State of Texas, or suffer such other punishment as a court martial may direct.

6. Every commanding officer shall, in the beginning of January and July of each year, and oftener if required by the Governor, transmit to the Adjutant General's department an exact return of the troops under his command, specifying the names of the officers absent from their posts, with the reasons for and the time of their absence. Such returns shall be made in the form and forwarded in the manner prescribed by the Adjutant General; and any such officer, who through neglect or design omits to send such return shall, on conviction thereof, be punished as a court martial may direct.

7. Every officer who knowingly makes a false return to the Adjutant General's department, or to any of his superior officers authorized to call for such returns, of the state of the regiment or company under his command, or of any arms, ammunition, clothing or other stores thereunto belonging, shall be punished as a court martial may direct.

8. Every officer who signs a false certificate relating to the absence or pay of any officer or soldier shall be dismissed from the service, or suffer such other punishment as a court martial may direct.

9. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows, the signing of any muster roll, knowing the same to contain a false muster shall, upon proof thereof by two witnesses before a court martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment, civil or military in the service of the State of Texas.

10. Any officer who wilfully or through neglect suffers to be lost, damaged or spoiled any military stores or supplies belonging to this State, or to the United States, which has been received for use of the military forces of this State, shall make good the loss or damage, and suffer such punishment as a court martial may direct.

11. Any soldier who sells or through neglect loses or spoils the arms, uniforms, equipments, accoutrements, or any other military stores or supplies issued to him for his use or in his charge, shall make good the loss or damage, and suffer such punishment as a court martial may direct.

12. Any officer or soldier who shall strike his superior officer, or offers any violence to him, the said superior officer being engaged in the reasonable execution of his official duties, or any officer or soldier who disobeys any lawful command of his superior officer shall be punished as a court martial may direct.

13. Any officer or soldier who begins, excites, causes or joins in any mutiny or sedition in any regiment, company quarters or guard, shall suffer such punishment as a court martial may direct.

14. Any officer or soldier, who being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having any knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer such punishment as a court martial may direct.

15. All officers, of what conditions soever, have power to quell all quarrels, frays and disorders, whether among persons belonging to their own or to any regiment or company, and to order officers into arrest and non-commissioned officers and soldiers into confinement who take part in same, until their proper superior officer is acquainted therewith. Whoever being so ordered refuses to obey such officer or non-commissioned officer, or draws a weapon upon him, shall be punished as a court martial may direct.

16. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court martial may direct.

17. Any soldier who absents himself from his company or guard, without leave from his commanding officer, shall be punished as a court martial may direct.

18. Any officer or soldier who fails except when prevented by sickness or other necessity, to repair at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court martial may direct.

19. Any soldier who is found one mile from camp, without leave in writing from his commanding officer, shall be punished as a court martial may direct.

20. Any officer who is found drunk on his guard, party or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court martial may direct.

21. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer such punishment as a court martial may direct.

22. Any officer or soldier who quits his guard without leave from his superior officer, except in case of urgent necessity, shall be punished as a court martial may direct.

23. Any officer who, by any means whatsoever, occasions false alarms in camp, command or quarters, shall suffer such punishment as a court martial may direct.

24. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any place, post or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer such punishment as a court martial may direct.

25. Any officer or soldier who, having been duly enlisted or drafted in the military service of this State, deserts the same shall suffer such punishment as a court martial may direct.

26. Every soldier who deserts the military service of this State shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

27. Any officer who, having tendered his resignation, quits his post or proper duties, without leave and with intent to remain permanently absent there-

from, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

28. No soldier shall enlist himself in any other regiment or company, without a regular discharge from the regiment or company in which he last served, on a penalty of being reputed a deserter and suffering accordingly. And in case any officer shall knowingly receive and entertain such soldier, or shall not, after his being discovered to be a deserter, immediately give notice thereof to the command in which he last served, the said officer shall, by court martial be dismissed.

29. In time of war, insurrection or rebellion, larceny, robbery, burglary, arson, rape or assault with intent to rape, mayhem, manslaughter, murder, assault and battery with attempt to kill, wounding by shooting or stabbing with intent to commit murder, shall be punished by the sentence of a general court martial when committed by persons in the military service of the State; and punishment in every such case shall not be less than the punishment provided for like offenses by the Penal Code of this State.

30. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of this State, which is punishable by the laws of this State, the commanding officer and the officers of the regiment or company to which the person so accused belongs are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil authority and to aid the officers of justice in apprehending and securing him in order to bring him to trial. If, upon application, any officer refuses or wilfully neglects, except in time of war, to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending him, he shall be punished as a court martial may direct.

31. Any person in the military service of this State, who makes or causes to be made, any claim against this State or the United States, or any officer thereof, knowing such claim to be false or fraudulent; or who presents or causes to be presented, to any person in the civil or military service thereof, for approval or payment, any claim against this State, or the United States, or against any officer thereof, knowing such claim to be false or fraudulent; or

Who enters into any agreement or conspiracy to defraud this State or the United States, by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

Who for the purpose of obtaining or aiding others to obtain, the approval, allowance or payment of any claim against this State, or the United States, or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing, or other papers knowing the same to contain any false or fraudulent statement; or

Who for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against this State or the United States, or any officer thereof, makes or procures or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

Who for the purpose of obtaining, or aiding others to obtain, the approval, allowance or payment of any claim against this State, or the United States, or any officer thereof, forges or counterfeits or procures or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses or procures or advises the use of any such signature, knowing the same to be forged or counterfeited; or

Who, having charge, possession, custody or control of any money or other property of this State, or the United States, furnished or intended for the military service of this State, knowingly delivers or causes to be delivered to any person having authority to receive the same, any amount less than that for which he receives a certificate or receipt; or

Who, being authorized to make or deliver any papers certifying the receipt of any property of this State, or the United States, furnished or intended for the military service of this State, makes or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, or with intent to defraud this State, or the United States; or

Who steals, embezzles, knowingly and wilfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipment, ammunition, clothing, subsistence stores, money or other property of this State, or the United States, furnished or intended for the military service of this State; or

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer or other person who is part of, or employed in, said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores or other property of this State, or the United States, such soldier or officer, or other person not having lawful right to sell or pledge the same shall on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court martial may adjudge, or by any or all of said penalties. If any person, being guilty of any of the offenses aforesaid, while in the military service of this State, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court martial, in the same manner and to the same extent as if he had not received such discharge or been dismissed.

32. Any officer who is convicted of conduct unbecoming to an officer and a gentleman shall be dismissed from the service.

33. All crimes not capital, and all disorders and neglects which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, are to be taken cognizance of by a general or regimental, or a summary court martial, according to the nature and degree of the offense, and punished at the discretion of such court.

34. Whenever, by these articles of war for the government of the military forces of this State, the punishment or conviction of any military offense, is left to the discretion of the court martial, the punishment therefor shall not be in excess of a limit which the Governor may prescribe.

35. The officers and soldiers of any troops whether active or reserve militia of this State or otherwise appointed, enlisted, mustered or drafted into the military forces of this State, shall at all times, and in all places be governed by these articles, and shall be tried by courts martial.

36. All retainers of the camp and all persons serving with the military forces of this State in the field, though not enlisted soldiers, shall be subject to these rules and articles in the same manner as enlisted men.

37. Officers charged with crime shall be arrested and confined in their quarters or tents, or other place, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service, and suffer such other punishment as a court martial may direct.

38. Soldiers charged with crime shall be confined until tried by court martial, or released by proper authority.

39. Any provost marshal, or any officer commanding a guard, who shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the military forces of this State shall suffer such punishment as a court martial may direct, provided the officer committing shall, at the same time, deliver a statement in writing, signed by himself, of the crime charged against the prisoner.

40. Every officer to whose charge a prisoner is committed, shall within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the crime charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court martial may direct.

41. Any officer who presumes without proper authority, to release a prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court martial may direct.

42. No officer or soldier put in arrest shall be continued in confinement more than five days, or until such time as a court martial can be assembled.

43. When an officer is put in arrest for the purpose of trial, except at remote stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within five days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

44. The Governor, or any general, or other officer commanding a division or brigade, may appoint general courts martial whenever necessary. But when any such general or other officer is the accuser or prosecutor of any officer under his command, the court shall be appointed by the Governor; and its proceedings and sentence shall be sent directly to the Adjutant General, by whom they shall be laid before the Governor for his approval or orders in the case.

45. Officers who may appoint a court martial shall be competent to appoint a judge advocate for the same.

46. General courts martial may consist of any number of officers, from five to thirteen inclusive, but they shall not consist of less than thirteen when that number can be convened without injury to the service. A decision of the appointing authority as to the number that can be assembled without injury to the service is conclusive.

47. When the requisite number of officers to form a general court martial is not present in any command or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the Governor, who shall thereupon order a court to be assembled at the nearest and most convenient place at or near which there may be such a requisite number of officers, and shall order the party accused, with the necessary witnesses to be transported to the place where the said court shall be assembled.

48. Every officer commanding a camp or other place where the troops consist of different corps, and every officer commanding a regiment, separate squadron or battalion, shall be competent to appoint for such camp or other place, or such regiment, separate squadron or battalion, regimental courts martial, consisting of three officers, to try enlisted men for offenses not capital; but such courts martial shall be appointed and the officers designated by superior authority when by him deemed desirable. Such courts martial shall have power to award punishment not to exceed confinement at hard labor for thirty days, or forfeiture of thirty dollars pay, or a fine of thirty dollars, or any or all of such confinement, forfeiture of pay and fine, and in case of a non-commissioned officer, reduction to the ranks in addition thereto.

49. Every commanding officer of each camp or other place, regiment or corps, detached battalion or company, and the commanding officer of each company at its home station, shall have power to appoint for such place, command or station summary courts martial to consist of one officer to be designated by him, to try enlisted men for offenses not capital, but such summary courts martial may be appointed and the officer designated by superior authority when by him deemed desirable; and, when but one commissioned officer is present with a command, he shall hear and finally determine such cases. Such summary courts shall have power to adjudge punishment not to exceed confinement at hard labor for thirty days, forfeiture of thirty dollars pay, or a fine of thirty dollars or any or all of such confinement, forfeiture of pay and fine, and, in case of non-commissioned officers, reduction to the ranks in addition thereto; provided such summary courts shall not adjudge confinement for more than ten days, forfeiture of more than ten dollars pay, or a fine of more than ten dollars, or any or all of such confinement, forfeiture of pay and fine, unless the accused shall, before trial, consent in writing to trial by said court; but in case of refusal to so consent, the trial may be had either by general, regimental or by said summary court, but in case of trial by said summary court without the consent as aforesaid, the court shall not adjudge confinement for more than ten days, or forfeiture of more than ten dollars pay, or a fine of more than ten dollars, or any or all of such confinement, forfeiture of pay and fine. The officer holding the summary court shall have power to administer oaths and to hear and determine cases cognizable by said court, and when satisfied of the guilt of the accused, adjudge the punishment to be inflicted which shall not exceed the limit prescribed in this article.

50. There shall be a summary court record kept at the headquarters of the proper command in the field, each regiment or corps, detached battalion or company, and each company at its home station, for which summary courts martial have been appointed, in which shall be entered a record of all cases heard and determined and the action had thereon. The commanding officer of each camp or other place, regiment or corps, detached battalion or company, and each company at its home station, for which summary courts martial have been appointed shall, on the last day of every month and oftener if required, make a report to the Adjutant General of the number of cases determined by summary courts, during the period, setting forth the offenses committed and the penalties awarded.

51. The judge advocate of any general or regimental court martial shall administer to each member of such court, before they proceed upon any trial, the following oath: "You, A. B., do solemnly swear that you will well and truly try and determine according to evidence, the matter now before you, between the State of Texas and the prisoner to be tried, and that you will duly administer justice, without partiality, favor or affection, according to the provisions of the rules and articles for the government for the military forces of this State, and if any doubts should arise, not explained by said articles, then according to your conscience, and the best of your understanding, and the customs in like cases; and you do further swear that you will not divulge the sentence of the court until it shall be published by the proper authority, except to the judge advocate; neither will you disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God."

52. When the oath has been administered to the members of a court martial, the president of the court shall administer to the judge advocate, or person officiating as such an oath in the following form: "You do swear that you will not disclose or discover the vote or opinion of any particular member of the court martial, unless required to give evidence thereof as a witness by a court of justice in due course of law; nor divulge the sentence of the court to any but the proper authority until it shall be duly disclosed by the same. So help you God."

53. A court martial may punish, at discretion, any person who uses any menacing words, signs or gestures in its presence, or who disturbs its proceedings by any riot or disorder.

54. All members of a court martial are to behave with decency and calmness.

55. Members of a court martial may be challenged by a prisoner, but only for causes stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

56. When a prisoner, arraigned before a court martial, from obstancy [obstinacy] and deliberate design, stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty.

57. The judge advocate general or some person deputied [deputized] by him, or by the Governor, or general or officer commanding the division, brigade, camp or other place, regiment, separate squadron or battalion shall prosecute on [in] the name of the State of Texas; but when the prisoner has made his plea he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses and to any question to the prisoner, the answer to which might tend to criminate himself. Whenever a court martial shall sit in closed session the judge advocate shall withdraw, and, whenever his legal advice or his assistance in referring to recorded evidence is required, it shall be obtained in open court.

58. The judge advocate general and the officers of his department, the judge advocate of court martial and the trial officers of summary courts are hereby authorized to administer oaths for the purpose of administration of military justice and for other military purposes.

59. The deposition of witnesses for the accused residing beyond the limits of the State, or the county in which any military court may be ordered to sit, may be taken and read in evidence as provided by the laws of this State.

60. All persons who give evidence before a court martial shall be examined on oath administered by the judge advocate in the following form: "You swear that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

61. A court martial for reasonable cause shall grant a continuance to either party for such time and as often as may appear to be just; provided, that if the prisoner be in close confinement the trial shall not be delayed for more than sixty days.

62. Members of a court martial in giving their votes, shall begin with the youngest in commission.

63. Officers shall be tried only by general courts martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.

64. No officer shall be discharged or dismissed from the service except by order of the Governor, or by sentence of a general court martial.

65. When an officer is dismissed from the service for cowardice or fraud, the sentence shall direct that the crime, punishment, name and place of abode of the delinquent shall be published in the newspapers in and about the State and in the county in which the offender lives, or where he usually resides; and, after such publication, it shall be scandalous for an officer to associate with him.

66. When a court martial suspends an officer from command it may also suspend his pay and emoluments for the same time according to the nature of his offense.

67. No person shall be tried for the second time for the same offense.

68. No person shall be liable to be tried or punished by a general court martial for any offense except for desertion in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall have meanwhile absented himself from this State, in which case the time of his absence shall be excluded in computing the period of the limitation; provided that said limitation shall not begin until the end of the term for which said person was mustered into service.

69. No sentence of a court martial respecting a general officer, and no sentence of a court martial directing the dismissal of any officer, shall be carried into execution until it shall have been confirmed by the Governor.

70. No sentence of a court martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being.

71. All sentences of a court martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where the confirmation by the Governor is not required by these articles.

72. Any officer who is authorized to confirm and carry into execution the sentence of a court martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of dismissal of an officer; and the Governor shall have power to pardon or mitigate any punishment adjudged by any court martial.

73. Every judge advocate, or person acting as such, at any general or regimental court martial shall, with such expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentences of such court to the Adjutant General in whose office they shall be carefully preserved.

74. Every party tried by general or regimental court martial shall, upon demand thereof, made by himself or any person in his behalf, be entitled to a copy of the proceedings and sentences of such court.

75. A court of inquiry to examine into the nature of any such transaction of, or accusation or imputation against, any officer or soldier may be ordered by the Governor, or by any commanding officer; but such courts of inquiry shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.

76. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder to reduce the proceedings and evidence to writing.

77. The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you without partially [partiality], favor, affection, prejudice or hope of reward. So help you God." After which the president of the court shall administer to the recorder the following oath: "You do swear that you will according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

78. A court of inquiry and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts martial and the judge advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts martial and the party accused shall be permitted to examine and cross-examine them so as to fully investigate the circumstances in question.

79. A court of inquiry shall not give an opinion on the merits of the case inquired of, unless specially ordered to do so.

80. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.

81. The proceedings of a court of inquiry may be admitted as evidence by a court martial in cases not extending to the dismissal of an officer; provided, that the circumstances are such that oral testimony can be obtained.

82. The foregoing articles shall be read once in every twelve months to every company in the military service of this State, and shall be duly observed and obeyed by all officers and soldiers in said service. [Id.]

COURTS MARTIAL

Art. 5859. [5861] Evidence.—The rules of evidence in all courts martial shall follow in general, so far as apposite, the common law rules of evidence as observed by the courts of this State in criminal cases; but a certain latitude in the introduction of evidence and the examination of witnesses by an avoidance of restrictive rules is permissible, when it is in the administration of military justice.

Art. 5860. [5862] Privileges of accused.—In all trials before courts martial, the accused shall have the right to demand the nature and cause of the accusation against him, and to be presented with a copy of the charges. He shall have the right of being heard by himself or counsel, or both; shall be confronted with the witnesses against him, and shall have

compulsory process for obtaining witnesses in his favor. [Id.]

Art. 5861. [5863] Counsel for defendant.—The officer ordering a general or regimental court martial will at the request of any prisoner who is to be arraigned, detail as counsel for his defense a suitable officer, one not acting as a summary court; provided such request is made within a reasonable time before trial. If there be no such officer available, the fact will be reported to the Adjutant General for his action. An officer so detailed shall perform such duties as usually devolve upon counsel for defendant before civil courts in criminal cases. [Id.]

Art. 5862. [5864] Reporter.—The judge advocate of a military court shall have power to appoint a reporter, who shall record the proceedings of, and testimony taken before such court, and may set down the same, in the first instance in shorthand. The reporter shall, before entering upon his duty, be sworn faithfully to perform the same. [Id.]

Art. 5863. [5865] May issue process.—The president or judge advocate of every general or regimental court martial shall have the power to issue like process to compel witnesses to appear and testify, which courts of criminal jurisdiction within this State may lawfully issue; and such process shall be issued in the same style and manner and executed by the same officers as when issued by such court. [Id.]

Art. 5864. [5866] Process generally.—The president of any court martial, and any summary court officer, shall have authority to issue, under his hand, in the name of the State of Texas, directed to any sheriff or constable, whose duty it shall be to serve or execute the same in the same manner in which like process is served or executed when issued by a magistrate, all necessary process, subpoenas, attachments, warrants of arrest and warrant of commitment. [Id.]

Art. 5865. [5867] Penalty.—Every person, who being duly subpœnaed to appear as a witness before a regimental or general court martial, who wilfully neglects or refuses to appear, or refuses to qualify as a witness or produce documentary evidence which such person may have been legally subpœnaed to produce, shall be deemed guilty of a misdemeanor, and prosecuted in the proper justice court, and punished by a fine not exceeding one hundred dollars; provided, such witness may plead as a defense that he was not tendered or paid one day's fee and mileage for the journey to and from the place of trial, as provided in this chapter, such amounts to be paid by the Adjutant General's department out of any appropriation of funds available for that purpose; provided, that no witness shall be compelled to incriminate himself, or to answer any questions which may tend to incriminate or degrade him. [Id.]

Art. 5866. [5868] Witnesses' expenses.—Persons in the employ of this State, but not belonging to the military forces thereof, when traveling upon summons as witnesses before military courts, are entitled to transportation from their place of residence to the place where the court is in session and return. If no transportation be furnished they are entitled to reimbursement of the cost of travel actually performed by the shortest usually traveled route. They are also entitled to reimbursement of the actual cost of meals and rooms at a rate not to exceed two dollars per day for each day actually and unavoidably consumed in travel, or in attendance upon the court under the order or summons. No allowance will be made to them when attendance upon court does not require them to leave their place of residence. [Id.]

Art. 5867. [5869] Compensation of.—A person not in the employ of this State and not belonging to the active military forces thereof, who has been duly summoned to appear as a witness before a military court, will receive one dollar and fifty cents per day for each day actually in attendance upon the court, and six cents a mile for going from his place of residence to the place of trial or hearing, and six cents a mile for returning. Civilian witnesses will be paid by the Adjutant General's department. [Id.]

Art. 5868. [5870] Account.—The charges for return journeys of witnesses will be made upon the basis of the actual charges allowed for travel to the court, and the entire account thus completed will be paid upon discharge from attendance without waiting for completion of return travel. [Id.]

Art. 5869. [5871] Attachment for witnesses.—If a witness has been subpœnaed and fails to attend, attachment shall issue, and he shall be liable for the costs of such attachment unless good cause be shown to the court why he failed to obey the subpœna, which cost may be recovered by civil suit. [Id.]

Art. 5870. [5872] Witness fees.—No fees shall be allowed to a person as witness fees, unless such person has been subpœnaed, attached, or recognized as a witness in the case.

Art. 5871. [5873] Governor may order arrest.—When charges against any person in the military service of this State are made to the Governor, or any officer authorized to order a court martial for the trial of such person, and the Governor or such officer, believes that such charges can be sustained, and has reason to believe that the person so charged will not appear for trial, or intends to flee from justice, the Governor, or such officer, may issue a warrant of arrest to the sheriff or any constable of the county in which the person so charged resides, or wherein he is supposed to be, commanding the sheriff or constable to take the body of the person so charged and confine him in jail until such time as his case may be finally disposed of; and the sheriff or constable, on the order of the Governor, or officer ordering the court, shall bring the person so charged before the court martial for trial, or turn him over to whoever the order may direct; the Governor, or the officer issuing the warrant of arrest, shall indorse thereon the amount of bail to be required; and it shall be a violation of duty on the part of any sheriff or constable to permit a person so committed to remain out of jail, except that he may, when such person desires it, permit him to give bail in the sum indorsed on the warrant, conditioned for his appearance, from time to time, before such court martial as he may be ordered for trial, and until his case is finally disposed of, or until such time as he may surrender to the sheriff or constable as directed by the reviewing authority of the court martial before which he may be ordered for trial. [Id.]

Art. 5872. [5874] Suit on bonds, etc.—Upon the failure of any person, who has been admitted to bail conditioned for his appearance for trial before a court martial, or upon the failure of any person admitted to bail to appear as a witness in any case before a court martial, as conditioned in the bail bond of any such person, the court martial shall certify the fact of such failure to so appear to the officer ordering the court martial, or to the officer commanding for the time being, as the case may be; and such officer shall cause a judge advocate, district or county attorney to file suit in Travis County therefor. [Id.]

Art. 5873. [5875] Laws applicable.—The rules laid down in the Code of Criminal Procedure of this State relating to the giving of bail, the amount of bail, the number of sureties, the persons who may be sureties, the property exempt from liability, the responsibility of parties to the same and all other rules of a general nature not inconsistent with this law are applicable to bail taken as provided in this chapter. [Id.]

Art. 5874. [5876] Warrant of arrest.—A warrant of arrest issued by the Governor, or other officer authorized to order a general court martial, and all subpœnas and other process issued by general courts martial shall extend to every part of the State; but warrants of arrest issued by an officer, other than those named above, and all subpœnas and other process issued by other military courts can not be executed in any other county than the one in which they were issued, except they be indorsed by the Governor, or an officer authorized to order a general court martial, in which case they can be executed anywhere in the State. The indorsement may be "Let this process be

executed in any county in the State of Texas." The indorsement shall be dated and signed officially by the Governor or officer making it. [Id.]

Art. 5875. [5877–78] Officers' fees.—Upon conviction of any person by a court martial, all costs including the cost accruing for witness fees and the fees for sheriffs or constables for executing the process, subpœnas, writs of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be taxed against defendant; and any sheriff or constable executing any process, subpœna, writ of attachment, warrant of arrest, warrant of commitment, or any other authorized writs, shall be allowed the same fees as provided by the Code of Criminal Procedure in this State. When the defendant is imprisoned for costs the Adjutant General shall pay said costs out of any fund that may be available. [Id.]

Art. 5876. [5879] Felony.—When the sentence of a court martial adjudges confinement, and the reviewing authority has approved the same in whole or in part, and such sentence as approved exceeds two years confinement, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which the court martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county until taken charge of by a duly accredited agent of the State penitentiary; and such reviewing authority, or the commanding officer for the time being, as the case may be, shall certify a copy of the proceedings, as approved, of the court martial in the case of such person to be confined to the superintendent of the State penitentiary, which shall be sufficient authority for, and such superintendent shall send for and confine such person in said penitentiary for the period named in the proceedings of the court martial as approved, or until he may be directed to release him by proper authority; and the State penitentiary board shall make such provision as may be necessary for receiving from the sheriff as aforesaid and confining such person in such manner as persons are received and confined in the State penitentiary on sentence of district courts in this State. [Id.]

Art. 5877. [5880] Misdemeanor.—When the sentence of a court martial adjudges confinement, and the reviewing authority has approved the same in whole or in part, and such sentence as approved, does not exceed two years confinement, the reviewing authority, or the commanding officer for the time being, as the case may be, shall issue a warrant of commitment to the sheriff of the county in which such court martial was held, directing such sheriff to take the body of the person so sentenced and confine him in the county jail of such county for the period named in such sentence, as approved, or until he may be directed to release him by proper authority; and such confinement shall be carried out as prescribed for confinement in jail by the Code of Criminal Procedure of this State. [Id.]

Art. 5878. [5881] Fine and costs.—When the sentence of a court martial adjudges a fine and cost against any person, and such fine and cost has not been fully paid within ten days after the confirmation thereof, the Governor or officer ordering the court or the officer commanding for the time being, as the case may be; shall issue a warrant of commitment directed to the sheriff of the county in which the court martial was held, directing him to take the body of the person so convicted and confine him in the county jail; and the sheriff shall take the body oif [of] the person convicted and confine him in the county jail for one day for any fine not exceeding one dollar, and one additional day for every dollar above that sum, and one additional day for each dollar of cost. [Id.]

Art. 5879. [5882] Payment of fines.—All fines and forfeitures imposed by general or regimental courts martial, shall be paid to the officer ordering such courts, or to the officer commanding for the time being, and by said officer, within five days from the receipt thereof, paid to the Adjutant General, who shall disburse the same as he may see fit for military purposes. [Id.]

Art. 5880. [5883] Fines.—All fines and forfeitures imposed by summary courts martial shall be paid to the officer ordering the court, or the officer commanding for the time being, and by such officer, within five days from the receipt thereof, placed to the credit of the company fund of the company of which the person fined was a member when the fine was imposed. [Id.]

Art. 5881. [5884] Sheriff to execute process.—When any lawful process, issued by the proper officer of any court martial, comes to the hands of any sheriff or constable, he shall perform the usual duties of such officer and perform all acts and duties by this chapter imposed or authorized to be performed by any sheriff or constable. [Id.]

Art. 5882. [5885] Jurisdiction presumed.—The jurisdiction of the courts and boards established by this chapter shall be presumed and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding. [Id.]

Art. 5883. [5886] Exemption from sentence.—No action or proceeding shall be prosecuted or maintained against a member of the military forces of this State or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of any fine or penalty, or the execution of any warrant, writ, execution, process, or mandate of a military court. [Id.]

Art. 5884. [5887] Change of venue.—Any officer or member of the military forces of this State, who is sued for any injury to persons or property done while performing, or endeavoring to perform, any duty required of him by this law, shall have the right, and the court in which suit is pending, upon the application of the person sued, shall remove the venue of such cause to some court of competent jurisdiction in another county not subject to the same or some other disqualification; provided, such application is supported by the affidavit of two credible persons to the effect that they have good reason to believe that the defendant cannot have a fair and impartial trial before such court. [Id.]

GENERAL PROVISIONS

Art. 5885. [5888] Appropriations.—Each commissioners court and the council of any city or town in this State are hereby authorized and empowered, in their discretion, to appropriate a sufficient sum, not otherwise appropriated, to pay the necessary expenses of the troops, batteries, companies, signal corps, hospital corps and bands of the active militia of this State located in their respective counties, cities or towns, not to exceed the sum of one hundred dollars per month for such expenses of any one organization. [Id.]

Art. 5886. [5889] Right of way on street.—The commanding officer of any portion of the active militia of this State, parading or performing any military duty in any street or highway, may require any or all persons in such street or highway to yield to the right of way to such militia; provided, that the carriage of the United States mails, the legitimate functions of the police and the progress and operations of hospital ambulances, fire engines and fire departments shall not be interfered with thereby. [Id.]

Art. 5887. [5890] Penalties.—Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the active militia of this State, or in any manner pawn or pledge any arms, uniforms, equipment, or other military property issued under the provisions of this chapter, or of the military regulations of this State, or any person who shall wear any uniform or part thereof, or device, strap, knot, or insignia of any design or character used as a designation of grade, rank of office, such as are by law or by general regu-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

lations duly promulgated, prescribed for the use of the active militia of this State, or similar thereto, except members of the army of the United States or the active militia of this State; or any person who shall subject or cause to be subjected any other person to the deprivation of any right, privilege or immunity usually enjoyed by the public on account of membership in the army, navy, marine corps or revenue cutter service of the United States, or of the National Guard or naval service of this State, or otherwise in the military or naval service of the United States or of this State, wearing the uniform prescribed for him at that time by law, regulation of the service or custom, on account of his wearing such uniform or of being in such service; or who on account of such membership or the wearing of such uniform shall make or cause to be made such discrimination, shall forfeit to the State one hundred dollars for each offense, to be sued for in the name of the State of Texas by a judge advocate, district or county attorney. All money recovered by any action under this article shall be paid to the Adjutant General, who shall apply the same to the use of the active militia of this State. [Acts 1905, p. 167, sec. 72; Acts 1st C. S. 1917, p. 20.]

Art. 5888. [5891] Gambling, etc.—The commanding officer upon any occasion of duty may place in arrest, during the continuance thereof, any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to and returning from any duty. He may prohibit and prevent the holding of huckster or auction sales, and all gambling within the limit of the post, camp ground, place of encampment, parade or drill under his command, or within limits not exceeding one mile therefrom as he may prescribe. And he may in his discretion, abate as a common nuisance all such sales. [Acts 1905, p. 167.]

Art. 5889. [5892] Insurrection.—Whenever any portion of the military forces of this State is employed in aid of the civil authority, the Governor, if in his judgment the maintenance of law and order will thereby be promoted may, by proclamation, declare the county or city in which the troops are serving, or any special portion thereof, to be in a state of insurrection. [Id.]

Art. 5890. [5893] Foreign troops.—No armed military force from another State, territory or district shall be permitted to enter this State without the permission of the Governor, unless such force is a part of the United States army. [Id.]

CHAPTER FOUR

STATE NAVAL MILITIA

Article 5891. Texas Naval Board.—The "Texas Naval Board" shall consist of the Governor, and one other person to be appointed by him, which board shall have power to make, adopt and promulgate all such rules, orders and regulations as may be advisable and necessary to create and maintain an efficient naval militia, and is further empowered to co-operate with the Secretary of the Navy of the United States in putting into effect in the State of Texas, the provisions of an Act passed by the Sixty-third Congress, entitled: "An Act to promulgate the efficiency of the naval militia, and for other purposes." [Acts 1915, p. 124.]

TITLE 95

MINES AND MINING

1. MINING BOARD AND INSPECTOR

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1. MINING BOARD AND INSPECTOR

Article 5892. [5923–4] Mining Board.—The Governor shall biennially appoint for a term of two years a board of seven members to be known as the State Mining Board, who shall make formal inquiry into and pass upon the qualifications and personal fitness of those seeking appointment as State Mining Inspector. Three members of said board shall be practical miners and three shall be mine operators. These six members shall nominate to the Governor a suitable person for appointment as the seventh member. If the said nomination is not made within ten days after their appointment, the Governor shall appoint the seventh. [Acts 1907, p. 331.]

Art. 5893. [5925] Board to select inspector.—The board shall meet biennially in the State Capitol to hear applications for the office of State Mining Inspector, and shall examine thoroughly all applicants who may come before it and select from among them the one who in its opinion is best qualified to perform the duties of said office, and upon their nomination, the Governor shall appoint [appoint] their nominee. [Id. sec. 16.]

Art. 5894. [5926] Qualifications and term.—The State Mining Inspector shall be a citizen of the United States, and shall have resided in this State for one year, a man at least thirty years old, of good repute, personal integrity and temperate habits, without any pecuniary interest in any mine in this State, and with at least five years experience working in and around coal mines. He shall hold office for a term of two years. [Id. sec. 17.]

Art. 5895. [5927] Supervision and removal.—The board shall exercise supervision over the acts of said inspector, and in the event of his incompetency or the neglect of his duty being proved to the board, they shall recommend to the Governor that he be removed from office, and his successor shall be chosen as herein provided. [Id. sec. 18.]

Art. 5896. [5928] Meetings of board.—The board shall meet twice each year at such time and place as the majority may select for the purpose of receiving reports from the inspector and instructing him in the performance of his duties. [Id. sec. 19.]

Art. 5897. [5929] Compensation of board.—The members of said board shall receive as compensation for their services five dollars a day not exceeding thirty days in any one year, and traveling expenses going to and returning from board meetings. [Id. sec. 20.]

Art. 5898. [5930] Duties of inspector.—Said inspector under the instruction of said board shall enforce the provisions of this title, and shall make a report to said board at its semiannual meeting and oftener if required. He shall file an itemized statement showing the number of times he inspected each mine and the actual amounts expended. [Id. Acts 1909, p. 163.]

Art. 5899. [5931] Discrimination.—Neither the instructions of said board nor the acts of said inspector shall ever discriminate in favor of or against any mine or against any owner, operator or employé of any mine, but said acts, either of the board or of the inspector, shall be impartial, fair and just to all persons or corporations subject to this law. [Id.]

Art. 5900. [5932] Bond and liability.—Before receiving his appointment by the Governor, said inspector shall enter into and deliver to the Governor a bond in the sum of ten thousand dollars, with at least three good and sufficient sureties, conditioned for the faithful and impartial performance of his duty, which bond shall be payable to and approved by the Governor. His sureties shall make affidavit that they, in their own right, are worth over and above all exemptions the full amount of the bond they sign as sureties. On proof that said inspector has discriminated against and to the injury of any owner, operator or employee of any mine, the said owner, operator or employee may sue upon said bond and shall be entitled to recover such damages as may be proved in such suit. [Id.]

2. MINING REGULATIONS

Art. 5901. [5933] Shafts, cages and passways.—Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds, shall be subjected to the provisions of this and the thirteen succeeding articles. At the bottom of each shaft and every caging place therein, a safe commodious passageway must be cut around said landing place, to serve as a traveling way by which employés shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft, shall be clear and free from loose materials and shall be securely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice cannot be distinctly heard, there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope and each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description, shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge. [Acts 1907, p. 331.]

Art. 5902. [5934] Props and timbers.—Every mine shall be supplied with props and timbers of suitable length and size; and, if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed. [Id.]

Art. 5903. [5925] Abandoned workings.—All openings connecting with worked-out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbed and blocked off from the operated portions thereof, so as to protect every person working in such mines from all danger that may be caused or produced by such worked-out portions of such mines. [Id.]

Art. 5904. [5936] Ventilation.—Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein, and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated. The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal, in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector whenever in his judgment unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder smoke and deleterious air of any kind. The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast and at the working face of each division or split of the air current. The main current of air shall be split or subdivided so as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary. The air current for ventilating the stables shall not pass into the intake air current for ventilating the working parts of the mine. Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current; and, upon his refusal or neglect to act promptly, the inspector may order the endangered men out of the mine. [Id. sec. 2.]

Art. 5905. [5937] Cut-throughs.—The mine foreman shall see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation; and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places; and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway, or other working place, being driven in advance of the air current contrary to the requirements of this article, he shall order the workmen in such places to cease work at once until the law is complied with. [Id. sec. 6.]

Art. 5906. [5938] Notice of fire damp.—Immediate notice must be conveyed by the miner or mine owner to the inspector upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the occurrence of any serious fire within the mine or on the surface. [Id. sec. 3.]

Art. 5907. [5939] Mining cage.—Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or material with him on a cage in motion, except for use in making repairs; and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon. [Id. sec. 4.]

Art. 5908. [5940] Powder.—No miner or other person shall carry powder into the mine except in the original keg or in a regulation powder can securely

fastened, and the can in otherwise air tight condition. [Id. sec. 5.]

Art. 5909. [5941] Safety lamps.—At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary. [Id. sec. 7.]

Art. 5910. [5942] Endangering life or health.—It shall be unlawful for any miner, workman or other person knowingly or carelessly to injure any shaft, safety lamp, instrument, air-course or brattice, or to obstruct or throw open an airway, or to carry any open lamp or lighted pipe or fire in any form, into a place worked by the light of safety lamps, or within three feet of any open powder, or to handle or disturb any part of the hoisting machinery, or to enter any part of the mine against caution, or to do any wilful act whereby the lives or health of persons working in the mines, or the security of the mine machinery thereof is endangered. [Id. sec. 8.]

Art. 5911. [5943] Posting mine rules.—Every operator shall post on the engine house and at the pit top of his mine, in such manner that the employees of the mine can read them, rules not inconsistent with this law, plainly printed in the English language, which shall govern all persons working in the mine. The posting of such notice shall charge all employees of such mine with legal notice of the contents thereof. [Id. sec. 9.]

Art. 5912. [5944] Coal scales.—The owner or operator of every coal mine shall provide adequate and accurate scales for weighing coal; the mine inspector shall examine such scales, and if same are not found to be accurate, he shall notify the owner to repair same; and, if such owner fails or refuses to repair same within a reasonable time, said inspector shall institute proceedings under the law against the proper parties. [Id. sec. 10.]

Art. 5913. [5945] Check weighman.—The employees in any mine shall have the right to employ a check weighmen [weighman] at their own option and their own expense. [Id. sec. 11.]

Art. 5914. [5946] Oil used.—No miner or other person employed in a mine shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts. [Id. sec. 12.]

Art. 5915. Insulating live wires.—In all mines where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, the owners or operators of every such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated or protected in a safe manner, so that the person or animal coming in contact therewith shall not be injured thereby. All wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines cannot come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines. It shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height, where there is sufficient height in existing entries to permit this; but where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded. Where it is impracticable in existing entries to place trolley wires six inches outside the rail, or five feet and six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded. This article shall not apply to entries that are not used as travel ways for workmen or work animals, nor to mines in operation on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand feet distance from the shaft to the face of the coal being operated, except as to extensions of trolley wires made in such mines. [Acts 1911, p. 196.]

Art. 5916. Duty of inspector.—The State Mining Inspector shall see that the provisions of this title are complied with and shall report all violations hereof to the State Mining Board and to the proper district or county attorney. [Id.]

Art. 5917. Map of mine.—Every operator of a coal mine in this State shall make a map of the underground workings of every mine in his charge. Said map shall be drawn on a scale of one inch to one hundred feet, and shall indicate the surface land lines as well as the rooms, entries or openings under ground. It shall be brought up to date at least once each month, covering operations for the preceding month. The original of said map shall be on file at the office of the operator at or near said mine. Said map shall be extended or brought up to date at any time requested by the State Mine Inspector, at least every three months. If, for any reason, a mine should be closed, then a final map shall be made and filed; but maps existing may be continued on the same scale as begun, if not smaller than one-half inch to one hundred feet. [Id.]

Art. 5918. Animals in mines.—It shall be unlawful for any person, association of persons, corporation or receiver, owning, operating or managing any mine in this State to permit any work animal under his control to remain in any mine longer than ten consecutive hours, or to feed or permit to be fed any work animal in said mine, or to store or keep any feed for such animals in said mine. Each person, company, corporation or receiver who shall in any manner violate any provision of this article shall for each offense committed forfeit and pay to the State a penalty of not less than one hundred nor more than five hundred dollars, and the district or county attorney shall institute suit in the name of the State for the recovery of same. [Acts 1911, p. 205.]

Art. 5919. Exceptions.—The preceding article shall not apply when the stables in which work animals are kept are equipped with fireproof doors at each opening, with doorframes of concrete, stone or brick, laid in mortar, and which door is kept closed during working hours, and where not more than twenty-four hours' supply of grass, cane, hay or other like inflammable feed, except corn, corn chops, bran and shelled oats, is taken down in any mine in any one day, and where no such feed, except corn, corn chops, bran and shelled oats, is taken down in the mine until after the regular day shift is out of the mine, and where no open light is taken into any underground stable in any mine. [Id.]

Art. 5920. Bath facilities.—The operator, owner, lessee or superintendent of every coal mine in this State employing ten or more men shall provide a suitable building convenient to the principal entrance of such mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employees. The employees shall furnish their own towels, soap and locks for their lockers, and shall exercise control over and be responsible for all property by them left in such house. The baths and lockers for negroes shall be separate from those for whites, but may be in the same building. No operator, owner, lessee or superintendent or company, its officers or agents, maintaining such a bath house at his or its mine as required herein shall be liable for the loss or

destruction of any property left at or in said house. The Commissioner of Labor Statistics of the State of Texas shall enforce the provisions of this article. [Acts 1915, p. 100.]

TITLE 96

MINORS—REMOVAL OF DISABILITIES OF

Art.
5921. Requisites of removal.
5922. Petition and hearing.
5923. Citation and procedure.

Article 5921. [5947–5949] Requisites of removal.—Minors above the age of nineteen years, where it shall appear to their material advantage, may have their disabilities of minority removed, and be thereafter held, for all legal purposes, of full age, except as to the right to vote. [Acts 1881, p. 16; G. L., vol. 9, p. 108.]

Art. 5922. [5947] [3499] Petition and hearing.—The petition for such removal shall state the grounds relied on, whether the parents of the minor are living or dead, and the name and residence of each living parent. Such petition shall be sworn to by a person cognizant of the facts, and shall be filed in the district court of the county where the minor resides, and a hearing had on any day of any term of said court, or during a vacation of said court. [Id.; Acts 1927, 40th Leg., p. 102, ch. 71, § 1.]

Art. 5923. [5948–50] Citation and procedure.—A copy of the petition shall be served upon the father of the minor, if living within the State. If the father be dead, or living without the State, then such service shall be had upon the county judge of the county in which the petition was filed, in which event the trial court shall appoint a special guardian, who shall in connection with the county judge, represent the true interests of the minor in aiding or resisting his application. The judge shall make an allowance to such guardian, which shall be paid out of the estate of such minor, and shall, if the petition be granted, order a certified copy of the decree to be recorded in the deed records of the county where the estate of the minor is situated, the fee for recording to be paid out of the estate of the minor. If the court grants such petition the decree shall specifically adjudge the minor of full age for all legal purposes except as to the right to vote. [Id.]

TITLE 97

NAME

Chap.
1. Assumed name.
2. Change of name.

CHAPTER ONE

ASSUMED NAME

Art.
5924. Business under assumed name.
5925. Change of ownership.
5926. Index of certificate.
5927. Exceptions.

Article 5924. Business under assumed name.—No person shall conduct or transact business in this State under any assumed name or under any designation, name, style, corporate or otherwise other than the real name of each individual conducting or transacting such business, unless such person shall file in the office of the county clerk of the counties in which such person conducts, or transacts or intends to conduct or transact such business, a certificate setting forth the name under which such business is, or is to be, conducted or transacted, and the true full name or names of each person conducting or transacting the same, with the post-office address of each. Said certificate shall be executed and duly acknowledged by the persons so conducting or intending to conduct said business in the manner provided for acknowledgment of conveyance of real estate. [Acts 1921, p. 142.]

Art. 5925. Change of ownership.—Whenever there is a change in ownership of any business operated under any such assumed name each person disposing of his interest therein or withdrawing therefrom shall file with the county clerk of each county in which such business is being conducted and has a place of business, a certificate setting forth the fact of such withdrawal from or disposition of interest in such business, which certificate shall be executed and duly acknowledged as directed in the preceding article. [Id.]

Art. 5926. Index of certificate.—Each county clerk shall keep an alphabetical index of all persons filing certificates provided for herein, and for indexing and filing each certificate shall receive a fee of one dollar. A copy of such certificate duly certified to by the county clerk in whose office the same was filed shall be presumptive evidence in all courts in this State of the facts therein contained. [Id.]

Art. 5927. Exceptions.—The three preceding articles shall not apply to any domestic or foreign corporation lawfully doing business in this State. [Id.]

CHAPTER TWO

CHANGE OF NAME

Art.
5928. Application.
5929. Changing minor's name.
5930. Not to injure third persons.
5931. In divorce suits.

Article 5928. [5951] [377] [336] Application.—Whoever desires to change either his Christian or surname, or both, and to adopt another name instead, shall file his application in the district court of the county of his residence, setting forth the causes for such desire. The judge of said court, if in his opinion it is for the interest or benefit of the applicant to so change his name shall decree that the adopted name of the party shall be substituted for the original name. [Act Feb. 5, 1856; G. L. vol. 4, p. 260.]

Art. 5929. [5952] [378] [337] Changing minor's name.—Whenever it shall be to the interest of any minor to change his name, the guardian or next friend of said minor shall file his application in the district court of the county of said minor's residence, alleging the reason for the change and giving the full name which the minor wishes to adopt. The judge of said court, if the facts alleged and proven satisfy him that such change will be for the benefit and interest of the minor shall grant authority to change his original name and adopt another. [Id.]

Art. 5930. [5953] [379] [338] Not to injure third persons.—Whenever any person shall change his original name and adopt another, it shall not operate to release him from any responsibility which he may have incurred by the original name nor defeat or destroy any rights or property or action which the person had or held in his original name. [Id.]

Art. 5931. [5954] [380] [339] In divorce suits.—On the final disposition of a divorce suit, the court, may in its discretion, enter a decree changing the name of either party specially praying for such change. [Id.]

TITLE 98

NEGOTIABLE INSTRUMENTS ACT

NEGOTIABLE INSTRUMENTS IN GENERAL

Art.
5932. Form and interpretation.
5933. Consideration.
5934. Negotiation.
5935. Rights of the holder.
5936. Liabilities of parties.
5937. Presentment for payment.
5938. Notice of dishonor.
5939. Discharge of negotiable instruments.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

BILLS OF EXCHANGE

Art.
5940. Form and interpretation.
5941. Acceptance.
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5944. Acceptance for honor.
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PROMISSORY NOTES AND CHECKS

5947. Promissory notes and checks.

GENERAL PROVISIONS

5948. General provisions.

NEGOTIABLE INSTRUMENTS IN GENERAL

Article 5932. Form and interpretation.—Sec. 1. An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;

2. It must contain an unconditional promise or order to pay a sum certain in money;

3. Must be payable on demand, or at a fixed or determinable future time;

4. Must be payable to order or to bearer; and

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Sec. 2. The sum payable is a sum certain within the meaning of this Act, although it is to be paid:

1. With interest; or

2. By stated installments; or

3. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate; or

5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Sec. 3. An unqualified order or promise to pay is unconditional within the meaning of this Act, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction which gives rise to the instrument; but an order or promise to pay out of a particular fund is not unconditional.

Sec. 4. An instrument is payable at a determinable future time, within the meaning of this Act, which is expressed to be payable:

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Sec. 5. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

2. Authorizes a confession of judgment if the instrument be not paid at maturity; or

3. Waives the benefit of any law intended for the advantages or protection of the obligor; or

4. Gives the holder an election to require something to be done in lieu of payment of money.

Nothing in this section shall validate any provision or stipulation otherwise illegal.

Sec. 6. The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or

2. Does not specify the value given, or that any value has been given therefor; or

3. Does not specify the place where it is drawn or the place where it is payable; or

4. Bears a seal; or

5. Designates a particular kind of current money in which payment is to be made.

Nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

Sec. 7. An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or

2. In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

Sec. 8. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer, or drawee; or

2. The drawer or maker; or

3. The drawee; or

4. Two or more payees jointly; or

5. One or some of several payees; or

6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

Sec. 9. The instrument is payable to bearer:

1. When it is expressed to be so payable; or

2. When it is payable to a person named therein or bearer; or

3. When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or

4. When the name of the payee does not purport to be the name of any person; or

5. When the only or last indorsement is an indorsement in blank.

Sec. 10. The instrument need not follow the language of this Act, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

Sec. 11. Where the instrument or an acceptance or any indorsement thereon is dated, such date is prima facie evidence of the true date of the making, drawing, acceptance, or indorsement as the case may be.

Sec. 12. The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

Sec. 13. Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

Sec. 14. Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Sec. 15. Where an incomplete instrument has not been delivered it will not, if completed and negotiated,

without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Sec. 16. Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Sec. 17. Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign he is to be deemed an indorser;

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Sec. 18. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. One who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Sec. 19. The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Sec. 20. Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Sec. 21. A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Sec. 22. The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Sec. 23. When a signature is forced or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. [Acts 1919, p. 190.]

Art. 5933. Consideration.—Sec. 24. Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

Sec. 25. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

Sec. 26. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

Sec. 27. Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Sec. 28. Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

Sec. 29. An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. [Id.]

Art. 5934. Negotiation.—Sec. 30. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Sec. 31. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Sec. 32. The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Sec. 33. An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

Sec. 34. A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

Sec. 35. The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Sec. 36. An indorsement is restrictive, which either:

1. Prohibits the further negotiation of the instrument; or

2. Constitutes the indorsee the agent of the indorser; or

3. Vests the title in the indorsee in trust for or to the use of some other person.

The mere absence of words implying power to negotiate does not make an indorsement restrictive.

Sec. 37. A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument;

2. To bring any action thereon that the indorser could bring;

3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

All subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Sec. 38. A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Sec. 39. Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof subject to the rights of the person indorsing conditionally.

Sec. 40. Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery, but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Sec. 41. Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

Sec. 42. Where an instrument is drawn or indorsed to a person as "Cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

Sec. 43. Where the name of a payee or indorsee is wrongly designated or mispelled [misspelled], he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

Sec. 44. Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Sec. 45. Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

Sec. 46. Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

Sec. 47. An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Sec. 48. The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Sec. 49. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferor had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferor. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

Sec. 50. Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this Act, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. [Id.]

Art. 5935. Rights of the holder.—Sec. 51. The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

Sec. 52. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;

2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

3. That he took it in good faith and for value;

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Sec. 53. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

Sec. 54. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

Sec. 55. The title of a person who negotiates an instrument is defective within the meaning of this Act when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Sec. 56. To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Sec. 57. A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

Sec. 58. In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Sec. 59. Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title. [Id.]

Art. 5936. Liabilities of parties.—Sec. 60. The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Sec. 61. The drawer by drawing the instrument admits the existence of the payee and his then capacity to endorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

Sec. 62. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse.

Sec. 63. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Sec. 64. Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery he is liable as indorser, in accordance with the following rules:

1. If the instrument is payable to the order of a third

person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Sec. 65. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be;

2. That he has a good title to it;

3. That all prior parties had capacity to contract;

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

When the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

Sec. 66. Every indorser who indorses without qualification warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivision one, two and three of the next preceding section; and

2. That the instrument is at the time of his indorsement valid and subsisting.

In addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

Sec. 67. Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Sec. 68. As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

Sec. 69. Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section sixty-five of this Act, unless he discloses the name of his principal, and the fact that he is acting only as agent. [Id.]

Art. 5937. Presentment for payment.—Sec. 70. Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. Except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

Sec. 71. Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

Sec. 72. Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf;

2. At a reasonable hour on a business day;

3. At a proper place as herein defined;

4. To the person primarily liable on the instrument or if he is absent or inaccessible, to any person found at the place where the presentment is made.

Sec. 73. Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

Sec. 74. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

Sec. 75. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

Sec. 76. Where a person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if, with the exercise of reasonable diligence, he can be found.

Sec. 77. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them even though there has been a dissolution of the firm.

Sec. 78. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

Sec. 79. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require the drawee or acceptor to pay the instrument.

Sec. 80. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

Sec. 81. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

Sec. 82. Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this Act cannot be made;

2. Where the drawee is a fictitious person;

3. By waiver of presentment, express or implied.

Sec. 83. The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid.

Sec. 84. Subject to the provisions of this Act, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Sec. 85. Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due (or becoming payable) on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Sec. 86. Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

Sec. 87. Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay

the same for the account of the principal debtor thereon.

Sec. 88. Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective. [Id.]

Art. 5938. Notice of dishonor.—Sec. 89. Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

Sec. 90. The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

Sec. 91. Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

Sec. 92. Where notice is given by or on behalf of the holder it enures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

Sec. 93. Where notice is given by or on behalf of a party entitled to give notice, it enures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

Sec. 94. Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice himself the same time for giving notice as if the agent had been an independent holder.

Sec. 95. A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact mislead [misled] thereby.

Sec. 96. The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate, that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

Sec. 97. Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Sec. 98. When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

Sec. 99. Where the parties to be notified are partners, notice to any one partner is notice to the firm even though there has been a dissolution.

Sec. 100. Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

Sec. 101. Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

Sec. 102. Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the time fixed by this Act.

Sec. 103. Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following.

2. If given at his residence, it must be given before the usual hours of rest on the day following.

3. If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

Sec. 104. Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if there be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

Sec. 105. Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Sec. 106. Notice is deemed to have been deposited in the post office when deposited in any branch post office or in any letter box under the control of the post-office department.

Sec. 107. Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Sec. 108. Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters or

2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

Where the notice is actually received by the party within the time specified in this Act, it will be sufficient, though not sent in accordance with the requirements of this section.

Sec. 109. Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Sec. 110. Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

Sec. 111. A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

Sec. 112. Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.

Sec. 113. Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

Sec. 114. Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;

2. When the drawee is a fictitious person or person not having capacity to contract;

3. When the drawer is the person to whom the instrument is presented for payment;

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

5. Where the drawer has countermanded payment.

Sec. 115. Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

2. Where the indorser is the person to whom the instrument is presented for payment;

3. Where the instrument was made or accepted for his accommodation.

Sec. 116. Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

Sec. 117. An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Sec. 118. Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required except in the case of foreign bills of exchange. [Id.]

Art. 5939. Discharge of negotiable instruments.—Sec. 119. A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor;

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

3. By the intentional cancellation thereof by the holder;

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

Sec. 120. A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;

2. By the intentional cancellation of his signature by the holder;

3. By the discharge of a prior party;

4. By a valid tender of payment made by a prior party;

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

6. By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

Sec. 121. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

Sec. 122. The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Sec. 123. A cancellation made unintentionally, or under mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake without authority.

Sec. 124. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

When an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Sec. 125. Any alteration which changes:

1. The date;

2. The sum payable, either for principal or interest;

3. The time or place of payment;

4. The number or the relations of the parties;

5. The medium of currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. [Id.]

BILLS OF EXCHANGE

Art. 5940. Form and interpretation.—Sec. 126. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

Sec. 127. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Sec. 128. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Sec. 129. An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this State. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Sec. 130. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Sec. 131. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit. [Id.]

Art. 5941. Acceptance.—Sec. 132. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

Sec. 133. The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

Sec. 134. Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

Sec. 135. An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who upon the faith thereof, receives the bill for value.

Sec. 136. The drawee is allowed twenty-four hours after presentment, in which to decide whether or not he will accept the bill; but the acceptance if given, dates as of the day of presentation.

Sec. 137. Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

Sec. 138. A bill may be accepted before it has been signed by the drawee, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by

non-acceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

Sec. 139. An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Sec. 140. An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

Sec. 141. An acceptance is qualified, which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;

5. The acceptance of some one or more of the drawees, but not of all.

Sec. 142. The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto. [Id.]

Art. 5942. Presentment for acceptance.—Sec. 143. Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

Sec. 144. Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

Sec. 145. Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf, and;

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative.

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

Sec. 146. A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections seventy-two and eighty-five of this Act. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock, noon, on that day.

Sec. 147. Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

Sec. 148. Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance, in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill.

2. Where, after the exercise of reasonable diligence, presentment cannot be made.

3. Where, although presentment has been irregular, acceptance has been refused on some other ground.

Sec. 149. A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance and such an acceptance as is prescribed by this Act is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted.

Sec. 150. Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

Sec. 151. When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary. [Id.]

Art. 5943. Protest.—Sec. 152. Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

Sec. 153. The protest must be annexed to the bill, or must contain a copy thereof and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment;

2. The fact that presentment was made and the manner thereof;

3. The cause or reason for protesting the bill:

4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

Sec. 154. Protest may be made by:

1. A notary public; or

2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

Sec. 155. When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Sec. 156. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

Sec. 157. A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

Sec. 158. Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

Sec. 159. Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Sec. 160. When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it,

protest may be made on a copy or written particulars thereof. [Id.]

Art. 5944. Acceptance for honor.—Sec. 161. Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security, and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

Sec. 162. An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

Sec. 163. Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Sec. 164. The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

Sec. 165. The acceptor for honor, by such acceptance engages that he will on due presentation pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given him.

Sec. 166. Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

Sec. 167. Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

Sec. 168. Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity.

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and four.

Sec. 169. The provisions of section eight-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Sec. 170. When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him. [Id.]

Art. 5945. Payment for honor.—Sec. 171. Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

Sec. 172. The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

Sec. 173. The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Sec. 174. Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Sec. 175. Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Sec. 176. Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

Sec. 177. The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest. [Id.]

Art. 5946. Bills in a set.—Sec. 178. Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Sec. 179. Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Sec. 180. Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

Sec. 181. The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Sec. 182. When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Sec. 183. Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. [Id.]

PROMISSORY NOTES AND CHECKS

Art. 5947. Promissory notes and checks.—Sec. 184. A negotiable promissory note within the meaning of this Act is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

Sec. 185. A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this act applicable to a bill of exchange payable on demand apply to a check.

Sec. 186. A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Sec. 187. Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

Sec. 188. Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

Sec. 189. A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check.

GENERAL PROVISIONS

Art. 5948. General provisions.—Sec. 190. This act may be cited as the Uniform Negotiable Instruments Act.

Sec. 191. In this Act, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "Writing" includes print.

Sec. 192. The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

Sec. 193. In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

Sec. 194. Where the day, or the last day, for doing an act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

Sec. 195. The provisions of this Act do not apply to negotiable instruments made and delivered prior to the taking effect hereof.

Sec. 196. In any case not provided for in this Act the rules of law and equity including the law merchant shall govern. [Id.]

TITLE 99

NOTARIES PUBLIC

Art.
5949. Governor shall appoint.
5950. List furnished county clerk.
5951. To qualify.
5952. Clerk to notify Secretary of State.
5953. Bond and oath.
5954. Authority of notary.
5955. Notaries' records.
5956. Copies of records.
5957. Removal.
5958. Office to become vacant.
5959. Effect of vacancy.
5960. Seal.

Article 5949. [6002] [3503] Governor shall appoint.—The Governor shall appoint, with the advice and consent of the Senate, a convenient number of notaries public for each organized county, and not to exceed six notaries public for each unorganized county in this State, who shall hold their office for two years from the first day of June after their appointment at a regular session of the Legislature. The Governor, with the advice and consent of the Senate, may also appoint additional notaries public at a regular session of the Legislature, who shall hold their office until the first day of June next succeeding their appointment, or at any special session of the Legislature, who shall hold their office until the first of June succeeding the next regular session of the Legislature after their appointment. [Acts 1881, p. 94; Acts 1885, p. 17; G. L., vol. 9, pp. 186, 637; Acts 1903, p. 158; Act 1st C. S. 1913, p. 2; Acts 1927, 40th Leg., p. 14, ch. 9, § 1.]

Art. 5950. [6014] [3515] List furnished county clerk.—The Secretary of State shall furnish each county clerk a printed list of all notaries public so appointed and qualified; and said clerk shall preserve said list for public inspection and post a copy thereof on the courthouse door. [Acts 1881, p. 84, sec. 12; G. L., vol. 9, p. 186.]

Art. 5951. [6015] [3516] To qualify.—When a notary is appointed, the Secretary of State shall forward the commission to the county clerk of the county where the party resides. Said clerk shall immediately notify said party to appear before him within ten days, pay for his commission, and qualify according to law. If said party be absent from the county, or sick at the time of the reception of said commission by the clerk, he shall have ten days from his return to said county in which to appear and qualify. [Id. sec. 13.]

Art. 5952. [6016] [3517] Clerk to notify Secretary of State.—The clerk receiving the commission shall indorse thereon the day on which notice was given, and, if the party pay the State fee for commission and qualify according to law, the said clerk shall notify the Secretary of State of his qualification, giving date of same, and remit the fee to said officer. If the party fails to qualify and pay the fee within the limited time, the appointment shall be void, and the clerk shall certify on the back of the commission that the party has failed to qualify, and return it to the Secretary of State. [Id. sec. 14.]

Art. 5953. [6003] [3504] Bond and oath.—Any person appointed a notary public, before entering his official duties, shall execute a bond for one thousand dollars, to be approved by the county clerk of his county, payable to the Governor, conditioned for the faithful performance of the duties of his office; and shall also take and subscribe the official oath, which shall be indorsed on said bond, with the certificate of the officer administering the same; said bond shall be recorded in the office of the county clerk, and deposited in said office, and shall not be void on the first recovery, and may be sued on in the name of the party injured from time to time until the whole amount thereof has been recovered. [Id. sec. 2.]

Art. 5954. [6008–6010–6012] Authority of notary.—Notaries Public shall have the same authority to take acknowledgments or proofs of written instruments, protest[s] instruments permitted by law to be protested, administer oaths, and take depositions, as is now or may hereafter be conferred by law upon county clerks. [Acts 1881, p. 94; G. L. vol. 9, p. 186.]

Art. 5955. [6011] [3512] Notaries' records.—Each notary public shall keep a well bound book, in which shall be entered the date of all instruments acknowledged before him, the date of such acknowledgments, the name of the grantor or maker, the place of his residence or alleged residence, whether personally known or introduced, and, if introduced, the name and residence or alleged residence of the party introducing him; if the instrument be proved by a witness, the residence of such witness, whether such witness is personally known to him or introduced; if introduced, the name and residence of the party introducing him; the name and residence of the grantee; if land is conveyed or charged by such instrument, the name of the original grantee shall be kept, and the county where the land is situated. The book herein required to be kept, and the statements herein required to be entered shall be an original public record, open to inspection by any citizen at all reasonable times. Each notary public shall give a certified copy of any record in his office to any person applying therefor on payment of all fees thereon. [Id.]

Art. 5956. [6013] [3514] Copies of records.—Copies of all records, declarations, protests, and other official acts of notaries public may be certified by the county clerk with whom they are deposited, and shall have the same authority as if certified by the notary by whom they were originally made. [Id. sec. 11.]

Art. 5957. [6004] [3505] Removal.—Any notary public who shall be guilty of any wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law. [Id. sec. 3.]

Art. 5958. [6005] [3506] Office to become vacant.—Whenever any notary public shall remove permanently from the county for which he was appointed, or an ex officio notary public from his precinct, his office shall thereupon be deemed vacant. [Id.]

Art. 5959. [6007–6009] Effect of vacancy.—Whenever the office of notary public shall be vacated by resignation, removal or death, the county clerk of the county where said notary resides shall obtain and deposit in his office the record books and all public papers belonging in the office of said notary. The seal of any notary vacating his office may be sold by the owner thereof to any qualified notary public in the county. [Id.]

Art. 5960. [6006] [3507] Seal.—Each notary public shall provide a seal of office, whereon shall be engraved in the center a star of five points, and the words, "Notary Public, County of ———, Texas," around the margin (the blank to be filled with the name of the county for which the officer is appointed), and he shall authenticate all his official acts therewith. [Id. sec. 5; Acts 1889, p. 121; G. L. vol. 9, p. 1149.]

TITLE 100

OFFICERS—REMOVAL OF

Art.
5961. By impeachment.
5962. Impeachment.
5963. Trial by Senate.
5963a–5963c. [Repealed.]
5964. Removal by address.
5965. Judges removed by Supreme Court.
5966. Jurisdiction of Supreme Court.
5967. State Officers appointed by Governor.
5968. Convictions work removal.
5969. Appeal supersedes order of removal.
5970. By district judge.
5971. Cause to be in writing.
5972. "Incompetency."
5973. "Official misconduct."
5974. Articles apply to cities.
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5978. General issue submitted.
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5990. District clerk removed.
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5992. Alderman.
5993. Against mayor.
5994. Procedure.
5995. Not to apply to all cities.
5996. Nepotism.
5997. Suits by Attorney General.

Article 5961. [6017] [3518] By impeachment.—The Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Commissioner of the General Land Office, Comptroller, Commissioner of Insurance, Banking Commissioner, Judges of the Supreme Court, of the Court of Criminal Appeals, of the Courts of Civil Appeals, of the district courts, of the criminal district courts, and all other State officers and heads of State departments or institutions of any kind, and all members, regents, trustees, commissioners having control or management of any State institution or enterprise, shall be removed from office or position by impeachment in the manner provided in the Constitution and in this title, the remedy by impeachment as herein provided for being cumulative of all other remedies with respect to the impeachment or removal of public officers. [Const. art. 15, secs. 1, 2; Acts 3rd C. S. 1917, p. 102.]

Art. 5962. Impeachment.—The power of impeachment shall be vested in the House of Representatives. If the House shall be in session at a regular or called session of the Legislature when it is desired to present articles of impeachment, or to make any investigation pertaining to a contemplated impeachment, it may proceed without further call or action at its pleasure and may continue to meet and proceed for such purposes until such time as the matters under consideration, pertaining to impeachments, may be disposed of. If the House shall be in session at a regular or called session of the Legislature, at the time it undertakes any investigation pertaining to impeachments, and the legislative session shall expire by limitation, or it shall in conjunction with the Senate, decide to adjourn in so far as legislative matters are concerned, before said investigation has been completed and before such impeachment matters have been finally disposed of, it may continue such investigation through committees, or by itself, and may continue in session for such purposes, or may adjourn the House to such time as it may desire for reconvention for the final disposition of such matters, and, in the meantime, it may continue such investigations through committees or agents. The members of such committees and the members of the House and Senate, when either shall be sitting for impeachment purposes, and when not in session for legislative purposes, shall receive the per diem fixed for members of the Legislature during legislative sessions or out of the contingent funds of the respective Houses, and the agents of the House or Senate or of such committees shall be paid as may be provided in the resolutions providing therefor, out of said contingent funds.

If the House be not in session when the cause for impeachment may arise or be discovered, or when it is desired to institute any investigation pertaining to a contemplafed impeachment, the House may be convened for the purpose of impeachment in the following manner:

1. By proclamation of the Governor; or
2. By proclamation of the Speaker of the House, which proclamation shall be made only when petitioned in writing by not less than fifty members of the House; or
3. By proclamation in writing signed by a majority of the members of the House.

Such proclamation shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be furnished in person or by registered mail to each member of the House who may be within the State and accessible, by the Speaker of the House, or under his direction, or, in case the same is issued under the authority of subparagraph 3, as above, by the members signing the same or some one or more of them designated by such signers for such purpose. Such proclamation shall in general terms, state the cause for which it is proposed to convene the House, and shall fix the time for the convention thereof. Two-thirds of the members of the House, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members. The House, when so convened, may proceed in the manner, and shall have all the powers, pertaining to impeachments and investigations with respect thereto given it by the Constitution and by the terms of this law. The members of the House when so convened, shall receive the same mileage and per diem pay as is provided for members of the Legislature when in legislative session, and the members of the committees of the House, when so convened and serving upon such committees when the House itself is not in session, shall receive the said per diem pay, to be paid out of the appropriations then existing, or which thereafter may be made, for the per diem pay of members of the Legislature, and the agents of the House so convened or of such committees acting when the House itself is not in session shall receive such pay as may be provided for in the resolutions of such House out of the appropriations then existing, or thereafter to be made, to defray the contingent expenses of the House or to pay the mileage and per diem of members.

The House, at any time when considering impeachment matters or making investigations pertaining thereto, shall have the power itself, or through committees, to send for persons and papers and to compel the giving of testimony, and to punish for contempt, to the same extent as the district courts of the State.

Any committee of the House, acting under the terms of this law, shall have and exercise all the powers which may be conferred upon it by the House. [Id.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 5963. Trial by Senate.—All officers, agents or employés against whom articles of impeachment may be preferred by said House shall be tried by the Senate sitting as a court of impeachment in the manner provided by Article XV of the Constitution of Texas.

If the Senate be in session, at a regular or called session of the Legislature when articles of impeachment are preferred against any officer, agent or employee by the House, it shall receive such articles from the House and as soon as practicable, organize a court of impeachment and dispose of such matters. If the session in which such articles are preferred and presented shall, for legislative purposes expire by limitation, or by adjournment in so far as legislative purposes are concerned, before the matters presented by such articles shall have finally been disposed of by the Senate, the Senate shall continue in session, for such purpose, so long as may be necessary to dispose of such matters, or may adjourn to some day certain, when it shall reconvene for the purpose of disposing of such matters and thereupon such matters shall be considered and disposed of as expeditiously as possible.

If the Senate be not in session at a regular or called session of the Legislature when articles of impeachment may be preferred by the House, the House shall cause a certified copy of such articles of impeachment to be delivered, by personal agent or registered mail, to the Governor and each member of the Senate who may be within the State and accessible, and a copy thereof shall be delivered to the Lieutenant Governor and the President Pro Tempore of the Senate. Thereupon the Senate shall be convened for the purpose of considering and disposing of such articles of impeachment in the following manner:

1. By proclamation of the Governor; or if the Governor shall fail to issue such proclamation within ten days after such articles of impeachment are preferred by the House then,

2. By proclamation of the Lieutenant Governor; or if the Lieutenant Governor shall fail to issue such proclamation within fifteen days from the date upon which articles of impeachment were preferred by the House then,

3. By proclamation of the President Pro Tempore of the Senate; or, if the President Pro Tempore of the Senate shall fail to issue such proclamation within twenty days from the date upon which such articles of impeachment were perferred [preferred] by the House then,

4. By proclamation in writing signed by a majority of the members of the Senate.

Such proclamation, in either case, shall be in writing, shall state in general terms the purpose for which the Senate is to be convened, shall fix the date for the convening thereof for such purposes, which shall not be later than twenty days from the issuance of the proclamation, and shall be filed in the office of the Secretary of State as a public record. Such proclamation, in either case, shall be published in at least three daily newspapers of general circulation, and a copy thereof shall be sent by registered mail to each member of the Senate by, or under the direction of the author or authors thereof. Upon the day fixed for the convening of the Senate for such purposes it shall be the duty of each member of the Senate to be in attendance thereupon, and upon such date the Senate shall convene. Two-thirds of the members of the Senate, upon such convention, shall constitute a quorum to do business, but a smaller number may adjourn from day to day and compel the attendance of absent members, and the Senate at such a session may compel the attendance of any absent member whether a quorum is present or not.

The Senate so convened shall continue in session until such matters are finally disposed of, or it may from time to time, adjourn to a day certain when the consideration of such matters shall be resumed and disposed of.

The Senate, at any time, shall have and exercise all the powers itself, or through committees or agents, which is or may be conferred upon it by law as in other cases when it is in session. It may send for persons, papers, records, books, etc., and compel the giving of testimony, and punish for contempt to the same extent as the district courts.

Members of the Senate when so convened, and the Lieutenant Governor when acting, shall receive the same mileage and per diem as is provided for members of the Legislature; the same, together with the pay of all agents, appointees, employees and other expenses incident to such impeachment trial, shall be paid from such appropriations as have been or shall be made for the contingent expenses of the Legislature or for the mileage and per diem of members. [Id.]

Arts. 5963a–5963c. [Repealed by Acts 1927, 40th Leg, p. 360, ch. 242, § 1.]

Art. 5964. [6018–19–20–21] Removed by address.—The judges of the Supreme Court, Court of Criminal Appeals, Courts of Civil Appeals, district courts and criminal district courts, the Commissioner of Agriculture, Commissioner of Insurance, and Banking Commissioner shall be removed from office by the Governor on the address of two-thirds of each house of the Legislature, for wilful neglect of duty, incompetency, habitual drunkenness, oppression in office, breach of trust, or other reasonable cause which shall not be sufficient ground for impeachment. The cause for such removal shall be stated at length in such address, and entered on the journals of each house. The officer so intended to be removed shall have notice of the cause assigned for his removal, and shall be admitted to a hearing in his own defense before any vote for such address shall be heard. The vote in all such cases shall be taken by yeas and nays and entered on the journals of each house respectively. [Acts 1876, p. 226; G. L. vol. 8, p. 1062.]

Art. 5965. [6022–3] Judges removed by Supreme Court.—The Supreme Court may remove any judge of the district court or of any criminal district court who is incompetent to discharge the duties of his office, or who shall be guilty of partiality or oppression, or other official misconduct, or whose habits and conduct are such as to render him unfit to hold such office, or who shall negligently fail to perform his duties as judge, or who shall fail to execute in a reasonable measure the business of his court. [Const. art. 15, sec. 6.]

Art. 5966. [6024–5–6] Jurisdiction of Supreme Court.—The Supreme Court shall have original jurisdiction to hear and determine the cases aforesaid when presented in writing, upon the oaths taken before some judge of a court of record, of not less than ten lawyers practicing in the courts held by such judge, and licensed to practice in the Courts of Civil Appeals. Such presentment shall be founded either upon the knowledge of the person making it, or upon the written oaths of credible witnesses as to facts. The Supreme Court may issue all needful process, and prescribe all needful rules to give effect to the preceding article. Such cases shall have precedence and be tried as soon as practicable.

Art. 5967. [6027] [3528] State officers appointed by Governor.—All State officers appointed by the Governor, or elected by the Legislature, where the mode of their removal is not otherwise provided by law, may be removed by him for good and sufficient cause, to be spread on the records of his office, and to be reported by him to the next session of the Legislature thereafter. [Id.]

Art. 5968. [6028] [3529] Convictions work removal.—All convictions by a petit jury of any county officers for any felony, or for any misdemeanor involving official misconduct, shall work an immediate removal from office of the officer so convicted. Each such judgment of conviction shall embody within it an order removing such officer. [Id.]

Art. 5969. [6029] [3530] Appeal supersedes order of removal.—When an appeal is taken from such judgment by the officer removed, such appeal shall have the effect of superseding such judgment, unless the court rendering such judgment shall deem it to the public interest to suspend such officer

from the office pending such appeal; and in that case the court shall proceed as in other cases of the suspension of officers from office as provided herein. [Id.]

Art. 5970. [6030] By district judge.—All district and county attorneys, county judges, commissioners, clerks of the district and county courts and single clerks in counties where one clerk discharges the duties of district and county clerk, county treasurer, sheriff, county surveyor, assessor, collector, constable, cattle and hide inspector, justice of the peace and all county officers now or hereafter existing by authority either of the Constitution or laws, may be removed from office by the judge of the district court for incompetency, official misconduct or becoming intoxicated by drinking intoxicating liquor, as a beverage, whether on duty or not; provided such officer shall not be removed for becoming intoxicated when it appears upon the trial of such officer that such intoxication was produced by drinking intoxicating liquors upon the direction and prescription of a duly licensed practicing physician of this State. [Acts 1923, p. 235.]

Art. 5971. [6031] [3532] [3391] Cause to be in writing.—In every case of removal from office for the causes named in the preceding article, the cause or causes thereof shall be set forth in writing, and the truth of said cause or causes be found by a jury. [Const. art. 5, sec. 24.]

Art. 5972. [6032] [3533] [3392] "Incompetency."—By "incompetency" as used herein is meant gross ignorance of official duties, or gross carelessness in the discharge of them; or an officer may be found to be incompetent when, by reason of some serious physical or mental defect, not existing at the time of his election, he has become unfit or unable to discharge promptly and properly the duties of his office. [R. S. 1879.]

Art. 5973. [6033] [3534] [3393] "Official misconduct."—By "official misconduct," as used herein with reference to county officers, is meant any unlawful behavior in relation to the duties of his office, wilful in its character, of any officer intrusted in any manner with the administration of justice, or the execution of the laws; and includes any wilful or corrupt failure, refusal or neglect of an officer to perform any duty enjoined on him by law. [R. S. 1879.]

Art. 5974. [6034] [3535] [3394] Articles apply to cities.—The two preceding articles shall apply also to mayors and aldermen. [R. S. 1879.]

Art. 5975. [6040] [3541] [3400] Failure to give bond.—All county officers who are required to give official bonds, who shall fail to execute their bonds within the time prescribed by law, or who, when required in accordance with law to give a new bond or additional bond or security, and shall fail to do so, may also be removed from office for such failure by the district judge, on the matter being brought before him in the manner hereinafter provided for bringing such matters before the court. [Id.]

Art. 5976. [6041] [3542] [3401] Proceedings.—The proceedings for the removal of said officers may be commenced, either in term time or vacation, by first filing a petition in the district court of the county where the officer resided, by a citizen of the State who has resided for six months in the said county where he proposes to file such petition, and who is not himself at the time under indictment in said county. [Id.]

Art. 5977. [6042] [3543] [3402] Requisites of petition.—The petition shall be addressed to the district judge of the court in which it is filed, and shall set forth in plain and intelligible words the cause or causes alleged as the grounds of removal, giving in each instance, with as much certainty as the nature of the case will admit of, the time and place of the occurrence of the alleged acts; the petition shall in every instance be sworn to at or before the filing of the same by at least one of the parties filing the same, and the proceedings shall be conducted in the name of "The State of Texas," upon the relation of the person filing the same. [Id.]

Art. 5978. [6043] [3544] [3403] General issue submitted.—In these cases, the judge shall not submit special issues to the jury, but shall, under a proper charge applicable to the facts of the case, instruct the jury to find from the evidence whether the cause or causes of removal set forth in the petition are true in point of fact or not; and, when there are more than one distinct cause of removal alleged, the jury shall by their verdict say which cause they find sustained by the evidence before them, and which are not sustained. [R. S. 1879.]

Art. 5979. [6044—5—6—52] Citation.—After such petition is filed, the person or persons so filing the same shall make a written application to the district judge for an order for a citation and a certified copy of the said petition to be served on the officer against whom the petition is filed, requiring him at a certain day named, which day shall be fixed by the judge, to appear and answer to the said petition; and until such order is granted and entered upon the minutes of the court (if application is made during term time) no action whatever shall be had thereon; and, if the judge shall refuse to issue the order so applied for, then the petition shall be dismissed at the cost of the relator, and no appeal or writ of error shall be allowed from such action of the judge. If the application for said citation is made to the judge in vacation, he shall indorse his action, whatever it may be, on such petition, and shall order it spread on the minutes of the court at the next ensuing term. Upon the order being granted during term time, also spread upon the minutes, the clerk shall issue the citation, accompanied with a certified copy of the petition. The clerk may demand of the relator security for costs as in other cases. [Id.]

Art. 5980. [6047] [3548] [3407] Time to answer.—In no case whatever shall the period fixed by the judge in his order in which the officer is to answer, be less than five days from the date of such service, to be computed as time is computed in other suits. [Id.]

Art. 5981. [6048] [3549] [3408] How trial conducted.—The trial, and all the proceedings connected therewith shall be conducted as far as it is possible in accordance with the rules and practice of the court in other civil cases. [Id.]

Art. 5982. [6049] [3550] [3409] How suspended.—At any time after the issuance of the order for the citation, as herein provided, the district judge may, if he sees fit, suspend temporarily from office, the officer against whom the petition is filed, and appoint for the time being some other person to discharge the duties of the office; but in no case shall such suspension take place until after the person so appointed shall execute a bond in such sum as the judge may name, with at least two good and sufficient sureties, and on such conditions as the judge may see fit to impose, to pay the person so suspended from office all damages and costs that he may sustain by reason of such suspension from office, in case it should appear that the cause or causes of removal are insufficient or untrue. [Id.]

Art. 5983. [6050—51] Appeal or writ of error.—An appeal or writ of error to the Court of Civil Appeals may be sued out by either party from the final judgment in these cases as in other civil cases. If the party has not been temporarily suspended from office, no other bond when an appeal is taken or writ of error sued out by him, shall be necessary than a bond for all the costs that have or may accrue in the district and Courts of Civil Appeals. [Id.]

Art. 5984. [6053] [3554] Against district attorneys.—Proceedings under this title may be commenced against any district attorney either in the county of his residence or the county where the alleged cause of removal occurred, if in a county of his judicial district. [Id.]

Art. 5985. [6054] [3555] Criminal district attorney.—Under the name of "district attorney," as used in this chapter, is included any criminal district attorney and the judge of each criminal district court

shall have the same power as to his removal and proceed in the same manner as the district judges of the State have in reference to all county officers. [Id.]

Art. 5986. [6055] [3556] [3415] Not retroactive.—No officer shall be prosecuted or removed from office for any act he may have committed prior to his election to office. [Id.]

Art. 5987. [6056–7] Precedence on appeal.—In these cases, an appeal may be taken or writ of error be made returnable to the Court of Civil Appeals, and such cause shall have precedence of the ordinary business of the court and be decided with all convenient dispatch. When so decided, unless the judgment be for some cause set aside or suspended, the mandate of the court shall issue within five days after the judgment of the court is rendered. [R. S. 1879.]

Art. 5988. [6058–9] Notary public.—Any notary public indicted for and convicted of any wilful neglect of duty or official misconduct shall be removed from office. The order for his removal shall in each instance be embodied in the judgment of the court. [Acts 1876, p. 29.]

Art. 5989. [6060] [3561] [3420] Public weigher.—Any public weigher who is incompetent or shall be guilty of official misconduct shall be removed by the Governor, who shall keep a record of such removal, and report the same with his reasons therefor to the next legislature. [Acts 1875, p. 162; G. L. vol. 8, p. 534; Acts 1919, p. 126.]

Art. 5990. [6063–4] District clerk removed.—The clerk of the district court may also be removed by information or by indictment and conviction by a petit jury. When so removed, the order for his removal shall be embodied in the judgment of conviction. [Const. art. 5, sec. 9; R. S. 1879.]

Art. 5991. [6065] [3566] [3425] Mayor and aldermen.—The mayor and aldermen of any incorporated town or city may be removed from office for official misconduct, wilful violation of any ordinance of such town or city, habitual drunkenness, incompetency, or for such other cause as may be prescribed by the ordinances of such town or city. [Acts 1875, p. 63, G. L. vol. 8, p. 435.]

Art. 5992. [6066–7] Alderman.—When written sworn complaint charging any alderman with any act or omission which may be cause for his removal shall be presented to the mayor, he shall file the same and cause the alderman so charged to be served with a copy of such complaint, and shall set a day for the trial of the case, and notify the alderman so charged and the other aldermen of such town or city to appear on such day. The mayor and aldermen of such town or city, except the aldermen against whom complaint is made, shall constitute a court to try and determine the case. [Id.; sec. 2.]

Art. 5993. [6068–9] Against mayor.—When any such complaint is made against the mayor of any incorporated town or city it shall be presented to an alderman of such town or city who shall file the same, and cause such mayor to be served with a copy thereof, and shall set a day for a trial of the case, and notify the mayor and other aldermen to appear on such day. A majority of the aldermen shall constitute a court to try and determine the complaint against the mayor, and they shall select one of their number to preside during such trial. [Id.]

Art. 5994. [6070–1–2] Procedure.—The rules governing other proceedings and trials in the courts of justices of the peace shall govern. If two-thirds of the members of the court present upon the trial of the case, find the defendant guilty of the charges contained in the complaint, and find that such charges are sufficient cause for removal from office, the presiding officer of the court shall enter judgment, removing such mayor or aldermen from office and declaring such office vacant. If the defendant be found not guilty, judgment shall be entered accordingly. Any municipal officer so removed shall not be eligible to re-election to the same office for two years from the date of such removal. [Id.]

Art. 5995. [6073] [3574] Not to apply to all cities.—The provisions of this title as to municipal officers shall not apply to any town or city except such as are incorporated under the general laws of this State. [Id.]

Art. 5996. [6074–75] Nepotism.—Whoever violates any provision of the Penal Code relating to nepotism and the inhibited acts connected therewith shall be removed from his office, clerkship, employment or duty, as therein mentioned. Such removal from office shall be made in conformity to the provisions of the Constitution of this State concerning removal from office in all cases to which they may be applicable. All other removals from office under the provisions of this law shall be by quo warranto proceedings. All removals from any such position, clerkship, employment or duty aforesaid shall be summarily made, forthwith, by the appointing power in the particular instance, whenever the judgment of conviction in a criminal prosecution in the particular case shall become final; provided, that, if such removal be not so made within thirty days after such judgment of conviction shall become final, the person holding such position, clerkship or employment, or performing such duty, may be removed therefrom as herein provided with reference to removal from office. [Acts 1909, p. 85.]

Art. 5997. [6076–77] Suits by Attorney General.—All quo warranto proceedings mentioned shall be instituted by the Attorney General in any district court of Travis County or in the district court of the county in which the defendant resides; the district or county attorney of the county in which such suit may be filed shall assist the Attorney General therein whenever he shall so direct. [Id.]

TITLE 101

OFFICIAL BONDS

Art.
5998. Sureties.
5999. Depository of bonds.
6000. Bond to be recorded.
6001. Sureties relieved.
6002. Requiring new bond.
6003. Suit on bond.

Article 5998. Sureties.—The official bond of each officer shall be executed by him with two or more good and sufficient sureties or a solvent surety company authorized to do business in this State.

Art. 5999. Depository of bonds.—The bond of each officer who is required by law to give an official bond payable to the Governor or to the State shall be deposited with the Comptroller by the officer who approves the same, except that of the Comptroller which shall be deposited with the Secretary of State.

Art. 6000. [6078] [3575] [3434] Bond to be recorded.—All official bonds of county officers that are required by law to be approved by the commissioners court, and which have been so approved, shall be made payable to the county judge and safely kept and recorded by the county clerk in a book kept for that purpose.

Art. 6001. [6079–80–81–82] Sureties relieved.—Any surety on any official bond of any county officer may apply to the commissioners court to be relieved from his bond, and the county clerk shall thereupon issue a notice to said officer, with a copy of the application, which shall be served upon said officer by the sheriff or any constable of the county, and said officer so notified shall upon such service cease to exercise the functions of his office, except to preserve any records or property in his charge, and in case of a sheriff or constable, to keep prisoners, preserve the peace and execute warrants of arrest, and his office shall become vacant unless he give a new bond within twenty days from the time of receiving such notice. If a new bond is given and approved, the former sureties shall be discharged from any liability for the mis-

conduct of the principal after the approval of the new bond. [Acts 1876, p. 132; G. L. vol. 8, p. 963.]

Art. 6002. [6083—4—5] Requiring new bond.—When the commissioners court becomes satisfied that the bond of any county officer which has been approved by said court is from any cause insufficient, they shall require a new bond or additional security to be given. Said court shall cause said officer to be cited to appear at a term of their court not less than five days after service, and shall take such action as they deem best for the public interest, and their decision shall be final and no appeal shall lie therefrom. [Acts 1876, p. 54; G. L. vol. 8, p. 890.]

Art. 6003. Suit on bond.—No official bond shall be void upon first recovery but may be sued upon in separate actions until exhausted.

TITLE 102

OIL AND GAS

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Article 6004. [7847] Casing.—The owner or operator of any well being drilled for oil or gas shall, before drilling into the oil or gas bearing rock, incase such well with good and sufficient wrought iron or steel casing, in such manner as shall exclude all surface or fresh water from the lower part of such well from penetrating the oil or gas bearing rock. Should any well be drilled through the first into a lower oil or gas bearing rock, the same shall be cased in such manner as will exclude all fresh water above the last oil or gas bearing rock penetrated. [Acts 1899, p. 68.]

Art. 6005. [7848] Abandoned wells.—The owner or operator of any such well, when about to abandon or cease operating the same and before drawing the casing therefrom, shall securely fill such well with rock, sediment, or with mortar, composed of two parts sand and one part cement or other suitable material, to the depth of two hundred feet above the top of the first oil or gas bearing rock, and also in such manner as shall prevent the gas and oil from escaping therefrom. If the owner or operator of any such well shall fail to or shall inefficiently comply with the provisions of this article, then the owner of the land upon which the well is situated shall forthwith comply therewith. If all the persons hereinbefore named shall fail to or inefficiently fill such well in the manner hereinbefore described, then it shall be lawful for any person, after written demand therefor to any of said persons, to enter the premises where such well is situated, take possession thereof and fully comply with the provisions of this article. The reasonable cost and expenses thereof shall forthwith be paid by the owner or operator of the well, and on his default by the owner of the land. The amount of such reasonable cost and expense shall forthwith be a lien upon the fixtures and machinery and leasehold interest of the owner and operator of said well, as upon the title and interest of the land owner in the land upon which said well is situated, and may be recovered and enforced against said owner or operator, in the order named, in any court of competent jurisdiction. [Id.]

Art. 6006. [7850] Illumination.—No person, co-partnership or corporation shall use natural gas for illuminating purposes by what are known as flambeau lights. Nothing herein shall prohibit the use of "Jumbo" burners or any other burners consuming no more gas than such "Jumbo" burners, but the person, co-partnership, or corporation, consuming such gas and using such burners in the open air, shall inclose the same in glass globes or lamps; and any one using such gas in the open air, or in or around derricks, shall turn off said gas not later than eight o'clock in the morning of each day such lights are burning or used, and shall not turn on or relight the same between the hours of eight o'clock a. m. and five o'clock p. m. [Id.]

Art. 6007. [7851] Penalties.—Any person, co-partnership, or corporation violating any provision of the three preceding articles shall be liable to a penalty of one hundred dollars, to be recovered with the costs of suit in a civil action in the name of the State of Texas, in the county in which the act shall be committed or omitted. Such suit may be brought at the instance of any resident of the State of Texas, without security or liability of cost. [Id.]

Art. 6008. [7849] Gas to be confined.—Any person, co-partnership, or corporation in possession, either as owner, lessee, agent or manager, of any well producing natural gas, in order to prevent the said gas from wasting by escape, shall within ten days after penetrating the gas bearing rock in any well, shut in and confine the gas in said well until and during such time as the gas therein shall be utilized for light or fuel or power; provided, that this shall not apply to any well that is operated for oil. Any person violating the provisions of this article shall be liable to a penalty of not less than three hundred dollars for each offense, to be recovered with the costs of suit in a civil action in the name of the State of Texas, in the county in which the act shall be committed or omitted. Each day such violation continues shall be a separate offense. Such suit may be brought at the instance of any resident of this State without security or liability of cost. [Acts 1899, p. 68; Acts 1913, p. 212.]

Art. 6009. [7849—7851] Disposition of penalty.—The amount of any penalty recovered under any preceding article of this title when collected shall be paid, one-half into the school fund of the county in which said suit is brought, and one-half to said person at whose instance such suit shall be brought. [Id.]

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Art. 6010. [7852] Water in wells.—If any person or persons in this State, in boring any well or wells, for oil or gas, shall pierce any cap-rock or other geological formation in such manner as to cause a flow of salt water or fresh water injurious to any oil well already bored, or to any oil or gas deposits, and which shall or may probably result in the injury of such oil or gas field, or to such gas or oil wells already bored, such person or persons shall, if the flow of water cannot be cased off, immediately abandon all work upon such well and plug and fill the same in such manner and with such materials as will stop the flow of said water; and it shall be unlawful for any well owner, or person boring any such well, to remove the casing from the well drilled until the flow of water shall be stopped, either by casing off or plugging such well. The provisions of this article shall only apply where such cap rock or other formation is pierced at a depth below the horizon at which oil or gas has already been discovered. [Acts 1905, p. 228.]

Art. 6011. [7854] Suits and penalties.—Any person or persons, co-partnership, corporation or association of persons, violating any provision of the preceding article, shall be liable to a penalty of not less than five hundred nor more than five thousand dollars, to be recovered with the costs of suit in a civil action brought in the name of the State of Texas in the county in which the act complained of shall have been committed or omitted. Such suit may be brought at the instance of any resident of this State without security or liability for costs. The amount of said penalty when collected shall be paid into the school fund of the county in which said suit is brought. Such suit may be brought at the instance of either the district attorney or the county attorney of the county in which the act was committed or omitted. [Id.]

Art. 6012. May plug or shut in.—If the owner of any such well shall neglect or refuse to cause said well to be plugged, or shut in, as herein provided, for a period of twenty days after a written notice to do so, which notice may be served personally upon such owner, or may be posted at a conspicuous place at or near the well, it shall be lawful for the owner or operator of any adjacent or neighboring lands to enter upon the premises where said well is situated and cause the same to be plugged if it be an abandoned well, or shut in if not abandoned, pursuant to the provisions hereof. The reasonable cost and expense incurred in so doing shall be paid by the owner of said well, and may be recovered as debts of like amount are by law recoverable. [Acts 1913, p. 212.]

Art. 6013. Petition to restrain waste.—In addition to the penalties provided in this title, it shall be the duty of any district judge, whether in term time or vacation, to hear and determine any petition which may be filed to restrain the waste of natural gas in the violation of this law, and to issue such mandatory or restraining orders as may in his judgment be necessary. Such petition may be filed by any citizen of this State, and the same need allege no further financial interest than the petitioner possesses in common with all citizens of the State in the natural resources thereof. [Id.]

Art. 6014. "Waste."—Natural gas and crude oil or petroleum shall not be produced in this State in such manner and under such conditions as to constitute waste. The term "waste" in addition to its ordinary meaning shall include: (a) escape of natural gas in commercial quantities into the open air from a stratum recognized as a natural gas stratum; but this is not intended to have application to gas pockets in high points in strata recognized as oil strata; (b) drowning with water of a gas stratum capable of producing gas in commercial quantities; (c) underground waste; (d) the permitting of any natural gas well to wastefully burn; (e) the wasteful utilization of such gas; (f) burning flambeau lights except when casing head gas is used in same; provided not more than four may be used in or near the derrick of a drilling well; and (g) the burning of gas for illuminating purposes between eight o'clock a. m. and five o'clock p. m. unless the use is regulated by meter. [Acts 1919, p. 285.]

Art. 6015. Prevention of waste.—All operators, contractors, or drillers, pipe line companies, or gas distributing companies, drilling for or producing crude oil or natural gas or piping oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil and gas or both, in drilling and producing operations, storage or in piping or distributing, and shall not wastefully utilize oil or gas, or allow same to leak or escape from natural reservoirs, wells, tanks, containers or pipes. [Id.]

Art. 6016. Confining gas in wells.—Whenever natural gas in such quantities, in a gas bearing stratum known to contain natural gas in such quantities, is encountered in any well drilled for oil or gas in this State, such gas shall be confined to its original stratum until such time as the same can be produced and utilized without waste and all such strata shall be adequately protected from infiltrating waters. [Id.]

Art. 6017. Penalty.—Any person, firm, corporation or any officer, agent or employee thereof directly or indirectly violating any provision of the three preceding articles shall be subject to a penalty of not more than five thousand dollars to be recovered by suit brought in the name of the State of Texas by any district or county attorney on the direction of the Railroad Commission. Every day that such violation continues shall be a separate offense. [Id.]

Art. 6018. Pipe line carriers.—Every person, firm, corporation, limited partnership, joint stock association or association of any kind whatever;

1. Owning, operating or managing any pipe line or any part of any pipe line within the State of Texas for the transportation of crude petroleum to or for the public for hire, or engaged in the business of transporting crude petroleum by pipe line; or

2. Owning, operating or managing any pipe line or any part of any pipe line for the transportation of crude petroleum, to or for the public for hire, and which said pipe line is constructed or maintained upon, over or under any public road or highway, or in favor of whom the right of eminent domain exists; or

3. Owning, operating or managing any pipe line or any part of any pipe line or pipe lines for transportation to or for the public for hire, of crude petroleum, and which said pipe line or pipe lines is or may be constructed, operated or maintained across, upon, along, over or under the right of way of any railroad, corporation or other common carrier required by law to transport crude petroleum as a common carrier; or

4. Owning, operating or managing or participating in ownership, operation or management, under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind whatsoever, any pipe line or pipe lines, or part of any pipe line, for the transportation from any oil field or place of production within this State to any distributing, refining or marketing center or reshipping point thereof, within this State, of crude petroleum bought of others;

Is hereby declared to be a common carrier and subject to the provisions of this law. The provisions of this law shall not apply to those pipe lines which are limited in their use to the wells, stations, plants and refineries of the owner and which are not a part of the pipe line transportation system of any common carrier as above defined; nor shall such provisions apply to any property of such a common carrier which is not a part of or necessarily incident to its pipe line transportation system. [Acts 1917, p. 48.]

Art. 6019. Control of.—It is declared that the operation of common carrier pipe lines is a business in which the public is interested, and is subject to regulation by law. The business of purchasing, or of purchasing and selling crude petroleum, using in connection with such business a pipe line of the class subject to this law to transport the crude petroleum so bought or sold, shall not be conducted, unless such pipe line so used is a common carrier within the pur-

view of this law, and subject to the jurisdiction herein conferred upon the Railroad Commission. [Id.]

Art. 6020. Powers of carrier.—The right to lay, maintain and operate pipe lines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of such pipe lines along, across or under any public stream or highway in this State, is hereby conferred upon all said common carrier pipe lines. Any person, firm, limited partnership, joint stock association, or corporation may acquire such right by filing with said Commission a written acceptance of the provisions of this law expressly agreeing that in consideration of the rights so acquiring it shall be and become a common carrier pipe line, subject to the duties and obligations conferred or imposed by this law.

Art. 6021. Injury to roads, etc.—The right to run pipe lines, telegraph and telephone lines along, across or over any public road or highway can only be exercised upon condition that the traffic thereon be not interfered with, and that such road or highway be promptly restored to its former condition of usefulness, and the restoration thereof to be subject also to the supervision of the commissioners court or other proper local authority. In the exercise of the privileges herein conferred, such pipe lines shall compensate the county or road district, respectively, for any damage done to such public road. Nothing herein shall be construed to grant any pipe line company the right to use any public street or alley of any incorporated or unincorporated city or town, except by express permission from the governing body thereof. [Id.]

Art. 6022. Eminent domain.—Every person, firm, corporation, limited partnership, joint stock association, or association of any kind whatsoever owning, operating or managing any pipe line, or any part of any pipe line within this State for the transportation of crude petroleum that is declared by this title to be a common carrier, shall have the right and power of eminent domain in the exercise of which he, it or they may enter upon and condemn the lands, rights of way, easements and property of any person or corporation necessary for the construction, maintenance or operation of his, its or their common carrier pipe line; and shall have the right to lay his, its or their pipes or pipe lines under any railroad, railroad right of way, street railroad, canal or stream in this State; and along and under any street or alley in any incorporated city or town in this State with the consent and under the direction of the governing body of such city or town; and across and under any public road, provided that no pipes or pipe lines shall be laid parallel with and on any public highway closer than fifteen feet from the improved section thereof except with the approval and under the direction of the commissioners court of the county in which such public highway is located; and such other rights in the matter of laying pipes and pipe lines as are conferred by Article 1497, subject to the conditions, limitations and restrictions therein stated. [Acts 1919, p. 273.]

Art. 6023. Jurisdiction.—Power and authority are hereby conferred upon the Railroad Commission of Texas, over all common carrier pipe lines conveying oil or gas in Texas, and over all oil and gas wells in Texas, and over all persons, associations or corporations owning or operating pipe lines in Texas, and over all persons, associations and corporations owning or engaged in drilling or operating oil or gas wells in Texas; and all such persons, associations and corporations and their pipe lines, oil and gas wells are subject to the jurisdiction conferred by law upon the Commission, and the Commission is authorized and empowered to make all necessary rules and regulations for the government and regulation of such persons, associations and corporations and their operations, and the Attorney General shall enforce the provisions of this title by injunction or other adequate remedy and as otherwise provided by law. The word "Commission," as used in this title, shall mean the Railroad Commission of Texas. The word "Commissioner" shall mean any member of the Railroad Commission.

Art. 6024. Powers.—In all matters pertaining to the discharge of its duties and the enforcement of its powers and authority as provided by the terms of this title, the Commission shall institute suits, hear and determine complaints, require the attendance of witnesses, pay their expenses out of the fund herein created, and sue out such writs and process as may be necessary for the enforcement of its orders, and punish for contempt or disobedience of its orders as the district court may do.

Art. 6025. Attendance of witnesses.—If any witness fails or refuses to obey a subpœna from the Commission, or a Commissioner, the Commission or Commissioner may issue an attachment for such witness as in civil cases, and compel him to attend before the Commission or any Commissioner thereof, and give his testimony upon such matter as may be lawfully required of him, and to bring with him and produce on examination such records, books, vouchers, memoranda, true copies thereof, prints and such other matter as may be required, if any, in such subpœna.

Art. 6026. Criminating testimony.—If a witness fails or refuses to attend on being summoned, or to answer any question propounded to him, or to produce any record or data required to be produced by such subpœna, the claim that any such testimony may tend to criminate the person giving it shall not excuse such witness from testifying or producing such records and data, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Art. 6027. Witness fees.—Each witness who shall appear before the Commission or a Commissioner at a place outside the county of his residence shall receive for his attendance three dollars per day and three cents per mile traveled by the nearest practicable route, in going to and returning from the place of meeting of said Commission or Commissioner, which shall be ordered paid, upon the presentation of proper vouchers, sworn to by such witness and approved by the Commission or chairman thereof, provided, that no witness shall be entitled to any witness fees or mileage who is directly or indirectly interested in any public utility involved in or concerning which, in any way, the investigation or hearing on account of which he is summoned, shall relate, or who is in anywise interested in any stock, bond, mortgages, security or earnings of any such utility, or who shall be the agent, attorney or employee of such utility, or any officer thereof, when summoned at the instance of such utility. No witness furnished with free transportation shall receive pay for the distance he may have traveled on such free transportation.

Art. 6028. Officer's fees.—The sheriff or constable executing any process issued by the Commission or any Commissioner thereof under the provisions of this title shall receive such compensation as the Commission may allow.

Art. 6029. Rules and regulations.—The Commission shall make and enforce rules and regulations for the conservation of oil and gas:

1. To prevent the waste of oil and gas in drilling and producing operations and in the storage, piping and distribution thereof.
2. To require dry or abandoned wells to be plugged in such way as to confine oil, gas and water in the strata in which they are found and to prevent them from escaping into other strata.
3. For the drilling of wells and preserving a record thereof.
4. To require such wells to be drilled in such manner as to prevent injury to the adjoining property.
5. To prevent oil and gas and water from escaping from the strata in which they are found into other strata.
6. To establish rules and regulations for shooting wells and for separating oil from gas.
7. To require records to be kept and reports made

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

by oil and gas drillers, operators and pipe line companies and by its inspectors.

8. It shall do all things necessary for the conservation of oil and gas whether here especially enumerated or not, and shall establish such other rules and regulations as will be necessary to carry into effect this law and to conserve the oil and gas resources of the State. [Acts 1919, p. 285.]

Art. 6030. Supervisor and employees.—The Commission shall employ a pipe line expert who shall be the supervisor for the Commission in enforcing its rules and regulations. The Commission may appoint such deputy supervisors as may be necessary and may increase the salary of the supervisor to a sum not exceeding $5,000.00 per annum and may fix the salaries of the deputies at not exceeding $3,600.00 per annum, and shall employ such other assistants as may be necessary.

Art. 6031. Duties of supervisor.—The supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and conform to the rules and regulations of the Commission, dealing with the production and conservation of oil and gas. The supervisor shall gather information, and assist the Commission in the performance of its duties under this title. [Id.]

Art. 6032. Tax.—There is hereby levied a tax of one-twentieth of one per cent of the market value of crude petroleum produced within this State, which shall be in addition to and collected in the same manner as the present gross receipts production tax on crude petroleum. Producers of crude petroleum are hereby required to make reports of production in the same manner and under the same penalties as for the gross production tax. The tax thus collected shall be paid into the State Treasury as other revenue, and shall be paid out on warrants as other State funds. Any yearly excess of the tax over and above the requirements of the Commission shall become a part of the general revenue of the State and any deficiency shall be made up out of the general revenue of the State.

Art. 6033. Certificate of compliance.—Owners or operators of gas wells shall, before connecting with any oil or gas pipe lines, secure from the Commission a certificate showing compliance with the oil and gas conservation laws of the State and conservation orders of the Commission. Pipe line companies shall not connect with oil or gas wells until the owners or operators thereof shall furnish certificates from the Commission that the conservation laws of the State have been complied with, provided this law shall not prevent a temporary connection with any well or wells in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of said well to secure certificate showing compliance with the conservation laws of the State. [Acts 1919, p. 285.]

Art. 6034. Books and records.—All owners and operators of oil and gas wells shall keep books, showing accurately the amount of stock sold and unsold and amount of promotion money paid, amount of oil and gas produced and disposed of, with the price for which the same was sold, together with the receipts from the sale or transfer of leases or other property, and the disbursements made in connection with or for the benefit of such business; which books shall be kept open for the inspection of the Commission or any accredited representative thereof, and of any stockholder or shareholder or royalty owner in said business, and shall report such information to the Commission for its information when required by the Commission to do so. [Acts 1919, p. 287; Acts 2nd C. S. 1919, p. 79.]

Art. 6035. Report to Commission.—Any person, firm, partnership, joint stock association, corporation or other organization, domestic or foreign, operating wholly or partially within this State, acting as principal or agent for another, for the purpose of drilling, owning or operating any oil or gas well, or owning or controlling leases of oil and mineral rights or the transportation of oil or gas by pipe line, shall immediately file with the Commission the name of the company or organization, giving the name and post-office address of the organization, the plan under which it was organized, and the names and post-office addresses of the trustee or trustees thereof, and the names and post-office addresses of the officers and directors. [Id.]

Art. 6036. Penalty.—Any person, firm, corporation or any officer, agent or employé thereof directly or indirectly violating any provision of the three preceding articles shall be subject to a penalty of not more than five thousand dollars to be recovered by suit brought in the name of the State of Texas by any district or county attorney on the direction of the Commission. Every day that such violation continues shall be a separate offense. [Id.]

Art. 6037. Rates and charges.—The Commission shall establish and enforce rates of charges and regulations for gathering, transporting, loading and delivering crude petroleum by such common carriers in this State, and for the use of storage facilities necessarily incident to such transportation, and prescribe and enforce rules and regulations for the government and control of such common carriers in respect to their pipe lines and receiving, transferring and loading facilities, and it shall also exercise such power upon petition by any person showing a substantial interest in the subject. [Acts 1917, p. 48.]

Art. 6038. Hearing, notice.—No order establishing or prescribing rates, rules and regulations shall be made except after hearing and at least ten days and not more than thirty days notice to the person, firm, corporation, partnership, joint stock association, or association, owning or controlling and operating the pipe line or pipe lines affected. [Id.]

Art. 6039. Reimbursement, when.—If any rate shall be filed by a pipe line and complaint against same or petition to reduce same shall be filed by a shipper, and such complaint be sustained, in whole or in part, all shippers who shall have paid the rates so filed by the pipe line shall have the right to reparation or reimbursement of all excess in transportation charges so paid over and above the proper rate as finally determined on all shipments made after the date of the filing of such complaint. [Id.]

Art. 6040. Exchange of facilities.—Every common carrier as above defined shall exchange crude petroleum tonnage with each like common carrier and the Commission is authorized to require such connections and facilities for the interchange of such tonnage to be made at every locality reached by both pipe lines whenever a necessity therefor exists and subject to such rates and regulations as may be made by the Commission; and any such common carrier under like rules and regulations shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on such pipe line. [Id.]

Art. 6041. Grades of oil carried.—No carrier shall be required to receive or transport any crude petroleum except such as may be marketable under rules and regulations to be prescribed by the Commission, and the Commission shall make rules for the ascertainment of the amount of water and other foreign matter in oil tendered for transportation, and for deduction therefor and for the amount of deduction to be made for temperature, leakage and evaporation. [Id.]

Art. 6042. Powers not limited.—Particular powers herein granted to the Commission shall not be construed to limit the general powers conferred by law, and until set aside or vacated by some order or decree of a court of competent jurisdiction, all orders of the Commission as to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity. [Id.]

Art. 6043. Publication of tariffs.—Such common carriers of crude petroleum shall make and publish their tariffs under such rules and regulations as the Commission may prescribe, and the Commission shall require them to make reports, and may investigate their books and records kept in connection with such business. [Id.]

Art. 6044. Monthly reports.—The Commission shall require of such common carrier pipe lines duly verified monthly reports of the total quantities of crude petroleum owned by such pipe lines and of that held by them in storage for others, as also of their unfilled storage capacity, but no publicity shall be given by the Commission as to stock of crude petroleum on hand of any particular pipe line; but the Commission in its discretion may make public the aggregate amounts held by all pipe lines making such reports, and of their aggregate storage capacity. [Id.]

Art. 6045. Discrimination prohibited.—No such common carrier in its operations as such shall discriminate between or against shippers in regard to facilities furnished or service rendered or rates charged under the same or similar circumstances in the transportation of crude petroleum; nor shall there be any discrimination in the transportation of crude petroleum produced or purchased by itself directly or indirectly. In this connection the pipe line shall be considered as a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities. No such carrier in such operations shall directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided, this shall not limit the right of the Commission to prescribe rates and regulations different from or to some places from other rates or regulations for transportation from or to other places, as it may determine; nor shall any carrier be guilty of discrimination when obeying any order of the Commission. When there shall be offered for transportation more crude petroleum than can be immediately transported, the same shall be equitably apportioned. The Commission may make and enforce general or specific regulations in this regard. No such common carrier shall at any time be required to receive for shipment from any person, firm, corporation or association of persons, exceeding three thousand barrels of petroleum in any one day. [Id.]

Art. 6046. Rules for prevention of waste.—The Commission, when necessary, shall make and enforce rules and regulations either general in their nature or applicable to particular oil fields for the prevention of actual waste of oil or operations in the field dangerous to life or property. [Id.]

Art. 6047. Penalty.—Any common carrier as herein defined who shall violate any provision of this law, or who shall fail to perform any duty herein imposed, or any valid order of the Commission when not stayed or suspended by order of court, shall be subject to a penalty of not less than one hundred nor more than one thousand dollars for each offense, recoverable in the name of the State. Such penalty may also be recovered by and for the use of any person, corporation or association of persons against whom there shall have been an unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved. [Id.]

Art. 6048. Transportation of crude petroleum.—Subject to the provisions of the law and the rules or regulations which may be prescribed by the Commission, every such common carrier shall receive and transport crude petroleum delivered to it for transportation and shall so receive and transport same and perform its other duties with respect thereto without discrimination. [Id.]

Art. 6049. Salary of expert and other expenses.—The salary of the expert for the Commission and all other employees shall be paid out of the fund created under Article 6032, by monthly warrants drawn by the Comptroller on the State Treasurer. All other expenses incurred in the administration and enforcement of the provisions of this subdivision shall be paid out of the same fund by like warrants issued upon duly verified statements of the persons entitled, with the approval of the chairman.

NATURAL GAS

Art. 6050. Classification.—The term "gas utility" and "public utility" or "utility," as used in this subdivision, means and includes persons, companies and private corporations, their lessees, trustees, and receivers, owning, managing, operating, leasing or controlling within this State any wells, pipe lines, plant, property, equipment, facility, franchise, license, or permit for either one or more of the following kinds of business:

1. Producing or obtaining, transporting, conveying, distributing or delivering natural gas: (a) for public use or service for compensation; (b) for sale to municipalities or persons or companies, in those cases referred to in paragraph 3 hereof, engaged in distributing or selling natural gas to the public; (c) for sale or delivery of natural gas to any person or firm or corporation operating under franchise or a contract with any municipality or other legal subdivision of this State; or, (d) for sale or delivery of natural gas to the public for domestic or other use.

2. Owning or operating or managing a pipe line for the transportation or carriage of natural gas, whether for public hire or not, if any part of the right of way for said line has been acquired, or may hereafter be acquired by the exercise of the right of eminent domain; or if said line or any part thereof is laid upon, over or under any public road or highway of this State, or street or alley of any municipality, or the right of way of any railroad or other public utility; including also any natural gas utility authorized by law to exercise the right of eminent domain.

3. Producing or purchasing natural gas and transporting or causing the same to be transported by pipe lines to or near the limits of any municipality in which said gas is received and distributed or sold to the public by another public utility or by said municipality, in all cases where such business is in fact the only or practically exclusive agency of supply of natural gas to such utility or municipality, is hereby declared to be virtual monopoly and a business and calling affected with a public interest, and the said business and property employed therein within this State shall be subject to the provisions of this law and to the jurisdiction and regulation of the Commission as a gas utility.

Every such gas utility is hereby declared to be affected with a public interest and subject to the jurisdiction, control and regulation of the Commission as provided herein. [Acts 3rd C. S. 1920, p. 18.]

Art. 6051. May enjoin gas pipe line.—The operation of gas pipe lines for buying, selling, transporting, producing or otherwise dealing in natural gas is a business which in its nature and according to the established method of conducting the business is a monopoly and shall not be conducted unless such gas pipe line so used in connection with such business be subject to the jurisdiction herein conferred upon the Commission. The Attorney General shall enforce this provision by injunction or other remedy. [Id.]

Art. 6052. Utility office.—Every gas utility as defined herein shall have an office in one of the counties of this State in which its property or some part thereof is located and shall keep in said office all books, accounts, papers, records, vouchers and receipts which the Commission shall require. No books, accounts, papers, records, receipts, vouchers or other data required by the Commission to be so kept shall be at any time removed from this State except upon such conditions as the Commission may prescribe. [Id.]

Art. 6053. Regulation of utilities.—The Commission after due notice shall fix and establish and enforce the adequate and reasonable price of gas and fair and reasonable rates of charges and regulations for transporting, producing, distributing, buying, sell-

ing and delivering gas by such pipe lines in this State; and shall establish fair and equitable rules and regulations for the full control and supervision of said gas pipe lines and all their holdings pertaining to the gas business in all their relations to the public, as the Commission may from time to time deem proper; and establish a fair and equitable division of the proceeds of the sale of gas between the companies transporting or producing the gas and the companies distributing or selling it; and prescribe and enforce rules and regulations for the government and control of such pipe lines in respect to their gas pipe lines and producing, receiving, transporting and distributing facilities; and regulate and apportion the supply of gas between towns, cities, and corporations, and when the supply of gas controlled by any gas pipe line shall be inadequate, the Commission shall prescribe fair and reasonable rules and regulations requiring such gas pipe lines to augment their supply of gas, when in the judgment of the Commission it is practicable to do so; and it shall exercise its power, whether upon its own motion or upon petition by any person, corporation, municipal corporation, county, or commissioner's precinct showing a substantial interest in the subject, or upon petition of the Attorney General, or of any county or district attorney in any county wherein such business or any part thereof may be carried on. [Id.]

Art. 6054. Orders, etc., reviewed.—All orders and agreements of any company or corporation, or any person or persons controlling such pipe lines establishing and prescribing prices, rates, rules and regulations and conditions of service, shall be subject to review, revision and regulation by the Commission on hearing after notice as provided for herein to the person, firm, corporation, partnership or joint stock association owning or controlling or operating the gas pipe line affected. [Id.]

Art. 6055. To refund excess charges.—If any rate or charge for gas or for service or for meter rental or any other purpose pertaining to the operation of said business shall be made or promulgated by any person, firm or corporation owning or operating any gas pipe line, or in the event of an inadequate supply of gas or inadequate service in any respect, and complaint against same shall be filed by any person authorized by the preceding article to file such petition and such complaint is sustained in whole or in part, all persons and customers of said gas pipe line shall have the right to reparation or reimbursement of all excess in charges so paid over and above the proper rate or charge as finally determined by the Commission from and after the date of the filing of such complaint. [Id.]

Art. 6056. Operator's reports.—The Commission may require of all persons or corporations operating, owning or controlling such gas pipe lines sworn reports of the total quantities of gas distributed by such pipe lines and of that held by them in storage, and also of their source of supply, the number of wells from which they draw their supply, the amount of pressure maintained, and the amount and character and description of the equipment employed, and such other matters pertaining to the business as the Commission may deem pertinent. [Id.]

Art. 6057. Discrimination.—No such pipe line public utility shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes, or to prescribe rates and regulations for service from or to other or different places, as it may determine. [Id.]

Art. 6058. Appeal from city control.—When a city government has ordered any existing rate reduced, the gas utility affected by such order may appeal to the Commission by filing with it on such terms and conditions as the Commission may direct, a petition and bond to review the decision, regulation, ordinance, or order of the city, town or municipality. Upon such appeal being taken the Commission shall set a hearing and may make such order or decision in regard to the matter involved therein as it may deem just and reasonable. The Commission shall hear such appeal de novo. Whenever any local distributing company or concern, whose rates have been fixed by any municipal government, desires a change of any of its rates, rentals or charges, it shall make its application to the municipal government where such utility is located and such municipal government shall determine said application within sixty days after presentation unless the determination thereof may be longer deferred by agreement. If the municipal government should reject such application or fail or refuse to act on it within said sixty days, then the utility may appeal to the Commission as herein provided. But said Commission shall determine the matters involved in any such appeal within sixty days after the filing by such utility of such appeal with said Commission or such further time as such utility shall in writing agree to, but the rates fixed by such municipal government shall remain in full force and effect until ordered changed by the Commission. [Id.]

Art. 6059. Appeal from orders.—If any gas utility or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied utility or party may file a petition setting forth the particular cause of objection thereto in a court of competent jurisdiction in Travis County against the Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature and shall be tried and determined as other civil causes in said court. Either party to said action may have the right of appeal; and said appeal shall be at once returnable to the appellate court, and said action so appealed shall have precedence in said appellate court of all causes of a different character therein pending. If the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. In all trials under this article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them. [Id.]

Art. 6060. Utility tax.—Every gas utility subject to the provisions of this subdivision on or before the first day of January and quarterly thereafter, shall file with the Commission a statement, duly verified as true and correct by the president, treasurer or general manager if a company or corporation, or by the owner or one of them if an individual or co-partnership, showing the gross receipts of such utility for the quarter next preceding or for such portion of said quarterly period as such utility may have been conducting any business, and at such time shall pay into the State Treasury at Austin a sum equal to one-fourth of one per cent of the gross income received from all business done by it within this State during said quarter. [Id.]

Art. 6061. Report to Governor.—The Commission shall on December 1st of each year make a full detailed report to the Governor, who shall transmit the same to the next succeeding session of the Legislature, showing:

1. The proceedings of said Commission to such time with respect to the gas utilities defined herein.

2. The receipts of gross income taxes from all sources, indicating the sources.

3. The expenditures made under and in accordance with this subdivision, the nature of such expenditures, including in addition to other items of expenditures, the names, titles, nature of employment, salaries of and payments made to all persons employed for any purpose under the terms of this subdivision with state-

ment of traveling and other expenses incurred by each of said persons and approved by the Commission. [Id.]

Art. 6062. Penalties.—Any public utility as herein defined violating any provision of this subdivision or failing to perform any duty herein imposed or to comply with any valid order of the Commission when not stayed or suspended by order of the court, shall be subject to a penalty payable to the State of not less than one hundred nor more than one thousand dollars for each offense, each violation to constitute a separate offense, and each day that such failure continues shall constitute a separate offense. An additional penalty of a like amount together with reasonable attorney's fees may also be recoverable by and for the use of any person, corporation or association of persons against whom there shall have been unlawful discrimination as herein defined; such suit to be brought in the name of and for the use of the party aggrieved. [Id.]

Art. 6063. Receiver.—Whenever any person, firm or corporation, owning, operating or controlling such gas pipe line shall violate any provision hereof or any rule or regulation of the Commission, the Commission shall, whenever in its judgment the public interests require it, apply to any court of this State having jurisdiction for a receivership of such concern guilty of such violation. Such receiver shall control and manage the property of such gas pipe line under the direction of the court as provided by law in receivership matters. The grounds for appointment of receiver provided for in this article shall be in addition to other grounds provided by law. [Id.]

Art. 6064. Duties of pipe line expert.—The supervisor shall likewise assist the Commission in the performance of its duties under this subdivision under the direction of the Commission, under such rules and regulations as it may prescribe. [Id.]

Art. 6065. Employees of Commission.—The Commission may employ and appoint, from time to time, such experts, assistants, accountants, engineers, clerks and other persons as it deems necessary to enable it at all times to inspect and audit all records or receipts, disbursements, vouchers, prices, pay rolls, time cards, books and official records, to inspect all property and records of the utilities subject to the provisions hereof, and to perform such other services as may be directed by the Commission or under its authority. Such persons and employees of the Commission shall be paid for the service rendered such sums as the Commission may fix. The number of employees and appointees employed or appointed under this subdivision and the sums of money paid to them for their services shall be subject to the approval of the Board of Control, and no employment or appointment hereunder shall be valid without such approval. [Id.]

Art. 6066. Expenditures limited.—The salary and expense of the expert and his assistants, and the salaries, wages, fees and expenses of every other person employed or appointed by the Commission under the provisions of this subdivision, and all other expenses, costs, and charges, including witness fees and mileage, incurred by or under authority of the Commission or a Commissioner, in administering and enforcing the provisions of this subdivision or in exercising any power and authority hereunder shall be paid out of the gas utilities fund provided for by Article 6060, by the State Treasurer on the warrants of the Comptroller of Public Accounts on order or voucher approved by the Commission or the chairman thereof. If the amount or total of such gross receipts charge collected shall not be sufficient, during any quarterly period, to pay such salaries, costs, charges, fees and expenses, then the deficit shall be paid by the State Treasurer out of the general revenue not otherwise appropriated. Any surplus remaining in the gas utilities fund, after paying all such salaries, costs, fees and charges after deducting such amounts as may be contracted to be paid and incurred and such as may be reasonably estimated by the Commission for its use, shall be paid over to the general revenue fund at the end of such quarterly period. The expenses authorized in this article shall never exceed in any one calendar year the sum of twenty thousand dollars.

TITLE 103

PARKS

1. STATE PARKS BOARD

Art.
6067. Creating Board.
6068. To solicit park sites.
6069. Duty of Board.
6070. Traveling expenses.

2. SAN JACINTO STATE PARK

6071. Establishing State Park.
6072. Commissioners.
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6074. Establishing park.
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4. WASHINGTON STATE PARK

6076. Washington State Park.
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6078. Tax for parks.
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6. CITY PARKS

6080. City parks.
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1. STATE PARKS BOARD

Article 6067. Creating Board.—There is hereby created a State Parks Board of five members to be appointed by the Governor, whose terms shall be six years from date of appointment, but in appointing the first board he shall appoint one member for two years, two for four years and two for six years. They shall serve without compensation, but shall be reimbursed for necessary traveling expenses and hotel bills out of State funds, except where localities pay such expenses. [Acts 2nd C. S. 1923, p. 58.]

Art. 6068. To solicit park sites.—The said Board shall solicit donations to the State of tracts of land, large or small, to be used by the State for the purpose of public parks, and said board is hereby authorized to accept in behalf of the State the title to any such tract or tracts of land, subject to the approval of the Legislature. [Id.]

Art. 6069. Duty of Board.—Said Board shall make investigations of any tract or tracts of land, of any size whatsoever, in the State with a view of determining whether the same is suitable for public park purposes, and, the terms on which it can be acquired; and shall report the result of their investigations, together with their recommendations and findings to each regular session of the Legislature, for such action as the Legislature may take. The purpose of this law being to initiate a movement looking to the establishment eventually of a system of State Parks for the benefit of the people, secured either by donation or purchase, or established on any land owned by the State available for such purpose. The said Board is especially directed to inspect the Davis Mountains in Jeff Davis County, to determine the feasibility of same as a park that might be made a National Park. If said Board should conclude that the Davis Mountains area is feasible as a great park, they are hereby authorized to outline the said park; take options or easements and outline a policy to finance the said Davis Mountains area as a park. Any options, easements or tentative deals that are made in regard to said Davis Mountains Park shall be subject to the action of the Legislature and shall not be binding on the State until the Legislature shall approve of the action of said Parks Board. [Id.]

Art. 6070. Traveling expenses.—Any locality desiring to do so may pay the expenses of said Board on any trip to such locality to inspect land and investigate in such locality in order to ascertain whether there

is a suitable site there for a State Park; but if the expenses of the Board are so paid, no money shall be paid out of the State Treasury for traveling expenses or hotel bills of said board for such trip. [Id.]

2. SAN JACINTO STATE PARK

Art. 6071. [6395] Establishing State Park.—The lands owned and acquired by the State, called the San Jacinto battlefield, shall be known and styled, "The San Jacinto State Park," and, with the exception, reservations and limitations herein mentioned, the said San Jacinto State Park shall be under the care and direction of the State Board of Control. Said Board and the commissioners shall jointly endeavor to improve, preserve and protect the lands and property within and connected with said San Jacinto State Park. [Acts 1907, p. 104.]

Art. 6072. [6396] Commissioners.—The Governor shall biennially appoint three resident citizens of the State, who shall be known as "San Jacinto State Park Commissioners," who shall serve without compensation and whose duties shall be to advise with and assist the Board of Control in the improvement, care and preservation of the lands now owned and hereafter acquired by the State, known as the San Jacinto battlefield. One or more of said commissioners may, in the discretion of the Governor, be selected from the patriotic organization known as San Jacinto Chapter, Daughters of the Republic of Texas, or from any kindred organization. [Id., Sec. 6.]

Art. 6073. [6397] Duties of the commissioners.—It shall be the duty of said commissioners, acting with the advice and consent of the Board of Control, to cause to be erected upon a site by them selected a keeper's cottage and other necessary buildings; to arrange for or employ a keeper who shall reside upon the grounds and who shall be clothed with all the powers and authority of a peace officer of the county for the purposes of caring for and protecting the property of the State; to provide the necessary teams, implements and other utensils for the use of such keeper and other employés in the work of beautifying, improving and protecting said grounds; to cause to be erected around, about and upon said grounds such fences as shall, in the judgment of the commissioners and the Board, serve the best interests of the State in the care and protection of its property; to provide for and outline a plan, diagram and design of the work to be done from time to time, copies of which shall be kept in the office of the Board for reference, and to do any and all things necessary to be done, with the intent and purpose of beautifying, improving and protecting the State's interest therein. [Id., Sec. 7.]

3. GONZALES STATE PARK

Art. 6074. Establishing park.—The State accepts title to the ground tendered by the City of Gonzales, and dedicates it as a public State park in commemoration of the historic events that have occurred at Gonzales, and agrees to beautify and protect the same; which said ground shall be under the care and direction of the State Board of Control, and shall be styled "Gonzales State Park." [Acts 1913, p. 242.]

Art. 6075. Commissioners.—The Governor shall biennially appoint three resident citizens of the State, who shall be known as "Gonzales State Park Commissioners," who shall advise with and assist the Board of Control in the improvement, care and preservation of the said land. One or more of said commissioners may, in the discretion of the Governor, be selected from the patriotic organization known as Gonzales Chapter, Daughters of the Republic of Texas, or from any kindred organization. Said commissioner shall serve without compensation. [Id.]

4. WASHINGTON STATE PARK

Art. 6076. Washington State Park.—The lands situated in Washington County and which were acquired by the State and on which the first capitol of Texas stood, shall be known as "The Washington State Park." [Acts 1923, p. 123.]

Art. 6077. Commissioners.—The Governor shall biennially appoint for a term of two years five resident citizens of this State, who shall constitute "The Washington State Park Commission." The duties of said commissioners, acting with the advice and consent of the Board of Control, shall be the same as that provided by law for the San Jacinto State Park, as far as applicable. [Id.]

5. COUNTY PARKS

Art. 6078. Tax for parks.—Each commissioners court is authorized to levy and collect a tax not to exceed five cents on each $100 of assessed valuation of the county for the purchase and improvement of lands for use as county parks which shall consist of not more than one hundred acres, and shall not exceed more than four in any one county. No such tax shall be levied and collected until the proposition is submitted to and ratified by the property tax-paying voters of the county at a general or special election called for that purpose, provided, a two-thirds majority of the property taxpaying voters of such county, at an election held for such purpose shall determine in favor of said tax. If said court desires to establish two or more of such county parks they shall locate them in widely separated portions of the county. Said court shall have full power and control over any and all such parks and may levy and collect an annual tax sufficient in their judgment to properly maintain such parks and build and construct pavilions and such other buildings as they may deem necessary, lay out and open driveways and walks, pave the same or any part thereof, set out trees and shrubbery, construct ditches or lakes, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules and regulations as said court may prescribe. [Acts 1915, p. 102.]

Art. 6079. Privileges and concessions.—No person, firm or association of persons shall have the right to offer for sale or barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the commissioners court or its duly authorized agent, paying for such privilege or concession the sum agreed upon with said court or its duly authorized agent. All revenue from the sale of such privileges or concessions shall go into a fund for the maintenance of said parks. [Id.]

6. CITY PARKS

Art. 6080. City parks.—The governing body of any incorporated city may purchase, improve and maintain land for use as city parks. Such parks shall not exceed two in number for each two thousand inhabitants. If such body establishes more than one of such parks, it shall locate them in widely separated parts of the city. Such body is authorized to levy and collect a tax not to exceed five cents on each one hundred dollars of its assessed valuation for the purchase and improvement of lands for use as such parks, and may levy and collect a like annual tax to properly maintain such parks. Said body shall have full power and authority over all such parks, and may build and construct such building as they may deem necessary, lay out and open driveways and walks, pave any part thereof, construct ditches or lakes, set out trees and shrubs, and make such other improvements as they may deem proper. Such parks shall remain open for the free use of the public under such reasonable rules as said body may prescribe. [Acts 1917, p. 149.]

Art. 6081. Concessions in city park.—No person, firm or association of persons shall have the right to offer for sale or barter, exhibit anything or conduct any place of amusement where a fee is charged within said parks without first obtaining the consent of the governing body, or its authorized agent, paying for such privilege or concession the sum agreed upon with

said body or its agent. All revenue from the sale of such rights, privileges or concessions shall go into a fund for the maintenance of said parks. [Id.]

TITLE 104

PARTITION

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1. PARTITION OF REAL ESTATE

Article 6082. [6096] [3606] Joint owner may compel.—Any joint owner or claimant of any real estate or of any interest therein or of any mineral, coal, petroleum, or gas lands, whether held in fee or by lease or otherwise, may compel a partition thereof between the other joint owners or claimants thereof in the manner provided in this chapter. [Acts 1917, p. 295.]

Art. 6083. [6097] [3607] [3466] Petition.—Such joint owner or claimant may file his petition in the district court of the county in which the real estate, or any part thereof, sought to be partitioned, is situated, which petition shall state:

1. The names and residence, if known, of each of the other joint owners, or joint claimants, of such property.

2. The share or interest which the plaintiff and the other joint owners, or joint claimants, of same own or claim so far as known to the plaintiff.

3. The land sought to be partitioned shall be so described as that the same may be distinguished from any other and the estimated value thereof stated.

Art. 6084. [6098] [3608] [3467] Citation and service.—Upon the filing of a petition for partition, the clerk shall issue citation for each of the joint owners, or joint claimants, named therein, as in other cases, and such citations shall be served in the manner and for the time provided for the service of citations in other cases.

Art. 6085. [6099] [3609] Where defendant is unknown.—If the plaintiff, his agent or attorney, at the commencement of any suit, or during the progress thereof, for the partition of land, shall make affidavit that an undivided portion of the land described in the plaintiff's petition in said suit is owned by some person unknown to affiant, the clerk of the court shall issue a citation to the proper officer, which shall contain a brief statement of the nature of the suit, and a description of the interest of the unknown owner or owners, commanding such officer to summon such unknown owner or owners by making publication of the citation in some newspaper in the county where the writ issued, if there be a newspaper published in said county, but if not, then in the nearest county where a newspaper is published, for four successive weeks previous to the return day of such process. When such notice is given, and no appearance is entered within the time prescribed for pleading, the court shall appoint an attorney to defend in behalf of such owner or owners, and proceed as in other causes where service is made by publication. It shall be the special duty of the court in all such cases to see that its decree protects the rights of the unknown parties thereto. The judge of the court shall fix the fee of the attorney so appointed, which shall be entered and collected as costs against said unknown owner or owners. [Acts 1879, p. 46; G. L., vol. 8, p. 1346.]

Art. 6086. [6100] [3610] [3468] Court shall determine, what.—Upon the hearing of the cause, the court shall determine the share or interest of each of the joint owners or claimants in the real estate sought to be divided, and all questions of law or equity affecting the title to such land which may arise.

Art. 6087. [6101] [3611] [3469] Appointment of commissioners.—The court shall determine before entering the decree of partition whether the property, or any part thereof, is susceptible of partition; and, if the court determines that the whole, or any part of such property is susceptible of partition, then the court for that part of such property held to be susceptible of partition shall enter a decree directing the partition of such real estate, describing the same, to be made in accordance with the respective shares or interests of each of the parties entitled thereto, specifying in such decree the share or interest of each party, and shall appoint three or more competent and disinterested persons as commissioners to make such partition in accordance with such decree and the law, a majority of which commissioners may act. [Acts 1905, p. 95.]

Art. 6088. [6102] [3612] [3470] Writ of partition.—The clerk shall issue a writ of partition, directed to the sheriff or any constable of the county, commanding such sheriff or constable to notify each of the commissioners of their appointment as such, and shall accompany such writ with a certified copy of the decree of the court directing the partition. [R. S. 1879.]

Art. 6089. [6103] [3613] [3471] Service of writ of partition.—The writ of partition shall be served by reading the same to each of the persons named therein as commissioners, and by delivering to any one of them the accompanying certified copy of the decree of the court. [Id.]

Art. 6090. [6104] [3614] [3472] May appoint surveyor.—The court may, should it be deemed necessary, appoint a surveyor to assist the commissioners in making the partition, in which case the writ of partition shall name such surveyor, and shall be served upon him by reading the same to him. [Id.]

Art. 6091. [6105] [3615] [3473] Return of writ.—A writ of partition, unless otherwise directed by the court, shall be made returnable to the first day of the next term of the court from whence the same issues; and the officer serving it shall indorse thereon the time and manner of such service. [Id.]

Art. 6092. [6106] [3616] [3474] Shall proceed to partition.—The commissioners, or a majority of them, shall proceed to partition the real estate described in the decree of the court, in accordance with the directions contained in such decree and with the provisions of this chapter. [Id.]

Art. 6093. [6107] [3617] [3475] May cause survey.—If the commissioners deem it necessary, they may cause to be surveyed the real estate to be partitioned into several tracts or parcels. [Id.]

Art. 6094. [6108–9] Shall divide real estate.—The commissioners shall divide the real estate to be partitioned into as many shares as there are persons entitled thereto, as determined by the court, each share to contain one or more tracts or parcels,

as the commissioners may think proper, having due regard in the division to the situation, quantity and advantages of each share, so that the shares may be equal in value, as nearly as may be, in proportion to the respective interests of the parties entitled. The commissioners shall then proceed by lot to set apart to each of the parties entitled one of said shares, as determined by the decrees of the court. [Id.]

Art. 6095. [6110] [3620] [3478] Report of commissioners.—When the commissioners have completed the partition, they shall report the same in writing and under oath to the court, which report shall show:

1. The property divided, describing the same.
2. The several tracts or parcels into which the same was divided by them, describing each particularly.
3. The number of shares and the land which constitutes each share, and the estimated value of each share.
4. The allotment of each share.
5. The report shall be accompanied by such field-notes and maps as may be necessary to make the same intelligible. [Id.]

Art. 6096. [6111] [3621] [3479] Property incapable of division.—Should the court be of the opinion that a fair and equitable division of the real estate, or any part thereof, can not be made, it shall order a sale of so much as is incapable of partition, which sale shall be for cash, or upon such other terms as the court may direct, and shall be made as under execution, or by private sale through a receiver, if the court so order, and the proceeds thereof shall be returned into court and be partitioned among the persons entitled thereto, according to their respective interests. [Acts 1905, p. 95.]

Art. 6097. [6112] [3622] [3480] Objections to report.—Either party to the suit may file objections to any report of the commissioners in partition, and in such case a trial of the issues thereon shall be had as in other cases. If the report be found to be erroneous in any material respect, or unequal and unjust, the same shall be rejected, and other commissioners shall be appointed by the court, and the same proceedings had as in the first instance. [R. S. 1879.]

Art. 6098. [6113] [3623] [3481] Partition not prejudicial.—When a partition is made between a joint owner who holds an estate for a term of years or for life with others who hold equal or greater estates, such partition shall not be prejudicial to those entitled to the reversion or remainder of such estates. [Id.]

Art. 6099. [6114] [3624] [3482] Each party shall hold in severalty.—When any partition is made, each party to whom a share has been allotted shall hold the same in severalty under the same conditions and covenants that it was held before such partition was made. No warranty, lease or right whatsoever shall be impaired or affected by such partition. [Id.]

Art. 6100. [6115] [3625] [3483] Decree shall vest title.—The decree of the court confirming the report of the commissioners in partition, when a partition has been made shall vest the title in each party to whom a share has been allotted, to such share as against the other parties to such partition suit, their heirs, executors, administrators or assigns, as fully and effectually as the deed of such parties could vest the same, and shall have the same force and effect as a full warranty deed of conveyance from such other parties and each of them. [Id.]

2. PARTITION OF PERSONAL PROPERTY

Art. 6101. [6116] [3626] [3484] Part owners may compel partition.—Part owners of personal property may be compelled to make partition between them in the manner hereinafter provided. [Acts Dec. 24, 1851, p. 20; G. L. vol. 3, p. 898.]

Art. 6102. [6117] [3627] [3485] Suit begun in what court.—Suit for partition shall be commenced in the court having jurisdiction of the value of such property, in the same manner as other civil suits are commenced, and the several owners or claimants of such property shall be cited as in other cases. [Id.]

Art. 6103. [6118] [3628] [3486] Value ascertained.—The separate value of each article of such personal property, and the allotment in kind to which each owner is entitled, shall be ascertained by the court, with or without a jury. [Id.]

Art. 6104. [6119] [3629] [3487] Decree of court executed.—When partition in kind of personal property is ordered by the judgment of the court, a writ shall be issued in accordance with such judgment, commanding the sheriff or constable of the county where the property may be to put the parties forthwith in possession of the property allotted to each respectively. [Id.]

Art. 6105. [6120–21] Property sold.—When personal property will not admit of a fair and equitable partition, the court shall ascertain the proportion to which each owner thereof is entitled, and order the property to be sold, and execution shall be issued to the sheriff or any constable of the county where the property may be, describing such property and commanding such officer to sell the same as in other cases of execution, and pay over the proceeds of sale to the parties entitled thereto, in the proportion ascertained by the judgment of the court. [Id.]

3. MISCELLANEOUS PROVISIONS

Art. 6106. [6122] [3632] [3490] Construction of title.—No provision of this title shall affect the mode of proceeding prescribed by law for the partition of estates of decedents among the heirs and legatees, nor preclude partition in any other manner authorized by the rules of equity; which rules shall govern in proceedings under this title in all things not provided for in this title. [R. S. 1879.]

Art. 6107. [6123] [3633] [3491] Pleading and practice.—The same rules of pleading, practice and evidence which govern in other civil causes shall govern in suits for partition, when not in conflict with any provision of this title. [Id.]

Art. 6108. [6124] [3634] [3492] Pay of commissioners.—The commissioners in partition and the surveyor, if any has been appointed, shall receive for their services three dollars each per day for each day they are engaged in making and returning such partition, to be taxed and collected as other costs in the case. [Id.]

Art. 6109. [6125] [3635] [3493] Costs.—The court shall adjudge the costs in a partition suit to be paid by each party to whom a share has been allotted in proportion to the value of such share. [Id.]

TITLE 105

PARTNERSHIPS AND JOINT STOCK COMPANIES

Chap.
1. Partnerships limited.
2. Unincorporated joint stock companies.

CHAPTER ONE

PARTNERSHIP—LIMITED

Art.
6110. Limited partnerships authorized.
6111. General and special partners.
6112. General partners only to act.
6113. Formation of such partnerships.
6114. Certificate to be acknowledged.
6115. Filing and recording certificate.
6116. Affidavit of general partner.
6117. Prerequisites indispensable.
6118. Terms to be published.
6119. Publisher's affidavit.
6120. Renewal of partnership.
6121. Certain alterations a dissolution.
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6123. Suits by and against.
6124. Capital of special partner.

Art.
6125. Reduction of special partner's capital.
6126. Powers of special partner.
6127. Partners to account.
6128. Assignments by partnership.
6129. Assignments contemplating insolvency.
6130. Concurrence by special partner.
6131. Partnership creditors preferred.
6132. Dissolution before time agreed on.

Article 6110. [6126] [3583] Limited partnerships authorized.—Limited partnerships for the transaction of any mercantile, mechanical, manufacturing or other business, except banking or insurance, may be formed by two or more persons, upon the terms, with the rights and powers, and subject to the conditions and liabilities herein prescribed. [Act May 12, 1846, p. 279; P. D. 4717 et seq.; G. L. vol. 2, p. 1585.]

Art. 6111. [6127] [3584] General and special partners.—Such partnerships may consist of one or more persons, who shall be called the general partners, and who shall be jointly and severally responsible as general partners now are by law; and of one or more persons who shall contribute in actual cash payments a specific sum as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them to the capital. [Id.]

Art. 6112. [6128] [3585] General partners only to act.—The general partners only shall be authorized to transact business and sign for the partnership and to bind the same. [Id.]

Art. 6113. [6129] [3586] Formation of such partnerships.—The persons desirous of forming such partnership shall make and severally sign a certificate, which shall contain:

1. The name or firm under which the partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence.
4. The amount of capital which each special partner shall have contributed to the common stock.
5. The period at which the partnership is to commence, and the period at which it is to terminate. [Id.]

Art. 6114. [6130] [3587] Certificate to be acknowledged.—The certificate shall be acknowledged by the several persons signing the same, before any officer authorized to take acknowledgments for record, and such acknowledgment shall be made and certified in the same manner as the acknowledgment of the conveyances of land. [Id.]

Art. 6115. [6131] [3588] Filing and recording certificate.—The certificate so acknowledged and certified shall be filed in the office of the clerk of the county in which the principal place of business of the partnership shall be situated, and shall also be recorded by him at large in a book to be kept for that purpose, open to public inspection. If the partnership shall have places of business situated in different counties, the certificate and acknowledgment thereof shall be filed and recorded in like manner in the office of the county clerk of every such county. [Id.]

Art. 6116. [6132] [3589] Affidavit of general partner.—At the time of filing the original certificate with the evidence of the acknowledgment thereof, as before directed, an affidavit of one or more of the general partners shall also be filed in the same office, stating that the sums specified in the certificate to have been contributed by each of the special partners, to the common stock, have been actually and in good faith paid in cash. [Id.]

Art. 6117. [6133] [3590] Prerequisites indispensable.—No such partnership shall be deemed to have been formed until a certificate shall have been made, acknowledged, filed and recorded, nor until an affidavit shall have been filed as above directed; and, if any false statement be made in such certificate or affidavit, all the persons interested in such partnership shall be liable for all the engagements thereof as general partners. [Id.]

Art. 6118. [6134] [3591] Terms to be published.—The partners shall publish the terms of the partnership when registered for at least six weeks immediately after such registry, in such newspapers as shall be designated by the clerk in whose office such registry shall be made; and if such publication be not made the partnership shall be deemed general. [Id.]

Art. 6119. [6135] [3592] Publisher's affidavit.—An affidavit of the publication of such notice by the publisher of the newspapers in which the same shall be published may be filed with the clerk directing the same, and shall be evidence of the facts therein contained. [Id.]

Art. 6120. [6136] [3593] Renewal of partnership.—Every renewal or continuance of such partnership beyond the time originally fixed for its duration shall be certified, acknowledged and recorded, and an affidavit of a general partner be made and filed, and notice given in the manner herein required for its original formation; and every such partnership which shall be otherwise renewed or continued shall be deemed a general partnership. [Id.]

Art. 6121. [6137] [3594] Certain alterations a dissolution.—Every alteration which shall be made in the names of the partners, in the nature of the business, or in the capital or shares thereof, or in any other matter specified in the original certificate, shall be deemed a dissolution of the partnership; and every such partnership which shall in any manner be carried on after any such alteration shall have been made shall be deemed a general partnership, unless renewed as a special partnership according to the provisions of the preceding article. [Id.]

Art. 6122. [6138] [3595] Firm name.—The business of the partnership shall be conducted under a firm in which the names of the general partners only shall be inserted, without the addition of the word "company," or any other general term; and if the name of any special partner be used in such firm, with his privity, he shall be deemed a general partner. [Id.]

Art. 6123. [6139] [3596] Suits by and against.—Suits in relation to the business of the partnership may be brought and conducted by and against the general partners, in the same manner as if there were no special partners. [Id.]

Art. 6124. [6140] [3597] Capital of special partner.—No part of the sum which any special partner shall have contributed to the capital stock shall be withdrawn by him, or paid or transferred to him in the character of dividends, profits or otherwise, at any time during the continuance of the partnership; but any partner may annually receive lawful interest on the sum so contributed by him, if the payment of such interest shall not reduce the original amount of such capital; and if, after the payment of such interest, any profits shall remain to be divided he may also receive his portion of such profits. [Id.]

Art. 6125. [6141] [3598] Reduction of special partner's capital.—If it shall appear that by the payment of interest or profits to any special partner the original capital has been reduced, the partner receiving the same shall be bound to restore the amount necessary to make good his share of the capital, with interest. [Id.]

Art. 6126. [6142] [3599] Powers of special partner.—A special partner may from time to time examine into the state and progress of the partnership concerns, and may advise as to their management. [Id.]

Art. 6127. [6143] [3600] Partners to account.—The general partners shall be liable to account to each other, and to the special partners, for the management of the concern both in law and equity, as other partners are by law. [Id.]

Art. 6128. [6144] [3601] Assignments by partnership.—Every sale, assignment or transfer of

any property or effects of the partnership made by such partnership when insolvent, or in contemplation of insolvency, or after, or in contemplation of insolvency of any partner, with the intent of giving a preference to any creditor of such partnership, or insolvent partner, over other creditors of such partnership, and every judgment confessed, lien created, or security given, by any such partnership under the like circumstances and with like intent, shall be void as against the creditors of such partnership. [Id.]

Art. 6129. [6145] [3602] Assignments contemplating insolvency.—Every such sale, assignment, or transfer of any of the property or effects of a general or special partner made by such general or special partner when insolvent, or in contemplation of insolvency, or after, or in contemplation of the insolvency of the partnership with the intent of giving to any creditor of his own, or of the partnership, a preference over the creditors of the partnership, and every judgment confessed, lien created, or security given, by any such partner under like circumstances and with like intent, shall be void as against the creditors of the partnership. [Id.]

Art. 6130. [6146] [3603] Concurrence by special partner.—Every special partner who shall violate any provision of the two preceding articles, and who shall concur in or assent to any such violation of the partnership by any individual partner, shall be liable as a general partner. [Id.]

Art. 6131. [6147] [3604] Partnership creditors preferred.—In case of the insolvency or bankruptcy of the partnership, no special partner shall, under any circumstances, be allowed to claim as creditor until the claims of all other creditors of the partnership shall be satisfied. [Id.]

Art. 6132. [6148] [3605] Dissolution before time agreed on.—No dissolution of such partnerships by the acts of the parties shall take place previous to the time specified in the certificate of its formation, or in the certificate of its renewal, until a notice of such dissolution shall have been filed and recorded and published once in each week for four weeks in a newspaper printed in each of the counties where the partnership may have a place of business, if there be such papers, and if there be no newspapers published in such county, then in a newspaper published in the nearest county where there is one. [Id.]

CHAPTER TWO

UNINCORPORATED JOINT STOCK COMPANIES

Art.
6133. Suit in company name.
6134. Service of citation.
6135. Judgment.
6136. Joint liability.
6137. Individual liability.
6138. This chapter cumulative.

Article 6133. [6149] Suit in company name.—Any unincorporated joint stock company or association, whether foreign or domestic, doing business in this State, may sue or be sued in any court of this State having jurisdiction of the subject matter in its company or distinguishing name; and it shall not be necessary to make the individual stockholders or members thereof parties to the suit. [Acts 1907, p. 240.]

Art. 6134. [6150] Service of citation.—In suits against such companies or associations, service of citation may be had on the president, secretary, treasurer or general agent of such unincorporated companies. [Id.]

Art. 6135. [6151] Judgment.—In suits by or against such unincorporated companies, whatever judgment shall be rendered shall be as conclusive on the individual stockholders and members thereof as if they were individually parties to such suits. [Id.]

Art. 6136. [6152] Joint liability.—Where suit shall be brought against such company or association, and the only service had shall be upon the president, secretary, treasurer or general agent of such company or association, and judgment shall be rendered against the defendant company, such judgment shall be binding on the joint property of all the stockholders or members thereof, and may be enforced by execution against the joint property; but such judgment shall not be binding on the individual property of the stockholders or members, nor authorize execution against it. [Id.]

Art. 6137. [6153] Individual liability.—In a suit against such company or association, in addition to service on the president, secretary, treasurer or general agent of such companies or association, service of citation may also be had on any and all of the stockholders or members of such companies or associations; and, in the event judgment shall be against such unincorporated company or association, it shall be equally binding upon the individual property of the stockholders or members so served, and executions may issue against the property of the individual stockholders or members, as well as against the joint property; but executions shall not issue against the individual property of the stockholders or members until execution against the joint property has been returned without satisfaction. [Id.]

Art. 6138. [6154] This chapter cumulative.—The provisions of this chapter shall not affect nor impair the right allowed unincorporated joint stock companies and associations to sue in the individual names of the stockholders or members, nor the right of any person to sue the individual stockholders or members; but the provisions of this chapter shall be construed as cumulative merely of other remedies now existing under the law. [Id.]

TITLE 106

PATRIOTISM AND THE FLAG

Art.
6139. Protecting the flag.
6140. Definition.
6141. Prima facie evidence.
6142. Exceptions.
6143. State Tree.
6144. Home Guard.
6145. Texas Historical Board.

Article 6139. Protecting the flag.—Whoever shall in any manner, for exhibition or display, place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag of the United States of America or State flag of this State, or shall expose or cause to be exposed to public view any such flag upon which, after this law takes effect shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall, after this law takes effect, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article or substance being an article of merchandise, or receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which, after this law takes effect, shall have been printed, painted, attached or otherwise placed, a representation of any such flag to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed. or who shall publicly mutilate, deface, defy, or defile, trample upon or cast contempt, either by words or act, upon such flag, shall forfeit a penalty of fifty dollars for each such offense. Such penalty shall be recovered with costs in a civil suit brought by and in the name of any citizen of this State. Such penalty when collected, less the reasonable cost and expense of suit and recovery, to be certified by the county attorney of the county in which the offense is committed, shall be paid into the State Treasury. Two or more penalties may be sued for and recovered in the same suit. [Acts 3rd C. S. 1917, p. 81.]

Art. 6140. Definition.—The word "flag," as used in this title, shall include any flag, standard, color, ensign or any picture or representation of either made of any substance or represented on any substance, and of any size, evidently purporting to be, either of, said flag, standard, color or ensign of the United States of America, or a picture or representation, of either upon which shall be shown the colors, the stars and stripes in any number of either, or by which the person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America, [Id.]

Art. 6141. Prima facie evidence.—The possession by one, other than a public officer, as such, of any such flag on which shall be anything made unlawful at any time, by this title, or of any article or substance or thing on which shall be anything made unlawful at any time by this title, shall be presumptive evidence that the same is in violation of this law. [Id.]

Art. 6142. Exceptions.—The preceding article shall not apply to any act permitted by the statutes of the United States, or by the United States Army and Navy regulations, nor to any newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry, or stationery for use in correspondence, on any of which shall be printed, painted, or placed said flag, disconnected from any advertisement. [Id.]

Art. 6143. State tree.—The Pecan Tree shall be the State tree of Texas and it shall be the duty of the State Board of Control and the State Parks Board to give due consideration to the Pecan Tree when planning beautification of State Parks or other public property belonging to the State. [Acts 1919, p. 155; Acts 1927, 40th Leg., p. 234, ch. 161, § 1.]

Art. 6144. Home Guard.—Whenever a state of war shall exist between the United States and another nation there may be organized and maintained without expense to this State, with the consent and under the direction of the county judge of any county, a Home Guard composed of adult citizens of the United States and of such county. Such Guard shall be organized to conform as nearly as practicable to the organization of military units, and shall at all times be subject to call to duty and to orders of the sheriff of such county. Each Guard shall be authorized to carry on and about his person pistols and other weapons as may be necessary when called to actual duty by the sheriff. Counties, cities and towns may through their lawful governing bodies appropriate from their public treasuries moneys to provide arms and ammunition for such Guard under such rules as they may prescribe, and those receiving arms from the county shall return all guns and ammunition to the county judge when not on duty. Such Guard may engage in drill at such time and place as the community officers may prescribe, and may be uniformed so as not to conflict with Section 125, Act of Congress, approved June 3, 1916. [Acts 3rd C. S. 1917, p. 79.]

Art. 6145. Texas Historical Board.—The Governor shall appoint five patriotic citizens of this State, to serve without compensation, who shall constitute the Texas Historical Board. Two of the members of said Board shall serve for a period of two years and three shall serve for four years from the date of their qualification by taking the official oath. The Governor shall, at the time of making the appointments, designate which members shall serve for two years and which shall serve for four years. The Board shall select one member as chairman and another as secretary and may adopt such rules and regulations for its control and guidance as may be necessary to carry out the purposes for which it was created, and shall hold such meetings at such times and places as may be designated by it. Said Board shall gather data relating to the history of Texas from the earliest time to the present and submit to the Legislature at each regular session, for such action as it may deem necessary, such data and such recommendations as it may see fit looking to the preservation of historic relics, and marking of historic spots, the purchase of historic grounds and the erection of fitting monuments in memory of the heroes and the heroic achievements that consecrated, sanctified, and made immortal the glorious and resplendent pages of Texas history. [Acts 2nd C. S. 1923, p. 62.]

TITLE 106A

PASSENGER ELEVATORS

Art.
6145a. Safety Devices.
6145b. Approval of Industrial Board.

Article 6145a. Safety Devices.—It shall be unlawful, after the 1st day of January, 1926, to operate passenger elevators for the carriage of passengers in any building within this State, until the same shall be equipped with a device that will prevent moving said elevator when the gate or door thereto is open; provided, however, that the installation of any such device, the design of which shall have been approved either by the United States Bureau of Standards, or by the Industrial Accident Board of the State of Texas, shall be prima facie evidence of a compliance with this act. [Acts 1925, 39th Leg., ch. 29, p. 147, § 1.]

Art. 6145b. Approval of Industrial Board.—It is hereby made the duty of the Industrial Accident Board to inspect and approve or disapprove the model, drawing, or design of any such devices as may be submitted to it in Austin, Texas, and to charge therefor a fee of $10.00. [Acts 1925, 39th Leg., ch. 29, p. 147, § 2.]

TITLE 107

PAWNBROKERS AND LOAN BROKERS

1. PAWNBROKERS

Art.
6146. Pawnbroker.
6147. Bond.
6148. Register.
6149. Pawn ticket.
6150. Failure to redeem.
6151. How notice given.
6152. Advertisement.
6153. Hours of sale.
6154. Report of sales.
6155. Expenses.
6156. Owner entitled to surplus.
6157. Payment to county treasurer.
6158. Suit for surplus.
6159. Suit upon bond.
6160. May sue officer.
6161. Common law shall govern.

2. LOAN BROKERS

6162–6165. [Amended.]
6165a. Loan brokers and regulations.

1. PAWNBROKERS

Article 6146. [6155] [3636] [3494] Pawnbroker.—A pawnbroker is one who pursues the business of lending money upon interest and receiving upon deposit any personal property as security for the payment of such loan and interest.

Art. 6147. [6156–7] Bond.—No person shall pursue the business of a pawnbroker without first having given bond, with at least two good sureties in the sum of one thousand dollars, payable to the State of Texas, and approved by and filed with the county clerk of the county in which such person proposes to pursue said business, conditioned that he will faithfully comply with each requirement of the law governing such business. A new bond shall be given in the same manner as the first every twelve months during the continuance of such business. Such bond shall be recorded and safely kept in the office of the county clerk of the county in which such pawnbroker pursues such business, the recording fee to be paid by such pawnbroker. [Acts 1874, p. 153; G. L. vol. 8, p. 155.]

Art. 6148. [6158] [3639] [3497] Register.—Each pawnbroker shall keep a well bound book, to be kept open for inspection in which he shall register all his transactions as a broker at the time the same occurs. Such register shall show—

1. An accurate description of the article pawned.
2. From whom received.
3. The time and the amount for which the article is pawned; its probable value and the rate of interest agreed upon.
4. The final disposition made of such property, and if sold to whom sold and the amount for which each article was sold. [Id.]

Art. 6149. [6159] [3640] [3498] Pawn ticket.—The broker shall give to the party pledging a ticket corresponding to the entry on the book of registry. [Id.]

Art. 6150. [6160] [3641] [3499] Failure to redeem.—If any article deposited with such broker as a pawn shall not be redeemed at or before the time agreed upon, the broker shall sell the same at public auction to the highest bidder for cash, at his usual place of business, after giving at least five days' notice of such sale. [Id.]

Art. 6151. [6161] [3642] [3500] How notice given.—Such notice of sale shall be given by posting or [of] written or printed advertisements at not less than three public places in the county where such sale is to take place, one of which places shall be the courthouse of such county. [Id.]

Art. 6152. [6162] [3643] [3501] Advertisement.—Such advertisements of sale shall state the time and place of such sale, and shall contain a full description of each article to be sold, and the name of the person depositing the same, and a copy thereof shall be filed in the office of the clerk of the county court of the county where such sale takes place. [Id.]

Art. 6153. [6163] [3644] [3502] Hours of sale.—All sales made by a pawnbroker shall be made between the hours of ten o'clock A. M. and four o'clock P. M., and no sales shall be made upon Sunday or upon a legal holiday. [Id.]

Art. 6154. [6164] [3645] [3503] Report of sales.—When a sale has been made the pawnbroker shall, within five days thereafter, file with the county clerk of the county where such sale was made, a report in writing and under oath, showing—

1. The time and place of such sale.
2. The notice given thereof.
3. A full description of the property sold and by whom deposited.
4. By whom purchased and the amount for which each article was sold.
5. The amount due the broker, principal, interest and expenses upon each article sold.
6. The amount of surplus of the proceeds of sale of each article, if any, after deducting the amount due the broker of principal, interest and expenses. [Id.]

Art. 6155. [6165] [3646] [3504] Expenses.—The expenses shall be such expenses as have been agreed upon by the parties to the contract, or if there be no agreement in regard thereto, then the reasonable expenses of the sale only, such as reasonable auctioneer's commissions, shall be allowed and deducted. [Id.]

Art. 6156. [6166] [3647] [3505] Owner entitled to surplus.—The owner or depositer of the property so sold shall be entitled upon demand to receive from such broker the surplus of the proceeds of such sale at any time within thirty days after such sale, and if no demand therefor be made within thirty days after such sale such surplus shall become the property of the county where such sale was made. [Id.]

Art. 6157. [6167] [3648] [3506] Payment to county treasurer.—Should there be any surplus of the proceeds of any sale made by a broker, he shall, at the expiration of thirty days from the day of such sale, pay such surplus to the county treasurer of the county where such sale was made, or he shall file with such county treasurer the receipt of the owner or depositor of the property sold, for such surplus, at the expiration of said thirty days. [Id.]

Art. 6158. [6168] [3649] [3507] Suit for surplus.—Suit may be brought upon the bond of the pawnbroker by the county, or by any party entitled to the surplus of any sale made by him, and upon recovery judgment shall be rendered against such pawnbroker and the sureties upon his bond for the amount of such surplus, together with ten per cent. per month on such amount for each month or fraction of a month that such surplus has been illegally withheld by such pawnbroker. [Id.]

Art. 6159. [6169] [3650] [3508] Suit upon bond.—Any person injured by the failure of a pawnbroker to comply faithfully with his contract, or with any requirement of law governing the business of pawnbrokerage, may sue upon the bond of such pawnbroker and recover such damages as he may prove himself entitled to, not to exceed the penalty of such bond. [Id.]

Art. 6160. [6170] [3651] [3509] May sue officer.—Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any provision of the law governing pawnbrokerage, shall have a right of action against such officer so failing, refusing or neglecting, for the recovery of all damages resulting from such failure, refusal or neglect. [Id.]

Art. 6161. [6171] [3652] [3510] Common law shall govern.—The rules of the common law shall govern the civil liability of pawnbrokers, except when inconsistent with any statute. [Id.]

2. LOAN BROKERS

Arts. 6162–6165. [Amended.]

Acts 1927, 40th Leg., 1st C. S., p. 30, ch. 17, § 1, amends articles 6162–6165 to read as provided in sections 2–8 without further specifying the particular articles. See article 6165a.

Art. 6165a. Loan brokers and regulations.—

Sec. 2. A loan broker is a person, firm, or corporation who pursues the business of lending money, purchasing salaries and taking for security for the payment of such loan and interest thereon an assignment of wages or assignment of wages with Power of Attorney to collect the same or other order for unpaid chattel mortgage or bill of sale upon household or kitchen furniture.

Sec. 3. That all loan brokers now doing business is this State within thirty (30) days after this Act [Art. 6165a; P. C., art. 1129a] takes effect, and such as may hereafter engage in business in this State, shall file an affidavit in the office of the County Clerk, of the County in which such loan broker is located or doing business, giving the true and correct name or names of the owner or owners of said business and name and designate some person or persons in each county or counties who is an agent, the residence of said owners, and the name or names of any and all persons in the county who are agents of the said loan-broker, upon whom service may be had or notice given in the event of any suit filed against such loan broker.

Sec. 4. That such loan brokers now doing business in this State or hereafter doing business in this State, shall, before beginning business in this State, execute and deliver a good and sufficient bond in the sum of One Thousand Dollars to such County Judge in the County in which said loan broker is located and doing business, to be approved by such Judge and payable to the said County Judge and his successors in office, conditioned that such loan broker shall comply with this Act and that all persons doing business with such loan broker who may be injured or damaged thereby may sue upon the said bond and recover for such injury or damage together with a reasonable attorney's fees to be allowed by the Court not to exceed the sum of Fifty Dollars, and also may sue in their own name and recover from said loan broker upon any and all usurious interest collected in

double the amount now provided by law. Such persons may sue and recover upon said bond from time to time until the full amount is exhausted, and when said bond is exhausted said loan broker shall be required by the County Judge to execute a new bond as above provided.

Sec. 5. All contracts for usurious or unlawful interest collected or received are declared to be contrary to public policy of this State, and all of such interest collected and contracted to be collected therefor shall be void; that each and every loan broker shall keep a well bound book in which he shall register all of his transactions with other persons as such loan broker at the time the same occur, which shall be at all times kept open for inspection, and such broker shall give to the borrower, or to all persons doing business with such broker, a ticket showing a true and correct statement of the amount of actual cash received by such borrower or person and the true and correct amount paid back by the borrower or person to such broker, giving correct dates of each and every payment or credit thereon, and said tickets shall correspond correctly with all of the entries on said register. Said register shall fully describe and show all of the articles of property securing the loan, if the same be secured by chattel mortgage or bill of sale on household or kitchen furniture, or if by a sale of wages or salary, or by an assignment of wages or salary, or assignment of wages or salary with a Power of Attorney to collect same, or of any other order for unpaid wages or salary given as security, giving the name of the person receiving the money, and the person by whom such person is employed or by whom it is expected he or she shall be employed or earn the wages or salary; said ticket shall further show the full amount of money actually received by the person and the full and total amount that is to be received back by such loan broker in full payment, and the full and correct rate of interest or discount agreed upon.

Sec. 6. Such bond when so approved by the County Judge shall be filed, together with the said affidavit, in the County Clerk's office in the County in which said loan broker is located and doing business, and the said bond shall be recorded at length by the County Clerk in a well bound book kept for that purpose. That each assignment of wages or contract providing for the purchase of wages, mortgages, Power of Attorney to collect or other transfer of the salary or wages of a married man and each bill of sale or chattel mortgage upon household or kitchen furniture of a married man shall be void unless the same be made and given with the consent of the wife, and such consent shall be evidenced by the wife joining in the assignment, mortgage, Power of Attorney to collect, or other transfer of salary or wages and the signing of her name thereto and by her separate acknowledgment thereon, taken and certified to by a proper officer, substantially in the mode provided for the acknowledgment of a wife in the conveyance of a homestead. [Acts 1927, 40th Leg., 1st C. S., p. 30, ch. 17.]

Section 7 of Acts 1927, 40th Leg., 1st C. S., p. 30, ch. 17, provides that if any part of the Acts is held invalid, such holding shall not affect the remainder, repeals all conflicting laws, and expressly repeals Rev. Crim. St. 1925, articles 1127, 1128, 1129. Section 8 being a penal provision is published as Penal Code, article 1129a.

TITLE 108

PENITENTIARIES

1. PRISON COMMISSION

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2. REGULATIONS AND DISCIPLINE

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1. PRISON COMMISSION

Article 6166. [Repealed by Acts 1927, 40th Leg., p. 298, c. 212, § 1.]

Article 6166a. Prison system.—It shall be the policy of this State, in the operation and management of the Prison System, to so manage and conduct the same in that manner as will be consistent with the operation of a modern prison system, and with the view of making the System self-sustaining; and that those convicted of violating the law and sentenced to a term in the State Penitentiary shall have humane treatment, and be given opportunity, encouragement and training in the matter of reformation. All prisoners shall be worked within the prison walls and upon farms owned or leased by the State; and in no event shall the labor of a prisoner be sold to any contractor or lessee to work on farms, or elsewhere, nor shall any prisoner be worked on any farm or otherwise, upon shares, except such farm be owned or leased by the State of Texas. [Acts 1927, 40th Leg., p. 298, ch. 212, § 2.]

Art. 6166b. Texas prison board.—There is hereby created the Texas Prison Board, which shall be composed of nine members to be appointed by the Governor with the advice and consent of the Senate, such appointments shall be made bi-annually, or on or before February 15. Each member of said Board shall be a State officer within the meaning of the Constitution, and before entering upon the discharge of his duties shall take the constitutional oath of office. The term of office of each member shall be six year [years], except that in making the first appointments the Governor shall appoint three members for a term of two years each, three members for terms of four years each, and three members for terms of six years each, so that the terms of three members shall expire every two years. Vacancies occurring in the Board shall be filled by appointment of the Governor for the unexpired term. [Acts 1927, 40th Leg., p. 298, ch. 212, § 3.]

Art. 6166c. Pay of members.—The members of the Texas Prison Board shall draw no salaries, but each member of the Board shall be entitled to a per diem of ten dollars per day and actual and necessary expenses when engaged in the discharge of his official duties. [Acts 1927, 40th Leg., p. 298, ch. 212, § 4.]

Art. 6166d. Meetings.—The Texas Prison Board shall hold a regular meeting on the first Monday in January, March, May, July, September and November of each year for the transaction of any and all official business. Special meetings of said Board may be called by the Chairman, and upon the petition of five members special meetings of said Board shall be called. Each member of the Board shall be given notice of special meetings and of the purpose thereof, and unless such notice has been given no official business shall be transacted at any special meeting. Six mem-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

bers of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. [Acts 1927, 40th Leg., p. 298, ch. 212, § 5.]

Art. 6166e. Organization.—The Board shall organize by the election of a Chairman and a Vice-chairman from among its members, and shall provide for the appointment of such committees as may be expedient to the accomplishment of the duties of said Board. The Board shall have authority to employ such clerical assistance as may be necessary for the discharge of its duties. [Acts 1927, 40th Leg., p. 298, ch. 212, § 6.]

Art. 6166f. Removal or suspension of members.—If any member of the Board shall be guilty of malfeasance, misfeasance or non-feasance in office, or shall become incapable or unfit to discharge his official duties or shall willfully fail, refuse or neglect the discharge of the duties of his office, such member may be removed from office in either of the following ways:

(1) By the Governor in the manner provided by law.

(2) By suit brought by the Attorney General in the name of the State on his own motion or at the direction of the Governor on the relation of the Governor, in the District Court of Travis County or in the District Court of the county of residence of such member. The Attorney General shall bring such suit when directed by the Governor to do so, provided the Governor accompanies such direction with charges and evidence showing that the member is subject to removal as provided herein. Upon the application of the Attorney General in the name of the State of Texas, the District Judge before whom such suit is pending may immediately suspend the member from office, and such order of suspension shall be effective until set aside by the Court on motion. Such motion, when filed, shall have preference over all other causes pending in such Court. If the judgment of the Court be one of removal from office, the member shall be forthwith suspended from office pending any appeal of the case. When the member is so suspended, the District Judge at the time of making such order of suspension, shall appoint for the duration of such suspension some other qualified person to perform the duties of the suspended member, and such appointee shall receive the same compensation as a member of the Board. The suit shall be a civil action, to be tried as other civil cases, with the right of appeal and review as in other cases. The Court shall have authority to issue all necessary writs to enforce its judgment or order of suspension and to protect its jurisdiction over each case. Such suit shall have precedence over all other cases in the trial and appellate courts. [Acts 1927, 40th Leg., p. 298, ch. 212, § 7.]

Art. 6166g. Control of prison system.—The Texas Prison Board, together with the manager hereinafter provided for, shall be vested with the exclusive management and control of the Prison System, and all properties belonging thereto, subject only to the limitations of this Act [Arts. 6166a–6166z7], and shall be responsible for the management of the affairs of the Prison System and for the proper care, treatment, feeding, clothing and management of the prisoners confined therein. [Acts 1927, 40th Leg., p. 298, ch. 212, § 8.]

Art. 6166h. Manager's reports.—The Texas Prison Board shall cause the manager hereinafter provided for to make full and complete reports to each regular meeting of said Board of the fiscal affairs of said Prison System and of the general conditions with relation thereto. On the first day of January of each year, said Board shall cause a full and complete inventory of all property of every description belonging to the Prison System to be made, and there shall be set opposite each item the book and actual market value of same. Said inventory shall further include a statement of the fiscal affairs of said System as of the first day of January; and a sufficient number of copies of such inventory and report shall be printed to give general publicity thereto. [Acts 1927, 40th Leg., p. 298, ch. 212, § 9.]

Art. 6166i. Suits by board.—The Texas Prison Board is authorized to bring and maintain suits for the collection and enforcement of all demands and debts owing to the prison system. The venue of such suits shall be in Travis County, and such suits shall be instituted and prosecuted by the Attorney General. No bond for costs, appeal bond, supersedeas bond, writ of error bond, or other security shall at any time be required of the Texas Prison Board in any civil suit of any kind brought by or against it or them in its or their official capacity as such Board or members thereon, except such suits as may be brought against it or them by the State of Texas. Nothing in this section shall authorize any civil suit of any kind whatsoever to be brought or prosecuted against said Board or any member thereof as such, except by way of offset or counter claim to an action originally brought by said Board. [Acts 1927, 40th Leg., p. 298, ch. 212, § 10.]

Art. 6166j. Manager's authority and pay.—The Texas Prison Board shall employ a general manager of the prison system, who shall possess qualifications and training which suit him to manage the affairs of a modern penal institution, and it shall be his duty to carry out the policies of the Texas Prison Board. The Board shall manage and control the prison system through the manager selected by it. In addition to his salary, which salary shall not exceed Eight Thousand ($8,000.00) Dollars per annum, said manager shall be furnished with a dwelling house by the State and all necessary traveling expenses when traveling on business for the prison system. The Board shall delegate to such manager authority to manage the affairs of the prison system, subject to its control and supervision. The duty of such manager shall extend to the employment and discharge, with the approval of the Board, of such persons as may be necessary for the efficient conduct of the prison system. The manager, with the consent of the Texas Prison Board, shall have power to prescribe reasonable rules and regulations governing the humane treatment, training and discipline of prisoners, and to make provision for the separation and classification of prisoners according to sex, color, age, health, corrigibility, and character of offense upon which the conviction of the prisoner was secured. [Acts 1927, 40th Leg., p. 298, ch. 212, § 11.]

Art. 6166k. Manager's removal.—The Texas Prison Board shall have the power at any time to remove the manager for inefficiency, improper conduct, or for any other cause or reason after due notice to him of their intention, and an opportunity given to said manager to be heard. [Acts 1927, 40th Leg., p. 298, ch. 212, § 12.]

Art. 6166l. Manager's accounts.—The manager shall keep, or cause to be kept, correct and accurate accounts of each and every financial transaction of the Prison System, including all receipts and disbursements of every character. He shall receive and receipt for all money paid to him from every source whatsoever, and shall sign all warrants authorizing any disbursement of any sum or sums on account of the prison system, and no money shall be paid out on any account of the prison system except on a warrant signed by him and countersigned by the auditor of the prison system. He shall keep full and correct accounts with each industry, department and farm of the prison system, and with all persons, firms, or corporations having financial transactions with the prison system. He shall have power to require all necessary reports from any department, officers or employees of the prison system at stated intervals. [Acts 1927, 40th Leg., p. 298, ch. 212, § 13.]

Art. 6166m. Remittances to State Treasurer.—On Monday of each week, the manager shall remit to the State Treasury all moneys received by him during the preceding week and belonging to the prison system. Such funds when received shall be deposited by the State Treasurer upon the warrant of the Comptroller to the credit of the general revenue fund. The manager shall be furnished with a receipt for such money, and a duplicate of such receipt shall be sent

to the chairman of the Texas Prison Board, and another duplicate to the State Prison auditor. All bills and accounts of said prison system shall be paid from appropriations made by the Legislature from the general revenue fund of the State, upon sworn accounts and warrants drawn by the State Comptroller on the State Treasurer in the same manner as provided by general law. Each account shall be approved by the manager and audited by the auditor of the prison system. The Comptroller shall have authority to issue warrants, and the Treasurer to pay the same, upon accounts approved by the manager and audited by the auditor, where the amount of such account does not exceed $5,000.00; and where the amount of the account is in excess of $5,000.00, before the Comptroller shall issue a warrant for the same or the Treasurer pay such warrant, such account shall be approved for payment by the chairman of the Prison Board. [Acts 1927, 40th Leg., p. 298, ch. 212, § 14.]

Art. 6166n. Competitive bids for contracts.—All contracts for the purchase of materials, supplies, equipment and sustenance for the prison system shall be upon competitive bids, except as hereinafter provided. Where the amount to be expended is in excess of the sum of $2,000.00 the purchase shall be made upon sealed competitive bids received by the manager after ten days advertisement in some paper or papers of general circulation in this State. Where the amount of the purchase is less than $2,000.00 the manager shall, before letting any contract for such purchase, ask and receive not less than three sealed competitive bids for such contract. In cases of emergency where the contemplated expenditure does not exceed $500.00, the purchase may be made without for competitive bids. [Acts 1927, 40th Leg., p. 298, ch. 212, § 15.]

Art. 6166o. Sale of prison products.—The Board shall have power to authorize the manager to sell and dispose of all products of all farms and industries connected with the prison system and all personal and moveable property, at such prices and on such terms and render such rules as it may deem best and adopt; and it may lease any real estate for agricultural or grazing purposes or lease other fixed property and appurtenances belonging thereto upon such terms as it may deem advantageous to the interests of the prison system. [Acts 1927, 40th Leg., p. 298, ch. 212, § 16.]

Art. 6166p. Bonds of manager and others.—The Texas Prison Board shall require the manager to execute a good and sufficient bond payable to the State of Texas in the sum of $50,000.00, conditioned for the faithful performance of the duties of his office and the accurate accounting for all moneys and property coming into his hands; and it may require of other officers, employees and agents of the prison system a good and sufficient bond in such sum as it may determine upon, payable to the State of Texas upon like condition. Such bonds shall be approved by the Texas Prison Board and filed with the Comptroller, and shall be executed by a surety company authorized to do business under the laws of this State, and the premium on any such bond shall be paid by the State out of the support and maintenance fund of the prison system. [Acts 1927, 40th Leg., p. 298, ch. 212, § 17.]

Art. 6166q. Auditor appointed and duties.—On the taking effect of this Act and biennially thereafter, there shall be appointed by the Attorney General, Treasurer and Comptroller, a permanent auditor for the prison system, who shall hold his office for a term of two years, subject to discharge at any time as herein provided. It shall be the duty of such auditor to audit all accounts, vouchers, payrolls and all other business transactions of the prison system, and to check all property, material and supplies received and disposed of by or within the prison system, and he shall make full report to the Governor on the first day of each month. Such auditor shall be subject to discharge at any time by the appointing board, consisting of the Attorney General, Treasurer and Comptroller, for incompetency, neglect, failure or refusal to discharge the duties of his office, or for any wrongful conduct that in the judgment of such appointing board renders him unfit for such service. During the term of his service, such auditor shall be paid a salary not to exceed Three Hundred ($300.00) Dollars per month, and all actual and necessary traveling expenses, to be paid at the end of each month out of funds appropriated for the maintenance and support of the prison system. Such auditor shall have free access to all books and records of whatsoever nature belonging to the prison system; and he shall give bond in the sum of $10,000.00, to be payable, conditioned, executed and approved in like manner as the bond of the manager herein provided for. It shall be the duty of such auditor to audit all vouchers and accounts for payment out of appropriations made for the support of the prison system. [Acts 1927, 40th Leg., p. 298, ch. 212, § 18.]

Art. 6166r. Transportation of prisoners.—The manager shall make suitable provision and regulations for the safe and speedy transportation of prisoners from counties where sentenced to the State penitentiary by the sheriffs of such respective counties if such sheriffs are willing to perform such services as cheaply as said commission can have it done otherwise. Said transportation shall be on State account and in no instance shall the prisoners be carried direct from the county jails to the State farm, but shall first be carried to the receiving station as designated by the Prison Board where the character of labor which each prisoner may reasonably perform shall be determined. Upon the arrival of each prisoner at such receiving station, the manager shall cause a statement to be made by the prisoner, giving a brief history of his life, and showing where he has resided, the names and post-office addresses of his immediate relatives, and such other facts as will tend to show his past habits and character; and the manager shall, by correspondence, or otherwise verify or disprove such statements, if practicable, and shall preserve the record and information so obtained for future reference. [Acts 1927, 40th Leg., p. 298, ch. 212, § 19.]

Art. 6166s. Manager and members of board to administer oaths.—The manager and each member of the Prison Board, in the discharge of their duties, are authorized to administer oaths, to summon and examine witnesses, and take such other steps as may be necessary to ascertain the truth of any matter about which they may have the right to inquire. [Acts 1927, 40th Leg., p. 298, ch. 212, § 20.]

Art. 6166t. Food for prisoners.—The manager shall see that all State prisoners are fed good and wholesome food, properly prepared under wholesome, sanitary conditions, and in sufficient quantity, and reasonable variety, and he shall hold under officers performing this work strictly to account for any failure to carry out his [this] provision. That the food may be properly prepared, he shall provide for the training of prisoners as cooks. Prisoners shall not be allowed spirituous, vinous nor malt liquors, except from the prescription of a physician. [Acts 1927, 40th Leg., p. 298, ch. 212, § 21.]

Art. 6166u. Separation of female prisoners.—All female prisoners shall be kept separate and apart from the male prisoners. Where practicable, the manager shall keep the female prisoners upon a separate farm, or at a separate prison from the male prisoners, and shall provide reasonable rules and regulations for the government of same. [Acts 1927, 40th Leg., p. 298, ch. 212, § 22.]

Art. 6166v. Commutation for good conduct.—In order to encourage prison discipline, a distinction may be made in the treatment of prisoners so as to extend to all such as are orderly, industrious and obedient, comforts and privileges according to their deserts. The reward to be bestowed on prisoners for good conduct shall consist of such relaxation of strict prison rules and extension of social privileges as may be consistent with proper discipline, commutation of time for good conduct shall be granted by the manager, and the following deduction shall be made from the term or terms of sentences when no charge[s] of mis-

conduct has been sustained against a prisoner, viz.: Two days per month off of the first year's sentence; three days per month off of the second year of sentence; four days per month off of the third year of sentence; five days per month off of the fourth year of sentence; six days per month off of the fifth year of sentence; seven days per month off of the sixth year of sentence; eight days per month off of the seventh year of sentence; nine days per month off of the eighth year of sentence; ten days per month off of the ninth year of sentence; fifteen days per month off of the tenth year, and all succeeding years of sentence. A prisoner under two or more cumulative sentences shall be allowed commutation as if they were all one sentence. For each sustained charge of misconduct in violation of any rule known to the prisoner in any year of the term each commutation allowed for one month of such year may be forfeited, for any sustained charge of escape or attempt to escape, mutinous conduct or other serious misconduct, all the commutation which shall have accrued in favor of the prisoner up to that day shall be forfeited unless in case of escape, the prisoner voluntarily returns without expense to the State, such forfeiture may be set aside by the manager. For extra meritorious conduct on the part of any prisoner, he shall be recommended to the favorable consideration of the Governor for increased commutation or pardon, and in case of any prisoner who shall have escaped and been captured, part or all of his good time thereby forfeited may be restored by the manager, if in his judgment his subsequent conduct entitles him thereto. [Acts 1927, 40th Leg., p. 298, ch. 212, § 23.]

Art. 6166w. Clothing.—Suitable clothing of substantial material, uniform make and reasonable fit, and such footwear as will be substantial and comfortable, shall be furnished the prisoners, and no prisoner shall be allowed to wear other clothing than that furnished by the prison authorities, except in case of extra meritorious conduct only. The manager may allow the prisoners to wear citizens underwear. [Acts 1927, 40th Leg., p. 298, ch. 212, § 24.]

Art. 6166x. Labor of prisoners.—Prisoners shall be kept at work under such rules and regulations as may be adopted by the manager with the Board's approval; provided, that no prisoner shall be required to work more than ten hours per day, except in case of extreme and unavoidable emergency, which time shall include the time spent in going to and returning from their work, but not to include the intermission for dinner, which shall not be less than one hour. And in cases of such extreme and unavoidable emergency said prisoners shall receive a deduction of time equal to double the hours so worked from the term or terms of sentence. In going to and returning from work, prisoners shall not be required to travel faster than a walk. No greater amount of labor shall be required of any prisoner than his physical health and strength will reasonably permit, nor shall any prisoner be placed at such labor as the prison physician may pronounce him unable to perform. No prisoner upon his admission to the prison shall be assigned to any labor until first having been examined by the prison physician. Any officer or employee violating any provision of this Section shall be dismissed from the service. [Acts 1927, 40th Leg., p. 298, ch. 212, § 25.]

Art. 6166y. Prisoners' money.—Prisoners when received into the penitentiary shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the manager, and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order, and under such restrictions as may be prescribed by law or the rules. Any officer or employee having charge of the prisoner's money who misappropriates the same, or any part thereof, shall be deemed guilty of a felony, and, upon conviction thereof, shall be confined in the penitentiary for a term of not more than five years. [Acts 1927, 40th Leg., p. 298, ch. 212, § 26.]

Art. 6166z. Reports of death.—The manager or other person in charge of prisoners, upon the death of any prisoner under their care and control, shall at once notify the nearest justice of the peace of the county in which said prisoner died, of the death of said prisoner, and it shall be the duty of said justice of the peace, when so notified of the death of such prisoner, to go in person, and make a personal examination of the body of such prisoner, and inquire into the cause of the death of such prisoner, and said justice of the peace shall reduce to writing the evidence taken during such inquest, and shall furnish a copy of the same to the manager, and a copy of the same to the district judge of the county in which said prisoner died, and the copy so furnished to said district judge shall be turned over by the district judge to the succeeding grand jury, and the said judge shall charge the grand jury, if there should be any suspicion of wrongdoing shown by the inquest papers, to thoroughly investigate the cause of such death. Any officer or employee of the prison system having charge of any prisoner at the time of the death of such prisoner, who shall fail to immediately notify a justice of the peace of the death of such prisoner shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, and by confinement in the county jail, not less than sixty days, nor more than one year, provided, that the justice of the peace making such examination shall be paid a fee as is now provided by law for holding inquests, said fee to be on sworn account therefor, and approved by the manager. [Acts 1927, 40th Leg., p. 298, ch. 212, § 27.]

Art. 6166z1. Discharge.—When a prisoner is entitled to a discharge from the prison, he or she shall be furnished with a written or printed discharge from the manager, with seal affixed, signed by the manager, giving prisoner's name, date of sentence, from what county sentenced, amount of commutation received, if any, the trade he has learned, if any, his proficiency in same, and such other description as may be practicable. Such discharged person shall be furnished with a decent outfit of citizen's clothing of good quality and fit, two suits of underwear, fifty dollars in money in addition to any money held to his or her credit, provided that if the actual time served exceed ten years, the sum of money shall be seventy-five dollars, and if the actual time served exceed twenty years, the sum of money shall be one hundred dollars. As far as may be practicable the Prison Board may authorize the creation of a bureau for the purpose of placing discharged prisoners in connection with employment, provided such will not be an extra expense to the prison system. [Acts 1927, 40th Leg., p. 298, ch. 212, § 28.]

Art. 6166z2. Visitors admitted.—The Governor, and all other members of the Executive and Judicial Departments of the State and members of the Legislature shall be admitted into the prisons, camps and other places where prisoners are kept or worked, at all proper hours, for the purpose of observing the conduct thereof, and may hold conversation with the convicts apart from all prison officers. Other persons may visit the penitentiary under such rules and regulations as may be established. [Acts 1927, 40th Leg., p. 298, ch. 212, § 29.]

Art. 6166z3. Rewards on escape.—The manager, with the Board's approval, may offer such reward for the apprehension of an escaped prisoner, as may be fixed by the manager and to be paid as directed by the manager. [Acts 1927, 40th Leg., p. 298, ch. 212, § 30.]

Art. 6166z4. Guards and other officers.—Any sergeant, guard or other officer or employee of the prison system of this State, who shall inflict any punishment upon a prisoner not authorized by the rules of the prison system, shall be guilty of an assault, and upon conviction thereof, shall be punished as prescribed by law, and it shall be the duty of the manager to make complaint before the proper officer of any county in which such assault was committed upon such prisoner. Provided, that in all cases where any person is charged by complaint or indictment with an offense against a prisoner, prisoners and ex-prisoners

shall be permitted to testify. [Acts 1927, 40th Leg., p. 298, ch. 212, § 31.]

Art. 6166z5. Gambling forbidden.—No gambling shall be permitted at any prison, farm or camp where prisoners are kept or worked. Any officer or employee engaging in or knowingly permitting gambling at any such prison, farm or camp shall be immediately dismissed from the service. [Acts 1927, 40th Leg., p. 298, ch. 212, § 32.]

Art. 6166z6. Seal of board.—The prison Board shall provide a seal whereon shall be engraved in the center a star of five points and the words, "Prison Board of Texas," around the margin, which seal shall be used to attest all official acts. [Acts 1927, 40th Leg., p. 298, ch. 212, § 33.]

Art. 6166z7. Board of prison commissioners abolished.—If any section or provision of this Act [Arts. 6166a–6166z7] shall contravene the terms of the Constitution of this State, or be otherwise held invalid for any reason, the same shall not affect the validity of the remainder of the Act. The Board of Prison Commissioners is abolished and all power, authority, duties and functions of the Board of Prison Commissioners of this State under other laws of this State and not repealed by this Act and not in conflict herewith, shall hereafter vest in and be performed by the Texas Prison Board created by this Act. [Acts 1927, 40th Leg., p. 298, ch. 212, § 34.]

Art. 6166z8. Sale of prison made goods.—Sec. 1. No sale of prison made goods in intra state commerce in this State shall ever be valid, and no action shall be brought in this State to enforce the collection or payment of any money or other thing of value pursuant to any such sale, unless at the time of such sale there is attached to the container or package thereof and upon each and every individual garment or article of such goods so sold, a plain and distinct label printed in the English language, containing the printed words "PRISON MADE MERCHANDISE," which printed words shall be printed in type not less than one-fourth of an inch in height and shall be plainly legible.

Sec. 2. The words "PRISON MADE GOODS" as used in this Act mean any goods, wares, merchandise or articles manufactured, produced or made, in whole or in part, in any penitentiary or reformatory or penal institution or by any convicts or prisoners or persons serving sentences in a reformatory or penal institution of any kind. [Acts 1927, 40th Leg., p. 370, ch. 251.]

Arts. 6167–6180. [Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1.]

2. REGULATIONS AND DISCIPLINE

Arts. 6181–6202. [Repealed by Acts 1927, 40th Leg., p. 298, ch. 212, § 1.]

Art. 6203. [6086–7–8] Board of Pardons.—The Governor is hereby authorized to appoint two qualified voters of this State, to be known as the Board of Pardon Advisers, who shall perform such duties as he may direct, and as herein provided, consistent with the Constitution, in disposing of the applications for pardon. When an application for pardon is referred to it by the Governor, the secretary or clerk of said Board shall immediately, by registered mail, notify the prosecuting officer, or officers, and the sheriff of the County in which the applicant was convicted, or in which the alleged crime was committed, or both, of the filing of such application, and that they, or either of them, or any interested party, may, within thirty days from the receipt of such notice, present in person or in writing to said Board their objection to the granting of such pardon. Said Board shall be given a room in the Capitol, properly furnished with necessary furniture and file cases, and provided with such stationary [stationery] and other appliances as may be necessary for the speedy and proper dispatch of the business for which it is organized. It shall make a thorough examination of each application that the Governor may refer to it and report in writing its recommendation thereon to him. Said Board shall spend such time each year as may be necessary in personally looking into the conditions of such convicts as it may desire, or as may be designated by the Governor, giving special attention to the cases of those of long service who may be so designated and who have no means for getting a proper petition before the Governor, to the end that the Board may have before it such data as will enable it to judge the condition of such convict and correctly to inform the Governor in reference thereto. All applications for pardon shall be taken up, considered and acted upon by said Board in the regular order of reference by the Governor, except when it appears to the members of said Board that there is extraordinary emergency in any case, in which event, the same may, with the consent of the Governor, be considered out of the regular order or [of] its reference. Said Board shall keep a record in which shall be entered every case sent it by the Governor, giving the docket number of the convict, his name, age, when and where convicted, his offense, his sentence, when received from the Governor, when notice of the application was given, the action taken by the Board on the application, and the date of said action. [Acts 1905, p. 68; Acts 2nd C. S. 1919, p. 25; Acts 1927, 40th Leg., p. 217, ch. 147, § 1.]

TITLE 109

PENSIONS

1. STATE AND COUNTY PENSIONS

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1. STATE AND COUNTY PENSIONS

Article 6204. [6267] Tax.—There shall be levied and collected in the same manner and at the same time that other taxes are levied and collected for the year 1925, and annually thereafter, an ad valorem tax of seven cents on the one hundred dollars valuation thereof on all property owned in the State on the first day of January of the year 1925, and of every year thereafter and on all property sent out of the State prior to the first day of January of any of said years, for the purpose of evading the payment of taxes thereon, and afterwards returned to the State, except so much thereof as may be exempted by the Constitution and laws of this State or of the United States which valuation shall be made in the manner pre-

scribed by law for the assessment, levy and collection of other State and county taxes, which said tax so levied and collected, shall be paid into the treasury of the State of Texas, in the same manner as other State taxes, and shall constitute a special fund for the payment of pensions provided for in Section 51 of Article 3 of the State Constitution, in the manner and under the rules and regulations prescribed herein and prescribed in existing law not repealed hereby and as may be hereafter prescribed by law. Which said fund is hereby expressly appropriated by the Legislature of the State of Texas for the purpose herein stated. This Act shall not affect or release the liability of any person for taxes, penalties, interest or costs accruing under prior laws or the right to collect or enforce collection thereof by suit or otherwise. [Acts 1925, p. 222.] [39th Leg., ch. 69, § 1.]

Art. 6205. [6267a] To whom granted.—Out of the fund to be created under the provisions of Article 6267 as amended there shall be paid an annual pension of twenty-five dollars per month, the same to be paid quarterly on the first day of September, December, March, and June of each year to every indigent or disabled Confederate soldier or sailor who came to Texas prior to January 1, 1910, and to their widows, in indigent circumstances and who have been bona fide residents of this State since January 1, 1910, and who were married to such soldiers or sailors prior to January 1, 1910, and to indigent and disabled soldiers who under the Special Laws of the State of Texas during the war between the states served in organizations for the protection of the frontier against Indian raiders or Mexican marauders and to indigent or disabled soldiers of the militia of the State of Texas who were in active service during the war between the states and to the widows of such soldiers who are in indigent circumstances and who were married to such soldiers prior to January 1, 1910, provided that the word "widow" as used in this article shall not apply to women born since the year 1861, and all soldiers and sailors and widows of soldiers and sailors eligible under the above conditions shall be entitled to be placed upon the pension rolls and participate in the distribution of the pension fund of this State under any existing law or laws hereafter passed by the Legislature; and the fact of remarriage since the death of the soldier or sailor shall not bar his surviving widow from receiving a pension hereunder if she be now a widow and in indigent circumstances, if she shall have been the wife of such soldier or sailor at the time of his death and left by him as his widow; and provided that in the event such fund provided for in Article 6204 shall prove insufficient to pay in full said pension there shall not thereby be created a deficiency outstanding as a valid claim against the State of Texas, and each pensioner shall receive, except as herein or in other law or laws otherwise provided for, his or her pro rata according to the amount of such fund collected for the year. [Id. p. 222.]

Articles 6206 and 6207 embraced in previous articles.

Art. 6208. [6268] Application requirements.—Persons entitled to a pension under this title shall make application for same in writing and under oath to the county judge of his or her county. Such application shall state the name, age, residence of the applicant, and occupation, if any, his or her physical condition, and every fact necessary to entitle the applicant to the pension. If the applicant is such a soldier or sailor as is prescribed herein, he shall state in his application the company and regiment in whch he was enlisted; if he served in an organization for the protection of the frontier against Indian raids or Mexican marauders, he shall name and identify such organization; if he were an officer commissioned by the President of the Confederate States or by the Governor, or other proper authority of this State, in the army, navy, militia or frontier organization, he shall state the date of his commission and his rank therein; and if detailed directly under the provisions of the conscript law for duty in the armories or shops of the Confederate Government or for any other labor necessary for the maintenance of the army in the field, or if he served in the Confederate Navy, he shall state the time of service in each case. Each applicant shall state in his application what property and income he possesses, and furnish the testimony of at least two credible witnesses who personally know that he enlisted in the service and performed the duties as claimed by him. If he cannot secure the testimony of two witnesses, he may furnish documents or other evidence of his service. [Acts 1909, p. 231; Acts 1913, p. 282; Acts 1917, p. 413.]

Art. 6209. [6268] Proof, how made.—Proof shall be made under oath and in writing before the county judge of the county where the applicant resides. Should the applicant or witnesses, because of circumstances beyond the control of the applicant, be unable to appear before the county judge, then such proof may be made before any officer authorized to administer oaths. When the proof is made before any other officer, the county judge shall certify that the applicant and witnesses are of trustworthy character and entitled to credit and that the officer before whom the proof is made is duly qualified and authorized by law to administer oaths and take affidavits; he shall also certify to the citizenship of the applicant, and that the applicant has been a bona fide resident of the county for a period of six months next before the date of said application. The officer taking the proof shall administer the oath to each applicant and witness before they sign the affidavit. [Acts 1909, p. 231.]

Art. 6210. [6268] Out of county.—If it is necessary for the applicant to go outside of the county and State for proof to establish his application, such proof may be submitted in the form of affidavits and accompanied by certificates from the county judge of the county where made, that the witnesses are of trustworthy character and entitled to credit. [Id.]

Art. 6211. [6268–69] Widow's application.—No widow shall be entitled to a pension should her husband, if living, be for any reason debarred. If the applicant is the widow of a soldier or sailor, who, if living would be entitled to a pension, she shall make oath that she is in fact the widow of such soldier or sailor and, as near as possible, state the facts showing her to be entitled to receive a pension under the provisions of this title in the same manner as required of a soldier or sailor. In case such widow cannot make such proof, she may comply with the provisions of the succeeding article. [Id.]

Art. 6212. [6270] Proof by affidavit.—The widow of a Confederate soldier or sailor, entitled to a pension may make affidavit to the county judge:

1. That she is in fact the widow of a Confederate soldier or sailor.

2. That her said husband rendered valuable service to the Confederacy, as such, that he did not desert, and was either killed or died, or was honorably discharged from the army.

3. That she has made diligent search for information as to the number of regiment and company in which her deceased husband served, and has been unable to secure the same.

The affidavit shall be filed with the county clerk, and the county judge may take such other evidence as he may deem necessary; and, if in his judgment he finds that she is the widow of a Confederate soldier or sailor, that all witnesses to the said fact are dead, or their whereabouts unknown to said widow and are unascertainable, he may upon his own motion, recommend to the Comptroller the grant of a pension to such widow; and, if he is satisfied that she is entitled to a pension under the provisions of this title he may grant it. [Id.]

Art. 6213. [6271] Soldier must have served honorably.—Every Confederate soldier applying for a pension under this title shall have served honorably

from the date of his enlistment until the close of the war, or until he was discharged or paroled in some military organization regularly mustered into the army or navy of the Confederate States until the surrender. The county judge shall reduce the evidence of witnesses examined by him to writing at the expense of the applicant at the rate of five cents per hundred words. The applicant may have such evidence written by his attorney, or such person as may be employed to secure the pension; and the county judge shall certify to the written statement of the evidence when taken before him. The application, affidavit and certified statement of the evidence shall be forwarded to the Comptroller. [Id.]

Art. 6214. [6272] What constitutes indigency.—To constitute indigency within the meaning of this Title, neither the applicant nor his wife, if married, nor both together, nor the widow, if the applicant be a widow, shall own property, real or personal, exceeding in value One Thousand ($1,000.00) Dollars, exclusive of homestead, and if its assessed value be not in excess of Two Thousand ($2,000.00) Dollars and exclusive of household goods and wearing apparel; and such applicant shall not have an income, annuity, or emoluments of office or wages for services in excess of Three Hundred ($300.00) Dollars per year, nor the aid of a pension from another state of the United States. Only the indigent, under the foregoing definition, shall be entitled to a pension under this title. [Acts 1909, p. 231; Acts 1913, p. 282; Acts 1917, p. 412; Acts 1923, p. 202; Acts 1927, 40th Leg., p. 146, ch. 95, § 1.]

Art. 6215. [6273] Payments; affidavit; warrant.—The payment of such pension shall begin on the first day of March and September of each year, payable at the end of each quarter and on and after the first of each quarter. The pensioner shall make affidavit, or, in case of old age, infirmities, or physical disabilities, preventing him or her from appearing before some one authorized to administer oaths, make statement in writing as to his or her claim or rights, in the presence of two credible witnesses who are in no wise related to the applicant, stating the county of his or her residence, postoffice address, and that he or she is the identical person to whom a pension has been granted under this law, and that the conditions which existed at the time of making his or her application and on which the pension was originally granted, still exist, which affidavit shall be supported by the affidavit of some other credible person to the same fact, and shall be filed with the Comptroller who shall draw his warrant to the amount of such pension on the Treasurer, to be paid out of money in the Treasury appropriated to this purpose. [Acts 1909, p. 231; Acts 1915, p. 158.]

Art. 6216. Proof in case of disability.—If the pensioner, on account of old age, infirmity, or physical disability, shall make a statement in writing in the presence of two credible witnesses, as hereinbefore provided, it shall be sufficient for one of such witnesses, in whose presence the statement was made, to make affidavit stating that said statement was made and signed in his or her presence and that the statements contained therein are within the knowledge of affiant, true and correct, and when such affidavit has been made by such proven person and approved by the Comptroller, he shall draw his warrant for the amount of such pension in the same manner as if the oath had been made by the pensioner. [Id.]

Art. 6217. [6274] Pensions denied to whom.—No application shall be allowed, nor shall any aid be given or pension paid, to any soldier or sailor, or the widow of any soldier or sailor under the provisions of this title, where any such soldier or sailor deserted his command or voluntarily abandoned his post of duty, or the said service during the said war, nor shall any application be allowed, nor any aid given, nor any pension paid, to any widow of a soldier or sailor who has been divorced from such soldier or sailor, nor to any widow who voluntarily without cause abandoned such soldier or sailor, being her husband, and continued to live separately from him up to the time of his death, nor to a soldier or sailor who served as a substitute for another, nor to the widow of a substitute. [Acts 1909, p. 231.]

Art. 6218. [6276] Fees limited.—No person shall receive a greater fee than five dollars to secure a pension for another, and any contract for a larger sum shall be unlawful. [Id.]

Art. 6219. [6277] Fees of county judge.—A county judge shall be allowed a fee of two dollars for hearing an application and taking proof therein, said fee to be paid by the applicant, and before hearing of application is had thereon; and all fees received by such county judge shall be reported as other fees of office and be otherwise controlled by the law regulating the fee of county judges. Said fee of two dollars shall be the only fee allowed to the county judge for all the work performed by him in securing a pension. [Id.]

Art. 6220. [6278] Persons not entitled to.—No person shall, while confined in any asylum of this State, at the expense of the State, or while confined in the State penitentiary, receive a pension, and any person having been granted a pension who shall afterwards be confined in an asylum of this State, at the expense of the State, or who shall be confined in the State penitentiary shall, while an inmate of such asylum or penitentiary, forfeit his pension, and no pensioner who leaves this State for a period of over six months shall draw a pension while so absent; provided, that any person who has been granted a pension under this law, and who is thereafter admitted as an inmate of the Confederate Home or is thereafter admitted as an inmate of the Confederate Womans' [Woman's] Home of this State, shall thereafter be entitled to receive pension payments of the amount of one-half of the pension that such person would be entitled to receive if not an inmate of such Home. [Acts 1921, p. 144.]

Art. 6221. [6279] Appropriation, how allotted.—On the first day of September and on the first day of March of each year, the Comptroller shall first allot to each blind, maimed, and totally disabled soldier or sailor or the blind and totally disabled widow of a soldier or sailor the sum of eight and one-third dollars per month for each year, and the remainder of said appropriation shall be equally prorated among the pensioners who are in indigent circumstances only, and whose claim to pensions have been established and filed; and the Comptroller shall issue his warrants for the amounts due said pensioners in the manner provided by law at the end of each quarter. All such pensions shall begin on the first day of the quarter next succeeding the filing and establishment of such application. After the apportionment is made, the Comptroller may fill any vacancies created by death or other causes, at any time between the first day of March and the first day of September each year. [Acts 1909, p. 231; Acts 1913, p. 282; Acts 1917, pp. 387–411.]

Art. 6222. [6280] Perpetuation of evidence.—Any Confederate veteran, soldier, or sailor, who may be entitled to a pension under the pension laws of Texas, who may be desirous of establishing such right by the evidence of any person who may be cognizant of such facts as would prove and establish such right, may cause such person to go before the county judge, or any notary public of the county of his residence of such person, and make affidavit to such fact. [Acts 1909, p. 215.]

Art. 6223. [6281] Statement filed.—Such affidavit shall be filed with the Secretary of State, and by him recorded in a book to be kept for such purpose, a properly certified copy of which shall be admitted and used in evidence at any future time, to prove and establish the right of the soldier or sailor in whose behalf, or at whose instance, the same may have been made to such pensioner as may be provided by law. [Id.]

Art. 6224. [6282] Widow may establish identity.—The widow of any soldier or sailor who may be entitled to a pension as such, under the laws of this State, shall be entitled to establish her identity and right to such pension in the same way and manner as herein provided for soldiers and sailors. [Id.]

Art. 6225. [6283] Examination of record.—The Comptroller shall examine and pass on all pension claims, keep a correct record of all approved claims, with the name, disability, service, residence and amount paid, and furnish the county judge with suitable blanks for use of claimants. He shall make a written report to the Governor on the first day of September of each year, showing the number of pensioners, the number of claims allowed for the past year, and the amounts paid, together with such other information as the Governor may ask. All records, books, claims or other matters pertaining to pensions shall be kept open to inspection and under the charge and direction of the Governor, and all rulings made by the Comptroller shall be subject to revision and change by the Governor. [Acts 1909, p. 231.]

Art. 6226. [6284] Shall strike from roll.—When it comes to the knowledge of the Comptroller that any person has been granted a pension through fraud or perjury, or that any one on the pension roll has acquired property or annuity, emolument or favor of the heirs or legal representatives of the deceased pension had such conditions existed at the date of said application, he shall strike the name of such person from the pension roll. [Id.]

Art. 6227. Mortuary warrant.—Whenever any pensioner who has been regularly placed upon the pension rolls under the provisions of law relating thereto, shall die and proof thereof shall be made to the Comptroller within forty days from the date of such death, by the affidavit of the doctor who attended the pensioner during the last illness, or the undertaker who conducted the funeral, or made arrangements therefor, the Comptroller shall issue a mortuary warrant for an amount not exceeding sixty-five dollars, payable out of the pension fund, in favor of the heirs or legal representatives of the deceased pensioner, or in favor of the person or persons owning the accounts (proof of the existence and justice of such accounts to be made to said Comptroller under oath and in such form as he may require) for the purpose of paying the funeral expenses of the deceased pensioner. In such cases where a warrant for the pension for the quarter during which the pensioner died has been issued, the same shall be returned to the Comptroller, who shall mark the same "canceled" and file it before the mortuary warrant herein provided for shall issue. Where such warrant for the pension has not been issued, the same shall not be issued, but the mortuary warrant herein provided for shall take the place thereof. [Acts 1923, p. 26.]

Art. 6228. Mothers' pension.—Any widow who has been a bona fide resident of this State for five years, and who is the mother of a child or children under the age of sixteen years, and who is unable to support them and to maintain her home, may present a sworn petition for assistance to the commissioners court of the county wherein she has resided for the preceding two years. Such petition shall show:

1. Her name, the date of the death of her husband, the names of her children, their sex, the dates and places of their birth and the time and place of her marriage.

2. Her residence and the length of time that she has been a resident of this State, the length of time she has lived at said residence and the address of her place of abode for the previous five years, and the date as near as possible, when she moved in and when she left said place of residence.

3. All the property belonging to her and to each of her children, including any future or contingent interest which she or any of them may have.

4. The efforts made by her to support her children.

5. The name, relationship and addresses of all her husband's relatives that may be known.

A copy of said petition and a notice of the time and place it will be presented to said court must be served on or mailed to the county judge of said county at least five days before the time the court shall be requested in said petition to meet and consider the same. When service is complete, said court shall examine under oath all who desire to be heard, and may, in its discretion, issue subpœnas for witnesses; or the court may refer said matter to a commissioner to be appointed by it to hear said witnesses. Said commissioner shall make a report to the court setting forth the facts as proven before him. If the court concludes that unless relief is granted the mother will be unable to properly support and educate her children and that they may become a public charge, it may make an order directing a payment to her, monthly, out of the county funds for the support of said children, twelve dollars for one such child; eighteen dollars for two children; and four dollars additional for each other child. Said allowance shall be discontinued as to any said child who reaches the age of sixteen. Said court shall have the right to refuse any application for allowance under this article, and its action in so doing shall be final. Said court shall see that any widow receiving any such allowance is properly caring for her children, and that they are sufficiently clothed and fed. When it is found that she is not properly caring for her children or that she is an improper guardian for such children, or when the court shall find that she no longer needs such relief, it shall thereupon revoke at any time with or without notice, any order made pursuant to this article. [Acts 1917, p. 313.]

2. CITY PENSIONS

Art. 6229. Board of trustees.—In all incorporated cities and towns having a population of over ten thousand according to the preceding Federal census, having a fully or partially paid fire department or police department, the mayor, two aldermen or commissioners, two citizens of said city or town to be designated by the mayor, the chief of police, the chief of the fire department and their successors, shall constitute a board of trustees of the Firemen, Policemen and Fire Alarm Operator's Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. The board shall be known as the Board of Firemen, Policemen and Fire Alarm Operator's Pension Fund, Trustees of ....., Texas. The board shall hold its office until the next general election in such city for municipal officers. Said board shall organize by choosing one member as chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of the beneficiaries of said fund and the amounts paid them. [Acts 1919, p. 10.]

Art. 6230. Membership in.—Each fully paid fireman, policeman and fire alarm operator and other persons herein designated as members of either of said departments, in the employment of such city or town, who desires himself or his beneficiaries, to participate in said fund, shall file a written statement with the city clerk of his desire to participate in said fund, and authorize said city or town to deduct one per cent of his wages each month to form a part of the fund known as the Firemen, Policemen and Fire Alarm Operators' Pension Fund. [Id.]

Art. 6231. Payments to fund.—There shall be deducted for such fund from the wages of each fireman, policeman and fire alarm operator, and other persons herein designated as members of either of said departments, one per cent of the wages earned by such employés when they have filed application therefor. Any donations made to such fund and rewards received by any member of either of said departments, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund. [Id.]

Art. 6232. Conduct of meetings.—The board shall hold regular monthly meetings and other meetings upon call of its chairman. It shall issue orders signed by the president or chairman and secretary to the persons entitled thereto, of the amount of money ordered paid to such persons from such fund by said board which order shall state for what purpose such payment is to be made; it shall keep a record of its proceedings, which record shall be a public record; it shall at each monthly meeting send to the city treasurer a written list of persons entitled to payment from the fund, stating the amount of such payment, and for what granted, which list shall be certified to and signed by the president or chairman and secretary of such board, attested under oath. The treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the Record Fireman, Policeman and firm [Fire] Alarm Operator's Pension Fund Board of ....., Texas, and the said board shall direct payment of the amounts named therein to the persons entitled thereto out of said fund. No money of said fund shall be disbursed for any purpose without a vote of a majority of the board, which shall be a no and yes vote entered upon the proceedings of the board. [Id.]

Art. 6233. Custody of fund.—The treasurer of said city or town shall be ex-officio treasurer of said fund. All money for said fund shall be paid over to and received by the treasurer for the use of said fund, and the duties thus imposed upon such treasurer shall be additional duties for which he shall be liable under his oath and bond as such city or town treasurer, but he shall receive no compensation therefor. [Id.]

Art. 6234. Who may share in fund.—Any person who at the establishment of said fund, or thereafter shall have been duly appointed and enrolled in the fire department, police department or fire alarm operator's department of any such city or town, to which application is made for participation in said fund by such person and who has filed his written application within thirty days after the organization of such board, or who shall file his application within thirty days after becoming a member of either of such departments and who shall have allowed said deductions from his salary, as well as the beneficiaries hereinafter named, shall be entitled to participate in said fund. [Id.]

Art. 6235. Retirement pensions.—Whenever any member of said departments who shall have contributed a portion of his salary, as provided herein, shall have served twenty years or more in either of said departments, he may be entitled to be retired from said service upon application, and shall, if the board approves, be entitled to be paid from such funds a monthly pension of one-half of the salary received by him at the time of his retirement. [Id.]

Art. 6236. Disability pensions.—Whenever any member of the fire department, police department or fire alarm operator's department of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly wages received by him as a member of either of said departments, at the time he became so disabled, to be paid in regular monthly installments. [Id.]

Art. 6237. Death benefits, widow, etc.—In case of the death before or after retirement of any member of the fire department, police department or fire alarm operator's department of any city or town, resulting from disease contracted, or injury received while in the line of duty, or from any other cause through no fault of his own, and who at the time of his death or retirement was a contributor to said fund, leaving a widow or child or children under sixteen years of age. the widow shall be entitled to receive from said fund an amount not exceeding one-fourth of the monthly wages received by such member immediately preceding his death, and the children of said deceased under sixteen years of age shall receive in the aggregate one-fourth of such monthly wages to be equally divided between them. When any child shall reach sixteen years of age, then such child shall no longer participate in the division of said wages of said deceased, but the same shall be paid to his remaining children, if any, under sixteen years of age, in equal parts, until they respectively become sixteen years of age. In no case shall the amount paid to any one family exceed the amount of one-half the wages earned by the deceased immediately prior to the time of his death. Upon the re-marriage of any widow or the marriage of any child granted such pension, such pension shall cease. No widow or child of any such member resulting from any marriage contract subsequent to the date of retirement of said member, shall be entitled to a pension under this law. [Id.]

Art. 6238. Death benefits, father, etc.—If any member of the fire department, police department, or fire alarm operator's department dies from injuries received or disease contracted while in the line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother or sister, wholly dependent upon said person for support, such dependent father, mother, sister and brother shall be entitled to receive in the aggregate one-half of the wages earned by said deceased immediately prior to his death, to be equally divided between those who are wholly dependent on said deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them, and as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to such matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked. [Id.]

Art. 6239. Investigations.—The board shall consider all cases for the retirement and pension of the members of the fire, police and fire alarm operator's department rendered necessary or expedient under the provisions of this law, and all applications for pensions by widows and children and of dependent relatives, and the said trustees shall give written notice to persons asking a pension to appear before said board and offer such sworn evidence as he or they may desire. Any person who is a member of either of said departments and who is a contributor to said fund may appear either in person or by attorney and contest the application for participation in said fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The president or chairman of said board shall have authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this law. Such process for witness shall be served by any member of the police, fire and fire alarm operator's department and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as in any judicial proceeding. [Id.]

Art. 6240. Medical examination.—Said board may cause any person receiving any pension under the provisions of this law, who has served less than twenty years, to appear and undergo a medical examination, as a result of which the board shall determine whether the relief in said case shall be continued, increased, decreased or discontinued. If any person receiving relief under the provisions of this law, after due notice, fails

to appear and undergo such examination, the board may reduce or entirely discontinue such relief. [Id.]

Art. 6241. Who are members.—All fire, police and fire alarm operators and superintendents in the employ of any such city or town, who have filed their application for participation in said fund, and have contributed a portion of their salary, as provided for other members of such departments, are hereby declared to be members of the fire, police, and fire alarm operator's department of such city or town, and they and their beneficiaries shall have the same rights and privileges as are herein granted to other members of such departments of such cities. [Id.]

Art. 6242. Use of public funds.—No funds shall be paid out of the public treasury of any such incorporated city or town, in carrying out any of the provisions of this law, except on a majority vote of the voters of such city or town. [Id.]

Art. 6243. Awards exempt.—No amount awarded to any person under the provisions of this law shall be liable for the debts of any such person; shall not be assignable and shall be exempt from garnishment or other legal process. [Id.]

TITLE 110

PRINCIPAL AND SURETY

Art.
6244. May require suit brought.
6245. Discharged by failure to sue.
6246. May have question of suretyship tried.
6247. Levy first on property of principal.
6248. Rights of surety.
6249. Execution against a co-surety.
6250. Officer has same rights as surety.
6251. Surety not to be sued alone.
6252. Who is surety.

Article 6244. [6329] [3811] May require suit brought.—Any person bound as surety upon any contract for the payment of money or the performance of any act, when the right of action has accrued, may require by written notice, the creditor or obligee forthwith to institute suit upon such contract. [Acts 1858, p. 112; P. D. 4783; G. L. vol. 4, p. 984.]

Art. 6245. [6330] [3812] Discharged by failure to sue.—If the creditor or obligee, not being under legal disability, shall fail to bring his suit to the first term of the court thereafter, or to the second term showing good cause for the delay and prosecute the same to judgment and execution, the surety giving such notice shall be discharged from all liability thereon. [Id.]

Art. 6246. [6331] [3813] May have question of suretyship tried.—When any suit is brought against two or more defendants upon any contract, any one or more of the defendants being surety for the other, the surety may cause the question of suretyship to be tried and determined upon the issue made for the parties defendant at the trial of the cause, or at any time before or after the trial or at a subsequent term. Such proceedings shall not delay the suit of the plaintiff. [Id.]

Art. 6247. [6332] [3814] Levy first on property of principal.—If the finding of such issue be in favor of the surety, the court shall make an order directing the sheriff before he levies on the property of the surety to first levy the execution upon the property of the principal situate in the county in which the judgment was rendered, if so much property of the principal can be found as will in the opinion of the sheriff be sufficient to make the amount of the execution; otherwise the levy shall be made on so much property of the principal as may be found, if any, and upon so much of the property of the surety as may be necessary to make the amount of the execution; and the clerk shall make a memorandum of such order on the execution. [Id.]

Art. 6248. [6333] [3815] Rights of surety.—When any person, being surety in any undertaking whatever, shall be compelled to pay any judgment, or any part thereof, or shall make any payment which is applied upon such judgment by reason of such suretyship, the said judgment shall not be discharged by such payment, but shall remain in force for the use of such surety, and shall be considered as assigned to such surety, together with all the rights of the creditor thereunder to the extent of such payment with the interest thereon; and such surety shall be entitled to have execution thereon in the name of the creditor for the use of such surety against the principal debtor for the full amount of such payment, interest and costs, which execution shall be issued upon the application of such surety to the clerk, or court, as the case may be, and shall be levied, collected and returned as in other cases. [Id.]

Art. 6249. [6334] [3816] Execution against a co-surety.—If there be more than one surety and one or more of them has failed to pay his proportionate part of the judgment, execution may issue, as provided in the preceding article, against the principal for the use of the surety who has paid more than his proportionate part for the whole amount paid by him and interest thereon, and also against his co-sureties, for their proportionate part of the excess so paid by him and interest thereon. [Id.]

Art. 6250. [6335] [3817] Officer has same rights as surety.—If an officer shall be compelled to pay any judgment, or any part thereof, by reason of any default of such officer, except for failing to pay over any money collected, or for wasting property levied on, such officer shall be entitled to have execution therefor against the principal defendant in such judgment as provided in the case of a surety. [Id.]

Art. 6251. [6336] [3818] Surety not to be sued alone.—No surety shall be sued, unless his principal is joined with him, or unless a judgment has previously been rendered against his principal, except in the cases otherwise provided for in the laws relating to parties to suits. [Id.]

Art. 6252. [6337] [3819] Who is surety.—The remedy provided for sureties by this title extends to endorsers, guarantors, drawers of bills which have been accepted, and every other suretyship, whether created by express contract, or by operation of law. [Id.]

TITLE 111

QUO WARRANTO

Art.
6253. Quo Warranto, when.
6254. Joinder of parties.
6255. Citation to issue.
6256. Proceedings as in civil cases.
6257. Judgment of court.
6258. Remedy cumulative.

Article 6253. [6398] [4343] Quo Warranto, when.—If any person shall usurp, intrude into or unlawfully hold or execute, or is now intruded into, or now unlawfully holds or executes, any office or franchise, or any office in any corporation created by the authority of this State, or any public officer shall have done or suffered any act which by law works a forfeiture of his office, or any association of persons shall act within this State as a corporation without being legally incorporated, or any corporation does or omits any act which amounts to a surrender or a forfeiture of its rights and privileges as such, or exercises power not conferred by law; or if any railroad company doing business in this State shall charge an extortionate rate for the transportation of any freight or passengers, or refuse to draw or carry the cars of any other railroad company over its lines as required by the laws of this State, the Attorney General, or district or county attorney of the proper county or district, either of his own accord or at the instance of any individual relator, may present a petition to the district court of the proper county, or any judge thereof in vacation, for leave to file an information in the nature of a quo warranto in the name of the State of Texas. If such court or judge is satisfied that there is probable ground

for the proceeding, he shall grant such leave and order the information to be filed and process to issue. [Acts 1879, S. S. p. 43; G. L. vol. 9, p. 75.]

Art. 6254. [6399] [4344] Joinder of parties.—When it appears to the court or judge that the several rights of divers parties to the same office or franchise may properly be determined on one information, the court or judge may give leave to join all such persons in the same information in order to try their respective rights to such office or franchise. [Id.]

Art. 6255. [6400] [4345] Citation to issue.—When such information is filed, the clerk shall issue citation as in civil suits, commanding the defendant to appear at the return term of said court to answer the relator in an information in the nature of a quo warranto. If the information is filed in vacation, the citation shall be returnable on the first day of the next succeeding term; if in term time, it may be made returnable on any day of the same term, not less than five days after the date of the writ, as shall be directed by the court. [Id.]

Art. 6256. [6401] [4346] Proceedings as in civil cases.—Every person or corporation who shall be cited as hereinbefore provided shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in cases of trial of civil cases in this state. Either party may prosecute an appeal or writ of error from any judgment rendered, as in other civil cases and the appellate court shall give preference to such case, and hear and determine the same as early as practicable. [Id. sec. 4, Acts 1921, p. 220.]

Art. 6257. [6402] [4347] Judgment of court.—If any person or corporation against whom any such proceeding is filed shall be adjudged guilty as charged, the court shall give judgment of ouster against such person or corporation from the office or franchise, and may fine such person or corporation for usurping, intruding into or unlawfully holding and executing such office or franchise and shall give judgment in favor of the relator for costs of the prosecution. [Acts 1879, S. S. p. 43; G. L. vol. 9, p. 75.]

Art. 6258. [6403] [4348] Remedy cumulative.—The remedy and mode of procedure hereby prescribed shall be construed to be cumulative of any now existing. [Id.]

TITLE 112

RAILROADS

Chap.

1. Charter and amendments.
2. Public offices and books.
3. Officers and by-laws.
4. Stock and stockholders.
5. Meeting of directors and stockholders.
6. Right of way.
7. Other rights of railroad corporations.
8. Restrictions, duties and liabilities.
9. Collection of debts and rights of employés.
10. Liability for injuries to employés.
11. Railroad Commission of Texas.
12. Issuance of stocks and bonds.
13. Miscellaneous railroads.
14. Union depot corporations.
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CHAPTER ONE

CHARTER AND AMENDMENTS

Art.

6259. Incorporation.
6260. Who may build.
6261. Stock, subscription and payment.
6262. Articles of incorporation.
6263. Shall be submitted to Attorney General.
6264. Shall be filed.
6265. Beginning of existence.
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6268. Manner of renewing.
6269. Sale or conveyance under special law.
6270. Shall take subject to lien.
6271. May amend articles, etc.
6272. When shall not amend.
6273. May project, etc., by amendment.
6274. Branch line requirements.

Article 6259. [6405] [4350] [4099] Incorporation.—Any number of persons, not less than ten, being subscribers to the stock of any contemplated railroad, may be formed into a corporation for the purpose of constructing, owning, maintaining and operating such railroad by complying with the requirements of this chapter. [Acts 1876, p. 141; G. L. vol. 8, p. 977.]

Art. 6260. [6406] Who may build.—No corporation, except one chartered under the laws of Texas, shall be authorized or permitted to construct, build, operate, acquire, own or maintain any railways within State. [Acts 1903, p. 90.]

Art. 6261. [6407] [4351] [4100] Stock, subscription and payment.—No railroad corporation shall be formed until stock to the amount of one thousand dollars for every mile of the road intended to be built shall be in good faith subscribed, and five per cent of the amount subscribed paid to the directors of such proposed company. [Acts 1876, p. 141; G. L. vol. 8, p. 977.]

Art. 6262. [6408] [4352] [4101] Articles of incorporation.—The persons proposing to form a railroad corporation shall adopt and sign articles of incorporation, which shall contain:

1. The name of the proposed corporation.
2. The places from and to which it is intended to construct the proposed railroad, and the intermediate counties through which it is proposed to construct the same. Local suburban railways may be constructed for any distance less than ten miles from the corporate limits of any city or town, in addition to such mileage as they may have within the same; and in such case the general direction shall be given from the beginning point.
3. The place at which shall be established and maintained the principal business office of the proposed corporation.
4. The time of the commencement and the period of the continuation of the proposed corporation.
5. The amount of the capital stock of the corporation.
6. The names and places of residence of the several persons forming the association for incorporation.
7. The names of the members of the first board of directors, and in what officers or persons the government of the proposed corporation and the management of its affairs shall be vested.
8. The number and amount of shares in the capital stock of the proposed corporation. [Acts 1889, p. 17; G. L. vol. 9, p. 1045.]

Art. 6263. [6409] [4353] [4102] Shall be submitted to Attorney General.—The articles of incorporation, when so prepared, adopted and signed, shall be submitted to the Attorney General, and, if he finds them to be in accordance with the provisions of this chapter and not in conflict with the laws of the United States, or of this State, he shall attach thereto a certificate to that effect. [Acts 1876, p. 141; G. L. vol. 8, p. 977.]

Art. 6264. [6410] [4354] [4103] Shall be filed.—When said articles have been so examined and certified, the same shall be filed in the office of the Secretary of State, accompanied by an affidavit signed and sworn to by at least three of the directors named in such articles, which affidavit shall state that the amount of one thousand dollars for every mile of such proposed road has been in good faith subscribed, and that five per cent of the amount subscribed has been actually paid to the directors named in such articles; and the Secretary of State shall cause such articles, together with said affidavit, to be recorded in his office, and shall attach a certificate of the fact of such record to said articles and return the same to such corporation. [Id.]

Art. 6265. [6411] [4355] [4104] Beginning of existence.—The existence of such corporation shall date from the filing of the articles of incorporation in the office of the Secretary of State and the certificate of the Secretary of State under the seal of the State, shall be evidence of such filing. [Id.]

Art. 6266. [6412] [4356] [4105] May proceed to act.—When the articles of incorporation have been so filed and recorded, the persons named as corporators therein shall thereupon become a body corporate, and authorized to carry into effect the objects of such articles, in accordance with the provisions of this title. [Id.]

Art. 6267. [6413] [4357] [4106] Period of existence.—No railroad corporation shall be formed to continue more than fifty years, but such corporation may be renewed from time to time for periods not longer than fifty years. [Id.]

Art. 6268. [6414] [4358] [4107] Manner of renewing.—The manner of renewing a railroad corporation which has expired by lapse of time shall be as follows:

1. By a resolution in writing adopted by a majority of three-fourths of the stockholders of the company at a regular meeting of the stockholders, specifying the period of time for which the corporation is renewed.

2. Those desiring a renewal of the corporation shall purchase the stock of those opposed thereto at its current value.

3. The resolution, when adopted, shall be certified to by the president of the company; and he shall state in his certificate thereto that it was adopted by a majority vote of three-fourths of all the stockholders of said company at a regular meeting of such stockholders, and that the stockholders desiring such renewal have purchased the stock of those who oppose such renewal, and such certificate shall be attested by the secretary of the company under the seal of the company.

4. Said resolution and certificate shall be filed and recorded in the office of the Secretary of State, and the renewal of said corporation shall date from said filing. [Id.]

Art. 6269. [6415] [4359] Sale or conveyance under special law.—Whenever a line of railway or any railway properties within this State are by special law authorized to be sold and conveyed, the persons contemplating the purchase thereof may be formed into a corporation for the purpose of acquiring, owning, maintaining and operating such railway by complying, as far as applicable with the requirements of this chapter. In the formation of such corporation, the requirements of Article 6261 and so much of Article 6264 as relates to the affidavit may be dispensed with, and words applicable to the case of a purchaser may be used and substituted when necessary or proper, in the articles of incorporation or elsewhere, in lieu of words applicable to the building or construction of a railway. When such corporation has been formed it shall have the power to purchase, acquire, own, maintain and operate such railway and the properties pertaining thereto, and all other rights, powers and privileges given by the laws of this State to railway companies. Any proposed extension or branch lines may be provided for and included in the original articles of incorporation, or the same may, by amendment thereto at any time thereafter, be projected and provided for by such company. [Acts 1891, p. 128; G. L. vol. 10, p. 130.]

Art. 6270. [6416] [4360] Shall take subject to lien.—Any company organized under the preceding article shall take the property so purchased subject to all incumbrances, judgments, claims, suits, claims for damages and for right of way against the old company and subject to all debts and claims for damages accruing against any receiver who may have been appointed for the old company to the same extent that such property would have been liable in the hands of the railroad company from which it was purchased; and such new company may be made a party to every suit pending against the company from which it is purchased, or which may be pending against any receiver of such company, to enforce any right against such new company; and the new company may be sued to enforce any such rights, without joining the old company, or the receiver; and, in case any judgment has been rendered against the old company, or against a receiver for such company, and for which the property is liable, execution may be issued on such judgment against such property in the possession of the new company without any suit therefor. When a corporation is formed under the provisions of the preceding article, service of process may be had upon any agent of such corporation in any county where suit may be pending. Such service shall bind each railroad operated or owned under such charter, in the same manner as if it were one railroad. [Id.]

Art. 6271. [6417–18–19] [4108] May amend articles, etc.—Any railroad corporation may amend or change its articles or act of incorporation in the manner following:

1. Such amendment or change shall be in writing and signed by the president and board of directors of the corporation and attested by the secretary under the seal of the corporation.

2. It shall be submitted to the Attorney General as in the case of original articles of incorporation and examined and certified by him in the same manner.

3. It shall then be filed and recorded in the office of the Secretary of State.

4. In the case of a corporation created by a special act of the legislature, the said amendment or change, together with the original charter and such amendments and changes as have been made by special act of the legislature, shall be filed and recorded in the office of the Secretary of State.

5. Such amendment or change shall be in force from the date of the filing of the same in the office of the Secretary of State in accordance with the provisions of this chapter. [Acts 1876, p. 142; G. L. vol. 8, p. 978.]

Art. 6272. [6420] [4364] [4111] When shall not amend.—Where, by the special act or articles [of] incorporating any railroad company, any privileges, rights or benefits are conferred upon said corporation, such as it could not claim, exercise or receive under this title or the general laws, then the said corporation shall not be permitted so to amend or change its charter or articles of incorporation as to relieve it from any of the requirements of such special act or acts conferring said privileges, rights or benefits. [Id.]

Art. 6273. [6421] [4365] May project, etc., by amendment.—Any railroad company may, by its original articles of incorporation or by its amendments to its charter, project and provide for the location, construction, owning and operating of branch lines from any point on its main line, or from points on its branch line, constructed or projected to other points making an angle of at least twenty-five degrees in the general course from the main line, if the branch commence from the same, or from the branch line, if it commences at a point on the same; provided, that the same may commence at the terminus of a branch line and continue in its general course; and, may by amendment to its charter, provide for the continuation in its general course of the main line. [Id. Acts 1901, p. 258.]

Art. 6274. [6422] [4366] [4114] Branch line requirements.—Any such corporation making such amendment to its charter shall complete and put in good running order at least ten miles of its said branch line in said amendment proposed within one year from the filing of such amendment, and an additional extent of at least twenty miles each succeeding year until the entire extent of the projected branch line is completed. [Id.]

CHAPTER TWO

PUBLIC OFFICES AND BOOKS

Art.
6275. To keep offices in Texas.
6276. Where no contract.
6277. Shops, etc.
6278. Officers to keep offices in Texas.
6279. Forfeiture.
6280. To do repair work in Texas.

Art.
6281. Books.
6282. President shall report.
6283. Books open to inspection.
6284. Penalty for failure.
6285. Duties of Attorney General.
6286. Change of general offices prohibited.
6287. Domicile of the corporation.

Article 6275. [6423] [4367] To keep offices in Texas.—Every railroad company chartered by this State, or owning or operating any line of railway within this State, shall keep and maintain permanently its general offices within this State at the place named in its charter for the location of its general offices. If no certain place is named in its charter where its general offices shall be located and maintained, then said railroad company shall keep and maintain its general offices at such place within this State where it contracts or agrees to locate its general office for a valuable consideration. [Acts 1889, p. 130; G. L. vol. 9, p. 1158.]

Art. 6276. [6423] [4367] Where no contract.—If said railroad company has not contracted or agreed for a valuable consideration to maintain its general offices at any certain place within this State, then such general offices shall be located and maintained at such place on its line in this State as said railroad company may designate to be on its line of railway. [Id.]

Art. 6277. [6423] [4367] Shops, etc.—Such railroads shall keep and maintain their machine shops and roundhouses, or either, at such place or places as they may have contracted to keep them for a valuable consideration received; and if said general offices and shops and roundhouses, or either are located on the line of railroad in a county which has aided such railroad by an issue of bonds in consideration of such location being made, then said location shall not be changed; and this shall apply as well to a railroad that may have been consolidated with another as to those which have maintained their original organization. [Id.]

Art. 6278. [6424] [4368] Officers to keep offices in Texas.—Railroad companies shall keep and maintain at the place within this State where its general offices are located the office of its president, or vice-president, secretary, treasurer, local treasurer, auditor, general freight agent, traffic manager, general manager, general superintendent, general passenger and ticket agent, chief engineer, superintendent of motive power and machinery, master mechanic, master of transportation, fuel agent, general claim agent; and each one of its general offices shall be so kept and maintained by whatever name it is known, and the persons who perform the duties of said general offices, by whatever name known, shall keep and maintain their offices at the place where said general offices are required to be located and maintained; and the persons holding said general offices shall reside at the place and keep and maintain their offices at the place where said general offices are required by law to be kept and maintained. If the duties of any of the above named offices are performed by any person, but his position is called by a different name, said railroad company shall maintain said offices at the place where its general Texas offices are kept and maintained, as required by this chapter. The name of the general offices shall not be understood to allow the railroad company to have any of the offices usually known as general offices at any other place than the one at which it is required to keep its general offices; and each railroad is hereby required to have and maintain its general offices at the place named herein. Where the principal shops of a company are situated on its line in the State, at a place other than where its general offices are located, the superintendent of motive power and machinery, master mechanic, either or both, may have his office and residence at such place where such principal shops are located; provided, that the Railroad Commission of Texas, where it is made to appear that any officer, other than the general officers of any company, can more conveniently perform his duties by residing at some place on the line in Texas other than the place where the general offices are situated, may by an order entered on its record, authorize any such officer to so reside and keep his office at such place. [Id. Acts 1899, p. 177.]

Art. 6279. [6425] [4369] Forfeiture.—Each railroad company chartered by this State, or owning, operating, or controlling any line of railroad within this State, which shall violate any provision of this chapter shall forfeit the charter by which it operates its railroad in Texas to the State of Texas. The Attorney General shall, upon the application of an interested party, or on his own motion, proceed at once against every offending railroad company owning, operating or controlling any line of railway within this State and violating any provision of this law, by quo warranto to forfeit the charter of such railroad company. In addition to forfeiting the charter to that part of the railroad situated within this State, such offending railroad company shall be subject to a penalty of five thousand dollars for each day it violates any provision of this chapter; such penalty to be recovered by suit in the name of the State of Texas to be filed by the Attorney General. Any money recovered from any railroad company under the provisions of this law shall be paid into the State Treasury and become a part of the available public free school fund. A judgment of the court forfeiting the charter of a railroad company shall allow six months from the date of the judgment within which to comply with this law, and if it shall comply within said time no forfeiture shall occur; but if it fails to so comply, then the judgment shall be final.

Art. 6280 [6426 to 6428] To do repair work in Texas.—All railroad corporations operating in, and having their repair shops within this State, are required to repair, renovate or rebuild in this State all defective or broken cars, coaches, locomotives, or other equipment owned or leased by said corporation in this State, when such rolling stock is within this State, and shall be prohibited from sending or removing any such rolling stock out of this State to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within this State, when such railway shall have, or be under obligation to have proper facilities in this State to do such work. This article does not apply to companies having less than sixty continuous miles of railroad in operation in this State, nor in case of strike, fire or other unforeseen casualties and emergencies; and is not to be construed to require a violation of the Federal safety appliance law; and no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within this State than would be necessary to reach their repair shops in another State. [Acts 1909, p. 73.]

Art. 6281. [6429] [4370] Books.—The principal business of said corporation shall be conducted, and stock transferred and claims for damages settled and adjusted at the public or general offices of said railroad companies in Texas, established as provided for in this chapter, by duly authorized officers and agents of said corporations. At said offices there shall be kept for the inspection of stockholders of such corporation, books in which shall be recorded:

1. The amount of capital stock subscribed.
2. The names of the owners of the stock and the amounts owned by them respectively.
3. The amount of stock paid and by whom.
4. The transfer of stock with the date of the transfer.
5. The amount of its assets and liabilities.
6. The names and places of residence of each of its officers. [Acts 1885, p. 67; G. L. vol. 9, p. 687.]

Art. 6282. [6430] [4371] President shall report.—The president or superintendent of every railroad company doing business in this State shall report annually under oath to the Comptroller or Governor the true status of said railroad and such

other matters and things as may be inquired about by said Comptroller or Governor. [Id. Const. art. 10, sec. 3.]

Art. 6283. [6431–2] Books open to inspection.—The books of such corporation kept at its public office shall at all reasonable business hours be open to the inspection of each stockholder, and to any officer or agent of the State whose duty it may be to inspect such books. The legislature may by committee or otherwise, examine the books of any railroad corporation at such times and as often as may by said legislature be deemed necessary. [Id.]

Art. 6284. [6433] [4374] Penalty for failure.—If said railroad or other corporation shall fail or refuse to comply with any provision of the three preceding articles, it shall be liable to pay to the State of Texas, the sum of one thousand dollars for each month that said railroad or other corporation shall fail or refuse to comply therewith, said sum to be recovered by the State. An honest mistake in the entries in its books shall not subject a railroad company to such penalties. [Acts 1885, p. 67; G. L. vol. 9, p. 687.]

Art. 6285. [6434] [4375] Duties of Attorney General.—The Attorney General shall bring suit against said corporation, and prosecute it to judgment for any violation of any provision of this chapter. [Id.]

Art. 6286. [6435] [4376] Change of general offices prohibited.—No railroad company shall change the location of its general offices, machine shops or roundhouses, save with the consent and approval of the Railroad Commission of Texas, and this shall apply also to receivers and to purchasers of the franchises and properties of railroad companies and to new corporations formed by such purchasers or their assigns. The Commission shall not consent to, or approve of, any removal or change of location in conflict with the restrictions of the first article of this chapter. No consent or approval of the Commission shall be required before the return of general offices, machine shops or roundhouses to previous locations when ordered or required under judgments in suits now pending in trial or appellate courts. [Acts 1915, p. 35.]

Art. 6287. [6437] [4378] [4120] Domicile of the corporation.—The public office of a railroad corporation shall be considered the domicile of such corporation. [Acts 1876, p. 150; G. L. vol. 8, p. 986.]

CHAPTER THREE

OFFICERS AND BY-LAWS

Art.
6288. Board of directors.
6289. Election of directors.
6290. Other officers elected.
6291. False dividend.
6292. False representation.
6293. By-laws.

Article 6288. [6338–39–45] Board of directors.—All the corporate powers of every railroad corporation shall be vested in and be exercised by the legally constituted board of directors. Every such corporation shall have a board of directors of not less than seven nor more than nine persons, each of whom shall be a stockholder in said corporation. A majority of said directors shall be resident citizens of this State, and shall so remain resident citizens during their continuance as such directors. [Acts 1876, p. 144; G. L. vol. 8, p. 980.]

Art. 6289. [6440–41–42–43–44] Election of directors.—These rules shall govern the election of the board of directors:

1. It shall require a majority in value of the stock of such corporation to elect any member of such board.

2. Such board shall be elected by the stockholders of the corporation at their regular annual meeting in each year, in the manner prescribed by this title and the by-laws of such corporation, and shall hold their office until their successors are elected.

3. In all such elections, each stockholder shall have the right to vote in person or by proxy for the number of shares of stock owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number to be elected multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he may see fit. Such directors shall not be elected in any other manner.

4. The by-laws of the corporation shall prescribe the manner and time of electing directors, and the mode of filling a vacancy in such office. Such provisions in such by-laws shall not be changed except at a regular annual meeting of the stockholders, and by a majority in value of the stockholders of such corporation.

5. If an election of directors shall not be made on the day designated by said by-laws for such purpose, the stockholders shall meet and hold an election for directors in such manner as said by-laws shall provide. [Id.]

Art. 6290. [6446–47] Other officers elected.—There shall be a president of the corporation who shall be chosen from and by the board of directors, and such other officers as said by-laws may designate, who may be appointed or elected, and who shall perform such duties and be required to give such security for the faithful performance thereof as required by said by-laws. It shall require a majority of the directors to appoint or elect any officer of the corporation. [Id.]

Art. 6291. [6448] [4389] [4133] False dividend.—If the directors of any railroad company shall declare and pay any dividend when the company is insolvent, or any dividend the payment of which would render it insolvent, they shall jointly and severally be liable for all debts of the company then existing, and for all that shall be thereafter contracted so long as they shall respectively continue in office. If any of the directors shall be absent at the time of making such dividend, or shall object thereto, and shall within thirty days thereafter, or after their return if absent, file a certificate of their absence or objection in writing with the clerk of the company and with the clerk of the county in which the principal office of said company is located, they shall be exempt from said liability. [Acts 1853, p. 55; G. L. vol. 3, p. 1339; P. D. 4886.]

Art. 6292. [6449] [4390] [4134] False representation.—If any certificate or report made, or public notice given, by the officers of any such company, in pursuance of the provisions of this title, shall be false in any material representation, all officers who signed the same shall be jointly and severally liable for all the debts of the company contracted while they are officers or stockholders thereof. [Id.]

Art. 6293. [6450–52] By-laws.—Every railroad corporation shall have the power to make such by-laws as it may think proper for the government of such company, the same not being inconsistent with the charter of such company or the laws. In the enactment of a by-law, the stockholders of the corporation shall be entitled to one vote for each share of stock held by them, and a stockholder may vote in person or by written proxy. No by-laws shall be enacted, altered, amended, added to, repealed or suspended, except at a regular annual meeting of the stockholders and by a majority vote of two-thirds in value of all the stock of the corporation. [Acts 1857, p. 25; G. L. vol. 4, p. 897; P. D. 4911.]

CHAPTER FOUR

STOCK AND STOCKHOLDERS

Art.
6294. Railroad stock is personal estate.
6295. Directors may require payment.
6296. Sale of unpaid stock.
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6298. Use of corporate funds.
6299. Liability of stockholders.

Art.
6300. Who are not liable.
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6303. Statement to stockholders.
6304. Loans and interest.
6305. Removal of officers.
6306. Issuance of stock.
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Article 6294. [6453] [4394] [4138] Railroad stock is personal estate.—The stock of a railroad corporation shall be deemed personal estate, and transferable in the manner prescribed by the by-laws of the corporation; but no such transfer shall be valid until the same shall have been made on the stock and transfer books of the company; nor shall any share be transferable until all previous calls thereon have been paid. [Acts 1876, p. 145; G. L. vol. 8, p. 981.]

Art. 6295. [6454] [4395] [4139] Directors may require payment.—The directors of such corporation may require the subscribers to the capital stock of the corporation to pay the amount by them respectively subscribed, in such manner and in such installments as the directors may deem proper. [Id.]

Art. 6296. [6455] [4396] [4140] Sale of unpaid stock.—If any stockholder shall neglect to pay any installment as required by a resolution or order of the board of directors, the said board shall be authorized to advertise said stock for sale by publication once a week for thirty days in some newspaper published on the line of said road, if there be one, and, if not, in some newspaper published in the State having a general circulation in the State; which notice shall name the stock to be sold and the time and place of such sale; and all stocks so sold shall be sold at the public office or place of business of such company, and between the hours of ten o'clock a. m. and four o'clock p. m. and to the highest bidder for cash, the proceeds of such sale to be credited to the delinquent stockholder. [Id.]

Art. 6297. [6456] [4397] [4141] Books accessible.—All stockholders shall at all reasonable hours have access to and may examine all books, records and papers of such corporation. [Id.]

Art. 6298. [6457] [4398] [4142] Use of corporate funds.—It shall be unlawful for any railroad corporation to use any of the funds thereof in the purchase of its own stock, or that of any other corporation, or to loan any of its funds to any director or other officer thereof, or to permit them or any of them, to use the same for other than the legitimate purposes of the corporation. [Id.]

Art. 6299. [6458] [4399] [4143] Liability of stockholders.—Each stockholder of a railroad corporation shall be held individually liable to the creditors of such corporation to an amount not exceeding the amount unpaid on the stock held by him, for all debts and liabilities of such corporation until the whole amount of the capital stock of such corporation so held by him shall have been paid. [Id.]

Art. 6300. [6459] [4400] [4144] Who are not liable.—No person holding stock in any railroad corporation as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as a stockholder of such corporation; but the estate or person owning such stock, shall be considered as holding the same and liable as a stockholder accordingly. [Id.]

Art. 6301. [6460 to 6464] Increasing capital stock.—If the capital stock of a railroad corporation shall be found insufficient for constructing and operating its road, such corporation may increase its capital stock from time to time, subject to the following conditions:

1. Such increase shall be sanctioned by a vote in person or by written proxy of two-thirds in amount of all the stock of such corporation at a meeting of such stockholders called by the directors of the corporation for such purpose.

2. Written notice of such meeting shall be given to each stockholder, served personally or by depositing same in a post office directed to his post-office address, postage prepaid; and also by advertising the same in some newspaper published in each county through or into which the said road shall run, or be intended to run, if any is published therein. Such notice shall state the time and place of the meeting, the object thereof, and the amount to which it is proposed to increase such capital stock, and shall be served or published at least sixty days prior to the day appointed for such meeting.

3. The stock may be increased to any amount required for the purposes mentioned in this article, not exceeding the amount mentioned in the notice so given.

4. Every order or resolution increasing such stock shall be recorded in the office of the Secretary of State, and such increase shall not take effect until such order or resolution has been so recorded. [Id.]

Art. 6302. Decrease of capital stock.—A railroad corporation may, in the same manner prescribed in this chapter for an increase of capital stock, decrease its capital stock in any amount which shall not reduce the same to less than one thousand dollars for every mile of its road as planned and described in its charter. But no such decrease shall prejudice the rights of any creditor of such corporation in any claim or cause of action such creditor may have against the company or any stockholder or director thereof. If such decrease relates to or affects any part of the stock that has actually been subscribed or issued, then such decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of such corporation, giving therein all its assets and liabilities, with names and post-office addresses of all creditors and amount due each, and where the proposed decrease affects any part of the subscribed or issued stock as aforesaid the Secretary of State may require as a condition precedent to the filing of such certificate of decrease that the debts of the corporation be paid or reduced. [Acts 1915, p. 262.]

Art. 6303. [6465–6] Statement to stockholders.—At the regular annual meeting of the stockholders, the president and directors shall exhibit a full, distinct and accurate statement of the affairs of the corporation to the stockholders. Such president and directors shall furnish similar statements at any special meeting of stockholders when they may require the same. [Acts 1876, p. 145; G. L. vol. 8, p. 981.]

Art. 6304. [6467] [4408] [4152] Loans and interest.—At any regular annual meeting of stockholders, or at a special meeting called for the purpose, the stockholders may, by a majority in value of all the stock of such corporation, determine the amount of loans which may be negotiated by such company for the construction of its railway and its equipment, and fix the rate of interest which may be paid, and provide for the security of such loans. [Id.]

Art. 6305. [6468] [4409] [4153] Removal of officers.—The stockholders may, by a two-thirds vote in value of all the stock, at any regular or special meeting of the stockholders, remove the president or any director or other officer of such corporation, and elect others instead in accordance with the by-laws of such corporation and this title. [Id.]

Art. 6306. [6469] [4410] [4154] Issuance of stock.—No railroad corporation shall issue any stock except for money, labor or property actually received and applied to the purpose for which such corporation was organized; nor shall it issue any shares of stock in said company except at its par value and to actual subscribers who pay or become liable to pay the par value thereof. [Id. P. D. 4921.]

Art. 6307. [6470] [4411] [4155] Fictitious dividends void.—All fictitious dividends and other fictitious increase of the capital stock or indebtedness of any such corporation shall be void. [Id.]

Art. 6308. [6471] [4412] [4156] Penalty.—Every officer or director of a railroad company, who

shall violate or consent to the violation of either of the two preceding articles, shall become personally liable to the stockholders and creditors of such company for the full par value of such illegal stock, or for the full amount of such fictitious dividends, increase of stock, or indebtedness. [P. D. 4921.]

CHAPTER FIVE

MEETING OF DIRECTORS AND STOCKHOLDERS

Art.
6309. Annual meeting of directors.
6310. Annual meeting of stockholders.
6311. Joint meetings.
6312. Quorum.
6313. Special meetings.
6314. Proxy dated.
6315. What stock shall not vote.

Article 6309. [6472] [4413] [4157] Annual meeting of directors.—The directors of every railroad company shall hold one meeting annually at their office in this State, public notice of which shall be given at least thirty days before said meeting, said notice to be published in some daily newspaper published in this State. [Const. art. 10, sec. 3; Acts 1885, p. 67; G. L. vol. 9, p. 687.]

Art. 6310. [6473] [4414] [4158] Annual meeting of stockholders.—The stockholders of every railroad corporation shall hold at least one meeting annually at the public office or place of business of such corporation in this State; and the board of directors shall cause public notice to be given of the time and place of such meeting for thirty days previously thereto as provided in the preceding article. [Acts 1876, p. 144; G. L. vol. 8, p. 980.]

Art. 6311. [6474] [4415] [4159] Joint meetings.—Said annual meeting of the board of directors and of the stockholders may be called to meet and may be held at the same time and place, in which case one notice shall answer the purpose of both meetings; provided, it be so stated in such notice. [Id.]

Art. 6312. [6475] [4416] [4160] Quorum.—A majority of the directors of any railroad corporation shall constitute a quorum to transact business, and a majority in value of two-thirds of all the stock owned by such corporation shall constitute a quorum of the stockholders to transact business. [Id.]

Art. 6313. [6476–7–8] Special meetings.—A special meeting of the stockholders may be called at any time during the interval between the regular annual meetings of such stockholders by the directors, or by the stockholders owning not less than one-fourth of all the stock of such company. Notice of the time and place of such meetings shall be given for at least thirty days prior to the time fixed for such meeting, in the same manner as is required in the case of a regular annual meeting; and such notice shall specify the purpose or purposes for which the said special meeting is called; and no other business shall be transacted at such special meeting, except that specified in such notice. If at any such special meeting so called a majority, in value, of the stockholders, equal to two-thirds of the stock of such corporation shall not be represented in person or by proxy, such meeting shall be adjourned from day to day, not exceeding three days without transaction of any business; and if within said three days two-thirds in value of such stock shall not be represented at such meeting, then the meeting shall be adjourned and another meeting called, and notice thereof given as heretofore provided. [Id.]

Art. 6314. [6479] [4420] [4164] Proxy dated.—Every proxy from a stockholder shall be dated within six months previous to the meeting of the stockholders at which it is proposed to vote by virtue thereof, and if not dated within such time, shall not be voted. [P. D. 4908.]

Art. 6315. [6480] [4421] [4165] What stock shall not vote.—Stock issued within thirty days before any stockholders meeting shall not entitle the holder to vote thereat except at the first stockholders meeting under their articles or act of incorporation for organization; nor shall any stock be voted upon except in proportion to the amount paid thereon, or secured to be paid by good security in addition to the subscription and stock.

CHAPTER SIX

RIGHT OF WAY

Art.
6316. Right to construct.
6316a. Right to construct spur tracks.
6317. Right of way over public lands.
6318. Lineal survey.
6319. Width of road.
6320. Streams of water.
6321. Crossings.
6322. Where made.
6323. Thirty days for completion.
6324. Distance from place.
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6332. May cross other railways.
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6335. Value and damages to be paid.
6336. When corporation and owner disagree.
6337. Entry only for survey.
6338. Practice in case specified.
6339. Right of way construed.
6340. Right of way reserved.

Article 6316. [6481] [4422] [4166] Right to construct.—Any railroad corporation shall have the right to construct and operate a railroad between any points within this State, and to connect at the State line with railroads of other States. [Const. art. 10, sec. 1.]

Art. 6316a. Right to construct spur tracks.—Every railroad company owning, leasing or operating a line of railroad in this State shall have authority and power to construct and operate spur or industrial tracks designed to reach or serve industries or industrial enterprises, such as mills, mines, rock quarries, rock deposits, gravel pits, gravel deposits, smelters, warehouses and other manufacturing or industrial enterprises, over which regular scheduled passenger or freight service will not be performed and for transportation over which only a switching charge, if any, will be made, together with all necessary side tracks and subsidiary or accessory spur tracks, and shall have power and authority under the General Laws of this State relating to railroads to condemn property for rights of way for any and all such tracks hereby authorized. [Acts 1925, 39th Leg., ch. 73, p. 230, § 1.]

Art. 6317. [6482] [4423] [4167] Right of way over public lands.—Every such corporation shall have the right of way for its line of road through and over any lands belonging to this State, and to use any earth, timber, stone or other material upon any such land necessary to the construction and operation of its road through or over said land.

Art. 6318. [6483] [4424] [4168] Lineal survey.—Every railroad corporation shall have the right to cause such examination and survey for its proposed railway to be made as may be necessary to the selection of the most advantageous route, and for such purpose may enter upon the lands or waters of any person or corporation, but subject to responsibility for all damages that may be occasioned thereby. [Acts 1876, p. 147; G. L. vol. 8, p. 983.]

Art. 6319. [6484] [4425] [4169] Width of road.—Such corporation shall have the right to lay out its road not exceeding two hundred feet in width, and to construct the same; and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of its railway, and to cut down any standing trees that may be in danger of falling upon or obstructing the railway, making compensation as provided by law. [Id.]

Art. 6320. [6485] [4426] [4170] Streams of water.—Such corporation shall have the right to

construct its road across, along, or upon any stream of water, water course, street, highway, plank, road, turnpike, or canal when the route of said railway shall intersect or touch; but such corporation shall restore the stream, water course, street, highway, plank road, turnpike, or canal thus intersected or touched, to its former state, or to such state as not to unnecessarily impair its usefulness, and shall keep such crossing in repair.

Art. 6321. [6486–87] Crossings.—All railway corporations in this State, which have or may fence their right of way, may be required to make openings or crossings through their fence and over their roadbed along their right of way every one and one-half miles thereof. If such fence shall divide any inclosure, at least one opening shall be made in said fence within such inclosure. Such crossings shall not be less than thirty feet in width, and shall be made and kept in such condition as to admit of the free and easy passage of vehicles and domesticated animals. [Acts 1887, p. 39; G. L. vol. 9, p. 837.]

Art. 6322. [6488–89] Where made.—Such crossings shall be made at such times and places as may be demanded by any two or more citizens of the State who either live or own land within five miles of the place where such crossings may be demanded. Such demand shall be made in writing, of the nearest local agent of such railway company to the place where such crossing or crossings are demanded, and shall state when and where such crossing is desired. [Id.]

Art. 6323. [6490] [4431] Thirty days for completion.—No railway company shall be required to complete such crossing as may be demanded under this chapter in a shorter time than thirty days from the day on which such demand is first made, nor shall they be required to make any crossings where they have already left such crossings, in each one and one-half miles of their road, except inside of inclosures, as provided in Article 6321. [Id.]

Art. 6324. [6491] [4432] Distance from place.—Any railway company, upon such demand, shall be deemed to have complied therewith upon making such crossings within four hundred yards of the place where they are demanded, within the time herein allowed. [Id.]

Art. 6325. [6492] [4433] Failure, etc.—Whenever any railroad company shall fail or refuse to comply with the requirements of this chapter, after demand is made in accordance therewith, such railway company shall pay to each person who made such demand the sum of five hundred dollars for each month they shall so fail or refuse to comply with such demand, the same to be recovered by suit. [Id.]

Art. 6326. [6493] [4434] Intersections.—Nothing in this chapter shall be construed to affect the law requiring railroad companies to provide proper crossings at intersection of all roads and streets. [Id.]

Art. 6327. [367–6494] Crossings of public roads.—Every railroad company in this State shall place and keep that portion of its roadbed and right of way, over or across which any public county road may run, in proper condition for the use of the traveling public, and in case of its failure to do so for thirty days after written notice given to the section boss of the section where such work or repairs are needed by the overseer of such public road, it shall be liable to a penalty of ten dollars for each week such railroad company may fail or neglect to comply with the requirements of this article. Such penalty shall go to the road and bridge fund of the county in which the suit is brought; and the county attorney, upon the making of an affidavit of the facts by any person, shall at once institute against the company violating any provision of this article suit in the proper court to recover such penalty or penalties, and his wilful failure or refusal to do so shall be sufficient cause for his removal from office, unless it is evident that such suit could not have been maintained. The proceedings under this article shall be conducted in the same manner as civil suits. The county attorney attending to such suits shall be entitled to a fee in each case of ten dollars, to be taxed as costs; provided, that when two or more penalties are sought to be recovered in the same suit, but one such fee shall be allowed. Such suits shall be conducted in the name of the county, and if the county be cast in the suit no costs shall be charged against it. [Acts 1885, p. 45; G. L. vol. 9, p. 665.]

Art. 6328. [6495] [4436] [4171] Culverts or sluices.—In no case shall any railroad company construct a roadbed without first constructing the necessary culverts or sluices as the natural lay of the land requires, for the necessary draining thereof. [Acts 1876, p. 147; G. L. vol. 8, p. 983.]

Art. 6329. [6496] [4437] [4172] Navigable waters.—This chapter shall not be construed to authorize the erection of any bridge or any other obstruction across or over any stream or water navigable by steamboats or sail vessels at the place where any bridge or other obstruction may be proposed to be placed so as to prevent the navigation of such stream or water. [Id.]

Art. 6330. [6497] [4438] [4173] Streets, etc.—This chapter shall not be construed to authorize the construction of any railroad upon or across any street, alley, square or highway of any incorporated city or town without assent of the governing body of said city or town. [Id.]

Art. 6331. [6498] [4439] [4174] Other cases.—In case of the construction of any railway along the highways, plank roads, turnpikes, or canals, such railroad corporation shall either first obtain the consent of the lawful authorities having control or jurisdiction of the same or condemn the same under the provisions of law. [Id.]

Art. 6332. [6499] [4440] [4175] May cross other railways.—Such corporation shall have the right to cross, intersect, join and unite its railway with any other railway before constructed at any point on its route and upon the grounds of such other railway corporation, with the necessary turnouts, sidings and switches, and other conveniences in furtherance of the objects of its connection. [Id.]

Art. 6333. [6500–1] Intersections.—Every corporation whose railway is or shall be intersected by any new railway shall unite with the corporation owning such railway in forming intersections and connections and grant to such new railway facilities therefor. If the corporations cannot agree upon the amount of compensation for any such crossings, intersection or connection, or the points and manner of the same, their differences shall be adjusted in the manner provided by law. [Id.]

Art. 6334. [6502] [4443] [4178] May take material.—Any railroad corporation may enter upon and take from any land adjacent to its road, earth, gravel, stone or other materials, except fuel and wood, necessary for the construction of its railway, paying, if the owner of such land and the corporation can agree thereto, the value of such material taken and the amount of damages occasioned to any such land or appurtenances, and, if such owner and corporation cannot agree, then the value of such material and the damages occasioned to such real estate may be ascertained, determined and paid in the manner provided by law. [Id.]

Art. 6335. [6503] [4444] [4179] Value and damages to be paid.—The value of such material and the damages to such real estate shall in all cases be ascertained, determined and paid before such corporation can enter upon and take such material. [Id.]

Art. 6336. [6504] [4445] [4180] When corporation and owner disagree.—If any railroad corporation shall at any time be unable to agree with the owner for the purchase of any real estate, or material thereon, required for the purpose of its incorporation or the transaction of its business, for its depots, station buildings, machine and repair shops, for

the construction of reservoirs for the water supply, or for the right of way, or for a new or additional right of way, for change, or relocation or road bed, to shorten the line, or any part thereof, or to reduce its grades, or any of them, or for double tracking its railroad or constructing and operating its tracks, which is hereby authorized and permitted, or for any other lawful purpose connected with or necessary to the building, operating or running its road, such corporation may acquire such property by condemnation thereof. The limitation in width prescribed by Article 6319 shall not apply to real estate or any interest therein, required for the purposes herein mentioned, other than right of way, and shall not apply to right of way when necessary for double tracking or constructing or adding additional railroad tracks, and real estate, or any interest therein, to be acquired for such other purposes, or any of them, need not adjoin or abut on the right [of] way, and no change of the line through any city or town, or which shall result in the abandonment of any station or depot, shall be made, except upon written order of the Railroad Commission of Texas, authorizing such change. No railroad corporation shall have the right under this law to condemn any land for the purposes mentioned in this article situated more than two miles from the right of way of such railroad corporation. [Id. Acts 1901, p. 46; Acts 1919, p. 280.]

Art. 6337. [6505] [4446] [4181] Entry only for survey.—No railroad company shall enter upon, except for a lineal survey, any real estate whatever, the same being private property, for the purpose of taking and condemning the same, or any material thereon, for any purpose whatever, until the said company shall agree with and pay the owner thereof all damages that may be caused to the lands and property of said owner by the condemnation of said real estate and property, and by the construction of such road. [P. D. 4922.]

Art. 6338. [6531] [4472] Practice in case specified.—When any railroad company is sued for any property occupied by it for railroad purposes, or for damages thereto, the court in which such suit is pending may determine all matters in dispute between the parties, including the condemnation of the property, upon petition or cross bill, asking such remedy by defendant, but the plea for condemnation shall be an admission of the plaintiff's title to such property. [Acts 1889, p. 18; G. L. vol. 9, p. 1046.]

Art. 6339. [6532] [4473] [4206] Right of way construed.—The right of way secured by condemnation to any railway company in this State shall not be construed to include the fee simple estate in lands, either public or private, nor shall the same be lost by forfeiture or expiration of the charter, but shall remain subject to an extension of the charter or the grant of a new charter over the same way without a new condemnation. [Acts 1861, p. 12; G. L. vol. 5, p. 348.]

Art. 6340. [6533] [4474] [4207] Right of way reserved.—The right of way is hereby reserved to any railroad company incorporated by the laws of this State, to the extent of one hundred feet on each side of said road, or roads that cross over or extend through any lands granted, or that may be granted to any railroad company by the Legislature, with the right to take from the lands so granted such stone, timber and earth as such road may need in the construction of its line of road.

CHAPTER SEVEN

OTHER RIGHTS OF RAILROAD CORPORATIONS

Art.
6341. Some rights.
6342. Shall alienate lands, etc.
6343. Apply to all companies.
6344. Right to erect buildings, etc.
6345. Right to borrow money, issue bonds, etc.
6346. Mortgage by resolution.
6347. May pay bonds with stock.
6348. Terminus on coast destroyed.
6349. Abandonment, change, or relocation of line.
6350. Change in city.
6351. Eminent domain.
6352. Certain changes validated.
6353. Hearing of application.

Article 6341. [6535–6–7–8–41–43] Some rights.—Railroad corporations shall have the following other rights:

1. To have succession, and in their corporate name may sue and be sued, plead and be impleaded.

2. To have and use a seal, which it may alter at pleasure.

3. To receive and convey persons and property on its railway by the power and force of steam, or by any mechanical power.

4. To regulate the time and manner in which passengers and property shall be transported, and the compensation to be paid therefor, subject to the provisions of law.

5. Of eminent domain for the purposes prescribed in this title.

6. To purchase, hold and use all such real estate and other property as may be necessary for the construction and use of its railway, stations and other accommodations necessary to accomplish the objects of its incorporation, and to convey the same when no longer required for the use of such railway.

7. To take, hold and use such voluntary grants of real estate and other property as shall be made to it in aid of the construction and use of its railway, and to convey the same when no longer required for the uses of such railway, in any manner not incompatible with the terms of the original grant. [Acts 1876, p. 142; G. L. vol. 8, p. 978.]

Art. 6342. [6539] [4480] Shall alienate lands, etc.—All lands acquired by railroad companies under the provisions of this chapter, or any general laws, shall be alienated by said companies, one-half in six years and one-half in twelve years, from the issuance of patents to the same, and all lands so acquired by railroad companies, and not alienated as herein required, shall be forfeited to the State and become a part of the public domain and liable to location and survey as other unappropriated lands. All lands purchased by or donated to a railroad corporation, except such as are used for depot purposes, reservation for the establishment of machine shops, turnouts and switches, shall be alienated and disposed of by said company in the same manner and time as is required when lands have been received from the State. [Id.]

Art. 6343. [6540] [4481] [4214] Apply to all companies.—The two preceding articles shall apply to such corporations as are prohibited by their acts of incorporation from purchasing or receiving donations of land, as well as those corporations that are not so prohibited. [Id.]

Art. 6344. [6542] [4483] [4216] Right to erect buildings, etc.—Such corporation shall have the right to erect and maintain all necessary and convenient buildings and stations, fixtures and machinery for the accommodation and use of passengers, freights and business interests, or which may be necessary for the construction or operation of its railway; but no railway company shall have the power, either by its own employés or other persons, to construct any buildings along the line of their railroad to be occupied by their employés or others except at their respective depot stations and section houses, and at such places shall construct only such buildings as may be necessary for the transaction of their legitimate business operations, and for shelter of their employés, nor shall they use, occupy or cultivate any part of the right of way over which their respective roads may pass, with the exception aforesaid, for any other purpose than the construction and keeping in repair their respective railways. [Id.]

Art. 6345. [6544] [4486] [4219] Right to borrow money, issue bonds, etc.—Such corporation shall have the right, from time to time, to borrow such sums of money as may be necessary for constructing,

completing, improving or operating its railway, and to issue and dispose of its bonds for any amount so borrowed, and to mortgage its corporate property and franchise to secure the payment of any debt contracted by such corporation for the purposes aforesaid, subject, however, to other provisions of law. [Id.]

Art. 6346. [6645–6] Mortgage by resolution.—No mortgage by such corporation shall be valid, unless authorized by a resolution adopted by a vote of two-thirds of all the stock of such company, after notice in the manner provided in this title for increasing the capital stock of such corporation. When any such resolution has been so adopted it shall be recorded in the office of the Secretary of State, and no such resolution shall take effect until so recorded. [Id.]

Art. 6347. [6547] [4489] [4222] May pay bonds with stock.—The directors shall be empowered, in pursuance of any such resolution, to confer on any holder of any bond for money so borrowed as aforesaid, the right to convert the principal of such bond into the stock of such corporation at any time not exceeding ten years after the date of such bond, under such regulations as the by-laws of such corporation may provide. [Id.]

Art. 6348. [6548] [4490] Terminus on coast destroyed.—Any railway company in this State having a terminus on the coast, the said terminus being a county site, and the same having been destroyed by storms and cyclones, and when said county site has been removed back from the coast near the line of said railway, it shall be lawful for said railway to remove and take up its track from its original terminus on the coast to a point opposite or near said new county site; provided, said railway company make its terminus at and build its road to said new county site. [Acts 1887, p. 6; G. L. vol. 9, p. 804.]

Art. 6349. Abandonment, change, or relocation of line.—When any railroad in this State whether incorporated under State or Federal charter desires to abandon, change or relocate any portion of its line of railroad within this State adjacent to but not within an incorporated city of fifty thousand or more inhabitants according to the preceding Federal census, it shall present a petition therefor to the Railroad Commission of Texas showing that portion of its line sought to be changed, relocated or abandoned and the situation of the new relocated line, with the reasons justifying the same; thereupon said Commission shall set down said application for hearing and give public notice thereof of not less than ten days in the locality where such change is desired by publishing notice in a newspaper of general circulation published nearest thereto, setting out substantially what such contemplated change may be; and if after such hearing said Commission shall be of the opinion that it is to the public interest to permit such change, relocation or abandonment of said line, it shall enter its order approving same and thereupon said railroad corporation or receivers of any railroad shall be empowered to make such change, relocation or abandonment; provided that nothing contained herein shall be construed to authorize said Commission to permit any railroad corporation or receivers of any railroad to abandon such substantial part of its line as shall amount to impairment of its charter contract or deprive any city or town of railroad facilities. Provided, said Commission shall not exercise the power herein granted unless and until said railroad corporation or receivers of any railroad shall have obtained the permission of the commissioners court of the county for such change, relocation or abandonment, which permission shall be evidenced by the duly authenticated order of such court which shall accompany the petition of such railroad corporation or receivers of any railroad to said Commission. [Acts 4th C. S. 1918, p. 45.]

Art. 6350. Change in city.—When any railroad corporation or receiver of any railroad in the State desires to change, relocate or abandon any part of its line within any city containing fifty thousand or more inhabitants, according to the preceding Federal census, it shall present its petition therefor to the governing body of such city, said petition to be also supported by the names of not less than five hundred resident citizens who shall be property owners in said city, showing the reasons therefor, the part of the line sought to be changed, relocated or abandoned, and the new location or arrangements proposed for operation; whereupon such governing body if of the opinion that the same is for the public interest, shall enter its order permitting such change, relocation or abandonment of said line. Thereupon the said railroad corporation or receivers of any railroad shall present its petition to the Railroad Commission of Texas praying for authority to make such change, relocation or abandonment, with a description of that portion of its lines; providing that no change shall be made that will seriously affect the charter obligations of any railroad company sought to be changed, relocated or abandoned, together with a description of the changed or relocated line, or arrangement for the new operation, which petition shall be accompanied by the order of the governing legislative authority of the city as aforesaid approving same; whereupon said Commission shall set down such application for public hearing upon not less than ten days' notice, and if upon such hearing said Commission shall be of the opinion that the public interest will be conserved by the granting of such petition, it shall enter its order to that effect and thereupon such railroad corporation or receivers of any railroad shall have full power to make such change, relocation or abandonment of its line. No application to alter, change or relocate railway tracks, as contemplated by this article, shall be acted upon by the governing body of such city until thirty days after the petition of citizens provided for herein shall have been filed with said body and publication thereof has been made for two consecutive weeks in a newspaper of general circulation within the limits of said city, prior to action had thereon. [Id.]

Art. 6351. Eminent domain.—When any railroad corporation or receivers of any railroad shall have been empowered under the provisions of this law to change, relocate or abandon its line of railroad in this State, it shall have full power to acquire by condemnation or otherwise all lands for right of way, depot grounds, shops, roundhouses, water supply sites, sidings, switches, spurs or any other lawful purposes connected with or necessary to the building, operating or running of its road as changed, relocated or abandoned; provided, however, that all property so acquired is hereby declared to be for and is charged with public use so far as the same may be necessary. [Id.]

Art. 6352. Certain changes validated.—All changes, relocations and abandonments of parts of their lines by railroad corporations or receivers of any railroad in or adjacent to any city having a population according to the preceding Federal census of fifty thousand inhabitants or over, heretofore made with the permission of the Railroad Commission of Texas or authorized by its written order, are hereby validated and made legal as fully as if made hereunder, and such permission or written order of the said Commission, given prior hereto, shall be full power and authority to a railroad corporation or receivers of any railroad to make such change, relocation or abandonment of parts of its line; providing that this law shall not affect any right or rights for damages that any person, firm or corporation may have, or may have had or shall have for damages caused by any such removal, change or abandonment. [Id.]

Art. 6353. Hearing of application.—Whenever the governing body of any city containing fifty thousand inhabitants or more shall present to the Railroad Commission of this State its application for any change or relocation of any tracks of any railroad corporation or receivers of any railroad in such way as to better serve the public interest, said Commission shall set down such application for a hearing after giving ten days notice to such railroad corporation or receivers of any railroad, whose tracks are sought to be changed or relocated and after such a hearing may make its order directing such change or relocation if

in the opinion of said Commission such change or relocation would be to the best interest of all parties concerned. No application to alter, change or relocate railway tracks, as contemplated by this article shall be determined upon by said governing body until thirty days after publication of the proposed change or relocation of said railway tracks shall have been made in the official newspaper of said city. [Id.]

CHAPTER EIGHT

RESTRICTIONS, DUTIES AND LIABILITIES

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Article 6354. [6549] [4491] [4223] Road to pass through county seat.—No railroad hereafter constructed in this State shall pass within a distance of three miles of any county seat without passing through the same and establishing and maintaining a depot therein, unless prevented by natural obstacles, such as streams, hills or mountains; provided, such town or its citizens shall grant the right of way through its limits and sufficient ground for ordinary depot purposes. [Const. art. 10, sec. 9.]

Art. 6355. [6550] [4492] [4224] Shall survey twenty-five miles.—Every railroad company organized under this title shall make an actual survey of its route or line for a distance of twenty-five miles on its projected route, and shall designate the depot grounds along said first twenty-five miles before the roadbed is begun. No railroad company shall change its route or depot grounds after the same have been so designated. [Acts 1876, p. 142; G. L. vol. 8, p. 978.]

Art. 6356. [6551] [4493] [4225] Subsequent mileage.—Every such corporation shall, on completion of the first twenty-five miles of its roadbed, make a survey of the next twenty-five miles, and of each subsequent twenty-five miles as the preceding twenty-five miles shall be completed, and every subsequent twenty-five miles shall be controlled by the provisions applicable to the first twenty-five miles of the road. [Id.]

Art. 6357. [6552] [4494] [4226] Train regulations.—Every such corporation shall start and run their cars for the transportation of passengers and property at regular times to be fixed by public notice, and shall furnish sufficient accommodation for the transportation of all such passengers and property, as shall, within a reasonable time previous thereto. offer or be offered for transportation at the place of starting and at junctions of other roads and at sidings and stopping places established for or receiving and discharging way passengers and freight and shall take, transport and discharge such passengers and property at, from and to such places, on the due payment of the tolls, freight or fare legally authorized therefor. Failure on the part of railroad companies to comply with the requirements of this article shall be deemed an abuse of their rights and privileges and such abuse shall at once be corrected and regulated by the Railroad Commission. No railroad corporation nor any manager or receiver of any railroad shall ever abandon operation of its trains over said railroad or any part thereof, and if any railroad corporation, manager or receiver has or may hereafter abandon operation of its trains over its said railroad, or part thereof, the Railroad Commission of Texas shall at once issue its order directing said railroad corporation, manager or receiver to at once resume operation of its trains over said road or part thereof, in accordance with the orders, rules and regulations of the said Commission. [P. D. 4893; Acts 1st C. S. 1903, p. 21; Acts 4th C. S. 1918, p. 189.]

Art. 6358. [6552] [4494] [4226] Action on abandonment.—If any railroad corporation, manager or receiver shall attempt to abandon any railroad, or part thereof, by failing to operate its trains or to resume operation of its trains over its said road, or part thereof, if the operation of trains has been abandoned, the Railroad Commission shall report the same to the Attorney General who shall at once file a suit in behalf of the State against said railroad corporation, manager or receiver in any district court of Travis County, or of any county through which said railroad may pass, for the purpose of determining whether or not said railroad corporation, manager or receiver has failed or refused to carry out the purpose of this law, and if the court shall determine that said corporation, manager or receiver has so failed or refused, said court shall appoint a receiver for the purpose of operating said railroad and carrying out the purposes of this law. The said receiver shall have no connection directly or indirectly with said railroad corporation, manager or receiver prior to the time of his appointment, but shall be a good business man well qualified to perform the duties of said receiver.

Said receiver shall collect freight and passenger rates as prescribed by said Commission and shall do and perform any and all things necessary in the operation of said trains over said road and shall report to the said court at such times as the decree of the court may prescribe, all his acts as such receiver. [Id.]

Art. 6359. Effect of preceding articles.—This law shall be considered cumulative of all laws of this State now in force on this subject when not in conflict herewith, but when in conflict herewith, this law shall control; but the provisions hereof shall not apply to railroads to which the right of eminent domain is not granted under the laws of this State. [Id.]

Art. 6360. [6554] [4496] [4227] Refusal to transport.—In case of the refusal by such corpo-

ration or their agents so to take and transport any passengers or property, or to deliver the same, or either of them, at the regularly appointed time, such corporation shall pay to the party aggrieved all damages which shall be sustained thereby, with costs of suit; and in case of the transportation of property shall in addition pay to such party special damages at the rate of five per cent per month upon the value of the same at the time of shipment, for the negligent detention thereof beyond the time reasonably necessary for its transportation. In suits against such corporation under this law, the burden of proof shall be on such corporation to show that the delay was not negligent. [Acts 1887, p. 116; G. L. vol. 9, p. 914.]

Art. 6361. [6555] Double-decked cars for animals.—All railroad companies operating any railroad, or any part thereof, within this State, are required to provide cars with double decks for the shipment of sheep, goats, hogs and calves; the said cars must be in every way as large as those now in use upon the respective roads of this State; the distance between the floor and the second deck shall be the same as the distance between the second deck and the roof; the floor of the second deck shall be so constructed as to protect the animals beneath; and said cars must be furnished by the railroad company to any person who shall offer to ship at one time, hogs, sheep, goats or calves, in carload lots. [Acts 1887, p. 57; Sen. Jour. 1895, p. 483; G. L. vol. 9, p. 855.]

Art. 6362. [6556] Rates of freight; penalty.—It shall be unlawful for any railroad company to charge more for shipping a double-decked carload of sheep, goats, hogs or calves than is charged for shipping a carload of other cattle or horses the same distance, and in the same direction; and any railroad company that shall fail or refuse to furnish double-decked cars of the dimensions prescribed in the preceding article to any person who may wish to ship as much as a double-decked carload of sheep, hogs, goats, or calves, or shall charge more for shipping a double-decked carload of sheep, hogs, goats or calves, than for shipping a carload of other cattle or horses for the same distance and in the same direction, shall be liable to pay to the owner or shipper of said sheep, hogs, goats, or calves, the sum of five hundred dollars as liquidated damages; provided, that if any railroad companies shall transport sheep, hogs, goats, and calves, on single-decked cars at one-half the price per carload charged for shipping horses, or other cattle, then the penalties prescribed in this article for failure to provide double-decked cars shall be inoperative. [Id.]

Art. 6363. [6557] Overcharge.—It shall be unlawful for any railroad company, in this State, its officers, agents or employés, to charge and collect or to endeavor to charge and collect from the owner, agent or consignee of any freight, goods, wares and merchandise, of any kind or character whatsoever, a greater sum for transporting said freight, goods, wares and merchandise than is specified in the bill of lading. [Acts 1899, p. 70.]

Art. 6364. [6558] Delivery on payment of charges.—Any railroad company, its officers, agents or employés, having possession of any goods, wares and merchandise, of any kind or character whatsoever, shall deliver the same to the owner, his agent or consignee, upon payment of the freight charges, as shown by the bill of lading. [Id.]

Art. 6365. [6559] Refusal to deliver freight.—If any railroad company, its officers, agents or employés shall refuse to deliver to the owner, agent or consignee, any freight, goods, wares and merchandise, of any kind or character whatsoever, upon the payment, or tender of payment, of the freight charges due as shown by the bill of lading, the said railroad company shall be liable in damages to the owner of said freight, goods, wares and merchandise, to an amount equal to the amount of freight charges, for every day said freight, goods, wares and merchandise is held after payment, or tender of payment, of the charges due as shown by the bill of lading. [Id.]

Art. 6366. Confiscating or converting freight.—No railroad company or receiver thereof, in this State shall confiscate, or otherwise convert to its own use, any carload shipment or substantial portion of any such carload shipment of any article or commodity of freight traffic received by it, or them, for transportation and delivery, without the express consent of the owner or consignee thereof, and the acts of the agents, officers and employés of such carrier or receiver within the apparent scope of their duties or authority with respect to such conversion or confiscation shall be deemed to be the acts of such railway company, receiver or other carrier. The provisions of this article shall not apply to conversion of freight where the same has been damaged or intermingled with other freight in wrecks, nor to refused or unclaimed freight, the delivery of which the railroad is unable to effect. [Acts 1917, p. 386.]

Art. 6367. Penalty.—In addition to all other remedies or penalties that may be provided by law therefor, the violation of any provision of the preceding article shall subject the railway company, or receiver or other common carrier so offending to a penalty of not less than one hundred and twenty-five nor more than five hundred dollars in favor of the State of Texas, and a further penalty of twice the amount of the purchase price of the converted shipment in favor of the owner or consignee thereof. [Id.]

Art. 6368. [6560–1] Badge.—Every conductor, baggage master, engineer, brakeman or other servant of such railroad corporation employed in a passenger train, or at its stations for passengers, shall wear upon his hat or cap a badge which shall indicate his office and the initial letters or the style of the corporation by which he is employed. No conductor or collector without such badge shall demand or be entitled to receive from any passenger any fare, toll ticket, or exercise any power of his office, and no other of the said officers or servants, without such badge, shall have any authority to meddle or interfere with the passengers, their baggage or property.

Art. 6369. [6562] [4505] [4230] Baggage.—A check shall be affixed to every package or parcel of baggage when taken for transportation by the agent or servant of such corporation, and a duplicate thereof given to the passenger or person delivering the same on his behalf; and, if such check be refused on demand, the corporation shall pay to such passenger the sum of ten dollars, to be recovered in an action of debt; and further, no fare or toll shall be collected or received from such passenger; and, if such passenger shall have paid his fare, the same shall be refunded by the conductor in charge of the train.

Art. 6370. [6563] [4506] [4231] Signs at cross-roads.—Such corporation shall erect at all points where its road shall cross any first or second class public road, at a sufficient elevation from such public road to admit of the free passage of vehicles of every kind, a sign with large and distinct letters placed thereon, to give notice of the proximity of the railroad and warn persons of the necessity of looking out for the cars; and any company neglecting or refusing to erect such signs shall be liable in damages for all injuries occurring to persons or property from such neglect or refusal. [P. D. 4890.]

Art. 6371. [6564] [4507] [4232] Bell and whistle.—A bell of at least thirty pounds weight and a steam whistle shall be placed on each locomotive engine, and the whistle shall be blown and the bell rung at a distance of at least eighty rods from the place where the railroad shall cross any public road or street, and such bell shall be kept ringing until it shall have crossed such public road, or stopped; and each locomotive engine approaching a place where two lines of railway cross each other shall, before reaching such railway crossing be brought to a full stop; and the corporation operating such railway shall be liable for all damages which shall be sustained by any person by reason of any such neglect. The full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at

such crossing an interlocking switch and signal apparatus and shall keep a flagman in attendance at such crossing. [Acts 1883, p. 28; G. L. vol. 9, p. 334; Acts 1893, p. 87; G. L. vol. 10, p. 517.]

Art. 6372. [6565–6] Headlights.—Every railroad corporation or receiver or lessee thereof, operating any line of railroad in this State, shall equip all locomotive engines used in the transportation of trains over said railroad with electric or other headlights of not less than fifteen hundred candle power, measured without the aid of a reflector. This article shall not apply to locomotive engines regularly used in the switching of cars or trains. Any railroad company or the receiver or lessee thereof doing business in the State of Texas, which shall violate any provision of this article, shall be liable to the State of Texas for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such suit may be brought in the name of the State in Travis County or in any county in or through which such line of railroad may run, by the Attorney General, or by the county or district attorney in any county in or through which such line of railroad may be operated; and such suit shall be subject to the provisions of Article 6477. [Acts 1907, p. 54.]

Art. 6373. [6567] Switch lights.—Every railway corporation operating any line of railway in this State shall place and maintain good and sufficient switch lights on all their main line switches connected with the main line, and keep the same lighted from sunset until sunrise. This article shall not apply to railways which have all their locomotives equipped with electric headlights, nor on railroad lines or divisions on which no trains are regularly run or operated at night. [Acts 1905, p. 77.]

Art. 6374. [6568] Derailing switches on sidings.—Every railroad corporation operating any line of railway in Texas shall place and maintain good and safe derailing switches on all of their sidings connecting with the main line of such railway and upon which siding cars are left standing. No derailing switches shall be required where the siding connects with the main line on an upgrade in the direction of the main line of one half of one per cent or over, nor on inside tracks at terminal points where regular switching crews are employed. [Id.]

Art. 6375. [6569] Penalty.—Any railway corporation which shall wilfully violate any provision of the two preceding articles shall be liable to the State of Texas for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suits therefor be brought by the Attorney General, or under his direction, in the name of the State of Texas, in Travis County, or in any county through which such railway may run or be operated, and such suits shall be subject to the provisions of Article 6477. [Acts 1905, p. 77.]

Art. 6376. Using tracks to make or repair cars.—No firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this State, shall use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use. Nothing herein shall be construed to prohibit temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. Any firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars in this State, who shall violate this law shall forfeit and pay a penalty to the State of Texas of not less than fifty nor more than two hundred dollars. Each day such violation shall exist shall be a separate offense. [Acts 1913, p. 334.]

Art. 6377. [6570] [4508] [4233] Forming passenger trains.—In forming a passenger train, baggage or freight, or merchandise, or lumber cars shall not be placed in rear of passenger cars; and if they or any of them shall be so placed and any accident happen to life or limb, the officer or agent who so directed or knowingly suffered such arrangement and the conductor and engineer of the train shall each be held guilty of intentionally causing the injury, and be punished accordingly. [P. D. 4896.]

Art. 6378. [6571] [4517] [4234] Brakes and brakemen.—Every such company shall have a good and sufficient brake upon the hindmost car on all trains transporting passengers and merchandise, and also keep stationed there at all times a trusty and faithful brakeman, under a penalty of not exceeding one hundred dollars for each offense, to be recovered by suit in the name of the State. [P. D. 4907.]

Art. 6379. Air brake inspection.—The air brakes and air brake attachment on each train in this State must be inspected by a competent inspector before such train leaves its division terminal. This article shall not apply to tram roads engaged in hauling logs to saw mills, nor to railroads under forty miles in length. Any corporation or receiver who operates or causes to be operated any such train without such inspection shall forfeit and pay to the State of Texas a penalty of not less than fifty nor more than one hundred dollars, to be recovered by suit. Each operation of any such train without such inspection first having been so made shall be a separate offense. [Acts 1911, p. 106.]

Art. 6380. [6572 to 76] Full crew.—No railroad company or receiver of any railroad company doing business in this State shall run over its road, or part of its road, outside of the yard limits:

1. Any passenger train with less than a full passenger crew consisting of four persons: one engineer, one fireman, one conductor and one brakeman.

2. Any freight train, gravel train or construction train with less than a full crew consisting of five persons: one engineer, one fireman, one conductor and two brakemen.

3. Any light engine without a full train crew consisting of three persons: one engineer, one fireman and one conductor.

4. The provisions of this article shall not apply to nor include any railroad company or receiver thereof, of any line of railroad in this State, less than twenty miles in length; and nothing in subdivisions one and two hereof shall apply in case of disability of one or more of any train crew while out on the road between division terminals, or to switching crews in charge of yard engines, or which may be required to push trains out of the yard limits.

Any such company or receiver which shall violate any provision of this article shall be liable to this State for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Suit for such penalty shall be brought in Travis County or in any county in or through which such line of railroad may run, by the Attorney General, or under his direction, or by the county or district attorney in any county in or through which such railroad may be operated. Such suits shall be subject to the provisions of Article 6477. [Acts 1909, p. 179.]

Art. 6381. [6577 to 6580] Ash pans.—No common carrier engaged in moving commerce in this State by railroad shall use in moving such commerce in this State any locomotive not equipped with an ash pan which can be dumped or emptied and cleaned without the necessity of any employé going under such locomotive. This article shall not apply to any locomotive upon which an ash pan is not necessary by reason of the use of oil, electricity or other such agency in such locomotive. Any such common carrier which shall violate the provisions of this article shall be liable to this State for a penalty of not less than one hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suit brought in the name of this State in Travis County or in any county into or through which such car-

rier may be operating a line of railroad. Such suit may be brought by the Attorney General or under his direction, or by the county or district attorney in any such county. The same compensation shall be allowed the attorney bringing such suit as provided in Article 6477. "Common carrier" as used in this article shall include the receiver or other person or corporation charged with the duty of managing and operating the business of a common carrier. [Acts 1909, p. 67.]

Art. 6382. [6709] Brakes.—No railroad engaged in intrastate commerce within this State shall use on its lines in moving intrastate traffic within said State any locomotive engine not equipped with a power driving wheel brake and appliances for operating the train brake system, or run any train in such traffic that has not sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose, nor run any train in such traffic that has not all of the power or train brakes in it used and operated by such engineer, nor run any train in such traffic that has not at least seventy-five per centum of the cars in it equipped with power or train brakes; and for the purpose of fully carrying into effect the objects of this and the five succeeding articles, the Commission may from time to time, after full hearing by public order, increase the minimum percentage of cars in any train which shall be equipped with power or train brakes; and after such minimum percentage has been so increased, it shall be unlawful for any common carrier to run any train in such traffic which does not comply with such increased minimum percentage. [Acts 1909, p. 64.]

Art. 6383. [6710] Improved couplers.—No common carrier engaged in commerce as aforesaid shall haul or permit to be hauled or used on its line of railroad within this State, any locomotive, tender, car or similar vehicle employed in moving intrastate traffic within this State which is not equipped with couplers, coupling automatically by impact and which can be coupled and uncoupled without the necessity of men going between the ends of locomotives, tenders, cars and similar vehicles. [Id.]

Art. 6384. [6711] Drawbar of engine.—No common carrier engaged in commerce as aforesaid shall use in moving intrastate traffic within this State any locomotive, tender, car or similar vehicle, any drawbar of which, when measured perpendicularly from the level of the tops of the track rails upon which such locomotive, tender, car or similar vehicle is standing to the center of such draw bar more than thirty-four and one-half inches in height. [Id.]

Art. 6385. [6712] May refuse rolling stock.—When any person, firm, company, corporation or receiver engaged in commerce as aforesaid shall have equipped a sufficient number of its locomotives, tenders, cars and similar vehicles so as to comply with the provisions of this title, it may lawfully refuse to receive from connecting lines of road or shippers, any locomotives, tenders, cars, or similar vehicles not equipped with such power or train brakes as will work and readily interchange with the brakes in use on its own locomotives, tenders, cars and similar vehicles as required by law.

Art. 6386. [6713] Rolling stock.—No common carrier, engaged in commerce as aforesaid, shall use in moving intrastate traffic within this State any locomotive, tender, cars, or similar vehicle which is not provided with sufficient and secure grab irons, hand holds and foot stirrups. [Id.]

Art. 6387. [6714] Penalty.—Every such common carrier, whether a co-partnership, a corporation, a receiver or an individual or association of individuals, violating any of the provisions of the five preceding articles shall be liable to the State of Texas for a penalty of not less than two hundred nor more than one thousand dollars for each offense. Such penalty shall be recovered and suit brought in the name of the State of Texas, in Travis County, or in any county into or through which such line of railroad may run, by the Attorney General or under his direction, or by the County or district attorney in the county in which the suit is brought, and the attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected, to be paid by the State, and the fees and compensation so allowed shall not be accounted for under the general fee law.

Art. 6388. [6646] No risk assumed.—Any employé of any common carrier engaged in any intrastate commerce, as provided in the six preceding articles who may be injured or killed shall not be held to have assumed the risk of his employment, or to have been guilty of contributory negligence, if the violation by such common carrier of any provision of said articles contributed to the injury or death of such employé. [Id.]

Art. 6389. [6581–2–3] Provision for employés.—Every person, corporation, or receiver, engaged in constructing or repairing railroad cars, trucks or other railroad equipment, shall erect and maintain a building or shed at every station or other point where as many a [as] five men are regularly employed on such repair work, the building or shed to cover a sufficient portion of its track so as to provide that all men regularly employed in the construction and repair of cars, trucks, or other railroad equipment shall be sheltered and protected from inclement weather. The provisions of this article shall not apply at points where less than five men are regularly employed in the repair service, nor at division terminals, nor other points where it is necessary to make light repairs only on cars, nor to cars loaded with time or perishable freight, nor to cars when trains are being held for the movement of said cars. Any person, corporation or receiver who shall violate any provisions of this article shall pay to the State a penalty of not less than fifty nor more than one hundred dollars. Each ten days of such failure or refusal to so comply shall be considered a separate infraction authorizing the recovery of a separate penalty. Suit for recovery of penalty hereunder shall be brought by the Attorney General or by the county or district attorney of the county in which suit is brought, and the county or district attorney, as the case may be, shall receive a fee of ten per cent upon each penalty recovered and collected by him, and said fee shall be over and above the fees allowed under the general fee bill. [Acts 4th C. S. 1910, p. 123.]

Art. 6390. [6584] Sixteen hours.—It shall be unlawful for any railroad company, or receiver of any railroad company, operating any line of railroad in whole or in part in this State, or any officer or agent of such railroad company or receiver to require or permit any conductor, engineer, fireman or brakeman to be or remain on duty for a longer period than sixteen consecutive hours; and whenever any such conductor, engineer, fireman or brakeman shall have been continuously on duty for sixteen hours, he shall be relieved and shall not be required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such conductor, engineer, fireman or brakeman who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty. [Acts 1909, p. 180.]

Art. 6391. [6585] Penalties.—Any railroad company, or receiver of any railroad, operating a line of railroad in whole or in part in this State, or any officer or agent of such railroad or receiver who shall violate any provision of the preceding article shall be liable to a penalty to the State of not to exceed five hundred dollars for each violation. Suit for such penalty shall be brought in the name of the State in Travis County, or in any county into or through which such railroad may run, and may be brought either by the Attorney General, or under his direction, or by the county attorney or district attorney of any county

or judicial district into or through which such railroad may pass, and such attorney bringing any such suit shall be entitled to one-third of any penalty recovered therein. In all prosecutions under this and the preceding article against any railroad company, or receiver of any railroad company, such company or receiver shall be deemed to have had knowledge of all acts of all of its officers and agents. The provisions of this and the preceding article shall not apply in any case of casualty or unavoidable accident, or the Act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of any conductor, engineer, fireman or brakeman at the time such conductor, engineer, fireman or brakeman left a terminal, and which act could not have been foreseen; nor to crews of wrecking or relief trains. [Id.]

Art. 6392. [6588] [4518] [4235] Carrying mail.—Every such corporation shall, when applied to by the Postmaster General, convey the mail of the United States on its road or roads; and in case such corporation shall not agree as to the rate of transportation therefor, and as to the time, rate of speed, manner and condition of conveying the same, the Governor shall appoint three commissioners, who, or a majority of them, after fifteen days written notice to the corporation of the time and place of meeting, shall determine and fix the prices, terms and conditions aforesaid; but such price shall not be less for conveying such mails in the regular passenger trains than the amount which such corporation would receive as freight on a like weight of merchandise transported in their merchandise trains and fair compensation for the post-office car; and if the Postmaster General shall require the mail to be carried at other hours, or at a higher speed than the passenger train be run at, the corporation shall furnish an extra train for the mail, and be allowed an extra compensation for the expenses and wear and tear thereof and for the service, to be fixed as aforesaid. [P. D. 4903.]

Art. 6393. [6589] [4519] [4236] Freight depots.—Railroad companies shall erect at each depot, station, or place established by such company for the reception and delivery of freight, suitable buildings or inclosures to protect produce, goods, wares, and merchandise and freight of every description from damage by exposure to weather, stock or otherwise; in default of which such railroad company shall be liable to the owner of such produce, goods, wares or merchandise for the amount of damages or loss sustained by reason of such improper exposure, together with all costs and expenses of recovering the same, including necessary attorneys' fees. [P. D. 4923.]

Art. 6394. [6590] [4520] [4237] Storage.—Railroad companies shall in no case be allowed to charge storage upon freight received by them for delivery, unless the owner or consignee thereof neglect to remove it from the depot of the company within three days after notice of its reception; which notice may be given by posting the same on the depot door; and, after the expiration of such time, the company may remove and store said freight at the expense of the owner or consignee, and said freight shall be held liable for the freight and charges due thereon. [P. D. 4923.]

Art. 6395. [6591] [4521] [4238] Passenger depots.—Every railroad company doing business in this State shall keep its depots or passenger houses in this State lighted and warmed, and opened to the ingress and egress of all passengers who are entitled to go therein, for a time not less than one hour before the arrival and after the departure of all trains carrying passengers on such railroad; and every such railroad company, for each failure or refusal to comply with any provision of this article shall forfeit and pay to the State of Texas, the sum of fifty dollars, and shall be liable to the party injured for all damages by reason of such failure. [Acts 1891, p. 29; Sen. Jour. 1895, p. 483, No. 89; G. L. vol. 10, p. 31.]

Art. 6396. [6592] Water closets.—All railroad and railway corporations operating a line of railway in this State for the transportation of passengers thereon are required to construct and maintain, and keep in a reasonably clean and sanitary condition, suitable and separate water closets or privies for both male and female persons at each passenger station on its line of railway, either within its passenger depot or in connection therewith, or within a reasonable and convenient distance therefrom, at such station for the accommodation of its passengers who are received and discharged from its cars thereat, and of its patrons and employés who have business with such railroads and corporations at such stations. [Acts 1905, p. 324; Acts 1909, p. 175.]

Art. 6397. [6593] Separate closets.—They shall keep said water closets and depot grounds adjacent thereto well lighted at such hours in the night time as its passengers and patrons at such stations may have occasion to be at the same, either for the purpose of taking passage on its trains, or waiting for the arrival thereof, or after leaving the same for at least thirty minutes before the schedule time for the arrival of its train and after the arrival thereof at said station. [Id.]

Art. 6398. [6594] Penalties.—Any railroad or railway corporation which fails, neglects or refuses to comply with the provisions of the two preceding articles shall forfeit and pay to the State of Texas the sum of fifty dollars for each week it so fails and neglects. The county attorney of the county in which such station is located, and in case there is no such county attorney, then the attorney of the district including said county, shall, upon credible information furnished him, institute suits in the name of the State of Texas against such defaulting railroad or railway corporation for the recovery of said penalties; and, in case of said recovery, the said attorney shall be entitled to one-fourth the amount thereof as commission for his said services, and the remainder thereof shall be paid into the road and bridge fund of said county. The State shall in no event be liable for any costs in such suit. [Id.]

Art. 6399. [6595] [4522] [4239] Switch cars.—When a company constructs a switch on its road for the accommodation of freighters, they shall be bound to furnish a sufficient number of cars for the transportation of freight therefrom when requested to do so, and in default shall be subject to the same penalties as in other cases of neglect of the like character.

Art. 6400. [6596 to 6600] Cattle-guards.—Every railroad company whose railroad passes through a field or inclosure, shall place a good and sufficient cattle-guard or stop at the points of entering such field or inclosure, and keep them in good repair. If such field or inclosure shall be enlarged or extended, or the owner of any land over which a railway runs shall clear and open a field so as to embrace the track of a railway, such railroad company shall place good and sufficient cattle-guards or stops at the margins of such extended inclosures or fields or such new fields and keep the same in repair. Such cattle-guards or stops shall be so constructed and kept in repair as to protect such fields and inclosures from the depredations of stock of every description. If such company fails to construct and keep in repair such cattle-guards and stops, the owner of such inclosure or field may have such cattle-guards and stops placed at the proper places and kept in repair, and may recover the costs thereof from such railroad company, unless it be shown that said enlargement or extension was made capriciously and with intent to annoy and molest such company. If any company neglects to construct the proper cattle-guards and stops and keep the same in repair as required in this article, such company shall be liable to the party injured by such neglect for all damages that may result from such neglect, to be recovered by suit. [Acts 1860, p. 64; G. L. vol. 4, p. 1426; P. D. 4925.]

Art. 6401. [6601–2] Johnson grass and thistle.—If any railroad or railway company or corporation doing business in this State shall permit any

Johnson grass or Russian thistle to mature or go to seed upon any right of way owned, leased or controlled by it, any person owning, leasing or controlling land contiguous to said right of way shall recover twenty-five dollars by suit from such company or corporation, and any additional sum as he may have been damaged by reason of said grass or said thistle being permitted to so mature or go to seed; provided that any person owning or controlling land contiguous to said right of way who permits any said grass or thistle to mature or go to seed upon said land shall have no right to such recovery. [Acts 1901, p. 283.]

Art. 6402. [6603] [4528] [4245] Killing stock.—Each railroad company shall be liable to the owner for the value of all stock killed or injured by the locomotives and cars of such railroad company in running over their respective railways. Such liability shall also exist in counties and subdivisions of counties which adopt the stock law prohibiting the running at large of horses, mules, jacks, jennets and cattle. If said company fence its road it shall only be liable for injury resulting from a want of ordinary care. [Acts 1905, p. 226; P. D. 4926.]

Art. 6403. Report of animals killed.—Whenever an animal is killed or found dead upon the railroad or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall make a description of such animal, stating its kind, the marks and brands, color and apparent age, and any other description that may serve to identify said animal, which description must be made before said animal is buried or otherwise disposed of, and shall send same to the county clerk of the county in which said animal is found or killed within ten days from the date of finding or killing, which description shall be by said county clerk filed and kept of record in his office without exacting any fees from said section foreman for filing same. A certified copy of said report so filed may be introduced in evidence in any case wherein the killing, death or value of said animal is in question. [Acts 1915, p. 126.]

Art. 6404. [6604–5–6] Consolidation of railroad corporations.—"Railroad corporation," or "other corporation," as used in this article shall mean any corporation, company, person or association of persons, who own or control, manage or operate any line of railroad in this State. No railroad corporation or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. No railroad company organized under the laws of this State shall consolidate, by private or judicial sale or otherwise, with any railroad company organized under the laws of any other State, or of the United States. [Acts 1887, p. 137; G. L. vol. 9, p. 935; Const. art. 10, sec. 6.]

Art. 6405. [6607] [4532] [4248] Map and profile of road.—Every such corporation shall, within a reasonable time after their road shall be located, cause to be made:

1. A map and profile thereof, and of the land taken or obtained for the use thereof, and file the same in the office of the Railroad Commission. Every such map shall be drawn on a scale and on paper to be designated by the Railroad Commission and certified and signed by the president of the corporation.

2. A certificate specifying the line upon which it is proposed to construct the railroad and the grades and curves, certified and signed and filed as aforesaid.

3. Any railroad company failing or refusing to comply with any provision of this article shall forfeit to the State of Texas any sum not less than five hundred nor more than one thousand dollars; and each day such railroad company fails or refuses to comply with the provisions of this law shall be a separate offense. [Acts 1893, p. 169; G. L. vol. 10, p. 599.]

Art. 6406. [6675] [4579] Contract of connecting lines.—Any two connecting railroads may enter into a contract whereby any part or all the passengers, freight or cars, empty or loaded, hauled or transported by one and destined to points on or beyond the line of the other, shall be delivered to, received and transported by the other, which contract, however, shall be submitted to the Commission for examination and approval, and when so approved shall be binding, but if said contract be not approved by the Commission, the same shall be void. Any connecting line delivering freight to the owner or consignee of such freight may be sued by the owner thereof in the county where the freight is delivered for any damage that may be done to such freight in its transportation. [Acts 1891, p. 55; G. L. vol. 10, p. 57.]

Art. 6407. [6608] [4535] [4251] Freight and passengers from connecting lines.—All railway companies doing business in this State shall be and they are hereby required to receive from all railway companies with which they may connect at the State line of this State, or at any place within this State, or at any or all places where they may cross the line of any other railway doing business, or operating a line of railway in this State, all freights and passengers coming to it from such connecting line, and destined to points on its line, or to points beyond its line or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the next connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against the line from which such freight or passengers are received, and upon the same terms and conditions with those made by such line for like or similar service against any other railway in or out of this State with which it does business; provided, however, that the words "without delay or discrimination," as used herein, are hereby declared to mean that the freight received for transportation as herein required shall be shipped in the order in which it is received, giving preference in all cases to live stock and other perishable freight in the order received; and the charges for the business required by this article to be interchanged shall be no greater pro rata per cent per mile for freight, and no greater rate per mile for passengers and baggage, than is charged to any other line for transporting like freight and passengers and baggage, or than it accepts for itself when transported wholly on its own line, no matter on what part the line or in what direction the transporting is done. [Acts 1887, p. 110; G. L. vol. 9, p. 908.]

Art. 6408. [6609] [4536] [4252] What are connecting lines.—Whenever any two or more railroads doing business in this State shall connect with each other by crossing each other's tracks or otherwise so as to form a continuous or connected line from one point in the State to another point in this State, such lines so crossing are hereby declared to be connecting lines; and when such connecting lines receive from any other railway or transportation line passengers or freight for transportation over the combined line at a rate or division agreed upon between themselves and such other railway or transportation line from which the business is received as aforesaid, then, in every such case, it shall be the duty of such connecting railways forming such through line, and of either or both of them, to receive from every other railway or transportation line with which they or either of them may connect by crossing of track or otherwise, all passengers or freight that may be destined to points on either of the lines making up such combined line, and transport the same to the point of destination, if on such combined lines,

or either of them, or to the next connection or crossing in the direction of the destination of such freight or passengers, without delay or discrimination, and at no greater rate than is paid, and on the same conditions as is or shall be required by such combined line for like or similar services from any other railway or transportation line with which they or either of them shall interchange business. [Id.]

Art. 6409. [6610] [4537] [4253] Terms, etc.—Every railroad, or person, or corporation, operating a railway for the carriage of freight and passengers in this State shall receive freight, passengers and baggage for transportation to or into this State, or through any part thereof, from every other connecting railway, upon the same terms and conditions as to the division of charges for carrying or transporting the same upon a mileage, or any other basis, and upon terms and conditions as to bills of lading, way bills, tickets, coupon tickets and baggage checks, that any such person or corporation, or transportation line may receive or contract to receive from any other person or corporation engaged in like business in this State; and, where railroads within this State receive goods for transportation into their warehouses or depots they shall forward them in the order in which they are received, the first received to be the first forwarded, without giving the preference to one over another; and in case of failure to do so they shall be liable for all loss occurring while the goods remain, and for all damage occasioned or in anywise resulting from delay; provided that the trip or voyage shall be considered as having commenced from the time of the signing of bill of lading, and as having ended upon the arrival of freight at point of destination, and written notices served upon the consignee that it is ready for delivery upon payment of freight and charges. If the consignee of the goods fails to receive them promptly after such notice is served, the liability of the railroads thereafter shall be the same as that of warehousemen. [Acts 1885, p. 67; G. L. vol. 9, p. 687.]

Art. 6410. [6611] Water craft freight.—Each railway company doing business in this State shall be required to receive from all steamships, steamboats and other water craft and vessels, at their usual places for receiving such freights at the several ports on the coast of Texas, and on the inland waterways in this State, all freights and passengers coming to it from such steamships, steamboats and other water craft and vessels, and destined to points on its line or to points beyond its line, or any other line of railway with which said line may connect or cross, and shall transport the same over its said line to destination, if on its line, or to the connecting or cross line in the direction of destination, if beyond its line, without delay or discrimination in favor of or against such steamship line, steamboat owner or company, or the owner of any other water craft or other vessels from whom such freight or passengers are received, and upon the same terms and conditions with those made by such railway company for like or similar service with any other person, steamboat company, steamship company or owners, or any other water craft or vessel, with which it does business at such points or stations as aforesaid. [Acts 1899, p. 101.]

Art. 6411. [6612–13] Penalty.—If any railroad company doing business in this State shall fail or refuse to interchange business with any steamship line or company or with any steamboat line or company, or any other watercraft or vessel on the same terms and conditions, or for the same compensation or pro rata that it interchanges business with any other steamship line or company, steamboat line or company, or any other water craft or vessel, it shall be deemed guilty of discrimination within the meaning of this chapter; and shall, for every such offense, forfeit and pay to the State of Texas a penalty of not less than five hundred nor more than five thousand dollars, to be collected in the manner and in the courts as prescribed for the collection of other penalties in Article 6477, and in addition thereto shall forfeit and pay to the corporation, person or persons aggrieved thereby, the sum of one thousand dollars as penal damages for each act of discrimination or violation of this law which may be recovered in the name of the corporation, person or persons so suing. Nothing in this article shall be so construed as to prevent the recovery of any damages by an aggrieved person, firm, or corporation accruing by reason of the violation of this article. This and the preceding article shall not have the effect to relieve or waive any right of action by the State, or any other person, firm or corporation for any right, penalty or forfeiture which has arisen, or may arise, under any law of this State. All penalties accruing under said articles shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty. [Id.]

Art. 6412. [6414] [4538] [4254] Trustee for connecting lines.—Every railway which may interchange business with any other connecting railway under the provisions of this chapter, or otherwise, is hereby declared to be a trustee for such connecting railway to the extent of all sums of money received by it for the joint business interchanged between them, and which may properly belong to such other railway. Such sums of money shall be due and payable from one connecting line to the other once every ninety days; and each connecting railway shall have a lien upon the property and franchises of the connecting railways to the extent of the balance due each quarter, which lien shall be superior to all other liens upon said property and franchises, save and except laborers liens as already provided by law, and may be enforced in any court of this State having jurisdiction by law of the subject matter and the parties. [Acts 1887, p. 110; G. L. vol. 9, p. 908.]

Art. 6413. [6615] [4539] [4255] Refusal to interchange.—If any railway company doing business in this State shall fail or refuse to interchange business with any other railway company, or shall fail or refuse to interchange business on the same terms or for the same pro rata that it interchanges business with any other railway company in this State, or shall fail or refuse to honor or receive the tickets, coupon tickets, way bills or baggage checks of any connecting railway upon the same terms and conditions that it receives or honors the tickets, coupon tickets, way bills, or baggage checks of any other railway company, or shall violate in any manner any other provision of this and the three preceding articles, such railway company shall be deemed guilty of discrimination within the meaning of this title, and shall forfeit and pay to the person or corporation aggrieved thereby the sum of one thousand dollars as penal damages for each act of discrimination or violation of this law, which may be recovered in the name of the person or corporation so suing. Nothing in this article shall be so construed as to prevent the recovery of any other damages by any aggrieved person, firm or corporation, occurring by reason of the violation of this or the three preceding articles. [Acts 1887, p. 112; G. L. vol. 9, p. 910.]

Art. 6414. [6616–17] Service for express business.—Every railroad company operating a railroad within this State shall furnish reasonable and equal facilities and accommodations, and upon reasonable and equal rates, to all corporations and persons engaged in the express business, for the transportation of themselves, agents, servants, merchandise and other property, and for the use of their cars, depots, buildings and grounds and for exchanges at points of junction with other roads. Any railroad company which shall fail to comply with the provisions hereof shall be liable to the aggrieved party, in an action for damages; and such railway company, in addition to liability to said action for damages, shall be subject to a writ of mandamus, to be issued by any court of competent jurisdiction, to compel compliance with the provisions of this article. The

said writ of mandamus shall issue at the instance of any party or corporation aggrieved by a violation hereof, and any violation of said writ shall be punishable as a contempt. [Id.]

Art. 6415. [6637–38] Ticket agent.—Each railroad company doing business in this State, or the receiver of any such railroad company, through their duly authorized officers, shall provide each agent who may be authorized to sell tickets, or other evidences, entitling the holder to travel upon any such railroad, with a certificate setting forth the authority of such agent to make such sale. Such certificate shall be duly attested by the corporate seal of such railroad company, or the signature of the receiver, if any there be, of such railroad company, or by the signature of the officer whose name is signed upon the tickets or coupons which such agent may be authorized to sell. Each such ticket agent shall keep said certificate posted in a conspicuous place in his office, and upon demand shall exhibit it to any person desiring to purchase a ticket, or to any officer of the law. [Acts 1893, p. 97; Acts 1903, p. 162; G. L. vol. 10, p. 527.]

Art. 6416. [6618] [4542] Passenger fare.—The passenger fare upon all railroads in this State shall be three cents per mile, with an allowance of baggage to each passenger not to exceed one hundred pounds in weight; provided, however, that, where the fare is paid to the conductor, the rate shall be four cents per mile, except from stations where no tickets are sold, and that the minimum charges in no case shall be less than twenty-five cents; and provided, further that when the passenger fare does not end in five or naught, the nearest sum so ending shall be the fare; provided, that in no case shall children under ten years of age be charged a higher rate of fare than two cents per mile. Railroads shall be required to keep their ticket offices open for half an hour prior to the departure of trains, and upon failure to do so they shall not charge more than three cents per mile. [Acts 1883, p. 70; G. L. vol. 9, p. 376.]

Art. 6417. [6746 to 6753] Separate coaches.—1. Every railway company, street car company, and interurban railway company, lessee, manager, or receiver thereof, doing business in this State as a common carrier of passengers for hire, shall provide separate coaches or compartments, as hereinafter provided, for the accommodation of white and negro passengers, which separate coaches or compartments shall be equal in all points of comfort and convenience.

2. "Negro" defined.—The term "negro" as used herein, includes every person of African descent as defined by the statutes of this State.

3. "Separate coach" defined.—Each compartment of a railroad coach divided by good and substantial wooden partitions with a door therein shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart; and each compartment of a street car or interurban car divided by a board or marker placed in a conspicuous place, bearing appropriate words in plain letters indicating the race for which it is set apart, shall be sufficient as a separate compartment within the meaning of this law.

4. Penalty.—Any railway company, street car company, or interurban railroad company, lessee, manager or receiver thereof, which shall fail to provide its cars bearing passengers with separate coaches or compartments, as above provided for, shall be liable for each failure to a penalty of not less than one hundred nor more than one thousand dollars, to be recovered by suit in the name of the State; and each trip run with such train or street car or interurban car without such separate coach or compartment shall be deemed a separate offense.

5. Exceptions.—This article shall not apply to any excursion train or street car or interurban car as such for the benefit of either race, nor to such freight trains as carry passengers in cabooses, nor be so construed as to prevent railroad companies from hauling sleeping cars, dining or cafe cars or chair cars attached to their trains to be used exclusively by either race, separately but not jointly, or to prevent nurses from traveling in any coach or compartment with their employer, or employés upon the train or cars in the discharge of their duty.

6. Law to be posted.—Every railroad company carrying passengers in this State shall keep this law posted in a conspicuous place in each passenger depot and each passenger coach provided in this law.

7. Duty of conductor.—Conductors of passenger trains, street cars, or interurban lines provided with separate coaches shall have the authority to refuse any passenger admittance to any coach or compartment in which they are not entitled to ride under the provisions of this law, and the conductor in charge of the train or street car or interurban car shall have authority, and it shall be his duty, to remove from a coach or street car, or interurban car, any passenger not entitled to ride therein under the provisions of this law. [Acts 1891, p. 44; Acts 1907, p. 58; G. L. vol. 10, p. 46.]

Art. 6418. [6633–4] Failure to build and equip.—If any railroad corporation organized under this title shall not within two years after its articles of association shall be filed and recorded as provided in this title, begin the construction of its road, and construct, equip and put in good running order at least ten miles of its proposed road, and, if any such railroad corporation, after the first two years, shall fail to construct, equip and put into good running order at least twenty additional miles of its road each and every succeeding year until the entire completion of its line, such corporation shall, in either of such cases, forfeit its corporate existence, and its powers shall cease as far as relates to that portion of said road then unfinished, and shall be incapable of resumption by any subsequent act of incorporation. The provisions of this article shall not apply to or in any manner affect railway companies incorporated for the construction and operation of urban, suburban and belt railroads for a distance of less than ten miles, as provided in Chapter 1 of this title; provided, that all such companies shall, within twelve months from the date of their charter, complete a portion of their road and commence and continue the running of the cars thereon. This article shall apply as well to branch lines as to main lines of railroads. [Acts 1876, pp. 143, 149, G. L. vol. 8, pp. 979, 985; Acts 1879, S. S. p. 47; G. L. vol. 9, p. 79; Acts 1889, p. 17; G. L. vol. 9, p. 1045.]

Art. 6418a. Relief to railway corporations failing to construct roads.—Sec. 1. That the time in which any railway corporation chartered under the laws of the State of Texas since the first day of January, 1892, or the charter of which has been amended since that date, is required to begin construction of its road and construct, equip and put the same in good running order as required by Article 6418 of the Revised Statutes of the State of Texas of 1925, be and the same hereby is, as to any unfinished portion of such road, extended two years from the taking effect of this Act; and any railroad company having been chartered since January first, 1892, or the charter to which has been amended since said date, which shall have forfeited its corporate existence, or any of its rights and powers, or is about to do so, by reason of the failure to comply with said Article 6418, or any part of said Article, shall have restored and preserved to it, its corporate existence and it shall have and enjoy all the corporate franchises, property rights and powers held or acquired by it previous to any cause of forfeiture as aforesaid; provided that no railway company which shall be revived or the time extended by virtue of this Act, shall claim or exercise any franchise not allowed, granted or permitted to other railway corporations under the law as now in force in this State.

Sec. 2. Any railway corporation chartered since

the first day of January, A. D., 1892, and which by its original charter or by amendment thereto, filed since said first day of January, A. D., 1892, has further provided for the locating, constructing, maintaining, owning and operating of any extension or branch line or lines of railway and which has failed or is about to fail to complete the same, or any part thereof, within the time required by law, shall, upon payment of all its franchise tax, be and is hereby restored to and granted all and singular the rights, privileges and franchises acquired by its original charter, or by such amendment to its articles of incorporation, as if the same was filed and recorded in the office of the Secretary of State on the day of and taking effect of this Act, and such corporation shall, upon payment of its franchise tax, be and is hereby authorized to project, complete, construct, own and operate any such extension and branch line or lines of railway under and as provided for in its charter or in any amendment to its articles of incorporation; provided, that such extension and branch line of railway shall be by such corporation completed and put in good running order at the rate of at least ten miles in two years from the taking effect of this Act, and twenty additional miles for each and every year thereafter, until all the branch line or lines of extension as provided for are completed; provided that the provisions of this Act shall not apply to any railroad company which has been chartered by the State of Texas for a period of ten years or more, and which has twenty miles or less of railroad to build in order to comply with its original charter, or any amendment thereto. [Acts 1927, 40th Leg., p. 357, ch. 240.]

Art. 6419. [6636] [4560] [4280] Neglect to make annual report.—Any railroad corporation which shall neglect to make the annual report required by this title to the Comptroller or Governor and which has been notified by the Comptroller or Governor of such failure and shall still neglect to make such report within three months after such notice shall forfeit its charter.

CHAPTER NINE

COLLECTION OF DEBTS AND RIGHTS OF EMPLOYÉS

Art.
6420. Subject to execution.
6421. Road sold for debts.
6422. New corporation, how formed.
6423. Jurisdiction.
6424. Sale under deed of trust.
6425. Judgment, execution, etc.
6426. Unpaid stock subscriptions.
6427. Old directors to be trustees.
6428. Suits not to abate.
6429. Law not to apply to State loans, etc.
6430. Reducing wages.
6431. Discharged employé.

Article 6420. [6619] [4543] [4259] Subject to execution.—The rolling stock and all other movable property belonging to any railroad company or corporation shall be considered personal property. Its real and personal property or any part thereof shall be liable to execution and sale in the same manner as the property of individuals, and no such property shall be exempt from execution and sale. [Const. art. 10, sec. 4.]

Art. 6421. [6624] [4549] [4260] Roads sold for debts.—In case of the sale of the property and franchises of a railroad company, whether by virtue of an execution, order of sale, deed of trust, or any other power, or by a receiver acting under judgment heretofore or to be hereafter rendered by any court of competent jurisdiction, the purchaser or purchasers at such sale, and associates, if any, shall acquire full title to such property and franchises, with full power to maintain and operate the railroad and other property incident to it, under the restrictions imposed by law; provided, that said purchaser or purchasers, and associates, if any, shall not be deemed to be the owners of the charter of the railroad company and corporations under the same, nor vested with the powers, rights, privileges and benefits of such charter ownership as if they were the original corporators of said company, unless the purchaser or purchasers, and associates, if any, shall agree to take and hold said property and franchises charged with and subject to the payment of all subsisting liabilities and claims for death and for personal injuries sustained in the operation of the railroad by the company, and by any receiver thereof, and for loss of and damage to property sustained in the operation of the railroad by the company and by any receiver thereof, and for the current expenses of such operation, including labor, supplies and repairs; provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of said property and franchises or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed or when the sale was made, in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within the two years; such agreement to be evidenced by a written instrument signed and acknowledged by said purchaser or purchasers and associates, if any, and filed in the office of the Secretary of State. Such charter, together with the powers, rights and privileges and benefits thereof, shall pass to said purchaser or purchasers and associates, if any, subject to the provisions and limitations imposed and to be imposed by law. The amount of stock and bonds which may be held against said property and franchises, after the sale thereof, as well as the manner of issuance of such stock and bonds shall be fixed, determined and regulated by the Railroad Commission of Texas at its discretion save that the total incumbrance secured by the lien on said property and franchises shall not exceed the amount allowed by Article 6521. [Acts 1910, 4th C. S. p. 120.]

Art. 6422. [6625] [4550] New corporation, how formed.—In case of a sale of the property and franchises of a railroad company within this State the purchaser or purchasers thereof and associates, if any, may form a corporation under the first chapter of this title, for the purpose of acquiring, owning, maintaining and operating the road so purchased, as if such road were the road intended to be constructed by the corporation; and, when such charter has been filed, the new corporation shall have the powers and privileges then conferred by the laws of this State upon chartered railroads, including the power to construct and extend. The property and franchises so purchased shall be charged with and subject to the payment of all subsisting liabilities and claims for death and personal injuries sustained in the operation of the railroad by the sold out company and by any receiver thereof and for loss of and damage to the property sustained in the operation of the railroad by the sold out company and by any receiver thereof and for the current expenses of such operation including labor, supplies and repairs, provided that all such subsisting claims and liabilities shall have accrued within two years prior to the beginning of the receivership resulting in the sale of such property and franchises, or within two years prior to the sale, if said property and franchises be sold otherwise than under receivership proceedings, unless suit was pending on such claims and liabilities when the receiver was appointed, or when the sale was made; in which event claims and liabilities on which suits were so pending shall be protected hereby as though accruing within two years; and provided, that by such purchase and organization no right shall be acquired in conflict with the present Constitution and laws, in any respect, nor shall the main track of any railroad once constructed and operated be abandoned or moved. The amount of stock and bonds which may be issued by said new corporation, as well as the manner of their issuance, shall be fixed,

determined and regulated by the Railroad Commission of Texas at its discretion, save that the total encumbrance secured by lien on said property and franchises shall not exceed the amount allowed by Article 6521 of the Revised Statutes of Texas. This and the preceding article shall not be construed to in anywise repeal or impair the provisions of Chapter 12 of this Title except in so far as the same may be changed thereby. [Acts 1889, p. 19; Acts 4th C. S. 1910, p. 120; G. L. vol. 9, p. 1047.]

Art. 6423. [6626] [4551] Jurisdiction.—No railway company availing itself of any of the privileges herein provided shall claim to be under the jurisdiction of the Federal courts by reason thereof; and any railway company which may avail itself of the said privileges which shall claim to be subject to the jurisdiction of the Federal courts in pursuance of this article shall ipso facto forfeit its reorganization and be remanded to the same condition as it was prior to said reorganization. [Id.]

Art. 6424. [6627] [4552] [4261] Sale under deed of trust.—Whenever a sale of the roadbed, track, franchise and chartered rights and privileges of any railroad company is made by virtue of any deed of trust or power, the same shall be made at the time and place mentioned in the deed of trust or power and in accordance with the provisions of the same as to notice, and in other respects; and if the same be not specified, such sale shall be made as hereinafter provided for sales under execution or order of sale. [P. D. 4913; Acts 1927, 40th Leg., p. 73, ch. 48, § 1.]

Art. 6425. [6628] [4553] [4262] Judgment, execution, etc.—Whenever judgment is rendered against any railroad company, execution shall issue thereon and be levied and collected as in other civil causes, except that when the roadbed, track, franchise and chartered powers and privileges of said railroad company is levied upon, the levy and sale must take place in the county where the principal office of such company is situated, and the entire roadbed, track, franchise and chartered powers and privileges of such company shall be levied upon and sold. The provisions of this article shall be observed so far as they are applicable in all cases where, by any decree of a competent court, a sale of the roadbed, track, franchise and chartered powers and privileges of any railroad company is directed to be made. [P. D. 4914.]

Art. 6426. [6629] [4554] [4263] Unpaid stock subscriptions.—The sale of the roadbed, track, franchise and chartered rights, as herein provided, shall not be held to pass or convey to the purchaser any right or claim to recover from the former stockholders of said company any sums which may remain due upon their subscriptions of stock, but the said stockholders shall continue liable to pay the same in discharge and liquidation of the debts due by the sold out company, as hereinafter provided. [P. D. 4915.]

Art. 6427. [6630] [4555] [4264] Old directors to be trustees.—Whenever a sale of the roadbed, track, franchise and chartered powers and privileges is made as hereinbefore provided (unless other persons shall be appointed by the Legislature or by some court of competent authority), the directors or managers of the sold out company at the time of the sale, by whatever name they may be known in law, shall be trustees of the creditors and stockholders of the sold out company, and shall have full power to settle the affairs of the sold out company, collect and pay outstanding debts, and divide among the stockholders the money and other property that shall remain after the payment of the debts and other necessary expenses; and the persons so constituted trustees shall have authority to sue by the name of the trustees of such sold out company, and may be sued as such, and shall be jointly and severally responsible to all creditors and stockholders of such company, to the extent of its property and effects that shall come to their hands. [P. D. 4916.]

Art. 6428. [6631] [4556] [4265] Suits not to abate.—No suit pending for or against any railroad company at the time that the sale may be made of its roadbed, track, franchise and chartered privileges shall abate, but the same shall be continued in the name of the trustees of the sold out company. [Id.]

Art. 6429. [6632] [4557] [4266] Law not to apply to State loans, etc.—The provisions of this law shall not apply to any debt, execution or deed of trust held by the State against any railroad company because of any loan made by the State to any company under the provisions of the Act to provide for the investment of the special school fund, or any other law which authorizes the loan of money to railroad companies, nor shall any creditor of any railroad company be allowed to make the State a party to any suit brought for the enforcement of any debt, mortgage or deed of trust or lien on any railroad, or permitted to require the State to foreclose any lien which it may have had upon any road, but the lien of the State and its right to enforce the same shall continue as if this law had never been passed, and as if no sale had been made under the provisions of the same. [P. D. 4917.]

Art. 6430. [6620–1–2] Reducing wages.—All persons in the employment of such railway company shall receive thirty full days notice from said company immediately prior to the day upon which a reduction is to take effect before their wages shall be reduced. In all cases of reduction the employé shall be entitled to receive from such company wages at his contract price for the full term of thirty days after such notice is given. Said notice may be given by posting written or printed handbills, specifying the parties whose wages are to be reduced and the amount of such reduction, in at least three conspicuous places in or about each shop, section house, station, depot, train or other place where said employés are at work; provided, such employé shall, within fifteen days from the date of such notice, inform such railway company, by posting like notices as given by such railway company, whether or not he will accept such reduction; and, if no such information is given such company by such employé, then such employé shall forfeit his right to such notice and such reduction shall take effect from the date of such notice, instead of at the expiration of thirty days. Any railway company violating or evading any provision of this article shall pay to each employé affected thereby one month's extra wages. [Acts 1887, p. 20; G. L. vol. 9, p. 818.]

Art. 6431. [6623] [4547] Discharged employé.—When a railroad company shall discharge an employé, or when the time of service of such employé shall expire, or when a railroad company shall be due and owing an employé, such railroad company, upon discharge, or upon the termination of the term of such service, or upon maturity of said indebtedness, shall, within fifteen days after the demand therefor upon the nearest station agent of said railroad company, pay to such employé the full amount due and owing him. If said railroad company fails or refuses to pay such employé, then it shall be liable to pay to such employé twenty per cent on the amount due him, as damages, in addition to the amount so due, in no case the damages to be less than five nor more than one hundred dollars. [Acts 1887, p. 72; G. L. vol. 9, p. 870.]

CHAPTER TEN

LIABILITY FOR INJURIES TO EMPLOYÉS

Art.
6432. Injury to fellow servant.
6433. Who are vice-principals.
6434. "Fellow-servants."
6435. Contract limiting liability void.
6436. Contributory negligence.
6437. Assumed risk.
6438. Double header trains.
6439. Liable for injury or death of employé.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art.
6440. Contributory negligence.
6441. Assumed risk.
6442. Contract changing liability void.
6443. Articles of this chapter construed.

Article 6432. [6640] Injury to fellow servant.—Every person, receiver, or corporation operating a railroad or street railway, the line of which shall be situated in whole or in part in this State, shall be liable for all damages sustained by any servant or employé thereof while engaged in the work of operating the cars, locomotives or trains of such person, receiver, or corporation, by reason of the negligence of any other servant or employé of such person, receiver or corporation, and the fact that such servants or employés were fellow-servants with each other shall not impair or destroy such liability. [Acts 1st C. S. 1897, p. 14; G. L. vol. 10, p. 1454.]

Art. 6433. [6641] Who are vice-principals.—All persons engaged in the service of any person, receiver, or corporation controlling or operating a railroad or street railway, the line of which shall be situated in whole or in part in this State, who are intrusted by such person, receiver, or corporation with the authority of superintendence, control or command of the other servants or employés of such person, receiver, or corporation, with the authority to direct any other employé in the performance of any duty of such employé, are vice-principals of such person, receiver, or corporation, and are not fellow-servants with their co-employés. [Id.]

Art. 6434. [6642] "Fellow-servants."—All persons who are engaged in the common service of such person, receiver, or corporation controlling or operating a railroad or street railway, and who while so employed are in the same grade of employment and are doing the same character of work or service, and are working together at the same time and place, and at the same piece of work and to a common purpose, are fellow-servants with each other. Employés who do not come within the provisions of this article shall not be considered fellow-servants. [Id.]

Art. 6435. [6643] Contract limiting liability void.—No contract made between the employer and employé based upon the contingency of death or injury of the employé and limiting the liability of the employer under the preceding articles of this chapter, or fixing damages to be recovered, shall be valid or binding. [Id.]

Art. 6436. [6644] Contributory negligence.—Nothing in the preceding articles of this chapter shall be held to impair or diminish the defense of contributory negligence when the injury of the servant or employé is caused proximately by his own contributory negligence, except as otherwise provided in this chapter.

Art. 6437. [6645] Assumed risk.—The plea of assumed risk shall not be available as a bar to recovery of damages in any suit brought in any court of this State against any corporation, receiver or other person, operating any railroad, interurban railway or street railway in this State for the recovery of damages for the death or personal injury of any employé or servant caused by the wrong or negligence of such person, corporation or receiver; it being contemplated that while the employé does assume the ordinary risk incident to his employment he does not assume the risk resulting from any negligence on the part of his employer, though known to him.

Where, however, in any such suit, it is alleged and proven that such deceased or injured employé was chargeable with negligence in continuing in the service of any such corporation, receiver or person above named in view of the risk, dangers and hazards of which he knew or must necessarily have known, in the ordinary performance of his duties, such fact shall not operate to defeat recovery, but the same shall be treated and considered as constituting contributory negligence, and if proximately causing or contributing to cause the death or injury in question, it shall have the effect of diminishing the amount of damages recoverable by such employé, or his heirs or representatives in case of the employé's death, only in proportion to the amount of negligence so attributable to such employé. [Acts 1905, p. 386; Acts 1921, p. 195.]

Art. 6438. [6647] Double header trains.—Employés of railway companies employed by said companies in the operation of trains within this State, propelled by two or more engines, shall not be held to assume the risk, if any there be, incident to their employment; provided, they be injured while engaged in the operation of such trains and that such injury was occasioned by reason of the operation of two or more engines on such train instead of one. [Acts 1900, S. S. p. 15.]

Art. 6439. [6648] Liable for injury or death of employé.—Every corporation, receiver, or other person, operating any railroad in this State, shall be liable in damages to any person suffering injury while he is employed by such carrier operating such railroad, or in case of death of such employé, to his or her personal representative for the benefit of the surviving widow and children, or husband and children, and mother and father of the deceased, and, if none, then of the next kin dependent upon such employé for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employés of such carrier; or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment. The amount recovered shall not be liable for debts of deceased and shall be divided among the persons entitled to the benefit of the action or such of them as shall be alive, in such shares as the jury, or court trying the case without a jury, shall deem proper. In case of the death of such employé, the action may be brought without administration by all the parties entitled thereto, or by any one or more of them, for the benefit of all, and, if all parties be not before the court, the action may proceed for the benefit of such of said parties as are before the court. [Acts 1st C. S. 1909, p. 279.]

Art. 6440. [6649] Contributory negligence.—In all actions brought against any such common carrier or railroad under or by virtue of any provision of the foregoing article and the three succeeding articles to recover damages for personal injuries to an employé, or where such injuries have resulted in his death, the fact that the employé may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employé; provided, that no such employé who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violations by such common carrier of any statute enacted for the safety of employés contributed to the injury or death of such employé. [Id.]

Art. 6441. [6650] Assumed risk.—In any action brought against any common carrier under or by virtue of any provision of the two preceding articles to recover damages for injuries to or the death of any of its employés, such employé shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employés contributed to the injury or death of such employé. [Id.]

Art. 6442. [6651] Contract changing liability void.—Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by the three preceding articles shall to that extent be void; provided, that, in any action brought against any such common carrier by virtue of said articles, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit or indemnity that may have been paid to the injured employé, or the person

entitled thereto, on account of the injury or death for which said action was brought. [Id.]

Art. 6443. [6652] Articles of this chapter construed.—Nothing in the provisions of the four preceding articles shall be held to limit the duty or liability of common carriers, or to impair the rights of employés, under other articles of these Statutes, but, in case of conflict, these articles shall prevail; and nothing in said articles shall affect the right of action under any law of this State. [Id.]

CHAPTER ELEVEN

RAILROAD COMMISSION OF TEXAS

Art.
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Article 6444. Terms defined.—The term "Commission" as used in this title means the Railroad Commission of Texas, and the term "Commissioners" means the members of the Railroad Commission of Texas.

Art. 6445. Power and authority.—Power and authority are hereby conferred upon the Railroad Commission of Texas over all railroads, and suburban, belt and terminal railroads, and over all public wharves, docks, piers, elevators, warehouses, sheds, tracks and other property used in connection therewith in this State, and over all persons, associations and corporations, private or municipal, owning or operating such railroad, wharf, dock, pier, elevator, warehouse, shed, track or other property to fix, and it is hereby made the duty of the said Commission to adopt all necessary rates, charges and regulations, to govern and regulate such railroads, persons, associations and corporations, and to correct abuses and prevent unjust discrimination in the rates, charges and tolls of such railroads, persons, associations and corporations, and to fix division of rates, charges and regulations between railroads and other utilities and common carriers where a division is proper and correct, and to prevent any and all other abuses in the conduct of their business and to do and perform such other duties and details in connection therewith as may be provided by law. [Acts 1891, p. 55; Acts 1911, p. 157; G. L. vol. 10, p. 57.]

Art. 6446. Power to enforce rules, etc.—The Railroad Commission of Texas is hereby vested with full power and authority to do and perform each act and duty authorized, directed or imposed upon it by the provisions of this title, and all railroads, persons, corporations, and associations subject to the control of the Commission shall be subject to the penalties prescribed by law for failure to comply with the rules, orders, directions or requirements of said Commission as severally provided in this title. [Id.]

Art. 6447. [6653] [4561] The Commission.—Election.—The Railroad Commission of Texas shall be composed of three members, one of whom shall be elected biennially at each general election for a term of six years.

Qualifications.—The members shall be resident citizens of this State, and qualified voters under the Constitution and laws, and not less than twenty-five years of age. No member shall be directly or indirectly interested in any railroad, or in any stock, bond, mortgage, security or earnings of any railroad, and should a member voluntarily become so interested his office shall become vacant; or should he become so interested otherwise than voluntarily, he shall within a reasonable time divest himself of such interest; failing to do this, his office shall become vacant.

Shall hold no other office, etc.—No railroad commissioner shall hold any other office of any character, while such commissioner, nor engage in any occupation or business inconsistent with his duties as such commissioner.

Oath, etc.—Before entering upon the duties of his office, each commissioner shall take and subscribe to the official oath and shall in addition thereto, swear that he is not directly or indirectly interested in any railroad, nor in the bonds, stock, mortgages, securities, contracts or earnings of any railroad, and that he will to the best of his ability faithfully and justly execute and enforce the provisions of this title, and all laws of this State concerning railroads, which oath shall be filed with the Secretary of State.

Organization.—The commissioners shall elect one of their number chairman. They may make all rules necessary for their government and proceedings. They may appoint a secretary at a salary not exceeding $2,000.00 per annum, and not more than two clerks at salaries not exceeding $1,500.00 per annum each, and such other experts as may be necessary. They shall be known collectively as the "Railroad Commission of Texas," and shall have a seal, a star of five points with the words "Railroad Commission of Texas" engraved thereon. They shall be furnished with an office at the Capitol, and with necessary furniture, stationery, supplies and all necessary expenses, to be paid for on the order of the Governor.

Secretary's duties.—The secretary shall keep full and correct minutes of all the transactions and proceedings of the Commission, and perform such duties as the Commission may require of him.

Expenses.—The Commissioners and their employés shall receive from the State their actual necessary traveling expenses while traveling on the business of the Commission, which shall include the cost only of

transportation while traveling on business for the Commission, upon an itemized statement thereof, sworn to by the party who incurred the expense, and approved by the Commission.

Sessions.—The Commission may hold its sessions at any place in this State when deemed necessary. [Acts 1891, p. 55; G. L. vol. 10, p. 57.]

Art. 6447a. Salary of secretary.—That the salary of the Secretary of the Railroad Commission of Texas shall be such sum as may be appropriated therefor by the Legislature from time to time. [Acts 1927, 40th Leg., p. 209, ch. 140, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 209, ch. 140, repeals all conflicting laws and parts of laws.

Art. 6448. [6654] [4562] Duties.—The Commission shall:

1. Adopt all necessary rates, charges and regulations, to govern and regulate freight and passenger traffic, to correct abuses and prevent unjust discrimination and extortion in rates of freight and passenger traffic on the different railroads in this State.

2. Fairly and justly classify and subdivide all freight and property of whatsoever character that may be transported over the railroads of this State into such general and special classes or subdivisions as may be found necessary and expedient.

3. Fix to each class or subdivision of freight a reasonable rate for each railroad subject to this title for the transportation of each of said classes and subdivisions. Such classifications shall apply to and be the same for all railroads subject to the provisions of this chapter. It may fix different rates for different railroads and for different lines under the same management, or for different parts of the same lines if found necessary to do justice, and may make rates for express companies different from the rates fixed by railroads.

4. Fix and establish for all or any connecting lines of railroads of this State reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more such lines of such railroads.

5. When two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising from the transportation of freights, passengers or cars over their lines, fix the pro rata part of the charges to be received by each connecting line.

6. From time to time, alter, change, amend or abolish any classification or rate established by it when deemed necessary. Such amended, altered or new classification or rates shall be put into effect in the same manner as the originals.

7. Adopt and enforce such rules, regulations and modes of procedure as it may deem proper to hear and determine complaints against the classifications or the rates, the rules, regulations and the determinations of the Commission.

8. Make reasonable and just rates of charges for each railroad subject hereto for the use or transportation of loaded or empty cars on its road and may establish for each railroad or for all railroads alike, reasonable rates for the storing and handling of freight and for the use of cars not unloaded after forty-eight hours' notice to the consignee, not to include Sundays and legal holidays.

9. Make and establish reasonable rates for the transportation of passengers over each railroad subject hereto, which rates shall not exceed the rates fixed by law. The Commission shall have power to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject hereto.

10. Require each railway subject to this title to provide and maintain adequate, comfortable and clean depots and depot buildings at its several stations for the accommodation of passengers; and to keep them well-lighted and warmed for the comfort and accommodation of the traveling public; and keep and maintain adequate and suitable freight depots and buildings for the receiving, handling, storing and delivering of all freight handled by such roads and such railway, and to obey the requirements of the Commission in respect thereto.

11. See that all laws of this State concerning railroads are enforced and that violations thereof are promptly prosecuted and penalties due the State therefor are recovered and collected; and report all such violations with the facts in its possession to the Attorney General or other officer charged with the enforcement of the law. It shall investigate all complaints against all railroad companies. Suits between the State and a railroad shall have precedence in the courts. [Acts 1891, p. 55.]

Art. 6449. [6655] [4563] Notice.—Before any rates shall be established, the Commission shall give each railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed; and said railroad company shall be entitled to be heard at such time and place; and it shall have process to enforce the attendance of its witnesses, which shall be served as in civil cases.

Art. 6450. [6655] [4563] Rules for hearing, etc.—The Commission may adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings of railroad companies and other parties before it, in the establishment of rates, orders, charges, and other acts required of it under this law; and no person shall be denied admission at such investigation.

Art. 6451. May administer oaths, etc.—Each Commissioner, for the purposes mentioned in this chapter, shall have power to administer oaths, certify to all official acts, and to compel the attendance of witnesses, and the production of papers, waybills, books, accounts, documents and testimony, and to punish for contempt as fully as is provided by law for the district court.

Art. 6452. [6656] [4564] Rates conclusive.—In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by the Commission before the institution of such action shall be held conclusive, and deemed and accepted to be reasonable, fair, and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for the purpose in the manner prescribed by the two succeeding articles. [Id.]

Art. 6453. [6657] Appeal.—If any railroad company or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the Commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis County, Texas, against said Commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the Appellate Court having jurisdiction of said cause; and said appeal shall be at once returnable to said Appellate Court at either of its terms; and said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending; provided, that, if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice. Provided further that no preliminary injunction shall be issued without notice to the opposite party and that no temporary restraining order shall be granted without notice to the opposite party unless it shall clearly appear from specific facts shown by affidavit or by the verified petition that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing had thereon. Every such temporary restraining order shall be enforced with the date and hour of issuance, shall be forthwith filed in the clerk's office and entered of record, shall define the injury and state why

it is irreparably [irreparable] and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed ten days, as the court or judge may fix, unless within the time so fixed the order is extended for a like period for good cause shown, and the reasons for such extension shall be entered of record. In case a temporary restraining order shall be granted without notice in the contingency specified, the matter of the issuance of a preliminary injunction shall be set down for a hearing at the earliest possible time and shall take precedence of all matters except older matters of the same character; and when the same comes up for hearing the party obtaining the temporary restraining order shall proceed with the application for a preliminary injunction, and if he does not do so the court shall dissolve the temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. [Acts 1925, p. 668.] [39th Leg., ch. 201, § 1.]

Art. 6454. [6658] [4566] Burden of proof.—The burden of proof shall rest upon the plaintiff to show the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to it or them. [Id.]

Art. 6455. [6659] [4567] Schedule of rates.—The Commission shall, when the classifications and schedule of rates herein provided are prepared and adopted, furnish each railroad affected thereby which is subject to the provisions of this title with a complete schedule in suitable form, showing the classification of freight made by it and the rates fixed to be charged by such road for the transportation of each class of freight, and shall cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads at its principal office in Texas, or to any agent of said company in this State; which schedule, rules, and regulations shall take effect at the date fixed by the Commission, not less than twenty days after the date of service. [Id.]

Art. 6456. [6659] [4567] Schedule to be printed and posted.—Each of said railroad companies shall cause said schedule to be printed in type of a size not less than pica, and shall have the same posted up in a conspicuous place at each of its depots, so as to be inspected by the public. [Id.]

Art. 6457. [6659] [4567] May abolish or alter regulations.—The Commission may at any time abolish, alter, or in any manner amend any such regulations; and in that event certified copies of the schedules, rules or regulations, showing the changes therein, shall be delivered to each road affected as herein specified. In all cases where the rates shall not have been fixed by the Commission, no changes shall be made, except after ten days' notice to and with the consent of the Commission. [Id.]

Art. 6458. [6660–1–2] Emergency freight rates.—The Commission may prevent interstate rate wars and injury to the business or interests of the people or railroads of the State, or in case of any other emergency, to be judged of by the Commission, it shall temporarily alter, amend or suspend any existing freight rates, tariffs, schedules, orders and circulars on any railroad or part of railroad in this State, and fix freight rates where none exist. Said rates so made, shall take effect at such time and remain in force for such length of time as the Commission may prescribe. [Acts 1899, p. 311; Acts 1897, p. 51; G. L. vol. 10, p. 1105.]

Art. 6459. [6663] Temporary tariffs.—The Commission shall have power to make temporary freight and passenger tariffs, to take effect at such times as said Commission shall fix whenever an emergency arises, the sufficiency of which shall be judged of by said Commission. In order that justice may be done or injury prevented any person, place or locality, said Commission shall have the power at once to suspend temporarily any existing freight or passenger tariffs, rules and regulations for temporary use, to have immediate effect where none exists. [Acts 1907, p. 220.]

Art. 6460. [6664] [4568] Complainants.—Any person, firm, corporation, or association, body politic, or municipal organization, complaining of anything done or omitted to be done by any railroad subject hereto, in violation of any law of this State, or any provision of this title, for which penalty is provided, may apply to the Commission under such rules as the Commission may prescribe. [Acts 1891, p. 55; G. L. vol. 10, p. 57.]

Art. 6461. [6664] [4568] Procedure.—If there shall appear to the Commission any reasonable grounds for investigating such complaint; (1) it shall give at least five days' notice to such railroad of such charge and complaint, and call upon such road to answer the same at a time and place to be specified by the Commission. (2) It shall investigate and determine such complaint under such rules and modes of procedure as it may adopt. (3) If the Commission finds that there has been a violation, it shall determine if the same was wilful. (4) If it finds that such violation was not wilful, it may call upon said road to satisfy the damage done to the complainant thereby, stating the amount of such damage, and to pay the cost of such investigation; and if the said railroad shall do so within the time specified by the Commission there shall be no prosecution by the State. (5) If said railroad shall not pay said damage and cost within the time specified by said Commission or if the Commission finds such violation was wilful, it shall institute proceedings to recover the penalty for such violation and the cost of the investigation. [Id.]

Art. 6462. [6664] [4568] Complaints, how framed.—All such complaints shall be made in the name of the State of Texas upon the relation of such complainant. All evidence taken before said Commission in the investigation of any such complaint, when reduced to writing and signed and sworn to by the witnesses, may be used by either party, the State, complainant, or by the railroad company, in any proceeding against such railroad involving the same subject matter. [Id.]

Art. 6463. [6664] [4568] Testimony taken.—The Commissioners may require the testimony taken before them to be reduced to writing when they deem necessary, or when requested to do so by either party to such proceedings; and a certified copy, under the hand and seal of said Commission, shall be admissible in evidence upon the trial of any cause or proceeding growing out of the same transaction against such railroad, involving the same subject matter and between the same parties. No provisions of this and the three preceding articles shall abridge nor affect the rights of any person to sue for any penalty that may be due him under the provisions of this title, or any other law of the State. [Id.]

Art. 6464. [6665] [4569] May inspect books, etc.—The Commissioners or either of them, or such persons as they may authorize in writing under the hand and seal of the Commission, shall have the right at any time to inspect the books and papers of any railroad company and to examine under oath any officer, agent or employé of such railroad in relation to the business and affairs of the same. [Id.]

Art. 6465. [6665] [4569] Penalty.—If any railroad shall refuse to permit such examination of its books and papers, such railroad company shall, for each offense, pay to the State of Texas not less than one hundred and twenty-five nor more than five hundred dollars for each day it shall so fail or refuse. [Id.]

Art. 6466. [6666] [4570] Shall ascertain cost of railway, etc.—The Commission shall ascertain as nearly as practicable:

1. The amount of money expended in construction and equipment per mile of every railway in Texas;
2. The amount of money expended to procure the

right of way, and the amount of money it would require to reconstruct the roadbed, track, depots, and equipment, and to replace all the physical properties belonging to the railroad.

3. The outstanding bonds, debentures and indebtedness, and the amount respectively thereof; when issued, and the rate of interest; when due, for what purpose issued, how used, to whom issued, to whom sold, and the price in cash, property or labor, if any, received therefor.

4. Disposition of the proceeds, by whom the indebtedness is held, and the amount purporting to be due thereon.

5. The floating indebtedness of the company, to whom due and his address, and the credits due on it.

6. The property on hand belonging to the railroad company.

7. The judicial or other sales of said road, its property or franchises, and the amounts purporting to have been paid and in what manner paid therefor.

8. The amounts paid for salaries to the officers of the railroad and the wages paid its employés.

For the purposes in this article named, the Commission may employ sworn experts to inspect and assist them when needed, and from time to time, as the information required by this article is obtained, it shall communicate the same to the Attorney General by report, and file a duplicate thereof with the Comptroller for public use. Said information shall be printed from time to time in the annual report of the Commission. [Id.]

Art. 6467. [6667] [4571] Blanks for information.—The Commission shall as often as necessary furnish each railroad company suitable blanks with questions formed so as to elicit all information concerning such railroads. Any railroad company receiving such blanks shall cause them to be properly filled out so as to answer fully and correctly each question therein propounded, and if they are unable to answer any question therein propounded, they shall give satisfactory reason for their failure; and the answers duly sworn to by the proper officer of the company, shall be returned to the Commission within thirty days from the receipt thereof. [Id.]

Art. 6468. [6667] [4571] Refusal to answer.—If any officer or employé of a railroad shall fail or refuse to fill out and return any blanks as above required, or fail or refuse to answer any questions therein propounded, or shall give a false answer to any such questions where the fact inquired of is within his knowledge, or shall evade the answer to any such questions, a penalty of five hundred dollars shall be recovered from the company by the State when it appears that such persons acted in obedience to its direction, permission or request in his failure, evasion or refusal. Said Commission shall have the power to prescribe a system of book-keeping to be observed by each railroad subject hereto, under the penalties prescribed in this article. [Id.]

Art. 6469. [6667] [4571] Annual reports.—The Commission shall make and submit to the Governor annual reports containing a full and complete account of the transactions of their office, together with the information gathered by such Commission as herein required, and such other facts, suggestions and recommendations as it may deem necessary, which report shall be published as the reports of heads of departments.

Art. 6470. [6667] [4571] Through freights.—The Commission shall investigate all through freight rates on railroads in Texas; and when same are, in the opinion of the Commission, excessive or levied or laid in violation of the interstate commerce law, or the rules and regulations of the Interstate Commerce Commission, the officials of the railroads shall be notified of the facts and requested to reduce them or make the proper corrections, as the case may be. When the rates are not changed and the proper corrections are not made according to the request of the Commission, it shall notify the Interstate Commerce Commission and apply to it for relief. [Id.]

Art. 6471. [6668] [4572] Witnesses.—In any examination or investigation provided in this chapter, the Commission is authorized and empowered to compel the attendance of witnesses, and may issue subpœnas for witnesses by such rules as they may prescribe, and such process shall be served by the officer to whom it may be directed. Each witness who shall appear before the Commission by order of the Commission, at a place outside the county of his residence, shall receive for his attendance one dollar per day and three cents per mile traveled by the nearest practical route, in going to and returning from the place of meeting of the Commission, which shall be paid by the Comptroller upon the presentation of proper vouchers, sworn to by the witness, and approved by the Commission. No witness shall be entitled to fees or mileage who is directly or indirectly interested in a railroad, or who is in anywise interested in any stock, bond, mortgage, security or earnings of such road, or was an officer, agent or employé of such road when summoned at the instance of such railroad. No witness furnished with free transportation shall receive pay for the distance he may travel on such free transportation. The Commission may issue an attachment as in civil cases, for a witness who fails or refuses to obey a subpœna, and compel him to attend before the Commission and give his testimony upon such matter as shall be lawfully required by them. If a witness, after being duly summoned, shall fail or refuse to attend or to answer any question propounded to him, and which he would be required to answer if in court, the Commission may fine and imprison such witness for contempt, in the same manner that a judge of the district court might do under similar circumstances. The claim that any such testimony might tend to criminate the person giving it shall not excuse a witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. [Id.]

Art. 6472. [6668] Depositions.—The Commission may in its discretion issue proper process and take written or oral depositions instead of compelling personal attendance of witnesses. The fees of an officer executing any process issued under the provisions of this title shall be such as the Commission may allow, not to exceed fees as prescribed by law for similar services. [Id.]

Art. 6473. [6669] [4573] Extortion.—If any railroad company, subject to the provisions of this title, or its agent or officer, shall charge, collect, demand, or receive a greater rate, charge or compensation than that fixed and established by the Commission for the transportation of freight, passengers or cars, or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars, or for any other service performed or to be performed by it, such railroad company and its agent and officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than one hundred nor more than five thousand dollars. [Id.]

Art. 6474. [6670] [4574] "Unjust discrimination."—Unjust discrimination is hereby prohibited and the following acts or either of them shall constitute unjust discrimination.

1. If any railroad subject hereto, directly or indirectly, or by any special rate, rebate, drawback or other device, shall charge, demand, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered or to be rendered by it than it charges, demands, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or shall give any undue or unreasonable preference or advantage to any particular person, firm or corporation, or locality, or to subject any particular description of traffic to any undue or unreasonable prejudice, delay or disadvantage in any respect whatsoever.

2. If any railroad company shall fail or refuse,

under regulations prescribed by the Commission to receive and transport without delay or discrimination the passengers, tonnage and cars, loaded or empty, of any connecting line of railroad, and every railroad which shall, under such regulations as the Commission may prescribe, fail or refuse to transport and deliver without delay or discrimination any passengers, tonnage or cars, loaded or empty, destined to any point on or over the line of any connecting line of railroad; provided perishable freights of all kinds and live stock shall have precedence of shipment.

3. If any railroad company shall charge or receive any greater compensation in the aggregate for the transportation of like kind of property or passengers for the shorter line than for a longer distance over the same line; provided, that upon application to the Commission any railroad may in special cases, to prevent manifest injury, be authorized by the Commission to charge less for longer than for shorter distances for transporting persons and property, and the Commission shall, from time to time, prescribe the extent to which such designated railroad may be relieved from the operation of this provision. No injustice shall be imposed upon any citizen at intermediate points. Nothing herein shall be so construed as to prevent the commission from making what are known as "group rates" on any line or lines of railroad in this State.

4. Penalty.—Any railroad company guilty of unjust discrimination as hereinbefore defined shall for each offense pay to the State of Texas a penalty of not less than five hundred dollars nor more than five thousand dollars.

5. Exceptions.—Nothing herein shall prevent the carriage, storage or handling of freight free or at reduced rates, or to prevent railroads from giving free transportation or reduced transportation under such circumstances and to such persons as the law of this State may permit or allow. [Id.]

Art. 6475. [6671] [4575] Damages; penalty.—If any railroad subject to this title shall do, cause or permit to be done any matter [,] act or thing prohibited or declared to be unlawful, or shall omit to do any act, matter or thing herein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination as by this chapter defined, then in addition to such damages such railroad shall pay to the person, firm or corporation injured thereby a penalty of not less than one hundred and twenty-five nor more than five hundred dollars. Such road may plead and prove as a defense to the action for said penalty that such overcharge was unintentionally and innocently made through a mistake of fact. A recovery as herein provided shall in no manner affect a recovery by the State of a penalty provided for such violations. [Id.]

Art. 6476. [6672] [4576] Penalty not otherwise provided.—If any railway company doing business in this State shall violate any provision of this title, or shall do any act herein prohibited, or shall fail or refuse to perform any duty enjoined upon it for which a penalty has not been provided by law or shall fail, neglect or refuse to obey any lawful requirement, order, judgment or decree made by the Commission, for every such act of violation it shall pay to the State of Texas a penalty of not more than five thousand dollars. [Id.; Acts 1901, p. 265.]

Art. 6477. [6673] [4577] Suits for penalty.—All of the penalties herein provided, except as provided in Article 6475, recoverable by the State shall be recovered and suits thereon shall be brought by the Attorney General or under his direction in the name of the State of Texas, in Travis County, or in any county into or through which such railroad may run; and the attorney bringing such suit shall receive a fee to be paid by the State of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collected. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this chapter shall be paid into the State Treasury; provided suits brought under Title 66 for recovery of penalties, may be brought in any county:

1. Where an act violative of any provision thereof is committed.

2. Where such company or receiver has an agent or representative.

3. Where the principal office of such company is situated, or such receiver or receivers, or either, reside. One-half of all moneys collected under the provisions of said title, less the commission and expenses allowed by law, shall be paid into the State Treasury; the remainder thereof shall be paid into the treasury of the county where such suit or suits may be maintained and constitute a part of the jury fund of such county. [Acts 1891, p. 55, G. L. vol. 10, p. 57.]

Art. 6478. [6674] [4578] Evidence.—Upon application of any person, the Commission shall furnish certified copies of any classification, rates, rules, regulations, or orders, and such certified copies, or printed copies published by authority of the Commission shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order, or classification therein contained and which may be an issue in the trial, is the official act of the Commission. A substantial compliance with the requirements of this chapter shall be sufficient to give effect to all the classifications, rates, charges, rules, regulations, requirements and orders made and established by the Commission, and none of them shall be declared inoperative for any omission of a technical matter in the performance of such act. [Id.]

Art. 6479. [6676] Definitions.—The terms, "road," "railroad," "railroad companies," and "railroad corporations," as used herein, shall be taken to mean and embrace all corporations, companies, individuals and associations of individuals, their lessees or receivers, appointed by any court whatsoever, that may now or hereafter own, operate, manage or control any railroad, or part of a railroad, in this State, and all such corporations; companies and associations of individuals, their lessees or receivers, as shall do the business of common carriers on any railroad in this State.

1. The provisions of this chapter shall be construed to apply to and affect only the transportation of passengers, freight and cars between points within this State; and this chapter shall not apply to street railways nor suburban or belt lines of railways in or near cities and towns, but shall apply to the transportation of passengers and freight by electric or gasoline motor cars over steam railroads subject to this Act.

2. It shall be the duty of the Commissioners to see that, upon every railroad branch of same, carrying passengers for hire in this State, shall be run at least one train a day, Sundays excepted, upon which passengers shall be hauled, and the Commissioners shall have no power to relax this provision; provided, however, the Commission may, in its discretion, relax such requirement as to any railroad in this State less than fifty miles in length and the gross annual passenger revenues of which are less than $3,600.00; and said Commission shall further regulate passenger train service to stop for a time sufficient to receive and let off passengers at such stations as may be designated by the Commissioner; provided that four trains each way, carrying passengers for hire, if so many are run daily, Sundays excepted, be required to stop as aforesaid at all county seat stations; and if such railroad or branch of same shall operate a gasoline or electric motor car over its line carrying passengers for hire in this State, such motor car shall be deemed a train within the meaning of this Article and shall be subject to and included within the requirements that at least [one train] be run every day, Sundays excepted, and the requirement made by the Commissions as to

stopping for a time sufficient to receive and let off passengers at designated stations. [Acts 1925, p. 365.] [39th Leg., ch. 154, § 1; Acts 1927, 40th Leg., p. 283, ch. 198, § 1.]

Art. 6480. [6677] [4581] Law cumulative.—Any provision of this title which may be inconsistent or in conflict with Title 66 shall be void and inoperative, but to that extent only. The provisions of any foregoing article of this title shall not have the effect to release or waive any right of action by the State, or any person, for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this State; and all penalties accruing under this title shall be cumulative of each other, and a suit for or recovery of one shall not be a bar to the recovery of any other penalty. [Acts 1891, p. 55; G. L. vol. 10, p. 57.]

Art. 6481. [6678–79] Railroad to furnish cars.—When any person, firm or corporation, desiring to ship any freight of any kind shall make written application to any superintendent, agent, or other person in charge of transportation, to any railway company, receiver or trustee operating a line of railway at the point the cars are desired upon which to ship any freight, it shall be the duty of such railroad company, receiver, trustee, or other person in charge thereof, to supply the number of cars so required, at the point indicated in the application, within a reasonable time thereafter, not to exceed six days from the receipt of such application, and shall supply such cars to the persons so applying therefor, in the order in which such applications are made, without giving preference to any person. If the application be for twelve cars or less the same, shall be furnished in three days; and provided further, that, if the application be for fifty cars or more, the railway company may have ten full days in which to supply the cars. Said application for cars shall state the number of cars desired, the place at which they are desired, and the time they are desired. The place designated shall be at some station or switch on the railroad. [Acts 1887, p. 133; Acts 1899, p. 67; Acts 1st C. S. 1913, p. 23.]

Art. 6482. [6680] [4499] Penalty.—A railway company failing to furnish cars applied for under the provisions of this chapter shall forfeit to the party or parties so applying for them the sum of twenty-five dollars per day for each car failed to be furnished, and all actual damages that such applicant may sustain. [Id.]

Art. 6483. [6681] [4500] Deposit.—Such applicant shall deposit with such agent, superintendent or other person one-fourth of the amount of freight charges for the use of such cars, and shall load said cars within forty-eight hours after they have been duly delivered; and upon failure to do so, he shall forfeit and pay to the company the sum of twenty-five dollars for each car not used. Where applications are made on several days, all of which are filed upon the same day, the applicant shall have forty-eight hours to load the car or cars furnished on the first application, and the next forty-eight hours to load the car or cars furnished on the next application, and so on; Sundays shall not be included in computing the time. The penalty prescribed shall not accrue to any car or lot of cars applied for any one day, until the period within which they may be loaded has expired. If the said applicant shall not use such cars so ordered by him, and shall notify said company or its agent, he shall forfeit and pay to the said railroad company, in addition to the penalty herein prescribed, the actual damages that such company may sustain by the failure to use said cars. [Id.]

Art. 6484. [6682] [4501] To deliver loaded cars.—When cars have been supplied and loaded, the railway company shall deliver them to the consignee within a reasonable time; and the consignee shall unload the same within forty-eight hours after delivery and notice, Sundays excepted, or forfeit and pay to the company the sum of twenty-five dollars per day for each car not so unloaded. [Acts 1887, p. 133; Acts 1st C. S. 1913, p. 23; G. L. vol. 9, p. 931.]

Art. 6485. [6683] [4502] Proof necessary.—Parties bringing suit against a railroad company under the provisions of this law shall show that such cars if furnished, would have been loaded within the time specified by this law. The provisions of this law shall not apply in cases of strikes or public calamity. [Id.]

Art. 6486. Not to affect demurrage regulations.—The provisions of this law shall not forfeit or annul the demurrage regulations provided by the Commission, and all penalties accruing to the carrier hereunder shall be cumulative of and additional to all demurrage charges prescribed by said Commission. [Acts 1st C. S. 1913, p. 24.]

Art. 6487. [6684] Duty to furnish cars.—Each railroad company incorporated under the laws of this State and doing business in this State, under the limitations and regulations prescribed by the Commission, shall equip and provide sufficient motive power and rolling stock to handle all passenger and freight traffic expeditiously and without delay. [Acts 1907, p. 297.]

Art. 6488. [6685] Commission to require mortgage.—The Commission shall require each railroad corporation chartered under the laws of this State, holding itself out as a common carrier, to provide and equip itself with sufficient motive power and rolling stock, or other equipment necessary, to handle all passenger and freight traffic, expeditiously and without delay, and it is vested with full power to require of such common carriers the purchase of such rolling stock and motive power as will properly equip such common carrier, and facilitate the movement of all traffic, passenger and freight, and that will supply transportation accommodations which it offers to perform as an inducement to the public to travel or ship via the lines of such railroad company, or common carrier. The Commission is authorized and empowered to approve liens or mortgages that may be given by such railroad companies and common carriers to secure the purchase or lease price of any equipment or motive power which may be deemed by the Commission necessary for the proper discharge of its duty as a common carrier. If in the judgment of the Commission any railroad company in this State which now has an excessive issue of bonds and stocks outstanding, has not sufficient passenger and freight equipment and motive power to handle the passenger and freight business of such common carrier and railroad company, the Commission after not less than five days' notice and hearing shall issue an order requiring the purchase of such rolling stock as in the judgment and discretion of the Commission may be deemed necessary for the prompt, expeditious and comfortable transportation of freight and passengers over the line of such railroad company and common carrier; and in such case, the Commission is authorized to approve contracts or liens for the purpose of securing the purchase or lease price of such rolling stock, motive power and equipment. [Id.]

Art. 6489. [6686] Penalty.—Any railroad company or common carrier failing to comply with any provision of the two preceding articles, or to obey the orders of the Railroad Commission, made in pursuance of any provision thereof, shall be deemed guilty of an abuse of their rights and privileges, and, shall be subject to a penalty of one hundred dollars payable to the State of Texas. Each day that such railroad company or common carrier neglects, fails or refuses to comply with such orders shall constitute a separate offense. [Id.]

Art. 6490. [6687] Facilities, interchange cars, etc.—Every railroad company operating a line of railroad within this State shall provide sufficient tracks, switches, sidings, yards, depots, motive power, cars and all other needful facilities and appliances, for receiving and delivering freight, to enable it with reasonable dispatch to perform all of its duties as to

all traffic which with ordinary foresight and diligence could be anticipated, as a common carrier; and furnish all necessary and suitable cars and vehicles of transportation for all freight offered or tendered to it for shipment within a reasonable time after demand therefor made by a shipper; and supply within a reasonable time, at its station or stations, spurs, sidings, switches, or other places, at which it receives freight for transportation, and from which such shipper gives notice to such railway company that he desires to ship such freight at the time designated by the shipper, where it is within reasonable time, sufficient suitable cars within which to load the same; and as to all services to be performed within the limits of the State, as to such freight and cars shall transport same within a reasonable time to destination, when destined to a point upon the line of such railway receiving such freight, and, if destined to a point beyond the line of such railroad, then transport and deliver within a reasonable time such freight in such loaded car or cars to the connecting carrier forming any part of the route over which such shipment is made, for the purpose of transportation by such connecting carrier on to the destination of such freight, or for delivery by it to the connecting line or lines forming any part of the route over which same is to be transported to its ultimate destination; and each connecting line of railroad engaged in such transportation, as to all such service to be performed, as to all such freight and cars in which the same is carried within this State, shall receive and transport within a reasonable time such loaded car or cars tendered to it, if in suitable condition for movement, and deliver the same at destination thereof, if destined to a point upon its line of railroad, and, if destined to a point beyond its line of railroad, then to its connecting carrier forming any part of the route over which such car or cars are to be transported, subject to the same duties and obligations as if such freight had originated upon such line of railroad. Where such freight forms less than a carload, or where it may be necessary to unload the same because of any accident or injury thereto, or to the car in which the same is being transported, or where such freight is unloaded at the request of the shipper en route, or where by reason of any accident or unavoidable cause, or in order to comply with any law or regulation provided by law, such freight is unloaded, or it is reasonably necessary to do so, or where it is for any other reason necessary to unload such freight in order to forward, or before it can be forwarded, in any such cases, where suitable cars may be supplied, and when the freight is carried wholly within this State, the Commission shall make all needful rules and regulations for unloading cars at junction points, or otherwise forwarding cars, furnishing cars for forwarding or reloading and the exchange of cars and forwarding of such freight in the same or other cars. Whenever by reason of any accidental or unavoidable cause which cannot be provided against by the use of reasonable foresight or diligence, such railroad company fails to so furnish cars and shall use reasonable diligence to do so promptly after the happening of such accidental or unavoidable cause, it shall not, on account of such failure, be liable to the penalties of attorney's fees or as otherwise herein prescribed. But nothing in this article shall in anyway affect the right or remedy of any shipper or other person as same may exist at common law or under any statute to recover on account of the failure, delay, or refusal to furnish cars for transportation of any freight, or other failure to perform any other legal duty, nor to in any wise exempt any such railroad company from any provision of the statutes of this State, or other duties imposed by law. [Acts 1907, p. 343.]

Art. 6491. [6688] To interchange cars at junction points.—To facilitate the movement, preservation and exchange of freight, every railroad company in this State, whose line of railroad connects with the line of any other railroad company in this State, shall exchange at such connecting or junction points, the loaded and empty cars used in or for transportation of freight carried upon such lines of railroad forming any part of the route over which said freight is carried or to be carried; and a railroad company forming any part of the through or joint route over which any freight is carried or to be carried, or having or participating in the joint rates on which such freight is carried or to be carried, on demand of any such connecting line delivering to it any such loaded car or cars of freight at junction points within this State shall furnish to such delivery line within a reasonable time after such loaded cars are so received, at such junction point in this State, as many cars suitable for the carriage or transportation of similar freight as may be so delivered to it loaded, by such connecting line; and upon the demand of the owner thereof, or the railroad company entitled thereto, or to the use thereof, every such railroad company so receiving the cars of another shall return the same at the place where they were received, or at such place as may be by said railroads agreed upon, within a reasonable time after demand thereof; and as to cars exchanged in transporting freight wholly within this State within the time and according to the rules and regulations prescribed by the Commission. [Id.]

Art. 6492. [6689] Commission to make rules.—As to all freight carried wholly within this State and the cars used therefor, the Commission shall make and establish all needful rules and regulations, general and special, which may be different according to the circumstances and conditions to different railroads and localities and for different kinds and classes of freight and cars, providing for the time, place and manner of demanding cars for or giving notice of shipment of such freight and the time, place, manner and order in which the same shall be furnished to shippers for the purpose of shipping freight between points in this State; and prescribe rules and regulations for the furnishing, exchanging and interchanging of cars, loaded and empty, by railroad companies as between each other; the time, place, terms and conditions upon which such cars shall be furnished and such interchange shall be made, and in the absence of an agreement of such railroad companies, the reasonable compensation to be paid by each railroad company for the use, loss, injury or destruction of the cars of another railroad company in the transportation of such freight; the time within which, and the manner by which railroad companies shall give notice or make demand upon each other for cars to be furnished by one railroad company in exchange for loaded cars, or to have its cars returned, the reasonable free time to be allowed the shippers for the loading of such car or cars without incurring liability for demurrage; the free time which shall be allowed to the shipper or consignee in which to unload such freight without incurring any liability for demurrage; a schedule of reasonable demurrage charges, reciprocal or otherwise, for the use of cars, irrespective of damages or penalties herein provided, which may be different for different railroads and different traffic and localities, to be paid by shippers for the detention or use of cars either in loading or unloading, or by the railroads for failing in a reasonable time to furnish cars, or to make delivery of loaded cars, subject to the penalties and damages herein provided, and the rules and regulations with respect thereto. Said Commission, whenever it may deem same necessary in order to secure the prompt transportation of freight and preservation of the property, shall be authorized to prescribe the minimum speed at which freight shall be moved when being transported between points within this State, including the time for transfer and delivery as between connecting railroads. Every such railway company shall conform to each rule, regulation and order of the Commission made in accordance with the two preceding and three succeeding articles; and failure to observe the rules and regulations of the Commission, or to comply with the provisions of this law, as to freight carried wholly within this State, shall be deemed an abuse sub-

ject to correction by the Commission, and shall subject such railroad company to the penalties hereinafter provided. [Id.]

Art. 6493. [6690] Liable for damages, when.—Every railroad company which shall fail to furnish cars as provided herein for the shipment of freight within a reasonable time, or in case of the shipment of freight between points within this State, within the time prescribed by the Commission, or shall fail to receive and forward any loaded car or cars or to exchange cars as provided herein, shall be liable to the shipper or other person injured or damaged thereby for all such injury or damages as may result to such shipper, and all special damages of which such railroad company had notice at the time of the shipment, or which shall occur after written notice thereof, and shall be liable in addition thereto for an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of such damage. If any railroad company in this State shall fail or refuse to furnish within a reasonable time after demand therefor, any car or cars for the shipment of live stock, green fruit, vegetables or other perishable freight, such railroad company shall be liable to the shipper for the damage caused thereby, and a reasonable attorney's fee in case of suit to recover the same. Any railroad company which shall fail to furnish or exchange cars as required by the provisions of this law, or by the rules and regulations of the Commission as provided for herein, shall be liable to the railroad company injured thereby for all such damages as may result to it, and in addition thereto an amount equal to a reasonable attorney's fee in case suit is brought for the recovery of any damage. Every railroad company using cars of another railroad company, or which have been delivered to it by such railroad company, shall be liable to pay to the party entitled thereto the value of the reasonable use and hire thereof, and for injury or damage thereto, or destruction thereof, while in its possession or under its control, for the amount of such injury; and, in case of cars in the shipment of freight between points wholly within this State, the amount for the use or hire thereof may be prescribed by the Commission, unless the owners of such cars and such railroad companies agree upon such compensation. Where any such railroad company, or owner of any such car or cars, shall be dissatisfied with the amount fixed by the Commission for such use, hire, loss or destruction, or damage to such car, or where the railroad company liable therefor shall fail to pay for the same, the Commission or person entitled thereto, or which is liable for the use, hire, loss, injury or destruction of such cars, shall be entitled to establish the reasonable value thereof by suit. [Id.]

Art. 6494. [6690] Not to furnish cars, when.—No railroad company shall be compelled to furnish its own cars to any other railroad company which is involved, except upon reasonable security furnished to it to protect it from loss of or damages to or destruction of such cars and compensation for the use thereof, and in no event shall any railroad company be required to furnish any cars to any connecting line, except to exchange for other cars reasonably suitable for the transportation of freight. [Id.]

Art. 6495. [6691] Other penalty.—A railroad company which shall willfully, by its gross negligence, or by the gross negligence of its agents having charge and management of the matter of furnishing cars, fail or refuse to furnish or exchange cars as herein provided for, or to transport or deliver the same within the time prescribed by the Commission, as to freight carried between points wholly within this State, or if not so prescribed, then within a reasonable time, shall in addition to the other liabilities herein provided for, forfeit to the State of Texas, for each of such violations, not less than one nor more than one hundred dollars for each offense; and each day of such failure or neglect as to each car which it, by such willful or gross negligence, shall fail or refuse to furnish or exchange shall be a separate offense. [Id.]

Art. 6496. "Shipper."—By the term "shipper" as herein used, is meant any person, firm or corporation tendering freight for shipment, and any consignor or consignee of any bill of lading, or other person, firm or corporation having the right of consignor or consignee. [Id.]

Art. 6497. [6692] "Reasonable time."—It shall be deemed prima facie a reasonable time within which to order cars that any shipper shall give written notice thereof to the station agent at the place of shipment, or in his absence, to the nearest station agent of the railroad company to which such application is made, three days before such shipment of five cars or less, and five days for less than ten or more than five cars, and eight days for ten cars or more. The railroad companies shall furnish their station agents with printed blanks upon which shippers make application for their cars. Nothing in this and the five preceding articles shall be construed to exempt any railroad company from the obligation to furnish cars for shipment without such written notice, but it shall only be subject to the penalties of this law for failure to furnish cars to shippers where notice thereof shall be given in writing, or in case of shipment of freight wholly between points in this State, then in accordance with the rules and regulations of the Commission. [Id.]

Art. 6498. [6693] Suitable depots.—Each railroad company in this State shall provide and maintain adequate, comfortable and clean depots and depot buildings at their several stations for the accommodation of passengers, and keep said depot buildings well lighted and warmed for the comfort and accommodation of the traveling public. They shall keep and maintain separate apartments in such depot buildings for the use of white passengers, and keep and maintain adequate and suitable freight depots and buildings for receiving, handling, storing and delivering of all freight handled by such roads, and the Commission shall require railroad companies to comply fully with the provisions of this law under such regulations as said Commission may deem reasonable. [Acts 1909, 2nd C. S., p. 401.]

Art. 6499. [6695] Union depots.—Where two or more railroad companies reach the same city or town in this State, if the Commission shall deem it practicable for such railroad companies to use a joint or union passenger depot or to join in the construction and use of a passenger depot, then it shall give notice to such railroad companies and after investigation and public hearing, may require the construction and maintenance of such union passenger depot by such railroad companies, if it appears to the Commission that the construction and maintenance of such union passenger depot are just and reasonable to the railroad companies involved, and demanded by the public interest. The Commission may specify the requirements of such union depot as to kind and character and may apportion the cost of construction and maintaining the same to each railroad company where the companies cannot agree. [Acts 2nd C. S. 1909, p. 399.]

Art. 6500. [6696] Penalty for failure.—Failure upon the part of any railroad company to observe and obey the orders of the Railroad Commission, issued in compliance with the two preceding articles shall subject such railroad company to the fines and penalties prescribed by law for failure to obey the lawful requirements, order, judgments and decrees made by the Commission. [Id.]

Art. 6501. [6697 to 6700] Right to lease another road.—A railroad whose total mileage in this State does not exceed thirty miles in length, which connects at or near the State line with any other railroad, may be leased by the company owning such other railroad, subject to the following provisions:

1. Such lease shall be made on such terms and for

such time, not exceeding ten years, as may be approved by the Commission. At any time before or after its expiration the lease may be renewed or another executed subject to the provisions and limitations of this title.

2. During the term of such lease the lessor company shall remain subject to the jurisdiction of the Commission, and shall be liable for any and all things occurring on or in connection with such road. The lease shall not operate to exempt or release either the lessor or lessee company from any liability that would otherwise exist against it.

3. The lessee company shall be exempted from the laws of this State requiring general offices to be maintained and general officers to reside in this State, except as required by provisions of the Constitution of this State and by the orders of the Commission.

4. In a suit against the lessor company the officers and agents of the lessee company shall be the officers and agents of the lessor company for the purpose of serving process.

The provisions of this article shall not apply to any railroad whose total mileage in this State may exceed thirty miles in length, although the part of its line connecting at or near the State line does not exceed thirty miles in length. [Acts 1899, p. 73.]

Art. 6502. [6701 to 6705] Railroad crossings.—Any company, corporation or receiver or person operating any railroad in this State shall forfeit and pay to the State of Texas a penal sum of five hundred dollars per week for each week of refusal or neglect to comply with any order made by the Commission in pursuance of the following provisions of this article:

1. When necessary for the track of one railroad company to cross the track of another, the Commission shall ascertain and define by its decree the mode of such crossings which will occasion the least probable injury upon the rights of the company owning the road to be crossed; and, if the Commission decides that it is reasonably practicable to avoid a grade crossing, said Commission shall by its order prevent the same.

2. Where the tracks of two or more railways cross each other at a common grade in this State, such railroad companies shall protect such crossing by interlocking or other safety devices and regulations to be designated by the Commission, to prevent trains colliding at such crossings.

3. When a railway company seeks to cross, at grades with its track or tracks, the track or tracks of another railroad, the one seeking to cross at grade shall be compelled to interlock, or protect such crossings by safety devices to be designated by the Commission, and to pay all cost of appliances together with the expense of putting them in. This law shall not apply to crossings of side tracks.

4. When interlocking or other safety devices are constructed and maintained in good order to the satisfaction of the Commission, the engines and trains of such railroads may pass over such crossings, without stopping. [Acts 1901, p. 255.]

Art. 6503. [6706] Double-header trains.—Where an unreasonable degree of hazards results to its employés, it is hereby declared to be an abuse of its franchise and privileges for any railroad company, or receiver, operating a line of railroad in this State to run or operate more than one working locomotive at the same time in propelling or moving any one train of cars, except in moving trains up steep grades, or where a locomotive propelling the train becomes temporarily disabled after leaving the terminal; the Railroad Commission shall investigate such abuses and see that the same are corrected, regulated or prohibited as hereinafter provided. [Acts S. S. 1900, p. 15.]

Art. 6504. [6707] Use regulated by Commission.—Should the Commission decide to regulate or forbid the practice of using more than one working locomotive at the same time in the operation of any train on any railroad, or part of railroad, within this State, then it shall make and record an order fully setting forth its decision and clearly designating the railroad, or part of railroad, on which such practice is forbidden or regulated and how regulated. Notice of such order shall be served upon said railroad affected by it. Said notice shall contain in full a copy of said order, and shall be directed to the sheriff or any constable of the county where the general offices of such railroad are located; and a copy of the same shall be delivered by the officer executing the same to any general officer of said railroad in this State residing in said county. Said officer executing said writ shall make his return on the original, and deliver the same with his return forthwith to the Commission. [Id.]

Art. 6505. [6708] Penalty.—Any railroad corporation which shall at any time after ten days after service of such notice violate the order of the Commission, shall be liable to the State for a penalty of not less than five hundred nor more than five thousand dollars for each offense. [Id.]

Art. 6506. Maintenance; powers of Commission.—The Commission shall see that each railroad corporation owning or operating a line of railroad in this State shall maintain its roadbed and track in such condition as to enable it to perform all of its duties as a common carrier with reasonable safety to persons and property carried by it and its employés and with reasonable dispatch. The Commission is vested with full power to require any railroad company to purchase or secure for installation in its roadbed or track all ties, rails, ballast and other material and equipment as may, in the judgment of the Commission, be necessary for the proper maintenance of the whole or any designated portion of such track and roadbed so as to put the same in safe condition and enable such railroad to adequately perform its duties to the public and to transport freight and passengers with safety and dispatch. [Acts 1915, p. 201.]

Art. 6507. Penalty for failure to comply.—When the Commission has made such order as authorized by the preceding article, each railroad company subject thereto shall promptly comply with the terms thereof, and for failure or refusal to do so, such company or its receiver shall become liable to the State of Texas, for a penalty of not less than five hundred nor more than five thousand dollars for each offense. In addition to such penalties, any court of competent jurisdiction upon application of the Attorney General shall issue writs of mandamus and mandatory injunctions and other proper writs to compel the compliance with such orders. [Id.]

Art. 6508. Improvement bonds.—When the Commission shall make an order as authorized by the provisions hereof for the improvement of any line of railway, it may in its discretion at the same time make an order permitting said railroad corporation to issue bond sufficient to raise the money necessary to make such improvements; and authorize such railroad corporation to secure the same by proper mortgage upon its property, and designate such bonds and mortgages as "Improvement Bonds and Mortgages;" provided, the entire amount of bonds of said railroad company shall not exceed the assets of the said company. The Commission shall also see that the funds arising from the sale of such bonds are applied to the making of the improvements ordered by it to be made, and shall regulate the same in the proper manner and any sale of such "Improvement Bonds and Mortgages" at less than par value thereof, must in order to be valid, be approved by the Commission. [Id.]

Art. 6509. [6715] Sidings, etc.—All railroads in Texas shall build sidings and spur tracks sufficient to handle the business tendered such railroads, when so ordered by the Commission. [Acts 1903, p. 93.]

Art. 6510. [6716] To enforce compliance.—Power is conferred on the Railroad Commission to require compliance by railroad companies with the provisions of the preceding article, under such regulations as said Commission may deem reasonable; and all railroad companies shall be subject to the penalties prescribed by law for failure to comply with the requirements of the Commission as provided herein. [Id.]

Art. 6511. Switch connections.—Any railroad company or receiver upon application of a shipper tendering traffic for transportation sufficient to justify it, shall construct, maintain and operate upon reasonable terms, a switch connection with any private sidetrack or spur track constructed by such shipper, to connect with its railroad where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability and without discrimination in favor of or against such shipper. [Acts 1915, p. 66.]

Art. 6512. Application.—If any railroad company or its receiver shall fail to install and operate any such switch connection, on application therefor by any shipper, such shipper may make application to the Commission, and it shall enter such orders as may be necessary governing the construction, maintenance and operation of said switch connection, if reasonably practicable and safe and will furnish sufficient business to justify the construction and maintenance of the same. [Id.]

Art. 6513. To fix rates, prevent discrimination, etc.—The Commission shall fix just and reasonable rates to be charged by railroad companies or their receivers for traffic moved and handled over private sidetracks or spur tracks extending to private industries and it shall adopt such rates, rules, and regulations as will prevent any discrimination in the operation of such tracks or the handling of such traffic. Whenever any railway company or receiver thereof shall operate any private sidetrack or spur track without charge, the Commission shall have authority to compel the operation without charge of any private sidetrack or spurtrack similarly situated. [Id.]

Art. 6514. To regulate private sidetracks, etc.—The Commission shall prescribe reasonable rates, rules and regulations for the operation of all private sidetracks or spur tracks constructed either by the railroad companies themselves or by individuals or corporate interests, or jointly by such railroads and individuals or corporations, when such private sidetracks or spur tracks are operated by railroad companies or the receivers thereof; and shall have power and authority to order and compel the operation of said private sidetracks or spur tracks whenever the railway company or receiver thereof is operating other private side tracks or spur tracks similarly situated, to prevent discrimination therein. [Id.]

Art. 6515. No discrimination.—Whenever any railroad company shall construct or maintain or contribute to the construction or maintenance of any private sidetrack or spur track to any private industry, the Commission shall order such railway company or receiver to construct or maintain or contribute to the construction or maintenance of a sidetrack or spur track to any private industry similarly situated on the same terms and conditions. [Id.]

Art. 6516. Failure to comply.—Should any railroad company or receiver thereof fail to obey the orders of the Commission issued in compliance with the five preceding articles, such failure shall subject such railroad company to a penalty of not less than five hundred nor more than five thousand dollars for each offense. [Id.]

Art. 6517. Action for damages.—Any person injured by a violation of the terms of the six preceding articles shall have the right to bring suit for his actual damages and for the enforcement of his rights thereunder. [Id.]

Art. 6518. Re-arrangement.—The Commission shall investigate proposed or existing arrangement of railroad tracks, switches and depot buildings at railroad stations to determine whether or not proposed or existing arrangements of such tracks, switches and depot buildings are or may be dangerous to the public and to determine whether or not the public interest demands a re-arrangement or relocation of such tracks, switches and depot buildings to be made, and to determine whether or not such re-arrangement or relocation can be made upon terms and conditions reasonable and just to the person, firm, corporation or receiver owning or operating such tracks, switches and depot buildings, and the Commission may if the question can, under the facts, be resolved affirmatively, thereupon give notice to such persons, firm, corporation or receiver, and after public hearing and investigation, may require the person, firm, corporation or receiver, owning or operating such tracks, switches and depot buildings at such points to arrange, or re-arrange, or re-locate the same in accordance with the specifications made by the Commission. No such arrangement, re-arrangement, or relocation, shall be authorized or required within the limits of any incorporated city or town without the express consent of the governing body of such city or town. [Acts 4th C. S. 1918, p. 196.]

Art. 6519. Suits for penalties.—All penalties and forfeitures provided for by this chapter for a violation of any provision hereof by railway companies recoverable by and payable to the State or any municipal subdivision thereof shall be determined by a direct suit in a proper court instituted by or under the direction of the Attorney General in Travis County or in any county into or through which the line of the offending railway company may run. The attorney bringing such suit shall receive a fee of fifty dollars for each penalty recovered and collected by him, and ten per cent of the amount collect[e]d to be paid by the State; and the fees so allowed shall be over and above the fees allowed such attorney under the provisions of law. In all suits arising under this chapter, the rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the State under this chapter shall be paid into the State Treasury.

CHAPTER TWELVE

ISSUANCE OF STOCKS AND BONDS

Art.
6520. Regulating stocks, bonds, etc.
6521. Incumbrance above value of road.
6522. To ascertain values, etc.
6523. Effect of sale of road.
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6530. Certificates, bonds, etc., void.
6531. False statement.
6532. State not liable.
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Article 6520. [6717] Regulating stocks, bonds, etc.—Among other things, the power and authority of issuing or executing bonds, or other evidences of debt, and all kinds of stocks and shares thereof, and the executions of liens and mortgages by railroad corporations in this State are special privileges and franchises, the right of supervision, regulation, restriction and control of which has always been, is now, and shall continue to be vested in the State government, to be exercised according to the provisions of this and other laws. [Acts 1893, p. 56; G. L. vol. 10, p. 486.]

Art. 6521. [6718] Incumbrance above value of road.—No bonds or other indebtedness shall be increased or issued or executed by any authority whatsoever, and secured by any lien or mortgage on any railroad or part of railroad, or the franchises or property appurtenant or belonging thereto, over the reasonable value of said railroad property; provided, that in case of emergency, on conclusive proof shown by the company to the Commission that public interests or the preservation of the property demand it, the Commission may permit said bonds, together with the stock in the aggregate, to be executed to an amount not more than fifty per cent over the value of said property. [Id.]

Art. 6522. [6719] To ascertain values, etc.—The Commission shall ascertain, and in writing report

to the Secretary of State, the value of each railroad in this State, including all its franchises, appurtenances and property. After it shall have prepared said report the Commission shall give the company interested ten days notice in writing by registered letter to the president, treasurer or receiver of said railroad, to the effect that said report is ready to be made, and that if it has any objections thereto it must file them in writing within forty days after said service, or the same will be so deposited with the Secretary of State as correct. If the company files with said Commission any objections to said report, the Commission shall duly investigate and pass on same, and if it concludes that its report of value is too low or too high, then it shall make the necessary correction before filing it. If no objections are filed within the time permitted, or being filed and on examination found without merit, the Commission shall forthwith file its said report in the office of the Secretary of State, where it shall remain as a public record, as a limitation for the issuance of indebtedness under the limitations prescribed in this title. To promote public interests and protect private rights, the Commission, after due notice under the rule herein prescribed, may correct its report of the value of any railroad at any time it may deem proper. [Id.]

Art. 6523. [6720] Effect of sale of road.—Every judicial or other sale of any railroad in this State which shall have the effect to discharge the property so sold from liability in the hands of purchasers for claims for damages, unsecured debts, or junior mortgages against such railroad company so sold, shall have the effect to annul and cancel all claims of every stockholder therein to any share in the stock of such railroad; and it shall not be lawful for said purchasers, or for any railroad company to operate said railroad, to issue any stock in lieu of the old stock or to allow any compensation therefor in any manner whatever, nor shall all or any part of the debt to satisfy which such sale is made be continued or held as a claim or lien on said property. [Id.]

Art. 6524. [6721] Purchasers may issue bonds, etc.—The purchaser of said property who procures it clear of incumbrance, or any company organized by his consent to operate said railroad under and in pursuance of the laws of this State, may issue stock and bonds in the proportion that he may deem advisable, subject to the rules and limitations prescribed by law. [Id.]

Art. 6525. [6722] Authority to issue bonds.—Should any company or corporation authorized to construct, own or operate a railroad in this State desire to issue bonds or other indebtedness, to be secured by lien or other mortgage on its franchises and property in advance of the completion of the said railroad, it shall make application to and first procure the consent of the Commission thereto. In said application, it shall exhibit to the Commission its contract with the construction company, if it have any, the profile of its completed road or part of road, the evidence of its right of way, depot grounds, terminal facilities, the extent and value of work done or in the process of completion, the amount of property received, the amount of stock subscribed and the amount paid in, and all other necessary facts showing the value of the franchise and property proposed as security for said contemplated debts. If on investigation, the Commission is satisfied that the company is acting in good faith, and that its contract with the construction company is reasonable and fair to the public, then it shall authorize the execution of said indebtedness and a lien to the extent necessary for the demands of the work, at no time to be fifty per cent over the value of the whole property and franchises. In executing said bonds, the company shall comply with Article 6526, and have them registered as required in Article 6527. [Id.]

Art. 6526. [6723] Certificates of stock.—Each railroad company now existing, or which shall hereafter be organized, or which shall be re-organized under the laws of this State, or which shall increase its stock under the laws of this State, shall issue certificates to the subscribers to its said stock under the following regulations: A majority of the board of directors shall meet in person in this State, at the principal office of such company, and shall cause to be made a list of the subscribers to such stock, showing the number of shares subscribed by each, the amount of stock represented by each share and the amount actually paid, labor done or property received on each share of stock, and shall cause to be affixed to each name on said list a number, beginning with number one, or the next highest number of any certificate previously issued. The president of the board, or presiding officer of the meeting at which the issuing of such certificates of stock is authorized, shall make a certificate signed by him in person to said statement to the effect that the same is correct, and that the amount of money paid, labor done and property received as stated is correct. Such statement shall thereupon be entered at large upon the minutes, and, after having the seal of the company affixed thereto, shall be attested by the secretary of the company, and deposited with the Commission, and by it filed and preserved in its office. The secretary of the company shall then be authorized to make out and deliver to each stockholder in said list a certificate corresponding with said statement in number, name, number of shares, amount of stock represented by each share, and the amount of money or its equivalent paid upon each share; which certificate shall be signed by the president of the said railroad company, attested by the secretary, with the seal of said company affixed. No railroad company shall increase its stock unless all existing shares of stock shall have been paid in full, or all unpaid shares of such stock have been sold out as forfeited under the law. When the certificates to be issued are for increase of stock, the statement herein required to be made by the board of directors shall state that all existing shares of stock have been paid in full, or that all shares not paid in full have been sold out or forfeited under the law. In no event shall the stock exceed the value of the railway property, and the correct aggregate amount of stock so issued by each railway company shall be certified to and registered in the office of the Secretary of State by or at the instance of the Commission. [Id.]

Art. 6527. [6724] Prerequisites.—When any railroad company in this State desires to make, issue, and sell any bonds or evidences of debt, which are to become a lien on its property, it shall comply with the laws of this State regulating the same, and in addition thereto shall have said bonds prepared, signed by the president of the company, and attested by the secretary, with the seal of the company attached thereto. Each bond shall be numbered, beginning with number one, or the next highest number of any preceding bond issued by it, and continue consecutively until all are numbered. The bonds shall be dated, made payable at a time not exceeding thirty years from date and shall bear interest not exceeding six per cent per annum. Said bonds, when thus prepared, shall be presented to the Commission, with a written statement, signed and sworn to by the president of said company, showing the amount of the stock of said company and the amount of outstanding bonds, if any, of said company. If said bonds are such as are permitted under this law, and the Commission shall be so satisfied, it shall approve said bonds, and shall issue to the Secretary of State a direction to register said bonds, specifying the numbers, dates, and amounts thereof. Said Commission shall keep in its office a correct record of the bonds so approved by it, giving the name of the company, the numbers, dates of execution and maturity of the bonds, the amount and rate of interest of each, and the date of approval. This provision shall not apply to receiver's certificates where the amount does not exceed one hundred thousand dollars. [Id.]

Art. 6528. [6725] Registering bonds.—When such bonds shall be presented to the Secretary of State with said direction to register, he shall register said bonds by entering a description thereof in a book to be kept for that purpose, which shall show the date, number, amount, when due, the rate of interest on each

bond, and also the date when the same is registered. The Secretary of State shall indorse on each bond, under the seal of his office and his official signature, together with the date thereof, as follows: "This bond is registered under the direction of the Railroad Commission of Texas." No bond or other evidence of debt, hereafter issued by or under the authority of any person, firm, corporation, court, or railroad company, whereby a lien is created on its franchise or property situated in this State, shall be valid or have any force until the same has been registered as required herein. [Id.]

Art. 6529. [6726] Forfeiture of charter.—If any railroad company owning or operating a railroad in this State shall issue or consent or cause to be issued any bonds or other evidences of debt to be or become a lien on its railroad property so owned or operated, or shall issue any stock not in accordance with the provisions of this chapter, such action shall work a forfeiture of its charter. [Id.]

Art. 6530. [6727] Certificates, bonds, etc., void.—Every certificate of stock in any railroad company, and every bond and other evidence of debt operating as a lien upon the property of such railroad company, which shall be made, issued or sold without first complying with the provisions of this chapter shall be void. [Id.]

Art. 6531. [6728] False statement.—Each railroad director, president, secretary or other official, who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt as aforesaid, or who shall by false statement knowingly made procure of the Commission direction to the Secretary of State to register the same, and which shall be by the Secretary of State registered, or shall with the knowledge of such fraud negotiate, or cause to be negotiated, any such bond or other security issued in violation of this chapter, shall be liable to any creditor of such company for the full amount of damages sustained by such wrongful conduct. [Id.]

Art. 6532. [6729] State not liable.—Nothing in this law, and no act done or performed under or in connection with it shall be construed to make the State of Texas liable to pay or guarantee, in any manner whatsoever, any obligation, debt or claim executed or assumed under or by virtue of its provisions. [Id.]

Art. 6533. [6730] Construction of branch lines.—Any corporation incorporated for the purpose of constructing, owning, maintaining and operating a railroad under the laws of this State, which has outstanding stocks and also outstanding bonds secured by a mortgage lien upon its property, or by any other character of lien, may amend its charter in the manner provided in this title, and in accordance with the Constitution and laws of this State, and may provide by such amendment for the making of any extension or extensions, or branch line or lines that it may desire to construct, and may issue stocks and bonds, or bonds, in an amount equal to the reasonable value of such extension or extensions, or such branch line or lines, and such terminal properties as it may acquire, the same to be issued in accordance with the provisions of this chapter. The Commission is hereby empowered to authorize the execution and issuance of such stocks and bonds, or bonds, and in determining the right to issue such stock and bonds, said Commission shall not consider the amount of outstanding stock or indebtedness, or bonds previously issued and secured by a lien upon the property of such corporation theretofore constructed; provided, that any existing mortgages or liens upon the property of such corporation constructed or owned prior to the time of making such amendment of its charter and to the construction of such extension or extensions, or branch line or lines, or to the acquiring of such terminal properties, shall not attach to or become a lien upon the extension or extensions, branch line or lines, or terminal properties constructed or acquired under such amended charter. This article shall not be so construed as to in any wise repeal or impair any other provision of this chapter or of the existing laws of this State except in so far as the same may be changed by the provisions of this article. [Acts 1901, p. 257.]

Art. 6534. [6732] May issue for double tracks.—Any railroad company chartered under the laws of this State, whenever the Commission shall find it advisable to authorize it to do so, may construct, own and operate an additional line of road upon its right of way, together with all necessary sidings, switches and turnouts, and may issue stock and bonds, or bonds, in an amount equal to the reasonable cost of such improvements, the same to be issued in accordance with the provisions of this chapter; and the Commission may authorize the execution and issuance of such stock and bonds, or bonds. In determining the right to issue such stock and bonds, or bonds, the Commission shall not consider the amount of outstanding stock, indebtedness or bonds previously issued and secured by lien upon the property of such corporation theretofore constructed. [Acts 1903, p. 131.]

CHAPTER THIRTEEN

MISCELLANEOUS RAILROADS

Art.
6535. Eminent domain.
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6537. Streams, streets, etc.
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Article 6535. [6733] Eminent domain.—All corporations chartered for the purpose of constructing, acquiring, maintaining and operating lines of electric railway between any cities and towns in this State for the transportation of freight or passengers, or both, shall have the right of eminent domain with all the rights and powers as fully as are conferred by law upon steam railroad corporations, and shall have the right and power to enter upon, condemn and appropriate the lands, rights of way, easements and property of any person or corporation whomsoever for the purpose of acquiring rights of way upon which to construct and operate their lines of railways and sites for depots and power plants. [Acts 1907, p. 23.]

Art. 6536. [6734] Right of way.—Such corporation shall have the right and power to lay out rights of way for their railways not to exceed two hundred feet in width, and to construct their railways and appurtenances thereon, and for the purpose of cuttings and embankments to take as much more land as may be necessary for the proper construction and security of their said railways, and to cut down any standing trees or remove any other structure that may be in danger of falling upon or obstructing such railway, compensation being made therefor in accordance with law. Such corporation may have such examination and survey of their proposed railways made as may be necessary to the selection of the most advantageous route, and for such purposes may enter upon the lands or waters of any person or corporation subject to responsibility for all damages that may be occasioned thereby. [Id.]

Art. 6537. [6735] Streams, streets, etc.—They may construct their railways along, across and over any stream of water, water course, bay, navigable water, arm of the sea, street, highway, steam railway, plank road, turnpike or canal which the route of such railway shall touch, and erect and operate bridges, trams, trestles, or causeways over, along or across any such stream, water course, navigable water, bay, arm of the sea, street, highway, plank road, turn-

pike, or canal. Such bridge or other structure shall be so erected as to not unnecessarily or unreasonably prevent the navigation of such stream, water course, bay, arm of the sea or navigable water and nothing herein shall authorize the construction of any such railway upon or across any street, alley, square or property of any incorporated city or town without the assent of said corporation of said city or town, and before constructing an electric railway along and upon highways, plank roads, turnpikes or canals, such interurban electric railway company shall first obtain the consent of the lawful authorities having the jurisdiction of the same. [Id.]

Art. 6538. [6737] Rights over other electric railway tracks, etc.—The right of condemnation herein given to interurban electric railway companies shall include the power and authority to condemn for their use and benefit, easements and rights of way to operate interurban cars along and upon the track or tracks of any electric street railway company owning, controlling or operating such track or tracks upon any public street or alley in any town or city of this State for the purpose hereinafter mentioned, subject to the consent, authority and control of the governing body of such town or city. [Id.]

Art. 6539. [6738] Proceedings to condemn.—Any interurban electric railway company, seeking to avail itself of the benefits of this chapter shall have the right to condemn an easement along and upon the track or tracks of any electric street railway company for the purpose only of securing an entrance into and an outlet from a town or city upon a route to be designated by the governing body of the city or town. In any proceeding to condemn an easement or right of way for the purposes above mentioned, the court, or the jury trying the case shall define and fix the terms and conditions upon which such easement or right of way shall be used. The court rendering such judgment shall be authorized upon a subsequent application or applications by either of the parties to the original proceedings, or any one claiming through or under them, to review and reform the terms and conditions of such grant and the provisions of such judgment, and the hearing upon such application shall be in the nature of a retrial of said cause with respect to the terms and conditions upon which said easement shall be used; but the court shall not have power upon any such rehearing to declare such easement forfeited or to impair the exercise thereof, and no application for a rehearing shall be made until two years after the final judgment on the last preceding application. [Id.]

Art. 6540. [6739] "Interurban railway company."—An interurban electric railway company, within the meaning of this chapter, is a corporation chartered under the laws of this State for the purpose of conducting and operating an electric railway between two cities or between two incorporated towns or between one city and one incorporated town in this State; and the rights secured under this chapter by any interurban company shall be inoperative and void if the road to be constructed under the charter of said company is not fully constructed from a city or incorporated town to some other city or incorporated town within twelve months from the date of the final judgment awarding to said company said easements and right of way. Any interurban company availing itself of the privileges conferred in this chapter is hereby prohibited from receiving for transportation at any point on that portion of the track or tracks so condemned, without the consent of the company over whose track or tracks the easement is condemned, any freight or passengers destined to a point or points between the termini of the track or tracks so condemned; and a wilful violation by the company of the provisions of this article shall operate to forfeit such easements or rights of way. [Id.]

Art. 6541. [6740] To sell light and power.—Interurban electric railway companies shall also have the right to produce, supply and sell electric light and power to the public and to municipalities. [Id.]

Art. 6541a. Extension of lines to supply light and power.—Any corporation now or hereafter organized under the laws of this state authorized to construct, acquire and operate electric or other lines of railway within and between any cities or towns in Texas and to acquire, hold and operate other public utilities in and adjacent to the cities or towns within or through which such company operates, may extend its electric light, power and gas lines, or either of them, for the purpose of supplying light, power and gas, or either of them, to the public residing beyond the territory adjacent to the cities or towns within or through which it operates, and for the purpose of so extending any such electric light, power and gas lines, any such corporation shall have all the rights and powers of extension now or hereafter possessed and enjoyed by public service corporations engaged in supplying and selling electric light, power and gas, or either of them as provided by law; and the powers herein granted shall not repeal either expressly or impliedly any of the anti-trust laws of the State of Texas. [Acts 1927, 40th Leg., p. 152, ch. 101, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 152, ch. 101, repeals all conflicting laws and parts of laws.

Art. 6542. [6741] Provisions cumulative.—No provision in this chapter shall be construed to have the effect to confer the power of eminent domain, or any power herein conferred, except that conferred in the preceding article, upon any interurban railroad or interurban railroad company, or upon any person, firm, association, or corporation or to add to the powers already possessed by any such railroad or railroad company, person, firm, association or corporation so as to enable or authorize it to condemn any land or ground occupied by any portion of its line or track, already constructed March 5, 1907, or to condemn any land or ground for the purpose of changing the location of any track or line already constructed at said date. Nothing in this article shall be construed to take from any interurban railroad company, person, firm, association or corporation, any power of eminent domain already possessed by it. [Acts 1907, p. 23.]

Art. 6543. Merger.—Any corporation organized under the laws of this State authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, may acquire, lease or purchase the physical properties, rights and franchise of any other railway corporation having and possessing like power, or may lease or purchase physical properties, rights and franchises of any suburban or street railway corporation, the lines of whose railway are to be operated in connection with the lines of the interurban railway, and may sell or dispose of the physical properties, rights and franchise by such corporation or person owning the same, to such corporation, acquiring, leasing or purchasing same hereunder. Such acquisition or purchase may be made upon such terms as may be agreed upon by the respective boards of directors and authorized or approved by a majority of the stockholders of such corporations, respectively. Corporations owning and operating said street car railways before making sale of its properties hereunder, shall obtain the consent of the governing body of the city where such street car line may be located; and, in cities and towns operating under any charter which provides for the right of qualified voters to vote on the granting or amending of franchise to street railways or interurban railways, this right shall still exist. Any corporation authorized to construct, acquire and operate electric or other interurban lines of railway in this State, commonly known as interurban railways, shall also have the power to make and enter into trackage or lease contract with any corporation owning and operating street railways, so as to procure continuous passage into or through such city or town; provided, the governing body of the city or town shall consent thereto; in such case, the owner of such street railways is also authorized to enter into such trackage or lease contract. No corporation named in this article shall ever be permitted to acquire, own, control or

operate any parallel or competing interurban line. No such corporation shall be permitted to purchase, lease, acquire, own or control, directly or indirectly, the shares or certificates of stock or bonds, franchise or other rights or the physical properties or any part thereof, of any other corporation, if the same will violate any provision of the law commonly known as the anti-trust law. [Acts 1st C. S. 1915, p. 31.]

Art. 6544. [6742–45] Street railway fares.—All persons or corporations owning or operating street railways in or upon the public streets of any town or city of not less than forty thousand inhabitants are required:

1. To carry children of the age of twelve years or less for one-half the fare regularly collected for the transportation of adults. This law shall not apply to street cars carrying children or students to and from schools, colleges or other institutions of learning situated at a distance of one mile or more beyond the limits of the incorporated city or town from which said cars run.

2. To sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, for one-half of the regular fare collected for the transportation of adults, to students not more than seventeen years of age in actual attendance upon any academic, public or private school of grades not higher than the grades of the public high schools situated within or adjacent to the town or city in which such railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase them of the written certificate of the principal of the school which he attends showing that he is not more than seventeen years old, is in regular attendance upon such school and is within the grades herein provided. Such tickets are not required to be sold to such students and shall not be used except during the months when such school is in actual session and such students shall be transported at half fare only when they present such tickets.

3. To transport free of charge children of the age of five years or less when attended by a passenger of above said age.

4. To accord to all passengers referred to in this article the same rights as to the use of transfers issued by their own or other lines as are or may be accorded to passengers paying full fare. [Acts 1903, p. 132.]

Art. 6545. Street and suburban railways.—All street and suburban railways engaged in the transportation of freight within and near cities and towns, shall be subject to the control of the Railroad Commission: No street railway company shall be exempt from payment of assessments that may be legally levied or charged against it for street improvements. Any corporation heretofore or hereafter organized under the general laws of this State, and which owns or operates with electric power any street or suburban railway or belt line of railways within and near cities and towns for the transportation of freight and passengers within Texas shall be authorized to supply and sell electric light and power to the public or municipalities, and to acquire or otherwise provide the necessary appliances therefore [therefor], and may, by proceeding in the manner provided by law, amend its articles of incorporation so as to expressly include such authority. When the Railroad Commission shall decide that any corporation created under chapter one of this title for the purpose of operating a local suburban railway not exceeding ten miles from the corporate limits of any city or town in addition to such mileage as it may have within the same, is not for any reason subject to the control of said Commission in reference to the issuance of stocks and bonds or either under the provisions of Chapter 50, Acts 1893, after such decision of the Commission, said corporation shall have the right to issue its stocks and bonds or either and also to increase its stocks and bonds or either without the control of the Commission and without complying with the Act aforesaid in reference thereto, and when so issued said stocks and bonds shall in all respects be valid and binding. [Acts 1897, p. 189; Acts 1903, pp. 29, 62; G. L. vol. 10, p. 1243.]

Art. 6546. Freight interurbans.—All electric, gas or gasoline, denatured alcohol or naphtha interurban or motor railways incorporated as such, which shall engage in transporting freight, shall be subject to the control of the Railroad Commission. No such corporation shall ever be exempt from the payment of assessments that may be legally levied or assessed against it for street improvements. Such interurban railways shall have the same right of eminent domain as are now given by law to steam railroads, and may exercise such right for the purpose of acquiring right of way upon which to construct their railway lines, and sites for depots and power plants, and shall have the same rights, powers and privileges as are now granted by law to interurban electric railways companies. Any such interurban company shall have the right and authority to acquire, hold and operate other public utilities in and adjacent to the cities or towns within or through which said company operates. No property upon which is located a cemetery shall ever be condemned by any such interurban railway, unless it shall affirmatively be shown, and so found by the court trying such condemnation suit, that it is necessary to take such property, and no other route is possible or practicable. [Id. Acts 1903, p. 204; Acts 1897, p. 188; Acts 1909, 2nd C. S., p. 396; G. L. vol. 10, p. 1242; Acts 1917, p. 390.]

Art. 6547. Plants and buildings.—Any corporation heretofore organized under any law of this State, and which now or may hereafter operate a line of electric, gas or gasoline, denatured alcohol, or naphtha motor railway, within and between any cities or towns in Texas, is authorized to own and operate union depots and office buildings, and to acquire, hold and operate electric light and power plants in and adjacent to cities or towns within or through which said company operates. Such existing corporation, or one heretofore organized under subdivision 68 of Article 1302, may, by proceeding in the manner provided by law, amend its charter so as to expressly include any or all powers herein authorized. [Id.]

Art. 6548. Jitney lines.—Any corporation operating a street or suburban railway or interurban railway, and carrying passengers for hire, is hereby authorized to maintain and operate motor trucks or jitney lines in connection with their said business for the purpose of carrying passengers for hire on the public roads, streets, squares, alleys and highways within the corporate limits of any incorporated city or town under such regulations as may be prescribed by any such city or town, and on the public roads and highways within five miles of the corporate limits of any such incorporated city or town, under such regulations as the commissioners court of such county may prescribe. [Acts 2nd C. S. 1923, p. 97.]

Art. 6549. Terminal railways.—Terminal railways shall have all the rights and powers conferred by law upon railroads by Chapters 6 and 7 of this title, and when such railway is adjacent to any inland navigable stream or water body, it shall have the right and power to construct, erect, operate and maintain all necessary and convenient facilities to accommodate and expeditiously handle the exchange of freight and passenger traffic with all steamship and other vessels and water craft using such waterways; and shall have the right to issue bonds in excess of its authorized capital stock under the direction of the Railroad Commission of Texas, in accordance with the stock and bond law regulating the issuance of stocks and bonds by railroads. Said commission shall fix the values of the property, rights and franchises of such railway company; and its stocks and bonds shall not exceed the amount authorized by said Commission in which jurisdiction over the issuance of the bonds herein authorized is hereby vested. No such terminal company shall have the right to charge any railroad company, steamship, vessel or water craft for terminal facilities a greater amount than may be from time to time des-

ignated and established by said Commission, which shall have authority to establish and prescribe such rates and rules for the operation of all such terminal companies as will prevent discrimination by them against any common carrier with respect to either charge or service. The provisions of Articles 6452, 6453 and 6454, shall apply to any and all orders, rulings, judgments and decrees of said Commission made, entered or held under the provisions of this law in respect to such terminal railway companies. [Acts 1897, p. 188; G. L. vol. 10, p. 1242; Acts 1905, p. 211; Acts 1907, p. 300; Acts 1917, p. 134.]

Art. 6550. Road to mines, etc.—Corporations created to build, maintain and operate a line of railroads to mines, gins, quarries, manufacturing plants, and mills, shall have the right to condemn land necessary for the right of way for such road from and between such mines, gin, quarry, manufacturing plant or mill and the nearest line of railroad, provided, that no such corporation shall have said right of eminent domain until it shall declare itself a public highway and common carrier, thus placing said road under the control of the Railroad Commission. [Acts 1897, p. 192; G. L. vol. 10, p. 1246.]

Art. 6550a. Title to steel rails of Texas State Railroad.—That title to all steel rail now upon the road bed of the Texas State Railroad, and allotted to the State of Texas by the United States under an Act of Congress from the surplus materials in the possession of the United States at the conclusion of the late war with the German Imperial Government, be and title to said rails is hereby vested in the State of Texas exclusively for the benefit of said Texas State Railroad, subject, however, to all the provisions of the aforesaid Act of Congress. [Acts 1925, 39th Leg., ch. 169, p. 384, § 1.]

Art. 6550b. Same—purchaser of.—If hereafter the said Texas State Railroad shall be sold or otherwise disposed of under authority of law any conveyance or assignment lawfully executed pursuant to said sale shall vest title to said rail absolutely in the purchaser or grantee thereunder to the exclusion of each and every agency of the Government of the State of Texas and the United States. [Acts 1925, 39th Leg., ch. 169, p. 384, § 2.]

Art. 6550a1. Aerial or tramways to mines.—Every person, firm, corporation, limited partnership, joint stock association or other association of any kind whatsoever, owning, constructing, operating or managing any aerial or other kind of tramway within this State between a mine, smelter or railway or either, may hold and acquire by purchase or condemnation rights-of-way, but in the exercise of such right shall be deemed to be a common carrier, and shall be subject to the jurisdiction and control of the Railroad Commission, and shall have the right and power of eminent domain in the exercise of which he, it or they may enter upon and condemn land, rights-of-way, easement and property of any person or corporation necessary for the construction, maintenance or operation of his, its, or their aerial or other kind of tramway; such right of eminent domain for acquiring rights-of-way provided for herein, shall be exercised in the manner prescribed by law for condemning the land and acquiring of rights-of-way by railroad companies. [Acts 1927, 40th Leg., p. 379, ch. 256, § 1.]

CHAPTER FOURTEEN

UNION DEPOT CORPORATIONS

Art.
6551. Union depots.
6552. Finances.
6553. Interest in railways.
6554. Condemnation.

Article 6551. [1243–4] Union depots.—Corporations formed for the purpose of acquiring, owning, maintaining and operating union passenger depots in any city or town in which any two or more railroad companies own or operate a railroad, shall have power and authority to acquire, own or lease, maintain and operate railroad tracks in any city or town for the purpose of enabling railroad companies to run their trains to and from the union depot; such tracks not to extend to a greater distance than three miles from such union depot. Such corporations may also add additional stories to their depot buildings and rent the same for offices or other purposes; and may also provide on their property buildings for express purposes, and rent the same to express companies. The Railroad Commission of Texas shall have the same supervision and control over said railroads and tariff rates and depots that it has over any other lines of railroad and depot buildings in Texas. [Acts 1895, p. 187; Acts 1897, p. 42; G. L. vol. 10, pp. 917, 1096.]

Art. 6552. [1245] Finances.—The provisions of Chapter 12 of this title shall govern and control the issuance of stock and bonds of such corporations as far as the same are applicable. [Id.]

Art. 6553. [1246] Interest in railways.—Railway companies existing under the laws of Texas, whether under general or special law, and railway companies incorporated under any general or special law of the United States, are authorized and empowered to subscribe to the stock, and purchase and own stock and bonds of any depot company formed under the authority of this law. [Id.]

Art. 6554. [1247–8] Condemnation.—Corporations created for the purposes contemplated herein may secure by condemnation such land or real estate as may be necessary for the business and purposes of such corporation, including all lands necessary for depot buildings, passenger sheds, yards or tracks requisite to the convenient use of the depot. Such corporations, by such condemnation, may acquire the fee simple title. After the award by the commissioners, and pending further litigation, the corporation may enter upon and take possession of the land sought to be condemned, by complying with the terms and conditions of any general laws of this State authorizing any corporation having the right to condemn to so enter upon and take possession of such land or real estate. [Acts 1899, p. 49.]

CHAPTER FIFTEEN

VIADUCTS

Art.
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Article 6555. Certain cities may contract.—All cities acting under special charters granted by the legislature are hereby granted all necessary rights and powers to carry out and comply with existing contracts or to hereafter make contracts with railway companies owning or operating tracks in such cities, to erect and complete by such railway companies, all necessary viaducts, the construction and completion of which shall be at the expense of such railway companies, according to plans and specifications agreed upon between such companies and such cities. [Acts 1911, p. 235.]

Art. 6556. May close streets.—All such cities are hereby given authority to abolish and close such portions of any highway, street or alley crossed by railroad tracks, as such cities have or may agree to close and abolish, in consideration of procuring the erection and completion of any viaduct by any railway company or companies. [Id.]

Art. 6557. May issue bonds.—Such cities are hereby given full power and authority to issue improvement bonds to be designated "viaduct bonds" to an amount not exceeding ten thousand dollars for the purpose of raising sufficient funds to pay for the right of way for a viaduct, over such property or

[as] may not be owned by such cities or by any of the railway companies affected, and to pay such damages, if any, which may be sustained by abutting property owners. The question of issuance of said bonds shall be submitted to a vote of the property tax paying voters, and shall be carried by a majority vote of said voters, such election being called as is provided for on other questions in the charters of cities desiring an election on said bonds. In addition, such cities are hereby given authority to give railroad companies the use of any portion of its streets, highways and alleys as may be necessary for a right of way for viaducts. [Id.]

Art. 6558. Condemnation.—All such cities are hereby given the right of eminent domain and the power and authority to condemn all land necessary for right of way purposes for viaducts and approaches to same forming a necessary part of such viaduct. [Id.]

Art. 6559. May enforce contracts.—All such cities are hereby given the right and power to compel the construction and completion of such viaducts as railway companies have by contract agreed with any such city to construct and complete or which any railway company or companies may hereafter agree to construct and complete, by mandamus proceedings in the district court of the county where such viaduct or viaducts are to be completed or through any other lawful means. [Id.]

Art. 6559a. Height of bridges or viaducts.—All bridges, viaducts, overheadways, foot bridges, wires or other structures hereafter built over the tracks of a railway, or over the tracks of railroads, by the State, or by a county, municipality, a railroad company or other corporation, firm, partnership, or natural person, shall be placed not less than twenty-two (22) feet in the clear from the top of the rails of such track or tracks to such structure or wire, or to the bottom of the lowest sill, girder or crossbeam, the lowest downward projection on the bridge, viaduct, overheadway, or foot bridge or other structure. [Acts 1925, 39th Leg., ch. 11, p. 32, § 1.]

Art. 6559b. Structures near tracks.—All loading platforms and all houses and structures, and all fences, and all lumber, wood and other materials hereafter built, placed or stored along the railroads of this State, either on or near the right of way of the main lines or on or near any spur, switch or siding of any such railroad, shall be so built, constructed, or placed that there shall be not less than eight and one-half (8½) feet space from the center of such main line, spur, switch or siding to the nearest edge of the platform, or to the wall of the building, or to the lumber, wood, or other material. [Acts 1925, 39th Leg., ch. 11, p. 32, § 2.]

Art. 6559c. Roof projections over tracks.—All roof projections hereafter constructed from any loading platform along any railroad main track, or spur, switch, or siding track shall be not less than twenty-two (22) feet above the rails of such track, and the other edge of said roof projection shall be not less than eight and one-half (8½) feet horizontally from the center of said track. [Acts 1825, 39th Leg., ch. 11, p. 32, § 3.]

Art. 6559d. Not applicable when.—The provisions of this Act shall not apply to nor prevent the building, placing, constructing or completing of structures or other things enumerated in Sections One, Two and Three, when same are being built, placed, or are in the courses of construction at the time this Act takes effect, or if material has been purchased for such placing, building, or construction at the time this Act takes effect, pursuant to prior contracts or plans. [Acts 1925, 39th Leg., ch. 11, p. 33, § 3a.]

Art. 6559e. Penalty recoverable by Attorney General.—If any railway company or other corporation, firm, partnership, or person shall hereafter erect any structure or wire in violation of any provision of this Act, or shall hereafter in any manner violate any provision of this Act, it shall be the duty of the Attorney General immediately to file a suit in court of competent jurisdiction, to collect a penalty, which is hereby prescribed of not less than one hundred ($100.00) dollars nor more than one thousand ($1,000.00) dollars for each violation of this Act; and the Attorney General may, in his discretion, sue in one proceeding for all violations of this Act by any one railway company or other corporation, firm, partnership or person. Provided further, that the said penalty shall accrue for each day such structure, wire, lumber, wood or other material is permitted to remain in violation of this Act, and each day same is permitted to remain, constitutes a separate violation of this Act. [Acts 1925, 39th Leg., ch. 11, p. 33, § 4.]

Art. 6559f. Regulation by Commission.—It is hereby made the duty of the Railroad Commission to promulgate rules and regulations in accordance with this Act. It is further provided that upon application regularly made and filed, and after notice to the Attorney General, the Railroad Commission may, for good cause shown, permit any railway company or other corporation, firm, partnership, or person, or any county or municipality to deviate from the terms of this Act in accordance with an order of the Commission made and entered; and in such event the corporation, firm, partnership, or person acting in accordance with the order of the Railroad Commission so made shall not be deemed to have violated this Act. [Acts 1925, 39th Leg., ch. 11, p. 33, § 5.]

TITLE 113

RANGERS—STATE

Art.
6560. Organization.
6561. Companies.
6562. Compensation.
6563. Quartermaster.
6564. Governor in command.
6565. Term of service.
6566. Purchase of supplies.
6567. Equipment.
6568. Arms and equipment.
6569. Subsistence and quarters.
6570. Powers of peace officers.
6571. Arrests.
6572. Regulations.
6573. Qualifications of members.

Article 6560. [6754] Organization.—The ranger force authorized to be organized by the Governor is for the purpose of protecting the frontier against marauding or thieving parties, and for the suppression of lawlessness and crime throughout the State, and to aid in the enforcement of the laws of the State. [Acts 1901, p. 41; Acts 1919, p. 263.]

Art. 6561. [6755] Companies.—The Ranger force shall consist of not to exceed one headquarters company and four companies of mounted men, except in cases of emergency, when the Governor shall have authority to increase the force to meet extraordinary conditions.

The headquarters company shall consist of one captain, who shall be designated the senior captain of the force, one sergeant, and not to exceed four privates.

Each separate mounted company shall consist of not to exceed one captain, one sergeant and fifteen privates. The captains and the quartermaster shall be appointed by the Governor and shall be removed at his pleasure; unless so removed by the Governor they shall serve for two years and until their successors are appointed and qualified.

The enlisted men and non-commissioned officers of each company shall be appointed by the Governor, acting by and through the Adjutant General who shall pass upon the qualifications of such men, and so far as practicable shall make such appointment upon the recommendation of the captain, under whom such men are to serve. The enlisted men and non-commissioned officers shall serve for two years, unless sooner removed by the Governor or the Adjutant General for cause. [Id.]

Art. 6562. [6756] Compensation.—The pay of officers and men shall be: Captains $150.00 each per month; sergeants $100.00 each per month; and privates $90.00 each per month, except as herein otherwise provided. The payment shall be made monthly at such times and in such manner as the Adjutant General may prescribe. The officers and enlisted men on the ranger force shall receive in addition to their regular salary an increase of five per cent after the first two years of continuous service and five per cent for each additional year not to exceed in all twenty per cent of their salary as above provided. For the violation or breach of such rules and regulations for the governing of the ranger force as may be prescribed by the Adjutant General and approved by the Governor, officers and enlisted men shall forfeit their right to participate in the increase or longevity pay, or any portion thereof provided for herein. [Acts 1901, p. 41; Acts 1917, 1st C. S. p. 57; Acts 1919, p. 263.]

Art. 6563. [6757] Quartermaster.—The Governor shall appoint a quartermaster for the ranger force who shall discharge the duties of a quartermaster, commissary and paymaster, and shall have the rank and pay of a captain. [Id.]

Art. 6564. [6758] Governor in command.—This force shall always be under the command of the Governor; to be operated under his direction in such manner, in such detachments, and in such localities as the Governor may direct, acting by and through the Adjutant General. [Id.]

Art. 6565. [6759] Term of service.—The Governor is authorized to keep this force, or so much thereof as he may deem necessary in the field as long as in his judgment there may be necessity for such a force; and men who may be enlisted in such service shall do so for such term not to exceed two years subject to disbandment in whole or in part at any time and reassemblage or reorganization of the whole force, or such portion thereof as may be deemed necessary by order of the Governor. [Id.]

Art. 6566. [6760] Purchase of supplies.—The quartermaster, when directed by the Adjutant General shall purchase all supplies for the ranger force, and shall make a certificate on the voucher of the party or parties from whom the supplies are purchased to the fact that the account is correct and just, and the articles purchased were at the lowest market prices. [Id.]

Art. 6567. [6761] Equipment.—Each officer, non-commissioned officer and private of said force shall furnish himself with a suitable horse, horse equipment, clothing, etc. If his horse is killed in action it shall be paid for by the State at a fair market value at the time when killed. [Id.]

Art. 6568. [6762] Arms and equipment.—The State shall furnish each member of said force with one improved carbine and pistol at cost, the price of which shall be deducted from the first money due such officer or man, and shall furnish said force with rations of subsistence, camp equipage and ammunition for the officers and men, and also forage for horses. [Id.]

Art. 6569. [6763] Subsistence and quarters.—In addition to the pay allowed to each officer and man of this force, they shall be allowed not to exceed $30.00 per month for subsistence when at their station, and when on duty outside of his district each member of said force shall be allowed his actual necessary expenses for subsistence and quarters, to be paid on a sworn account showing the actual amount expended, not to exceed $3.00 per day. In addition thereto, each member shall be allowed his actual railroad expenses when traveling under orders. When any company of said force furnishes motor transportation without expense to the State, they shall be allowed $50.00 per month per company for repairs and upkeep for said motor vehicle. [Id.]

Art. 6570. [6764] Powers of peace officers.—The officers, non-commissioned officers and privates of this force shall be clothed with all the powers of peace officers, and shall aid the regular civil authorities in the execution of the laws. They shall have authority to make arrests, and to execute process in criminal cases, and in such cases shall be governed by the laws regulating and defining the powers and duties of sheriffs when in discharge of similar duties; except that they shall have the power and shall be authorized to make arrests and to execute all process in criminal cases in any county in the State. They shall, before entering on the discharge of these duties, take an oath that each of them will faithfully perform his duties in accordance with law. To arrest and bring to justice men who have banded together to prevent the execution of the laws or to commit robbery or other felonies, the officers, non-commissioned officers and privates of said force may accept the services of such citizens as shall volunteer to aid them; but while so engaged such citizens shall not receive pay from the State for such services. [Id.]

Art. 6571. [6765] Arrests.—When said force, or any member or members thereof, shall arrest any person charged with a criminal offense, they shall forthwith convey said person to the county where he or they so stand charged, and shall deliver him or them to the proper officer, taking his receipt therefor. All necessary expenses thus incurred shall be paid by the State. [Id.]

Art. 6572. [6766] Regulations.—The Governor and Adjutant General shall cause to be made such regulations for the government and control of the organization herein provided for, for the enlistment and employment of non-commissioned officers and privates as they may deem necessary so that the force so provided for shall be as effective as possible. When any complaint is made to the Adjutant General charging any ranger with misconduct or violation of the law, the Adjutant General will have the right to institute proceedings before any magistrate in the county where the offense is alleged to have been committed. Upon application of the Adjutant General said magistrate shall issue process for witnesses to appear and testify under oath, which testimony shall be reduced to writing by a stenographer and transmitted by the court to the Adjutant General, who shall take such action as the facts warrant. The cost of such proceedings including fee of $3.00 of the magistrate and fifteen cents for each one hundred words of testimony so taken and transcribed shall be paid by the Comptroller upon approval by the Adjutant General out of funds appropriated for enforcement of law. Any citizen who knows of any such misconduct or violation of the law on the part of any member of the ranger force shall at once notify the Adjutant General in writing of misconduct, and the Adjutant General shall at once conduct such examination and take such action thereon as the facts make necessary and without delay submit all of such evidence and his actions thereon to the Governor for his approval or disapproval. [Id.]

Art. 6573. Qualifications of members.—No person shall be appointed to the ranger force who is not a citizen of the United States and of Texas, and preference shall always be given to discharged soldiers holding certificates of honorable discharge from the United States Army. All officers and men selected shall be sober men of good moral character and sound judgment, shall furnish satisfactory evidence thereof, and shall conform to such qualifications as the Governor shall prescribe for appointment. All applications for appointment to the ranger force shall be made to the Governor, who shall pass upon the qualifications of each applicant. [Acts 1919, p. 263.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

TITLE 114

RECORDS

1. RECORDS

Art.
6574. Old records transcribed.
6574a. Old probate records.
6575. Correctness certified to.
6576. Records of county surveyor.
6577. Original books preserved.
6578. Records of new county transcribed.
6579. Pay for making transcript.
6580. Translation.
6581. Effect of such translations.

2. LOST RECORDS, ETC.

6582. Lost records supplied by proof.
6583. Proceedings to establish lost records.
6584. Judgment.
6585. Proceedings in the county court.
6586. Effect of judgment.
6587. Certified copies may be recorded
6588. Originals recorded again.
6589. Force of substituted judgment.
6590. Copies of records.

1. RECORDS

Article 6574. [6767–8] [4585] [4281] Old records transcribed.—When any of the records or indexes of a county become defaced, worn or in a condition endangering their preservation in a safe and legible form, the commissioners court of such county shall procure necessary, well bound books and require the officer having the custody thereof, to transcribe such records into such new books so as to perfectly conform to the original record as indexed. The designation of such new records, whether by letter or number, shall not be changed from the original. Such transcribed records shall be carefully compared with the originals by the officer who transcribes them, assisted by a sworn deputy. [Acts 1876, p. 84; G. L. vol. 8, p. 920.]

Art. 6574a. Old probate records.—The commissioners' court of any county in this State may require the county clerk to record in a well bound book any old probate records or papers that are unrecorded when in the opinion of the commissioners' court such recording is necessary. The commissioners' court shall fix the compensation of the county clerk before the work is done at any amount not to exceed fifteen (15c) cents per one hundred words for recording such records or papers, to be paid out of the General fund of the county. [Acts 1925, 39th Leg., ch. 162, p. 373, § 1.]

Art. 6575. [6769] [4587] [4283] Correctness certified to.—When such records have been correctly transcribed, the officer with his deputies who transcribed and verified them, shall officially certify at the conclusion of the record to the correctness of the same with the impress of the seal of said court affixed on the same page, stating the number of pages contained in the book from one to the highest number. [Id.]

Art. 6576. [6771] [4589] [4285] Records of county surveyor.—Where the records of the county surveyor's office have been so transcribed, the surveyor shall certify the correctness of such transcribed records and make affidavit thereto before the county clerk of his county who shall impress thereon the seal of the county court. [Id.]

Art. 6577. [6770] [4588] [4284] Original books preserved.—The original books transcribed according to the provisions of this title shall be carefully kept and preserved by such clerk, as other archives of his office. [Id.]

Art. 6578. [6772–3–4] Records of new county transcribed.—The commissioners court of a county which has been created, either in whole or in part from the territory of another county or counties, or to which may have been added since its creation, the territory of another county or counties, shall require the county clerk to transcribe from the record of said other county or counties in substantial well bound record books to be furnished him by the commissioners court, each deed mortgage, conveyance, incumbrance and muniment of title affecting or in anywise relating to all lands and real property embraced in the territory so acquired from such other county or counties, which deeds, mortgages, conveyances, incumbrances and muniments of title appear of record in the county or counties from which said territory may have been taken. When the territory acquired was from more than one county, then the clerk shall use a separate book for each county, and such records shall be indexed and arranged as is provided by law. Said records shall be legibly transcribed, and when so transcribed shall be carefully compared with the original record by the said clerk or his deputies who transcribed them. When said record or records have been correctly transcribed, the county clerk and his deputies who transcribed and verified them, shall certify the correctness of such records under their official oath of office at the conclusion thereof with the impress of the seal of said court affixed on the same page. [Acts 1879, p. 105; G. L. vol. 8, p. 1405.]

Art. 6579. [6775] [4593] Pay for making transcript.—The county clerk or person making such transcript shall receive not exceeding fifteen cents per hundred words for transcribing, comparing and verifying said records, the amount to be fixed by the commissioners court in the order directing the transcribing of such records; said compensation to be paid out of the county treasury upon warrant issued under the order of the commissioners court of the newly created county. [Acts 1917, p. 88.]

Art. 6580. [6776] [4593] Translation.—Any commissioners court may require the county clerk of its county to have translated into English all or any part of the archives and records of their offices which are in Spanish and which relate to titles to land, and copy said translations in a well bound book or books, but they shall not contract to pay more than fifteen cents per hundred words for both the translation and recording. [Acts 1893, p. 168: G. L. vol. 10, p. 598.]

Art. 6581. [6777] [4593] Effect of such translations.—When such Spanish archives and records are translated and recorded, said records in English shall have the same force and effect as if the archives and instruments were originally made and recorded in the English language, and certified copies may be used as evidence and otherwise, for like purposes and with like effect as the originals are and certified copies of records of the originals can now be used; and said record books hereinbefore provided for shall be permanent archives and records of the county clerk's office of the counties when so translated and recorded. [Id.]

2. LOST RECORDS, ETC.

Art. 6582. [6778] [4594] [4286] Lost records supplied by proof.—All deeds, bonds, bills of sale, mortgages, deeds of trust, powers of attorney and conveyances which are required or permitted by law to be acknowledged or recorded, and which have been so acknowledged or recorded, which have been lost or destroyed, and all judgments of courts of record in this State, where the record of the court containing such judgment has been lost, destroyed or carried away, may be supplied by parol proof of the contents thereof; which proof shall be taken in the manner hereinafter provided. [Acts 1876, p. 45; G. L. vol. 8, p. 881.]

Art. 6583. [6779] [4595] [4287] Proceedings to establish lost records.—Any person having any interest in any such deed, instrument in writing, or any judgment, or order or decree in the district court, the record or entry of which has been lost, destroyed, or carried away, may, in addition to any mode provided by law for establishing the existence and contents of such record, file with the district clerk of the county where such loss or destruction took place, his written application setting forth the facts entitling him to the relief sought; whereupon such clerk shall issue a citation to the grantor in such deed,

or to the party or parties interested in such instrument, or to the party or parties who were or may be interested adversely to the applicant at the time of the rendition of any such judgment, or the heirs and legal representatives of such parties to appear at a term of the district court to be designated in said citation, and contest the right of the applicant to have such deed, writing, or judgment substituted and recorded. Service shall be as provided for process in other cases. [Id.]

Art. 6584. [6780] [4596] [4288] Judgment.—On hearing said application, if the court shall be satisfied from the evidence of the previous existence of such deed, instrument, order or decree, and of the loss, destruction or carrying away of the same, as alleged by the applicant, and the contents thereof, an order shall be entered on the minutes of the district court to that effect, which order shall contain a description of the lost deed, instrument in writing, judgment or record, and the contents thereof, and a certified copy of such order may be recorded in the records of the proper county. [Id.]

Art. 6585. [6781] [4597] [4289] Proceedings in the county court.—Whenever any judgment, order or decree duly entered in the county court of any county has been or may be lost, destroyed or carried away, any person interested therein may file his written application with the clerk of the county court to which the original record belonged, setting forth the facts entitling him to the relief sought, when the same proceedings shall be had and the court shall enter a like judgment as provided in the two preceding articles. [Id.]

Art. 6586. [6782] [4598] [4290] Effect of judgment.—Whenever such judgment, order or decree rendered in the district or county court shall be duly entered, it shall stand in the place of and have the same force and effect as the original of said lost deed, instrument in writing, judgment or record; and when duly recorded may be used as evidence in any court of this State with like effect as the original thereof. [Id.]

Art. 6587. [6783] [4599] [4291] Certified copies may be recorded.—All certified copies from the records of such county, where the records have been lost, destroyed or carried away, and all certified copies from the records of the county or counties from which said county was created, may be recorded in such county; provided, the loss of the original shall first be established. [Acts 1876, p. 45; G. L. vol. 8, p. 881.]

Art. 6588. [6784] [4600] [4292] Originals recorded again.—When any original paper mentioned in the first article of this subdivision may have been saved or preserved from loss, the record of said originals having been lost, destroyed or carried away, the same may be recorded again, and this last registration shall have force and effect from the filing for original registration; provided, said originals are recorded within four years next after such loss, destruction or removal of the records. [Id.; Acts 1879, p. 35; G. L. vol. 8, p. 1335.]

Art. 6589. [6785] [4601] [4293] Force of substituted judgment.—Judgments, orders and decrees, when substituted as hereinbefore provided, shall carry all the rights thereunder in every respect as the originals, especially preserving the liens from the date of the originals, and giving the parties the right to issue executions under the substituted judgments as under the originals. [Id.]

Art. 6590. Copies of records.—All transcribed records and all translations of Spanish archives, and all judgments supplying lost records or other instruments in writing, and all re-recorded deeds or other instruments in writing required by law to be recorded, when made and recorded in accordance with the provisions of this title and certified copies of such instruments shall have the same force and effect as the original record thereof.

TITLE 115

REGISTRATION

Chap.

1. Recorders and Their Duties.
2. Acknowledgments and Proof for Record.
3. Effect of recording.
4. Separate Property of Married Women.
5. General Provisions.

CHAPTER ONE

RECORDERS AND THEIR DUTIES

Art.

6591. Recorders.
6592. Seal.
6593. Record books.
6594. Memorandum and receipt.
6595. Shall record without delay.
6596. Considered recorded when deposited.
6597. Alphabetical indexes.
6598. What they shall contain.
6599. Index of other records.
6600. Shall give attested copies.
6601. Mortgages, etc.

Article 6591. [6786] [4602] [4294] Recorders.—County clerks shall be the recorders for their respective counties; they shall provide and keep in their offices well bound books in which they shall record all instruments of writing authorized or required to be recorded in the county clerk's office in the manner hereinafter provided. [Acts 1846, p. 236; P. D. 5001; G. L. vol. 2, p. 1542.]

Art. 6592. [6787] [4603] [4295] Seal.—The seal of the county court shall be the seal of the recorder, and shall be used to authenticate all his official acts. [Id.]

Art. 6593. [6788] [4604] [4296] Record books.—Each county clerk shall provide suitable books for his office, and keep regular and faithful accounts of the expenses thereof. Such accounts shall be audited by the commissioners court and paid out of the county treasury. [Id.]

Art. 6594. [6789] [4605] [4297] Memorandum and receipt.—When any instrument of writing authorized by law to be recorded shall be deposited in the county clerk's office for record, if the same is acknowledged or proved in the manner prescribed by law for record, the clerk shall enter in a book to be provided for that purpose, in alphabetical order, the names of the parties and date and nature thereof, and the time of delivery for record; and shall give to the person depositing the same, if required, a receipt specifying the particulars thereof. [Id.]

Art. 6595. [6790] [4606] [4298] Shall record without delay.—Each recorder shall, without delay, record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the acknowledgments, proofs, affidavits and certificates thereto attached, in the order deposited for record by entering them word for word and letter for letter, and noting at the foot of the record the hour and the day of the month and year when the instrument so recorded was deposited in his office for record. [Id.]

Art. 6596. [6791] [4607] [4299] Considered recorded when deposited.—Every such instrument shall be considered as recorded from the time it was deposited for record; and the clerk shall certify under his hand and seal of office to every such instrument of writing so recorded, the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded deliver the same to the party entitled thereto. [Id.]

Art. 6597. [6792] [4608] [4300] Alphabetical indexes.—Each county clerk shall keep in alphabetical order a well bound index to all books of records wherein deeds, powers of attorney, mortgages or other instruments of writing concerning lands and tenements are recorded, distinguishing the books and pages in which every such deed or writing is recorded. [Id.]

Art. 6598. [6793] [4609] [4301] What they shall contain.—It shall be a cross-index and

shall contain the names of the several grantors and grantees in alphabetical order; and, in case a deed is made by a sheriff, the name of the sheriff and defendant in execution; and, if by executors, administrators or guardians, their names and the names of their testators, intestates or wards; and, if by attorney, the name of such attorney and his constituents; and, if by a commissioner or trustee, the name of such commissioner or trustee and the person whose estate is conveyed. [Id.]

Art. 6599. [6794] [4610] [4302] Index of other records.—Each shall, in like manner, make and keep in his office a full and perfect alphabetical index to all books of record in his office, wherein all instruments of writing relating to goods and chattels, or movable property of any description, marriage contracts, and all other instruments of writing authorized or required to be recorded in his office are recorded; and in a like index of all the books of record wherein official bonds are recorded, the names of the officers appointed, and of the obligors in any bond recorded, and a reference to the book and page where the same are recorded. . [Id.]

Art. 6600. [6795] [4611] [4303] Shall give attested copies.—The county clerk shall give attested copies whenever demanded of all papers recorded in his office; and he shall receive for all such copies, such fees as may be provided by law. [Acts 1836, p. 155; P. D. 4979; G. L. vol. 1, p. 1215.]

Art. 6601. [6796] [4612] [4303] Mortgages, etc.—All deeds of trust, mortgages or judgments which are required to be recorded in order to create a judgment lien, or other instruments of writing intended to create a lien, shall be recorded in a book or books separate from those in which deeds or other conveyances are recorded.

CHAPTER TWO

ACKNOWLEDGMENTS AND PROOF FOR RECORD

Art.
6602. Before whom acknowledgments made.
6603. Acknowledgment, how made.
6604. Party must be known or proven.
6605. Acknowledgment of married woman.
6606. Certificate of officer.
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6608. Form by a married woman.
6609. Proof by witness.
6610. Witness must be personally known.
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6612. Handwriting may be proved, when.
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6614. When grantor made his mark.
6615. Proofs how made and certified.
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6617. Subpœna to witness.
6618. May compel attendance of witness.
6619. Record of acknowledgment.
6620. Contents of statement.
6621. Shall further recite.
6622. The book a public record.
6623. Action for damages.

Article 6602. [6797–8–9] [4613–14–15] [4305–6–7] Before whom acknowledgments made.—The acknowledgment or proof of an instrument of writing for record may be made within this State before:

1. A clerk of the district court.
2. A judge or clerk of the county court.
3. A notary public.

Without the State, but within the United States or their territories before:

1. A clerk of some court of record having a seal.
2. A commissioner of deeds duly appointed under the laws of the State.
3. A notary public.

Without the United States before:

1. A minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made.
2. A consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul or consular agent of the United States, resident in the country where proof or acknowledgment is made.
3. A notary public. [Acts 1871, p. 77; P. D. 7418; G. L. vol. 6, p. 979.]

Art. 6603. [6800] [4616] [4308] Acknowledgment, how made.—The acknowledgment of an instrument of writing for the purpose of being recorded shall be by the grantor or person who executed the same appearing before some officer authorized to take such acknowledgment, and stating that he had executed the same for the consideration and purposes therein stated; and the officer taking such acknowledgment shall make a certificate thereof, sign and seal the same with his seal of office. [Acts 1846, p. 236; P. D. 5007; G. L. vol. 2, p. 1542.]

Art. 6604. [6801] [4617] [4309] Party must be known or proven.—No acknowledgment of any instrument of writing shall be taken unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness, which shall be noted in his certificate, that the person making such acknowledgment is the individual who executed and is described in the instrument. [Id.]

Art. 6605. [6802] [4618] [4310] Acknowledgment of married woman.—No acknowledgment of a married woman to any conveyance or other instrument purporting to be executed by her shall be taken, unless she has had the same shown to her, and then and there fully explained by the officer taking the acknowledgment on an examination privily and apart from her husband; nor shall he certify to the same, unless she thereupon acknowledges to such officer that the same is her act and deed, that she has willingly signed the same, and that she wishes not to retract it. [Acts 1846, p. 156; P. D. 1003; G. L. vol. 2, p. 1462.]

Art. 6606. [6803] [4619] [4311] Certificate of officer.—An officer taking the acknowledgment of a deed, or other instrument of writing, must place thereon his official certificate, signed by him and given under his seal of office, substantially in form as hereinafter prescribed.

Art. 6607. [6804] [4620] [4312] Form of certificate.—The form of an ordinary certificate of acknowledgment must be substantially as follows:

"The State of ———,

"County of ———,

"Before me ——— (here insert the name and character of the officer) on this day personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal) "Given under my hand and seal of office this ——— day of ———, A. D., ———."

Art. 6608. [6805] [4621] [4313] Form by a married woman.—The certificate of acknowledgment of a married woman must be substantially in the following form:

"The State of ———,

"County of ———.

"Before me, ——— (here insert the name and character of officer) on this day personally appeared ———, wife of ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the foregoing instrument, and having been examined by me privily and apart from her husband, and having the same fully explained to her, she, the said ———, acknowledged such instrument to be her act and deed, and declared that she had willingly signed the same for the purposes and consideration therein expressed, and that she did not wish to retract it.

(Seal) "Given under my hand and seal of office this ——— day of ———, A. D., ———. ———."

Art. 6609. [6806] [4622] [4314] Proof by witness.—The proof of any instrument of writing for the purpose of being recorded shall be by one or more of the subscribing witnesses personally appearing before some officer authorized to take such proof, and stating on oath that he or they saw the grantor or person who executed such instrument of writing sub-

scribe the same or that the grantor or person who executed such instrument of writing acknowledged in his or their presence that he had executed the same for the purposes and consideration therein stated; and that he or they had signed the same as witnesses at the request of the grantor or person who executed such instrument; and the officer taking such proof shall make a certificate thereof, sign and seal the same with his official seal. [Acts 1846, p. 236; P. D. 5008; G. L. vol. 2, p. 1542.]

Art. 6610. [6807] [4623] [4315] Witness must be personally known.—The proof by a subscribing witness must be by some one personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness, which fact shall be noted in the certificate. [Id.]

Art. 6611. [6808] [4624] [4316] Form of certificate.—The certificate of the officer, where the execution of the instrument is proved by a witness, must be substantially in the following form:

"The State of ———,

"County of ———.

"Before me, ——— (here insert the name and character of the officer), on this day personally appeared ———, known to me (or proved to me on the oath of ———), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw ———, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

(Seal) "Given under my hand and seal of office this ——— day of ———, A. D., ———."

Art. 6612. [6809] [4625] [4317] Handwriting may be proved, when.—The execution of an instrument may be established for record by proof of the handwriting of the grantor and of at least one of the subscribing witnesses in the following cases:

1. When the grantor and all the subscribing witnesses are dead.
2. When the grantor and all the subscribing witnesses are non-residents of this State.
3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained.
4. When the subscribing witnesses have been convicted of felony, or have become of unsound mind, or have otherwise become incompetent to testify.
5. When all the subscribing witnesses to an instrument are dead or are non-residents of this State, or when their residence is unknown, or when they are incompetent to testify, and the grantor in such instrument refuses to acknowledge the execution of the same for record.

Art. 6613. [6810] [4626] [4218] Evidence must prove what.—The evidence taken under the preceding article must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,
4. The place of residence of the witness testifying.

Bracketed reference to Revised Civil Statutes 1879, should be to art. 4318, instead of art. 4218.

Art. 6614. [6811] [4319] [4319] When grantor made his mark.—When the grantor or person who executed the instrument signed the same by making his mark, and when also any one or more of the conditions mentioned in Article 6612 exists, the execution of any such instrument may be established by proof of the handwriting of two subscribing witnesses and of the place of residence of such witnesses testifying. [Acts 1863, p. 26; G. L. vol. 5, p. 614; P. D. 5009.]

Art. 6615. [6812] [4628] [4320] Proofs how made and certified.—The proof mentioned in the three preceding articles must be made by the deposition or affidavit of two or more disinterested persons in writing; and the officer taking such proof shall make a certificate thereof, and sign and seal the same with his official seal; which proofs and certificates shall be attached to such instrument. [Id.]

Art. 6616. [6813] [4629] [4321] Officers' authority.—Officers authorized to take the proof of instruments of writing under the provisions of this chapter are also authorized in such proceedings:

1. To administer oaths or affirmations.
2. To employ and swear interpreters.
3. To issue subpœnas.
4. To punish for contempt as hereinafter provided.

Art. 6617. [6814] [4630] [4322] Subpœna to witness.—Upon the sworn application of any person interested in the proof of any instrument required or permitted by law to be recorded, stating that any witness to the instrument refuses to appear and testify touching the execution thereof, and that such instrument cannot be proved without his evidence, any officer authorized to take the proof of said instrument shall issue a subpœna requiring such witness to appear and testify before such officer touching the execution of such instrument. [Acts 1860, p. 75; P. D. 5020; G. L. vol. 4, p. 1437.]

Art. 6618. [6815] [4631] [4323] May compel attendance of witness.—When a witness shall fail to obey a subpœna, said officer shall have the same power to enforce his attendance and to compel his answers as a judge of the district court has to compel the attendance and answers of witnesses; but no attachment shall issue unless the same compensation is made or tendered to each witness as is allowed to witnesses in other cases; and no witness shall be required to go beyond the limits of the county of his residence, unless he shall, for the time being, be found in the county where the execution of such instrument is sought to be proved for registration.

Art. 6619. [6816] [4632] [4324] Record of acknowledgment.—All officers authorized or permitted by law to take the acknowledgment or proof of any deed, bond, mortgage, bill of sale or any other written instrument required or permitted by law to be placed on record shall procure a well bound book, in which they shall enter and record a short statement of each acknowledgment or proof taken by them, which statement shall be by them signed officially. [Acts 1874, p. 155; P. D. 7418b; G. L. vol. 8, p. 157.]

Art. 6620. [6817] [4633] [4325] Contents of statement.—Such statement shall recite the true date on which such acknowledgment or proof was taken, the name of the grantor and grantee of such instrument, its date, if proved by a subscribing witness, the name of the witness, the known or alleged residence of the witness and whether personally known or unknown to the officer; if personally unknown, this fact shall be stated, and by whom such person was introduced to such officer, if by any one, and the known or alleged residence of such person. [Id.]

Art. 6621. [6818] [4634] [4326] Shall further recite.—Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown, by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated. [Id.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 6622. [6819] [4635] [4327] The book a public record.—The book herein required to be procured and kept, and the statements herein required to be recorded in the same shall be an original public record, and shall be delivered to his successor, and the same shall be open to the inspection and examination of any citizen at all reasonable times. [Id.]

Art. 6623. [6820] [4636] [4328] Action for damages.—Any person injured by the failure, refusal or neglect of any officer whose duty it is to comply with any provision of this chapter shall have a right of action against such officer so failing, refusing or neglecting, before any court of competent jurisdiction, for the recovery of all damages resulting from such neglect, failure or refusal. [Id.]

CHAPTER THREE

EFFECT OF RECORDING

Art.
6624. Patents and grants.
6625. Copies of archives.
6626. What may be recorded.
6627. When sales, etc., to be void unless registered.
6628. Located lands have priority.
6629. English language used.
6630. Deeds, etc., recorded.
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6634. Copies from land office.
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6645. Titles to chattels, where recorded.
6646. Record of a grant, etc.

Article 6624. [6821] [4637] [4329] Patents and grants.—Letters patent from the State of Texas, or any grant from the government, executed and authenticated pursuant to existing law, may be recorded, without further acknowledgment or proof.

Art. 6625. [6822] [4638] [4330] Copies of archives.—Copies of all deeds, transfers, or any other written evidence of title to land, which have been filed in the general land office, in accordance with law, or copies when the originals remain in the public archives, and were executed in conformity with the laws existing at their dates, duly certified by the officers having lawful custody thereof, shall be admitted to record in the county where such land lies. [Acts 1839, p. 52; G. L. vol. 2, p. 52.]

Art. 6626. [6823] [4639] [4331] What may be recorded.—The following instruments of writing, which shall have been acknowledged or proved according to law, are authorized to be recorded, viz., all deeds, mortgages, conveyances, deeds of trust, bonds for title, covenants, defeasances or other instruments of writing concerning any lands or tenements, or goods and chattels, or movable property of any description. [Acts 1846, p. 236; P. D. 5004; G. L. vol. 2, p. 1542.]

Art. 6627. [6824] [4640] [4332] When sales, etc., to be void unless registered.—All bargains, sales and other conveyances whatever, of any land, tenements and hereditaments, whether they may be made for passing any estate of freehold of inheritance or for a term of years; and deeds of settlement upon marriage, whether land, money or other personal thing; and all deeds of trust and mortgages shall be void as to all creditors and subsequent purchasers for a valuable consideration without notice, unless they shall be acknowledged or proved and filed with the clerk, to be recorded as required by law; but the same as between the parties and their heirs, and as to all subsequent purchasers, with notice thereof or without valuable consideration, shall be valid and binding. [Acts 1840, p. 154; P. D. 4988; G. L. vol. 2, p. 328.]

Art. 6628. [6825] [2322] [2265] Located lands have priority.—Titles to land which may have been deposited in the general land office subsequently to the time when the land embraced by such titles had been located or surveyed, by virtue of valid land warrants or certificates, shall not be received as evidence of superior title to the land against any such location or survey, unless such elder title had been duly recorded in the office of the county clerk where the land may have been situated prior to the location and survey, or unless the party having such location or survey made had actual notice of the existence of such elder title before he made such location or survey. [Acts 1866, p. 32; P. D. 5825; G. L. vol. 5, p. 950.]

Art. 6629. [6826] English language used.—No deed, conveyance or other instrument, whether relating to real or personal property, if in any other than the English language, shall be admitted to record; provided, that all such instruments executed prior to the twenty-second day of August, 1897, may be filed and recorded if accompanied by a correct translation thereof, the accuracy of which is sworn to before some officer authorized to administer oaths. Such translations shall be recorded with the original, and if correct shall operate as constructive notice from and after the date of its filing, if the original be authenticated in the manner required by law. [Acts 1897, p. 11; G. L. vol. 10, p. 1065.]

Art. 6630. [6827] [4641] [4333] Deeds, etc., recorded.—All deeds, conveyances, deeds of trust, or other written contracts relating to real estate, which are authorized to be recorded, shall be recorded in the county where such real estate, or a part thereof, is situated; provided, that all such instruments, when relating to real estate situated in an unorganized county, shall be recorded in the county to which such unorganized county is attached for judicial purposes, in a well bound book, or books, to be kept for that purpose, separately from the records of the county to which it is attached and from other unorganized counties; and the clerk or other officer having the custody of such books, when such unorganized county shall be organized, or has been detached therefrom and attached to another county for judicial purposes, shall deliver such book or books, without charge, to the proper officer of such newly organized county, or of the county to which it is attached for judicial purposes when demanded by him; and, where such records have been heretofore kept in separate books, they shall also be delivered in like manner as above, and in each case the same shall become archives of the county to which it is so delivered. Where such records have not heretofore been kept separately, upon the organization or attachment of such unorganized county to another organized county, a certified transcript from the records of such instruments so recorded shall be obtained by such new clerk or officer; and when so made the same shall in like manner become archives of such newly organized county, or county to which such unorganized county may be attached, as the case may be. [Acts 1887, p. 94; G. L. vol. 9, p. 892.]

Art. 6631. [6828] [4642] [4334] Deed, etc., valid against subsequent creditors.—Every conveyance, covenant, agreement, deed, deed of trust or mortgage or certified copies of any such original conveyance, covenant, agreement, deed, deed of trust or mortgage copied from the deed or mortgage records of any county in the State where the same has been regularly recorded, although the land may not have been situated in the county where such instrument was recorded, and which shall have been acknowledged, proved or certified according to law, may be recorded in the county where the land lies; and when delivered to the clerk of the proper court to be recorded shall take effect and be valid as to all subsequent purchasers for a valuable consideration without notice, and as to all creditors from the time when such instrument shall have been so acknowledged, proved or certified and delivered to such clerk to be recorded, and from that time only. All certified copies filed and recorded under the provisions of this article shall take effect and be in force from the time such certified copy was filed for record. Nothing herein shall be construed to validate an in-

valid instrument. [Acts 1895, p. 157; P. D. 4994; G. L. vol. 10, p. 887.]

Art. 6632. [6829] [4643] [4335] Marriage contract.—No covenant or agreement made in consideration of marriage shall be valid against a purchaser for a valuable consideration, or any creditor not having notice thereof, unless such covenant or agreement shall be duly acknowledged or proved and recorded in manner and form as provided by law for deeds and other conveyances. [Acts 1887, p. 94; P. D. 4987; G. L. vol. 9, p. 892.]

Art. 6633. [6830] [4644] [4336] Recorder shall record, etc.—Each county clerk shall record in books to be provided for that purpose all marriage contracts and powers of attorney, and all official bonds required to be recorded in his office, and all other instruments of writing authorized or required to be recorded in his office, which shall be proved and acknowledged according to law and delivered to him for record. [Acts 1846, p. 236; P. D. 5005; G. L. vol. 2, p. 1542.]

Art. 6634. [6831] [4645] [4337] Copies from land office.—County clerks shall record all copies of titles recorded in the general land office presented for record; provided, such copies are attested with the seal of the general land office. [Id.]

Art. 6635. [6832] [4646] [4338] Judgments recorded.—County clerks shall record all judgments and abstracts of judgments rendered by any court of this State presented to him for record when attested under the hand and seal of the clerk of the court where such judgment was obtained. [Id.]

Art. 6636. [6833] [4647] Transfers of judgment.—The sale of a judgment, or any part thereof, of any court of record, or the sale of any cause of action, or interest therein, after suit has been filed thereon, shall be evidenced by a written transfer; which, when acknowledged in the manner and form required by law for the acknowledgment of deeds, may be filed with the papers of such suit, and when thus filed the clerk shall make a minute of said transfer on the margin of the minute book of the court where such judgment of said court is recorded; or if judgment be not rendered when transfer is filed, the clerk shall make a minute of such transfer on the court trial docket where the suit is entered, giving briefly the substance thereof; for which service he shall be entitled to a fee of twenty-five cents, to be paid by the party applying therefor; and this article shall apply to any and all judgments, suits, claims and causes of action, whether assignable in law and equity or not. When said transfer is duly acknowledged, filed and noted as aforesaid, the same shall be full notice and valid and binding upon all persons subsequently dealing with reference to said cause of action or judgment, whether they have actual knowledge of such transfer or not. [Acts 1889, p. 103; G. L. vol. 9, p. 1131.]

Art. 6637. [6834] [4648] Judgment in justice courts.—Whenever land is sold under execution or order of sale issuing out of a justice court, upon the application of any party interested in said land, it shall be the duty of the justice of the peace having the custody of the execution and judgment upon which said execution issued to make from said records a complete transcript of said judgment and the execution issued thereon and levied on land, together with the levy and return of the officer executing the same thereon indorsed, and to certify to the correctness thereof officially; then said transcript shall be admitted to record in the county where the land is situated in the same manner in which deeds are recorded and with like effect; said transcript or certified copy thereof, under the hand and seal of the county clerk of the county where said transcript has been recorded, shall be admitted in evidence in like manner and with like effect that the original judgment and execution with indorsements thereon would have if offered. [Acts 1889, p. 133; G. L. vol. 9, p. 1161.]

Art. 6638. [6835] [4649] Partition to be recorded.—Every partition of land made under an order or decree of a court, and every judgment or decree by which the title to land is recovered shall be duly recorded in the office of the county clerk in which such land may lie; and until so recorded, such partition, judgment or decree shall not be received in evidence in support of any right claimed by virtue thereof. [Acts 1860, p. 75; P. D. 5023; G. L. vol. 4, p. 1437.]

Art. 6639. [6836] [4650] [4340] Decree may be abbreviated.—It shall not be necessary to record the proceedings or the decree rendered in such cases in full; but a brief statement by the clerk of the court in which the same is made, under his hand and seal, setting forth the case in which the partition or decree was made, and the date thereof, and the names of the parties in the suit for partition, and the particular land or lot lying in the county in which the record is made and the name of the party to whom the same is decreed, shall be a sufficient record of such partition, judgment or decree. [Id.]

Art. 6640. [6837] Suit for land; notice to be filed.—During the pendency of any suit or action, involving the title to real estate, or seeking to establish any interest or right therein, or to enforce any lien, charge or encumbrance against the same, any party seeking affirmative relief therein, may file a notice of the pendency of such suit with the county clerk of each county where such real estate, or any part thereof, is situated. Such notice shall be signed by the party filing the same, his agent or attorney, setting forth the number and style of the cause, the court in which pending, the names of the party thereto, the kind of suit and description of the land affected. [Acts 1905, p. 316.]

Art. 6641. [6838] Record of, how made.—The county clerk shall record such notice in a well-bound book, to be styled, "Lis Pendens Record," and at the same time index the same, both direct and reverse, under the names of each and all parties to the suit. For which the clerk shall be allowed a fee of fifteen cents per hundred words recorded, not to be less than fifty cents. [Id.]

Art. 6642. [6839] Transfers without notice, valid.—The pendency of such suit or action shall not prevent effective transfers or encumbrances of such real estate to a third party for a valuable consideration and without other notice, actual or constructive, by a party to the suit as against a subsequent decree for the adverse party unless such notice shall have been properly filed under the name of the party attempting to transfer or encumber in the county or counties in which said land is situated. [Id.]

Art. 6643. [6840] Effect of notice.—All such notices of pendency shall be notice to all the world of their contents and that the suit or suits mentioned therein are pending, and such notices shall operate as soon as filed with the county clerk for record, as provided in this Chapter whether service has been had on the parties to said suit or not. [Id.; Acts 1927, 40th Leg., p. 83, ch. 59, § 1.]

Art. 6643a. In lieu of lis pendens.—In any suit or action of which a notice of pendency thereof has been filed, and in which it shall appear to the court, upon motion made by any party to the suit or other person having an interest in the property affected by the action or in the result of such suit or action, that adequate relief can be secured to the party plaintiff or defendant seeking such affirmative relief therein, by the deposit of money, or in the discretion of the court, by the giving of an undertaking, the court may, at any stage of the proceeding, upon notice to all of the parties to the suit or action to be affected thereby, direct, by order made either in term time or in vacation, that the notice of the pendency thereof be cancelled upon the payment into court of the amount of the judgment sought to be recovered in such action, and such sum in addition thereto as the court may deem sufficient to cover interest likely to accrue during the pendency of the action, and costs.

In lieu thereof, the court may, in its discretion, order that an undertaking be given in a sum double the amount of the judgments sought to be recovered, with

two sufficient sureties to be approved by the court, conditioned that the party or person applying therefor will pay the judgment or judgments sought to be enforced against said property, with interest and costs, in the event that a final judgment shall be entered in favor of the party to such suit filing such notice to the effect that such real estate was, at the time of the filing of such notice of pendency of action, legally and equitably therewith charged. A copy of such undertaking with notice of the filing of same shall be served upon the attorney for the party filing such notice of pendency of suit not less than two days prior to the submission of the same to the court for its approval. Upon the approval of such undertaking by the court, the court may direct that the notice of pendency of action or suit be cancelled of record in the manner above provided. [Acts 1925, p. 353.] [39th Leg. ch. 145, § 1.]

Art. 6644. Federal Lien Record.—The county clerk of each county is authorized to, and shall either file, or file and record, as is or may be provided by the laws of the United States, every notice, abstract or statement of any lien or claim, or release or discharge thereof, in favor of the United States or of any department or bureau thereof, when any such notice, abstract or statement prepared in conformity to the laws of the United States, is presented to him for filing or filing and recording. The county clerk shall number such notices, abstracts or statements, in the order in which they are filed, and if they are required to be recorded, he shall record them in a well bound book to be styled, "Federal Lien Record," and in either case he shall index them alphabetically under the names of the persons named therein or affected thereby, such index to be kept in a well bound book styled, "Index to Federal Liens," and for the performance of these services he shall not charge a fee, but shall be compensated by the county, as provided for in Article 3931. His failure to file, record or index properly any such notice, abstract or statement as herein required, or to be compensated therefor, shall not affect the validity or legality of any such lien or claim, or release or discharge thereof. [Acts 1923, p. 18.]

Art. 6645. [6841] [4651] [4341] Titles to chattels, where recorded.—Every deed, mortgage, or other writing, respecting the title of personal property hereafter executed, which by law ought to be recorded, shall be recorded in the clerk's office of the county court of that county in which the property shall remain; and if afterwards the person claiming title under such deed, mortgage, or other writing, shall permit any other person in whose possession such property may be to remove with the same, or any party thereof, out of the county in which the same shall be recorded, and shall not, within four months after such removal cause the same to be recorded in the county to which such property shall be removed, such deed, mortgage, or other writing for so long as it shall not be recorded in such last mentioned county, and for so much of the property aforesaid as shall have been removed, shall be void as to all creditors and purchasers thereof for valuable consideration without notice. [Acts 1897, p. 209; Acts 1840, p. 156; P. D. 4993; G. L. vol. 10, p. 1263; G. L. vol. 2, p. 330.]

Art. 6646. [6842] [4652] [4342] Record of a grant, etc.—The record of any grant, deed or instrument of writing authorized or required to be recorded, which shall have been duly proven or acknowledged for record and duly recorded in the proper county, shall be taken and held as notice to all persons of the existence of such grant, deed or instrument.

CHAPTER FOUR

SEPARATE PROPERTY OF MARRIED WOMEN

Art.
6647. Property of married women.
6648. May present and prove schedule.
6649. Acquisition after marriage.
6650. Where registration made.
6651. Subsequent creditors, etc.

Article 6647. [6844] [4654] [4344] Property of married women.—All property, real and personal, which may be owned or claimed at the time of marriage by any woman, or which she may acquire after marriage by gift, devise or descent, shall be registered as herein directed. [Acts 1846, p. 153; P. D. 4995; G. L. vol. 2, p. 1459.]

Art. 6648. [6845] [4655] May present and prove schedule.—A married woman may prepare a schedule of all the real and personal property which she owned at the time of her marriage and make her statement under oath before an officer authorized to take acknowledgments that the property described in the schedule is her separate property; and upon such statement being made, such officer shall annex a certificate of the fact under his hand and seal of office; which certificate shall be sufficient evidence for the recorder of any county to record the same. [Id.]

Art. 6649. [6846] [4656] [4346] Acquisition after marriage.—A married woman upon coming into possession of any property, real or personal, to which she had claim at the time of her marriage, or which she may afterward acquire by gift, devise or descent, may have a schedule of the same recorded in the same manner as prescribed in the foregoing article. [Id.]

Art. 6650. [6847] [4657] Where registration made.—The registration of the wife's separate property herein provided for, if real estate, shall be made in the county or counties in which the same, or a part thereof, is situated; if personal property, in the county or counties where the same remains; and in case such personal property be removed out of the county, the registration must also be made in the county in which the property is removed within four months after such removal. [Id.]

Art. 6651. [6848] [4659] [4349] Subsequent creditors, etc.—The registration of a schedule of a wife's separate property, made in accordance with the provisions of this chapter, shall be conclusive as against all subsequent creditors of and purchasers from her husband. [Id.]

CHAPTER FIVE

GENERAL PROVISIONS

Art.
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Article 6652. [6849] [4660] [4350] Penalty for failing to record.—If any county clerk to whom any instrument of writing authorized to be recorded by him, and proved or acknowledged according to law, has been delivered for record, shall neglect or refuse to make an entry thereof, or give receipt therefor, as required by law, or shall neglect or refuse to record such instrument of writing within a reasonable time after receiving the same, or shall record any instrument of writing affecting the same property, or any part thereof, before another first deposited in his office and entitled to be recorded, or shall record any such instrument incorrectly, or shall neglect or refuse to provide and keep in his office such indexes as required by law, he shall forfeit and pay a sum not exceeding five hundred dollars, to be recovered on motion in the district court, one-half to the use of the county, and the other half to the use of the person who shall sue for the same, such clerk having three days' notice of such motion, and shall also be liable to the party for all damages he may have sustained thereby, to be recovered by suit on his official

bond against such clerk and his sureties. [Acts 1846, p. 236; G. L. vol. 2, p. 1542.]

Art. 6653. [6850] [4661] [4351] Conveyances governed by then existing law.—The legality of the execution, acknowledgment, proof, form or record of any conveyance or other instrument heretofore made, executed, acknowledged, proved or recorded, shall not be affected by anything contained in this title, but shall depend for its validity and legality upon the laws in force when the act was preformed [performed].

Art. 6654. [6851] [4664] [4352] Prior records; evidence.—All conveyances of real property heretofore made and acknowledged or proved, according to the laws in force at the time of such making and acknowledgment or proof, shall have the same force as evidence, and may be recorded in the same manner and with the like effect as conveyances executed and acknowledged in pursuance of this title.

Art. 6655. [6852] [4663] [4353] May correct imperfect certificate.—When the acknowledgment or proof of the execution of any instrument in writing may be properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

Art. 6656. [6853] [4664] [4354] Judgment of proof of instrument.—Any person interested under any instrument in writing entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

Art. 6657. [6854] [4665] [4355] Effect of judgment.—A certified copy of the judgment in a proceeding instituted under either of the two preceding articles, showing the proof of the instrument, and attached thereto, shall entitle such instrument to record with like effect as if acknowledged.

Art. 6658. [3702] Land in Archer County.—Certified copies of deeds, mortgages, trust deeds, and all other instruments in any manner affecting titles to lands in Archer County which were recorded in Jack County from August 10, 1866 to August 10, 1870, made under the hand and seal of the County Clerk of Shackelford County, shall be admitted in evidence in all suits where secondary evidence is admissible. [Acts 1897, p. 143.]

Art. 6659. [6855] [4666] [4356] Record of certain titles confirmed.—Any grant, deed, or other instrument of writing, for the conveyance of real estate or personal property, or both, or for the settlement thereof in marriage, or separate property, or conveyance of the same in mortgage, or trust to uses, or on conditions, as well as any and every other deed or instrument required or permitted by law to be registered, and which shall have been prior to the ninth day of February, 1860, registered or recorded, shall be held to have been lawfully registered, with the full effect and consequences of existing laws; provided, the same shall have been acknowledged by the grantor or grantors before any chief justice, or associate justice, or clerk of the county court, or notary public in any county within the late Republic or the now State of Texas, or judge of the department of Brazos, or any primary judge, or judge of the first instance in 1835 or 1836, or proven before any such officer by one or more of the subscribing witnesses thereto, and certified by such officer, whether such acknowledgment or proof shall have been made before any such officer of the county where such instrument should have been recorded or not. [Acts 1860, p. 75; G. L. vol. 4, p. 1437; P. D. 5021.]

Art. 6660. [6856] [4667] [4357] Shall be evidence, when.—All such instruments which shall have been acknowledged or proven before any officer named in the preceding article, and which shall have been afterward recorded in the proper county, or certified copies thereof, shall be evidence in the courts, as full and sufficient as if such acknowledgment had been taken or proof made in accordance with existing laws; but this article and the article preceding shall not be construed so as to affect or bind, in any manner, any person or party with constructive notice of the existence of any deed or other instrument, except after the ninth day of February, 1860, and in the future. [Id.]

Art. 6661. [6857] [4668] [4358] Old registration operative.—Where an instrument in writing has been duly registered in the proper county, and any property conveyed or incumbered by such instrument shall fall within another county subsequently created, the prior registration shall not be deemed to be thereby invalidated or in any manner affected, but shall still continue to be equivalent to an actual notice of its contents to all persons whomsoever; and it shall be the duty of the county court of the new county (and at the expense thereof) to cause a transcript of the record of all such instruments to be made and duly certified and deposited in the recorder's office of said new county, for public inspection, and indexes of the same to be made. [Id.]

Art. 6662. [6858] [4669] Attachments recorded.—Whenever an attachment is levied upon real estate, the officer levying the writ shall immediately file with the county clerk of the county or counties in which the real estate so levied upon is situated, a copy of the writ, together with a copy of so much of his return as relates to the land in said county. Said clerk shall enter in a book, to be kept for that purpose, the names of the plaintiffs and defendants in attachment, the amount of the debt and the return of the officer in full. Should the writ of attachment be quashed or otherwise vacated, the court in which the attachment suit is pending shall cause a certified copy of said order to be sent to the county clerk of the county or counties in which the real estate levied upon is situated. The clerk shall, upon the receipt of the same, enter in the book aforesaid the names of the plaintiffs and defendants and record the order of the court in full. If the real estate levied upon is situated in any county other than the one in which the suit is pending, then, in case of failure to make the record aforesaid, the attachment lien shall not be valid against subsequent purchasers for value and without notice and subsequent lienholders in good faith. Each county clerk shall keep a well bound book for the record of the matters aforesaid, and shall keep a direct and reverse index thereto in which shall be entered the names of all the plaintiffs and defendants in the various attachments recorded by him; and the order of the court aforesaid shall be indexed in the same manner. [Acts 1889, p. 80, G. L. vol. 9, p. 1108.]

TITLE 116

ROADS, BRIDGES AND FERRIES

Chap.

1. State highways.
2. Establishment of county roads.
3. Maintenance of roads.
4. Special road tax.
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CHAPTER ONE

STATE HIGHWAYS

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1. STATE HIGHWAY DEPARTMENT

Article 6663. Department.—The administrative control of the State Highway Department, hereinafter called the Department, shall be vested in the State Highway Commission, hereinafter called the Commission, and the State Highway Engineer. Said Department shall have its office at Austin where all its records shall be kept. [Acts 1917, p. 416.]

Art. 6664. Commission.—The Commission shall consist of three citizens of the State. With the advice and consent of the Senate, the Governor shall biennially appoint one member to serve for a term of six years, the classification to continue as constituted by law. The Governor shall designate one such member as chairman. Each member shall execute a bond payable to the State in the sum of five thousand dollars, to be approved by the Governor, and conditioned upon the faithful performance of his duties. The premium on such bonds shall be paid out of the State Highway Fund. [Id.; Acts 1923, p. 325.]

Art. 6665. Organization.—The Commission shall hold regular meetings once each month. They shall attend the same and such special or called meetings as they may provide by rule or the chairman may call. They shall formulate plans and policies for the location, construction and maintenance of a comprehensive system of State highways and public roads. They shall biennially submit a report of their work to the Governor and the legislature, with their recommendations and those of the State Highway Engineer. A quarterly statement containing an itemized list of all moneys received and from what source and of all money paid out and for what purpose shall be prepared and filed in the records of the Department and a copy sent to the Governor. These records shall be open to public inspection. [Id.]

Art. 6666. Rules.—The Commission shall establish and make public proclamation of all rules and regulations for the conduct of the work of the Department as may be deemed necessary, not inconsistent with the provisions of law. They shall maintain a record of all proceedings and official orders and keep on file copies of all road plans, specifications and estimates prepared by the Department or under its direction. [Acts 1917, p. 416.]

Art. 6667. To aid road officials.—The Department shall collect information and compile statistics relative to the mileage, character and condition of the public roads in the different counties, and the cost of construction of the different classes of roads in the various counties. It shall investigate and determine the methods of road construction best adapted to the different sections of the State, and shall establish standards for the construction and maintenance of highways, bridges and ferries, giving due regard to all natural conditions and to the character and adaptability of road building material in the different counties. The Department may, at all reasonable times, be consulted by county and city officials for any information or assistance it can render with reference to the highways within such counties or cities, and it shall supply such information when called for by city or county officials; and it may in turn call upon all such officials for any information necessary for the performance of its duties hereunder. Upon request of the commissioners court of any county, the Department shall consider and advise concerning general plans and specifications for all road construction to be undertaken from the proceeds of the sale of bonds or other legal obligations issued by a county, or by any subdivision or defined district of a county; and such information and advice shall be so obtained before any of the proceeds from such bond issues are expended by or under the direction of the commissioners court. [Id.]

Art. 6668. Qualifications of engineers.—The Department shall adopt such rules as are found necessary to determine the fitness of engineers making application for highway construction work. Upon the formal application of any county or organized road district thereof, or of any municipality, the Commission may recommend for appointment a competent civil engineer, and graduate of some first class school of civil engineering, skilled in the knowledge of highway construction and maintenance. [Id.]

Art. 6669. Engineer.—The Commission shall elect a State Highway Engineer who shall be a competent civil engineer and graduate of some first class school of civil engineering, experienced and skilled in highway construction and maintenance, who shall hold his position until removed by the Commission. He shall first execute a bond payable to the State in such sum as the Commission may deem necessary, to be approved by the Commission, and conditioned upon the faithful performance of his duties. He shall act with the Commission in an advisory capacity, without vote, and shall quarterly, annually and biennially submit to it detailed reports of the progress of public road construction and statement of expenditures. He shall be allowed all actual traveling and other expenses therefor, under the direction of the Department, while absent from Austin in the performance of duty under the direction of the Commission. [Id.]

Art. 6669a. Auditors, accountants and inspectors.—The Highway Commission is hereby authorized and empowered to employ a Chief Auditor of Accounts and Expenditures, three Engineer Accountants or Inspectors, and two Equipment Inspectors, fix their compensation and pay the same out of the State Highway Fund. [Acts 1927, 40th Leg., p. 214, ch. 143, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 214, ch. 143, provides that the authority granted and employments thereunder shall expire on the taking effect of the appropriation for the Highway Department for the fiscal years 1928 and 1929.

Art. 6670. State road map.—The Highway Engineer shall cause to be made and kept in form convenient for examination in the office of the Department, a complete road map of the State as represented in the road construction of the various counties, and such map shall be regularly revised as construction proceeds in the different counties. He shall also prepare, under the direction and with the approval of the Commission, a comprehensive plan providing a system of State highways. [Acts 1917, p. 416.]

Art. 6671. Laboratories.—The laboratories maintained at the Agricultural and Mechanical College of Texas and at the University of Texas shall be at the disposal and direction of the Highway Engineer

for the purpose of testing and analyzing road and bridge material, and those in charge of said laboratories shall co-operate with and assist said Engineer to that end. [Id.]

Art. 6672. Federal aid.—Any funds for public road construction in this State appropriated by the Federal Government shall be expended by and under the supervision of the Department only upon a part of the system of State Highways. [Id.]

Art. 6673. Control of highways.—The Commission is authorized to take over and maintain the various State Highways in Texas, and the counties through which said highways pass shall be free from any cost, expense or supervision of such highways. The Commission shall use the automobile registration fees in the State Highway Fund for the maintenance of such highways, and shall divert the same to no other use unless the Commission shall be without sufficient funds from other sources to meet Federal aid to roads in Texas, and in such case the Commission is authorized by resolution to transfer a sufficient amount from such fund to match said Federal aid. [Acts 1923, p. 161; Acts 2nd C. S. 1923, p. 71.]

Art. 6674. Operating expenses.—The legislature shall make appropriations for the maintenance and running expenses of the Department, fix the compensation of the Highway Engineer and all other employés of the Department, and determine the number of such employés; and shall fix the compensation of the members of the Commission at not exceeding twenty-five hundred dollars per annum. The Board of Control shall make contracts for equipment and supplies (including seals and number plates) required by law in the administration of the registration of licensed vehicles, and in the operation of said Department. All money herein authorized to be appropriated for the operation of the Department and the purchase of equipment shall be paid from the State Highway Fund, and the remainder of said fund shall be expended by the Commission for the furtherance of public road construction and the establishment of a system of State highways as herein provided. [Acts 1921, p. 102; Acts 1923, p. 325.]

1A. CONSTRUCTION AND MAINTENANCE OF STATE HIGHWAYS

Art. 6674a. Definition of terms.—The term "highway" as used in this Act shall include any public road or thoroughfare or section thereof and any bridge, culvert or other necessary structure appertaining thereto. The term "improvement" shall include construction, reconstruction or maintenance, or partial construction, reconstruction or maintenance and the making of all necessary plans and surveys preliminary thereto. The term "Commission" refers to the State Highway Commission and the term "Department" refers to the State Highway Department. [Acts 1925, 39th Leg., ch. 186, p. 456, § 1.]

Art. 6674b. Highway system.—All highways in this State included in the plan providing a system of State Highways as prepared by the State Highway Engineer in accordance with Section 11 of Chapter 190 of the General Laws of the Regular Session of the Thirty-fifth Legislature are hereby designated as the "State Highway System." [Acts 1925, 39th Leg., ch. 186, p. 456, § 2.]

Art. 6674c. County aid.—The commissioners' court of each county in the State is hereby authorized to aid the construction and maintenance of any section or sections of a macadamized, graveled or paved road or turnpike in said county constituting a part of the State Highway System and to enter into contracts or agreements with the State Highway Department for that purpose. Any moneys in the available road fund of the county or any political subdivision or defined district thereof may be appropriated for the purpose of granting such aid, hereinafter designated as "county aid." [Acts 1925, 39th Leg., ch. 186, p. 456, § 3.]

Art. 6674d. Federal aid.—All further improvement of said State Highway System with Federal aid shall be made under the exclusive and direct control of the State Highway Department and with appropriations made by the Legislature out of the State Highway Fund. The further improvement of said system without Federal aid may be made by the State Highway Department either with or without county aid. Surveys, plans, specifications and estimates for all further improvement of said system with Federal aid or with Federal and State aid shall be made and prepared by the State Highway Department. No further improvement of said system shall be made under the direct control of the commissioners' court of any county unless and until the plans and specifications for said improvement have been approved by the State Highway Engineer.

Nothing in this section or this Act shall be construed as prohibiting the granting of State aid under the provisions of Chapter 190, General Laws of the Regular Session of the Thirty-fifth Legislature and subsequent amendments thereto, nor shall anything in this Act prevent the completion of any highway improvement project already begun or the carrying out of any contract for such improvement. [Acts 1925, 39th Leg., ch. 186, p. 456, § 4.]

Art. 6674e. Appropriations from Highway Fund.—All moneys now or hereafter deposited in the State Treasury to credit of the "State Highway Fund", including all Federal aid moneys deposited to the credit of said fund under the terms of the Federal Highway Act and all county aid moneys deposited to the credit of said fund under the terms of this Act shall be subject to appropriation for the specific purpose of the improvement of said system of State Highways by the State Highway Department. [Acts 1925, 39th Leg., ch. 186, p. 457, § 5.]

Art. 6674f. Reimbursement of Highway Fund.—The total cost of all improvement of State Highways made with county aid shall be paid out of the State Highway Fund. The county or road district in which any such improvement is made shall reimburse said fund in such amounts, and in such proportion of the total cost of improvement, as may be agreed upon between the State Highway Department, and the commissioners' court of the county. [Acts 1925, 39th Leg., ch. 186, p. 457, § 6.]

Art. 6674g. County warrants for construction.—Said county aid shall be paid to the State Highway Department for deposit in the State Treasury to the credit of the State Highway Fund in partial payments as the improvement progresses. It shall be paid by warrants issued by the county clerk and countersigned by the county judge and approved by the commissioners' court upon accounts of the State Highway Department certified by the State Highway Engineer. Said accounts rendered by the State Highway Department shall be based on certified accounts of contractors, laborers and material-men previously paid by the department, copies of which accounts shall be filed in the county with the accounts rendered by the department; the purpose of issuing said county warrants being to reimburse or partially reimburse the State Highway Fund for moneys paid out of same in improving the section or sections of highway for which county aid has been granted. [Acts 1925, 39th Leg., ch. 186, p. 457, § 7.]

Art. 6674h. Competitive bids.—All contracts proposed to be made by the State Highway Department for the improvement of any highway constituting a part of the State Highway System or for materials to be used in the construction or maintenance thereof shall be submitted to competitive bids. Notice of the time when and place where such contracts will be let and bids opened shall be published in some newspaper published in the county where the improvement is to be done once a week for at least two weeks prior to the time set for letting said contract and in two other newspapers that the department may designate. [Acts 1925, 39th Leg., ch. 186, p. 457, § 8.]

Art. 6674i. Opening and rejecting bids.—The State Highway Department shall have the right to reject any and all such bids. All such bids shall be sealed, and filed with the State Highway Engineer, at Austin, Texas, and shall be opened at a public hearing of the State Highway Commission. All bidders may attend and all bids to be opened in their presence. Copies of all such bids shall be filed with the county in which the work is to be performed. [Acts 1925, 39th Leg., ch. 186, p. 458, § 9.]

Art. 6674j. Contractor's bond.—The successful bidder or bidders shall enter into written contracts with said department, and shall give bond in such amounts as is now provided by law, conditioned for the faithful compliance with his bid and performance of the contract and payable to the State Highway Department for the use and benefit of the State Highway Fund. [Acts 1925, 39th Leg., ch. 186, p. 458, § 10.]

Art. 6674k. Form of contract.—The State Highway Commission shall prescribe the form of such contracts and may include therein such matters as they may deem advantageous to the State. Such forms shall be uniform, as near as may be. [Acts 1925, 39th Leg., ch. 186, p. 458, § 11.]

Art. 6674*l*. Signing contracts.—Every such contract for highway improvement under the provisions of this Act shall be made in the name of the State of Texas, signed by the State Highway Engineer, approved by at least two members of the State Highway Commission and signed by the contracting party, and no such contract shall be entered into which will create a liability on the part of the State in excess of funds available for expenditure under the terms of this Act. [Acts 1925, 39th Leg., ch. 186, p. 458, § 12.]

Art. 6674m. Partial payments.—Said contracts may provide for partial payments to an amount not exceeding (90%) of the value of the work done. Ten per centum of the contract price shall be retained until the entire work has been completed and accepted, and final payment shall not be made until it is shown that all sums of money due for any labor, materials, or equipment furnished for the purpose of such improvements made under any such contract have been paid. [Acts 1925, 39th Leg., ch. 186, p. 458, § 13.]

Art. 6674n. Condemnation of right of way, and materials.—Whenever, in the judgment of the State Highway Commission, the use of any timber, earth, stone, gravel, or other material, convenient to any road being constructed or maintained under the provisions of this Act will facilitate such construction or maintenance or whenever in the judgment of said commission it is necessary or expedient to construct or reconstruct any such road over a new or wider right of way, the State Highway Commission shall have the right to use any such materials most convenient to such roads and to acquire such land or lands for the public use and benefit as may be necessary for the new or wider right of way. In such cases the owner of such materials or land shall be paid therefor out of the State Highway Fund. Provided, that should the owner of such land or materials and the State Highway Commission fail to agree upon the amount to be paid therefor, then the Attorney General at the request of the State Highway Commission shall proceed to condemn the same for and on behalf of the State of Texas in the same manner as near as may be that commissioners' courts of certain counties may condemn materials under the provisions of Articles 6894 and 6895, Title 119, Revised Statutes, 1911, such condemnation proceedings to be held in the county in which such material or land so to be condemned may be situated. The highway commission's portion of the expense of such proceedings shall be paid out of the State Highway Fund. [Acts 1925, 39th Leg., ch. 186, p. 458, § 14.]

2. REGULATION OF VEHICLES

Art. 6675. Registration.—Every owner of a motor vehicle, tractor, trailer, semi-trailer, or motorcycle used on the public highways of this State, and each chauffeur, shall annually file in the office of the county tax collector of the county in which he resides or in which the vehicle to be registered is being operated, an application for the registration of each such vehicle owned or controlled by him, or for a chauffeur's license. The county tax collector shall not issue a license to any person until such application has been filled out in full and signed by the applicant, and until the requisite fee for the number of unexpired quarters for the calendar year is paid. [Acts 1917, p. 423; Acts 4th C. S. 1918, p. 158; Acts 1919, p. 174; Acts 1921, p. 253; Acts 1st C. S. 1921, p. 166; Acts 1923, p. 155.]

Art. 6676. Vehicles exempt.—Road rollers and other road building equipment owned and operated by municipalities, counties or subdivisions of counties; street sprinklers, fire engines or apparatus, patrol wagons, ambulances owned by municipalities or counties; and motor vehicles owned and operated under the direction of and exclusively in the official service of the United States Government, State of Texas, or any county or city thereof, shall not be required to pay the fees herein required for motor vehicles, but application shall be made for and a registration number and distinguishing seal secured for such motor vehicles. [Acts 1917, p. 423.]

Art. 6677. Registration dates.—The registration for all vehicles and chauffeurs hereunder shall begin with the first day of January and end with the 31st day of December of each year. All applications for such registration filed during the first quarter ending March 31st shall be accompanied by the annual fee; all applications except for chauffeur's license, filed during each succeeding quarter shall be accompanied by three-fourths, one-half and one-fourth, respectively, of the annual fee. [Acts 4th C. S. 1918, p. 160.]

Art. 6678. Fees: passenger vehicles.—The annual registration fee of a motorcycle shall be five dollars. The annual fee for registration of a passenger motor vehicle shall be based upon the weight of the vehicle and upon the N. A. C. C. horsepower rating, as follows:

Weight of vehicle in pounds.		Fee per 100 lbs. or fraction thereof.	Fee per horsepower.
Class 1	1000–2000	$ .40	$ .17½
Class 2	2001–3500	.50	.17½
Class 3	3501–4500	.60	.17½
Class 4	4501 and up	.75	.17½

The minimum fee, based on horsepower, shall be four dollars for a full year. [Id.]

Art. 6679. Fees: trucks.—For each motor vehicle designed or used for the transportation of property, the annual license fee shall be based upon the gross weight of the vehicle including the body, plus its net carrying capacity, the tire equipment and the N. A. C. C. horsepower rating as follows:

Gross weight in lbs.		Fee per 100 lbs. or fraction thereof of the carrying capacity, plus the weight of the vehicle: If equipped with pneumatic tires.	If equipped with solid rubber tires.	Fee per horsepower.
Class 1	1000–6000	$ .30	$ .40	$ .17½
Class 2	6001–8000	.40	.50	.17½
Class 3	8001–10,000	.50	.60	.17½
Class 4	10,001–12,000	.60	.80	.17½
Class 5	12,001–14,000	.80	1.00	.17½
Class 6	14,001–16,000	1.20	1.50	.17½
Class 7	16,001–22,000	1.60	2.00	.17½
Class 8	22,001 and up	4.00	5.00	.17½

[Id.]

Art. 6680. Fees: trailers.—For each trailer or semi-trailer, drawn or designed to be drawn by a commercial motor vehicle, or tractor, the annual license

fee shall be based upon the tire equipment and gross weight of vehicle and capacity of load, as follows:

Gross weight in lbs.	Fees per 100 lbs. or fraction thereof: If equipped with pneumatic tires.	If equipped with solid rubber tires.	If equipped with steel tires.
Class 1 1000–6000.....	$ .30	$ .40	$1.00
Class 2 6001–8000.....	.40	.50	1.25
Class 3 8001–10,000.....	.50	.60	1.50
Class 4 10,001–12,000....	.60	.80	2.00
Class 5 12,001–14,000....	.80	1.00	2.50
Class 6 14,001–16,000....	1.20	1.50	3.00
Class 7 16,001–20,000....	1.60	2.00	4.00
Class 8 20,001 and up...	4.00	5.00	6.00

[Id.]

Art. 6681. Fees: tractors.—The word "tractor" as used in this title shall mean any self-propelled vehicle designed or used as a traveling power plant or for drawing other vehicles, but having no provision for carrying loads on its own structure. For each tractor used upon the highways of this State the annual license fee shall be based upon the weight of the tractor as follows:

1,000– 4,000 lbs	$ .25	per cwt.
4,001– 6,000 lbs	.50	per cwt.
6,001– 8,000 lbs.	.60	per cwt.
8,001–10,000 lbs.	.75	per cwt.
10,001–16,000 lbs.	1.00	per cwt.
16,001–20,000 lbs.	2.00	per cwt.

[Id.]

Art. 6682. Basis of power fees.—For all purposes of this law, the horsepower of any motor vehicle, except electric or steam driven vehicles, shall be determined by the formula commonly known as the National Automobile Chamber of Commerce Formula, being as follows: Square the diameter of the bore of the cylinder in inches, multiply by the number of cylinders, and divide by two and one-half. The horsepower of any steam driven vehicle shall be computed by the system of horsepower rating adopted by the United States Government. For vehicles propelled by electricity the rating shall be the normal horsepower designated by the manufacturer of the electric motor or motors used therein. [Id.]

Art. 6683. Basis of weight fees.—In the computation of the fees for all passenger motor vehicles and tractors the actual weight shall be the weight of the vehicles in pounds, fully provisioned and equipped for use on the highways. For commercial motor vehicles, trailers and semi-trailers, the gross weight shall be determined by adding the actual weight of vehicles, including body, to the carrying capacity of the vehicle. The Department shall compile and furnish to the tax collectors a schedule of weights of the various makes and models of motor vehicles, trailers and semi-trailers, to be ascertained from the actual weighing of the vehicles fully provisioned with water, oil and fuel and equipped with the manufacturer's standard equipment, or from certified statements of the manufacturers of the various vehicles or vehicle bodies. No applicant shall be permitted to register any such vehicle upon a declared weight less than that shown for the vehicle to be registered in said schedule. [Id.]

Art. 6684. Disputed classifications.—The Department shall have authority in disputed cases to determine the classification in which any vehicle belongs and the amount of fee which shall be paid therefor. [Id.]

Art. 6685. Transfer fees.—When any person, other than a dealer, sells a vehicle subject to registration hereunder, he shall indorse upon his certificate of registration a written transfer of the same. The purchaser of such motor vehicle shall pay to the county tax collector of the county of his residence a transfer fee of one dollar, with his full name and address, and he shall then be regarded as the owner thereof and amenable to the provisions of this law. [Acts 1917, p. 423.]

Art. 6686. Dealer's license.—(a) Any manufacturer of or dealer in motor vehicles in this State may, instead of registering each vehicle he may wish to show or demonstrate on the public highways, apply for registration and secure a general distinguishing number which may be attached to any motor vehicle or motorcycle which he sends temporarily upon the road. The annual fee for such dealer's registration of a general distinguishing number shall be $15.00, and additional number plates bearing said number desired by any dealer shall be assigned and registered for a fee of $5.00 each. A dealer within the meaning of this Article means any person, firm or corporation engaged in the business of selling automobiles who runs them upon the public highways or streets for demonstration for the purpose of sale; and this Act shall not be construed as permitting the use of a dealer's license or number plate on any vehicle owned or used by such a dealer for any other purpose than demonstration for the purpose of sale. Every dealer in making application for a dealer's license shall apply for same in writing on a form prescribed and provided by the State Highway Commission. The application shall state that the applicant is a dealer within the meaning of this Act, and if he holds a contract with an automobile manufacturer or distributor for the distribution or sale of motor vehicles or motorcycles he shall so state in the application, giving make of vehicle he handles and name of such manufacturer or distributor. The facts stated in such application shall be sworn to before an officer authorized to administer oaths. No dealer's license or number plates shall be issued until this article is complied with.

(b) Each dealer holding a dealer's license may issue temporary card-board numbers using such dealer's number thereon, which may be used by any person or dealer purchasing a vehicle from such dealer until such purchaser has time to register the same at the tax collector's office in the county of the residence of such purchaser.

(c) (Manufacturer to give notice of sale or transfer.) —Every manufacturer or dealer, upon transferring a motor vehicle, trailer or semi-trailer, whether by sale, lease or otherwise, to any person other than a manufacturer or dealer, shall immediately give written notice of such transfer to the department upon the official form provided by the department. Every such notice shall contain the date of such transfer, names and addresses of the transferer and transferee and such description of the vehicle as may be called for in such official form.

(d) All registration fees shall be paid in the county in which the owner lives at the time of registration of said motor vehicle. [Id.; Acts 1927, 40th Leg., p. 296, ch. 211, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 296, ch. 211, provides that it shall be cumulative of all laws on the subject and shall not repeal any laws except those conflicting therewith.

Art. 6687. Chauffeur's license.—A "chauffeur" is one whose business or occupation is operating a motor vehicle for compensation, wages or hire. Each chauffeur shall pay an annual fee of three dollars for the whole or part of any year he is so engaged. The Department shall prescribe the form of application for chauffeur's license, and shall require the same to be sworn to by the applicant, indorsed and vouched for by two reputable citizens of the place where the applicant lives or resides when making application, setting forth that they have known or been acquainted with the applicant for a period of not less than sixty days prior thereto, and that he is trustworthy, sober and competent to operate motor vehicles upon the highways of this State. No license shall be issued to an applicant unless he is over eighteen years old. He shall be issued a certificate and a metal badge with a distinguishing number, free of charge. Said badge shall at all times be prominently displayed on his clothing while engaged as a chauffeur, and shall be valid only during the term of his license. [Acts 1917, p. 475.]

Art. 6688. Number plates and seals.—A pair of license number plates, each bearing the same number,

shall be issued for every motor vehicle registered. One of such plates shall have permanently printed on it the word "Front" and the other the word "Rear," and the plate marked "Front" shall be securely attached to the front and the one marked "Rear" shall be securely attached to the rear of such vehicle; and both such plates shall remain so attached so long as the vehicle is used on the public highways or streets of this State, or until registered under a new number after a renumbering is ordered by the Highway Commission. Such number plates shall be exhibited without obstruction so that the same are visible from the front and rear of the vehicle, respectively; Provided that the applicant for registration of motor vehicle shall state under oath the kind of motor vehicle the applicant wishes to register and that said number plates will not be used on any car other than the one stated in the application. The State Highway Commission shall prescribe the form, size and number of all number plates. [Id.; Acts 1st C. S. 1921, p. 146; Acts 1927, 40th Leg., p. 296, ch. 211, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 296, ch. 211, provides that it shall be cumulative of all laws on the subject and shall not repeal any laws excepting those conflicting therewith.

Art. 6689. Replacement license.—If a license number plate, seal or chauffeur's badge is lost or destroyed, the owner of a registered vehicle, or a chauffeur, may obtain from the Department through the county tax collector a replacement number plate, seal or badge by filing with said collector an affidavit showing the fact, and by paying one dollar for each replacement number, seal or badge. [Acts 1917, p. 475.]

Art. 6690. License receipt.—Upon filing an application for license the applicant shall pay said collector the amount of the license fee required by law, and said collector shall issue a receipt therefor showing the name of the holder, the make of his car, the model and the number of the engine of same, or the number of the chauffeur's badge and his name. Such receipt shall be a protection to the holder against prosecution under any provision of the Highway Law regulating the registration of motor vehicles until the receipt by him of the number plates and seals, or badge and certificate. Such receipts shall be issued in triplicate, one to be delivered to the licensee, one forwarded to the Department by the collector, and one retained by him. Said receipts shall be numbered consecutively for each county. [Acts 4th C. S. 1918, p. 161.]

Art. 6691. Apportionment of funds.—On Monday of each week, each County Tax Collector shall deposit in the County Depository of his County to the credit of the road and bridge fund of that County an amount equal to Seventeen and one-half cents (17½) per horse power of every vehicle registered in such County, together with Thirty per cent (30%) of all weight fees collected by such tax collector, by virtue of Articles 6678, 6679, 6680, and 6681 of the Revised Civil Statutes of Texas, 1925; provided, however, that no tax collector of any one County shall deposit in the County Depository of his County exceeding in any one calendar year Fifty Thousand Dollars, ($50,000.00) of such weight fees. The amount so deposited in the County Depository hereunder to be deducted from the gross registration fees collected during the preceding week, and the balance shall be transmitted to the Highway Department. None of said moneys so placed to the credit of the Road and Bridge Fund shall be used to pay the salary or compensation of any County Judge or County Commissioner, but all said moneys shall be used for the construction and maintenance of lateral roads in such county under the supervision of the County Engineer, if there be one, and if there is no such engineer then the County Commissioners' Court shall have authority to command the services of the Division Engineer of the State Highway Department for the purpose of supervising the construction and surveying of lateral roads in their respective counties. [Id.; Acts 1923, p. 156; Acts 1927, 40th Leg. p. 235, ch. 162, § 1.]

Art. 6692. Duty of tax collector.—Said tax collector shall forward to the Department the copies of receipts issued to applicants for license, together with the State's part of the remittances therefor. He shall keep a record of all transfers and report same weekly to the Department. Tax collectors in counties having five thousand or more motor vehicles shall receive for such services a two per cent commission on all amounts so collected; and collectors in counties having less than five thousand motor vehicles shall receive a four per cent commission on all money so collected. Such compensation shall be used exclusively to pay salaries of deputies or other employés appointed in accordance with law, and any fees so collected remaining after paying such salaries shall be accounted for as fees of office as provided by law. [Acts 4th C. S. 1918, p. 161; Acts 2nd C. S. 1923, p. 81.]

Art. 6693. Registration supplies.—Upon receipt of such receipts and remittances, the Department shall assign registration numbers to the persons whose names appear thereon, and shall at once forward, charges prepaid, to the collector the required number plates, seals or badges and certificates corresponding thereto, which shall be delivered by the collector, without expense to him or to the county, to those entitled thereto upon application therefor by the owners. The Secretary of the Department shall on or before January first of each year forward to each county tax collector, carrying charges prepaid, registration blanks and receipts, and a number of seals corresponding to the number of motor vehicle and motorcycle registrations in their respective counties for the previous year, which shall be delivered by said collector to the registrants upon the payment of the license fee for the ensuing year. The number of seals so sent out shall be charged to the respective collectors in a book kept for that purpose by the Department, and upon receipt of notification by the said collector, together with the remittance therefor, he shall be credited with the seals so distributed. [Acts 4th C. S. 1918, p. 161.]

Art. 6694. State Highway Fund.—All funds coming into the hands of the Commission derived from the registration fees or other sources provided for in this subdivision, as collected, shall be deposited with the State Treasurer to the credit of a special fund designated as "The State Highway Fund," and shall be paid only on warrants issued by the Comptroller upon vouchers drawn by the chairman of the Commission and approved by one other member thereof, such vouchers to be accompanied by itemized sworn statements of the expenditures. [Acts 1917, p. 424.]

Art. 6695. Misrepresenting weight.—If any person shall operate, or permit to be operated, any motor vehicle licensed under this law of a greater weight than stated in his declaration or application, he shall be liable to pay the tax collector of any county through or into which he shall operate, or cause to be operated, such vehicle, the full license fee provided for the class to which such motor vehicle properly belongs. [Acts 1923, p. 156.]

Art. 6696. Unsafe vehicle.—If the Department shall determine at any time that a motor vehicle is unsafe or improperly equipped, or otherwise unfit to be operated upon the public highways, it may refuse to register such vehicle, and may for a like reason revoke any registration already issued. [Acts 1917, p. 475.]

Art. 6697. Delinquent registration.—The registration fee required to be paid upon a motor vehicle shall become delinquent when the owner of any such vehicle operates or permits the same to be operated upon the public highways without first having applied for registration and paid the registration fee therefor. In addition to all other penalties, if at the expiration of thirty days after any registration fee becomes delinquent such fee has not been paid and registration applied for, a penalty of twenty-five per cent of the fee shall be added thereto, and both shall be a lien upon such vehicle. The Department shall collect said fee and penalty by foreclosure upon and by sale of such vehicle in the manner provided by law for the sale of personal property by the county tax collector for collection of taxes due on personal property. [Id.]

Art. 6698. Municipal regulation.—The certificate of registration and numbering for purposes of identification, and the fees herein provided for shall be in lieu of all other similar registrations heretofore required by any county, municipality or other political subdivision of this State, and no such registration fees or other like burdens shall be required of any owner of any motor vehicle or motorcycle by any county, municipality or other sub-division of the State. This provision shall not affect the right of incorporated cities and towns to license and regulate the use of motor vehicles for hire in such corporation. Nothing herein shall in anywise authorize or empower any county or incorporated city or town in this State to levy and collect any occupation tax or license fees on motorcycles, motor vehicles or motor trucks. [Id.]

Art. 6699. County traffic officers.—The commissioners' court of each county, acting in conjunction with the sheriff, may employ not more than two regular deputies, nor more than two additional deputies for special emergency to aid said regular deputies, to be known as county traffic officers to enforce the highway laws of this State regulating the use of the public highways by motor vehicles. Said deputies shall be, whenever practicable, motorcycle riders, and shall be assigned to work under the direction of the sheriff. They shall give bond and take the oath of office as other deputies. They may be dismissed from service on request of the sheriff whenever approved by the commissioners court, or by said court on its own initiative, whenever their services are no longer needed or have not been satisfactory. The commissioners court shall fix their compensation prior to their selection, and may provide at the expense of the county, necessary equipment for said officers. The pay of said deputies shall not be included in the settlements of the sheriff in accounting for the fees of office. For the purposes of this law, the commissioners courts of counties whose funds from the motor registration fees provided herein amount to thirty thousand dollars or over, may use not exceeding five per cent of said funds; and not to exceed seven and one-half per cent of such funds in counties receiving a lesser amount from such registration. Said deputies shall at all times co-operate with the police department of each city or town within the county, in the enforcement of said traffic laws therein and in all other parts of the county. [Acts 1919, p. 228.]

Art. 6699a. Salaries of deputies.—Deputies shall be paid a salary out of the general county fund not to exceed one hundred and fifty ($150) dollars per month, the salary to be fixed by the commissioners' court, and in addition thereto the commissioners' court is hereby authorized to provide at the expense of the county such necessary uniforms, caps and badges, such badges to be not less than two inches by three inches in dimensions, and other necessary equipment, to include a motorcycle and its maintenance, as is necessary for them to discharge their duties. The salaries paid to said deputies acting as such highway officer shall be paid direct to said deputies by the commissioners' court, and such salaries shall be independent of any salary or fee paid to the sheriff and all of his deputies not so acting as highway officers, and the sheriff shall not be required to account for the salaries provided for herein as fees of office or as salary to the sheriff or his other deputies. Such deputies as are provided for herein shall be appointed by the commissioners' court and be deputized by either the sheriff or any constable of the county in which they are appointed, and no other officers shall make arrests in this State for violation of laws relating to highways now in effect in this State. Such deputies as provided for herein shall at all times when in the performance of their duties wear a full uniform with a cap and badge, the badge to be displayed on the outside of the uniform in a conspicuous place. Such officers shall remain in and upon the highway, and at all times patrol the same while in the performance of their duties, only leaving the highway to pursue any offender whom such officers were unable to apprehend upon the highway itself. No arrest by any such officer shall be binding or valid upon the person apprehended if the officer making such arrest was in hiding or if he set a trap to apprehend persons traveling upon the highway. No fees or charges whatever shall be made for the service of such officers provided for herein, nor shall any fee for the arrests made by such officers be charged and taxed as costs or paid to such officers in any case in which such officers shall make an arrest. Such officers shall perform all their duties and make arrests for violation of any law of this State appertaining to the control and regulation of vehicles operating in and upon any highway, street, or alley of this State. The district engineer in whose district the county in which such officers operate shall advise with such officers as to the enforcement of the various State laws pertaining to control and regulation of traffic upon the highways, and in case such officers shall not perform their duties in enforcing such laws, the district engineer may complain to the commissioners' court, and upon the filing of such complaint in writing duly signed by the district engineer, the commissioners' court shall summons before them for a hearing the officer or officers so complained of, and if such hearing develops that such officer or officers are not performing their duties as required of them, then such officer or officers shall immediately be discharged from all of their duties and powers as herein provided for, and other officers shall forthwith be appointed. Should any portion or section of this article be held invalid or unconstitutional, such holding shall not affect the validity or constitutionality of any other portion of this article, and all other portions not held invalid or unconstitutional shall remain in full force and effect. [Acts 1925, p. 202.] [39th Leg., ch. 58, § 1.]

Art. 6700. Disposition of fines.—Fines collected for violations of any highway law as set forth in Chapter 1 of Title 13 of the Penal Code, shall be used by the municipality or the counties in which the same are assessed and to which the same are payable, in the construction and maintenance of roads, bridges and culverts therein, and for the enforcement of the traffic laws regulating the use of the public highways by motor vehicles and motorcycles, and to help defray the expense of county traffic officers. [Acts 1917, p. 484; Acts 1919, pp. 228, 310.]

Art. 6701. Width of wheels.—No person, firm, association or corporation shall sell or offer for sale in this State any wagon or other road vehicle with an intended carrying capacity of more than two thousand pounds and not exceeding four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than three inches in width; or any such wagon or other road vehicle with an intended carrying capacity of more than four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than four inches in width. This article shall apply to all persons, firms, associations or corporations engaged in the sale of road vehicles, either at wholesale or retail, but shall not apply to individuals selling or offering for sale road vehicles purchased for their individual use. Any firm, association or corporation violating the terms of this article shall be subject to a penalty of not less than one hundred nor more than one thousand dollars for each offense, to be collected for the benefit of the county in which such violation may occur. [Acts 1917, p. 139; Acts 1919, p. 284; Acts 3rd C. S. 1920, p. 61.]

[Additional legislation, Acts 1925, pp. 135–145.]

Section 1. Wherever used in this Act the following terms shall have the meaning ascribed to each as follows:

(a) "Motor Vehicle" shall include all vehicles propelled otherwise than by muscular power, except motorcycles and vehicles that run exclusively upon tracks or rails.

(b) "Tractor" shall include any motor vehicle used as a traveling power plant or for drawing other vehicles, but having no provisions for carrying loads independently, other than the operator of such tractor.

(c) "Trailer" shall include any vehicle without motive power constructed for carrying passengers or property wholly on its own structure and for being drawn

by a self-propelled vehicle, except those running exclusively on tracks or rails.

(d) "Semi-trailer" shall include a vehicle designed and constructed for use in conjunction with a self-propelled vehicle so that some of the weight of its load rests upon and is carried by the towing vehicle, but not including those running exclusively upon tracks or rails.

(e) "Motorcycle" shall include any motor vehicle constructed to travel on not more than three wheels in contact with the ground or public highway, but not those that run exclusively on rails or tracks.

(f) "Bicycle" shall include any vehicle propelled by human power while the person or persons furnishing the power ride such vehicle, except those running exclusively upon tracks or rails.

(g) "Public Highway" shall include any road, street, way, thoroughfare or bridge in this State not privately owned or controlled, for the use of vehicles, over which the State has legislative jurisdiction under its police power.

(h) "Night-time" shall mean the time between one-half hour after sunset and one-half hour before sunrise.

(i) "Person" shall include, wherever applicable, a person, firm, partnership, corporation, association or other concern by whatever name known or howsoever organized or created.

(j) "Headlighting Device" or "Device," when used in the provisions relative to lights on motor vehicles, tractors, or motorcycles, shall include the integral and complete headlamp or a device intended to modify in any manner the beam of the ordinary type of headlighting equipment.

(k) "Ordinary Type of Headlighting Equipment" shall mean a headlamp composed of a lamp housing, plain parabolic reflector, plain glass front or bare reflector, and a clear-glass incandescent lamp or bulb.

(l) "Lens" shall include any headlight lens, cover-glass or front-glass other than a plain glass front.

(m) "Reflector" shall include any reflector other than a plain parabolic reflector.

(n) "Headlight Control Device" shall have the same meaning as that assigned to "Headlighting Device" and "Device."

(o) "Spotlight" shall mean any light or lamp, the direction of the beam from which is controllable from the front seat of a motor vehicle or from the seat or side-car of a motorcycle.

Sec. 2. It shall be unlawful for any person to operate any motor vehicle, motorcycle, tractor, trailer, semi-trailer or bicycle upon any public highway in this State during the night-time if such motor vehicle, motorcycle, tractor, trailer, semi-trailer or bicycle be not equipped with lights complying with the following requirements applicable to any such vehicle.

(a) Every motor vehicle and tractor shall, during the night-time, have two lighted headlamps of approximately equal candle-power attached to the front end thereof, one of said headlamps shall be located to the right of the car axis and the other to the left of said axis. Every motorcycle shall, during the night-time, have one lighted headlamp attached to the front thereof. Each of said headlights of motor vehicles, tractors, and motorcycles shall be visible from the front of the vehicle.

(b) Every motor vehicle, motorcycle, tractor, trailer, or semi-trailer shall, during the night-time, have attached one lighted lamp displaying a red or yellow light visible from the rear of such vehicle; provided, that when more than one of such vehicles are operated while fastened together, one behind the other, only the last of such vehicles toward the rear shall be required to carry such a tail light. Such rear tail light on all such vehicles mentioned in this subdivision shall be so arranged and constructed as to illuminate during the night-time the number plate showing the registration number of the vehicle so that the number plate shall be visible from the rear of such vehicle. Where the construction or use of a motor truck makes it necessary to separate the tail light and the number plate for the purpose of protecting either or both, it shall not be necessary for the tail light to be so placed as to illuminate the number plate.

(c) Every bicycle shall, during the night-time, have attached to it in front a lighted lamp which shall be visible from the front of such bicycle, or a reflex mirror, and attached to it in the rear a reflex mirror or a lighted lamp exhibiting a red or yellow light which shall be visible from the rear of such bicycle.

Sec. 3. No headlight shall be used upon any motor vehicle, tractor or motorcycle operated upon the public highways of this State unless such headlight is equipped with a lens, reflector or headlight control device which has been approved by the State Highway Commission in accordance with the provision of this Act, and which is adjusted as prescribed in the certificate of approval. Before any lens, reflector, or headlight control device intended to enable a headlight to comply with the provisions of this Act shall be used upon any motor vehicle, tractor or motorcycle, such lens, reflector, or headlight control device shall be submitted by the State Highway Commission to be tested by a testing agency as hereinafter specified, and a certificate of approval issued by the State Highway Commission to the manufacturer of such lens, reflector or headlight control device or his agent within this State.

Sec. 4. The University of Texas is hereby designated as the official testing agency for the State of Texas, said tests to be carried on under the supervision of the Experiment Station of said institution. In the event that said institution is unable to carry on the tests herein prescribed, the State Highway Commission shall have the authority to designate a new testing agency. Said testing agency, in either case, shall carry on the tests in laboratories equipped to carry on photometric tests according to the best practice, recognized as such by the National Bureau of Standards and other states requiring tests similar to those required herein.

Sec. 5. Any person, firm or corporation may submit to the State Highway Commission a lens, reflector or headlight control device intended to make a headlight comply with the provisions of this Act, and make application that the same be tested as to conformity with the requirements of this Act. Upon such application being made, the State Highway Commission shall, upon notice to the applicant, submit such lens, reflector or headlight control device to the testing agency as herein designated with the request that such device be tested as to conformity with the requirements of this Act. Each such applicant shall, upon the filing of his application, pay to the State Highway Commission a fee of fifty dollars. All such fees shall be paid by the State Highway Commission into the State Treasury, and they shall be deposited in a fund to be known as the Highway Light Test Fund, and the State Treasurer shall keep such fund separate. The moneys in such fund, or so much of them as may be necessary, shall be used to meet the expense of the tests as herein provided, and for such use they are hereby appropriated, and the balance thereof, if any, shall be paid into the State Highway Fund. Moneys in the Highway Light Test Fund shall be spent under the direction of the State Highway Commission, and may be spent only to defray the expenses of testing by the testing agency herein provided for.

Sec. 6. The testing agency shall conduct an exact scientific test of every device submitted to it as herein provided, and shall report thereon to the State Highway Commission its findings and instructions as to the candlepower lamp or bulb and any particular adjustment to be used with such device.

The sample submitted to the testing agency shall be representative of the device as manufactured and as marketed. They shall be accompanied by printed instructions for their use as issued by the manufacturer of the device. The samples submitted shall include as much of the accessory equipment peculiar to the device (except batteries) as is necessary to operate the device in its normal manner.

In the case of devices to be used in connection with standard parabolic reflectors, the reflectors used in making the laboratory tests shall be of standard high

grade manufacture of 1.25 inch focal length, with clean and highly polished surfaces and as nearly truly paraboloidal in form as possible, and as approved for this purpose by the National Bureau of Standards.

The incandescent lamps used in connection with the laboratory tests shall be of standard manufacture and as approved for this purpose by the National Bureau of Standards. In case of devices involving the use of special incandescent lamps, such lamps, together with any necessary accessories, shall be submitted.

Each device submitted must bear a distinctive designation prominently and permanently indicating the name and type of the device. Special incandescent lamps submitted in connection with devices shall bear the manufacturer's normal clear-bulb rating.

The testing agency shall adjust the device in accordance with the printed instructions issued by the manufacturer, which instructions must be adequate for practical purposes. An exact description of the adjustments made for test shall be given in the report.

Sec. 7. The following designations of the focal adjustments of the incandescent lamp in the parabolic reflector are hereby adopted:

Principal Focus. The beam, with bare reflector, or plain front glass, is nearly parallel and of the smallest possible diameter.

Rear Focus. The beam, with bare reflector or plain front glass, diverges as much as possible without having a dark center.

Front Focus. The beam, with bare reflector or plain front glass, converges and crosses near the lamp, and then diverges as much as possible without having a dark center.

Special Focus. A special focal adjustment shall be allowed only when it can be clearly defined and described.

Sec. 8. (a) The testing agency shall make the following photometric tests:

Tests of devices used in pairs. A pair of testing reflectors, mounted similarly to the headlamps on a motor vehicle, shall be set up in a dark room at a distance of not less than sixty feet nor more than one hundred feet from a vertical white screen. If a testing distance of one hundred feet is taken, the reflectors shall be set twenty-eight inches apart from center to center, and if a shorter testing distance is taken, the distance between reflectors shall be proportionately reduced. The axis of the lamps shall be parallel and horizontal, or tilted in a vertical plane in accordance with manufacturer's adjustment. The intensity of the combined light shall then be measured with each pair of samples in turn, with the reflectors fitted with a pair of incandescent lamps of the gas-filled type, six to eight volts, 21 spherical candlepower rating. The lamps shall be such as will give their rated candlepower when operated at their rated efficiency. They shall be operated at their rated candlepower.

Measurements shall be made at the following points at the surface of the screen:

A. In the median vertical plane parallel to the lamp axis, on a level with the lamps.

B. In the median plane one degree of arc below the level of the lamps.

C. In the median plane of one degree of arc above the level of the lamps.

D. Four degrees of arc to the left of the median plane and one degree of arc above the level of the lamps.

PL and PR. One and one-half degree of arc below the level of the lamps and three degrees of arc to the left and to the right, respectively, of the median plane.

QL and QR. Three degrees of arc below the level of the lamps and six degrees of arc to the left and to the right, respectively, of the median plane.

(b) All pairs of samples tested under the conditions prescribed above shall conform to the following specifications for observed apparent candlepower:

Point A. Not less than 1,800 candlepower nor more than 6,000 candlepower.

Point B. Not less than 7,200 candlepower, and there shall not be less than 7,200 candlepower at any point on the horizontal line through B, one degree to the left and to the right of B.

Point C. Not over 2,400 candlepower, and not less than 800 candlepower.

Point D. Not over 800 candlepower.

Points PL and PR. At each of these points and at every point on the line between them, not less than 5,000 candlepower.

Points QL and QR. At each of these points and at every point on the line between them, but less than 2,000 candlepower.

Sec. 9. Test of devices used singly. Where a device is to be used singly, only one reflector shall be used, and the specifications for the observed candlepower for the test stations in 8 (a) shall be as follows:

Point A. Not less than 1,800 candlepower.

Point B. Not less than 3,600 candlepower, and there shall not be less than 3,600 candlepower at any ponit [point] on the horizontal line through B, one degree to the left and to the right of B.

Point C. Not more than 2,400 candlepower.

Point D. Not more than 800 candlepower.

Points PL and PR. At each of these points and at every point on the line between them, not less than 2,500 candlepower.

Points QL and QR. At each of these points and at every point on the line between them, not less than 1,000 candlepower.

Sec. 10. The testing agency shall recommend to the State Highway Commission that any device submitted be not given a certificate of approval, even though it passes the photometric tests herein prescribed, if such device has one of the following defects:

Unnecessary loss of light due to absorption or diffusion.

Abnormal or unduly complicated adjustment.

Unstable or bad mechanical construction.

Unduly bright or dark areas or excessive contrast in the illuminated field.

Irregular or badly defined cut-off line.

Sec. 11. In the case that the design or construction of any device is changed in any way which alters the characteristics by which it is ordinarily identified, a new name or type designation must be given, and the device may then be submitted for approval on the same basis as a new device.

Any alteration in the design of any approved device which does not affect its distinctive appearance, but which is made for the purpose of improving its performance or to correct for alterations made in the standard of construction of incandescent lamps or reflectors, may be allowed under the original approval of such device, provided that due notice of such alteration is given to the State Highway Commission and verification tests made to the satisfaction of the commission that the device as altered complies with the specifications herein given.

Sec. 12. As a safeguard against deviations in the design and construction of an approved device from that on which approval was originally based, the State Highway Commission shall have the right to submit from time to time samples of the approved devices to the testing agency for a verification of their performance or to require the submission at suitable intervals of certified copies of reports of such verification tests, satisfactory to the testing agency, made by a person or an organization fulfilling the requirements of a testing authority. In case copies of verification tests are not submitted as required, or in case the verification test shows failure of any device to conform to the specification herein prescribed, the State Highway Commission may suspend or withdraw approval of such device.

Sec. 13. Whenever the State Highway Commission shall receive from the testing agency a report that a particular device has been tested and found to comply with the provisions of this Act, together with instructions as to the candlepower lamp or bulb and any particular adjustments to be used in connection with such device, the commission shall issue to the applicant

a certificate of approval, together with a copy of the instructions of the testing agency relative to the use of such device. The State Highway Commission may refuse approval to any device which in its opinion will be, in actual use, unsafe or impractical due to any one or more of the defects detailed in Section 10 of this Act, but upon any such refusal must furnish the applicant a detailed statement setting forth the reason for such refusal.

Upon receipt of said certificate of approval, the applicant may stamp on or attach to, or cause to be stamped on or attached to, all devices identical in design and construction with the device for which the certificate of approval was issued, the following words: "Approved by the Texas State Highway Commission." Should any person stamp upon or attach to or cause to be stamped upon or attached to any such device or equipment the words: "Approved by the Texas State Highway Commission," or any words meaning that such device has been approved by the Texas State Highway Commission when such device or equipment has not been approved by the State Highway Commission, or should any person knowingly sell or offer for sale in this State any device or equipment so marked which has not been approved by the State Highway Commission, such person shall be guilty of a misdemeanor and upon conviction be confined to the county jail for not less than one year, and not more than two years, or by a fine of not less than $100.00 and not more than $1,000.00, or by both such fine and imprisonment; or should any corporation cause or knowingly permit such offense to be committed, the offending corporation shall forfeit to the State of Texas as a penalty the sum of one thousand dollars, and the Attorney General shall sue or cause such corporation to be sued in the district court of Travis County for such penalty.

Sec. 14. Each and every county commissioners' court in this State shall, under the technical supervision of the State Highway Commission, establish and maintain county test stations in the various counties for the purpose of testing and adjusting the headlights on motor vehicles and motorcycles. Said county test stations shall test and adjust the headlights of motor vehicles and motorcycles for proper tilt, proper focal adjustment, and general efficient operation. Proper tilt, proper focal adjustment, and general efficient operation, shall mean the tilt, focal adjustment, and proper mechanical condition as prescribed for the various devices by the State Highway Commission upon the recommendation of the testing agency heretofore referred to. The establishment of county test stations shall mean the designation of any place which shall comply with the requirements for a test station as determined by the State Highway Commission. The number and location of county test stations shall be determined by the county commissioners' court in accordance with the number and geographical distribution of motor vehicles and motorcycles in the county.

Sec. 15. The county commissioners' court shall require the county test stations to charge a fee of twenty-five cents for the test and adjustment of headlights of each motor vehicle and motorcycle. Said court shall require the issuance by the county test stations of a certificate of test and adjustment which shall show the make of the motor vehicle or motorcycle, the registration number, the date of the adjustment, and the official designation of the station making the test. Said certificate shall bear the signature of the person in charge of the test station, and shall be kept by the owner of the motor vehicle or motorcycle for which the certificate was issued until replaced by the certificate for the next year, or by a certificate issued at a later date in the same year. These certificates shall be issued to the county commissioners' court upon requisition to the State Highway Commission, and the county commissioners' court shall issue them to the various test stations. A duplicate of each certificate issued by each county test station shall be forwarded at the end of each month to the county commissioners' court together with as much of the total fee charged for such test as the court may require. The portion of the total fee, if any, to be allowed the county test station for making the test and adjustment for such motor vehicle and motorcycle shall be determined by the county commissioners' court before the designation of any county test station under this Act, but may be changed at any future time as necessity may require.

Sec. 16. Before any county tax collector shall issue a certificate of registration to the owner of a motor vehicle or motorcycle as now provided by law, he shall require the presentation of a certificate showing that the headlights of such motor vehicle or motorcycle have been tested and adjusted at some one of the county test stations referred to, and that said test and adjustment have been made within the thirty-day period preceding the date of application for registration.

Sec. 17. The expense of the administration of this Act in the various counties shall be paid out of the fees received from the county test stations. At the end of each year any moneys so received and not expended as herein provided shall be paid into the road and bridge fund of the county.

Sec. 18. Upon designation of a county test station, the county commissioners' courts shall appoint the party or one of the parties making the request for designation, or some person satisfactory to both the court and the party or parties requesting the designation, as the official representative of the county. This representative shall sign each certificate issued by the county test station, and he shall be responsible to the county commissioners' court for the proper conducting of the county test station. If the county commissioners' court finds that the business of any county test station is being badly or poorly conducted, it shall be the duty of the court to revoke the designation of said test station. Before the final designation of a county test station by the county commissioners' court, said court shall require of the person who is to be the official representative, as above provided for, such bond and in such amount as the court may deem necessary for the proper safeguard of the funds to be handled.

Sec. 19. County test stations shall re-test and re-adjust the headlights of any motor vehicle without charge upon the presentation by the owner of said motor vehicle or motorcycle of a certificate of test adjustment issued for the current year. No such re-test and re-adjustment shall be made during the period from December 1 of any year to February 1 of the following year, unless so ordered by an officer who has arrested a person for a violation of the provisions of this Act, and who is acting under the provisions of Section 25 hereof.

Sec. 20. The State Highway Commission shall have published and sent to each county commissioners' court in this State a sufficient number of lists of devices approved for use, as hereinbefore provided. These lists shall be distributed by the county commissioners' court to the various county test stations and to individuals upon request. This list of approved devices shall show the required tilt of the headlamp, the candlepower limit of the lamp or bulb to be used with the device, and any other special adjustment required by the State Highway Commission in order to make the device, whole headlamp or portion thereof, comply with the requirements of this Act.

Sec. 21. It shall be unlawful for any person or persons, firm, corporation or association to sell or offer for sale any lens, reflector, or headlight control device which has not been approved by the State Highway Commission as herein provided.

Sec. 22. It shall be unlawful for any operator of a motor vehicle or motorcycle to use a spotlight when a motor vehicle or motorcycle, approaching from the front, is in sight. Upon sight of a motor vehicle or motorcycle approaching from the front, it shall be the duty of the operator of a motor vehicle or motorcycle upon which a spotlight is being used to immediately extinguish said spotlight, and it shall not

be turned on until the approaching motor vehicle or motorcycle has passed. In case the headlights of a motor vehicle or headlight of a motorcycle should fail to function, and the operator of said motor vehicle or motorcycle is without sufficient driving light, the use of a spotlight shall be permissible at all times, but when so used the beam from said spotlight shall be so directed that it strikes the road not more than fifty feet ahead of the motor vehicle or motorcycle upon which it is being used. The provisions of this section prohibiting the use of spotlights under certain conditions shall not apply to police or fire department vehicles.

Sec. 23. Any motor vehicle, tractor, or motorcycle equipped with acetylene headlamps shall be deemed to have complied with the provisions of this Act, concerning headlights, anything to the contrary notwithstanding, if such vehicle has two acetylene headlamps attached to the front portion thereof, of approximately equal candlepower, which shall be lighted during the time specified in Section 2 of this Act, and are fitted with plain glass fronts, bright six-inch spherical mirrors, and standard acetylene five-eighths foot burners.

Sec. 24. Upon the day this Act becomes effective the State Highway Commission may begin to receive applications for the approval of lenses, reflectors or headlight control devices as herein provided, and the commission shall immediately begin submitting the various devices to the testing agency as provided in this Act. Action shall be taken on all applications as soon as the report of the testing agency is received.

No person shall be arrested and prosecuted under this Act until after September 1, 1925, by which time the State Highway Commission shall have distributed, as provided in Section 20, copies of its list of devices which have been approved for use. This list of approved devices may be supplemented from time to time as applications are received and approved by the State Highway Commission.

Sec. 25. Each headlamp of motor vehicles, tractors or motorcycles, including the lens, reflector, or headlight control device used in connection therewith, shall be kept in adjustment according to the certificates of approval of said lens, reflector or headlight control device issued by the State Highway Commission. Any person operating a motor vehicle, or motorcycle which is equipped with a lens, reflector or headlight control device which is approved for use by the State Highway Commission, and who shall be arrested upon a charge that such headlamps or headlamp is equipped with a lamp or bulb not approved for use with such lens, reflector or headlight control device by the State Highway Commission, or that such headlamps or headlamp is not focused or adjusted as directed by the State Highway Commission in its certificate of approval of the lens, reflector or headlight control device, used therewith, shall be immediately released from custody by the officer making the arrest, and said person shall have seventy-two hours in which to have his headlamps or headlamp tested and adjusted or retested and re-adjusted by some one of the county test stations and for this purpose the officer making the arrest shall issue to the person arrested a permit to have the lights of said automobile or motorcycle retested and re-adjusted at any one of the county test stations without charge to the party arrested. The officer making the arrest shall instruct the person so arrested to appear before the justice of the peace or other authority designated by the officer within the seventy-two hour period immediately following the arrest, and, if said person presents to the justice of the peace or other authority designated by the officer making the arrest, a certificate of test and adjustment or re-test and re-adjustment issued by a county test station within the seventy-two hour period immediately following his arrest, the charge shall be dropped and the person arrested released.

Sec. 26. If any section, provision or part of this Act should be held invalid for any reason, it is the legislative intent that the remainder of the Act shall remain in full force and effect.

Sec. 27. If any person violates any provision of this Act, except any provision setting forth a specific penalty, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars nor more than twenty-five dollars for the first offense, and not less than twenty-five nor more than two hundred dollars for the second or any subsequent offense after the first.

Sec. 28. All laws and parts of laws in conflict herewith are hereby repealed.

CHAPTER TWO

ESTABLISHMENT OF COUNTY ROADS

Art.
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6703. Commissioners courts: powers.
6704. Classes of roads.
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6707. Notice of appointment.
6708. Oath of jury.
6709. Notice to owner.
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6711. Neighborhood roads.
6712. Gates.
6713. Road supervisors.
6714. Reports.
6715. Across public lands.
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Article 6702. [6859] [4670] "Public roads."—All public roads and highways not discontinued that have heretofore been laid out and established agreeably to law are hereby declared to be public roads. [Acts 1876, p. 64; G. L. vol. 8, p. 905.]

Art. 6703. [6860–1–2–76–6902] Commissioners courts: powers.—The commissioners court shall order the laying out and opening of public roads when necessary, and discontinue or alter any road whenever it shall be deemed expedient. No public roads shall be altered or changed except to shorten the distance from end to end, unless the court upon a full investigation of the proposed change finds that the public interest will be better served by making the change; and said change shall be by unanimous consent of all the commissioners elected. No part of a public road shall be discontinued until a new road is first built connecting the parts not discontinued; and no entire first or second class road shall be discontinued except upon vacation or non-use for a period of three years. Said court shall assume and have control of the streets and alleys in all cities and incorporated towns in Texas which have no defacto [de facto] municipal government in the active discharge of their official duties. [Acts 1st C. S. 1884, p. 24; G. L., vol. 9, p. 556; Acts 1885, p. 25; G. L., vol. 9, p. 645; Acts 1889, p. 21; G. L., vol. 9, p. 1049.]

Art. 6704. [6871–2–3–4] Classes of roads.—The Commissioners Courts shall classify all public roads in their counties as follows:

1. First-class roads shall be clear of all obstructions, and not less than forty feet nor more than eighty feet wide; all stumps over six inches in diameter shall be cut down to six inches of the surface and rounded off, and all stumps six inches in diameter and under cut smooth with the ground, and all causeways made at least sixteen feet wide. No first or second class road shall be reduced to a lower class.

2. Second class roads shall conform to the requirements of first class roads except that they shall be not less than forty feet wide.

3. Third class roads shall not be less than twenty feet wide and the causeways not less than twelve feet wide; otherwise they shall conform to the requirements of first-class roads. [Acts 1st C. S. 1884, p. 20; G. L., vol. 9, p. 553; Acts 1927, 40th Leg., p. 256, ch. 178, § 1.]

Art. 6705. [6875–6–85] Petition.—The commissioners court shall in no instance grant an order on an application for any new road, or to discontinue an original one, or to alter or change the course of a public road, unless the applicants have given at least twenty days notice by written advertisement of their intended application, posted up at the court house door of the county and at two other public places in the

vicinity of the route of such road. All such applications shall be by petition to the commissioners court, signed by at least eight freeholders in the precinct in which such road is desired to be made or discontinued, specifying in such petition the beginning and termination of such road, provided an application to alter or change a road need not be signed by more than one freeholder of the precinct. [Id.]

Art. 6706. [6877–9] Preliminary survey.—All roads ordered to be made shall be laid out by a jury of freeholders in the county, to be appointed by the commissioners court. Said jury shall consist of five persons, a majority of whom may proceed, with or without the county surveyor, as ordered by the commissioners court, to lay out, survey and describe such road to the greatest advantage to the public, and so that the same can be traced with certainty. They shall make written report of their proceedings to the next term of said court, and the field notes of such survey or description of the road shall be included therein, and, if adopted, shall be recorded in the minutes of said court. [Id.]

Art. 6707. [6886–7–8] Notice of appointment.—When juries of view are appointed, the clerk of the court shall make out and deliver to the sheriff duplicate copies of the order appointing them within ten days after such appointment was made, indorsing on such copies the date of such order. The sheriff shall serve the same upon each juror in person, or by leaving one of said copies at his usual place of abode. The sheriff shall make such service within twenty days after he receives said copies, and shall make his return to the clerk on the duplicate copies, stating the date and manner of service, or the cause of his failure to make the same. Any juror of view, summoned as such, who fails or refuses to perform the service required of him by law as such juror, shall forfeit and pay for every such failure the sum of ten dollars, to be recovered by judgment on motion of the district or county attorney, in the name of the county. [Id.]

Art. 6708. [6878] [4689] Oath of jury.—Said jurors shall first take the following oath: "I, ———, do solemnly swear that I will lay out the road now directed to be laid out by the order to us directed from the commissioners court, according to law, without favor or affection, malice or hatred, to the best of my skill and knowledge. So help me God." [Id.]

Art. 6709. [6880] [4691] Notice to owner.—Said jury shall issue a written notice of the time when they will proceed to lay out such road, or when they will assess the damages incidental to the opening of the same. Such notice shall be served upon each land owner, his agent or attorney, through whose land said road may run, at least five days before the day named therein. If such owner is a non-resident of the county the notice may be given by publication in a newspaper published in the county, once a week for four consecutive weeks, and the road may be established after four weeks publication, the cost of publishing to be paid as directed by the judgment of the court. [Id.]

Art. 6710. [6881–2–3–4] Damages to land.—Any such owner may, at the time stated in such notice, or previously thereto, but not in any event thereafter, present to the jury a written statement of the damages claimed by him, incidental to the opening of such road, and thereupon the jury shall proceed to assess the damages, returning their assessment and the claimant's statement with their report. If the commissioners court approves the report and orders such road to be opened, they shall consider the assessment and damages by the jury and the claimant's statement thereof, and allow to such owner just damages and adequate compensation for the land taken. When same are paid or secured by special deposit with the county treasurer to the credit of such owner and after notice of such payment or deposit to the owner, and if no objection is made to the jury's report, said court may proceed to have such road opened, if deemed of sufficient importance. Said owner may appeal from such assessment as in cases of appeal from judgment of justice courts, but such appeal shall not prevent the road from being opened, but shall be only to fix the amount of damages. [Id.]

Art. 6711. [6889–6900] Neighborhood roads.—Any lines between different persons or owners of lands, any section line, or any direct line through an inclosure containing twelve hundred and eighty acres of land or more may be declared public highways upon the following conditions:

1. Ten freeholders, or one or more persons living within an inclosure, who desire a nearer, better or more practicable road to their church, county seat, mill, timber or water, may make sworn application to the commissioners court for an order establishing such road, designating the lines sought to be opened and the names and residences of the persons or owners to be affected by such proposed road, and stating the facts which show a necessity for such road.

2. Upon the filing of such application the clerk shall issue a notice reciting the substance thereof directed to the sheriff or any constable of the county, commanding him to summon such land owners, naming them, to appear at the next regular term of the commissioners court and show cause why said lines should not be declared public highways. Said notice shall be served in the manner and for the length of time provided for the service of citations in civil actions in justice courts, and shall be returned in like manner as such citation.

3. At a regular term of the court, after due service of such notice, if the commissioners court deems said road of sufficient public importance, it may issue an order declaring the lines designated in the application to be public highways, and direct the same to [be] opened by the owners thereof and left open for a space of fifteen feet on each side of said line, but the marked trees and other objects used to designate said lines, and the corners of surveys, shall not be removed or defaced. Notice of such order shall be immediately served upon such owners, and return made thereon, as before provided.

4. The damages to such land owners shall be assessed by a jury of freeholders, as for other public roads, and all costs attending the proceedings in opening neighborhood roads, if the application is granted shall be paid by the county.

5. The commissioners court shall not be required to keep any such road worked by the road hands as in the case of other public roads. [Id.]

Art. 6712. [6899] [4710] Gates.—The owners of land across which a third class or neighborhood road may be run, when the right of way therefor has been acquired without cost to the county, may erect gates across said road when necessary, said gates to be not less than ten feet wide and free of obstructions at the top. [Acts 1st C. S. 1884, p. 23; G. L., vol. 9, p. 555.]

Art. 6713. [6901] [4712] Road supervisors.—Except when road commissioners are employed, the county commissioners shall be supervisors of public roads in their respective counties, and each commissioner shall supervise the public roads within his commissioners precinct once each month. He shall also make a sworn report to each regular term of the commissioners court held in his county during the year, showing:

1. The condition of all roads and parts of roads in his precinct.

2. The condition of all culverts and bridges.

3. The amount of money remaining in the hands of overseers subject to be expended upon the roads within his precinct.

4. The number of mile posts and finger boards defaced and torn down.

5. What, if any, new roads of any kind should be opened in his precinct, and what, if any, bridges, culverts, or other improvements are necessary to place the roads in his precinct in good condition and the probable cost of such improvements; also the name

of every overseer who has failed to work on the road, or in any way neglected to perform his duty.

Said report shall be spread upon the minutes of the court, to be considered in improving public roads and determining the amount of taxes levied therefor. [Id.; Acts 1913, p. 255.]

Art. 6714. [6903] [4714] Reports.—Said supervisor's report shall be submitted together with all contracts made by said court since its last report for any work on any road, to the grand jury, at the first term of the district court thereafter. [Id.]

Art. 6715. [6904] [4715] Across public lands.—No public road shall be opened across lands owned and used or for actual use by the State, educational, eleemosynary, or other public State institutions for public purposes and not subject to sale under the general laws of the State, without the consent of the trustees of said institution and the approval of the Governor. The roads heretofore opened across such lands may be closed by the authorities in charge of any such lands whenever they deem it necessary to protect the interests of the State, upon repayment to the county where the land is situated with eight per cent interest, the amount actually paid out by said county for the condemnation of said lands as shown by the records of the commissioners court.

Art. 6716. Damage to roads.—The county commissioner of any precinct, or county road superintendent of any county, or road supervisor, whose road is affected, may forbid the use of highways or parts thereof when from wet weather or recent construction or repairs they cannot be safely used without probable serious damages to same, or when the bridge or culverts on same are unsafe, under the following rules:

1. Such officer shall post notices on such highways, stating the maximum load permitted and the time such use is prohibited, and same shall be posted upon the highway in such places as will enable the drivers to make detours to avoid the restricted highways or portions thereof.

2. If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the county judge of such county, setting forth the nature of his grievance. When such complaint is filed, the judge shall set the same down for a day certain not more than three days later, and shall give written notice to such official of the day and purpose of such hearing. The judge shall hear testimony offered by the parties thereto, and upon conclusion thereof, shall render judgment sustaining, revoking or modifying such order or notice, and such judgment shall be final as to the issues raised.

3. The owners, operators, drivers or movers of any vehicle, object or contrivance over a public highway or bridge shall be jointly and severally responsible for all damages which said highway or bridge may sustain as the result of negligent driving, operating or moving of such vehicle, or as a result of operating same at a time forbidden by said road officials. The amount of such damages may be recovered in any action at law by the county judge for the use of the county, and such recovery shall go to the benefit of the damaged road. The county attorney shall represent the county in such suit. [Acts 1st C. S. 1921, p. 133; Acts 1923, p. 160.]

CHAPTER THREE

MAINTENANCE OF ROADS

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1. OVERSEERS AND HANDS'

Article 6717. [6905] [4716] Road precincts.—The commissioners courts of the several counties shall lay off their respective counties into convenient road precincts and shall number each precinct; and in the order establishing the same shall specify as definitely as practicable the boundaries thereof. [Acts 1876, p. 63; G. L. vol. 8, p. 899.]

Art. 6718. [6906–7] Road force.—At the first regular term of said court in each year, or, if not done then, at any subsequent regular or called term, said court shall appoint an overseer for each road precinct, and designate all the hands liable to work on public roads and apportion them to the several overseers. Hands shall as nearly as practicable be apportioned to work on the road precincts nearest to their place of abode. The supervisor of public roads shall at any time apportion any hands in his precinct who from any cause may not have been apportioned as otherwise provided in this subdivision. [Acts 1st C. S. 1884, p. 24; G. L. vol. 9, p. 556.]

Art. 6719. [6909–10–11–17] Appointment of overseer.—All orders appointing overseers shall embrace the designation of hands liable to work under such overseer, as far as known, and shall specify the boundaries of such overseer's road precinct as laid off

by the court. The clerk of said court shall make out duplicate copies of all orders appointing overseers, inserting thereon the duties required of overseers in regard to their non-acceptance of such appointment, and deliver the same to the sheriff of the county within ten days after any such order is made, indorsing on such copies the date of the orders of appointment. The sheriff shall, within twenty days after receipt of such copies, deliver to or leave at the usual place of abode of such overseer, one of such copies, and return duplicate of such copy to the clerk of the county court, indorsing thereon the date and manner of service, or the cause of his failure to serve the same. [Id.]

Art. 6720. [6908–12] Term of service.—The term of service of a road overseer shall be from the time of the service of the order of appointment until the first regular term of the commissioners court in the succeeding year, and during such time he shall be exempt from jury service. If any road overseer dies, removes or is unable to act, the county judge, immediately upon information of the fact, shall appoint an overseer to fill such vacancy, and notify him of his appointment. [Id.]

Art. 6721. [6913–14–15–16] Persons exempt from serving.—No person shall be compelled to serve as an overseer who is lawfully exempt from road duty, nor shall any one be compelled to serve as overseer more than one year in every three successive years. Such person shall notify the clerk of his non-acceptance within ten days after notice of his appointment, and the clerk shall forthwith report the same to the county judge, who shall immediately appoint another overseer for said road precinct. If such exempt person fails to so notify the clerk, it shall be considered an acceptance of the appointment, and he shall not be permitted thereafter to plead his exemption from road duty as a defense against any neglect or failure to perform any of the duties of such overseer. [Id.]

Art. 6722. [6918] [4729] List of overseers.—Each county clerk shall post up in the court house on the first day of each term of the district court held in his county, a list of the names and road precincts of all overseers in the county. [Id.]

Art. 6723. [6919–26] Road duty.—All male persons between the ages of twenty-one and forty-five years shall be liable to work on, repair and clean out the public roads under the provisions of this title, subject to the following conditions:

1. Ministers in the active discharge of their duties, invalids, members of volunteer fire companies in the active discharge of their duties, and persons who have not been residing in the county in which they are summoned to work for fifteen days immediately preceding such summons, shall be exempt.

2. Any person so liable who has been summoned to do such duty may furnish an able bodied substitute to work in his place. The overseer shall not accept such substitute if he is incapable of performing a reasonable amount of work.

3. Any person so liable, by paying to his road overseer before the day appointed to work, one dollar for each day he is summoned to work, shall be exempt for each day paid for.

4. Each person summoned to work on a road shall take with him an axe, hoe, pick, spade or such tool as the overseer directs, or if he has no such tool then such other suitable tool as he may have.

5. Each road hand shall perform his duties as such in accordance with the directions of his overseer. No person shall be compelled to do such work more than five days of eight hours efficient service each in each year. [Acts 1876, p. 63; G. L. vol. 8, p. 899; Acts 1883, p. 22; G. L. vol. 9, p. 329; Acts 1895, p. 160; G. L. vol. 10, p. 890.]

Art. 6724. [6927–8–9] Call for hands.—Each overseer shall cause the roads through his precinct to be worked twice in each year; and he may call out all or some of the hands at any time he deems it necessary, or when ordered by the commissioners court or other competent authority. If any hand has not ben [been] apportioned by the commissioners court, the overseer nearest such person's residence shall summon such hand. [Acts 1876, p. 66; G. L. vol. 8, p. 902; Acts 1889, p. 21; G. L. vol. 9, p. 1049.]

Art. 6725. [6930–31–32] Summons.—Each overseer shall give three days previous notice, by summons in person or in writing, to each person within his road precinct liable to road duty, of the time and place such person is required to appear to work on the road, and the number of days such person shall be required to work. A written summons may be served by leaving the same at the usual place of abode of the person summoned, with some person residing at such place who is not less than ten years of age, or by posting it on the door of such abode. The overseer may appoint some one to summon the hands and such person shall be exempt from road duty as many days as he was actually so engaged. [Acts 1889, p. 21.]

Art. 6726. [6933–45] Complaints against hands.—Within ten days after he has had his road worked, the overseer shall file with the county attorney or the justice of the peace a sworn complaint against each person so summoned who has failed to work and who is not entitled to exemption from road duty. Overseers shall dismiss from the road any hand who fails to do efficient work, or who hinders other hands from doing their work properly, or dismiss any hand who may be intoxicated, or who shall refuse to obey any reasonable order of the overseers; and the overseer shall also file complaints against such hands. [Id. Acts 1st C. S. 1884, p. 24; G. L. vol. 9, p. 556.]

Art. 6727. [7013] [4791] Bridges.—Overseers of roads shall cause bridges to be erected across all such water courses and other places as may appear to them to be necessary and expedient; and should there be a water course or other place that requires a bridge, dividing any two road precincts, the overseer of each of such precincts, together with their hands, shall meet at the same time and place to construct such bridge, and the overseer chosen by a majority of the hands present shall superintend the building of such bridge until finished. [Acts 1876, p. 67; G. L. vol. 8, p. 903.]

Art. 6728. [6934] [4744] Road material.—If an overseer deems it expedient to make causeways and build bridges, or to gravel any public road, the timber, gravel, earth, stone or other necessary material most convenient therefor may be used. In such case the owner of such material shall be paid out of the county treasury a fair compensation for the same, to be determined by the commissioners court upon the application of such owner. [Acts 1876, p. 66; G. L. vol. 8, p. 902; Acts 1897, p. 84; G. L. vol. 10, p. 1138.]

Art. 6729. Condemnation of road material.—The commissioners court may use either timber, earth, stone, gravel, or other necessary material most convenient therefor to build, repair, or maintain any public road or any part of any public road in the county without regard to the location or extent thereof or the funds from which such repair or maintenance is paid. In such case the owner of any such material shall be paid a fair and just compensation therefor as may be agreed upon by the owner or his agent and the commissioners court. Should the owner and the commissioners court fail to agree upon the compensation to be paid for the material required, then the county, upon the order of said court, shall proceed to condemn the same. If such material is needed for the general system of county highways, then payment shall be made from the road and bridge fund of the county, or from the proceeds of any county issue of bonds. If such material is to be used for the benefit of any defined district or political subdivision of the county, then the cost of such material shall be paid from funds of such defined district or subdivision arising through sale of bonds or the collection of special taxes. The commissioners appointed to condemn the property shall receive two dollars for each day they may be necessarily engaged in the performance of their duties, to be paid out of the same fund from which payment is made for materials on the order of the commissioners court. Compensation awarded by said commissioners for ma-

terial shall be paid to the owner or deposited with the county treasurer to the credit of such owner, and when so paid or deposited the county shall have the right to enter upon and use said material. If the owner or the county is not satisfied with the compensation awarded, he or said county may appeal therefrom as in condemnation cases; provided, the commissioners appointed to condemn such road material shall, after due hearing, fix a fair and reasonable value for such material; and if it has a market value, then such market value shall be determined and the market value fixed thereon as compensation to the owners, or if the material has no market value, then its value shall be fixed at such sum as the evidence shows the material to be reasonably worth for the purpose for which it was used. The value may be fixed either as a whole or in quantities, by the yard for earth, for sand, or broken stone, or by the perch for stone, and per tree, or per post, or per foot where trees are suitable for lumber or for timbers in such quantities as may be needed upon estimates secured by the commissioners court. [Acts 1901, p. 277; Acts 3rd C. S. 1920, p. 44; Acts 2nd C. S. 1923, p. 46.]

Art. 6730. [6935] [4745] Drains.—The earth necessary to construct a causeway shall be taken from both sides, so as to make a drain on each side thereof. Whenever it is necessary to drain the water from any public road, the overseer shall cut a ditch for that purpose, having due regard for the natural water flow, and with as little injury as possible to the adjacent land owners. In such cases the commissioners court shall cause the damages to such premises to be assessed and paid out of the general revenues of the county, and in case of disagreement the same may be settled by suit as in other cases. [Id.]

Art. 6731. [6936] [4746] Wagons and scrapers.—When it may be necessary to use a wagon for any purpose in working a road, or a plow or a scraper, the overseer may exchange the labor of any hand for the use of wagons, plows or scrapers, and the necessary teams to operate the same, at reasonable rates, to be employed as aforesaid. [Acts 1876, p. 67; G. L. vol. 8, p. 903.]

Art. 6732. [6937–40] Mile posts and signs.—Each overseer shall measure such parts of such roads in his precinct as are in continuation, and set up posts of stone or good lasting timber at the end of each mile leading from the courthouse or some other noted place, and mark on said posts in legible and enduring figures the distance in miles to said courthouse or other noted place. He shall place conspicuously and permanently at the intersection of all first and second class public roads in his precincts, index or sign boards, with directions plainly marked thereon, stating the most noted place to which each of said roads leads. The commissioners court may enter into contracts with persons, firms or corporations to mark or designate road intersections as herein provided for, by the use of advertising schemes and devices, and the correct marking of road intersections by such devices shall be deemed a compliance with this law, provided such sign boards are properly maintained. When a mile post or index board is removed or defaced by any means whatever, the overseer shall cause the same to be replaced immediately by another marked as the original one. The overseer may exchange the labor of any hand for the marking of index boards or mile posts. [Id. Acts 2nd C. S. 1919, p. 57; Acts 1923, p. 59.]

Art. 6733. [6941] [4751] Expenditures.—Each overseer shall impartially apply all money coming into his hands as such to the improvement of roads, by repairing or building bridges, hiring hands or teams to work on the road, or in such other manner as he may deem best. He shall pay to the commissioners court any such funds remaining in his hands, when he makes his report thereto. [Act 1876, p. 68.]

Art. 6734. [6942] [4752] Report to commissioners court.—Each overseer shall make written sworn report to the commissioners court at the first regular term thereof in each year, giving the number of hands and their names in his precinct liable to work on the roads; the number of days he has caused his road to be worked; the condition of such road; the amount of funds received by him for his road, from whom received, and for what purpose, and to whom and for what purpose said funds have been paid out, and the amount of such funds in his hands. [Id.]

Art. 6735. [6943] [4753] Pay of overseers.—Overseers shall retain out of money that may come into their hands as such ten per cent thereof as compensation for their services.

Art. 6736. [6944] [4754] Road and bridge funds.—All moneys appropriated by law, or by order of the commissioners court, for working public roads or building bridges, shall be expended under the order of the commissioners court, except when otherwise herein provided, and said court shall from time to time make the necessary orders for utilizing such money and for utilizing convict labor for such purposes. [Const. art. 16, sec. 24.]

2. ROAD COMMISSIONERS

Art. 6737. [6946] [4756] Employment.—Each commissioners court may employ not exceeding four road commissioners, who shall be resident citizens of the district for which they are employed, and when more than one is employed, the district that each road commissioner is to control shall be defined and fixed by the court. Such road commissioners shall receive such compensation as may be agreed upon by the court, not to exceed two dollars per day for the time actually engaged. Each road commissioner shall first execute a bond, payable to the county judge of the county and his successors in office, in the sum of one thousand dollars, with one or more good and sufficient sureties, to be approved by the county judge, and conditioned for the faithful performance of his duties. [Acts 1889, p. 134; G. L. vol. 9, p. 1162.]

Art. 6738. [6947] [4757] Powers and duties.—A road commissioner shall have control over all overseers, hands, tools, machinery and teams to be used upon the roads in his district; and may require overseers to order out hands in any number he may designate for the purpose of opening, working or repairing roads or building or repairing bridges or culverts in his district. He shall see that all roads and bridges in his district are kept in good repair, and he shall, under the direction and control of the commissioners court, inaugurate a system of grading and draining public roads in his district, and see that such system is carried out by the overseers and hands under his control, and shall obey all orders of the commissioners court; and he shall be responsible for the safe-keeping and liable for the loss or destruction of all machinery, tools or teams placed under his control, unless such loss is without his fault, and when he shall be discharged he shall deliver them to the person designated by the court. [Id.]

Art. 6739. [6948] [4758] Expenditures.—He shall expend such money as may be placed in his hands by the commissioners court under its direction in the most economical and advantageous manner on the public roads, bridges and culverts of his district; and all his acts shall be subject to the control, supervision, orders and approval of the commissioners court. He shall work the convicts and such other labor as may be furnished him by the commissioners court. When he has funds in his hands to expend for labor on the roads, and when it shall be necessary for any overseer in his district to work more than five days during any one year upon the public roads, he may employ such overseer to continue his duties as such for such length of time as may be necessary, and pay him for such services not more than one dollar and fifty cents per day for the time actually employed after the five days; provided, that the hands shall not be required to work when there shall be on hand, after building and repairing bridges, a sufficient road

fund to provide for the necessary work on the roads. Said road commissioner shall report to the commissioners court at each regular term under oath showing an itemized account of all money he has received to be expended on roads and bridges and what disposition he has made of the money, and showing the condition of all roads, bridges and culverts in his district, and such other facts as the court may desire information upon, and shall make such other reports and at such time as the court may desire. [Id.]

Art. 6740. [6949] [4759] Expenditure of road fund.—The commissioners court shall see that the road and bridge fund of their county is judiciously and equitably expended on the roads and bridges of their county, and, as nearly as the condition and necessity of the roads will permit, it shall be expended in each county commissioners precinct in proportion to the amount collected in such precinct. Money used in building permanent roads shall first be used only on first or second-class roads, and on those which shall have the right of way furnished free of cost to make as straight a road as is practicable and having the greatest bonus offered by the citizens of money, labor or other property. [Id.]

Art. 6741. [6950] [4760] Powers of court.—The commissioners court may make and enforce all reasonable and necessary rules and orders for the working and repairing of public roads, and to utilize the labor to be used and money expended thereon, not in conflict with the laws of this State. Said court may purchase or hire all necessary road machinery, tools or teams, and hire such labor as may be needed in addition to the labor required of citizens to build or repair the roads. [Id.]

Art. 6742. [6951] [4761] Donations.—Commissioners court or road commissioners may accept donations of money, lands, labor of men, teams or tools, or any other kind of property or material to aid in building roads in their counties, and may authorize any person to make a drain along any public road for the purpose of draining his land, and require the person draining his land to do such work under the direction of the road commissioner. [Id.]

3. ROAD SUPERINTENDENTS

Art. 6743. [6953–4–6] Appointment.—The commissioners court of any county subject to this law may appoint a competent person as road superintendent for such county, or one such superintendent in each commissioners precinct, as it shall determine by an order made at a regular term thereof. Such order shall be entered on the minutes of such court, and shall not be void for want of form, but a substantial compliance with the provisions of this subdivision shall be sufficient. Every road superintendent shall be a qualified voter in the county or precinct for which he is appointed, and shall hold his office for two years or until removed by the commissioners court for good cause. No county shall be under the operation of this law whose commissioners court does not appoint a road superintendent or superintendents. [Acts 1891, p. 149; G. L. vol. 10, p. 151.]

Art. 6744. [6955] [4765] Oath and bond.—Each road superintendent shall within twenty days after his appointment take and subscribe the oath required by the Constitution, and give bond payable to and to be approved by the county judge in such sum as the commissioners court may fix, conditioned that he will faithfully perform all the duties required of him by law or the commissioners court, and that he will pay out and disburse the funds subject to his control as the law provides or said court may direct. [Id.]

Art. 6745. [6957] [4767] Salary.—Each road superintendent shall receive such salary as the commissioners court may fix, to be paid on the order of said court at stated intervals. In counties of less than fifteen thousand inhabitants the county superintendent's salary shall never exceed one thousand dollars per annum, and in counties of more than fifteen thousand inhabitants it shall not exceed twelve hundred dollars per annum. The salary of precinct superintendents in counties of less than fifteen thousand inhabitants shall not exceed three hundred dollars per annum, and in counties of over fifteen thousand inhabitants, it shall never exceed four hundred dollars per annum. Said court may suspend the salary of any superintendent whose continued services are not needed. [Id.]

Art. 6746. [6958] [4768] Powers.—Subject to the orders of said court, each superintendent shall have general supervision over all public roads of his county or precinct, and shall superintend the laying out of new roads, the making, changing, working and repairing of roads, and the building of bridges except where otherwise contracted and over all county convicts worked on such roads, but this shall not prevent the commissioners court from employing a person to watch and manage such convicts and direct the work to be done by them. Said road superintendent shall take charge of and be responsible for the safe-keeping of all tools, machinery, implements and teams placed under his control by the commissioners court and execute his receipt therefor, which shall be filed with the county clerk. He shall be liable for the loss, injury or destruction of any such tools, teams, implements or machinery unless such loss occurred without his fault, and for the wrongful or improper expenditure of any road funds coming into his hands. On leaving office, he shall deliver all such money and property to such person as the commissioners court may direct. [Id.]

Art. 6747. [6959] [4769] Duties.—Each superintendent shall see that all roads and bridges in his county or precinct are kept in good repair, and he shall, under the direction of the commissioners court, inaugurate and carry out a system of working, grading and draining the public roads in his county or precinct. He shall act as supervisor of the roads in his county or precinct, and perform all the duties of supervisor devolving on the county commissioners in counties not adopting this law; and he shall do and perform such other service as said court may require. [Id.]

Art. 6748. [6960] [4770] Road districts.—When said court so directs, each superintendent shall divide his county or precinct into road districts of convenient size, to be approved by said court, and define the boundaries thereof and designate the same by number. Such boundaries shall be recorded in the road minutes of the commissioners court. He shall ascertain the names of all persons subject to road duty in each district and keep a record thereof and report the same to the commissioners court. [Id.]

Art. 6749. [6961] [4771] Road hands.—Each superintendent shall call out all persons liable to work on the public roads at any time and in such numbers as he deems necessary, under the provisions of subdivision 1 of this chapter. No person shall be compelled to work outside of his road district. He may contract with any such person to discharge his road duty by the use of a double team, but he shall not allow more than two dollars a day for any team, nor more than three dollars for any hand and double team. [Id.]

Art. 6750. [6962–71] Accounts and reports.—Each superintendent shall make a sworn report to said court at each regular term thereof showing an itemized account of all money belonging to the road fund he has received, from whom received, and what disposition he has made of the same, the condition of all roads and bridges in the county or precinct, and such other matters as the court may desire information upon, and shall make such other reports at such times as such court may require. Within ten days after collection of any money on account of the road or bridge fund he shall pay the same over to the coun-

ty treasurer, taking his receipt therefor, and shall keep an accurate account thereof. [Id.]

Art. 6751. [6963] [4773] Powers of court.—The commissioners court of any such county is authorized to purchase or hire all necessary road machinery, tools, implements, teams and labor required to grade, drain, or repair the roads of such county, and said court is authorized and empowered to make all reasonable and necessary rules, orders and regulations not in conflict with law for laying out, working and otherwise improving the public roads, and to utilize the labor and money expended thereon, and to enforce the same. [Id.]

Art. 6752. [6964–5] Extra road force.—Each road superintendent shall employ a sufficient force to enable him to do the necessary work in his county or precinct, as the case may be, having due regard for the condition of the county road and bridge fund and the quality and durability of the work to be done, and shall buy or hire such tools, teams, implements and machinery as the commissioners court may direct, and he shall work such roads in such manner as the commissioners court may direct, and such work shall at all times be subject to the general supervision of the commissioners court. He shall make the best contract possible for such labor or machinery, and in payment therefor he shall issue to the person entitled thereto his certificate showing the amount due, the purpose for which it was given, and upon approval by the commissioners court, a warrant shall issue therefor to the holder thereof on the county treasurer, to be paid by him out of the proper fund as other warrants. All such certificates shall be dated, numbered and signed by the road superintendent, and he and his sureties on his official bond shall be liable for all loss or damages caused by the wrongful issue of any such certificate or any extravagance in the amount thereof. [Id.]

Art. 6753. [6966] [4776] Contracts for road work.—The commissioners court may, when deemed best, construct, grade, gravel or otherwise improve any road or bridge by contract, and advertise for bids, and may reject any bid. The contract shall be awarded to the lowest responsible bidder, who shall enter into bond with good and sufficient sureties payable to and to be approved by the county judge, in such sum as said court may determine, conditioned for the faithful compliance with such contract. At the time of making such contract said court shall direct the county treasurer to pass the amount of money stipulated in such contract to a particular fund and to keep a separate account thereof, and the same shall be used for no other purpose and can only be paid out on the order of said court. [Id.]

Art. 6754. [6968] [4778] Donations.—The commissioners court may accept donations of money, land, teams, tools, or labor, or any other kind of property or material to aid in building or keeping up roads in the county, and said court or any road superintendent, with the concurrence of the commissioners, may authorize any person to make a drain along any public road, the same to be done under the direction of the road superintendent or such other person as said court may direct. [Id.]

Art. 6755. [6969] [4779] Overseers.—The commissioners court may retain the system of working hands under road overseers as provided by general laws, and place such overseers under control of a superintendent, under such lawful regulations as said court may prescribe, or may work with the overseers without any superintendent, as may be deemed best. [Id.]

Art. 6756. [6970] [4780] Road duty: exemptions.—The commissioners court of any county in which a special tax for the maintenance of the public roads is levied and collected, as provided in Section 9 of Article 8 of the Constitution, shall not be compelled to require persons subject to road duty to work on the roads, but in such counties the roads shall be worked wholly by taxation, or by taxation in connection with road service, as such court may deem best. [Id.]

Art. 6757. [6972] [4782] Injuring property.—Any person who shall knowingly or wilfully destroy, injure or misplace any bridge, culvert, drain, sewer, ditch, signboard or mile post or anything of like character, placed upon any road for the benefit of the same, shall be liable to the county and any person injured for all damages caused thereby. [Id.]

Art. 6758. [6973] [4783] Delinquent poll tax payers.—The superintendent shall obtain from the tax collector as soon after the first day of January of each year as practicable and before the first day of May thereafter, a full list of the delinquent poll tax payers of such county for the previous year, and those appearing on said list who are such delinquent poll tax payers shall be subject to road duty for three days during such year in addition to the five days required by law. All the provisions of law governing persons liable to road duty shall apply to persons subject to such duty hereunder. Any such person summoned to road work may satisfy such summons and be relieved from such duty by paying to the road superintendent three dollars, one-third of which shall go to the free school fund, and the balance to the road and bridge fund. [Id.]

Art. 6759. [6974] [4784] Definitions.—As used in this subdivision, "road" includes roadbed, ditches, drains, bridges, culverts, and every part of such road, and "work" and "working" includes the opening and laying out of new roads, widening, constructing, draining, repairing, and everything else that may be done in and about any road. [Id.]

Art. 6760. [6975] [4785] Law cumulative.—This law shall be cumulative of all other general laws on the subject of roads and bridges not in conflict herewith, and where not otherwise provided herein such general laws shall apply; but in case of conflict with other general laws the provisions of this chapter shall govern. [Id.]

Art. 6761. [6976] Counties exempt.—The counties of Angelina, Aransas, Blanco, Bowie, Calhoun, Camp, Cass, Cherokee, Comal, Dallas, Delta, DeWitt, Fayette, Franklin, Galveston, Gillespie, Grayson, Gregg, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Jack, Jackson, Jasper, Lamar, Lavaca, Limestone, McLennan, Milam, Montgomery, Morris, Nacogdoches, Newton, Panola, Parker, Rains, Red River, Refugio, Sabine, San Augustine, Shelby, Smith, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Washington, and Wood are exempted from the provisions of this subdivision; provided that the commissioners court of Dallas and Collin counties may accept and adopt the provisions of this law in lieu of the special acts for Dallas, Collin, Grayson and other counties, if in their judgment, its provisions are better suited to Dallas and Collin counties than the said special laws. [Acts 1911, p. 234.]

4. OPTIONAL ROAD LAW

Art. 6762. [6977] Ex-officio commissioners.—In all counties of this State, as shown by the preceding Federal census to contain as many as forty thousand inhabitants, the members of the commissioners court shall be ex-officio road commissioners of their respective precincts; and under the direction of the commissioners court shall have charge of the teams, tools and machinery belonging to the county and placed in their hands by said court. They shall superintend the laying out of new roads, the making or changing of roads and the building of bridges under rules adopted by said court. Each commissioner shall first execute a bond of one thousand dollars payable to and to be approved by the county judge for the use and benefit of the road and bridge fund, conditioned that he will perform all the duties required of him by law, or by the commissioners court, and that he will account for all money or other property belonging to

the county that may come into his possession. [Acts 1901, p. 277.]

Art. 6763. [6978] Powers.—The commissioners court shall adopt such system for working, laying out, draining and repairing the public roads as they deem best, and from time to time said court may change their plan or system of working. Said court may purchase such teams, tools and machinery as may be necessary for the working of public roads; and construct, grade, or otherwise improve any road or bridge by contract in the manner provided in the preceding subdivision of this chapter. Said court may employ any hands and teams on the public roads under such regulations and for such prices as they may deem best. [Id.]

Art. 6764. [6979] County convicts.—The commissioners court may provide the necessary houses, prisons, clothing, bedding, food, medicine, medical attention and superintendents and guards for the safe and humane keeping of county convicts. Said court may provide such reasonable regulations and punishment as may be necessary to require such convicts to perform good work, and may provide a reward not to exceed ten dollars, to be paid out of the road and bridge fund, for the recapture and delivery of any escaped convict to be paid to any person other than the guard or person in charge of such convict at the time of his escape. [Id.]

Art. 6765. [6980] Overseers.—Each commissioner shall have control of all road overseers in his precinct, and shall deliver to each of them such teams, tools and machinery necessary in working the roads therein as have been supplied to him by the commissioners court, taking a receipt therefor, specifying each item and giving its value, which receipt shall be a full answer for the liability of the road commissioner, and shall fix the liability of the road overseer. The commissioner or overseer who shall have been intrusted with any teams, tools or machinery belonging to the county, shall be liable for all damages that may occur to the same while in his possession caused by his negligence or want of due care of same. When the overseer has finished work on his road, he shall return to said road commissioner all teams, tools and machinery received from him and take up the receipt given therefor. [Id.]

Art. 6766. [6981] To direct work.—Each county commissioner, when acting as road commissioner, shall inform himself of the condition of the public roads in his precinct, and shall determine what character of work shall be done on said roads, and shall direct the manner of grading, draining or otherwise improving the same, which directions shall be followed and obeyed by all road overseers of his precinct. [Id.]

Art. 6767. [6982] Road hands.—The road commissioner may require each road overseer in his precinct to call out the hands in such numbers as may be sufficient to perform the work. All road hands in a particular road precinct shall as far as practicable be worked a uniform time. Each road overseer shall have full control of all road hands in his precinct. The overseer may, when he deems it expedient or when directed to do so by the road commissioner, and at the time of notifying any hand to work upon the road, also summon such hand as may be the owner of a team suitable for road work, to bring such team with him to be used in working upon the public roads during such time as the hand may be notified to work upon the public roads. Any hand for so doing shall be credited with and allowed two and one-half days upon his time for which he is liable for road duty for each day he may work in connection with and while furnishing such team, and one and one-half days for his team without such hand. [Id.]

Art. 6768. [6983] Road duty: exemptions.—A person liable for road duty who shall, on or before the first day of February of any year, pay the county treasurer the sum of three dollars, shall be exempt from road duty for such year beginning on the first day of February. The county treasurer shall receive and receipt for all money so paid him and place the same to the credit of the road and bridge fund, and he shall keep a separate account for each precinct from which it was received. The county treasurer shall, on the third day of February, or as soon thereafter as practicable, furnish to each road commissioner a list of all persons in their respective precincts that have paid said sums. [Id.]

Art. 6769. [6988] Law cumulative.—The provisions of this subdivision shall be cumulative of all general laws on the subject of roads, when not in conflict therewith, but in case of such conflict this law shall control. This law shall not be in operation in any county unless the commissioners court thereof in their judgment may deem it advisable, and then only by an order of said court when all the members are present, made at some regular term thereof, accepting the provisions hereof. Such order shall be entered on the minutes of said court, and shall not be void for want of form, but a substantial compliance of the provisions hereof shall be sufficient. [Id.]

Art. 6770. [6989] Certain counties excepted.—The provisions of this subdivision shall not apply to the counties of Fannin, Lamar, Grayson, Collin, Dallas, and Bell. [Id.; Acts 1927, 40th Leg., p. 222, ch. 150, § 1.]

5. DRAINAGE

Art. 6771. [6990] Powers.—For the purpose of this subdivision all public roads and highways that have been or may be laid out and established agreeably to law, and all roads and highways that have been opened to and used by the public for a period of ten years prior to March 25, 1897, and which have not been discontinued or closed to the use of the public agreeably to law, are hereby declared to be public roads.

The commissioners court at any regular session thereof may cause to be constructed and maintained, as hereinafter provided, ditches, drains and water courses, hereinafter called ditches on and within the exterior lines of all public roads situated within the county sufficient in capacity to carry off and into the natural waterways of the county, all surface water reasonably adjacent and liable to collect in said ditch from natural causes, or by means of the construction of private lateral ditches as hereinafter provided for, and shall also have power to construct, in connection with such ditch any side, lateral, spur or branch ditch or water course necessary to the accomplishment of the purposes of this law. No ditch shall be constructed along any public road unless at the same time an outlet is constructed to a natural waterway, sufficient in capacity to carry off all water that may collect therein. [Acts 1897, p. 66; G. L. vol. 10, p. 1120.]

Art. 6772. [6991] Culverts.—No road overseer, or any court, shall, on petition or otherwise, have the power to change the natural course of any branch, creek or stream, but such volume of water shall always enter and cross said road at its natural crossing; and overseers shall always, in draining their roads, provide a culvert sufficiently broad and tall to permit said stream to flow at high tide, from its intersection with said road, across its natural outflow at the opposite natural channel. [Id.]

Art. 6773. [6992] Petition.—A petition shall first be filed with the county clerk, signed by at least one hundred tax payers and voters of said county, setting forth the necessity and availability for such drainage system, and the number of miles of public roads within such county, as accurately as the same may be known, and as near as practicable the width and depth required for the ditches to be constructed along the first class roads of the county. Said petition shall also separately state the name and location of each natural waterway of such county crossed by each of the first class public roads of said county, and the distance of said natural waterways one from the other along said road. Said petition shall also state the names and residences, if known, of the

owners of the lands adjacent to each of said first class public roads, and within one mile thereof, and, if unknown, shall so state. [Id.]

Art. 6774. [6993] Notice of hearing.—Upon the filing of said petition, the clerk shall issue five notices in writing, containing a brief statement of the contents of said petition, commanding all persons interested to appear at the next regular term of the commissioners court and contest the same. One of said notices shall be posted at the courthouse door of such county, and one each at four other public places in such county, no two of which shall be in the same town or city, for twenty days prior to the first day of the next regular term of the commissioners court after the issuance thereof. Said notices shall be posted by the sheriff of the county, who shall make due returns to the clerk of said court of such notices, on or before the said first day of the term; and for such services the sheriff shall receive three dollars, and the clerk one dollar and fifty cents. [Id.]

Art. 6775. [6994—7000] Hearing.—At the time specified, said court shall hear and determine the petition in connection with all protests, remonstrances or objections thereto; and, if they find that the adoption of the drainage system provided for herein is necessary, advisable or for the public benefit, or for the best interest of the county, the court shall so order, and the order shall be entered at length upon the minutes of the court and become a part of the record thereof, and the same shall recite the time, character and manner of service of notice. If it appears therefrom that notice has been given as provided for herein, the said order shall be final. If said court refuses to adopt said drainage system, no other application therefor shall be heard for one year thereafter. [Id.]

Art. 6776. [6995] Survey.—At the same or any succeeding term of said court after the entry of such order, said court shall employ a competent surveyor, who shall be an engineer, to run a line of levels along the public roads of the county, and to measure the same from the beginning to the terminus of said road, and to measure the distance of each waterway crossed by said roads from the beginning point. Said survey and the drainage system shall be first applied to the first class roads of such county, and thereafter to roads of the second and third class. Nothing herein shall be construed to prohibit said court from constructing one or more ditches at the same time, as the financial condition of the county will permit. [Id.]

Art. 6777. [6996] Survey: report.—The surveyor shall, as soon as practicable after his employment, proceed to make such survey and system of levels, and shall cause stakes or monuments to be placed along said line at intervals of one hundred feet, with such intermediate stakes as may be necessary, numbered progressively, and shall establish permanent bench marks along said lines at intervals of one mile or less, as may be necessary, and shall establish by stake or monument of a different character and appearance from all other stakes or monuments, the highest point upon said road between each of the natural waterways crossed by the road; and said surveyor shall also measure and establish by suitable marks, the frontage of each tract of land abutting on said road; and if there be a natural waterway adjacent to the line of said road and ditch and the same is necessary to be utilized as an outlet for the water at any point on said ditch, the surveyor shall measure the distance to same, and run the line of levels thereto, at the nearest practicable point on said road and ditch. He shall prepare a map showing the location of said ditch or ditches, together with the position of stakes or monuments with numbers corresponding with those on the ground, and the position of bench marks, with their elevations referred to an assumed or previously determined datum. Said map shall also show the lines and boundaries of adjacent land, and the courses and distances of any adjacent watercourse, together with a profile of the line of the ditch which shall show the assumed datum and the grade line of the bottom of the same, and the elevation of each stake, monument, or other important feature along the line, such as top of banks, and bottom of all ditches or watercourses, and surface of water, top of rail and bottom of tie, foot of embankment, and bottom of borrow pits of all railroads. Said map, or the explanation accompanying same, shall in tabular form give the depth of cut, width at bottom and width at top, at the source, outlet, and at each one hundred feet stake or monument to said ditch; and shall show the total number of cubic yards of earth to be excavated and removed from said ditch between each natural waterway into which the water is to be conveyed, and an estimate of the cost of each portion of the said ditch or ditches lying between natural waterways crossed by said road, together with an estimate of total cost of the whole work. He shall also prepare detailed specifications for the execution of such project. Whenever in his opinion it may be advantageous to run said ditch underground through drainage tiles, he shall so state in said report, map and specifications, together with the statement of the locality of said underground ditch, and length thereof, and the dimensions or character of tiling or other material required therefor. As soon as completed, he shall file said survey, report, map, explanation and estimate with the county clerk. [Id.]

Art. 6778. [6997] Jury of view.—At any regular or called session of the commissioners court after the filing of said report, map, explanation, specifications and estimate, the court shall appoint a jury of five freeholders of the county who shall meet at a time and place to be specified by the said court in the order appointing them. The county clerk shall thereupon issue to said viewers a certified copy of the petition and order of the court, together with the original report, map, explanation, specifications and estimate of the surveyor; and, if said jury of viewers shall fail or refuse from any cause to perform the duties required under such appointment, or if their report, from any cause, should not be adopted, the court may at any succeeding term appoint another jury of viewers, whose appointment and duties shall be the same as required in the first instance. Said jury shall proceed at the time and place so specified, after giving notice to each abutting land owner, and owner of land within one mile of said ditch, as hereinafter provided, and after viewing the line of the proposed ditch and after hearing all protests, claims and remonstrances offered, they shall take the several partial estimates, and the surveyor's estimate of the total cost of the work as a basis, and shall have lines run parallel to the lines of said ditch at a distance of one mile on either side thereof, and shall set apart and apportion to each parcel of land abutting on said road and ditch, or within said parallel lines, and to each person, firm or corporation owning the same, its proportionate share of the one-half of the total cost of said ditch, taking into consideration the relative amount of benefit derived by said land from the construction thereof. They shall assess the amount of damages or compensation due to each land owner through whose land any spur, branch or lateral ditch, is or may be constructed under the order of appointment. Before such ditch is opened said sum shall be paid on the order of the commissioners court out of the county treasury from the fund set aside for the construction of said ditch. Said jury shall make a sworn report to the commissioners court as soon as practicable after their meeting, signed by at least three of said jury, and shall return with their report an accurate and full description of each tract of land assessed by them, with the number of acres and the name of the owners thereof, and the amount assessed against each tract and the owner thereof. The jury shall also return with their report the map, profile, explanation and estimates of the surveyor, together with a copy of the specifications; and the same shall be filed with the clerk, and shall become a public record and be preserved as such. The court shall act upon said report at the next regular or

called term, and approve or reject the same; provided that the court may appoint separate juries of view for each road and ditch to be constructed, if deemed desirable or advantageous to the public. [Id.]

Art. 6779. [6998] Oath of viewers.—Said jury shall first take the following oath: "I do solemnly swear that I am not directly interested in the construction of the proposed ditch, either as the owner or otherwise, of adjacent land lying within one mile thereof, and that I am not of kin to any person who is so interested. I further swear that I have no bias or prejudice toward any person directly interested in said ditch, and that I will assess the amount of expense due on and by all adjacent lands lying within one mile of said ditch, according to law, without fear, favor, hatred or hope of reward, to the best of my knowledge and ability. So help me God." [Id.]

Art. 6780. [6999] Notice of assessments.—The said jury shall issue a written notice to the land owner of each abutting tract along said ditch, and to each land owner, any part of whose land lies within one mile of the line of said ditch, or to his agent or attorney, of the time and place when they will assess the one-half of the expense incidental to the construction of the ditch or ditches specified in the order of appointment; which notice shall be served at least five days before the day named therein, by any person competent to testify; and a duplicate of said notice, together with the returns of said service, shall be returned and filed with the report of the jury of viewers. If such owner is a non-resident of the county, and has no resident, agent or attorney therein, the notice shall be given by publication in a newspaper published in the county, as notices are required to be given to non-resident defendants in actions in the district court; and said notices shall be complete after four weeks publication thereof prior to the date named for the meeting of the jury of view, and at any time thereafter the jury of viewers may proceed to assess the proportionate part of such expense against said non-resident land owner, and the land owned by him subject thereto. The cost of such publication shall be paid by the county, on an order of the commissioners court. [Id.]

Art. 6781. [7001] Claims.—Any person whose land may be affected by such ditch may appear before said viewers and freely express his opinion on all matters pertaining to the assessment of expense against him. The owner of any such lands may at the time stated in such notice, or previously thereto, present to the jury a written statement of any objections to, or dissatisfaction therewith, and any claim for damages which he may have sustained by reason of making said ditch or drain; and a failure to so make such objection or claim for damages or compensation shall be deemed a waiver of all claim or right thereto. All such claims or objections shall be returned to the commissioners court in connection with the report of the viewers. Any adjacent land owner may appear before and be heard by the commissioners court on his protest or remonstrance or claim against the action of said jury. [Id.]

Art. 6782. [7002] Appeals.—Any person, firm or corporation, aggrieved by any such assessments, may appeal from the final order of the commissioners court approving the report of said jury to any proper court within the county by giving notice of appeal in open court and having the same entered as a part of the judgment of the court, and by filing within ten days thereafter, a transcript of the proceeding had in the commissioners court, with the justice or clerk of the court to which appeal is taken, together with an appeal bond, with at least two good sureties, to be approved by such clerk or justice, in double the amount of the probable costs to accrue, conditioned that the appellant will prosecute his appeal to effect, and pay all costs that may be adjudged against him in said court. Appeals from an assessment of expense shall be heard upon this issue: whether the assessments made against the appellant for the construction of such ditch are in proportion to the benefits to be derived therefrom. Appeals from an assessment of compensation shall be heard upon this issue: whether the assessment of compensation made by the jury is adequate to the injury occasioned and to the value of the land. [Id.]

Art. 6783. [7003] Trial on appeal.—In the trial of all such appealed cases the burden of proof shall rest upon the appellant; and the court or jury trying the cause shall state the correct amount of expense chargeable to appellant, or the correct amount of compensation due to appellant as found by them, and the same shall be entered as the judgment of the court thereon, and from such judgment no further appeal shall be allowed to either party. If the verdict of the jury shall find the appellant chargeable with a less amount of expense, or that the appellant is entitled to a greater amount of compensation as damages, than was found by the jury of viewers, the costs shall be adjudged against the county; otherwise the same shall be adjudged against the appellant. Within five days after the entry of such judgment, the clerk or justice shall issue and return to the commissioners court a certified copy of such judgment, to be filed with the papers pertaining to such ditch, and the same shall be entered by the commissioners court as the judgment of said court, and thereafter the appellant shall be held for, or claim, the amount specified in said judgment. [Id.]

Art. 6784. [7004] Appropriation: construction.—The commissioners court of such county may, at the next term thereof, after the filing of the report of the jury of viewers and the entry of the order approving the same, if the report be approved, make an order setting aside such portion of the road and bridge fund, and such portion of the special road and bridge fund as may be necessary for the construction of the ditch described in the report of the jury of viewers, and shall also enter an order to the overseers of the road adjoining said ditch or to the supervisors of the road, or to the road commissioner, commanding him to construct such ditch in accordance with the specifications of the surveyor, which shall be turned over to him for his information, and that the earth taken therefrom shall be used in making a raised road adjoining said ditch. The court shall further order that all the road hands apportioned to said road, and that any teams, tools or materials, belonging to the county, and necessary to the execution of such work, be apportioned to said overseer, supervisor or commissioner, for the completion thereof; and shall authorize such overseer, supervisor or commissioner to employ such additional labor and teams, and to purchase tools and implements as may be necessary, to be paid for out of the road and bridge fund set aside therefor, on the order of the commissioners court, and said order shall also show the amount of compensation to be allowed to said overseer, supervisor, or road commissioner for his services. [Id.]

Art. 6785. [7005] Special overseer.—The commissioners court may employ some suitable and competent person, other than the overseer, road commissioner or supervisor, if to the best interest of the county, and such person shall have the same powers, duties and responsibilities as provided for overseers, road commissioners, and supervisors in the preceding article, and the court shall enter an order showing the amount of compensation to be paid him for his services. [Id.]

Art. 6786. [7006] List of assessments.—At the same or at any succeeding term after the entry of such order for the construction of the ditches and roadway, the commissioners court shall make and enter upon the minutes of the court a list showing the names of the owners, amounts due, the tract of land, original grantees, number of acres covered by each assessment of expense, as made and reported by the jury of viewers and approved by the court; and the county clerk shall issue a certificate against each person on said list showing the amount of each assessment and for what ditch or road the same was issued,

and the tract of land on which said amount was assessed. Such certificate shall be signed by the county judge in open court, and attested under the hand and seal of the county clerk, which fact shall be noted upon the minutes of said court. [Id.]

Art. 6787. [7007–8–9] Assessments: collection.—All assessments, sums, and charges by said viewers, or order of court, assessed against any land and the owner thereof, shall be a lien thereon, unless prohibited by the Constitution of this State. The county judge shall deliver the certificate to the county treasurer, taking his receipt therefor, which shall be filed with the papers and archives concerning such ditch; and the county treasurer shall collect the sums due on such certificates, and deposit the amount so collected to the credit of the road and bridge fund. If any person against whom any such certificate may be issued fails or refuses to pay the same to the county treasurer on demand therefor, such treasurer shall turn same over to the county attorney, who shall at once file suit thereon, and have the lien on said land foreclosed, or for a personal judgment as may be lawful. [Id.]

Art. 6788. [7010] Compensation.—The jury of viewers shall each receive three dollars per day for their services for each day so actually engaged; and said surveyor shall receive such sum as the commissioners court may allow. [Id.]

Art. 6789. [7011] Private ditch.—Any owner of lands or tracts of land abutting on said road or ditch, or the owner of any tract of land lying wholly or partially within one mile of such road or ditch, may construct at his own cost lateral drainage ditches and connect the same with such main ditch or ditches as shall be constructed under the provisions of this subdivision. [Id.]

CHAPTER FOUR

SPECIAL ROAD TAX

Art.
6790. Election.
6791. Election, conduct of.
6792. Result of election.
6793. No bonds to issue.

Article 6790. [7042] Election.—The commissioners court shall order an election upon presentation to it at any regular session of a petition signed by two hundred qualified voters and property tax payers of the county, or a petition of fifty persons so qualified in any political subdivision or defined district of the county, requesting said court to order an election to determine whether said court shall levy upon the property within said territory a road tax not to exceed fifteen cents on the one hundred dollars worth of property, under the provisions of the amendment of 1889 to the Constitution of the State of Texas, adopted in 1890. Said court may act on such petition without notice, and may make an order for such election, fixing the amount to be levied, not to exceed fifteen cents on the one hundred dollars, the election to take place at any time thereafter, not less than twenty nor more than ninety days from the date of making the order therefor. Upon a petition signed by a majority of the qualified tax paying voters of any portion of any county or of any political subdivision of any county, to said court requesting that such portion of said county or political subdivision shall be created as a defined district, the said court shall declare such territory a defined district and spread the order for same upon the minutes of said court; provided the petition aforesaid shall define by metes and bounds the territory desired to be so incorporated in such defined district. [Acts 1891, p. 51; G. L. vol. 10, p. 53; Acts 1913, p. 30.]

Art. 6791. [7043–4] Election, conduct of.—No formal notice need be given of such election, but the county judge shall issue his election proclamation; and the fact that such election is to be held shall be published in the newspapers of the county or political subdivision or defined district as fully as practicable. Tickets for the election shall be printed by the county and sent to each voting precinct by the county judge before the election opens, and as long before such time as practicable. The tickets printed and to be voted shall have written or printed on them the words: "For the Tax" and "Against the Tax," and those who favor the tax shall vote the ticket "For the Tax," and those who oppose the tax shall vote the ticket "Against the Tax." The expenses of the election shall be paid for by the county. An election ordered within ninety days of a general election shall be held on the day of the general election, and as elections on other questions are held, but otherwise the commissioners court shall order a special election which shall be conducted as other elections. The officers to conduct the same shall be appointed as in other cases. Only qualified voters who pay a property tax in the county or political subdivision or defined district shall be permitted to vote at such election.

Art. 6792. [7045] Result of election.—If at any such election a majority of the qualified voters voting thereat shall vote for such tax, it shall not be necessary to make further proclamation of that fact than to count the votes, as in other cases, and officially announce the result, and the commissioners court shall thereby be authorized and required to levy a road tax in the same manner that other taxes are levied in the amount specified in said order for such election, never to exceed fifteen cents on the one hundred dollars worth of property. Such levy shall be made at the same time other county taxes are levied, if such election is held in time therefor, but otherwise it may be made at any time before the rolls are made out. If at the election, the proposition for said tax shall carry, no petition for its repeal shall be granted in less than two years. But if it fail to carry, another petition may be granted in one year, but not sooner; and the order granting the second or any subsequent petition may fix a greater or less rate of levy, not to exceed fifteen cents on the one hundred dollars worth of property, and if no greater rate is levied for any one year the commissioners court may lower the rate for the next year without a petition therefor. An election to repeal the levy may be ordered and held as in other cases, but there must be satisfactory proof presented to said commissioners court that there is great dissatisfaction with such tax and that it is probable that a majority of the citizens of the county or political subdivision or defined district who are authorized to vote for said tax would vote for the repeal of the law, and unless such proof be made the petition to repeal shall be denied. [Id.]

Art. 6793. [7046] No bonds to issue.—No bonds shall ever be issued under the provisions of this chapter. [Id.]

CHAPTER FIVE

BRIDGES AND FERRIES

1. BRIDGES

Art.
6794. Commissioners court: powers.
6795. Toll bridges.
6796. Boundary bridge.
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2. FERRIES

6798. Right to maintain.
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For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

1. BRIDGES

Article 6794. [7014] [4792] Commissioners court: powers.—The commissioners court shall have full power and authority to cause all necessary bridges to be built and kept in repair in their respective counties, and to make necessary appropriations of money of the counties therefor. [Acts 1876, p. 51; G. L. vol. 8, p. 888.]

Art. 6795. [7015–16] Toll bridges.—When it is inexpedient for the road force to build bridges over large creeks or water courses, the commissioners court may contract with a proper person to build a toll bridge, for which the court shall lay the toll to be levied on all persons, cattle, horses, vehicles, etc., passing over the same, to be granted to the contractor for such a number of years as said court may think proper, not to exceed ten years; and the builder and his successors shall keep the bridge in constant repair during the term of the contract, and in default thereof shall forfeit all right and claim to the toll of such bridges. Before granting a license to any person to build a toll bridge, the commissioners' court shall take bond in the sum of one thousand dollars, with good and sufficient sureties, conditioned that the contractor shall build and keep in constant repair the bridges so contemplated for the term of years agreed upon. If any person shall sustain damages in consequence of the owner or keeper of any toll bridge not having complied with the conditions of his bond, the person so damaged may bring an action of debt against the owner or keeper of such toll bridge on his or their bond, in the county in which such license was granted, and recover judgment for the damages so sustained. [Acts 1836, p. 162; G. L. vol. 1, p. 1222.]

Art. 6796. [7017] [4795] Boundary bridge.—Whenever any stream constitutes either in whole or in part the boundary line between two or more counties, or when two or more counties are jointly interested in the construction of a bridge, whether over a stream or elsewhere, it shall be lawful for the counties so divided or interested to jointly erect bridges over such stream or over any other stream, upon such equitable terms as the commissioners court of each county interested may agree upon. [Acts 1871, p. 42; G. L. vol. 7, p. 44; P. D. 5883; Acts 1923, p. 273.]

Art. 6797. [7018] [4796] Tolls assessed to pay bonds.—Whenever any county bonds are issued to build bridges, the commissioners court may assess and collect tolls on said bridges sufficient to pay the interest on bonds so issued; and, if thought proper, sufficient to pay the interest and create a sinking fund with which to pay the principal at maturity, all of which shall be done under such rules as said court may prescribe. [Acts 1871, p. 42; P. D. 5884; G. L. vol. 7, p. 44.]

Art. 6797a. Interstate bridges.—Sec. 1. The State Highway Department of the State of Texas is hereby authorized and empowered to make an allotment of aid from any moneys available and to expend funds of said department to acquire, construct and maintain any bridge across or spanning any stream or portion of any stream constituting a boundary between the State of Texas and any other State in an amount not to exceed one half of the amount necessary to acquire, construct or maintain any such bridge, subject to the provisions hereof.

Sec. 2. That the provisions of this Act shall not apply in any instance wherein any such State adjoining the State of Texas has not enacted a statute making provisions for the acquirement, construction and maintenance of such bridge as between such State and the State of Texas and for the use of such bridge by the public without charge, nor where such bridge does not connect designated highways of the respective State and the State of Texas.

Sec. 3. That the State Highway Department of this State is authorized and empowered by the authority of the Governor to enter into negotiations with, and consummate contracts and agreements with such departments of adjoining States, and with the departments of our National Government, to carry out the purpose of this Act, and in all instances to look to the purpose of furnishing to the traveling public substantial bridges across our State boundaries for its use, without charge.

Sec. 4. That it is the purpose and intent of this Act to furnish to the traveling public, bridges across our State Boundary for its use without charge, and to elicit the co-operation of each State adjoining the State of Texas, in enacting a similar statute to this Act and to assent to the provisions of an Act of the Sixty-Fourth Congress of the United States, approved July 11, 1916, and being "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes"; and to ask an Act of the Congress of the United States whereby bridges spanning streams which are boundaries between the States and connecting designated highways of such States, may be condemned for public use and travel without charge and to provide the manner of such condemnation and to provide for and make appropriations for acquiring, constructing and the maintenance of such bridges. [Acts 1927, 40th Leg., p. 252, ch. 175.]

2. FERRIES

Art. 6798. [7021] [4797] Right to maintain.—Every person owning the land fronting upon any water course, navigable stream, lake or bay, shall be entitled to the privilege of keeping a public ferry over or across the same. If he owns the lands on both sides or banks he shall be entitled to the sole and exclusive right of ferriage at such place; if he owns the lands on one side only, he shall have the privilege of a public ferry from his own shore, with the privilege of landing his boat and passengers on the opposite shore, with the consent of the owner of the land on said shore. If such consent cannot be obtained, he may apply to the commissioners court for the establishment of a public road from said opposite shore; and said court shall act on such applications as in other cases. [Acts 1850, p. 67; G. L. vol. 3, p. 505; P. D. 3841.]

Art. 6799. [7022–24–29–39] License.—No person shall keep any such ferry for hire without first procuring a license from the commissioners court of the county in which such ferry is situated. If the applicant for such license shows that he is the lawful owner of such land as the ferry is sought to be established on, and satisfies the court that the public convenience will be promoted thereby, such court shall grant such license for one year from the date thereof, when the applicant makes bond and produces his receipt from the county treasurer for the payment of the annual license tax, which said court is authorized to assess and collect from each such ferryman, not to exceed one hundred dollars per annum. Such license shall be renewed annually. [Id.]

Art. 6800. [7028–37] Bond.—The owner of each ferry shall annually enter into bond payable to and to be approved by the county judge, in such sum as the commissioners court shall direct, not less than one thousand dollars, conditioned that such owner will at all times keep good and sufficient boats for the use of such ferry, and will also keep the banks on each side of the ferry in good repair and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank, and that said ferry shall be well attended at all times, and that he will comply with the laws relating to or governing ferries. Any person injured by breach of such bond may sue thereon in his own name. Such bond may be sued on until the whole penalty is recovered. [Acts 1850, p. 67; G. L. vol. 3, p. 506; P. D. 3846, 3847.]

Art. 6801. [7025–6–30] Rates of ferriage.—When a commissioners court shall establish a ferry, they shall state in their record the rate of toll or ferriage which may be demanded for ferrying such

property as is usually transported by ferries; and may, at their first term in each year, and shall at any other term, upon the petition of twenty respectable citizens of the county, revise, and, if deemed expedient, change the rates of toll or ferriage at all ferries in their county. The county clerk shall record all rates of ferriage and changes therein and deliver copies thereof, under his hand and official seal, to the owners of ferries affected. No change of rate shall take effect until the expiration of thirty days from the day on which said change may be made. [Acts 1854, p. 5, G. L. vol. 3, p. 1449.]

Art. 6802. [7041] [4817] Swimming cattle.—The commissioners court shall not authorize a charge of more than one cent per head on cattle or horses swimming rivers at licensed ferries, including the use of pens and boats necessary for the control of such stock. [Acts 1862, p. 31; G. L. vol. 5, p. 475.]

Art. 6803. [7031] [4807] To post rates.—Every owner of a ferry license shall keep a list of the rates of toll or ferriage established for his ferry posted up at either the ferry or ferry house, for the inspection of all persons. If any such owner shall fail or neglect to do so, he shall forfeit and pay the sum of four dollars for every such neglect, which may be recovered before any justice of the peace of the county on the complaint of any person, one-half of said amount to go to the county and the other half to the prosecutor. Every week that he shall so fail or neglect shall be deemed a separate offense for which he shall be liable as aforesaid. [Id.]

Art. 6804. [7034] [4810] Excessive rates.—If any licensed ferryman shall charge and receive from any person a higher rate of toll or ferriage than has been established for his ferry by the commissioners court, he shall forfeit and pay to such person five dollars for every such offense, to be recovered by action before any justice of the peace of the county in which the ferry is established, with costs of suit. [Id.]

Art. 6805. [7033] [4809] Duties of ferryman.—Every licensed ferryman shall at all times keep good and sufficient boats for the use of such ferry, and shall keep the banks on each side of the ferry in good repair, and so graded and leveled that the rise shall not exceed one foot in every seven feet from the water's edge to the top of the bank; and shall give ready and due attendance on all passengers, horses, wagons, and other property. [Id.]

Art. 6806. [7032] [4808] Delays.—If any person licensed to keep a ferry shall, on being tendered his lawful fees, refuse or neglect without a reasonable cause, to cross any person or property usually transported by such ferry, he shall, for every delay of thirty minutes, forfeit and pay to the person injured the sum of two dollars, to be recovered by action before any justice of the peace of the county in which the ferry is situated, with costs of suit. [Id.]

Art. 6807. [7027] [4803] Refusal to operate.—Where any owner of a ferry shall refuse to keep up the same at the rates allowed by the commissioners court, said court may issue a license to any one who will do so. In such case the party receiving such license shall be bound to take the ferry boat in use at said ferry, if desired by the owner, at such valuation as two respectable citizens of the vicinity, one to be chosen by each party, shall place upon it. [Id.]

Art. 6808. [7036] [4812] Recovery from sureties.—In all cases where a recovery shall be had against the ferryman for violation of this law, if after judgment, execution shall be returned that no estate of such ferryman can be found whereon to levy and make the money demanded in such execution, the justice to whom such execution is so returned shall cite the sureties of such ferryman to appear and show cause why judgment should not be rendered against them for the amount of the execution that is not satisfied, and unless such cause is shown, judgment shall be entered and execution issue therefor. [Id.]

Art. 6809. [7038] [4814] Temporary license.—One wishing to establish a public ferry between the regular terms of the commissioners court may obtain a temporary license for such ferry from the county judge, which shall authorize him to keep such ferry until the next regular term of the commissioners court for the county, and to charge and receive for such time such rates of toll or ferriage as are charged at other ferries on the same water course, stream, lake or bay. [Id.]

Art. 6810. [7040] [4816] County boundary stream.—If the banks of any water course, navigable stream, lake or bay lie in different counties, the application for a license to operate a ferry between such banks shall be made to the commissioners court of the county wherein the applicant resides or has his ferry house, and upon the granting of such license by the said court, the person so licensed shall have the right to own and operate a ferry upon the same terms and conditions and with the same rights and privileges as are provided by this subdivision for the owners or keepers of ferries operated exclusively in one county, and no county tax shall be assessed and collected upon a ferry by any other commissioners court than the one granting the license therefor. [Id.]

Art. 6811. [7023] [4799] State boundary stream.—When a water course, navigable stream, lake or bay forms a part of the boundary line of this State, if any tax or charge shall be assessed or collected by any such adjoining State for the privilege of a ferry landing on the shore or bank of such State from this State, then the same tax or charge may be assessed and collected by the commissioners court for the like privilege of landing on the bank or shore of this State. [Id.]

Art. 6812. [7035] [4811] Unlicensed ferry.—If any person shall keep any ferry over any water course, navigable stream, lake or bay, for which he shall charge any person any money or other valuable thing, without complying with the provisions of this subdivision in relation to paying the tax, obtaining license and entering into bond, he shall forfeit and pay to every other person having a licensed ferry on the same water course, stream, lake or bay in the same county five dollars for every person so ferried, and the same sum for every wagon or other article so transported which may be subject to a separate charge, to be sued for and recovered before any justice of the peace of the county, with costs of suit; and shall forfeit and pay a like sum in like manner to the county, which may be sued for and recovered in like manner by the county treasurer. [Id.]

TITLE 117

SALARIES

Art.
6813. Enumeration.
6813a. Members of Railroad Commission.
6814. Bureau of Labor Statistics.
6815. Eleemosynary institutions.
6816. Perquisites.
6817. Lieutenant Governor.
6818. Legislators.
6819. Reporter's salary.
6819a. Salaries of judges.
6820. Judicial district expenses.
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6825. Salary of women.
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Article 6813. Enumeration.—The following-named officers, deputies, clerks and assistants in the employ of the State Government shall receive for their

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services the annual salaries set opposite their respective names:

Adjutant General	$3600
Assistant Adjutant General	2000
Quartermaster	2000
Assistant Quartermaster General	2000
Agriculture—Commissioner of	3600
Chief Clerk Department of Agriculture	2000
Plant Pathologist Department of Agriculture	2100
Nursery Inspector Department of Agriculture	2000
Attorney General	2000
Banking Commissioner	6000
Deputy Banking Commissioner	5000
Comptroller	2500
Control—Each Member of Board of	5000
Governor	4000
Health Officer—State	4500
Assistant State Health Officer	2400
Chemist in Health Department	2100
Industrial Accident Board—Chairman	4500
Other Members of Industrial Accident Board	4000
Insurance—Commissioner of	4000
Each Other Member of State Insurance Commission	3600
Land Commissioner	2500
Librarian—State	2000
Live Stock Sanitary Commission—Chairman of	2500
Other Members of Live Stock Sanitary Commission	1250
Markets and Warehouses—Commissioner of	3600
Chief Clerk Markets and Warehouse Department	2000
Mining Inspector—State	2000
Pardons—Each Member of Board of	3000
Prosecuting Attorney—State	3600
Assistant State Prosecuting Attorney	3000
Public Instruction—State Superintendent of	4000
Railroad Commission—Each Member of	4000
Reclamation Engineer—State	3600
State—Secretary of	2000
Tax Commissioner—State	2500
Treasurer—State	2500
Vital Statistics—Registrar of	2400
Deputy Registrar of Vital Statistics	1500
Water Engineers—Each Member of Board of	3600
Game Commissioner—Acts 1925, p. 401	3600

The reference in this article to Acts 1925, p. 401 (ch. 172) is only to the salary of the Game Commissioner.

Art. 6813a. Members of Railroad Commission.—That from and after the passage of this Act the salary of the members of the Railroad Commission of Texas, in addition to the salary at present fixed by law, shall be two thousand ($2000.00) Dollars each per annum, one thousand ($1000.00) Dollars each per annum payable out of the fund created under Article 6032 of the Revised Civil Statutes of the State of Texas, and one thousand ($1000.00) Dollars each per annum payable out of the fund created under Article 6060 of the Revised Civil Statutes of the State of Texas. This sum shall be paid in monthly installments, as other state salaries are paid, and shall be appropriated by the Legislature, as provided by law. The sum of Three Thousand Six Hundred ($3600.00) Dollars is hereby appropriated proportionately out of the two respective funds to cover the increase in salary for the remainder of the fiscal year ending August 31, 1927. [Acts 1927, 40th Leg., p. 416, ch. 277, § 1.]

Art. 6814. [5243] Bureau of Labor Statistics.—The Commissioner of Labor Statistics shall receive a salary of $3,000.00 per annum; and he shall be allowed a secretary at a salary of $1,800.00 per annum; an assistant secretary and stenographer at a salary of $1,500.00 per annum; a chief deputy at a salary of $2,000.00 per annum; six deputies at a salary of $1,800.00 each per annum; a chief of the Woman's Division at a salary of $2,000.00 per annum; and two women inspectors at a salary of $1,800.00 each per annum. [Acts 1919, p. 164.]

Art. 6815. Eleemosynary institutions.—The superintendents of the Blind Institute, the Deaf and Dumb Institute, the Epileptic Colony, State Lunatic Asylum, Southwestern Insane Asylum, North Texas Hospital for the Insane, Northwest Texas Insane Asylum, Hospital for Negro Insane, Colony for the Feeble Minded, State Juvenile Training School, State Tuberculosis Sanatorium, and the Head Physician of the State Pasteur Institute shall each receive an annual salary of $2,500.00; the superintendents of the Confederate Home, the Confederate Woman's Home, Girls Training School, and the State Orphans' Home shall each receive an annual salary of $2,000.00; the superintendent of the Deaf, Dumb and Blind Institute for Colored Youths shall receive an annual salary of $1,800.00; and each of said superintendents or physicians shall receive provisions not exceeding in value $500.00 per year, and fuel, lights, water, laundry and housing for himself and immediate family. The secretary to the Superintendent of the Confederate Home shall receive an annual salary of $720.00. The storekeepers and accountants of the various eleemosynary institutions shall receive an annual salary to be fixed in the general appropriation bills from year to year, not to exceed $1,200.00. [Acts 1st C. S. 1917, p. 241; Acts 2nd C. S. 1919, p. 61.]

Art. 6816. Perquisites.—The Governor shall have the use and occupation of the Governor's Mansion, fixtures and furniture. The Attorney General shall receive such fees as may be prescribed by law, not to exceed $2,000.00 annually. The Commissioner of Insurance shall receive an annual salary of $500.00 for his services to the State Insurance Commission. Said Commissioner shall receive $50.00 per annum for services as a member of the State Insurance Commission for services as to workmens' compensation insurance, and each of the other members of said Commission shall receive $100.00 per annum for such services.

Art. 6817. [7055] Lieutenant Governor.—The Lieutenant Governor shall, while he acts as president of the Senate, receive for his services the same compensation and mileage allowed to members of the Senate, and no more; and when acting as Governor, the same compensation which the Governor would have received had he been employed in the duties of his office, and no more. [Const. art. 4, sec. 17; Acts 1907, p. 10.]

Art. 6818. [7056] Legislators.—Members of the Legislature shall receive as compensation for their services and attendance upon any session of the Legislature, five dollars per day for the first sixty days of each session, and after that, the sum of two dollars per day for the remainder of the session. They shall receive as mileage for attendance upon any regular or called session of the Legislature five dollars of [for] every twenty-five miles in going to and returning from Austin, to be computed by the nearest and most direct route of travel by land, regardless of railways or water routes. The Comptroller shall prepare and preserve a table of distances to each county seat, by which such mileage shall be computed and paid, the calculation to be based in each instance upon the distance to the county seat of the county in which such member resides. No member shall be entitled to mileage for any extra session of the Legislature that may be called within one day after the adjournment of any regular or called session. [Const. art. 3, sec. 24; Acts 1907, p. 10.]

Art. 6819. Reporter's salary.—That on and after the passage of this Act, the Reporter of the Court of Criminal Appeals of Texas shall receive as compensation for his services, the sum of Four Thousand Dollars per annum. [As amended Acts 1927, 40th Leg., p. 207, ch. 138, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 207, ch. 138, makes an appropriation for such increase compensation to the end of the present fiscal year.

Art. 6819a. Salaries of judges.—That from and after the passage of this Act, Judges of the Supreme Court and the Judges of the Court of Criminal Appeals of this State shall each be paid an annual salary of $8,000.00 payable in equal monthly installments; that the Judges of the Commission of Appeals, and of the Commission in aid of the Court of Criminal Appeals, and the Judges of the several courts of Civil Appeals of this State shall each be paid an annual salary of $7,000.00, payable in equal monthly installments; and that the Judges of the District Courts of this State shall each be paid an annual salary of $5,000.00 payable in equal monthly installments. [Acts 1927, 40th Leg., p. 411, ch. 273, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 411, ch. 273, repeals all conflicting laws and parts of laws.

Art. 6820. Judicial district expenses.—All district judges and district attorneys when engaged in the discharge of their official duties in any county in this State other than the county of their residence, shall be allowed their actual and necessary expenses while actually engaged in the discharge of such duties, not to exceed four dollars per day for hotel bills, and not to exceed four cents a mile when traveling by railroad, and not to exceed twenty cents a mile when traveling by private conveyance, in going to and returning from the place where such duties are discharged, traveling by the nearest practical route. Such officers shall also receive the actual and necessary postage, telegraph and telephone expenses incurred by them in the actual discharge of their duties. Such expenses shall be paid by the State upon the sworn and itemized account of each district judge or attorney entitled thereto, showing such expenses. In districts containing more than one county, such expenses shall never exceed in any one year $100.00 for each county in the district; provided that no district judge or attorney shall receive more than $600.00 in any one year under the provisions of this article. The account for said services shall be recorded in the official minutes of the district court of the county in which such judge or attorney resides, respectively. [Acts 1923, p. 50.]

Art. 6821. [7061–65] Special judges.—The salaries of special judges commissioned by the Governor in obedience to Section 11, Article 5, of the Constitution, or elected by the practicing lawyers or agreed upon by the parties as provided by law, shall be determined and paid as follows:

1. Each special judge shall receive the same pay as district judges for every day that he may be occupied in performing the duties of judge, and those commissioned by the Governor shall also receive the same pay as district judges for every day they may be necessarily occupied in going to and returning from the place where they may be required to hold court.

2. The amount of such salary shall be ascertained by dividing the salary allowed a district judge by three hundred and sixty-five, and then multiplying the quotient by the number of days actually served by the special judge.

3. A judge so commissioned shall, in order to obtain his salary, present his sworn account to the Comptroller, showing the number of days necessarily occupied in going to and returning from such place, accompanied by evidence that he was duly commissioned. Such account shall be certified to be correct by the judge of the district, or by the clerk of the court in which the services were performed.

4. A judge so elected or agreed upon shall be paid for his services on presentation to the Comptroller of the certificate of the clerk of the court in which such services were performed, showing the record of such election or appointment and services, and accompanied by the sworn account of such judge showing the number of days actually served by him as such special judge. [Acts 1876, p. 140.]

Art. 6822. Salaries of employés.—Any deputy, assistant clerk or any employé authorized by the laws of this State to be appointed by the head of any department of the State Government, shall, when his salary is not fixed or provided for by law, receive such salary as the Legislature shall from time to time appropriate.

Art. 6823. Traveling expenses.—The traveling and other necessary expenses incurred by the various officers, assistants, deputies, clerks and other employés in the various departments of the State Government, in the active discharge of their duties shall be such as are specifically fixed and appropriated by the Legislature in the general appropriation bills providing for the expenses of the State Government from year to year. [Acts 1st C. S. 1917, p. 241.]

Art. 6824. [7086] [4853] Change in salary.—The salaries of officers shall not be increased nor diminished during the term of office of the officers entitled thereto.

Art. 6825. Salary of women.—All women performing public service for this State shall be paid the same compensation for their service as is paid to men performing the same kind, grade and quantity of service, and there shall be no distinction in compensation on account of sex. [Acts 1919, p. 145.]

Art. 6826. [7087] [4854] How paid.—Annual salaries provided for in this title shall be paid monthly on warrants drawn by the Comptroller on the Treasurer.

Art. 6827. [7088] [4858] Evidence of qualification.—Upon demand of any citizen of this State, the Comptroller, Treasurer, commissioners courts, county treasurers and all other officers of this State or of any municipal division thereof, who are authorized or required by law to audit, pay or order to be paid, claims due from the State, or any county or municipal division thereof, to any person as salary, fees, compensation, perquisites or emoluments for official services rendered by such person as an officer thereof, before auditing, paying or ordering payment of such claim, shall require such claimant to produce the certificate of his election or appointment to such office directed by the laws of this State to be issued to such officer, or if his claim be founded upon the judgment or decree of a court of this State authorized by law to hear and determine the claims of persons to office, then a copy of the record of such judgment or decree certified under the hand and seal of the legal custodian of such record to be a true copy thereof. [Acts 1881, p. 7; G. L. vol. 9, p. 99.]

Art. 6828. [7089–90] Unauthorized officers.—It shall be unlawful for any officer or court of this State, or of any municipal division thereof, to allow, audit, pay or order to be paid, the claim of any person for salary, compensation, fees, perquisites, emoluments or services, as an officer of the State or of any municipal division thereof, except to such person as has been duly elected such officer by the qualified voters of this State, and whose election has been ascertained and certified or declared in the manner required by law, or who has been appointed such officer by the lawful appointing power under the Constitution and laws of this State, or who has been adjudged entitled thereto by a State court of competent jurisdiction, and has qualified as such officer in accordance with law. Any person not so elected, appointed and qualified shall not be entitled to receive pay for services as such officer, or to exercise the powers or jurisdiction of such officer. The official acts of any person claiming a right to exercise such power or jurisdiction contrary to the provisions of this law shall be void. [Id.]

Art. 6829. [7091] Other salaries.—The enumeration of various officers and their salaries in this title shall not operate to repeal or affect provisions of law found elsewhere in the statutes, or in any appropriation bill permitting or authorizing the existence, or prescribing the compensation of other officers.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

TITLE 118

SEAWALLS

Art.
6830. Commissioners' court may construct levees.
6831. May use streets and alleys.
6832. Eminent domain.
6833. Bonds: election.
6834. Election: Board of Inquiry.
6835. Result of election.
6836. Sinking fund.
6837. Cession of State lands.
6838. Custodians of funds.
6839. General laws to govern.

Article 6830. [5585] Commissioners' court may construct levees.—The county commissioners' court of all counties, and the municipal authorities of all cities, bordering on the coast of the Gulf of Mexico, shall have the power and are authorized from time to time to establish, locate, erect, construct, extend, protect, strengthen, maintain, and keep in repair and otherwise improve any sea wall or breakwater, levees, dikes, floodways and drainways, and to improve, maintain and beautify any boulevard erected in connection with such sea wall or breakwater, levees, dikes, floodways and drainways, and to incur indebtedness therefor, the payment of which may be provided for either with or without the issuance of bonds. And said commissioners' courts and municipal authorities shall also have power and are hereby authorized to levy taxes not to exceed in any one year fifty cents on the one hundred dollars of taxable values of said county or city for the payment of said indebtedness, provided that when the taxes are levied as herein provided for, will not pay off said indebtedness within five years, then the payment of said indebtedness shall be provided for by the issuance of bonds as hereinafter provided.

Art. 6831. [5586] May use streets and alleys.—Said county commissioners' court, and municipal authorities, shall have the power to impose such additional uses and burdens upon all streets, alleys, public highways and other public grounds as they may deem necessary for the location, erection, construction and maintenance of seawalls, breakwaters, levees, dikes, floodways and drainways, and to license, regulate or grant such additional uses of said seawalls, breakwaters, levees, dikes, floodways or drainways as will not impair their efficiency.

Art. 6832. [5587] Eminent domain.—Said counties and cities shall have the power to take and appropriate such land and other property as may be deemed necessary for the establishment, location, construction and maintenance of said seawalls, breakwaters, levees, dikes, floodways and drainways, and to define the area of land needed, and to acquire, take, hold and enjoy the same for the purposes aforesaid, and to that end shall have the right to exercise the right of eminent domain and to condemn lands for the uses and purposes aforesaid, in the manner and under the conditions provided by law in case of railroad corporations; provided, nevertheless, that said county commissioners' court, or said municipal authorities, shall be empowered to take the fee simple estate to the land condemned or acquired hereunder, whenever deemed necessary for the purposes of this Act; and, provided, further, that before exercising the power of eminent domain hereunder said county commissioners' court, or said municipal authorities, shall, by order, ordinance, or resolution duly entered on the minutes of the county commissioners' court, of the city council, define and describe lands needed, and determine whether an easement or fee simple estate in said land shall be taken. [Acts 1925, p. 270; 39th Leg., ch. 96, § 1.]

Art. 6833. [5588] Bonds: election.—Before issuing said bonds the commissioners court or governing body shall prescribe the amount to be issued, the rate of interest thereon, and provide for an election to vote for or against the proposed taxation. [Acts 1881, p. 7; G. L. vol. 9, p. 99; Acts 1st C. S. 1913, p. 3.]

Art. 6834. [5589] Election: Board of Inquiry.—For the purpose of ascertaining whether two-thirds of the tax-payers of said county or city have voted in favor of the proposed taxation, the county judge, the county assessor and the county collector, or three members of their own body selected by the governing body, as the case may be, are hereby constituted and appointed a Board of Inquiry. Whenever an election is ordered hereunder, said Board shall make out from the latest completed assessment rolls of said county, or city, a list of all taxpayers of said county or city, who are qualified voters and taxpayers entitled to vote hereunder; and from the date of the notice of said election until five days before the day thereof, said Board shall sit daily for the purpose of making additions to and corrections of said list. All tax payers who are qualified voters shall, during said period, have the right to apply to said Board and to have their names entered on said list. During the period of five days before said election, said Board shall make out under certificate and file with the county or city clerk as the case may be, a complete alphabetical list of all tax payers who are qualified voters at said election, and shall furnish printed copies of said list to the officers at each poll at said election. Said printed list furnished by said Board, and the returns and poll lists of said election, shall be returned to the county, or city clerk as the case may be. The ballots at said election shall contain the words, in substance, "In favor of the proposed tax," or "Against the proposed tax." Said election may be held on thirty days notice thereof at any time fixed by the commissioners court, or governing body. The proposition to levy a tax hereunder may be renewed until the power to tax hereunder shall have been exhausted. [Acts 1st C. S. 1901, p. 23.]

Art. 6835. [5590] Result of election.—The commissioners court or governing body as soon as practicable after said election shall meet and canvass the returns thereof, and with the aid of the returns and lists herein provided for, together with such other evidence as may be required, ascertain and record in its minutes, the total number of taxpayers of said county or city who were qualified voters on the day of said election, the number of said taxpayers voting in favor of and the number voting against the proposed taxation. If two-thirds of the taxpayers of said county or city, who are qualified voters therein, shall have voted in favor of the proposed tax, the said county or city shall thereupon have power to issue its bonds for the construction and maintenance of seawalls and breakwaters. [Id.]

Art. 6836. [5591] Sinking fund.—Whenever bonds are issued under this title, the commissioners court, or governing body, shall annually levy, assess and collect, in the mode prescribed by law for other county or municipal taxes, a tax on the real estate and personal or mixed property in said county or city, sufficient to pay the interest and provide a sinking fund of not less than two per cent of the principal of all of said bonds. All taxes collected by virtue hereof shall be held in trust by said county, or city, as a special and inviolable fund for the payment of interest and principal of said bonds; provided, that any surplus above the amount required to meet the annual interest may be invested for the benefit of the sinking fund in the bonds issued hereunder, or in the bonds of the State of Texas, or of the United States. [Id.]

Art. 6837. [5592] Cession of State lands.—The right to the use and control for the purposes prescribed by this title, of so much of the land and sea bottom below high tide as may be deemed necessary by said commissioners court or governing body, is hereby ceded by the State of Texas to counties and cities availing themselves of the provisions herein. [Id.]

Art. 6838. [5593] Custodians of funds.—All funds, revenues and moneys derived from the sale of

the bonds herein authorized and from the sale or rent of reclaimed or other lands acquired under this title and from additional uses of said works as herein authorized, shall be deposited with the county or city treasurer, as the case may be, and shall be held in trust exclusively for the construction and maintenance of seawalls and breakwaters, including the purchase of the right of way therefor. All moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of interest and principal of bonds to be issued under this title. [Id.]

Art. 6839. [5594] General laws to govern.—All bonds issued hereunder shall be issued under and subject to the provisions of the laws regulating bonds issued by cities and counties, in so far as said laws do not conflict with the provisions of this title. The provisions of this title shall apply to all cities bordering on the coast of the Gulf of Mexico, whether incorporated by general or special laws. [Id.]

TITLE 119

SEQUESTRATION

Art.
6840. When to be issued.
6841. Applicant's affidavit.
6842. Petition.
6843. Applicant's bond.
6844. On claim not due.
6845. Requisites of writ.
6846. Duty of officer.
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6849. Defendant may replevy.
6850. Bond for personal property.
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6854. When property has been injured.
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6856. Plaintiff may replevy.
6857. When bond forfeited.
6858. Defendant need not account for hire, etc.
6859. Perishable goods.
6860. Order of sale for.
6861. Return of order.
6862. Sale on debt not due.
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Article 6840. [7094] [4864] [4489] When to be issued.—Judges and clerks of the district and county courts, and justices of the peace shall, at the commencement or during the progress of any civil suit, before final judgment, have power to issue writs of sequestration, returnable to their respective courts. in the following cases:

1. When a married woman sues for divorce, and makes oath that she fears her husband will waste her separate property, or their common property, or the fruits or revenues produced by either, or that he will sell or otherwise dispose of the same so as to defraud her of her just rights, or remove the same out of the limits of the county during the pendency of the suit.

2. When a person sues for the title or possession of any personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy such property, or remove the same out of the limits of the county during the pendency of the suit.

3. When a person sues for the foreclosure of a mortgage or the enforcement of a lien upon personal property of any description, and makes oath that he fears the defendant or person in possession thereof will injure, ill-treat, waste or destroy, or remove the same out of the county during the pendency of the suit.

4. When any person sues for the title or possession of real property, and makes oath that he fears the defendant or person in possession thereof will make use of his possession to injure such property, or waste or convert to his own use the fruits or revenue produced by the same.

5. When any person sues for the title or possession of any property from which he has been ejected by force or violence, and makes oath of such fact.

6. When any person sues for the foreclosure of a mortgage or the enforcement of a lien on real estate, and makes oath that he fears the defendant or person in possession thereof will make use of such possession to injure such property, or waste or convert to his own use the timber, rents, fruits or revenue thereof.

7. When any person sues to try the title to any real property, or to remove cloud upon the title to such real property, or to foreclose a lien upon any such real property, or for a partition of real property and makes oath that the defendant or either of them in the event there be more than one defendant, is a nonresident of this State. [Acts 1866, p. 120; Acts 1887, p. 30; G. L. vol. 5, p. 1038; vol. 9, p. 828.]

Art. 6841. [7095] [4865] [4490] Applicant's affidavit.—No sequestration shall issue in any cause until the party applying therefor shall file an affidavit in writing stating:

1. That he is the owner of the property sued for, or some interest therein, specifying such interest, and is entitled to the possession thereof; or,

2. If the suit be to foreclose a mortgage or enforce a lien upon the property, the fact of the existence of such mortgage or lien, and that the same is just and unsatisfied, and the amount of the same still unsatisfied, and the date when due.

3. The property to be sequestered shall be described with such certainty that it may be identified and distinguished from property of a like kind, giving the value of each article of the property and the county in which the same is situated.

4. It shall set forth one or more of the causes named in the preceding article entitling him to the writ. [Acts 1848, p. 88; G. L. vol. 3, p. 88.]

Art. 6842. [7096] [4866] [4491] Petition.—If the suit be in the district or county court, no writ of sequestration shall issue, unless a petition shall have been first filed therein, as in other suits in said courts. [Acts 1866, p. 120; G. L. vol. 5, p. 1038.]

Art. 6843. [7097] [4867] [4492] Applicant's bond.—No writ of sequestration shall issue until the party applying therefor has filed with the officer authorized to issue such writ a bond payable to the defendant for a sum not less than double the value of the property to be sequestered as stated in his affidavit, with two or more good sureties to be approved by such officer, conditioned for the payment of all damages and costs in such suit in case it shall be decided that such sequestration was wrongfully issued. [Acts 1848, p. 89; G. L. vol. 3, p. 89.]

Art. 6844. [7098] [4868] [4493] On claim not due.—When any person has a mortgage or lien upon personal property of any description, and makes affidavit and gives bond as required by law, the writ of sequestration may issue, although the right of action upon such mortgage or lien has not accrued. The same proceeding shall be had thereon as in other cases of sequestration, except that no final judgment shall be rendered against the defendant until such right shall have accrued. [Id.]

Art. 6845. [7099] [4869] [4494] Requisites of writ.—The writ of sequestration shall be directed to the sheriff or any constable of any county wherein the property is alleged to be situated, which allegation may be made either in the original or in a supplemental affidavit. It shall command the sheriff or any constable to take into his possession the property, describing the same as it is described in the affidavit, if to be found in the county, and keep the same subject to the future order of the judge, court or justice of the peace who issued the writ, unless the same is replevied according to law. [Act Nov. 9, 1866, p. 121; G. L. vol. 5, p. 1039.]

Art. 6846. [7100] [4870] [4495] Duty of officer.—The officer executing a writ of sequestration, while he retains custody of the property sequestered, shall take care of and manage the same in a prudent manner, and if he confides the same to the custody

of other persons he shall be responsible for their acts in regard thereto, and shall be responsible to the party injured for any neglect or mismanagement by himself, or by those to whom he has confided the custody or management of the property. [Id.]

Art. 6847. [7101] [4871] [4496] Compensation of officer.—The officer retaining custody of property by virtue of a writ of sequestration shall be entitled to receive a just compensation and all reasonable charges therefor, to be determined by the judge or justice from whose court the writ issued, to be taxed in the bill of costs against the party cast in the suit, and collected in the same manner as the other costs in the case. [Id.]

Art. 6848. [7102] [4872] [4497] Officer expending money.—If the officer be compelled to expend any sum in the security, management or care of the property, he may retain possession of said property until said money be refunded by the party offering to replevy said property, his agent or attorney. [Id.]

Art. 6849. [7103] [4873] [4498] Defendant may replevy.—When property has been sequestered, the defendant shall have the right to retain possession of the same by delivering to the officer executing the writ, his bond payable to the plaintiff, with two or more good and sufficient sureties, to be approved by such officer, in an amount not less than double the value of the property to be replevied. [Act Feb. 8, 1860, p. 70; G. L. vol. 4, p. 1432.]

Art. 6850. [7104] [4874] [4499] Bond for personal property.—If the property to be replevied be personal property, the condition of the bond shall be that the defendant will not remove the same out of the county, or that he will not waste, illtreat, injure, destroy or sell or dispose of the same, according to the plaintiff's affidavit, and that he will have such property, with the value of the fruits, hire or revenue thereof, forthcoming to abide the decision of the court, or that he will pay the value thereof and of the fruits, hire or revenue of the same in case he shall be condemned so to do. [Id.]

Art. 6851. [7105] [4875] [4500] Bond for real estate.—If the property be real estate, the condition of such bond shall be that the defendant will not injure the property, and that he will pay the value of the rents of the same in case he shall be condemned so to do. [Id.]

Art. 6852. [7106] [4876] [4501] Return of bond.—The bond provided for in the three preceding articles shall be returned with the writ to the court from whence the writ issued. In case the suit is decided against the defendant, final judgment shall be entered against all the obligors in such bond, jointly and severally, for the value of the property replevied, and the value of the fruits, hire, revenue or rent thereof as the case may be; and the value of the property replevied shall be proven either as of the time of the execution of the replevy bond or as of the time of the trial, as the plaintiff may elect. [Id. Acts 1923, p. 28.]

Art. 6853. [7107] [4877] [4502] Defendant may discharge judgment.—Within ten days after the rendition of the judgment provided for in the preceding article, the defendant may deliver to the sheriff or constable of the court in which such judgment is rendered, the property or any part thereof, which the defendant has bound himself to have forthcoming to abide the decision of the court, and which property has not been injured or damaged since the replevy. Such officer shall receipt the defendant therefor, and shall immediately deliver such property to the plaintiff. Upon filing such receipt with the papers in the cause, the defendant shall be credited by the clerk or justice of the peace upon such judgment with the value of the property so returned.

Art. 6854. [7108] [4878] [4503] When property has been injured.—If the property tendered back by the defendant has been injured or damaged while in his possession under such bond, the sheriff or constable to whom the same is tendered shall not receive the same, unless the defendant at the same time tenders the reasonable amount of such injury or damage, to be judged of by such officer.

Art. 6855. [7109] [4879] [4504] Execution.—If the property be not returned and received, as provided in the two preceding articles, execution shall issue upon said judgment for the amount due thereon, as in other cases.

Art. 6856. [7110] [4880] [4505] Plaintiff may replevy.—When the defendant fails to replevy the property within ten days after the levy of the writ, if such defendant, his agent or attorney is present in the county, or within twenty days if absent from the county at the time of such levy, the officer having the property in possession shall deliver the same to the plaintiff upon his giving bond payable to the defendant in a sum of money not less than double the value of such property, with two or more good and sufficient sureties to be approved by such officer, conditioned for the forthcoming of such property, together with the fruits, hire, revenue and rent of the same, to abide the decision of the court. [Acts 1866, p. 122; G. L. vol. 5, p. 1040.]

Art. 6857. [7111] [4881] [4506] When bond forfeited.—The bond provided for in the preceding article shall be returned with the writ, and in case the suit is decided against the plaintiff, final judgment shall be entered against all the obligors in such bond, jointly and severally for the value of the property replevied, and for the value of the fruits, hire, revenue or rent thereof as the case may be; and the value of the property replevied shall be proven either as of the time of the execution of the replevy bond or as of the time of the trial, as the defendant may elect. The same rules which govern the discharge or enforcement of a judgment against the obligors in the defendant's replevy bond shall be applicable to and govern in case of a judgment against the obligors in the plaintiff's replevy bond. [Acts 1923, p. 28.]

Art. 6858. [7112] [4882] [4507] Defendant need not account for hire, etc.—In suits for the enforcement of a mortgage or lien upon property, the defendant, should he replevy the property, shall not be required to account for the fruits, hire, revenue or rent of the same, but this exemption shall not apply to the plaintiff in case he shall replevy the property.

Art. 6859. [7113] [4883] [4508] Perishable goods.—If after the expiration of ten days from the levy of a writ of sequestration the defendant has failed to replevy the same, if the plaintiff or defendant shall make affidavit in writing that the property levied upon, or any portion thereof, is likely to be wasted or destroyed or greatly depreciated in value by keeping, and if the officer having possession of such property shall certify to the truth of such affidavit, it shall be the duty of the judge or justice of the peace to whose court the writ is returnable, upon the presentation of such affidavit and certificate, either in term time or vacation, to order the sale of said property or so much thereof as is likely to be so wasted, destroyed or depreciated in value by keeping, but either party may replevy the property at any time before such sale. [Id.]

Art. 6860. [7114] [4884] [4509] Order of sale for.—The judge or justice granting the order provided for in the preceding article shall issue an order directed to the officer having such property in possession, commanding such officer to sell such property in the same manner as under execution. [Id.]

Art. 6861. [7115] [4885] [4510] Return of order.—The officer making such sale shall, within five days thereafter, return the order of sale to the court from whence the same issued, with his proceedings thereon, and shall, at the time of making such return, pay over to the clerk or justice of the peace the proceeds of such sale. [Id.]

Art. 6862. [7116] [4886] [4511] Sale on debt not due.—If the suit in which the sequestration issued be for a debt or demand not yet due, and the

property sequestered be likely to be wasted, destroyed or greatly depreciated in value by keeping, the judge or justice of the peace shall, under the regulations hereinbefore provided, order the same to be sold, giving credit on such sale until such debt or demand shall become due. [Acts 1848, p. 88; G. L. vol. 3, p. 88.]

Art. 6863. [7117] [4887] [4512] Purchaser's bond.—In the case of a sale as provided for in the preceding article, the purchaser of the property shall execute his bond, with two or more good and sufficient sureties, to be approved by the officer making the sale, and payable to such officer, in a sum not less than double the amount of the purchase money, conditioned that such purchaser shall pay such purchase money at the expiration of the time given. [Id.]

Art. 6864. [7118] [4888] [4513] Return of bond.—The bond provided for in the preceding article shall be returned by the officer taking the same to the clerk or justice of the peace from whose court the order of sale issued, with such order, and shall be filed among the papers in the cause; and, in case the purchaser does not pay the purchase money at the expiration of the time given, judgment shall be rendered against all the obligors in such bond for the amount of such purchase money, interest thereon and all costs incurred in the enforcement and collection of the same; and execution shall issue thereon in the name of the plaintiff in the suit, as in other cases, and the money when collected shall be paid to the clerk or justice of the peace to abide the final decision of the cause. [Id.]

TITLE 120

SHERIFFS AND CONSTABLES

1. SHERIFFS

Art.
6865. Election and term.
6866. Oath and bond.
6867. Neglect to qualify.
6868. Failure to give new bond.
6869. May appoint deputies, etc.
6870. Responsible for their acts.
6871. May employ guards.
6872. Control of court house.
6873. Shall execute process.
6874. Legislative process.
6875. Shall indorse all process.
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2. CONSTABLES

6878. Election.
6879. Appointment of deputies.
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6881. Bond and oath.
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6883. Neglect to qualify.
6884. Failure to give new bond.
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1. SHERIFFS

Article 6865. [7119] [4890] Election and term.—The qualified voters of each county at each general election shall elect one sheriff for a term of two years. [Const. art. 5, sec. 23; Acts 1846, p. 265; P. D. 5108; G. L. vol. 2, p. 1571.]

Art. 6866. [7121–2] Oath and bond.—Every person elected to the office of sheriff shall, before entering upon the duties of his office, give a bond with two or more good and sufficient sureties, to be approved by the commissioners court of his county, for such sum as may be directed by such court, not less than five thousand nor more than thirty thousand dollars payable to the Governor and his successors in office, conditioned that he will account for and pay over to the persons authorized by law to receive the same, all fines, forfeitures and penalties that he may collect for the use of the State or any county, and that he will well and truly execute and make due return of all process and precepts to him lawfully directed, and pay over all sums of money collected by him by virtue of any such process or precepts, to the persons to whom the same are due, or their lawful attorney, and that he will faithfully perform all such duties as may be required of him by law, and further conditioned that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and said sheriff shall also take and subscribe the official oath, which shall be indorsed on said bond, together with the certificate of the officer administering the same. When any person elected or appointed sheriff, in accordance with this article, shall have given bond and taken the official oath, he may enter at once upon the discharge of his duties, and his acts shall be as valid in law before receiving his commission as afterward. [Acts 1846, p. 265; G. L. vol. 2, p. 1571; Acts 1923, p. 23.]

Art. 6867. [7123] [4894] Neglect to qualify.—When any person elected sheriff shall neglect, refuse or fail from any cause whatever to give bond and take the official oath within twenty days after notice of his election, the office shall be deemed vacant. [Acts 1885, p. 89; G. L. vol. 9, p. 709.]

Art. 6868. [7124] [4895] Failure to give new bond.—Whenever any of the sureties of a sheriff shall die, remove permanently from the State, become insolvent, or be released from liability in accordance with law, or whenever the commissioners court shall deem the sheriff's bond insufficient, said court shall cite said sheriff to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation and give a new bond with good and sufficient security; and, if such sheriff shall neglect or refuse to appear and give such bond on or before the designated time he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers. [Acts 1836, p. 178; P. D. 5110; G. L. vol. 1, p. 1239.]

Art. 6869. [7125] [4896] May appoint deputies, etc.—Sheriffs shall have the power, by writing, to appoint one or more deputies for their respective counties, to continue in office during the pleasure of the sheriff, who shall have power and authority to perform all the acts and duties of their principals; and every person so appointed shall, before he enters upon the duties of his office, take and subscribe to the official oath, which shall be indorsed on his appointment, together with the certificate of the officer administering the same; and such appointment and oath shall be recorded in the office of the county clerk and deposited in said office. The number of deputies appointed by the sheriff of any one county shall be limited to not exceeding three in the justice precinct in which is located the county site of such county, and one in each justice precinct, and a list of these appointments shall be posted up in a conspicuous place in the clerk's office. An indictment for a felony of any deputy sheriff appointed shall operate a revocation of his appointment as such deputy sheriff. [Acts 1889, p. 23; G. L. vol. 9, p. 1051.]

Art. 6870. [7126] [4897] Responsible for their acts.—Sheriffs shall be responsible for the official acts of their deputies, and they shall have power to require from their deputies bond and security; and they shall have the same remedies against their deputies and sureties as any person can have against a sheriff and his sureties. [Acts 1846, p. 265; P. D. 5113, G. L. vol. 2, p. 1571.]

Art. 6871. [7127] [4898] May employ guards.—Whenever in any county it may become necessary to employ guards for the safe keeping of prisoners and the security of jails, the sheriff may, with the approval of the commissioners court, or in case of emergency, with the approval of the county judge, employ such number of guards as may be necessary; and his account therefor, duly itemized and sworn to, shall be allowed by said court and paid out of the county treasury. [Id.]

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Art. 6872. [6393] [3835] Control of courthouse.—Sheriffs shall have charge and control of the courthouses of their respective counties, subject to such regulations as the commissioners court may prescribe; and the official bonds shall extend to and include the faithful performance of their duties under this article.

Art. 6873. [7130] [4901] Shall execute process.—Each sheriff shall execute all process and precepts directed to him by legal authority, and make return thereof to the proper court, on or before the day to which the same is returnable; and any sheriff who shall fail so to do, or who shall make a false return on any process or precept shall, for every such offense, be liable to be fined by the court to which such process is returnable, as for a contempt, not exceeding one hundred dollars at the discretion of the court, which fine shall go to the county treasury; and such sheriff shall also be liable to the party injured for all damages he may sustain. [Id. P. D. 5115.]

Art. 6874. [7131] [4902] Legislative process.—Sheriffs are required also to execute all subpœnas and other process issued by the Speaker of the House of Representatives, or the President of the Senate, or chairman of a committee of either house of the Legislature, to them directed, under like pains and penalties as are incurred by failure to execute process issued by a court; and for such services they shall receive the fees prescribed by law for similar services in the courts, to be paid on the certificate of the authority issuing such process. [Acts 1873, p. 19; P. D. 7102a et seq. G. L. vol. 7, p. 471.]

Art. 6875. [7134] [4905] Shall indorse all process.—Every sheriff, deputy sheriff or constable shall indorse on all process and precepts coming to their hands the day and hour on which they received them, the manner in which they executed them, and state at what time and place the process was served as well as the distance actually traveled in serving such process, and shall sign their returns officially. [Acts 1846, p. 265; P. D. 5121; G. L. vol. 2, p. 1571; Acts 1903, p. 81.]

Art. 6876. [7135] [4906] May summon posse comitatus.—Whenever a sheriff or any of his deputies shall meet with resistance in the execution of any legal process, they shall call to their aid the power of the county; and any person who shall neglect or refuse to aid and assist any sheriff or deputy in the execution of any legal process when summoned so to do shall be deemed guilty of a contempt of court, and shall be fined not exceeding ten dollars, to be recovered on motion of such sheriff or his deputy and proof of such neglect or refusal before the court from which such process issued, three days' notice of such motion being given to the party accused, and in addition thereto may be punished criminally as prescribed in the Penal Code. [Id. sec. 10; P. D. 5117.]

Art. 6877. [7136] [4907] Unfinished business.—When any sheriff or any constable shall from any cause vacate his office, all unfinished business whatsoever in his hands shall be transferred to his successor, and be completed by him in the same manner as if commenced by himself. [Acts 1846, p. 265; P. D. 5122; G. L. vol. 2, p. 1571.]

2. CONSTABLES

Art. 6878. [7137] [4908] Election.—The qualified voters of each justice precinct at each general election shall elect a constable for such precinct for a term of two years. [Acts 1885, p. 17; G. L. vol. 9, p. 637; Acts 1897, p. 194; G. L. vol. 10, p. 1248.]

Art. 6879. [7138] Appointment of deputies.—When in any such justice precinct there may be a city of eight thousand or more inhabitants, such constable may appoint no more than two deputies who shall qualify as required of deputy sheriffs; and provided, that, when in any such justice precinct there may be a city of forty thousand or more inhabitants, such constable may appoint five deputies and no more, who shall qualify as required of deputies; provided, such constable shall first make written application to the commissioners court of his county, showing the necessity therefor, giving the name of each proposed appointee, for the approval and confirmation of said court. In justice precincts which do not contain a city of eight thousand or more inhabitants, said constable may appoint no more than one deputy who shall qualify in such manner as is required by law. [Id. Acts 1921, p. 131; Acts 1923, p. 348.]

Art. 6880. [7139] [4909] Unorganized counties.—The commissioners courts of the several counties to which unorganized counties are attached for judicial purposes shall have power to appoint a constable for each unorganized county attached to said counties for judicial purposes, in accordance with the laws governing such appointments in organized counties. [Acts 1879, p. 89; G. L. vol. 8, p. 1389.]

Art. 6881. [7141] [4911] Bond and oath.—Each person who may be elected to the office of constable shall, before entering upon the duties of the office, give a bond with two or more good and sufficient sureties to be approved by the commissioners court of his county, for such sum as said court may direct, not less than five hundred nor more than fifteen hundred dollars, conditioned for the faithful performance of all the duties required of him by law; and shall also take and subscribe the official oath, which shall be indorsed on said bond, together with the certificate of the officer administering the same. [Acts 1846, p. 261; G. L. vol. 2, p. 1567.]

Art. 6882. [7142] [4912] De facto constable.—Whenever any person is elected or appointed to the office of constable and has given bond and taken said oath, he may enter at once upon the duties of the office, and his acts shall be as valid in law as if he had been duly commissioned.

Art. 6883. [7143] [4913] Neglect to qualify.—Whenever any person elected constable shall neglect or refuse to give bond and take the official oath within twenty days after notice of his election, the office shall be deemed vacant. [Id.]

Art. 6884. [7144] [4914] Failure to give new bond.—Whenever any of the sureties of a constable shall die, remove permanently from the State or become insolvent, or are released from liability in accordance with law, or whenever the commissioners court shall deem the bond of any constable to be insufficient, said court shall cite said constable to appear at a time to be named in such citation, not less than ten nor more than thirty days after issuing such citation, and give a new bond, with good and sufficient security. If such constable shall neglect or refuse to appear and give such bond at the designated time, he shall cease to exercise the functions of his office, and shall be removed from office by the judge of the district court in the mode prescribed by law for the removal of county officers. [Id. sec. 3; P. D. 982.]

Art. 6885. [7145] [4915] Duties in general.—Each constable shall execute and return according to law all process, warrants and precepts to him directed and delivered by any lawful officer, attend upon all justice courts held in his precinct and perform all such other duties as may be required of him by law. [Id. P. D. 987.]

Art. 6886. [7146] [4916] May summon posse.—When any constable shall meet with resistance in the execution of any lawful process, or in the arrest of offenders, he may call to his aid any citizen of the county who may be convenient; and any person who shall fail or refuse to obey such call may be fined as for a contempt by any justice of the peace, in a sum not exceeding ten dollars, on motion of such constable, three days' notice thereof having been given to the party accused. [Id. P. D. 986.]

Art. 6887. [7147] [4917] Failure to execute or return process.—If any constable shall fail or refuse to execute and return, according to law, any process, warrant, or precept to him lawfully

directed and delivered, he shall be fined for a contempt, on motion of the party injured, before the court from which such process, warrant or precept issued, not less than ten nor more than one hundred dollars, with costs; which fine shall be for the benefit of the party injured. Said constable shall have ten days' notice of such motion. [Id. P. D. 990.]

Art. 6888. [7148] [4918] Failure to pay.—If any constable shall receive from any person any bonds, bills, notes or accounts for collection, and shall give his receipt therefor, in his official capacity, and shall fail to pay to such person, on demand, any amount he may have collected on the same, such constable and his sureties shall be responsible on his official bond for all such amounts as he may have collected on such bonds, bills, notes or accounts not paid over. [Id. P. D. 991.]

Art. 6889. [7149] [4919] Jurisdiction.—Every constable may execute any process, civil or criminal, throughout his county and elsewhere, as may be provided for in the Code of Criminal Procedure, or other law. [Id. sec. 14; P. D. 993.]

TITLE 121

STOCK LAWS

Chap.

1. Marks and brands.
2. Protection of livestock.
3. Slaughter and shipment.
4. Estrays.
5. Stock law and limited range.
6. Stock running at large.
7. Protection of stockraisers.
8. Live Stock Sanitary Commission.

CHAPTER ONE

MARKS AND BRANDS

Art.

6890. Owner's mark and brand.
6891. County brands.
6892. Owner may use county brand.
6893. Stock removed from county.
6894. To furnish lists.
6895. Brands of minors.
6896. When branded.
6897. Disputes settled.
6898. Marks and brands recorded.
6899. Unrecorded brands as evidence.

Article 6890. [7151] [4921] Owner's mark and brand.—Every person who has cattle, hogs, sheep or goats shall have an ear mark and brand differing from the ear mark and brand of his neighbors, which ear mark and brand shall be recorded by the county clerk of the county where such animals shall be. No person shall use more than one brand, but may record his brand in as many counties as he deems necessary. [Acts 1848, p. 156; P. D. 4655; G. L. vol. 3, p. 156.]

Art. 6891. [7152] [4922] County brands.—Each county shall have a brand for horses and cattle, said brand to be known and designated as the "county brand." The county brand of each county shall be as follows:

County.	Brand.	County.	Brand.
Anderson	A.A.	Borden	B.D.
Andrews	A.N.	Bosque	B.
Angelina	A.L.	Bowie	B.O.
Aransas	A.R.	Brazoria	B.D.
Archer	A.H.	Brazos	B.Z.
Armstrong	A.M.	Briscoe	B.H.
Atascosa	A.T.	Brown	B.W.
Austin	A.U.	Burleson	B.U.
Bandera	B.A.	Burnet	B.T.
Bastrop	B.S.	Caldwell	C.A.
Bailey	B.I.	Calhoun	C.H.
Baylor	B.R.	Callahan	C.L.
Bee	B.E.	Cameron	C.M.
Bell	B.L.	Camp	C.P.
Bexar	B.X.	Carson	C.R.
Blanco	B.N.	Cass	C.S.
Castro	C.T.	Johnson	J.H.
Chambers	C.B.	Jones	J.O.
Cherokee	C.K.	Karnes	K.
Childress	C.D.	Kaufman	K.A.
Clay	C.Y.	Kendall	K.E.
Cochran	C.C.	Kent	K.T.
Coleman	C.E.	Kerr	K.R.
Collin	C.I.	Kimble	K.I.
Collingsworth	C.W.	King	K.N.
Colorado	C.N.	Kinney	K.O.
Comal	C.O.	Knox	K.X.
Comanche	C.J.	Lamar	L.A.
Concho	C.V.	Lamb	L.M.
Cooke	C.U.	Lampasas	L.P.
Coryell	C.X.	La Salle	L.S.
Cottle	C.2.	Lavaca	L.C.
Crockett	C.3.	Lee	L.E.
Crosby	C.4.	Leon	L.4.
Dallam	D.L.	Liberty	L.I.
Dallas	D.A.	Limestone	L.T.
Dawson	D.N.	Lipscomb	L.B.
Deaf Smith	D.S.	Live Oak	L.O.
Delta	D.T.	Llano	L.
Denton	D.O.	Lubbock	L.K.
DeWitt	D.E.	Lynn	L.N.
Dickens	D.I.	Madison	M.1.
Dimmit	D.M.	Marion	M.2.
Donley	D.N.	Martin	M.4.
Duval	D.D.	Mason	M.N.
Eastland	E.A.	Matagorda	M.R.
Edwards	E.D.	Maverick	M.K.
Ellis	E.L.	McCulloch	M.C.
El Paso	E.P.	McLennan	M.L.
Erath	E.R.	McMullen	M.
Falls	F.A.	Medina	M.A.
Fannin	F.N.	Menard	M.D.
Fayette	F.E.	Milam	M.I.
Fisher	F.I.	Mitchell	M.H.
Floyd	F.L.	Montague	M.E.
Fort Bend	F.B.	Montgomery	M.M.
Franklin	F.K.	Moore	M.O.
Freestone	F.R.	Morris	M.S.
Frio	F.O.	Motley	M.T.
Galveston	G.A.	Nacogdoches	N.S.
Gaines	G.I.	Navarro	N.A.
Garza	G.R.	Newton	N.
Gillespie	G.L.	Nolan	N.O.
Goliad	G.D.	Nueces	N.E.
Gonzales	G.O.	Ochiltree	O.H.
Gray	G.Y.	Oldham	O.O.
Grayson	G.N.	Orange	O.
Greer	G.	Palo Pinto	P.P.
Gregg	G.G.	Panola	P.A.
Grimes	G.M.	Parmer	P.R.
Guadalupe	G.E.	Parker	P.K.
Hale	H.	Pecos	P.
Hall	H.A.	Polk	P.K.
Hamilton	H.I.	Potter	P.O.
Hansford	H.F.	Presidio	P.R.
Hardeman	H.N.	Rains	R.
Hardin	H.D.	Randall	R.A.
Harris	H.S.	Red River	R.R.
Harrison	H.X.	Refugio	R.E.
Hartley	H.T.	Roberts	R.S.
Haskell	H.6.	Robertson	R.O.
Hays	H.Y.	Rockwall	R.L.
Hemphill	H.M.	Runnels	R.N.
Henderson	H.E.	Rusk	R.K.
Hidalgo	H.G.	Sabine	S.B.
Hill	H.L.	San Augustine	S.A.
Hockley	H.K.	San Jacinto	S.J.
Hood	H.O.	San Patricio	S.P.
Hopkins	H.P.	San Saba	S.S.
Howard	H.R.	Scurry	S.
Houston	H.4.	Shackleford	S.D.
Hunt	H.U.	Shelby	S.H.
Hutchinson	H.H.	Sherman	S.N.
Jack	J.	Smith	S.T.
Jackson	J.A.	Somervell	S.O.
Jasper	J.P.	Starr	S.R.
Jefferson	J.E.	Stephens	S.E.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

County.	Brand.	County.	Brand.
Stonewall	S.L.	Waller	W.
Swisher	S.I.	Washington	W.N.
Tarrant	T.A.	Webb	W.E.
Taylor	T.E.	Wharton	W.T.
Terry	T.	Wheeler	W.H.
Throckmorton	T.H.	Wichita	W.A.
Titus	T.I.	Wilbarger	W.R.
Tom Green	T.G.	Williamson	W.I.
Travis	T.S.	Wilson	W.L.
Trinity	T.R.	Wise	W.S.
Tyler	T.L.	Wood	W.O.
Upshur	U.P.	Yoakum	Y.
Uvalde	U.	Young	Y.O.
Van Zandt	V.	Zapata	X.
Victoria	V.I.	Zavalla	X.X.
Walker	W.K.		

[Acts 1883, p. 76; G. L. vol. 9, p. 382.]

Art. 6892. [7153] [4923] Owner may use county brand.—The owners of all horses and cattle, in addition to their private brand, may place said county brand upon the neck of all horses and cattle owned by them. [Id.]

Art. 6893. [7154] [4924] Stock removed from county.—Whenever any horses or cattle branded with the county brand are removed to another county, the owners of such stock may counterbrand with said county brand, and a bar under said county brand shall be used and known as the "County brand," and when so counterbranded the brand of the county in which said stock may be newly located may be placed on said stock. [Id.]

Art. 6894. [7155] [4925] To furnish lists.—The Secretary of State shall furnish a printed list of the county brands to the county clerks of this State, who shall securely post the same in their office. [Id.]

Art. 6895. [7156] [4926] Brands of minors.—Minors owning cattle or hogs, separate from that of the father or guardian, may have a brand and mark, which shall be recorded. The father or guardian shall be responsible for the proper use of such mark and brand of any such minor. [Acts 1848, p. 156; P. D. 4660; G. L. vol. 3, p. 156.]

Art. 6896. [7157] [4927] When branded.—Cattle shall be marked with the ear mark or branded with the brand of the owner on or before they are twelve months old; hogs, sheep, and goats shall be marked with the ear mark of the owner on or before they are six months old. [Id. P. D. 4656.]

Art. 6897. [7158] [4928] Disputes settled.—If any dispute shall arise about any ear mark or brand, it shall be decided by reference to the book of marks and brands kept by the county clerk, and the ear mark and brand of the oldest date shall have the preference. [Id. P. D. 4657.]

Art. 6898. [7159] [4929] Marks and brands recorded.—The clerks of the county courts in their respective counties shall keep a well bound book, in which they shall record the marks and brands of each individual who may apply to them for that purpose, noting in every instance the date on which the brand or mark is recorded. [Id. P. D. 4658.]

Art. 6899. [7160] [4930] Unrecorded brands as evidence.—No brands, except such as are recorded as provided in this chapter, shall be recognized in law as any evidence of the ownership of the cattle, horses, or mules, upon which the same may be used; provided, that this shall not apply in criminal cases. [Acts 1848, p. 156; P. D. 4659; G. L. vol. 3, p. 156; Acts 1913, p. 129.]

CHAPTER TWO

PROTECTION OF LIVE STOCK

Art.
6900. Glanders.
6901. Report as to disease.
6902. Condemned animals killed.

Article 6900. [7161] [4931] Glanders.—If it comes to the knowledge of any county judge, by affidavit of any credible citizen of his county, stating that affiant has reason to believe and does believe that glanders or farcy exists among any horses, mules, jacks or jennets in said county, naming owner or owners of such animal or animals so infected, if known, if unknown, so stating, such county judge, upon the filing of said affidavit, shall immediately appoint three disinterested and intelligent citizens of said county, who shall carefully and minutely examine said animal or animals so reported to be diseased with glanders or farcy; said three citizens, before entering upon the duties required of them by this chapter, shall take an oath that they will discharge their duties as prescribed by this chapter in a fair and impartial manner. [Acts 1st C. S. 1892, p. 11; G. L. vol. 10, p. 375.]

Art. 6901. [7162] [4932] Report as to disease.—If, after carefully and minutely examining each animal so reported to be affected with glanders or farcy, said three citizens shall be of the opinion that said animal is diseased with glanders or farcy, they shall condemn the same; and appraise each animal so condemned, at their just and full value at the time of such examination and condemnation, forthwith reporting their action in writing to the county judge, stating the number of animals condemned, the owner of same if known, and if unknown so stating it, with the appraised value of same. If the said citizens have any reasonable doubt as to the diseased animals being affected with glanders or farcy, before condemning as above provided for, they shall require the owner or owners to have said diseased animals separated from contact with all other animals subject to contagion, for a reasonable time. When they are fully satisfied that the disease is glanders or farcy, then they shall proceed to condemn and destroy said animals as provided for in this article. [Id.]

Art. 6902. [7163–4] Condemned animals killed.—The county judge upon the receipt of said report shall issue his order to the sheriff or any constable of his county commanding him to seize said diseased animals and take same to some secluded place and kill them and bury or burn the carcass. After said animals are killed, the owner thereof may present his claim to the commissioners court of the county where the same were killed, for the value, if any, of each animal at the time the same was killed. The amount of such claim, or so much thereof as may be allowed by said court, shall be paid out of the general revenue of the county, as other claims against such county. The sheriff or constable killing, burying or burning said animal or animals shall be paid by the county such sum as the commissioners court thereof may determine the service worth. [Acts 1899, p. 303.]

CHAPTER THREE

SLAUGHTER AND SHIPMENT

Art.
6903. Bill of sale.
6904. Butchers to report.
6905. Recorded before driving.
6906. Sworn descriptive lists.
6907. Register of cattle.
6908. Bond of butcher.
6909. Inspector's record.
6910. Counties exempt.

Article 6903. [7170–1–2] Bill of sale.—Upon the sale or transfer of any horse, mare, mule, gelding, colt, jack, jennet, cow, calf, ox, or beef steer by any person in this State, the actual delivery of such animals shall be accompanied by a written transfer to the purchaser from the vendor, or party selling, giving the number, marks and brands of each animal sold and delivered. Upon the trial of the right of property in any such animal, the possession of such animal without said written transfer shall be prima facie illegal. Persons may dispose of stock animals of any said kind as they run in the range, by the sale and delivery of the brands and marks; and in every such sale the

purchaser, in order to acquire title thereto, shall have his conveyance or bill of sale of such stock, recorded in the county clerk's office, in a book to be kept by him for that purpose; and such sale or transfer shall be noted on the record of original marks and brands in the name of the vendee or purchaser. [Acts 1866, p. 223; G. L. vol. 5, p. 1141.]

Art. 6904. [7173] [4943] Butchers to report.—Each person in this State engaged in the slaughter and sale of animals for market shall make a regular sworn report to each regular meeting of the commissioners court of the county, giving the number, color, age, marks and brands of every animal slaughtered by him since the last term of said court, to be filed with and kept on file by the county clerk. Each said report shall be accompanied by the bill of sale or written conveyance to the butcher for every animal that he has purchased for slaughter. If any of the animals slaughtered have been raised by himself it shall be so stated in the report. Said report so made to said court may in the discretion of said clerk be destroyed after a period of five years. [Acts 1907, p. 239.]

Art. 6905. [7175] [4944] Recorded before driving.—Any person who shall purchase animals of any class named in Article 6903, for the purpose of driving to market out of the county where purchased, or out of the State, shall, before moving the animals out of the county where purchased, deposit with the county clerk for record, a bill of sale and correct list of the number, marks, brands and kind of animals, signed and acknowledged by each vendor, which, together with the address of the vendee, shall be recorded in the book kept by the clerk for that purpose, and with his certificate of record under seal shall be returned to the purchaser upon payment of the recording fees. [Acts 1866, p. 223; G. L. vol. 5, p. 1141.]

Art. 6906. [7176] [4945] Sworn descriptive lists.—Persons intending to drive their own stock raised by themselves to market out of the county where raised, or out of the State, shall, before so driving, deposit with the county clerk for record a correct list of such animals, with a particular description of their marks and brands, verified by their own affidavit; which list said clerk shall record and certify and return to the owner. [Id.]

Art. 6907. [7177–8] Register of cattle.—The commanders or agents of all vessels and the agents of all railroads on which cattle are exported from the State, and the proprietors or agents of all establishments for the slaughter of cattle within the State, shall keep a register of all cattle shipped or slaughtered, with the marks, brands and general description of such animals, and the names of the persons shipping or selling the same, the dates of their shipments or purchase, and the county from which they were driven. Such register on the first day of each month shall be deposited with the county clerk of the county where the cattle were shipped or slaughtered. Said clerk shall at once copy the same in a well bound book to be kept for that purpose, and return the original to the party depositing it. [Acts 1850, p. 27; G. L. vol. 3, p. 809; P. D. 460.]

Art. 6908. [7179] [4948] Bond of butcher.—Every person, before he shall set up and carry on the trade or occupation of a butcher or slaughterer of cattle in this State, shall file a bond to be approved by the county judge of the county in which he desires to carry on the business, in a sum not less than two hundred nor more than one thousand dollars, payable to the State of Texas, conditioned that he shall keep a true and faithful record in a book kept for that purpose of all cattle purchased or slaughtered by him, with a description of the animal including marks, brands, age, color, weight, and from whom purchased and the date thereof; that he will have the hide and ear of such animal inspected by the inspector, or some magistrate of the county, within twenty days after it is slaughtered, and that he will not purchase any cattle that has been slaughtered by another unless the hide and ears of such slaughtered animal accompany said animal offered for sale, and that he will not purchase any animal that has been slaughtered by another when the ear marks, or brands on the hide accompanying such animal, when offered for sale, have been changed, mutilated or destroyed. Any butcher or slaughterer of cattle who shall violate any condition of said bond may be sued upon his bond at the instance of the county or district attorney of the county where such bond is given. All sums recovered by suits upon said bonds shall be paid into the county treasury and become a part of the available school fund of such county. [Acts 1893, p. 38; G. L. vol. 10, p. 468.]

Art. 6909. [7183] [4952] Inspector's record.—The inspector or magistrate shall keep a record of the marks, brands, color and general description of such hides, and for whom inspected, with the date of inspection, and return a copy of the same to the county clerk of the county in which it was inspected within thirty days after said inspection. Said inspector or magistrate shall be entitled to receive ten cents for each hide so inspected, to be paid by the party having the hide inspected. [Id.]

Art. 6910. [7184] [4953] Counties exempt.—The provisions of the two preceding articles shall not apply to the following counties: Anderson, Angelina, Austin, Bandera, Bastrop, Bell, Bexar, Blanco, Bowie, Brazos, Burleson, Caldwell, Calhoun, Camp, Cass, Chambers, Cherokee, Clay, Collin, Colorado, Comal, Comanche, Dallas, Delta, Denton, DeWitt, Ellis, Falls, Fannin, Fayette, Franklin, Freestone, Galveston, Gillespie, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hill, Hopkins, Houston, Hunt, Jasper, Johnson, Karnes, Kaufman, Kendall, Kerr, Kimball, Lamar, Lavaca, Lee, Leon, Liberty, Limestone, Llano, Madison, Marion, Mason, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Palo Pinto, Panola, Polk, Rains, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Sutton, Tarrant, Titus, Travis, Trinity, Tyler, Upshur, Van Zandt, Walker, Waller, Washington, Williamson, Wood. [Acts 1917, p. 358.]

CHAPTER FOUR

ESTRAYS

Art.
6911. Who may take up.
6912. Appraisement and bond.
6913. Proof of ownership.
6914. No pay for takers-up.
6915. Commissioner to return.
6916. Advertisement.
6917. Property in estrays.
6918. Sale day.
6919. Other estrays.
6920. Returns of sales.
6921. Taker-up liable.
6922. Taker-up may use.
6923. If estray dies.
6924. Proceeds of sale.
6925. If taker-up refuses to deliver.
6926. Owner may reclaim money.
6927. Notice of estray.

Article 6911. [7185–90] Who may take up.—When any stray horse, mare, gelding, filly, colt, mule, jack, jennet, or work ox shall be found on the land of any citizen or his lessee for one year or more, such citizen or his lessee may forthwith advertise the same, describing the animal's color and specifying the marks and brands, if any, also giving the age and flesh marks of every kind, at three public places in the county in which he resides, one of which notices shall be at the courthouse door, for at least twenty days, and shall also deliver to the county clerk a copy of said notice which shall be by him securely posted up in his office; after the expiration of which time, if no owner apply, the taker-up of said animal or animals shall appear before some justice of the peace in said county and estray the same. No animal so taken up shall be used for any purpose until the party shall have given bond as required by the succeeding article. [Acts 1866, p. 54; G. L. vol. 5, p. 972.]

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Art. 6912. [7186–92–93] Appraisement and bond.—Any citizen so entitled to estray any animal shall make affidavit before said justice of the peace that the animal which he proposes to estray was taken upon his plantation, or on his lands adjoining the same; that the marks and brands thereof have not been altered or disfigured since the same was taken up; that notice has been given as the law requires, and that no owner has been found; whereupon the said justice shall file said affidavit and shall cause to appear before him, by summons or otherwise, two disinterested householders of his county, who are in no way related to the person estraying, commanding them, after being sworn, to value and appraise the same and certify under oath attested by said justice the valuation, together with a particular description of the animal, including height, marks, brands, color and age. Said justice shall thereupon require of the taker-up a bond with two or more good and sufficient sureties, in double the value of such animal or animals, payable to the county judge of the county, conditioned that the taker-up shall comply with the provisions of this chapter, which bond, affidavit and appraisement shall be sent by such justice to the county clerk within twenty days thereafter, for which said justice shall receive the same fees that are allowed for similar services by law. Said clerk shall record said papers so sent to him in a separate book to be kept for that purpose, for which he shall be entitled to collect the same fees allowed by law for similar services to be paid in all cases by the taker-up. When two or more animals are taken up at the same time by the same person, they shall be included in the same entry, and said justice and said clerk shall receive no more fees including posting and advertising, than for one such animal. [Id.]

Art. 6913. [7187–8] Proof of ownership.—At any time within twelve months, and before the sale of any estrays, it shall be lawful for the owner of any such estray to prove his property by the affidavit of any respectable witness, which shall specify a particular description of the animal claimed, including the kind, marks, brands, height, color and age of the same. This affidavit shall be delivered to the taker-up and by him filed in the office of the county clerk of such county, and on the delivery of such affidavit and the payment of all costs incurred in posting such estray to the taker-up, such owner shall be entitled to demand and receive the animal. When the respectability of said witness is not known to the officer administering the oath, the party claiming the estray shall produce satisfactory evidence of the respectability of such witness, certified to by a notary public, county clerk or county judge of the county in which such witness resides. [Id. P. D. 6812.]

Art. 6914. [7189] [4958] No pay for taker-up.—If the owner of any animal which has been so duly estrayed, be a resident citizen of the county in which it has been estrayed, and shall have had his mark and brand recorded in said county, and the animal so estrayed shall be in the mark and brand of the owner at the time it was taken up, then and in that case the taker-up shall not be entitled to receive any compensation for expense incurred in estraying said animal. [Id.]

Art. 6915. [7191] [4960] Commissioner to return.—If any estrays of any kind shall be found running at large and not estrayed, and the owner of the same be unknown, any county commissioner shall return the same, with a full description thereof, to the county clerk of his county, who shall advertise the same as specified in this chapter. If such animal shall not be proven away by the owner within the time allowed by law the commissioner returning the same, or his successor in office, shall proceed to sell such animals and report the sale thereof to said county clerk, and after paying the clerk's fee and retaining twenty per cent of the proceeds of such sale, he shall pay the remaining sum into the county treasury. [Id. P. D. 6813.]

Art. 6916. [7194] [4963] Advertisement.—The county clerk shall cause a statement of the appraisement and a description of the animals so estrayed to be advertised at least three times in some newspaper published in the county where such animal was estrayed, if there be one; and if none, then the clerk shall cause the same to be advertised in the newspaper nearest to the county, and also by posting up notices at three public places in the county, one of which shall be at the courthouse door thereof. The printer of such notice shall furnish the said clerk with a copy of the paper containing said notice. For such publication the printer shall be entitled to receive two dollars from the party estraying the same. Said clerk shall file and preserve said copy in his office. [Id.]

Art. 6917. [7195–6] Property in estrays.—The property of every stray horse, mare, gelding, filly, colt, mule, jack, jennet or work ox taken up as aforesaid and not proven away within twelve months after such appraisement shall be deemed vested in the county wherein such estray or estrays may have been posted, and the taker-up shall immediately thereafter proceed to sell the same for cash to the highest bidder at the courthouse door of the county, after giving notice of the same as required in the case of sheriff's sale. Within ten days after such sale, he shall, after deducting the expenses incurred in estraying said animals, pay into the county treasury seventy-five per cent of the proceeds of the same, and retain the other twenty-five per cent for his own use. Whenever a sale of an estray shall be made according to the provisions of this article, the taker-up shall make a return of such sale, duly sworn to by him, to the county clerk of the county in which the sale was made, who shall file the same in his office. [Id.]

Art. 6918. [7197] [4966] Sale day.—All sales of estrays, horses, mares, fillies, geldings, colts, mules, jacks, jennets, or work oxen shall be made on the first Monday in the month, and between the hours of one and three o'clock p. m. of said day. [Id.]

Art. 6919. [7198–9] Other estrays.—Any citizen taking up any stray hogs, sheep, goats or cattle, other than work oxen, shall proceed in the same manner as is required in the case of horses, etc., except advertising in a newspaper; and any person estraying the same, at the expiration of six months from the day of appraisement, shall proceed to give notice as in the case of sheriff's or constable's sales, and sell such estrays where they were taken up; provided, there be not less than three adult bidders in attendance at said sale, beside the family of the taker-up. No animal enumerated in this article except work oxen, shall be subject to be estrayed, unless the same shall have been known to the taker-up as being an estray for at least four months previous to the time of estraying the same. [Id. Acts 1899, p. 234.]

Art. 6920. [7200] [4969] Returns of sales.—In making the returns of sales under this chapter, when the sale has been made at the residence of the taker-up or other place than at the courthouse door of the county, the taker-up shall, in all cases, give the names of at least three of the bidders who were present at said sale, who were not members of his family. [Acts 1866, p. 54; P. D. 6817; G. L. vol. 5, p. 972.]

Art. 6921. [7201] [4970] Taker-up liable.—If any person estraying an animal enumerated in this chapter shall send or take away the same out of the county in which the same was taken up and estrayed, or sell or otherwise dispose of the same, he and his sureties shall be liable upon their bond in an action for damages in favor of the party injured. [Id. P. D. 6818.]

Art. 6922. [7202] [4971] Taker-up may use.—The taker-up of an estray may use the same in moderation, after having executed bond as provided in this chapter, but should he abuse or injure the same, he and his sureties shall be liable upon his bond in damages for such abuse or injury, and may be sued therefor by the owner for his own use, or by the county judge for the use of the county.

Art. 6923. [7203] [4972] If estray dies.—Whenever an estray animal shall be found dead, or shall escape, the taker-up shall without delay, make a written sworn report thereof to the county clerk; which report shall be recorded by said clerk in a book to be kept by him for that purpose. Any person who shall make a false report shall be liable on his bond, together with his sureties, for the value of the animal or animals estrayed. [Id. P. D. 6819.]

Art. 6924. [7204] [4973] Proceeds of sale.—All moneys arising from the sales of estrays, under the provisions of this chapter, shall be paid to the county treasurer, and shall be by him applied exclusively to the jury fund of the county. [Id. P. D. 6820.]

Art. 6925. [7205] [4974] If taker-up refuse to deliver.—If any person having in charge an estray shall refuse to deliver the same to the owner thereof, on his complying with the provisions of this chapter, such owner shall be entitled to action therefor with damages. [Id. P. D. 6821.]

Art. 6926. [7206] [4975] Owner may reclaim money.—At any time within twelve months after the sale of any estray made under the provisions of this chapter, the owner of such estray may apply to the county treasurer of the county in which such estray has been sold, and upon proof of such ownership shall be entitled to receive from said treasurer the amount deposited on account of such sale, after paying such costs as may be necessary to establish his right thereto. [Id. P. D. 6822.]

Art. 6927. [7207–8] Notice of estray.—Whenever any person shall estray any animal on which any county brand may be found, the county clerk of the county in which said estray may be shall immediately send a notice containing a full description of said animal, together with the marks and brands, to the county clerk of the county to which the county brand may belong; and the county clerk of said county brand shall record said notice in a book kept for that purpose, and post the same on the courthouse door; and shall ascertain from his record of brands to whom said animal may belong, and notify said owner by letter or otherwise. For such services he shall be entitled to a fee of one dollar from said owner; and the county clerk furnishing the notice shall be entitled to a fee of one dollar from said owner. Any county clerk who shall fail to send a notice as required by this article, shall become liable to the original owner of said estray in an amount equal to the value of said estray. [Acts 1883, p. 78; G. L. vol. 9, p. 384.]

CHAPTER FIVE

STOCK LAW AND LIMITED RANGE

1. GENERAL PROVISIONS

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6929. Combined election.

2. STOCK LAW ELECTIONS

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6931. Territory between subdivisions.
6932. Requisites of petition.
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3. FREE RANGE ELECTIONS

6947. Limited free range.
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1. GENERAL PROVISIONS

Article 6928. General provisions.—The following rules shall govern any election held under any provision of this chapter for either of the purposes named in this chapter:

1. If the election be for a subdivision of the county, the county judge, at the time he issues the order for such election, shall appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks.

2. Said election shall be held at the usual voting places in the several election precincts if the election is ordered for the whole county; but if the election is ordered for any particular subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened.

3. Only persons who are freeholders and qualified voters under the Constitution and laws shall vote at said election.

4. On or before the tenth day after any said election, the persons holding such election shall make due returns to the county judge of all votes cast at their respective voting places for and against the proposition or propositions submitted at said election. [Acts 1876, p. 150; G. L. vol. 8, p. 986; Acts 1919, p. 149.]

Art. 6929. Combined elections.—When an election is called for any county or subdivision thereof for the purpose of voting upon the question of the adoption of the stock law or any part thereof, under the provisions of this chapter, if such county or subdivision has not already in operation the stock law or any part thereof under the provisions of this chapter, it shall be lawful to submit at the same time and at the same election the question of the limited period of free range for hogs, as provided for in this chapter, but said proposition must be submitted and voted upon as a separate proposition, and the votes cast therein, and the returns thereof, and the judge's proclamation thereon, must be separate and distinct from that of the stock law proposition voted on at such election. [Acts 1919, p. 149.]

2. STOCK LAW ELECTIONS

Art. 6930. [7209] [4978] To order election.—Upon the written petition of fifty freeholders of any county, or upon the petition of twenty freeholders of any subdivision of a county, the commissioners court of such county shall order an election to be held in said county or subdivision, on some day named in the order, for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs, sheep or goats shall be permitted to run at large in such county or subdivision. [Const. art. 16, sec. 23; Acts 1876, p. 150; G. L. vol. 8, p. 986; Acts 1909, p. 164.]

Art. 6931. [7210–7234] Territory between subdivisions.—Whenever there is territory between two subdivisions of a county which have adopted a stock law, or when there is territory adjoining a subdivision which has adopted a stock law, and in such territory there are less than fifty freeholders, an election shall be ordered on a petition of a majority of the freeholders residing in such territory; and the election shall be held as provided by law in other cases relating to the adoption of the stock law. If there be less than twenty freeholders in such intervening or adjoining territory, then on the petition of a majority of the owners of the land to the commissioners court, the said commissioners court shall issue an order extending the stock law to said territory and the same shall be included in the territory of such adjoining subdivision; in cases where there are no freeholders on such intervening or adjoining territory, then on the petition of the owner or owners of the land to the commissioners court, the said court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision; and any person or persons who own lands adjoining any other lands which have been added to

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

territory in which a stock law prevails, shall have the same right, and, on petition of the owner or owners of such lands to the said court, the said court shall issue an order extending the stock law to said territory, and the same shall be included in the territory of such adjoining subdivision. [Acts 1899, p. 80; Acts 1907, p. 150; Acts 1915, p. 206.]

Art. 6932. [7211] [4980] Requisites of petition.—Such petition shall set forth clearly the class or classes of animals enumerated in the preceding articles which the petitioners desire shall not run at large in such county or subdivision. If the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated. [Acts 1876, p. 150; G. L. vol. 8, p. 986.]

Art. 6933. [7212] [4981] Election ordered.—Upon the filing of such petition, the commissioners court, at its next regular term thereafter, shall order an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order. [Id.]

Art. 6934. [7213–14] Order and notice.—Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notice thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county; but if no newspaper be published in the county, then by posting copies of such order at the courthouse door, and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. The order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened. [Id.]

Art. 6935. [7218] [4987] Manner of voting.—All votes at any such election shall be by ballot; and voters desiring to prevent the animals designated in the order from running at large shall place upon their ballots the words, "For the stock law," and those in favor of allowing such animals to run at large shall place upon their ballots the words, "Against the stock law."

Art. 6936. [7220] [4989] Returns of election.—The returns shall be opened, tabulated and counted by the commissioners court of the county in the same manner as provided for all general elections in this State. [Acts 2nd C. S. 1919, p. 150.]

Art. 6937. [7221] [4990] Proclamation of result.—If a majority of the votes cast at such election shall be "For the stock law," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of thirty days from its issuance it shall be unlawful to permit to run at large within the limits designated any animal of the class mentioned in said proclamation. [Acts 1876, p. 150; G. L. vol. 8, p. 986].

Art. 6938. [7222–23] Stock impounded.—If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or cultivated land of any person, other than the owner of such stock, without his consent, in any county or subdivision in which the provisions of this subdivision have become operative in the manner provided in the preceding articles, the owner, lessee or person in lawful possession of such lands may impound said stock and detain the same until his fees and all damages occasioned by said stock are paid to him. No animals shall be impounded unless they have entered upon the inclosed lands or shall be found roaming about the residence, lots, or cultivated land of another; and whenever any stock is impounded notice thereof shall at once be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages. [Acts 1887, p. 56; G. L. vol. 9, p. 854.]

Art. 6939. [7224–5] Fees and damages.—Any owner, lessee, or person in lawful possession of inclosed lands shall be entitled to the following fees for impounding stock, to-wit: Ten cents per day per head for hogs, ten cents per day per head for goats, and five cents per day per head for sheep. The damages done by such stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall upon the application of the taker-up of the stock be appointed by the justice of the peace of the precinct in which such subdivision is situated. Where said justice shall fail or refuse to make such appointment, or where the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this law has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due to the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees, in writing, and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders, to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with said justice, which shall be final; provided, that the owner of the stock, if known, shall have five days' notice of the time and place of the meeting of said freeholders, and if the owner is unknown then a written notice thereof shall be posted in two public places in said subdivision, and one at the door of the courthouse of the county; and provided, further, that nothing in this law shall be construed to deprive the taker-up of the stock to enforce by suit in a court of competent jurisdiction any claim he may have for such fees and damages, and to subject the stock so taken for the payment of the same under the provisions of this law. After the filing of the assessment, as provided for in this article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale as in constable's sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like services in civil cases. [Acts 1895, p. 84; G. L. vol. 10, p. 814.]

Art. 6940. [7226] [4995] Stock sold.—If no owner can be found of stock so impounded, the taker-up may make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to affiant, which affidavit shall be forthwith delivered to the county clerk by such justice, to be kept in his office for inspection. After the filing of such assessment, the constable of the precinct shall sell such stock as in case where the owner is known; and, if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the county clerk, and pay the same over to the county treasurer, to be received and disbursed by him, as in case of sales of estrays; or the taker-up may at his option, after the expiration of five days, estray such stock, according to the laws regulating estrays in this State. [Id.]

Art. 6941. [7228] [4997] Subsequent elections.—Whenever an election is held under the provisions of this law for any county or subdivision, and the proposition for a stock and fence law, as herein provided, is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter. But the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county; nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county. [Acts 1876, p. 150; G. L. vol. 8, p. 986.]

Art. 6942. [7227–29–31] Lawful fence.—Should any stock not permitted to run at large enter any inclosure of any owner or lessee of land, entitled to the benefit of this law, without his consent, it shall be lawful for the owner or lessee of said inclosure to impound said stock; and it shall be the duty of the owner or lessee of said land to give notice immediately to the owner of said stock of their impounding and detention; and the owner of said stock shall be entitled to the possession of his stock on payment of expenses incurred in impounding and keeping said stock; provided, that in such county or subdivision said owners or lessees shall not be required to fence against the stock not permitted to run at large; and any fence in said county or subdivision which is sufficient to keep out ordinary stock permitted to run at large under this chapter shall be deemed a lawful fence. Three barbed wires with posts not more than thirty feet apart, and one or more stays between them or pickets four feet high and not more than six inches apart, shall constitute a lawful fence. If boards or rails are used, then three boards to be not less than five inches wide and one thick, or four rails shall constitute a lawful fence; provided, that all fencing built under the provision of this chapter shall be four feet high. Nothing in this subdivision shall prevent the freeholders of any county or subdivision of a county where the stock law prevails from deciding by a majority vote whether or not three barbed wires without a board shall constitute a lawful fence in such county or subdivision thereof; the election for such purpose to be conducted in the same manner and under the same rules as elections provided for in this chapter governing the passage of the stock law. [Id. Acts 1879, p. 66; G. L. vol. 8, p. 1366; Acts 1901, p. 290.]

Art. 6943. [7230] [4999] Stock not to be injured.—If any person whose fence is insufficient under this law shall, with guns, dogs or otherwise maim, wound or kill any cattle, or any horse, mule, jack or jennet, or procure the same to be done, such person or persons so offending shall give full satisfaction to the party injured for all damages by such person or persons sustained, to be recovered as in other suits for damages; provided, that this article shall not be so construed as to authorize any person in any event to maim, kill or wound any horse, mule, jack, jennet or cattle belonging to another. When a trespass has been committed by any cattle or horses on the cleared or cultivated land of any person who has complied with the provisions of this chapter, in the erection of a lawful fence, such person may complain thereof to the justice of the peace of the precinct in which such trespass shall have been committed; and such justice is hereby authorized and required to cause two disinterested and impartial freeholders to be summoned, who shall on oath view and examine whether such complaint be sufficient or not, and what damages have been sustained by said trespass, and certify the same in writing; and, if it shall so appear that said fence be sufficient, then the owner of such cattle or horses shall make just satisfaction for the trespass to the party injured, to be recovered before any tribunal having proper jurisdiction. In case of a second trespass by the same cattle or horses, the owner or lessee of the premises upon which the trespass is committed may, if he deem it necessary for the protection and preservation of his premises or growing crops thereon, cause said stock to be penned and turned over to the sheriff or constable, and held responsible to the person damaged for all damages caused by said stock and all costs thereof. It shall be lawful for the owner or lessee of such inclosures as are contemplated in this law to charge twenty-five cents per day per head for impounding such stock as referred to in this law. [Id.]

Art. 6944. [7232] No election within two years.—After the adoption of the stock law in any county or subdivision, no election under the preceding articles shall be held within the same prescribed limits in less than two years after an election under this law has been held therein; but at the expiration of that time the commissioners court of each county in the State, whenever petitioned to do so by a majority of the freeholders, who are qualified voters under the constitution and laws of a county which has formerly adopted the stock law, or by a majority of the freeholders who are qualified voters under the constitution and laws of the subdivision of a county which has formerly adopted the stock law, shall order another election to be held by the freeholders who are qualified voters under the constitution and laws of such county, or subdivision, to determine whether hogs, sheep and goats shall be permitted to run at large in said county or subdivision, which election shall be ordered, held, notice thereof given, the votes returned and counted in all respects as provided by this law for a first election. [Acts 1899, p. 81.]

Art. 6945. [7233] Proclamation issued.—If, in a county or subdivision which has formerly adopted the stock law, a majority of the legal votes cast at such election shall be "Against the stock law," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of one hundred and eighty days from its issuance it shall be lawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation; if a majority of the legal votes cast at such election shall be "For the stock law," he shall so state in his proclamation, and the operation of the law shall be in no way affected by such election. [Id.]

Art. 6946. Elections validated.—All elections held in any county in this State for the purpose of determining whether or not hogs, sheep, or goats shall be permitted to run at large in such county or subdivision as provided in this chapter, wherein the petition was filed, orders of the election made by the commissioners court, notice thereof given, such election held and a majority of the freeholders voting at such election, voted in favor of the same, and such election may have been invalidated by the failure of some ministerial officer to perform the duties required of him, the same is hereby in all things validated, and shall be by each court of this State held to be valid elections just the same as if the officers charged with the duty of opening, tabulating and counting the votes, had complied with the law, as provided in this chapter. [Acts 2d C. S. 1919, p. 150.]

3. FREE RANGE ELECTIONS

Art. 6947. Limited free range.—Upon the written petition of fifty freeholders of any county, or upon the petition of twenty freeholders of any subdivision of any county, which county or subdivision has heretofore adopted, or may hereafter adopt, the hog law under the provisions of this chapter the commissioners court of such county shall order an election to be held in said county or subdivision on some day named in the order for the purpose of enabling the freeholders of such county or subdivision to determine whether hogs shall have a free range in said county or subdivision from the fifteenth day of November to the fifteenth day of February, of each year. Whenever there is territory between two subdivisions of a county which have adopted the hog law, and in such intervening territory there is less than fifty freeholders, an election shall be ordered on the petition of a majority

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

of the freeholders residing in such intervening territory, and the election shall be held for the purpose named herein. If the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated in the same manner as when originally established. [Acts 1919, p. 149.]

Art. 6948. Order by Court.—Upon the filing of such petition, the commissioners court, at a regular or special meeting thereof, shall order an election to be held throughout the county or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns made in accordance with the laws regulating general elections, in so far as the same are applicable. [Id.]

Art. 6949. Order by judge.—Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one; if no newspaper be published in the county then by posting copies of such order at the courthouse door, and at some public place in each justice's precinct, if such election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. The order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall have the limited period of free range.
3. The time in which said animals are to have the limited period of free range.
4. The territorial limits to be affected.
5. The day of election.
6. The places at which polls are to be opened. [Id.]

Art. 6950. Ballots.—All votes at an election held under the provisions of this Act, shall be by ballot; and voters desiring to permit hogs to have a limited period of free range in hog law counties or districts as designated in the order, shall place upon their ballots the words, "For the limited period of free range for hogs," and those against the limited period of free range for hogs shall place upon their ballots the words, "Against the limited period of free range for hogs." [Id.]

Art. 6951. Returns.—The returns shall be opened, tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or two respectable freeholders of the county. [Id.]

Art. 6952. Declaration of result.—If a majority of the votes cast at such election shall be "For the limited period of free range for hogs," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of ten days from its issuance, it shall be lawful to permit hogs to run at large within the limits designated for the period of time between the fifteenth day of November of each year and the fifteenth day of the following February of each year, both days inclusive. [Id.]

Art. 6953. Second election.—Whenever an election is held under the provisions of this law for any county or subdivision, no other election for such purpose shall be held within such county or subdivision for the space of two years, but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county, nor shall the defeat of the proposition for any subdivision prevent an election from being held immediately thereafter, for the entire county. If, in a county or subdivision which has formerly adopted the limited period of free range for hogs, as provided for under the terms of this law, a majority of the legal votes cast at such election shall be "Against the limited period of free range for hogs," the county judge shall immediately issue his proclamation declaring the result; which proclamation shall be posted at the courthouse door, and after the expiration of ten days from its issuance, it shall be unlawful to permit hogs to run at large within the limits designated; if a majority of the legal votes cast at such election shall be, "For the limited period of free range for hogs," he shall so state in his proclamation, and the operation of the law shall in no way be affected by such election. [Id.]

CHAPTER SIX

STOCK RUNNING AT LARGE

Art.
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Article 6954. [7235] Petition.—Upon the written petition of one hundred freeholders of any of the following counties: Anderson, Atascosa, Austin, Bailey, Bastrop, Baylor, Bandera, Chambers, Throckmorton, Runnels, Briscoe, Archer, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazoria, Brazos, Brewster, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Cass, Castro, Clay, Cherokee, Childress, Collingsworth, Coleman, Collin, Colorado, Cooke, Comanche, Concho, Crockett, Coryell, Cottle, Crosby, Cochran, Crane, Dallas, Dallam, Dawson, Deaf Smith, Delta, Denton, De Witt, Dimmitt, Donley, Eastland, Ector, Edwards, Ellis. Erath, El Paso, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Fisher, Freestone, Gaines, Gregg, Guadalupe, Garza, Glasscock, Gillespie, Gonzales, Grimes, Grayson, Hale, Hamilton, Hansford, Harrison, Hays, Haskell, Hall, Hardeman, Hartley, Henderson, Hidalgo, Hill, Hood, Hopkins, Howard, Hockley, Hudspeth, Hunt, Jack, Jackson, Jones, Jefferson, Johnson, Kaufman, Kimble, Knox, Kerr, Kendall, Kleberg, Lamar, Lampasas, Lavaca, Lamb, Lee, Limestone, Lynn, Lipscomb, Llano, Lubbock, Madison, Marion, Mason, McLennan, Matagorda, McCulloch, Menard, Moore, Martin, Maverick, Medina, Midland, Milan, Mills, Mitchell, Montague, Morris, Navarro, Nacogdoches, Nolan, Nueces, Ochiltree, Palo Pinto, Panola, Parmer, Parker, Pecos, Rains, Randall, Red River, Reeves, Reynolds, Real, Robertson, Rockwall, Rusk, San Patricio, San Saba, Sabine, San Augustine, Shelby, Schleicher, Scurry, Sherman, Smith, Somervell, Sterling, Starr, Sutton, Swisher, Tarrant, Tom Green, Taylor, Titus, Travis, Upshur, Victoria, Val Verde, Van Zandt, Washington, Williamson, Wilson, Wise, Ward, Wharton, Wood, Wheeler, Winkler, Wichita, Wilbarger and Young, or upon the petition of twenty-five freeholders of any such subdivision of a county as may be described in the petition, and defined by the commissioners court of any of the above named counties, the commissioners court of any of said county [counties] shall order an election to be held in such county or such subdivision of a county as may be described in the petition, and defined by the commissioners court on the day named in the order for the purpose of enabling the freeholders of such county or such subdivision of a county as may be described in the petition and defined by the commissioners court to determine whether horses, mules, jacks, jennets, and cattle shall be permitted to run at large in such county or such subdivision of a county as may be described in the petition and defined by the commissioners court. [Acts 1925, 39th Leg., ch. 56, p. 197, § 1; ch. 99, p. 274, § 1; ch. 101, p.

277, § 1; Acts 1926, 39th Leg., 1st C. S., p. 17, ch. 11, § 1; Acts 1927, 40th Leg., p. 363, ch. 245, § 1.]

The title of Acts 1927, 40th Leg., p. 363, ch. 245, purports to include Jim Wells, Leon, Polk and Refugio counties omitted in the enumeration.

Art. 6955. Exceptions.—The provisions of the preceding article shall not apply to Wharton County as a whole, but shall apply only to such subdivision thereof as may be designated in the manner herein provided; provided, however, that the provisions of this Act shall not apply to Jefferson County as a whole, but shall apply only to such subdivision thereof as may be designated in the manner herein provided; provided, however, that the provisions of this Act shall not apply to Hudspeth County as a whole, but shall apply only to such subdivisions thereof as may be designated in the manner herein provided. [Acts 1925, p. 277.] [39th Leg., ch. 101, § 1.]

Art. 6956. [7237] Intervening territory.—Whenever there is territory between two subdivisions of a county which have adopted the stock law, and in such intervening territory there are less than fifty freeholders, an election shall be ordered on the petition of a majority of the freeholders residing in such intervening territory; and the election shall be held as provided by law in other cases relating to the adoption of the stock law. [Acts 1899, p. 220.]

Art. 6957. [7238] Requisites of petition.—Such petition shall set forth clearly the class or classes of animals enumerated in the first article of this chapter, which the petitioners desire shall not run at large in such county, or subdivision, as the case may be; and, if the petition be from the freeholders of a subdivision of any county, such subdivision shall be particularly described and the boundaries thereof designated. [Id.]

Art. 6958. [7239] Order of court.—Upon the filing of such petition, the commissioners court at the next regular term thereafter shall pass an order directing an election to be held throughout the county, or the particular subdivision thereof, as the case may be, on a day to be designated in the order, not less than thirty days from the date of such order; which election shall be held and conducted and the returns thereof made in accordance with the laws regulating general elections, in so far as the same are applicable. [Id.]

Art. 6959. [7240–1] Order by judge.—Immediately after the passage of an order for an election by the commissioners court, the county judge shall issue an order for such election and cause public notices thereof to be given for at least thirty days before the day of election, by publication of the order therefor in some newspaper published in the county, if there be one, if no newspaper be published in the county, then by posting copies of such order at the courthouse door and at some public place in each justice's precinct, if the election be ordered for the whole county, or at three public places in the subdivision, if the election be ordered for a subdivision. Said order of the county judge shall specify:

1. The petition and the action of the commissioners court.
2. The class of animals it is proposed shall not run at large.
3. The territorial limits to be affected.
4. The day of election.
5. The places at which polls are to be opened. [Id.]

Art. 6960. [7242 to 7246] Election.—The following rules shall govern any election held under any provision of this chapter:

1. If the election be for a subdivision of the county the county judge, at the time he issues the order for such election shall appoint proper persons as managers of said election, all of whom shall be freeholders of the county and qualified voters; and such managers may appoint their own clerks.

2. Said election shall be held at the usual voting places in the several election precincts if the election is ordered for the whole county; but if the election is ordered for any particular subdivision, the county judge shall designate the particular places in such subdivision at which the polls shall be opened.

3. Only persons who are freeholders and qualified voters under the Constitution and laws shall vote at said election.

4. All votes at any election, in pursuance of this chapter, shall be by ballot, and voters desiring to prevent the animals designated in the order from running at large shall place upon their ballots the words "For the stock law," and those in favor of allowing animals to run at large shall place upon their ballots the words, "Against the stock law."

5. On or before the tenth day after any such election, the persons holding such election shall make due returns to the county judge of all votes cast at their respective voting places for and against said proposition submitted at said election. [Acts 1899, p. 220.]

Art. 6961. [7247] Effect of election.—The returns shall be opened tabulated and counted by the county judge in the presence of the county clerk and at least one justice of the peace of the county, or of two respectable freeholders of the county, and an order showing the result shall be duly recorded in the minutes of the commissioners court in the said county. The order showing the result of said election this [thus] determined, certified and recorded, shall be held to be prima facie evidence that all the provisions of law have been complied with in presenting the petition, the action of the court thereon ordering the election, the giving of notice and holding said election, and in counting and returning the votes and declaring the result thereof, and, if said election be then declared to be in favor of the stock law, then after thirty days from said date, it shall be prima facie evidence that the proclamation required by law has been made and published as required by law. [Acts 1907, p. 124.]

Art. 6962. [7248] Proclamation.—If a majority of the votes cast at such election shall be "For the stock law," the county judge shall immediately issue his proclamation declaring the result, which proclamation shall be posted at the courthouse door, and, after the expiration of thirty days from its issuance, it shall be unlawful to permit to run at large, within the limits designated, any animal of the class mentioned in said proclamation. [Acts 1899, p. 220.]

Art. 6963. [7236] Election to repeal law.—Upon the written petition of two hundred freeholders of any of the above named counties, or upon the written petition of fifty freeholders of any subdivision of the above named counties, if the law be in force in that subdivision only, the commissioners court shall be authorized and required to order an election on the date therein named to determine whether or not said law be repealed; provided, such petition be signed by at least twenty-four freeholders from each justice precinct in such county. But if this law becomes operative over any of the above named counties, as prescribed, it can in no case be repealed by any subdivision, except by a two-thirds majority of the votes cast by the freeholders of such counties, at an election held in accordance with the provisions of this chapter. [Acts 1909, p. 121.]

Art. 6964. [7255] Second election.—Whenever an election is held under the provisions of this chapter for any county or subdivision, and the proposition of a stock law as herein provided is defeated, no other election for such purpose shall be held within that locality for the space of twelve months thereafter; but the defeat of the proposition for a county shall not prevent another election from being held immediately thereafter for any subdivision of such county, nor shall a defeat of the proposition for any subdivision prevent an election from being held immediately thereafter for the entire county. [Acts 1899, p. 220.]

Art. 6965. Duty of officers.—It shall be the duty of any sheriff or constable of any county, or subdivision thereof, within this State, where the provisions of this chapter are or may hereafter become operative, to seize any stock which may become known to him to be running at large on any outside premises where the provisions of the stock law are in force, and

impound the same in some place provided for that purpose, and immediately notify the owner thereof, if such owner is known to such officer, who may redeem the same on the payment of an impounding fee of one dollar per head, and an additional fee of twenty-five cents per day per head for each day such stock is so kept. [Acts 1915, p. 146.]

Art. 6966. [7249] May impound.—If any stock forbidden to run at large shall enter the inclosed lands, or shall, without being herded, roam about the residence, lots or cultivated lands of any person other than the owner of such stock without his consent, in any county or subdivision in which the provisions of this chapter have become operative in the manner provided in this chapter, the owner, lessee, or person in lawful possession of such lands may impound such stock and detain the same until his fees and all damages occasioned by said stock are paid to him; provided that no animals shall be impounded except as provided in the preceding article, unless they have entered upon the inclosed lands or be found roaming about the residence, lots or cultivated land of another, and, whenever any stock is impounded, notice thereof shall be given to the owner, if known, and such owner shall be entitled to their possession upon payment of fees and damages. [Acts 1899, p. 220; Acts 1915, p. 146.]

Art. 6967. [7251] Fees for impounding.—Any owner, lessee or person in lawful possession of inclosed lands shall be entitled to the following fees for impounding stock, to-wit: twenty-five cents per day per head for horses and mules, fifteen cents per day per head for cattle, and ten cents per day per head for jacks and jennets. The damages done by such stock, if any, and the fees due to the taker-up of such stock, if any, may be assessed by any three disinterested freeholders of the subdivision in which said stock is taken up, who shall, upon the application of the taker-up of the stock, be appointed by the justice of the peace of the precinct in which such subdivision is situated. When such justice shall fail or refuse to make appointments, or when the stock law has been adopted by an entire county, said freeholders shall be appointed by the county judge of the county. Said freeholders, after being duly sworn to discharge with impartiality the duties devolving upon them by said appointment, shall proceed after hearing the evidence to determine whether or not any trespass prohibited by the provisions of this chapter has been committed, and to ascertain the damages, if any, occasioned thereby, and the fees due the taker-up of the stock by reason of said trespass, and shall make an assessment of damages and fees in writing and signed by said freeholders, or two of them, and verified by the affidavit of said freeholders to the effect that said assessment is just and that they have no bias in favor of or prejudice against any party interested therein, and shall file said assessment with the justice of the peace, which shall be final; provided, that the owner of the stock, if known, shall have five days notice of the time and place of the meeting of said freeholders, and if the owner is unknown, then a written notice thereof shall be posted in two public places in said subdivision and one at the courthouse door of the county. Nothing in this chapter shall be construed to deprive the taker-up of the stock to enforce, by suit, any claim he may have for such fees and damages, and to subject the stock so taken up for the payment of the same under the provisions of this chapter. [Acts 1899, p. 220, sec. 16.]

Art. 6968. [7252] Sale of impounded stock.—After the filing of the assessment, as provided for in the preceding article, the constable of the precinct shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like service in civil cases. [Acts 1899, p. 220, sec. 17.]

Art. 6969. Sale if not redeemed.—When any stock shall have been impounded as provided in the third preceding article, and after five days' notice has been given to the owner of such stock, such officer shall sell such stock at public auction for cash, after having given notice of such sale, as in constables' sales of personal property, and apply the proceeds of such sale, after deducting the expenses thereof, to the satisfaction of said fees and damages, and shall pay the balance, if any remains, to the owner of such stock. The justices and constables shall receive for their services the same compensation as is allowed for like service in civil cases. [Acts 1915, p. 146.]

Art. 6970. [7253] Unknown owners.—If no owner can be found of stock so impounded, such officer or other person taking up any such stock shall make affidavit before a justice of the peace of the county, describing the stock impounded by him, and that the owner is unknown to the affiant; which affidavit shall be forthwith delivered to the county clerk by such justice to be kept in his office for inspection. After the filing of such affidavit, the constable of the precinct shall sell such stock as in case when the owner is known; and if anything remains after satisfying the expenses of said sale and the fees and damages due to the taker-up, he shall report the same under oath to the clerk of the county court and pay the same over to the county treasurer to be received by him and placed to the credit of the road and bridge fund of the county. [Acts 1899, p. 220; Acts 1915, p. 146.]

Art. 6971. [7254] Lawful fence.—After the adoption of the stock law in any county, or subdivision, any fence within such county or subdivision shall be deemed a lawful fence if it be sufficient to keep out the classes of stock not affected by the provisions of this chapter. [Acts 1899, p. 220, sec. 19.]

CHAPTER SEVEN

PROTECTION OF STOCK RAISERS

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Article 6972. [7256 to 7259] Inspector.—Each organized county, not expressly excepted herein, shall constitute an inspection district for the inspection of hides and animals; and at each general election an officer to be styled, "Inspector of hides and animals" shall be elected by the qualified voters of such county, and in each unorganized county the Governor shall appoint such inspector. The word, "inspector," as used in this title, shall mean the inspector of hides and animals. Such inspectors shall hold their office for the term of two years. Until any vacancy in such office is filled by appointment, the sheriff of the county shall discharge the duties of the office. [Acts 1876, pp. 217–295; Acts 1879, p. 89; G. L. vol. 8, pp. 1053–1131–1389.]

Art. 6973. [7260] [5006] Bond.—Each person elected to the office of inspector, before entering on the duties of his office, shall enter into a bond, with two or more good and sufficient sureties, to be approved by the commissioners court of the county constituting his district, payable to the county judge, in a sum to be fixed by said court, not less than one thousand nor more than ten thousand dollars, conditioned that he shall well and truly perform the duties of his office. A sheriff acting temporarily as inspector, pending a vacancy in such office, shall not be required to give additional bond but his official bond as sheriff shall extend to and include the faithful and proper performance of his duties as inspector ad interim. [Acts 1876, p. 295; G. L. vol. 8, p. 1131.]

Art. 6974. [7262] [5008] Seal of office.—Each commissioners court shall furnish to the inspector for such county a seal of office, having upon it the words, "Inspector of hides and animals, ——— county, Texas" (the blank to be filled with the name of the county), and each inspector and his deputy shall certify their official acts with the impress of such seal. The inspector upon retiring from office shall deliver such seal, together with the books, papers and records of his office to his successor. [Id.]

Art. 6975. [7263–4] Deputies.—Every inspector shall have power to appoint in writing and under his seal as many deputies as shall be necessary to perform the duties imposed on them by this chapter. The inspector shall require bond and security of their deputies for the faithful performance of their duties; and the said deputies shall take and subscribe the official oath. The inspectors shall be responsible to any person injured thereby for the official acts of each of their deputies and they shall have the same remedies against their deputies and their sureties as any person can have against the inspectors and their sureties. [Id.]

Art. 6976. [7265] [5011] Definitions.—As used in this chapter, the words "deputy inspector" shall mean the "deputy inspector of hides and animals," and the words "county," "district," or "inspection district," shall include each organized county in this State not herein excepted, together with any unorganized county that may be attached for judicial purposes to any such county. [Id.]

Art. 6977. [7266] [5012] Take acknowledgments.—Every inspector shall have authority to authenticate bills of sale of animals, and give certificates of acknowledgment of the same under his hand and seal, and shall be allowed to collect fifty cents for every acknowledgment so taken. [Id. p. 302.]

Art. 6978. [7267–8] Inspections and record.—The inspector, in person or by deputy, shall faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries; and shall keep a record, in a well bound book, in which he shall record a correct statement of the number, ages, marks and brands of all animals inspected by him, and the number, mark and brand of all hides inspected by him, and whether the same are dry or green, and the name or names of the vendor and of the purchaser thereof. He shall return a certified copy of all entries made in such record during each month to the county clerk on the last day of each month, which report shall be filed among the records of the county court. [Id.]

Art. 6979. [7629] [5015] Exemption from inspection.—The provisions of this chapter shall not be so construed as to include sheep, goats, swine, or hides of either, nor to involve the re-inspection of salted hides in packeries or other slaughter houses taken from animals previously inspected and returned as provided in the preceding articles. [Id.]

Art. 6980. [7270] [5016] Shall not certify.—No inspector shall grant any certificate of inspection of any unbranded hides or animals, or of hides or animals upon which the marks and brands cannot be ascertained, and he shall prevent the same from being taken or shipped out of the county, unless they are identified by proof or by a duly acknowledged bill of sale signed by the owner of such hides or animals. [Id.]

Art. 6981. [7271–2] Seizure.—Every inspector may seize and sequestrate all unmarked or unbranded calves or yearlings, and all calves or yearlings freshly marked or branded, and on which the fresh marks or brands are unhealed, which are about to be slaughtered, or driven or shipped out of the county, unless such animals are accompanied by the mother thereof, or are identified by the presentation of a bill of sale from the person proven to be the owner thereof, signed by him or his legally authorized agent, and acknowledged before some officer authorized to authenticate instruments for record in this State. Every inspector may seize and sequestrate all unbranded animals or hides, and animals and hides upon which the mark or brand cannot be ascertained, which are about to be taken or shipped out of the county, or which animals are to be slaughtered, unless such animals or hides are identified as provided in this article. [Id.]

Art. 6982. [7273] [5019] Procedure as to seizure.—When an inspector has seized any hides or animals as provided for in the preceding article, he shall report the fact to some judge of the district or county court, or justice of the peace, according as the value of the property seized may come within the jurisdiction of either of said courts; and said judge or justice shall issue or cause to be issued a citation addressed, "To all whom it may concern," setting forth a seizure of said property with a description of the same, commanding them to appear at a day named in said citation to show cause why said property should not be forfeited to the county wherein the same was seized, and sold for the benefit of said county. Said citation shall be directed to the sheriff or to any constable of said county, who shall cause certified copies of the same to be posted in three public places in said county for a period of ten days before the day mentioned in said citation. Upon the proof of the posting of said citation, said judge or justice issuing said citation shall proceed to condemn the property mentioned in said citation, unless satisfactory proof shall be made of the ownership of said property, or other sufficient cause be shown why the same should not be condemned. In case of condemnation he shall order the same to be sold by the inspector at public auction to the highest bidder. The inspector shall be entitled to retain one-fourth of the net proceeds of such sale, after deducting therefrom all expenses connected therewith, and he shall immediately pay the remaining three-fourths thereof into the county treasury; and all sums so paid in shall be placed to the credit of the general fund of such county. [Id.]

Art. 6983. [7274] [5020] Bill of sale taken.—Each person who shall buy or drive any animal or animals for sale or shipment out of any county, or who shall buy or drive the same for slaughter, shall, at the time of purchasing and before driving the same, procure a written bill of sale from the owner or owners thereof, or from his or their legally authorized agent. Said bill of sale shall be properly signed and acknowledged. Such bill of sale shall distinctly enumerate the number, kind and age of animals sold, together with all marks and brands discernible thereon; and said animals before leaving the county in which they have been gathered shall be inspected by the inspector of such county or his deputy. [Id.]

Art. 6984. [7275] [5021] In sale of hides.—The purchaser of any hides of cattle at the time of purchasing same shall obtain from the owner thereof, or from his legally authorized agent, a written bill of sale duly acknowledged, which shall recite in full the marks and brands of each hide, the weight thereof, and whether the same is dry or green. [Id.]

Art. 6985. [7276–7] Certificate of inspection.—Whenever an inspector shall have inspected any animal or animals, as herein provided, he shall, on the presentation of a written bill of sale or power of attorney from the owner or owners of such animal or ani-

mals, or his or their agent duly authorized in writing, duly signed and acknowledged, and on payment to said inspector of his legal fees, deliver to the purchaser of the animals mentioned in such bill of sale or power of attorney, or his agent, a certificate setting forth that he has carefully examined and inspected such animal or animals, and that said purchaser has in all respects complied with the law, which certificate shall not be complete until the same and the bill of sale herein provided for shall be recorded in the office of the county clerk of the county, and be certified to by said clerk under his hand and seal. Such certificate shall be then delivered to the purchaser and shall protect him from the payment of inspection fees in any other district for the animals therein described, except from the county from which the same may be exported; provided that any person driving cattle in his own mark and brand shall be entitled to the certificate of inspection provided for herein, on payment of fees to the inspector, and on presentation to the inspector of the certificate of the county clerk of the county where such mark and brand is recorded, to the effect that the mark and brand named therein is duly recorded in his office as the mark and brand of the person so driving such cattle. [Id. Sen. Jour. 1895, p. 484.]

Art. 6986. [7278] Road brand.—Any person who shall drive any cattle to market beyond the limits of this State shall, before removing such cattle from the county where same are gathered, place upon each animal so to be driven a large and plain road brand, composed of any device he may choose, which shall be branded on the left side of the back behind the shoulder; and each person using or causing to be used any road brand shall place the same on record as in the case of other brands, in the county from which the animals are to be driven, and before their removal from such county. [Id.]

Art. 6987. [7279] Export to Mexico.—Any person may drive or ship any animals to Mexico from any point on the coast of Texas, or may drive or ship them across the Rio Grande River at any point where a custom house of the United States is located, but not from any other point; and he shall cause all such animals to be inspected by the inspector of the district in which the point of shipment or place at which they are to be driven across said river is situated before shipment from the State or passage across said river of said animals. [Id.]

Art. 6988. [7280–1] Herds in transit.—Whenever a drove of cattle may be passing through any county, the inspector, if called upon to do so by any person, shall stop and inspect said drove without any unnecessary detention of the same; and he shall exercise the same powers and perform the same duties in the inspection of such cattle as are prescribed above. If any cattle be found in said drove not included in the certificate of the inspector of the county in which the drove may have been gathered, the fees of the inspector shall be paid out of the proceeds of the sale of said cattle; but if no cattle shall be found in said drove except those covered by the inspector's certificate, then the inspector's fee shall be paid by the person at whose instance said drove was inspected. [Id.]

Art. 6989. [7282] Hides from Mexico.—The hides of all cattle imported into this State from Mexico shall be inspected by the inspector of any county or district into which the same may be imported. If the importer of said hides fails or refuses to place such hides in a position where the same may be inspected by said inspector, or if said hides are found by said inspector to be folded or booked in such a manner as that the same may not be inspected without injury to said hides, said inspector shall take possession of such hides and have the same treated in such manner as will enable him to unfold the same without injury thereto. Such inspector shall not be held liable for any damage which may accrue to such hides by reason of the treatment thereof for the purpose of enabling him to inspect the same, and such treatment as may be necessary to enable the inspector to unfold and inspect such hides shall be wholly at the risk of the importer or person in whose possession such hides may be found. In addition to the inspection fees allowed such inspector for the inspection of said hides, there shall be paid by the importer or the person in whose possession said hides may be found after importation, all expenses incurred by said inspector in the treatment of said hides, for the purpose of enabling him to inspect the same as herein provided, such expenses to include drayage and freight charges and all expenses for handling and treatment of said hides. If the importer or the person in whose possession said hides may be found after importation, fails or refuses to pay said expenses for retreatment, or if he fails or refuses to pay the inspection fees as required by law, the inspector may retain possession of said hides and sell a sufficient number thereof, after three days public notice, to the highest and best bidder, to pay said inspection fees and all necessary expenses in connection therewith. [Acts 1876, p. 295; G. L. vol. 8, p. 1131; Acts 1917, p. 325.]

Art. 6990. [7283] Animals imported.—Horses, mules and cattle imported from Mexico into this State shall be inspected in accordance with the provisions of Article 6978, and with like authority to retain and sell as provided in the preceding article for a failure to pay the inspection fees. [Id.]

Art. 6991. [7284–5] Notify if stolen.—If an inspector finds among hides or animals imported from Mexico any hides or animals which from the brand or from other evidence, he has reason to believe have been stolen from the lawful owner, he shall separate said hides or animals from others undergoing inspection and take possession of the same and notify any person he believes to be interested therein to come forward and institute suit for the recovery of the same. If no person appears to claim said hides or animals, the inspector shall within twenty-four hours, make oath before the district judge, the county judge, or any justice of the peace of the county, according to the value of the property involved, that he has reason to believe that said hides or animals have been stolen; whereupon said judge or justice shall issue a citation directing the importer or party claiming the same to appear before him at his office within a time specified, not to exceed twenty-four hours, to show cause why said property should not be condemned. [Id.]

Art. 6992. [7286] [5024] Importer to recover.—If said importer or claimant makes proof that he is the lawful owner of said hides or animals by showing a bill of sale from the owner of same, or his legally authorized agent, and by showing complete chain of transfer of title from the original owner of the brand to himself, or his firm, such judge or justice shall direct the same to be delivered to said importer or claimant upon his paying the inspection fees. [Id.]

Art. 6993. [7287–8] [5025] Hides or animals sold.—If the importer or claimant of said hides or animals fail to establish his claim as the lawful owner of the same, or to any number of hides or animals so seized, the district judge, county judge or justice shall direct that said property be sold at public auction by the inspector, after a notice of ten days, published in a newspaper, should there be one published in said county, or if no newspaper be published in the county, then by written notice, posted at the courthouse door and two or more other places in said county, and the said hides shall be sold to the highest and best bidder. The inspector shall retain twenty-five per cent of the purchase money, after having deducted and paid all necessary expenses incurred by reason of said sale, and he shall deposit the remainder of said purchase money with the county treasurer, and take his receipt therefor. Said treasurer shall place one-half of said sum of money to the credit of the school fund and the other half to the credit of the jury fund of said county. [Id.]

Art. 6994. [7289] [5027] Property delivered to owner.—If any person appears and claims any hides or animals imported from Mexico at any time before the same shall have been sold as above directed, and should said claim be established before such judge

or justice of the peace of said county, such property shall be delivered to the claimant, and all costs accruing therein shall be paid by the importer; provided that at any time before proceedings shall have been commenced as above directed the importer may be permitted to pay the lawful owner, his agent or attorney, for any hides or animals imported by him from Mexico and presented in any county of this State for inspection, and upon such payment and the fees for inspection such hides or animals shall be released. [Id. Acts 1917, p. 325.]

Art. 6995. [7291] [5029] Brand recorded once.—In all cases where application for registration of any mark or brand shall be made, the county clerk shall receive and record the same, unless an examination of the recorded list of marks and brands shows that a similar mark and brand is already upon record in such county, in which event he shall refuse to register or give any certificate for the same; provided, that if such applicant shall have previously had such mark and brand recorded in some other county, and shall have a certificate from the clerk thereof, stating that such brand and mark had been recorded in said county at some time anterior to the time of the registration of the similar mark and brand in the county in which the applicant may desire to have his brand recorded, then said brand and mark shall be recorded; and the clerk shall make a minute on the record setting forth said facts. [Id.]

Art. 6996. [7292] [5030] In county of range.—All marks and brands of cattle shall be recorded in the county or counties in which they usually range. When cattle are gathered near the county line, the bills of sale of the same shall be recorded in both counties. When any stock or cattle is sold, the fact shall be noted on the record opposite or near the record of its mark or brand, giving the name of the vendor and vendee and date of sale, and this shall be done as often as there is a sale. The inspector shall procure certified copies of the marks and brands of this county for himself and his deputies, and monthly have added thereto the marks and brands that may be recorded. [Id.]

Art. 6997. [7293] [5031] Only one to be used.—No person owning and claiming stock shall, in originally marking and branding animals, make use of more than one mark and brand. Any person may own and possess animals in many marks and brands, the same having been acquired by him by purchase; and written bills of sale, properly acknowledged from the previous owner or owners shall be sufficient evidence of such purchase, but the increase of such animals, or of any animal counterbranded by such person from other stocks of cattle owned by him, shall be branded or counterbranded by one and the same brand; and when marked by such person shall be marked in one and the same mark. [Id.]

Art. 6998. [7294] [5032] Counterbranding.—In all cases where the counterbranding of any cattle shall be deemed necessary or expedient, the person so counterbranding shall counterbrand the existing brand of the animal by which the owner thereof is then known, or by which it is then claimed and owned, by branding below the said brand its facsimile, that is, similar letters, characters or numbers, as the case may be; and he shall also place on said animals the brand of the then owner thereof; but no person shall change or alter the ear marks of any animal, but in counterbranding shall leave the ears bearing the same mark or marks as before counterbranding. [Id.]

Art. 6999. [7295] [5033] Authority to gather, etc.—Any person having marks and brands recorded in the office of the county clerk may file with the inspector a list of his recorded marks and brands, certified by the clerk under his seal, to which certified lists shall be attached the names of any person or persons whom the owner of said stock may wish to authorize to gather, drive or otherwise handle his stock. The filing of said list with the inspector shall be deemed sufficient authority to the person or persons named in such list to gather, drive or otherwise handle any animals of the marks and brands therein described. [Id.]

Art. 7000. [7296–7] Inspections personal.—In making inspections, the inspector shall not trust to the statement or representations of any persons, but he shall in person carefully inspect and examine each animal or hide separately so as to identify the marks and brands, and in case of animals, the ages and sexes. He shall also carefully examine the bills of sale and lists of brands and marks for the cattle inspected by him; and, if satisfied that the person claiming the cattle inspected has correct bills of sale or chain of transfer in writing from the record owner, or is the owner himself in whole or part of the mark and brand of each animal in his drove or herd which should be inspected, and that he has none other in said herd or under his control to be carried with it, he will then, and not until then, make out a certificate, which he shall first enter in his record, under his hand and seal containing the number of cattle in each mark and brand, with their respective ages and sexes, thus inspected, and that they appear to be the property of the person for whom they were inspected, naming him, as appears by bills of sale from recorded owner of the marks and brands on the cattle inspected by him, or the owner of the brand and mark himself, and that he has none other in his herd or under his control that should be inspected; and that he intends to drive or ship them, naming the place in the State for sale or slaughter; or if out of the State, he shall then name the place on the border of the State through which it is proposed to drive or ship such stock. [Id.]

Art. 7001. [7298] [5036] Inspection before export.—Whenever any person shall be about to drive or ship any stock out of the State, if the inspector shall believe or is informed by any credible person that said person has other stock in his herd than those covered by his original certificate of inspection, or by subsequent purchase duly attested by proper bill of sale, the inspector at said point of shipment or border county where said person leaves the State, shall be authorized to inspect said stock in the same manner as in the original inspection; and, if any stock is found in said herd other than those covered by his original certificate of inspection, or by subsequent purchase duly and properly authenticated by bill of sale, the fees of said inspection shall be paid as provided in Article 6988, provided that said inspector shall in no case be authorized to receive or demand more than three cents per head for each head of cattle inspected; but if not, then said fees shall be paid by the person at whose instance said inspection was made; and if said inspection is made by the inspector at his own instance, and no stock is found in said herd, except those properly accounted for under the provisions of this article, then said inspector shall receive no fees for said inspection. [Acts 1879, S. S. p. 19; G. L. vol. 9, p. 51.]

Art. 7002. [7300] [5038] Seizure of other cattle.—If the inspector at the point of destination shall find upon inspection that the owner of the herd or person in charge has in his herd other cattle besides those inspected originally in the county from which said herd was driven, he shall seize said cattle and take them into possession, and thereupon the same proceedings shall be had as are prescribed in Article 6981. If the person in charge of any such cattle refuses to deliver the same into the possession of the inspector, such inspector may obtain a writ of sequestration from any justice of the peace, county judge or district judge, according as the value of such cattle may come within the jurisdiction of either. Such writ may be obtained upon the affidavit of the inspector, stating that he believes such cattle have been unlawfully acquired, shall issue without bond, and be forthwith executed by the sheriff or any constable of the county; and thereupon said proceedings shall be had before the officer issuing the writ, either in term time or in vacation. [Acts 1876, p. 302; G. L. vol. 8, p. 1138.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 7003. [7302–3] Proceeds into treasury.—The net proceeds of the sale of cattle condemned under the preceding article, save one-fourth of such proceeds retained by the inspector for his compensation, shall be paid into the county treasury, subject to the claim of the true owner of such cattle. If no claim be set up and established thereto within one year from the date of its deposit, such proceeds shall pass into the general fund of the county, and all claims thereto shall thereafter be barred. At the time such proceeds are originally deposited in the county treasury the inspector shall accompany such deposit with a certified statement, under his hand and seal, of the number of cattle sold, the mark and brand of each animal, with the amount for which sold. [Id.]

Art. 7004. [7304] [5042] Change of destination.—If the owner of the inspected herd desires to sell, slaughter or ship the cattle, or any of them, at any place other than the destination named in the original certificate of inspection, he may do so by first having his herd inspected at the point of destination therein named and a new certificate of inspection issued to him at that point, naming the new point of destination or shipment; and upon his arrival at such new point of destination, like proceedings shall be had in the way of inspection, comparison and return of the certificate of inspection, as are prescribed for the original point of destination. [Id.]

Art. 7005. [7305] [5043] Counties exempt.—The counties of Anderson, Angelina, Aransas, Archer, Armstrong, Atascosa, Austin, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Borden, Bowie, Bosque, Brazoria, Brazos, Brewster, Brown, Burleson, Burnet, Caldwell, Callahan, Calhoun, Cameron, Camp, Carson, Cass, Chambers, Cherokee, Childress, Clay, Cochran, Coke, Collin, Collingsworth, Colorado, Comal, Comanche, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Delta, Denton, DeWitt, Dickens, Donley, Duval, Eastland, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Gillespie, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadelupe, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Hartley, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Irion, Jackson, Jack, Jasper, Jeff Davis, Jefferson, Johnson, Karnes, Kaufman, Kendall, Knox, Kinney, Lamar, Lamb, Lampasas, Lavaca, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, Madison, Marion, Mason, Maverick, Medina, McLennan, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacagdoches, Navarro, Newton, Oldham, Orange, Palo Pinto, Panola, Parker, Pecos, Polk, Presidio, Raines, Reagan, Red River, Refugio, Robertson, Rockwall, Rusk, Reeves, Sabine, San Augustine, San Jacinto, San Patricio, Schleicher, Shelby, Smith, Shackleford, Somerville, Starr, Scurry, Stephens, Sterling, Tarrant, Terrell, Terry, Throckmorton, Titus, Tom Green, Trinity, Tyler, Uvalde, Upshur, Upton, Val Verde, Van Zandt, Victoria, Walker, Ward, Washington, Wharton, Wheeler, Williamson, Wilson, Wise, Winkler, and Young are hereby exempted from the provisions of this chapter, and from all laws regulating the inspection of hides and animals. [Acts 1921, pp. 43–83; Acts 1925, 39th Leg., p. 266, ch. 92, § 1; Acts 1927, 40th Leg., p. 156, ch. 105, § 1.]

Art. 7006. [7306] Local option election.—Whenever twenty-five of the qualified voters of each justice precinct in any county, or a majority thereof, shall petition the commissioners court for an election to determine whether such county shall have a hide and animal inspector, said court shall, either at a general or special term, order such election to be held after thirty days notice having been given by posting such notice in each of such justice precincts and by publishing same in some newspaper published in said county, if there be one so published. The clerk of said court shall prepare said notices and the sheriff shall post same and make and file with said clerk return of such posting showing time and place thereof. [Acts 1909, p. 127.]

Art. 7007. [7307 to 7311] Result.—At the time of ordering said election said court shall appoint two judges, designating one of such as presiding judge, and two clerks, who shall hold said election in the same manner as general elections are held. All qualified voters shall be entitled to vote. The ballots shall have written or printed on same "For inspector," or "Against inspector." The presiding judge shall deliver or cause to be delivered one copy of the result of said election, to the county clerk within five days after said election, and retain one copy himself. Within five days after such delivery of such returns to said clerk, the commissioners court shall count the votes and declare the results and enter the same on the election record. The county shall pay the expenses of holding such election. No election shall be held oftener than every two years under this law. If at such election a majority of the votes cast be "For inspector," then the persons holding such offices shall retain same to the next general election until his successor is elected and qualifies. In counties having no inspector, the commissioners court shall appoint one to serve until the next general election. [Id.]

Art. 7008. Fees of inspector.—Each inspector or deputy inspector provided for in this chapter, shall be entitled to receive ten cents for each hide or animal inspected, but if more than fifty hides or animals are inspected in the same lot, then ten cents each for the first fifty, and three cents each for all above that number. [Acts 1909, p. 127.]

CHAPTER EIGHT

LIVE STOCK SANITARY COMMISSION

Art.

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Article 7009. [7312–13] Commission.—The Governor with the consent of the Senate shall biennially appoint for a term of two years a Live Stock Sanitary Commission of the State of Texas, composed of three members. Each commissioner shall give a bond payable to the State of Texas in the sum of ten thousand dollars to be approved by the Comptroller. Each Commissioner shall be a bona fide resident of and a practical live stock raiser in the community from which he may be appointed, and shall have been actively engaged in said business for at least five years next preceding the date of his appointment. One of said Commissioners shall be appointed from the West, one from the South, and one from the Eastern portion of Texas. The word "Commission" as used in this chapter shall mean the Live Stock Sanitary Commission of the State of Texas. [Acts 1893, p. 70.]

Art. 7010. Repealing clause.—The following Acts be, and same are hereby, repealed, viz: Chapter LX of the General Laws of the Regular Session of the Thirty-fifth Legislature, as amended by Chapter XII

of the General Laws of the First Called Session of the Thirty-fifth Legislature, as amended by Chapter IV of the General Laws of the Second Called Session of the Thirty-fifth Legislature, as amended by Chapter XLIV of the General Laws of the Regular Session of the Thirty-sixth Legislature, as amended by Chapter XXVII of the General Laws of the Second Called Session of the Thirty-sixth Legislature, as amended by Chapter XXXVIII of the General Laws of the Third Called Session of the Thirty-sixth Legislature, as amended by Chapter X of the General Laws of the Fourth Called Session of the Thirty-sixth Legislature.

Art. 7011. Tick defined.—The word "tick," as used in this Act, is defined to mean the fever-carrying tick (Magararopic Annulatus) and no other species of ticks; and the word "cattle," as used in this Act is defined to include horses, mules and asses.

Art. 7012. Prevention.—It is hereby made the duty of the commission provided for in Article 7312, Revised Civil Statutes, to protect the domestic animals of the State from all malignant, contagious or infectious diseases, whether said diseases exist in Texas or elsewhere; and, subject to the limitations herein prescribed, said commission, for said purposes, is hereby authorized and empowered to establish, maintain and enforce such protective measures and quarantine lines and sanitary rules and regulations as may be necessary whenever it shall determine upon proper inspection that such diseases exist. It shall also be the duty of said commission to co-operate with the Live Stock Sanitary Commission and officers of other States, and with the United States Secretary of Agriculture in establishing such interstate quarantine lines, rules and regulations, subject to the limitations herein prescribed, as shall best protect the livestock industry of this State against the fever-carrying tick (Magararopic Annulatus) and other malignant, contagious, infectious or other communicable diseases of livestock. It shall be the duty of said commission to quarantine any district, county, or part of county or premises within this State when it shall determine, upon proper inspection, the fact that cattle, sheep, or other livestock in such district, county or part of county or premises are infected with any malignant, contagious, infectious or communicable disease, or with the agency of transmission of such disease, and to give written or printed notice of such quarantine to the proper officers of railroad and express companies doing business in or through such quarantine district, county, or part of county within this State, and to publish notices of the establishment of such quarantine in such newspapers in the quarantined district, county, or part of county as the Live Stock Sanitary Commission may select, or to give notice in such other ways as it deems necessary and adequate for the purpose of establishing and maintaining a quarantine service, and no railroad or express company shall receive for transportation, or transport from any quarantined district, county, or part of county within this State into any other district, county, or part of county within this State any cattle, sheep, or other livestock except as hereinafter provided for; nor shall any person, company or corporation deliver for transportation to any railroad or express company any cattle, sheep or other livestock from a quarantined area except as hereafter provided; nor shall any person, company or corporation drive on foot, or cause to be driven on foot, or transport in private conveyance, or cause to be transported in private conveyance, or drive, or permit to be driven or permit to go, whether driven or not, from a quarantined district, county, or part of county or premises in this State any cattle, sheep or other livestock except as hereinafter provided. It is hereby made the duty of the Live Stock Sanitary Commission of Texas to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, treatment, and handling and method and manner of delivery and shipment of cattle and other livestock from and into a quarantined district, county, or part of county or premises and into any other district, county, or part of county or premises in this State, and said Commission shall make and promulgate rules and regulations which shall permit and govern the movement and shipment of cattle and other livestock from or into a quarantined district, county or part of county or premises into any district, county, part of county or premises in this State, and said rules and regulations shall permit cattle to be shipped from all quarantine areas to State markets, without other condition, for immediate slaughter on being cleaned of ticks under official inspection, and shall permit cattle to be shipped from quarantined areas into non-tick infested areas otherwise than for immediate slaughter upon such cattle being dipped until they are cleaned of ticks and inspected by an authorized inspector of the Live Stock Sanitary Commission, and it is hereby made the duty of the Live Stock Sanitary Commission to promptly furnish official inspection of all cattle tendered for shipment from quarantined areas upon application to it for such inspection by the owner or caretaker of such cattle. It is hereby made the duty of Live Stock Sanitary Commission of Texas to give notice of all of its rules and regulations by proclamation issued by the Governor of Texas and to furnish to any owner of live stock who applies therefor a printed copy of all such rules and regulations. The said Live Stock Sanitary Commission of Texas is hereby empowered to employ a State veterinarian and assistant State veterinarian in times of emergency, and inspectors or other persons as it may deem necessary for the performance of the duties imposed upon said commission and the Live Stock Sanitary Commission, the State veterinarian, assistant State veterinarians and inspectors acting under authority or direction of the commission are hereby empowered and it is made their duty at their discretion to enter upon the premises of any person or persons, company, or corporation within this State for the purpose of inspecting, quarantining or disinfecting premises or livestock thereon.

Art. 7013. Sale of biological products.—It is hereby provided that the Live Stock Sanitary Commission of Texas shall have the power to control the sale and distribution of all veterinary biological products within this State, and it is hereby made its duty, subject to the limitations herein prescribed, to destroy and eradicate the fever-carrying tick; also to eradicate and eliminate the scabies, sheep scab, hog cholera, glanders, and all other malignant, contagious, infectious and other communicable disease of livestock. For this purpose it is empowered and directed to establish special quarantine districts where such disease or infections of such diseases are known to exist, and notice of the establishment of such special quarantine districts shall be given as provided in Article 7314, Revised Civil Statutes, and in Section 3 of this Act. Said commission shall have the power to quarantine premises or pastures located in said special quarantine districts and the domestic livestock thereon situated in such quarantined districts or elsewhere when such pasture or quarantined premises or livestock located thereon are infected with or have been exposed to malignant, contagious, infectious or communicable disease or infection thereof; and no livestock shall be moved to or from such special quarantined district or from any pastures or premises located in such special quarantined district in a manner, method or condition other than those prescribed by the Live Stock Sanitary Commission and by this Act. It shall be the duty of the Live Stock Sanitary Commission to prescribe methods for dipping livestock or otherwise treating or disinfecting said premises and the livestock thereon, as in their opinion are necessary and adequate for the eradication of the disease or the infection of the disease for which they are quarantined.

Art. 7014. Duties of commissioners' court.—It shall be the duty of the county commissioners' court to co-operate with and assist the Live Stock Sanitary Commission in protecting the livestock for their respective counties from all malignant, contagious and infectious or communicable diseases, whether such diseases exist within or outside of the county, and

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

otherwise to protect the livestock interests of their counties. It shall be the duty of the commissioners' court in these counties which adopt compulsory tick eradication work under the local option provisions of this Act to co-operate with the Live Stock Sanitary Commission and the officers working under the authority or direction of said commission in the suppression and eradication of ticks and all malignant, contagious, infectious or communicable diseases of livestock; provided when it becomes necessary to disinfect any premises, county or subdivision of the county infected with anthrax, hog cholera, glanders, foot and mouth disease, bovine tuberculosis, or contagious abortion, under orders of the Live Stock Sanitary Commission, the county judge of the county where said premises are located shall have such disinfection done at the expense of the county and according to the rules and regulations of the Live Stock Sanitary Commission, and said commissioners' courts are hereby authorized and empowered and directed to appropriate moneys out of the general fund of their counties, to incur indebtedness by the issuance of warrants, and to levy a tax to pay the interests thereon and provide a sinking fund for the payment thereof, for the purpose of purchasing, constructing or leasing necessary public dipping vats within their counties. Said warrants shall draw interest at a rate not exceeding six per cent per annum and shall run not exceeding twenty years from the date hereof.

Art. 7014a. Owner vaccinating own hogs.—No law of this State shall prevent any person from vaccinating, inoculating, or treating his own hogs or for any person employed as County Demonstration Agent from vaccinating, inoculating or treating any hogs in the county where he is employed with hog cholera virus or serum or other remedy; or dogs with any serum or virus that will prevent rabies, and any law in conflict with this Act is hereby repealed. [Acts 1927, 40th Leg., p. 217, ch. 146, § 1.]

Art. 7015. Quarantine.—It shall be the duty of the Live Stock Sanitary Commission, whenever they have reason to believe or shall receive notice that any malignant, contagious, infectious or communicable diseases exist among any domestic animals in the State, to immediately investigate, and if such disease is found to exist, or if they have reason to believe such disease exists, to immediately quarantine such animals and premises and land upon which they are located. If glanders or anthrax is found, the State veterinarian or assistant State veterinarian shall make a thorough investigation and shall notify the county judge of the county wherein such animals are located of the number and description of the animals so infected.

Art. 7016. Appraisers to be appointed.—It shall be the duty of the county judge of any county in the State, whenever any horse, mule or ass within their counties is found infected with glanders and have been quarantined by order of the Live Stock Sanitary Commission, to appoint three disinterested parties who shall act as appraisers and fix the value of such animals at their actual value at the time of such appraisement, and make a sworn written report of said appraisement to the county judge, whereupon the commissioners' court shall pass upon such written report, and pay to the owner of the animals their appraised value. The county judge, on receipt of a report of the appraisers, as provided for in this article, shall issue an order to the sheriff, deputy sheriff, or any constable of the county, commanding him to seize said diseased animal or animals, and take same to some secluded place and kill them and burn their carcass or carcasses, and said appraisers and officers shall be paid for their services as provided for in Article 7320, Revised Civil Statutes.

Art. 7017. To be burned or buried.—It shall be the duty of any person, firm or corporation of this State to burn to ashes or bury at a depth of not less than two and one-half feet and to cover with quick lime the carcass or carcasses of any domestic animal or animals dying from any infectious, contagious or communicable disease of any malignant character that may be found upon their premises within twenty-four hours after the death of such animal or animals.

Art. 7018. Election to be ordered.—It shall be the duty of the commissioners' courts of every county in Texas where systematic tick eradication work is not being conducted at the State expense, whenever they deem it expedient, or when petitioned to do so by seventy-five resident land owners and qualified voters in the county, to order an election for the purpose of determining whether the county shall take up and prosecute the work of tick eradication in said county. Said election shall be ordered and held not less than sixty days after the filing of the petition. At said election the ballots shall have printed upon them "For tick eradication in ——— County," and "Against tick eradication in ——— County." The officers of said election shall hold said election and make return thereof as provided by law in cases of other elections, as nearly as may be. Said returns shall be made to the county judge of the county. The commissioners' court shall meet and canvass said returns as soon as practicable after such election, and if they find that a majority of all the votes cast were in favor of tick eradication, under the direction of the Live Stock Sanitary Commission, they shall so certify to said commission and cause publication of the result of said election to be made in a newspaper published in said county, which publication shall be certified to by the county judge of said county, and said certificate shall be filed with the county clerk of said county, which said certificate shall be admissible in evidence in any court of this State. The county judge of the county shall immediately so notify the Live Stock Sanitary Commission, and upon receipt of such notice from the county judge of the county so holding the election, the Live Stock Sanitary Commission shall cause to be issued a supplemental proclamation signed by the Governor of Texas, and the citizens of said county in co-operation with and under the directions of the Live Stock Sanitary Commission shall begin work of tick eradication within thirty days of the issuance of said supplemental proclamation. Should the commissioners' court find that a majority of the votes cast were against tick eradication, then the county judge shall so notify the Live Stock Sanitary Commission.

Art. 7019. County Inspectors.—The commissioners' court of every county within this State where tick eradication is carried on under the provisions of this Act may nominate for appointments by the Live Stock Sanitary Commission the number of county inspectors found by the Live Stock Sanitary Commission to be necessary to carry on the work of active tick eradication in such county, and when so nominated said Live Stock Sanitary Commission shall appoint them. In the event of the failure or refusal of the commissioners' court to nominate said county inspectors the Live Stock Sanitary Commission is hereby authorized to appoint the number of county inspectors deemed by them to be necessary. Said county inspectors shall be residents of said county, shall work under the direction and orders of the Live Stock Sanitary Commission, and shall be subject to discharge by said Commission, and shall be paid their salaries out of the State Treasury of Texas, their compensation to be fixed by said Commission.

In the event the commissioners' court should nominate any persons who are thereafter appointed such county inspectors and the Live Stock Sanitary Commission find or conclude that the commissioners' court of said county are trying to retard tick eradication or that they are nominating men who are incompetent or negligent in the performance of their duty, then in that event said Live Stock Sanitary Commission is hereby authorized to ignore in the future nominations or recommendations by said commissioners'[s] court of county inspectors. In any event, county inspectors must be residents of the county in which they are appointed to work.

Art. 7020. Inspector and clerk.—The Live Stock Sanitary Commission is hereby empowered to

appoint a chief inspector, chief clerk, and such supervising inspectors as they deem necessary to carry on active, systematic tick eradication, and they are authorized and empowered to employ such clerical help as may be deemed necessary to maintain their office, and to appoint a chief veterinarian and such assistant veterinarians as they may deem necessary.

Art. 7021. Scabies.—Whenever, any district, county or part of county shall be quarantined by order of the Live Stock Sanitary Commission on account of scabies or scab in sheep, every individual premises and the lands of every individual, firm or corporation within such quarantined area shall be quarantined separately, and no cattle or other livestock shall be shipped, driven, drifted, or permitted to be shipped, driven or drifted from any premises where located when such quarantine is declared, without a written permit from an authorized inspector of the Live Stock Sanitary Commission of Texas.

Art. 7022. Order to dip.—The Live Stock Sanitary Commission, or its chairman, is hereby authorized and empowered to direct in writing any person or persons, company or corporation owning, controlling or caring for any cattle which are subject to be dipped under the provisions of this Act in the prosecution of the systematic tick eradication work, to dip said cattle under the supervision of an authorized inspector of such Commission in an arsenical solution of a strength not less than seven and one-half pounds, and not more than eight and one-half pounds, of arsenic to each five hundred gallons of water in the said solution for the purpose of destroying, eradicating and removing said fever-carrying tick or exposure, subject to the provisions of this Act. Said dippings shall be administered at regular intervals, but the Live Stock Sanitary Commission shall not require the dipping of cattle at more frequent intervals than every fourteen days.

Art. 7023. Instructions.—The written direction issued by the Live Stock Sanitary Commission, or its chairman, requiring the dipping of cattle, as provided for in this Act, shall be dated, showing the date of its issuance, the name of the person, company or corporations to whom the said directions are given, the approximate location of the premises on which the said livestock are located; the name of the county in which said premises are located, and it shall state in clear and intelligible language that the said cattle, which the said person is therein directed to dip, have the fever-carrying tick upon them, or that they are exposed to the said fever-carrying tick, or are on a premise or other place on which the fever-carrying tick is known to exist, or that they have sometime during the nine months next preceding the date of the issuance of said written direction hereinbefore provided been exposed to the said fever-carrying tick, or been on a premise or other place on which the fever-carrying tick is known to exist; and it shall direct the said person, company or corporation to dip the said livestock under the supervision of an authorized inspector of the Live Stock Sanitary Commission, in an arsenical solution of a strength of not less than seven and one-half pounds, nor more than eight and one-half pounds of arsenic to each five hundred gallons of water in the dipping solution in which the said livestock are to be dipped, and it shall designate the place, date and time that said dipping is to be done, and it shall be signed by the Live Stock Sanitary Commission or its chairman.

Art. 7024. Dipping directions to be delivered.—The said dipping direction, provided for in this Act, shall be delivered to the person, company or corporation owning[,] controlling or caring for said cattle required to be dipped at least fourteen full days before the date and time said dipping is to be administered. The person, company or corporation owning, controlling or caring for said cattle required to be dipped under the provisions of this Act may file with the Live Stock Sanitary Commission, or its chairman, a written affidavit at any time within five days after receiving said written direction and not later, denying that said cattle are subject to being dipped under the provisions of law, or that for good and sufficient reason set out in said affidavit the said person, company or corporation is entitled to have said dipping direction rescinded, or to have said dipping postponed, and requesting that the Live Stock Sanitary Commission, or its chairman, withhold the enforcement or [of] said dipping direction and grant him or them a hearing on said matter, or make necessary investigation to determine the correctness of the statement contained in said affidavit. Upon the receipt of said affidavit, the Live Stock Sanitary Commission, or its chairman, shall within five days after receipt of such affidavit grant said affiant a hearing in the office of the chairman of said commission if the affiant so desires it, and give such affiant notice of such hearing, by telegram or registered mail, and which hearing shall be set not less than four days after the service of such notice and the commission shall consider such ex parte affidavits as such owner or caretaker may file with the commission in said hearing, and the commission and its chairman shall make such investigation in person or through its authorized representatives, in reference to such statement as the commission, or chairman thereof, deem necessary, and if such statements are found to be correct, the dipping direction shall be rescinded by the commission or its chairman; otherwise, the dipping direction shall be enforced on the day and at the time specified in said written direction. The commission, or its chairman, after having granted such hearing, or made investigation, shall notify the person, company or corporation in writing of its findings, which notice shall be delivered to the person, company or corporation at least four full days before the day and time he or they are required to dip said cattle by virtue of such written direction. Any person, company or corporation who has been directed to dip the cattle as hereinbefore provided for who shall be dissatisfied with the findings of the Live Stock Sanitary Commission, he or they may apply to a court of proper venue and jurisdiction for injunctive or other relief, which application for injunction upon proper allegations and verification shall be granted and the Live Stock Sanitary Commission shall not enforce the dipping order until the final disposition of such suit.

Art. 7025. Presence of fever tick to be ascertained, how.—The ascertaining of the presence of the fever-carrying tick on any premise, place or livestock, or the ascertaining of exposure of premises, places or livestock to the said fever-carrying tick, shall be done by authorized representative or inspectors of the Live Stock Sanitary Commission, or by the commissioners.

Art. 7026. Commission may adopt rules.—The Live Stock Sanitary Commission is hereby authorized and empowered to make, adopt and promulgate rules and regulations in conformity with this Act for the carrying out and enforcing the provisions of this Act.

Art. 7027. Quarantine.—Whenever the Live Stock Sanitary Commission shall have determined the fact that cattle, or other livestock, are infected with or exposed to splenetic tick fever, bovine tuberculosis, anthrax, glanders, contagious abortion, hemorrohagic [hemorrhagic] septicaemia, scabies, hog cholera, malta fever, or other similar or dissimilar contagious, infectious or communicable disease, or to the agency of transmission theref [thereof], recognized by the veterinary science as being contagious, infectious or communicable, the said commission shall designate the district, county, or part of county or premises necessary to be quarantined, and notice of such quarantine shall be issued by the said commission, or chairman thereof, as provided herein. Publication of such quarantine orders may be made in any newspaper within such area, or if no newspaper is published in such area, then the nearest newspaper thereto. In lieu of such publication the Live Stock Sanitary Commission may give notice of such quarantine by posting a copy of such quarantine notice at the county courthouse door of the county in which said quarantine is to be effective.

A written notice of such quarantine delivered to the owner or caretaker of livestock to be quarantined shall be sufficient notice of such quarantine, in lieu of notices above provided. The owner and caretaker of milch cows or dairy cows shall not be required to dip such cattle unless upon examination by an authorized inspector of the Live Stock Sanitary Commission such cattle or a part of them are found to have the fever-carrying tick upon them, or are exposed to said fever-carrying tick, and if the said Live Stock Sanitary Commission shall so find, then said quarantine shall be effective as to the premises of such owner and said person shall be subject to all the provisions of this Act, provided the term milch or dairy cows shall include only such cattle as are actually used for domestic or dairy purposes and does not include stocker or breeding cattle for other purposes.

Art. 7028. Shipment by carriers.—Any railway company, or receiver or receivers of any railway company or other common carrier, who shall receive for shipment or who shall haul or transport into any county in this State any cattle, horses, mules or asses, in violation of any quarantine established by the Live Stock Sanitary Commission, or its chairman, or who shall receive for shipment, or who shall transport from any county in this State that is under quarantine to any other county in this State any cattle that have not been certified to by a regular inspector of the Live Stock Sanitary Commission, shall be deemed guilty of a violation of this Act, and in any suit brought in a court of competent jurisdiction by the district or county attorney, either in the county where such shipment was received by said railroad company, receiver, or other common carrier, or in the county to which or through which said shipment may be moved, such county attorney or district attorney is hereby authorized to recover, for the benefit of the State, penalties against said railway company of not more than fifty dollars per head for such cattle so received, hauled or transported.

Art. 7029. Shipping from quarantine district.—The owner, caretaker or person in charge of any cattle located in any quarantine county, district, area, premises or land, may move said cattle to shipping pens, and may ship same to market for the purpose of immediate slaughter upon one dipping, provided that in the driving or otherwise moving said cattle to the shipping pens, they shall not be moved or transported over or into any land or premises belonging to another that has been declared clean of the fever tick by the Live Stock Sanitary Commission, or over or into any land or premises upon which systematic tick eradication is being carried on by Live Stock Sanitary Commission or the Bureau of Animal Industry.

Art. 7030. Moving from quarantine district.—Any owner or person in charge of any cattle located in quarantined counties in this State may move or ship said cattle to any other quarantined county in this State upon one dipping under official inspection of the Live Stock Sanitary Commission or the Bureau of Animal Industry and so certified as having been inspected by said Live Stock Sanitary Commission or said Bureau of Animal Industry, provided the county to which said cattle are shipped is not engaged in systematic tick eradication, and provided further that in moving said cattle to the shipping pens in the county from which they are shipped and in moving cattle from the shipping pens in the county to which they are shipped they do not go into, through or over any clean land or premises, and provided further that said cattle shall not be unloaded en route in clean pens and shall not be unloaded at the point of destination in any clean pens. Said cattle shall be shipped within forty-eight hours from the time they are dipped. Said cattle shall be dipped in a solution of not less than 8¼ pounds and not more than 9⅛ pounds of arsenic to each 500 gallons of water. Cattle may be driven from one quarantined county to another quarantined county, and when so driven pass through quarantined territory in which no systematic tick eradication is being carried on, and do not pass through or along side of any clean territory, said cattle may be driven without dipping.

Art. 7031. Boundary of districts.—Immediately after this Act becomes effective, the Live Stock Sanitary Commission of Texas shall make out and certify to the Governor of Texas, a list of all counties and portions of counties in Texas which have tick infested territory, land or premises that lie west of the following line, beginning at the mouth of the Brazos River thence with said river to the northwest corner of Robertson County, and a list of all counties lying north or west of the hereinafter described line; commencing at the northwest corner of Robertson County on said Brazos River; thence in an easterly direction with the north lines of Robertson and Leon Counties to the northeast corner of Leon County in the west line of Anderson; thence in a southerly direction, following west line of Anderson County to the southwest corner of said county and the northwest corner of Houston County, thence in an easterly direction with the dividing line between said counties of Anderson and Houston, to the southeast corner of Anderson County; thence in a northerly direction, following the east line of Anderson County, to the northwest corner of Cherokee County, same being the southwest corner of Smith County; thence in an easterly direction, following the north line of Cherokee County to the northeast corner of same, being the southeast corner of said Smith County in the west line of Rusk County; thence with the west line of Rusk County, in a northerly direction, to the northwest cornor [corner] of same, said point being the southwest corner of Gregg County; thence in an easterly direction following the north line of Rusk County to where the same intersects the south line of Harrison County; thence with the south line of Harrison County and the north line of Panola County; thence with the south line of Harrison County to the southeast corner of said Harrison County on the Louisiana State line.

Art. 7032. May designate counties.—The Live Stock Sanitary Commission shall designate from time to time, the counties and portion of counties in said area west of said Brazos River and north and west of a line running from the northwest corner of said Robertson County to the southeast corner of Harrison County as set out above in which systematic tick eradication work will be commenced, and the Governor shall thereupon issue his proclamation requiring systematic tick eradication work to begin and be prosecuted in said counties and portions of counties so designated by said Live Stock Sanitary Commission, and thereafter, from time to time, said Live Stock Sanitary Commission shall make out a list of additional counties or portions of counties in which they will carry on systematic tick eradication, if any, and thereupon the Governor shall issue his proclamation requiring systematic tick eradication work to begin in said counties or portions of counties so designated by the Live Stock Sanitary Commission. The expense of said work to be borne as follows:

Art. 7033. Salaries and expenses.—The salaries of all supervising inspectors and such county inspectors as the Live Stcok [Stock] Sanitary Commission may deem necessary, shall be borne by the State of Texas, and the expense of purchasing the necessary dip shall also be borne by the State of Texas. The expense of buying or leasing and maintaining the necessary dipping vats shall be borne by the respective counties in said territory, and said counties shall also bear the expense of constructing and maintaining such necessary pens and other facilities incident to the proper dipping of livestock; and said work of tick eradication in said counties and portions of counties shall be prosecuted until the fever ticks therein are destroyed and said territory is released from quarantine by the Live Stock Sanitary Commission.

Art. 7034. Certify to Governor.—Immediately after this Act becomes effective the Live Stock Sanitary Commission of Texas shall make out, and certify to the

Governor of Texas, a list of all counties and portions of counties in Texas which have tick infested territory, land or premises, whereupon the Governor shall issue his proclamation declaring a quarantine in all of said counties or portions of counties so designated by said Live Stock Sanitary Commission, and no cattle shall be moved from any quarantined area, land or premises within said quarantined counties or parts of counties except as is provided for in this Act, or in accordance with the rules and regulations of the Live Stock Sanitary Commission.

Art. 7035. State to bear expenses of dipping.—In all counties in this State, east of the Brazos River and south of said line running from the northwest corner of Robertson County to the southeast corner of Harrison County, who shall, at an election held for that purpose under the provisions of this Act, declare in favor of tick eradication, the expense of supervising inspectors and county inspectors, as well as the purchase of all necessary dip to carry on the work of tick eradication, shall be borne by the State of Texas, and the buying or leasing and maintaining the necessary dipping vats, shall be borne by the respective counties, the said counties shall also bear the expense of constructing and maintaining such necessary pens and other facilities incident to the proper dipping of livestock.

Art. 7036. Expense by owner.—In all counties and parts of counties in this State in which tick eradication work is being prosecuted under the provisions of this Act, or by virtue of any local option election, it shall be the duty of the owner, owners, or caretakers of such cattle or other livestock within such territory, to gather same, at his or their own expense, and drive, or cause them to be driven, to the dipping vat, and to dip same for the purpose of eradicating said fever ticks.

Art. 7037. Definition of premises.—Premises, as referred to in this Act, is hereby defined as being any lot, block, tract, subdivision, subdivisions, surveys, grants, part or parts thereof, of any kind situated within this State.

Art. 7038. Carrying arms.—No inspector provided for in this Act shall be permitted to carry on or about his person, saddle or in his saddle bags, or automobiles any pistol, dirk, dagger, slung shot, sword, cane, spear or knuckles made of any metal or any hard substance, bowie knife, or any other knife manufactured or sold for the purposes of offense or defense.

Art. 7039. Carrying arms.—In case any inspector secures appointment as deputy sheriff or deputy constable, or any other office that will permit him to carry arms, he shall be at once discharged by the Live Stock Sanitary Commission, and in case they refuse to discharge such inspector, the county judge of the county where such inspector is employed shall discharge him.

Art. 7040. Clean land, etc., defined.—By the term clean land, clean premises, clean area, clean pens and non-tick infested area, is meant those areas, premises, pens or land that have been declared free of the fever-carrying tick by the Live Stock Sanitary Commission. [Acts 1925, p. 310.]

[Note.—For penalties for violating the provisions of this Act see Act Thirty-ninth Legislature, Chapter 122, Sec. 8, p. 313; Sec. 10, p. 314; Sec. 13, p. 315; Sec. 20, p. 318; Sec. 21, p. 319; Sec. 23, p. 319; Sec. 23a, p. 320; Sec. 24, p. 321; and Sec. 27, p. 322.]

TITLE 122

TAXATION

Chap.

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CHAPTER ONE

LEVY OF TAXES AND OCCUPATION TAXES

Art.

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Article 7041. [7349] Board constituted.—The Governor, Comptroller and State Treasurer are constituted a board to calculate the ad valorem tax to be levied and collected each year for State and public free school purposes. [Acts 1907, p. 464.]

Art. 7042. [7350] Certificate to Comptroller.—Each tax assessor shall make a statement to the Comptroller on or before July 15th of each year showing as nearly as can be ascertained from his inventories or assessments the total amount of property in each county subject to taxation; provided, that the tax for State and public free school purposes shall not be calculated and carried out upon said rolls. [Acts 1st C. S. 1909, p. 371.]

Art. 7043. [7351] Ascertaining tax rate.—Within five days after the Comptroller has received such certified statements from every assessor within this State, said board shall meet for the purpose of calculating the ad valorem rate for taxes to be collected for the State and public free school purposes. In calculating said rates the board shall calculate the same by the following rules and upon the following basis; they shall find by adding together all the property subject to taxation in all the counties as shown by the certified statements returned by the assessors, the total valuation of all property within this State subject to ad valorem taxes. They shall find by adding together the sums appropriated by the Legislature, which will or which may become due by the State during the following fiscal year, the total sum which will or which may become due by the State, during the following fiscal year. They shall find, by adding all sums paid into the State treasury as taxes for State purposes from all sources other than as ad valorem taxes during the first half of the current calendar year and the latter half of the preceding calendar year, the total sum paid into the State treasury from said sources during said time. They shall find by subtracting from the total sum which will or which may become due by the State during the succeeding fiscal year the total sum which was paid into the State treasury as taxes for State purposes during the first half of the current calendar year and the latter half of the preceding calendar year, the total sum for State purposes which must be collected by ad valorem taxes. They shall add to such remainder twenty per cent of said remainder. They shall divide the total sum for State purposes which must be collected by ad valorem taxes added to twenty per cent of such total sum by the quotient of the total valuation of all property within this State divided by one hundred. The quotient shall be the number of cents on the one hundred dollars valuation to be collected for the current year for State purposes; provided, that said quotient shall not be run to more than three decimals. The rate for State purposes shall never exceed the rate fixed by law on the one hundred dollars valuation of property. In calculating the rate to be collected for public free school

purposes, said board shall take into consideration the number of children in the State within the scholastic age, to be determined from the most recent official school census; and shall fix a rate that will yield and produce for such fiscal year four dollars per capita for all the children within the scholastic age, as shown by said scholastic census; provided, the rate so fixed for any year shall never exceed the rate fixed by law. [Acts 1st C. S. 1907, p. 464.]

Art. 7044. [7352] Certify rate to tax assessor.—The Comptroller shall certify to the tax assessor of each county through registered letter, the rate of taxes for State purposes and for public free school purposes for the current year, and shall also publish immediately such rate for thirty days in some newspaper published in the State and having a general circulation therein; and as soon as such tax assessor has received notice of such rate he shall calculate the taxes due the State for State purposes, and also the taxes due for public free school purposes, on all taxable property within his county as set out in the preceding article, and shall carry the same out upon the copies of the tax rolls of the county to be delivered to the tax collector and to the county clerk, and to be returned to the Comptroller. After he has so completed the said copies of the tax rolls, he shall return to the Comptroller a copy of the same. [Id.]

Art. 7045. [7353] County rate.—The Commissioners courts of the several counties, all the members thereof being present, at either a regular or special session, may at any time after the tax assessors of their respective counties have forwarded to the Comptroller the said certificate and prior to the time when the tax collector of such county shall have begun to make out his receipts, calculate the rate and adjust the taxes levied in their respective counties for general purposes to the taxable values shown by the assessment rolls. [Id.]

Art. 7046. [7354] [5048] Poll tax.—There shall be levied and collected from every person between the ages of twenty-one and sixty years, resident within this State on the first day of January of each year (Indians not taxed, and persons insane, blind, deaf or dumb, or those who have lost one hand or foot, or are permanently disabled, excepted), an annual poll tax of one dollar and fifty cents, one dollar for the benefit of the free schools, and fifty cents for general revenue purposes. Said tax shall be collected and accounted for by the tax collector each year and appropriated as herein required. No county shall levy more than twenty-five cents poll tax for county purposes. The poll tax due from citizens of unorganized counties shall be paid in the county to which the unorganized county is attached for judicial purposes. [Acts 4th C. S. 1920, p. 11.]

Art. 7047. [7355] [5049] Occupation taxes.—There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this article, an annual occupation tax, which shall be paid annually in advance except where herein otherwise provided, on every such occupation or separate establishment, as follows: [Acts 1st C. S. 1897, p. 49.]

1. Itinerant merchants.—From every merchant who may remove from place to place and offer for sale "bankrupt stocks" of goods, or advertising "fire sales" or "water and fire damaged stocks for sale," for a limited period of time, there shall be collected one hundred dollars per month for the first month, or less than a month, for each place where such business is located; and for each additional month that such sales are continued at any given place, said merchant shall pay an additional sum of twenty dollars. Where they remain for six months or more in any place, in addition to the one hundred dollars charged for the first month, they shall pay an additional sum of ten dollars per month. [Id.]

2. Traveling vendors of patent medicines.—From every traveling person selling patent or other medicines, fifty dollars, and no traveling person shall so sell until said tax is so paid. This tax shall not apply to commercial travelers, drummers, or salesmen making sales or soliciting trade for merchants engaged in the sale of drugs or medicines by wholesale. [Acts 1st C. S. 1897, p. 49; Acts 1917, p. 335.]

3. Itinerant physicians, etc.—From every itinerant physician, surgeon, oculist or medical or other specialist of any kind, traveling from place to place in the practice of his profession, except dentists practicing from place to place in the county of their residence, an annual tax of fifty dollars. [Acts 1907, p. 57.]

4. Peddlers.—From every foot-peddler, five dollars in each county in which he peddles; from every peddler with one horse or one pair of oxen, seven dollars and fifty cents in the county in which he peddles; from every peddler with two horses or two pair oxen, ten dollars in each county in which said occupation is pursued; from every peddler with sail or other boat in streams, along coasts or bays of this State, ten dollars in each county in which said occupation is pursued. Nothing herein shall be so construed as to include traveling vendors of literature or traveling vendors of poultry, vegetables, fruits or other country produce exclusively, or fruit trees exclusively. [Acts 1st C. S. 1897, p. 49.]

5. Clock peddlers.—From every person or firm who peddles out clocks, agricultural implements, cooking stoves or ranges, wagons, buggies, carriages, surreys, and other similar vehicles, washing machines and churns, an annual tax of two hundred and fifty dollars, to be paid in each county in which said occupation is pursued; provided, that a merchant shall not be required to pay this special tax for selling the articles named in this subdivision when sold in his place of business. [Id.]

6. Auctioneers.—From every auctioneer, ten dollars. [Id.]

7. Selling on commission.—From every person, firm, or association of persons selling on commission, ten dollars. [Id.]

8. Brokers.—From every person, firm or association of person[s] selling on commission, if in a city of more than ten thousand inhabitants, fifty dollars; if in a city or town of less than ten thousand inhabitants, twenty-five dollars. This article is intended to cover every person, firm or association of persons selling on samples only, and who do not carry any stock or merchandise or anything else on hand. This tax shall not apply to commercial travelers or salesmen making sales or soliciting trade from merchants. [Id.]

9. Ship brokers and agents.—From every person, firm or association of persons following the occupation of ship brokers or ship agents, ten dollars. [Id.]

10. Insurance adjusters and general agents.—For each person acting as a general adjuster of losses, or agents of fire and marine insurance companies, who may transact any business as such in this State, an annual occupation tax of fifty dollars. By "general agent" as used in this law, is meant any person or firm, representative of any insurance company in this State, or who may exercise a general supervision over the business of such insurance company in this State, or over the local agency thereof in this State, or any subdivision thereof. [Id.]

11. Lightning rod agents.—From every person, firm or association of persons, dealing in lightning rods, an annual tax of thirty-six dollars to the State and eighteen dollars as a county tax to the county in which such business is carried on; and from every person canvassing for the sale of lightning rods, an annual tax of one hundred dollars to the State and fifty dollars as county tax, in each county in which such canvassing is done. [Id.]

12. Cotton brokers and commission merchants.—From every person, firm or association of persons following the occupation of cotton broker, cotton factor, or commission merchant in a city of ten thousand inhabitants or over, thirty-five dollars; and in all cities and towns of less than ten thousand inhabitants, an annual tax of eighteen dollars. A "commission merchant," in the meaning of this article, is every

person, firm or association of persons, receiving country produce, horses, cattle, sheep, hogs, grain, corn, hay, lumber, shingles, wood, coal, goods, wares and merchandise, or anything else for sale, to be accounted for to the owner when sold, and charging a commission therefor. [Id.]

13. Pawnbrokers.—From every pawnbroker, an annual tax of one hundred and fifty dollars. [Id.]

14. Loan brokers.—From loan brokers, as that term is defined by the laws of this State, an annual tax of one hundred and fifty dollars for each place of business. [Acts 1915, p. 50.]

15. Money lenders.—From every person, firm or association of persons loaning money as agent or agents for any corporation, firm or association, either in this State or out of it, an annual occupation tax of one hundred and fifty dollars for the State, for the principal office, and a county tax of fifteen dollars from each agent for each county in which he may do business, and no additional occupation tax shall be levied by any county, city or town in this State. [Acts 1st C. S. 1897, p. 49.]

16. From each person, party, partnership or corporation engaged in the business of inquiring into and reporting upon the credit or standing of persons engaged in business in this State, or acting as agent or business manager in this State for any such person, party, partnership, joint stock association, or corporation, three hundred dollars. The payment of this tax, evidenced by the receipt of the Comptroller of Public Accounts, shall exempt the party paying the same from the payment of this tax in any other county, or to any city or town; and payment of such tax shall not be required of any sub-agent or correspondent of the party or company carrying on such business in this State.

17. Gas companies.—From each gas company, manufacturing gas in towns and cities of ten thousand or more inhabitants, thirty-five dollars; in a city or town of less than ten thousand inhabitants, twenty dollars. [Id.]

18. Electric light companies.—From each electric light company operating an electric light plant in a town or city of ten thousand inhabitants or more, thirty-five dollars; in a city or town of less than ten thousand and more than six hundred inhabitants, twenty dollars. [Acts 3rd C. S. 1920, p. 27.]

19. Waterworks companies.—From each water works company operating a water works plant in a town or city of ten thousand inhabitants or more, thirty-five dollars; in a city or town of less than ten thousand and more than six hundred inhabitants, twenty dollars. [Id.]

20. Ice dealers.—From each person or corporation who are wholesale dealers, selling imported or home-made ice to the trade to be sold again, in cities and towns of twenty thousand inhabitants or more, fifty dollars; in cities and towns of less than twenty thousand or more than ten thousand inhabitants, thirty dollars; in cities and towns of less than ten thousand and more than five thousand inhabitants, twenty dollars; in cities and towns of less than five thousand inhabitants ten dollars. [Acts 1st C. S. 1897, p. 49.]

21. Street car companies.—From every street car company in this State, two dollars per mile on each mile of track owned by said company or corporation. [Id.]

22. Theaters.—From the owner, proprietor or operator of every regularly established and recognized opera house, theater, airdome, and other establishd [established] place where moving picture or other entertainments or exhibitions are given for private profit, in cities, towns and villages having the following populations, respectively:

Population.	Annual Tax.
Under 1000	$ 5.00
1,000 to 2,500	15.00
2,500 to 5,000	20.00
5,000 to 10,000	25.00
10,000 to 15,000	30.00
15,000 to 20,000	40.00
20,000 to 30,000	50.00
30,000 to 40,000	60.00
40,000 or more	75.00

In each case the population shall be determined by the preceding Federal census. Counties, incorporated cities, towns and villages shall each have the power and authority to collect one-half the amount of such State occupation tax. [Acts 3rd C. S. 1923, p. 162.]

23. Panorama or view shows.—From each owner, manager or keeper of every panorama or view show, used for profit, exhibiting in a wagon, room, tent or elsewhere, an annual occupation tax of ten dollars and a county occupation tax of two dollars per annum. A panorama or view show is a show exhibiting pictures, statuary or other works of art which are to be viewed through stereoscopic or magnifying lenses. [Acts 1st C. S. 1897, p. 49.]

24. Circus.—From every circus or wild west show wherein among other acts, broncho-busting, rough riding, equestrian or acrobatic feats are performed or exhibited for which pay for admission is demanded or received, for each day or part thereof on which performances or exhibitions are given where an admission fee of seventy-five cents or over is charged, two hundred and twenty-five dollars; for each day or part thereof on which performances or exhibitions are given where an admission fee of any sum from fifty cents to seventy-five cents is charged, two hundred dollars; for each day or part thereof on which performances or exhibitions are given where an admission fee of fifty cents or less is charged, one hundred and fifty dollars; provided, that the amount of fee charged for reserved seats shall be considered as a part of such admission fee; provided that where there is a combination of circus and menageries, wild west and menagerie or circus or wild west and other exhibitions, the highest tax fixed by this act for any division or department of the combination shall be collected. Every show or exhibition which advertises itself as a circus, wild west show or menagerie or combination of any of them, shall be held to be such for the purposes of the levy and collection of occupation taxes provided for herein. [Acts 1911, p. 142.]

25. Menagerie, museum, carnival.—From every menagerie, wax works, side shows or exhibition, whether connected with a circus or not, where a separate fee for admission is demanded or received, ten dollars for every performance or exhibition in which fees for admission are received; provided that from any museum, menagerie or zoological exhibition, or a combination thereof, operated and maintained in any city or town and open for admission all day continuously, in which a charge for admission is demanded or received, an annual tax of fifty dollars. Provided that where any carnival, or carnivals, shows, amusements or entertainments are held, under the auspices, direction or control of any chamber of commerce of any city or other similar organization, for not longer during any one year of a period or periods aggregating thirty days, it shall not be necessary for such carnivals, shows or entertainments to pay any tax to the State, city or county during the operation of said show by said chamber of commerce or other similar organization, but there shall be assessed against said chamber of commerce or other similar organization, as the case may be, a State tax of one hundred dollars. [Acts 1915, p. 209.]

26. Waxworks, etc.—From every menagerie, waxworks or exhibition of any kind where a separate fee for admission is demanded or received, ten dollars for every day on which fees for such admission are received; provided that exhibitions by associations organized for promotion of art, science, charity or benevolence, shall be exempt from taxation; and persons who form a museum composed entirely of the products of Texas shall have the right to exhibit the same for a fee without paying any occupation tax. [Acts 1st C. S. 1897, p. 49.]

27. Acrobatic performances.—From every exhibi-

tion where acrobatic feats are performed and an admission fee charged for profit, not connected with the circus or theatre, ten dollars for each performance. [Id.]

28. Slight of hand performances.—From every slight of hand performance or exhibition of legerdemain, not connected with the theater or circus, twenty-five dollars. [Id.]

29. Medicine shows, etc.—From each owner, manager or keeper of every show or company of persons giving exhibitions of music, songs, recitations, slight of hand, gymnastic, dancing or other kinds of performances in a tent, house or elsewhere, which said exhibitions are used for profit by sale of medicines, electric belts or other articles of value, whether charge is made only for seats or not, an annual occupation tax of fifty dollars and a county occupation tax of two dollars and fifty cents for every such performance or exhibition; provided, this tax shall not be assessed when these performances are given inside the grounds of any State or county fair during the time that said State or county fair is giving its annual exhibition. [Id.]

30. Concerts, etc.—For every concert where a fee for admission is demanded or received, two dollars; provided, that entertainments when given by the citizens for charitable purposes, or for the support or aid of literary or cemetery associations are exempt. [Id.]

31. Phonographs, etc.—From each owner or manager of every coin operated phonograph, electrical piano, electric battery, graphaphone [graphophone], weighing machine or other machines or instruments where a fee is charged, where such fee is five cents or more, an annual tax of five dollars. From each owner or manager of every such machine as mentioned or referred to herein where the fee charged is a penny, an annual occupation tax of one dollar, provided when an electric battery is used by a regularly authorized physician on a patient, no tax shall be charged. [Acts 2nd C. S. 1923, p. 44.]

32. Ball parks.—From every manager of a base ball park in a city or town containing five thousand or more inhabitants, where an admission fee is charged, twenty-five dollars. [Acts 1st C. S. 1897, p. 49.]

33. Race tracks.—From every owner or manager of every race track, one mile or more in length, used for profit, one hundred dollars; from each owner or manager of every race track, one-half mile or less in length, fifty dollars per annum; provided, this shall not apply to race tracks owned by private individuals and used only for training purposes, or in connection with agricultural fairs and expositions. [Id.]

34. Skating rinks.—From each and every owner or keeper of any skating rink used for profit, twenty-five dollars. [Id.]

35. Shooting gallery.—From every person or firm keeping a shooting gallery at which a fee is paid or demanded, an annual tax of thirty dollars in each county. [Id.]

36. Nine and ten pin alleys.—From every nine or ten pin or other alley used or operated for profit by whatever name called, constructed or operated upon the principal [principle] of a bowling alley upon which pins, pegs, balls, rings, hoops or other devices are used, without regard to the number of tracks or alleys in the same building or place, or whether the balls or other devices are rolled or used by hand or otherwise, one hundred dollars. Any alley used in connection with any drug store, or place where tobacco in any form is sold, or upon which money or other things of value are paid or charged for the privilege of playing shall be regarded as used and operated for profit. [Acts 1917, p. 385.]

37. Hobby horses, etc.—From all persons keeping or using for profit any hobby horse, flying-jenny, or device of that character, with or without name, fifteen dollars for each county wherein the same are kept or used. [Acts 1st C. S. 1897, p. 49.]

38. Tax on dealers in cannon crackers, etc.—From every person, firm or corporation engaged in the occupation of selling cannon crackers, or toy pistols used for shooting or exploding cartridges, within this State, an annual tax of five hundred dollars, and counties and incorporated cities or towns in which such business is located shall have the power to levy a tax of one-half the above amount as now provided by law in addition to the above tax, and such person, firm or corporation so selling such cannon crackers shall be required to pay an additional tax in the above amount and take out an additional license for each separate establishment or place in which such cannon crackers shall be sold. By the term "cannon cracker" is meant any fire cracker or other combustible package more than two inches in length, and more than one inch in circumference commonly sold and exploded for purposes of amusement. Nothing herein shall be so constructed [construed] as to prohibit the sale of, or to place a tax on, the sale of cartridges, combustible packages or explosives commonly used for firearms or artillery, mining, excavating earth or stone, scientific purposes or for any public or private work. [Acts 1909, p. 174.]

39. Cigarette dealers.—From all dealers in cigarettes in this State, ten dollars, a cigarette being the same as defined by the laws of the United States government; provided, that this tax shall be in addition to any other tax levied under the law. Each dealer shall be required to procure an annual license from the county clerk of the county where he proposes to sell cigarettes, which shall be granted for no shorter or longer term than one year. The license shall describe the house and locality where the dealer proposes to sell cigarettes. [Acts 1st C. S. 1897, p. 49.]

Art. 7048. [7357] [5050] County ad valorem, etc.—Each commissioners court shall have power to levy, for county revenue purposes, a tax of one-fourth of one per cent, and, for roads and bridges, fifteen cents on the one hundred dollars valuation of all property subject to a State tax by the provisions of this title; and, for the payment of debts incurred prior to September 1883, and for the erection of public buildings and other permanent improvements they shall have power to levy a tax not to exceed twenty-five cents on the one hundred dollars valuation in any one year, and for the improvement of public roads, under the restrictions provided by law for the levy of a road tax, a tax not to exceed fifteen cents on the one hundred dollars valuation, and shall have power to levy a special tax for the further maintenance of public free schools, and the erection within each school district of school buildings therein in counties not exempt from the district school system; provided, that two-thirds of the qualified property tax paying voters of the district, voting at an election to be held for that purpose, shall vote such tax not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, and shall have the right to levy one-half of the occupation tax levied by the State upon all occupations not herein otherwise specially exempted; provided any one wishing to pursue any of the vocations named in this chapter, upon which any county occupation tax may be levied, may do so by paying the same quarterly. The receipt of the proper officer under seal shall be prima facie evidence of the payment of such taxes as are herein named. The provisions of this law shall not be deemed to affect the provisions of any law specially authorizing any commissioners court to levy a different rate of tax. No person shall be allowed license for keeping any nine or ten pin alley, or anything of the kind used for profit, for a period of less than twelve months. The governing body of any incorporated town or city shall in no case levy a greater tax on any occupation than that authorized by this chapter to be levied by the commissioners court. In all cases where any dealer in merchandise, wares or goods of any kind, subject to ad valorem or occupation taxes, or both, under the provisions of this law, who shall after the rendition of said merchandise, wares or goods for taxation, or after becoming liable for any occupation tax, become bankrupt or make assignment of

said merchandise, wares or goods, then the tax collector shall at once demand of the receiver or assignee of said dealer payment of the amount due for said taxes by said dealer; and in case of failure of said receiver or assignee to at once pay the amount of said taxes, the said collector shall levy upon, seize and sell from the said merchandise, wares or goods, enough to satisfy the amount of said taxes, and said taxes, until paid, shall constitute a prior lien on said merchandise, goods and wares in default of said taxes. [Acts 1885, p. 105; G. L. vol. 9, p. 725; Acts 1891, p. 51.]

Art. 7049. [7358] [5051] Taxes payable in what.—The taxes levied by this chapter are payable in currency or coin of the United States; provided, that persons holding scrip issued to them for services rendered the county may pay their county ad valorem taxes in such scrip[t]. [Acts 1st C. S. 1897, p. 38.]

Art. 7050. [7359] [5052] Books of collector.—The tax collector shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates, to-wit: January 1st, April 1st, July 1st, and October 1st, or within ten days thereafter, in which to require the returns to be made under the provisions of this chapter, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax upon occupations under this chapter; and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the Comptroller a transcript or duplicate of the return and the amount as shown by his record, this transcript and record from which it is taken to show the amount of such quarterly returns and the tax due thereon from every person, firm or association of persons liable to such tax. Nothing contained in this article is intended to affect the liability which, in the absence of this statute, would be incurred under any special enactment of this State. [Acts 1879, p. 143; G. L. vol. 8, p. 1443.]

Art. 7051. [7360] Collector furnished books, etc.—The Comptroller shall furnish tax collectors the necessary books and blanks required to be used by such collectors under the provisions of this chapter. [Id.]

Art. 7052. [7361] [5054] Pay in advance.—The payment of the specific tax herein provided for shall be required by the tax collector to be made before any person, firm or association of persons shall be allowed to engage in any occupation requiring a license under any provision of this law, this payment to be made for a period not less than three months. All arrearages of taxes that may be due by reason of any such business having been carried on shall be a lien upon all the stock and fixtures owned or used in making a part of any business or vocation liable to such tax under the provisions of this chapter, and which lien shall authorize the collector to sell, after due notice, so much of the stock or other personal property of any person, firm or association of persons owing taxes under the provisions of this chapter, as will satisfy such claim, together with the cost of such proceeding. [Id.]

Art. 7053. [7362] [5055] Tax receipts furnished.—The Comptroller shall cause occupation tax receipts for each occupation to be printed with his signature, for all occupations, payable to the collectors, annual receipts for those that are paid annually, and quarterly receipts for all that can be paid quarterly; such receipts shall state the name of the occupation and the amount of the tax, and have blanks for the year, month and name of licensee, and also have a blank space for the signature of the collector; these receipts shall each have a stub attached, stating briefly the substance of the attached receipt, and shall be bound in books; and he shall forward to each collector a proper number of said receipts, and charge him with the amount represented therein, and cause him to account therefor. The collector whenever collecting any occupation tax, shall fill the blanks in the receipt and stub by writing thereon the time for which he collects and the name of the licensee, and shall sign the receipt and stub officially. No person shall pursue any occupation, unless he has a receipt signed as herein provided by the Comptroller and collector; and every person, firm or corporation keeping an office or having a local place of business shall keep posted up in a conspicuous place his or their said license. [Id.]

Art. 7054. [7363] Account of occupation tax receipts.—When the Comptroller furnishes collectors with blank occupation tax receipts, he shall furnish the commissioners courts with the numbers and value of the receipts furnished to their respective collectors; and such courts shall charge their respective collectors with the number and such proportion of the value of the receipts so furnished as shall apply to the county tax, when such collectors shall make their settlements with the Comptroller. The Comptroller shall furnish the commissioners court with the numbers and value of the receipts returned, and with the amount of the occupation taxes collected by their respective collectors. [Acts 1st C. S. 1897, p. 49.]

Art. 7055. [7364] [5056] Transfer of license.—Any person, firm, corporation, or association of persons, who shall be the legal owners or holders of any unexpired occupation license issued in accordance with the laws of this State, may transfer the same on the books of the officer by whom the same was issued. [Acts 1885, p. 27; G. L. vol. 9, p. 647.]

Art. 7056. [7365] [5057] Purchaser of unexpired license.—The assignee or purchaser of such unexpired occupation license shall be authorized to pursue such occupation under such unexpired license for and during the unexpired term thereof, provided that such assignee or purchaser shall, before following such occupation, comply in all other respects with the requirements of the law provided for in the original applications for such licenses. Nothing in this law shall be so construed as to authorize two or more persons, firms, corporations or associations of persons to follow the same occupation under one license at the same time. Whenever any person, firm, corporation or association of persons following an occupation shall be closed out by legal process, the occupation license shall be deemed an asset of said person, firm, corporation or association of persons, and sold as other property belonging to said person, firm, corporation, or association; and the purchaser thereof shall have the right to pursue the occupation named in said license, or transfer it to any other person; provided, such occupation license shall under no circumstances be transferred more than one time. [Id.]

Art. 7057. [7366–67–68] Revenue duties.—The Governor may, whenever in his judgment the public service demands it, direct the Comptroller to investigate books and accounts of the assessing and collecting officers of this State, and all officers and persons disbursing, receiving or having in their possession public funds, and to make such other investigations and perform such other duties in the interest of the public revenues as the Governor may direct. Whenever any such investigation is ordered by the Governor, the Comptroller shall report to him in writing the results thereof, and point out the particulars, if any, wherein the revenue laws have been violated or their enforcement neglected, together with the names of those delinquent therein. Whereupon the Governor shall institute civil and criminal proceedings through the Attorney General in the name of the State against such delinquent parties who are reported by the Comptroller to be delinquent. The Comptroller shall have power at any time to examine and check up all and any expenditures of money appropriated for any of the State institutions or for any other purpose or for improvements made by the State on State property or money received and disbursed by any board authorized by law to receive and disburse any State money. The Comptroller shall also have power and authority, and it is hereby made his duty, to fully investigate any State institution when so directed by the Governor or required by information coming to his own knowledge. He shall investigate the manner of conducting the

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

same and the policy pursued by those in charge thereof, and the conduct or efficiency of any person employed therein by the State. He shall examine into and report upon the character and manner as well as the amount of expenditures thereof, and investigate and ascertain all sums of money due the State from any source whatever, the ascertainment and collection of which does not devolve upon other officers of this State under existing law; and he shall report all such facts to the Governor. When the Comptroller, acting under the direction of the Governor, calls on any person connected with the public service to inspect his accounts, records or books, said person so called upon shall submit to said agent all books, records and accounts so called for without delay.

The Comptroller shall receive his actual traveling expenses, which shall be paid on the approval of the same by the Governor; provided he shall not be allowed traveling expenses for any service connected with the examination and investigation of the accounts of any institution in Travis County. [Acts 1891, p. 87; Acts 1899, p. 26; Acts 4th C. S. 1918, p. 197.]

CHAPTER TWO

TAXES BASED UPON GROSS RECEIPTS

Art.
7058. Express companies.
7059. Telegraph companies.
7060. Gas, electric light, power or waterworks.
7061. Collecting or commercial agency.
7062. Car companies.
7063. Sleeping, palace or dining car companies.
7064. Insurance companies.
7065. Tax on gasoline.
7066. Tax on sulphur.
7067. [Repealed.]
7067a. Franchise tax of interurban and electric railway companies.
7068. Dealers in pistols.
7069. Text book publishers.
7070. Telephone companies.
7071. Gross production tax on oil.
7072. Terminal companies.
7073. Tax paid when business is begun after beginning of quarter.
7074. Penalty for failure to report.
7075. Penalty for failure to pay tax.
7076. Penalties recovered by suit.
7077. Permit not granted until tax paid.
7078. Tax in addition to all other taxes.
7079. Additional reports.
7080. Permit.
7081. Issuance of permit.
7082. Suspension of permit.
7083. Penalties.

Article 7058. [7369] Express companies.—Each individual, company, corporation or association doing an express business, by railroad or water, in this State shall on or before the first day of March of each year, make a report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from charges and freights within this State paid to or collected by such individual, company, corporation or association on account of money, goods, merchandise or other character of freight carried within this State during the twelve months next preceding. Said individuals, companies, corporations or associations at the time of making said report, shall pay to the State Treasurer an occupation tax for the year beginning on said date equal to two and one-half per cent of said gross receipts as shown by said report. [Acts 1st C. S. 1907, p. 479.]

Art. 7059. [7370] Telegraph companies.—Each individual, company, corporation or association owning, operating, controlling or managing any telegraph lines in this State, or owning, operating, controlling or managing what is known as wireless telegraph stations, for the transmission of messages or aerograms and charging for the transmission of such messages or aerograms, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller under oath of the individual, or of the president, treasurer or superintendent of such companies, corporation or association, showing the gross amount received from all business within this State during the preceding quarter, in the payment of telegraphic or aerographic charges, including the amount received on full rate messages and aerograms and half rate messages and aerograms, and from the lease or use of any wires or equipment within the State during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to two and three-fourths per cent of said gross receipts as shown by said report. [Id.]

Art. 7060. [7371] Gas, electric light, power or waterworks.—Each individual, company, corporation or association, owning, operating or managing or controlling any gas, electric light, electric power or waterworks, or water and light plant, within this State and charging for gas, electric lights, electric power or water, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association showing the gross amount received from the business done within this State in the payment of charges for gas, electric lights, electric power and water for the quarter next preceding. Said individual, company, corporation or association, at the time of making said report for any town or city of ten thousand inhabitants and less than twenty-five thousand inhabitants, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to one-fourth of one per cent of said gross receipts, as shown by said report; and for any town or city of twenty-five thousand inhabitants or more, the said individual, company, corporation or association, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date an amount equal to one-half of one per cent of said gross receipts as shown by said report. Nothing herein shall apply to any gas, electric light, electric power or waterworks or water and light plant within this State owned by any city or town. [Id.]

Art. 7061. [7372] Collecting or commercial agency.—Each individual, company, corporation or association, owning, operating, managing or controlling any collecting agency, commercial agency or commercial reporting credit agency within this State, and charging for collections made, or business done, or reports made, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing from business done within this State the gross amount received in the payment of charges for collections made and business done and reports made during the quarter next preceding. Such individuals, companies, corporations or associations at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to one-half of one per cent of said gross receipts as shown by said report. [Id.]

Art. 7062. [7373] Car companies.—Each individual, company, corporation or association, residing without this State, or incorporated under the laws of any other State or territory, or nation, and owning stock cars, refrigerator and fruit cars of any kind, tank cars of any kind, coal cars of any kind, furniture cars or common box cars and flat cars, and leasing, renting or charging mileage for the use of such cars within the State of Texas, shall make quarterly, on the first days of January, April, July and October of each year, and report to the Comptroller under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the amount of gross receipts from such rentals, or mileage, or from other sources of revenue received from business done within this State, during the quarter next preceding. Said individuals, companies and corporations, and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter begin-

ning on said date equal to three per cent of said gross receipts as shown by said report. [Id.]

Art. 7063. [7375] Sleeping, palace or dining car companies.—Every sleeping car company, palace car company, or dining car company doing business in this State, and each individual, company, corporation or association leasing or renting, owning, controlling or managing any palace cars, dining cars, or sleeping cars within this State for the use of the public, for which any fare is charged, shall, on the first days of January, April, July and October of each year, report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation, or association, showing the amount of gross receipts earned from any and all sources whatever within this State, except from receipts derived from buffet service, during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to five per cent of said gross receipts as shown by said report. The tax herein provided for shall be in lieu of all other taxes now levied upon sleeping car, palace car or dining car companies, except the tax of twenty-five cents on the one hundred dollars of capital stock of such car companies as provided by law. [Id.]

Art. 7064. [7376] Insurance companies.—Every insurance company transacting the business of fire, marine, marine inland, accident, credit, title, live stock, fidelity, guaranty, surety, casualty, or any other kind or character of insurance business other than the business of life insurance, within this State and other than fraternal benefit associations, at the time of filing its annual statement, shall report to the Commissioner of Insurance the gross amount of premiums received in the State upon property, and from persons residing in this State during the preceding year, and each of such companies shall pay an annual tax upon such gross premium receipts as follows: shall pay a tax of two and six-tenths per cent, provided, that any company doing two or more kinds of insurance business herein referred to, shall pay the tax herein levied upon its gross premiums received from each of said kinds of business; and the gross premium receipts where referred to in this law are understood to be the premium receipts reported to the Commissioner of Insurance by the insurance companies upon the sworn statement of two principal officers of such companies, less return premiums paid policy holders, and the premiums paid for re-insurance in companies authorized to do business in this State. Upon receipt by him of sworn statements, showing the gross premium receipts by such companies, the Commissioner shall certify to the State Treasurer the amount of taxes due by each company, which tax shall be paid to the State Treasurer on or before the first of March following, and the receipt of the Treasurer shall be evidence of the payment of such taxes. No such insurance company shall receive a permit to do business in this State until such taxes are paid. If any such insurance company shall have as much as one-fourth of its entire assets, as shown by said sworn statement, invested in any or all of the following securities: real estate in this State, bonds of this State or of any county, incorporated city or town of this State, or other property in this State in which by law such companies may invest their funds, then the annual tax of any such companies shall be one per cent of its said gross premium receipts; and if any such company shall invest as aforesaid as much as one-half of its assets, then the annual tax of such company shall be one-half of one per cent of its gross premium receipts, as above defined. No occupation tax shall be levied on insurance companies herein subjected to a gross premium receipt tax by any county, city or town. All mutual fraternal benevolent associations, now or hereafter doing business in this State under the lodge system and on the assessment plan, whether organized under the laws of this State or a foreign State or country, are exempt from the provisions of this article. The taxes aforesaid shall constitute all taxes and license fees collectible under the laws of this State against any such insurance companies, and no other occupation or other taxes shall be levied on or collected from any insurance company by any county, city or town, but this law shall not be construed to prohibit the levy and collection of State, county and municipal taxes upon the real and personal property of such companies. Purely co-operative or mutual fire insurance companies carried on by the members thereof solely for the protection of their own property, and not for profit, shall be exempt from the provisions of this law. [Id. Acts 1911, p. 216.]

Art. 7065. [7377] Tax on gasoline.—Every person selling at wholesale in intrastate commerce in this State any gasoline shall pay to the State of Texas an occupation tax equal to three cents per gallon so sold by such person. Such tax shall be due and payable at the office of the Comptroller at Austin on the 25th day of each month, based on such sales made during the calendar month next preceding. Every such person so selling gasoline shall, on or before the 25th day of each month make and deliver to the Comptroller a report sworn to as correct by such person before an officer authorized to administer oaths in this State (or, if other than an individual, so sworn to by its president, secretary, treasurer, or other duly authorized officer, or by its representative in charge of such intrastate sales of such gasoline), on such forms as said Comptroller shall prescribe, of the total number of gallons of gasoline sold at wholesale in intrastate commerce in this State by such person during the next preceding calendar month. The term "selling at wholesale" or "sold at wholesale" or "sales at wholesale" as used in this law shall include:

1. Any and all sales of gasoline in any quantity whatsoever in intrastate commerce in this State to the retailer to be sold by such retailer to the consumer in any quantity whatsoever.

2. Any and all sales to consumer in intrastate commerce in this State of gasoline refined, compounded, manufactured, blended or prepared in this State where such sales are made by the person so refining, compounding, manufacturing, blending or preparing same whether such sales are made in such person's own name or in the name of other [others] or in the name of a representative, agent or employee of such person.

3. Any and all sales in any quantity whatsoever to the consumed [consumer] in intrastate commerce in this State of gasoline brought into the State from outside the State, except that gasoline which is sold in intrastate commerce to the retailer for sale to the consumer, the selling of which latter mentioned is covered by subdivision 1 hereof.

Failure of the Comptroller to furnish any person affected by this law with a form for any report required to be made by such person shall not relieve such person of liability for penalties for failure to comply with this law as to any such report. Every person required to pay said tax shall keep a complete record of all sales at wholesale made upon which the occupation tax herein levied is measured or computed, which record shall be in a permanently bound book or books (not loose leaf) and shall show the date of each such sale; the amount of same; to whom (except as to sales to the consumer) each such sale was made; from what place such gasoline was shipped and the name of the place of delivery of same. All of which records shall be open at all times to official inspection and examination of the Comptroller, or the Attorney General, or any authorized employé or representative of such Comptroller or Attorney General. Any such person failing to keep such record or records as herein required shall forfeit to the State as a penalty an amount not exceeding one thousand dollars; and for each day such person so fails to keep such record or records a separate penalty shall accrue. Any person required to pay an occupation tax by this law failing to pay such tax on or before the date same is due and payable, shall pay to the State as a penalty an additional ten per cent of the amount of the tax due on said date and such tax and penalty shall draw interest at the rate of eight per cent per annum from due date until paid.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Any person required to make any report under this law failing to make the same in the manner or within the time prescribed by this law shall forfeit to the State a penalty of not to exceed one thousand dollars. Such penalty shall draw eight per cent interest from due date until paid. The occupation taxes herein levied shall be placed in the State Treasury by the Comptroller as provided in this law immediately upon the collection of same. One-fourth of such occupation tax shall go to the available free school fund and three-fourths of same shall be placed to the credit of the State highway fund for the construction and the construction and maintenance of the public highways of the State constituting a part of the State system of public highways as designated by the State Highway Commission, and said funds shall be set aside in a separate fund from the general revenue fund for the two purposes herein mentioned, and shall be subject to disbursement in accordance with the statute controlling the distribution of such available school fund and State highway fund, respectively. The Attorney General shall bring suit in behalf of the State in any court of competent jurisdiction in Travis County to recover the amount of taxes, penalties and interest past due and payable by any person affected by this law. The word "gasoline" as used in this law means gasoline or gasoline substitute refined, compounded, manufactured, blended or prepared in whole or in part from any derivative fraction or product of petroleum or natural gas; and shall also include what is commercially known as gasoline so refined, compounded, manufactured, blended or prepared. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, receivers, common law trusts, those operating under a declaration of trust, or other concern by whatsoever name known or howsoever organized, formed or created. It is the purpose and intent of this law to levy an occupation tax that will not operate to burden the industry with the tax every time any particular gasoline is sold, but to place the tax on only one transaction as to any particular gasoline, to the end that the tax will bear equally and uniformly on the gasoline industry. [Acts 3rd C. S. 1923, p. 158; Acts 1927, 40th Leg., p. 142, ch. 93, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 142, ch. 93, repeals all conflicting laws and parts of laws, and provides that on and after September 1, 1928, the gasoline tax shall be two cents per gallon instead of three cents per gallon.

Art. 7066. Tax on sulphur.—Each person who owns, controls, manages, leases or operates any sulphur mine or mines, wells or shafts, or who produces sulphur by any method, system, or manner, within this State shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, sworn to by such person before an officer authorized to administer oaths in this State, or if such person be other than an individual, so sworn to by its president, secretary or other duly authorized officer, on such forms as said Comptroller shall prescribe, showing the total amount of sulphur produced during the quarter next preceding, and the average market value thereof, which shall include any bonus or premiums paid or promised during said quarter, and at the time of making said report shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date on [an] amount equal to two per cent of the total amount of sulphur produced by such person in this State during said quarter at the average market value thereof, including any bonus or premiums paid as shown by said report. If for any reason the Comptroller is not satisfied with any report so received, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due from such person or concern, which additional or supplemental reports shall be made under oath as above provided. Should any person subject to the occupation tax herein levied begin business after the beginning of a quarter, the amount of tax which such person or concern shall pay for the first quarter immediately succeeding the quarter in which the business was begun shall be ascertained by taking the total value of the sulphur produced within the last quarter, dividing the same by the number of days such person or concern was engaged in the business during said preceding quarter, and multiplying the quotient by 90, taking two per cent of the product. Each person subject to the payment of the occupation tax levied and required to be paid by this law shall cause to be made and to be kept and preserved, a full and complete record of all sulphur produced in this State during the time so engaged in its production, all of which record shall be open at all times to official inspection and examination of the Comptroller or the Attorney General, or any employé or representatives of such Comptroller or Attorney General. Any person failing to keep such record or records as herein required shall forfeit to the State of Texas as a penalty any sum not less than five hundred nor more than fifteen hundred dollars, payable to the State of Texas, and each ten days of failure to keep such records shall constitute a separate offense and subject the offender to additional penalties. Any person subject to the payment of said tax on sulphur failing to pay the tax levied in this article within thiry days after same is due and payable, shall pay to the State as a penalty an additional amount equal to ten per cent of the taxes due and such tax and penalty shall draw interest at the rate of six per cent. per annum from the due date until paid. The Attorney General or any district or county attorney at the direction of the Attorney General, shall bring suit in behalf of the State to recover the amount of taxes, penalties and interest past due and payable by any person affected by this law. The word "person" as used in this law shall include persons, firms, partnerships, companies, corporations, associations, common law trusts, those operating under a declaration of trust, or other concern by whatever name known or howsoever organized, formed or created. [Acts 3rd C. S. 1923, p. 176.]

Art. 7067. [Repealed by Acts 1927, 40th Leg., p. 431, ch. 286, § 1]

Art. 7067a. Franchise tax of interurban and electric railway companies.—In lieu of the tax imposed upon such individual, company, corporation, or association as provided in Article 7067 of the Revised Civil Statutes of 1925, the said individual, company, corporation, or association shall be required to pay the franchise tax now imposed in Chapter 3, of Title 122, of the Revised Civil Statutes of 1925, or which may hereafter be imposed by law. [Acts 1927, 40th Leg., p. 431, ch. 286, § 2.]

Section 1 of Acts 1927, 40th Leg., p. 431, ch. 286, repeals art. 7067, Rev. Civ. St. 1925.

Art. 7068. [7380] Dealers in pistols.—Each individual, company, corporation or association created by the laws of this or any other State, who shall engage in his own name or in the name of others, or in the names of its representatives or agents in this State, in the business of a wholesale or retail dealer of pistols, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of said company, corporation or association, showing the gross amount collected and uncollected from any and all sales made within this State of all such firearms during the quarter next preceding. Such individuals, companies, corporations and associations, at the time of making said report, shall pay to the State Treasurer an occupation tax for the quarter beginning on said date equal to fifty per cent of said gross receipts from sales of all firearms as shown by said report. [Acts 1st C. S. 1907, p. 479.]

Art. 7069. [7381] Text book publishers.—Each individual, company, corporation or association, whether incorporated under the laws of this State, or of any other state or nation, engaged in publishing, printing and selling such text books as are used, or will be used, in the schools of this State, or owning,

controlling or managing any such business, within the State or out of it, and having State agencies within this State for the purpose of selling any such books, to be used in any of the schools of this State, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, or of the person owning, controlling or managing any such business, showing the gross amount received from such business done within this State from any and all sources during the quarter next preceding. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the State Treasurer an occupation tax for the quarter beginning on said date equal to one per cent of said gross receipts as shown by said report; provided that after September 1, 1929, no further tax shall be assessed under the provisions of this article, but all taxes accruing under the provisions hereof prior to said date shall nevertheless be paid. The provisions of this article shall not apply to any corporation organized by the students and faculty of any State supported institution of learning and which has no capital stock and pays no dividends and is organized for the purpose of supplying books and other school supplies to the students of such institution and whose assets on the dissolution of the corporation pass to the governing board of the institution as a trust fund to be used for the benefit of the institution. [Id. Acts 1923, p. 352.]

Art. 7070. [7382] Telephone companies.—Each individual, company, corporation or association owning, operating, managing or controlling any telephone line or lines or any telephones within this State, and charging for the use of the same, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer or superintendent of such company, corporation or association, showing the gross amount received from all business within this State during the preceding quarter in the payment of charges for the use of its line or lines, telephone and telephones, and from the lease or use of any wires or equipment within this State during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the State Treasurer an occupation tax, for the quarter beginning on said date, equal to one and one-half per cent of said gross receipts, as shown by said report. [Acts 1st C. S. 1907, p. 479.]

Art. 7071. [7383] Gross production tax on oil.—1. Each person owning, controlling, managing, operating or leasing in this State any oil well, or any person who produces in any other manner any oil by taking it from the earth in this State, shall make quarterly on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of such person or if the producer is other than a natural person, under oath of the president, treasurer, superintendent or person in charge of such production, showing the total amount of oil produced by such person from each well, or otherwise, during the quarter next preceding and the average market value thereof during said quarter. Each such person on said first days of January, April, July, and October shall pay to the Treasurer of this State an occupation tax for the quarter beginning on said date equal to two per cent of the value of the total amount of oil produced in this State by such person during the quarter next preceding such first days of January, April, July and October at the average market value thereof.

2. Each person mentioned and included in subdivision 1 of this article shall make, keep and preserve a full and complete record of all such oil produced in this State during the time so engaged in its production, and said record shall be open at all times to the inspection of all tax officers of this State. Any person failing to comply with this requirement shall be subject to a penalty not less than five hundred and not more than fifteen hundred dollars payable to the State of Texas, and such penalty shall accrue for each ten days of failure to comply with this subdivision of said article and such penalty shall accrue for failure to comply with this subdivision with reference to each separate oil well.

3. In each report required to be made by this article such person making the same shall show in detail the disposition made of any such oil, if disposed of, and if not, shall show where it is stored. Said report shall show to whom any such oil was sold or delivered, the date of sale and delivery, the amount delivered to each, and shall show the name and location of the person, refinery, pipe line, establishment, plant, factory, railroad, institution or place to which or to whom delivery was made.

4. The word "person" as used in this article shall include any person, firm, concern, receiver, receivers, trustee, executor, administrator, agent, institution, association, partnership, company corporations, and persons acting under declarations of trust as well as the trustees acting under such declarations of trust.

5. The market value of oil as that term is used herein shall be the actual market value of the same, and among other things proper to be considered any bonus or premium paid or which the oil will reasonably bring shall not be excluded in arriving at the market value.

6. Any person failing to make proper and accurate report for thirty days from the date when said report is required herein to be made shall forfeit and pay to the State of Texas a penalty of ten per cent of the amount of the tax due for the quarter for which said report is required by law to be made.

7. Any person failing to pay any tax provided for herein within thirty days from the date when said tax is required herein to be paid shall forfeit and pay to the State of Texas a penalty of ten per cent upon the amount of such tax and six per cent interest upon the amount of such tax and penalty from date when due and payable until paid.

8. The word "oil" as used in this law means petroleum oil, mineral oil, or other oil taken from the earth.

9. For the occupation tax, penalties and interest herein provided for, the State shall have a lien on any leasehold interest, ownership of the oil rights or interest owned by the person owing any tax herein provided for. [Acts 1907, p. 479; Acts 1919, p. 128; Acts 1923, 2nd C. S., p. 98.]

Art. 7072. [7384] Terminal companies.—Each and every individual, company, corporation or association, whether incorporated under the laws of this or any other State or territory, or of the United States, or any foreign country, which owns, controls, manages or leases any terminal companies, or any railroad doing a terminal business within this State, shall make quarterly, on the first days of January, April, July and October of each year, a report to the Comptroller, under oath of the individual or of the president, treasurer, or superintendent of such company, corporation or association, showing the total amount of its gross receipts from all sources whatever within this State, during the quarter next preceding, and the average market value thereof during said quarter. Said individuals, companies, corporations and associations, at the time of making said report, shall pay to the Treasurer of the State of Texas an occupation tax for the quarter beginning on said date equal to one per cent of the total amount of its gross receipts from all sources whatever as shown by said report. [Acts 1st C. S. 1907, p. 479.]

Art. 7073. [7385] Tax paid when business is begun after beginning of quarter.—If any individual, company, corporation, firm, or association, in this chapter mentioned, shall begin and engage in any business for which there is an occupation tax herein imposed, on or after the beginning day of the quarter for which said tax is imposed, then, and in

all such cases, the amount of such tax for said beginning quarter shall be and is hereby fixed at the sum of fifty dollars, payable to the State Treasurer in advance; but for the next succeeding quarter, and all other succeeding quarters, the tax shall be determined by reports to the Comptroller of the business for the preceding quarter, or part thereof, as herein otherwise in this chapter provided; and reports and payments of such tax shall be made subject to all other provisions of this chapter. [Id.]

Art. 7074. [7386] Penalty for failure to report.—Any person, company, corporation or association, or any receiver or receivers, failing to make report for thirty days from the date when said report is required by this chapter to be made, shall forfeit and pay to the State of Texas a penalty of not exceeding one thousand dollars. [Id.]

Art. 7075. [7387] Penalty for failure to pay tax.—Any person, company, corporation or association, or any receiver or receivers, failing to pay any tax for thirty days from the date when said tax is required by this chapter to be paid, shall forfeit and pay to the State of Texas a penalty of ten per cent upon the amount of such tax. [Id.]

Art. 7076. [7388] Penalties recovered by suit.—The penalties provided for by this chapter shall be recovered by the Attorney General in a suit brought by him in the name of the State of Texas; and venue and jurisdiction of such suit is hereby conferred upon the courts of Travis County. [Id.]

Art. 7077. [7389] Permit not granted until tax paid.—No individual, company, corporation or association, failing to pay all taxes imposed by this chapter, shall receive a permit to do business in this State, or continue to do business in the State; until the tax hereby imposed is paid. The receipt of the State Treasurer shall be evidence of the payment of such tax. [Id.]

Art. 7078. [7390] Tax in addition to all other taxes.—Except as herein stated, all taxes levied by this chapter shall be in addition to all other taxes now levied by law; provided, that nothing herein shall be construed as authorizing any county or city to levy an occupation tax on the occupation and business taxed by this chapter. [Id.]

Art. 7079. [7391] Additional reports.—If for any reason the Comptroller is not satisfied with any report from any such person, company, corporation, co-partnership or association, he may require additional or supplemental reports containing information and data upon such matters as he may need or deem necessary to ascertain the true and correct amount of all taxes due by any such person, firm or corporation. Every statement or report required by this chapter shall have affixed thereto the affidavit of the president, vice-president, secretary or treasurer of the person, corporation, co-partnership or association, or one of the persons or members of the partnership making the same, to the effect that the statement is true. The Comptroller shall prepare blanks to be used in making the reports required by this chapter. [Id.]

Art. 7080. Permit.—Every person, company, firm, partnership, corporation, or unincorporated company or association, engaged in any business within this State, upon which the laws of this State require the payment of a tax on gross receipts, shall be required to have a permit to transact such business, to be issued by the Secretary of State, which permit shall be and remain posted, subject to the view of the public at the principal office of such person to whom the same is issued. The permit shall be issued in such form as the Attorney General may prescribe, shall show the name of the person or concern to whom issued, the business to be transacted, and that the holder thereof has complied with this law. [Acts 4th C. S. 1918, p. 177.]

Art. 7081. Issuance of permit.—Permits to transact business shall be issued by the Secretary of State upon applications made upon form prescribed by the Secretary of State, which application shall show, to the satisfaction of the Secretary of State, the facts required to be shown in the permit; and shall show that the applicant has paid the gross receipts taxes prescribed by law, or that if the applicant is the vendee of a going business that his vendor has paid all his gross receipts taxes due, or to become due; such taxes are to be shown to be paid for the current quarter, or such other period of time as said taxes may be paid. The Secretary of State shall make such investigation as necessary to determine that such taxes have been paid and shall then issue a permit to transact business, authorizing the party to whom issued to transact business until the 31st day of December of the current year, after which date new permits for each year must be obtained, as in the first instance. When a permit has been issued as herein provided, the Secretary of State shall immediately certify such fact to the Comptroller. [Id.]

Art. 7082. Suspension of permit.—Within thirty days after gross receipts taxes may become due by any one transacting or authorized to transact business hereunder, if such tax remains unpaid, the Comptroller shall certify such fact to the Secretary of State, whose duty it shall be to notify the delinquent tax payer that his name has been certified to the Secretary of State as a delinquent and that unless the tax is paid to the Comptroller within ten days from the date of such notice the permit to transact business of the delinquent will be suspended by the Secretary of State. The notice herein provided for shall be given by the Secretary of State, mailing to the delinquent at his last known address a printed or written notice, and the mailing of such notice shall be a sufficient compliance of this law. If the tax, with accrued penalties, is not paid within fifteen days after the mailing of the notice, the Secretary of State shall note on his records that the permit to transact business of the delinquent has been suspended, giving the date upon which such action was taken by the Secretary of State. The Secretary of State shall then immediately certify such suspension to the Comptroller and to the Attorney General. After the permit to transact business has been suspended it shall be unlawful for the delinquent to continue to transact business, and it shall be the duty of the Secretary of State to cause to be published in some daily or weekly paper, published in the county of the delinquent's place of business, or if there is no newspaper published in such county, then in some daily newspaper of State-wide circulation, notice that the delinquent's permit to transact business has been suspended. [Id.]

Art. 7083. Penalties.—Any person, company, firm, partnership, corporation, unincorporated company or association, transacting business in this State upon which a gross receipts tax is required by law to be paid, without having first obtained a permit to do so, or transacting such business after its permit so to do has been suspended, as provided by this law, shall be liable to a penalty of not less than $50.00 nor more than $500.00 daily for each day's business which is transacted in violation of this law. The Attorney General shall bring suits for all penalties authorized by this law, and the courts of Travis County shall have concurrent jurisdiction over all violations of this law. [Id.]

CHAPTER THREE

FRANCHISE TAX

Art.
7084. Paid by domestic corporation.
7084a. Closed state bank.
7085. Paid by foreign corporation.
7086. Only part of tax to be paid.
7087. Affidavits required.
7088. Reports filed.
7089. Report of corporation.
7090. Supplemental tax.
7091. Failure to pay tax.
7092. Notice of forfeiture.

Art.
7093. Foreign corporations may withdraw.
7094. Corporations exempt.
7095. *Attorney General to bring suit.*
7096. Forfeiture of charter.
7097. Corporations in process of liquidation.

Article 7084. [7393] Paid by domestic corporation.—Except as herein provided, each private domestic corporation heretofore or that may hereafter be chartered under the laws of this State, shall on or before the first day of May of each year, pay in advance to the Secretary of State a franchise tax for the year following, which shall be computed as follows, viz: fifty cents on each one thousand dollars, or fractional part thereof, of the authorized capital stock of such corporation unless the total amount of the capital stock of such corporation actually paid in, plus its surplus and undivided profits, shall exceed its authorized capital stock; and in that event the franchise tax of such corporation for the year following shall be fifty cents on each one thousand dollars of capital stock of such corporation actually paid in, plus its surplus and undivided profits; provided, that such franchise tax shall not in any case be less than ten dollars. Where the authorized capital exceeds one million dollars, such franchise tax shall be fifty cents for each one thousand dollars up to and including one million dollars, and for each additional one thousand dollars in excess of one million dollars, it shall be twenty-five cents. Where a domestic corporation does business outside of the State, the franchise tax of such corporation shall be computed upon that proportion of the authorized capital stock plus the surplus and undivided profits, if any, of such corporation, as the total gross receipts of such corporation from its business done in Texas bears to the total gross receipts of the corporation from all sources. [Acts 1st C. S. 1907, p. 503; Acts 1919, p. 100.]

Art. 7084a. Closed state bank.—Hereafter no franchise tax shall be assessed against a State Bank after it has closed its doors and has gone into the hands of the Banking Commissioner for liquidation according to law, nor shall any such corporation be liable for any franchise tax while in the hands of the Commissioner for liquidation. The failure of the Commissioner to pay franchise taxes for any bank in his hands for liquidation shall not operate to revoke or forfeit the charter of such corporation.

Provided, that after such liquidation should there be any funds left that would go to the stockholders, then all past due franchise taxes shall be paid before distributing such funds, if any, to outstanding stockholders.

Provided further, that the Banking Commissioner of Texas shall not be required to file with the Secretary of State any reports for the purpose of assessing franchise taxes, as provided in Article 7088, Revised Civil Statutes, 1925. [Acts 1927, 40th Leg., p. 294, ch. 208, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 294, ch. 208, repeals all conflicting laws and parts of laws.

Art. 7085. [7394] Paid by foreign corporations.—Except as herein provided, each foreign corporation authorized, or that may hereafter be authorized, to do business in this State, shall, on or before the first day of May of each year, pay in advance to the Secretary of State a franchise tax for the year following which shall be computed as follows: the authorized capital stock, surplus and undivided profits, if any, of such corporation, the total gross receipts of such corporation from all its business and the total gross receipts from all of its business done in Texas for the calendar year immediately preceding shall be ascertained by the Secretary of State from sworn reports of the officers of such corporation or by such other method as may satisfy the Secretary of State, and the capital stock of such corporation upon which the franchise tax herein provided is based shall be that proportion of the authorized capital stock, plus the surplus and undivided profits, if any, of such corporation, as the gross receipts from the Texas business of such corporation done within this State bears to the total gross receipts of such corporation from its entire business and the capital stock assignable to the Texas business and upon which the fees hereinafter provided shall be calculated and based being thus ascertained, the franchise tax which is hereby provided shall be computed as follows: one dollar on each one thousand dollars or fractional part thereof up to and including one hundred thousand dollars; fifty cents on each one thousand dollars or fractional part thereof in excess of one hundred thousand dollars up to and including one million dollars and twenty-five cents on each one thousand dollars or fractional part thereof in excess of one million dollars; provided that the minimum franchise tax to be paid by any foreign corporation shall be twenty-five dollars; provided, however, that where such corporation has a surplus or undivided profits the same shall be added to the entire capital stock of such corporation and shall be taken and computed as a part thereof in determining the amount of such entire capital stock. Where a foreign corporation applying for a permit has theretofore done no business in Texas, the franchise tax herein provided shall not be payable until the end of one year from the date of such permit at which time the franchise tax shall be computed upon that proportion of the authorized capital stock, plus the surplus and undivided profits, if any, of such corporation ascertained as above required as the gross receipts from its Texas business bears to the gross receipts of the corporation from its entire business done for the same period; and the second payment of such franchise tax shall be made for the period intervening between the date of such first payment and the first day of May following, the proportion of authorized capital stock, plus the surplus and undivided profits, if any, of such corporation, upon which the same shall be computed to be the same proportion that the gross receipts from the Texas business for such period bears to the gross receipts of the corporation from its entire business for the same period, and that thereafter such franchise tax shall be payable annually on the first day of May for the year succeeding computed upon that portion of the authorized capital stock, plus the surplus and undivided profits, if any of such corporation which the gross receipts for the Texas business of such corporation bears to its entire gross receipts for the calendar year preceding as hereinabove provided. [Acts 1st C. S. 1907, p. 503; Acts 1917, p. 168; Acts 1919, p. 75.]

Art. 7086. [7395] Only part of tax to be paid.—Whenever a private domestic corporation is chartered in this State, and whenever a foreign corporation is authorized to do business in this State, such corporation shall be required to pay in advance to the Secretary of State, as its franchise tax from that time down to and including the thirtieth day of April next following, only such proportionate part of its annual franchise tax, as hereinabove prescribed, as the period of time between the date of filing of its articles of incorporation or the issuance of its permit to do business, as the case may be, and on the first day of May following, bears to a calendar year. [Acts 1st C. S. 1907, p. 503.]

Art. 7087. [7396] Affidavits required.—To determine the amount of the first franchise tax payment required by this chapter of any domestic corporation which may be hereafter chartered, or of any foreign corporation which may hereafter apply for a permit to do business within this State, and also to determine the correctness of any report which is provided for in this chapter, the Secretary of State may, whenever he deems it necessary or proper to protect the interests of the State, require any one or more of the officers of such corporations to make and file in the office of the Secretary of State an affidavit setting forth fully the facts concerning the amount of the surplus and undivided profits, respectively, if any, of such domestic or foreign corporation; and until the Secretary of State shall be fully satisfied as

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

to the amount of such surplus and undivided profits, respectively, if any, he shall not file the articles of incorporation of such proposed domestic corporation, or issue such permit, or accept such franchise tax. [Id.]

Art. 7088. [7397] Reports filed.—For the purpose of ascertaining and determining the amount of any annual franchise tax prescribed by this chapter, excepting only the first tax to be paid by any domestic corporation which may hereafter be chartered, or of any foreign corporation which may hereafter be authorized to do business in this State, the president, vice-president, general manager, secretary, treasurer and superintendent of each domestic or foreign corporation embraced within the provisions of this chapter, shall annually and between the first and tenth days of March, and also whenever called upon by the Secretary of State to do so, report to the Secretary of State, in writing, and under oath as required by the preceding article, the total amounts of the capital stock issued and outstanding, and the surplus and undivided profits, respectively, if any, of such corporation on the first day of March next preceding; and the Secretary of State may ascertain such facts from other sources; and, if true aggregate of such amounts shall exceed the authorized capital stock of such corporation as disclosed by its then current original or amended articles of incorporation, the amount of its annual franchise tax for the year beginning the first day of May next thereafter shall be thereon collected and paid; otherwise, its annual franchise tax shall be calculated and paid upon the amount of its authorized capital stock as shown by its aforesaid original or amended articles of incorporation. The making and filing by any one of such officers of such corporation of the record required by this article shall relieve the other officers of such corporation from the duty of making any report required by this article, except such report or reports as the Secretary of State may require. [Id.]

Art. 7089. Report of corporation.—Except as herein provided, all corporations that are now required by law to pay an annual franchise tax, shall, between January 1st, and March 15th, of each year, be required to make a sworn report to the Secretary of State, on blanks furnished by him, showing the condition of such corporation on the 31st day of December preceding. The Secretary of State may, for good cause shown by any corporation, extend such time to any date up to the first day of May. Said report shall be signed officially and shall give the authorized capital stock of the corporation, the capital stock actually paid in, its surplus and undivided profits, if any, the name and address of each officer and director of the corporation, the amount of mortgages, bonded or other indebtedness of such corporation, and the amount of the last annual, semi-annual or quarterly dividend provided, that domestic corporations having a permit or permits to do business outside the State, shall include in such report the gross receipts of such corporation from all sources and the gross receipts of the corporation from its business done in Texas, for the calendar year preceeding [preceding]; provided, that foreign corporations shall include in such report, the total gross receipts of the corporation from all sources and the gross receipts of the corporation in Texas for the calendar year preceding. Where a foreign corporation has not theretofore done business in this State and is granted a permit to do business in Texas, it shall file its first report to the Secretary of State at the end of one year from the date of such permit. Any corporation which shall fail or refuse to make said report shall be assessed a penalty of ten per cent of the amount of franchise tax due by such corporation payable to the Secretary of State, together with its franchise tax. Said reports shall be deemed to be privileged and not for the inspection of the general public but one interested in the subject matter of any report may secure a copy of same upon valid request in writing made to the Secretary of State. The following officers of each corporation shall be deemed competent to make said report; the president, vice-president, secretary, treasurer or general manager. [Acts 1913, p. 327; Acts 1919, p. 82; Acts 1921, p. 173.]

Art. 7090. [7398] Supplemental tax.—In the event of increase in the authorized capital stock of any domestic or foreign corporation, it shall also pay in advance a supplemental franchise tax thereon for the remainder of the year down to and including the thirtieth day of April next thereafter, the amount of which shall be determined as is provided in the third article of this chapter in case of the first franchise tax payment to be made by a domestic corporation which may be hereafter authorized to do business within this State. [Acts 1st C. S. 1907, p. 503.]

Art. 7091. [7399] Failure to pay tax.—Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this chapter when the same shall become due and payable under the provisions of this chapter, shall thereupon become liable to a penalty of twenty-five per cent of the amount of such franchise tax due by such corporation. If the amount of such tax and penalty be not paid in full on or before the first day of July thereafter, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consumated [consummated] without judicial ascertainment by the Secretary of State entering upon the margin of the record kept in his office relating to such corporation, the words, "right to do business forfeited," and the date of such forfeiture. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation, unless its right to do business in this State shall be revived as provided in this chapter. Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation which may be created or incurred, with his knowledge, approval and consent, within this State, after such forfeiture by any such directors or officers, and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners. [Id.]

Art. 7092. [7400] Notice of forfeiture.—The Secretary of State, shall during the month of May of each year, notify each domestic and foreign corporation which may be or become subject to a franchise tax under any law of this State, which has failed to pay such franchise tax on or before the first day of May, that unless such overdue tax together with said penalty thereon shall be paid on or before the first day of July next following, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. Such notice may be either written or printed and shall be verified by the seal of the office of the Secretary of State, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other known place of business of such corporation. A record of the date of mailing such notice shall be kept by the Secretary of State. Such notice and record thereof shall constitute legal and sufficient notice thereof for all the purposes of this chapter. Any corporation whose right to do business may have been forfeited, as provided in this chapter, shall be relieved from such forfeiture by paying to the Secretary of State any time within six months after such forfeiture the full amount of the franchise tax and penalty due by it, together with an additional amount of five per cent of such tax for each month, or fractional part of a month, which shall elapse after such forfeiture; provided, that such amount shall in no case be less than five dollars. When such tax and

all penalties shall be fully paid to the Secretary of State, he shall revive the right of the corporation to do business within this State by cancelling the words, "right to do business forfeited," upon his record and endorsing thereon the word, "revived," and the date of such revival. If any domestic corporation whose right to do business within this State shall hereafter be forfeited under the provisions of this chapter shall fail to pay the Secretary of State, on or before the first day of January next following the revival, the amounts necessary to entitle it to have its right to do business revived under the provisions of this chapter, such failure shall constitute sufficient ground for the forfeiture, by judgment of any court of competent jurisdiction, of the charter of such domestic corporation. [Id.]

Art. 7093. [7401] Foreign corporations may withdraw.—Should any foreign corporation which has or may obtain a permit to do business within this State desire at any time to withdraw from doing business in this State, it may surrender such permit to the Secretary of State, who shall mark or stamp such permit "surrendered," dating and signing same officially, and shall endorse upon the record of such permit in his office the word, "surrendered," and the date thereof; and thereafter such corporation may, by complying with the provisions of this chapter, secure a new permit to do business in this State without having made any further payment of the franchise tax under such old permit. [Acts 1st C. S. 1907, p. 503.]

Art. 7094. [7403] Corporations exempt.—The franchise tax imposed by this chapter shall not apply to any insurance company, surety, guaranty or fidelity company, or any transportation company, or any sleeping, palace car and dining car company which is now required to pay an annual tax measured by their gross receipts, or to corporations having no capital stock and organized for the exclusive purpose of promoting the public interest of any city or town, or to corporations organized for the purpose of religious worship, or for providing places of burial not for private profit, or corporations organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits, or for strictly educational purposes, or for purely public charity. [Id.]

Art. 7095. [7404] Attorney General to bring suit.—The Attorney General shall bring suit therefor against any such corporation which may be or become subject to or liable for any franchise tax or penalty under this law; and, in case there may now be or shall hereafter exist valid grounds for the forfeiture of the charter of any domestic private corporation, or failure to pay any franchise tax or franchise taxes or penalty or penalties to which it may have become or shall hereafter be or become subject or liable under this or former law, he shall bring suit for a forfeiture of such charter; and, for the purpose of enforcing the provisions of this chapter by civil suits, venue is hereby conferred upon the courts of Travis county, concurrently with the courts of the county in which the principal office of such corporation may be located as shown by its articles or amended articles of incorporation. Such courts shall also have authority to restrain and enjoin a violation of any provision of this chapter. In any case in which any court having jurisdiction thereof shall make and enter judgment forfeiting the charter of any such corporation, the court may appoint a receiver thereof and may administer such receivership under the laws regulating receiverships. [Id.]

Art. 7096. [7405] Forfeiture of charter.—Upon the rendition by the district court of any judgment of forfeiture under the provisions of this chapter, the clerk of that court shall forthwith mail to the Secretary of State a certified copy of such judgment; and, upon receipt thereof, he shall endorse upon the record of such charter in his office the words, "Judgment of forfeiture," and the date of such judgment. In the event of an appeal from such judgment by writ of error or otherwise, the clerk of the court from which such appeal is taken shall forthwith certify to the Secretary of State the fact that such appeal has been perfected, and he shall endorse upon the record of such charter in his office the word, "appealed," and the date upon which such appeal was perfected. When final disposition of such appeal shall be made, the clerk of the court making such disposition thereof shall forthwith certify such disposition and the date thereof to the Secretary of State, who shall briefly note same upon the record of such charter in his office and the date of such final disposition.

Art. 7097. [7606] Corporations in process of liquidations.—If a corporation is actually in process of liquidation, such corporation shall only be required to pay a franchise tax calculated upon the difference between the amount of stock actually issued and the amount of liquidating dividends actually paid upon such stock; provided, that the president and secretary of such corporation shall make affidavit as to the total amount of capital stock issued and as to the amount of liquidating dividends actually paid and that such corporation is in an actual bona fide state of liquidation. [Id.]

CHAPTER FOUR

INTANGIBLE TAX BOARD

Art.
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Article 7098. [7407] State Tax Board.—The State tax board shall be composed of the Comptroller, the Secretary of State, and a third member to be known as Tax Commissioner of the State of Texas. Except as herein otherwise provided, such tax commissioner shall be appointed by the Governor in accordance with and subject to the provisions of section twelve of article four of the Constitution and shall hold his office for two years. A record of the proceedings of said board shall be kept at the State Capitol, and shall be open to the inspection of the public. [Acts 1905, p. 35; Acts 1st C. S. 1907, p. 469.]

Art. 7099. [7408] Bond of Commissioner.—Before he enters upon his official duties, the tax commissioner shall execute a bond payable to the State of Texas at Austin, in Travis County, in the sum of ten thousand dollars, with two or more good and sufficient sureties, to be approved by the Governor, conditioned for the faithful discharge of his official duties as such tax commissioner, and shall take and subscribe the official oath. [Id.]

Art. 7100. [7409] Secretary.—Said board may employ for not more than four months in each year a secretary, who shall be an expert stenographer, and who shall receive one hundred dollars a month for his services as secretary and stenographer. [Id.]

Art. 7101. [7410] Duties of Board.—It shall be the duty of said tax board:

1. To make such rules and regulations as said board shall deem proper with respect to its own meetings and procedure, and to effectually carry out the purposes for which said board is constituted.

2. To examine all books, papers and accounts and to interrogate under oath, or otherwise, any and all persons whom said board, or any member thereof, may desire to examine for the purpose of obtaining or acquiring any information that may in any way aid in securing a compliance with any tax law or revenue

law of this State by any and all persons, companies, corporations or associations liable to taxation or to pay any license fee under any law of this State, which is now in force, or which may hereafter be enacted.

3. To make diligent investigation and inquiry concerning the revenue laws and systems of other states and countries, so far as the same are made known by published reports, or statistics, or can be ascertained by correspondence with officers thereof; and, with the aid of information thus or otherwise obtained together wtih [with] experience and observation of the operation of the laws of this State, to recommend to the legislature at each regular session thereof, such amendments, changes or modifications of the laws of this State, and such additional laws as may to said board, or any member thereof, seem necessary or proper to remedy injustice or irregularity in taxation, and to facilitate the assessment of taxes and collection of public revenues.

4. To report to the legislature, at each regular session thereof, the whole amount of State revenues collected in this State for all purposes, and the sources thereof, the amount of such revenues which may be lost to the State through failure to make collection and the cause of such losses, a summary of the proceedings of said board since the date of its last report, and such other matters concerning the public revenues as said board, or any member thereof may deem to be of public interest. [Id.]

Art. 7102. [7411] Visits.—Said Tax Board, or any member thereof, or the Comptroller under the direction of said board, or of the Governor, shall, at least once in each year, visit such counties of the State as said board or the Governor may direct, for the purpose of investigating into and aiding in the enforcement of all revenue laws of this State, and especially those concerning the rendition, assessment and collection of taxes. [Id.]

Art. 7103. [7412] Powers of board.—Each member of said board shall have power to administer oaths and to subpœna and examine witnesses, and to issue subpœnas duces tecum, and shall have access to and power to order the production before such board, or any member thereof, of any and all books, documents and papers which may be in the possession or under the control of any person, company, corporation or receiver, assignee, trustee in bankruptcy, or bailee, whenever such board, or any member thereof, may consider same necessary or proper in the prosecution of any inquiry under or in the execution of any provision of this chapter and all such process shall be served under the provisions of law governing the service of process in civil cases, in so far as applicable. [Id.]

Art. 7104. [7413] Failure to obey subpœna.—Any person who shall disobey any such subpœna, or subpœna duces tecum, issued by any member of said board, or any such order of said board, or who shall fail or refuse to attend as by such subpœna directed, or to testify when so required to do so by any member of said board, under the provisions of this chapter, shall be deemed guilty of contempt, and may be punished therefor by said board under the provisions of laws applicable to the district courts in such cases. [Id.]

Art. 7105. [7414] Tax on intangible assets.—Each incorporated railroad company, ferry company, bridge company, turn-pike or toll company, doing business wholly or in part within this State, whether incorporated under the laws of this State, or of any other state, territory, or foreign country, and every other individual, company, corporation or association doing business of the same character in this State, in addition to the ad valorem taxes on intangible properties which are or may be imposed upon them, respectively, by law, shall pay an annual tax to the State, beginning with the first day of January of each year, on their intangible assets and property, and local taxes thereon to the counties in which its business is carried on; which additional tax shall be assessed and levied upon such intangible assets and property in the manner provided in this chapter. The county or counties in which such taxes are to be paid, and the manner of apportionment of the same, shall be determined in accordance with the provisions of this chapter. [Id.]

Art. 7106. [7415] Statement required.—Between the second day of January and the first day of March of each year, every individual, company, corporation and association embraced within the provisions of the next preceding article of this chapter, or coming within its scope and intent, shall make out and deliver into the possession of said tax commissioner a statement containing the information required of it by this chapter, which statement shall be duly verified by the affidavit of the individual, or one of the officers of the company, corporation or association in whose behalf it is made, or by the receiver, assignee, or trustee in bankruptcy thereof. [Id.]

Art. 7107. [7416] Contents of statement.—Each such statement shall show the following items and particulars as the same stood on the first day of January next preceding, to-wit:

1. The name of the individual, company, corporation, or association making such statement, and the character of its business.

2. If incorporated, the authority by which it was incorporated and the purposes of its incorporation as expressed in its original or amended articles of incorporation or articles of association.

3. The locality of its principal office and the amount and kind of business done by it in this State and the total gross receipts derived from its business within this State, including a due proportion of its interstate business, if it has done any business of that character.

4. Its total authorized capital stock and the number of shares thereof, which have been issued and are outstanding, and the par face value of each such share, and the amount of the capital actually employed in the aforesaid business within the State.

5. The market value of said shares of stock, or, if they have no market value, the actual value thereof.

6. The assessed value and also the true value of all the tangible property owned by such individual, company, corporation or association in each county in this State and the total assessed value and also the true value thereof.

7. The assessed value and also the true value of the tangible property of such individual, company, corporation or association, outside of this State, and not specifically used in the business of such individual, company, corporation or association, same to be given by states, and the total assessed value and also the true value of the same.

8. A statement of each and every existing lien, mortgage or other charge upon the whole, or any part, of the property of such individual, company, corporation or association, and of the property thereby charged or encumbered, and of the amount of unpaid debt secured by each such mortgage, lien or charge and of the interest charged thereon, and to what extent such interest has been paid, and of the true and fair market value of every such debt.

9. A statement of the gross receipts and net income and earnings for the next preceding twelve months, including therein all interest on investments, and all rents, fruits, revenues and receipts from every source whatsoever, and a statement of the income used for repairs, and of the amounts used for betterments, and the amount used for extensions within that period of time.

10. Every such railroad company shall also show in each statement made by it:

11. The total length of all lines of said company, whether within or without this State.

12. The total length of such lines as are within the State.

13. The length of its lines in each of the counties in this State into which its lines extend. [Id.]

Art. 7108. [7417] Additional statements.—The tax commissioner shall receive all tax statements rendered to him under the provisions of this

chapter, and shall indorse upon each the date of receipt thereof, signing such indorsement officially. Said board shall examine all such statements as soon as may be practicable; and, if said board shall deem any of them insufficient, or shall believe other or further information necessary or proper, said board shall at once demand of such individual, company or corporation, or association, such additional statements and such further information as it may think proper. [Id.]

Art. 7109. [7418] Statements placed before board.—On the first Monday after the first day of March of each year, or as soon thereafter as may be practicable, said tax commissioner shall place before said board all such statements, facts and information as may have come into its possession or knowledge under the provisions of this chapter. [Id.]

Art. 7110. [7419] Passing upon statement.—Said board shall thereupon carefully examine and consider the said statements, facts and information; and, if they deem it advisable to do so, shall hear evidence, and shall require such individual, company, corporation or association to make such additional reports, if any, as such board may deem proper, and shall otherwise secure further additional information so far as may be in its power, to show the true value of the properties aforesaid, and the true value of that portion of every such property which is situated within the State and within the respective counties thereof, sufficient to enable said board to make the preliminary estimate herein provided for; and, for that purpose as well as for the purpose of carrying into effect any provision of this chapter, said board, and each member thereof, may require and compel, any and all such individuals, companies, corporations and associations, and the officers and agents thereof, and such receivers, trustees in bankruptcy, assignees and bailees, to appear before such board at a time or times to be designated by said board, with any and all such books, papers, documents and information as said board may require, and to submit themselves to examination by said board. Upon consideration of such statements and information and such additional evidence, books, papers, documents and information, if any, said board shall make in accordance with the provisions of this chapter, a preliminary estimate, valuation and apportionment of the true value of the intangible property within this State, of each of said individuals, companies, corporations, or associations, and shall, on or before the thirty-first day of May of each year, by registered mail, notify each and every such individual, company, corporation or association, receiver or assignee, trustee in bankruptcy, or other person holding such property for the benefit of creditors, of such preliminary estimate, valuation and apportionment, and the amounts thereof; and all such individuals, companies, corporations, associations, receivers, assignees, trustees and other persons shall have fifteen days from the time of mailing such notice by registered mail to appear before such board, at Austin, on a date to be fixed by such notice, and request of such board a change or changes in such valuation and apportionment, or cancellation of such valuation and apportionment; and said individuals, companies, corporations, association[s], receivers, assignees, trustees, and other persons may appear before such board, in person or by attorney, or in person and by attorney, and introduce evidence. Said board may, upon its own motion, or upon the written request of any interested party, and each member of said board, may summon, swear and examine witnesses under the same rules which govern the summoning, swearing and examination of witnesses in the district courts of this State; and, such board shall have the same jurisdiction, authority and power, under the same penalties, to require the production and to secure the examination of any and all books, documents and papers of such individuals, companies, corporations and associations, receivers, assignees, trustees and other persons as is now or may hereafter be conferred by the laws of this State upon the Railroad Commission of Texas. Upon or after such hearing, said board may change such valuation and apportionment, or either, or cancel such valuation and apportionment, as said board may deem just and proper in the premises. [Id.]

Art. 7111. [7420] Other duties regarding statement.—In so far as the other evidence and information adduced before said board does not make it appear to the members of said board to be improper or unjust to do so, said board shall, in fixing the true value of the entire property of such individual, company, corporation or association embraced within the provisions of this chapter, take as a basis therefor the aggregate market or true value of all its shares of stock, adding thereto the aggregate market or true value of all indebtedness secured by any mortgage, lien or other charge upon its property or assets, and the sum so produced shall be deemed and treated as the true value of said entire property. And where the individual, company, corporation or association does business and has property, both within this State and outside of it, in ascertaining the true value of its property within this State, said board shall next ascertain from said statements, reports and evidence, if any, or otherwise, the true value, in the locality where the same is situated, of each such several pieces of real estate situated outside of this State, and of its other properties, if any, outside thereof, and not specifically used in the business of said individual, company, corporation or association, and the aggregate of said value shall be deducted from the gross value of the property as above ascertained; and the result of the said deduction and the sum or value thereby obtained shall be deemed and treated as the true value of all property of such individual, company, corporation or association in actual use in its business. Said board shall then fix the true value of the property of such individual, company, corporation or association within this State, using as a basis and being guided so far as it shall not believe it unjust to do so, by the proportion which it finds to exist between the total lines or total receipts within this State and outside of it, and lines controlled or operated, or the receipts obtained, entirely within this State, so that there shall be apportioned to this State, as the true value of the property within its borders of each individual, company, corporation and association doing business within and outside of its limits, such proportion of the true value of all the property of such individual, company, corporation or association which is specifically used in its business, as is borne by its total lines or total receipts within this State when compared with the total lines or total receipts both inside and outside of the State of Texas. From the entire value of the property within this State, when ascertained as directed by this chapter, said board shall deduct the true value of all the tangible property of such individual, company, corporation or association within this State, as so ascertained by said board, and the residue and remainder of value shall be by said board fixed, determined and declared as the true value of the intangible properties owned and held by such individual, company, corporation or association within this State. Said board shall apportion the sum of the said total taxable values within this State to the counties in which such individual, company, corporation or association does business, in proportion to the amount of business done in and the receipts derived from each such company, except that, in case of a railroad company, the apportionment to each county shall be in proportion to the line or lines of such individual, company, corporation or association therein. In apportioning the value of the aforesaid properties, said board shall consider all evidence which may be put before it and all material facts at its command; and, if it shall believe that some method of calculation other than that specifically prescribed in this chapter is necessary in order to produce just and lawful results, said board shall follow that method of calculation which it believes best calculated, under all circumstances, to bring about a just, fair, equitable and lawful valuation and apportionment of such property. [Id.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 7112. [7421] Capital, how ascertained.—Whenever any person, or association of persons, not being a corporation, nor having a capital stock, shall engage in this State in any character of business embraced within the provisions of the eighth article of this chapter, then the capital and property, or the certificate or other evidences of the rights or interests of such person or association of persons engaged in such business, shall be deemed and treated as the capital stock of such person, or association of persons, for the purpose of taxation, and for all other purposes, under this chapter, and shall be estimated and valued; and the intangible property of such person or association of persons, when ascertained, shall be apportioned, distributed, assessed and taxed under the provisions of this chapter, in like manner as if such person or association of persons were a corporation; and each such person and association of persons, shall, annually, within the time and in the manner provided in this chapter, make the statements and reports and furnish and supply the information required by this law of the aforesaid companies, corporations and associations, and shall be subject in like manner as the aforesaid companies, corporations and associations to all the terms and provisions of this chapter, including penalties. [Id.]

Art. 7113. [7422] Board to certify to assessor.—Thereafter, and not later than the twentieth day of June of each year, said board shall make, in accordance with the provisions and requirements of this chapter, a final valuation and apportionment of the intangible assets aforesaid, of each and every such individual, company, corporation and association, and shall, as soon after such twentieth day of June as practicable, certify to the tax assessor of each county to which any portion of such intangible assets of any such individual, company, corporation or association is found by said board to be apportionable for taxation and so apportioned, the amount thereof as fixed, determined and declared by said board, and thereunto apportioned by said board, together with the name and place of residence or place of business of the owner or owners of the property embraced in such valuation and apportionment; provided, that such final valuation and apportionment of such intangible assets, properly apportionable and apportioned by such board to any unorganized county shall be by said board so certified to the tax assessor of the county to which such unorganized county is attached for judicial purposes. The tax assessor of such county, upon receiving such certificate or certificates of said board, shall place, set down and list, upon forms prescribed by the Comptroller for such purpose, upon the tax rolls of his county, and of each unorganized county which is attached to his county for judicial purposes, as the case may be, any and all such intangible assets, at the value so fixed, determined, declared and certified by said board. Such county tax assessor shall extend and prorate upon said rolls the State and county taxes upon all such intangible assets in the same manner as taxes upon other property are extended and prorated. Said assessment, valuation and apportionment of such intangible assets so fixed, determined, declared and certified by such board shall not be subject to review, modification or change by the tax assessor of such county, nor by the board of equalization of such county; and the State and county taxes thereon shall be collected by the tax collector of such county and accounted for by him in the same manner and under the same penalties as taxes upon other property. All State and county ad valorem taxes upon all intangible property in this State belonging to any individual, company, corporation or association embraced by this chapter, shall be assessed under its provisions and not otherwise; but ad valorem taxes upon all other property of any and all such individuals, companies, corporations and associations shall be assessed as is or as may be provided by law. [Id.]

Art. 7114. [7424] Failure to make statement.—Any individual, company, corporation or association, embraced within the provisions of this chapter, which shall fail to make any return, statement and report provided for by this chapter, within fifteen days after the day on which it is required by this chapter to be made, or to make any additional report or statement, or to furnish any additional information which may be required by said board, or any member thereof, under the provisions of this chapter, within fifteen days after the mailing of a registered notice or demand therefor in writing, signed by any member of said board and addressed to such individual, company or corporation or association, at its proper post-office address or principal place of business, shall forfeit and pay to the State of Texas not more than five thousand dollars, which amount may be recovered by suit which may be brought therefor in behalf of the State by the Attorney General; and venue of such suits is hereby fixed within the county of Travis. [Id.]

Art. 7115. [7425] Receivers and trustees in bankruptcy to report.—If the property of any such individual, company, corporation or association shall be in the hands of any receiver, assignee, trustee in bankruptcy, or other person holding under any court, or for the benefit of any creditor or creditors, then the statements, reports, information, books, and papers aforesaid shall be furnished by such receiver, assignee, trustee or other person, by some officer or agent acting under him, in the same manner and to the same extent as is hereinbefore provided in cases where an individual, company or association is in possession; and as to such receiver, assignee, trustee in bankruptcy or other person, officer, or agent, all of the provisions of this chapter, in so far as they are applicable, shall apply and govern. [Id.]

Art. 7116. [7426] Relieved of other taxes.—Whenever any individual, company, corporation or association, embraced within the eighth article of this chapter, shall pay in full, and within the year for which same may be assessed, all its State and county taxes for that year upon all its intangible properties as determined, fixed and assessed under the provisions of this chapter, such individual, company, corporation or association shall thereby be relieved from liability for and from payment of any and all occupation taxes measured by gross receipts for or accruing during that year under any law of this State; but no such individual, company, corporation or association shall be entitled to any such exemption, except for the year for which it shall, before same shall become delinquent, pay all its aforesaid intangible State and county taxes for that year. [Id.]

CHAPTER FIVE

INHERITANCE TAX

Art.
7117. Property subject.
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7119. Class B—Domestic bequest.
7120. Class C—Brother or sister.
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7122. Class E—Foreign bequest.
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7129. Securities of non-resident.
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7140. Duty of attorneys.
7141. Attorney's fees.
7142. Tax collector's fees.
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Article 7117. Property subject.—All property within the jurisdiction of this State, real or personal, corporate or incorporate, and any interest therein, whether belonging to inhabitants of this State or to persons who are not inhabitants, regardless of whether property is located within or without this State, which shall pass absolutely or in trust by will or by the laws of descent or distribution of this or any other State, or by deed, grant, sale or gift made or intended to take effect in possession or enjoyment after the death of the grantor or donor, shall upon passing to or for the use of any person, corporation or association, be subject to a tax for the benefit of the State's general revenue fund in accordance with the following classifications. [Acts 2nd C. S. 1923, p. 63.]

Art. 7118. Class A—Wife and children.—If passing to or for the use of husband or wife, or any direct lineal descendant or ascendant of the decedent, or to legally adopted child or children, or to the husband of a daughter or the wife of a son, the tax shall be one per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; two per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars; three per cent on any value in excess of one hundred thousand dollars, and not exceeding two hundred thousand dollars; four per cent on any value in excess of two hundred thousand dollars and not exceeding five hundred thousand dollars; five per cent on any value in excess of five hundred thousand dollars, and not exceeding one million dollars; and six per cent on any value in excess of one million dollars. [Id.]

Art. 7119. Class B—Domestic bequest.—If passing to or for the use of the United States, to be used in this State, the tax shall be one per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars; two per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; three per cent on any value in excess of one hundred thousand dollars and not exceeding two hundred thousand dollars; four per cent on any value in excess of two hundred thousand dollars, and not exceeding five hundred thousand dollars; five per cent on any value in excess of five hundred thousand dollars and not exceeding one million dollars; and six per cent on any value in excess of one million dollars. [Id.; Acts 1927, 40th Leg., p. 87, ch. 62, § 1.]

Art. 7120. Class C—Brother or sister.—If passing to or for [for] the use of a brother or sister or a direct lineal descendant of a brother or sister, of the decedent, the tax shall be three per cent on any value in excess of ten thousand dollars and not exceeding twenty-five thousand dollars; four per cent on any value in excess of twenty-five thousand dollars and not exceeding fifty thousand dollars; five per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; six per cent on any value in excess of one hundred thousand dollars and not exceeding two hundred and fifty thousand dollars; seven per cent on any value in excess of two hundred and fifty thousand dollars and not exceeding five hundred thousand dollars; eight per cent on any value in excess of five hundred thousand dollars and not exceeding seven hundred and fifty thousand dollars; nine per cent on any value in excess of seven hundred and fifty thousand dollars and not exceeding one million dollars; and ten per cent on any value in excess of one million dollars. [Id.]

Art. 7121. Class D—Uncle or aunt.—If passing to or for the use of an uncle or aunt, or a direct lineal descendant of an uncle or aunt of the decedent, the tax shall be four per cent on any value in excess of one thousand dollars and not exceeding ten thousand dollars; five per cent on any value in excess of ten thousand dollars and not exceeding twenty-five thousand dollars; six per cent on any value in excess of twenty-five thousand dollars and not exceeding fifty thousand dollars; seven per cent on any value in excess of fifty thousand dollars and not exceeding one hundred thousand dollars; ten per cent on any value in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars; twelve per cent on any value in excess of five hundred thousand dollars and not exceeding one million dollars; and fifteen per cent on any value in excess of one million dollars. [Id.]

Art. 7122. Class E—Foreign bequest.—If passing to or for the use of any other person within or without this State or to any religious, educational or charitable organization or institution located without the State of Texas, or to any religious, educational or charitable organization or institution located in the State of Texas or to the United States, and the bequest, devise or gift is to be used without this State, or to any other corporation or association not included in any of the classes mentioned in the preceding portions of the original act known as Chapter 29 of the General Laws of the Second Called Session of the 38th Legislature, the tax shall be five per cent on any value in excess of five hundred dollars, and not exceeding ten thousand dollars; six per cent on any value in excess of ten thousand dollars, and not exceeding twenty-five thousand dollars; eight per cent on any value in excess of twenty-five thousand dollars, and not exceeding fifty thousand dollars, ten per cent on any value in excess of fifty thousand dollars, and not exceeding one hundred thousand dollars, twelve per cent on any value in excess of one hundred thousand dollars and not exceeding five hundred thousand dollars; fifteen per cent on any value in excess of five hundred thousand dollars and not exceeding one million dollars; and twenty per cent on any value in excess of one million dollars. [Id.; Acts 1927, 40th Leg., p. 87, ch. 62, § 2.]

Section 3 of Acts 1927, 40th Leg., p. 87, ch. 62, repeals all conflicting laws or parts of laws.

Art. 7123. Divided estate.—If the property passing as aforesaid shall be divided into two or more estates, as an estate for years or for life and a remainder, the tax shall be levied on each estate or interest separately, according to the value of the same at the death of the decedent. The value of estates for years, estates for life, remainders and annuities, shall be determined by the "Actuaries Combined Experience Tables," at four per cent compound interest. [Id.]

Art. 7124. Bequest to trustee.—If a testator bequeaths or devises to his executor or trustee property in lieu of commission, the value of such property in excess of reasonable compensation, as determined by the county judge and the Comptroller, shall be subject to taxation under this chapter. [Id.]

Art. 7125. Deductions.—The only deductions permissible under this law are the debts due by the estate, funeral expenses, expenses incident to last illness of deceased, and all Federal, State and county and municipal taxes due at the time of the death of decedent. A full statement of the facts authorizing deductions must be made in duplicate under oath by the executor, administrator or trustee, and one copy filed with the county clerk, and the other with the Comptroller, before any deductions will be allowed. [Id.]

Art. 7126. Preliminary report.—Every executor, administrator or trustee of the estate of a decedent leaving property subject to taxation under this chapter, and every other person coming into possession of any portion of such estate where there is no administration of such estate, shall file a preliminary report within one month after coming into possession of any such property, giving the date of the death of such decedent, the approximate value and character of his estate and the persons entitled to receive same. Such report shall be in duplicate, one of which shall be filed with the Comptroller, and the other with the county clerk of the county wherein such decedent resided at the time of his death or wherein the principal part of his estate is located. The county clerk

shall immediately notify the county judge of the filing of such report. [Id.]

Art. 7127. Inventory.—Within six months after the executor, administrator or trustee or other person comes into full possession of such estate, he shall make report in duplicate and shall file the same in the manner provided in the preceding article. Said report must be made under oath and recorded as a permanent record in the Probate Court of the county wherein filed, and must give the following information:

(1) A list of all real estate located in Texas, including improvements thereon, and the true and full value of such real estate and all improvements thereon at the date of the death of decedent;

(2) A complete list of all live stock showing the location, kind and value thereof;

(3) All moneys on hand or in the bank, regardless of location, whether in this State or outside of Texas:[;]

(4) All notes, bonds, certificates, mortgages, stocks and other securities or evidences of indebtedness due the estate, showing the name and residence of those owing the estate, and the kind of bonds owned, the kind of notes, mortgages and stocks and other securities, and the name of the corporation, association or company in which stock or any interest is owned;

(5) The name and address of all persons entitled to such property and the value of such property to each beneficiary. [Id.]

Art. 7128. If administration unnecessary.—If for any reason the administration of the estate of a decedent leaving property subject to taxation under this chapter, shall not be necessary in this State except to carry out the provisions of this law, it shall be in the discretion of the county judge and Comptroller to dispense with the appointment of an administrator, upon filing with each of them a satisfactory inventory of the taxable property by the trustee or owner. Upon the filing of such inventory, the appraisement and other proceedings required by this chapter shall be had as in other cases. [Id.]

Art. 7129. Securities of non-resident.—In case of the death of a non-resident of Texas, owning no property in this State except stocks or bonds in a domestic corporation or association, and such fact is shown to the satisfaction of the Comptroller, such officer shall value said property. The administrator, executor or trustee may pay said tax when notified of the amount by the Comptroller, direct to such officer at Austin. The Comptroller shall then issue and deliver proper receipt therefor to the State Treasurer who shall keep a record of such payment and forward receipts to the trustee. [Id.]

Art. 7130. Appraisal.—The judge of the county court having jurisdiction of the estate of the decedent shall appoint two competent disinterested persons, to be approved by the Comptroller, as appraisers to fix the value of the property of such decedent subject to taxation hereunder; or upon agreement of the parties interested to dispense with the appointment of appraisers, the county judge and Comptroller shall appraise the property and make and file a report of such appraisement. The appraisers, being first sworn, shall forthwith give notice to all persons known to have any claim or interest in the property to be appraised, including the executor, administrator or trustee, of the time and place when they will appraise the same. At such time and place, said appraisers shall appraise such property at its actual market value if it has a market value, and in case it has none, then its real value at the time of the death of the decedent, and shall thereupon make a report thereof in writing to said county judge and Comptroller, who shall file and keep such report. If the same decedent shall leave property taxable hereunder to more than one person, said appraisement and report shall be made for the property of each of such persons. Each appraiser shall be paid, on the certificate of the county judge, five dollars for each day employed in such appraisal, together with his actual necessary expenses incurred therein. [Id.]

Art. 7131. Fixing tax.—Immediately after the filing of the appraisal report, or as soon thereafter as practical, the county judge shall calculate and determine the tax due on such property, according to the value thereof as shown in such appraisement, and shall furnish a statement of the same to the Comptroller for verification. If the Comptroller finds the tax to be correct, he shall so advise the county judge, whereupon it shall immediately become the duty of the county judge to certify such amount to the collector of taxes, to the executor, administrator or trustee, and to the person to whom or for whose use, the property passes, and said tax shall be a lien upon such property from the death of the decedent until paid. [Id.]

Art. 7132. Payment of tax.—All taxes received under this law by any executor, administrator or trustee, shall be paid by him to the tax collector of the county whose county court has jurisdiction of the estate of the decedent. Upon such payment, the collector shall make duplicate receipts thereof and shall deliver one to the party making payment, the other he shall send to the Comptroller, who shall charge the collector with the amount thereof and shall countersign and affix his seal to such receipt and transmit same to the party making payment. [Id.]

Art. 7133. Lien.—A lien shall exist on all property subject to taxation under this law to secure the payment of all taxes, penalties and costs provided for in this chapter. All persons acquiring any portion of said property shall be charged with notice of the existence of all such unpaid taxes, penalties and costs, and of the lien securing their payment, which may be enforced in any suit brought for the collection of said taxes, penalties and costs. [Id.]

Art. 7134. Foreclosure.—If the amount of tax due hereunder, as shown by such assessment furnished by the county judge and Comptroller, is not paid within three months from the date of said assessment, same shall draw two percent interest per month until paid, beginning with the date of notice of such assessment, and shall be added to said tax and collected as a penalty. If said tax and penalty are not paid within nine months from the date of such assessment, the Comptroller shall so advise the county attorney, or if there is no county attorney then the district attorney, who must immediately file suit in the district court to foreclose the tax lien, as other tax liens are foreclosed. [Id.]

Art. 7135. Final accounts.—No final account of any executor, administrator or trustee shall be allowed by the county judge unless such account shows and said judge finds that all taxes imposed under this law on any property or interest passing through his hands as such have been paid. Neither shall the county judge close any estate, or permit the delivery of any property to the legatee or heir without first ascertaining whether or not a tax is due under this chapter, and if no tax is due such fact must be shown by an instrument in writing filed with the final papers closing said estate. [Id.]

Art. 7136. Delivery of securities.—No notes, bonds, certificates, mortgages, stocks, securities or other evidences of indebtedness due the estate of deceased persons and subject to taxation hereunder, shall be transferred or delivered to any legatee or heir until the Comptroller issues a notice to the executor, administrator or trustee of such estate, or to their bondsmen, stating that all the inheritance taxes due this State have been paid. Such notice shall be authority for any administrator, executor or trustee to deliver such property to the proper legatees or heirs. [Id.]

Art. 7137. Delivery before payment.—Should any domestic corporation or association transfer to any legatee or heir, or should an administrator, executor or trustee deliver to any legatee or heir, the

stocks or bonds of any domestic corporation or association, or deliver any other property, before the inheritance tax thereon due this State is paid, the corporation or association, or the administrator, executor, trustee and their bondsmen, shall be liable for said tax and penalty and all cost of collection. [Id.]

Art. 7138. Offsets after distribution.—Whenever any debts shall be proved against the estate of the decedent after the distribution of the property on which the tax has been paid and a refund is made by the distributee, due proportion of the tax so paid shall be repaid to him by the executor, administrator or trustee if still in his hands, or by the Comptroller upon warrant on the State Treasurer, if said tax has been paid. [Id.]

Art. 7139. False report.—If any person charged with the duty of filing a report hereunder shall knowingly make a false report, he shall be liable for a penalty of not exceeding one thousand dollars, which shall be collected by the county attorney, or district attorney where there is no county attorney, in the name of this State by suit in the county in which the administration is pending. Twenty per cent of such penalty shall be retained by the attorney prosecuting such suit as attorney's fees, and the remainder shall be distributed as the taxes collected under this law are distributed. [Id.]

Art. 7140. Duty of attorneys.—It shall be the duty of the county attorney, or district attorney where there is no county attorney, of each county in this State to carefully investigate and keep informed concerning the estates subject to the payment of taxes and to see that proper reports are filed as required in this chapter. [Id.]

Art. 7141. Attorney's fees.—For the services performed under the provisions of this chapter, the county attorney and the county judge shall each be allowed two per cent of the taxes collected not to exceed thirty dollars in any one estate. If suit be brought, the county or district attorney prosecuting same shall receive as compensation therefor five per cent on the amount of the taxes payable hereunder not to exceed in any one case the sum of one hundred dollars, which fee shall be added and collected from said estate in addition to the taxes and penalties herein provided for, and such compensation shall be in addition to all other fees and compensation provided by this law. The aggregate of fees received under this law shall not exceed in any one year two thousand dollars, and any fees earned in addition to said sum shall be considered a portion of the tax and penalties collected, and be distributed in the same manner. [Id.]

Art. 7142. Tax collector's fees.—The collector of taxes of each county shall, on or before the fifteenth day of each month, pay to the State Treasurer all taxes received by him under this law before the first day of the month, deducting therefrom all lawful disbursements made by him under this law, and also his compensation at the rate of one per cent of all taxes collected hereunder. [Id.]

Art. 7143. Disposition of tax.—All moneys received by the State Treasurer under this chapter shall be deposited in the State Treasury to the credit of the general revenue fund. [Id.]

Art. 7144. Comptroller to furnish forms.—The Comptroller shall prescribe and furnish all forms necessary in making the reports and collecting the tax provided for by this law. [Id.]

CHAPTER SIX

PROPERTY SUBJECT TO TAXATION AND RENDITION

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Article 7145. [7503] [5061] All property taxed.—All property, real, personal or mixed, except such as may be hereinafter expressly exempted, is subject to taxation, and the same shall be rendered and listed as herein prescribed. [Acts 1876, p. 275; G. L. vol. 8, p. 1111.]

Art. 7146. [7504] [5062] "Real property."—Real property for the purpose of taxation, shall be construed to include the land itself, whether laid out in town lots or otherwise, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all the rights and privileges belonging or in any wise appertaining thereto, and all mines, minerals, quarries and fossils in and under the same. [Id.]

Art. 7147. [7505] [5063] "Personal property."—Personal property, for the purposes of taxation, shall be construed to include all goods, chattels and effects, and all moneys, credits, bonds and other evidences of debt owned by citizens of this State, whether the same be in or out of the State; all ships, boats and vessels belonging to inhabitants of this State, if registered in this State, whether at home or abroad, and all capital invested therein; all moneys at interest, either within or without the State, due the person, to be taxed over and above what he pays interest for, and all other debts due such person over and above his indebtedness; all public stock and securities; all stock in turn-pikes, railroads, canals and other corporations (except national banks) out of the State, owned by inhabitants of this State; all personal estate of moneyed corporations, whether the owners thereof reside in or out of this State, and the income of any annuity, unless the capital of such annuity be taxed within this State; all shares in any bank organized or that may be organized under the laws of the United States; all improvements made by persons upon lands held by them, the title to which is still vested in the State of Texas, or in any railroad company, or which have been exempted from taxation for the benefit of any railroad company, or any other corporation whose property is not subject to the same mode and rule of taxation as other property. [Acts 1879, p. 39; G. L. vol. 8, p. 1339.]

Art. 7148. Assessment of merchandise.—Any person, co-partnership, association, or corporation, doing business in this State, and carrying and possessing any stock of goods of whatsoever nature, shall upon demand by the tax assessor of the county in which such stock of goods is located, furnish said tax assessor with a verified copy of the last inventory of said stock of goods, together with the inventory value thereof.

The affidavit to the inventory shall state that said inventory includes every article in the stock carried by such person, co-partnership, association, or corporation and that no part of such stock is owned, operated or controlled by any person, co-partnership, association, or corporation other than the person furnishing such inventory.

Any persons, co-partnerships, associations or corporations who have space leased in which merchandise or any character of business is or was operated on January 1st so making such inventory, shall further state, if such is the case, what persons, associations, co-partnerships or corporations own or control any part of the stock of goods offered for sale and their residence in conjunction with the stock of goods owned by the person, co-partnership, association, or corporation rendering such inventory and not contained in such inventory.

Any person or agent or representative of such co-partnership, association, or corporation who shall fail to furnish such inventory and information as set forth above upon demand by the tax assessor of the county in which such property is located, shall be subject to all the penalties now existing against any person for making a false rendition of property for the purpose of taxation. [Acts 3rd C. S. 1923, p. 172.]

Art. 7149. [7506] [5064] Definition of terms.—The term, "money," or "moneys," wherever used in this title shall, besides money or moneys, include every deposit which any person owning the same or holding in trust and residing in this State, is entitled to withdraw in money on demand.

"Credits."—The term, "credits," wherever used in this title, shall be held to mean and include every claim and demand for money or other valuable thing, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and demands secured by deed or mortgage, due or to become due.

"Tract or lot."—The term, "tract or lot," and "piece or parcel," of real property, and "piece and parcel" of land, wherever used in this title, shall each be held to mean any quantity of land in possession of, owned by or recorded as the property of the same claimant, person, company or corporation.

"Town or district."—The words, "town or district," wherever used shall be held to mean village, city, ward or precinct, as the case may be.

"Value."—The term, "true and full value," wherever used shall be held to mean the fair market value, in cash, at the place where the property to which the term is applied shall be at the time of assessment, being the price which could be obtained therefor at private sale, and not at forced or auction sale.

"Person."—The term, "person," shall be construed to include firm, company or corporation. [Acts 1876, p. 275; G. L. vol. 8, p. 1111.]

Art. 7150. [7507] [5065] Exemption from taxation.—The following property shall be exempt from taxation, to-wit:

1. Schools and churches.—Public school houses and houses used exclusively for public worship, the books and furniture therein and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit. All public colleges, public academies, all buildings connected with the same, and all the lands immediately connected with public institutions of learning, and all endowment funds of institutions of learning and religion not used with a view to profit, and when the same are invested in bonds or mortgages, or in land or other property which has been or shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages; provided, that such exemption of such land and property shall continue for two years after the purchase of the same at such sale by such institutions and no longer; and all such buildings used exclusively and owned by persons or associations of persons for school purposes. This provision shall not extend to leasehold estate of real property held under authority of any college or university of learning. [Acts 1907, p. 302.]

2. Christian Associations.—Young Mens' Christian Association Buildings, and Young Womens' Christian Association Buildings, used exclusively for the purpose of furthering religious work, and acting under the approval and co-operation of the State and International Young Mens' Christian Association committees and the Young Womens' Christian Association committees, the books and furniture contained in such buildings, and the grounds attached thereto necessary for the proper occupancy of such buildings, use and enjoyment of the same, and not leased or otherwise used with a view to profit other than for the purpose of maintaining the buildings and Association, and all endowment funds of the above mentioned religious institutions not used with a view to profit, but for the purpose of maintaining the Association and buildings in doing religious work. [Acts 1913, p. 153.]

3. Cemeteries.—All lands used exclusively for graveyards or grounds for burying the dead, except such as are held by any person, company or corporation with a view to profit, or for the purpose of speculating in the sale thereof. [Acts 1907, p. 302.]

4. Public property.—All property, whether real or personal, belonging exclusively to this State, or any political subdivision thereof, or the United States, except that in each county in this State, where the State of Texas has or may acquire and own land for the purpose of establishing thereon State farms and employing thereon convict labor on State account, the penitentiary board or board of penitentiary commissioners, or other officers of the penitentiary having the management of the same, shall render said land for taxes to the tax assessor of said county; and the taxes on same shall be assessed and collected in the manner required by law for the assessment and collection of other taxes; provided, that said taxes shall be assessed and collected for county purposes only; and said county taxes shall be paid annually out of the revenue derived from such State farms respectively by the officer having the management thereof, and same shall be charged to the expense account of operating such farm. No debt shall be created against the general revenue of the State in case of the failure to pay said taxes out of the revenue of any such farm. In arriving at the amount to be paid in taxes to the counties the value of the land only shall be considered and not the value of the buildings and other improvements owned by the State and situated on said land. [Id. Acts 1910, S. S. p. 122.]

5. County buildings.—All buildings belonging to counties for holding courts, for jails, or for county officers, with the land belonging to and on which such buildings are erected. [Acts 1907, p. 302.]

6. Poor-houses.—All lands, houses and other buildings belonging to any county, precinct or town, used exclusively for the support or accommodation of the poor. [Id.]

7. Public charities.—All buildings belonging to institutions of purely public charity, together with the lands belonging to and occupied by such institutions not leased or otherwise used with a view to profit, unless such rents and profits and all moneys and credits are appropriated by such institutions solely to sustain such institutions and for the benefit of the sick and disabled members and their families and the burial of the same, or for the maintenance of persons when unable to provide for themselves, whether such persons are members of such institutions or not. An institution of purely public charity under this article is one which dispenses its aid to its members and others in sickness or distress, or at death, without regard to poverty or riches of the recipient, also when the funds, property and assets of such institutions are placed and bound by its laws to relieve, aid and administer in any way to the relief of its members when in want, sickness and distress, and provide homes for its helpless and dependent members and to educate and maintain the orphans of its deceased members or other persons. [Id.]

8. Public libraries.—All public libraries and personal property belonging to the same. [Id.]

9. Market houses, etc.—All market houses, public squares, or other public grounds, town or precinct houses or halls used exclusively for public purposes, and all works, machinery or fixtures belonging to any town used for conveying water to such town. [Id.]

10. Fire engines.—All fire engines and other implements owned by towns and cities used for the ex-

tinguishment of fires, with the buildings used exclusively for the safekeeping thereof. [Id.]

11. Furniture.—All household and kitchen furniture not exceeding at their true and full value two hundred and fifty dollars to each family, in which may be included one sewing machine. [Id.]

12. Pensions.—All annual pensions granted by the State or the United States. [Id.]

13. Buffalo and catalo.—All buffalo and all catalo now in captivity in this State, by whomsoever owned, where such animals are kept and used for experimental purposes in crossing same with cattle for the purpose of producing a better strain of beef animals, or where such animals are kept in parks to preserve the species, and not for profit. [Acts 1917, p. 384.]

14. Art Galleries, etc.—All property belonging to Art Leagues and Societies of Fine Arts, whether incorporated or not, which are devoted wholly and without charge to the promotion of education and learning, including Art Galleries and exhibits therein contained, the land upon which the same are situated, which is devoted exclusively to such purposes, and also all land, money, pictures and other works of art and all other personal property which may be necessary and in actual use for the purpose of carrying out said educational feature. [Acts 1921, p. 97.]

15. Property of Boy Scouts.—Hereafter the property of the organization known as the Boy Scouts of America or any local organization affiliated with such organization, shall be exempt from taxation in this State. [Acts 1925, p. 255.] [39th Leg., ch. 85, § 1.]

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Sec. 1-a. All of the lands, buildings, personal property and the endowment funds used exclusively by any persons or association of persons for the maintenance and operation of demonstration farms for the purpose of teaching and demonstrating modern and scientific methods of farming to farmers and others, without charge, and not operated or used with a view to profit, and when any of the income, over and above an amount sufficient to maintain and operate the same, is used and bound for the use of other institutions of public charity. [Acts 1926, 39th Leg., 1st C. S., p. 19, ch. 12, § 1.]

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1a. Provided that any territory that has been acquired, or may hereafter be acquired, by the State of Texas as a part of any State prison farm or property, shall not hereafter be exempt from the payment of its pro rata part of any bond tax of a public school district of which the said territory was a part at the time outstanding bonds of the said district were issued; and the pro rata part of the said bond tax that shall be paid by said territory shall be the proportionate part that the assessed valuation of such territory was of the total assessed valuation of the school district for the year in which the territory was, or may be, acquired by the State. Provided, also, that the said bond tax shall be paid by the governing board of management of the State prison system out of any funds appropriated therefor by the Legislature. It is hereby specifically provided that the said bond tax shall be paid for each year that has elapsed since any such territory of a school district was acquired by the State for and as a part of the said prison system. [Acts 1927, 40th Leg., 1st C. S., p. 224, ch. 81, § 1.]

Art. 7150a. County school land not exempt.—Any county in this State owning any land mentioned and referred to in Section 6a of Article VII of the Constitution of Texas adopted by the people as an amendment to the Constitution under S. J. R. No. 10 of the Regular Session of the 39th Legislature, is hereby authorized to pay taxes duly and lawfully levied on the same out of the County's revenue derived from such land. In the event any County has no such revenue, such taxes shall be paid out of the general fund of the County, and if any County has sufficient of such revenue to pay only a portion of such taxes the remainder shall be paid out of the general fund of the County. [Acts 1927, 40th Leg., 1st C. S., p. 20, ch. 10, § 1.]

Art. 7151. [7508] [5066] When to be rendered.—All property shall be listed for taxation between January 1 and April 30 of each year, when required by the assessor, with reference to the quantity held or owned on the first day of January in the year for which the property is required to be listed or rendered. Any property purchased or acquired on the first day of January shall be listed by or for the person purchasing or acquiring it. If any property has, by reason of any special law, contract or fact, been exempt or has been claimed to be exempted from taxation for any period or limit of time, and such period of exemption shall expire between January 1, and December 31 of any year, said property shall be assessed and listed for taxes as other property; but the taxes assessed against said property shall be for only the pro rata of taxes for the portion of such year remaining. [Acts 1909, p. 373.]

Art. 7152. [7509] [5067] How rendered.—All property shall be listed or rendered in the manner following:

1. By the owner.—Every person of full age and sound mind, being a resident of this State, shall list all of his real estate, moneys, credits, bonds or stock of joint stock or other companies (when the property of such company is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties, and all other property.

2. As agent.—He shall also list all lands or other real estate, all moneys and other personal property invested, loaned or otherwise controlled by him as agent or attorney, or on account of any other person, company or corporation whatsoever, and all moneys deposited subject to his order, check, or drafts and credits due from or owing by any person, body corporate or politic.

3. Minor.—The property of a minor child shall be listed by his guardian, or by the person having such property in charge.

4. Wife.—The property of a wife, by her husband, if of sound mind; if not, by herself.

5. Idiot.—The property of an idiot or lunatic, by the person having charge of such property.

6. Cestui que trust.—The property of a person for whose benefit it is held in trust by the trustee of the estate; of a deceased person, by the executor or administrator.

7. Receivers.—The property of corporations whose assets are in the hands of receivers, by such receivers.

8. Corporations.—The property of a body politic or corporate, by the president or proper agent or officer thereof.

9. Copartnership.—The property of a firm or company, by a partner or agent thereof.

10. Manufactories.—The property of manufacturers and others in the hands of an agent, by such agent, in the name of his principal, as real, personal and merchandise.

11. Nurseries.—The stock of nurseries, growing and otherwise, in the hands of nurserymen shall be listed and assessed as merchandise. [Id.]

Art. 7153. [7510] [5068] Where rendered.—All property, real and personal, except such as is required to be listed and assessed otherwise, shall be listed and assessed in the county where it is situated; and all personal property, subject to taxation and temporarily removed from the State or county, shall be listed and assessed in the county of the residence of the owner thereof, or in the county where the principal office of such owner is situated. [Acts 1897, p. 203; G. L. vol. 10, p. 1257.]

Art. 7154. [7511] [5069] Rendered in but one county.—Lands lying on county boundaries, which have not been accurately and legally surveyed, determined or fixed, shall not be assessed or taxed in more than one county. [Acts 1879, p. 153; G. L. vol. 8, p. 1453.]

Art. 7155. [7512] [5070] Livestock.—All persons, companies and corporations owning pastures in this State which lie on county boundaries shall be required to list for assessment, all livestock of every kind owned by them in said pastures in the several

counties in which such pastures are situated, listing in each county such portion of said stock as the land in such county is of the whole pasture. All persons, companies and corporations owning any kind of livestock in pasture not their own shall list said livestock in the several counties in which such pastures are situated in the same manner; and in both cases the tax upon such livestock shall be paid to the tax collector of the several counties in which such livestock is listed and assessed. [Acts 1889, p. 29; G. L. vol. 9, p. 1057.]

Art. 7156. [7513] [5071] Taxes not to be paid twice.—Any lands which may have been assessed in any county according to the abstract of land titles, and the taxes paid thereon according to law, shall not be afterwards subject to the payment of taxes for the same period in a different county, although a subsequent survey and determination of the county boundaries may show said lands to be in a different county from that in which they were originally assessed; and any sales of such lands for alleged delinquency shall be illegal and void. [Acts 1879, p. 153; G. L. vol. 8, p. 1453.]

Art. 7157. [7514] [5072] Vessels.—All persons, companies and corporations in this State owning steamboats, sailing vessels, wharf boats and other water craft shall be required to list the same for assessment and taxation in the county in which the same may be enrolled, registered or licensed, or kept when not enrolled, registered or licensed. [Acts 1876, p. 277; G. L. vol. 8, p. 1113.]

Art. 7158. Deposits with State.—All securities of every kind and character, and all moneys, required or permitted by law to be deposited by any person, firm residing in this State, or corporation organized under the laws of Texas, with the State Treasurer, or other State officer or department, shall be taxed in the county in which the person owning same resides, or where such firm has its place of business, or at the domicile of such corporation, and at no other place. [Acts 4th C. S. 1918, p. 69.]

Art. 7159. [7515] [5073] Railroads, telegraphs, etc.—All railroad, telegraph, plank road and turnpike companies shall list all of their real and personal property, giving the number of miles of roadbed and line in the county where such roadbed and line is situated at the full and true value, except when such company may own personal property or real estate in an unorganized county or district, then they shall list such property to the Comptroller. [Acts 1876, p. 277; G. L. vol. 8, p. 1113.]

Art. 7160. [7516] [5074] Listing for others.—Persons required to list property on behalf of others shall list it in the same manner in which they are required to list their own, but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs. [Id.]

Art. 7161. [7517] [5075] Sworn list.—Each person required by law to list property shall make and sign a statement, verified by his oath, as required by law, of all property, both real and personal, in his possession, or under his control, and which he is required to list for taxation, either as owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor. [Id.]

Art. 7162. [7518] [5076] Requisites.—Such statement shall truly and distinctly set forth:

1. The name of the owner, and a description sufficient for the identification of any real estate belonging to such owner.
2. The number of acres.
3. The value of the land.
4. The number of the lot or lots.
5. The number of the block.
6. The value of town lots.
7. The name of the city or town.
8. The number of miles of railroad in the county.
9. The value of railroads and appurtenances.
10. Number of miles of telegraph in the county.
11. Value of telegraph and appurtenances in the county.
12. Number and amount of land certificates and value thereof.
13. Number of horses and mules and the value thereof.
14. Number of cattle and the value thereof.
15. Number of jacks and jennets and value thereof.
16. Number of sheep and value thereof.
17. Number of goats and value thereof.
18. Number of hogs and dogs and value thereof.
19. Number of carriages, buggies, wagons, automobiles, bicycles, motorcycles, or other vehicles of whatsoever kind and the value of each one thereof.
20. Number of sewing machines and knitting machines and value thereof.
21. Number of clocks and watches and value thereof.
22. Number of organs, melodeons, piano fortes, and all other musical instruments of whatsoever kind and value thereof.
23. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
24. Office furniture and the value thereof.
25. The value of gold and silver plate.
26. The value of diamonds and jewelry.
27. Every annuity or royalty, the description and value thereof.
28. Number of steamboats, sailing vessels, wharf boats, barges or other water craft, and the value thereof.
29. The value of goods, wares and merchandise of every description which such person is required to list as a merchant (in hand on the first day of January of each year.)
30. Value of materials and manufactured articles which such person is required to list as a manufacturer.
31. Value of manufacturers' tools, implements and machinery other than boilers and engines, which shall be listed as such.
32. Number of steam engines, including boilers, and the value thereof.
33. Amount of moneys of bank, banker, broker or stock jobber.
34. Amount of credits of bank, banker, broker or stock jobber.
35. Money on hand or on deposit, in or out of the State, with banks, trust companies, corporations, firms or individuals, and subject to order, check or draft, including certificates of deposit.
36. Amount of credits other than of bank, banker, broker or stock jobber.
37. Amount and value of bonds and stocks other than United States Bonds.
38. Amount and value of shares of capital stock companies and associations not incorporated by the laws of this State.
39. Value of all property of companies and corporations other than property hereinbefore enumerated.
40. Value of stock and furniture of hotels and eating houses.
41. Value of every billiard, pigeon hole, bagatelle or other similar tables, together with the number thereof.
42. Every franchise, the description and value thereof.
43. Value of all other property not enumerated above. [Acts 1876, p. 278; Acts 1905, p. 357; G. L. vol. 8, p. 1114.]

Art. 7163. [7519] [5077] Certain credits and stocks not to be listed.—No person shall be required to list or render a greater portion of his credits than he believes will be received or can be collected, or to include in his statement as a part of his personal property which is required to be listed any share or portion of the capital stock or property of any company or corporation which is required to list or return its capital and property for taxation. [Id.]

Art. 7164. [7520] [5078] Rendition of real estate.—Persons listing or rendering real estate shall make a statement, duly signed and under oath, which shall truly and distinctly set forth:

1. The name of the owner, abstract number, number of survey, the number of the certificate, the name of the original grantee, the number of acres, and the true and full value thereof.

2. The number of the lot and block and the true and full value thereof, together with the name of the town or city.

3. When the name of the original grantee, or abstract number, or number of certificate, or number of survey is unknown, say "unknown," and give such description so that land or lot can be identified and the true and full value thereof can be determined. [Id.]

Art. 7165. [7521] [5079] Assessment of personal property of bank, etc.—Every bank, whether of issue or deposit, banker, broker, dealer in exchange, or stock jobber, shall at the time fixed by this chapter for listing personal property, make out and furnish the assessor of taxes a sworn statement showing:

1. If a national bank, the president or some other officer of such bank shall furnish to the assessor of the county in which such bank is located a list of the names of all the shareholders of the stock, together with the number and amount of the shares of each stockholder of stock in said bank; and the shareholders of the stock in national banks shall render to the tax assessor of the county in which said bank is located the number of their shares and the true and full value thereof. All shares of stocks in national banks not rendered to the assessor of taxes in the county where such bank is located within the time prescribed by law for listing property for taxes shall be assessed by the assessor against the owner or owners thereof as unrendered property is assessed; but the tax roll shall show the name of the owner or owners thereof as per statement furnished by the president or other officers of said bank.

2. National banks shall render all other bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stock or stocks of other companies or corporations held as an investment or in any way representing assets, together with all other personal property belonging or pertaining to said bank, except such personal property as is specially exempted from taxation by the laws of the United States.

3. National banks shall be required to render all of their real estate as other real estate is rendered; and all the personal property of said national banks herein taxed shall be valued as other personal property is valued.

4. All other banks, bankers, brokers, or dealers in exchange, or stock jobbers shall render their list in the following manner:

(1) The amount of money on hand or in transit or in the hands of other banks, bankers, brokers or others subject to draft, whether the same be in or out of the State.

(2) The amount of bills receivable, discounted or purchased and other credits due or to become due, including accounts receivable, interest accrued but not due, and interest due and unpaid.

(3) From the aggregate amount of the items named in the first and second of the last two subdivisions shall be deducted the amount of money on deposit.

(4) The amount of bonds and stocks of every kind, except United States bonds, and all shares of capital stocks or joint stocks of other companies or corporations held as an investment or in any way representing assets.

(5) All other property belonging or appertaining to said bank or business, including both personal property and real estate, shall be listed as other personal property and real estate. [Acts 1895, p. 37; G. L. vol. 10, p. 767.]

Art. 7166. [7522] [5080] Assessment of real estate by banks.—Every banking corporation, State or national, doing business in this State shall, in the city or town in which it is located, render its real estate to the tax assessor at the time and in the manner required of individuals. At the time of making such rendition the president or some other officer of said bank shall file with said assessor a sworn statement showing the number and amount of the shares of said bank, the name and residence of each shareholder, and the number and amount of shares owned by him. Every shareholder of said bank shall, in the city or town where said bank is located, render at their actual value to the tax assessor all shares owned by him in such bank; and in case of his failure so to do, the assessor shall assess such unrendered shares as other unrendered property. Each share in such bank shall be taxed only for the difference between its actual cash value and the proportionate amount per share at which its real estate is assessed. The taxes due upon the shares of banking corporations shall be a lien thereon, and no banking corporation shall pay any dividend to any shareholder who is in default in the payment of taxes due on his shares; nor shall any banking corporation permit the transfer upon its books of any share, the owner of which is in default in the payment of his taxes upon the same. Nothing herein shall be so construed as to tax national or State banks, or the shareholders thereof, at a greater rate than is assessed against other moneyed capital in the hands of individuals. [Acts 1885, p. 106; G. L. vol. 9, p. 726.]

Art. 7167. [7523] [5081] Deductions.—No person, company or corporation shall be entitled to any deduction on account of any bond, note or obligation of any kind given to any mutual insurance company, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor or [on] account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated. [Acts 1876, p. 280; G. L. vol. 8, p. 1116.]

Art. 7168. [7524] [5082] Assessment by railroads.—Every railroad corporation in this State shall deliver a sworn statement, on or before the thirtieth day of April of each year, to the assessor of each county and incorporated city or town, into or through which any part of their road may run or in which they own or are in possession of real estate, a classified list of all real estate owned by or in possession of said company in said county, town or city, specifying:

1. The whole number of acres of land, lot or lots, exclusive of their right of way and depot grounds, owned, possessed or appropriated for their use, with a valuation affixed to the same.

2. The whole length of the railroad and the value thereof per mile, which valuation shall include right of way, roadbed, superstructure, depots and grounds upon which said depots are situated, and all shops and fixtures of every kind used in operating said road.

3. All personal property of whatsoever kind or character, except the rolling stock belonging to the company or in their possession in each respective county, listing and describing the said personal property in the same manner as is now required of citizens of this State. [Acts 1909, p. 373.]

Art. 7169. [7525] [5083] Railroads to return sworn statements.—Every railroad corporation in this State shall deliver a sworn statement on or before the first day of April of each year, to the assessor of the county in which its principal office is situated, setting forth the true and full value of the rolling stock of said railroad, together with the names of all the counties through which it runs, and the number of miles of roadbed in each of said counties; and said statement shall be submitted to the board of equalization of the county in which its principal office is situated for review, on the first Monday in June in each year, or as soon thereafter as practicable; and such board shall certify such final valuation when made without delay to the Comptroller, who shall proceed at once to apportion the amount of such valuation among the said counties in proportion to the distance such roads shall run through any such county, and shall certify such apportionment to the assessors of such counties, and the same shall constitute part of the tax assets of such counties; and the assessor of each of said counties shall list and enter the same upon the rolls for taxation as other personal property situated in said county. And said railroad corporation shall

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

also report in a separate sworn statement all rolling stock operated by it, under rental, hire, lease or other form of contract, which it does not render for taxation, giving the true and full value of such rolling stock and the amount paid or promised to be paid for rental, hire, lease or use under other form of contract, together with the name of person, firm, corporation or association owning such rolling stock, and together with the post-office address of such person or firm, or if it be a corporation or association, then the city, county and State of its principal office; and if from said statement it appears that said rolling stock belongs to any person residing in this State, or to any firm doing business in this State, or to any corporation or association organized under the laws of this State, then said statement shall be certified by the tax assessor to whom it is made to the tax assessor of the county in which such person lives, or such firm does business, or such corporation or association has its principal office; and said statement shall be, by the tax assessor to whom it is certified, submitted to the board of equalization of the county for review, and the same shall be equalized by the board of equalization of such county, and certified to the Comptroller, and apportioned by the Comptroller in the same manner as other rolling stock is certified and apportioned under the preceding provisions of this article; and, if it appears from said statement that the person, firm, corporation or association owning such rolling stock is a non-resident of this State, then said statement shall be submitted to the board of equalization of the county in which the principal office of the railroad company using the same under rental, hire, lease or other form of contract is situated, which statement shall be reviewed by said board of equalization, and said property assessed against the owner, and certified to the Comptroller, and the valuation apportioned against said owner by the Comptroller, in the same manner as rolling stock belonging to the railroad corporation furnishing the list. [Acts 1885, p. 30; Acts 1907, p. 192; G. L. vol. 9, p. 650.]

Art. 7170. [7526] [5084] Corporate property.—All property of private corporations, except in cases where some other provision is made by law, shall be assessed in the name of the corporation; and in collecting the taxes on the same all the personal property of such corporation shall be liable to be seized whenever the same may be found in the county, and sold in the same manner as the property of individuals may be sold for taxes. All statements and lists made by corporations that are required to be sworn to shall be verified by the affidavit and signature of the secretary of said corporation, and, if they have no secretary, the officer who discharges the duties of secretary of said corporation. [Acts 1876, p. 280; G. L. vol. 8, p. 1116.]

Art. 7171. [7527] [5085] Assessments in owner's name.—All real property subject to taxation shall be assessed to the owners thereof in the manner herein provided; but no assessment of real property shall be considered illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof. [Id.]

Art. 7172. [7528] [5086] Lien for taxes.—All taxes upon real property shall be a lien upon such property until the same shall have been paid. And should the assessor fail to assess any real estate for any one or more years, the lien shall be good for every year that he should fail to assess for; and he may, in listing property for taxes any year thereafter, assess all the back taxes due thereon, according to the provisions of this title. [Id.]

Art. 7173. [7529] [5087] Leasehold interests in public lands.—Property held under a lease for a term of three years or more, or held under a contract for the purchase thereof, belonging to this State, or that is exempt by law from taxation in the hands of the owner thereof, shall be considered for all the purposes of taxation, as the property of the person so holding the same, except as otherwise specially provided by law. Timber held by persons or corporations, heretofore or hereafter purchased from the State under the various laws for that purpose, shall likewise be subject to assessment for taxes, and the value thereof for taxation shall be ascertained as the value of other property is ascertained. And should the owner of such timber fail or refuse to pay the taxes assessed against it, the same shall be sold for the taxes thereon, as provided in this title for the sale of personal property for taxes, provided that the same can be found by the collector; but, if the timber can not be found, then the collector shall collect the taxes due as the taxes on other personal property are collected; provided, further, that the Land Commissioner shall furnish by the first of January each year to the various commissioners courts and the tax assessors of this State a full and complete list of all timber sold by the State belonging to the school funds, giving the number of acres, price and to whom sold, in the respective counties where the timber so sold is situated. In case of the sale of such timber for taxes as herein provided, the purchaser shall take and hold the same under the same terms and conditions as the original purchaser thereof from the State. [Acts 1905, p. 72.]

Art. 7174. [7530] [5088] Valuation of property for taxation.—Each separate parcel of real property shall be valued at its true and full value in money, excluding the value of crops growing or ungathered thereon.

In determining the true and full value of real and personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or a forced sale or in the aggregate with all the property in his county; but he shall value each tract or lot by itself, and at such sum and price as he believes the same to be fairly worth in money at the time such assessment is made.

In valuing any real property on which there is a coal or other mine or stone or other quarry, or springs possessing medicinal properties, the same shall be valued at such price as such property, including a mine, or quarry or spring, would probably sell at a fair voluntary sale for cash.

Taxable leasehold estates shall be valued at such a price as they would bring at a fair voluntary sale for cash.

Personal property of every description shall be valued at its true and full value in money.

Money, whether in possession or on deposit, or in the hands of any member of the family, or any other person whatsoever, shall be entered in the statement at the full amount thereof.

Every credit for a sum certain, payable either in money or property of any kind, shall be valued at the full value of the same so payable. If for a specified article or for a specified number or quantity of property of any kind, it shall be valued at the current price of such property at the place where payable. Annuities or moneys payable at stated periods shall be valued at the price that the person listing the same believes them to be worth in money. [Id.]

Art. 7175. [7531] Currency and coin.—Circulating notes of national banking associations and United States legal tender notes and other notes and certificates of the United States, payable on demand and circulating or intended to circulate as currency, and gold, silver and other coin, shall be hereafter subject to taxation as money on hand or on deposit, under the laws of this State. [Acts 1895, p. 49; G. L. vol. 10, p. 49.]

Art. 7176. [7532] Assessed as money on hand.—The assessor of taxes shall assess the same in the same manner as money on hand or on deposit or other personal property, as provided for in the general assessment laws of this State. [Id.]

CHAPTER SEVEN

ASSESSMENT AND ASSESSORS

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Article 7177. [7533] [5089] Election and term.—The qualified electors of each county at each general election shall elect an assessor of taxes for a term of two years. [Acts 1876, p. 265; G. L., vol. 8, p. 1101.]

Art. 7178. [7535] [5091] Oath and bond.—Every assessor of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall execute a bond, payable to the Governor and his successors in office, in a sum which shall be equal to one-fourth the amount of the State tax of the county, as shown by the last preceding assessment, but not to exceed ten thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners court of his county, conditioned that he will faithfully discharge all the duties of said office; and said bond and his official oath shall be recorded in the office of the county clerk of the said county, and be forwarded by the county judge of the county to the Comptroller, to be deposited in his office. [Id.]

Art. 7179. [7537] [5093] New bond.—Assessors of taxes may be required to furnish a new bond and additional security whenever, in the opinion of the commissioners court, it may be advisable. If any assessor of taxes fails to give a new bond and additional security when required, he shall be suspended from the further discharge of his duties by the commissioners court of his county, and be removed from office in the mode prescribed by law for the removal of county officers. [Id.]

Art. 7180. [7538] [5094] Bond for county taxes.—The assessor of taxes shall give a like bond with like conditions to the county judges of their respective counties and their successors in office, in a sum not less than one-fourth of the amount of the county tax of the county, as shown by the last preceding assessment, but not to exceed five thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners court of his county. A new bond and additional security may be required, and the assessor of taxes may be removed from office for a failure to furnish a new bond or additional security in the manner prescribed by law. [Id.]

Art. 7181. [7539] [5095] May appoint deputies.—Each assessor of taxes may appoint one or more deputies to assist him in the assessment of taxes, and may require such bond and security from the person so appointed as he deems necessary for his indemnity; and the assessor of taxes shall in all cases be liable and accountable for the proceedings and misconduct of his deputies. [Id.]

Art. 7182. [7540] [5096] Authority of deputies.—The deputies appointed in accordance with the provisions of the preceding article shall do and perform all the duties imposed and required by law of assessors of taxes; and all acts of such deputies done in conformity with law shall be as binding and valid as if done by the assessor of taxes in person. [Id.]

Art. 7183. [7541–7567] May administer oaths.—Assessors of taxes are hereby authorized and empowered to administer all oaths necessary to obtain a full, complete and correct assessment of all taxable property situated in their respective counties. [Id. Acts 1895, p. 103; G. L., vol. 10, p. 33.]

Art. 7184. [7542] [5098] The oath.—The assessor of taxes shall also require each person rendering a list of taxable property to him for taxation, under the assessment laws, to subscribe to the following oath or affirmation, which shall be written or printed at the bottom of each inventory, to-wit: "I, ——— (filling the blank with the name of the person subscribing) do solemnly swear or affirm that the above inventory rendered by me contains a full, true and complete list of all taxable property owned or held by me in my own name (or for others, as the case may be, naming the person or firm for whom he rendered the list) in this county, subject to taxation in this county and personal property not in this county subject to taxation in this county by the laws of this State, on the first day of January, A. D. 19—— (filling the blank with the year), and that I have true answers made to all questions propounded to me touching the same. So help me God." [Id. Acts 1897, p. 204.]

Art. 7185. [7543] [5099] Where oath may be made.—The owner or agent who is required under the laws of this State to render any property for taxation may render the same in the county where the same is situated by listing the same and making oath thereto, as required in this title, before any officer authorized to administer oaths in this State, or any officer out of this State that is authorized by law to take acknowledgments of instruments for record in this State, and may forward the same to the assessor of the county by mail or otherwise, and the assessor shall enter the said property on his tax rolls. If the assessor is satisfied with the valuation as rendered in said list, he shall so enter the same; if he is not satisfied with the valuation, he shall refer the same to the board of equalization of the county for their action, and shall immediately notify the person from whom he received said list that he has referred said valuation to the board of equalization. [Acts 1876, p. 267; G. L., vol. 8, p. 1102.]

Art. 7186. [7544] [5100] Failure to administer or attest oath, etc.—The assessor of taxes, for every failure or neglect to administer the oath or affirmation prescribed in the second preceding article to each person rendering a list of taxable property

to him, unless the person refuses to qualify, shall forfeit fifty dollars, to be deducted out of his commissions upon satisfactory information furnished the county judge; and for each failure or neglect to attest the oath subscribed to as provided in said article, shall forfeit the sum of fifty dollars upon satisfactory information furnished the county judge. The forfeitures imposed by this article shall be deducted from the assessor's commissions on the assessment for county taxes. [Id.]

Art. 7187. [7545] [5101] Fraud upon public revenue.—Any evasions by means of artifice or temporary or fictitious sale, exchange or pretended transfer upon any bank books, of gold and silver coin, bank notes or other notes or bonds subject to taxation under the laws of this State for United States nontaxable treasury notes or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this State. [Acts 1891, p. 39; G. L., vol. 10, p. 41.]

Art. 7188. [7546] [5102] Taxpayer to make oath.—Each assessor of taxes shall require all taxpayers when assessed by them to make oath as to any such sale, exchange or transfer made by them on the first day of January or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any such should have been made by them; and, if it should be disclosed that any such pretended sale, exchange or transfer has been made for the purpose of evading taxation, then and in that event the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this State. [Id.]

Art. 7189. [7547] [5103] When assessments made.—Assessors of taxes shall, between the first day of January and the thirtieth day of April of each year, proceed to take a list of taxable property, real and personal, in his county and assess the value thereof in the manner following, to-wit: By calling upon the person, or by calling at the office, place of business or the residence of the person, and listing the property required by law in his name, and requiring such person to make a statement under said oath of such property in the form hereinafter prescribed. [Acts 1876, p. 265; Acts 1909, p. 373; G. L., vol. 8, p. 1103.]

Art. 7190. [7548] [5104] Irregular assessments valid.—Should any property be listed or assessed for taxation after April 30th of any year, or should the assessor of taxes of his deputy fail to administer the requisite oath or attest the same in the mode prescribed by law, or should the party rendering property for taxation fail to subscribe to the list, yet the assessments shall, nevertheless, be as valid and binding to all intents and purposes as if made in strict pursuance of law. [Id.]

Art. 7191. [7549] [5105] If taxpayer is absent.—If any person who is required by this title to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office or usual place of residence or business of such person, a written or printed notice requiring such person to meet him and render a list of his property at such time and place as the assessor of taxes may designate in said notice. The tax assessor shall carefully note in a book the date of leaving such notice. [Id.]

Art. 7192. [7550] [5106] Or refuses to list.—In every case where any person whose duty it is to list any property for taxation has refused or neglected to list the same when called on for that purpose by the assessor of taxes, or has refused to subscribe to the oath in regard to the truth of his statement of property, or any part thereof, when required by the tax assessor, the assessor shall note in a book the name of such person who refused to list or to swear; and in every case where any person required to list property for taxation has been absent or unable from sickness to list the same, the tax assessor shall note in a book such fact, together with the name of such person. [Id.]

Art. 7193. [7551] [5107] Duty in such cases.—In all cases of failure to obtain a statement of real and personal property from any cause, the assessor of taxes shall ascertain the amount and value of such property and assess the same as he believes to be the true and full value thereof; and such assessment shall be as valid and binding as if such property had been rendered by the proper owner thereof. [Id.]

Art. 7194. [7552] [5108] Land office to furnish abstracts.—The Land Commissioner shall furnish to each assessor of taxes a correct abstract of all the surveys of land and number of acres therein in their respective counties; and on the first day of January of each year said commissioner shall furnish said assessors an additional list of all new valid surveys in his county during the year. If the records of the land office do not show the number of acres in a survey, the county surveyor shall furnish said assessor a certified statement of the number of acres therein. [Acts 1879, p. 24; G. L., vol. 8, p. 1324.]

Art. 7195. [7553] [5109] Books furnished assessors.—Each commissioners court shall procure and furnish the assessor three well bound books of not less than six hundred and forty pages each, and an index book for same, and such other stationery as may be necessary; said books to be of the best material and make, and shall have printed headings as per following form: [Id.]

Abstract No.....Assessor's Abstract for.....Co.....

PATENT

No.	Vol.	To Whom Issued	Date			Acres
			Month	Day	Year	

CERTIFICATE

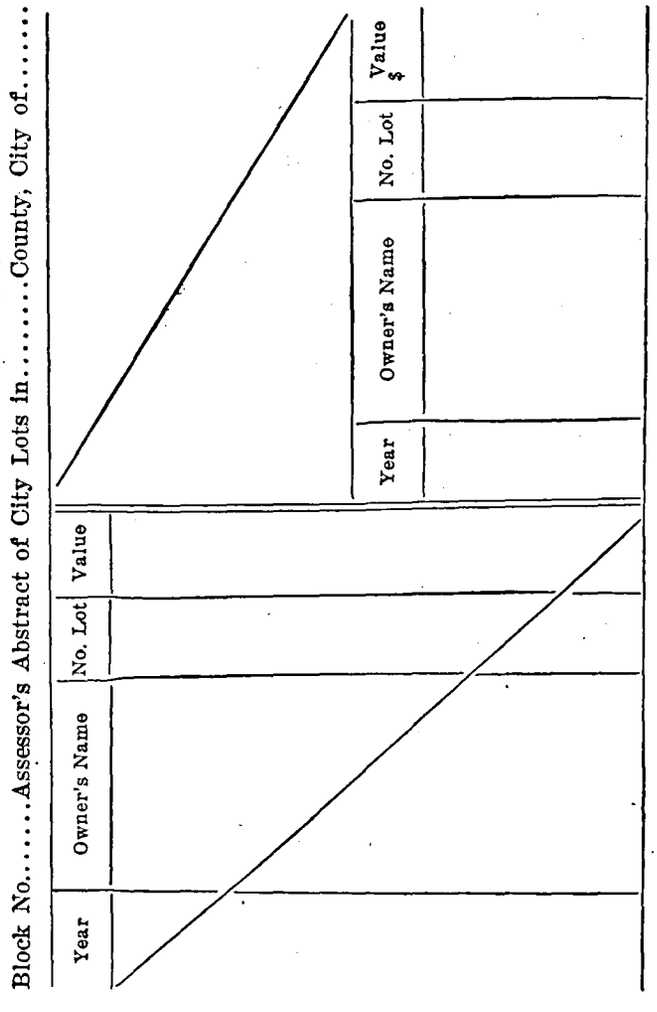
No.	Class	Character	To Whom Issued

RENDERED FOR TAXATION

Year	By Whom Rendered	Acres	Value	Year	By Whom Rendered	Acres	Value

Art. 7196. [7554] [5110] How filled by assessor.—The blanks to be filled by the assessor with the abstract number, name of party to whom the certificate was issued, the number, class and character of the certificate, the name of the party to whom the patent issued, number of volume of patent, the month, day and year it was issued, and the number of acres each survey contains; which whole survey shall stand as a debit against the assessor. [Id.]

Art. 7197. [7555] [5111] Blocks and lots in cities.—Each assessor shall be required to make an abstract of all the blocks or subdivisions of each of the cities or towns or villages of his county, in a book or books of at least four hundred and eighty pages each, to be furnished him by the commissioners court of his county for that purpose, with an index book to the same, which said book or books shall have a blank space for a diagram or plot of each block or subdivision, giving the number of the lots as per form following:



And the said assessor shall draw a plot of each block in the blank space left for that purpose, giving the number of each lot. And the whole of said block or subdivision shall be a debit against the assessor. [Id.]

Art. 7198. [7556] [5112] Assessing.—Each assessor, when he shall have made the assessment of his county for each year, shall, on the first day of June of each year, or as soon thereafter as practicable, carry from each person's assessment the number of acres and its value on each survey of lands, lots or blocks to that particular survey, lot or block found on the abstract books provided in Articles 7196, 7197 and 7205; and all the parts of each survey or block placed on said abstract books shall be a credit to the assessor on that particular survey. Said assessor shall deduct the total number of acres rendered on each survey or block from the total number of acres of the whole survey or block as is shown by said abstract; and, if any part is left unrendered, then he shall assess the same to the owner or owners thereof, if known, and, if unknown, then to "unknown owners," and the value thereof shall be affixed by him, sanctioned by the board of equalization; provided, that the owner or owners of any survey and grant of land may show that the survey and grant in which they are interested does not contain the full complement of acres, showing how many acres are in fact embraced within the calls of the particular survey and grant. [Id.]

Art. 7199. [7557] [5113] To be kept in office.—The assessor's abstracts shall be kept in his office at the county seat of his county, as records of his office, and shall be at all times subject to the inspection of the public. The index book shall show the original grantee, the number of acres, the abstract number, and the volume and page in which each survey is placed. [Id.]

Art. 7200. [7558] [5114] Lands not on abstract.—Should there be any survey of lands, lots or blocks not on the abstract book or books which are by law subject to taxation, the assessor shall enter such lands, lots or blocks on the assessment list as though the same appeared on said abstract books. [Id.]

Art. 7201. [7559] [5115] Certificate from board.—Each assessor of taxes shall procure from the board of equalization of his county a certificate that all the surveys and parts of surveys of lands in his county, and all the lots and blocks of the cities and towns of his county, are rendered for taxation; which certificate shall be forwarded to the Comptroller before he shall issue to said assessor a draft on the tax collector of his county. The same rule shall apply to the commissioners court before they issue drafts on the county treasurer for his pay for assessing the county taxes. [Id.]

Art. 7202. [7560] [5116] Substitute employed.—The board of equalization or the commissioners court shall, if the assessor fails to perform the duties required by this chapter within a reasonable time, employ some other competent person to have the requirements of this law carried out, and the compensation therefor shall be deducted from the assessor's pay for that year. [Id.]

Art. 7203. [7561] [5117] Unorganized counties.—The Comptroller shall be required to have this law carried out in the unorganized counties of this State, where lands are located. [Id.]

Art. 7204. [7562] [5118] Manner and form of assessing.—The manner and form for assessing property for taxation shall be substantially as follows, to-wit:

1. The name of the owner.
2. Abstract number.
3. From whom and how acquired.
4. The name of the original grantee.
5. The number of acres.
6. The value of the land.
7. The number of the lot or lots.
8. The number of the block.
9. The value of town lots.
10. The name of the city or town.
11. Number of miles of railroad in the county.
12. The value of railroads and appurtenances, including the proportionate amount of rolling stock to the county after the assessment of such rolling stock and its apportionment among the several counties by the Comptroller as hereinafter provided.
13. Number of miles of telegraph in the county.
14. Value of telegraph and appurtenances in the county.
15. Number of horses and mules and value thereof.
16. Number of cattle and value thereof.
17. Number of jacks and jennets, and value thereof.
18. Number of sheep and value thereof.
19. Number of goats and value thereof.
20. Number of hogs and value thereof.
21. Number of carriages, bicycles or tricycles, buggies or wagons of whatsoever kind and value thereof.

22. Number of sewing machines and knitting machines and the value thereof.
23. Number of clocks and watches and the value thereof.
24. Number of organs, melodeons, pianos, and all other musical instruments of whatsoever kind and value thereof.
25. The value of household and kitchen furniture over and above the amount of two hundred and fifty dollars.
26. Office furniture and the value thereof.
27. The value of gold and silver plate.
28. The value of diamonds and jewelry.
29. Every annuity or royalty, the description and value thereof.
30. Number of steamboats, sailing vessels, wharves, boats, barges, or other water craft, and the value thereof.
31. The value of goods and merchandise of every description which such person is required to list as a merchant in hand on the first day of January of each year.
32. The value of material and manufactured articles which such person is required to list as a manufacturer.
33. The value of manufactures, tools, implements and machinery other than boilers and engines, which shall be listed as such.
34. Number of steam engines and boilers and value thereof.
35. The amount of moneys of bank, banker, broker, stock jobber or any other person.
36. The amount of solvent credits of bank, banker, broker, stock jobber or any other person.
37. The amount and value of bonds and stocks other than United States bonds.
38. The amount and value of shares of capital stock companies and associations not incorporated by the laws of this State.
39. The value of property of companies and corporations other than property hereinbefore enumerated.
40. The value of stock and furniture of hotels and eating houses.
41. Every franchise, the description and value thereof.
42. The value of all other property not enumerated as above. [Acts 1876, p. 268; Acts 1895, p. 38; G. L. vol. 8, p. 1104.]

Art. 7205. [7563] [5119] Assessment of property not rendered.—If the assessor of taxes discovers any real property in his county subject to taxation which has not been listed to him, he shall list and assess such property in the manner following, to-wit:
1. The name of the owner; if unknown, say "unknown."
2. Abstract number and number of certificate.
3. Number of the survey.
4. Name of the original grantee.
5. Number of acres.
6. The true and full value thereof.
7. The number of lot or lots.
8. The number of the block.
9. The true and full value thereof.
10. The name of the city or town, and give such other description of the lot or lots or parcels of land as may be necessary to better describe the same; and such assessment shall be as valid as if rendered by the owner thereof. [Acts 1876, p. 269; G. L. vol. 8, p. 1105.]

Art. 7206. [7564] [5120] Boards of equalization.—Each commissioners court shall convene and sit as a board of equalization on the second Monday in May of each year, or as soon thereafter as practicable before the first day of June, to receive all the assessment lists or books of the assessors of their counties for inspection, correction or equalization and approval.
1. They shall cause the assessor to bring before them at such meeting all said assessment lists, books, etc., for inspection, and see that every person has rendered his property at a fair market value, and shall have power to send for persons, books and papers, swear and qualify persons, to ascertain the value of such property, and to lower or raise the value on the same.
2. They shall have power to correct errors in assessments.
3. They shall equalize improved lands in three classes, first-class to embrace the better quality of land and improvements, the second-class to embrace the second quality of lands and improvements, and the third-class to embrace lands of but small value or inferior improvements. The unimproved lands shall embrace first, second and third class, and all other property made as nearly uniform as possible.
4. After they have inspected and equalized as nearly as possible, they shall approve said lists or books and return same to the assessors for making up the general rolls, when said board shall meet again and approve the same if same be found correct.
5. Whenever said board shall find it their duty to raise the assessment of any person's property, they shall order the county clerk to give the person who rendered the same written notice that they desire to raise the value of same. They shall cause the county clerk to give ten days written notice before their meeting by publication in some newspaper, but, if none is published in the county, then by posting a written or printed notice in each justice's precinct, one of which must be at the court house door.
6. The assessors of taxes shall furnish said board on the first Monday in May of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refuse to swear or to qualify or to have signed the oath required by law, together with the assessment of said person's property made by him through other information; and said board shall examine, equalize and correct assessments so made by the assessor, and when so revised, equalized and corrected, the same shall be approved. [Acts 1879, p. 44; Acts 1909, p. 373; G. L. vol. 8, p. 1344.]

Art. 7207. [7565] Assessment of real property for previous years.—If the assessor of taxes shall discover in his county any real property which has not been assessed or rendered for taxation for any year since 1870, he shall list and assess the same for each year for which it has not been assessed, in the manner prescribed in the preceding article; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof; but no such real property shall be assessed by the assessor unless he has ascertained by the certificate of the Comptroller the fact that the records of his office do not show that the property has been rendered or assessed for the year in which he assesses it. [Acts 1888, p. 4; G. L. vol. 9, p. 1002.]

Art. 7208. [7566] [5121] Back taxes on personal property.—If the assessor of taxes shall discover in his county any property, or outside of his county but belonging to a resident of the county, any personal property which has not been assessed or rendered for taxation every year for two years past, he shall list and assess the same for each year thus omitted which it has belonged to said resident, in the manner prescribed for assessing other property; and such assessment shall be as valid and binding as though it had been rendered by the owner thereof. [Acts 1887, p. 127; G. L. vol. 9, p. 925.]

Art. 7209. [7567] Supplemental roll.—Collectors of taxes of counties, cities and towns, when any taxpayer applies to them to ascertain the amount of his taxes, and the collector finds that his name or his property does not appear on the tax roll, shall assess said taxpayer then and there, collect the taxes and enter the same upon a supplemental tax roll to be made by him. He shall make out, on forms to be furnished by the Comptroller, three copies of such supplemental roll, one copy to be delivered to the Comptroller, one to be delivered to the county clerk, and one to be filed in the collector's office. Said supplemental tax roll shall be made out and delivered to the commissioners court with all other papers pertaining to the final settlement of said tax collector.

and the same shall be examined and approved by the commissioners court, in like manner as upon the tax roll of the tax assessor. The oath shall be the same as is administered by tax assessors under existing law. The tax collector shall receive the following compensation for his services on all assessments made by him under this Act, to-wit: For assessing the State and county taxes, four cents for each one hundred dollars of property so assessed, and for assessing the poll tax, five cents for each poll; which fee shall be paid in the same way as the tax assessor's fee in Article 3937. [Acts 1895, p. 103; G. L. vol. 10, p. 833.]

Art. 7210. [7568] [5122] Assessor to follow instructions.—Tax assessors in the execution of their duties shall use the forms and follow the instructions which the Comptroller shall from time to time prescribe, and furnished to them by the county judge in pursuance of law. [Acts 1876, p. 265; G. L. vol. 8, p. 1101.]

Art. 7211. [7569] [5123] Equalization of assessments.—Hereafter when any person, firm or corporation renders his, their or its property in this State for taxation to any tax assessor, and makes oath as to the kind, character, quality and quantity of such property, and the said officer accepting said rendition from such person, firm or corporation of such property is satisfied that it is correctly and properly valued according to the reasonable cash market value of such property on the market at the time of its rendition, he shall list the same accordingly; but, if the assessor is satisfied that the value is below the reasonable cash market value of such property, he shall at once place on said rendition opposite each piece of property so rendered an amount equal to the reasonable cash market value of such property at the time of its rendition, and if such property shall be found to have no market value by such officer, then at such sum as said officer shall deem the real or intrinsic value of the property; and if the person listing such property or the owner thereof is not satisfied with the value placed on the property by the assessor, he shall so notify the assessor, and if desiring so to do make oath before the assessor that the valuation so fixed by said officer on said property is excessive; such officer to furnish such rendition, together with his valuation thereon and the oath of such person, firm or officer of any corporation, if any such oath has been made, to the commissioners' court of the county in which said rendition was made, which court shall hear evidence and determine the true value of such property on January First, 19—— (here give year for which assessment is made) as is herein provided; such officer or court shall take into consideration what said property could have been sold for any time within six months next before the first day of January of the year for which the porperty [property] is rendered. [Acts 1925, pp. 48 and 382.] [39th Leg., ch. 20, § 2, and ch. 167, § 2.]

Art. 7212. [7570] [5124] Boards may equalize.—The boards of equalization shall have power, and it is made their official duty, to supervise the assessment of their respective counties, and, if satisfied that the valuation of any property is not in accordance with the laws of the State, to increase or diminish the same and to affix a proper valuation thereto, as provided for in the preceding article; and, when any assessor in this State shall have furnished said court with the rendition as provided for in the preceding article, it shall be the duty of such court to call before it such persons as in its judgment may know the market value or true value of such property, as the case may be, by proper process, who shall testify under oath the character, quality and quantity of such property, as well as the value thereof. Said court, after hearing the evidence, shall fix the value of such property in accordance with the evidence so introduced and as provided for in the preceding article; and their action in such case or cases shall be final. [Id.]

Art. 7213. [7571] Neglect of duty by assessor.—If any tax assessor in this State shall fail, refuse or neglect to place upon any rendition as provided in Article 7211 of this chapter, the true value or market value in accordance with the method of fixing such value as provided for herein, or shall fail, refuse or neglect to return to the commissioners court such rendition, together with the oath of the owner or person listing such property for taxes when such oath has been made, as provided for in this chapter, or if the assessor accepts the rendition from any person rendering property for taxation without reading to such person the oath and having it signed and sworn to as provided by law, such failure, refusal or neglect shall be deemed malfeasance on the part of such officer, and shall be cause for his removal from office. [Acts 1907, p. 459.]

Art. 7214. [7572] Oath of assessor.—Every tax assessor and deputy tax assessor in this State, in addition to the oath prescribed by the Constitution of this State, shall, before entering upon the duties of his office, take and subscribe to the following oath: "I, ————, tax assessor (or deputy tax assessor, as the case may be) in and for ———— County, Texas, do solemnly swear that I will personally view and inspect all the real estate and improvements thereon subject to taxation, lying in said county, that may be rendered to me for taxation by any corporation or individual, or by their agent or representative, as fully as may be practicable, and that I will, as fully as is practicable, view and inspect all other taxable property in said county rendered to me as aforesaid; that I will to the best of my ability make a true estimate of the cash value, the market value of such property, if such property has a market value, and if it has no market value, then the real value of all such property, both real and personal, on the first day of January next preceding; and that I will make up and attach to each assessment sheet made up and sworn to by the said property owners, their agents or representatives, a true assessment and valuation of said property, together with a memoranda of all facts which I may learn bearing upon the value of said taxable property, and that I will make all possible inquiry relative to the true value of such property; and that I will attach said memoranda and statement of facts that I may ascertain as aforesaid to the said assessment sheets of the respective property owners. That I have read and understand the several provisions of the Constitution and laws of this State relative to the valuation of taxable property, and that I will faithfully do and perform every duty required of me as tax assessor (or deputy tax assessor), by the Constitution and laws of this State. So help me God." This oath shall be administered by the county clerk and shall be in duplicate; the original shall be by the clerk filed and recorded in the records of the county, and the duplicate shall be retained by the assessor, or the deputy, as the case may be. [Id.]

Art. 7215. [7573] Oath of board.—When a commissioners court convenes as a board of equalization, before considering the subject of equalization of property values for the purposes of taxation, each member of the court, including the county judge, shall take and subscribe to the following oath: "I, ————, a member of the board of equalization of ———— County, for the year A. D. ———, hereby solemnly swear that, in the performance of my duties as a member of such board for said year, I will not vote to allow any taxable property to stand assessed on the tax rolls of said county for said year at any sum which I believe to be less than its true market value, or, if it has no market value, then its real value; that I will faithfully endeavor and as a member of said board will move to have each item of taxable property which I believe to be assessed for said year at less than its true market value, or real value, raised on the tax rolls to what I believe to be its true cash market value, if it has a market value, and if not, then to its real value; and that I will faithfully endeavor to have the assessed valuation of all property subject to taxation within said county stand upon the tax rolls of said county for said year at its true cash market value, or, if it has no market value, then its real value.

I further solemnly swear that I have read and understand the provisions contained in the Constitution and laws of this State relative to the valuation of taxable property, and that I will faithfully perform all the duties required of me under the Constitution and laws of this State. So help me God." Said oath shall be filed and recorded in the commissioners court record as a part of the proceedings of that term of court. [Id.]

Art. 7216. [7574] Neglect of duty cause for removal.—If, in passing upon the value of any property by a commissioners court sitting as a board of equalization in this State, the court shall fix a value upon any property for the purpose of taxation and a minority of said court do not concur in the judgment of the court, the clerk shall record in the minutes of the court the names of the members, including the county judge, who do not concur in fixing such values (if the county judge shall cast the deciding vote in such matter); and, if any tax assessor or member of any commissioners court shall knowingly fail or refuse to fix the value of property rendered for taxes in compliance with this chapter, and all other laws of this State, such failure, neglect or refusal shall constitute malfeasance in office on the part of such assessor or member or members of said court, and such failure, neglect or refusal shall be cause for his or their removal from office. Whenever the fact is brought to the knowledge of the Attorney General that any tax assessor, deputy tax assessor, county judge, or member of the commissioners court, has failed, refused or neglected to comply with the provisions of this chapter, he shall at once file suit for the removal from office of such officer thus offending. Such proceedings for the removal of such officer or officers herein provided for shall be brought in the district court of the county of such officer's residence; and such suit shall be brought by or under the direction of the Attorney General. [Id.]

Art. 7217. [7575] [5125] To furnish list of delinquents.—The assessor of taxes shall furnish the board of equalization on the first Monday in June of each year, or as soon thereafter as practicable, a certified list of names of all persons who either refused to swear or qualify or to sign the oath as prescribed in this title; also a list of the names of those persons who refused to render a list of taxable property as required by this title. Should any person so failing or refusing to take the oath prescribed, or to render a list of their property, or to subscribe to the oath, as required by the provisions of this title, fail to give satisfactory reasons for such failure or refusal to the board of equalization within one month from the date of the filing of said list by the assessor, as required by this article, the board of equalization shall return a list of all persons who have failed to give satisfactory reasons for such failure or refusal to render, qualify or subscribe to the oath to the assessor of taxes, who shall present the said list to the next grand jury of his county. [Acts 1876, p. 270; G. L. vol. 8, p. 1106.]

Art. 7218. [7576] [5126] To submit lists to board.—The assessor of taxes shall submit all the lists of property rendered to him prior to the first Monday in June to the board of equalization of his county on the first Monday in June or as soon thereafter as practicable, for their inspection, approval, correction or equalization. After said board shall have returned the corrected and approved lists of taxable property, the assessor of taxes shall proceed to assess all the unrendered property of his county as provided for in this title, and shall proceed to make out and prepare his roles [rolls] or books of all the real and personal property listed to him, in the form and manner prescribed by the Comptroller. [Id.]

Art. 7219. [7577] [5127] Shall make out rolls in triplicate.—As soon as the board of equalization shall have examined, corrected and approved the assessor's list, the assessor of taxes shall prepare and make out a roll or book, as may be required by the Comptroller, from the list so corrected and approved, and three exact copies of the same, the original to be furnished to the collector of taxes, the second to the Comptroller, and the third to be filed in the county clerk's office for the inspection of the public. He shall also prepare a roll or book, and two exact copies thereof, to be distributed, the first to the collector of taxes, the second to the Comptroller, the third to be filed in the county clerk's office, of all the real and personal property which has not been listed to him. [Id.]

Art. 7220. [7578] [5128] Also rolls of unrendered property.—The assessor of taxes shall, after his list of unrendered real and personal property shall have been examined, corrected and approved by the board of equalization as provided by law, prepare and make out his rolls or books of all unrendered real and personal property listed by him in the manner and form prescribed by the Comptroller. [Id.]

Art. 7221. [7579] [5129] And add up columns.—The assessor of taxes shall add up and note the aggregate of each column on his roll or book, and he shall also make in each book or roll, under proper headings, a tabular statement showing the footings of the several columns upon each page, and he shall add up and set down under the respective headings the total of the several columns. [Id.]

Art. 7222. [7580] [5130] Return and oath.—The assessor of taxes shall, on or before the first day of August of each year for which the assessment is made, return his rolls or assessment books of the taxable property rendered to him or listed by him for that year, after they have been made in accordance with the provisions of this title, to the county board of equalization, verified by his affidavit, substantially on the following form:

The State of Texas,

——— County.

I, ———, assessor of ——— county, do solemnly swear that the rolls (or books) to which this is attached contain a correct and full list of the real and personal property subject to taxation in ——— county, so far as I have been able to ascertain the same; that I have sworn every person listing property to me in the county, or caused the same to be done in manner and form as provided by law, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is the true and correct valuation thereof as ascertained by law, and the footings of the several columns in said books and the tabular statement returned is correct, as I verily believe. [Id. Acts 1897, p. 204; G. L. vol. 10, p. 1258.]

Art. 7223. [7581] [5131] Lists, etc., filed.—The assessor of taxes shall at the same time deliver to the board of equalization all the lists, statements of all property which shall have been made out or received by him, and arranged in alphabetical order, together with the roll withdrawn to aid him in the past assessment. The lists and statements shall be filed in the county clerk's office, and remain there for the inspection of the public. [Acts 1876, p. 271; G. L., vol. 8, p. 1107.]

Art. 7224. [7582] [5132] Rolls, how distributed.—After the board of equalization shall have examined the rolls or assessment books and made all corrections, if any be necessary, the assessor shall send one copy of each to the Comptroller, one copy of each to the collector of his county, and he shall file the other copies in the county clerk's office until the next assessment, when the assessor shall have the right to withdraw them and use as provided in this title. [Id.]

Art. 7225. [7586] [5136] Penalties for neglect of duty.—Should any assessor of taxes fail or neglect to make out and return his rolls or books to the commissioners court in the time and manner provided for in this chapter, it shall be competent for the commissioners court to deduct from his compensation such amount as they may deem proper and right for such neglect or failure; and, should his rolls or books, when presented for approval to the commis-

sioners court, prove to be imperfect or erroneous, the court shall have the same corrected or perfected, either by the assessor or some other person than the assessor of taxes. Such person so employed by the commissioners shall be entitled to such part of the commissions to which such assessor is entitled as the court may allow; and said court shall so certify to the Comptroller, who shall pay such person in the same manner as the assessor of taxes is paid; and the amount so paid shall be deducted by the Comptroller from the commissions of the assessor of taxes, whose duty it was to have performed such work. [Id. Acts 1879, p. 44; G. L. vol. 8, p. 1344.]

Art. 7226. [7587] [5137] Lands of non-residents in unorganized counties, etc.—Lands lying in and owned by non-residents of unorganized counties, and lands lying in the territory not laid off into counties, shall be assessed by the Comptroller in accordance with such regulations as he may adopt and establish for that purpose. [Const. art. 8, sec. 12.]

Art. 7227. Canceling subdivisions.—Any person, firm, association or corporation owning lands in this State, which lands have been subdivided into lots and blocks or small subdivisions, may make application to the commissioners court of the county wherein any such lands are located, for permission to cancel all or any portion of such subdivision or subdivisions, so as to throw the said lands back into acreage tracts as it existed before such subdivisions were made. When such application is made by the owner or owners of such land, and it is shown that a cancellation of such subdivisions, or portion thereof, will not interfere with the established rights of any purchaser owning any portion of such subdivisions, or if it be shown that said person or persons agreed to such cancellation, said commissioners court shall enter an order, which order canceling said subdivision shall be spread upon the minutes of such court, authorizing such owner or owners of such lands to cancel the same by written instrument describing such subdivisions, or portions thereof, so cancelled as designated by said court. When such cancellation is filed and recorded in the deed records of such county, the tax assessor of such county shall assess such property as though it had never been subdivided. When such application is so filed, said court shall cause notice to be given of such application by publishing such application in some newspaper, published in the English language, in such county for at least three weeks prior to action thereon by said court, and action shall be taken on such petition or petitions at a regular term of said court. Such notice, in addition to said publication, shall command any person interested in such lands to appear at the time specified in such notice to protest if desired against such action. If such lands are delinquent for taxes for any preceding year, or years, and such application is granted as hereinbefore provided, the owner or owners of said land shall be permitted to pay such delinquent taxes upon an acreage basis, the same as if said lands had not been subdivided, and for the purpose of assessing lands for such preceding years the county assessor of taxes shall back assess such lands upon an acreage basis. This law shall not apply to any lands or lots included in an incorporated city or town. [Acts 1919, p. 160.]

Art. 7228. [7588] [5138] Lands in unorganized counties.—All lands and other property situated in the unorganized counties of this State, owned by residents of such unorganized counties, shall be assessed by the assessor of the organized county to which such unorganized county is attached for judicial purposes, and the taxes collected by the collector of such organized county; and the same remedies for the enforcement of the assessment and collection of such taxes shall apply as the law directs for the assessment and collection of the taxes on property situated in organized counties of this State. [Acts 1879, p. 141; G. L. vol. 8, p. 1441.]

Art. 7229. [7589–90] Duties of Comptroller.—The Comptroller is authorized, empowered and required to assess and collect the State and county taxes on all lands which are situated in unorganized counties and owned by non-residents thereof, in the manner hereinafter provided. The Comptroller may at any time prior to the return of the assessment rolls to his office of the organized county to which such unorganized county or counties are attached for judicial purposes, receive the assessment of and collect the taxes on any lands situated in such unorganized county or counties which are owned by non-residents thereof. [Id. Acts 1987, p. 43; G. L. vol. 10, p. 1097.]

Art. 7230. [7591–2] List of unrendered lands.—As soon as the tax rolls of the organized county to which unorganized counties are attached for judicial purposes shall have been received by the Comptroller, he shall, by comparing the lands rendered to the assessor of the organized county by the residents of such unorganized county or counties with those previously rendered to him by non-residents, make out a list of all unrendered lands situated in such unorganized county, and place such value upon the lands thus found to be unrendered as he may deem just and fair. Nothing in this law shall be so construed as to prevent the Comptroller from receiving the assessment and taxes due at any time prior to the completion of the unrendered list of such unorganized county. After the completion of the unrendered list provided for in this chapter, the owner or owners must pay according to the value and assessment made thereon by the Comptroller. [Id.]

Art. 7231. [7593] [5143] May appeal from assessment.—Assessment of lands rendered to the Comptroller under the provisions of this chapter shall be made by the party rendering the same under oath as to their value; but if the Comptroller thinks the valuation too low he shall object; and if the Comptroller and the party rendering the land cannot agree, then the Comptroller shall assess the same at such value as he may think it is worth; and, if the party rendering feels that the assessment is too high, he may appeal to the board of equalization, which for such purposes shall consist of the Governor, Attorney General and the Secretary of State, and their decision shall be final. [Id.]

Art. 7232. [7594] [5144] May levy upon and sell, when.—Three months after the completion of the unrendered list of each unorganized county, respectively, the Comptroller shall proceed to levy upon and advertise all lands in such counties upon which the taxes are due and unpaid, giving notice of the amount due upon each separate tract of land, and giving such description of the land upon which taxes are due and unpaid as he may be in possession of; such notice to be given by publication in some weekly newspaper published in the State for four consecutive weeks; said notice to state that on a certain day therein named the Comptroller will proceed to sell the land therein described, or so much thereof as may be necessary to pay the State and county taxes due, and the cost of advertising the same. [Id.]

Art. 7233. [7595] [5145] Sale.—The sale shall commence on the day named in said notice, and may continue from day to day (Sundays and legal holidays excepted) until completed; such sale shall be had in front of the Comptroller's office, in the city of Austin, between the hours of eight o'clock A. M. and four o'clock P. M. of each day. [Id.]

Art. 7234. [7596] [5146] May be bought by State.—Should there be no purchaser of said lands, then the Comptroller shall bid in the same for the State for the taxes due thereon and the costs of sale, and make a deed to the State to the same, including in one deed all lands bid in. [Id.]

Art. 7235. [7597] [5147] Redemption.—Should the lands bid in by the Comptroller for the State not be redeemed by the owner thereof or his agent within two years, by the party redeeming the same paying double the amount for which the said land was sold, then the said lands thus sold and un-

redeemed shall become vacant and revert to and become a part of the public free school fund. [Id.]

Art. 7236. [7598] [5148] Tax deed.—The Comptroller shall give to the purchaser of any lands, the sale of which is provided for in this chapter, a deed to the same, giving in such deed such description of the land as may be necessary to identify the same, or such description as he may be in possession of. [Id.]

Art. 7237. [7600] [5150] Deed shall vest title.—The deed given to the purchaser or purchasers by the Comptroller under the provisions of this chapter shall vest a good and sufficient fee simple title in the purchaser or purchasers, subject to be impeached only for actual fraud; provided, the former owner or owners thereof do not redeem the same within two years from the date of the deed, either by paying to the purchaser or purchasers double the amount for which said land was sold, or by making a tender of the same to him or his agent, or by depositing with the Comptroller before the expiration of the two years double the amount for which such land was sold, to be paid by the Comptroller, when called upon, to the purchaser or purchasers thereof. [Id.]

Art. 7238. [7601] [5151] County taxes paid, where.—All county taxes collected under the provisions of Article 7235 shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. [Id.]

Art. 7239. [7602] [5152] Comptroller to keep taxes.—All county taxes, other than taxes to pay pro rata of indebtedness to parent county, due unorganized counties, collected by the Comptroller, shall be kept by him to the credit of such unorganized county until the total sum to the credit of the county shall reach the sum of five thousand dollars. Then he shall upon the demand of the treasurer of the former unorganized county, when the same shall have organized, paid said sum, or whatever amount is held to the credit of said county, over to said treasurer. And all county taxes collected by the Comptroller after the amount to the credit of such unorganized county shall reach the amount of five thousand dollars shall be paid into the county treasury of the organized county to which the unorganized county is attached for judicial purposes. [Id. Acts 1897, p. 43; G. L., vol. 10, p. 1097.]

Art. 7240. [7603] [5152a] Payment by Comptroller.—Where the amount to the credit of any unorganized county now exceeds five thousand dollars, the Comptroller shall keep said sum to be paid to the treasurer of such unorganized county when the same shall organize; and all county taxes, other than taxes collected to pay pro rata of indebtedness to parent county, hereafter collected by the Comptroller in such counties, shall be paid into the county treasury of the organized county to which such county is attached for judicial purposes. [Acts 1897, p. 43; G. L., vol. 10, p. 1097.]

Art. 7241. [7604] [5153] Special deposit made by Comptroller.—All moneys received by the Comptroller on deposit for the redemption of land sold and bought by individuals shall be by him deposited in the State Treasury as a special deposit, subject to the order of the party to whom the conditional deed to such land was given. So also shall all county taxes collected by the Comptroller under the provisions of this law be deposited in the State Treasury as a special fund, subject to the order of the Comptroller, to be paid to the county treasurers as provided in this chapter. [Id.]

Art. 7242. [7722–26] In new counties.—When any county is created or organized, those in charge of the assessor's roll embracing the new county shall allow the person appointed by the commissioners court for such purpose access to the rolls to make the transcripts herein provided for. Such appointee shall make from such rolls two transcripts of the unpaid assessments, both on person and property, in that portion of the new county formerly embraced within the unorganized county or the territory from which the new county was created, and shall receive such pay for his services as he may agree on with said court. The proper collector shall examine and verify said transcripts and attest their correctness over his official signature, and shall receive therefor twenty dollars from the new county, to be paid on the order of its commissioners court. Said collector shall also have the commissioners court of his county approve said transcripts, and shall deliver one of them to the collector of the new county, and forward the other to the Comptroller. On receipt of same the Comptroller shall be authorized to give proper credit to the collector of the old county and to charge the same to the collector of the new county. The collector of the new county shall receive the same compensation, and shall have the same authority to collect and enforce the collection of the taxes found to be due by such transcripts as is enjoyed by the collectors of other counties. [Acts 1885, p. 107; G. L., vol. 9, p. 727.]

Art. 7243. Assessment of property stored.—Any person, co-partnership, association or corporation doing business in this State as a warehouseman or operating or controlling a warehouse or place of storage, shall, upon demand of the tax assessor of the county in which said business is operated or in which property is so stored, on January 1st of each year, furnish to the said tax assessor, a list of the property so stored in such warehouse or place of storage, together with a list of the owners of such property and their residence. The term "place of storage" as used herein shall also include all cold storage or refrigeration plants wherein goods of any nature are stored. Any person or agent or representative of such co-partnership, association, or corporation who shall fail to furnish such list and information as set forth above upon demand by the tax assessor of the county in which such property is located, shall be subject to all the penalties now existing against any person for making a false rendition of property for the purpose of taxation. [Acts 3rd C. S. 1923, p. 165.]

Art. 7244. [4825] Mutual life insurance companies.—For the purpose of State, county and city taxation, the amount of the reserve and contingency reserve of all mutual life insurance companies shall be treated as debts due by them to their policyholders, and the total value of their property for such purposes shall be ascertained by deducting from the total amount of their gross assets the amount of such reserves and contingency reserves. [Acts 1st C. S. 1909, p. 292; Acts 1921, p. 153.]

CHAPTER EIGHT

COLLECTION AND COLLECTOR

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7295. Payment of other money.
7296. Notification to pay.
7297. Duty to sue.
7298. Limitation not available.

Article 7245. [7605] [5154] [4729] Election and term.—In each county having ten thousand inhabitants, to be determined by the preceding Federal census, there shall be elected at the regular biennial election a collector of taxes, who shall hold his office for two years. [Const., art. 8, sec. 16; Acts 1876, p. 259; G. L., vol. 8, p. 259.]

Art. 7246. [7607] [5156] [4731] Sheriff a collector.—In each county having less than ten thousand inhabitants, the sheriff of such county shall be the collector of taxes, and shall have and exercise all the rights, powers and privileges, be subject to all the requirements and restrictions, and perform all the duties imposed by law upon collectors; and he shall also give the same bonds required of a collector of taxes elected. [Const., art. 8, sec. 16; Id.]

Art. 7247. [7608] [5157] [4732] Bond for State taxes.—Each collector of taxes, within twenty days after he shall have received notice of his election or appointment, and before entering upon the duties of his office, shall give bond based upon unincumbered real estate of the sureties, subject to execution, payable to the Governor and his successors in office, in a sum which shall be equal to forty per cent of the whole amount of the State tax of the county as shown by the last preceding assessment, provided said bond shall not exceed one hundred thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners court of his county, which shall be further subject to the approval of the Comptroller, and his official oath together with said bonds shall be recorded in the office of the county clerk of said county, and be forwarded by the county judge of the county to the Comptroller to be deposited in his office. Said bond shall be conditioned for the faithful performance of the duties of his office as collector of taxes for and during the full term for which he was elected or appointed. [Acts 1876, p. 259; Acts 1915, p. 190; Acts 1917, p. 353; G. L., vol. 8, p. 1095.]

Art. 7248. [7609] [5158] [4733] New bond.—The tax collector may be required to furnish a new bond or additional security whenever in the opinion of the commissioners court or the Comptroller, it may be advisable. Should any tax collector fail to give a new bond and additional security when required, he shall be suspended from office by the commissioners court of his county, and immediately thereafter be removed from office in the mode prescribed by law. [Acts 1876, p. 259; G. L., vol. 8, p. 1095.]

Art. 7249. [7610] [5159] [4734] Bond for county taxes.—Collectors of taxes shall give a like bond, with like conditions to the county judge of their respective counties and their successors in office in a sum not less than forty per cent of the whole amount of the county tax, as shown by the last preceding assessment, provided said bond shall not exceed one hundred thousand dollars, with at least three good and sufficient sureties, to be approved by the commissioners court of his county. A new bond and additional security may be required, and for failure to give such new bond or additional security, the collector of taxes may be removed from office in the manner prescribed by law. If said bonds required are executed by a satisfactory surety company or companies or by any private party or parties as surety or sureties thereon in counties with a total taxable valuation of thirty million dollars or more, the county of which the principal in said bond or bonds is tax collector shall pay a reasonable amount as premium on said bond or bonds, which amount shall be paid out of the general revenue of the county upon presentation of the bill therefor to the commissioners court of the county properly authenticated as required by law in other claims against the county. If there be any controversy as to the reasonableness of the amount claimed, as such premium, such controversy may be determined by any court of competent jurisdiction. [Acts 1876, p. 260; Acts 1915, p. 190; Acts 1917, p. 354; G. L., vol. 8, p. 1096.]

Art. 7250. Depository shall pay treasurer.—Except as to compensation due such tax collector as shown by his approved reports, tax money deposited in county depositories shall be paid by such depositories only to treasurers entitled to receive the same, on checks drawn by such tax collector in favor of such treasurer. [Id.]

Art. 7251. [7611] [5160] [4735] All bonds to be first approved.—No collector shall enter upon the discharge of the duties of the office until all of the bonds required of him by law for the collection of any taxes, State, county or special, shall have been given and approved.

Art. 7252. [7612] [5161] [4736] Deputies.—Each tax collector may appoint one or more deputies to assist him in the collection of taxes, and may take such bond and security from the person so appointed as he deems necessary for his indemnity; and the collectors in all cases shall be allowable and accountable for his proceedings and misconduct in office. [Acts 1876, p. 260; G. L., vol. 8, p. 1096.]

Art. 7253. [7613] [5162] [4737] Rolls to be a warrant.—When any tax collector shall have received the assessment rolls or books of the county, he shall receipt to the commissioners court for the same; and said rolls or books shall be full and sufficient authority for said collector to receive and collect the taxes therein levied. [Id.]

Art. 7254. [7614] [5163] [4738] Collector for all taxes.—The tax collector shall be the receiver and collector of all taxes assessed upon the tax list in his county, whether assessed for the State or county, school, poor house or other purposes; and he shall proceed to collect the same according to law, and place the same when collected to the proper fund, and pay the same over to the proper authorities, as hereinafter provided. [Id.]

Art. 7255. [7615] [5164] [4739] Collections, when to begin.—Each tax collector shall begin the collection of taxes annually on the first day of October, or so soon thereafter as he may be able to obtain the proper assessment rolls, books or data upon which to proceed with the business; and he shall post up notices—not less than three—at public places in each voting or justice precinct in his county, at least twenty days previous to the day said taxpayers are required to meet him for the purpose of paying their taxes, stating in said notice the times and places the same are required to be paid; and said collector or his deputy shall attend at such times and places for the purposes aforesaid, and shall remain at each place at least two days. If the collector from any cause shall fail to meet the taxpayers at the time and place specified in the first notice, he shall in like manner give a second notice. [Id.]

Art. 7256. [7616] [5165] [4740] Office at county seat.—Each tax collector shall keep his office at the county seat of his county; and it shall be

the duty of every person who has failed to attend and to pay his taxes at the times and places in his precinct named by the collector, as provided in the preceding article, to call at the office of the collector and pay the same before the last day of December of the same year for which the assessment is made. [Acts 1887, p. 127; G. L., vol. 9, p. 925.]

Art. 7257. [7617] [5166] [4741] Tax receipt.—The tax collector or his deputy, whenever any tax is paid, shall give to the person paying the same a receipt therefor, specifying the amount of State, county and district taxes, and the year or years for which such tax was assessed; said receipt shall also show the number of acres of land in each separate tract, number, abstract and name of original grantee and any city or town lot and name of city or town, and total value of all property assessed. Said receipt shall have a duplicate to be retained by the collector. The collector shall provide himself with a seal, on which shall be inscribed a star with five points, surrounded by the words "Collector of Taxes, ——— county" (the blank to be filled with the name of the county), and shall impress said seal on each receipt and duplicate given by him for taxes collected on real estate; and said receipt having the seal attached shall be admissible to record in the county in which the property is situated in the same manner as deeds duly authenticated, and when so recorded shall be full and complete notice to all persons of the payment of said tax. The collector, when any taxes are paid, shall insert in the margin of the tax rolls the words and figures as follows: "Taxes paid ——— day of ———," No. of receipt ——— (dates to be filled and receipt number to be given) and signed by the collector; and such entry shall be notice to all the world of the payment of such tax, and such entries may be used in evidence on issues involving the payment of same. [Acts 1876, p. 261; G. L., vol. 8, p. 1097; Acts 1921, p. 136.]

Art. 7258. Recording tax receipts.—Every receipt for the payment of taxes on property, real, personal or mixed, hereafter paid, as well as those heretofore paid, collected by State, county or municipal officers, may be recorded in the office of the county clerk of the county where the property is situated. On presentation of a tax receipt to the county clerk he shall immediately file the same in the same manner of filing a deed to land, and enter and record such receipt in full in a record book kept by him for the purpose of recording tax receipts, to be called "Tax Receipt Record," and shall have the name and number written thereon, and such record shall be notice to all the world of the payment of such tax, and certified copies thereof may be used in evidence on issues involving the same under like rules admitting certified copies of deeds in evidence. [Acts 1915, p. 137.]

Art. 7259. Record books furnished.—Each commissioners court shall furnish the county clerk tax receipt record books which may be made in form as books for recording deeds or in form with printed blanks conforming to the form of the tax receipts as provided by law for tax collectors, or in any form suitable to the purposes of this law, in the discretion of said court, with the name "Tax Receipt Record" indorsed on the same, with successive numbers on each separate volume, and said clerk shall properly index said record alphabetically in the name of the holder of the tax receipt. [Id.]

Art. 7260. [7618] [5167] [4742] Monthly reports.—1. At the end of each month the tax collector shall, on forms to be furnished by the Comptroller, make an itemized report under oath to the Comptroller, showing each and every item of ad valorem, poll and occupation taxes collected by him during said month, accompanied by a summarized statement showing full disposition of all State taxes collected, provided that said itemized reports for the months of December and January of each year may not be made for twenty-five days after the end of such months if same cannot be completed by the end of such respective months.

2. He shall present such report, together with the tax receipt stubs to the county clerk, who shall within two days compare said report with said stubs, and if same agree in every particular as regards names, dates and amounts, he shall certify to its correctness, for which examination and certificate said clerk shall be paid by the commissioners court twenty-five cents for each certificate and twenty-five cents for each two hundred taxpayers on said report.

3. The tax collector shall then immediately forward his reports so certified to the Comptroller, and shall pay over to the State Treasurer all moneys collected by him for the State during said month, excepting such amounts as he is allowed by law to pay in his county, reserving only his commissions on the total amount collected, and to enable him to do so, he may, at his own risk, send the same to the State Treasurer at the least cost to the State, on which he shall be allowed credit by the Comptroller upon filing receipt showing actual amount of exchange paid. The tax collector may, in making remittances of funds to the State Treasurer or any other State officer, board, commission or employé of the State, make the same by sending cash or a check on the county depository, if the funds are in the county depository, or if the same, in due course, are required to be in such depository. No State or county funds shall be used to pay exchange on, or expense of transmitting or collecting money by, any check or exchange or draft which may be used to make any such remittances. If such funds are sent in cash, by registered letter, by post-office money order, express money order or by bank draft or bank check or depository check, in such event the liability of the persons sending the same shall not cease until the same money is actually received by the State Treasurer or the duly authorized State depository or other authorized officer in due course of business. The State Treasurer, whenever he may receive a remittance from a tax collector, shall promptly pay the money so remitted to the State Treasury, on the deposit warrant of the Comptroller, and the money when so deposited shall be a credit to the said tax collector.

4. The tax collector shall pay over to the State Treasurer all balances in his hands belonging to the State, and finally adjust and settle his account with the Comptroller on or before the first day of May of each year, and to enable him to do so, the commissioners court shall convene on or before the third Monday in April for the purpose of examining and approving his final settlement papers.

5. The allowance to a tax collector of credit for the unpaid taxes shown on his delinquent and insolvent lists prepared under Articles 7263 and 7336 shall not absolve any taxpayer or property appearing upon either of said lists from liability for and payment of such taxes, nor absolve the tax collector from the duty of collecting same, and the provisions of Articles 7264, 7266, 7267, 7268, 7269, 7270, 7272, 7273, 7274, and 7336 pertaining to the levy upon and seizure and sale by the tax collector of personal property to enforce the payment of taxes shall be applicable to the enforced collection of such taxes. As such taxes are collected, the tax collector shall issue special tax receipts therefor to be furnished by the Comptroller, which blank receipts shall be numbered and charged to the tax collector, who shall account for same at his next annual settlement in the same manner as occupation tax receipts. The tax collector shall make in triplicate itemized monthly reports of all such collections, using blanks for that purpose furnished by the Comptroller. One of said triplicates shall be retained by the tax collector as a record of his office, one shall be filed with and preserved by the county clerk as a record of his office, and one shall be sent to the Comptroller and preserved as a record of his office. There shall be entered upon or attached to each copy of said reports the affidavit of the tax collector that he has fully complied with and exhausted all resources authorized and provided by law for the

seizure and sale of personal property for the collection of all unpaid taxes shown upon the delinquent and insolvent lists of his county, and that he does not know of any personal property belonging to any person or persons against whom such taxes remain unpaid that he is authorized by law to seize, levy upon and sell for the purpose of enforcing the payment of such taxes or any part thereof.

6. The Comptroller shall prescribe and furnish the forms to be used by the collectors of taxes, and the mode and manner of keeping and stating their accounts, and shall adopt such regulations as he may deem necessary in regard thereto. He shall enforce a strict observance of each provision of these articles.

7. The Comptroller shall notify the district attorney of the district or the county attorney of the county in which the collector resides, and the sureties on the bond of the collector, of any failure to comply with any provision of this article. [Acts 1893, p. 90; G. L., vol. 10, p. 520; Acts 1915, p. 190; Acts 3rd C. S. 1923, pp. 157 and 188.]

Art. 7261. [7619] [5168] [4743] Duties of clerk and collector—1. The tax collector shall at the end of each month make like reports to the commissioners court of all the collections made for the county, conforming as far as applicable and in like manner to the requirements as to the collection and report of taxes collected for the State. The county clerk shall likewise, within two days after the presentation of said report by the collector, examine said report and stubs, and certify to their correctness as regards names, dates and amounts; for which examination and certificate he shall be paid by the collector fifty cents each month, which amount shall be allowed to the collector by the commissioners court.

2. The clerk shall file said report intended for the commissioners court, together with the tax receipt stubs, in his office for the next regular meeting of the commissioners court.

3. The tax collector shall immediately pay over to the county treasurer all taxes collected for the county during said month, after reserving his commissions for collecting the same, and take receipts therefor, and file with the county clerk.

4. At the next regular meeting of the commissioners court, the tax collector shall appear before said court and make a summarized statement, showing the disposition of all moneys, both of the State and county, collected by him during the previous three months. Said statement must show that all taxes due the State have been promptly remitted to the State Treasury at the end of each month, and all taxes due the county have been paid over promptly to the county treasurer and shall file proper vouchers and receipts showing same.

5. The commissioners court shall examine such statement and vouchers, together with an itemized report and tax receipt stubs filed each month, and shall compare the same with the tax rolls and tax receipt stubs. If found correct in every particular, and if the tax collector has properly accounted for all taxes collected, as provided above, the commissioners court shall enter an order approving said report, and the order approving same shall be recorded in the minutes.

6. The tax collector shall finally adjust and settle his account with the commissioners court for the county taxes collected, at the same time and in the same manner as is provided in the foregoing article in his settlement with the State. [Acts 1893, p. 90; G. L. vol. 10, p. 520.]

Art. 7262. [7620] [5169] Report not approved, unless—If any tax collector shall have failed at the end of each month, or within three days thereof, to promptly remit to the State Treasurer the amount due by him to the State, or pay over to the county treasurer the amount due by him to the county, the commissioners court, at the next regular meeting, shall ascertain the facts; and if the tax collector fails or refuses to pay or remit the same and file proper vouchers therefor, as provided in the foregoing article, the commissioners court shall not approve his reports and accounts, but shall ascertain the amounts due by him, both to the State and county, and enter an order requiring him to pay the same to the proper treasurers, as is provided in Articles 7294 and 7295, and notify such collector, as is provided for in Article 7296 under penalty for failure to do so. Whenever the tax collector shall fail or refuse to remit to the State Treasurer the amounts due the State, when requested, the Comptroller shall notify him. [Acts 1893, p. 90; G. L. vol. 10, p. 520.]

Art. 7263. [7621] [5170] [4744] List of delinquents and insolvents.—The tax collector shall make out on forms to be furnished for that purpose by the Comptroller, between April first and the fifteenth of each year, list of delinquent or insolvent taxpayers, the caption of which shall be, the "list of delinquent or insolvent taxpayers." In this list he shall give the name of the person, firm, company, or corporation from whom the taxes are due, in separate columns; and he shall post one copy of these delinquent or insolvent lists at the courthouse door of the county, and one list at the courthouse door, or where court is usually held, in each justice precinct in his county; and the tax collector, upon the certificate of the commissioners court that the persons appearing on the insolvent or delinquent lists have no property out of which to make the taxes assessed against them, or that they have moved out of the county, and that no property can be found in the county belonging to such persons, out of which to make the taxes due, shall be entitled to a credit on final settlement of his accounts for the amounts due by the persons, firms, companies, or corporations certified to by the commissioners court, as above provided for. [Id.]

Art. 7264. [7622] [5171] [4745] To collect delinquent list.—The allowance of an insolvent list to the collector in accordance with the provisions of the preceding article shall not absolve any taxpayer or property thereon from the payment of taxes; but the collector shall use all necessary diligence to collect the amounts due on the insolvent list after it is allowed, and report and pay over to the proper officers all amounts collected on the same. [Id.]

Art. 7265. [7623] [5172] Non-residents.—Non-residents of counties, owing State or county taxes, are hereby authorized to pay the same to the Comptroller; provided, that all taxes due by said non-residents shall be paid at the Comptroller's office on or before the first day of January next after the assessment of such taxes. The tax collectors shall be entitled to the commissions on all moneys paid by non-residents to the Comptroller, due their counties respectively. [Acts 1879, p. 41; G. L. vol. 8, p. 1341.]

Art. 7266. [7624] [5173] [4746] Forced collections to begin.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by law, until the first day of January next succeeding the return of the assessment roll of the county to the Comptroller, the tax collector shall, by virtue of his tax roll, seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with all costs accruing thereon; provided, there shall be no levy on property when the owner thereof has the right to pay at the Comptroller's office, until a list of the persons who have paid their taxes at said office has been furnished the tax collector by the Comptroller. The Comptroller shall forward said list of paid taxes on or before the first day of February of each year; and the tax collector shall, immediately on receipt of said list from the Comptroller, levy on and sell the property of such non-residents as have not paid their taxes, in accordance with the law regulating the sale of property for taxes. [Acts 1887, p. 127; G. L. vol. 9, p. 128.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 7267. [7625] [5174] [4747] Personal property pointed out.—If any person shall point out to the tax collector sufficient personal property belonging to him to pay all taxes assessed against him before the first day of January of any year, the collector shall immediately levy upon and sell such property so pointed out, in accordance with the laws regulating tax sales of a similar class of property. [Id.]

Art. 7268. [7626] [5175] [4748] Property about to be removed.—If it comes to the knowledge of the tax collector that any personal property assessed for taxes on the rolls is about to be removed from the county, and the owner of such property has not other property in the county sufficient to satisfy all assessments against him, the collector shall immediately levy upon a sufficiency of such property to satisfy such taxes and all costs, and the same sell in accordance with the law regulating sales of personal property for taxes unless the owner of such property shall give bond, with sufficient security payable to and to be approved by the collector, and conditioned for the payment of the taxes due on such property, on or before the first day of January next succeeding. [Id.]

Art. 7269. [7627] Tax lien superior.—In all cases where a taxpayer makes an assignment of his property for the payment of his debts, or where his property is levied upon by creditors, by writs of attachments or otherwise, or where the estate of a decedent is or becomes insolvent, and the taxes assessed against such person or property, or against any of his estate remain unpaid in part or in whole, the amount of such unpaid taxes shall be a first lien upon all such property; provided, that when taxes are due by an estate of a deceased person, the lien herein provided for shall be subject to the allowances to widows and minors, funeral expenses, and expenses of last sickness. Such unpaid taxes shall be paid by the assignee, when said property has been seized by the sheriff, out of the proceeds of sale in case such property has been seized under attachment or other writ, and by the administrator or other legal representative of decedents; and, if said taxes shall not be paid, all said property may be levied on by the tax collector and sold for such taxes in whomsoever's hands it may be found.

Art. 7270. [7628] Execution in other counties.—Whenever it shall appear to any tax collector that any person who is delinquent in the payment of his or her taxes has no property in his county out of which said amount of taxes can be collected, such collector shall make out from the assessment list a true and complete list or schedule of the taxes due by said delinquent, which shall be certified to under the official seal and signature of said collector, and forward the same to the tax collector of any county or counties where he shall have reason to believe said delinquent has property of any description, and if said property is in any of the unorganized counties of this State, then to the collector of the county to which said unorganized county is attached for judicial purposes; and, when received by said collector, he shall at once proceed to the collection of said tax by seizure and sale in the same manner as if said taxes were originally assessed and due in his said county, and shall report to the collector from whom said list was received the taxes so collected by him. [Acts 1905, p. 317.]

Art. 7271. [7629] Credit for delinquent taxes.—The provisions of this chapter pertaining to the duty of tax collectors in the matter of the collection of delinquent and insolvent taxes shall apply as well to taxes owing by persons who own real property as to those who do not own real property, and no tax collector in this State shall be entitled to or be allowed either by the county or by the Comptroller credit as approved by Article 7263 for any taxes reported or returned as either delinquent or insolvent under Article 7263 or 7336 until he makes affidavit entered upon or attached to both his lists of insolvent tax payers prepared under said Article 7263 and his lists of delinquent lands prepared under Article 7336, that said lists are true and correct and that he has fully complied with and exhausted all resources to collect such taxes as authorized and required by Articles 7264, 7266, 7267, 7268, 7269, 7270, 7272, 7273, 7274, and 7336, and does not know of, and has made diligent inquiry and has been unable to learn of, any personal property belonging to any person or persons against whom such taxes are shown on said lists to be unpaid that he was authorized by law to seize, levy upon and sell for the purpose of enforcing the payment of such taxes or any part thereof, nor until the commissioners court of his county, after full consideration and investigation, has entered upon or attached to both the insolvent lists and lists of delinquent lands the certificate required by said Article 7263, and no compensation that at the time, or at any time thereafter, may be due or owing to the tax collector, either by the State or county, shall be retained by or paid to the tax collector until he has made the affidavits as provided by this article. Nothing in this article is intended or shall be construed as requiring any tax collector to levy upon and sell real property for the purpose of enforcing the payment of such taxes. [Id. Acts 3rd C. S. 1923, p. 168.]

Art. 7272. [7630] [5176] All property liable for taxes.—All real and personal property held or owned by any person in this State shall be liable for all State and county taxes due by the owner thereof including taxes on real estate, personal property, and poll tax; and the tax collector shall levy on any personal or real property to be found in his county to satisfy all delinquent taxes, any law to the contrary notwithstanding. [Acts 1879, p. 46; G. L. vol. 8, p. 138.]

Art. 7273. [7631] [5177] [4749] Sales of personal property.—In making sales of personal property for taxes, the collector shall give notice of the time and place of sale, together with a brief description of the property levied on and to be sold, for at least ten days previous to the day of sale, by advertisements in writing to be posted at the courthouse door, and at two other public places in the county; and such sale shall take place at the courthouse door of the county in which the assessment is made, by public auction. [Acts 1876, p. 259; G. L. vol. 8, p. 1095.]

Art. 7274. [7632] [5178] [4750] If property is insufficient.—If personal property levied upon prove insufficient to satisfy the taxes and penalties due and costs accrued thereon, the collector shall levy upon and sell so much other personal taxable property belonging to the person as will be sufficient to satisfy such taxes, penalties and costs in the same manner as an original levy and sale, and, in all cases of sales for taxes, if there be an excess remaining in the hands of the collector, after satisfying all taxes, penalties and costs, the same shall be paid over to the original owner by the collector, or deposited in the hands of the county treasurer subject to the order of such owner. [Id.]

Art. 7275. [7633] [5179] [4751] Sales of real property.—If the delinquent is not possessed of a sufficiency of personal property in the county subject to seizure and sale to satisfy all taxes due by him, the tax collector shall seize so much of the real estate of such delinquent, situated in the county, as will be sufficient to satisfy such taxes and all costs, and sell the same in accordance with the provisions of the succeeding article. [Id.]

Art. 7276. [7634] [5180] [4752] Advertisement of real property for sale.—In making sales of real property for taxes, the collector shall advertise the same for sale in some newspaper published in the county where the land is to be sold, for three successive weeks, if there be one; and the publisher of such newspaper shall receive as compensation not exceeding twenty-five cents for each tract or parcel of land so advertised to be taxed as other

costs of sale against such land. The cost of advertising in a newspaper shall be deducted from the fee allowed the collector for advertising. The Comptroller shall allow the collector twenty-five cents per tract for each tract of land bid off by the State. If there be no newspaper published in the county, or, there being a newspaper published in the county and the publisher thereof refuses to publish the advertisement at the price herein fixed, then the advertisement shall be made by posting the same for thirty days previous to the day of sale, at the courthouse door and three other public places in the county where the land or lots are situated, giving in said advertisement such description as is given to the same on the tax rolls in his hands, stating the name of the owner if known, and if unknown say "unknown," together with the time, place, and terms of sale; said sale to be for cash, to the highest bidder, at public outcry at the courthouse door, and between legal hours, on the first Tuesday of the month. [Acts 1881, p. 12; G. L. vol. 9, p. 252.]

Art. 7277. [7635] [5181] List posted.—Prior to the sale of any real property for taxes in any county in this State, the tax collector shall advertise the same by posting a list of the names of the delinquents for thirty days as follows: one copy at the courthouse door of the county, and a copy at two other public places in the county where the lands or lots are situated. [Acts 1879, S. S., p. 46; G. L. vol. 8, p. 1346.]

Art. 7278. [7636] [5182] [4753] Sale continued.—As far as may be practicable, all the lands and town lots levied upon for taxes shall be advertised in one notice and be sold on the same day; and such sales may be continued from day to day until concluded; but at the close of each day's sale the tax collector shall make proclamation of such continuance on the following day. No sale shall be considered complete until the payment of the purchase money; and, if the same is not made before the completion of the tax sales, the collector shall re-sell the property, and continue such sale until the same is complete. [Acts 1876, p. 262; G. L. vol. 8, p. 1098.]

Art. 7279. [7637] [5183] [4754] Homesteads liable.—No real estate set apart, used or designated as a homestead shall be sold for taxes other than the taxes due on such homestead. [Id.]

Art. 7280. [7638] [5184] [4755] Sales of land.—The tax collector, in making sales for taxes due upon real estate, shall sell at auction, at the time and place appointed, so much of said real estate as may be necessary to pay the taxes and penalties due and all costs accruing thereon, and shall offer said real estate to the bidder, who will pay the taxes and penalties due, and costs of sale and execution of deed, for the least amount of said real estate, who shall be deemed the highest bidder. Should a less amount of said real estate than the whole tract or parcel of said real estate levied upon be sold for the taxes and penalties due and all costs of sale and execution and deed, the collector shall, in making his deed to the purchaser begin at some corner of said tract or parcel of land or town lot and designate the same in a square as near as practicable. [Id.]

Art. 7281. [7639] [5185] [4756] Tax deed.—The tax collector shall execute and deliver to the purchaser, upon the payment of the amount for which the estate was sold, and the cost and penalties, a deed for the real estate sold, which deed shall vest a good and perfect title to said land in the purchaser, if not redeemed in two years, as provided by law, which deed shall state the cause of sale, the amount sold, the price for which the real estate was sold, the name of the person, firm, company or corporation on whom the demand for taxes was made, provided the name is known, and if unknown say "unknown," the same description of the land as is given in the tax rolls, and such other description as may be practicable for better identification; and when real estate has been sold, he shall convey, subject to the right of redemption provided for in Article 7283, all the right and interest which the former owner had therein at the time when the assessment was made. [Const., art. 8, sec. 13; Id.]

Art. 7282. [7640] [5186] [4757] Sales reported.—When the collector shall have made sale of any real estate under this chapter, he shall make immediate return of said sale to the commissioners court, stating in said return the land sold, the name of the owner, if known, and if unknown, state the fact, the time of sale, the amount for which said sale was made, together with the name of the purchaser, which return shall be entered of record on the minute books of said court. [Id.]

Art. 7283. [7641] [5187] [4758] Redemption.—The owner of real estate sold for the payment of taxes, or his heirs or assigns or legal representatives, may, within two years from the date of sale redeem the estate sold by paying or tendering to the purchaser, his heirs or legal representatives, double the amount of money paid for the land. [Id.]

Art. 7284. [7643] [5188] Redemption from private purchasers.—Any person having the right to redeem any land sold at a tax sale may do so by payment, within the time prescribed by law, to the tax collector of the county in which the said land was sold, of the amount which the law requires to be paid; provided, that the owner of said land, or his agent, shall first have made affidavit that he has made diligent search in the county where said land is situated for the purchaser thereof at the tax sale, and has failed to find him, or that the purchaser at such tax sale is not a resident of the county in which the land is situated, or that he and the purchaser cannot agree on the amount of redemption money. In such cases only shall the owner or agent be authorized to redeem the same by the payment to the collector of taxes. [Acts 1879, S. S., p. 29; G. L. vol. 9, p. 61.]

Art. 7284a. Redemption from district tax sales.—Whenever land is sold under a decree and judgment of Court for taxes levied by or for any district organized under the laws of the State of Texas with authority to levy and collect taxes, the owner of such property, or any one having an interest therein, shall have the right to redeem the same at any time within two years from the date of such sale upon payment of double the amount paid by the purchaser at such sale; provided, that the purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of such sale. [Acts 1927, 40th Leg., p. 25, ch. 20, § 1; Acts 1927, 40th Leg., 1st C. S., p. 195, ch. 69, § 1.]

Art. 7284b. Redemption from state or county tax sales.—Whenever land is sold under a decree and judgment of court for taxes levied by or for the State, or by or for any County within the State, the owner of such property, or any one having an interest therein, shall have the right to redeem the same at any time within two years from the date of such sale upon payment of double the amount paid by the purchaser at such sale; provided that the purchaser at such foreclosure sale, and his assigns, shall not be entitled to the possession of the property sold for taxes until the expiration of two years from the date of such sale. [Acts 1927, 40th Leg., 1st C. S., p. 195, ch. 70, § 1.]

Art. 7285. [7644] [5189] Receipt of collector, notice when.—Each tax collector to whom payment is made under the provisions of this chapter shall give a receipt therefor, signed by him officially in the presence of two witnesses; which receipt when duly recorded, shall be notice to all persons that the land therein described has been redeemed; and said collector shall on demand pay over to the purchaser at said tax sale the money thus received by him. [Acts 1879, S. S., p. 29; G. L. vol. 9, p. 61.]

Art. 7286. [7645–46] Relief, when.—Any person whose land has been rendered for taxation, whether the same was rendered in the name of the original grantee or not, and has also been placed upon the un-

rendered rolls for the same year, shall be entitled to relief upon complying with the requirements herein indicated. If any such lands shall have been sold for the taxes charged upon the unrendered rolls, and bought by the State, the owner thereof, his agent or attorney, shall present to the tax collector of the county in which the land is situated an affidavit to the effect that the same land has been rendered for taxation, and placed upon the regular assessment rolls for the year mentioned. Said affidavit shall contain an accurate description of the land and be accompanied with the certificate of the assessor that the same is true and correct; and the tax collector shall thereupon present such person with a written statement, officially signed, that the said tax has been cancelled, and make a note of the same upon the unrendered rolls; provided, the provisions of this article shall apply to all such lands at any time after the collector shall receive the rolls until the same shall have gone into the hands of a private purchaser; and if the owner shall have paid the taxes charged upon the unrendered rolls at any time previous, he shall be entitled to the warrant of the Comptroller for the amount so paid in the same manner as is provided in Article 7287 of this chapter, in cases of redemption from individual purchasers. The tax collector shall make no charge whatever for the duties herein mentioned. [Acts 1881, p. 107; G. L. vol. 9, p. 199.]

Art. 7287. [7647] [5192] Certificate of redemption.—When the owner of such lands shall have redeemed the same from a private purchaser, the tax collector shall furnish him a certificate to that effect; and upon presentment of said certificate to the Comptroller, the Comptroller shall issue to him a warrant upon the State Treasury for the amount of such tax. This warrant shall be receivable for all taxes to the State. For issuing the certificate provided for in this article, the tax collector shall be allowed the sum of fifty cents to be paid by the applicant. [Id.]

Art 7288. [7648] [5193] [4759] Lands to be bid in for State.—Should the tax collector fail to make sale of any real estate for want of a purchaser, he shall bid the same off for the State for the taxes and penalties due, and all costs accruing thereon, and execute a deed to the State; and one deed shall include all tracts of land bid off to the State at such tax sale, and make due return thereof, under such forms and directions as the Comptroller may furnish and direct. After sale and purchase by the State of any real estate, it shall not be lawful for said collector to levy upon or advertise or sell the same for any remaining or accrued taxes due thereon until the same shall have been redeemed by the owner or is sold by the State. Said collector shall, on final settlement of his accounts with the commissioners court and the Comptroller, be entitled to a credit for the amount of taxes due the State and county, respectively, for which the lands and lots were bid off to the State. [Acts 1879, S. S., p. 36; G. L. vol. 9, p. 68.]

Art. 7289. [7649] [5194] May redeem.—The owner of any lands that may have been conveyed to the State under the provisions of the foregoing article, or his agent, desiring to redeem the same, may do so by depositing with the collector of the county in which the lands were sold double the amount of the purchase money and all accrued taxes thereon, within two years from the date of the deed to the State; and such collector shall execute a receipt to such owner, or agents, giving therein the amount of money received, and a description of the land so as to identify the same, and sign and seal the same officially; and, upon presentation of such receipt to the Comptroller, he shall execute to the owner a relinquishment under his signature and seal of office, which may be admitted to record in like manner with other conveyances of land. [Id.]

Art. 7290. [7650] [5195] If not redeemed.—In case said land shall not have been redeemed as provided in Article 7289, then the same may be sold as provided in Article 7288. [Id.]

Art. 7291. [7651] [5196] May redeem by paying costs.—The owner of real estate which has been bought in by the State for taxes, or his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the amount designated by the Comptroller as due thereon with costs of advertisement; and if it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall upon the payment of the amount that may be due thereon, cancel such sale; and deliver to the owner of the land, or his agent, a certificate under seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been cancelled; which certificate shall release the interest of the State and the same may be recorded in the proper county as other conveyances of real estate are recorded. [Id.]

Art. 7292. [7652] [5197] Board of inquiry.—Each commissioners court shall, at the regular terms of said courts sit as a court of inquiry in cases where land has been erroneously rendered for taxes; and any land owner whose land has been or may be sold to the State for taxes may appear before said court in person or by proxy and show to the satisfaction of a majority of said court that the taxes for which his lands have been sold have been paid, although the same was rendered in an incorrect abstract number or survey or original grantee; thereupon said court shall issue to said land owner a certificate setting forth fully said facts, which certificate shall be signed officially by the county judge of said county; and, upon presentation of said certificate to the Comptroller, he shall execute and deliver to said land owner a valid deed relinquishing all the right, title and interest the State may have acquired in and to said land by reason of such tax sale. [Acts 1889, p. 31; G. L. vol. 9, p. 1058.]

Art. 7293. [7657] [5209] [4769] Lands of non-residents in unorganized counties.—The taxes upon lands lying in and owned by non-residents of unorganized counties, and upon lands situated in the territory not laid off into counties, shall be paid and collected at the office of the Comptroller, under such regulations as he may adopt for that purpose. [Const., art. 8, sec. 12.]

Art. 7294. [7658] [5210] Payment of State moneys.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to the State, and pay the same over to the State Treasurer whenever and as often as they may be directed so to do by the Comptroller; provided that tax collectors shall have thirty days from the date of such direction within which to comply with the same. [Acts 1879, S. S., p. 5; G. L. vol. 9, p. 37.]

Art. 7295. [7659] [5211] Payment of other money.—All tax collectors and other officers or appointees authorized to receive public moneys shall account for all moneys in their hands belonging to their respective counties, cities or towns, and pay the same over to the respective county treasurers or city treasurers whenever and as often as they may be directed to do so by the respective county judges, or county commissioners courts or mayor or board of aldermen; provided that tax collectors shall have ten days from the date of such direction within which to comply with the same. [Id.]

Art. 7296. [7660] [5212] Notification to pay.—The notification and direction provided for in the two preceding articles may be verbal, written or by telegram; and if written or by telegram, proof of the deposit in the post office or telegraph office of such notification and direction, with postage or charges duly prepaid and correctly addressed, shall be prima facie evidence of the fact of such notification and direction having been given, and of the time when the same was given. [Id.]

Art. 7297. [7661] [5212a] Duty to sue.—The district or county attorney of the respective counties of this State, by order of the commissioners court, shall institute suit in the name of the State for recovery of all money due the State and county as taxes due and unpaid on unrendered personal property; and in all suits where jugdments are obtained under this law, the person owning the property on which there are taxes due the State and county shall be liable for all costs. The State and county shall be exempt from liability for any costs growing out of such action. All suits brought under this article for the recovery of taxes due on personal property shall be brought against the person or persons who owned the property at the time such property should have been listed or assessed for taxation. No suit shall be brought until after demand is made by the collector for taxes due, and no suit shall be brought for an amount less than twenty-five dollars. Such suits may be brought for all taxes so due and unpaid for which such delinquent tax payer may be in arrears for and since the year 1886.

Art. 7298. [7662] Limitation not available.—No delinquent tax payer shall have the right to plead in any court or in any manner rely upon any statute of limitation by way of defense against the payment of any taxes due from him or her either to the State, or any county, city or town. [Acts 1st C. S. 1895, p. 6; G. L. vol. 10, p. 1052.]

CHAPTER NINE

BACK TAXES ON UNRENDERED LANDS

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Article 7299. [7663] [5213] Back taxes on unredeemed lands.—In all cases where lands or real estate have not been assessed for taxation for any year since the year one thousand eight hundred and seventy, the same shall be assessed and the taxes thereon collected in the mode prescribed in this chapter. [Acts 1876, p. 214; G. L. vol. 8, p. 1050.]

Art. 7300. [7664] [5214] Annual list.—On the first day of July of each year, the Comptroller shall cause to be prepared a list of all unrendered lands in each county subject to taxation and not assessed, in which shall be specified the name of the original grantee, the abstract number, the number of acres, the year for which such lands were unrendered, and the rate of State and county taxes for such year. [Id.]

Art. 7301. [7665] [5215] List forwarded.—Upon completion of such lists, the Comptroller shall forward the same to the board of equalization of the respective counties, with the verification that the said list is a true and correct statement of all the unrendered land and real estate in ——— county for the year ———, as shown by the records of his office. [Id.]

Art. 7302. [7666] [5216] Board to value such lands.—Upon receipt of such list or lists by the board of equalization of such county, they shall value each tract of land or parcel of real estate so mentioned and described in the said lists at their true and full value, as near as can be ascertained, for the year it was omitted to have been rendered. [Id.]

Art. 7303. [7667] [5217] Making of rolls.—When the board of equalization completes the valuation, they shall cause to be made out three separate rolls, in such manner as the Comptroller may prescribe; they shall place one in the hands of the tax collector, forward one to the Comptroller, and file one in the office of the county clerk for the inspection of the public. [Id.]

Art. 7304. [7668] [5218] Collector to give notice.—Upon receipt of the rolls by the tax collector, he shall advertise in some weekly newspaper published in his county, and, if no paper is published in his county, by posting printed circulars in not less than eight public places in his county, for four consecutive weeks, that the rolls for the collection of taxes on unrendered land and real estate have been placed in his hands, and that unless the taxes are paid within sixty days after the date of said notice he will proceed to collect the same as provided by law for the collection of delinquent taxes. [Id.]

Art. 7305. [7669] [5219] Collections enforced.—After the expiration of said sixty days, if the taxes on any such lands are not paid, the tax collector shall proceed to enforce the collection of said taxes in the mode provided in this title for the enforced collection of delinquent taxes; and he shall be entitled to the same fees and penalties as are allowed him for the collection of other delinquent taxes. [Id.]

Art. 7306. [7670] [5220] List of lands sold to State.—The Comptroller on or before the first day of each year, shall make out and forward to the tax collector of each county a full and complete list of all real estate situated in said county that has been previously, at tax sales, bid off to the State for taxes assessed in the county where the land is situated, since the thirty-first day of December, 1876, the owners of which have failed to redeem the same within two years from the date of said sale by payment or tender of payment to the proper officer of double the amount of taxes and costs for which said real estate was bid off to the State, together with all subsequent taxes that have become due on the same from the date of sale to the last date on which the same could have been redeemed. [Acts 1879, p. 79; G. L. vol. 8, p. 1379.]

Art. 7307. [7671] [5221] Sale.—Each tax collector, within ninety days after receipt of said list, shall call to his aid the county surveyor of his county, and, as near as may be, ascertain if any lands contained in said list do not in fact exist in said county, or are embraced in other surveys conflicting therewith, and upon which the taxes have been paid; and, after deducting the same from said list, he shall proceed to sell each tract of land therein described, whether belonging to residents or nonresidents, for the payment of such sums of money as may be designated on said list as due thereon, together with all costs that may accrue in advertising and selling the same as herein provided. [Id.]

Art. 7308. [7672] [5222] Advertisement and redemption.—The tax collector shall, prior to the sale of any real estate that has been previously bid off to the State at tax sales, the owners of which have failed to redeem the same, advertise the real estate to be sold in some newspaper published in the county for six successive weeks, if there be such newspaper published therein, otherwise he shall post advertisements of said sale at the courthouse door and at one public place in each justice's precinct of his county for at least six weeks, giving in said advertisement, whether published or posted, such description of the lands to be sold as shall be given on the Comptroller's list, and stating the time, place and terms of sale, which shall be between legal hours on the first Tuesday of some specified month at the court house door at public outcry, to the highest bidder for cash; provided, that no real estate shall in any case be sold for less than the amount designated by the Comptroller as due thereon, together with all costs of advertisements and sale. The former owner of any such real estate, his heirs or assigns, may redeem the same at any time prior to the sale thereof, by the payment to the collector of the county in which such real estate is situated, or to the Comptroller, if in an unorganized county, of the amount designated by the Comptroller as due thereon,

with costs of advertisement. If it shall at any time appear to the satisfaction of the Comptroller that any land has been sold to the State for taxes which have been paid, or that the sale has not been made in accordance with the law authorizing the sale of land for taxes, he shall, upon the payment of the amount that may be due thereon, cancel such sale; and in all cases he shall deliver to the owner of the land, or his agent, a certificate under the seal of his department, setting forth the fact that such land has been redeemed, or that such sale has been canceled, which certificate shall release the interest of the State, and the same may be recorded in the proper county as other conveyances of real estate are recorded. [Acts 1884, S. S. p. 31; Id. G. L. vol. 9, p. 563.]

Art. 7309. [7673] [5223] Land sold, how.—At the time and place appointed for said sale, the tax collector shall offer for sale each separate parcel of the real estate advertised, and shall sell the same to the bidder who will offer the largest amount of money therefor. [Acts 1879, p. 79; G. L. vol. 8, p. 1379.]

Art. 7310. [7674] [5224] Sale may be continued.—If the sale of the real estate advertised as provided herein shall not be completed on the day it is commenced, said sale may be continued for ten consecutive days, from day to day, by announcement of the tax collector to that effect; and the said collector may, if there be on any day a less number than three bidders present, adjourn said sale to the first Tuesday in the following month. [Id.]

Art. 7311. [7675] [5225] Deed executed.—When a sale has been made of any real estate as herein provided, the tax collector, upon payment of the amount bid for the same, shall make, execute and deliver to the purchaser a deed for such real estate, specifying in said deed the cause and date of sale, the number of acres sold if the same can be ascertained, the name of the person, firm, corporation or company in whose name the land was assessed, and all such descriptive information as may be necessary to identify the property conveyed; provided, that the purchaser may, after payment, as described in this article, ask a delay of sixty days within which to have said real estate surveyed by the county surveyor, said survey to be made at the expense of the purchaser, and, upon a certificate from the collector directed to the surveyor, that the person named in the certificate has purchased and paid for the same, not to exceed one dollar for each survey, to be paid for out of the sale of such survey.. [Id.]

Art. 7312. [7676] [5226] Execution of deed.—When a survey has been made, as provided in the preceding article, and a copy of the field notes, certified to as true and correct by the county surveyor, filed with the tax collector, the said collector shall thereupon make, execute and deliver to the purchaser a deed to said real estate, which deed shall, in addition to the requisite hereinabove named, contain the field notes certified by the county surveyor. [Id.]

Art. 7313. [7677] [5227] Effect of deed.—Deeds made, executed and delivered by tax collectors under the authority of this chapter shall be held to vest a good and perfect title to the real estate therein described in the purchaser, and may be impeached only for fraud; provided, that the former owner shall have two years from the date of said deed to redeem the same by paying to the purchaser double the amount paid for said land by the purchaser at such sale, together with all subsequent taxes paid by the purchaser, with eight per cent interest on the amount of such subsequent taxes. [Id.]

Art. 7314. [7678] [5228] Report of sales.—Within thirty days after sales made under the provisions of this chapter, the tax collector shall make a report to the commissioners court of his county, and also to the Comptroller, giving in said reports such description of the real estate sold as is given in the Comptroller's list, and stating the amounts due the State, county and collector respectively, and the amount for which said land was sold, and the name of the party to whom each tract was sold. [Id.]

Art. 7315. [7679] [5229] Proceeds of sale.—Tax collectors shall, within sixty days after payments for real estate sold under the provisions of this chapter, after deducting from the proceeds of sale all costs due to them or their predecessors in said office, pay into the county treasury of the county in which said real estate is situated the amount of taxes shown by the Comptroller's list to be due to said county, and the balance of said proceeds shall be paid by him into the State Treasury within the said sixty days, in such manner as may be directed by the Comptroller. [Id.]

Art. 7316. [7680] [5230] Collections applied.—Taxes collected by the State or county, by sales made under the provisions of this chapter, shall be placed to the credit of the different funds for which originally assessed under the direction respectively of the Comptroller and the commissioners court of the county in which the sale is made; the balance of the proceeds, after satisfying all taxes, penalties and costs accrued, shall, under the direction of the Comptroller, be placed in the State Treasury, subject to be reclaimed by the owner of the land on proof as required in case of escheated estates. [Acts 1884, S. S. p. 31; G. L. vol. 9, p. 563.]

Art. 7317. [7681] [5231] Costs deducted.—The tax collector shall be entitled to deduct and retain out of the proceeds of sale of each separate parcel of real estate sold, as hereinbefore provided:

1. Such amount as may be designated in the Comptroller's list as costs due thereon to the collector.
2. If the advertisement of sale is published in a newspaper, such a proportion of the actual amount paid for advertising as the number of acres in such separate parcel sold bears to the whole number of acres advertised; or, if the advertisements are posted, the sum of one dollar.
3. Two dollars for every deed made, executed, and delivered under the provisions of this chapter. [Acts 1879, p. 79; G. L. vol. 8, p. 1379.]

Art. 7318. [7682] [5232] Unsold land reported.—If, after the expiration of ninety days after the receipt by the tax collector of the Comptroller's list, any real estate described in said list shall remain unsold, the said collector shall make separate reports of such fact to the commissioners court of his county and the Comptroller respectively; and the said parcels of real estate shall be embraced in the next list furnished by the Comptroller to the tax collector. [Id.]

CHAPTER TEN

DELINQUENT TAXES

Art.

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Article 7319. [7683] "Real property."—For the purpose of taxation, real property shall include all lands within this State, and all buildings and fixtures thereon and appertaining thereto, except such as are expressly exempted by law. [Acts 1895, p. 50; Acts 1897, p. 132; G. L. vol. 10, pp. 780–1186.]

Art. 7320. [7684] A lien on land.—All lands or lots which have been returned delinquent or reported sold to the State, or to any city or town, for taxes due thereon since the first day of January, 1885, or which may hereafter be returned delinquent or reported sold to the State, or to any city or town, shall be subject to the provisions of this chapter, and said taxes shall remain a lien upon the said land, although the owner be unknown, or though it be listed in the name of a person not the actual owner; and though the ownership be changed, the land may be sold under the judgment of the court for all taxes, interest, penalty and costs shown to be due by such assessment for any preceding year. [Acts 1897, p. 132.]

Art. 7321. [7685] Listed by tax collector.—The commissioners court of each county shall cause to be prepared by the tax collector, at the expense of the county (the compensation for making out the delinquent tax record to be fixed by the commissioners court) a list of all lands, lots or parts of lots sold to the State for taxes since the first day of January, 1885, and which have not been redeemed in their respective counties and unorganized counties attached thereto, and have such lists recorded in books to be called the "Delinquent Tax Record," showing when the lands or lots were reported delinquent or sold to the State for taxes, also the name of the owner at the time of such sale or delinquency, if known, the number of acres, the amount of taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year as shown by the records of the tax collector's office; and, in making up the list or lists contemplated by this chapter, corrections and omissions in the description of any real estate embraced in such list or lists shall be made, so that when the corrections are made and the omissions supplied, the description will be such as is given in the abstracts of all the titled and patented lands in the State of Texas, or such as may be furnished by the Land Commissioner, and it shall be required, in bulk assessments, to apportion to each tract or lot of land separately, its pro rata share of the entire tax, penalty and cost. The list for each county, when certified to by the county judge, and the assessment rolls and books on file in the tax collector's office, shall be prima facie evidence that all the requirements of the law have been complied with by the officers charged with any duty thereunder, as to the regularity of listing, assessing, levying of all taxes therein mentioned, and reporting as delinquent or sold to the State any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in case the description of the property in said list or assessment rolls or books is not sufficient to properly identify the same, and of which property there is sufficient description in the inventories in the assessor's office, then said inventories shall be admissible as evidence of the description of said property. This delinquent tax record for each county shall be delivered to and preserved by the county clerk in his office; and the commissioners court shall cause a duplicate of same to be sent to the Comptroller; provided, where the records are incomplete in any county, the Comptroller shall furnish such county with a certified copy of the delinquent list for any year or years. [Id.]

Art. 7322. [7686] Delinquent tax record.—On receipt of such delinquent tax record the county clerk of each of the counties of this State, respectively, shall certify the same to the commissioners court for examination and correction, and he shall thereafter cause the same to be recorded in a book labeled the "Delinquent Tax Record of ——— County." The delinquent tax record shall be arranged numerically as to abstract numbers, and shall be accompanied by an index showing the names of delinquents in alphabetical order. [Id.]

Art. 7323. [7687] Delinquent tax list published.—Upon the completion of said delinquent tax record by any county in this State the commissioners court may, in their discretion, cause the same to be published in some newspaper published in the county once each week for three consecutive weeks, but if no newspaper is published in the county, such list may be published in a newspaper outside the county to be designated by the commissioners court, by contract duly entered into, and a publisher's fee of twenty-five cents shall be taxed against each such tract or parcel of land so advertised, which fee, when collected, shall be paid into the county treasury; and the commissioners court of said county shall not allow for said publication a greater amount than twenty-five cents for each tract of land so advertised and such publication and any other publication in a newspaper provided for in this chapter may be proved by affidavit of the printer of the newspaper in which the publication was made, his foreman or principal clerk, annexed to a copy of the publication, specifying the times when and the paper in which publication was made. All corrections made in said record under this article shall be noted in the minutes of the commissioners court, and shall be certified by the county clerk to the Comptroller, who shall note the same upon his delinquent tax record. If such delinquent tax record be not published correctly, in accordance with the copy furnished such newspaper, then no compensation shall be allowed for such publication, but failure to so publish such list shall be no defense to a suit for taxes due. [Id. Acts 2nd. C. S. 1923, p. 33.]

Art. 7324. Notice to owners of delinquency.—During the months of April and May each year, or as soon thereafter as practicable the collector of taxes in each county of this State shall mail to the address of each record owner of any lands or lots situated in the county a notice showing the amount of taxes delinquent or past due and unpaid against all such lands and lots as shown by the delinquent tax record of the county on file in the office of the tax collector, a duplicate of which shall also have been filed in the office of the Comptroller of the State and approved by such officer, but failure to send or receive such notice shall be no defense to a suit brought for taxes. Such notice shall also contain a brief description of the lands and lots appearing delinquent and the various sums or amounts due against such lands and lots for each year they appear to be delinquent, according to such records, and it shall also recite that unless the owner of such lots or land described therein shall pay to the tax collector the amount of taxes, interest, penalties, and costs set forth in such notice within thirty days from the date of notice, that the county or district attorney will institute suits for the collection of such moneys and for the foreclosure of the constitutional lien against such lands and lots. Each tax collector, as soon after mailing such notice as practicable, shall furnish to the county or district attorney duplicates of all such notices mailed to the tax payers in accordance with the provisions of this law, and also, lists of lands and lots located in the county appearing on the delinquent tax records in the name of "unknown" or "unknown owners," or in the name of persons whose correct address or place of residence in or out of the county said collector is unable by the use of diligence to discover or ascertain, against which taxes are delinquent, past due, and unpaid, and such lists or statements shall show the amount of State and county taxes delinquent, past due, and unpaid against each such tract or lot of land for each year they appear to be delinquent according to the delinquent tax records of the county, and shall likewise contain a brief description of all such lands and lots. The tax collector shall furnish on demand of any person, firm or corporation like statements with reference to any particular lot or tract of land for whatever purpose desired, which shall be in all instances certified by him with the seal of his office attached. Whenever any person, or persons, firm or corporation shall pay to the tax collector all the taxes, interest, penalties and costs shown by the delinquent tax records of the county to be due and unpaid against any tract, lot or parcel of land for all the years for

which taxes may be shown to be due and unpaid, prior to the institution of suit for the collection thereof, the tax collector shall issue to such person or persons, firm or corporation, a receipt covering such payment as is now required by law. [Acts 1915, p. 250; Acts 2nd. C. S. 1919, p. 184; Acts 2nd C. S. 1923, p. 32.]

Art. 7325. Notice, how made up.—In making up the notices or statements provided for in the preceding article, each tax collector shall rely upon the delinquent tax records compiled as required by law, approved by the commissioners court, and a duplicate of which has been filed in the office of the Comptroller, and which has or may be approved by the Comptroller. The tax collector, whenever there shall be one year or more of back taxes that have not been included in such delinquent tax records, shall prepare or cause to be prepared a supplement to such records which shall be prepared in duplicate, one copy to be filed in the office of the county clerk and one copy thereof to be furnished to the Comptroller subject to his approval; and whenever said supplement shall have been approved by the commissioners court and by the Comptroller, the tax collector shall rely thereon for the data covering delinquent taxes for said years in making out the notices or statements provided for in the preceding article. Said tax collector, in making up said delinquent tax record and supplement, shall examine the records of the district court and county clerk's office of his county, and no tract of land shall be shown delinquent on any delinquent tax record for any year where the records of the district court or the county clerk's office show that the taxes for said year have been paid. It shall be the duty of each tax assessor to enter the post-office address of each and every tax-payer after his name on the tax rolls, and the Comptroller shall provide a column for the entry of such addresses on the sheets furnished the assessors for making up the tax rolls. [Acts 1915, p. 250; Acts 2nd. C. S. 1923, p. 33.]

Art. 7326. [7688] Suits to foreclose tax lien.—Whenever any taxes on real estate have become delinquent it shall be the duty of the county attorney upon the expiration of the thirty days notice provided for in the two preceding articles or as soon thereafter as practicable, to file suit in the name of the State of Texas in the district court of the county where such real estate is situated, for the total amount of taxes, interest, penalty and costs that have remained unpaid for all years since the thirty-first day of December, 1908, with interest computed thereon to the time fixed for the trial thereof at the rate of six per cent per annum, and shall pray for judgment for the payment of the several amounts so specified therein and shown to be due and unpaid by the delinquent tax records of said county; and also that such land be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief as the State may be entitled to under the law and facts. All suits to enforce the collection of taxes as provided in this law shall include all lands in the county where the suit is brought, owned by the same person on which delinquent taxes are due, and shall take precedence over all other suits pending in said district court. If through mistake, oversight or otherwise any tax due on any land owned by the defendant is omitted from such suit, such omission shall not be any defense against the collection of the tax due and sued for. All delinquent tax records of said county in any county where such suit is brought shall be prima facie evidence of the true and correct amount of taxes and costs due by the defendant or defendants in such suit, and the same or certified copies thereof shall be admissible in the trial of such suit as evidence thereof. Such suit shall be brought as an ordinary foreclosure for debt, with averments as to the existence of a lien upon such land for such taxes, with interest at the rate of six per cent per annum, and shall pray for judgment for the foreclosure of the said lien and sale of said lands as under ordinary execution. The county attorney, or the attorney employed by the commissioners court, shall sign such petition as attorney for plaintiff. The county tax collector and county tax assessor shall furnish all affidavits, certified copies of the records of their respective offices and such other evidence as may be in their possession by virtue of such office as may be applied for by the proper attorney prosecuting such suit, and shall be allowed a fee of fifty cents for each certified copy furnished upon such application. If the amount of taxes delinquent is not more than five dollars the commissioners court may have such suit for five dollars or less instituted or not as said court may deem to be for the best interests of the county. [Acts 1895, p. 50; Acts 1897, p. 132; Acts 2nd C. S. 1923, p. 34; Acts 3rd C. S. 1923, p. 184.]

Art. 7327. Unknown owner.—In respect to lands and lots appearing on lists furnished by the tax collector to the county or district attorney in accordance with the provisions of this law, as lands and lots located in the county which appear on the delinquent tax record in the name of "unknown" or "unknown owner," or in the name of persons whose correct address or place of residence in or out of the county said collector has been unable, by due diligence to discover or ascertain, the county attorney or in the counties having no county attorney, the district attorney, immediately after the lists of such lands have been furnished him by the collector shall proceed to collect all taxes, penalty, interest and costs then due against the same in the manner prescribed in this chapter. [Acts 2nd C. S. 1919, p. 166.]

Art. 7328. [7689] Proceedings in tax suits.—The proper persons, including all record lien holders, shall be made parties defendant in such suit, and shall be served with process and other proceedings had therein as provided by law in ordinary foreclosure suits in the district courts of this state; and in case of foreclosure an order of sale shall issue and the land sold thereunder as in other cases of foreclosure; but if the defendant or his attorney shall, at any time before the sale, file with the officer in whose hands any such order of sale shall be placed, a written request that the property described therein shall be divided and sold in smaller tracts than the whole, together with the description of such smaller tracts. then such officer shall sell the lands in such subdivisions as defendant may request, and in such case shall sell only as many subdivisions, as near as may be, as are necessary to satisfy the judgment, interest, penalty and costs and after the payment of the taxes, interest, penalty and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of the court out of which said execution or other final process issued to be retained by him subject to the order of the court for a period of two years, unless otherwise ordered by the court, after which time the court may order the same to be paid to the owner against whom said taxes were assessed; provided, any one claiming the same shall make proof of his claim to the satisfaction of the State Treasurer within three years after the sale of said land or lots, after which the same shall be governed by the law regulating escheat. If there shall be no bidder for such land the county attorney, sheriff or other officer selling the same, shall bid said property off to the State for the amount of all taxes, penalty, interest and costs adjudged against such property, and the district clerk shall immediately make report of such sale in duplicate, one to the Comptroller and one to the Commissioners' Court, on blanks to be prescribed and furnished by the Comptroller. Where the property is bid off to the State, the sheriff shall make and execute a deed to the State, using forms to be prescribed and furnished by the Comptroller, showing in each case, the amount of taxes, interest, penalty and costs for which sold, and the clerk's fees for recording deeds. He shall cause such deeds to be recorded in the record of deeds by the county clerk in his county, and when so recorded, shall forward the same to the Comptroller. The county clerk shall be entitled to a fee of one dollar for recording each such deed to the State, to be taxed as other costs. When land thus

sold to the State shall be redeemed the tax collector shall make the proper distribution of the moneys received by him in such redemption, paying to each officer the amount of costs found to be due, and to the State and county the taxes, interest and penalty found to be due each respectively. If any of the land thus sold to the State is not redeemed within the time prescribed by this law, the sheriff shall sell the same at public outcry to the highest bidder for cash at the principal entrance to the court house in the county wherein the land lies, after giving notice of sale in the manner now prescribed for sale of real estate under execution, provided when notice is given by posting notices, one of the said notices shall be posted in a conspicuous place upon the land to be sold. Said notice shall contain a legal description of the land to be sold; the date of its purchase by the State, the price for which the land was sold to the State; that it will be sold at public outcry to the highest bidder for cash, date and place of sale. All sales contemplated herein shall be made in the manner prescribed for the sale of real estate under execution, and the sheriff is hereby authorized, and it is hereby made his duty to reject any and all bids for said land when in his judgment the amount bid is insufficient or inadequate, and in event said bid or bids are rejected the land shall be re-advertised and offered for sale as provided for herein, but the acceptance by the sheriff of the bid shall be conclusive and binding on the question of the sufficiency of the bid, and no action shall be sustained in any court of this State to set aside said sale on grounds of the insufficiency of the amount bid and accepted. Nothing herein shall be construed as prohibiting the State, acting through the county attorney of the county wherein the land lies, or its Attorney General, from instituting an action to set aside the said sale on the grounds of fraud or collusion between the officer making the sale and the purchaser. The sheriff shall send the amount received from such sale to the State Treasurer after deducting the amount of the county taxes, interest and penalty of the county tax which he shall pay to the county treasurer. The sheriff, in behalf of the State, shall execute a deed conveying title to said property when sold and paid for. [Acts 1895, p. 50; Acts 1897, p. 132; Acts 2nd C. S. 1923, p. 35; Acts 3rd C. S., [1923] p. 181; Acts 1927, 40th Leg., 1st C. S., p. 260, ch. 99, § 1.]

Art. 7329. Defense to tax suits.—There shall be no defense to a suit for collection of delinquent taxes, as provided for in this chapter except:

1. That the defendant was not the owner of the land at the time the suit was filed.
2. That the taxes sued for have been paid, or
3. That the taxes sued for are in excess of the limit allowed by law, but this defense shall apply only to such excess. [Acts 2nd C. S. 1923, p. 36.]

Art. 7330. Sheriff to execute deeds.—In all cases in which lands have been sold, or may be sold, for default in the payment of taxes, the sheriff selling the same, or any of his successors in office, shall make a deed or deeds to the purchaser or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this State to vest good and perfect title in the purchaser thereof, subject to be impeached only for actual fraud. [Acts 1895, p. 50; G. L., vol. 10, p. 780; Acts 1897, p. 132; G. L., vol. 10, p. 1186.]

Art. 7331. [7691] Fees of tax collector.—For preparing the annual delinquent list of assessments charged to the tax collector upon the tax roll, but which have not been collected at the time of his annual settlement with the State and county, separating the property previously sold to the State from that reported sold as delinquent for preceding years and for prorating the State taxes into State revenue, State school and State pension, calculating the penalty, extending it and adding it in with other taxes, balancing the delinquent lists and certifying it to the commissioners court and the Comptroller, the tax collector shall be entitled to a fee of one dollar for each correct assessment of land to be sold, said fee to be taxed as costs against the delinquent. Provided, that in no case shall the State or county be liable for said fee which shall be additional and cumulative of all other fees now allowed by law and shall not be accounted for under the fee bill as fees of office. For checking up and taking off delinquency, separating and assorting various tracts or each assessment, prorating the taxes thereon, arranging the items by abstract numbers or lot and block numbers, and compiling the delinquent tax record herein required to be compiled whenever there shall be as many as two years of back taxes that have not been included in the delinquent record, the tax collector shall be paid out of the general fund of the county, five cents for each written line of the original of such delinquent record, not to exceed twenty-five cents for any one tract or abstract rendered, returned delinquent and owned by one taxpayer; such fee to be taxed as costs, and to be paid back into the general fund of the county when collected. For issuing notices to taxpayers, furnishing copies to the county, district or delinquent tax attorneys, issuing statements in regard to particular tracts of land required by this law, preparing and issuing cancellations, calculating and preparing redemption certificates, and receipts, reporting and crediting redemptions, posting Comptroller redemption numbers on the delinquent record, mailing certificates of redemption to taxpayers after approval by the Comptroller, the tax collector shall receive five per cent of all delinquent taxes collected by him, which, together with five cents per line compensation for compiling the delinquent record as above provided shall be accounted for as fees of office, and shall not be retained by such tax collectors so as to increase the maximum compensation now allowed by law for such respective office. [Acts 3rd C. S. 1923, p. 182.]

Art. 7332. [7691] Other fees.—The county attorney or district attorney shall represent the State and county in all suits against delinquent taxpayers that are provided for in this law, and all sums collected shall be paid immediately to the county collectors. In all cases the compensation for said attorney shall be five dollars for the first tract in one suit, and one dollar for each additional tract involved in the same suit; provided, that those county attorneys who have or may institute said suits shall be entitled to an equal division with their successors in office of the fees allowed herein on all suits instituted by them where the judgment has not been obtained prior to the vacation of their office. The sheriff shall be entitled to a fee of one dollar for selling and making deed thereto to each purchaser of land that he sells under judgment for taxes; and for executing citation he shall receive the same fees allowed by law for similar services in tax suits. The district clerk shall be entitled to a fee of one dollar and fifty cents in each case to be taxed as costs of suit. The county clerk, for making out and recording the data [date] of each delinquent assessment and for certifying same in the minutes of the commissioners court and for all other services rendered in such suits shall receive the sum of one dollar. Where such suits are brought against delinquents to recover taxes due by them to the State and county, and the said delinquent pays the amount of tax, interest, penalties, and all accrued costs to the county collector during the pendency of such suit, then the county attorney shall receive as compensation therefor two dollars for the first tract and one dollar for each additional tract embraced in said suit; and the district clerk shall receive only one dollar in each case; but these fees shall be paid in lieu of the fees provided for officers where such suits are brought as herein provided. All fees provided for the officers herein mentioned shall be in addition to fees allowed by law to such officers, and shall not be accounted for by said officers as "fees of office." [Id.]

Art. 7333. [7691] Fees taxed as costs.—In each case such fees shall be taxed as costs against the land to be sold under judgment for taxes, and paid out of the proceeds of sale of same after the taxes, penalty and interest due thereon are paid, and in no case shall the State or county be liable therefor. [Id.]

Art. 7334. [7691] "Tract."—The term "tract" shall mean all lands or lots in any survey, addition or subdivision or part thereof owned by the party being sued for delinquent taxes. [Id.]

Art. 7335. [7691] Contract with attorney.—Whenever the commissioners court of any county after thirty days written notice to the county attorney or district attorney to file delinquent tax suits and his failure to do so, shall deem it necessary or expedient, said court may contract with any competent attorney to enforce or assist in the enforcement of the collection of any delinquent State and county taxes for a per cent on the taxes, penalty and interest actually collected, and said court is further authorized to pay for an abstract of property assessed or unknown and unrendered from the taxes, interest and penalty to be collected on such lands, but all such payment and expenses shall be contingent upon the collection of such taxes, penalty and interest. It shall be the duty of the county attorney, or of the district attorney, where there is no county attorney, to actively assist any person with whom such contract is made, by filing and pushing to a speedy conclusion all suits for collection of delinquent taxes, under any contract made as herein above specified; provided that where any district or county attorney shall fail or refuse to file and prosecute such suits in good faith, he shall not be entitled to any fees therefrom, but such fees shall nevertheless be collected as a part of the costs of suit and applied on the payment of the compensation allowed the attorney prosecuting the suit, and the attorney with whom such contract has been made is hereby fully empowered and authorized to proceed in such suits without the joinder and assistance of said county or district attorneys. [Acts 2nd C. S. 1923, p. 37; Acts 3rd C. S. 1923, p. 182.]

Art. 7336. [7692] Penalty.—If any person fail or refuse to pay the taxes imposed upon him or his property by law until after the thirty-first day of January next succeeding the return of the assessment rolls of the county to the Comptroller, a penalty of ten per cent on the entire amount of such taxes shall accrue, which penalty, when collected, shall be paid proportionately to the State and county; and the collector of taxes shall by virtue of his tax rolls seize and levy upon and sell so much personal property belonging to such person as may be sufficient to pay his taxes, together with the penalty above provided, interests and all costs accruing thereon. If no personal property be found for seizure and sale as above provided, the collector shall, on the thirty-first day of March of each year for which the State and county taxes for the preceding year remain unpaid, make up a list of the lands and lots on which the taxes for such preceding years are delinquent, charging against the same all taxes and penalties assessed against the owner thereof. Said list shall be made in triplicate and shall be presented to the commissioners court for examination and correction of any errors that may appear, and when so examined and corrected by the commissioners court, such lists in triplicate shall be approved by said court, and one copy thereof shall be filed with the county clerk, and one copy retained and preserved by the collector and one copy forwarded to the Comptroller with his annual settlement reports. Such lists as furnished by the tax collector and corrected by the commissioners court, and the rolls or books on file in the collector's office, or either said list or assessment rolls or books, shall be prima facie evidence that all the requirements of the law have been complied with by the officers of courts charged with any duty thereunder as to the regularity of listing, assessing, levying all taxes therein mentioned and reporting as delinquent any real estate whatsoever, and that the amount alleged against said real estate is a true and correct charge; and, in cases in which the description of the real estate in said list or assessment rolls or books is not sufficient to identify the same, and of which property there is a sufficient description in the inventories of the assessor's office, then said inventories shall be admissible as evidence of the description of said property. [Acts 1895, p. 50; G. L. vol. 10, p. 780; Acts 1897, p. 132; G. L. vol. 10, p. 1186; Acts 2nd C. S. 1923, p. 39.]

Art. 7337. [7693] Cities may avail.—Any incorporated city or town or school district shall have the right to enforce the collection of delinquent taxes due it under the provisions of this chapter. [Acts 1897, p. 132; G. L. vol. 10, p. 1186.]

Art. 7338. [7694] Exemptions from this chapter.—Real estate which may have been rendered for taxes and paid under erroneous description given in assessment rolls, or lands that may have been duly assessed and taxes paid on one assessment, or lands which may have been assessed and taxes paid thereon in a county other than the one in which they are located, or lands which may have been sold to the State and upon which taxes have been paid and through error not credited in the assessment rolls, shall not be deemed subject to the provisions of this chapter. When called upon, the Land Commissioner shall furnish the county judge of any county compiling its own delinquent tax record with such information as may enable him to determine the validity or locality of such surveys and grants as have not been shown by the printed abstracts of the Land Office. [Id.]

Art. 7339. [7695] May redeem before sale.—Any delinquent taxpayer whose lands have been returned delinquent or reported sold to the State for taxes due thereon, or any one having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this chapter, by paying to the collector the taxes due thereon since January first, 1885, with interest at the rate of six per cent per annum and all costs and the penalty of ten per cent. [Id.]

Art. 7340. [7696–97] May redeem from State.—Where lands or lots shall hereafter be sold to the State or to any city or town for taxes under decree of court in any suit or suits brought for the collection of taxes thereon or by a collector of taxes, or otherwise, the owner or any one having an interest in such lands or lots shall have the right at any time within two years from the date of sale to redeem the same upon payment of the amount of taxes for which sale was made, together with all costs and penalties required by law, and also payment of all taxes, interest, penalties and costs on or against said land or lots at the time of the redemption. [Acts 1897, p. 132, sec. 14; Acts 1905, p. 323; Acts 1907, p. 282; Acts 2nd C. S. 1909, p. 400; Acts 1st C. S. 1913, p. 25; Acts 1st C. S. 1915, p. 58; Acts 4th C. S. 1918, p. 155; Acts 3rd C. S. 1920, p. 103.]

Rev. Civ. St. 1911, art. 7696, which is continued in force by decision in Rose v. Turner (Com. App.) 7 S.W.(2d) 70, read as follows: "Where lands are sold under the provisions of this chapter, the owner, or anyone having an interest therein, shall have the right to redeem said land, or his interest therein, within two years from the date of said sale upon the payment of double the amount paid for the land."

Art. 7341. [7701] Evidence of title to redeem land.—In all cases where lands in this State have been or may be sold for taxes, and the owner of the land, at the time of such sale, shall desire to redeem the same, under the provisions of the Constitution, or of laws enacted on that subject, it shall be sufficient to entitle such owner to redeem from the purchaser or purchasers thereof for him to have had a paper title to such land, or to have been in possession of such land in person or by tenant, at the time of the institution of the suit under which sale was made, or when such sale was made; and the existence of such facts and conditions shall be sufficient prima facie evidence of ownership to entitle the party so claiming ownership to the right to redeem such land; and he shall not be required to deraign title from the sovereignty, or shall any hiatus or defect in his chain of title defeat the offered redemption. Nothing herein shall be held to limit the right of one offering to redeem to prove ownership otherwise than herein provided, nor prevent any one having the superior title from redeeming such land within two years from the date of the tax sale by paying to the person who has

previously redeemed such lands the amounts provided by law. [Acts 1905, p. 118.]

Art. 7342. [7698] Unknown or non-resident.—Whenever the owner or owners of any lands or lots that have been or may be returned delinquent or reported sold to the State for the taxes due thereon for any year or number of years, are non-residents of the State, or the name of the owner or owners of said lands or lots be unknown, then, upon affidavit of the attorney for the State setting out that the owner or owners are non-residents, or that the owner or owners are unknown to the attorney for the State and after inquiry cannot be ascertained, said parties shall be cited and made parties defendant by notice in the name of the State and county, directed to "all persons owning or having or claiming any interest in the following described land delinquent to the State of Texas and county of ———, for taxes, to-wit: (here set out description of the land as contained on the assessment roll and such further description obtainable in the petition)," and further stating "which said land is delinquent for taxes for the following amounts, $——— for States taxes, and $——— for county taxes and you are hereby notified that suit has been brought by the State for the collection of said taxes, and you are commanded to appear and defend such suit at the ——— term of the district court of ——— County, and State of Texas, and show cause why judgment shall not be rendered condemning said land (or lot), and ordering sale and foreclosure thereof for said taxes and costs of suit," which notice shall be signed by the clerk and shall be published in some newspaper published in said county one time a week for three consecutive weeks. If there is no newspaper published in the county, then notice may be given by publication in a paper in an adjoining county. A maximum fee of two and one-half cents per line (seven words to count a line) for each insertion may be taxed for publishing said citation. If the publication of such citation cannot be had for such fee, then publication of the citation herein provided may be made by posting a copy at three different places in the county, one of which shall be at the courthouse door. It shall be lawful in all cases to set forth in the petition the names of all parties interested as far as ascertained, and make them parties, and also to join and make defendants all persons having or claiming any legal or equitable interest in the land described in the petition. Such suit, after such publication, shall be proceeded with as in other cases; and whether any party or parties make defense or not on the trial of said case, the State and county shall be entitled to prove the amount of taxes due, and shall have a decree for the sale of said land or lot as in those cases where defendant owners have been personally served and defend suit. A sale of said land or lot shall be had and be as binding as where defendants are personally served with process. In all suits for taxes due, the defendant shall be entitled to credits he can show due him for any year or number of years for which he may be able to produce receipts or other positive proof showing the payment of such taxes. [Acts 1897, p. 138; G. L. vol. 10, p. 1192.]

Art. 7343. [7699] Similar proceedings by cities and independent school districts.—In any incorporated city or town in which any tracts, lots, outlots or blocks of land, situated within the corporate limits of said city or town have been returned delinquent, or reported sold to said city or town for the taxes due thereon, the governing body may prepare or cause to be prepared lists of delinquents in the same manner as provided in this chapter, and such lists shall be certified to as correct by the mayor of said city or town, if any, and if said city or town has no mayor, by the presiding officer of the governing body. After said lists have been properly certified to, the governing body of the city may cause lists of delinquents to be published in a newspaper as provided for State and county delinquent taxes in this law. When twenty days from the date of last publication of said list or lists of delinquents has elapsed, the governing body of the city or town may direct the city attorney to file suits for collection of said taxes, or said governing body may employ some other attorney of the county to file suits and the city attorney or other attorney filing said suits shall be entitled to the same fees as allowed the county attorney or district attorney in suits for collection of State and county taxes, to be taxed as costs in the suit. Independent school districts may collect their delinquent taxes as above provided for cities and towns, the school board performing the duties above described for the governing body of cities, and the president of the school board performing the duties above prescribed for the mayor or other presiding officer. The school board may, when the delinquent tax lists and records are properly prepared and ready for suits to be filed, instruct the county attorney to file said suits. If the school board instructs the county attorney to file said suits and he fails or refuses to do so within sixty days the school board may employ some other attorney of the county to file suit. The county attorney, or other attorney, filing tax suits for independent school districts, shall be entitled to the same fees as provided by law in suits for State and county taxes. No other county officer shall receive any fees unless services are actually performed, and in that event he shall only receive such fees as are now allowed him by law for similar services in civil suits. The employment of an attorney to file suit for taxes for cities, towns or independent school districts shall authorize said attorney to file said suits, swear to the petitions and perform such other acts as are necessary in the collection of said taxes.

All laws of this State for the purpose of collecting delinquent State and county taxes are by this law made available for, and when invoked shall be applied to, the collection of delinquent taxes of cities and towns and independent school districts in so far as such laws are applicable. [Id.; Acts 3rd C. S. 1920, p. 48; Acts 2nd C. S. 1923, p. 39.]

Art. 7344. [7700] Land platted and numbered.—In counties in which the subdivisions of surveys are not regularly numbered, and in cities or towns in which the blocks or subdivisions are not numbered, or are so irregularly numbered as to make it difficult or impossible for the assessor to list the same, the commissioners court of such counties may have all the blocks and subdivisions of surveys platted and numbered so as to identify each lot or tract, and furnish the assessor with maps showing such numbering; and an assessment of any property by such numbering on said maps shall be sufficient description thereof for all purposes. Such maps or a certified copy of same or any part thereof, shall be admissible as evidence in all courts. The cost of making said survey and plats shall be defrayed by the county in which said property is situated, and of which said commissioners court ordered the said surveys and plat made and the cost of any map of a town or city shall be paid by such city or town when ordered by the town or city. [Acts 1897, p. 139; G. L. vol. 10, p. 1193.]

Art. 7345. Separate payments.—When two or more lots or blocks or tracts of land are rendered in the same rendition with separate valuations, and the taxes due thereon become delinquent the tax collectors shall, when tendered, accept payment of the taxes due on each lot or block or tract of land having such separate valuation. [Acts 3rd C. S. 1923, p. 185.]

CHAPTER ELEVEN

IN CERTAIN CASES

Art.
7346. Property omitted from rolls.
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Article 7346. [7702] Property omitted from rolls.—Whenever any commissioners court shall discover through notice from the tax collector or otherwise that any real property has been omitted from the tax rolls for any year or years since 1884, or shall find that any previous assessments on any real property for the years mentioned are invalid, or have been declared invalid for any reason by any district court in a suit to enforce the collection of taxes on said properties, they may, at any meeting of the court, order a list of such properties to be made in triplicate and fix a compensation therefor; the said list to show a complete description of such properties and for what years such properties were omitted from the tax rolls, or for what years the assessments are found to be invalid and should be canceled and re-assessed, or to have been declared invalid and thereby canceled by any district court in a suit to enforce the collection of taxes. No re-assessment of any property shall be held against any innocent purchaser of the same if the tax records of any county fail to show any assessment (for any year so re-assessed) by which said property can be identified and that the taxes are unpaid. The above exception, with the same limitation, shall also apply as to all past judgments of district courts canceling invalid assessments. [Acts 1905, p. 318.]

Art. 7347. [7703] Property listed assessed.—When said list has been so made up the commissioners court may, at any meeting, order a cancellation of such properties in said list that are shown to have been previously assessed, but which assessments are found to be invalid and have not been canceled by any former order of the commissioners court, or by decree of any district court; and shall then refer such list of properties to be assessed or re-assessed to the tax assessor who shall proceed at once to make an assessment of all said properties, from the data given by said list (the certificate of the Comptroller as to assessments or re-assessments made by the tax assessor shall not be necessary a required under Article 7207, but he shall furnish all blank forms needed, that uniformity may be had in all counties), and when completed shall submit the same to the commissioners court, who shall pass upon the valuations fixed by him; and, when approved as to the values, shall cause the taxes to be computed and extended at the tax rate in effect for each separate year mentioned in said list; and, in addition thereto, shall cause to be added a penalty equal in amount to what would be six per cent interest to the date of making said list from the date such properties would have been delinquent had same been properly rendered by the owner thereof at the time and for the years stated in said list; provided, that the certificate of any tax collector given during his term of office that all taxes have been paid to the date of such certificate on any certain piece of property, which is fully described in such certificate, or if the tax rolls of any county fail to show any assessments against such property sufficient to identify it, and that the same was unpaid at the dates such rolls may have been examined to ascertain the condition of any property as to taxes unpaid, this shall be a bar to any re-assessment of such property under this law for any years prior to the date of such certificate, or such examinations; provided, that the property referred to, when re-assessed, shall be held by an innocent purchaser, who has relied upon the correctness of such certificate, or the tax rolls heretofore referred to. [Id.]

Art. 7348. [7704] List to operate a lien.—The said list, when complete in all respects, and filed with the tax collector, shall constitute a valid lien against all the properties mentioned in said list for the full amount of taxes, penalties, officers costs, advertising and six per cent interest from the date of said list to the date of the payment of the full sum due on each separate piece of property. A copy of said list and all cancellation orders shall be furnished to the Comptroller, and a copy filed with the county clerk. [Id.]

Art. 7349. [7705] To be advertised.—The commissioners court shall proceed to have such list of properties advertised in the manner provided in Article 7323 after which, suit may be filed in the same manner as provided by law for the enforced collection of delinquent taxes. [Id.]

Art. 7350. [7706] Assessments reduced.—In all cases of delinquent taxes of unrendered and unknown property, where there appears to be an assessment of the same at a valuation excessive and unreasonable, the commissioners court shall be authorized to correct or reduce such values on the request of the tax collector with a full statement of the facts in each case; which statement and the action had thereon and the name of each commissioner voting for or aginst [against] the reduction in valuation asked for shall be entered upon the minutes of the court; and a certified copy of the action had thereon shall be furnished to the Comptroller, and, when the values are so corrected or reduced, payment of taxes shall be accepted in accordance with such reduction, to which shall be added interest, penalty, advertising and costs as provided by law. [Id.]

Art. 7351. [7708] Bulk assessments validated.—In all suits to enforce the collection of delinquent taxes, where the assessment of any property for any year is invalidated by reason of the failure of the assessor to comply with the provisions of law for the description of any lot, block or tract of land, or to give a separate value on each lot, block or tract of land, known as "bulk assessments" or to enter upon the lists (similar to that used for the listing of rendered property, to be signed by the owner) all items of property assessed to unknown owners, all such assessments are hereby validated and given the same force and effect as if the descriptions, the separate valuations and the listing were in all respects strictly in compliance with law; provided, as to description, that the descriptions given are sufficient to identify the property, as to separate values, that the valuations and the taxes shown upon the tax rolls (in what are called "bulk assessments") can be fairly prorated to each separate lot, block or tract of land; and, as to listing, that the valuation given on the tax rolls upon properties assessed as unknown are found to have been entered upon the assessor's block book as the original assessment, instead of listing as in rendered assessments, and then entering upon the tax rolls. [Id.]

Art. 7352. [7709] Delinquent tax record published.—The various counties which have not heretofore made and published a delinquent tax record, under provisions of chapter 103, acts of the regular session of the twenty-fifth legislature, are hereby authorized and it shall be their duty to make and publish the same to date hereof, and, when so done, it shall have the same force and effect as if made and published under that Act; and any county which has heretofore made a delinquent tax record for any number of years is hereby authorized and empowered to re-compile the same to date hereof, and may compile each year thereafter under the provisions of said act. [Id.]

Art. 7353. [7710] Property listed by Comptroller.—Whenever it shall appear to the Comptroller from an inspection of the tax rolls of any county or otherwise, that any lands in such county subject to taxation have not been assessed for taxation for any year since and including the year 1900, he shall make a list of such lands and send the same to the tax assessor of such county by registered letter, accompanying such list with instructions to such tax assessor to assess such lands for taxes for the years for which they have not been assessed as shown by said list. [Acts 1905, p. 321.]

Art. 7354. [7711] List to be posted.—Upon receipt of such list, the tax assessor shall immediately post a copy of such notice and list at the court house door of his county, noting upon such copy the date of such posting; and the owners of the lands embraced in such list shall have the right, at any time within twenty days of such posting, to render the

same to the tax assessor for the taxes for the years for which they have not been assessed for taxes, or for any of such years as shown by such notice, in the same manner as is provided for the rendition of other property for taxes under the provisions of the general laws for that purpose. [Id.]

Art. 7355. [7712] Unrendered lands assessed.—Should any of the said lands remain unrendered by the owners or owner thereof, under the provisions of the preceding article for any of the years for which the same have not been assessed according to said notice and lists, for twenty days after the date of the posting of such notice, it shall be the duty of the tax assessor, immediately upon expiration of such time, to assess for taxes at their true value such lands so remaining unrendered and unassessed for each of the years since and including the year 1900, and including the year such lists are made up by the Comptroller, listing the same in the name of unknown owners, and charging up to said lands the taxes. State and county, for which they are liable for each of such years, valuing such lands at their true and full value as provided in Article 7174. If any of said lands are lands purchased from the State as belonging to the school fund, the University, or any of the asylums of the State, and held under such contract of purchase upon which a part of the purchase money is still due, such lands being unpatented, no deduction shall be made in the value of said lands for, or on account of, such unpaid purchase money, but they shall be valued at their full and true value as though paid out and patented. [Id.]

Art. 7356. [7713] Duty of commissioners court.—The tax assessor shall make up lists showing such assessments, and deliver the same to the county judge, who shall at once, unless a regular session is held within ten days thereafter, call a meeting of the commissioners court in special session, as a board of equalization for the purpose of passing upon said assessment lists in the manner provided in case of regular assessments in so far as the provisions of the statute with regard thereto are applicable. The commissioners court without delay shall act upon said supplemented assessment lists, as to the value of the property embraced, and, when said values have been equalized as required by law, aprove [approve] the same, and approve the rolls made up by the tax assessor in accordance therewith; provided, that the commissioners court shall have no authority to alter said assessment lists, or in any way interfere with such assessments, except as to the values of property embraced therein, in equalizing the same as provided by law, and to strike therefrom any lands that have been already assessed for taxes at their true market value for the years for which they are assessed on said supplemental rolls and such taxes paid. [Id.]

Art. 7357. [7714] Supplemental tax rolls.—After such supplemental assessment lists have been passed upon by the board of equalization as herein provided, supplemental tax rolls shall be prepared by the tax assessor and approved by the commissioners court as is required by law in case of the regular assessment for taxes; and thereafter the taxes due according to such supplemental rolls shall be collected as in case of other taxes, and, if not paid, such proceedings shall be had for their collection as in case of other taxes. [Id.]

Art. 7358. [7715] Fees of assessor.—For making the supplemental assessments provided herein, the tax assessor shall be entitled to the same fees to be paid in the same manner as is provided by law in case of regular assessments. [Id.]

Art. 7359. City may use county officers.—Any incorporated city, town or village in this State is hereby authorized by ordinance to authorize the county tax assessor and county tax collector of the county in which said city, town or village is situated, to act as tax assessor and tax collector respectively for said city, town or village. The property in said city, town or village utilizing such county assessor and collector shall be assessed at the same value as it is assessed for county and State purposes. When an ordinance is so passed making available their services, said assessor shall assess the taxes for said city, town or village and perform the duties of tax assessor for said city, town or village according to the ordinances of said city, town or village and according to law; and said collector shall collect the taxes and assessments for said city, town or village and turn over as soon as collected to the city depository of said city or other authority authorized to receive such taxes or assessments, all taxes or money so collected, and shall perform the duties of tax collector of said city, town or village according to the ordinances thereof and according to law, deducting from the taxes so collected his fees provided for herein; and they shall respectively receive for such services one per cent of the taxes so collected. [Acts 1921, p. 128.]

TITLE 123

TIMBER

Art.
7360. Log brands.
7361. To be recorded.
7362. Written report to be filed.
7363. Evidence of ownership.

Article 7360. [7727] [5244] Log brands.—Whoever engages in floating or rafting timber upon the waters of any river or creek of this State shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded. [Acts 1879, p. 81, sec. 1; G. L. vol. 8, p. 1381.]

Art. 7361. [7728] [5245] To be recorded.—He shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk, in a book to be kept by said clerk for that purpose, for which said clerk shall receive a fee the same as is by law allowed for recording stock brands. [Id. sec. 2.]

Art. 7362. [7729] [5246] Written report to be filed.—Any person who floats any logs or timber in this State shall, on the first day of April, first day of July, first day of September, and on the first day of January of each year, or within fifteen days of said dates, make a written report under oath showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut; and such clerk shall record the same in a book kept for that purpose, and index it, and receive therefor the sum of fifty cents from the party presenting the same. This law shall not apply to pickets, posts, rails or firewood. [Id. sec. 3.]

Art. 7363. [7730] [5247] Evidence of ownership.—A certificate under the hand of the county clerk, containing a description of a log brand and the name of the owner thereof, with a transfer on the back of it signed and acknowledged by such owner, or proved as other instruments for record, shall be prima facie evidence that the person to whom transfer is made owns the logs described thereon. [Id. sec. 4.]

TITLE 124

TRESPASS TO TRY TITLE

1. THE PLEADINGS AND PRACTICE

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7370. The possessor shall be defendant.
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2. CLAIM FOR IMPROVEMENTS

7393. Claim of improvements.
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1. THE PLEADINGS AND PRACTICE

Article 7364. [7731] [5248] [4784] Method of trying titles.—All fictitious proceedings in the action of ejectment are abolished. The method of trying titles to lands, tenements or other real property shall be by action of trespass to try title. [Act Feb. 5, 1840; G. L. vol. 2, p. 310.]

Art. 7365. [7732] [5249] [4785] Rules in other cases observed.—The trial shall be conducted according to the rules of pleading, practice and evidence in other cases in the district court, and conformably to the principles of trial by ejectment, except as herein otherwise expressly provided. [Id.]

Art. 7366. [7733] [5250] [4786] Requisites of petition.—The petition shall state:

1. The real names of the plaintiff and defendant and their residence, if known.

2. It shall describe the premises by metes and bounds, or with sufficient certainty to identify the same, so that from such description possession thereof may be delivered, and state the county or counties in which the same are situated.

3. The interest which the plaintiff claims in the premises, whether it be a fee simple or other estate; and, if he claims an undivided interest, he shall state the same and the amount thereof.

4. That he was in possession of the premises or entitled to such possession.

5. That the defendant afterward unlawfully entered upon and dispossessed him of such premises, stating the date, and withholds from him the possession thereof.

6. If rents and profits or damages are claimed, such facts as show the plaintiff to be entitled thereto and the amount thereof.

7. It shall conclude with a prayer for the relief sought. [Id. P. D. 5292.]

Art. 7367. [7734] [5251] [4787] Indorsement on petition.—The plaintiff shall indorse on his petition that the action is brought as well to try title as for damages. [Id. P. D. 5294.]

Art. 7368. [7735] [5252] [4788] Warrantor, etc., may be made a party.—When a party is sued for lands, the real owner or warrantor may make himself, or may be made, a party defendant in the suit, and shall be entitled to make such defense as if he had been the original defendant in the action.

Art. 7369. [7736] [5253] [4789] Landlord may become defendant.—When such action shall be commenced against a tenant in possession, the landlord may enter himself as the defendant, or he may be made a party on motion of such tenant; and he shall be entitled to make the same defense as if the suit had been originally commenced against him. [Id. P. D. 5296.]

Art. 7370. [7737] [5254] [4790] The possessor shall be defendant.—The defendant in the action shall be the person in possession if the premises are occupied, or some person claiming title thereto in case they are unoccupied.

Art. 7371. [7738] [5255] May join as defendants, whom.—The plaintiff may join as a defendant with the person in possession, any other person who, as landlord, remainderman, reversioner or otherwise, may claim title to the premises, or any part thereof, adversely to the plaintiff.

Art. 7372. [7739] [5256] May file plea of "not guilty" only.—The defendant in such action may file only the plea of "not guilty," which shall state in substance that he is not guilty of the injury complained of in the petition filed by the plaintiff against him, except that if he claims an allowance for improvements, he shall state the facts entitling him to the same. [Acts 1844, p. 70; P. D. 5307; G. L. vol. 2, p. 982.]

Art. 7373. [7740] [5257] Proof under such plea.—Under such plea of "not guilty" the defendant may give in evidence any lawful defense to the action except the defense of limitation, which shall be specially pleaded. [Id.]

Art. 7374. [7741] [5258] Answer taken as admitting possession.—Such plea or any other answer to the merits shall be an admission by the defendant, for the purpose of that action, that he was in possession of the premises sued for, or that he claimed title thereto at the time of commencing the action, unless he states distinctly in his answer the extent of his possession or claim, in which case it shall be an admission to such extent only. [Act Feb. 5, 1840; P. D. 5297; G. L. vol. 2, p. 310.]

Art. 7375. [7742] [5259] What is sufficient title.—All certificates for head-right, land scrip, bounty warrant, or any other evidence of right to land recognized by the laws of this State, which have been located and surveyed, shall be deemed and held as sufficient title to authorize the maintenance of the action of trespass to try title.

Art. 7376. [7743] [5260] May demand abstract of title.—After answer filed, either party may, by notice in writing, duly served on the opposite party or his attorney of record, not less than ten days before the trial of the cause, demand an abstract in writing of the claim or title to the premises in question upon which he relies.

Art. 7377. [7744] [5261] Time to file abstract.—Such abstract of title shall be filed with the papers of the cause within twenty days after the service of the notice, or within such further time as the court on good cause shown may grant; and, in default thereof, no evidence of the claim or title of such opposite party shall be given on trial.

Art. 7378. [7745] [5262] Abstract shall state what.—The abstract mentioned in the two preceding articles shall state:

1. The nature of each document or written instrument intended to be used as evidence and its date; or

2. If a contract or conveyance, its date, the parties thereto and the date of the proof of acknowledgment, and before what officer the same was made; and,

3. Where recorded, stating the book and page of the record.

4. If not recorded in the county when the trial is had, copies of such instrument, with the names of the subscribing witnesses, shall be included.

If such unrecorded instrument be lost or destroyed,

it shall be sufficient to state the nature of such instrument and its loss or destruction.

Art. 7379. [7746] [5263] Amended abstract.—The court may allow either party to file an amended abstract of title, under the same rules, which authorize the amendment of pleadings so far as they are applicable; but in all cases the documentary evidence of title shall at the trial be confined to the matters contained in the abstract of title.

Art. 7380. [7747] [5264] Surveyor appointed, etc.—The judge of the court may, either in term time or in vacation, at his own discretion, or on motion of either party to the action, appoint a surveyor, who shall survey the premises in controversy pursuant to the order of the court, and report his action under oath to such court. If said report be not rejected for good cause shown, the same shall be admitted as evidence on the trial. [Act Feb. 5, 1840; P. D. 5294; G. L. vol. 2, p. 310.]

Art. 7381. [7748] [5265] Survey unnecessary when.—Where there is no dispute as to the lines or boundaries of the land in controversy, or where the defendant admits that he is in possession of the lands or tenements included in the plaintiff's claim or title, an order of survey shall be unnecessary. [Id. P. D. 5308.]

Art. 7382. [7749] [5266] Common source of title.—It shall not be necessary for the plaintiff to deraign title beyond a common source. Proof of a common source may be made by the plaintiff by certified copies of the deeds showing a chain of title to the defendant emanating from and under such common source. Before any such certified copies shall be read in evidence, they shall be filed with the papers of the suit three days before the trial, and the adverse party served with notice of such filing as in other cases. Such certified copies shall not be evidence of title in the defendant unless offered in evidence by him. The plaintiff may make any legal objection to such certified copies, or the originals thereof, when introduced by the defendant. [Acts 1871, S. S. p. 3; P. D. 6829; G. L. vol. 7, p. 5.]

Art. 7383. [7750] [5267] Judgment by default.—If the defendant, who has been personally served with citation according to law, fails to appear and answer by himself or attorney within the time prescribed by law for other actions in the district court, the proper judgment by default may be entered against him and in favor of the plaintiff for the title to the premises, or the possession thereof, or for both, according to the petition, and for all costs, without any proof of title by the plaintiff.

Art. 7384. [7751] [5268] Proof ex parte.—If the defendant has been cited only by publication, and fails to appear and answer by himself, or by attorney of his own selection, or if any defendant, having answered, fails to appear by himself or attorney when the case is called for trial on its merits, the plaintiff shall make such proof as will entitle him prima facie to recover, whereupon the proper judgment shall be entered.

Art. 7385. [7752] [5269] When defendant claims part only.—Where the defendant claims part of the premises only, the answer shall be equivalent to a disclaimer of the balance.

Art. 7386. [7753] [5270] When plaintiff proves part.—Where the defendant claims the whole premises, and the plaintiff shows himself entitled to recover part, the plaintiff shall recover such part and costs.

Art. 7387. [7754] [5271] May recover a part.—When there are two or more plaintiffs or defendants, any one or more of the plaintiffs may recover against one or more of the defendants the premises, or any part thereof, or any interest therein, or damages, according to the rights of the parties.

Art. 7388. [7755] [5272] The judgment.—Upon the finding of the jury, or of the court where the case is tried by the court, in favor of the plaintiff for the whole or any part of the premises in controversy, the judgment shall be that the plaintiff recover of the defendant the title or possession, or both, as the case may be, of such premises, describing them, and where he recovers the possession, that he have his writ of possession.

Art. 7389. [7756] [5273] Damages.—Where it is alleged and proved that one of the parties is in possession of the premises, the court or jury, if they find for the adverse party, shall assess the damages for the use and occupation of the premises. If special injury to the property be alleged and proved, the damages for such injury shall also be assessed, and the proper judgment shall be entered therefor, on which execution may issue; but damages shall not be assessed under this article for use and occupation or for injuries done over two years prior to the commencement of the suit. [Acts 1871, S. S., p. 3; G. L. vol. 7, p. 5.]

Art. 7390. [7757] [5274] Claim for improvements.—When the defendant or person in possession has claimed an allowance for improvements in accordance with the provisions of the succeeding subdivision, the claim for use and occupation and damages mentioned in the preceding article shall be considered and acted on in connection with such claim by the defendant or person in possession.

Art. 7391. [7758] [5275] Final judgment conclusive.—Any final judgment rendered in any action for the recovery of real estate shall be conclusive as to the title or right of possession established in such action upon the party against whom it is recovered, and upon all persons claiming from, through or under such party, by title arising after the commencement of such action.

Art. 7392. [7759] [5276] Former laws shall govern, when.—Nothing in this title shall be so construed as to alter, impair or take away the rights of parties, as arising under the laws in force before the introduction of the common law, but the same shall be decided by the principles of the law under which the same accrued, or by which the same were regulated or in any manner affected. [Acts 1871, S. S. p. 3; G. L. vol. 7, p. 5.]

2. CLAIM FOR IMPROVEMENTS

Art. 7393. [7760] [5277] Claim of improvements.—The defendant in any action of trespass to try title may allege in his pleadings that he and those under whom he claims have had adverse possession in good faith of the premises in controversy for at least one year next before the commencement of such suit, and that he and those under whom he claims have made permanent and valuable improvements on the lands sued for during the time they have had such possession, stating the improvements and their value respectively, and stating also the grounds of such claim. [Act Feb. 5, 1840; G. L. vol. 2, p. 310.]

Art. 7394. [7761] [5278] Issue as to.—Where the defendant has filed his claim for an allowance for improvements in accordance with the preceding article, if the court or jury find that he is not the rightful owner of the premises sued for, but that he and those under whom he claims have made permanent and valuable improvements thereon, being possessors thereof in good faith, the court or jury shall at the same time estimate from the testimony:

1. The value at the time of trial of such improvements as were so made before the filing of the suit not exceeding the amount to which the value of the premises is actually increased thereby.

2. The value of the use and occupation of the premises during the time the defendant was in possession thereof (exclusive of the improvements thereon made by himself or those under whom he claims), and also, if authorized by the pleadings, the damages for waste

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or other injury to the premises committed by him, not computing such annual value for a longer time than two years before suit, nor damages for waste or injury done before said two years.

3. The value of the premises recovered without the improvements made as aforesaid. [Id.]

Art. 7395. [7762] [5279] Rents and profits as offset.—If the sum estimated for the improvements exceeds the damages estimated against the defendant and the value of the use and occupation as aforesaid, there shall then be estimated against him, if authorized by the testimony, the value of the use and occupation and the damages for injury done by him or those under whom he claims, for any time before the said two years, so far as may be necessary to balance the claim for improvements, but no further; and he shall not be liable for the excess, if any, beyond the value of the improvements.

Art. 7396. [7763] [5280] Judgment for excess.—If it shall appear from the finding of the court or jury under the two preceding articles that the estimated value of the use and occupation and damages exceed the estimated value of the improvements, judgment shall be entered for the plaintiff for the excess and costs in addition to a judgment for the premises; but should the estimated value of the improvements exceed the estimated value of the use and occupation and damages, judgment shall be entered for the defendant for the excess.

Art. 7397. [7764] [5281] Writ of possession.—In any action of trespass to try title, when the lands or tenements have been adjudged to the plaintiff, and the estimated value of the improvements in excess of the value of the use and occupation and damages has been adjudged to the defendant, no writ of possession shall be issued for the term of one year after the date of the judgment, unless the plaintiff shall pay to the clerk of the court for the defendant the amount of such judgment in favor of the defendant, with the interest thereon. [Act Feb. 5, 1840; P. D. 5301; G. L. vol. 2, p. 310.]

Art. 7398. [7765] [5282] Failure of plaintiff to pay.—If the plaintiff shall neglect for the term of one year to pay the amount of said judgment in favor of the defendant, with the interest thereon as directed in the preceding article, and the defendant shall within six months after the expiration of said year, pay to the clerk of the court for the plaintiff the value of the lands or tenements, without regard to the improvements as estimated by the court or jury, then the plaintiff shall be forever barred of his writ of possession, and from ever having or maintaining any action whatever against the defendant, his heirs or assigns, for the lands or tenements recovered by such suit.

Art. 7399. [7766] [5283] Defendant failing to pay.—If the defendant or his legal representatives shall not, within six months aforesaid, pay to the clerk for the plaintiff the estimated value of the lands or tenements, as directed in the preceding article, then the plaintiff may sue out his writ of possession as in ordinary cases.

Art. 7400. [7767] [5284] Judgment.—The judgment shall recite the estimated value of the premises without the improvements, and shall also include the conditions, stipulations and directions contained in the three preceding articles, so far as applicable to the case before the court.

Art. 7401. [7768] [5285] Duty of the clerk.—If payment is made to the clerk of the court by the plaintiff or defendant, as provided in the preceding articles, such clerk shall enter a memorandum of such payment, with the date thereof, on the page of the record on which the judgment was entered; and he shall, on demand, pay the money to the party entitled, taking his receipt therefor, dated and signed on the page of the record aforesaid.

TITLE 125

TRIAL OF RIGHT OF PROPERTY

Art.
7402. Claimant must make affidavit.
7403. Bond.
7404. Condition of bond.
7405. Property delivered to claimant.
7406. Return of oath and bond.
7407. Out-county levy.
7408. Return of original writ.
7409. Jurisdiction.
7410. Docketing cause.
7411. Issue to be made up.
7412. Requisites of issue.
7413. Judgment by default.
7414. Judgment of nonsuit.
7415. Proceedings.
7416. Burden of proof.
7417. Damages.
7418. If value of property exceeds judgment.
7419. Copy of writ evidence.
7420. Failure to establish title.
7421. Execution shall issue.
7422. Time of execution.
7423. Return of property by claimant.
7424. Claim is a release of damages.
7425. Levy on other property.

Article 7402. [7769] [5286] [4822] Claimant must make affidavit.—Whenever a writ of execution, sequestration, attachment or other like writ is levied upon personal property, and such property, or any part thereof, shall be claimed by any person who is not a party to such writ, such person or his agent or attorney may make affidavit that such claim is made in good faith, and present such affidavit to the officer who made such levy. [Acts 1848, p. 140; P. D. 5310; G. L. vol. 3, p. 140.]

Art. 7403. [7770] [5287] [4823] Bond.—He shall also execute and deliver to the officer who made such levy, his bond, with two or more good and sufficient sureties, to be approved by such officer, payable to the plaintiff in such writ, for an amount equal to double the value of the property so claimed, to be assessed by such officer. When more than one writ has been levied, the bond may be made payable to all the plaintiffs in the several writs levied. Said bond shall inure to the benefit of all the plaintiffs in the several writs according to their respective priorities in time of levy. Upon the approval of such bond and delivery of the property to the claimant, the same shall be deemed in custodia legis, and shall not be taken out of his possession by any other like writ or writs; but said writs may be levied on the same by giving notice to the claimant; and in such cases the claimant's bond shall also inure to the benefit of the several plaintiffs in such writs according to their respective priorities. [Acts 1887, p. 104; G. L. vol. 9, p. 902.]

Art. 7404. [7771] [5288] [4824] Condition of bond.—The bond shall be conditioned that the party making such claim in case he fails to establish his right to such property, shall return the same to the officer making the levy, or his successor, in as good condition as he received it, and shall also pay the reasonable value of the use, hire, increase and fruits thereof from the date of said bond, or, in case he fails so to return said property and pay for the use of the same, that he shall pay the plaintiff the value of said property, with legal interest thereon from the date of the bond, and shall also pay all damages and costs that may be awarded against him.

Art. 7405. [7772] [5289] [4825] Property delivered to claimant.—The officer receiving such oath and bond shall deliver the property so claimed to the person so claiming it. [Id.]

Art. 7406. [7773] [5290] [4826] Return of oath and bond.—Whenever any person shall claim property and shall duly make the oath and give the bond, if the writ under which the levy was made was issued by a justice of the peace or a court of the county where such levy was made, the officer receiving such oath and bond shall indorse on the writ that such claim has been made and oath and bond given,

and by whom; and shall also indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath to the proper court having jurisdiction to try such claim. [Id.]

Art. 7407. [7776] [5293] [4829] Out-county levy.—Whenever any person shall claim property and shall make the oath and give the bond as provided for herein, if the writ under which such levy was made was issued by a justice of the peace or a court of another county than that in which such levy was made, then the officer receiving such oath and bond shall indorse on such bond the value of the property as assessed by himself, and shall forthwith return such bond and oath with a copy of the writ, to the justice or court of the county in which such levy was made having jurisdiction according to the value of the property as assessed by said officer.

Art. 7408. [7777] [5294] [4830] Return of original writ.—The officer taking such bond shall also indorse on the original writ that such claim has been made and oath and bond given, stating by whom, the names of the sureties and to what justice or court the bond has been returned; and he shall forthwith return such original writ to the tribunal from which it issued.

Art. 7409. [7778] [5295] [4831] Jurisdiction.—Cases arising under this chapter shall be tried in courts having jurisdiction of the amount involved. [Const. art. 5, secs. 8, 16, 19.]

Art. 7410. [7779] [5296] [4832] Docketing cause.—Whenever any oath and bond for the trial of the right of property shall be returned, the clerk of the court, or such justice of the peace, shall docket the same in the name of the plaintiff in the writ as the plaintiff, and the claimant of the property as defendant. [Acts 1848, p. 140; P. D. 5312; G. L. vol. 3, p. 140.]

Art. 7411. [7780] [5297] [4833] Issue to be made up.—At the first term of the court thereafter, if both parties appear, the court or justice shall direct a written issue to be made up between the parties and tried as in other cases. [Id.]

Art. 7412. [7781] [5298] [4834] Requisites of issue.—Said issue shall consist of a brief statement of the authority and right by which the plaintiff seeks to subject the property levied on to his execution, and of the nature of the claim of the defendant thereto. [Id.]

Art. 7413. [7782] [5299] [4835] Judgment by default.—If the plaintiff appears and the defendant fails to appear or neglects or refuses to join issue under the direction of the court or justice within the time prescribed for pleading, the plaintiff shall have judgment by default. [Id.]

Art. 7414. [7783] [5300] [4836] Judgment of non-suit.—If the plaintiff does not appear at the first term, the case shall be continued to the next term, when, if he appears, the like proceedings may be had as at the first term; but if he does not then appear on or before the appearance day of the third term, he shall be non-suited. [Id.]

Art. 7415. [7784] [5301] [4837] Proceedings.—The proceedings and practice on the trial shall be as nearly as may be the same as in other cases before such court or justice.

Art. 7416. [7785–7786] Burden of proof.—If the property was taken from the possession of the claimant, the burden of proof shall be on the plaintiff. If it was taken from the possession of the defendant in such writ, or any other person than the claimant, the burden of proof shall be on the claimant. [Id.]

Art. 7417. [7787] [5304] [4840] Damages.—In all trials of the right of property under the provisions of this title, if the claimant shall fail to establish his right to the property, the court or justice trying the same shall give judgment against all the obligors in the claimant's bond for ten per cent damages on the value of the property. [P. D. 5314.]

Art. 7418. [7788] [5305] [4841] If value of property exceeds judgment.—When such value is greater than the amount claimed under the writ, by virtue of which such property was levied upon, the damages shall be on the amount claimed under said writ. [Id.]

Art. 7419. [7789] [5306] [4842] Copy of writ evidence.—In all trials of the right of property, under the provisions of this title, in any county other than that in which the writ issued under which the levy was made, the copy of the writ herein required to be returned by the officer making the levy shall be received in evidence in like manner as the original could be.

Art. 7420. [7790] [5307] [4843] Failure to establish title.—Where any claimant of property shall fail to establish his right thereto judgment shall be rendered against him and his sureties for the value of the property, with legal interest thereon from the date of such bond. Such judgment shall be rendered in favor of the plaintiff in the writ, or of the several plaintiffs, if more than one, and shall fix the amount of each plaintiff's claim. [Acts 1887, p. 104; G. L. vol. 9, p. 902.]

Art. 7421. [7791] [5308] Execution shall issue.—If such judgment should not be satisfied by a return of the property, then execution shall issue thereon in the name of the plaintiff for the amount of his claim, or of all the plaintiffs for the sum of their several claims, provided the amount of such judgment exceeds such claim or sum. In such cases the excess of such judgment shall inure to the benefit of any person who shall show superior right or title to the property claimed as against the claimant; but if such judgment be for a less amount than the sum of the several plaintiffs' claims, then the respective rights and priorities of the several plaintiffs shall be fixed and adjusted in the judgment. [Id.]

Art. 7422. [7792] [5309] [4844] Time of execution.—No execution shall issue for ten days on such judgment.

Art. 7423. [7793] [5310] [4845] Return of property by claimant.—If, within ten days from the rendition of said judgment, the claimant shall return such property in as good condition as he received it, and pay for the use of the same together with the damages and costs, such delivery and payment shall operate as a satisfaction of such judgment.

Art. 7424. [7794] [5311] [4846] Claim is a release of damages.—A claim made to property, under the provisions of this chapter, shall operate as a release of all damages by the claimant against the officer who levied upon said property.

Art. 7425. [7795] [5312] [4847] Levy on other property.—Proceedings for the trial of the right of property, under the provisions of this title, shall in no case prevent the plaintiff in the writ from having a levy made upon any other property of the defendant. [P. D. 5318.]

TITLE 125A

TRUSTEES

Art.
7425a. Conveyance by trustees.
7425b. Payment of money to trustees.

Article 7425a. Conveyance by trustees.—Where a trust is created, but is not contained or declared in the conveyance to the trustee, or when a conveyance or transfer is made to a trustee without disclosing the names of the beneficiary, or beneficiaries, the trustee shall be held to have the power to convey or transfer or encumber the title and whenever he shall execute and deliver a conveyance or transfer or encumbrance of such property, as trustee, such conveyance or transfer

or encumbrance shall not thereafter be questioned by any one claiming as a beneficiary under such trust or by any one claiming by, through, or under an undisclosed beneficiary, provided that none of the trust property in the hands of said trustee shall be liable for personal obligations of said trustee. [Acts 1925, 39th Leg., ch. 120, p. 305, § 1.]

Art. 7425b. Payment of money to trustees.—Whenever one shall actually and in good faith pay a sum of money to a trustee, which the trustee is authorized to receive, he shall not be responsible for the proper application of the money, according to the trust; and any right or title derived from the trustee in consideration of such payment shall not be impeached or called in question in consequence of a misapplication by the trustee of the money so paid. [Acts 1925, 39th Leg., ch. 120, p. 305, § 2.]

TITLE 126

TRUSTS—CONSPIRACIES AGAINST TRADE

1. DEFINITIONS, FORFEITURES AND OTHER PROVISIONS

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1. DEFINITIONS, FORFEITURES AND OTHER PROVISIONS

Article 7426. [7796] "Trusts."—A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for either, any or all of the following purposes:

1. To create, or which may tend to create, or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by laws of this State.

2. To fix, maintain, increase or reduce the price of merchandise, produce or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance, or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or business of transportation or insurance, or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity, or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business, or from the purchase or sale of merchandise, produce or commodities partially or entirely within the State of Texas, or any portion thereof. [Acts 1903, p. 119.]

Art. 7427. [7797] "Monopoly" defined.—A monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first article of this chapter.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise. [Id.]

Art. 7428. [7798] Conspiracies against trade.—Either or any of the following acts shall constitute a conspiracy in restraint of trade.

1. Where any two or more persons, firms, corporations or associations of persons, who are engaged in buying or selling any article of merchandise, produce or any commodity enter into an agreement or understanding to refuse to buy from or sell to any person, firm, corporation or association of persons, any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons, shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons. [Id.]

Art. 7429. [7799] Acts illegal.—Any and all trusts, monopolies and conspiracies in restraint of trade, as herein defined, are prohibited and declared to be illegal. [Id.]

Art. 7429a. Endless chain schemes or plans.—Sec. 1. That for the purpose of this Act the term "Endless Chain" shall be construed to mean and include any plan or scheme wherein any person, firm or corporation, sells, transfers, assigns, or issues to any person any right, property, ticket, coupon, certificate, contract, or other token, and wherein the purchaser, transferee or assignee thereof or the person to whom the same is issued undertakes or is required or is permitted to undertake for himself, or as the agent, representative, or attorney of any person, firm or corporation, to sell,

transfer, assign, or issue to another any right, property, ticket, coupon, certificate, contract or other token which may under certain conditions entitle the purchaser or recipient thereof to any right, property, ticket, coupon, certificate, contract, or other token and wherein the purchasers, transferees or assignees thereof from the original purchasers, assignees, or transferees, or from subsequent purchasers, assignees, or transferees, are also given as a consideration for their entry into or participation in such plan or scheme and their purchase or receipt of such right, property, ticket, coupon, certificate, contract or other token, the right, privilege or obligation of making further sales, assignments, or transfers of any right, property, ticket, coupon, certificate, contract or other token.

Each person, firm or corporation carrying on and conducting any system of merchandising by means of an endless chain, as herein defined, as a principal, shall be known for the purpose of this Act as a dealer.

Every person, firm or corporation engaged in the sale, transfer, issuing or assignment of any right, property, ticket, coupon, certificate, contract, or other token in connection with any system of merchandising by means of an endless chain, as herein defined, otherwise than as a principal, shall be known for the purposes of this Act as an agent.

Sec. 2. That it shall be unlawful for any dealer, or agent to operate, conduct or carry on, or to cause to be operated, conducted, or carried on in the State of Texas any system of merchandising by means of an endless chain, as herein defined, without having first obtained from the county tax collector of the county in which such business is to be conducted a license authorizing said dealer or agent to engage in such business.

Sec. 3. That it shall be unlawful for any agent, as defined by this Act, to sell or offer for sale or to solicit or canvass in connection with any endless chain, without having first applied to and obtained from the county tax collector of the county in which he proposes to engage in the endless chain business, a license authorizing him to pursue such business.

Sec. 4. That each dealer or agent, as herein defined, shall pay in advance to the county tax collector of the county in which he proposes to engage in the endless chain business, an annual occupation tax of $25.00, and it shall be unlawful for said dealer or agent to engage in such business prior to paying said tax. [Acts 1927, 40th Leg., p. 324, ch. 220.]

Art. 7430. [7800] Charters forfeited.—The charter of any corporation chartered under the laws of this State, adjudged guilty of violating any provision of this subdivision may be forfeited at the request of the Attorney General, if in the judgment of the court before whom the litigation is pending, the public interest requires it, provided, the forfeiture of the charter shall be in addition to all other penalties prescribed by law. [Acts 1903, p. 119; Acts 1923, p. 12.]

Art. 7431. [7801] Quo warranto proceedings.—For a violation of any provision of this subdivision or any anti-trust laws of this State, by any corporation, it shall be the duty of the Attorney General, when in his judgment the public interest requires it, upon his motion and without leave or order of any judge or court, to institute suit, or quo-warranto proceedings in Travis County, or at the county seat of any county in the State which the Attorney General may select, for the forfeiture of its charter rights and privileges, and the dissolution of its corporate existence, and for such purpose venue is hereby given to each district court in the State of Texas. [Acts 1903, p. 119; Acts 1909, p. 281; Acts 1923, p. 12.]

Art. 7432. [7802] Successors are prohibited from doing business.—When a corporation organized under the laws of this State shall have been convicted of a violation of any provision of this subdivision and its charter and franchise has been forfeited, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas. [Acts 1903, p. 119.]

Art. 7433. [7803] Foreign corporations.—When any foreign corporation is adjudged guilty of violating any provision of this subdivision or any anti-trust law of this State, the Attorney General may bring suit in the district court of Travis County for the purpose of enjoining and forever prohibiting such corporation from doing business in this State, and if in the judgment of the court the public interest requires it, the injunction shall be granted, provided the denial of the right to do business in this State to any foreign corporation adjudged guilty of violating the anti-trust laws shall be in addition to all other penalties prescribed by law. [Acts 1903, p. 119; Acts 1923, p. 12.]

Art. 7434. [7804] Quo-warranto proceedings.—The laws governing quo-warranto, shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this title. [Id.]

Art. 7435. [7805] Rights of convicted foreign corporations.—When any foreign corporation has been convicted of a violation of any of the provisions of this subdivision and its right to do business in this State has been forfeited, as provided in the second preceding article, then, before such corporation or any other corporation to which such corporation may have transferred its properties and business or which has assumed its obligations, shall be permitted to incorporate or do business in Texas, it shall be required to go into the court where the original judgment of forfeiture was entered and show that it has fully obeyed the decree of court forfeiting its charter and has satisfied in full all fines and penalties assessed against it. It shall further show that it has so organized or reorganized its affairs and business that if permitted to do business in Texas, it can and will do so without violating any law of this State; and particularly that it has no connection with any person, firm, or corporation engaged in violating the laws against trusts and monopolies, and is not itself so engaged. No such action shall be instituted within five years from the date of such original conviction. Any corporation which shall be convicted a second time of a violation of any provision of this title shall be forever barred from instituting any such action hereunder. Whereupon and after a hearing had, after the notice to the Attorney General herein provided, the court may modify or reform such judgment so as to permit such corporation to incorporate, or secure a permit and do business in Texas, and such modified or reformed judgment shall be by the clerk of said court certified to the Secretary of State for action by him in conformity therewith. Nothing in this article shall in any manner affect any judgment hereafter rendered by any court against any corporation, its agent, or employés or successors.

Notice of filing of such proceeding and the taking of evidence shall be served upon the Attorney General whose duty it shall be to represent the State in such proceeding. The court may require the production of all books and records and may appoint a commission to take testimony, either within or without the State. The expense of the entire proceeding, including reasonable attorney's fees, the amount of which to be determined by the judge trying the case, and the same to be paid to the attorney representing the State, and same to be delivered by such attorney to the State Treasurer and by him deposited to the account of the general revenue fund of the State. The court, after modifying or reforming the judgment, as provided herein, shall retain jurisdiction of the case and at any time thereafter shall, upon showing that said corporation is violating the laws against trusts or monopolies, or has connection with any person, firm, or corporation engaged in violation of the laws against trusts or monopolies, set aside any order or judgment entered, in which event all proceedings based thereon, including all transfers of any and all properties shall be nullified, and it shall be the duty of the Attorney General, for good cause, to enter proceedings to set aside and nullify the modified judgment of the court and its proceedings, as herein provided. If the Court shall, after the hearing provided for, refuse to modify

or reform such judgment, no permit shall be issued by the Secretary of State to such corporation or to any other corporation to which its properties or business have been transferred or which has assumed the payment of its obligations. [Acts 1903, p. 119; Acts 1917, p. 63; Acts 1919, p. 48.]

Art. 7436. [7806] Penalties; venue; fees.—Each firm, person, corporation or association of persons, who shall in any manner violate any provision of this subdivision shall, for each day that such violation shall be committed or continued, forfeit and pay a sum of not less than fifty nor more than fifteen hundred dollars, which may be recovered in the name of the State of Texas in the district court of any county in the State of Texas, and venue is hereby given to such district courts. When any such suit shall have been filed in any county and jurisdiction thereof acquired, it shall not be transferred to any other county, except upon change of venue allowed by the court. It shall be the duty of the Attorney General or the district or county attorney under the direction of the Attorney General, to prosecute for the recovery of the same. The fees of the district or county attorney for representing the State in all anti-trust proceedings, or for the collection of penalties for the violation of the anti-trust laws of this State, shall be ten per cent of the amount collected up to and including the sum of fifty thousand dollars, and five per cent of all sums in excess of the first fifty thousand dollars, to be retained by him when collected, and all such fees which he may collect shall be over and above the fees allowed under the general fee bill. The provisions of this subdivision as to fees allowed the prosecuting attorney shall not apply to any case in which judgment has heretofore been rendered in any court nor to any monies to be hereafter collected upon such judgment heretofore rendered in any court, whether such judgment or judgments are pending upon appeal or otherwise. The district or county attorney who joins in the institution or prosecution of any suit for the recovery of penalties for a violation of any of the anti-trust laws of this State, who shall, previous to the collection of such penalties, cease to hold office, shall be entitled to an equal division with his successor of the fee collected in said cause. In case of the employment of special counsel by any such district or county attorney, the contract so made shall be binding upon such prosecuting officer making such contract and thereafter retiring from office. In case any suit is compromised before any final judgment in the trial court is had, then the fees herein provided for shall be reduced one-half. [Acts 1903, p. 119; Acts 1909, p. 281.]

Art. 7437. [7807] All agreements in violation of, void.—Any contract or agreement in violation of any provision of this subdivision shall be absolutely void and not enforcible either in law or equity. [Acts 1903, p. 119.]

Art. 7438. [7808] Actions to have precedence.—All actions authorized and brought under this subdivision on motion of the attorney for the State, shall have precedence of all other business, civil or criminal, except criminal cases where the defendants are in jail. [Id.]

2. EVIDENCE IN TRUST CASES

Art. 7439. [7810] Evidence preliminary to prosecutions.—Upon the application of the Attorney General, or of any of his assistants, or of any district or county attorney, acting under the direction of the Attorney General made to any county judge or any justice of the peace in this State, stating that he has reason to believe that a witness who is to be found in the county in which such county judge or justice of the peace is an officer, knows of a violation of any provision of the preceding subdivision, it shall be the duty of such county judge or justice to have summoned as in criminal cases and to have examined such witness in relation to violations of any provision of said subdivision. The said witness shall be duly sworn; and the county judge, or justice of the peace, shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, and such sworn statement shall be delivered to the attorney upon whose application the witness was summoned. Should the witness summoned as aforesaid fail to appear or to make sworn statements of the facts within his knowledge or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. [Acts 1907, p. 221.]

Art. 7440. [7811] Testimony; books and papers.—Whenever any suit shall be instituted, or is pending in any court of competent jurisdiction in this State by the Attorney General, or by any district or county attorney acting under his direction against any corporation, individual, association of individuals, joint stock association or co-partnership, under any law of this State, against trusts, monopolies or conspiracies in restraint of trade, or under any laws of this State regulating or controlling corporations, domestic or foreign, the Attorney General, district or county attorney, as the case may be, may, in addition to the means provided by law, examine and procure the testimony or evidence of witnesses and have books, papers and documents produced as evidence in the manner herein provided. [Acts 1907, p. 16.]

Art. 7441. [7812] Evidence, how taken.—Whenever any action is commenced or is pending as contemplated in the preceding article, by the Attorney General, or by any district or county attorney acting under his direction, and said officer representing the State, either upon the trial of the case, or in preparation for the trial thereof, desires to take the testimony of any officer, director, agent or employé of any foreign or domestic corporation or joint stock association proceeded against, or in case of any co-partnership, any member thereof, or in case of any individual or individuals, either of them, and the person or persons whose testimony is desired resides either within or without said State, the said officer shall file in said court where the action is brought, either in term time or in vacation, or with any special commissioner who may be appointed by the court to take testimony, as provided for in this law, a written statement setting forth the name and residence of each person whose testimony he desires to take, and in a general way shall designate any books, papers or documents he desires produced, and the time when and the place where either within or without this State, he desires such person to appear, and testify or to produce books, papers and documents, if any are desired. Thereupon the judge of said court, or the commissioner, before whom said testimony is being or shall be taken, shall immediately issue written notice, directed to the attorney or attorneys of record in said cause, or the agent, officer, or employé of any corporation or joint stock association, or directed to the attorney or attorneys of record of any co-partnership, individual or individuals, or to any member of such co-partnership or to any individual or individuals who are defendant or defendants in said action, notifying said attorney or attorneys of record, or officer, agent or employé, aforesaid, or member or members of any co-partnership, or individual, that the testimony of each person named in said notice is desired, and requiring said attorney or attorneys of record, or such officer, agent or employé aforesaid, or member of such co-partnership, or any individual to whom said notice is delivered, or upon whom the same is served, to notify and have said witness or witnesses, whose testimony or evidence it is desired to take, at the time and place named in said notice, before the court or special commissioner named, then and there to testify, and then and there to have and produce such books, papers and documents as are called for, and for any of the purposes herein provided. The court or the commissioner may continue

the taking of such evidence from day to day, or adjourn from day to day at the same place until the same has been concluded. [Id.]

Art. 7442. [7813] Judgment on failure to produce books, papers, etc.—Whenever any officer, director, agent or employé of any foreign or domestic corporation, or joint stock association, authorized to do business in this State, or any member of any co-partnership or any individual, against whom suit has been filed, or is pending, as provided for in this title, or the attorney or attorneys of record of any such corporation, joint stock association, co-partnership, or individual shall be notified in accordance with the provisions of this title that any of the books, papers or documents belonging to such corporation, joint stock association, co-partnership or individual, are wanted before the court, or special commissioner as provided in this title, it shall be the duty of such defendant corporation, joint stock association, co-partnership, or individual, as the case may be, to produce and present, or cause to be produced and presented, as required in said notice, all such books, papers and documents belonging to any such defendant, or under such defendant's control, as may be specified in said notice, in court or before said special commissioner, at the time and place so specified. In the event of the failure or refusal of any such corporation, joint stock association, co-partnership or individual, to comply with any of the provisions of this article, it shall be the duty of the court, upon motion of the officer representing the State, to strike out all the pleadings, answers, motions, reply or demurrer theretofore or thereafter filed in such case by such defendant corporation, joint stock association, co-partnership or individual and render judgment by default against any such defendant. [Id.]

Art. 7443. [7814] Notice to attorneys on failure to produce.—Whenever any attorney or attorneys of record, or any agent, officer or employé of any corporation or joint stock association, proceeded against as herein provided, shall be notified that any officer, director, agent or employé of any such corporation or joint stock association is wanted before said court, or any special commissioner, as provided herein, to give his testimony or to produce any such books, papers or documents of said corporation or joint stock association, as the case may be, or if any attorney or attorneys of record of any co-partnership or individual shall be notified that any member or members of said co-partnership or any individual who are defendants in any such action are desired as witnesses, or to produce books, papers or documents before any court, or before any special commissioner appointed to take testimony in said proceeding, it shall be the duty of such attorney or attorneys of record, or any such officer, director, agent or employé to immediately notify any such person of the time and place where he shall attend and give his testimony, or produce any such books, papers or documents, if any are desired. If any person whose testimony is desired, as herein provided, shall fail to appear, or appearing shall refuse to testify, or shall fail to produce whatever books, papers, or documents he or they may be ordered to produce, as before provided, then it shall be the duty of the court, upon motion of the Attorney General, district or county attorney, on proof of such refusal, failure or dereliction, to strike out the answer, motion, reply, demurrer or other pleading theretofore or thereafter filed in such action, by said delinquent defendant, who has himself, or being a corporation or joint stock association, whose officer, agent, director, or employé, as herein provided, has refused or failed to attend and testify, or to produce all books, papers or documents demanded, which were in the custody or subject to the control of such witness or witnesses, or corporation or joint stock association. Said court shall, in the event of any such refusal or failure, proceed to render judgment by default against any such defendant; provided, that if any such defendant shall file a written sworn denial, in said court, setting forth that such failure or refusal did not arise by reason of any fault or procurement of defendant, the court shall hear evidence upon that issue; and if the defendant shows to the satisfaction of the court that any witness who failed to attend did not do so at the instance or procurement of said defendant, or that the books, papers or documents demanded were not in its possession or control and could not be produced, and that such defendant had complied with all the provisions of this title within such defendant's power to perform, then in that event the answer, motion, reply, demurrer or other pleadings shall not be stricken out or judgment by default taken because of the failure of the witness to attend, who could not be so procured, or because of the failure to produce the books, papers or documents not in the possession or under the control of such defendant; but the court shall have the power to enter such further orders in respect to the matter in controversy as it may deem necessary for the proper administration of justice. In any proceeding had before a special commissioner, as herein provided, the certificate of the special commissioner showing the failure or refusal of any such witness or witnesses to appear and testify, or to produce any books, papers or documents desired, shall be sufficient prima facie evidence of such failure, refusal or dereliction on the part of any such defendant, when same is filed in court. Any witness attending any proceeding herein provided for in compliance with any notice or subpœna issued by authority of this law shall receive as compensation one dollar per day for each day of his attendance and four cents per mile traveled, computed upon the shortest practical route. Any claim for fees and mileage shall be filed with the court, or special commissioner, and sworn to by said witness and shall be taxed up as costs, and collected as other costs in civil cases. [Id.]

Art. 7444. [7815] Special commission to take testimony.—The court or presiding judge thereof, in which any proceeding as herein provided is pending, in term time or in vacation, upon application therefor made by the Attorney General, or district or county attorney acting under his direction, shall appoint some well qualified disinterested person as special commissioners to take testimony in any such case, at any point either within or without the State, as designated in such application; or where requested by either party to said cause of action, upon the issues joined in said cause. Such special commissioner shall have full power and authority to issue notices provided for in the third preceding article and to issue subpœnas for witnesses, compelling the attendance of such witnesses, the production of books, papers or documents, to issue attachments, to punish for contempt to the same extent as provided by law for said court, to administer oaths to witnesses, to have all witnesses examined orally, which testimony shall be reduced to writing, and may be taken down by a competent stenographer and transcribed, and shall be signed and sworn to by said witness. The person appointed as special commissioner in any case shall qualify by taking the Constitutional oath of office, and shall, with all convenient speed, certify and return the testimony taken by him to the court appointing him. Said commissioner shall note all objections to the testimony and shall not exclude any testimony. All questions as to the materiality or admissibility of same shall be reserved for the court trying the case. Such testimony so taken may be read in evidence upon the trial of the suit in which same was taken, subject to any legal objections which might be made to same. The compensation of such commissioner shall be his actual expenses in traveling and such fees as are allowed a notary public in taking depositions, to be taxed up as costs and collected as in civil cases. [Id.]

Art. 7445. [7816] Notice to witnesses.—When any notice is issued and served, as provided for in this subdivision, ten full days exclusive of the day of service shall elapse before any witness so requested shall be compelled to appear and testify, or produce any books, papers or documents called for. If the taking

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

of testimony shall not be concluded on the date named in said notice, each witness shall remain in attendance from day to day until same is completed or said witness is finally discharged by the court, or commissioner, as the case may be. Service of said notice and the return thereon may be made by any sheriff or constable of this State, or by any disinterested person competent to make oath of the fact, and shall be made by delivery to each person or attorney to be served a true copy of such notice. Return of such service shall be indorsed on or attached to the original notice; it shall state when the same was served and the manner of service and upon whom served, and shall be signed. If served by a person other than an officer, it shall be sworn to by the party making the service before some officer authorized by law to take affidavits. [Id.]

Art. 7446. [7810–17] Witnesses exempt from prosecution.—Any person who shall testify before any county judge or justice of the peace as provided for in this title, or any witness for the State who shall testify or produce any books, papers or documents in any proceeding or examination under the provisions of this title, shall not be subject to indictment or prosecution for any transaction, matter or thing, concerning which he truthfully testifies or produces evidence, documentary or otherwise. [Acts 1907, pp. 16, 221.]

Art. 7447. [7818] Provisions cumulative.—The provisions of this subdivision shall be cumulative of all laws of this State, and shall not be construed as repealing any other law relating to the taking of testimony or evidence; but shall be construed as providing an additional means of securing evidence for the enforcement of the laws, as herein provided. [Acts 1907, p. 16.]

TITLE 127

VETERINARY MEDICINE AND SURGERY

Art.
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7457. Examinations.
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Article 7448. Board of examiners.—There shall be a board known as the "State Board of Veterinary Medical Examiners," to consist of seven qualified veterinarians who shall have resided and practiced veterinary medicine and surgery in this State under a diploma from a legal reputable college of veterinary medicine for more than five years prior to their appointment. The Governor shall biennially appoint said board within ninety days after his inauguration from a list of eligible practitioners of veterinary medicine furnished by the secretary of the State Veterinary Medical Association. A stockholder or a member of the faculty or board of trustees of any veterinary college shall not be eligible for appointment. The term of office of its members shall be two years. The board may prescribe rules, regulations and by-laws in harmony with the provisions of this title, for its own government and proceedings for the examination of applicants for the practice of veterinary medicine and veterinary surgery. [Acts 2nd C. S. 1919, p. 143.]

Art. 7449. Meetings.—At the first meeting of said Board after each biennial appointment the Board shall elect a president, vice-president and secretary-treasurer. Regular meetings shall be held at least twice each year at such time and places as shall be deemed most convenient for applicants for examination. Special meetings may be held upon a call of four members. Due notice of such meetings shall be given by publication in such papers as may be selected by the Board. [Id.]

Art. 7450. Record of proceedings.—The board shall preserve a record of its proceedings in a book kept for that purpose, showing the name, age and place and duration of residence of each applicant, the time spent in study in medical school, and the year and school from which degrees were granted; or where the applicant qualifies as having been engaged in the practice of veterinary medicine in Texas prior to 1911, the same shall show the age, name and place and duration and residence, and the number of years engaged in the practice of veterinary medicine in Texas. Said record shall show whether applicants were rejected on examination or licensed, and shall be prima facie evidence of all matters contained therein. The secretary of the board shall transmit an official copy of said register to the Secretary of State for permanent record, certified copies from which with hand and seal of the secretary of said board or the Secretary of State shall be admitted in evidence in all courts. [Id.]

Art. 7451. Practicing without registering.—No person shall practice veterinary medicine or veterinary surgery in any of its branches, including veterinary dentistry, within the limits of this State, unless and until such person shall have complied with the provisions of this title, and it shall further be unlawful for any person to so practice who has not registered in the district clerk's office of the county in which he resided, his authority for so practicing, as herein prescribed, together with his age, post-office address, place of birth and name of school of veterinary medicine from which he graduated. [Id.]

Art. 7452. Exceptions.—Nothing in this title shall prohibit any person, who has heretofore registered as a veterinary surgeon in the county of his residence according to the provisions of Chapter 76 of the Acts of the Regular Session of the Thirty-second Legislature who had previous to the year 1911 practiced veterinary medicine or veterinary surgery as his principal occupation for five years in the State of Texas prior to the year 1911, from practicing in the county of his residence only by securing a license from the State Board of Veterinary Medical Examiners by filing satisfactory evidence of his former compliance with the requirements of said Act of the Thirty-second Legislature, together with an affidavit that he has practiced veterinary medicine or veterinary surgery continuously for five years prior to 1911, in which affidavit he shall state the place where he has so practiced veterinary medicine or veterinary surgery together with his place of residence during said period. Upon the face of such license shall be printed the words "non-graduate." It shall be unlawful for any person to register under the five year practicing clause of this article, but the object of this provision is to permit persons who have heretofore lawfully registered to continue practicing under the five year clause. The fact of such oath shall be endorsed upon the certificate or license as the case may be, but if such person shall remove from such county of residence, he shall comply with all the requirements of this law before he shall be allowed to practice. Nothing in this title shall be so construed as to apply to commission or contract veterinarians in the employ of the United States or the Bureau of Animal Industry of the United States Department of Agriculture in the performance of their duties as such, but shall not engage in private practice, nor to legally qualified veterinarians of other States called in consultation but who do not open offices in this State nor to prohibit the sale by licensed druggists of remedies which they recommend for the cure of diseases of animals. [Id.]

Art. 7453. Register.—Each district clerk shall keep a book of suitable size to be known as the "Veterinary Medical Register" and record therein the name and record of each veterinary practitioner who presents a certificate from the State Board of Veterinary Examiners. The clerk shall receive the sum of one dollar from each person so registered, which shall be his full compensation for all duties required under this title. When any person registered in said book shall die, remove from the county or have his license revoked, it shall be the duty of said clerk to make note of the facts thereof at the bottom of the page containing the record of such person as closing the record. On the first day of January of each year said clerk shall on request of the board, certify to the office of said board a correct list of the veterinarians then registered in the county, together with such other information as said board may require. A copy from said register pertaining to any person, certified by said clerk under the seal of said court, on a certificate issued by said officer certifying that any person named therein has or has not registered in said office as required by this title shall be admitted as evidence in all trial courts. [Id.]

Art. 7454. Reciprocity.—The board may at its discretion arrange for reciprocity in license with the authorities of other States and territories having requirements equal to those established by this law. License may be granted applicants for license under such reciprocity upon payment of twenty dollars.

Art. 7455. Applications for examination.—Each applicant to practice veterinary medicine in this State, not otherwise licensed under the provisions of this title, must successfully pass an examination before the board of veterinary medical examiners. Applicants to be eligible for examination must present satisfactory evidence to the board that they are over twenty-one years of age, of good moral character, and graduates of bona fide reputable veterinary medical schools. A bona fide veterinary medical school shall be one whose requirements for a degree and whose equipment is such as is at present required for recognition by the Bureau of Animal Industry of the United States Department of Agriculture, or the American Veterinary Medical Association. Application for examination must be made in writing under affidavit to the secretary of the board, accompanied by the sum of fifteen dollars. Such applicants shall be given due notice of the date and place of examination. In case any applicant because of failure to pass examination be refused a license, such person may be permitted to take a second examination without additional fee. [Id.]

Art. 7456. Compensation.—The fund realized from the aforesaid fees shall be applied first to the payment of the necessary expenses of the board; any remaining funds shall be applied by order of the board to compensating members of the board at ten dollars per day. It shall be unlawful for the board or any member thereof in any manner or for any purpose to charge or obligate the State for the payment of any money and the members of said board shall look alone to the revenue derived from the operation of this title for compensation and for the expenses of conducting said board. [Id.]

Art. 7457. Examinations.—All examinations shall be conducted in writing in such manner as shall be entirely fair and imparital [impartial]. The applicants to be known by numbers without names or other methods of identification on examination papers by which members of the board may be able to identify such papers until after the applicants have been granted licenses or rejected. Examinations shall be conducted on the scientific branches of veterinary medicine only, and shall include veterinary anatomy, veterinary pathology, chemistry, veterinary obstetrics, veterinary materia medica, veterinary sanitary science, veterinary practice, and veterinary jurisprudence, and veterinary physiology and bacteriology. Upon satisfactory examination under the rules of the board, applicants shall be granted license to practice veterinary medicine. All questions and answers with grades attached shall be preserved for one year and any person rejected shall be entitled to examine his said answers and the grades attached thereto. All applicants examined at the same time shall be given identical questions in each of the above branches. All certificates shall be signed by a majority of said board and atttested [attested] by its seal. [Id.]

Art. 7458. Revocation of license.—The right to practice veterinary medicine in this State may be revoked by any court of competent jurisdiction upon proof of the violation of the law in any regard thereto or for any cause for which the State Board of Veterinary Medical Examiners is authorized by law to refuse to admit to its examinations as hereinafter provided. The several district and county attorneys of this State shall file and prosecute appropriate proceedings in the name of the State for violations thereof on request of any member of said Board. [Id.]

Art. 7459. Qualifications.—The State Board of Veterinary Medical Examiners may refuse to admit to its examinations or to issue the certificate provided for by this law for any of the following causes: The presentation to the Board of any license, certificate or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination; conviction of crime of the grade of felony, or one which involves moral turpitude; other grossly unprofessional or dishonorable conduct of a character likely to deceive or defraud the public; or for habits of intemperance or drug addiction calculated to endanger the lives of patients. Any applicant who may be refused admittance to examination before said board shall have his right of action to have such issue tried in the district court in the county in which some member of the board resides. [Id.]

Art. 7460. Who are veterinarians.—Any person shall be deemed as practicing veterinary medicine or veterinary surgery or dentistry who professes publically to be a veterinary physician, surgeon, or dentist, or who appends to his name any initials or title implying qualifications to practice veterinary medicine or who shall treat, operate or prescribe for any physical ailment or deformity of any domestic animal for which he shall receive compensation, either direct or indirect, or any county demonstration or farm demonstration agent while in the employment of any county, State or Federal government on a salary for treating or attempting to treat any animal for any disease, ailment or deformity. Nothing in this law shall apply to persons not so employed gratuitously treating animals. The operation known as "Dehorning," "Castrating," or spaying shall not be construed as the practice of veterinary medicine or surgery nor the vaccination of cattle for blackleg as the practice of veterinary medicine. [Id.]

Art. 7461. Certificates and licenses.—On or before March 1st each year, each practicing veterinary physician in the State shall file with the secretary of the board of veterinary examiners his application for renewal of his license to practice. Said application shall be made on forms to be furnished by the board on which shall appear the name, age, and residence of the applicant, and whether practicing under a license issued by the board after examination or whether under the provisions of Chapter 76, Acts 1911, as to the practice of veterinary medicine for five years prior to 1911. All such applications shall be accompanied by a fee of one dollar. If any person practicing veterinary medicine or veterinary surgery shall fail for a period of sixty days after the expiration of his license to make application to the board for its renewal, his name shall be erased from the register of licensed veterinarians, and before he may again practice veterinary medicine he shall be requird [required] to take the examination before the board, unless he has been prevented from applying for renewal for good cause, of which the board shall be the judge of the sufficiency thereof. Each license is-

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sued under this title shall expire on the 1st day of March of each year, and may be renewed by complying with the provisions of this title. [Id.]

Art. 7462. Definitions.—The terms veterinarians, veterinary medicine, veterinary surgery, veterinary physician and veterinary dentist as used in this title shall be construed as synonymous. [Id.]

Art. 7463. Permanent license.—Nothing in this title shall be construed as requiring veterinarians or veterinary surgeons who have successfully passed examination and who have been granted certificate of permanent license by said board, to again submit themselves to examination. Such certificate of permanent license is valid to all intents and purposes, subject to each provision of this title. [Id.]

Art. 7464. License to be recorded.—Any person receiving a certificate of license from the Board of Veterinary Medical Examiners shall forthwith have it recorded in the office of the District Clerk of the county in which he makes his residence, and shall display it in his regular place of business. The date of recording shall be recorded thereon, and until the license is recorded the holder shall not exercise any of its rights or privileges therein conferred. Such license shall become invalid if it is not recorded within ninety days from its date of issuance. The district clerk shall be paid his fee for recording such certificate by the holder thereof. [Id.]

Art. 7465. To record license on removal.—Any veterinarian or veterinary surgeon who has successfully passed examination and who has been granted license by said board to practice veterinary medicine, veterinary surgery or veterinary dentistry in this State, and has recorded his license as provided for in this title, may go from one county to another county in this State on professional business and may practice veterinary medicine, veterinary surgery or veterinary dentistry in any county in this State to which he may go, without recording or registering said license in any county to which he may go or in which he may practice. Any veterinarian or veterinary surgeon who has successfully passed the said examination and duly recorded his license, and who removes his residence from the county in which his license is recorded, shall again record his license in the county to which he removes his residence, in the same manner as the same was recorded in the county from which he removed his residence. Such veterinarian or veterinary surgeon shall have no authority to practice in any county to which he removes his residence until he has so recorded said license. [Id.]

TITLE 128

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I. IRRIGATION AND WATER RIGHTS

CHAPTER ONE

USE OF STATE WATER

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1. PUBLIC RIGHTS

Article 7466. [4991] [3115] Public rights.—The conservation and development of all of the natural resources of this State, including the control, storing, preservation and distribution of its storm and flood waters, the waters of its rivers and streams for irrigation, power and all other useful purposes; the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation; the reclamation and drainage of its overflowed lands, and other lands needing drainage; the conservation and development of its forest, water and hydro-electric power; the navigation of its inland and coastal waters, and the preservation and conservation of all such natural resources of the State are each and all hereby declared public rights and duties. [Acts 1895, p. 21; G. L. vol. 10, p. 751; Acts 1913, p. 358; Acts 1917, p. 211; Acts 1921, p. 233.]

Art. 7466a. Rio Grande Agreement.—The Governor of this State shall, with the advice and consent of the Senate appoint some qualified person a commissioner to represent the State of Texas in conference with commissioners duly appointed to represent the states of New Mexico and Colorado, and a representative of the Government of the United States, to negotiate an agreement respecting the use, control and disposition of the waters of the Rio Grande and its tributaries above Fort Quitman, Texas. [Acts 1925, 39th Leg., ch. 117, p. 301, § 1.]

Art. 7466b. Authority of Commissioner.—The commissioner appointed to represent the State of Texas shall have authority to meet and confer with the other members of the commission, at such points within the State of Texas or elsewhere as they may see fit, and the compensation and expenses of such commissioner shall be paid out of the appropriation herein made. Such commissioner is authorized to make the necessary investigation and procure the necessary data for the proper performance, of his duties, and may, with the approval of the Governor, employ such clerical, legal, engineering and other assistance as may be necessary in the performance of his duties. [Acts 1925, 39th Leg., ch. 117, p. 301, § 2.]

Art. 7466c. Necessity of ratification.—Any agreement which may be entered into between the commissioner on behalf of the State of Texas and the commissioners on behalf of the other states and the representative of the United States, shall be reduced to writing and submitted to the Governor of this State, but such agreement shall have no binding effect upon the State of Texas or any of its legal representatives until the same shall have been ratified by the Legislature of this State and approved by the Governor, nor unless ratified by the Legislatures of New Mexico and Colorado and consented to by the Congress of the United States. [Acts 1925, 39th Leg., ch. 117, p. 301, § 3.]

Art. 7466d. Appropriation and expenditures.—There is hereby appropriated, out of any moneys in the State Treasury not otherwise appropriated, the sum of fifteen [thousand] ($15,000.00) dollars, for the purpose of carrying out the provisions of this Act. The compensation of the commissioner hereby authorized to be appointed shall be fixed by the Governor to be paid out of the appropriation herein made. All other expenditures authorized herein shall be made on sworn accounts, approved by said commissioner, and all payments authorized hereunder shall be paid out of the State Treasury on warrants drawn by the Comptroller, as under general laws. [Acts 1925, 39th Leg., ch. 117, p. 302, § 4.]

PECOS RIVER COMPACT

Whereas, by authority of Chapter 133 of the General Laws of the State of Texas, passed [by] the Thirty-eighth Legislature at the Regular Session thereof, the Honorable R. E. Thomason was appointed by the Governor of the State of Texas to represent the State of Texas in a conference with representatives of the United States, and of the State of New Mexico, with a view to negotiating an agreement concerning the storage, division and use of the waters of the Pecos River in New Mexico and Texas; and

Whereas, the said commissioner in conference with the Honorable C. T. Pease representing the United States, and the Honorable Richard H. Hanna, representing the State of New Mexico, agreed upon and signed a compact with reference thereto and transmitted the same to the Governor of Texas; and

Whereas, the Governor of Texas has submitted said compact to the Legislature for appropriate action, which compact is in words and figures substantially as follows, to-wit:

PECOS RIVER COMPACT

The State of Texas and the State of New Mexico having resolved to enter into a compact, under the Acts of their respective Legislatures, have, through their Governors, appointed as their commissioner: R. E. Thomason for the State of Texas and Richard H. Hanna for the State of New Mexico, who, after negotiations participated in by C. T. Pease, appointed by Secretary of the Interior of the United States, as a representative of the Bureau of Reclamation, have agreed upon the following article:

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Article I.

Present rights to the beneficial use of the water of the Pecos River and its tributaries are unimpaired by this compact, the major purposes of which are to provide for the equitable division and apportionment of the unappropriated and flood waters of the Pecos River system; to promote interstate comity; to remove causes of present and future controversies and to secure the expeditious agriculture development of the Pecos River Basin by the conservation and economical distribution of the waters therein.

Article II.

In this compact

a. The State of New Mexico and the State of Texas are designated respectively as "New Mexico" and "Texas" and these terms include the citizens and corporations of each State.

b. The term "Pecos River System" means the Pecos River and all of its tributaries, including springs and swamps, from its sources in New Mexico to the Kansas City, Mexico and Oriental Railroad as now constructed between the towns of Alpine and Sherwood in Texas.

c. The term "Pecos River Basin" means all the drainage area of the Pecos River System.

d. The term "Upper Basin" means that part of the Pecos River basin above and north from a due east and west line crossing the Pecos River on the boundary between townships six (6) and seven (7) north, range twenty-two (22) east of the New Mexico principal meridian.

e. The term "Middle Basin" means that part of the Pecos River Basin below and south from a prolongation of the boundary line between townships [six] (6) and seven (7) north, range twenty-two (22) east of the New Mexico principal meridian to the Texas-New Mexico State Line.

f. The term "Lower Basin" means that part of the Pecos River Basin within the State of Texas lying above and northwest of the Kansas City, Mexico and Orient Railroad.

g. The term "domestic use" shall include the use of water for household, stock, municipal, milling, industrial railroad and other like purposes.

h. The term "Carlsbad Project" means certain tracts of land in townsships [townships] twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), and twenty-six (26), south, ranges twenty-six (26), twenty-seven (27), twenty-eight (28) and twenty-nine (29) east of the New Mexico principal meridian, and all reservoirs, dams, canals, drains and other works, constructed or that may hereafter be constructed by the United States for the reclamation, use and benefit thereof.

Article III.

The right to appropriate and use for irrigation and domestic purposes the natural flow of the Pecos River system in the Upper Basin shall not be limited or abridged by this compact, but no permit or permits for the construction of any additional storage reservoir or reservoirs, or for the enlargement of any existing reservoir, within the Upper Basin, having an aggregate capacity or capacities of more than ten thousand (10,000) acre feet, shall be granted by the State of New Mexico prior to the first day of January, 1940.

Article IV.

Within the Middle Basin New Mexico shall have in perpetuity indefeasible rights in the waters of the Pecos River system to divert and use from either or both natural flow or storage reservoirs, constructed or to be constructed, sufficient water, whenever available, for all domestic purposes and the irrigation of seventy-six thousand (76,000) acres of land.

Article V.

Texas shall at all times, subject to the provisions of Articles III, IV, and IX of this compact, have the right:

1. To divert all of the natural flow of the Pecos River system in the Lower Basin for domestic and agricultural purposes.

2. To build, maintain and operate a storage reservoir or reservoirs at or below what is commonly known as the Red Bluff Reservoir site, in Eddy County, New Mexico, for the use and benefit of forty thousand (40,000) acres of land in Loving, Reeves, Ward, Crane and Pecos Counties, Texas, and to store any surplus waters to which Texas may be entitled, and to acquire by purchase, prescription or the exercise of eminent domain, such rights of way, easements, or lands as may be necessary for the construction, maintenance and operation of said reservoir: Provided, that said reservoir shall be constructed and in operation on or before the first day of January, 1940, and provided further, that the construction, maintenance and operation of said reservoir shall not vest in Texas any prior, preferred or superior servitude upon or claim or right to the waters of the Pecos River in New Mexico.

Article VI.

All surplus water flowing in the Pecos River within the Middle or Lower Basins, over and above that required for domestic use, the adequate and proper irrigation of seventy-six thousand (76,000) acres of land in the Middle Basin and forty thousand (40,000) acres of land in the Lower Basin, shall be divided equally between the signatory States. All permits issued by either New Mexico or Texas, prior to January 1, 1940, for the use of the surplus waters shall specifically state that the rights granted by said permits are and shall be subservient to prior rights for seventy-six thousand (76,000) acres of land in the Middle Basin and forty thousand (40,000) acres of land in the Lower Basin.

Article VII.

1. Texas and New Mexico, at their joint expense, shall maintain a stream gaging station upon the Pecos River at or near Malaga, Eddy County, New Mexico, for the purpose of ascertaining the amount of surplus water flowing in said river. The location of said gaging station may, by mutual consent, be changed from year to year as conditions of the river may require.

2. The State engineer of New Mexico and the Board of Water Engineers for Texas, shall make provisions for the co-operative gaging of and the details of operating said station and for the exchange and publication of records and data relative to the discharge of the river at said station.

Article VIII.

The use of any impounded water of the Pecos River system for the generation of electrical power shall be subservient to the use and consumption of such water for agricultural and domestic purposes and shall not interfere with or prevent the use for such dominant purposes.

Article IX.

Notwithstanding any limitations or restrictions, either expressed or implied, in this compact upon the area to be irrigated in the Middle Basin, New Mexico, shall have the right on and after January 1, 1940, to extend and increase the irrigated area within the Middle Basin, over and above seventy-six thousand (76,000) acres, one-fifth (1/5) of an acre;

1. For each and every acre foot that the aggregate effective storage capacity of all reservoirs, now or hereafter constructed for the use of the Lower Basin shall be less than two hundred and fifty thousand (250,000) acre feet;

2. For each and every acre foot of the original capacity or capacities, of any and all, reservoirs, constructed for the use and benefit of the Lower Basin that have been or may be abandoned or unused for a period of five (5) years, or longer.

Article X.

Nothing in this compact shall be construed as affecting the rights of the United States of America in

the waters of the Pecos River system or in the Carlsbad project.

Article XI.

It shall be the duty of the State engineer of New Mexico and the Board of Water Engineers for Texas, to supervise the carrying out of the provisions of this compact, within their respective States, and they may, from time to time, formulate rules and regulations for that purpose, which, when promulgated by them, shall be binding until amended or until terminated.

Article XII.

Whenever any official of either State is designated to perform any duty under this compact, such designation shall include the State official or officials upon whom the duties now performed by such designated official or officials may hereafter devolve.

Article XIII.

Should any claim or controversy arise between the signatory States:

a. with respect to the waters of the Pecos River system not covered by the terms of this contract;

b. over the meaning or performance of any of the terms of this compact;

c. as to the allocation of the burdens incident to the performance of any article of this compact; or

d. as to the construction, maintenance or operation of storage works within New Mexico for the use and benefit of Texas; the Governors of the signatory States, upon the request of either one of them, shall forthwith appoint commissioners with power to consider and adjust such claim or controversy, subject to ratification by the Legislature of New Mexico and Texas.

Article XIV.

Nothing in this compact shall be construed to affect the right either State or the United States from instituting or maintaining any action or proceeding, legal or equitable, for the protection of any right under this compact or the enforcement of any of its provisions.

Article XV.

Nothing in this compact shall be construed to affect the right to appropriate, under the laws and regulations of New Mexico and Texas, any waters that if unappropriated and unused would not contribute to the flow of the Pecos River.

Article XVI.

This compact may be modified or terminated at any time by mutual consent of the signatory States. In the event of such termination, the rights established under it shall continue unimpaired.

Article XVII.

This compact shall become binding and operative when approved by the Legislatures of each of the signatory States and consented to by the Congress of the United States. Notice of approval by the Legislatures shall be given by the Governor of each State to the Governor of the other State and to the President of the United States, and the President of the United States is requested to give notice to the signatory States of consent by the Congress of the United States.

In witness whereof, the commissioners have signed this compact in triplicate originals, one of which shall be deposited with the Department of the Interior of the United States and one with the Governor of each of the signatory States. [Acts 1925, 39th Leg., p. 693, S. J. R. No. 20.]

2. BOARD OF WATER ENGINEERS

Art. 7467. Property of the State.—The waters of the ordinary flow and underflow and tides of every flowing river or natural stream, of all lakes, bays or arms of the Gulf of Mexico, and the storm, flood or rain waters of every river or natural stream, canyon, ravine, depression or watershed, within the State of Texas, are hereby declared to be the property of the State, and the right to the use thereof may be acquired by appropriation in the manner and for the uses and purposes hereinafter provided, and may be taken or diverted from its natural channel for any of the purposes expressed in this chapter. When an application is made for appropriation of such water for mining purposes, the owner of the land through which the water flows and which is to be appropriated shall have the prior right to appropriate same, and shall be permitted to exercise such right, although such owner may not have made application prior to such application by another, and such owner shall have only ten days after notice of application to appropriate such water in which to exercise his prior right to appropriate, which he shall do by written application filed with the Board of Water Engineers within such time. [Acts 1921, p. 233, sec. 2.]

Art. 7467a. River beds and channels in cities and towns.—The State of Texas hereby relinquishes, quit claims and grants unto all incorporated cities and towns that have a population of forty thousand inhabitants, or more, according to the 1920 census, all of the beds and channels, and also all of the abandoned beds and channels, of all rivers, streams and other channels that are now or that may hereafter be within the present or future corporate limits of such cities or towns, in so far as the beds and channels, and such abandoned channels, of such rivers, streams and other channels may be owned or claimed as the property of said State. [Acts 1925, 39th Leg., ch. 155, p. 366, § 1.]

Art. 7468. How stored and purpose of.—The waters described in the preceding article may be held or stored by dams, in lakes or reservoirs, or diverted by means of canals, ditches, intakes, pumping plants, or other[s] works, constructed by any person, corporation, association of persons, or irrigation district created under the statutes, for the purpose of irrigation, mining, milling, manufacturing, the development of power, the construction and operation of waterworks for cities, and towns, or for stock raising, the waters of any arm or inlet of the Gulf of Mexico, or of any salt water bay, may be changed from salt to sweet or fresh water, and held or stored by dams, dikes, or other structure, and taken or diverted for any of the purposes expressed in this chapter. [Acts 1921, p. 234, sec. 3.]

Art. 7469. Vested private rights.—Nothing in this chapter shall prejudice vested private rights. [Id., p. 234, sec. 3.]

Art. 7470. Appropriation of water.—The appropriation of water must be for irrigation, mining, milling, manufacturing, the development of power, the construction and operation of waterworks for cities and towns, or for stock raising.

Art. 7470a. Appropriation for Public Parks, etc.—The waters of the State may be appropriated as provided by law in addition to the purposes and uses now provided by law, for the following purposes: Public parks, game preserves, recreation and pleasure resorts, power and water supply for industrial purposes and plants and for domestic use. [Acts 1925, 39th Leg., ch. 136, p. 341, § 1.]

Art. 7471. Subordinate irrigation.—So far as practicable and within the limits of the public welfare, the Board of Water Engineers, shall subordinate the appropriation of water for power to the appropriation of water for irrigation. [Acts 1917, p. 212, sec. 4.]

Art. 7472. Between appropriators.—As between appropriators, the first in time is the first in right. [Id., sec. 5.]

Art. 7473. Appropriators defined.—For the purpose of this chapter, an appropriator is any person, association of persons, corporation or irrigation district, who has heretofore made beneficial use of any water, in a lawful manner, under the provisions of any Act of the Legislature of the State of Texas, prior to the passage of Chapter 171 of the General

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Laws of the Thirty-third Legislature of Texas, and who has filed with the State Board of Water Engineers a record of his appropriation, as required by said Act of the Thirty-third Legislature of Texas, or who has heretofore or may hereafter make beneficial use of any water within the limitations of a permit lawfully issued by the Board of Water Engineers, and no appropriation of any water shall be considered as having been perfected, unless such water has been beneficially used for one or more of the purposes named in this chapter, and for the purpose or purposes stated in the original declaration of intention to appropriate such water, or stated in the permit issued by the Board of Water Engineers. [Id. sec. 6.]

Art. 7474. Forfeiture of rights.—Neither the foregoing article, nor any other provision of this chapter, shall be construed as intended to impair or to work or authorize the forfeiture of, or shall impair or work or authorize the forfeiture of, any rights heretofore or hereafter acquired by any declaration of appropriation or by permit when the appropriator has begun, or begins, the work and development contemplated by his declaration of appropriation, within the time provided in the law under which the same was or is made and has prosecuted and continues to prosecute the same with all reasonable diligence toward completion; but if any appropriator under this chapter, or other law of this State, has failed or fails to begin the work and development contemplated by his declaration of appropriation within the time provided in the law under which the same was or is made, or has failed or fails, to prosecute the same with all reasonable diligence toward completion, his right to so much water as has not been applied, or is not applied to beneficial use, as defined in this chapter, shall be considered as, and shall be, forfeited, and such water shall be subject to new appropriation under this chapter; provided, that no such rights shall be declared forfeited until the person or persons who are the owners of the land and whose rights are claimed to have been forfeited, shall first be given due notice and hearing, as required in Article 7519 of this chapter; and, provided further, that if a permit for the use of such water has been issued, or is issued, under this Act, or under the Act approved April the 9th, 1913, such water shall not be subject to new appropriation until the permit is cancelled by the Board in whole, or in part, in accordance with the provisions of Article 7519 of this chapter. [Id. sec. 7.]

Art. 7475. Water divisions.—The State shall be, and is hereby, divided into three water divisions, as follows:

All that portion of the State of Texas lying north of the thirtieth parallel, north latitude, and west of the one hundredth meridian, west longitude, shall constitute water division No. 1.

All that portion of the State of Texas lying east of the ninety-seventh meridian, west longitude, and south of the thirtieth parallel north latitude, together with all that portion lying north of the thirtieth parallel north latitude and east of the one hundredth meridian west longitude, shall constitute water division No. 2.

All that portion of the State of Texas not embraced in water division No. 1 or water division No. 2, as heretofore defined, shall constitute water division No. 3. [Id. p. 213, sec. 8.]

Art. 7476. Beneficial use defined.—For the purpose of this chapter, beneficial use shall be held to mean the use of such a quantity of water, when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose, as is economically necessary for that purpose. [Id. sec. 9.]

Art. 7477. Board continued in office.—The Board of Water Engineers, created and constituted by the Act of the Thirty-third Legislature, Chapter 171, General Laws, approved April 9, 1913, is hereby continued, and the members constituting such board shall continue in office for the respective terms for which they were appointed and until their successors are appointed and qualified, unless sooner removed in the manner provided by law. [Id. sec. 10.]

Art. 7478. Board appointment of.—Said board shall be composed of three members, one of whom shall be appointed from each of the respective water divisions described in Article 7475. The mmbers [members] of such board shall be appointed by the Governor, by and with the advise [advice] and consent of the Senate, and shall each hold office for a term of six years, and until his successor is appointed and qualified. [Id.]

Art. 7479. Qualification.—No person shall be appointed a member of the Board who has not such technical knowledge and such practical experience and skill as shall fit him for the duties of the office. [Id.]

Art. 7480. Bond.—Each member of such Board shall enter into bond, to be approved by the Governor, in the penal sum of ten thousand dollars, with not less than two personal sureties, or with one surety or guaranty company authorized to do business in this State, conditioned for the faithful discharge of the duties of his office, and for the delivery to his successor, or other officer appointed by the Governor to receive same, all moneys, books, and other property belonging to the State then in his hands, or under his control, or with which he may be legally chargeable as a member of said board. [Id.]

Art. 7481. Governor may remove.—The Governor shall have power to remove, at any time, for cause, any member of the State Board of Water Engineers, after such member shall have been given a full, free and public hearing by the Governor. The Goverror [Governor] shall fill all vacancies by appointment, with the advice and consent of the Senate. [Id.]

Art. 7482. Salary.—Each member of such Board shall receive a salary of thirty-six hundred dollars per annum, payable in monthly installments, upon the presentation of salary vouchers, approved by the Board. [Id. p. 214, sec. 11.]

Art. 7483. Meet at Austin.—The members appointed shall meet at Austin and organize and elect one of their number chairman of said Board. [Id. sec. 12.]

Art. 7484. Majority constitute quorum.—A majority of said Board shall constitute a quorum to transact business. [Id.]

Art. 7485. Board appoint secretary.—Said Board shall appoint a secretary, who shall be thoroughly conversant with irrigation law, at a salary of not more than two thousand dollars per annum, and who shall execute a bond in the sum of twenty-five hundred dollars, to be approved by the Board, payable to the Board of Water Engineers. [Id.]

Art. 7486. Board appoint employees.—The Board may appoint such experts and employees as may be necessary to perform any duty that may be required of them by this chapter, and fix their compensation. [Id.]

Art. 7487. Duty of secretary.—The secretary shall keep full and accurate minutes of all transactions and proceedings of said Board, and perform such duties as may be required by the Board. [Id.]

Art. 7488. Power of Board.—The Board shall have power to make all needful rules for its government and proceedings; and shall have a seal, the form of which it shall prescribe. [Id.]

Art. 7489. Office furnished.—The Board shall be furnished with an office at Austin, with necessary furniture, stationery, supplies, etc., at the expense of the State, to be paid for on the order of the board. [Id.]

Art. 7490. Traveling expenses.—The members, secretary, experts and employees of the Board shall be entitled to receive from the State their necessary traveling expenses while traveling on the business

of the board, upon an itemized statement, sworn to by the party who incurred the expense and approved by the Board. [Id. sec. 13.]

Art. 7491. Board hold sessions, where.—The Board may hold sessions at any place in this State, when deemed necessary to facilitate the discharge of its duties. [Id. sec. 14.]

Art. 7492. Application in writing.—Every person, association of persons, corporation, water improvement or irrigation district, who shall, after this Act shall take effect, desire to acquire the right to appropriate, for the purposes stated in this chapter, unappropriated water of the State, shall, before commencing the construction, enlargement or extension of any dam, lake, reservoirs of [or] other storage work, or any ditch, canal, intake, headgate, pumping plant of other distributing work, or performing any work in connection with the storage, taking or diversion of water, make an application in writing to the Board for a permit to make such appropriation, storage or diversion. [Id., part sec. 15.]

Art. 7493. Description of.—Such application shall be in writing and sworn to; shall set forth the name and post-office address of the applicant; the source of water supply; the nature and purposes of the proposed use; the location and description of the proposed dam, lake, reservoir, headgate, intake, pumping plant, ditch, canal or other work; the time within which it is proposed to begin construction, and the time required for the application of the water to the proposed use; and, if such proposed use is for irrigation, a description of the lands proposed to be irrigated, and, as near as may be, the total acreage thereof. [Id., part sec. 15.]

Art. 7494. Map to be furnished.—Such application shall be accompanied by a map or plat drawn on tracing linen, on a scale not less than one inch equals two thousand feet, showing substantially the location and extent of the proposed work; the location of the headgate, intake, pumping plant or point of diversion by course and distance from permanent natural objects or land marks; the location of the main ditch or canal and of the laterals or branches thereof; the course of the river, stream or other source of water supply; the position and area of all lakes, reservoirs or basins intended to be used or created, and the water line thereof, the intersection with all other ditches, canals, laterals, lakes or reservoirs the proposed work will touch or intersect, or with which connection will be made; and shall represent in ink of different color from that used to represent the proposed works, the location of all ditches, canals, laterals, reservoirs, lakes, dams, or other work of like character then existing on the ground, with a designation of the name of the owner thereof. Such map or plat shall contain the name of the proposed work or enterprise; the name or names of the applicants, and a certificate of the surveyor, giving the date of his survey, his name and post-office address, and also the date of the application which it accompanies. [Id., part sec. 15.]

Art. 7495. Permit for alteration, etc.—Nothing in this Act shall be held or construed to require the filing of an application or procuring of any permit for the alteration, enlargement, extension or addition to any canal, ditch or other work that does not contemplate, or will not result in, an increased appropriation, or the use of a larger volume of water, but before making any such alteration, enlargement, extension or addition, the person, association of persons, corporation or irrigation district desiring to make same, shall file with the Board of Water Engineers a detailed statement and plan, for the information of the board, of the work proposed to be done. [Id., part sec. 15.]

Art. 7496. Priority of date.—Any person or association of persons, corporation, water improvement or irrigation district, who desires to investigate the feasibility of any project having for its object the creation of a reservoir for the impounding of flood waters in quantities greater than five thousand acre-feet, and which, if constructed, will probably result in the use of five thousand acre-feet per annum, or more, and who has an organized engineering force adequate to expeditiously proceed with such investigation, shall, upon the presentation of such facts, duly verified, to the Board of Water Engineers, describing the locality of such proposed reservoir, have priority date from the time of the filing of such presentation, should a permit be granted thereafter, for the purposes described in such presentation; provided, however, that nothing in this article or in this chapter shall affect or restrict the right of any person or persons, owning lands in this State, to construct on his own property any dam or reservoir which would impound or contain less than five hundred acre-feet of water. [Id., p. 215, sec. 16.]

Section 16 cited above was amended by Acts 1925, 39th Leg., ch. 136, p. 341, § 2, which is art. 7496a of these statutes.

Art. 7496a. Presentation.—Any person who desires to investigate the feasibility of any water appropriation or use of water in quantities greater than twenty thousand-acre feet storage or fifty second feet diversion, or for generation of two thousand hydro-electric horsepower and who has an organized engineering force adequate to expeditiously proceed with such investigation, shall, upon the filing of an application therefor presenting such facts duly verified to the board, have priority date from the time of filing such application should a permit thereafter be granted thereon. Such application, in addition to the requirements above stated, shall describe the contemplated project, its location and purpose, the quantity of water to be applied for by measure if known, and if not by statement as near as possible of the quantity of water necessary to the contemplated use.

Before such presentation is filed same shall be presented to said board for examination.

Such presentation shall not be filed unless first approved by the board as to extent and purpose, and the board may require, in addition to the requirements above specified, additional information to be submitted under oath in order to determine if same is filed in good faith for the purposes stated.

A presentation is confined to a stated purpose and area and one reservoir or diversion site, and cannot be so filed as to cover more than a reasonable area.

The presentation when approved and filed by the board and to the extent approved by the board shall be in effect for a period of six months from the date it is so filed by the board.

If the person filing a presentation shall, during such period, have begun work and shall have prosecuted same with reasonable diligence, but requires more time than the six months period to complete same, then application may be made before the expiration of said period to the board for an extension of time thereon. Such application for the extension of time shall contain a statement of the work done and the reasons why more time is required therefor. The board shall consider same together with any opposition thereto filed, and may grant one or more extensions of time, provided the total time granted under a presentation shall not exceed a term of three years from the date same is first filed. [Acts 1925, 39th Leg., ch. 136, p. 341, § 2.]

Art. 7497. Fee.—Upon the filing of such presentation, a fee of two hundred and fifty dollars shall be paid to the Board for the use of the State, as provided for other fees collected under this Act; no part of which shall be returned, except as hereinafter provided. The fee shall be held by the Board for a period of twelve months from the date of its receipt, unless disposed of as hereinafter provided. [Acts 1917, p. 215, sec. 17.]

Art. 7498. File application for.—Any person or association of persons, corporation, water improvement, or irrigation district, who has complied with the provisions of Articles 7496 and 7497, and who shall, within twelve months from the date of such presentation, file an application for a permit to store and

use any of the flood waters of this State, in volumes of five thousand acre-feet, or more, for the objects and purposes, and at the locality set out in the presentation described in Articles 7496 and 7497, shall when paying the fees described in Article 7532, be credited with the two hundred and fifty dollars paid in accordance with the provisions of Article 7497. [Id., p. 216, sec. 18.]

Art. 7499. May return fee.—If within twelve months after the filing of the presentation of facts described in Article 7496, such relator shall elect not to apply for a permit, and shall file the results of his or its investigation in intelligible form, with the Board, the Board may, at its option, return, all or any part of said two hundred and fifty dollars, if in its judgment such information will be of equivalent value to the State. [Id., sec. 19.]

Art. 7499a. Presentation extended.—In the event a presentation is extended by order of the board so that same expires more than one year after the date upon which same is filed, the fee of $250.00 deposited with the State Board of Water Engineers shall be held by the board and disposed of as provided by law upon the expiration of the period to which same may be extended. All rights pertaining to a presentation shall cease and be of no further effect at the end of the term thereof, unless a permit is granted in pursuance thereof as provided by law. [Acts 1925, 39th Leg., ch. 136, p. 342, § 3.]

Art. 7500. Board requirements.—If the proposed taking or diversion of water for irrigation is of greater volume than nine cubic feet per second of time, the Board may require the following, in addition:

A continuous longitudinal profile; cross sections of the proposed channel; and the detail plans and specifications of any structural work of whatever character entering into the proposed project, on such scales and with such definition as the board may deem necessary or expedient.

The Board may also require the filing of a copy of the engineer's field notes of any survey of such lake or reservoir, and all plans and specifications, where the project calls for a dam over six feet in height, either for the purpose of diversion or storage; and no work on such project shall proceed until approval of such plans is obtained.

The Board may, in case the applicant is an incorporated company, require the filing of a certified copy of the applicant's articles of incorporation, together with a statement of the names and addresses of its directors and officers; and the amount of its authorized and of its paid up capital stock.

If the applicant be other than an incorporated company, the board may require the filing of a sworn statement, showing the names and addresses of the person or persons interested in same and the extent of such interest and of the financial condition of each such person. [Acts 1917, p. 216, sec. 20.]

Art. 7500a. Permit unnecessary.—Any one may construct on his own property a dam and reservoir to impound or contain not to exceed two hundred and fifty-acre feet of water without the necessity of securing a permit therefor. [Acts 1925, 39th Leg., ch. 136, p. 344, § 5.]

Art. 7501. Fees paid.—Every such application shall be accompanied by the fees hereinafter provided, and shall not be filed or considered until such fees are paid. [Acts 1917, p. 216, sec. 20.]

Art. 7502. Drainage.—Whenever, in the opinion of the Board, the successful efficient operation of any existing or proposed irrigation system will, or may, be adversely affected by lack of adequate facilities incident to the work proposed to be done by the applicant or applicants for a permit to appropriate public waters, the said applicant or applicants shall submit drainage plans adequate, in the opinion of the board, to guard against any present or future injury which the proposed works may entail. [Id., sec. 21.]

Art. 7503. May reject application.—Upon the filing of such application, accompanied by the data and fees hereinbefore provided, it shall be the duty of the Board to make a preliminary examination thereof and, if it appear that there is no unappropriated water in the source of supply, or that, for other reasons, the proposed appropriation shall not be allowed, the Board may thereupon reject such application; in which case, if the applicant shall elect not to proceed further, the Board may return to such applicant any part of the fees accompanying such application. [Id., p. 217, sec. 22.]

Art. 7504. Decision of Board.—The Board shall determine whether the application, maps, plats, contours, plans, profiles and statements accompanying same are in compliance with the provisions of this chapter, and with the regulations of the Board, and may require the amendment therefore [thereof]. [Id. sec. 22.]

Art. 7505. Where recorded.—All applications filed with the Board shall be recorded in a well bound book kept for that purpose in the office of said Board, and shall be indexed alphabetically in the name of the applicant, of the stream or source from which such appropriation is sought to be made, and the county in which appropriation is sought to be made. [Id. sec. 23.]

Art. 7506. Board to reject applications.—It shall be the duty of the Board to reject all applications and refuse to issue the permit asked for if there is no unappropriated water in the source of supply; or if the proposed use conflicts with existing water rights, or is detrimental to the public welfare. [Id. sec. 24.]

Art. 7507. Board to approve applications.—It shall be the duty of the Board to approve all applications and issue the permit asked for if such application is made in proper form in compliance with the provisions of this chapter and the regulations of said Board; and is accompanied by the fees required in this chapter; and if the proposed appropriation contemplates the application of water to any of the uses and purposes provided for in this chapter, and does not impair existing water rights, or vested riparian rights and is not detrimental to the public welfare. [Id.]

Art. 7508. Conditions of application.—Before the Board shall approve any such application and issue any such permit, notice of such application shall be given substantially in the following manner:

Such notice shall be in writing; shall state the name of the applicant and his residence; the date of the filing of the application in the office of the Board; the purpose and extent of the proposed appropriation of water; the source of supply; the place at which the water is to be stored, or to be taken or diverted from the source of supply; together with such additional information as the board may deem necessary. If the proposed use is for irrigation, such notice shall contain a general description of the location and the area of the land to be irrigated. Such notice shall also state the time and place when and where such application will be heard by the Board. [Id. sec. 25.]

Art. 7509. Publication of.—Such notice shall be published once in each week for four consecutive weeks prior to the date stated in such notice for the hearing of such application in some newspaper having a general circulation in that section of the State in which the source of water is located. In addition to such publication, a copy of such notice shall be transmitted by the secretary of the Board, by registered mail, addressed to each claimant or appropriator of water from such source of water supply, the record of whose claim or appropriation has been filed in the office of the Board. Such notice shall be mailed not less than twenty days before the date set for the hearing.

Art. 7510. Hearing of application.—At the time and place stated in the notice, the Board shall sit to hear such application. Any person, association of persons, corporation, or irrigation district may appear, in person or by attorney, and enter appearance in writing in said matter and present objection to the issuance of permit. The Board may receive evidence, orally or by affidavit, in support of or in opposition to the issuance of such permit; and may also hear arguments. It shall have power to adjourn such hearing from time to time and from place to place, and after full hearing to render decision in writing approving or rejecting such application. Such application may be approved or rejected in whole or in part. Nothing herein contained shall prevent the Board from rejecting any application in whole without the issuance of the notice herein required. [Id. p. 218, sec. 27.]

Art. 7511. Cost of publication.—The cost of publication of the notice herein required and the postage for mailing thereof shall, in each case be paid by the applicant. [Id. sec. 28.]

Art. 7512. Attorney General shall represent board.—In all litigation to which the Board may be a party, the Attorney General shall represent the Board. [Id. sec. 29.]

Art. 7513. Duty of clerk.—When any court of record in this State shall render any judgment, order or decree, affecting in any manner the title to any water right, claim, appropriation or irrigation works, or any matter over which the Board of Water Engineers is given supervision under the provisions of this chapter, it shall be the duty of the clerk of such court to forthwith transmit to the office of the Board a certified copy of such judgment, order or decree. [Id. sec. 30.]

Art. 7514. Authority to inspect.—The Board, or any one employed by the Board for that purpose, shall have at all times authority to inspect any impounding, diversion or distribution works during construction, to determine whether or not they are being constructed in a safe and approved manner, and in accordance with the order of the Board theretofore issued. [Id. sec. 31.]

Art. 7515. Contents of permit.—Every permit issued by the Board, under the provisions of this chapter, shall be in writing, attested by the seal of said Board and shall contain substantially the following: The name of the applicant to whom issued; the date of the issuance thereof; the date of the filing of the original application therefor in the office of the Board; the use or purpose for which the appropriation of water is to be made; the amount or volume of water authorized to be appropriated; a general description of the source of supply from which the appropriation is proposed to be made; and, if such appropriation is for irrigation, a description and statement of the approximate area of the lands to be irrigated; together with such other data and information as the Board may prescribe. [Id. sec. 32.]

Art. 7516. Transmitted to county clerk.—Upon the issuance of such permit, same shall be transmitted by the secretary of the Board, by registered mail, to the county clerk of the county in which the appropriation is to be made. [Id.]

Art. 7517. Recording fee.—Upon receipt of a recording fee of one dollar, to be paid by the applicant, such clerk shall file and record the same in a well bound book provided and kept for that purpose only, and to index the same alphabetically under the name of the applicant and of the stream or source of water supply, and, thereupon, to deliver such permit, upon demand, to the applicant. [Id.]

Art. 7518. Constructive notice.—Such permit, when thus filed in the office of the county clerk, shall be constructive notice of the filing of the application with the Board; of the issuance of the permit; and of all the rights arising thereunder. [Id.]

Art. 7519. Time required.—Within ninety days after the date of issuance of the permit provided for in this chapter, the applicant seeking to appropriate water thereunder shall begin actual construction of the proposed ditch, canal, dam, lake, reservoir, or other work, and shall prosecute the work thereon diligently and continuously to completion; provided, that the Board may, by an order entered of record, extend the time for beginning the actual construction of such work for a period not to exceed twelve months from the date of issuance of such permit; and, further provided, that if any applicant shall fail to comply with the requirements of this article, he, they or it, shall thereby forfeit all rights under such permit. If any applicant to whom a permit is issued, or one owning prior appropriation, shall, after beginning the actual construction work, as provided in this article, fail to thereafter prosecute the same diligently and continuously to completion the Board may, after thirty days notice to the applicant or owner of such appropriation, and giving him an opportunity to be heard, by an order entered of record, revoke and cancel such permit or appropriation in whole or in part. Any party affected by such order shall have the right of appeal to the district court, as in this chapter provided. A certified copy of such order shall be forthwith transmitted by the secretary of the Board, by registered mail, to the clerk of the county in which such permit is recorded and which order shall be recorded by said county clerk. [Id. p. 219, sec. 33.]

Art. 7520. Conviction.—Any person, association or [of] persons, corporation, water improvement or irrigation district, or any agent, officer, employee or representative of any person, association of persons, corporation or irrigation district, who shall wilfully take, divert or appropriate any of the water of this State, or the use of such water, for any purpose, without first complying with all the provisions of this chapter, shall be deemed guilty of a misdemeanor; and, on conviction thereof, shall be fined in a sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment; and each day that such taking, diversion or appropriation of water shall continue shall constitute a separate offense, and the possession of such water, except when the right to its use is acquired in accordance with the provisions of law, shall be prima facie proof of the guilt of the person, association of persons, corporation, irrigation district, or the agent, officer, employees or representatives of any person, association of persons, corporation or irrigation district. [Id. sec. 34.]

Art. 7521. Liable.—In addition to the punishment prescribed in the last preceding article, any person, association of persons, corporation, water improvement or irrigation district, or any agent, officer, employee or representative of any such persons, association of persons, corporation, water improvement or irrigation district, who shall wilfully take, divert or appropriate water of the State, or the use of such water, without first complying with the provisions of this chapter, shall be liable to a penalty of one hundred dollars per day for each and every day that such taking, diversion, appropriation, or use may be made. [Id. sec. 35.]

Art. 7522. Suit.—The State may recover such penalties by suit brought for that purpose in any court of competent jurisdiction. [Id.]

Art. 7523. Date.—When any permit is issued under the provisions of this chapter, the priority of the appropriation of water, or the claimant's right to the use of such water, shall date from the date of the filing of the original application in the office of the Board. [Id. p. 220, sec. 36.]

Art. 7524. Measurements and calculations.—It shall be the duty of the Board to make or cause to be made measurements and calculations of the flow of streams from which water may be appropriated, as provided in this chapter, commencing such work in those streams most used for irrigation or other beneficial uses; to collect data and make surveys; to determine the most suitable location for

constructing works to utilize the waters of the State; to ascertain the location and area of the lands best suited for irrigation; to examine and survey reservoir sites; and wherever practicable, to make estimates of the cost of proposed irrigation works, and the improvements of reservoir sites. [Id. sec. 37.]

Art. 7525. Board conversant.—It shall be the duty of the board to make itself conversant with the water courses of the State and of the needs of the State concerning irrigation matters, and the storage and conservation of the waters of the State for other purposes. [Id.]

Art. 7526. Biennial reports of board.—The Board shall make biennial reports in writing to the Governor, in which shall be included the data and information collected by the Board, and in which shall be included such suggestions as to the amendment of existing laws and the enactment of new laws as the information and experience of the Board may suggest. [Id.]

Art. 7527. Proper records.—The board shall keep in its office full and proper records of its work, observations and calculations, all of which shall be the property of the State. [Id.]

Art. 7528. Quantity of water.—It shall be the duty of the Board to ascertain the quantity of water, and to determine the proper quantities required for irrigation and other lawful uses in the several sections of the State, in order to secure the highest beneficial use of such water, such work to be first conducted in those sections where, in the judgment of the Board, the greatest necessity exists. [Id. sec. 38.]

Art. 7529. Board to condemn.—Full authority is lodged with the Board, on its own initiative, to condemn existing works, the existence or operation of which may, in the judgment of the Board, become a public menace or dangerous to life and property; provided that, in all cases of proposed condemnation, the party or parties at interest shall be notified of such contemplated action, and may appear at a time stated and be heard. [Id. sec. 39.]

Art. 7530. Right of appeal.—In such cases the party or parties whose works may be condemned, shall have the right of appeal from the decision of the Board, as provided herein in all other cases of appeal. [Id.]

Art. 7531. Board to enforce rules, etc.—The Board may adopt, promulgate and enforce such rules, regulations and modes of procedure as it may deem proper for the discharge of the duties incumbent upon it under the provisions of this chapter. [Id. sec. 40.]

Art. 7532. Board to charge and collect fees.—The Board shall charge and collect, for the benefit of the State, the following fees:

For filing each and every application for any purpose, a fee of seven and one-half dollars; and, in addition thereto;

For filing each and every application for storage water, except surface waters, a fee of five dollars, provided that if the application shall contemplate and propose the storage of water in excess of five acre-feet, and [an] additional fee of twenty-five cents shall be charged for each additional acre-foot in excess of five, up to and including one hundred acre-feet; for each additional one hundred acre-feet, or fraction thereof in excess of one hundred, and [an] additional fee of ten dollars, up to and including one thousaid [thousand] acre-feet; and for each additional thousand acre-feet, above one thousand, and [an] additional fee of twenty-five dollars; provided that no fee, based on storage, shall be charged for any proposed or contemplated storage of less than five acre-feet.

For filing each application contemplating and proposing the taking or diversion of water for the purpose of irrigation, ten cents for each and every acre proposed to be irrigated.

For filing each application proposed and contemplating the use of water for the purpose of developing hydraulic power, a fee of two cents for each foot of head for each cubic foot of water per second it is proposed to use.

For filing each application contemplating and proposing the taking, diversion, or use of flowing water for any other purpose than storage, irrigation of land, or the development of hydraulic power, as hereinbefore provided, five cents for each acre-foot of water consumed per annum.

Provided, that, in estimating the aforesaid additional fees on a proposed appropriation contemplating the use of water or [for] two or more of the aforesaid purposes, the fees charged shall be cumulative, and a charge made for each use, based on the quantity proposed for each separate use.

For the filing of each and every exhibit, map, affidavit, or other paper authorized to be filed in the office of the Board of Water Engineers, a filing fee of twenty-five cents.

For recording each and every paper authorized or required to be recorded in the records of the office of the Board, a fee of one dollar, and, in addition thereto, a fee of fifteen cents per folio of one hundred words, in excess of two hundred.

For making and certifying each and every copy of an instrument or paper authorized to be certified under the seal of the board a fee of one dollar, and in addition thereto, a fee of fifteen cents per folio of one hundred words, including the certificate.

For making and certifying copies of any map or blue print thereof, a fee of one dollar, and, in, addition thereto, a fee of seventy-five cents for each hour or fraction thereof necessarily employed by the draughtsman in making such copy.

For filing each application for an extension of time within which to begin actual construction or to complete work, a fee equal to one-half of the original application fees in such case; provided that, if it be simultaneously sought to extend both the time for the beginning and completion of any work theretofore authorized, but one fee shall be charged; and, in addition thereto, the usual fees for filing and recording such applications. [Id. p. 221, sec. 41.]

Section 41, cited above, was amended by Acts 1925, 39th Leg., ch. 136, p. 342, § 4, which is art. 7532a of these statutes.

Art. 7532a. Board to charge and collect fees.—The board shall charge and collect for the benefit of the State the fees hereinafter provided, and it shall be the duty of the secretary to make a record thereof at the time same become due, and to render an account thereof to the party charged therewith, said fees being as follows:

For filing each presentation a fee of $25.00.

For filing each application for a permit a fee of $25.00 and cost of publishing notice and mailing notices.

For filing each petition for formation of a district a fee of $25.00.

For filing each application for approval of a bond issue a fee of $25.00.

For filing each application for adjusting or fixing rates a fee of $25.00.

For filing each application for extension of time under any provision of the law a fee of $10.00.

Fees hereinabove provided cover the filing of each and all papers and records filed at one time as part of such transaction.

For filing each paper or instrument, exhibit or map, affidavit or anything else authorized or provided by law to be filed, or which is filed, a filing fee of $1.00.

For recording each and every instrument or anything authorized or required to be recorded, or which is recorded in the office of the Board a fee of $1.00, and in addition thereto a fee at the rate of fifteen cents per folio of one hundred words.

For making and certifying each and every copy of an instrument or paper under the hand of the secretary, or the seal of the Board a fee of $1.00, and in addition thereto a fee at the rate of fifteen cents per hundred words including the certificate.

For making and certifying copies of any map, blue print, tracing, drawing, picture, profile or other record which is not in the class of a written instrument

a fee of $1.00, and in addition thereto a fee at the rate of seventy-five cents for each hour necessarily employed by the draftsman in making such copy, or in the event such copy is made by blue print or other similar process by a State agency without special charge therefor, a fee of $1.00 for each print.

In addition to the fees herein otherwise provided there shall be paid to the Board for the benefit of the State the following fees upon each application for a permit to acquire a water right:

For the use of water for irrigation, ten cents per acre for each acre to be irrigated.

For the use of water for hydraulic power twenty-five cents for each theoretical horsepower.

For use of water for steam or gas power plant, cooling, condensing or steam purposes twenty-five cents for each indicated horsepower.

For other uses not specifically named herein twenty-five cents per acre foot based on estimated annual consumption.

For the use of water for parks, pleasure resorts, game preserves, twenty cents per acre foot of storage, based on the holding capacity of reservoir.

The maximum fees for any use of water under a permit shall not exceed one thousand five hundred dollars and for each additional use under the same permit for which such maximum fee is paid the fee shall not exceed two hundred dollars in addition to said sum of one thousand five hundred dollars.

The fees paid upon application for a permit other than the filing fees herein provided shall be held by the Board until said application is passed upon, and if same is not granted such fees shall be returned to the applicant therefor, provided if such application is thereafter granted by judgment of a court then said fee shall be paid before such permit shall be effective. [Acts 1925, 39th Leg., ch. 136, p. 342, § 4.]

Art. 7533. Fees and charges deposited.—The fees and charges collected in accordance with the provisions of this chapter shall be immediately deposited in the State Treasury to the credit of the general revenue and full and detailed verified monthly and annual reports of all such receipts, as well as of the expenditures of the said Board, shall be filed with the Comptroller of Public Accounts. [Acts 1917, p. 221, sec. 41.]

Art. 7534. Fee limit.—That the fees to be paid for filing in the office of the State Board of Water Engineers of applications for permits for the storage, diversion and use of water shall not exceed the sum of fifteen hundred dollars for any one such application, permit or project. In case of all such applications and permits heretofore filed and granted, on which partial payment of fees have been made, as provided by law, the balance to be paid thereon shall be the difference between the amount paid and the said maximum sum of fifteen hundred dollars. [Acts 1923, p. 281, sec. 1.]

Art. 7535. Excess fees paid, how.—The fees provided by law to be paid to the State Board of Water Engineers upon applications for permits for the storage, diversion and use of water for any and all statutory purposes when such fees exceed one thousand dollars shall be paid as follows:

One-tenth shall be paid when the application is filed.

One-tenth shall be paid within thirty days after notice is mailed the applicant that the permit is granted. The balance shall be paid before the use of water is commenced under the permit; and a failure to so pay same shall annul such permit. [Acts 3rd C. S., 1920, p. 87, sec. 2.]

Art. 7536. State board to fix time.—Whenever the State Board of Water Engineers shall grant a permit for the use of water, which use contemplates the construction of a storage reservoir, they shall fix the time actual construction work shall be commenced thereon, not to exceed two years from the granting of such permit. [Id. sec. 3.]

Art. 7537. Time limit.—Such time limit may be extended by order of said board upon payment of such fees as the Board may fix, not to exceed the sum of one thousand dollars. [Id.]

3. REGULATION OF USE

Art. 7538. Measurement of flowing water.—A cubic foot of water per second of time shall be the standard unit for the measurement of flowing water for the purpose of distributing water for beneficial uses. [Acts 1917, p. 222, sec. 42.]

Art. 7539. Standard unit.—The Standard unit for volume of static water shall be the acre-foot. [Id.]

Art. 7540. Quantity of water.—A cubic foot per second of time is the quantity of water that will pass through an area of one square foot in one second, when flowing at an average velocity of one foot per second. [Id. sec. 43.]

Art 7541. Acre foot defined.—An acre foot is the quantity of water required to cover one acre one foot deep. [Id.]

Art. 7542. Water right defined.—A water right is the right to use the water of the State when such use has been acquired by the application for water under the statutes of this State and for the purposes stated in this chapter. Such use shall be the basis, the measure and the limit to the right to use water of the State at all times, not to exceed[ing] in any case the limit of volume to which the user is entitled and the volume which is necessarily required and can be beneficially used for irrigation or other authorized uses. [Id. sec. 44.]

Art. 7543. Use of water limited.—Rights to the use of water acquired under the provisions of this chapter shall be limited and restricted to so much thereof as may be necessarily required when beneficially used for the purposes stated in this chapter, irrespective of the capacity of the ditch or other works, and all the water not so applied shall not be considered as appropriated. [Id. sec. 45.]

Art. 7544. Appropriation forfeited.—Any appropriation or use of water heretofore made under any statute of this State, or hereafter made under the provisions of this chapter, which shall be wilfully abandoned during any three successive years, shall be forfeited and the water formerly so used or appropriated shall be again subject to appropriation for the purposes stated in this Act. [Id. sec. 46.]

Art. 7545. Right to appropriate, when.—Any person, association of persons, corporation, water improvement or irrigation district, who may have heretofore constructed, or who may hereafter construct, any dam or dams across any river, or other stream, for the purpose of storing water for any of the purposes set forth in Article 7468 of this chapter, shall have the right to appropriate the ordinary flow, underflow, or the storm flood or rain waters of such stream, in amounts and quantities equal to the holding capacity of such dam or dams, by making application as provided in Articles 7493 and 7494 of this chapter, and such application shall have priority over all other applications; and, provided, that any such person, association of persons, corporations or irrigation district thus impounding water in any river, channel, lake or reservoir and appropriating the same shall have the right to collect from any riparian owner who shall divert such impounded water from said reservoir by pumping or otherwise a reasonable sum for the water so diverted, such sum to be determined by the Board of Water Engineers, based upon the benefits accruing to such riparian owner by reason of the construction of such dam, lake, or reservoir and the impounding of such waters therein, provided the owner of such dam, lake or reservoir and the owner of riparian rights using such water cannot agree upon the price to be paid therefor. [Id. sec. 47.]

Art. 7546. Authority of corporations.—All such corporations, whether chartered under the provisions of Chapter 2, Title 73, Revised Civil Statutes of Texas, 1911, or under the general corporation laws of the State of Texas, shall have full power and authority

to make contracts for the sale of permanent water rights, to any person, corporation, association of persons, or irrigation district, and to have the same secured by a lien on the lands, or otherwise, and to lease, rent or otherwise dispose of the water controlled by such corporation, for such price as may be agreed upon, and in addition to the lien on the crops hereinafter provided for, such lease or rental contract may be secured by lien on land or otherwise; provided, that such water may be sold, leased, rented or otherwise disposed of to any such person, corporation, association of persons or irrigation district, or to the water tenants thereof, who have heretofore appropriated and complied with the provisions of Chapter 2, Title 73, Revised Civil Statutes of Texas, 1911, regardless of whether or not the water is furnished to lands adjacent or contiguous to the canals of such corporation, association of persons or irrigation district so furnishing water; provided further that any person, corporation, association of persons or irrigation district, shall be under no obligation during the period that water is so taken and utilized, to operate its or their pumping plant, headgate, or intake and failure to so operate its pumping plant, headgate, or intake during such period, shall not be deemed an abandonment or waiver, of his, their or its rights in such pumping plant, headgate, intake and source of supply.

Provided that nothing herein contained shall affect or alter the existing relative rights of priority of the various appropriators whose supply is derived from the same source. [Id. p. 223, sec. 48.]

Art. 7547. Who may enter into contract.—Any person [,] association of persons, corporation, water improvement or irrigation district having in possession and control storm, flood or rain waters conserved or stored, under the provisions of this chapter, may enter into contract to supply same to any person, association of persons, corporation, water improvement or irrigation district, having the right to acquire such use; provided that the price and terms of such contract shall be just and reasonable and without discrimination and subject to the same revision and control as hereinafter provided for other water rates and charges. If any person shall use such stored or conserved water without first entering into contract with the party having stored or conserved the same, such user shall pay for the use thereof such charge or rental as the Board shall find to be just and reasonable, and subject to revision by the court, as herein provided for other water rates and charges. [Id. sec. 49.]

Art. 7548. When lawful to use banks and beds.—For the purpose of conveying and delivering storm, flood or rain water from the place of storage to the place of use, as provided in the preceding article, it shall be lawful for any person, association of persons, corporation[s], water improvement or irrigation district, to use the banks and beds of any flowing natural stream within this State, under and in accordance with such rules and regulations as may be prescribed by the Board of Water Engineers, and such board shall prescribe rules and regulations for such purpose. No person, association of persons, corporation, water improvement or irrigation district who has not acquired the right to the use of such conserved or stored waters, as provided in the last preceding article, shall take, use or divert same. [Id. p. 224, sec. 50.]

Art. 7549. Wilful interference with the passage of.—Any person, association of persons, corporation, water improvement or irrigation district, or the agent, officer, employee or representative of any such person, association of persons, corporation, water improvement or irrigation district, who shall wilfully interfere with the passage of, or take, divert or appropriate such conserved or stored water during the passage and delivery thereof, as provided in the last two preceding articles, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not exceeding one hundred dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment, and each and every day that such taking, diversion or appropriation may be made shall constitute a separate offense. [Id. sec. 52.]

Art. 7550. Duty of district court.—It shall be the duty of the district court, or the judge thereof, of any judicial district in or through which the conserved or stored waters described in the last three preceding articles may pass, at the suit of any party having an interest therein upon it being made to appear that any person, association of persons, corporation, water improvement or irrigation district, or any agent, officer, employee, or representative thereof, is interfering with, or threatening or about to interfere with the passage, or is taking, diverting, appropriating, or threatening, or about to take, divert, or appropriate, any conserved or stored waters, in violation of the provisions of the last three preceding articles, to issue such writ or writs of injunction, mandamus, or other process, as may be proper or necessary to prevent such wrongful acts. [Id. sec. 52.]

Art. 7551. To construct gates.—Persons, associations of persons, corporations or districts, operating under the statutes of Texas relating to irrigation, are hereby authorized (subject to the conditions and regulations which may be required or prescribed by the authorities of the United States Government in respect to navigation), to construct such gates or breakwaters, dams or dikes, with gates, as may be required in any waters wholly in the State of Texas where gulf tides ebb and flow, to prevent the pollution of the fresh water of any stream, river or bayou, through ebb and flow of salt tides from the Gulf of Mexico and to conserve such fresh water in a condition fit for irrigation; provided that such work shall, in every case, be done so as not to obstruct navigation by any vessels operated on such waterway, and provided that, in every case where gates are required, to avoid obstruction of navigation, such persons, association, corporation or district responsible for the construction, shall at all times keep a competent person at such gates to operate same when required for purposes of navigation; provided further that such dam, dike or breakwater hereby authorized shall not be placed at any point in such waters, except where the gulf tides ebb and flow, and not so as to obstruct the flow of fresh water to any appropriator or riparian owner below, on the same stream. [Acts 4th C. S., 1918, p. 64, sec. 1.]

Art. 7552. Purpose of corporations.—Corporations may be formed and chartered, under the provisions of this chapter, and of the general corporation laws of the State of Texas, for the purpose of constructing, maintaining and operating canals, ditches, flumes, feeders, laterals, dams, reservoirs, lakes and wells, and of conserving, storing, conducting and transferring water to all persons entitled to the use of the same for irrigation, mining, milling, manufacturing, the development of power, to cities and towns for waterworks, and for stock raising. [Acts 1917, p. 224, sec. 53.]

Art. 7553. Authority of corporations.—All such corporations shall have full power and authority to make contracts for the sale of permanent water rights, and to have the same secured by liens on the land, or otherwise, and to lease, rent, or otherwise dispose of the water controlled by such corporation, for such time as may be agreed upon and, in addition to the lien on the crops hereinafter provided for, the lease or rental contract may be secured by a lien on the land, or otherwise.

Provided, any contract for the sale of water rights shall be voidable, unless the seller thereof has complied with the provisions of the statute relating to certified filings, or shall have obtained a permit from the Board of Water Engineers for the purposes and uses proposed to be made by the buyer of such water rights it is proposed to deliver. [Id. part sec. 54.]

Art. 7554. Deemed guilty, when.—Any person, association of persons or corporation who sells or

offers for sale any permanent water right, without having complied with the provisions of the statute relating to certified filings, or without having obtained a permit from the Board of Water Engineers for the uses and purposes purporting to be conveyed by such permanent water right, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than one hundred dollars, nor more than one thousand dollars, or be confined in the county jail for any period of time not to exceed one year, or both such fine and imprisonment. [Id. part sec. 54.]

Art. 7555. Possessory right.—All persons who own or hold a possessory right or title to land adjoining or contiguous to any dam, reservoir, canal, ditch, flume or lateral, constructed and maintained under the provisions of this chapter, and who shall have secured a right to the use of water in said canal, ditch, flume, lateral, reservoir, dam or lake, shall be entitled to be supplied from such canal, ditch, flume, lateral, dam, reservoir or lake with water for irrigation of such land, and for mining, milling, manufacturing, development of power, and stockraising, in accordance with the terms of his or their contract. [Id. sec. 55.]

Art. 7556. Failure to agree upon price.—If the person, association of persons, or corporation owning or controlling such water, and the person who owns or holds a possessory right or title to land adjoining or contiguous to any canal, ditch, flume or lateral, lake or reservoir, constructed or maintained under the provisions of this chapter, fail to agree upon a price for a permanent water right, or for the use or rental of the necessary water to irrigate the land of such person, or for mining, milling, manufacturing, the development of power, or stock raising, such person, association of persons, or corporation shall, nevertheless, if he, they or it, have or control any water not contracted to others, furnish the necessary water to such person to irrigate his lands or for mining, milling, manufacturing, the development of power or stock raising, at such prices as shall be reasonable and just, and without discrimination. [Id. sec. 56.]

Art. 7557. Division in case of shortage.—In case of shortage of water from drouth, accident or other cause, all waters to be distributed shall be divided among all customers pro rata, according to the amount he or they may be entitled to, to the end that all shall suffer alike, and preference be given none. [Id. sec. 57.]

Art. 7558. Prior vested right.—Nothing in the preceding article contained shall be held to preclude any such person, association of persons, or corporation owning or controlling such water from supplying the same to any person having a prior vested right thereto under the laws of this State. [Id. sec. 57.]

Art. 7559. Permanent water right defined.—The permanent water right shall be an easement to the land and pass with the title thereto; the owner thereof shall be entitled to the use of the water upon the terms provided in his or their contract, with such person, association of persons or corporation, or, in case no contract is entered into, then at just and reasonable prices and without discrimination. Any instrument of writing conveying a permanent water right shall be admitted to record in the same manner as other instruments relating to the conveyance of land. [Id. p. 226, sec. 58.]

Art. 7560. Board to make preliminary investigation.—If any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir or lake, or from any conserved or stored supply, shall present to the board his petition in writing, showing that the person, association of persons, corporation, water improvement or irrigation district, owning or controlling such water, has a supply of water not contracted to others and available for his use, and fails or refuses to supply such water to him, or that the price or rental demanded therefor is not reasonable and just, or is discriminatory; or that the complainant is entitled to receive or use such water, and is willing and able to pay a just and reasonable price therefor, and shall accompany such petition with a deposit of twenty-five dollars, it shall be the duty of the Board to make a preliminary investigation of such complaint and determine whether there is probable ground therefor. If said Board shall determine that no probable ground exists for such complaint, same shall be dismissed, and the deposit may, at the discretion of the Board, be returned to the complainant or paid into the State Treasury. [Id. sec. 59.]

Art. 7561. Board to set date.—If the Board shall determine that probable grounds exist for such complaint, it shall enter an order setting said matter for hearing at a time and place to be named therein. The Board may, in its discretion, require the complainant to make an additional deposit, or to enter into bond in an amount fixed by the Board, conditioned for the payment of all costs of such proceeding, and which bond shall be approved by the Board. Thereupon, it shall be the duty of the secretary of the Board to transmit a certified copy of the petition of complainant and of the order setting same for hearing, by registered mail, addressed to the party or parties against whom such complaint is made, and which notice shall be deposited in the mails at least twenty days before the date set for such hearing. [Id. sec. 60.]

Art. 7562. Board to hear evidence.—At the time and place stated in such order the Board shall sit to hear such complaint. It may hear evidence orally or by affidavit in support of or against such complaint, and may hear arguments, and shall have power to adjourn such hearing from time to time and from place to place, and, upon completion thereof, shall render decision in writing. [Id. sec. 61.]

Art. 7563. Board to fix rates.—The said Board shall have power and authority, and it shall be its duty to fix reasonable rates for the furnishing of water for the purposes or any purpose mentioned in this chapter. [Acts 4th C. S., 1918, p. 129, sec. 61-A.]

Art. 7564. Appeal from decision.—Appeal from such decision of the Board may be taken within the time and in the manner as herein provided for other appeals from the decision of such Board. The decision may be suspended by filing of a supersedeas bond, in the same manner as now provided in other civil cases; provided, that the Board shall fix the amount of the bond necessary to stay the execution of any such order. [Acts 1917, p. 226, sec. 62.]

Art. 7565. Witnesses expenses paid.—In any examination, investigation or proceeding authorized before the Board of Water Engineers, such board shall have power to issue subpœnas for the attendance of witnesses, under such rules as the board may prescribe. Each witness who shall appear before the board by order of the board, at a place outside of the county of his residence, shall receive for his attendance, one dollar per day and three cents per mile traveled by nearest practicable route, in going to and returning from the place of meeting of said board which shall be ordered paid by the Comptroller of Public Accounts upon the presentation of proper vouchers, sworn to by such witness and approved by the chairman of the board; provided, that no witness shall be entitled to any witness fees or mileage who is directly interested in such proceeding. [Id. p. 227, sec. 63.]

Art. 7566. Board to adjourn hearing.—In any examination or hearing held before the Board of Water Engineers, the board shall have authority to adjourn such hearing from time to time and from place to place. Each member of such board and the secretary thereof shall be authorized to administer oaths. [Id. sec. 64.]

Art. 7567. May appeal to appellate court, when.—If any person, firm, association or persons, or corporations engaged in furnishing water, or other persons at interest be dissatisfied with the decision of any

rate, charge, order or act of regulation adopted by the board, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rule, rate, charge or order, or to either or all of them, in a district court of Travis County, against said board as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Any party to said action may appeal to the Appellate Court having jurisdiction of said cause; and said appeal shall be at once returnable to said Appellate Court at any term thereof; said action so appealed shall have precedence in said Appellate Court of all causes of a different character therein pending; provided that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days notice. [Acts 4th C. S., 1918, p. 129, sec. 64–a.]

Art. 7568. Proof rests upon plaintiff.—In all trials under the foregoing article the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, acts, orders, or charges complained of are unreasonable and unjust to it or them. [Id., sec. 64–B.]

Art. 7569. Board to furnish certified copies, when.—Upon application of any person, the board shall furnish certified copies of any order or decision of record of such board, or of any paper, map or other document filed in the office of such board, and such certified copies, under the hand of the secretary and seal of the board, shall be admissible in evidence in any court, in the same manner and with like effect that the original would be entitled to. [Acts 1917, p. 227, sec. 65.]

Art. 7570. Rules and regulations made and published.—Every person, association of persons, corporation, or irrigation district, conserving or supplying water for any of the purposes authorized by this chapter; shall make and publish reasonable rules and regulations relating to the method and manner of supply, use and distribution of water, and prescribing the time and manner of making application for the use of water and payment therefor. [Id. sec. 66.]

Art. 7571. Conveyance recorded.—Every conveyance of a ditch, canal, or reservoir, or other irrigation work, or any interest therein, shall hereafter be executed and acknowledged in the same manner as the conveyance of real estate, and recorded in the deed records of the county or counties in which such ditch, canal, or reservoir is situated, and any such conveyance which shall not be made in conformity with the provisions of this chapter, shall be null and void, as against subsequent purchasers thereof in good faith and for valuable consideration. [Id. sec. 67.]

Art. 7572. Corporations to store salt water, when.—That in the mode provided in Chapter 2 of Title 25 of the Revised Statutes of Texas of 1911 corporations may be created for the purpose of gathering, storing and impounding water containing salt or other substances produced in the drilling and operation of oil and other wells, and to prevent the flow thereof into streams at times when the latter may be used for irrigation. [Acts 4th C. S., 1918, p. 122, sec. 1.]

Art. 7573. Rights of corporations.—Such corporations, in addition to the general powers conferred by such title upon private corporations, may acquire, own, and operate ditches, canals, pipe lines, levees, reservoirs, and their appliances appropriate for the gathering, impounding or storage of such water, and for the protection of such reservoirs from inflow or damage by surface waters; with further power to condemn lands and rights necessary therefor under like procedure as is provided in condemnation by railroads; and also to cross with their ditches, canals and pipe lines under any highways, canals, pipe lines, railroads, and tram or logging roads; conditioned that the use thereof be not impaired longer than essential to the making of such crossings; provided that, no right is conferred to pass though any cemetery or under any residence, schoolhouse or other public building nor to cross any street or alley of any incorporated city or town without the consent of the authorities thereof. [Id. sec. 2.]

Art. 7574. Corporations to serve producers.—In the localities in which they operate and to the extent of the facilities provided, such corporations shall serve all producers of such waters in the gathering, impounding, and storage of such waters in proportion to the needs of such producers, at fair and reasonable charges, and without discrimination between such producers under like conditions. Corporations interested in the proper disposition of such waters may subscribe for, own, and vote stock in the corporations which may be created hereunder. [Id. sec. 3.]

Art. 7575. Use of water not entitled to.—Any person who shall wilfully open, close, change or interfere with any headgate or water box without lawful authority or who shall wilfully use water or conduct water in and through his ditch or upon his land, to which water he is not entitled, shall be fined not less than ten nor more than one thousand dollars, or be imprisoned in jail not exceeding six months; provided, that the possession or use of water to which the person using or possessing same shall not be lawfully entitled shall be prima facie proof of the guilt of the person so using or in possession of same. [Acts 1917, p. 227, sec. 68.]

Art. 7576. Destruction of and punishment for.—Any person who shall wilfully cut, dig, break down, destroy, or injure, or open any gate, bank, embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder or pump or machinery, building, structure, or other work, which is the property of another, or in which another owns an interest, or which is in the lawful possession or use of another or others, and which is used for the purpose of irrigation or milling or mining, or manufacturing, or for the development of power, or for domestic purposes, or for stockraising, with intent maliciously to injure any person, association, corporation, water improvement or irrigation district, or for the gain of any person, association, water improvement or corporation, so cutting, digging, breaking, injuring or opening any such work hereinbefore in this article named or with the intent of taking or stealing or causing to run out or waste out of any such ditch, canal, or reservoir, feeder or flume, any water for his own profit, benefit or advantage, or to the injury of any person, association or corporation lawfully entitled to the use of such water or the use or management of such ditch, canal, tunnel, reservoir, feeder, flume, maching [machine] structure or other irrigation work, shall be fined not less than ten nor more than one thousand dollars, and may be punished by imprisonment in jail not exceeding two years, or by both such fine and imprisonment. [Id. p. 288, sec. 69.]

Art. 7577. Punishment for pollution.—Any person who shall deposit in any canal, lateral, reservoir or lake, used for any purpose enumerated in this Act, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, baling or barbed wire, earth, offal or refuse of any character, or any other article or articles which might pollute the water or obstruct the flow in any such canal or other similar structure, shall be fined not less than ten nor more than one hundred dollars, or be imprisoned in jail for a term not exceeding six months, or be both so fined and imprisoned. [Id. sec. 70.]

Art. 7578. Failure to pay for proportionate share of work.—In all cases where irrigation ditches are owned or used by two or more persons, or by mutual or co-operative companies or corporations, and one or more of such persons, or shareholders, shall fail or neglect to do or to pay for his proportionate

share of the work necessary for the proper maintenance and operation of such ditch, the owners or shareholders, desiring the performance of such work as is reasonably necessary to maintain and operate the ditch, may, after having given ten days' written notice to such joint owner, or owners, or shareholders who have failed to pay for or refused to perform their proportionate share of work necessary for the operation and maintenance of said ditch, proceed themselves to do such work, or cause same to be done, and may recover therefor from such person so failing to perform or pay for his share of such work, in any court having jurisdiction over the amount, the reasonable expense or value of such work or labor so performed. [Id. sec. 71.]

Art. 7579. Surplus water.—All surplus water taken or diverted from any running stream and not used by the appropriator or disposed of to consumers for the purposes stated in this chapter shall be conducted back to the stream from which taken or diverted, wherever such water may be returned by gravity flow, whenever reasonably practicable. [Id. p. 229, sec. 72.]

Art. 7580. Examination and survey.—Every person, association of persons, corporation, water improvement or irrigation district shall have power to cause an examination and survey for its proposed work to be made as may be necessary to the selection of the most advantageous reservoir sites and rights of way for any of the purposes authorized by this chapter, and for such purposes shall have the right to enter upon the lands or waters of any person. [Id. part sec. 73.]

Art. 7581. Employee of board may enter upon lands of any person, when.—Any member or employee of the board shall have authority to enter upon the lands of any person and any or all waterways, either natural or artificial, for the purpose of making any investigation that would, in the judgment of the board assist in the discharge of its duties. [Id. part sec. 73.]

Art. 7582. Right of way granted to whom.—Every person, association of persons, corporation, water improvement or irrigation district formed for any of the purposes authorized by this chapter are hereby granted the right of way, not to exceed one hundred feet in width, and the necessary area for any dam and reservoir site over all public free school, university and asylum lands of this State, with the use of the rock, gravel and timber on such reservoir site and right of way for construction purposes, after paying such compensation as the board of engineers may determine, and may acquire such reservoir site and rights of way over private lands by contract. [Id. sec. 75.]

Art. 7583. Additional right of way obtained.—Any person, association of persons, corporation, irrigation or water improvement district, or any city or town, may also obtain the right of way over private lands and also the lands for pumping plants, intakes, headgates and storage reservoirs, by condemnation, by causing the damages for any private property appropriated by any such person, association of persons, corporation, water improvement or irrigation district or city or town, to be assessed and paid for as provided by the statutes of this State, and as provided in Title 52 of this Act relating to "Eminent Domain," provided, however, that when the power granted by this section is sought to be exercised by any person or association of persons, but not including corporation districts, cities or towns, he or they shall first make application to the Board of Water Engineers for such condemnation and said Board shall make due investigation and if it deems advisable shall give notice to the party owning the land sought to be condemned, and after hearing, may institute such condemnation proceedings in the name of the State of Texas for the use and benefit of said person or persons and all others similarly situated, the costs of said suit and condemnation to be paid by the person or persons at whose instance the same is instituted in proportion to the benefits received by each as fixed by said board and to be paid before use is made of such condemned rights or property; and thereafter all persons seeking to take the benefits of such condemnation proceedings shall make application therefor to the Board of Water Engineers and if such application is granted shall pay fees and charges as may be fixed by the board. [Id. sec. 75.]

Art. 7584. Who shall not have the right or power to acquire.—No corporation, person, association of persons, city, town, municipality, or other public corporation, shall have the right or power to acquire by right of eminent domain or condemnation, any riparian right, or rights, water rights or right, dam or dams, or water supply, or any land or lands on, under or adjacent to any stream or streams in the State of Texas, when held, owned or claimed by any corporation, person, or association of persons for the purpose of constructing or erecting any dam, lock, reservoir, power plant, canal, tail-race or channel for the purpose of using the waters of said stream or any part thereof, for developing, using or furnishing power, on any streams, or stream, the waters of which are actually being used, in whole or in part, for such uses or purposes; provided that this Act shall not apply to cities or towns having a population of 25,000 or over according to the last United States census. All parts of any law or laws in conflict herewith are hereby repealed. [Acts 1923, p. 324, sec. 1.]

Art. 7585. Roads and highways.—All persons, associations of persons, corporations, and water improvement or irrigation districts shall have the right to run along or across all roads and highways necessary in the construction of their work, and shall at all such crossings construct and maintain necessary bridges, culverts, or siphons, and shall not impair the uses of such road or highways; provided, that if any public road or highway or public bridge shall be upon the ground necessary for the dam site, reservoir, or lake, it shall be the duty of the commissioners' court to change said road and to remove such bridge that the same may not interfere with the construction of the proposed dam, reservoir, or lake; provided, further, that the expense of making such change shall be paid by the person, association of persons, corporation, water improvement or irrigation district desiring to construct such dam, lake or reservoir. [Acts 1917, p. 230, sec. 76.]

Art. 7586. Who has power to construct ditch.—Such person, association of persons, corporation, or irrigation district shall have power to construct its ditch or canal across, along or upon, any stream of water. [Id. sec. 77.]

Art. 7587. When necessary to irrigate or reclaim lands.—When, in the examination of any such irrigation or reclamation project, under the provisions of the Act of Congress, known as the Reclamation Act, approved June 17, 1902, it shall be found advisable or necessary to irrigate or reclaim lands within the limits of the State, the Secretary of the Department of the Interior is authorized to make all necessary examinations and surveys for, and to locate and construct irrigation or reclamation works within this State, and to perform any and all acts necessary to carry into effect the provisions, limitations, charges, terms and conditions of said Reclamation Act. [Id. sec. 78.]

Art. 7588. Provisions and amendments.—The provisions of this chapter shall in all things apply to the construction, maintenance and operation of any irrigation works in this State, constructed under what is known as the Federal Reclamation Act, approved June 17, 1902, and the amendments thereto, in so far as the provisions of this chapter are not inconsistent with said Act of Congress, or the amendments thereto, of [or] the regulations prescribed by the Secretary of the Department of the Interior in conformity to such Reclamation Act and the amendments thereto. [Id. sec. 79.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 7589. Unlawful to divert water.—It shall be unlawful for any person, association of persons, corporation, water improvement or irrigation district to take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, water course, or watershed, in this State into any other natural stream, water course or watershed, to the prejudice of any person or property situated within the watershed from which such water is proposed to be taken or diverted. [Id. sec. 80.]

Art. 7589a. Diversion or impounding of surface waters.—That it shall hereafter be unlawful for any person, firm or private corporation to divert the natural flow of the surface waters in this State or to permit a diversion thereof caused by him to continue after the passage of this Act or to impound such waters, or to permit the impounding thereof caused by him to continue after the passage of this Act, in such a manner as to damage the property of another, by the overflow of said water so diverted or impounded, and that in all such cases the injured party shall have remedies, both at law and in equity, including damages occasioned thereby, provided that the passage of this Act shall in no way affect the construction and maintenance of levees and other improvements for the purpose of controlling floods, overflows and freshets in rivers, creeks and streams, nor the construction of canals for conveying waters for irrigation or other purposes; and provided further that nothing in this Act shall be so construed as to authorize or give authority to persons or private corporations owning or constructing canals for irrigation or other purposes to construct or maintain any canal, lateral canal or ditch in such manner as to obstruct any river, creek, bayou, gully, slough, ditch or other well defined natural drainage. [Acts 1927, 40th Leg., p. 80, ch. 56, § 1.]

Art. 7590. Application for permit.—Before any person, association of persons, corporation, water improvement or irrigation district shall take any water from any natural stream, water course, or water shed in this State into any other water-shed, such person, association of persons, corporation, water improvement or irrigation district shall make application to the Board of Water Engineers for a permit so to take or divert such waters, and no such permit shall be issued by the Board until after full hearing before said Board as to the rights to be affected thereby, and such hearing shall be held and notice thereof given at such time and such place, in such mode and manner as the Board may prescribe; and from any decision of the Board an appeal may be taken to the district court of the county in which such diversion is proposed to be made, in the mode and manner prescribed in this chapter for other appeals from the decision of the Board. [Acts 1917, p. 230, sec. 81.]

Art. 7591. Penalty to divert waters from natural streams, etc.—If any person, association of persons, corporation, water improvement or irrigation district, or the agent, attorney, employee, or representative of any such person, association of persons, corporation or irrigation district, shall take or divert any waters from the natural streams, water courses or watershed into any other watershed, contrary to the provision of the last two preceding articles he, it, or they shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in a sum not less than one hundred dollars nor more than five hundred dollars or by imprisonment in the county jail, for any term not exceeding six months, and each day that such taking or diversion shall continue shall constitute a separate offense. [Id. p. 231, sec. 82.]

Art. 7592. Acquired title.—Whenever any appropriator of water from any stream or other source of water supply located in whole or in part within this State, shall have obtained from the Board of Water Engineers a permit for the use of water, and shall have made use of the water under the terms of such permit; or whenever any such appropriator of water shall have filed an appropriation in accordance with the laws of this State in force at the time of such filing, and shall have filed with the Board of Water Engineers a certified record of such appropriation, as required by Chapter 171 of the Acts of the Regular Session of the Thirty-third Legislature, and shall have made use of the water, under the terms of such filing or permit for a period of three years after this Act shall take effect, he shall be deemed to have acquired a title to such appropriation by limitation, as against any and all other claimants of water from the same stream, or other source of water supply, and as against any and all riparian owners upon said stream or other source of water supply. [Id. sec. 83.]

Art. 7593. Failure to fence.—Unless the person, association of persons, corporation, water improvement or irrigation district owning or controlling any ditch, canal, reservoir, dam or lake, shall keep the same securely fenced, no cause of action shall accrue in their favor against owners of live stock for any trespass thereon. [Id. sec. 84.]

Art. 7594. Power to acquire lands by voluntary donation.—Any corporation organized under the provision of the General Laws of this State, or the provisions of this chapter for any of the purposes stated in this chapter, shall have the power to acquire lands by voluntary donation or purchase in payment of stock or bonds or water rights; and to hold, improve, subdivide and dispose of all such lands and other property; and to borrow money for the construction, maintenance and operation of its canals, ditches, flumes, feeders, reservoirs, dams, lakes, wells and other property and franchises, to the extent of the value thereof, to secure the payment of any debts contracted for same; provided, no corporation shall issue stock or bonds except for money paid, labor done, or property actually received, and all fictitious increases in stock or indebtedness shall be void; provided further, all lands acquired by such corporation, except such as are used for the construction, maintenance or operation of such canals, ditches, laterals, feeders, reservoirs, dams, lakes, wells, and other necessary works, shall be alienated within fifteen years from the date of acquiring said land or be subject to judicial forfeiture. [Id. sec. 85.]

Art. 7595. Corporation may elect directors.—Any corporation under the provisions of the General Laws of this State, or the provisions of this chapter, for any of the purposes stated in this chapter, may elect directors or trustees to hold office for a period of three years, and may provide for the election of one-third in number thereof each year. [Id. p. 232, sec. 86.]

Art. 7596. Preference lien.—Every person, association of persons, corporation, water improvement or irrigation district who has heretofore constructed, or may hereafter construct any ditch, canal, dam, lake or reservoir for the purpose of irrigation, and who shall lease, rent, furnish or supply water to any person, association of persons, water improvement district or corporation, for the purpose of irrigation, shall, irrespective of contract, have a preference lien superior to every other lien upon the crop or crops raised upon the land thus irrigated;

Provided, however, that when any such irrigation, conservation or reclamation district shall obtain a water supply under contract with the United States, the Board of Directors of such district may, by resolution duly entered upon the minutes of the board, and with the consent of the Secretary of the Interior, waive such preference lien, in whole or in part. [Id. sec. 87; Acts 1927, 40th Leg., p. 141, ch. 91, § 1.]

Art. 7597. Enforcement of lien.—For the enforcement of the lien provided for in the preceding article, every such person, association of persons, corporation, water improvement or irrigation district shall be entitled to all the rights and remedies prescribed by Title 84, Articles 5222 to 5239, inclusive, of this Act for the enforcement of the lien as between landlord and tenant. [Id. sec. 89.]

This article is from section 88 of Acts 1917, 35th Leg., ch. 88, p. 232, instead of section 89 as shown above.

Art. 7598. Johnson grass or Russian thistle.—It shall be unlawful for any person, association of persons, corporation, water improvement or irrigation district owning, leasing or operating any ditch or canal or reservoir, or cultivating any lands abutting upon any reservoir, ditch, flume, canal, wasteway or lateral to permit Johnson grass or Russian thistle to go to seed upon such reservoir, ditch, flume, canal, waste-way or lateral within ten feet of the high water line of any such reservoir, ditch, flume, canal, waste-way, or lateral, where the same crosses or lies upon land in the ownership or control of any such person, association of persons, corporation, water improvement or irrigation district, and anyone violating the provisions of this article shall be fined not less than twenty-five nor more than five hundred dollars or be imprisoned in jail not less than thirty days nor more than six months, or both so fined and imprisoned. [Id. sec. 89.]

Art. 7599. Counties exempt.—The preceding article shall not apply to Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde and San Saba counties. [Id. sec. 89.]

Art. 7600. Artesian well defined.—An artesian well is defined, for the purposes of this chapter to be an artificial well in which, if properly cased, the waters will rise by natural pressure above the first impervious stratum below the surface of the ground. [Id. sec. 90.]

Art. 7601. When artesian well declared a public nuisance.—Any artesian well which is not tightly cased, capped and furnished with such mechanical appliances as will readily and effectively arrest and prevent the flow from such well, either over the surface of the ground about the well, or wasting from the well through the strata through which it passes, is hereby declared a public nuisance and subject to be abated as such, upon the order of the board. [Id. sec. 91.]

Art. 7602. Waste defined.—Waste is defined for the purposes of this Act, in relation to artesian wells to be the causing, suffering or permitting the waters of an artesian well to run into any river, creek or other natural water course or drain, superficial or underground channel, bayou, or into any sewer, street, road, highway, or upon the land of any other person than that of the owner of such well, or upon the public lands or to run or percolate through the strata above that in which the water is found, unless it be used for the purposes and in the manner in which it may be lawfully used on the premises of the owner of such well. [Id. p. 233, sec. 92.]

Art. 7603. Proper irrigation of trees, etc.—Nothing in the preceding article shall be construed to prevent the use of such water, if suitable, for proper irrigation of trees standing along or upon any street, road or highway, or for ornamental ponds or fountains, or the propagation of fish, or for the purposes authorized by this chapter. [Id. p. 233, sec. 92.]

Art. 7604. Well properly cased.—Whenever any person desires to drill a well upon his own land for domestic purposes or use for stock raising purposes or use that comes within the definition of artesian well, as defined in this chapter he shall have the right to do so without subjecting himself to the provisions of this chapter, provided that said well shall be properly and securely cased, and whenever water is reached containing mineral or other substances injurious to vegetation or agriculture it shall be the duty of the owner of said well to securely cap same or to control its flow so as not to injure the land of any other person, or to fill it up so as to prevent the water of said well to rise above the first impervious stratum below the surface of the ground. [Id. sec. 93.]

Art. 7605. Accurate record kept.—Any person boring or causing to be bored any artesian well shall keep a complete and accurate record of the depth and thickness and character of the different strata penetrated, and when such well is completed shall transmit by registered mail to the Board of Water Engineers a copy of such record. [Id. sec. 94.]

Art. 7606. Excessive or wasteful use of water wilfully permitted.—Any person, association of persons or the agent of any corporation owning or acquiring any possessory right to lands contiguous to any canal or irrigation system and who acquires the right to the use of water from such canal or irrigation system, by contract as in this chapter provided, who wilfully permits the excessive or wasteful use of water by any of the agents, servants or employees of said parties, or who wilfully permits water to be wasted and not applied to a beneficial purpose, shall be deemed guilty of a misdemeanor and shall be punished as provided in Article 7613 and such use or waste of water shall be declared a public nuisance and abated as such by the Board of Water Engineers: said Board of Water Engineers being empowered to direct the canal company or irrigation system to close the water gates of said persons and to keep them closed until such time as such unlawful use of water shall be corrected and the determination of this question shall be controlled entirely by the Board of Water Engineers or its agents, servants, and employees. [Id. sec. 94.]

Art. 7607. Works declared public nuisance.—Any person, association of persons, corporation, water improvement or irrigation district who owns or operates any works which make use of water for any of the purposes named in this chapter, and who permits unreasonable loss of water in the operation of such works, through the faulty design or negligent operation of such works, shall be deemed guilty of waste, and such works or any part thereof may be declared a public nuisance and abated as such by the Board of Water Engineers. [Id. p. 234, sec. 96.]

Art. 7608. Penalty for use of works declared public nuisance.—Any person or the agent of any person, or the agent of any association or corporation who shall operate or attempt to operate any works, or shall use any water under contract, with any canal or irrigation system, that has been previously declared to be a public nuisance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not more than one thousand dollars or be confined in the county jail for a period of not to exceed one year or both such fine and imprisonment. [Id. sec. 97.]

Art. 7609. Suit instituted, where.—In any and all civil suits instituted by or under the direction of the Board of Water Engineers, suit may be prosecuted and instituted in any court of competent jurisdiction in the county or in any of the counties where the land lies. [Id. sec. 98.]

Art. 7610. Action may be brought before any district court.—Action may be brought before any district court of this State having jurisdiction over the irrigation district in question by any person, association of persons, corporation, water improvement or irrigation district, who may be injured by waste as herein defined for the determination of questions arising under Articles 7607 and 7608. [Id. sec. 99.]

Art. 7611. Detailed record.—Any person, association of persons, corporation, irrigation or water improvement district who owns and operates any system of works used for the irrigation of land, or for any of the purposes named in the law, shall keep such detailed record of daily operations as may be necessary to determine the quantity of water taken or diverted each calendar year. If the use is for irrigation, there shall also be kept a record of the number of acres irrigated, as near as may be, without making actual surveys for the purpose, and the character of crop or crops grown, and the yield per acre. [Id. part sec. 100.]

Art. 7612. Information required.—On or before the first day of March of each year, every person, association of persons, corporation, water improvement or irrigation district who, during any part of the preceding calendar year, owned or operated

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any of the works described in this chapter, shall furnish, under oath, to the Board of Water Engineers, upon blanks to be furnished by the Board, the information required ot [to] be kept for such preceding year, or part thereof, together with such other available information as the Board may require, covering the uses made of water for any of the purposes named in the law. [Id. part sec. 100.]

Art. 7612a. Penalty for failure to file report.—Any one who shall under the provisions of the law be required to file annual reports as provided by Section 100 of Chapter 88 of the Acts of the Regular Session of the Thirty-fifth Legislature, and who shall fail or refuse to so file same as therein provided shall be liable to a penalty of $25.00 and a further penalty of $1.00 per day for each day he so fails to file same after the expiration of the day provided by law upon which same shall be filed, and the State may recover such a penalty by suit therefor, provided, however, the maximum penalty for failure to file any one such annual report shall not exceed the sum of $150.00. [Acts 1925, 39th Leg., ch. 136, p. 344, § 6.]

Art. 7613. Penalty for permitting waste.—Whoever wilfully causes or knowingly permits waste, as defined in this chapter, shall be fined in any sum not exceeding five hundred dollars, or shall be imprisoned in jail not more than ninety days, or by both such fine and imprisonment. [Acts 1917, p. 234, sec. 101.]

Art. 7614. Sworn statement.—Any person, association of persons, corporation, or water improvement or irrigation district, owning or operating any artesian well, as defined for the purposes of this chapter, at the time of its taking effect shall, within one year thereafter, transmit to the Board of Water Engineers a sworn statement showing the result of such test, together with a declaration of the use or uses to which the newly developed supply will be devoted, and the contemplated extent of such use. [Id. p. 235, sec. 102.]

Art. 7615. Detailed statement furnished.—On or before the first day of March of each year, every person, association of persons, corporation, water improvement or irrigation district who, during any part of the preceding calendar year, owned or operated any artesian well for any purpose other than that of domestic use, shall furnish, under oath, to the Board of Water Engineers, upon blanks to be furnished by the Board, a detailed statement showing the quantity of water which has been derived from such well, and the character of use to which same has been applied, together with the change in level of water table of said well, and if used in irrigation, the acreage and yield of each crop, together with such additional data as the Board may require. [Id. sec. 103.]

Art. 7616. Oil wells exempt.—Nothing in the preceding articles, relating to artesian wells, shall be construed to apply to any oil well and the status of such oil wells shall be unaffected by this chapter. [Id. sec. 104.]

Art. 7617. Abandoned oil wells.—Abandoned oil wells shall be safeguarded as required in Article 7601. [Id. sec. 104.]

Art. 7618. Boundaries.—The provisions of this chapter shall apply to all streams or other[s] sources of water supply lying upon or forming a part of the boundaries of this State. [Id. p. 243, sec. 135.]

Art. 7619. Not to recognize any riparian right.—Nothing in this chapter contained shall be construed as a recognition of any riparian right in the owner of any lands the title to which shall have passed out of the State of Texas subsequent to the first day of July, A. D. 1895. [Id. sec. 136.]

Art. 7620. Not to alter any vested right of property.—Nothing in this chapter contained shall be held or construed to alter, affect, impair, increase, destroy, validate or invalidate any existing or vested right of property existing at the date when this Act shall go into effect. [Id. sec. 137.]

Art. 7621. Held unconstitutional.—If any article or provision of this chapter shall be held unconstitutional, it shall not be held to invalidate any other provision of this Act. [Id. sec. 138.]

CHAPTER TWO

WATER IMPROVEMENT DISTRICTS

Water Control and Improvement Districts, see post, chapter 3a.

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Article 7622. Water improvement districts established.—The county commissioners' court of any county in this State at any regular or called session thereof may establish one or more water improvement districts in their respective counties, or parts of such districts therein, in the manner hereinafter provided. Such districts may or may not include within their boundaries villages, towns, cities, and municipal corporations, or any part thereof, but no land shall be at the same time included within the boundaries of more than one water improvement district created under this chapter. Such districts when so established may make improvements or may purchase improvements already existing, or may purchase improvements and make additions thereto, and may issue bonds in payment therefor, as herein provided. Such districts being authorized to provide for the irrigation of the land included therein, and when operating under Section 59 of Article 16 of the Constitution, furnish water for domestic, power and commercial purposes. Such districts may be formed for co-operation with the United States under the Federal Reclamation Laws for the purpose of the construction of irrigation works, including drainage works, necessary to maintain the irrigability of the land for the purchase, extension[,] operation or maintenance of constructed works or for the assumption, as principal or guarantor, of indebtedness to the United States on account of district lands. [Acts 2nd C. S., 1919, p. 65, part sec. 1.]

Art. 7622a. Including lands within existing district.—Whenever a water improvement district, shall be organized under the provisions of this Chapter, for co-operation with the United States, under the Federal Reclamation Laws, for the purpose of the construction of irrigation works or the obtaining of a water supply therefrom, it shall be lawful to include within such water improvement district lands at the same time included within the boundaries of an existing water improvement district or other district organized for irrigation purposes, as well as lands not embraced within any such district; and when lands are embraced within two districts, as authorized by this Article, such fact shall not change, impair or limit the rights, obligations or liabilities of such lands in or to either district, but the contract with the United States may reserve to the United States a prior lien upon crops grown upon said land with water furnished in whole or in part by the United States.

Provided, further, that the lands embraced within such district need not be contiguous. [Acts 1927, 40th Leg., p. 366, ch. 247, § 1.]

Art. 7623. Petition signed by majority—notice.—The petition herein provided for to be presented to the county commissioners' court shall be signed by a majority in number of the holders of title to the lands situated within the proposed district and representing a majority in value of the lands therein as indicated by the county tax rolls; provided, however, that such petition shall be sufficient if same is signed by fifty holders of title or evidence of title to the land situated within the proposed district, in the event that the number of such land owners should be greater than fifty in number. Upon presentation to the commissioners' court either at a regular or special session, of a petition as herein provided praying for the establishment of a water improvement district, setting for [forth] the boundaries thereof and designating a name for the district, the commissioners' court shall set the same for hearing at some regular or special session to be held not less than fifteen days nor more than forty days from the presentation of said petition. The clerk of said court shall issue a notice of the said hearing, giving the date and place of hearing, and a copy of the order of the court

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setting same for hearing. Said notice shall be directed to the sheriff of the county requiring him to serve the notice in the manner provided by law. Said notice shall be sufficient if it contains the matter herein provided, and all persons interested shall take notice of the boundaries of said district as set out in the petition and may inspect same by examining the same in the office of the clerk of said court. [Acts 2nd C. S., 1919, p. 65, part sec. 1.]

Art. 7624. Posting and publishing notice.—The sheriff shall execute said notice by posting true copies thereof in three public places within said proposed district and one at the courthouse door of the county, or on the bulletin board used for public notices at the county courthouse. Said notices shall be posted for ten full days prior to the date of said hearing. Said notices shall also be published in a newspaper of general circulation in the county, if a newspaper is published therein, one time and at least five days prior to such hearing. The sheriff shall make due return of a true copy of said notice, showing the time when and the places where such notice was posted and published. The said return to be delivered to the clerk of the commissioners' court, and to be recorded in the minutes of said court. [Id. part sec. 1.]

Art. 7625. Duties imposed upon clerk and sheriff.—The duties herein imposed upon the clerk and sheriff may be performed by them acting by themselves or their deputies as provided by law for other similar duties. When conditions may make desirable, the petition herein provided for may be signed and presented to the court in several copies. When such petition is so presented in more than one copy the clerk shall file all such copies and shall make a true copy thereof, including a list of all those who have signed the several copies, and certify thereto and file same. Such certified copy shall be considered the petition in all other proceedings provided for by this chapter.

Water improvement districts to be organized as provided herein are defined districts under the authority granted by Section 52 of Article 3 of the Constitution of the State. [Id. part sec. 1.]

Art. 7625a. Districts in two or more counties; establishment.—When any district proposed to be established embraces lands located in two or more counties, the owners of title, or evidence of title of a majority of the acreage of the proposed district, or fifty property tax paying voters of the territory proposed to be embraced within a district may petition the State Board of Water Engineers for a hearing to determine the advisability of the creation of such district, and for an order of election creating such district, and for the election of five directors of the proposed district. [Acts 1925, 39th Leg., ch. 205, p. 676, § 2.]

Art. 7625b. Notice of hearing.—Upon the filing of such petition, the Board of Water Engineers shall set the same down for a hearing at a date not less than fifteen or more than thirty days from the date of the filing of such petition, and shall cause notice to be given to the commissioners' court of each county in which lands are located proposed to be embraced in the district, and stating the date and place of hearing, and upon receipt of such notice by the commissioners' courts from the State Board of Water Engineers, it shall be the duty of the clerk of the said commissioners' courts to post a notice at the court house door of the date and place of hearing. [Acts 1925, 39th Leg., ch. 205, p. 676, § 2.]

Art. 7625c. Hearing.—At such hearing on said petition to the Board of Water Engineers, any person whose land would be affected by the organization of such district may appear before the Board of Water Engineers and protest against or contend for the creation of the proposed district, and may offer competent testimony to show that the said district would or would not serve a beneficial purpose, and that the organization of such district would or would not be practicable or capable of accomplishing the purpose intended by its organization.

If, upon hearing of such petition, it shall appear to the Board of Water Engineers that the proposed plan of water conservation, irrigation and use presented in the petition praying for the organization of the district, is practicable and would present a public utility, then the said Board of Water Engineers shall so find and enter such finding in the records of the Board, and shall transmit a certified copy of such findings to the commissioners' court in each county in which lands proposed to be embraced within said district are situated, and naming a date on which an election shall be held in the territory to be comprised within the district to determine whether or not the proposed district shall be created in accordance with the provisions of this Act, and for the election of a board of five directors of such district. But should the Board of Water Engineers, upon such hearing, determine that said proposed district is not practicable, and will not serve a beneficial purpose, and that it would not be possible to accomplish through its organization the purposes proposed, then it shall so find and enter its findings of record, and the petition shall be thereupon dismissed. [Acts 1925, 39th Leg., ch. 205, p. 676, § 2.]

Art. 7625d. Notice of election.—Upon the receipt of a certified copy of the findings of the Board of Water Engineers authorizing an election to determine whether or not the proposed district shall be formed, the commissioners' court of each county and part of county which is embraced within the proposed district, shall give notice of an election to be held on the date named in the finding and order of the Board of Water Engineers, which notice shall be posted as provided in this Act for other elections for not less than fifteen, nor more than thirty days before the date fixed for the election. [Acts 1925, 39th Leg., ch. 205, p. 677, § 2.]

Art. 7625e. Election.—At the said election there shall be submitted for the decision of the voters the question whether or not the proposed district shall be created, and for the election of five directors for the district. Persons desiring to vote for the creating of such district and for the election of five directors for such district, shall have written or printed on their ballots the words "For the District" and those desiring to vote against the creation of the district shall have written or printed on their ballots the words "Against the District," and those desiring to vote for the issuance of notes shall have written or printed on their ballots "For the Issuance of Notes" and those desiring to vote against the issuance of notes shall have written or printed on their ballots "Against the Issuance of Notes." At such election the names of the directors may be written or printed upon said ballot, or a separate ballot may be used for such purpose. [Acts 1925, 39th Leg., ch. 205, p. 677, § 2.]

Art. 7626. Creation of district contested.—Upon the day set by said county commissioners' court for the hearing of said petition, any person whose lands are included in and would be affected by the creation of said district may appear before said court and contest the creation of such district, or contend for the creation thereof, and may offer testimony to show that such district is or is not necessary and would or would not be of public utility, and that the creation of such district would or would not be feasible or practicable. Said county commissioners shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such district and all matters pertaining to the same, except as is hereinafter provided, and may adjourn the hearing on any matter connected therewith from day to day and all judgments rendered by said court in relation thereto shall be final, except as herein otherwise provided. [Acts 1917, p. 174, sec. 2.]

Art. 7627. Petition feasible—recorded.—If, at the hearing of such petition, it shall appear to the satisfaction of the court that the organization of

such district and the construction or purchase, or the construction and purchase of the proposed irrigation system, or that co-operation with the United States as in Article 7622 provided, is feasible and practicable, and that it is needed and would be a public benefit and a benefit to the lands included in the district then the court shall so find, and cause its findings to be entered of record; but if the court should find that the irrigation of lands in such district is not feasible and practicable and that it would not be a public benefit or is not needed or would not be a public utility, then the court may enter such findings of record and dismiss the petition at the cost of the petitioners. [Id. sec. 3.]

Art. 7628. Appeal to district court.—If at the hearing provided for in Article 7627 of this Act, the court shall enter an order granting or refusing the petition for the organization of said district at the cost of the petitioners, then in that event the petitioners, or any one or more of them, or any one owning land in such district, may appeal from said order to the district court; provided, however, any such appeal shall only be taken in the event notice thereof is filed with said county commissioners' court at the time of said hearing, and that same is perfected by filing with the clerk of said court an appeal bond in a sum of not less than $2,000.00 or more than $5,000.00 to be fixed by said county commissioners' court, payable to the county judge for the benefit of adverse parties, at the time notice of appeal is given and said bond shall be filed with the clerk of said court within ten days thereafter. In the event of such appeal said cause shall be tried under the rules prescribed for practice in the district court, and to be de novo, and the clerk of the commissioners' court shall transfer to the clerk of the district court within ten days from the date of filing of an appeal bond such judgment and all records filed with the county commissioners' court, and it shall be unnecessary to file any other additional pleadings in said cause. The final judgment on appeal shall be certified to the commissioners' court for their action within ten days after same has become final. [Acts 1921, p. 19, sec. 4.]

Art. 7629. Election held within proposed district, when.—After hearing of the petition as provided for in Articles 7626 and 7627 of this Act, if the commissioners' court shall find in favor of the petitioners for the establishment of a district according to the boundaries as set out in said petition the county commissioners' court shall order an election to be held within said proposed district at which election there shall be submitted the following propositions: "For the Water Improvement District." "Against the Water Improvement District." "For the Issuance of Notes of said District." "Against the Issuance of Notes of Said District.", for the purpose of paying the cost of organizing, surveying, maps and plats, and all other indebtedness prior to the issuance of bond [bonds] and the election of five directors as is hereinafter provided. [Acts 2nd C. S., 1923, p. 26, sec. 5.]

Art. 7630. Time—where notices posted.—After ordering of the election as provided in the preceding article, notices of such election shall be given, stating the time and place or places of holding the election, and showing the boundaries of said proposed district, and such notices shall also show the presiding officer or officers appointed for the holding of said election. Such notices shall be posted in four places in such proposed district, and one shall be posted at the courthouse door of the county in which such proposed district is situated, such posting to be for twenty days previous to the date of the election and shall contain the proposition to be voted upon and names of offices to be filled at such election. [Acts 1917, p. 175, sec. 6.]

Art. 7631. Who may vote.—The manner of conducting elections herein provided for shall be governed by the general election laws of the State except as herein otherwise provided. At such election none but resident property taxpayers who are qualified voters under the laws of the State shall be entitled to vote. The county commissioners' court shall at the time of ordering said first election, by an order entered of record, create said proposed district, or the part thereof within said county, into one or more election precincts and shall name a polling place in each voting precinct, and shall appoint two judges and two clerks for each polling place, one of the judges to be designate [designated] as presiding judge. If any said officer so elected fail to serve, his place shall be filled in the manner provided by the general election laws. The court shall order printed one and one-half times as many ballots for said election as there are estimated to be qualified voters within such district. Said ballots for said election shall have printed thereon substantially the following: "For Water Improvement District," "Against Water Improvement District," "For Issuance of Notes of Said District," "Against Issuance of Notes of Said District," and said ballot shall contain five blank lines upon which to write names of persons voted for, for the office of director with a heading, "For Directors, Five to be Elected." No other matter shall be placed on the ballot except the heading "Official Ballot." [Acts 2nd C. S., 1923, p. 26, sec. 7.]

Art. 7632. Election precincts.—The election precincts herein provided to be created shall be and continue the election precincts of said district until changed by an order of the board of directors. [Id.]

Art. 7633. Duty of tax collector.—It shall be the duty of the tax collector of the county before a water improvement district is formed, and of the tax collector of the district after its organization, to make a certified list of the property taxpayers of said district or part thereof in the county, and to furnish same to the officers of the election of each polling place, and before any person is entitled to vote at any election under this Act his name must appear in said certified list of property taxpayers; provided, however, that a qualified voter who is a property taxpayer in said district or proposed district, and whose name[s] does not appear upon said list, shall be entitled to vote if he shall first take the following oath, to be administered by an election judge and which judges of the election are authorized to administer: "I do solemnly swear (or affirm) that I am a qualified voter under the laws of the State of Texas, and that I am a resident property taxpayer of ——— (inserting the name of the district) and I did not acquire such property prior to this election for the purpose of voting, but I am a bona fide property taxpayer. [Acts 2nd C. S., 1919, p. 67, sec. 8.]

Art. 7634. Court declare result of election.—The officers of the election shall make returns for each polling place in the same manner as provided by law for general elections, and the county commissioners' court shall canvass said returns in the manner provided by law. If a majority of said votes be cast in favor of the organization of said district, then the court shall declare the result of said election in favor of the establishment of said district and shall enter same in the minutes of said court. If a majority of said votes be cast in favor of the issuance of notes of said district then the court shall declare the result of said election in favor of the issuance of said notes, and it shall be the duty of the board of directors, when qualified, to issue notes of said district, in a sum not to exceed fifteen per cent of the proposed cost of improvements to be made in said district, for the purpose of creating a fund to pay the costs of the organization of the district and the cost of all surveys, investigations, engineering, issuance of bonds, making and filing of maps and reports, all legal expenses connected therewith, and all other costs and expenses authorized or made necessary by the provisions of this chapter; and to sell said notes, or to exchange the same in payment for such costs and expenses, said notes to be secured by the assessment, levy, and collection of taxes as hereinafter provided for the assessment, levy and collection of taxes for the payment of the bonds of said district; provided, however, that all notes issued under the provisions of

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this article, shall be paid off, satisfied and discharged out of the proceeds of the bonds when issued and sold, if bonds of said district are not voted at the election held for that purpose, then and in that event the notes so issued shall continue in force and effect and shall be paid off, satisfied and discharged by the assessment, levy and collection of taxes to pay note issues. The court shall also canvass the votes for directors and declare the election of the five persons receiving the highest number of votes for said office; provided that should it be found that two or more persons had received the same number of votes so as to make it a tie for the office between them, then the said court shall elect one of said persons to fill such position. In the event said district is composed of territory lying in two or more counties the said returns shall be canvassed and the result declared as hereinafter provided. [Acts 2nd C. S., 1923, p. 27, sec. 9.]

See art. 7634a for amendment of 1925.

Art. 7634a. Court to canvass returns and declare result.—The officers of the election shall make returns for each polling place in the same manner as provided by law for general elections, and the county commissioners' court shall canvass said returns in the manner provided by law. If a majority of said votes be cast in favor of the organization of said district, then the court shall declare the result of said election in favor of the establishment of said district and shall enter same in the minutes of said court. If a majority of said votes be cast in favor of the issuance of notes of said district, then the court shall declare the result of said election in favor of the issuance of said notes, and it shall be the duty of the board of directors, when qualified to issue notes of the said district, in a sum not to exceed four per cent of the proposed cost of improvement to be made in said district, for the purpose of creating a fund to pay the cost of the organization of the district and the cost of all surveys, investigations, engineering, issuance of bonds, making and filing of maps and reports, all legal expenses connected therewith, and all other costs and expenses authorized or made necessary by the provisions of this chapter; and to sell said notes, or to exchange the same in payment of such costs and expenses. Said notes to be secured by the assessment, levy and collection of taxes as hereinafter provided for the assessment, levy and collection of taxes for the payment of the bonds of said district, provided, however, that all notes issued under the provisions of this article shall be paid off, satisfied and discharged out of the proceeds of the bonds when issued and sold. If bonds of said district are not voted at the election held for that purpose, then and in that event, the notes so issued shall continue in force and effect and shall be paid off, satisfied and discharged by the assessment, levy and collection of taxes to pay note issues. The court shall also canvass the votes for directors and declare the election of the five persons receiving the highest number of votes for said office; provided, that should it be found that two or more persons had received the same number of votes so as to make it a tie for the office between them, the [then] the said court shall elect one of said persons to fill such position. In the event said district is composed of territory lying in two or more counties the said returns shall be canvassed and the result declared as hereinafter provided. [Acts 1925, 39th Leg., ch. 205, p. 675, § 1.]

Art. 7635. Result entered in minutes.—If the result of said election be in favor of the establishment of the district, the county commissioners' court shall make and enter in the minutes of said court an order setting forth facts substantially as follows: "In the matter of the petition of ——— and others praying for the establishment of a water improvement district, as in said petition described and named ——— be it known that an election was called for that purpose in said district and held on the —— day of ———, A. D. ———, and a majority of the resident taxpayers voting thereat voted in favor of the creation of said district. Now, therefore, it is declared that said district has been legally established under the name of ———, with the following metes and bonds [bounds]: (Here copy description of boundaries.)

When a district is created including territory in two or more counties the officer charged with the duty of declaring result of said election shall use substantially the same form. [Acts 2nd C. S., 1919, p. 68, sec. 10.]

Art. 7636. Bear name of county.—All districts lying wholly in one county shall include in its name the name of the county in which it is located as a part of its name, and shall be numbered consecutively as created and established. A district lying partly in two or more counties may include the names of said counties in its name or may adopt any appropriate name. [Id.]

Art. 7637. Numbers of districts.—The numbers of districts created hereafter shall not conflict with the numbers of irrigation or water improvement districts heretofore created, but shall be consecutively continued, and when a district lying in two or more counties has adopted a number as part of its name such number shall not be the same as that of any other district in either of said counties, and the numbers of districts created in either of said counties shall not conflict therewith. [Id.]

Art. 7638. Certified copies recorded.—After the making and entering by the commissioners' court of the order establishing such districts as herein provided, or an order changing the name of a district, the said court shall cause to be made a certified copy of such order, which shall be filed with the county clerk of the county in which such district is situated, and shall cause same to be duly recorded in the deed records of said county and properly indexed in the same manner provided for the recording and indexing of deeds, and such recordation shall have the same effect, in so far as notice is concerned, as is provided for the record of deeds, and all costs in connection with the making and recording of such copies shall be paid by the districts. [Acts 1917, p. 176, sec. 11.]

Art. 7639. Directors shall each make bond.—Within ten days after the making and entry of the order of the commissioners' court declaring the result of the election and the establishment of the district as hereinbefore provided, or as soon thereafter as is practicable, the directors elected at such election shall each make and enter into a good and sufficient bond in the sum of five thousand ($5,000.00) dollars each, payable to such district conditioned upon the faithful performance of their duties, to be approved by the commissioners' court. Provided, however, that after the organization of such district, all bonds required to be given by any director, officer or employee of such district shall be approved by the directors of such district, and said directors shall take the oath of office prescribed by statute for the commissioners' court, except that the name of the district shall be substituted for the name of the county in said oath of office; and the bond and oath herein provided for shall be filed with the county clerk of the county within which said district is situated and be by him recorded in the official bond record for said county, and after its record, said bond shall be delivered by the county clerk to the depository selected by such district under the provisions of this Act, and shall be by it safely kept and preserved as a part of the records of said district. [Id. p. 177, sec. 12.]

Art. 7640. Organization of directors.—The directors of such district shall organize by electing one of their number as president and one as secretary. The directors may elect a president pro tem, and a secretary pro tem, to act in the absence or inability of the president or secretary. Any three directors shall constitute a quorum at any meeting, and a concurrence of three shall be sufficient in all matters pertaining to the business of the district except the letting of constructing [construction] contracts and drawing of warrants on the depository, which shall require the concurrence of four of such directors;

provided, however, warrants to pay the current expenses, salaries, and labor and material accounts, may be drawn by an officer, or employee, designated by standing order of the directors, when such accounts have been contracted and ordered paid by the directors. [Acts 2nd C. S., 1919, p. 68, sec. 13.]

Art. 7641. Who eligible for director.—No person shall be elected a director of any district created under this Act unless he is a resident of the State of Texas and owns land subject to taxation within said district, and, who, at the time of such election, shall be more than twenty-one years of age. [Acts 1917, p. 177, sec. 14.]

Art. 7642. Qualifications of tax assessor and collector.—The office of tax assessor and collector is one office to be filled by one person. The tax assessor and collector shall be appointed by the directors or if the directors so order may be elected by an election held for that purpose. He shall qualify by making and entering into a good and sufficient bond, signed also by at least two good and sufficient sureties, to be approved by the board of directors, in the sum of five thousand dollars ($5,000.00) conditioned for the faithful performance of his duties as tax assessor and collector and for the paying over to the depository all funds or sums of money or other thing of value, coming into his hands as such collector. The directors may require additional bonds or bond in larger amount or additional security at any time that same may be advisable in their judgment. The assessor and collector shall be a resident of the district, or any town within the general boundaries of the district, and shall be a qualified voter in the county of his residence. [Acts 2nd C. S., 1919, p. 69, sec. 15.]

Art. 7643. Salary of tax assessor and collector.—The compensation to be paid the tax assessor and collector, or deputy tax assessor and collector shall be fixed by the board of directors, but shall not exceed $3,000.00 per year. One or more deputies may be appointed by the board of directors to assist the tax assessor and collector for such time not to exceed one year as may be ordered by the board. Such deputies shall perform such duties as the board may order and may be discharged at any time by the board. The amount of bond given by such deputies shall be determined at the time of their appointment or as occasion may require. The board of directors may require the tax assessor and collector to perform other duties than those herein fixed and may fix his additional compensation, if any, therefor. [Id.]

Art. 7644. Additional bond required.—In case any district organized hereunder is appointed fiscal agent of the United States, or by the United States is authorized to make collections of money for and in behalf of the United States in connection with any Federal reclamation project, such assessor and collector and each director, shall execute a further additional bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of the duties of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under such appointment or authorization; such additional bonds to be approved, recorded and filed as herein provided for other official bonds, and any such additional bonds may be sued on by the United States or by any person injured by the failure of such officer or the district, to fully, promptly and completely perform their respective duties. [Id.]

Art. 7645. Survey of boundaries.—It shall be the duty of the directors, immediately after they qualify as such, to cause an actual survey of the boundaries of such district to be made according to the boundaries designated in the petition for the establishment of such district, or to adopt in whole or in part such boundaries where already established, and to have said boundary marked by suitable monuments. [Acts 1917, p. 178, sec. 16.]

Art. 7646. Petition to exclude lands.—The owner or owners of the fee of any land constituting a portion of any district may file with the board of directors of such district a petition praying that certain lands owned by them be excluded from and taken out of said district. The petition shall describe the lands which the petitioners desire to have excluded by metes and bounds and such petition must be acknowledged in the same manner and form as is required by law for the conveyance of real estate. Such petition may be filed at any time prior to the issuance of bonds by such district. [Acts 2nd C. S., 1919, p. 69, sec. 17.]

Art. 7647. Notice of hearing.—Upon the filing of a petition for the exclusion of any lands from said district with the board of directors, they shall immediately set said petition down for hearing for a day certain, not to exceed twenty days, however, from the date of the filing thereof, and shall cause notice of such hearing to be given by the posting of written or printed notices of the time and place of such hearing at three public places within said district. Such notice shall contain a copy of the petition for exclusion, and shall be posted for at least eight days prior to such hearing. [Acts 1917, p. 178, sec. 18.]

Art. 7648. Decision after hearing.—The board of directors, at any time and place designated in such notice, or at such time and place as such hearing may from time to time be adjourned to, shall proceed to hear the petition and all objections thereto, and shall determine whether or not said lands, or any portion thereof, shall remain as a portion of said district or be excluded therefrom; and if upon such hearing the directors shall determine that the land desired to be withdrawn or any portion thereof is not susceptible to irrigation by gravity from the system to be provided, or for other reasons should be allowed to be withdrawn, then such lands shall be excluded by granting such petition in whole or in part, and such excluded lands and the owners thereof thereby waive all right to be served with water from such irrigation system or by said district. [Acts 2nd C. S., 1919, p. 70, sec. 19.]

Art. 7649. Petition filed.—The owner or owners of the fee to lands contiguous to any district created under this Act may file with the board of directors of said district a petition in writing, praying that such land be included in such district. The petition shall describe the tract or body of land owned by the petitioners by metes and bounds and upon the filing of such petition with the board of directors, said board of directors shall cause an accurate survey of the said tract of land to be made and the boundaries thereof marked upon the ground, and said tract of land may be admitted as a part of the district; provided it can be irrigated without prejudice to the rights of any of the lands originally contained therein to be first furnished with an adequate supply of water, and when said lands are so admitted they shall immediately become subject to their proportionate share of any taxation or bonded indebtedness that may have been created against said district and subject to such reasonable charge against such lands for the purpose of defraying its part of the expenses of maintenance, operation or other necessary expenses previously made as may be determined by the board of directors. [Acts 1917, p. 179, sec. 20.]

Art. 7650. Application recorded.—If the lands described in said petition are admitted as a part of the district, the application for such admission shall be signed and acknowledged as provided for deeds, and shall be recorded in the deed records of the county in which such district is situated, together with the order of the directors endorsed thereon. [Id.]

Art. 7651. Consent necessary.—No land shall be added to any irrigation district with which contract with the United States shall have been made without the written consent of the Secretary of the Interior. [Id.]

Art. 7652. Directors to control district.—The board of directors herein provided for shall have control over and management of all the affairs of such district, shall make all contracts pertaining thereto, and shall employ all necessary employees for the proper handling and operating of such districts, and

especially may employ a general manager, an assessor and collector, attorneys, a bookkeeper, an engineer, water master and such other assistants and such other laborers as may be required, and they may also buy all necessary work animals, motors, pumps, engines, boilers, machinery and supplies as may be required in the erection, operation and repair of the improvements of the districts; a director may be employed as general manager, and at such compensation as may be fixed by the other four directors and when so employed he shall also perform the duties of a director, but he shall not receive the compensation in this Act provided to be paid to directors. [Id. sec. 21.]

Art. 7653. Contract with United States.—The board of directors, on behalf of said district, may enter into any obligation or contract with the United States for the construction, operation and maintenance of the necessary work for the delivery and distribution of water therefrom, or for the drainage of district lands or for the assumption of indebtedness to the United States for district lands, or for the temporary rental of water from the United States for district lands or a part thereof, under the provisions of the Federal Reclamation Act, and all acts amendatory thereof or supplementary thereto, and the rules and regulations established thereunder; or the board may contract with the United States for a water supply under any Act of Congress providing for or permitting such contract, and in case contract has been or hereafter may be made with the United States as herein provided, bonds of the district may be deposited with the United States at ninety (90) per cent of their par value, to the amount to be paid by the district to the United States under any such contract, the interest on said bonds to be provided for by assessment and levy as in the case of other bonds of the district, and regularly paid to the United States to be applied as provided in such contracts, and if bonds of the district are not so deposited it shall be the duty of the board of directors to include as part of any levy or assessment now provided for by law, an amount sufficient to meet each year all payments accruing under the term of any such contract; and the board may accept on behalf of the district appointment of the district as fiscal agent of the United States in connection with any Federal reclamation project, whereupon the district shall be authorized to so act, and to assume the duties and liabilities incident to such action, and the said board shall have full power to do any and all things required by the Federal statutes now or hereafter enacted in connection therewith and all things required by the rules and regulations now or that may hereafter be established by any department of the Federal Government in regard thereto. [Id.]

Art. 7654. Directors prohibited—interest.—No director of any such district, engineer or employees thereof shall be, directly or indirectly, interested either for themselves or as agents for any one else in any contract for the purchase or construction of any work by said district, and if any such person shall, directly or indirectly, become interested in any such contract he shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine in any sum not to exceed one thousand ($1,000.00) dollars, or by confinement in the county jail not less than six months nor more than one year, or by both such fine and imprisonment. [Id. p. 180, sec. 22.]

Art. 7655. Districts sued.—All districts established under the provisions of this Act may sue and be sued in any and all courts of this State in the name of such district, and all courts of this State shall take judicial knowledge and notice of the establishment of such district and the boundaries thereof, and such districts shall contract and be contracted within the name of such districts. [Acts 2nd C. S., 1919, p. 70, sec. 23.]

Art. 7656. Districts empowered.—Districts created under the provisions of this Act are hereby empowered to own and construct reservoirs, dams, wells, canals, etc., and to acquire the necessary rights of way for and buy or construct all reservoirs, dams, wells, canals, laterals, sites for pumping plants and all other improvements required for the irrigation of the lands in such district by gift, grant, purchase or condemnation, and they may acquire the title to any and all lands necessary or incident to the successful operation thereof, in addition to any of the above, in the manner provided, including the authority by purchase or condemnation, to acquire rights of way for the enlargement, extension or improvement of any existing canals, or ditches for the purpose of raising such canals and ditches jointly with the owners thereof. [Id. p. 227, sec. 24.]

Art. 7657. Property conveyed to United States.—Any property acquired may be conveyed to the United States in so far as the same shall be necessary for the construction, operation and maintenance of works by the United States for the benefit of the district under any contract that may be entered into thereunder. [Id.]

Art. 7658. Assessor and collector to make assessment.—Immediately upon the qualification of the assessor and collector, as hereinbefore provided, he shall enter upon the discharge of his duties, and shall at once proceed to make an assessment of all the taxable property, both real, personal and mixed, in his said district; and such assessment shall be made annually thereafter. [Acts 1917, p. 181, sec. 25.]

Art. 7659. Contents of assessment.—Said assessment shall be made upon blanks to be provided by the directors for such district. Said assessment shall consist of a full statement of all property owned by the party rendering same in said district and subject to taxation therein, and shall state the full value thereof. There shall be attached to each such assessment an affidavit made by the owner or his agent rendering said property for taxation to the effect that said assessment or rendition contains a true and complete statement of all property owned by the party for whom said rendition is made in said district and subject to State and county taxation therein; and in addition to all such assessments or renditions made by the owner or agents of such property, the tax assessor shall make out similar lists of all property not rendered for taxation in such districts that is subject to State and county taxation therein. [Id.]

Art. 7660. Rendition of taxable property.—Each and every person, partnership or corporation owning taxable property in such district shall render same for taxation to the assessor when called upon so to do, and if not called upon by the assessor, the owner shall on or before June 1 of each year nevertheless render for taxation all property owned by him in the district subject to taxation. And all laws and penal statutes of this State providing for securing the rendition of property for State and county taxes, and providing penalties for the failure to render such properties shall apply to all persons, partnerships or corporations owning or holding property in any such district. The tax assessors shall have authority to administer oaths to fully carry out the provisions of this section. [Id.]

Art. 7661. Board of Equalization.—The directors for such district created under the provisions of this Act shall, at their first meeting, or as soon thereafter as practicable, and annually thereafter, appoint three commissioners, each being a qualified voter and resident property owner of said district, who shall be styled "The Board of Equalization," and at the same meeting the same board of directors shall fix the time for the meeting of such Board of Equalization for the first year; and said Board of Equalization shall convene at the time fixed by the directors to receive all assessment lists or books of the assessor for said district for examination, correction, equalization, appraisement and approval, and at all

meetings of said Board the secretary of the board of directors shall act as secretary thereof and keep a permanent record of all the proceedings of said Board of Equalization. [Id. sec. 25.]

Art. 7662. Oath.—Before entering upon the duties as such Board of Equalization, each of the members thereof shall take and subscribe the following oath: "I ..... do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, equalization and appraisement of all property contained within said district, as shown by the assessment lists or books of the assessor of said district, and add thereto all property not included therein of which I have knowledge," and said oath shall be spread upon the minutes to be kept by the secretary of the Board. [Id. p. 182, sec. 27.]

Art. 7663. Board to examine assessment lists.—The Board of Equalization herein provided for shall cause the assessor to bring before them, at the time fixed for the convening of said Board, all the assessment lists or books of the assessor of said district for their examination, that they may see that each and every person has rendered his property at its full value; and said Board shall have power to send for persons and papers to swear and qualify persons who testify, to ascertain the value of such property, and if they are satisfied it is too high, they shall lower it to its proper value; and if too low they shall raise the value of such property to a proper figure. Said Board shall have power to correct any and all errors that may appear on the assessors lists or books, and shall have further authority to add any and all property to said lists of inventories that may have been omitted therefrom. [Id. sec. 28.]

Art. 7664. May file complaint.—The Board of Equalization shall equalize, as near as possible the value of all property situated within said district, having reference to the location of said property and the improvements thereon situated. Any person may file with the said Board at any time before the final action of said board, a complaint as to the assessment of his or any other person's property, and said Board shall hear said complaint, and said complainant shall have the right to have witnesses examined to sustain said complaint as to the assessment of said property, or as to a failure to render any property owned by any person, partnership or corporation situated within said district subject to taxation which has not been properly assessed. [Id. sec. 29.]

Art. 7665. Certified list furnished.—The assessor for such district, at the same time that he delivers to said Board his lists and books, shall also furnish to said Board a certified list of the names of all persons who either refuse or swear to or to sign, the oath or affirmation as required by this law, together with the list of the property of such persons situated within said district who have failed or refused to list their property, as made by him through other information, and said Board shall examine the list and appraise the property so listed by the assessor. [Id. sec. 30.]

Art. 7666. Board to adjourn—serve notice.—In all cases where the Board of Equalization shall find it their duty to raise the value of any property appearing on the lists or books of the assessor or to add property omitted therefrom, they shall, after having fully examined such lists or books, and corrected all errors appearing therein, adjourn to a day not less than ten nor more than fifteen days from the date of adjournment, such day to be fixed in the order of adjournment, and shall cause the secretary of said Board to give a written notice to the owner of such property, or to the person rendering same, of the time to which said Board may have adjourned, and that such owner or person may at that time appear and show cause why the value of such property should not be raised, which notices may be served by depositing the same, properly addressed and postage paid, in any post office within the county. [Id. p. 183, sec. 31.]

Art. 7667. Board to lower property value.—The Board of Equalization shall meet at the time specified in said order of adjournment and shall hear all persons the value of whose property has been raised; and if said Board is satisfied they have raised the value of such property too high, they shall lower the same to its proper value; and said Board of Equalization, after they have finally examined and equalized the value of all the property on the assessors lists or books or that may have been placed thereon by said Board of Equalization, shall approve said lists or books and return them, together with the lists of unrendered property to the assessor that he may make up therefrom his general rolls as required by this Act; and when said general rolls are so made pj [up] the Board shall immediately reconvene to examine said rolls and approve the same if found correct; and the action of the Board at the meeting last provided for in this article shall be final and shall not be subject to revision by said Board or by any other tribunal thereafter. [Id. sec. 32.]

Art. 7668. Compensation.—The members of the Board of Equalization and the secretary while acting as secretary of said Board, shall receive such compensation for their services as may be fixed by the board of directors of the district, not to exceed, however, the sum of six dollars per day for the time actually engaged in the discharge of such duties. [Acts 2nd C. S., 1919, p. 70, sec. 33.]

Art. 7669. Permanent record.—After the return to the assessor and collector of the assessment lists and books duly approved by the Board of Equalization, as hereinbefore provided for, the said assessor and collector shall make up the assessment of all taxable property situated in said district upon duplicate rolls and after the approval of said rolls by the Board of Equalization, he shall retain one of same in his office and shall deliver the other copy to the directors of said district, to be kept by them as a permanent record in their office, and all lists and books of said assessor shall be caused to be substantially bound and by him kept as a permanent record of his office, and be delivered, together with all other[s] records of his office, to his successor, upon his election and qualification, or, in case of a vacancy in such office to the directors for said district. [Acts 1917, p. 183, sec. 34.]

Art. 7670. Assessors report.—The assessor and collector shall collect all taxes due to said district, and shall, at the expiration of each week, pay over to the depository selected by said district all moneys by him collected, and shall report to the directors for such district on the fourth Saturday in every month all moneys so collected by him and paid over to the depository as hereinbefore provided, and shall perform all such other duties, and in such manner and according to such rules and regulations as the board of directors may prescribe and for the convenience of the persons, firms or corporations owning such tax, shall keep and maintain an office with the board of directors for such district, where all such taxes may be paid. [Id. sec. 35.]

Art. 7671. Credit.—The assessor and collector shall be charged by the directors for such district, upon a permanent finance ledger to be kept for said purpose by said district, with the total assessment as shown by the assessment rolls; and proper credit shall be given to the assessor and collector for all sums of money paid over to the depository, as shown by his monthly reports as hereinbefore provided for, and upon the final annual settlement, the said assessor and collector shall make up a full complete report of all taxes that have not been collected, which said report shall be audited by said board of directors, and proper credits given therefor, and such annual settlements shall be made on the first Monday in September of each year. [Id. p. 184, sec. 36.]

Art. 7672. Assessment date.—The assessment provided for in this Act shall be made upon all property subject to taxation in said district on the

first day of January of each year, and such assessment shall be completed and the lists and books ready to deliver on or before the first day of June of each year. [Id. sec. 37.]

Art. 7673. Board convene annually.—The Board of Equalization, after the first year, shall convene annually on the first Monday in June of each year to receive all of the assessment lists or books of the assessor of said district for examination, correction, equalization, appraisement and approval, and for the addition thereto of any property found to be unrendered in said district and shall complete and deliver said lists and rolls to the assessor and collector by the third Monday in July of said year, and the said assessment rolls shall be completed by the assessor and approved by the Board of Equalization, and returned to said assessor and collector by the first Monday in October of each year after the first assessment as hereinbefore provided. [Id. sec. 38.]

Art. 7674. Taxes due—payable.—All taxes provided for by this Act shall become due and payable on the first day of November of each year and shall be paid on or before the 31st day of January thereafter. [Id. sec. 39.]

Art. 7675. Taxes remain lien.—All lands and other property which have been returned delinquent, during the existence of such district, shall be subject to the provisions of this Act, and said taxes shall be and remain a lien upon said land, and upon all other property against which same were assessed, although the owner be unknown or though such land be listed in the name of a person not the actual owner, and though the ownership be changed the land may be sold under the judgment of the court for all taxes, interest, penalty, and costs shown to be due by such assessment for any preceding year or years, provided the record owner of such land or lands at the date of filing such suit be made a party to such suit and be properly cited, and such districts shall have authority to file suits for the collection of taxes due upon land and also personal property or property of any character. No law providing for a period of limitation on debt or actions shall apply to such taxes, accruing after the formation of such district. [Acts 1st C. S., 1921, p. 149, sec. 40.]

Art. 7675a. Assessment lien; not barred by limitation.—All assessments made by the directors of a water improvement district as provided by law for the maintenance and operation thereof, shall be and constitute a lien against the land on which such assessments are made and remain a lien thereon until same are paid and satisfied, and no law providing for a period of limitation against actions for debt shall apply thereof [thereto]. Same shall not be barred by limitation. [Acts 1925, 39th Leg., ch. 152, p. 362, § 4.]

Art. 7676. District no right to become party.—No district created or existing or to be created under the provisions of this chapter shall have the right to become a party to or purchase, or hold under or assign or seek to enforce or receive the fruits or benefits from any contract between any land owner and private canal company or corporation made prior to the formation of such district, but all rights and privileges owned or possessed by such district are those arising or inherent in such district by virtue of this chapter. The statutes of limitation of two years as well as the provisions hereof may be pleaded in bar of all actions for the recovery of water rents or other assessments accruing on land in such district prior to the formation of such district and cannot acquire or enforce any lien against such land fixed by any contract existing prior to the formation of such district and cannot prosecute or cause to be prosecuted for it any suit or cause of action or claim of any character for its use for the recovery of any such water taxes or assessments accruing prior to the formation of such district and cannot foreclose any lien on such lands by reason of such unpaid water assessments and taxes accruing prior to the formation of such district and cannot avail itself of any rights under any private contracts made with reference to said lands prior to the formation of such districts, and cannot be held liable for the breach of any such contract. [Acts 1st C. S., 1921, p. 150, sec. 40a.]

Art. 7677. Delinquent tax record.—It shall be the duty of the directors for such district to cause to be prepared by the tax collector, or at the expense of such district a list of all lands upon which the taxes remain unpaid on the 31st of January of each year, and such list of lands shall be known as a delinquent tax roll, and such delinquent tax roll shall be delivered to the secretary of such district to be by him safely kept as a part of the record of his office. Such delinquent record shall carry a sufficient description to properly identify the land shown to be delinquent therein. Such description may be made by reference to lot or block number. [Acts 1917, p. 184, sec. 41.]

Art. 7678. How recorded.—Upon receipt of such delinquent tax roll by the directors of said district, the said directors shall cause said record to be recorded in a book which shall be labeled "The Delinquent Tax Record of ——— County, Water Improvement District No. ———," and shall be accompanied by an index showing the name of delinquents in alphabetical order.

Art. 7679. Publication of delinquent tax record.—Upon the completion of said delinquent tax record by any such district, it shall be the duty of the directors thereof to cause the same to be published in some newspaper published in the county in which said district is situated for three consecutive weeks, but if no newspaper is published in the county, such lists may be published in a newspaper outside of the county to be designated by such directors by a contract entered into, and a publisher's fee of not to exceed twenty-five ($.25) cents for each tract of land so advertised and said publication, and any other publication, in a newspaper provided for in this Act may be proven by the affidavit of the proprietor of the newspaper in which the publication was made, his foreman or principal clerk, annexed to a copy of the publication specifying the time when and the paper in which the publication was made.

Art. 7680. Attorney to bring suit.—Twenty days after the publication of such notice or as soon thereafter as practicable, the directors for such water improvements or irrigation shall employ an attorney to bring suit in the name of the district in the district court of said county for the purpose of collecting all taxes, interest, penalty, and costs due upon said land. Said petition shall describe all lands upon which taxes and penalties shall remain unpaid and the total amount of taxes and penalties due thereon with interest computed to the time fixed for the sale of said land at the rate of six (6%) per cent per annum, and shall pray for a judgment for said amount, and for the fixing, establishing and foreclosing of the lien existing against such land; that said lands be sold to satisfy said judgment for all taxes, interest, penalty and costs, and for such other relief to which such district may be entitled under the law and facts. All suits to enforce the collection of taxes as provided in this Act shall take precedence and have priority over all other suits pending in the district court.

Art. 7681. Parties defendants.—The proper persons shall be made parties defendants in all such suits and shall be served with process and other proceedings due therein as provided by law for suits of like character in the district court of this State, and in case of foreclosure, order of shall [sale] shall issue thereunder as in other cases of foreclosure; but if the defendant or his attorney shall, at any time before the sale, file with the sheriff or other officer in whose hands any such order of sale shall be placed a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivision as the defendant may request, provided same are reasonable, and in such case, shall sell only as many subdivisions as may be necessary to satisfy the judgment, interest, penalties and cost, and after the payment of the taxes,

interest, penalties and costs adjudged against it, the remainder of the purchase price, if any, shall be paid by the sheriff or other officer executing said order of sale to the defendant or his attorneys of record. [Id. sec. 45.]

Art. 7682. Deed to purchaser.—In all cases in which lands may be sold for default in the payment of taxes under the preceding section, it shall be lawful for the sheriff or other officers selling the same or any of his successors in office, to make a deed or deeds to the purchaser, or to any other person to whom the purchaser may direct the deed to be made, and any such deed shall be held in any court of law or equity in this State to vest a good and perfect title in the purchaser thereof subject to be impeached only for actual fraud. [Id. p. 186, sec. 46.]

Art. 7683. Attorneys compensation.—The attorneys representing such district in all suits against delinquent taxpayers that are provided for in this Act shall receive for such service such compensation to be paid out of delinquent taxes collected, as may be allowed by the directors for such district; provided, however, that in no event shall said fee exceed fifteen (15%) per cent of the amount of taxes so collected. The sheriffs, district clerks and other officers, executing any writ or performing any service in the foreclosure of delinquent taxes on any lands situated in such district shall receive the same fees for such services as is provided by statute as fees for like services performed in connection with the discharge of the duty of their respective offices. [Id. sec. 47.]

Art. 7683a. Attorney's fees added to taxes; publication not necessary.—When a water improvement district shall employ an attorney to collect delinquent taxes, the fees of said attorney as fixed under the provisions of Section 47, Acts of 1917, by the board of directors shall be added to such taxes to the extent of not to exceed 10% of the amount of such delinquent taxes as collection fees and may be recovered in the judgment rendered in any such tax suit. The publication of the delinquent tax rolls shall not be a prerequisite to the filing of tax suits by a district and such suits may be filed without the publication thereof. [Acts 1925, 39th Leg., ch. 152, p. 362, § 2.]

Art. 7684. Interest on delinquent taxes.—If any person shall fail or refuse to pay the taxes imposed upon him or his property by this Act until after the 31st day of January next succeeding the return of the assessment roll for said district, a penalty of ten (10%) per cent on the entire amount of such tax shall accrue which penalty when collected shall be paid over to such district. Such delinquent taxes shall bear interest from August 1st after due at the rate of six per cent per annum. And the collector of taxes shall, by virtue of his tax roll seize and levy upon and sell so much personal property as shall be sufficient to make the amount of such taxes together with the penalty above provided, interest thereon at the rate of six (6%) per cent per annum and all costs accruing thereon. If no personal property be found for seizure and sale as above provided, the collector shall make up and file with the secretary of the district the delinquent tax list hereinbefore provided for, charging against same all taxes, penalties and interest assessed against same and the owner thereof. [Acts 1917, p. 186, sec. 48.]

Art. 7685. Delinquent taxpayer [may] redeem lands, how.—Any delinquent taxpayer whose lands have been returned delinquent or anyone having an interest therein, may redeem the same at any time before his lands are sold under the provisions of this Act by paying to the collector the taxes due thereon with interest at the rate of six (6%) per cent and all costs and the penalty of ten (10%) per cent as provided in this Act. [Id. sec. 49.]

Art. 7686. Duty of engineer.—After the establishment of any such district and after the qualification of the board of directors, and after the return of the list of assessments of the taxable property situated in such district, the board of directors for such district may appoint an engineer, whose duty it shall be to make a complete survey of the lands contained in said district, and to make a map and profile of the several canals, laterals, reservoirs, dams, and pumping sites in such district and connected therewith, which shall also show any part of said canals, laterals, reservoirs and dams or pumping sites extending beyond the limits of such district, which said map shall show the name and number of each survey and shall also show the area in number of acres contained in such district. Provided, however, that such engineer may adopt any and all surveys heretofore made by any person, firm or corporation who have applied for or appropriated any water for irrigation under the general laws of this State; and provided further, that said engineer may adopt all surveys for canals, laterals, reservoirs, dams or pumping sites shown on said maps or plats, or may adopt other maps, plats and surveys of the correctness of which he may be satisfied. [Id. p. 187, sec. 50.]

Art. 7687. Map.—The maps hereinbefore provided for shall show the relation that each canal and lateral bears to each tract of land through which it passes and the shapes into which it divides each tract, and how much and what part of each tract can be irrigated therefrom, and where the canal or lateral cuts off any less than twenty acres of land from any tract, the map shall show the number of acres in the whole tract, showing the shape of such small tract and its relation to the canal or lateral. And such profile map shall also show in detail the number of cubic yards necessary to be moved or excavated in order to make such reservoir, canal or lateral, and shall show in detail the specification for all other works necessary to the construction of all improvements proposed to be made in such district, and gives the estimated cost of each and when said map, profile, specifications and estimates shall have been completed by the engineer as herein provided, he shall sign the same in his official capacity and file them with the secretary of said board. Provided, however, that where said district contains any pumping plants, canals, dams, ditches or reservoirs heretofore created, and which is contemplated to be purchased or acquired by said district, then such map or plat and estimates as hereinbefore provided for shall show such improvements and the price or probable price at which the same may be acquired, and where additional improvements of canals, ditches, laterals, reservoirs or pumping plants are to be constructed, such report shall contain the detailed information with reference to such additional improvements as is provided for in this article. Provided, further, that none of the maps and data prescribed by this and the preceding article except such as are required for use in the making of assessments and levies for district purposes shall be required where contract is entered into with the United States under Federal laws. [Id. sec. 51.]

Art. 7688. Election.—After the establishment of any such district and the qualification of the directors thereof, and after the making and filing of such maps, profiles, specifications and estimate as provided for in the preceding article and after the making and return of the assessment roll by the assessor and collector for said district, as provided for in this Act, the board of directors may order an election to be held within such district at the earliest possible legal time at which election there shall be submitted the proposition and none other: "For the issuance of bonds and levy of tax and payment therefor." "Against the issuance of bonds and levy of tax and payment therefor." In the event that contract is proposed to be made with the United States under the Federal reclamation laws, the question which shall be submitted to the voters at such election shall be: "For contract with the United States and levy of taxes and payment therefor," and "Against contract with the United States and levy of taxes and payment therefor." [Id. p. 188, sec. 52.]

Art. 7689. Notices posted, where.—Notice of such election stating the maximum amount of bonds to be issued, which amount shall not exceed the engi-

neers [engineer's] estimate, together with the amount of incidental expenses, organization expenses, and the cost of additional work which it may become necessary to add to the engineer's estimate by any change or modification made by the directors of the district in the proposed work; also stating the proposed maximum interest rate thereon, and the proposed maximum maturity date of said bonds; also stating the time and place or places of holding the election shall be given by the secretary of the board of directors, as ordered by the directors, by posting notices thereof in four public places in such district and one at the courthouse door of the county or counties in which said district is situated. Such notice shall be posted for at least twenty days prior to the date of the election. Said notice shall also be published in the manner prescribed in Section 43, Chapter 87, Acts Thirty-fifth Legislature, Regular Session. [Acts 2nd C. S., 1919, p. 70, sec. 53.]

Art. 7690. Contents of notice.—The said notice shall contain substantially the proposition to be voted on as herein provided; provided, however, the bonds so voted upon may be issued to mature in serial form at any date not to exceed the maximum date stated in the notice and may be issued at any rate of interest not to exceed the rate of interest stated in such notice. Said notice shall also contain a summary of the engineer's estimate of the cost of construction of the proposed improvements, and estimate of cost of purchase of any existing improvements to be purchased, together with additions thereto as herein provided. If, however, contract with the United States is proposed for election, the notice shall state the maximum amount of money payable for construction purposes, exclusive of penalties and interest. [Id.]

Art. 7691. Polls and Ballots.—The manner of conducting all elections herein provided for shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers who are qualified voters of said district shall be entitled to vote at any election on any question submitted to the voters thereof by the director for such district at such election. The directors for such district shall name a polling place for such election in each voting precinct or part of the voting precinct embraced in said district, and shall also select and appoint two judges, one [of] whom shall be the presiding judge, and two clerks, for each voting precinct designated in said order; and shall provide one and one-half times as many ballots for said election as there are qualified resident taxpaying voters within such district, as shown by the tax rolls of said county. Said ballot shall have written or printed thereon these words, and no others: "For the issuance of bonds and levy of tax in payment therefor," and "Against the issuance of bonds and levy of tax in payment therefor." If it is proposed that contract be entered into with the United States the ballot shall contain the following words, and no others: "For contract with the United States and levy of taxes and payment therefor," and "Against contract with the United States and levy of taxes and payment therefor." [Acts 1917, p. 188, sec. 54.]

Art. 7692. Oath.—Every person who offers to vote in any election held under the provisions of this chapter shall first take the following oath before the presiding judge of the polling place where he offers to vote, and the presiding judge is hereby authorized to administer same: "I do solemnly swear (or affirm) that I am a qualified voter of ——— County, Water Improvement District No. ———, and that I am a resident property taxpayer of said district, and that I have not voted before at this election." [Id., p. 189, sec. 55.]

Art. 7693. Returns—result.—Immediately after the election the presiding judge at each polling place shall make return of the result in the same manner as provided by law in general elections, such return to be made to the secretary of such district, who shall keep same in a safe place, and deliver them together with the returns from the several polling places to the directors of such district, who shall at a regular session or a special session called for that purpose, canvass said returns and declare the results thereof. In a district operating under authority of Section 59 of Article 16 of the Constitution a majority vote is required in favor of the issuance of bonds and in other districts a two-thirds majority is required. If said canvass of said returns shows said bond issue to have been adopted or said election to have been in favor of making contract with the United States, as the case may be, and the levy of tax, then said directors shall declare the result of said election—to be in favor of the issuance of the bonds, or in favor of the making of contract with the United States, and the levy of tax and payment therefor, and shall cause the same to be entered in their minutes. [Acts 2nd C. S., 1919, p. 71, sec. 56.]

Art. 7694. Directors enter record.—After the canvass of the vote and declaring the result as provided for in the preceding section, the directors for said district shall make and enter an order directing the issuance of bonds, or authorizing the execution of contract with the United States for such district, as the case may be, sufficient in amount to pay for such proposed improvements, together with all necessary incidental expense connected therewith, not to exceed the amount specified in the order for the election and the notice of election. [Acts 2nd C. S., 1923, p. 27, sec. 57.]

Art. 7695. Bonds to include interest.—Provided, however, that bonds may be issued when so authorized by a majority of the voters of said district so as to include a sum sufficient to pay the first three years' interest accrued on the bond issue authorized and no taxes shall be levied against the property situated in said district for said period of three years, when this power is exercised, except in an amount sufficient to pay off, satisfy and discharge the notes provided for in Article 7634 of this Act. [Id.]

Art. 7696. Limitation of indebtedness.—In districts organized under the authority of Article 52 of Section 3 of the Constitution the amount of such bonds, or the amount of contract indebtedness with the United States, shall not exceed in amount one-fourth of the actual assessed value of the real property in such district, as shown by the assessment thereof made for the purpose of determining the value thereof, or at the last annual assessment as provided for in this chapter. This limitation of indebtedness of one-fourth of the assessed value shall not apply to districts, organized under the authority of Section 59 of Article 16 of the Constitution. [Id.]

Art. 7697. Modifications.—Provided, however, that if after an election has been held for the issuance of bonds or for contract with the United States, and the tax authorized and levied, and bonds have been authorized to be issued, or have been issued as provided for in this chapter, or contract with the United States authorized or executed, as the case may be, the directors for said district shall consider it necessary to make any modifications in said district, or in any of the improvements thereof, or shall determine to purchase or construct any further or additional improvements therein and issue additional bonds upon the report of the engineers, or shall determine to make supplemental contract with the United States, or upon its own motion may find it necessary to make said additional improvements, or purchase additional property in order to carry out the purpose for which said district was organized, or to best serve the interest of said district, said findings shall be entered of record, and notice of an election for the issuance of said bonds, or for the authorization of contract with the United States shall be given and such election held within such times, and the returns of such election made as hereinbefore provided for in cases of original election, and the result thereof determined in the same manner. [Id.]

Art. 7698. Bond issuance—requirements.—If the result of such election be declared to be in favor of the issuance of such bonds or the making of such

contract with the United States, said directors may order such bonds to be issued, or may negotiate and execute supplemental contract with the United States as in the manner provided in this chapter. And provided, that if a contract is made with the United States as in Article 7653 hereof provided, and bonds are not to be deposited with the United States in connection with said contract, bonds need not be issued, or if required to raise funds in addition to the amount of such contract, said bonds shall be issued only in the amount needed in addition thereto. [Id.]

Art. 7699. Bonds to repair damage.—Provided, further, that whenever such a district shall have constructed or purchased improvements and same shall be damaged so that it may be necessary to raise funds to repair such damage, such district may either issue bonds to secure such funds or may issue its notes to run not to exceed twenty years, and to bear interest at not to exceed six per cent per annum. Before such notes are issued, the board of directors shall order an election and give notice thereof as required in bond issues, stating the purpose for which they are to be issued, the time they are to run, and the rate of interest they are to bear, and the time and place of said election. The ballots for such election shall have printed thereon, "For Issuance of Notes," and "Against Issuance of Notes." The election shall be held and returns made and canvassed as provided for bond elections. If two-thirds majority of those voting at such election voted in favor of the issuance of such notes, the board of directors may issue same and sell same for the benefit of said district. Such notes shall not be issued in an amount of more than thirty thousand ($30,000.00) dollars. At the time such notes are issued or sold the board of directors shall levy a tax for the purpose of paying the interest thereon and creating a sinking fund sufficient to pay such interest and to pay said notes within the time of their maturity. Said notes may be issued in serial form to mature in installments as determined by the directors. [Id.]

Art. 7700. Denomination of bonds.—The bonds issued under the provisions of this Act shall be issued in the name of the district, signed by the president and attested by the secretary, with the seal of said district affixed thereto, and such bonds shall be issued in denominations of not less than one hundred ($100.00) dollars nor more than one thousand ($1,000.00) dollars each, and such bonds shall bear interest at the rate of not to exceed six (6%) per cent per annum, payable annually or semi-annually. Such bonds shall by their terms provide the time, place or places, manner and conditions of their payment, and the interest thereon, as may be determined and ordered by the directors for such district, and none of such bonds shall be made payable more than forty years after the date thereof. [Acts 1917, p. 190, sec. 58.]

Art. 7701. Preferred lien.—Provided, that the lien for the payments due the United States under any contract between the district and the United States accompany [accompanying] which bonds have not been deposited with the United States, shall be a preferred lien to that of any issue of bonds or any series of any issue subsequent to the date of such contract. [Id.]

Art. 7702. Suit not permitted, when.—No suit shall be permitted to be brought in any court of this State contesting or enjoining the validity of the formation of any district created under the provisions of this chapter, or any bonds issued hereunder, or contesting the validity of contract with the United States or of the authorization thereof by the district except in the name of the State of Texas, by the Attorney General, upon his own motion, or upon the motion of any party affected thereby upon good cause shown, except as herein provided. [Id. sec. 59.]

Art. 7703. Determine validity.—Any such district in this State desiring to issue bonds in accordance with this chapter shall, before such bonds are offered for sale, bring an action in the district court in any county of the judicial district in which said district, or any part thereof, may be situated or in the district court of Travis County, to determine the validity of any such bonds, or such district contracting with the United States in accordance with this chapter, shall, if requested by the Secretary of the Interior, bring an action in said court to determine the validity of said contract. Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested may be had by publication of a general notice thereof once each week for at least two consecutive weeks in some paper of general circulation published in the county or counties in which such district is situated, and if no paper is published in the county then same shall be published in a paper in the nearest county thereto where a paper is published. Notice shall also be served upon the Attorney General of the State of Texas of the pendency of said action in the same manner as in civil suits. [Acts 2nd C. S., 1919, p. 72, sec. 60.]

Art. 7704. Attorney General may waive service.—The Attorney General may waive service in such suits when furnished a full transcript of the proceedings had in the formation of such district and in connection with the issuance of said bonds, or in connection with the authorization of said contract with the United States and a copy of the contract. [Id.]

Art. 7705. Attorney General to tender issue.—It shall be the duty of the Attorney General to make a careful examination of all such proceedings and require such further evidence and make such further investigation as may seem to him advisable. He shall then file an answer tendering the issue as to whether such bonds are legal and binding obligations upon such district, or, as the case may be, as to whether such contract with the United States is legal and binding upon the district. The issue thus made shall be tried and determined by the court and judgment entered upon such finding. Upon the trial of such cause the court may permit any person having an interest in the issues to be determined to intervene and participate in the trial of the issues made. All suits brought under the provisions of this chapter shall have preference over all other actions in order that a speedy determination as to the matters involved may be reached. [Acts 1917, p. 191, sec. 61.]

Art. 7706. Judgment rendered.—Upon the trial of the issues made under the preceding article, if the judgment of the court shall be adverse to the district, then such judgment may be by said district accepted, and the error pointed out in such proceedings may be corrected in the manner designated or directed by said court, and when so corrected, the judgment of the district court shall be rendered showing that said corrections had been made, and that the bonds issued thereunder, or the said contract with the United States, are binding obligations upon said district. And thereafter the judgment, when so finally made and entered, shall be received as res adjudicata in all cases arising in connection of said bonds or any interest due thereon, or in connection with the collection of moneys required by contract with the United States, and as to all matters pertaining to the organization and validity of said district, or pertaining to the validity of the bonds or of the said contract with the United States. [Id. sec. 62.]

Art. 7707. Certified copy.—After the making and entry of the judgment of the district court, as hereinbefore provided, the clerk of said court shall make a certified copy of such decree, which shall be a part of the orders and decree connected with such election, and said court decree shall be filed with the Comptroller of Public Accounts, and to be by him recorded in a book kept for that purpose, and said certified copy or a duly certified copy of said record made by the Comptroller shall be received in evidence in all litigation thereafter rising which may affect the validity of such bonds or of such contract with the United States, and shall be conclusive evidence of such validity. [Id. p. 192, sec. 63.]

Art. 7708. Comptroller to register bonds.—Upon the presentation of said bonds, together with a certified copy of the decree of the district court, as provided for in the preceding article, the Comptroller shall register said bonds, together with a certified copy of the judgment, as herein provided for, in a book to be provided for that purpose, and shall attach to each of said bonds a certificate of the fact that the decree of the district court as required by this chapter has been filed with him in his office; such certificate to be signed by him officially, and the seal of his office attached thereto. [Id. sec. 64.]

Art. 7709. Book provided.—The county commissioners court in the county in which such district may be situated, in whole or in part, shall provide a well bound book in which a list of said bonds shall be kept by the county clerk, showing their numbers, amount, rate of interest, date of issue, when due, where payable, and said book shall be a public record. [Acts 2nd C. S., 1919, p. 73, sec. 65.]

Art. 7710. Salable bonds.—After the issuance of said bonds, and after the registration by the Comptroller of Public Accounts for the State of Texas, as provided by this chapter, the board of directors for such district shall offer for sale, and sell said bonds on the best terms and for the best possible price, but none of said bonds shall be sold for less than ninety per cent of their face value. When said bonds are sold, all money received therefrom shall immediately be paid over by the board of directors to the depository for said district, provided, however, that the board of directors may exchange bonds for property to be acquired by purchase under contract or in the payment of contract price for work to be done for the use and benefit of said district. [Acts 1921, p. 19, sec. 66.]

Art. 7711. Purpose of construction and maintenance fund.—All expenses, debts and obligations necessarily incurred in the creation and establishment and maintenance of any district organized under the provisions of this chapter shall be paid out of the construction and maintenance fund of such district, which fund shall consist of all moneys received by said district from the sale of the bonds of such district, or as hereinafter provided, or if contract is proposed to be made with the United States for the construction of the irrigation system, said expenses, debts and obligations may be paid out of the maintenance and operating fund. [Acts 1917, p. 192, sec. 67.]

Art. 7712. Directors levy tax.—Whenever such bonds shall have been voted, the directors for such district shall levy a tax upon all property within such district sufficient in amount to pay the interest on such bonds together with an additional amount to be placed in the sinking fund, sufficient to discharge and redeem said bonds at their maturity, and said directors for such district shall annually levy or cause to be assessed and collected taxes upon all property within said district sufficient in amount to pay for the expenses for assessing and collecting such taxes. Whenever contract shall be made with the United States, taxes shall similarly be levied sufficient in amount to meet all installments, as they become payable, and interest, if any, and the directors shall cause due levy annually to be made until all such contracts and obligations shall have been discharged. Such bonds may be issued in serial form, or payable in installments, as determined by said directors, and such tax levy shall be sufficient if it provides an amount sufficient to pay the interest on such bonds and to meet the proportional amount of the principal of the next maturing series of said bonds, and the expenses of assessing and collecting such taxes for such year. [Id., p. 193, sec. 68.]

Art. 7713. "Interest and Sinking Fund."—There is hereby created what shall be termed the "Interest and Sinking Fund" for such district, and all taxes collected under the provisions of this chapter for such fund, shall be credited to such fund, and shall never be paid out, except for the purpose of satisfying and discharging the interest on said bonds, or for the payment of such bonds, and to defray the expense of assessing and collecting such tax, and for the payment of principal and interest due or to become due to the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States, as in Article 7653 hereof provided, such fund shall be paid out upon order of the directors of such district upon warrants drawn therefor, as hereinbefore provided, and at the time of such payment the depository for such district shall receive and cancel any interest coupon so paid or any bond so paid, and when any such interest coupon or bond has been paid, it shall be delivered to the directors and be cancelled and destroyed. [Acts 2nd C. S., 1919, p. 73, sec. 69.]

Art. 7714. "Maintenance and Operating Fund."—There shall also be created a fund to be known as "Maintenance and Operating Fund," and such fund shall consist of all moneys collected by assessment or otherwise for the maintenance and operation of the properties owned or acquired by such district, or for temporary rental due to the United States, and, except the expenses of assessing and collecting taxes for interest and sinking fund, which shall be paid as provided in the next preceding article, out of said maintenance and operating fund shall set aside the amortization and emergency fund, hereinafter provided for, and shall be paid all expense of operation of every kind, and any balance due on construction, or for extensions or improvements, not otherwise provided for, such debts to be paid upon warrants executed as otherwise provided herein. [Acts 1923, p. 378, sec. 70.]

Art. 7715. Engineer make inspection and valuation.—As soon after the passage of this Act as practicable and before fixing the next annual assessment for maintenance and operation, the board of directors of each such district shall cause to be made by a competent engineer an inspection and valuation of all the physical properties of such district, subject to decay or obsolescens[c]e, or to loss, injury or damage by any sudden, accidental or unusual cause whatsoever, and based upon such inspection and valuation said engineer shall determine, as nearly as may be, such a sum, to be annually set aside, as will be sufficient to pay for replacement of each item of such physical property at the end of its economical life, or for the restoration or replacement of any such physical property upon the happening of such loss, injury or damage thereto. [Id.]

Art. 7716. "Amortization and Emergency Fund."—Out of the maintenance and operation fund, as the same shall be collected, such board of directors shall set aside such portion thereof as shall be necessary to make each year the amount of the annual sum determined as above provided, to be known as the "Amortization and Emergency Fund" and no part of such fund shall be expended except to replace such amortized property or to restore or replace such lost, injured, or damaged property. Any part of the Amortization or Emergency Fund not necessarily expended for the purposes above provided, may be invested in bonds or interest bearing securities of the United States. Provided, that any such board of directors may or may not, in the discretion of such Board, establish such Amortization and Emergency Fund, but after such fund has been established for any such district as above provided, the same shall thereafter be kept up and maintained. [Id.]

Art. 7717. Term of office.—The terms of office of all officers elected for such district shall be for two years, and until their successors are elected and qualified; provided, however, that all officers elected at the first election held under the provisions of this chapter shall hold office only until the next regular election to be held in said district for the election of such officers. [Acts 1917, p. 194, sec. 71.]

Art. 7718. Directors elected or appointed.—There shall be held on the second Tuesday in January, 1924, and every two years thereafter, a general

election, at which time there shall be elected five directors for such district, who shall be the elective officers for such district. Provided, that in all such districts containing not to exceed twelve thousand acres, in which sixty per cent or more of the lands in such district are owned by persons who do not reside in the district, the directors shall be appointed by the county commissioners' court of the county in which the district is situated. The term of office for such directors shall be two years and they shall be so appointed at the same time fixed for the election of directors in other districts and if for any reason the county commissioners' court is not in session at that time the said court shall convene and appoint said directors as soon thereafter as possible. The owners of the lands in such district may file with the county commissioners' court petitions expressing their choice of persons to be selected as directors, and if the owners of sixty per cent of such land, and if sixty per cent of such landowners, agree upon the persons to be appointed, the persons so agreed upon, if qualified, shall be appointed. Otherwise the said court shall appoint suitable qualified persons as such directors. [Acts 1923, ch. 58, sec. 72.]

See art. 7718a for amendment of 1925.

Art. 7718a. Directors elected or appointed.—There shall be held a general election in all water improvement districts on the second Tuesday in January, 1926, and every two years thereafter, at which time there shall be elected five directors for each district.

In all such districts hereafter organized, containing not to exceed 12,000 acres of land, in which 60% or more of the lands are owned by persons who do not reside in the district, the petition for organization of such district may provide that the directors of such district shall be appointed by the county commissioners' court of the county in which such district is situated. In all such districts in which the petition so provides the directors shall be appointed by the county commissioners' court and no election for directors shall be held therein. They shall be so appointed at the time fixed for the election of directors in other districts and if, for any reason, said court is not in session at that time, as soon thereafter as possible. The owners of the lands in such district may file with the court petitions expressing their choice of persons to be selected as directors, and if the owners of 60% of such lands agree upon the persons to be appointed the court shall be governed thereby, otherwise said court shall appoint suitable, qualified persons as directors. [Acts 1925, 39th Leg., ch. 152, p. 362, § 3.]

Art. 7719. Directors receive and canvass election returns.—All elections held in water improvement districts shall be held in accordance with the provisions of the general election laws of this State, except as herein otherwise provided; provided, however, that the board of directors shall appoint all necessary officers to hold such elections, and shall name the polling places in said district, and shall receive and canvass the election returns and do and perform all other duties necessary to the holding of said election and canvassing the returns thereof and declaring the result thereof. [Acts 1917, p. 194, sec. 73.]

Art. 7720. Employment time limited.—All other persons employed or representing said district shall be employed by the board of directors for such time and under such terms and conditions as said board of directors shall deem best for the interest of said district; provided, however, that no contract shall ever be made with any person or employee for a longer period of time, at any one time, than one year, and the salaries of all such employees, or the compensation to be received by them, shall be fixed by the board of directors at the time of the employment. [Id. sec. 74.]

Art. 7721. Vacancies filled, how.—All vacancies in the office of director for such district shall be filled by the board of directors by appointment, and the director so appointed shall hold office until the next regular election, and until his successor has been elected and qualified. Provided, however, that where the number of directors shall have been reduced by death or resignation or from other cause to less than three, then such vacancies shall be filled by a special election to be ordered by the president of said board of directors, or by any two members of said board, said election to be ordered and held after the giving of notice for the election of said officers as provided for the holding of general elections; and further provided, that if said president or two of the directors shall fail or refuse to order such election, then said election may be ordered by the district judge of any judicial district in which said district may be situated upon a petition signed by any five parties interested in the election of said directors, whether said interested parties be taxpayers or bond holders; and when so ordered, notice shall be given of said election, and such election held in the manner provided for the holding of general elections, but under the order of said court, and the directors elected at such election shall hold their office until the next general election, and until their successors shall have been elected and qualified. In the event that less than a quorum exists to approve bonds of such elected directors, then such bonds shall be approved by the county commissioners' court of the county in which such directors reside. [Id., sec. 75.]

Art. 7722. Directors compensation.—The directors provided for by this chapter shall receive as compensation for their services the sum of five dollars per day for each and every day necessarily taken in the discharge of their duties as such directors, and said directors shall file with the secretary for such district a statement verified by their affidavit of the number of days actually taken by them in the service of said district, said statement to be filed on the last Saturday in each month, or as nearly thereafter as practicable, and before a warrant shall issue for the payment of such services. [Id., p. 195, sec. 76.]

Art. 7723. Right of eminent domain.—The right of eminent domain is hereby conferred upon all districts established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through all lands, private and public, except as hereinafter indicated, necessary for making reservoirs, canals, laterals, and for pumping sites, drainage ditches, levees and all other improvements necessary and proper for such districts, and the authority hereby conferred shall authorize and empower such districts to condemn all lands, private and public, for the purposes herein indicated beyond the boundary of such districts and in any county within the State of Texas; the right of eminent domain shall not extend to land used for cemetery purposes, nor to property owned by any person, association of persons, corporation or water improvement district, and used for the purpose of supplying water under the laws of this State and necessary for the making of reservoirs, canals, laterals, pumping sites, levee and drainage ditches, or other appurtenant work by such owner. All such condemnation proceedings shall be under the direction of the directors and in the name of the irrigation or water improvement district, and the assessing of damages and all procedure with reference to condemnation, appeal and payment shall be in conformity with the statutes of the State and as provided in Title 52 of this Act relating to "Eminent Domain," and all such compensation and damages adjudicated in such condemnation proceedings shall be paid out of the construction and maintenance fund of said district. [Id., sec. 77.]

Art. 7724. Defined districts.—In all cases were [where] districts have been heretofore established or wherein proceedings are now pending to establish same, and a hearing has heretofore been had upon

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a petition to establish such districts, and action thereon has been taken by the commissioners' court, or where a public hearing is now pending upon such petition, and the notices thereof and therefor have been given as provided for by Chapter 172, of the Acts of the Thirty-third Legislature, such notices are hereby deemed and declared to be and to have been due and regular notices of such publication under the full meaning, intents and purposes of this chapter, and all such districts so established are hereby declared to be duly and regularly established and are hereby declared to be defined districts, or territory within the meaning of the Constitution, and all acts or things done by said districts under the provisions of said Chapter 172 of the Thirty-third Legislature are hereby validated and declared to be the regular and binding act of such district. [Id., sec. 78.]

Art. 7725. District dissolved, when.—In the event that any district established under the provisions of Chapter 172 of the Acts of the Thirty-third Legislature shall not within two years after the taking effect of this Act, or that any district which may hereafter be established under the provisions of this chapter shall not within two years after the conclusion of the organization of such district begin to acquire the necessary canals, ditches, flumes, laterals, reservoirs, sites, dam sites, pumping plants or other things necessary to the successful operation of such a district, or shall not diligently pursue the purposes for which said district was created, then and in that event, such district may be dissolved without the necessity of taking any action in connection therewith, and any party having interest herein, or to whom any debt may be due and owing by said district, may collect such debt in the same manner provided by law for the collection of any debt due by any person, association of persons or corporation, and such debt shall be a lien upon the property of such district when established by any court of competent jurisdiction, and the judgment of said court shall provide for the payment of such debt and judgment in the same manner as judgments for debt against cities or towns that have been dissolved may be enforced; and provided further, that any district heretofore organized, or hereafter organized, under the provisions of this chapter, may voluntarily dissolve by the same vote and in the same manner herein provided for the organization of districts, such election to be held in the manner herein provided for the holding of elections in such districts, but provided further, that no dissolution shall be had until all debts and obligations have been fully paid and discharged. Any such district may also voluntarily abolish its corporate existence in the same manner as provided by law for the dissolution of drainage districts, as set forth in Chapter 28 of the Acts of the Thirty-third Legislature, First Called Session, and each and all of the provisions of said Act shall apply to and control the abolition of said districts and the legal consequence thereof. [Id., p. 195, sec. 79.]

Art. 7726. Advice of State Board of Water Engineers.—When any district proposed to be established embraces lands located in two or more counties the owners of title, or evidence of title of a majority of the acreage of the proposed district, or fifty property tax paying voters of the territory proposed to be embraced within a district may petition the State Board of Water Engineers for a hearing to determine the advisability of the creation of such district, and for an order of election creating such district, and for the election of five directors of the proposed district. Upon the filing of such petition the Board of Water Engineers shall set the same down for a hearing at a date not less than fifteen nor more than thirty days from the date of the filing of such petition, and shall cause notice to be given to the commissioners' courts of each county in which lands are located proposed to be embraced in the district, and stating the date and place of the hearing, and upon receipt of such notice by the commissioners' courts from the State Board of Water Engineers it shall be the duty of the clerk of the said commissioners' courts to post a notice at the courthouse door of the date and place of hearing. At such hearing on said petition to the Board of Water Engineers any person whose land would be affected by the organization of such district may appear before the Board of Water Engineers and protest against or contend for the creation of the proposed district, and may offer competent testimony to show that the said district would or would not serve a beneficial purpose, and that the organization of such district would or would not be practicable or capable of accomplishing the purposes intended by its organization. [Acts 1921, p. 20, sec. 80.]

Art. 7727. To grant petition.—If upon hearing of such petition it shall appear to the Board of Water Engineers that the proposed plan of water conservation, irrigation and use presented in the petition praying for the organization of the district, is practicable and would present a public utility, then the said Board of Water Engineers shall so find and enter such finding in the records of the Board, and shall transmit a certified copy of such finding to the commissioners' court in each county in which lands proposed to be embraced within said district are situated, and naming a date on which an election shall be held in the territory to be comprised within the district to determine whether or not the proposed district shall be created in accordance with the provisions of this chapter, and for the election of a board of five directors of such district. But should the Board of Water Engineers upon such hearing determine that said proposed district is not practicable, and will not serve a beneficial purpose, and that it would not be possible to accomplish through its organization the purposes proposed, then it shall so find and enter its findings of record, and the petition shall be thereupon dismissed. Provided, that the boundary lines of the proposed district may be so changed in the course of such hearing as to meet objections urged to the practicability and feasibility of the district, in accordance with the findings of the Board of Water Engineers, if such changes will result in bringing the proposed district within the provisions of the statute, and will make such district serve a beneficial purpose. [Id.]

Art. 7728. Commissioners' court give notice.—Upon the receipt of a certified copy of the findings of the Board of Water Engineers authorizing an election to determine whether or not the proposed district shall be formed, the commissioners' court of each county and part of county which is embraced within the proposed district shall give notice of an election to be held on the date named in the finding and order of the Board of Water Engineers, which notice shall be posted as provided in this chapter for other elections for not less than fifteen, nor more than thirty days before the date fixed for the election. [Id.]

Art. 7729. Purpose of election.—At the said election there shall be submitted for the decision of the voters the question whether or not the proposed district shall be created, and for the election of five directors for the district. Persons desiring to vote for the creation of such district and for the election of five directors for such district shall have written or printed on their ballots the words, "For the District," and those desiring to vote against the creation of the district shall have written or printed on their ballots the words, "Against the District." At such election the names of the directors may be written or printed upon said ballot, or a separate ballot may be used for such purpose. [Id.]

Art. 7730. Canvassing returns.—In certifying the result of its findings upon the petition for an election to create a district, and for the election of the board of directors, the Board of Water Engineers shall designate the county judge in one of the counties in the proposed district as a canvassing board to receive and canvass and declare the result of the election for the creation of the proposed district.

When the election for the creation of the district has been held the officers named by the commissioners' court of the different counties to hold the elections in the proposed district shall make returns of the election to the commissioners' court of their respective counties and return all ballot boxes to the clerk of the commissioners' court of the county, and it shall be the duty of the commissioners' court of each county in the proposed district upon receiving returns of the election to canvass the same and certify the result of the election in the county to the county judge of that county named by the Board of Water Engineers as the canvassing board in the election for the creation of the district, and for the election of the board of directors. Upon receipt of the returns of the election in the different counties of the district the county judge designated to canvass the vote shall canvass such vote and certify the result to each county in the proposed district. If a majority of the votes cast in the district are in favor of the creation of the district, this finding shall be entered of record in the permanent records of the commissioners' court in each county embraced in whole or in part in the proposed district, and the county judge of the county canvassing the vote of the district shall certify the result to the five persons receiving the highest number of votes for directors, and issue to them a certificate of election, and the said directors shall after having been notified proceed with the organization of the district as provided in this chapter. [Id. p. 21, sec. 81.]

Art. 7731. Districts governmental agencies.—The board of directors, as soon as they shall have qualified, shall proceed to the selection of all administrative officers and necessary employees for the direction of the affairs of the district in the manner provided in this chapter for districts lying wholly in one county, except as may be specifically provided in these Articles 7726 to 7731, inclusive. The board of directors elected for such district shall qualify and meet as hereinabove provided, and shall have charge of the affairs of the district in the same manner as herein provided for districts lying wholly within one county. All such districts shall be governmental agencies, and body politic and corporate, and be governed by and exercise all the rights, privileges and powers provided by law as pertaining to districts lying within one county, and as embodied in the provisions of this chapter. [Id. p. 22, sec. 82.]

Art. 7732. Conditions of additional territory.—Whenever any water improvement district has been formed under this chapter, or under the provisions of Chapter 172 of the Acts of 1913, lying wholly within one county, and it is to the advantage of such district and of land owners lying in the adjoining county or counties to have such adjoining lands added to or included in such established district then the same may be so included in or added to the territory already included in such established district in the following manner: The owners of the fee shall make application to the directors of the established district to which they desire to be annexed, which application shall be in writing and shall describe the lands covered by the application by metes and bounds and same shall be acknowledged in the same manner and form as now required for the acknowledgment of deeds, and if said land is a homestead or the separate property of a married woman it shall be acknowledged by both husband and wife. [Acts 1917, p. 198, sec. 83.]

Section 83, cited above, was amended by Acts 1925, 39th Leg., ch. 152, p. 362, § 5, which is art. 7737a of these statutes.

Art. 7733. Petition heard and election thereof.—The directors of the district shall set said petition or application down for hearing on some certain date and shall give notice of such hearing in the same manner as provided in Articles 7623 and 7624 of this chapter, and shall consider same in the same manner as provided for the consideration of petitions by the county commissioners' court as set out and provided in Articles 7626 and 7627 of this chapter, and in the event that they shall find and determine that it is for the advantage of such established district and for advantage of the lands sought to be added thereto, to so include said lands in said district, then they shall so find and enter said findings of record in the minutes of said directors and they shall thereupon order an election to be held in said established district to determine whether or not said additional territory shall be permitted to be added thereto, which election shall be held after thirty days notice, which notice shall be given by posting copies of such notice in five public places in said district for at least twenty days next preceding the day of election, and if there be a newspaper published in said district, by publishing such notice for at least once a week for three weeks next preceding the day of said election. [Id.]

See note to article 7732.

Art. 7734. Question submitted.—The said notice shall be given by the directors which said directors shall furnish all necessary supplies for said election and shall appoint two judges and two clerks for all polling places in said district to conduct said election and make return thereof, which officers shall take the oath of office prescribed by the general election laws of the State, and they shall make returns of said election to the directors of the district, but in all other things said election shall be held in conformity with the general election laws of the State. At such election there shall be submitted the question, and none other, "Shall the proposed territory be added to the district?" and there shall follow said sentence the word "Yes" and just below it the word "No." [Id.]

See note to article 7732.

Art. 7735. Two-thirds majority required.—If two-thirds majority of the resident property taxpayers of said district vote "yes," then the said territory may be added and become a part of said district in the same manner as if originally incorporated therein and subject to all laws governing said district; provided, that the directors of said district may require the owners of said lands to pay into the interest and sinking fund of said district their proper pro rata part of charges theretofore made against the lands in said district to pay interest and sinking fund upon bonds of said district. [Id.]

See note to article 7732.

Art. 7736. Extra election held.—If the application or petition for the addition of lands to the districts as herein provided for shall cover a number of different tracts of land, or if there be included in the territory so described in said application or petition property taxpayers other than those signing and acknowledging such application, or if there be included in such territory as many as ten property taxpaying voters, then at the same time the election above provided for is held in said established district, there shall also be held and conducted under the same rules and regulations as above provided for elections within such established territory, an election in such territory that is proposed to be added, except that the notice of election shall include a full description by metes and bounds of the territory included within such proposed addition. The ballot for such election shall have printed thereon, "For Addition to Irrigation District," and "Against Addition to Irrigation District," but shall not contain any other matter whatever. In the event that two-thirds majority of the resident property taxpaying voters voting thereon at said election vote in favor of the addition of such territory, then same may be added to such irrigation district by a proper order of the directors entered upon the minutes of such established district, said order to be made within twenty days after the holding of such election, and said territory so added shall thereafter be and become an integral part of said district subject to all laws governing said district as completely and as fully as if same had been included in the

district in its original formation; provided, however, that no water shall be furnished for the irrigation of land included within said district until the owners and holders thereof shall have fully paid the charges fixed against each such land by the directors as a condition to their admission into the district as provided for in this Act. [Id.]

See note to article 7732.

Art. 7737. Voters have right to participate.—Such additions to such district shall not in any manner affect the officers, employés and affairs of such district, but the voters of such added territory shall have a right to participate in all matters of the district considered or voted upon thereafter, and in case contract has been made with the United States as aforesaid, the Secretary of the Interior may assent to such change. [Id.]

See note to article 7732.

Art. 7737a. Addition of lands in adjoining county.—Lands laying [lying] in an adjoining county may be added to an established water improvement district in another county in the same manner as if said lands were in the same county in which such district is situated. [Acts 1925, 39th Leg., ch. 152, p. 362, § 5.]

Art. 7737b. Liability of lands added to district.—When land is added to an established water improvement district and such district is organized, or is operating, as such district under the authority of Section 59 of Article 16 of the State Constitution, such land may be added to such district upon the agreement, contained in the order of the board of directors admitting such lands to the district, that same shall be taxed upon the assessment of benefit plan of taxation instead of upon the plan of the general ad valorem tax, and such agreement may provide that such lands shall be so taxed upon a uniform acreage basis or upon the plan of a definite annual payment. In such event the amount of the debts to be paid by such lands and the amount to be paid as an annual tax thereon for the purpose of paying such debts shall be fixed by the order of the board of directors admitting such lands to the district, and same shall become a lien on said lands in the same manner and to the same extent as if said land had been a part of said district at the time such indebtedness was incurred or authorized by an election held for that purpose. Such added land shall be a part of said district and shall be liable for debts thereafter incurred in the same way as other lands in said district. [Acts 1925, 39th Leg., ch. 152, p. 361, § 1.]

Art. 7738. Penalty for prohibiting officers to enter land.—The directors of any district and the engineer and employees thereof are hereby authorized to go upon any lands lying within said district, for the purpose of examining same, locating reservoirs, canals, dams, pumping plants, and all other improvements, to make maps and profiles thereof; and are hereby authorized to go upon the lands beyond the boundaries of such districts in any county for the purposes stated, and for any other purposes necessarily connected therewith, whether herein enumerated or not. And any person who shall wilfully prevent or prohibit any such officers or employees from entering any lands for such purposes shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred dollars for each day he shall so prevent or hinder such officer or employee from entering upon any lands. [Acts 1917, p. 199, sec. 84.]

Art. 7739. Contracts made by directors.—Contracts for making and constructing reservoirs, dams, canals, laterals, pumping plants, check gates, sluice gates, and all improvements whatsoever of said district shall be made by the directors, to the lowest responsible bidder, after giving notice by advertising same in one or more newspapers of general circulation in the State of Texas, and in one newspaper published in the county, if there be one in the county, and one newspaper in such district, if there be one in the irrigation district, which notice shall be published once a week for four consecutive weeks; and also by posting notices for at least twenty days in five public places in the district, and one at the courthouse door of the county or counties in which such district is situated; provided that the provisions of this article shall not apply in case of any contract between the district and the United States. [Id. p. 200, sec. 85.]

Art. 7740. Copy of engineer's report furnished bidder.—Any person, corporation or firm, desiring to bid on the construction of any work advertised as provided for herein, shall upon application to the directors be furnished with a copy of the engineer's report, and profile, showing the work to be done, provided the directors may charge therefor the actual cost of having such report and profile made and furnished. All bids or offers to do any such work shall be in writing, and sealed and delivered to the president or secretary of the board of directors, together with a certified check for at least two per cent of the total amount bid, which said amount shall be forfeited to the district in the event the bidder refused to enter into a proper contract for his bid as accepted. Any or all bids may be rejected in the judgment of the directors. All bids shall be opened at the same time. [Id. sec. 86.]

Art. 7741. Copy of contract recorded.—All contracts made by the districts shall be in conformity with and subject to the provision of this chapter, and the provisions of this chapter shall be a part of all contracts in so far as applicable to either the contractor or the district, and the provisions of this chapter shall govern whenever the contract is in conflict herewith. The contract shall be reduced to writing and signed by the contractors and directors, and a copy of same so executed shall be filed with the county clerk of the county or counties in which said district is situated, which said copy so filed with said county clerk shall be recorded in a book kept for that purpose, and be subject to public inspection. [Id. sec. 87.]

Art. 7742. Give bond.—The person, firm or corporation to whom such contract is let shall give bond payable to the district in such amount as the directors may determine, not to exceed the contract price, conditioned that he, they or it will faithfully perform the obligations, agreements and covenants of such contract, and that in default thereof they will pay to said district all damages sustained by reason thereof. Such bond shall be approved by the directors, and shall be deposited with the depository of the district, a true copy thereof being retained in the office of such directors. [Id. sec. 88.]

Art. 7743. Specifications included.—All such contracts shall contain a full statement of the specifications for all work included in the contract, and all such work shall be done in accordance with the specifications under the supervisions of the directors and the district engineer. [Id. sec. 89.]

Art. 7744. Full and detailed reports given.—As the work progresses the engineer of such district will make full reports to the directors, showing in detail whether the contract is being complied with or not in the construction, and when the work is completed the engineer shall make a detailed report of same to the directors, showing whether or not the contract has been fully complied with according to its terms, and if not in what particular it has not been so complied with. The directors, however, will not be bound by such report, but may in addition thereto fully investigate such work and determine whether or not such contract has been complied with. [Id.]

Art. 7745. Bridges and culverts.—The district is hereby authorized and empowered to make all necessary bridges and culverts across or under any railroad track and roadway of such railway to enable them to construct and maintain any canal, lateral, or ditch necessary to be constructed as a part of the

improvements of such district. Such bridges or culverts shall be paid for by the district; provided, however, that notice shall first be given by such district directors by delivering a written notice to any legal agent, division superintendent or roadmaster of such railway, and the railway company shall be allowed thirty days to build such bridges or culverts at their own expense, if they should desire to do so, and according to their own plans; provided such canal, culvert or ditch shall be constructed of sufficient size not to interfere with the free and unobstructed flow of water passing through the canal or ditch, and shall be placed at such points as are designated by the district engineer, or directors. [Id.]

Art. 7746. Bridges and culverts required.—Such districts are hereby authorized and required to build all necessary bridges and culverts across and over all canals, laterals and ditches made and constructed by such district, whenever the same crosses a county or public road, and shall pay for the same out of the funds of such district. [Id. p. 2091, sec. 90.]

Art. 7747. Disbursement of remaining funds.—After the full and final completion of all the improvements of such district as herein provided for, and after the payment of all the expense incurred under the provisions of this chapter, the directors are authorized to use the remaining funds of the district for the best interest of such district in the preservation, upkeep and repair of the works of such district. [Id. sec. 91.]

Art. 7748. Directors to inspect—draw warrant.—The directors shall have the right, and it is hereby made their duty, at all times during the progress of the work being done under any contract, to inspect the same; and upon the completion of any contract in accordance with its terms, they shall draw a warrant on the depository of the district for the amount of the contract price in favor of the contractor or his assignee; and if the directors shall deem it advisable in order to obtain more favorable contracts, they may advertise a contract to be paid for in partial payments as the work progresses, and such partial payments shall not exceed in the aggregate eighty-five (85) per cent of the amount of work done, the said amount of work completed to be shown by certified report of the engineer of the district. [Id. sec. 92.]

Art. 7749. Semi-annual report.—The directors shall make a semi-annual report on the first days of July and January of each year, showing in detail the kind, character, and amount of work done in the district, the cost of same, the amount of each warrant drawn, and to whom paid, and for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this chapter, and each report shall be verified by them, a copy of which shall be filed in the office of the county clerk of the county or counties in which such district is situated, and shall be open to public inspection. [Id. sec. 93.]

Art. 7750. Supply water for annual rental.—When a district acquires an established irrigation system which has supplied water to lot owners in a city, town or village, and such city, town or village is not included in such district, such district shall continue to supply water to such lot owners for a reasonable annual rental. [Id. p. 202, sec. 94.]

Art. 7751. Statement furnished.—Every person desiring to receive water during the course of the year, or at any time during the year, shall furnish to the secretary of the board of directors a statement in writing of the acreage intended by him to be put under irrigation, and for which water is to be used, and as near as may be, a statement of the several crops to be planted with the acreage of each, and shall at the same time pay such proportion of the water charge or assessment therefor as may be prescribed by the board of directors. If such statement should not be furnished or such payment should not be made before the date for fixing the assessments, there shall be no obligation upon the district to furnish such water to such person for that year. [Acts 1923, p. 379, sec. 95.]

Art. 7752. Expense estimated.—The board of directors, on or as soon as practicable after a date in each year to be fixed by a standing order of the board, shall carefully estimate the expense to be incurred during the course of the next succeeding twelve months for the maintenance and operation of the irrigation system. A proportionate part of the amount so estimated, not less than one-third, nor more than two-thirds, to be determined from year to year, by the board of directors, shall be paid by assessment against all irrigable lands within the district, pro rata per acre; that is to say, against all lands to which the district is in condition to furnish water by its then system of canals and laterals, or through extension thereto of then existing laterals, but without reference as to whether such land is to be actually irrigated or not; and the remainder of the amount so estimated shall be paid by the persons taking water or applying for water as aforesaid. This remaining amount shall be equitably prorated, as nearly as may be, among the applicants for water, and in prorating same, the board of directors may take into consideration the acreage to be planted by each applicant for water, the crop to be grown by him, and the amount of water per acre to be used by him; provided, however, that each water user shall pay the same price per acre for use of water upon the same class of crops. All assessments shall be paid in installments and at times to be fixed by the order of the board of directors, but if the crop for which such water was furnished shall be harvested prior to time fixed for the payment of any installment, the entire unpaid assessment shall at once become due and shall be paid within ten days after the harvesting of such crop and before the removal of same from the county or counties in which grown. The board of directors shall have power and authority from time to time to adopt, alter and rescind rules, regulations, standing orders and temporary orders, not in conflict with this chapter, governing the methods, ways, terms and conditions of water service, applications for water, assessments for maintenance and operation and the payment and the enforcement of payment of such assessments, and the furnishing of water to persons who have not applied for same before the date of assessment, and to persons who desire to take water for irrigation in excess of their original applications, or for use on other lands than those covered by such applications. The board of directors may, at their discretion, require every person desiring water during the course of the year to enter into a contract with the district, which contract shall indicate the acreage to be watered, the crops to be planted, and the amount to become due, and the terms of payment; and it may be further required that the water taker shall execute a negotiable note or notes for such amounts, or for parts thereof. The making of such contracts shall not constitute a waiver of the lien given by this chapter upon the crops of the water taker for the service furnished to him. If the water taker shall water more land than is called for in his contract he shall pay for the additional service rendered as and at the time hereinbefore indicated. To secure money for operating and maintenance expense of the district, the board of directors shall have authority to borrow money with interest not exceeding ten per cent per annum, and may hypothecate any of its notes or contracts with water takers or accounts against them. The district shall have a first lien, superior to all other liens, upon all crops of whatever kind grown upon each tract of land in the district, to secure the payment of the assessments herein provided for, and all such assessments shall bear interest from the time due and payable at the rate of ten per cent per annum. Provided, however, that when such district obtains a water supply under contract with the United States,

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the board of directors of such district may, by resolution entered upon the minutes of the board and with the consent of the Secretary of the Interior, waive in whole or in part, such lien. And if suit should be filed therefor, or the same should be collected by any legal proceeding, an additional amount of ten per cent on unpaid principal and interest shall be added to the same as collection or attorney's fees, which collection fees, as well as principal and interest of such assessments, shall stand secured by the lien aforesaid. Suits for delinquent water assessments may be brought either in the county in which the irrigation district is situated or in the county in which the defendant resides. All land owners shall be personally liable for all assessments herein provided for, and if they shall fail or refuse to pay same when due the water supply shall be cut off and no water shall be furnished to the land until all back dues are fully paid. This provision with respect to cutting off water shall bind all parties, persons and corporations owning or thereafter acquiring any interest in said lands. The directors of all districts shall within ten days after any assessment is due, post at a public place in said district a list of all delinquents and shall thereafter keep posted a correct list of all such delinquents; provided, however, that if the parties owing such assessments shall have executed notes and contracts as hereinbefore provided, they shall not be placed upon such delinquent list until after the maturity of such notes and contracts. In the event that contract shall be made with the United States, the remedies in this section hereinbefore provided in favor of the district shall apply with regard to the operation and maintenance and rental charges which may become due to the United States. Provided, however, that the Federal Reclamation Laws, and in particular, The Reclamation Extension Act approved August 13, 1914, and any Acts amendatory thereof, shall be applicable. Moreover, all water, the right to the use of which is acquired by the district under contract with the United States, shall be distributed and apportioned by the district in accordance with the Acts of Congress, and rules and regulations of the Secretary of the Interior, and the provisions of such contract in relation thereto. [Id.; Acts 1927, 40th Leg., p. 138, ch. 90, § 1.]

Art. 7753. Public notice of assessments given.—In the event the assessments made as provided for in the preceding article should be more than sufficient to meet the necessary obligations of the district, the balance shall be carried over to the next season; and in the event the assessments made are not sufficient to meet the necessary expenses of such district the balance unpaid shall be assessed, as pro rata, in accordance with the assessments previously made for the then current year, and shall be paid under the same conditions and penalties within thirty days from the time such assessment is made. Public notice of all such assessments shall be given by posting printed notices thereof in at least three public places in the district, and printed notices shall be mailed to each land owner; provided, however, each land owner shall furnish to the board of directors his correct post-office address. Such notice shall be given by posting and mailing such notice five days before the assessment is due, and in the event of special assessments such notice shall be given within ten days after such assessments are levied. [Acts 1917, p. 204, sec. 96.]

Art. 7754. Plans include, what.—Included in the plans of any such district may be the necessary drainage ditches, or other facilities for drainage, and necessary levees for the protection of land under the system; and every such district may purchase the system or any part of any system belonging to a drainage district. The purchase, however, shall provide for the payment of the debts of the drainage district, or the assumption of such debts, and the amount of such debts paid or assumed is to be considered in determining the bond issuing capacity of the district. [Id. sec. 97.]

Art. 7755. Assessments collected, how.—All assessments for operation and maintenance expenses made under the provisions of this chapter shall be collected under the direction of the directors, by the assessor and collector of taxes, or other person designated by them, which said officer shall give bond in such sum as they may direct conditioned upon the faithful performance of his duties and accounting for all money collected. He shall keep a true account of all money collected, and deposit the same as collected in the district depository, and shall file with the secretary of the directors a true statement of all money collected once each week. The collectors shall use duplicate receipt books, and shall give a true receipt for each collection made, retaining in such book a true copy thereof, which shall be preserved as a record of the district. [Id. sec. 98.]

Art. 7756. True accounts kept where.—The directors of such district shall keep a true account of all their meetings and proceedings, and shall preserve all contracts, records and notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatsoever kind, in a fireproof vault or safe, and the same shall be the property of the district and shall be delivered to their successors in office. [Id. sec. 99.]

Art. 7757. Depository selected.—The directors for such district shall select a depository for such district under the same provisions as are now or may hereafter be provided for the selection of the depository for the counties in this State. The duties of such depositories shall be the same as are now or may hereafter be prescribed by law for county depositories. However, in the selection of depositories the directors of such district shall act in the same capacity and perform the same duties as is incumbent upon the county judge and members of the county commissioners' court in the selection of the county depository; provided, however, that in the event the highest and best bidder for the handling of such funds as the depository of such district should be a bank in which members of such board should be a stockholder or director, that then in that event such bank may be selected as such depository by the other directors being a majority of said board, and the bond given by such depository may be approved by them, but in such event before said order so selecting said such depository or approving such bonds shall be effective, the same shall be filed with and approved by the county judge of the county in which such district is situated, and such approval by such county judge shall make such action final, but in the event the county judge of said county shall, for any reason, fail to approve said selection or to approve said bond, then said bank shall not be selected, but new bids shall be called for, and some other bank be selected. [Acts 1921, p. 22, sec. 100.]

Art. 7758. Monthly report.—The district depository shall make a report of all moneys received, and all of moneys paid out, at the end of each month, and file such reports with such vouchers among the records of said district in its own vault, and shall furnish a true copy thereof to the directors, and shall, when called upon, allow same to be inspected by any taxpayer or resident of such district. Such records shall be preserved as the property of such district and shall be delivered to the successor of such depository. [Acts 1917, p. 205, sec. 101.]

Art. 7759. Regular office maintained.—The directors of each district shall have and maintain a regular office suitable for conducting the affairs of such district, within such district, or within a town situated within the general boundary lines of such district, and not removed therefrom. And such directors shall hold regular meetings at said office on the first Monday in February, May, August and November of each year, at ten o'clock a. m., and shall hold such other regular special meetings as they may

see fit. And any such resident taxpayer or interested party may attend any such meeting of such directors, but shall not participate in any such meetings without the consent of the directors and shall have no authority to vote upon any matter considered by such directors, but may present such matters as they desire to such directors in an orderly manner. [Id. sec. 102.]

Art. 7760. Surety company bond.—All officers and employees of any district who may be required to give bond or security, may furnish bonds of surety companies subject to the approval of the directors; provided, however, whenever such surety company bond is furnished by any officer or employee, the surety company furnishing same shall file for record in the office of the county clerk of the county where such district is situated a duly executed power of attorney, showing the authority of the person signing such bond for said company, to so sign same, and said power of attorney shall be duly executed by the officers of said company, and have attached the company seal; and such power of attorney shall remain on file in said office. All such official bonds shall be preserved by it as the property of said district. [Id. sec. 103.]

Art. 7761. Directors select auditor—report made.—All meetings of the directors shall be held at the regular office of the district. All vouchers issued for the payment of any funds of the district shall be signed by at least four directors, except as provided in Article 7640, and shall refer to the book and page of the minutes allowing such account. All vouchers shall be issued from a regular duplicate book containing a duplicate which shall be preserved. The directors shall have kept a complete book of accounts for such district, and shall on September first of each year select a competent auditor who shall examine the accounts, books and reports of the depository, the assessor and collector and the directors, and make a full report thereon, a copy of which shall be filed with the depository and a copy with the directors and one with the county clerk of the county or counties in which such district is situated. Such report shall be filed by November 1st of each year. [Id. sec. 104.]

Art. 7761a. Adoption of Calendar year as fiscal year; report.—Any water improvement district may by order of the board of directors entered of record, adopt the calendar year as their fiscal year, and in such event the report of the board of directors shall be for the calendar year and be filed within thirty days after the end of each year; also in such event the annual audit shall be for the calendar year and the auditor shall be appointed by January 15th following the end of the year and shall make his report for the preceding calendar year. [Acts 1925, 39th Leg., ch. 152, p. 363, § 6.]

Art. 7762. Unearned portion of taxes.—Where a district organized under prior Acts has issued bonds and levied taxes to provide the interest and sinking fund thereon and said bonds or a portion thereof have not been sold at such time, the directors of such district may return all unearned portion of said taxes, if collected, and may cancel all unearned portion of said taxes not collected and all penalty, interest and costs thereon. At the time of the sale of such bonds, however, a sufficient tax shall be levied to provide all interest and charges thereon. [Acts 1917, p. 206, sec. 105.]

Art. 7763. Joint ownership contract.—Two or more districts may jointly own and construct irrigation works and reservoirs under the terms and conditions to be set out in a written contract. Any such contract shall not be binding until same shall have been ratified by a majority vote of each such district. An election shall be held in each such district upon the same day to determine whether such contract shall be adopted. Such contract shall be printed or in writing, and a true copy shall be filed in the office of each district fifteen days prior to such election and be subject to public inspection, and one true copy of same shall be furnished each voter calling at such office for same at any time within fifteen days prior to such election. When improvements are constructed by two or more districts, bids may be jointly called for and may be opened and considered at the designated office of either of such districts, and such districts shall approve the letting of the contract, and the contractor's bond, and may meet for that purpose at a place outside of their district, or at any office established for such joint project and at which office all business of such joint project may be transacted, all bids, bonds, contracts, etc., of said joint project may be in the names of said joint project districts, such districts being empowered and authorized to do all acts by joint action that one district may do. The action of each district being determined by its board of directors, a general manager may be employed for such joint enterprise whose duties may be set forth in the joint ownership contract.

The terms and conditions of such joint ownership contract shall not conflict with the provisions of the law providing for the organization and conduct of districts, but may include provisions for joint construction and operation of same. Such contracts may be amended in the same manner. [Id. sec. 106.]

Art. 7764. Districts validly created.—The Act of the Twenty-ninth Legislature, being Chapter 50 of the Acts of 1905, and the Act of the Thirty-third Legislature, being Chapter 172 of the Acts of 1913, and Chapter 138 of the Acts of 1915, are hereby repealed. All districts heretofore organized under the terms and in accordance with the provisions of said Acts, are hereby expressly declared to be validly created, organized, described and defined with boundaries as prescribed by the order of the commissioners' court organizing the same, or as the same have since been changed by the board of directors thereof in the manner provided by said Acts. Such districts, however, shall hereafter be governed by the provisions of this chapter; provided, however, that the duly constituted and qualified officers of such districts shall continue to perform the duties of such offices until the next general election held under the provisions of this chapter.

All bonds issued by such district, which have been declared valid by a judgment of the district court, shall be and be held to be valid and binding obligations of such district and not subject to attack, except for actual fraud. Any such district may change its name to the name herein provided for such districts by filing a declaration to that effect with the commissioners' court of the county or counties in which it is situated, and which said declaration shall be in the form of a deed of conveyance and duly acknowledged by the president and secretary of the district, and shall embody and set forth a copy of the minutes of said board of directors, and show the resolution adopted for the change of such name, and when such instrument shall have been so recorded, the name of such district shall hereby be changed.

All districts in the process of organization under existing laws repealed by this Act, are hereby declared to be valid districts and entitled to proceed in accordance with the provisions of said Act so repealed until the date upon which this Act shall take effect after which, said districts shall be governed by the provisions of this chapter, and said districts shall change their name to conform to the provisions of this chapter by filing a declaration as above provided, in the office of the county clerk of the county or counties in which they are situated; and if they have not proceeded to the point of election of directors, they shall change such name by making application to the county commissioners' court having jurisdiction thereof, which said court shall change said name upon all orders thereafter issued relating to said district. [Id. sec. 107.]

Art. 7765. District necessities authorized.—All districts organized under the provisions of this

chapter shall have full authority, acting by and through its board of directors, to construct all works and improvements necessary for the irrigation of lands in said districts, and to supply, deliver and sell water for domestic, power, and commercial purposes when operating under the authority of Section 59 of Article 16 of the Constitution; and to fully carry out the purposes of its organization and the conservation and use of water for the several purposes authorized by the Constitution and the laws of this State, and to acquire the right to the use of water in the manner provided by law, and the directors of such districts, subject only to the provisions hereof, shall have full authority to manage such districts and the business of such districts for the purpose of carrying out the intention and purposes of the organization. [Acts 2nd C. S., 1919, p. 74, sec. 108.]

Art. 7766. Land become part of district—originally included.—Where a district is organized embracing land irrigated by an established irrigation system and lands entitled to be served by an established irrigation system are not included in such district, in the manner provided by law, and when so admitted to or included in such district the said land shall become part of said district as if originally included therein and shall be entitled to water service upon an equal basis with the lands originally included in said district. [Acts 1917, p. 207, sec. 109.]

Art. 7767. Water rights transferred.—Where there is included in a district lands having a water right from a source of supply acquired by such district but which lands it is difficult or impracticable to irrigate, the said district may allow such water rights to be transferred to other lands adjacent to said district and may admit such lands to said district upon an equal basis as to water service with the lands originally included in such district. [Id. sec. 110.]

Art. 7768. Lands relieved of assessment, when.—Whenever any district organized or hereafter organized has failed or neglected to furnish water sufficient to irrigate any land within such district within two years from its organization, then such lands shall be relieved of any and all assessments and charges except taxes until such district shall construct the necessary canals and furnish the necessary water to enable the owner of said land to irrigate all of said land on demand therefor. [Id. p. 208, sec. 111.]

Art. 7769. Conditions of tax levied.—The tax as levied in connection with the original issuance of bonds shall remain in force from year to year as the levy for that purpose, until a new levy shall be made. The board of directors may, from time to time, increase or diminish such tax so as to adjust the same to the taxable values of the property subject to taxation by the district and the amount to be collected, and in such manner as to raise an amount sufficient to pay the annual interest and sinking fund on said bonds then outstanding. [Id. sec. 112.]

Art. 7770. Sinking funds invested.—The board of directors are authorized and empowered, whenever they may deem it advisable, to invest any sinking funds of the district, acquired for the redemption and payment of any of its outstanding bonds, in bonds of the United States, of the State of Texas, of any county of the State of Texas, any irrigation or water improvement bonds or of any incorporated city or town, or of any independent school district, or of any other school district in the State of Texas authorized to issue bonds; provided that no bonds shall be so purchased that according to their terms mature at a date subsequent to the time of maturity of the bonds for the payment of which such sinking fund was created. [Id. sec. 113.]

Art. 7771. County clerk's fees.—The county clerk shall receive for his services in registering said bonds the sum of ten cents for each bond so registered; for entering a payment of any bond, the sum of ten cents; for recording of instruments of the district required to be recorded, and for which no fees are hereinbefore fixed, he shall receive the same fees as provided by law for recording deeds. [Id. sec. 114.]

Art. 7772. Manager employed.—The board of directors may employ a manager, who shall have general charge and management of the water distribution system of the district, subject to the general rules and regulations made by the board of directors, and who shall have power to appoint and discharge all other employees except the president and the secretary of the board and the assessor and collector, to purchase and contract for all supplies necessary for the water distribution system, after the board has authorized such purchases, to collect all assessments for operation and maintenance, and to execute on behalf of the district all water contracts and other contracts that are not required by the law to be executed by the board or by the president and secretary for the board, and who shall have such other powers and perform such other duties as may be provided by the board of directors. Unless such manager is appointed, all persons employed by or representing the district shall be employed by the board of directors. No contract shall ever be made with any manager or other person or employée, whether employed by the board of directors or by the manager, for a longer period of time than one year, and the salaries of all employees, or the compensation to be received by them, shall be fixed at the time of their employment. [Id. sec. 115.]

Art. 7773. Bonds exchanged.—Where bonds have been issued, or may be hereafter issued, by a district organized under and in accordance with the provisions of this chapter, or where bonds have been issued by any district organized under the Act of the Twenty-ninth Legislature, being Chapter 50 of the Acts of 1905, or the Act of the Thirty-third Legislature, being Chapter 172 of the Acts of 1913, in accordance with the provisions of said Acts respectively, new bonds bearing the same or a lower rate of interest may be issued in lieu thereof. Such new bonds may be exchanged for old bonds, provided the old bonds are taken in exchange at their face value or at a discount, or they may be sold and the net proceeds applied to the purchase of the old bonds redeemed at par or at a discount. The Comptroller of Public Accounts shall not register said new bonds until the old bonds in lieu of which they are issued are presented to him for cancellation or until a valid contract has been entered into and a copy thereof filed with the Comptroller for the purchase of a corresponding amount of such old bonds. After registration of the new bonds, the Comptroller shall keep the same in his possession until the old bonds are surrendered to him and cancelled by him, whereupon he shall deliver the new bonds to the proper party or parties; provided, that the old bonds may be so presented for payment, in installments, and a like amount of the new bonds registered and delivered as herein provided.

If the new bonds are in the same amounts and have the same dates of maturity as the old bonds intended to be replaced thereby, they may be authorized by resolution of the board of directors and issued without submitting the question of their issuance to the vote of the property taxpayers, who are qualified voters in the district, and they shall be registered by the Comptroller in the manner hereinbefore provided, and upon the filing with him a copy of the resolution of the board of directors providing for the cancellation of said old bonds and the issuance of the new bonds in place thereof; and when said old bonds shall have been cancelled and the new bonds registered by the Comptroller, such new bonds shall be the valid and binding obligations of the district, without further proceedings in regard thereto; and the same are hereby declared to have and are hereby given, the same force, effect and validity as the original issue of bonds that they have replaced.

Any such district is authorized to issue new or refunding bonds in lieu of bonds heretofore or here-

after issued as aforesaid, in such amount, of such denominations, bearing such rates of interest and periods of maturity as may be provided by resolution of the board of directors thereof, within the limits prescribed in this chapter in the case of an original issuance of bonds, whenever the board of directors may deem such action advisable, but if such new or refunding bonds are in greater amount, bear a greater rate of interest or have longer periods of maturity, or in any other respect create a greater burden on the district than the old bonds then outstanding, the issuance of such new or refunding bonds shall be submitted to the vote of the resident property taxpayers who are qualified voters of the district, and all provisions of this chapter governing the election and the issuance, approval, validation, registration, and sale of bonds in the case of an original issue of bonds shall apply to and govern such new or refunding bonds. All such bonds shall be registered and delivered only in the manner provided in this section. [Id. p. 209, sec. 116.]

Art. 7774. Application for water improvement district.—Should any parties in any unorganized county wish to organize a water improvement district, under the provisions of this chapter, such parties shall have the right to do so by applying to the commissioners' court of the county to which said unorganized county is attached for judicial purposes, and such commissioners' court is hereby authorized to perform for said unorganized county all things which in this chapter is required of commissioners' court of organized counties. [Id. p. 210, sec. 117.]

Art. 7775. Vote separately canvassed, when.—Whenever a district proposed to be organized as herein provided contains within its boundaries as proposed and described in the petition for organization, a town, city or municipal corporation, or part thereof, when the county commissioners' court calling the election to determine said question as herein provided shall constitute said territory within said town, city or municipal corporation, a separate election precinct, with one or more polling places, and the vote received for and against the proposition within said town, city or municipal corporation shall be separately canvassed by the court to determine whether or not a majority of those voting at said election within said town, city or municipal corporation voted for or against said proposition. If a majority of those voting at said election within such town, city or municipal corporation vote against the formation of such district the same shall not be formed including such town, city or municipal corporation, but if the majority of the votes therein is in favor of the formation of such district then such vote shall be canvassed with the votes of the balance of said entire district to determine the result of said election. [Acts 2nd C. S., 1919, p. 75, sec. 11Sa.]

Art. 7775a. Vote separately canvassed, when.—No town, city or municipal corporation shall be included within any district organized hereunder, unless the proposition for the organization thereof shall have been adopted by a majority vote of the voters therein participating in such election. Any such municipal corporation included within a district shall be a separate voting district and the ballots cast therein shall be counted and canvassed to show the result of such election therein. No district hereafter organized embracing a town, city or municipal corporation shall include lands outside of such municipal corporation, unless the election held therein to confirm and ratify the formation of such district shall be adopted thereby independent of the vote in such municipal corporation. No district, the major portion of which is in one county, shall be organized to include lands in another county unless election held therein to confirm and ratify the formation of such district shall be adopted by the vote of those voting in such portion of such county, independent of the vote of the portion thereof in such other county or counties. In the event any portion of a district, under the provisions of this section, shall vote against the formation of a district and the balance of such district shall vote for the formation thereof, such proposition shall be adopted and such district be confirmed and ratified with the exception of the territory so voting against same, which is thereby automatically excluded therefrom and from all debts and obligations thereafter incurred, provided, however, if as many as ten per cent of the voters of such district so organized shall file with the board of directors a petition asking for a new election on such issue, such new election shall be ordered and held for the remaining portion of such district, or such district organization may be dissolved by order of the Board of Directors and a new district formed. All lands and property included in such original district shall be subject to the payment of taxes for the payment of all debts and obligations incurred while it was a part thereof, including organization expenses. The petition asking for a new election herein provided for shall be filed within thirty days after the date upon which the result of such election is canvassed and declared by the directors and not thereafter. [Acts 1925, 39th Leg., ch. 205, p. 677, § 3.]

Art. 7775b. Lands within city or town discontinued as part of district.—Sec. 1. Whenever there exists within the limits of any Water Improvement District, organized and operating under Title 128, Chapter 2, of the Revised Statutes of 1925, any lands lying within or adjoining the territorial limits of an incorporated city or town, which was not included in such district at time of the organization of such district, and which lands have been subdivided into town lots and blocks with streets or other thoroughfares dedicated to the use of the public, and of which a map and such dedication has been duly filed for record with the County Clerk of the County in which said lands are situated, the Board of Directors of such Water Improvement District may by resolution duly passed, discontinue said territory as a part of said District; and when said resolution has been duly passed, it shall be entered by the Secretary of the District in the minutes of the Board of Directors of said District, and from and after said entry, said territory shall cease to be a part of said district, and the said territory so excluded, shall no longer be entitled to be served with water from such irrigation system, or by said District.

Sec. 2. The owner or owners of the fee of any such lands containing not less than ten acres, and constituting a portion of any Water Improvement District, may file with the Board of Directors of said District, a petition praying that such lands owned by them be excluded from said District. The petition shall describe the lands which the petitioners desire to have excluded by metes and bounds. When such petition has been filed with the Secretary of said District, the Board of Directors of said District shall order an election to be held at a convenient place or places within said District within thirty days thereafter; and if a majority of the qualified voters living in said District, and voting at such election cast their votes in favor of discontinuing said territory as a part of said District, the Board of Directors shall declare such territory no longer a part of said District, and there shall be entered upon the minutes of the Board of Directors, an order to that effect; and from and after such entry said territory shall cease to be a part of said District, and such excluded lands shall no longer be entitled to be served with water from such irrigation system or by said District.

Sec. 3. Whenever any territory shall be excluded from a Water Improvement District as provided herein, either by Section 1 or Section 2 of this Act, and said Water Improvement District shall, at the time of such withdrawal owe any debts by bond or otherwise, such withdrawn territory shall not be released from the payment of its pro rata of such indebtedness; but it shall be the duty of said District to continue to levy taxes each year on the property in such territory at the same rate as is levied upon other property of such District, until the taxes collected from said territory shall equal its pro rata share of the indebtedness of

said District at the time of withdrawal. The taxes so collected shall be charged only with the cost of levying and collecting same, and the same shall be applied exclusively to the payment of said pro rata share of indebtedness. Nothing herein shall be construed to prevent the owner of any lands in said territory from paying in full, at any time, his pro rata share of the indebtedness, both principal and interest, of said District. [Acts 1927, 40th Leg., p. 318, ch. 216.]

Art. 7776. Fixing maintenance charges.—The maintenance charges may be fixed as provided in Article 7752 of this chapter, or same may be determined upon the basis of the quantity of water used, and if based upon the use of water a fixed charge may be made on all lands or water connections entitled to receive and use water, and an additional charge may be made, or a graduated scale adopted, for the use of water in excess of that covered by the minimum charge. The district may install proper measuring devices. [Acts 2nd C. S. 1919, p. 75, sec. 119.]

Art. 7777. Charging cities and towns.—Where a district includes a city or town, or contracts with a city or town to supply it water, the charge for the use and delivery of such water, and the time and manner of payment therefor shall be determined by the board of directors and be specified in a standing order of said board. [Id. sec. 120.]

Art. 7778. Consolidation of districts.—Any two or more irrigation districts, or water improvement districts, governed by the provisions of this chapter and amendments thereof, may be consolidated into one district in the following manner: The terms and conditions upon which such consolidation is to be affected [effected] shall be agreed upon by the board of directors of each district, and then the question shall be submitted to a vote in each district after giving notice thereof for at least twenty days in the manner provided by law for other elections. The election shall be held in such districts on the same day. The consolidation to be effected only in the event same is adopted by each and all such districts. When two or more districts are consolidated their obligations shall not be impaired but shall be protected and paid by taxes levied upon the property in the district creating said debt or by assessments in the same manner and extent as if said consolidation had not been effected. After consolidation such taxes shall be assessed and collected by the officers of the consolidated district and in the event they should fail or refuse to so assess and collect same, for such purpose, in due order and time, then same may be assessed and collected, and paid on such obligations, by a receiver appointed by and acting under the orders of a district court, in a proper suit which may be brought by a creditor or by five or more taxpayers of such district. When two or more districts are consolidated into one district, same shall be governed as and be one district, except that the debts of each district, created prior to such consolidation, shall be paid as herein provided; provided, however, such consolidated district may contribute to such payments upon the terms stated in the consolidated agreement. When two or more districts are consolidated the officers of said respective districts shall continued to act jointly as the officers of said district, and to wind up, the affairs of their respective districts as effected by said consolidation, for a period of ninety days after the date of the election, and they may continue to so act until the next general election if so provided by the consolidation agreement, or the consolidation agreement may provide who shall constitute the first board of directors to serve until the next general election if the officers then serving agree to resign. Said new officers shall within the period of ninety days after the election qualify as such officers of the consolidated district and assume such office at the expiration of said period. All bonds of such officers will be approved by the then existing boards of directors. [Id. sec. 121.]

Art. 7779. Benefit plan of taxation.—In the event that any irrigation or water improvement district, other than those operating under contract with the United States, have been or shall be constituted a conservation and reclamation district so as to come within the terms of Section 59 of Article 16 of the Constitution of the State of Texas, and shall adopt or have adopted the assessment of benefit plan of taxation instead of the ad valorem plan of taxation then and in that event the fixing and assessing of property values on which taxes shall be levied and collected shall be made in the manner provided by Articles 7782 to 7787 inclusive, provided any such district may at the same election at which the adoption of said plan of taxation is voted upon, or at any other time before the issuance of bonds, vote upon the proposition of whether said benefits shall be fixed as an equal sum upon each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. In which event the amount of benefit per acre shall be voted upon as applied to all lands in the district that can be irrigated by gravity flow from the irrigation system to be constructed or purchased and also the benefit to lands in the district that can not be so irrigated.

When such questions are desired to be so submitted and an election held to determine same the board of directors of the district shall submit same and order such election in the same manner as provided by law for other elections in such districts. The ballots for such elections shall have printed thereon the following propositions: "For uniform assessment of benefits of $..... per acre upon all irrigable lands in the district, and the assessment of $..... per acre upon all non-irrigable lands in the district." "Against uniform assessment of benefits." Said blank spaces in said propositions shall be filled in with amounts as determined by said board of directors to be voted upon. Said amount of charge per acre to be found by dividing the number of acres of such lands into the amount of indebtedness to be incurred by the district in providing for the irrigation of same.

In the event the owners of lands classed as non-irrigable object to the amount of charges fixed against them by said order of the board of directors calling such election or as a result of said election they may have their said non-irrigable lands taken out of said district by filing application therefor as provided by law within ten days after such election is held.

If a majority of those voting on such proposition at such election vote in favor thereof same shall be adopted.

In the event the plan of uniform acreage valuation for taxation is adopted as herein provided the said valuation shall be applied to all such lands and it shall not be necessary for the assessor, or the board of equalization to annually fix the value thereof or equalize such values, except as herein provided, nor for the board of directors of the district to appoint a commission to ascertain or fix the value of the improvement to particular lands as in other cases provided. The board of equalization will examine the renditions and tax rolls to ascertain that all property subject to the tax is placed on such tax rolls under its proper classification and add any property thereto that may be left off such tax rolls or that may not have been rendered for taxation, and examine, correct, and certify to said tax rolls. Any property owner may protest the classification of his land as not being proper and the board of equalization shall fully consider any such protest, hear evidence, and enter their findings thereon in their minutes, in the same manner provided for protests in the case of the fixing of valuations upon property as provided by law.

The rate of taxation, the collection of taxes, assessment of property, rendering of property for taxation shall be made as now provided by law with reference to ad valorem taxes, except that any such lands shall be rendered or taxed and in rendering same the value thereof shall not be stated and it shall not be necessary that the party rendering same shall make affidavit to the value thereof nor that the value thereof be stated by the tax assessor, but same shall be rendered as subject to irrigation or not subject to irrigation.

In the event lands classed as non-irrigable are thereafter irrigated by said district the owner thereof prior to receiving water for irrigation shall pay to said district an amount equal to the entire amount that would have been charged to same if same had been originally classed as irrigable. [Acts 1921, p. 17; Acts 1923, p. 279, sec. 122.]

Art. 7780. Locating offices.—Whenever a district is formed in such manner that the towns within or adjoining the territory included in the district are left out of said district, then in that event the directors for said district may establish the office in said district as provided by law, or may establish the office of said district within any town adjoining, or close to said district within the same county or counties, which may be best suited as a location for the transaction of the business of said district, provided, however, such office shall not be removed from the proximity of said district, but shall be so located as to be accessible to the residents of said district. [Id. p. 23, sec. 123.]

Art. 7781. Collecting under benefit plan.—In the event that any irrigation or water improvement district, other than those operating under contract with the United States, have been or shall be constituted a conservation and reclamation district, and shall adopt the assessment for benefit plan of taxation instead of the ad valorem system of taxation, as authorized by the provisions of Chapter 12 of the General Laws of the Second Called Session of the Thirty-sixth Legislature, or under the provisions of this Act, then in that event the levy, assessment, equalization of property values, and collection of taxes shall be made in the manner provided by Sections 125 to 130 inclusive of this Act. [Id. sec. 124.]

Art. 7782. Commissioners of appraisement.—As soon as practicable, after the approval of the report of the engineer, and the adoption of the plan of improvements to be constructed, the board of directors shall appoint three disinterested commissioners, who shall be known as commissioners of appraisement, but who shall be freeholders, but not owners of land within the district for which they are to act. [Id. sec. 125.]

Art. 7783. Time and place of meeting.—The secretary of the board of directors immediately following the appointment of the commissioners of appraisement shall in writing notify each of his appointment, and in the notice designate a time and place for the first meeting of such commissioners. It shall be the duty of the commissioners to meet at the time and place specified or as soon thereafter as possible when they shall each take and subscribe an oath that they will faithfully and impartially discharge their duty as such commissioner, and make true report of the work done by them, and at such meeting the commissioners shall organize by electing one of their number chairman and one vice-chairman, and the secretary of the board of directors, or in his absence such person as the board of directors may appoint, shall be secretary of said commissioners during their continuance in office and shall furnish to them such information and such assistance as may be within his power and necessary to the performance of their duties. [Id. sec. 126.]

Art. 7784. To make report—compensation.—Within thirty days after qualifying and organizing as above directed, the commissioners of appraisement shall begin their duties, and they may at any time call upon the attorney of the district for legal advice and information relative to such duties, and may, if necessary, require the presence of the district engineer, or one of his assistants, at such times and for so long as may be necessary to the proper performance of their duties. Such commissioners shall proceed to view the lands within such district as will be affected by the plan of reclamation for such district as carried out, and all public roads, railroads, rights of way and other property or improvements located within such district, and shall assess the amounts of benefits and all damages, if any, that will accrue to any tract of land or other property within such district or to any public highway, railroad and other rights of way, roadways or other property from carrying out and putting into effect the improvements to be constructed by such district. The board shall prepare a report of their finding which shall show the owner of each piece of property examined, and on or concerning which any assessment is made, together with such description of said property as may identify the same, with the amount of damages and all benefits assessed for and on account of, or against the same, which said report shall be signed by at least a majority of the said commissioners and filed with the secretary of the board of directors of the district, and which report shall also show the number of days each commissioner has been employed and the actual expenses incurred by each during his service as commissioner, and each shall be paid by the district not to exceed $10.00 per day for his services, and all necessary expenses in addition thereto upon the approval of his account for such per diem and expenses by the board of directors. Said commissioners shall in their said report fix a time and place when and where they will hear objections thereto, and such date shall be not less than twenty days from the filing of such report. [Id. sec. 127.]

Art. 7785. Notice of hearing.—When the report of the commissioners shall have been filed with the secretary of the board of directors, he shall forthwith give notice by publication in a newspaper published in each county wherein any portion of the district is located, for at least once a week for two consecutive weeks prior to the date fixed for such hearing, of the time and place of such hearing, and he shall also mail a written notice to each person whose property will be in any wise affected by the carrying out of the plan of reclamation and improvement if his post office is known, stating the time and place of such meeting, which notice shall state in substance that the report of the commissioners to assess benefits and damages accruing to the land and other property by reason of the plan of reclamation and improvement for the district in question has been filed in his office, and that all persons interested may examine the same and make objections thereto in whole or in part, and that the commissioners will meet on the day and at the place named for the purpose of hearing and acting on objections to such report, and the secretary upon the day of the hearing shall file in his office the original notice with his affidavit thereto, showing the manner of publication and the names of all persons to whom notices have been mailed, and that post offices of those to be effected [affected] to whom notices were not mailed were unknown to him, and could not be ascertained by reasonable diligence, and copies of such notice and affidavit shall be filed, one with the commissioners of appraisement and one with the clerk of the county commissioners' court. [Id. p. 24, sec. 128.]

Art. 7786. Issuance of decrees.—At or before the hearing, upon the report of the commissioners of appraisement, any owner of land or other property affected by such report, or the plan of reclamation and improvements may file exceptions to any or all parts of such report, and said commissioners at the time and place specified in the notice shall proceed to hear and base opinion on such objections, and where such objections are sustained, in whole or in part, may make such changes and modifications from time to time as may be necessary to confirm the report of their findings. When the commissioners shall have finally acted they shall make decrees confirming such report in so far as it is confirmed, and approving and confirming the same as modified or changed in so far as it may be modified or changed. The commissioners shall have power to adjudge and apportion costs incurred upon the hearing in such manner as may be deemed equitable. The findings of the commissioners as to benefits and damages to lands, railroads and other property within the district shall be final and conclusive. The final decree and judgment of the commissioners shall be entered of record in the minutes of the board of directors and certified copies thereof shall be filed with the county clerk of each county in which any portion of the lands within such district are located, as a permanent record of such county, and such filings shall

be notice to all persons of the contents and purpose of such decree. [Id. sec. 129.]

Art. 7787. Benefit basis of taxation.—After the action of the commissioners of appraisement as aforesaid, their final findings, judgment and decree, until lawfully changed or modified, shall form the basis of taxation within and for the district for which they shall have acted, for all purposes for which taxes may be levied by, for or on behalf of such district and all taxes shall be apportioned and levied on each tract of land, railroad and other real property in the district, in proportion to the net benefits to the property named in such final judgment or decree as shown thereby. In all matters before the commissioners of appraisement, parties interested may not only appear in person or by attorney, but they shall be entitled to process for witnesses to be issued by the chairman of the commissioners of appraisement on demand, and such commissioners shall have the same power as a court of record to enforce the attendance of witnesses. [Id. p. 25, sec. 130.]

Art. 7788. Equitable basis instead of ad valorem.—Any water improvement district organized under authority of Section 59 of Article 16 of the Constitution, and Chapter 25, General Laws, Fourth Called Session, Thirty-fifth Legislature, as well as any water improvement district which may have been created prior to the adoption of such constitutional amendment, and which shall have availed itself or may hereafter avail itself of the benefits of Section 59 of Article 16 of the Constitution, may at the time of its creation, or at any time thereafter before such district shall have issued bonds, submit to the qualified electors of such district the question whether the taxes to be levied therein, or any part thereof, shall be levied, assessed and collected upon an "equitable" basis in proportion to benefits to be conferred by the organization, operation and maintenance of such district and the work and improvements to be created thereby, or whether such taxation or any portion thereof shall be levied upon an ad valorem basis. Such question shall be submitted to the qualified voters of such district at any time and in any manner that the governing body of such water improvement district may select, and the ballots to be used shall have printed thereon in substance the following: "For the levy of taxes upon a benefit basis instead of an ad valorem basis," and "Against the levy of taxes on a benefit basis instead of on an ad valorem basis." And such election shall be governed by the provisions of Chapter 87 of the General Laws of the Thirty-fifth Legislature, Regular Session, and amendments thereof so far as applicable. If a majority of the votes cast at such election shall be in favor of the levy and collection of the taxes, or any part thereof, upon an equitable basis in proportion to benefits instead of upon an ad valorem basis, then taxes shall be so levied and collected. [Id. sec. 131.]

Art. 7789. When contract with United States.—In the event an irrigation or water improvement district shall have heretofore been operated or shall hereafter be operated under contract with the United States and such district shall have adopted or may adopt the plan of the levy and collection of taxes on a benefit basis instead of an ad valorem basis, then the directors of such district shall at some convenient time thereafter, and from time to time as may be necessary, sit as a board to apportion and assess the benefits conferred upon any and all property situated within such water improvement district and shall cause a record to be made, showing the amount and value of the benefits computed to accrue to all of the property situated within such district and subject to taxation, and the amount of taxes upon such basis to be levied against and collected from such property; provided, that no taxes so assessed or adjudged against such property shall be in excess of the benefit accruing and to accrue to such property from the organization, operation and maintenance of such district and the improvements to be acquired or constructed thereby. After such record shall have been made up, the board shall cause notice to be mailed to each property owner whose name appears upon such record, showing the amount of taxes to be levied against such property, and fixing a date and place at which such owner may appear and contest the correctness and equitableness of such tax. And after such hearing such board of directors or other governing body shall determine the inequitableness of the tax and sustain, reduce, or increase the same, as in their judgment shall be just and equitable; and the decision of this board shall be final. All of the provisions of Chapter 87, General Laws, Thirty-fifth Legislature, Regular Session, and amendments thereto, not inconsistent herewith, shall apply to the levy, assessment and collection of the taxes herein provided for. [Id. p. 26, sec. 132.]

Art. 7790. Sale of water power privileges.—Any irrigation or water improvement district may contract for the sale of water power privileges whenever it may be possible for power to be generated by the use of the water flowing from its reservoir, or in its canal system, provided, however, any such contract for the sale of water power privileges shall be subject to the obligation of the district to protect the lands embraced therein in an adequate supply of water for irrigation for which the district was organized, or for supplying water for municipal purposes in those districts supplying water for municipal purposes. [Id. sec. 133.]

Art. 7791. Adopt rate of commissioners' court.—Irrigation and water improvement districts operating under the provisions of laws of this State, and assessing taxes on the ad valorem basis, may, if they find it to their advantage, adopt the assessment and equalization of values of the property authorized therein for taxation as made and equalized by the county officers and the county commissioners' court and base the levy and collection of taxes on such assessment and equalization, and they shall also have authority to secure from the county tax assessor a list of tax renditions as made to him covering the property within said district, and adopt same for the use and benefit of said district by causing the tax assessor and collector of the district to compile same as the tax roll of the district instead of making independent assessment thereof. In the event that the district tax assessor and collector and district directors should for any reason fail or refuse to properly assess, equalize tax values, and prepare a tax roll for said district, as provided by law, then in that event the taxes levied at the time of issuance of bonds or other valid obligations of said district shall be collected by the county tax collector by entering on his rolls the said tax as against all property situated within such district for the year or years which the said district officers may have so failed to perform their said duties. If the tax levy is not sufficient because of decreased valuations same shall be increased by order of the commissioners' court.

The fund so collected by such county tax collector shall be deposited in the county depository as a special fund to be devoted to the payment of interest and sinking fund on such bonds or other obligations, and such fund shall be paid thereon upon order of the county commissioners' court. In the event any such county tax collector should fail or refuse to perform such duties then the holders of such securities, bonds or obligations, or any one or more of them, may compel him to do so by mandamus proceeding in the court of proper jurisdiction. The county tax collector shall be allowed, in addition to all other compensation now provided by law, reasonable fees for the performance of such duty, to be fixed by the county commissioners' court, not to exceed, however, the rate of compensation fixed by law for the performance of like duties in the collection of county funds. Whenever such district officers shall fail to perform and discharge their duty, in the assessment and valuation of the property and collection of taxes, as hereinabove provided, then any bond holder or other person interested in said district and the payment of their obligations may request the county commissioners' court to enter an order authorizing the county tax collector to perform the duties herein provided, and the county commissioners' court shall investigate said matter, and if they find said conditions to exist shall enter an order directing the county tax collector to proceed as herein provided, and

no county tax collector shall undertake the collection of such taxes until so ordered by the county commissioners' court. The provisions of this section are not intended to allow anyone to interfere with the duties of the district officers so long as they are in the active discharge of their duties, but such powers shall be exercised in the event such district officers shall not perform their duties or in the event of a vacancy in said offices.

In the event of any dispute arising as to whether or not said officers are so performing their duties, said matter may be determined by an action against said officers in the district court in the nature of a mandamus suit or in injunction proceedings restraining such officers from interfering with the collection of such taxes and the payment of said obligations by said county tax collector, and said county commissioners' court. Any such action of the district court may be appealed to the Court of Civil Appeals and a judgment of the Court of Civil Appeals shall be final. In the event any such district embraces territory in two or more counties, the duties herein provided for the county tax collector and county commissioners' court shall be performed by such officers as to all such property lying within the county. [Id. sec. 134.]

Art. 7792. Selling surplus water.—Any irrigation or water improvement district may sell any surplus water they may have or have conserved to lands in the same vicinity for the purpose of irrigation, domestic, or commercial uses. [Id. p. 28, sec. 135.]

Art. 7793. Sale and lease of electrical energy.—Any water improvement district or conservation and reclamation district operating under contract with the United States, may provide for the purchase, acquisition, construction, operation, lease or control of plants for the generation, distribution, sale and lease of electrical energy, including the sale to municipalities, corporations, firms or individuals of electrical power, generated within or without said district, or the sale or lease of power privileges incident to or forming a part of the reservoirs, canals or other works owned, constructed or operated by or for such district, and for the purpose of obtaining funds with which to construct or acquire the power plants, transmission lines and other works necessary or useful for the development, transmission, distribution, sale or lease of such power, may borrow money in the name of such district, and issue bonds therefor, which bonds shall be secured by a lien upon the water power or energy and power privileges incident to such irrigation and drainage project, and also by a lien upon the power plant, transmission lines, and all of the physical properties necessary for, or used in the creation, transmission, distribution and market of such power or energy, but such bonds shall not be a lien upon the lands or other property owned by individual irrigators or water users under such project. Such bonds may be issued in the manner and subject to all of the regulations, terms, conditions and provisions of other bonds authorized to be issued under the terms of Chapter 87 of the General Laws of the Regular Session of the Thirty-fifth Legislature, and of the acts amendatory thereof and supplementary thereto, except as in this section otherwise provided. The board of directors of any such district shall estimate and determine the amount of money necessary to be raised, or the amount of indebtedness necessary to be assumed for such purpose or purposes, and may include in such amount a sum sufficient to pay the first four years' interest on such indebtedness. [Acts 1921, p. 183, sec. 1.]

This article and art. 7794, were expressly repealed by Acts 1925, 39th Leg., ch. 123, p. 325, § 4, which read as follows: "That Chapter 94 of the General Laws of the Regular Session of the Thirty-seventh Legislature be and the same is hereby repealed."

Art. 7794. Co-operating with districts of other states.—Whenever any water improvement or conservation and reclamation district in this State, operating under contract with the United States, shall obtain water from the same source from which water is obtained by any such district or similar district or districts, organized for irrigation or drainage purposes, under the laws of any other State, the water improvement district or conservation and reclamation district organized under the laws of this State shall be, and it is hereby authorized to jointly own, acquire, construct and operate irrigation works, reservoirs and drainage works, in co-operation with such district or districts obtaining water from the same source of supply, which may be located within another State, under the terms and conditions to be set out in a written contract, and the provisions of the preceding section, relating to the development, transmission, distribution, sale and lease of electrical power and energy, in the manner in said section provided shall be applicable to any such district in this section referred to. Any such contract shall not be binding until the same shall have been ratified by a majority vote of the legally qualified voters of such district, situated within this State. Such contract shall be printed or in writing, and a true copy thereof shall be filed in the office of such district in Texas fifteen (15) days prior to such election, and shall be subject to public inspection.

Whenever works or improvements are to be constructed or acquired, bids may be jointly called for and may be opened and considered at the designated office of either of such districts, and the officers of such district in Texas may execute such contract, and may hold meetings to consider the execution thereof, and the approval of the contractor's bond, and all matters pertaining to or incident to such contract, at any office established for such joint project, and at which office all business of such joint project may be transacted.

The action of each district being determined by its board of directors, a general manager may be employed for such joint enterprise, whose duties may be set forth in the joint ownership contract. The terms and conditions of such joint ownership or construction contracts shall not conflict with the provisions of the law providing for the organization and conduct of districts, except as herein provided, but may include provisions for joint construction and operation, and such contracts may be amended from time to time in the same manner. The provisions of this and the next preceding article shall apply only to districts operating under contract with the United States. [Id. sec. 2.]

See note to art. 7793.

Art. 7794a. Acquisition of plants; sale and lease of electrical energy.—Any water improvement district or conservation and reclamation district operating under contract with the United States, or any department thereof, may provide for the purchase, acquisition, construction, operation, lease or control of plants for the generation, distribution, sale and lease of electrical energy, including the sale to municipalities, corporations, firms or individuals of electrical power, generated within or without said district, or the sale, or lease of power privileges incident to or forming a part of the reservoirs, canals or other works owned, constructed or operated by or for such district, and for the purpose of obtaining funds with which to construct or acquire the power plants, transmission lines and other works necessary or useful for the development, transmission, distribution, sale or lease of such power, may borrow money in the name of such district, and issue bonds therefor or enter into contract with the United States for the repayment thereof. Such bonds may be issued in the manner and subject to all of the regulations, terms, conditions and provisions of other bonds authorized to be issued under the terms of Chapter 87 of the General Laws of the Regular Session of the Thirty-fifth Legislature, and of the acts amendatory thereof and supplementary thereto. The board of directors of any such district shall estimate and determine the amount of money necessary to be raised, or the amount of indebtedness necessary to be assumed for such purpose or purposes, and may include in such amount a sum sufficient to pay the first four years' interest on such indebtedness. [Acts 1925, 39th Leg., ch. 123. p. 324, § 1.]

Art. 7794b. Coöperating with districts of other states.—Whenever any water improvement or conservation and reclamation district in this State,

operating under contract with the United States, shall obtain water from the same source from which water is obtained by any such district or similar district or districts, organized for irrigation or drainage purposes, under the laws of any other State, the water improvement district or conservation and reclamation district organized under the laws of this State shall be, and it is hereby authorized to jointly own, acquire, construct and operate irrigation works, reservoirs and drainage works, in cooperation with such district or districts obtaining water from the same source of supply, which may be located within another State, under the terms and conditions to be set out in a written contract, and the provisions of the preceding section, relating to the development, transmission, distribution, sale and lease of electrical power and energy, in the manner in said section provided, shall be applicable to any such district in this section referred to. Any such contract shall not be binding until the same shall have been ratified by a majority vote of the legally qualified voters of such district, situated within this State. Such contract shall be printed or in writing, and a true copy thereof shall be filed in the office of such district in Texas fifteen (15) days prior to such election, and shall be subject to public inspection.

Whenever works or improvements are to be constructed or acquired, bids may be jointly called for and may be opened and considered at the designated office of either of such districts, and the officers of such district in Texas may execute such contract, and may hold meetings to consider the execution thereof, and the approval of the contractor's bond, and all matters pertaining to or incident to such contract, at any office established for such joint project, and at which office all business of such joint project may be transacted.

The action of each district being determined by its board of directors, a general manager may be employed for such joint enterprise, whose duties may be set forth in the joint ownership contract. The terms and conditions of such joint ownership or construction contracts shall not conflict with the provisions of the law providing for the organization and conduct of districts, except as herein provided, but may include provisions for joint construction and operation, and such contracts may be amended from time to time, in the same manner. [Acts 1925, 39th Leg., ch. 123, p. 325, § 2.]

Art. 7794c. Application.—The provisions of this Act shall apply only to districts operating under contract with the United States, or any department thereof. [Acts 1925, 39th Leg., ch. 123, p. 325, § 3.]

Art. 7795. Limiting power to incur debt.—The board of directors of any water improvement district which has been or shall be constituted a conservation and reclamation district under the provisions of Section 59, of Article 16, of the Constitution, may, for the benefit of the purchasers or holders of bonds to be issued, limit the power of the district to incur debt and issue bonds in the manner and to the extent hereinafter mentioned. Said board may adopt a resolution declaring that during a period not exceeding ten years, the district shall not issue bonds in excess of twenty-five per cent of the assessed value of the taxable real property of the district according to the last assessment for district purposes, and shall give notices of the adoption of such resolution by publication once a week for two successive weeks in a newspaper published in the district, stating that such resolution shall take effect unless a petition signed by ten per cent of the qualified property tax paying electors of the district shall be presented against the proposed limitation within thirty days after the date of the first publication of such notice. If such petition or remonstrance be filed within said period, said limitation shall not take effect unless it be approved at a general or special election held in the district in the same manner as other general or special elections are held. The ballot on the question at such election shall be in substantially the following form: "For limiting during the term of ——— years, the maximum debt of the district to twenty-five per cent of the assessed valuation of the real property," and "Against limiting during the term of ——— years, the maximum debt of the district to twenty-five per cent of the assessed valuation of the real property." If such limitation shall be approved or if during said period no petition or remonstrance shall be filed, the district shall not issue bonds under any statute or constitutional provision during said term in excess of the amount so limited, except to complete works for constructing which bonds may be issued within said limitation, and shall only issue bonds exceeding said limitation for completing such works after the State Board of Water Engineers shall have approved the plans and specifications of the original and uncompleted works, together with the estimates of the cost thereof. If such plans and specifications and estimate be approved by said State Board of Water Engineers, notice of intention to issue said bonds to complete said works shall be given by publication once a week for three weeks, stating the amount of the proposed issue of bonds and the time when a hearing will be had, which shall not be less than thirty days from the date of the first publication. Any property taxpayer, bondholder or other creditor or person interested may appear and shall be heard. If the determination be in favor of the issuance of additional bonds to the amount stated in the notice, the question of issuing such bonds shall be submitted to the property taxpaying voters at an election held in the form and manner prescribed by law. [Acts 1st C. S., 1921, sec. 139.]

Art. 7796. Previous bond validated.—All proceedings heretofore had and taken to organize a water improvement district under the Act to which this is an amendment, or to determine the manner in which taxes or assessments shall be levied and collected, or to bring any district organized hereunder under the provisions of Section 59 of Article 16 of the Constitution of Texas, or to authorize the issuance of bonds of any district organized under the Act to which this is an amendment, whether such district shall or shall not have come under said Section 59 of Article 16 of the Constitution, shall be and are hereby in all respects ratified, validated, approved and confirmed, and such bonds may be issued and sold in the form and manner and at the price and under the conditions prescribed by law. [Id. sec. 139.]

Art. 7797. May sue to protect bonds.—All water improvements districts and irrigation districts heretofore or hereafter organized under the laws of the State being dependent upon their water rights and water supply to perform their public duties and to protect their bonds and other indebtedness created under the provisions of the law and to maintain their taxable values and assessable values, shall have full authority to maintain any action or suit for such purposes. [Id. p. 150, sec. 140.]

Art. 7798. May sue to protect bonds.—The board of directors are hereby empowered to institute and maintain any suit or suits to protect the water supply of said district and to prevent any unlawful or unwarranted interference with or diversion of such water supply. All water improvement districts and irrigation districts shall have full power and right to protect their water supply and all other rights and property and by proper suit to prevent any taking or interference with such water supply, of whatever nature or however acquired, necessary to the uses of such district or for the irrigation of the lands situated therein. [Id. sec. 141.]

Art. 7799. Board of Water Engineers to investigate.—The State Board of Water Engineers shall be and is constituted a commission to investigate and report upon the organization and feasibility of all water improvement districts which shall issue bonds under the provisions of the law of this State. All such districts desiring to issue bonds for any purposes shall submit in writing to said board an application for investigation, together with a copy of the engineer's report, and a copy of all data, profiles, maps, plans and specifications prepared in connection therewith. Said Board of Water Engineers shall examine same and shall visit the project and carefully inspect the same and may call for and shall be supplied with additional data and information requisite to a reasonable and

careful investigation of the project and proposed improvements. They shall file in their office in writing their suggestions for changes and improvements, and furnish a copy thereof to the board of directors of the district. If said board shall finally approve or refuse to approve such project or the issuance of bonds for any improvement, they shall make a full written report thereon, file same in their office, and furnish a copy of same to the board of directors of said district. [Id. sec. 142.]

Art. 7800. Conveying interests.—Any water improvement district organized under the laws of the State of Texas, which shall have filed an application for a permit to construct a reservoir and to appropriate the waters of a stream or watershed for irrigation or other purposes and for which a permit shall have been granted by the State Board of Water Engineers and a permit issued therefor, said district may convey to another water improvement district an interest in said reservoir and water rights evidenced by its application and permit granted by the State Board of Water Engineers. Said conveyance shall convey all such rights covered by its terms; provided, however, same shall be filed for record and be recorded in the office of the county clerk of the county or counties in which said property is situated and shall then be filed for record in the office of the State Board of Water Engineers. Said transfer when so filed shall be and operate as a conveyance of all rights granted to the district to which said permit was issued in so far as it covers same, not to exceed, however, the rights granted by the permit issued therefor by the State Board of Water Engineers. From and after the date said transfer is filed in the office of the State Board of Water Engineers all rights conveyed thereby shall be vested in the district to which same is transferred as fully and to the same extent as if a permit had been issued for same by said State Board of Water Engineers. [Acts 1923, p. 282, sec. 1.]

Art. 7801. Excluding land from district.—All water improvement districts which have been organized and in which it may be thereafter determined that some of the lands included within the boundaries of such district can not be irrigated by gravity flow from the irrigation system as constructed may eliminate and take said land out of said district at any time prior to the issuance of bonds or other fixed obligations by said district in the following manner. The board of directors of such district shall make an order specifying such lands and the owners thereof and declaring same to be so situated that they will not be irrigated by gravity flow from the canals constructed or to be constructed, and enter such order on the minutes of said board. Within ten days after said order is so made and entered notice thereof shall be given by publishing a true copy of same in a newspaper of general circulation in the county in which said lands are situated once a week for two weeks. If no protest is filed to such action with said board of directors within fifteen days after the final publication of said notice, said order shall become final as to all lands included in said order the owners of which have not filed a protest. In the event any owner of said lands or any part thereof shall file a protest with said board of directors contesting said action and asking that said lands be not taken out of said district then as to same order shall be annulled and said lands or parts thereof described in said protest shall remain in said district. In the event any lands are so excluded from a district that it may thereafter be desired to have again included in said district same may be so included upon application of the owner thereof in the manner provided by law for adding lands to an established district. [Acts 1923, ch. 135, p. 278, sec. 1.]

Art. 7802. Districts heretofore organized may take advantage.—Any water improvement district, drainage district, or levee improvement district, heretofore organized or hereafter organized or hereafter to be organized, under the laws of this State, as defined districts, under Section 52 of Article 3 of the Constitution, may avail itself of the benefits of Section 59 of Article 16 of the Constitution, and thereby become a conservation and reclamation district, without change of name. [Acts 1923, p. 282, sec. 2.]

Art. 7803. May incur indebtedness.—Any conservation or reclamation district hereafter organized under this Act, and any water improvement district, drainage district or levee improvement district which may be constituted a conservation and reclamation district under this Act, may incur indebtedness and levy taxes to fully carry out each and all of the purposes of its organization, and for the payment of its obligations and the maintenance and operation of said district. [Id. sec. 3.]

Art. 7804. Limitations removed.—All limitations of indebtedness authorized to be incurred and taxes to be levied, imposed by Section 52 of Article 3 of the Constitution, and any and all laws under which any such district has been or may be organized, are removed as to all districts which may become conservation and reclamation districts under the terms of this Act. [Id. sec. 5.]

Art. 7805. To change districts heretofore organized.—Any water improvement district, or irrigation district heretofore or hereafter organized under the laws of this State, may become and be made a conservation and reclamation district, as herein provided, in the following manner: When a petition signed by twenty per cent of the owners of land in such district, praying therefor, is presented to the directors, they shall order an election to be held to determine such issue, such election to be conducted as provided for general elections in such districts. The ballots shall have printed thereon the following: "For Conservation and Reclamation." The directors shall canvass the returns and declare the result of such election, and have recorded in the deed records of the county or counties in which such district is situated a full copy of the order declaring the result of such election; and when such order is in favor of so making such district a conservation and reclamation district, it shall become such district without change of name or impairment of its obligations, upon the result of such election being declared and recorded as herein provided. [Id. sec. 5.]

Art. 7806. Governed by regulations of water improvement districts.—Any conservation and reclamation district organized for the purpose for which water improvement districts and irrigation districts have heretofore been organized, or any water improvement district or irrigation district becoming a conservation and reclamation district under the terms hereof, shall be governed and controlled by the provisions of law applying to water improvement districts, except as herein otherwise provided. [Acts 2nd C. S., 1919, p. 37, sec. 6.]

Art. 7807. May choose benefit or ad valorem basis.—Any water improvement district organized under authority of Section 59 of Article 16 of the Constitution, and Chapter 25, General Laws, Fourth Called Session, Thirty-fifth Legislature, as well as any water improvement district which may have been created prior to the adoption of such constitutional amendment, and which shall have availed itself, or may hereafter avail itself, of the benefits of Section 59 of Article 16 of the Constitution, may, at the time of its creation, or at any time thereafter before such district shall have issued bonds, submit to the qualified electors of such district the question whether the taxes to be levied therein, or any part thereof, shall be levied, assessed and collected upon an "equitable" basis in proportion to benefits to be conferred by the organization, operation and maintenance of such district and the work and improvements to be created thereby, or whether such taxation of [or] any portion thereof shall be levied upon an ad valorem basis. Such question shall be submitted to the qualified voters of such district at any time and in any manner that the governing body of such water improvement district may elect, and the ballots to be used shall have printed thereon in substance the following: "For the levy of taxes upon a benefit basis instead of an ad valorem basis," and, "Against the levy of taxes on a benefit basis instead

of on an ad valorem basis." And such election shall be governed by the provisions of Chapter 87 of the General Laws of the Thirty-fifth Legislature, Regular Session, so far as applicable. If a majority of the votes cast at such election shall be in favor of the levy and collection of the taxes, or any part thereof, upon an equitable basis in proportion to benefits, instead of upon an ad valorem basis, then the directors of such district shall at some convenient time thereafter, and from time to time as may be necessary, sit as a board to apportion and assess the benefits conferred upon any and all property situated within such water improvement district, and shall cause a record to be made, showing the amount and value of the benefits computed to accrue to all of the property situated within such district and subject to taxation, and the amount of taxes upon such basis to be levied against and collected from such [basis to be levied against and collected from such] property; provided, that no taxes so assessed or adjudged against such property shall be in excess of the benefit accruing and to accrue to such property from the organization, operation and maintenance of such district and the improvements to be acquired or constructed thereby. After such record shall have been made up, the board shall cause notice to be mailed to each property owner whose name appears upon such record, showing the amount of taxes to be levied against such property, and fixing a date and place at which such owner may appear and contest the correctness and equitableness of such tax. And after such hearing such board of directors of [or] other governing body shall determine the equitableness of the tax and sustain, reduce, or increase the same, as in their judgment shall be just and equitable; and the decision of such board shall be final. All of the provisions of Chapter 87, General Laws, Thirty-fifth Legislature, Regular Session, and amendments thereto, not inconsistent herewith shall apply to the levy, assessments and collection of the taxes herein provided for. [Id. sec. 5a.]

CHAPTER THREE

WATER CONTROL AND PRESERVATION DISTRICTS

Water control and improvement districts see post chapter 3a.

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1. ESTABLISHMENT.

Article 7808. May establish.—One or more water control and preservation districts may be established in the several counties, or a part of any county, or in two or more adjacent counties, or in parts of two or more adjacent counties, or in one county and part of an adjacent county or counties, in the manner provided in this chapter. Said districts may or may not include within their boundaries villages, towns and municipal corporations, or any part thereof, but no land shall be at the same time included within more than one such district. All such districts are defined districts within the meaning of Section 52, Article 3 of the State Constitution. [Acts 4th C. S. 1918, p. 74.]

Art. 7809. Purposes.—Said districts, when established, shall be for the purpose of the control and preservation of the purity of the waters of any rivers, creeks, bayous, lakes, canals, streams or other waters of any kind and character situated or flowing, in whole or in part, through the said district, or any part thereof, by the prevention of the inflow of salt water or other deleterious substances, or by the changing of said waters from salt to fresh water, and the impounding of fresh water for such purposes. [Id.]

Art. 7810. Powers.—Such districts, when established, shall have full power to erect, construct, maintain, repair and reconstruct dams, bulkheads, jetties, locks, gates, or any other character of improvement or construction necessary to the accomplishment of any such purpose, and to make such construction without the boundaries of the district, where same may be deemed necessary to the preservation, or the improvement of the purity and irrigable quality of such waters; and may issue bonds in payment therefor. [Id.]

Art. 7811. Petition.—Upon the presentation to the commissioners court of a petition signed by twenty-five of the resident property taxpayers of any proposed district praying for the establishment thereof within the county, and setting forth the boundaries, and accompanied by a map thereof, the general nature of the improvements proposed, and an estimate of the probable cost thereof, and praying for the issuance of bonds and levy of a tax in payment thereof, and designating a name for such district which shall include the name of the county; and accompanied by the affidavit of the petitioners stating that they are resident property taxpayers of such county; the court shall set the same down for a hearing at a regular or called session, not less than thirty nor more than sixty days thereafter. [Id.]

Art. 7812. Contingent deposit.—The petition shall be accompanied by five hundred dollars in cash

which shall be deposited with the clerk of the commissioners court of the county in which the largest portion of the proposed district is situated. If the result of the original election is in favor of the establishment of the district, the clerk shall return said deposit to the petitioners, their agent or attorney; otherwise the clerk shall pay the same out upon the vouchers signed by the county judge of such county, for all expenses and costs pertaining to the proposed district up to and including said election, and shall return the balance to the petitioners, their agent or attorney. [Id.]

Art. 7813. Notice of hearing.—The court shall, when setting a date for the hearing, order the clerk of said court to give notice of the date and place of said hearing by posting, or causing to be posted, not less than twenty days prior to the hearing, a copy of said petition and the order of the court thereon, one at the courthouse door and four others within the limits of the proposed district. Said clerk shall receive one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. [Id.]

Art. 7814. Hearing.—Any person who may be affected thereby may appear before said court and contest the creation of said district, or contend for its creation, and may offer testimony in favor of or against the boundaries of said district to show that the proposed improvements would or would not be of any public utility, and would or would not be feasible or practicable, and the probable cost of such improvements, or as to any other matter pertaining to the proposed district. [Id.]

Art. 7815. Hearing: authority of court.—Unless otherwise provided, the commissioners court shall have exclusive jurisdiction to hear and determine all contests and objections to the creation and establishment of any district, and shall have exclusive jurisdiction in all subsequent proceedings of any organized district, and may adjourn hearing on any matter connected therewith from day to day; and all judgments, decrees or orders rendered or entered by said court in relation thereto shall be final. [Id.]

Art. 7816. Findings.—If at said hearing it appears to the court that the organization of such district and the proposed improvement is feasible and practicable, and that it would be a public benefit or public utility, then it shall so find, and shall also find the amount of money necessary for said improvement and for all expenses incident thereto and the expenses necessarily incurred in connection with the creation and establishment of the district, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear. If the court finds that such organization and improvement is not feasible or practicable, or that it would not be a public benefit or utility, then it shall dismiss the petition at the cost of the petitioners. In either case, the court shall enter its findings in the records of the court. [Id.]

Art. 7817. May renew petition.—The order dismissing said petition or any appeal therefrom shall not prevent the presentation at any subsequent time of a similar petition with changed boundaries, but the presentation of a similar petition with identical boundaries shall not be permitted until the expiration of six months after such dismissal. [Id.]

Art. 7818. Appeal.—Any petitioner or taxpayer in such district may appeal from the findings of said court to the district court of said county. Such appeal shall be perfected within five days after the rendition of the order appealed from, in the following manner: notice of appeal shall be given and entered of record on the minutes of said court, at the time of the entry of said order by announcement of same before said court, or by giving written notice within two days after the entry of such order by a simple statement that the undersigned gives notice of appeal from the order entered on the date stated, and by filing such written notice with the county clerk; and by filing an appeal bond with two or more good and sufficient sureties for one hundred dollars, payable to the county judge and approved by the county clerk, and conditioned upon the due prosecution of the appeal and payment of all costs incident thereto. Unless appeal is so perfected, such order shall be final and conclusive. [Id.]

Art. 7819. Appeal: proceedings.—Within five days from the filing of the appeal bond, the county clerk shall transfer to the district clerk all records filed with the commissioners court pertaining to the establishment of said district, and it shall not be necessary to file additional pleadings in said court. The court shall set the matter down for hearing de novo, giving it precedence over all other cases, and the matters shall be tried and determined by the court. The judgment of the district court shall be final and conclusive, and shall be certified to the commissioners court for its further action. [Id.]

Art. 7820. Election order.—If the petition is granted, the commissioners court shall order an election to be held in such district at the earliest legal time, to determine whether or not such district shall be created and whether or not a tax shall be levied sufficient to pay the interest and provide a sinking fund to redeem said bonds at maturity. Said order shall specify the amount of bonds to be issued, the length of time said bonds shall run, and the rate of interest they shall bear, as determined by the court. [Id.]

Art. 7821. Notice of election.—Notice of such election stating the time and place of holding the same shall be given by the county clerk by posting or causing to be posted notices thereof in four public places in such district and one at the courthouse door, for thirty days prior to the election. Said notice shall also contain the proposition to be voted on and the purpose for which said bonds are to be issued and the amount of such bonds, and shall contain a copy of the election order. [Id.]

Art. 7822. Ballot.—The commissioners court shall provide twice as many ballots as there are qualified resident property tax paying voters within such district. Said ballots shall have printed thereon the words and none others: "For the Water Control and Preservation District, and issuance of bonds and levy of tax in payment thereof;" "Against the Water Control and Preservation District, and issuance of bonds and levy of tax in payment thereof." [Id.]

Art. 7823. Election: conduct of.—None but resident property taxpayers who are qualified voters of said proposed district shall be entitled to vote at such election. The commissioners court shall create and define, by an order of the court, the voting precincts in the proposed district, and shall name convenient polling places therein, and shall appoint the judges and other necessary election officers. [Id.]

Art. 7824. List of voters.—The tax collector of the county wherein such district is situated, prior to the election, shall make a certified list of the property taxpayers of said district and furnish to the presiding judge of each precinct a list of such voters in such precinct. No person whose name does not appear in said list shall vote at any election under this chapter, except as provided in the two succeeding articles. [Id.]

Art. 7825. Voter's oath.—Any person who acquired property in said district after the first day of January of the preceding year may vote in said election upon taking the following oath before the presiding judge of the polling place where he offers to vote, and such judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of ——— County and that I am a resident property taxpayer of the proposed district, that I was not subject to pay property tax in said district for the preceding year and have not voted before at this election." [Id.]

Art. 7826. Taxpayer's oath.—Any person whose name was erroneously omitted from said list of voters

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

may vote at said election upon taking the oath as prescribed in the preceding article except that in lieu of the clause "that I was not subject to pay property tax in said district for the preceding year," there shall be substituted "that I was subject to and did pay property tax in said district for the preceding year."] [Id.]

Art. 7827. Results of election.—Said court shall canvass the vote, and if two-thirds of such votes are in favor of the proposition submitted, then the court shall declare the result of said election to be in favor of said district, and shall enter same in their minutes as provided in the succeeding article. [Id.]

Art. 7828. Declaration of result.—Said order of the court shall be as follows: "Commissioners court of ——— County, Texas, ——— day of ———, A. D. ——— in the matter of petition of ——— and ——— others, praying for the establishment of a Water Control and Preservation District, and issuance of bonds and levy of taxes in said petition fully described and designated by the name of ——— Water Control and Preservation District ———. Be it known that at an election called for that purpose in said district, held on the ——— day of ——— A. D. ———, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said District, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said District be and the same is hereby established by the name of ——— Water Control and Preservation District ———, and that the bonds of said District in an amount not exceeding ——— dollars be issued by the Directors of said District, and that said Board of Directors levy a tax of ——— cents on the hundred dollars of valuation, or so much thereof as may be necessary, upon all property within said district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund sufficient to redeem them at maturity, and that if said tax shall at any time become insufficient for such purpose, same shall be increased by said Directors until same is sufficient. The metes and bounds of said District being as follows, to-wit: (giving the metes and bounds.)" [Id.]

Art. 7829. Board of directors.—At the same meeting when said order is made, or at a called meeting within five days thereafter, the court shall appoint a board of directors consisting of three members, all of whom shall be freehold property taxpayers and legal voters of the county embraced in whole or in part within the district, and more than twenty-one years of age. Each shall receive three dollars per day for each day necessarily taken in the discharge of their duties as such; and shall hold office for two years, unless sooner removed by a majority vote of said court. Upon the expiration of their terms of office, the court shall appoint their successors by majority vote. Should any vacancy occur in said board, the same shall be filled in like manner by said court. [Id.]

Art. 7830. Combined district.—Where a proposed district lies partly within two or more counties, the petition for the establishment of said district shall be presented to the commissioners court of each county. Each such court shall give all necessary notice as provided for a single district in one county, but stating that same is a part of such entire district, and shall order an election, appoint all necessary officers, furnish all supplies, canvass the returns and declare the result of such election, all as provided for a single district. The presiding officer of each court shall then certify and report the result of said election to the county judge of the county in which the largest portion of such district is situated. [Id.]

Art. 7831. Combined district: declaration.—Said county judge shall canvass said vote and declare the result thereof, and if two-thirds of such votes favor the creation of said district, he shall declare the result and make the same order as provided herein for a single district. Copies of such order shall be filed with the county clerk of each county and shall be held to be a proclamation of the result of said election. [Id.]

Art. 7832. Combined district: hearing.—The commissioners court of each county shall hear and determine the matters relating to the establishment of said district in their county, in the same manner as provided for a single district, and appeals may be taken therefrom to the district court of any county in which any part of said district is situated, in the manner provided herein for a single district. [Id.]

Art. 7833. Combined district: directors.—A board of five directors shall be elected at the same election held for the establishment of such district, and the ballot therefor may have printed thereon the names of such candidates, or the voter may write upon his ballot the names of the persons voted for as directors; and the five persons receiving the highest number of votes so cast shall be the directors of said district, and shall hold office until the next regular election. In case of vacancy in said board, or if the number of directors is reduced by any cause to less than three, said vacancies shall be filled in the same manner as provided by law in such cases for directors of water improvement districts under Chapter 2 of this title. [Id.]

Art. 7834. Combined district: election.—On the second Tuesday of January after the establishment of such district, and biennially thereafter, an election for such directors shall be held in each such county in accordance with the election laws of this State and the provisions of this chapter for elections for establishing a district. Said directors shall hold office for two years. The directors shall give notice of the election, appoint election officers, receive and canvass the election returns and perform all other duties necessary for holding said elections. [Id.]

Art. 7835. Director's bond and oath.—Within ten days after their appointment or election, or as soon as practicable thereafter, the directors shall each make a good and sufficient bond for five thousand dollars payable to their district, conditioned upon the faithful performance of their duties, to be approved by the commissioners court of the county in which the director resides, and such bond and a copy of the order approving same shall be filed with the county clerk of the county in which the largest part of the district is situated. Such clerk shall record and index the same in the deed records in the manner provided for recording and indexing deeds. Each director shall take the official oath before the county clerk of the county in which the director resides. All bonds and oaths shall be delivered by said clerks to the district depository and be by it safely kept and preserved for the district. [Id.]

Art. 7836. County officers: compensation.—Unless otherwise provided, the duties and powers herein conferred upon the county judges and members of the commissioners court, and other officers are made a part of the regular duties of said officials, which they shall render and perform without additional compensation, and the county clerk shall receive the same compensation for his services hereunder as provided for similar services under Chapter 2 hereof. [Id.]

2. BOARD OF DIRECTORS

Art. 7837. Organization of board.—As soon as possible after their qualification, the directors shall organize by electing one of their number president and one as district secretary. When the board consists of three members, any two directors shall be a quorum; and when it consists of five members, any three directors shall be a quorum. [Id.]

Art. 7838. Meetings.—During the progress of the construction of any improvement under contract, the directors shall maintain a regular office within such district, and may in their discretion when deemed necessary, maintain a regular office in the district during any other time. The directors shall hold an annual meeting on the first day of December at ten

o'clock A. M. and may provide for meetings at stated intervals by resolution duly passed, and the president or any two directors may call special meetings at any time that may be deemed proper or necessary. [Id.]

Art. 7839. Powers.—The directors shall have control over the management of all district affairs, shall make all contracts pertaining thereto, and shall employ all necessary employés for the proper conduct and operation of such district, including engineers, bookkeepers and such other assistants and such laborers as may be required, at such compensation as they may determine, and may require bonds of any employés in any amount they may determine. They may employ attorneys to represent such district in the preparation of any contract or the conduct of any proceedings in or out of court, and to be the legal adviser of the directors, on such terms and for such fees as may be agreed upon by them. [Id.]

Art. 7840. Powers: limitation.—Where the district lies wholly in one county, the directors shall not, after the completion of the improvements, employ any attorneys as legal advisers of the district or an engineer for such district, or any other employés, except with the concurrence and consent of the commissioners court of such county; and the compensation paid by any such attorney, engineer, or employé so employed shall be fixed by the directors subject to the approval of the commissioners court. [Id.]

Art. 7841. Further powers.—The directors may employ a general manager to have general charge of the work, paying such compensation as may be agreed upon by the directors. A director may be appointed as general manager at such compensation as may be fixed by the other directors, and when so employed he shall also perform the duties of a director, but shall not receive the compensation to be paid to the directors. The directors may also buy all necessary work animals, machinery and supplies and material of all description as may be required in the construction, operation or repairing of the improvements of the district, and may do and perform all things necessary and proper in carrying out the purposes of said district. [Id.]

Art. 7842. Official bonds.—All district officers and employés who may be required to give bond or security may furnish bonds of surety companies, subject to the approval of the directors. All such bonds shall be preserved by the directors as the property of said district. After the organization of a district, all bonds required of any district officer or employé shall be approved by the directors. [Id.]

Art. 7843. District records.—The directors, through the secretary, shall keep a true account of all matters and proceedings of the board, and shall preserve all contracts, records and notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatsoever kind, and the same shall be the property of the district and shall be delivered to their successors in office. [Id.]

Art. 7844. Disbursements.—All payments of any district funds shall be by voucher upon the district depository, and all such vouchers shall be signed by the president or any two directors. All vouchers shall be issued from a regular duplicate book containing a duplicate, which shall be preserved. [Id.]

Art. 7845. District depository.—The directors shall select a depository for such district in the same manner as now provided by law for the selection of county depositories, and such depository shall be regulated by the same laws as those governing county depositories. In such selection, the directors shall perform the same duties as are incumbent upon the county judge and members of the commissioners court in the selection of county depositories. Such depository shall make and file reports and preserve the district records as required of depositories under Chapter 2 hereof. [Id.]

Art. 7846. Audit and report.—The directors shall annually require an audit to be made of the district records and accounts, at the time and in the manner provided for audits of Water Improvement Districts under Chapter 2 of this title, and on the first of January of each year they shall make and file a report of the condition of the district affairs and other data required of directors of Water Improvement Districts. [Id.]

3. POWERS OF DISTRICT

Art. 7847. Status of district.—Any district may by and through its directors sue and be sued in the name of such district, and all courts of this State shall take judicial notice of the establishment of such districts; and said districts shall contract and be contracted with in the name of such districts. They shall have a circular seal containing a five pointed star in the center surrounded by the name of the district. [Id.]

Art. 7848. Suits affecting district.—No suit shall be brought in any Court of this State contesting the validity or enjoining the formation of any district, or any bonds issued hereunder, or in anywise affecting the establishment of the district, or issuance of bonds by such district, except in the name of this State by the Attorney General, upon his own motion or upon the motion of any party affected thereby, upon good cause shown. [Id.]

Art. 7849. Property rights.—The directors are hereby empowered to acquire the necessary right of way and property of any kind or character whatsoever for all necessary improvements contemplated by this chapter, by gift, grant, purchase or condemnation proceedings, within or without the boundaries of the district; and any property acquired may be conveyed to the United States in so far as the same shall be necessary for the construction, operation and maintenance of works by the United States under any contract that may be entered into between the district and the United States. [Id.]

Art. 7850. Eminent domain.—The right of eminent domain is hereby conferred upon all districts for the purpose of condemning and acquiring the right of way over and through all lands, private and public, except property used for cemetery purposes, necessary for making and maintaining dams, bulkheads, jetties, locks, gates and all other improvements necessary and proper for such construction. Such right shall extend to any county in this State. All such condemnation proceedings shall be under the direction of the directors and in the name of the district; and all compensation and damages adjudicated in such proceedings shall be paid out of the "Construction and Maintenance Fund." [Id.]

Art. 7851. District engineer.—The directors shall have authority to employ a competent engineer whose term of office shall be at the will of the directors. He shall make all necessary surveys, examinations, investigations, maps, plans, and drawings with reference to the proposed improvements. He shall make an estimate of the cost of such improvements, shall supervise the work thereon, and perform all such duties as may be required of him by the directors. If any proposed improvement or construction work necessary to the accomplishment of the purposes authorized in this chapter requires the permission or consent of the Federal Government or any department or officer thereof, the directors shall have authority to obtain such consent, and in lieu of or in addition to the employment of the district engineer, they shall have power to adopt any survey of any waters heretofore made by the United States, and to arrange for surveys, examination and investigation of the proposed improvements, and supervision of such work by the United States or the proper department or officer thereof. [Id.]

Art. 7852. Federal co-operation.—The directors shall have full power to co-operate and act with the United States or any officer or department thereof, in any matter pertaining or relating to the construction and maintenance of any improvement, whether by survey, work or expenditure of money made or to

be made, either by the directors or by Federal authority, or both. Such directors shall have authority to agree and consent to the United States entering upon and taking the management and control of said work of construction, repair or reconstruction and maintenance, in so far as it may be necessary or permissible under the laws of the United States and the regulations and orders of any department thereof. [Id.]

Art. 7853. Construction contracts.—If the district improvements are not carried out by the United States, the contracts for such improvements shall be let by the directors to the lowest and best responsible bidder. If more than one improvement is to be made, the contract may be let separately for each, or one contract for all such improvements. These rules shall govern the letting of such contracts: 1. Bids shall be called for by advertising the same in one or more newspapers of general circulation in Texas, once a week for four consecutive weeks, and by posting notices for at least thirty days at the courthouse door of the counties in the district and four other notices in each county. 2. Any person, firm or corporation desiring to bid on the construction of any work so advertised, upon application to the district secretary, shall be supplied with the surveys and plans for said work. All bids shall be in writing and sealed and delivered to the president or district secretary, together with a certified check for two per cent of the total amount bid. Such deposit shall be forfeited to the district in case the bidder refuses to enter into a proper contract and make the necessary bond, if his bid is accepted or returned to the bidder if his bid is rejected. Any bid may be rejected at the discretion of the directors. 3. Each contractor shall give bond payable to the district in such amount as may be determined by the directors, not to exceed the contract price, and not less than fifty per cent thereof, conditioned that he will faithfully perform the obligations, agreements and covenants of such contract, and that in default thereof, he will pay to said district all damages sustained by reason thereof; and such other conditions as may be required by law of contractors for public work. Said bond shall be approved by the directors. 4. All contracts shall be in writing and signed by the contractors and president of the directors and attested by the district secretary. A copy of same shall be filed with the clerk of the county in which the largest portion of such district is situated. [Id.]

Art. 7854. Supervision of work.—All work contracted for, unless done under Federal supervision, shall be done under the supervision of the district engineer. When the work is completed according to the contract, he shall make a detailed report of same to the directors, showing whether the contract has been fully complied with according to its terms, and if not, in what particular it has not been so complied with. The directors shall not be bound by such report, but may in addition thereto fully investigate such work and determine whether or not such contract has been complied with; and while such work is in progress, they shall inspect the same. [Id.]

Art. 7855. Contract: payment.—Upon completion of any contract, the directors shall draw a voucher on the district depository for the amount of the contract price in favor of the contractor or his assignee. Said voucher shall be paid out of the Construction and Maintenance Fund. If the directors deem it advisable, they may contract for the work to be paid for in partial payments as the work progresses, but such partial payments shall not exceed in the aggregate eighty per cent of the total amount to be paid under the contract, and the amount of work completed shall be shown by a certificate of the engineer. [Id.]

Art. 7856. Maintenance of district.—After the full and final completion of all improvements of the district, and after payment of all expenses incurred under this chapter, the directors are authorized to use the funds remaining in the Construction and Maintenance Fund for the best interest of such district in the preservation, upkeep, repair and reconstruction of the works of such district. [Id.]

Art. 7857. Joint project.—Two or more districts may by contract join in the construction of any improvement and enter upon any work authorized hereunder, as a joint project, when in the judgment of the directors of each district, such improvement, work or construction will be advantageous to the respective districts. Such contract shall stipulate the pro rata amount to be paid by each district for such project to provide for its maintenance, repair and reconstruction, and shall be executed by the directors. Such project may be undertaken regardless of the location of the proposed work. Such contract may be enforced and specific performance compelled by any court of competent jurisdiction. [Id.]

Art. 7858. Joint action.—When improvements are constructed by two or more districts, bids may be jointly called for and opened and considered at the designated office of either district, and the directors of such districts shall approve the letting of the contract and contractor's bond, and may meet and transact all business for that or any other purpose concerning such project at a place outside the district, or at any office established for such joint project. All bids, bonds, contracts, etc., of said project shall be in the name of said districts, which are empowered to do all acts by joint action that one district may do, the action of each district being determined by its directors. A general manager, who may be a director of either district, may be employed for such project, whose duties may be set forth in the joint ownership contract. [Id.]

4. BONDS

Art. 7859. Issuance of bonds.—Immediately after their organization, the directors shall enter an order directing the issuance of bonds for such district within the limits authorized by the election held therefor, sufficient to cover the cost of the proposed improvements, all of the expenses incident thereto, and the expenses necessarily incurred in connection with the creation and establishment of the district; and they shall levy a tax upon all property subject to taxation in the district, sufficient to pay the interest on such bonds, with an amount to be placed in the sinking fund sufficient to redeem said bonds at maturity, and such levy shall remain as a levy for such purpose until a new levy is made. [Id.]

Art. 7860. Bonds: requisites.—All bonds issued under this chapter shall be governed by the provisions of Chapter 2 of this title governing the issuance, denomination, rate of interest, maturity dates, manner of payment, proceedings to test validity, and registration by the Comptroller, of bonds of water improvement districts. [Id.]

Art. 7861. Bonds: limit of issue.—Said bonds shall not exceed in amount one-fourth of the assessed valuation of the real property of such district as made by the last annual assessment thereof for State and county taxation. [Id.]

Art. 7862. Bonds: record.—The directors shall provide a well bound book in which a record shall be kept by the clerk of the county in which the largest portion of said district is situated, of all bonds issued with their numbers, amounts, rate of interest, date of issue, when due, where payable, the annual rate of tax levy made each year to provide for interest and sinking fund, and of each payment made thereon. The district secretary shall furnish said clerk a certified copy of all orders made in connection with the issuance and levy and assessment of taxes for the payment of interest and creating a sinking fund. Said record shall be at all times open to the inspection of all parties interested in said district, either as taxpayers or bondholders. [Id.]

Art. 7863. Change in plans.—If after an election has been held for the issuance of bonds, the directors shall consider it necessary to make any modification or change in any proposed improvements, they shall, with the concurrence of all the directors, be authorized to make such change. [Id.]

Art. 7864. Additional bonds.—If the directors shall determine to make additional improvements, works or construction in order to carry out the purposes for which said district was organized, or to reconstruct any improvements theretofore made, and the amount derived from the bonds issued or authorized is not sufficient, a resolution to that effect shall be duly entered upon the minutes of the board, and a certified copy thereof presented to each commissioners court in the district. [Id.]

Art. 7865. Resolution.—Said resolution shall set forth the proposed work, the amount of bonds to be issued to pay for same, their rate of interest and maturity dates, and shall embody therein a request to the commissioners court or courts to order an election in such counties to vote on such propositions and whether or not a tax shall be levied to provide for the interest and sinking fund for such bonds at a day specified in the resolution. [Id.]

Art. 7866. Additional bonds: requisites.—The commissioners court must, on receipt of such resolution, order an election on the day specified therein. Notice of such election shall be given, returns made, result declared, orders entered, tax levied, certified, assessed and collected, and all other matters applicable shall be performed in the same manner as herein provided in case of elections for original bonds. All provisions as to the issuance, approval, validation, registration, recordation and sale of original bonds shall be applicable to such additional bonds. [Id.]

Art. 7867. Additional bonds: ballot.—The ballot for such election shall have printed thereon the words and none other: "For the issuance of additional Water Control and Preservation Bonds and levy of tax in payment thereof;" "Against the issuance of additional Water Control and Preservation Bonds and levy of tax in payment thereof." [Id.]

Art. 7868. Bonds: sale.—After registration of said bonds by the Comptroller, the directors shall sell the same on the best terms and for the best price possible, not less than their face value and the accrued interest thereon; or they may exchange bonds in payment of the contract price for work to be done for the use and benefit of said district. All moneys received from the sale of bonds shall be forthwith paid to the district depository. [Id.]

Art. 7869. Construction and maintenance fund.—There is hereby created a "Construction and Maintenance Fund" of such district, which shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatsoever source, except the tax collections applied to the interest and sinking fund on bonds. All expenses of any kind prior to and after the filing of the original petition necessarily incurred in connection with the creation, establishment and maintenance of any district, and improvements, repairs, cost of maintenance, salaries of all officers and employés, and all expenditures for any purposes of the district shall be paid out of such fund. [Id.]

5. TAXES

Art. 7870. Tax levy.—The directors shall annually levy and cause to be assessed taxes upon all property within said district sufficient to pay the expenses of assessing and collecting same, and a tax sufficient for the expenses incident to the maintenance of the district. The directors may from time to time increase or diminish any tax so as to adjust the same to the taxable value of the property subject to taxation, and shall certify the levy of all such taxes to the commissioners court of each county in the district. [Id.]

Art. 7871. Assessment of taxes.—When the levy of taxes is so certified, each such court shall order the county tax assessor to assess all property in the county subject to such tax, and list the same for taxation in the books or rolls furnished him by said court for such purpose and charged to the district. Said assessor shall return said books when he returns the other books or rolls of the State and county taxes for correction and approval, and if said courts shall find said books or rolls correct, they shall approve same. In all matters pertaining to such assessment, the tax assessor and board of equalization of the county shall be authorized to act and shall be governed by the laws of Texas for assessing and equalizing property for State and county taxes. [Id.]

Art. 7872. County tax assessor.—Each county tax assessor shall receive for said service such compensation, not to exceed the amount allowed by law for like services, as the directors of the district shall determine proper. Should any tax assessor fail or refuse to comply with such orders of the commissioners court, he shall be suspended from the further discharge of his duties by the court, and be removed from office as provided by law for the removal of county officers. Upon failure to so order such assessor, the commissioners court shall be subject to mandamus by any court of competent jurisdiction on a petition in the name of the district, and the order of court upon such hearing may require the assessor to perform the duty without the intervention of an order of the commissioners court. [Id.]

Art. 7873. County tax collector.—The county tax collector in each county wherein any part of the district may be situated shall be charged by the commissioners court of such county with the assessment rolls of the district, or that part of the district situated within the county, and he shall collect said taxes within his said county. In so doing, he shall be authorized to act and shall be governed by the laws of this State for the collection of State and county taxes, and suits may be brought for the collection of said taxes and the enforcement of the tax liens created by this chapter. His compensation shall be determined in the same manner as for the county assessor. [Id.]

Art. 7874. Collector: bond.—The commissioners court shall require the tax collector of their respective counties to give an additional bond or security in such sum as they may deem proper and safe to secure the collection of said taxes, payable to the district and conditioned as provided by law for tax collector's bonds. Should any tax collector fail or refuse to give such bond or security when requested by said court, within the time prescribed by law for such purposes, or fail or refuse to collect the taxes so levied, he shall be suspended from office by the commissioners court and immediately thereafter be removed from office in the mode prescribed by law. [Id.]

Art. 7875. Taxes: payment.—All taxes authorized to be levied by this chapter shall be a lien upon the property upon which said taxes are assessed, and said taxes shall mature and be paid at the time provided by the laws of this State for the payment of State and county taxes, and all penalties provided by law for the non-payment of said taxes shall apply to all taxes authorized to be levied by this chapter. [Id.]

Art. 7876. Delinquent taxes.—Said collector shall make a certified list of all delinquent property upon which said tax has not been paid, and return same to the commissioners court, which shall proceed to have the same collected by the sale of such property; and all the provisions of law with reference to delinquent State and county taxes, the collection thereof by suit or otherwise and the redemption of same from such sale, shall apply. Such suits shall be in the name of said district and brought and prosecuted by the same officers as provided for State and county taxes, who shall receive the same fees for such services as provided for like proceedings for State and county taxes. The directors may purchase such delinquent property for the benefit of the district. [Id.]

Art. 7877. Maintenance tax.—The directors shall have authority as occasion may require, in their discretion, to levy a tax on all property within such district in an amount sufficient to pay for the proper maintenance, operation and repair of any dams, bulkheads, jetties, locks, gates or any other improvement constructed by said district, and all the provisions of the preceding articles for the levy and collection of taxes shall apply. [Id.]

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Art. 7878. Tax money: disposition.—The tax collector shall pay all moneys collected by him for said district to the district depository monthly, and as often as directed so to do by the directors, as now prescribed by law for the payment by tax collectors to county and city treasurers. [Id.]

Art. 7879. Interest and sinking fund.—There is hereby created an "Interest and Sinking Fund" for such district, and all taxes collected under this chapter for the payment of bonds and interest thereon shall be credited to such fund and shall never be paid out except for the purpose of satisfying and discharging the interest on said bonds, or for the payment, cancellation and surrender of said bonds. At the time of such payment, the depository shall receive and cancel any interest coupon so paid or any bond so satisfied or discharged, and when such coupon or bond shall be turned over to the directors, the account of such depository shall be credited with the amount thereof, and such coupon or bond shall be cancelled and destroyed. [Id.]

Art. 7880. May invest sinking fund.—The directors are empowered, whenever they deem it advisable, to invest any sinking fund of the district in bonds of the United States, of this State, of any county of Texas, any irrigation or water improvement or navigation bonds, or bonds of any school district in Texas authorized to issue bonds. No bonds shall be so purchased whose terms provide for their maturity at a date subsequent to the time of the maturity of the bonds for the payment of which such sinking fund was created. [Id.]

CHAPTER 3A

WATER CONTROL AND IMPROVEMENT DISTRICTS

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Art. 7880—1. May be organized; petition.—Water control and improvement districts may be organized in the State of Texas within the terms and provisions of Section 52 of Article 3 of the State Constitution, and within the terms and provisions of Sec-

tion 59 of Article 16 of the State Constitution. Petition for organization of such districts shall state the section and article under which same are to be organized, and such districts shall be organized and operated under the conditions, provisions, authority and restrictions therein provided. [Acts 1925, 39th Leg., ch. 25, p. 86, § 1.]

Art. 7880—2. Purposes.—Water control and improvement districts may be organized under the provisions of Section 52 of Article 3 of the Constitution for the purposes therein provided as follows:

(a) The improvement of rivers, creeks, and streams to prevent overflows, and to permit of navigation thereof or of irrigation thereof, or in aid of such purposes.

(b) The construction and maintenance of pools, lakes, reservoirs, dams, canals and waterways for the purpose of irrigation, drainage, or navigation, or in aid thereof. [Acts 1925, 39th Leg., ch. 25, p. 87, § 2.]

Art. 7880—3. Same.—Water control and improvement districts may be organized under the provisions of Section 59 of Article 16 of the Constitution for any one or more of the purpose[s] therein provided as follows:

"Including the control, storing, preservation and distribution of its waters and flood waters, the waters of its rivers and streams, for irrigation, power and all other useful purposes, the reclamation and irrigation of its arid, semi-arid and other lands needing irrigation, the reclamation and drainage of its overflowed lands and other lands needing drainage, the conservation and development of its forests, water and hydro-electric power, the navigation of its coastal and inland waters, and the preservation and conservation of all such natural resources of the State," and such districts when organized shall have power to control any shortage or harmful excess of waters by any mechanical means. [Acts 1925, 39th Leg., ch. 25, p. 87, § 3; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 1.]

Section 26 of Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, repeals all conflicting laws and parts of laws.

Art. 7880—4. Area included.—Such districts may include the area of any county or counties, or any portion thereof, including towns, villages, or municipal corporations. Such districts may include any county and number of counties, or any political subdivision of the State, and defined district or parts of any or all counties in the State of Texas; and the land composing said districts need not be in one body, but may consist of separate bodies of land separated by land not embraced in the district; provided, however, that each segregated area must cast a majority vote in favor of the creation of the district before such segregated area can be included in the district.

Provided that no district provided for in this Act [Arts. 7880—1 to 7880—147] shall embrace territory situated in more than one county except by a majority vote of the property tax paying voters residing within the territory in each county sought to be embraced within said District. [Acts 1925, 39th Leg., ch. 25, p. 87, § 4; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 2.]

Art. 7880—4a. Preference in use of water.—Districts organized under the provisions of this Act [Arts. 7880—1 to 7880—147] may in the discretion of their directors award use of waters of the district in the following order of preference and superiority, viz.:

1st. Domestic and municipal use;

2nd. Industrial use, other than the development of hydro-electric power;

3rd. Irrigation;

4th. Development of hydro-electric power;

5th. Pleasure and recreation.

Where the welfare of the district may require, the directors of such district may withdraw water from an inferior use and appropriate such water to a superior use, as hereinabove given discretionary preference. Whenever such diversion or withdrawal will affect a vested right, such withdrawal or diversion must be after condemnation proceedings as provided for in Section 126 of this Act [Art. 7880—126]. [Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 3.]

Art. 7880—5. Bonds; limitations of indebtedness.—Water control and improvement districts organized under Section 52 of Article 3 of the Constitution may issue bonds or otherwise lend their credit in any amount not to exceed one-fourth of the assessed valuation of the real property value of such district, or territory, except that the total indebtedness of any city or town shall never exceed the limits imposed by the provisions of the Constitution, and levy and collect taxes to pay the interest thereon and provide a sinking fund for the redemption thereof. [Acts 1925, 39th Leg., ch. 25, p. 87, § 5.]

Art. 7880—6. Tax levy and sinking fund.—Water control and improvement districts organized under the provisions of Section 59 of Article 16 of the Constitution may incur all such indebtedness as may be necessary to provide all improvements, and the maintenance thereof, requisite to the achievement of the purposes for which it was authorized to be created, and all such indebtedness may be evidenced by bonds to be issued as prescribed by law, and such districts are authorized to levy and collect all such taxes, equitably distributed, as may be necessary for the payment of the interest and the creation of a sinking fund for the payment thereof, and also for the maintenance of such districts and improvements, and such taxes shall be a lien upon the property assessed for the payment thereof. [Acts 1925, 39th Leg., ch. 25, p. 87, § 6.]

Art. 7880—7. Powers.—All districts organized under the provisions hereof shall have and may exercise such functions, powers, authority, rights and duties as may be incident to or necessary to their organization and operation, including the investigation, construction, maintenance and operation of all necessary improvements and plants, the acquisition of water rights and all other properties, lands, tenements, and rights incident to the purposes of its organization, subject only to the restrictions provided by law. [Acts 1925, 39th Leg., ch. 25, p. 88, § 7.]

Art. 7880—8. Bonds; vote required.—In all districts organized under the provisions of Section 52 of Article 3 of the Constitution, bonds shall be issued only upon a vote of a two-thirds majority of the resident property taxpayers voting thereon who are qualified electors of such district. [Acts 1925, 39th Leg., ch. 25, p. 88, § 8.]

Art. 7880—9. Same.—In all districts organized under the provisions of Section 59 of Article 16 of the Constitution, no bonds shall be issued or any indebtedness incurred unless such proposition shall first be submitted to the qualified property tax paying voters of such district and the proposition be adopted by not less than a majority of such qualified persons voting thereon. [Acts 1925, 39th Leg., ch. 25, p. 88, § 9.]

Art. 7880—10. Petition.—Petition for the organization of a water control and improvement district shall be signed by a majority in number of the holders of title to the lands therein, and the owners of a majority in value of the lands therein, as shown by the county tax rolls, provided, if the number of such land owners therein is more than fifty, such petition shall be sufficient if same is signed by fifty land owners. Such petition may be signed and filed in two or more copies. [Acts 1925, 39th Leg., ch. 25, p. 88, § 10.]

Art. 7880—11. Contents of petition.—The petition shall designate the name of the district, the area and boundaries thereof, the provision of the Constitution under which same is to be organized, the purpose or purposes of same. Said petition shall state the general nature of the work to be done, the necessity thereof, the feasibility thereof, with reasonable detail and definiteness in order that the court or board passing on same may understand therefrom the purpose, utility, feasibility and need or necessity therefor. The petition shall state the estimated cost of the project as then estimated by those filing such petition from such information as they may have at that time. [Acts 1925, 39th Leg., ch. 25, p. 88, § 11.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 7880—12. Filing of petition.—Said petition shall be filed in the office of the county clerk of the county in which the district is situated. If land in more than one county is included, copies of the petition certified by such clerk shall be filed in the office of the county clerk of each county in which a portion thereof lies. Said petition shall be recorded in a book kept for that purpose in the office of the county clerk. When more than one petition or copy is filed and same are identical except as to the signature thereon, one copy shall be recorded and all signatures of such copies shall be included. [Acts 1925, 39th Leg., ch. 25, p. 88, § 12.]

Art. 7880—13. Formation of district.—When the land to be included in a district lies within one county, the formation thereof shall be considered and ordered by the county commissioners' court, and when the land in such a district is in two or more counties the formation thereof shall be considered and ordered by the State Board of Water Engineers. [Acts 1925, 39th Leg., ch. 25, p. 89, § 13.]

Art. 7880—14. Date of hearing.—When a petition is filed for the organization of a district within one county the county judge shall make an order setting the date of hearing thereof by the county commissioners' court, and shall endorse same on said petition or on a paper attached thereto. The county clerk shall thereupon issue a notice of such hearing. Said petition may be considered at a regular or special session of said court. [Acts 1925, 39th Leg., ch. 25, p. 89, § 14.]

Art. 7880—15. Notice of hearing.—The notice of hearing of a petition for the formation of a district shall contain a statement of the nature and purpose thereof, the date and time and place of hearing. The notice shall be prepared with one original and three copies. The county clerk will retain one copy in his files and deliver the original and two copies to the county sheriff. The sheriff shall post one copy at the court house door fifteen days prior to the date of hearing and shall publish one copy in a newspaper of general circulation in the county once a week for two consecutive weeks, the first publication thereof to be made at least twenty days prior to the date of hearing. He shall make due return of service thereof with copy and affidavit of publication attached on the original prior to date of hearing. [Acts 1925, 39th Leg., ch. 25, p. 89, § 15.]

Art. 7880—16. Designation of districts.—All districts organized under the provisions hereof shall be known and designated as Water Control Improvement Districts. Such districts lying in one county shall be named: ——— County Water Control and Improvement District, Number ———, filling in name of county and proper consecutive number. [Acts 1925, 39th Leg., ch. 25, p. 89, § 16.]

Art. 7880—17. Contest of creation.—Upon the day set for hearing upon a petition for the organization of a district by the county commissioners' court, or by the State Board of Water Engineers, any person whose land is included in or would be affected by the creation of such district may appear and contest the creation thereof and may offer testimony to show that such district is or is not necessary, would or would not be a public utility, and would or would not be feasible or practicable. Such hearing may be adjourned from day to day. [Acts 1925, 39th Leg., ch. 25, p. 89, § 17.]

Art. 7880—18. Jurisdiction; hearing.—The county commissioners' court shall have exclusive jurisdiction to hear, consider and determine all such petitions for organization in one county, and all orders made by said court therein shall be final, provided that if the court shall grant or refuse such petition any party thereto may file an appeal therefrom to the district court by filing with the clerk of the commissioners' court notice thereof within ten days after the making of a final order. The clerk of the commissioners' court shall file in the office of the clerk of the district court to which such appeal is taken as set out in the notice of appeal, a certified copy and trans[s]cript of all the papers, records and files pertaining to said cause. Said cause shall be tried as other civil cases in the district court, the trial being de novo except that it shall not be necessary to file any other or additional pleadings therein. All parties thereto shall take notice of said appeal by virtue of the notice of appeal filed as herein provided without the issuance of citation or notice thereof. Said cause shall be advanced and be tried by the district court as soon after being filed as possible. The final judgment on appeal shall be certified by the clerk of said court, to the commissioners' court for further action as ordered therein. All original papers and files therein which were sent to the district court by the clerk of the commissioners' court shall be returned. [Acts 1925, 39th Leg., ch. 25, p. 89, § 18.]

Art. 7880—19. Granting or refusing petition.—If it shall appear on hearing by the commissioners' court that the organization of a district as prayed for is feasible and practicable, that it would be a benefit to the land to be included therein, and be a public benefit, or utility, the commissioners' court shall so find and grant the petition. If the court should find that such proposed district is not feasible or practicable, would not be a public benefit or utility, or would not be a benefit to the land to be included therein, or is not needed, the court shall refuse to grant the petition. [Acts 1925, 39th Leg., ch. 25, p. 90, § 19; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 4.]

Art. 7880—20. Appointment of directors.—When the commissioners' court shall grant a petition for organization of a district it shall appoint five directors who shall serve until their successors are elected or appointed in accordance with law. Such directors shall within fifteen days thereafter file their official bonds in the office of the county clerk who shall present same to the county judge for approval. The county judge shall pass upon such bonds and approve same if proper and sufficient, or disapprove same and endorse his action thereon and return same to the county clerk. If approved, said bonds shall be recorded in a record kept for that purpose in the office of the county clerk. If such bond is not approved a new bond may be furnished in ten days thereafter. If any director so appointed fails to qualify, the commissioners' court shall appoint other persons in place of those failing to qualify. Each of said directors shall take the oath of office as herein provided. [Acts 1925, 39th Leg., ch. 25, p. 90, § 20.]

Art. 7880—21. State Board of Water Engineers; jurisdiction.—The State Board of Water Engineers shall have jurisdiction to hear and determine all petitions for organization of a district which included land in two or more counties and all orders made therein shall be final unless set aside by a court of competent jurisdiction in the manner and within the time herein provided. Said board shall consider such petitions in the same manner and purpose herein provided for consideration of petitions by the commissioners' court for formation of districts in one county. If said board shall grant or refuse to grant a petition, any party thereto may file suit in the district court of any county in which a portion of such district is situated to set aside such order and have said petition retried therein. Any party filing such suit in the district court shall do so by filing in the office of the State Board of Water Engineers notice thereof in writing within fifteen days after the entry of the order of the board therein. The secretary of the Board of Water Engineers shall make a certified transcript of all the papers and records of said matter in his office and file same in the office of the clerk of the district court designated in said notice. The party applying therefor shall pay the actual cost of making such transcript provided whenever practical the original papers shall be sent to the district court instead of copies thereof. All parties thereto shall take notice of the filing of such suit by virtue of such notice so filed and it shall not be necessary to issue citation or other notice thereof. The final judgment of the court shall be certified by the clerk thereof to the State Board of Water Engineers for further action as therein ordered. All

original papers and files sent to the court by the State Board of Water Engineers shall be returned. [Acts 1925, 39th Leg., ch. 25, p. 90, § 21.]

Art. 7880—22. Directors; bond.—If at the hearing of a petition the State Board of Water Engineers shall grant the petition they shall appoint five directors who shall serve until their successors are elected or appointed. A certified copy of the order granting the petition and naming the directors shall be filed in the office of the county clerk of each county in which a portion of the district lies. The directors therein named shall within fifteen days file their official bonds in the office of the county clerk of the county of their residences and same shall be presented to the county judge for approval. The county judge will act upon same in the manner herein provided for districts in one county. If any such director fails to qualify the commissioners' court of the county in which he lives shall appoint some qualified person in his place. [Acts 1925, 39th Leg., ch. 25, p. 91, § 22.]

Art. 7880—23. Election; ballot.—Whenever a district shall have been organized by the granting of a petition therefor by the commissioners' court or by the State Board of Water Engineers, and the directors shall have qualified by giving bond and taking the oath of office, the directors shall meet, elect a president, vice-president and secretary and enter upon the discharge of their duties.

Before such district shall incur any indebtedness other than for its operation and the holding of an election, and in any event within thirty days after the date of their first meeting they shall make and publish an order calling an election within and for such district for the purpose of confirming the organization of the district by a vote of the qualified resident property taxpaying voters. The ballots for such election shall contain the proposition: "For confirmation of district" and "Against district."

The election shall be held as herein provided for other elections. At the same time and the same election the proposition for issuance of preliminary bonds may be submitted. [Acts 1925, 39th Leg., ch. 25, p. 91, § 23.]

Art. 7880—24. Confirmation of organization.—If the majority of those voting at such election vote in favor of the confirmation of the district the same is thereby finally confirmed and ratified. If a majority of those voting at such election vote against the district, same shall have no further authority except that any debts incurred shall be paid and the organization shall be maintained until all such debts are paid.

Whenever such an election shall be found to be in favor of the confirmation of the district and the result thereof be declared the board of directors shall make and enter in their minutes an order substantially as follows:

An election having been held in ——— district on the ——— day of ——— for the purpose of voting upon the confirmation of the organization resulted in a vote of ——— votes for confirmation and ——— votes against the district, the result being declared in favor of the organization. Said ——— district is therefore declared to have been legally organized with the following boundaries:—(Set out boundaries).

Said order shall be signed by said directors or a majority of them and acknowledged by the president and be filed for record in the office of the county clerk of the county or counties in which same is situated and shall be recorded in the deed records. [Acts 1925, 39th Leg., ch. 25, p. 91, § 24.]

Art. 7880—25. Ballots; director's bond.—As to all districts organized by order of the State Board of Water Engineers there shall also be submitted at said first election the question of the election of five directors of such district. There shall be placed on the ballots the names of the five directors appointed and a blank space shall be left to write in the names of other persons. If the directors appointed are elected the ones so elected shall be confirmed thereby without the necessity of furnishing new bonds, but shall be continued in office. In the event any of the directors first appointed are not elected at such election the person or persons elected in their places shall furnish bond and same shall be approved in the same manner as herein provided for directors first appointed. [Acts 1925, 39th Leg., ch. 25, p. 92, § 25.]

Art. 7880—26. Conduct of election.—All elections held by a district shall be ordered, held and conducted in accordance with the laws of this State for the holding of general elections for State and county officers, except as herein otherwise provided. [Acts 1925, 39th Leg., ch. 25, p. 92, § 26.]

Art. 7880—27. Polling places; judges; clerks.—The directors shall name the polling places and if more than one is required divide the district into election precincts. Same may be changed from time to time as required. The directors shall provide for the holding of all elections and giving of notice thereof and appoint the officers to hold same. The officers shall consist of one presiding judge, one assistant judge and two clerks. More clerks may be appointed when necessary. Officers shall be appointed for such election when it is ordered. [Acts 1925, 39th Leg., ch. 25, p. 92, § 27.]

Art. 7880—28. Notice of election.—Notice of all elections shall be given by order of the board of directors. The notice shall state the purpose of the election, the propositions and officers to be voted upon, the polling places, the names of the officers of election. The notice shall be signed by the president and secretary and shall be published once a week for three consecutive weeks in a newspaper of general circulation published in the county or counties in which such district is located, or if none is published in said counties in the nearest county thereto. The first publication shall be at least twenty one days prior to the election and not more than thirty-five days prior thereto. [Acts 1925, 39th Leg., ch. 25, p. 92, § 28.]

Art. 7880—29. Declaring result of election.—The officers holding the election shall make and deliver the returns thereof in triplicate, one being retained by the presiding judge, one delivered to the president of the district and one delivered to the secretary. The ballot boxes and other election records and supplies shall be delivered to the secretary at the office of the district and be preserved as provided by law in said office. All boxes containing ballots voted or mutilated shall be preserved for one year subject to the orders of any court in which a contest thereof may be filed. The officers of election at the time of making and sealing such election returns shall give to the newspapers or others calling for same the result of such election in their voting box. The directors shall meet and canvass the returns of an election at any time not less than five full days thereafter nor more than seven days thereafter, provided if same cannot be canvassed within seven days same shall be done as soon thereafter as possible. [Acts 1925, 39th Leg., ch. 25, p. 93, § 29.]

Art. 7880—30. Voter's oath.—When any person appears at the polls to vote who is not known to the election officers to be a qualified voter and a property tax payer, or when his vote is challenged, he shall be required to subscribe and swear to an oath as follows: "I do solemnly swear (or affirm) that I am a qualified voter and a property tax payer in the district. I did not acquire property prior to this election for the purpose of voting, but am a bona fide property tax payer in the district." Such oath shall be required only in elections in which the voter is required to be a property tax payer. [Acts 1925, 39th Leg., ch. 25, p. 93, § 30.]

Art. 7880—31. Preliminary bonds.—The directors of the district shall have full authority to make investigations and plans necessary to the operation of the district and the construction of plans and improvements. They may employ engineers, attorneys, bond experts, and other agents and employees required to aid them in the performance of such duties. The district may issue bonds to be known and designated as preliminary bonds, for the purpose of creating a fund

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to pay the costs of organization of the district and of making surveys, investigations, attorneys fees, engineering work, cost of issuance of bonds, and all other costs and expenses incident to the organization of the district and its operation in investigating and determining upon plans for its plant and improvements and the expense of issuing and selling bonds to provide for such permanent improvements.

The directors shall make an estimate of such expenses and state in the notice of election the amount of same. Said proposition of the issuance of such bonds shall be submitted to an election and shall be adopted. Those voting at such election shall be qualified electors and property tax payers. Such preliminary bonds shall bear interest at a rate not to exceed six per cent per annum and shall be due and payable not to exceed ten years from their date. While said bonds shall be known and designated on the records as preliminary bonds it shall not be necessary to so designate same on the bonds. [Acts 1925, 39th Leg., ch. 25, p. 93, § 31.]

Art. 7880—32. Provision for payment.—Said bond election may be held at the same time as the election held for the conformation of the district, or at such time thereafter as the directors shall provide. When such bonds have been authorized by an election the directors may make an order for the issuance thereof in an amount not to exceed the amount stated in the notice of election. Said bonds may be made payable serially or upon amortization at any time within ten years from their date. At the time such bonds are issued a tax shall be levied sufficient to pay the interest thereon and provide for the payment of the principal thereof as same mature and to pay the cost of assessing and collecting such taxes.

If such tax levied is based upon the assessed value obtained from the county tax rolls, or the tax rolls of such district for the preceding year and new tax rolls be approved before the time for collection of taxes, the board of directors is authorized to change the tax rate so made at the time of the issuance of said bonds, provided that the new tax rate shall be sufficient when applied to the new assessed value to raise the same amount of money as the rate levied at the time when the bonds were issued would have raised upon the valuation taken into consideration in fixing such rate. [Acts 1925, 39th Leg., ch. 25, p. 94, § 32; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 5.]

Art. 7880—33. Levy of taxes.—The directors may appoint a tax assessor and collector for the district in the manner herein provided and cause taxes to be levied, assessed and collected as herein provided. Provided, however, the directors of a district upon the making of a tax levy for the purpose of paying the charges on such preliminary bonds, or any tax levy made under the provisions of law by a district, may file a certificate of such tax levy in the office of the county tax assessor and the county tax collector of the county or counties in which said district is situated. In which event the said tax assessor shall enter same upon the tax rolls of the county as against all property thereon within such district in the same manner as other tax levies, or make a special list thereof and attach same to said tax rolls before same are delivered to the tax collector or thereafter. The county tax collector shall collect said taxes in the same manner as other county taxes. The county tax assessor and county tax collector shall be paid for such service a reasonable compensation to be agreed upon which shall not be subject to the fee bill, but shall be in addition to all other fees and compensation provided by law. The tax collector shall keep a true and complete record of all such taxes collected and uncollected and of all receipts for taxes issued by him. He shall pay to the district depository all sums collected by him for the district on or before the end of each month and shall furnish the secretary of the district an itemized statement thereof. A finance ledger shall be kept by the district in which shall be charged against said tax collector the full amount of the tax rolls, and credit shall be given for all collections with the name of the party paying same.

Such taxes shall be collected and handled by such county officers in accordance with the provisions of law for the collection of State and county taxes, except as herein otherwise provided.

In the event taxes are collected for a district in the manner provided in this section then the provisions of law providing for the assessment and collection of taxes by a district through its own officers shall not apply thereto. [Acts 1925, 39th Leg., ch. 25, p. 94, § 33.]

Art. 7880—34. Records of bonds.—Whenever a district shall issue bonds other than preliminary bonds, before same are sold a record showing all proceedings of the organization of the district and of the issuance of bonds shall be filed in the office of the Attorney General of the State and it shall be the duty of the Attorney General to examine same and give his opinion thereon. Said record may be so presented to the Attorney General before such bonds are printed and executed after the record providing for the issuance of same is completed. When such record is approved said bonds shall be issued or duly executed and shall be submitted to the Attorney General for approval. If he shall find that same have been issued in accordance with the provisions of law and that such bonds are valid, binding obligations upon the district he shall so officially certify and execute a certificate thereof which shall be filed in the office of the State Comptroller and be recorded in a record kept for that purpose. Such bonds after being approved and registered shall be held in any suit or proceeding in which their validity may be questioned to be valid, binding obligations of such district, provided, however, that any party interested therein may file a suit thereon at any time prior to the registration of same by the State Comptroller, but not thereafter. Said bonds shall not be so registered in the office of the State Comptroller until twenty days after the date of the election authorizing the issuance thereof. [Acts 1925, 39th Leg., ch. 25, p. 95, § 34.]

Art. 7880—35. District depository.—Prior to the sale of any bonds the directors of the district shall select and name a depository for the district as herein provided and the proceeds of such bonds shall be paid into the depository and disbursed as herein provided. [Acts 1925, 39th Leg., ch. 25, p. 95, § 35.]

Art. 7880—36. Qualifications and powers of directors.—Each district shall have five directors. Each director shall be twenty-one years or more of age, be a resident citizen of the State and own land subject to taxation in the district. The five directors shall compose the board of directors of the district and be the managing officers in charge of all the business and affairs of the district, make all contracts pertaining thereto. They shall employ all employees necessary for the proper handling of such business and the operation of the district, its plant and improvements. They may employ a general manager, attorneys, bookkeepers, engineers and laborers. They may purchase all necessary work animals, motors, automobiles, machinery, materials and supplies, required in the erection, repair or maintenance of the plant and improvements of the district. A director may be employed as general manager and at such compensation as may be fixed by the four other directors, and when so employed he shall continue to perform the duties of a director. [Acts 1925, 39th Leg., ch. 25, p. 95, § 36.]

Art. 7880—37. Election of directors.—There shall be held a general election in said water control and improvement district on the second Tuesday in January next after the said district is formed at which time five directors for each district shall be elected. The three directors receiving the highest vote shall serve for two years. The other two directors shall serve for one year. At the second annual election two directors shall be elected to serve two

years. At the third annual election three directors shall be elected to serve two years, and thereafter there shall be an annual election of two directors in one year and three directors in the next year in continuing sequence. [Acts 1925, 39th Leg., p. 95, ch. 25, § 37; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 6.]

Art. 7880—38. Vacancies.—All vacancies in the office of director and other officers shall be filled by appointment by the board of directors for the unexpired term. In the event the number of directors shall be reduced to less than three then the remaining director or directors shall call a special election to fill said vacancies, and if they shall fail to do so within fifteen days after such vacancies occur the judge of any district court within the jurisdiction of which any part of such district may be situated, upon petition of any voter or creditor thereof may order the holding of such election, fixing the date thereof, and order the publication of notice thereof by any county sheriff and name the officers to hold such election. In any such election held by order of a district judge the returns of an election shall be made to and filed in the office of the clerk of the court and he shall declare the result thereof. The officers elected shall furnish bond and qualify in the manner provided herein with reference to directors first appointed for a district upon its organization. [Acts 1925, 39th Leg., ch. 25, p. 96, § 38.]

Art. 7880—39. Directors; bond; oath.—The directors of a district shall each make and furnish a good and sufficient bond in the sum of five thousand dollars, payable to the district, conditioned upon the faithful performance of their duties as such directors. They shall each take and subscribe an oath of office with conditions therein as provided by law for members of the county commissioners' court. After the organization of a district as herein provided and the qualification of the first board of directors all such bonds required to be given by a director or other officer of a district shall be approved by the director of the district. All such bonds shall be filed for record in the office of the county clerk of the county in which the director lives and shall then be recorded in a record kept for that purpose in the office of the district and be filed for safe keeping in the depository of the district. [Acts 1925, 39th Leg., ch. 25, p. 96, § 39.]

Art. 7880—40. Officers and employees; bond.—The directors of a district shall require all officers and employees who shall be charged with the collection or paying or handling of any funds of the district under their orders to furnish good and sufficient bonds payable to the district, conditioned upon the faithful performance of their duties and accounting for all funds and property of the district coming into their hands in a sufficient sum to safeguard the district. [Acts 1925, 39th Leg., ch. 25, p. 96, § 40.]

Art. 7880—41. Directors; quorum; warrants. The directors of a district shall organize by electing one of their members president, one vice president and one secretary. Three directors shall constitute a quorum at any meeting, and a concurrence of three shall be sufficient in all matters pertaining to the business of the district except the letting of construction contracts and the drawing of warrants on the depository paying therefor, which shall require the concurrence and signature of four directors. Warrants to pay current expenses, salaries and accounts may be drawn and signed by an officer or employee, designated by standing order entered on their minutes, when such accounts have been contracted and ordered paid by the directors. [Acts 1925, 39th Leg., ch. 25, p. 96, § 41.]

Art. 7880—42. Organization of directors.—The president shall preside at all meetings of the board and shall be the chief executive officer of the district. The vice president shall act as president in case of the absence or disability of the president. The secretary shall act as secretary of the board of directors and shall be charged with the duty of seeing that all records and books of the district are properly kept. In the case of the absence or inability of the secretary to act, a secretary pro tem shall be selected by the directors. The directors shall hold regular meetings at the office of the district on the first Monday in February, May, August and November of each year at 10 o'clock a. m., and may hold meetings at such other times as the business of the district may require. Any person owning taxable property in the district may attend any meeting of the directors and may present such matters as they desire to such directors in an orderly manner. [Acts 1925, 39th Leg. ch. 25, p. 97, § 42.]

Art. 7880—43. Fees of directors.—The directors shall receive as fees of office the sum of not to exceed Ten Dollars per day for each day of service necessary to discharge of their duties. They shall file with the secretary a verified statement showing the actual number of days of service each month on the last day of the month, or as soon thereafter as possible and before a warrant shall be issued therefor. [Acts 1925, 39th Leg., ch. 25, p. 97, § 43.]

Art. 7880—44. Minutes; office.—The directors shall keep a true and full account of all their meetings and proceedings and preserve their minutes, contracts, records, notices, accounts, receipts, and records of all kinds in a fireproof vault or safe. The same shall be the property of the district and subject to public inspection. A regular office shall be established and maintained for conduct of the district business within the district, provided that when a district is organized in such a manner that the towns within or adjoining the territory included therein are left out of the district, the district office may be located in such adjoining town which is best suited for the transaction of the business. [Acts 1925, 39th Leg., ch. 25, p. 97, § 44.]

Art. 7880—45. Auditor's report.—A complete book of accounts shall be kept. During the first week of each year a competent auditor shall be employed who shall examine the account books and records of the district, of the depository and of the tax assessor and collector and make a report thereon. Said report shall be in triplicate, one copy being filed in the office of the district, one with the depository of the district, and one copy in the office of the auditor, all of which shall be open to public inspection. [Acts 1925, 39th Leg., ch. 25, p. 97, § 45.]

Art. 7880—46. General manager.—The directors may employ a general manager for the district and may give him full authority in the management and operation of the district affairs, (subject only to the orders of the board of directors). The term of office and compensation to be paid such manager and all employees shall be by the board of directors and all employees may be removed by the board. [Acts 1925, 39th Leg., ch. 25, p. 98, § 46.]

Art. 7880—47. Officers and employees; bonds.—All bonds required to be given by officers and employees of the district may be signed by individual sureties or by surety companies authorized to do business in the State. [Acts 1925, 39th Leg., ch. 25, p. 98, § 47.]

Art. 7880—48. Powers of district.—All districts shall have full power and authority to construct all plants, works, and improvements necessary to the purpose for which it is organized and incident thereto. Water control and improvement districts may construct all works and improvements necessary for the prevention of floods, the irrigation of land in such districts, for drainage of lands and construction of levees to protect same from overflow, to alter land elevations where correction is needed, and to supply water for municipal uses, domestic uses, power and commercial purposes, and all other beneficial uses or controls. [Acts 1925, 39th Leg., p. 98, ch. 25, § 48; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 7.]

Art. 7880—49. Entry on lands.—The directors, employees and engineers of a district shall have au-

thority to go upon any lands for the purpose of making surveys for reservoirs, canals, rights of way, dams, or other contemplated improvements and to attend to any business of the district, whether such lands are situated in the district or outside of such district. [Acts 1925, 39th Leg., ch. 25, p. 98, § 49.]

Art. 7880—50. Liability on contracts of acquired irrigation system.—When a district acquires an established irrigation system which has contracted to supply water to others and the holders of such contracts or the lands entitled to service of water thereon are not within such district, such contracts and duties shall be carried out by the district in the same manner and to the same extent that any other purchaser of such system would be bound thereby. [Acts 1925, 39th Leg., ch. 25, p. 98, § 50.]

Art. 7880—51. Right to sue or be sued.—All districts can sue and be sued in any and all courts of this State in the name of the district. All courts shall take judicial knowledge and notice of the establishment of a district and the boundaries thereof. Such districts shall contract and be contracted with in the name of the district. [Acts 1925, 39th Leg., ch. 25, p. 98, § 51.]

Art. 7880—52. District engineer.—The directors may employ a competent civil engineer who shall be an officer of the district to be known as "District Engineer". It shall be his duty to make a thorough study and investigation of all plans of the district and to make and file in the office of the district a report upon all plans for construction of plants and improvements. Each district shall provide and keep in its office a book to be known as the "Engineer's Record" in which shall be recorded all reports and recommendations made by the engineer and same shall be open to public inspection. No contract involving the expenditure of more than twenty thousand dollars shall be made by a district unless such district shall have a district engineer who has made a proper study and report thereon. The term of service of such engineer shall be fixed by the board of directors. [Acts 1925, 39th Leg., ch. 25, p. 98, § 52.]

Art. 7880—53. Contract with United States.—Any district authorized under Section 59, Article 16, of the Constitution, with the object, among other things, of irrigating arid land, is hereby empowered through its board of directors to contract with the United States of America for the purpose of providing for the investigation, construction, extension and operation and maintenance of any Federal reclamation project of benefit to the district and authorized under the National Reclamation Act of June 17, 1902 (Thirty-second United States Statutes at Large, page 388), and acts now and hereafter amendatory thereof or supplementary thereto, and all herein styled the National Reclamation Law, and the securing of a district water supply therefrom, and to pay to the United States the agreed cost thereof in the form of construction charges, operation and maintenance charges, and water rental charges, as shown by such contract and in accordance with the terms and conditions of the National Reclamation Law, and the regulations now and hereafter promulgated thereunder. The construction charges may include the cost of drainage and flood control works necessary to control floods or to maintain the irrigability of district land, and the cost of incidental electric power and municipal water service made feasible through the water supply of the reclamation project. Every such contract involving the payment of construction charges to the United States shall be voted upon by the electors of the district as in the case of an issue of district bonds, and the provisions of this Act relating to the election upon, approval and validation of such bonds shall be followed so far as applicable, including the prosecution of an action in court to determine the validity of the contract. The notice of election shall state the maximum amount, exclusive of operation and maintenance charges, water rental charges, interest and penalties, payable by the district to the United States under the contract and the ballot shall contain the following words; and no others: "For contract with the United States of America and levy of taxes and payment therefor," and "Against contract with the United States of America and levy of taxes and payment therefor." Any such district may convey real property to the United States in connection with the construction or operation and maintenance of Federal reclamation works used or to be used for the benefit of the district. Where a contract is made under this section, between a district and the United States, providing for use by the district of Federal Reclamation works, the district need not prepare or file any engineering data respecting the construction of such works. Until all moneys receivable by the United States from any such district under any such contract shall have been fully paid, the boundaries of such district shall not be altered without the consent of the United States. Any such district contracting with the United States under this section shall annually levy taxes sufficient in amount to provide payment of all installments of charges as required by the contract and the district may, under authority of a vote of the district electors as provided in this Act, apportion benefits and levy and collect taxes on a benefit basis instead of on an ad valorem basis, and may when provided by contract make payment of construction charges on the basis of the average gross annual acre income of the lands of the district or designated divisions or subdivisions thereof, as such annual gross acre income is determined by the Secretary of the Interior. The annual levies of assessments shall be sufficient to collect the amount of money required to meet all the district's obligations in full when due notwithstanding any delinquency in payment of assessments by any tract of land. If collections in any year prove insufficient to meet the obligations of the district, the levy shall be increased the following year to a sufficient extent to cover the deficit. The annual levies for payment of construction charges shall continue to be made each year against each tract of land in the district until the full amount apportioned against the same has been paid notwithstanding that such construction charges apportioned against other tracts of land in the district may sooner or later be paid out. The lien against district lands on account of any such contract with the United States shall be superior and dominant to the lien on account of any district bonds approved subsequent to date of such contract. [Acts 1925, 39th Leg., ch. 25, p. 99, § 53; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 8.]

Art. 7880—54. Tax assessor and collector.—The office of tax assessor and collector is one office to be filled by one person. He shall be appointed by the board of directors, or if the directors so order may be elected. He shall give good and sufficient bond with at least two sufficient sureties or a surety company, to be approved by the directors, in the sum of five thousand dollars, conditioned for the faithful performance of his duties as tax assessor and collector and for the paying over to the depository all funds or other things of value coming into his hands as such officer. The directors may require additional bonds or a bond in larger amount or additional security at any time that same may be advisable in their judgment. The tax assessor and collector shall be a resident of the district and shall be a qualified voter. One or more deputies may be appointed by the directors to assist the tax assessor and collector for such time, not to exceed one year, as may be ordered by the directors, and such assistants may be required to furnish bonds with similar conditions to that required of the tax assessor and collector. The compensation to be paid to the tax assessor and collector and any deputy shall be fixed by the directors. The board of directors may require the tax assessor and collector to perform other duties than those herein fixed. In case any district is appointed fiscal agent of the United States, or by the United States is authorized to make collections of money for and on behalf of the United States in connection with any Federal Reclamation project, such tax assessor and collector and each director and

officer of the district shall execute a further additional bond in such sum as the Secretary of the Interior may require, conditioned for the faithful discharge of his respective office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under such appointment or authorization. Such additional bonds to be approved, recorded and filed as herein provided for other official bonds. Any such additional bonds may be sued on by the United States or any person injured by the failure of such officer, or the district to fully, promptly and completely perform their respective duties. [Acts 1925, 39th Leg., ch. 25, p. 100, § 54.]

Art. 7880—55. Property subject to taxation.—The tax assessor and collector shall make an assessment of all the taxable property in his district. The property subject to taxation in a district shall be determined by and governed by the laws of this State providing for taxation for State and county purposes, and all such laws of the State shall apply thereto except as herein otherwise provided. [Acts 1925, 39th Leg., ch. 25, p. 101, § 55.]

Art. 7880—56. Rendition of taxable property.—The tax assessor and collector shall compile a record of all tax payers and those subject to payment of taxes in the district, and of all taxable property and the name and postoffice address of the owner thereof. He shall on or before the first day of April each year furnish each tax payer and each owner of taxable property in the district a blank form for the rendition of property for taxation. Same may be delivered or deposited in the mails addressed to such owner. It shall be the duty of the owner of any and all property subject to taxation in the district to file in the office of the tax assessor and collector a full, accurate and complete statement made under oath of all property owned by him, her, it or them, subject to taxation therein. Said statement or rendition shall be filed on or before the last day of March of each year and shall state the true value of all property listed and owned by the party rendering same subject to taxation in the district. In rendering land improvements and all other character of physical, real and personal property such statement shall show both the market value and the real value thereof. [Acts 1925, 39th Leg., ch. 25, p. 101, § 56.]

Art. 7880—57. Taxpayer's oath.—Anyone, any corporation, any organization, partnership, association, joint stock company, or property owner of any description who shall refuse to make or file as herein provided a true, full and complete statement and rendition under oath of all property owned subject to taxation in the district, shall thereby be precluded from making any objection, protest, or contest against the assessment made against him, her, it, or them for taxes by the district. Such statement or rendition shall have thereon, or attached thereto, an oath substantially as follows:

"I, ———, upon my oath state that the foregoing statement and rendition is a true, full and complete statement of all property owned by me or for whom this rendition is made, or by whom this rendition is made, subject to taxation within ——— district. I have correctly stated the description, location and value thereof and of each item thereof."

Same shall be signed and oath made before any officer authorized by the laws of this State to take oaths and acknowledgments. Such officer shall place thereon his official certificate, in substance as follows:

"Subscribed and sworn to by ——— before me this the ——— day of ———, ———" and attach thereto his official seal and signature.

Such statement may be filed by any authorized agent of the owner of any such property, provided such agent shall state therein that he makes and files same as such agent. [Acts 1925, 39th Leg., ch. 25, p. 101, § 57.]

Art. 7880—58. Verification by tax assessor and collector.—The tax assessor and collector shall check, investigate and verify each such rendition of property and note thereon in writing his report thereof. He shall add in such report any property omitted therefrom and make statement of his estimate of the value of all property not rendered at its full value or if same is rendered at more than its full value. He shall make and file a rendition of all property in the district which is not rendered for taxation. Such rendition by such officer to be made and filed on or before the first day of June of each year, or as soon thereafter as possible. The provisions hereof that the tax assessor and collector shall furnish a form for such renditions to be made by property owners shall not excuse anyone failing to receive same from the duty of making and filing same, but any property owner failing to receive same shall call at the office for same. In making rendition of all property not rendered the tax assessor and collector shall include all property of every description which is not rendered by the owner thereof, or by his agent for him, and if the owner thereof is unknown, shall list same as owned by an "unknown owner" and said property shall be taxed and taxes collected thereon even though the owner be unknown or be assessed against one not the owner thereof. [Acts 1925, 39th Leg., ch. 25, p. 102, § 58.]

Art. 7880—59. False oaths.—The tax assessor and collector shall have authority to administer oaths to fully carry out his duties and the assessment of property for taxation. All laws and penal statutes of this State providing the rendition of property for State and county purposes and providing penalties for making false oaths and providing penalties for failing to render such property shall apply to the rendition of property for taxation in a district except as herein otherwise provided. [Acts 1925, 39th Leg., ch. 25, p. 102, § 59.]

Art. 7880—60. Date of rendition.—If upon the organization of a district it shall become necessary to have the property therein rendered for taxation at a later date in the year than herein provided for the regular assessment thereof, then the directors of such district shall fix and determine the time when such renditions shall be made and the time within which the other necessary things herein provided to be done in connection therewith shall be done. After said first year, however, said assessments shall be made as herein provided. [Acts 1925, 39th Leg., ch. 25, p. 102, § 60.]

Art. 7880—61. Board of equalization.—The directors for such district created under the provisions of this Act, shall at their first meeting, or as soon thereafter as practicable, and annually thereafter, appoint three commissioners, each being a qualified voter and resident property owner of said district, who shall be styled the "Board of Equalization," and at the same meeting the board of directors shall fix the time for the meeting of such board of equalization for the first year; and said board of equalization shall convene at the time fixed by the directors to receive all assessment lists or books of the assessor for such district for examination, correction, equalization, appraisement and approval, and at all meetings of said board the secretary of the board of directors shall act as secretary thereof and keep a permanent record of all the proceedings of the board of equalization. [Acts 1925, 39th Leg., ch. 25, p. 102, § 61.]

Art. 7880—62. Oath of board.—Before entering upon the duties as such board of equalization, each of the members thereof shall take and subscribe the following oath: "I ——— do solemnly swear (or affirm) that I will to the best of my ability, make a full and complete examination, correction, equalization and appraisement of all property contained within said district as shown by the assessment lists or books of the assessor for said district and add thereto all property not included therein of which I have knowledge," and said oath shall be spread upon the minutes to be kept by the secretary of said board. [Acts 1925, 39th Leg., ch. 25, p. 103, § 62.]

Art. 7880—63. Board to convene.—The Board of Equalization, after the first year, shall convene on the first Monday in June of each year and shall complete

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their work by the first day of September, or as soon thereafter as possible. [Acts 1925, 39th Leg., ch. 25, p. 103, § 63.]

Art. 7880—64. Board to examine assessment lists.—The board of equalization herein provided for shall cause the assessor to bring before them, at the time fixed for the conveying of said board, all the assessment lists or books of the assessor of said district for their examination, that they may see that each and every person has rendered his property at its full value; and said board shall have power to send for persons and papers, to administer oaths to persons who testify before the board, to ascertain the value of all property subject to taxation. They may lower the valuation of all property rendered or raise the valuation thereof. The board shall have power to correct any and all errors of assessments and renditions and to cause all property not rendered to be placed on the tax rolls.

The board of equalization shall equalize as near as possible the value of all property rendered for taxation and fix the value thereof for taxation. [Acts 1925, 39th Leg., ch. 25, p. 103, § 64.]

Art. 7880—65. May file complaint.—Any person may file with the board of equalization a complaint as to the rendition and assessment of his own property, or any other property, and the board shall hear and consider all such complaints. Anyone may file with the board suggestions of property being omitted from the tax rolls and the board shall add to the rolls any property subject to taxation omitted from same. The tax assessor and collector shall file with the board a list of all persons who fail or refuse to render their property. [Acts 1925, 39th Leg., ch. 25, p. 103, § 65.]

Art. 7880—66. Notice of hearing.—When said board shall have passed upon such renditions they shall fix a date for hearing protests from those whose renditions have been raised. The secretary shall give notice in writing to all whose assessments have been raised, of the time and place of such hearing by depositing same with postage paid in the mails addressed to such party if his address is known. Failure to give such notice shall not relieve the owner of any such property of his duty to take notice of the meeting of the board of equalization and to appear at such meeting. Said notice shall be mailed at least ten days prior to such meeting. The board of equalization, at said meeting, shall hear and consider all complaints and protests and reconsider the valuation of all property the valuation of which has theretofore been raised by them and finally fix the valuation of all property. When the tax assessor and collector has made out his tax rolls, the board of equalization shall meet and consider same and make all necessary corrections therein and endorse their approval thereon. The action of the board of equalization at said last meeting approving said rolls shall be final and shall not be subject to revision by said board or in any other tribunal thereafter. The compensation of the members of the board shall be fixed by the directors of the district. [Acts 1925, 39th Leg., ch. 25, p. 103, § 66.]

Art. 7880—67. Duplicate tax rolls.—The tax assessor and collector shall prepare the tax rolls in duplicate, one copy of which he shall retain in his office and one copy shall be filed in the district office. The minutes of the board of equalization, all renditions, protests and other papers filed in connection with the rendition of property and the preparation of the tax rolls shall be preserved as official records in the office of the district. [Acts 1925, 39th Leg., ch. 25, p. 104, § 67.]

Art. 7880—68. Books of account; audit.—The directors of a district shall provide a permanent finance ledger in which the tax assessor and collector shall be charged with the total assessment of property as shown by the tax rolls. Credit shall be entered thereon of all collections paid to the depository. Said finance ledger and the books and accounts of the tax assessor and collector shall be audited by the board fo [of] directors semi-annually on January 1st and July 1st of each year and at such other times as the board may order. [Acts 1925, 39th Leg., ch. 25, p. 104, § 68.]

Art. 7880—69. When taxes due—payable.—All taxes shall become due and payable on the first day of October of each year and shall be paid on or before the 31st day of January thereafter. [Acts 1925, 39th Leg., ch. 25, p. 104, § 69.]

Art. 7880—70. Delinquent taxes; collection; sale of property; limitation.—All taxes which have not been paid on the last day of January shall become delinquent on the first day of February each year and same shall be and remain a lien upon the property for which same were assessed although the owner be unknown or same be listed in the name of a person not the actual owner thereof or though the ownership be changed. All such property may be sold under a judgment of a court for all taxes, interest penalty and costs assessed against same at any time after such taxes become delinquent. The district shall have authority to file suits for the collection of taxes against any and all property assessed for taxes and if the owner be unknown such suit may be filed against an unknown owner and the property sold under the judgment of the court. Taxes are not barred by any law of limitation and no law providing for a period of limitation as to debts or actions shall apply to such taxes. [Acts 1925, 39th Leg., ch. 25, p. 104, § 70.]

Art. 7880—71. Penalty; interest.—All taxes becoming delinquent shall have added thereto a penalty of ten per cent of the amount thereof, which charge shall accrue at the time same became delinquent. All such delinquent taxes shall bear interest at the rate of six per cent per annum from the date upon which they became delinquent. [Acts 1925, 39th Leg., ch. 25, p. 104, § 71.]

Art. 7880—72. Publication of delinquent tax roll.—The tax assessor and collector shall on or before the first of April each year prepare a delinquent tax roll, showing all charges upon the tax rolls which have not been paid and file same with the directors of said district. The directors shall publish said delinquent tax list showing name of owner, description of the property, and total amount due, in a newspaper published in the county where said district or any part thereof is situated. Said notice shall be published once a week for two weeks. If no newspaper is published in the county said notice may be published in a newspaper outside of the county. There shall be paid to the newspaper for publishing such notice a reasonable fee fixed by agreement, not to exceed, however, twenty cents for each rendition or each tract of land, allowing not to exceed three lines single column thereto. The publisher of such notice shall file in the office of the district a copy of each issue of the paper containing said notice with affidavit of publication attached thereto. The notice herein provided for to be made by publication is intended to be for the information of all taxpayers and shall not be, or be held to be, a requisite to the filing of any suit for the collection of taxes and such suits may be filed without publishing such notice. [Acts 1925, 39th Leg., ch. 25, p. 104, § 72.]

Art. 7880—73. Attorney to bring suit.—The directors shall on or before the first day of April each year employ an attorney to file suits for the collection of all delinquent taxes. Said attorney shall be entitled to a fee of ten per cent upon the amount of all delinquent taxes collected or paid after suit is filed and same shall be charged as costs of court and judgment recovered therefor together with said taxes and as part of same. Such suits shall be filed and tried as other civil suits. When the owner of the property against which the taxes are assessed is unknown, the suit may be filed as against an unknown owner and citation be published as provided by law with reference to State and county taxes. All tax suits shall be for the collection of the amount due and foreclosure of the lien on the property against which same are assessed and said property shall be sold under order of sale. All costs of suits shall be taxed therein. In the event more property is covered by such lien as fixed by the judgment than necessary to be sold to secure the

amount due, same may be divided and sold in parcels as may be necessary to collect the amount due. The officer executing any such order of sale shall make deeds to the purchaser thereof which shall be held to vest a good and perfect title in the purchaser subject to be impeached only for fraud. [Acts 1925, 39th Leg., ch. 25, p. 105, § 73.]

Art. 7880—74. Redemption of delinquent property.—Any person may redeem any property delinquent for taxes at any time prior to the date of sale of same under a judgment by paying the taxes and all penalties, interest, attorney's fees and court costs accrued thereon. [Acts 1925, 39th Leg., ch. 25, p. 105, § 74.]

Art. 7880—75. Land added to district.—Land may be added to a district and become a part thereof upon petition of the owner thereof in the following manner: The owner of the land shall file with the board of directors a petition praying that the lands described be added to and become a part of the established district. Said petition shall describe the land by metes and bounds and be signed and executed in the same manner provided by law for the conveyance of real estate. Such petition shall be heard and considered by the directors and may be granted and said land added to the district if same is considered to be to the advantage of the district and if the water supply, canals, etc. are sufficient to supply the same without injury to the lands of the district. Any such petition which may be granted adding lands to a district shall be filed for record and be recorded in the office of the county clerk of the county in which such land is situated. [Acts 1925, 39th Leg., ch. 25, p. 105, § 75.]

Art. 7880—76. Lands excluded from district.—Whenever a district shall have been organized and the directors shall find that land has been included within the boundaries of the district that should not have been included therein for the reason that same cannot be practicably and economically supplied with water from, or protected from flood by, the plant and improvements to be constructed by the district, or for other good reasons, and such facts are ascertained and determined before bonds, other than preliminary bonds, are issued, the directors may make an order entered on their minutes excluding such lands from the district and their finding shall be final and not subject to judicial review save and only upon the ground of fraud discovered after the entry of the order of exclusion. Notice thereof shall be given by publication of notice once a week for two consecutive weeks in a newspaper having a general circulation in the county or counties in which such district is situated, or by notice in person or by registered mail, and the published notice shall be sufficient if directed to the owner or owners of the land and all others in any wise interested, without naming such owners. The owners of any such land may file protest thereto at any time within 30 days after the first publication of notice or receipt of notice, if delivered in person or by registered mail, and in the event of such protest such lands shall not be excluded therefrom unless it appears that water service, flood protection, or drainage cannot practicably and economically be rendered. In the event no protest thereto is filed, such order excluding such lands shall become and be effective 30 days from the date of the publication of the first notice, or the delivery of the notice in person or by mail, whereupon said order excluding such lands shall be filed for record in the office of the county clerk of the county in which such lands are located. When land is eliminated from the district under the provisions hereof after preliminary bonds have been issued, such eliminated lands shall, nevertheless, be liable for the necessary taxes, until same shall have been fully paid off and discharged. Provided, nevertheless, in the event that the preliminary bonds of said district, if any, are thereafter retired by other bond issues of the district, then there shall be no further liability on the part of the lands eliminated in accordance with the provisions hereof. [Acts 1925, 39th Leg., p. 106, ch. 25, § 76; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 9.]

Art. 7880—76a. Elimination of cities from districts.—Whenever a city, town, village, or municipal corporation shall have been included within any district heretofore or hereafter organized under the provisions of Chapter 25, Acts of the 39th Legislature, and amendments thereof, and if before bonds, other than preliminary bonds, are issued, it shall be found by the directors of such district upon investigation that such city, town, village, or municipal corporation will not be sufficiently benefited or cannot practicably and economically be served with water or protected from flood by the construction of the improvements contemplated by the district, the directors of such district may, after notice as herein provided, hold a public hearing on the question of whether or not such city, town, village, or municipal corporation shall be eliminated from such district. Notice of the time, place, and purpose of such public hearing shall be given by publication of notice once a week for two consecutive weeks in a newspaper of general circulation published in the county or counties in which such district is situated. At the time and place set forth in such notice, the board of directors of the district shall hear the evidence of any and all interested parties upon the matter of the proposed elimination of such city, town, village, or municipal corporation. Should the board of directors, upon hearing evidence, be convinced that it is for the best interest of such city, town, village, or municipal corporation and, or, of the district, that such city, town, village, or municipal corporation be eliminated from the district, then the board of directors shall pass an order eliminating same, and their findings shall be final and not subject to judicial review, save upon the ground of fraud discovered after entry of the order of exclusion. A copy of such order duly signed and acknowledged by the president of the board of directors and attested by the secretary shall be thereupon filed for record in the office of the county clerk of the county or counties wherein such city, town, village, or municipal corporation is situated. Upon the entry of such order of elimination and the filing of same for record in the office of the county clerk, such order shall become effective and such eliminated city, town, village, or municipal corporation shall thereafter be relieved of any and all liability thereafter incurred by said district. Provided, nevertheless, that all property situated within such eliminated city, town, village, or municipal corporation shall be subject to the payment of any and all necessary taxes to pay off and discharge the interest on and principal of preliminary bonds of the district theretofore issued, if any, and the cost of collecting taxes therefor. In the event that the preliminary bonds of said district, if any, are thereafter retired by other bond issues of the district, then there shall be no further liability on the part of the property situated within said excluded city, town, village, or municipal corporation for the payment of such preliminary bonds. [Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 10.]

Art. 7880—77. Transfer of water rights to other lands.—When there is included in a district lands having a water right from a source of supply acquired by such district, but which lands it is difficult or impracticable to irrigate, the said district may allow such water rights to be transferred to other lands adjacent to the district and may admit such other lands to the district upon an equal basis as to water service with the lands from which said water was transferred. [Acts 1925, 39th Leg., ch. 25, p. 106, § 77.]

Art. 7880—78. Construction of plant and improvements.—Whenever a district shall have been organized and shall have adopted plans for the construction of a plant and improvements to carry out the purpose of its organization, it may issue bonds for the purpose of constructing same and paying all costs and charges incident thereto, including the cost of property deemed necessary therefor and the retirement of any and all preliminary bonds theretofore issued, if any. Before an election is held to authorize the issuance of bonds, there shall be filed in the office of the district, an engineer's report covering the plan and improvements to be constructed, together with maps,

plats, profiles, and data fully showing and explaining same, and same shall be open to inspection by the public. The said engineer's report shall contain a detailed estimate of the cost of such improvements including the cost of purchase of any property to be purchased, and shall also contain an estimate of the time required to complete said improvements, so that service therefrom can be commenced. The directors shall consider and approve such report and may make changes therein and note same of record in their minutes. After such report shall have been filed and approved, with changes, if any, the board of directors may order an election to be held in the district for the purpose of authorizing the issuance of such bonds. [Acts 1925, 39th Leg., p. 106, ch. 25, § 78; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 11.]

Art. 7880—79. Plants and improvements; bonds.—Such bonds may be issued so as to include and cover the cost of organization of the district, incidental expenses, the cost of investigation and making plans, engineer's work and other incidental expenses, including cost of retirement of preliminary bonds of the district, if any, theretofore issued, cost of issuing and selling bonds, estimated discount on the bonds and cost of operation of the district for the period stated in the engineer's report, as estimated to be required for the construction of the plant and improvements to be constructed up to the time same shall be completed and service therefrom commenced, and as part of such costs there may be included in such bond issue a sum sufficient to pay the interest on the bonds during such period so stated in the engineer's report and not to exceed three years from the time such bonds are sold. An estimate shall be made by the board of directors in its order for the election of the total amount required to cover said items and such bonds may also be issued so as to include and cover any additional cost or expense which it may become necessary to add to the engineer's estimate by any change or modification made by the district in the proposed work, and in its order for the election the board of directors shall make an estimate covering any such additional cost or expense on account of any change or modification made by them in the proposed work. The maximum amount of bonds to be issued shall not exceed the amount of said engineer's estimate, together with the amounts of the estimate so made by the board of directors in its order. Such order shall state the proposed maximum interest rate on said bonds and the maximum maturity date of said bonds, and shall state the time and place or places of holding the election and the names of the officers of election. The bonds so voted upon may be issued to mature at the end of a term of years, or to mature in serial form at any date, not to exceed the maximum maturity date stated in the order for the election and may be issued at any rate of interest, not to exceed the rate of interest stated in such order, and in no event to exceed 6 per cent per annum. The proposition to be voted upon shall be that of the issuance of the total amount of bonds covered by the amount of the estimate made in the engineer's report and the estimates which may be made by the Board of Directors, as hereinbefore provided. [Acts 1925, 39th Leg., p. 106, ch. 25, § 79; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 12.]

Art. 7880—80. Notice of bond election.—Notice of election, stating the maximum amount of bonds to be issued and the proposed maximum interest rate thereon and the maximum maturity date of said bonds and the time and place or places of holding the election, shall be given under the hand of the president and secretary of the Board of Directors, by publication of such notice once a week for four consecutive weeks in some newspaper having general circulation in the county or counties in which said district, or any part thereof, is located, the first of which publication shall be at least twenty-eight days before the date of such election. Such notice shall contain substantially the proposition to be voted upon and shall contain a summary of the engineer's estimate of the cost of the proposed improvements, as shown by his report provided for in Section 78 [Art. 7880—78], and shall also contain a statement showing any estimate or estimates made by the Board of Directors in its order for the election covering sums to be included in the proposed bond issue. [Acts 1925, 39th Leg., p. 106, ch. 25, § 80; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 13.]

Art. 7880—81. Propositions submitted.—The propositions submitted at such election shall be as follows: "For the issue of bonds and levy of taxes in payment therefor" and "Against the issuance of bonds and levy of tax in payment therefor." In the event that contract is proposed to be made with the United States under the Federal Reclamation Laws, the question which shall be submitted to the voters at such election shall be "For contract with the United States and levy of tax in payment therefor" and "Against contract with the United States and levy of tax in payment therefor." [Acts 1925, 39th Leg., ch. 25, p. 106, § 81.]

Art. 7880—82. Contract with United States.—If contract with the United States is proposed for election the notice of election shall state the maximum amount of money payable for construction purposes, exclusive of penalties and interest. [Acts 1925, 39th Leg., ch. 25, p. 108, § 82.]

Art. 7880—83. Manner of election; record.—The order of the board of directors ordering such election shall be recorded upon their minutes. A copy of the notice of election together with a copy of said notice as published and the publisher's affidavit of publication attached thereto shall be filed in the office of the district. The said election shall be held and conducted and returns made in accordance with the provisions of law for holding elections in such districts as herein provided. [Acts 1925, 39th Leg., ch. 25, p. 108, § 83.]

Art. 7880—84. Vote required.—In all such districts organized in accordance with the provisions of Section 52 of Article 3 of the Constitution, the vote required upon an election for issuance of bonds shall be a two-thirds majority of those voting at such election. In all other districts herein provided for the vote required for the adoption of the issuance of such bonds shall be a majority of those participating in such election. [Acts 1925, 39th Leg., ch. 25, p. 108, § 84.]

Art. 7880—85. Limitation of indebtedness; form of ballot; additional bonds.—The board of directors of any district which has been or shall be organized under the provisions of Section 59 of Article 16 of the Constitution, may, for the benefit of the purchasers, or holders, of bonds to be issued or sold, limit the power of the district to incur debt or issue bonds in the manner and to the extent hereinafter provided. Said board may adopt a resolution declaring that during a period of not exceeding fifteen years the district shall not issue bonds in excess of twenty-five per cent of the assessed value of the taxable real property of the district according to the last assessment for district purposes, or not in excess of a fixed sum, or only for certain named purposes, and shall give notice of the adoption of such resolution by publication once a week for two consecutive weeks in a newspaper having general circulation in the district, stating that such resolutions shall take effect unless a petition signed by twenty per cent of the qualified tax paying electors of the district shall be presented against the proposed limitation within twenty days after the date of the first publication of such notice. If such petition or remonstrance be filed within said period, such limitation shall not take effect unless it is approved at an election held in the district. The ballot on the question at such election shall be substantially in the following form: "For limiting during the term of ——— years, the maximum debt of the district to ———," and "Against limiting during the term of ——— years, the maximum debt of the district to ———." The blank space therein shall be properly filled in to show the purpose of the election.

If such limitation shall be approved, or if during said period no petition or remonstrance shall be filed the district shall not issue bonds under any statute or constitutional provision during said term in excess of the amount so limited, except for the necessary repair

of or to complete works for construction of which bonds may be issued within each limitation, and shall only issue bonds exceeding such limitation for said purpose after the State Board of Water Engineers shall have approved same and the plans and specifications for same, with the estimate of the cost thereof. If such plans and specifications and estimate be approved by said State Board of Water Engineers, notice of intention to issue such bonds, stating the purpose thereof, shall be given by publication once a week for three consecutive weeks in a newspaper having general circulation in the district, stating the amount of the proposed issue of bonds and the time a hearing will be had, which time shall not be less than thirty days from the first publication. Any tax payer, bondholder, or other person interested may appear and shall be heard.

Said hearing to be held by the board of directors of the district. If the determination be in favor of the issuance of such additional bonds for the amount and for the purpose stated in the notice, the question of issuing such bonds shall be submitted to the property tax paying voters at an election held in the form and manner provided by law. Only resident voters who are property tax payers shall vote at such election as provided by the provisions of the Constitution. [Acts 1925, 39th Leg., ch. 25, p. 108, § 85; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 14.]

Art. 7880—86. Issuance of bonds: requirements.—The bonds issued under the provisions of this Act shall be issued in the name of the district, signed by the president and attested by the secretary, with the seal of the district affixed thereto, and said bonds shall be issued in denominations of not less than one hundred dollars nor more than one thousand dollars each, and such bonds shall bear interest at the rate of not to exceed six per cent per annum, payable annually or semiannually. Such bonds shall by their terms provide the time, place or places, manner and condition of their payment and the interest thereon, as may be determined and ordered by the directors of said district, and none of such bonds shall be made payable more than forty years after the date thereof, provided that the lien for the payments due the United States under any contract between the district and the United States accompanying which bonds have not been deposited with the United States, shall be preferred lien to that of any issue of bonds or any series of any issue subsequent to the date of such contract. [Acts 1925, 39th Leg., ch. 25, p. 109, § 86; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 15.]

Art. 7880—87. Limitation of indebtedness.—After the canvass of the vote and declaring the result, as provided for, the directors shall make and enter an order directing the issuance of bonds or authorizing the execution of a contract with the United States for such district, as the case may be, sufficient in amount to pay for such improvements, together with all necessary incidental expense connected therewith not to exceed the amount specified in the order for the election and the notice of election. In districts organized under the authority of Article 3, Section 52 of the Constitution the amount of such bonds, or the amount of contract indebtedness with the United States shall not exceed in amount one-fourth of the actual assessed value of the real property of such district as shown by the assessment thereof made for the purpose of determining the value thereof, or at the last annual assessment as provided for in this Act. This limitation of indebtedness of one-fourth of the assessed value shall not apply to districts organized under the authority of Section 59 of Article 16 of the Constitution. [Acts 1925, 39th Leg., ch. 25, p. 109, § 87.]

Art. 7880—88. Additional bonds; supplemental contract with United States.—If, after an election has been held for the issuance of bonds or for contract with the United States, and the tax authorized and levied, and bonds have been authorized to be issued or have been issued as provided for in this Act, or contract with the United States authorized or executed, as the case may be, the directors of said district shall consider it necessary to make any modifications in said district, or in any of the improvements thereof, or shall determine to purchase or construct any further or additional improvements therein and issue additional bonds upon the report of the engineer, or shall determine to make supplemental contract with the United States, or upon its own motion may find it necessary to make additional improvements, or purchase additional property in order to carry out the purpose for which the district was organized, or to best serve the interests of said district, said finding shall be entered of record and notice of an election for the issuance of said bonds, or for authorization of contract with the United States, shall be given, and such election held within such times, and the returns of such election made as hereinbefore provided for in case of original election, and the result thereof determined in the same manner. If the result of such election be declared to be in favor of the issuance of such bonds or the making of such contract with the United States, said directors may order such bonds to be issued, or may negotiate and execute supplemental contract with the United States as in the manner provided in this Act. And provided that if a contract is made with the United States as herein provided and bonds are not to be deposited with the United States in connection with said contract, bonds need not be issued, or if required to raise funds in addition to the amount of such contract, said bonds shall be issued only in the amount needed in addition thereto. [Acts 1925, 39th Leg., ch. 25, p. 110, § 88.]

Art. 7880—89. Damages to improvements; bonds; notice.—Whenever such district shall have constructed or purchased improvements and same may be damaged so that it may be necessary to raise funds to repair such damage, said district may either issue bonds to secure such funds or may issue its notes to run not to exceed twenty years, and to bear interest at not to exceed six per cent per annum. Before such notes are issued the board of directors shall order an election and give notice thereof as required in bond issues stating the purpose for which they are to be issued, the time they are to run, and the rate of interest they are to bear, and the time and the place of said election. The ballots for such election shall have printed thereon, "For issuance of notes" and "Against Issuance of notes." The election shall be held and returns made and canvassed as provided for bond elections. If a majority of those voting at such election voted in favor of the issuance of such bonds or notes, the board of directors may issue and sell same for the benefit of said district. At the time such bonds or notes are issued or sold the board of directors shall levy a tax for the purpose of paying the interest thereon and creating a sinking fund to pay such interest and to pay such bonds or notes within the time of their maturity. Said notes shall be issued in serial form to mature in installments as determined by the directors. [Acts 1925, 39th Leg., ch. 25, p. 110, § 89; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 16.]

Art. 7880—90. Bonds; payment; form.—Whenever such bonds have been voted, the directors for such district shall levy a tax upon all property within such district sufficient in amount to pay the interest on such bonds together with an additional amount to be placed in the sinking fund, sufficient to redeem and discharge such bonds at their maturity, and said directors of such district shall annually levy or cause to be assessed and collected taxes upon all property within said district in an amount sufficient to pay for the expense of assessing and collecting said taxes. Whenever contract shall be made with the United States, taxes shall similarly be levied sufficient in amount to meet all installments as they become payable, and interest if any, and the directors shall cause due levy annually to be made until all such contracts and obligations shall have been discharged. Such bonds may be issued in serial form, or payable in installments, as determined by said directors, and such tax levy shall be sufficient if it provides an amount sufficient to pay the interest on such bonds and to meet the proportionate amount of

the principal of the next maturing series of such bonds and the expenses of assessing and collecting such taxes for such year. [Acts 1925, 39th Leg., ch. 25, p. 114, § 90.]

Art. 7880—91. Tax levy; investment of sinking fund.—The tax levy made in connection with the issuance of any bonds shall remain in force from year to year as the levy for the purpose to be collected, until a new levy shall be made. The board of directors may from time to time increase or diminish such tax, so as to adjust the same for the taxable values of the property subject to taxation by the district and the amount required to be collected, and shall in every such levy raise thereby an amount sufficient to pay the annual interest and sinking fund on all bonds then outstanding.

The board of directors may invest any portion of the sinking fund of the district set aside for the redemption of its outstanding bonds in bonds of the United States, of the State of Texas, or of any county or city within the State, of any irrigation or water improvement district, school district, or other tax bonds issued under the laws of the State of Texas such funds may be so invested when the bonds to be paid thereby do not mature within three years from the time of making such investment and when same is necessary to preserve the best interests of said district. [Acts 1925, 39th Leg., ch. 25, p. 111, § 91.]

Art. 7880—92. Refunding bonds.—Any district governed by this Act which has heretofore been organized under the laws of this State and any district hereafter organized under the provisions hereof, may refund any bonds issued by issuing new bonds for that purpose, provided the said old bonds are taken in exchange at their face value or less, or in event such new bonds can be sold at a premium and the old bonds retired thereby without loss to the district.

The Comptroller shall not register such new bonds until the old bonds in lieu of which they are issued, are presented to him for cancellation, or until a valid contract has been entered into and a copy thereof filed with the Comptroller providing for the purchase of such old bonds or exchange thereof. The Comptroller shall keep said new bonds until the old ones are presented to him for exchange or payment. In case same are presented for payment, the district shall pay same before such new bonds are registered. [Acts 1925, 39th Leg., ch. 25, p. 112, § 92.]

Art. 7880—93. Limitation of indebtedness.—No district shall issue bonds or create indebtedness in an amount more than that authorized by the provision of the Constitution of the State of Texas, authorizing the issuance of such bonds or the creation of such indebtedness. [Acts 1925, 39th Leg., ch. 25, p. 112, § 93.]

Art. 7880—94. Interest and sinking fund.—There is hereby created what shall be termed the "Interest and Sinking Fund" for such district, and all taxes collected under the provisions of this Act, for such fund, shall be credited to such fund, and shall never be paid out except for the purpose of satisfying and discharging the interest on said bonds, the payment of such bonds, and to defray the expenses of assessing and collecting such tax, and for the payment of principal and interest due the United States under any contract between the district and the United States accompanying which bonds of the district have not been deposited with the United States as herein provided; such fund shall be paid out upon the order of the board of directors of such district upon warrants drawn therefor, as herein provided, and at the time of such payment the depository for such district shall receive and cancel any interest coupon as paid or any bond as paid, and when any such interest coupon or bond has been paid it shall be delivered to the directors and be cancelled and destroyed. [Acts 1925, 39th Leg., ch. 25, p. 112, § 94.]

Art. 7880—95. Suit to validate bonds.—Whenever any district shall have issued bonds including preliminary bonds as herein provided and may desire to validate same by suit as hereinafter provided, such suit may be filed for the validation or the organization of such district and of such bonds and after the rendition of a final judgment therein said bonds or contract shall be incontestable and no suit shall be brought in any court of this State contesting or enjoining the validity of the formation of any such district or any bonds issued thereby or contesting or enjoining the validity of any contract with the United States or of authorization thereof by the district, except in the name of the State of Texas, by the Attorney General upon his own motion or upon the motion of any party affected thereby upon good cause shown. No such suit shall be filed or prosecuted by the Attorney General unless based upon allegations of fraud disclosed or found after the rendition of a final judgment in such validation suit. If such validation suit is filed it shall not be necessary to have said bonds approved by the Attorney General as herein otherwise provided. [Acts 1925, 39th Leg., ch. 25, p. 112, § 95; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 17.]

Art. 7880—96. Jurisdiction; notice.—Such validation suit shall be brought by the district in the district court in any county in which said district or any part thereof is located, or in any county of the judicial district in which such district is located, or in the district court of Travis County. Such suit shall be to determine the validity of the organization of such district and determine the validity of such bonds; or such district contracting with the United States shall, if requested by the Secretary of the Interior, bring such an action to determine the validity of such contract. Such suits shall be in the nature of a proceeding in rem and jurisdiction of all parties thereto and interested therein shall be had by publication of a general notice thereof once each week for at least two consecutive weeks prior to the term of court to which same is returnable. Said notice shall be published in some newspaper of general circulation in the county or counties in which such district is situated, and if no paper is published in such county or counties, then same shall be published in a newspaper of the nearest county thereto where a paper is published. Notice shall also be served upon the Attorney General of the State of Texas of the pendency of such suit in the same manner as civil suits. The Attorney General may waive service in such suits when furnished a full transcript of the proceedings had in the formation of such district; and in connection with the issuance of such bonds; in connection with the authorization of a contract with the United States and a copy of the contract. [Acts 1925, 39th Leg., ch. 25, p. 113, § 96.]

Art. 7880—97. Examination by Attorney General; intervention.—It shall be the duty of the Attorney General to make an examination of all such proceedings and require such further evidence and make such further examination as may seem advisable to him. He shall then file an answer tendering the issue as whether such proceedings are valid and such bonds are legal and binding obligations upon such district, or as the case may be, as to whether such contract with the United States is legal and binding upon the districts. Any person interested therein may intervene in said cause or file answer therein. The issue thus made shall be tried and determined by the court and judgment be entered upon such finding. If such bonds shall have been approved by the Attorney General and have been registered before such suit is filed then the filing of such suit cancels prior registration. All suits brought under the provisions of this Act shall have preference over all other actions in order that a speedy determination thereof may be had. [Acts 1925, 39th Leg., ch. 25, p. 113, § 97.]

Art. 7880—98. Judgment res adjudicata.—Upon the trial with the issues made in accordance with the preceding section of this Act, if the judgment of the court shall be adverse to the district upon any issue, then such judgment may be by said district

excepting and the error pointed out in such proceedings may be corrected, the judge in the manner directed by the court and when so corrected, the judgment of the court shall be rendered showing that such corrections have been made, and that the bonds issued thereunder, or the contract with the United States are binding obligations upon such district. And thereafter the judgment si [as] finally made and entered shall be received as res adjudicata in all cases thereafter arising in connection with the collection of said bonds, or any interest due thereon, or of any taxes levied by the district to pay the charges thereon, or in connection with the collection of moneys required by a contract with the United States, and as to all matters pertaining to the organization and validity of said district or pertaining to the validity of such bonds, or of a contract with the United States. [Acts 1925, 39th Leg., ch. 25, p. 113, § 98.]

Art. 7880—99. Certified copy of decree conclusive evidence.—After the making and entry of the judgment of the district court as herein provided the clerk of said court shall make a certified copy of such decree which shall be filed in the office of the State Comptroller and be by him recorded in a book kept for that purpose. Said certified copy, or a certified copy of said record thereof, made and kept by the Comptroller, shall be received in evidence in any suit thereafter arising which may affect the validity of the organization of such district, or the validity of such bonds, or of such contract with the United States, and shall be conclusive evidence of such validity. [Acts 1925, 39th Leg., ch. 25, p. 114, § 99.]

Art. 7880—100. Registration of bonds; certificate.—Upon the presentation of said bonds together with certified copy of the decree of the district court, the Comptroller shall register such bonds in a book kept in his office for that purpose, and shall attach to each of said bonds a certificate of the fact that the decree of the district court as required by this Act has been filed and recorded in his office. Said certificate shall be signed officially and the seal of his office attached thereto. [Acts 1925, 39th Leg., ch. 25, p. 114, § 100.]

Art. 7880—101. Sale of bonds.—After the issuance of such bonds as herein provided the directors of a district shall sell same on the best terms and for the best possible price, but none of said bonds shall be sold for less than ninety per cent of their face value. When said bonds are sold the proceeds thereof shall be paid over by the directors to the depository for said district. The district may exchange bonds for property acquired by purchase, or in payment of the contract price of work done for the use and benefit of said district. [Acts 1925, 39th Leg., ch. 25, p. 114, § 101.]

Art. 7880—102. "Construction Fund."—The proceeds of any such bonds sold and deposited in the depository shall be credited to the special fund designated "Construction Fund." All expenses, debts and obligations necessarily incurred in the creation and establishment and maintenance of any district may be paid out of the construction fund and all cost of purchase of property and construction contracts may be paid from said fund including all purchases for which same were issued. If same are issued in accordance with a contract made or to be made with the United States as herein provided all debts and obligations may be paid therefrom under the terms of such contract, or incident thereto. After the payment of all obligations for which such bonds were issued to pay any balance remaining therein may be transferred to the maintenance fund. [Acts 1925, 39th Leg., ch. 25, p. 114, § 102.]

Art. 7880—103. "Maintenance Fund."—Such district shall have a fund to be known as the "Maintenance Fund" into which shall be paid all funds collected by assessment or otherwise for the maintenance, repair and operation of the properties and plant of the district, or for temporary annual rental due to the United States. Out of said fund shall be paid all expenses of maintenance, repair and operation of the district, except the expenses of assessing and collecting taxes for the interest and sinking fund may be paid out of that fund. Out of said fund may be paid all expenses not herein otherwise provided for. [Acts 1925, 39th Leg., ch. 25, p. 115, § 103.]

Art. 7880—104. "Amortization and Emergency Fund."—All such funds heretofore created and existing under the laws of this State shall be preserved and used as herein provided. The board of directors of each district shall cause to be made by a competent engineer an inspection and valuation of all the physical properties of such district, subject to decay or obselescence [obsolescence], injury or damage by any sudden, accidental or unusual cause whatsoever, and based upon inspection and valuation said engineer shall determine, as nearly as may be, a sum to be annually set aside as will be sufficient to pay for replacement of each item of such physical property at the end of its economical life, or for the restoration or replacement of any such physical property upon the happening of such loss, injury or damage thereto. Out of the maintenance and operation fund, as the same shall be collected, such board of directors shall set aside such portion thereof as shall be necessary to make each year the amount of the annual sum determined as above provided to be known as the "Amortization and Emergency Fund", and no part of such fund shall be expended except to replace such amortization property, or to replace or restore such lost, injured or damaged property. Any part of the amortization and emergency fund not necessarily expended for the purposes above provided, may be invested in bonds or interest bearing securities of the United States. Provided, that any such board of directors may or may not in the discretion of such board, establish such amortization and emergency fund, but after each fund has been established for any such district as above provided, the same shall thereafter be kept up and maintained. [Acts 1925, 39th Leg., ch. 25, p. 115, § 104.]

Art. 7880—105. District funds; how handled.—All district funds shall be handled by and under the orders of the board of directors upon warrants drawn therefor. At the time of the payment of interest coupon or of any bonds the directors shall receive and cancel same and make a record thereof which same shall be destroyed. [Acts 1925, 39th Leg., ch. 25, p. 115, § 105.]

Art. 7880—106. Charges for water furnished.—All such districts shall have authority to make, establish and collect maintenance and operation charges for the service they render which may be determined and fixed upon the basis of the quantity of water furnished or appropriate measure of the service rendered, and if based upon a use of water a fixed charge may be made as a minimum charge on all lands, water connections or other service entitled to receive and use same, and an additional charge may be made for the use of water in excess of that covered by the minimum charge. The district may install proper measuring devices or require that same be installed. Where a district includes a city or town or contracts with a city or town to supply it water, the charge for the use and delivery of such water and the time and manner of payment shall be determined by the board of directors or be fixed by contract made by the directors. [Acts 1925, 39th Leg., ch. 25, p. 115, § 106.]

Art. 7880—107. Taxation to maintain proper service.—All such districts shall have authority to levy and collect taxes to secure funds to maintain, repair and operate all plants, properties and improvements of the district and to give and maintain proper service for the purposes of its organization. [Acts 1925, 39th Leg., ch. 25, p. 116, § 107.]

Art. 7880—108. Power to refuse service.—Every such district shall have the power and authority to refuse service of water to anyone therein or entitled thereto who shall refuse to pay the charges and assessments therefor or who shall fail or refuse to pay any taxes levied against his property after six months

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from date same become delinquent. [Acts 1925, 39th Leg., ch. 25, p. 116, § 108.]

Art. 7880—109. Statement by person desiring service.—Every person desiring to receive water during the course of the year, or at any time during the year, shall furnish to the secretary of the board of directors a statement in writing of the acreage intended by him to be put under irrigation, and for which water is to be used, and as near as may be a statement of the several crops to be planted with the acreage of each, and shall at the same time pay such proportion of the water charge or assessment therefor as may be prescribed by the board of directors. If such statement should not be furnished, or such payment should not be made before the date for fixing the assessments, there shall be no obligation upon the district to furnish such water to such person for that year. The board of directors, on or as soon as practicable after a date in each year to be fixed by a standing order of the board, shall carefully estimate the expense to be incurred during the course of the next twelve months for the maintenance and operation of the irrigation system. A proportionate part of the amount so estimated, not less than one-third, nor more than two-thirds, to be determined from year to year by the board of directors, shall be paid by assessment against all irrigable lands within the district, pro rata per acre; that is to say, against all lands to which the district is in condition to furnish water by its then systems of canals and laterals, or through extensions thereto of then existing laterals, but without reference as to whether such land is to be actually irrigated or not, and the remainder of the amount so estimated shall be paid by the persons taking water or applying for water as aforesaid. This remaining amount shall be equitably prorated among the applicants for water, and in prorating same the board of directors may take into consideration the acreage to be planted by each applicant for water, the crop to be grown by him and the amount of water per acre to be used by him, provided, however, that each water user shall pay the same price per acre for use of water upon the same class of crops. All assessments shall be paid in installments and at times to be fixed by order of the board of directors, but if the crop for which such water was furnished shall be harvested prior to the time fixed for the payment of any installment, the entire unpaid assessment shall at once become due and shall be paid within ten days after the harvesting of such crop and before removal of same from the county or counties in which grown. The board of directors shall have power and authority from time to time to adopt, alter and rescind rules, regulations, standing orders and temporary orders, not in conflict with this Act, governing the methods, ways, terms and conditions of water service, applications for water, assessment for maintenance and operation and payment and enforcement of payment of such assessments, and the furnishing of water to persons who have not applied for same before the date of assessment, and to persons who desire to take water for irrigation in excess of their original applications or for use on lands other than those covered by such applications. The board of directors may, at their discretion, require every person desiring water during the course of the year to enter into a contract with the district, which contract shall indicate the acreage to be watered, the crops to be planted, and the amount to become due and the terms of payment; and it may be further required that the water taker shall execute a negotiable note or notes for such amounts, or for parts thereof. The making of such contracts shall not constitute a waiver of the lien given by this Act upon the crops of the water taker for the service furnished to him. If the water taker shall water more land than is called for in his contract he shall pay for such additional service rendered as and at the times hereinbefore indicated. To secure money for operating and maintenance expense of the district the board of directors shall have authority to borrow money with interest not exceeding ten per cent per annum, and may hypothecate any of the notes or contracts with water takers or accounts against them. The district shall have a first lien, superior to all other liens, upon all crops of whatsoever kind grown upon each tract of land in the district, to secure the payment of the assessment herein provided for, and all such assessments shall bear interest from the time due and payable at the rate of ten per cent per annum. And if suit should be filed therefor, or the same should be collected by any legal proceeding, an additional amount of ten per cent on unpaid principal and interest shall be added to the same as collection or attorney's fees, as well as principal and interest of such assessments shall stand secured by the lien as aforesaid. Suits for delinquent water assessments may be brought either in the county in which the irrigation district is situated or in the county in which the defendant resides. All land owners shall be personally liable for all assessments herein provided for, and if they shall fail or refuse to pay same when due the water supply shall be cut off and no water shall be furnished to the land until all back dues are fully paid. This provision with respect to cutting off water shall bind all parties, persons and corporations owning or thereafter acquiring any interest in said lands. The directors of all districts shall within ten days after any assessment is due, post at a public place in said district a list of all delinquents and shall thereafter keep posted a correct list of all such delinquents; provided however, that if the parties owing such assessments shall have executed notes and contracts as hereinbefore provided, they shall not be placed upon such delinquent list until after the maturity of such notes and contract. In the event that contract shall be made with the United States, the remedies in this section hereinbefore provided in favor of the district shall apply with regard to the operation and maintenance and rental charges which may become due the United States. Provided, however, that the Federal Reclamation Laws, and in particular, the Reclamation Extension Act approved August 13, 1914, and any acts amendatory thereof shall be applicable. Moreover, all water, the right to the use of which is acquired by the district under contract with the United States, shall be distributed and apportioned by the district in accordance with the Acts of Congress, and rules and regulations of the Secretary of the Interior, and the provisions of such contract in relation thereto, and it is so enacted. [Acts 1925, 39th Leg., ch. 25, p. 116, § 109.]

Art. 7880—110. Surplus or deficiency; notice of assessment.—In the event the assessment made as provided for in the preceding section should be more than sufficient to meet the necessary obligations of the district, the balance shall be carried over to the next season; and in the events the assessments are not sufficient to meet the expenses the balance unpaid shall be assessed pro rata, in accordance with the assessments previously made for the then current year, and shall be paid under the same conditions and penalties within thirty days from the time such assessment is made. Public notice of all such assessments shall be given by posting printed notice thereof in at least three public places in the district, and printed notice shall be mailed to each land owner, provided, however, that each land owner shall furnish to the board of directors his correct postoffice address. Such notice shall be given by posting and mailing such notice five days before the assessment is due, and in the event of special assessments such notice shall be given within ten days after such assessments are levied. [Acts 1925, 39th Leg., ch. 25, p. 118, § 110.]

Art. 7880—111. Collection of assessments.—All assessments for maintenance and operation expenses under the provisions of this Act shall be collected under the direction of the directors by the assessor and collector of taxes, or other person designated by them, which said officer shall give such bond as they may direct conditioned upon the faithful performance of his duties and accounting for all money collected. He shall keep a true account of all money collected and deposit the same as collected in the dis-

trict depository and shall file with the secretary of the directors a true statement of all money collected once each week. The collector shall use duplicate receipt books and shall give a true receipt for each collection made, retaining in such books true copy thereof, which shall be preserved as a record of the district. [Acts 1925, 39th Leg., ch. 25, p. 118, § 111.]

Art. 7880—112. Unorganized county.—Districts may be organized in an unorganized county by the commissioners' court of the county to which such unorganized county is attached for judicial purposes. [Acts 1925, 39th Leg., ch. 25, p. 119, § 112.]

Art. 7880—113. Depository; bond; report.—The directors of every district shall select a depository for such district in accordance with the provisions of law for the selection of depositories for counties in this State, and the duties of such depository and the bonds and securities to be given thereby shall be the same as provided by law for county depositories, except as herein otherwise expressly provided. In the selection of a depository the directors of such district shall perform all duties provided by such law to be performed by the county officers in the selection of depositories, acceptance and approval of bonds, and all other acts. All depositories so selected shall furnish good and sufficient bond to fully protect the district and guarantee the safe-keeping of such funds and accounting for same as provided by law. Which bonds shall be approved by the directors. All such bonds shall be recorded in a record kept in the district office for that purpose and preserved in a fire-proof vault or safe.

All funds of the district of any and all kinds shall be deposited in the depository and paid out as herein provided. All said funds shall be paid into the proper account and kept separately, same being: interest and sinking fund account, construction account, and maintenance account. No funds shall be paid from the interest, and sinking fund account except to pay interest and principal on bonded indebtedness and the expense of assessing and collecting taxes therefor.

The district depository shall make a report of all moneys received, and of all moneys paid out at the end of each month and file such reports with such vouchers with the records of said district in its own vault, and shall furnish a true copy thereof to be inspected by any tax payer of said district, and shall be delivered to the successor of such depository. [Acts 1925, 39th Leg., ch. 25, p. 119, § 113.]

Art. 7880—114. District director interested in depository.—In the event the highest and best bidder as district depository should be a bank in which any member of the board of directors should be a stockholder or director, such bank may be selected as such depository if such interested director shall not vote upon the selection of same and the bonds given by the depository may be approved by the other directors. In such event, however, before such bank is selected as such depository or such bonds shall become effective the same shall be presented to the county judge of the county in which such district is situated and be approved by him, but in the event the county judge of said county shall for any reason fail to approve the selection of such bank as depository or fail to approve such bond, then new bids shall be called for and some other bank be selected. [Acts 1925, 39th Leg., ch. 25, p. 119, § 114.]

Art. 7880—115. Municipal corporation within district.—No town, city or municipal corporation shall be included within any district organized hereunder unless the proposition for the organization thereof shall have been adopted by a majority vote of the voters therein participated [participating] in such election. Any such municipal corporation included within a district shall be a separate voting district and the ballots cast therein shall be counted and canvassed to show the result of such election therein. No district hereafter organized embracing a town, city or municipal corporation shall include lands outside of such municipal corporation unless the election held therein to confirm and ratify the formation of such district shall be adopted thereby independent of the vote in such municipal corporation.

No district, the major portion of which is in one county shall be organized to include lands in another county unless the election held therein to confirm and ratify the formation of such district shall be adopted by the vote of those voting such portion of such county, independent of the vote of the portion thereof in such other county or counties.

In the event any portion of a district, under the provisions of this section shall vote against the formation of a district and the balance of such district shall vote for the formation thereof such proposition shall be adopted and such district be confirmed and ratified with the exception of the territory so voting against same, which is thereby automatically excluded therefrom and from all debts and obligations thereafter incurred, provided, however, if as many as ten per cent of the voters of such district so organized shall file with the board of directors a petition asking for a new election on such issue, such new election shall be ordered and held for the remaining portion of such district, or such district organization may be dissolved by order of the board of directors and a new district be formed. All lands and property included in such original district shall be subject to the payment of taxes for the payment of all debts and obligations incurred while it was a part thereof including organization expenses. The petition asking for a new election herein provided for shall be filed within thirty days after the date upon which the result of such election is canvassed and declared by the directors and not thereafter. [Acts 1925, 39th Leg., ch. 25, p. 119, § 115.]

Art. 7880—116. Letting contracts.—The provisions of law providing for the letting of contracts, furnishing of bonds and other procedure for the letting of contracts for construction work shall apply to all such work involving the expenditure of twenty-five thousand ($25,000.00) dollars or more, but shall not be a restriction upon the authority of the directors to operate and maintain said district or let contracts for less than twenty-five thousand ($25,000.00) dollars for repairs and improvements. [Acts 1925, 39th Leg., ch. 25, p. 120, § 116.]

Art. 7880—117. Lowest responsible bidder; notice.—Contracts for making and constructing the plants, works and improvements of the district shall be made by the directors to the lowest responsible bidder. It is provided however, that if the owners of two-thirds or more of the land located in the district, either in acres or in value, or if two-thirds or more of the qualified electors of said district, do sign a petition to the directors in the district requesting that the contract for the construction of the plants, works and improvements be entered into by the directors by individual negotiation and not by advertisement for bids, then and in that event the directors of the district may, in their discretion, enter into such contract by individual negotiation. In the event the contract is not to be so entered into however, the directors of the district shall give notice of the letting of the contract by advertising the same in some one or more newspapers having general circulation in the state of Texas and also in one newspaper having general circulation in the county in which such district or part thereof is situated and in one newspaper published in said district, if there be a newspaper published therein. Such notice shall be published once a week for four consecutive weeks prior to the date upon which said contract is let. The provisions of this Section shall not apply in case of any contract between the district and the United States. [Acts 1925, 39th Leg., p. 120, ch. 25, § 117; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 25.]

Art. 7880—118. Bids.—Anyone desiring to bid on the construction of any works advertised as herein provided shall, upon written application to the directors, be furnished with a copy of the engineer's report showing the work to be done and all details thereof, provided a charge may be made therefor to

cover the cost of making such copy. All bids to do any such work shall be in writing and sealed and delivered to the board and shall be accompanied by a certified check upon some responsible bank of the State of Texas for at least one per cent of the total amount bid, and the amount of said check shall be forfeited to the district and the bank certifying to same shall be liable therefor to the district in the event such successful bidder shall fail or refuse to enter into a proper contract therefor or shall [or] refuse to furnish bond therefor as required by law. Any or all bids may be rejected by the directors. All bids shall be opened at the same time. [Acts 1925, 39th Leg., ch. 25, p. 121, § 118.]

Art. 7880—119. Form of contracts; engineer's report.—All construction contracts made by the district shall be in conformity with and subject to the provisions of this Act, and the provisions of this Act shall be a part of all such contracts in so far as applicable thereto either to the contractor or to the district, and the provisions of this Act shall govern whenever the contract is in conflict therewith. The contract shall be reduced to writing and signed by the contractor and the directors and a copy of same so executed shall be filed with the county clerk of the county or counties in which such district is situated, which copy shall be recorded in a book kept for that purpose and be subject to public inspection. All such contracts shall contain or have attached thereto the specifications for all work included in the contract and the plans and details thereof and all such work shall be done in accordance with such plans and specifications under the supervision of the directors and the district engineer. As the work progresses the district engineer shall make full written reports to the directors showing in detail whether the contract is being complied with or not and when the work is completed the engineer shall make a detailed report of same to the directors. [Acts 1925, 39th Leg., ch. 25, p. 121, § 119.]

Art. 7880—120. Payment on contract; inspection.—Such construction contract may be paid for in partial payments as the work progresses but such payments shall not exceed 85 per cent of the amount due at the time of such payment as shown by the report of the engineer of the district. The directors shall at all times during the progress of the work inspect the same and cause the same to be inspected by the district engineer and his assistants and upon the completion of any contract in accordance with its terms they shall draw a warrant on the depository of the district to pay any balance due thereon. [Acts 1925, 39th Leg., ch. 25, p. 121, § 120.]

Art. 7880—121. Contractor's bond.—The person, firm, or corporation to whom such contract is let shall give a good and sufficient bond payable to the district in such amount as the directors may determine, not to exceed the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of such contract and that in default thereof they will pay to said district all damages sustained by reason thereof or complete said contract according to its terms. All sureties signing such bond shall be bound thereto and thereby to the same extent that the principal thereon is so bound regardless of the technical defenses. Such bonds shall be approved by the directors and shall be deposited with the depository of the district, a true record thereof being made in a record book in the office of the district. [Acts 1925, 39th Leg., ch. 25, p. 121, § 121.]

Art. 7880—122. Crossing railroad, interurban or street railway.—Every such district is authorized and empowered to make and construct all necessary bridges and culverts across or under any railroad tracks and roadway of such railroad, interurban or street railway of any description to enable them to construct and maintain any canal, lateral, ditch, or other improvements of such district. Same shall be paid for by the district, provided, however, that notice shall be given by the district in writing to any local agent, superintendent, or roadmaster or owner of such railroad track, and the railway company or the owner thereof shall be allowed sixty days to build such bridge at their own expense if they should desire to do so and according to their own plans, provided such canals, culvert, ditch or structure shall be constructed of sufficient size and proper plan to serve the purpose for which it is intended. [Acts 1925, 39th Leg., ch. 25, p. 122, § 122.]

Art. 7880—123. Crossing county or public road.—Such districts are hereby authorized and required to build all necessary bridges and culverts across and over all canals, laterals and ditches made and constructed by such district, whenever the same crosses a county or public road, and shall pay for the same out of the funds of said district. [Acts 1925, 39th Leg., ch. 25, p. 122, § 123.]

Art. 7880—124. Facilities for drainage; levees.—Included in the plans of any such district may be the necessary drainage ditches, or other facilities for drainage, and necessary levees for the protection of land under the system. [Acts 1925, 39th Leg., ch. 25, p. 122, § 124.]

Art. 7880—125. Property of district; conveyance to United States.—Districts created under the provisions of this Act [Acts 7880—1 to 7880—147] are hereby empowered to own reservoirs, dams, levees, flood control retarding works, hydroelectric works, and a distributing system therefor, wells, canals, laterals, sites for pumping plants, sites for settling basins, and, all other properties plants and improvements necessary or proper or incident to the carrying out of the purposes for which same were organized, and to buy or construct the same, and to acquire the necessary rights of way for, or land for, the same by gift, grant, purchase or condemnation, and they may acquire the title to any and all lands necessary or incident to the successful operation thereof, in addition to any of the above, in the manner provided, including the authority by purchase or condemnation, to acquire rights of way for the enlargement, extension, or improvement of any existing canals or ditches. Any property acquired may be conveyed to the United States in so far as the same shall be necessary for the construction, operation, and maintenance of works by the United States for the benefit of the district under any contract that may be entered into thereunder. [Acts 1925, 39th Leg., p. 122, ch. 25, § 125; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 18.]

Art. 7880—126. Eminent domain.—If it shall appear on hearing by the Commissioners' Court of each County, containing territory to be included in the district sought to be organized or prayed for is feasible and practicable, that it would be a benefit to the land to be included therein and be a public benefit or utility, the Commissioners' Court shall so find and grant the petition if the Court shall find that such proposed district is not feasible or practicable nor be a public benefit or utility, or is not needed, the Court shall refuse to grant the petition. [Acts 1925, 39th Leg., p. 123, ch. 25, § 126; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 19.]

Art. 7880—127. Contribution to construction by other district.—Any district organized under the provisions of this Act may, in so far as its best interests are served thereby, contribute to the construction of any improvement by any other similar district, the construction of which shall contribute to the benefit of the district and in proportion to the cost thereof determined by the directors, and may make contract with such other district with reference thereto. [Acts 1925, 39th Leg., ch. 25, p. 123, § 127.]

Art. 7880—128. Joint ownership or construction.—Two or more districts may jointly own and construct irrigation works and reservoirs, levees, flood control retarding system, drainage systems, and all other plants, works and improvements which they are authorized to own or construct, under the terms and conditions to be set out in a written contract. Any such contract shall not be binding until same

shall have been ratified by a majority vote of each of such districts. An election shall be held in each of such districts upon the same day to determine whether such contract shall be adopted. Notice of such election shall be the same as that required for the formation of a district under this Act. Such contract shall be printed or in writing, and a true copy thereof shall be filed in the office of each district fifteen days prior to such election, and be subject to public inspection. and one true copy of same shall be furnished to each voter calling for same at such office at any time within fifteen days prior to such election. When improvements are constructed by two or more districts, bids may be jointly called for and opened and considered at the designated office of either of such districts, and such districts shall approve the letting of the contracts and the contractor's bond, and may meet for that purpose at a place outside of their district, or at any office established for such joint project and at which office all business of such joint project may be transacted, all bids, bonds, contracts, etc., of such joint project may be in the names of such joint project districts, such districts being empowered and authorized to do all acts by joint action that one district may do. The action of each district being determined by its board of directors, a general manager may be employed by such joint enterprises whose duties may be set forth in the joint ownership contract.

The terms and conditions of such joint ownership contract shall not conflict with the provisions of law providing for the organization and conduct of districts, but may include provisions for joint construction and operation of same. Such contracts may be amended in the same manner as made. [Acts 1925, 39th Leg., ch. 25, p. 123, § 128; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 20.]

Art. 7880—129. Consolidation of districts.—Any two or more districts governed by the provisions of this Act and amendments thereof may be consolidated into one district in the following manner: The terms and conditions upon which such consolidation is to be effected shall be agreed upon by the board of directors of each district, and then the question shall be submitted to a vote in each district after giving notice thereof for at least twenty days in the manner provided by law for other elections. The election shall be held in each district on the same day. The consolidation to be effected only in the event same is adopted by each and all such districts. When two or more districts are consolidated their obligations shall not be impaired but shall be protected and paid by taxes levied upon the property in the district creating such debt or by assessments in the same manner and extent as if said consolidation had not been effected. After consolidation such taxes shall be assessed and collected by the officials of the consolidated district. When two or more districts are consolidated into one district same shall be governed as and be one district, except that the debts created by each district prior to the consolidation shall be paid as herein provided; provided, however, such consolidation district may contribute to such payments upon the terms stated in the consolidation agreement. When two or more districts are consolidated the officers of said respective districts shall continue to act jointly as the officers of said district, and to wind up the affairs of their respective districts as affected by said consolidation, for a period of ninety days after the consolidation election, and they may continue to so act until the next general election if so provided by the consolidation agreement, or the consolidation agreement may provide who shall constitute the first board of trustees to serve until the next general election if the officers then serving agree to resign. Said new officers shall within the period of ninety days after the election qualify as such officers of the consolidated district and assume such offices at the expiration of said period. All bonds of such officers will be approved by the then existing board of directors. [Acts 1925, 39th Leg., ch. 25, p. 124, § 129.]

Art. 7880—130. Benefit or ad valorem basis for tax levy.—Any district organized under authority of Section 59, Article 16, of the Constitution of Texas, and as well any district which may have been created prior to the adoption of such Constitutional Amendment, and which has availed, or which may hereafter avail, itself of the benefits of said Section 59 of Article 16, may at the time of its creation, or at any time thereafter, before such districts may have issued bonds, submit to the qualified elector of such district the question whether the taxes to be levied therein, shall be levied, assessed, and collected upon an ad valorem basis; or whether the taxes to be levied, assessed, and collected shall be upon the basis of specific and equitable assessment in proportion to the benefits to be conferred; (a) or whether the tax to be levied or assessed and collected shall be on an ad valorem basis as to some part of the total tax required, and upon an equitable or specific assessment of benefits as to some defined part of the area of the district, or as to some designated part of the total tax required; (b) if the directors of a district wish to submit to the electors of their district the question as to whether the tax shall be in part ad valorem and in part upon the basis of equitable and specific assessment in proportion to benefit, they shall by resolution entered in their minutes designate what part of the tax is proposed to be on each basis; they shall also designate the peculiar physical or economic conditions, or peculiar diverse local needs of different areas within the district which make it equitable or expedient to levy part of the total tax upon the specific or equitable assessment of benefit basis. (c) If the proposed assessment of the tax upon an equitable, specific benefit basis is to apply only to some defined part of the district, the directors of a district shall in their minutes define the area and fully set out the peculiar local needs of the defined part of the district to which the peculiar assessment of specific benefits is proposed to apply. This finding shall be based upon distinctive local need of water supply, local drainage, local flood protection or altering land elevations needing correction, one or all, and not generally affecting the districts as a whole. Their findings further shall fix the sum of money required to provide the works needed to protect or serve the peculiar local conditions within such defined part of the district upon which it is proposed to assess a tax upon an equitable benefit basis, which tax may or may not be in addition to other taxes levied by the district on property within the defined area. It is provided however, that the proportional tax, or income, contributions of a defined area, either by water use or other tax levies of the district, may be taken into consideration in assessing benefits in the defined area. (d) Such questions shall be submitted to the qualified voters of such district at any time, in the manner, and after the notice provided by law under which the district is created with reference to the issuance of bonds by it. Such election may be held at the time of the election of directors, and the question of taxation may be on the same ballot as that provided for the election of directors. (e) If the directors submit the question as to whether the tax shall be on an ad valorem basis or on a specific benefit basis, then notice of the election shall so state and the ballot shall have printed thereon in substance the following: "For levy of taxes on a basis of the assessed value of property," and, "For the levy of taxes on a specific benefit assessment basis." (f) If the directors wish to submit to the voters the question whether some designated part of the total tax proposed shall be on an ad valorem basis and the remainder on the basis of specific benefits, the notice of election shall in addition set out in full the minutes of the directors setting up the respective amounts and the reasons on which the proposed allocation of taxes has been based; also the ballot used shall have printed thereon in substance the following: "For the levy of ——— per cent of a total tax on a basis of the assessed value of property, and ——— per cent, on a specific benefit basis," and, "Against the levy of ———

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

per cent of a total tax on a basis of the assessed value of property, and ——— per cent on a specific benefit basis." (g) The directors of a district shall not have power to assess a specific benefit tax on a defined area within a district unless the owners of more than fifty per cent of the real estate, either in acreage or in value, located within the area proposed to be defined and taxed for peculiar local improvements or benefits, do file with the board a petition signed by such owners or owner. Upon receipt of such petition the directors may give notice either by posting notice at some public place in said area proposed to be defined, or by publishing notice in a newspaper having general circulation in said area. Notice shall be given ten full days before the time set for hearing by the board and shall state the time and place of hearing. (h) The board shall hear evidence for or against the creation of the proposed defined area. They shall grant or deny the petition upon the grounds set out in Section 19 of said Chapter 25. (i) If no such appeal is perfected within said ten days, or after final decision of such appeal, the board may at any time order an election to be held within the district to confirm the designation of the area and to authorize the issuance of bonds and the levy of tax on the property within the defined area on the specific benefit basis, in order to provide the works necessary to serve the area to be defined. The area defined shall be for the purpose of this election a separate voting precinct. (j) The notice of election and manner of holding it, and the qualification of electors, shall be the same as for the issuance of bonds by such district. The notice shall, in addition to other requirements, set out in full the minutes giving the findings of the board as to the peculiar needs of the area defined, the works to be provided and the sum required to provide the works proposed. At such election the ballot shall have printed thereon in substance the following: "For designation of the area, the issuance of bonds, and the levy of a tax upon the specific benefit basis within the defined area," and, "Against such designation, the issuance of bonds and levy." (k) If the majority vote in the defined area is in favor of the proposal the directors of a district shall declare the result of the election by order in their minutes giving accurate description of the boundary of the defined area. A copy of this order properly certified shall be recorded in the deed records of the county or counties in which the defined area may lie. (l) If a majority vote within the defined area favors the issuance of such bonds the directors may issue bonds, assess benefits, levy and collect taxes to retire the bonds and to maintain the works designed to serve the defined area, and shall administer the business of said defined area as part of their duties as directors under the applicable provisions of said Chapter 25 of the Acts of the 39th Legislature. (m) If a majority of the vote in the whole district favors the creation of a defined area, or areas, within the district, then and in that event, and if the sums derived from the assessments and levy of specific benefit taxes within the defined area are not in any year sufficient to meet the obligations of the district for any given year under the bonds issued for the benefit of a defined area or areas, then the succeeding year the directors of the district shall levy upon the district as a whole a supplemental ad valorem tax or specific benefit assessment tax sufficient to protect the defaulted obligations under said bonds. In case of such levy or assessment to protect the deficiency the district shall reimburse itself by enforcement of its tax lien, hereby created, upon the property located in the defined area. The taxes in such defined area shall be levied, assessed and collected, as provided for by Sections 132 and 133 of said Chapter 25 of the Acts of the 39th Legislature. (n) The fact that bonds have been issued and sold by the district shall not prevent the creation of a defined area as provided herein, and the issuance of bonds for the specific benefit of such designated area, and to be retired by the assessment of specific taxes in such defined area. (o) Save as herein provided the issuance and sale of such bonds based on a defined area shall be in accordance with the provisions of said Chapter 25 relating to the issuance and sale of other bonds by the district. [Acts 1925, 39th Leg., p. 124, ch. 25, § 130; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 21.]

Art. 7880—131. Directors to apportion and assess benefits.—In the event an irrigation or water improvement district shall have heretofore been operated or shall hereafter be operated under contract with the United States and such district shall have adopted or may adopt the plan of the levy and collection of taxes on a benefit basis, instead of an ad valorem basis, then the directors of said district shall at some convenient time thereafter, and from time to time as may be necessary act as a board to apportion and assess the benefits conferred upon any and all property situated within such district and shall cause a record to be made showing the amount and value of the benefits computed to accrue to all of the property situated within such district and subject to taxation, and the amount of taxes upon such basis to be levied and collected against such property; provided that no taxes so assessed or adjudged against such property shall be in excess of the benefit accruing and to accrue to such property from the organization, operation and maintenance of such district and the improvements to be constructed or purchased thereby. After such record shall have been made up the board shall cause notice to be mailed to each property owner whose name appears upon such record, showing the amount of taxes to be levied against such property and fixing a date and place at which such owner may appear and contest the correctness and equitableness of such tax. And after such hearing, said board or other governing body shall determine the inequitableness of the tax and sustain, reduce, or increase the same as in their judgment shall be just and equitable, and the decision of such board shall be final. All of the provisions hereof not inconsistent therewith shall apply to the levy, assessment and collection of the taxes herein provided for. [Acts 1925, 39th Leg., ch. 25, p. 125, § 131.]

Art. 7880—132. Manner of levying assessment, collection of taxes, etc.—In the event that any district other than those operating under contract with the United States shall adopt the assessment for benefit plan of taxation as provided by law, then in that event, the levy, assessment, equalization of property values and collection of taxes shall be made in the manner herein provided.

A. As soon as practicable after the approval of the report of the engineer, and the adoption of the plan of improvements to be constructed, the board of directors shall appoint three disinterested commissioners, who shall be known as commissioners of appraisement, but who shall be freeholders, but not owners of land within the district for which they are to act.

B. The secretary of the board of directors immediately following the appointment of the commissioners of appraisement shall, in writing, notify each of his appointment and in the notice designate the time and place for the first meeting of such commissioners. It shall be the duty of the commissioners to meet at the time and place specified or as soon thereafter as possible and when they shall each take and subscribe an oath that they will faithfully and impartially perform their duty as such commissioners, and make true report of the work done by them, and at such meeting the commissioners shall organize by electing one of their members chairman and one vice-chairman, and the secretary of the board of directors, or in his absence such person as the board of directors may appoint, shall be the secretary of said commissioners during their continuance in office and shall furnish to them such information and such assistance as may be within his power and necessary to the performance of their duties.

C. Within thirty days after qualifying and organizing as above directed, the commissioners of the appraisement shall begin their duties, and they may at any time call upon the attorney of the district for legal

advice and information relative to such duties, and may if necessary require the presence of the district engineer or one of his assistants at such times and for so long as may be necessary for the proper performance of their duties. Such commissioners shall proceed to view the lands in such district as will be affected by the plan of reclamation for such district as carried out, and all public roads, railroads, rights of way and other property or improvements located within such districts and shall assess the amounts of benefits and all damages, if any, that will accrue to any tract of land or other property within such district or to any public highway, railroad and other rights of way, roadways or other property from carrying out and putting into effect the improvements to be constructed by such district. The board shall prepare a report of their findings which shall show the owner of each piece of property examined and on or concerning which any assessment is made, together with such description of said property as may identify the same, with the amount of damages and all benefits assessed for and on account of or against the same, which said report shall be signed by at least a majority of said commissioners and filed with the secretary of the board of directors of the district, and which report shall also show the number of days each commissioner has been employed and the actual expense incurred by each during his service as commissioner, and each shall be paid by the district not to exceed ten dollars per day for his services, and all necessary expenses in addition thereto on approval of the account for such per diem and expenses by the board of directors. Said commissioners shall in their said report fix a time and place when and where they will hear objections thereto, and such date shall not be more than twenty days after filing such report.

D. At or before the hearing upon the report of the commissioners of appraisement, any owner of land or other property affected by such report or the plan of reclamation or improvements may file exceptions to any or all parts of such report and said commissioners at the time and place specified in the notice shall proceed to hear and base opinion on such objections, and where such objections are sustained, in whole or in part, may make such changes and modifications from time to time as may be necessary to conform the report to their findings. When the commissioners shall have finally acted, they shall make a decree confirming such report in so far as it is confirmed, and confirming and approving the same as modified or changed in so far as it may be modified or changed. The commissioners shall have power to adjudge and apportion costs incurred upon the hearing in such manner as may be deemed equitable. The findings of the commissioners as to damages and benefits to lands, railroads and other property within the district shall be final and conclusive. The final decree and judgment of the commissioners shall be entered of record in the minutes of the board of directors, and certified copies thereof shall be filed with the county clerk of each county in which any portion of the lands within such districts are located, as a permanent record of such county and such findings shall be notice to all persons of the contents and purpose of such decree.

E. When the report of the commissioners shall have been filed with the secretary of the board of directors, he shall forthwith give notice by publication in a newspaper published in each county wherein any portion of the district is located for at least once a week for two consecutive weeks prior to the date fixed for such hearing of the time and place for such hearing, and he shall also mail a written notice to all persons whose property will in any wise be affected by the carrying out of the plan of reclamation and improvement if his post office is known, stating the time and place of such meeting, which notice shall state in substance that the report of the commissioners to assess benefits and damages accruing to land or other property by reason of the plan of reclamation and improvement for the district in question has been filed in his office, and that all persons interested therein may examine same and make objections thereto in whole or in part, and that the commissioners will meet on the day and at the place named for the purpose of hearing and acting on objections to such report, and the secretary upon the day of hearing shall file in his office the original notice with his[,] affidavit thereto, showing the manner of publication and the names of all persons to whom notices have been mailed and that post offices of those to be affected to whom notices were not mailed were unknown to him, and could not be ascertained by reasonable diligence, and copies of such notice and affidavit shall be filed, one with the commissioners of appraisement and one with the clerk of the county commissioners' court.

F. After the action of the commissioners of appraisement as aforesaid, their final findings, judgment and decree, until lawfully changed or modified shall form the basis of taxation within and for the district for which they shall have acted for all purposes for which taxes may be levied by, for and on behalf of such district and all taxes shall be apportioned and levied on each tract of land, railroad and other real property in the district in proportion to the net benefits of the property named in such final judgment or decree as shown thereby. In all matters before the commissioners of appraisement parties interested therein may not only appear in person or by attorney, but they shall be entitled to process for witnesses to be issued by the chairman of the commissioners of appraisement on demand, and such commissioners shall have the same power as a court of record to force the attendance of witnesses. [Acts 1925, 39th Leg., ch. 25, p. 125, § 132.]

Art. 7880—133. Benefit plan of taxation.— In the event that any district organized under the terms of Section 59 of Article 16 of the Constitution shall adopt or have adopted the assessment of benefit plan of taxation instead of the ad valorem plan of taxation, fixing and assessment of property value on which taxes shall be levied and collected shall be made in the manner herein stated provided any such district may at the same election at which the adoption of such plan of taxation is voted upon, or at any other time before the issuance of bonds, vote upon the proposition of whether such benefits shall be fixed as an equal sum upon each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. In which event the amount of benefit per acre shall be voted upon as applied to all lands in the district that can be irrigated by gravity flow from the irrigation system to be constructed, or purchased, and also the benefit of lands in the district that cannot be so irrigated. When such questions are desired to be submitted and an election held to determine same the board of directors of the district shall submit same and order such election in the same manner as provided by law for other elections in such districts. The ballots for such elections shall have printed thereon the following propositions: "For uniform assessment of benefits of $——— per acre upon all irrigable lands in the district, and the assessment of $——— per acre upon all non-irrigable lands in the district." "Against uniform assessment of benefits."

Said blank spaces in said proposition shall be filled in with the amounts as determined by said board of directors to be voted upon. Said amount of charge per acre to be found by dividing the number of acres of land into the amount of indebtedness to be incurred by the district in providing for the irrigation of same. In the event the owners of lands classed as non-irrigable object to the amount of charges fixed against them by said order of the board calling such election or as a result of said election they may have their non-irrigable lands taken out of said district by filing application therefor as provided by law within ten days after such election is held. If a majority of those voting on such proposition at such election vote in favor thereof same shall be adopted.

In the event the plan of uniform valuation of acreage for taxation is adopted as herein provided the said valuation shall be applied to all such lands and it shall

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not be necessary for the assessor of the board of equalization to annually fix the value thereof or equalize the values, except as herein provided nor for the board of directors of the district to appoint a commission of appraisement to ascertain or fix the value of improvements to particular lands as in other cases provided. The board of equalization will examine the renditions and tax rolls to ascertain that all property subject to the tax is placed on such tax rolls under its proper classification and add any property thereto that may be left off of such tax rolls or that may not have been rendered for taxation, and examine and correct and certify to said tax rolls. Any property owner may protest the classification of his lands as not being proper and the board of equalization shall fully consider any such protest and after their findings thereon in their minutes in the same manner provided for protest in the case of the fixing of valuations upon property as provided by law.

The rate of taxation, the collection of taxes, assessment of property, rendering of property for taxation shall be made as now provided by law with reference to ad valorem taxes, except that only such lands shall be rendered or taxed and in rendering same the valuation thereof shall not be stated and it shall not be necessary that the party rendering same shall make affidavit to the value thereof nor that the value thereof be stated by the tax assessor, but same shall be rendered as subject to irrigation or not subject to irrigation.

In the event lands classed as non-irrigable are thereafter irrigated by said district, the owner thereof prior to receiving water for irrigation shall pay to the district an amount equal to the entire amount that would have been charged to same if same had originally been classed as irrigable. [Acts 1925, 39th Leg., ch. 25, p. 128, § 133.]

Art. 7880—134. Uniform assessment of benefits.—Districts organized for the purpose of constructing levees or works and plants as a protection from overflow, and districts organized for the purpose of constructing drainage systems, may adopt the proposition that the benefits shall be fixed at an equal sum upon each acre of land therein [in] the manner provided in the proceeding [preceding] section. In such event the proposition to be voted upon shall be stated in the order of election changing the wording thereof to apply to the purpose for which the district was organized or for which bonds are to be issued, substantially as follows:—"For uniform assessment of benefits for ———— purposes," and the negative "Against uniform assessment of benefits." [Acts 1925, 39th Leg., ch. 25, p. 129, § 134.]

Art. 7880—135. Aid by town, city, or municipal corporation.—Any town, city or municipal corporation may have the benefit and powers herein provided under the constitution of this State and may aid any district in the construction and operation of any such improvements to the extent that same may be an advantage to such municipal corporation in the following manner:

A. The area included in any town, city or municipal corporation be organized into and constituted a water control and improvement district with all the powers, authority and privileges provided by Section 59 of Article 16 of the Constitution and be governed by this Act, by an ordinance duly enacted by the board of aldermen, commissioners, or governing body thereof, constituting same a water control and improvement district and appointing five directors therefor. The bonds of such directors shall be filed with and approved by said governing board of such municipality, and upon the qualifications of said directors said district is completely organized without the necessity of holding an election therefor. Said district shall from and after its organization be governed by the provisions of this Act and any amendments hereafter enacted.

B. Whenever a municipal corporation shall be constituted a water control and improvement district as herein provided all taxes levied therein may be assessed and collected in the manner herein provided or in the following manner: The directors of the district shall make an order fixing the rate of taxation and levying a tax as herein provided and enter same upon their minutes and then file a copy thereof duly signed by the president and secretary, with the seal affixed, with the secretary of the municipal corporation; the said secretary shall record same in a book kept in his office for that purpose and make and deliver to the tax assessor a copy thereof. Said tax levy shall be entered on the tax rolls and be assessed and collected in the same manner as other municipal taxes, and the collection thereof shall be governed by the provisions of law governing the collection of taxes in such municipal corporation, and all officers of such municipal corporation are charged with the same duties therein as provided by law for the collection of and accounting for municipal corporation taxes. The tax collector shall make a monthly report on the last day of each month of all such taxes collected to the district depository and deposit same therein, a copy of such report shall be filed in the office of the directors. The directors of the district pay to the city tax assessor, the city tax collector, and all other city officers reasonable compensation for the services performed by them for the district, the amount thereof to be fixed in advance of the performance of such duties.

D. When such taxes are so levied, assessed and collected it shall not be necessary for such district to appoint a tax assessor and collector, and the provisions of this Act with reference to the assessing and collecting of taxes shall not apply to such district.

E. All taxes levied, bonds issued, and indebtedness incurred by such water control and improvement district shall be subject to the provisions of the constitution and of this Act in so far as same require an election to authorize same.

F. Any such water control and improvement district may issue bonds and incur indebtedness for any purpose herein provided, or in aid thereof, in connection with the construction of improvements by any other district organized under the provisions of this Act or heretofore organized and governed by the provisions of this Act. [Acts 1925, 39th Leg., ch. 25, p. 135, § 135.]

Art. 7880—136. Payment of judgment against district.—In the event that any court within the State shall render any judgment of debt against any district such court may order the directors of such district to levy, assess and collect taxes or assessments to provide for the payment thereof. [Acts 1925, 39th Leg., ch. 25, p. 131, § 136.]

Art. 7880—137. Suit to protect water rights.—The Board of directors are hereby empowered to institute and maintain any suit or suits to protect the water supply or other rights of the district and to prevent any unlawful interference with same or a diversion of its water supply by others and to prevent any taken or interference with such water supply or other rights. All districts may sue and be sued in the name of the district by and through its board of directors. [Acts 1925, 39th Leg., ch. 25, p. 131, § 137.]

Art. 7880—138. Sale of surplus water.—Any District may sell any surplus water that it may have to lands in the same vicinity, or to other Districts which include lands in the same vicinity, for the purpose of irrigation, domestic or commercial uses, or such District may contract to pump for or supply such other District with any waters in which such other District may have any right, if in the opinion of the Board of Directors same is advisable and on such terms as they provide. Any District may contract for the sale of water power privileges whenever it may be possible for power to be generated by the use of water flowing from their reservoir or within its canal system, provided, however, any such contract for the sale of water power privileges shall be subject to the duty of the District to protect the lands embraced therein in an adequate supply of water for the purpose for which

such District was organized or for supplying water for municipal purposes in such Districts supplying water for such purposes. [Acts 1925, 39th Leg., p. 131, ch. 25, § 138; Acts 1927, 40th Leg., p. 377, ch. 254, § 1.]

Art. 7880—139. Investigation by State Board of Water Engineers.—The State Board of Water Engineers shall be and is constituted a commission to investigate and report upon the organization and feasibility of all districts which shall issue bonds under the provisions hereof. All such districts desiring to issue bonds for any purpose shall submit in writing to said board an application for investigation, together with a copy of the engineers report and a copy of data, profiles, maps, plans, and specifications prepared in connection therewith. Said board shall examine same and shall visit the project and carefully inspect the same and may ask for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements. They shall file in their office in writing their suggestions for changes and improvement and furnish a copy thereof to the board of directors of such district. If said board shall finally approve or refuse to approve such project, or the issuance of bonds for such improvements, they shall make a full written report thereon, file same in their office and furnish a copy of same to the board of directors of said district. [Acts 1925, 39th Leg., ch. 25, p. 131, § 139.]

Art. 7880—140. Effect of act on other districts.—This Act shall not in any manner affect or repeal other laws providing other methods of forming similar districts and shall not repeal or affect laws providing for the organization of water improvement districts, levee districts, improvement districts or levee improvement districts or drainage districts. And this Act shall apply to and affect only districts organized hereunder or specifically adopting the provisions hereof as herein[g] provided. [Acts 1925, 39th Leg., ch. 25, p. 132, § 140.]

Art. 7880—141. Donations and contributions.—Any district organized under the provisions hereof shall have authority to seek and solicit cooperation, donations and contributions from the United States Government, the Government of the State of Texas, or any other State or Nation, any county, municipality, water improvement district, water control district, drainage district, or any other political subdivision of Texas, any person, co-partnership, corporation or association and may incur reasonable expense to procure such cooperation, both with reference to adding to the area of the district or with reference to the contributions to the cost of the improvements undertaken by the district in such manner that the contributions would be either upon a percentage of cost, or a definite annual sum basis. (a) Any water improvement district, water control and improvement district, levee improvement district, county, city, town or other body politic within the State of Texas now organized or which may be hereafter organized shall have the power to enter into contract for contribution to the cost of the construction of drainage, flood control or water supply works, or the changing of the land elevations needing correction, to be constructed beyond the boundaries of the contributing district, municipality, or other political subdivision of the State of Texas, and to so contribute even though such works may be located beyond the boundaries of Texas or of the United States, and by whomsoever such works are to be constructed. Such contribution shall be in proportion to the extent that the proposed works will be a benefit to the contributor. (b) Such contract may provide for the issuance of bonds by the contributor and direct payment to contractors upon the estimates of the engineer for the contributor, out of the proceeds of such bonds. If bonds are to be issued by a body politic the contributor shall submit the contract for contribution to its qualified electors for approval and for authority to issue the bonds, fix a lien to secure the bonds and to levy, assess and collect taxes to retire the bonds. All such procedure by a contributing political subdivision of Texas shall be in conformity to the applicable law under which such contributing body politic has its being and may create bonded indebtedness. The disposition of the proceeds of such bonds shall be in conformity to the approved contract of contribution. (c) Such contract for contribution may provide that in lieu of the issuance of bonds the contributor may provide for the levy, assessment and collection of an annual tax in a specific sum to be a lien on the property within the contributor's taxing power, which tax shall be collected by the contributor at its own expense, and annually paid to the constructor of the works to which the contribution is to be made, and such annual payment shall be held as a trust fund by the constructor of the proposed works and applied annually by such constructor upon the bonds issued by it to provide funds for the construction of the works to which contribution[s] is to be made. (d) Such contract shall be submitted by the contributor to its qualified electors for approval and for authority to levy and assess a tax sufficient to meet the annual payments fixed in the contract of contribution. Such levy or assessment shall be a lien on the property subject to the contributor's taxing power. The election for the approval of the contract and the authorized taxes for the fulfillment of the contract shall be held in conformity to appropriate law under which such contributing body politic has its being and may created [create] bonded indebtedness. Payment of the annual sums of contribution shall be in conformity to the contract of contribution. (e) If the proposed contributor has any fund not otherwise appropriated, or any fund not required for actual use, even though otherwise appropriated, the said fund may be withdrawn from the appropriation not needing the fund and the same or either of the same may be applied in payment of contributions to the cost of the works deemed to be a benefit to the contributor, but to be constructed by another, or jointly by the contributor and another. Contributions from such an unappropriated, or available fund shall be within the powers of the governing officers of the contributing body politic, who are hereby authorized to enter into contract for contribution, and to contribute, without submitting the same to a vote of the qualified electors of the contributor. Such contribution shall not however be made in any case where the contribution would impair the ability of the contributor to meet any outstanding obligation or to well and economically discharge contributor's duty to its electorate or constituency. [Acts 1925, 39th Leg., p. 132, ch. 25, § 141; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 22.]

Art. 7880—142. Topographic maps and data.—It is hereby made the duty of the Reclamation Engineer of the State of Texas to furnish to any district topographic maps and data concerning all elements of the various projects undertaken by the district for the control of floods. It shall be the duty of the State Board of Water Engineers to furnish to a district topographic maps and data concerning all projects for the storage of water or creation of reservoirs undertaken by the district. [Acts 1925, 39th Leg., ch. 25, p. 132, § 142.]

Art. 7880—143. Conversion of districts.—Any water improvement district, levee improvement district, irrigation district, or other conservation and reclamation district heretofore organized, or hereafter to be organized, under the provision of Section 59 Article 16, or Section 52 of Article 3 of the State Constitution, may become and be converted into a water control and improvement district in the following manner: The Board of Directors, supervisor or other governing body of such district shall adopt a resolution declaring that in their judgment it is for the best interest of such district, and will be a benefit to the lands and property included in said district to become a water control and improvement district, and to operate under the provisions of Article 16, Section 59, of the Constitution of Texas. Such resolution shall be entered in their minutes. Notice of the adop-

tion of such resolution shall be given by publication thereof in a newspaper having general circulation in the county or counties in which the district is situated. Such notice shall be published once a week for two consecutive weeks. The first publication must appear not less than fourteen full days prior to the time set down for a hearing. Notice shall state the time and place of the hearing and shall set out the resolution in full. It shall notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution. If, upon a hearing, the board of directors, board of supervisors, or other governing body, find that it would be for the best interest of the district to be converted into a water control and improvement district, and would be a benefit to the lands and property situated in said district, then, and in that event, they shall enter their order so finding, and said district shall thereupon become a water control and improvement district. If they find that it would not be for the best interest of the district and would not be a benefit to the lands and property situated in the district, they shall so find and enter their order against conversion of the district to a water control and improvement district. The findings of said board of directors, board of supervisors, or other governing body, shall be final and not subject to appeal or review. All water improvement districts, levee improvement districts and other districts referred to in this section which shall become and be constituted a water control and improvement district under the provisions hereof shall be a conservation and reclamation district under the provisions of Section 59 Article 16 of the State Constitution and shall thereafter be governed by this Act, and any amendments hereof hereafter adopted, and shall have and may exercise all the powers, authority, functions and privileges herein provided in the same manner and to the same extent as if same had been organized under the provisions hereof. [Acts 1925, 39th Leg., p. 132, ch. 25, § 143; Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 23.]

Art. 7880—144. Proceedings validated.— All the proceedings had and taken to organize any water improvement district or irrigation district and to determine the areas of land included therein and which are benefited thereby, and to determine the manner in which taxes and assessments for taxation should or shall be made, levied and collected, or to bring any such district under the provisions of Section 59 of Article 16 of the Constitution, or to authorize the issuance of notes or bonds, or for the election and qualification of its officers and directors, or for construction of projects jointly by two or more districts, shall be and are hereby in all respects declared to be ratified, validated, approved and confirmed by the conversion thereof into such water control and improvement district as herein provided. Provided, however, nothing herein contained shall in any manner affect or validate any bonds or any taxes or charges for the payment of any bonds, or any proceedings for the organization of a district, the validity of which bonds, taxes or proceedings is now being challenged or litigated in any court of this State. [Acts 1925, 39th Leg., ch. 25, p. 133, § 144.]

Art. 7880—145. Applications by candidates for director.—Candidates for the office of director or other elective offices may file with the secretary of the board of directors application to have their names printed upon the ballots to be used at an election. Such applications shall be signed by such candidates, or by ten qualified voters, and shall be filed at least twenty days prior to the date of such election. [Acts 1925, 39th Leg., ch. 25, p. 133, § 145.]

Art. 7880—146. Directors in districts containing less than 12,000 acres.—In all districts hereafter organized under the provisions of this Act which contain not to exceed twelve thousand acres of land and in which fifty per cent or more of the lands in such district are owned by persons who do not reside in the district, the directors shall be appointed by the county commissioners' court, instead of being elected as herein provided, if the petition for the organization of such district shall so provide. The term of office of such directors shall be two years, and they shall be so appointed at the same time fixed for election of directors in other districts, and if for any reason the county commissioners' court is not in session at that time the said court shall appoint said directors as soon thereafter as possible. The owners of the lands in such district may file with the county commissioners' court, petitions expressing their choice of persons to be selected as directors and if a majority of those filing such petition agree upon the persons to be appointed, the persons so agreed upon, if qualified, shall be appointed, otherwise the said court shall appoint suitable qualified persons as such directors. [Acts 1925, 39th Leg., ch. 25, p. 133, § 146.]

Art. 7880—147. Lands added to district; liability for debts.—When land is added to an established district and such district is organized or is operating under the authority of Section 59 of Article 16 of the State Constitution, such land may be added to such district upon the agreement contained in the order of the board of directors admitting such land to the district that same will be taxed upon the assessment of benefit plan of taxation instead of upon the plan of the general ad valorem tax, and such agreement may provide that such added land shall be so taxed upon a uniform acreage basis or upon the plan of a definite annual charge. In such event the amount of the debts to be paid by such land and the amount to be paid as an annual tax thereon for the purpose of paying such debt shall be fixed by the order of the board of directors admitting such land to the district and the same shall become a lien on said land in the same manner and to the same extent as if said land had been a part of said district at the time said indebtedness was incurred or authorized by an election held for that purpose. Such added land shall be a part of such district and shall be liable for debts thereafter incurred in the same way as other lands in said district.["] [Acts 1925, 39th Leg., ch. 25, p. 134, § 147.]

Art. 7880—147a. Districts validated.—All water improvement districts which have heretofore complied with the requirements of Chapter 25 of the Acts of the 39th Legislature relating to converting such districts to water control and improvement districts are hereby declared to be valid water control and improvement districts just as though they had been originally organized under the provisions of said Chapter 25 of the Acts of said 39th Legislature, and further all water control and improvement districts as now defined and bounded, the validity of which is not now being contested in any of the courts of this State, are hereby declared to be valid water control and improvement districts and to have the powers and duties defined in and granted by Chapter 25 of the Acts of the 39th Legislature of Texas, and as well to have any powers and duties which may be hereafter defined in or granted by any Act amending said Act. All bonds issued by such districts, which have been declared valid by a judgment of the district court, and not appealed from, or by a judgment of the district court affirmed on appeal, or by the Attorney General of this State, shall be and are held to be valid and binding obligations of such districts and not subject to attack except for fraud. [Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 24.]

Art. 7880—147b. Record of proceedings.—All proceedings of the directors of a district and all decrees and orders of any court affecting the formation, boundaries or validity of such district must be recorded in the office of the county clerk of each county in which such district is located in a special record book kept for that purpose. This recording is to be in addition to other recording provisions in this Act contained. [Acts 1927, 40th Leg., 1st C. S., p. 496, ch. 107, § 24.]

CHAPTER THREE B

AID TO CAMERON AND WILLACY COUNTIES FOR PROTECTION AGAINST OVERFLOWS

Art.
7880—148. Sinking fund.
7880—149. Bond issue for levees, etc.
7880—150. Collection of tax.
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7880—152. Grant to take effect when.
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Article 7880—148. Sinking fund.—For the purpose of aiding in the protection of the property and lives of the citizens of Cameron and Willacy Counties from further disastrous and calamitous overflows, and to conserve and increase the revenues derived by the State from said counties, that part of the State ad valorem taxes, which is in excess of ten cents on the hundred dollars valuation of property subject to taxation, collected upon property and from persons in the county of Cameron, including the rolling stock belonging to railroad companies which shall be ascertained and apportioned as provided by law, is hereby donated and granted by the State of Texas to the county of Cameron, for a period of twenty-five years, beginning January 1, 1926, to be used by said county in part payment of interest and in creation of a sinking fund to pay the bonds of said county which shall be voted and issued as herein provided to obtain funds for the construction of the necessary breakwaters, levees, dikes, floodways and drainways to protect the counties of Cameron and Willacy from such disastrous and calamitous overflows. [Acts 1925, 39th Leg., ch. 35, p. 161, § 1.]

Art. 7880—149. Bond issue for levees, etc.—It is an express condition of this grant that the resident property taxpayers who are qualified voters in Cameron County shall, on or before October 1, 1926, authorize the issuance of the bonds of said county in an amount not less than one million two hundred and fifty thousand dollars, nor more than one million five hundred thousand dollars, voted, issued and sold as is, or may be prescribed by law; the proceeds whereof shall be applied to the construction of the breakwaters, levees, dikes, floodways and drainways necessary to protect the counties of Cameron and Willacy from such overflows. [Acts 1925, 39th Leg., ch. 35, p. 162, § 2.]

Art. 7880—150. Collection of tax.—During the term of this grant the tax collector of Cameron County shall collect and pay into the State Treasury, as prescribed by law, ten cents on each one hundred dollars valuation of taxable property in Cameron County, as State ad valorem taxes; while the portion of said State ad valorem tax which is hereby donated and granted to Cameron County shall be levied and collected by Cameron County as is herein provided. [Acts 1925, 39th Leg., ch. 35, p. 162, § 3.]

Art. 7880—151. Payment of interest on bonds.—This donation and grant is further made with the express condition that Cameron County shall levy and collect, in the manner prescribed by law, an ad valorem tax on all property subject to taxation in said county, sufficient to pay the interest on said bonds as it accrues and create a sinking fund in an amount sufficient to pay the principal thereof at maturity, and in addition thereto an annual ad valorem tax of five cents on the $100 valuation to maintain said breakwaters, dikes, levees, floodways and drainways during the term of this grant, and said county of Cameron shall bond itself for the full constitutional limit for said purposes herein and assess and collect taxes on the county to pay said bonds and the excess after payment of the bonds shall be paid to the State of Texas; and when said county shall have made such levy, the State taxes hereby donated to said county shall not be separately levied and collected, but for convenience in administering this Act, shall be collected and applied by said county as part of said ad valorem tax, levied and collected to pay interest on and to create a sinking fund to retire said bonds. [Acts 1925, 39th Leg., ch. 35, p. 162, § 4.]

Art. 7880—152. Grant to take effect when.—The grant and donation hereby made shall take effect whenever the duly constituted authorities of Cameron County shall have filed with the Comptroller of Public Accounts of the State of Texas, a properly authenticated certified copy of the order canvassing the returns and declaring the result of an election at which the property tax payers who are qualified voters of Cameron County shall have authorized the issuance of bonds as herein provided; and such certified copy of said order shall likewise have the effect of authorizing and directing the Comptroller of Public Accounts to settle with the tax collector of Cameron County in conformity with the provisions of this Act. [Acts 1925, 39th Leg., ch. 35, p. 162, § 5.]

Art. 7880—153. Grant to terminate on retirement of bonds.—The grant and donation hereby made shall terminate in less than twenty-five years whenever the sinking fund provided by the terms of this Act shall become sufficient to retire the bonds issued under its provisions. [Acts 1925, 39th Leg., ch. 35, p. 163, § 6.]

CHAPTER FOUR

FRESH WATER SUPPLY DISTRICTS

Art.

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1. ESTABLISHMENT

Article 7881. Purposes.—There may be created within this State conservation districts to be known as Fresh Water Supply Districts for the purpose of conserving, transporting and distributing fresh water from lakes, pools, reservoirs, wells, springs, creeks, and rivers for domestic and commercial purposes, as contemplated by Section 59, Article 16 of the State Constitution. Said districts shall have and may exercise all the rights, privileges and powers given by this chapter and in accordance with its directions, limitations and provisions. Such districts may or may not include cities and towns. [Acts 2nd C. S. 1919, p. 107.]

Art. 7882. Petition.—When it is proposed to create a district, a petition shall be presented to the commissioners court of the county embracing the lands in the proposed district, or to the county judge of the county if said court is not in session. Said petition shall be signed by fifty or a majority of the qualified voters of such district who own land therein, and shall set forth the boundaries thereof, the general nature of the work proposed to be done, the necessity therefor, and the feasibility thereof, and designating a name therefor which shall include the name of the county in which it is situated. [Id.]

Art. 7883. Deposit.—The petition shall be accompanied by a deposit of one hundred dollars, which shall be paid to the county clerk who shall pay same out upon vouchers approved by the county judge, for all expenses incident to the hearing and the election for the creation of the district, returning any excess to the petitioners or their attorney. [Id.]

Art. 7884. Notice of hearing.—The Commissioners' Court or County Judge, as the case may be, shall forthwith fix a time and place at which the petition shall be heard by the court not less than fifteen nor more than thirty days thereafter, and shall direct the county clerk, as ex-officio clerk of said court, to issue notice of such time and place of hearing. Such notice shall inform all persons of their right to appear and contest the form, and allegations of such petition, and the necessity and feasibility of such project, and the benefits to accrue, which notice may be delivered to any adult who is willing to execute the same by posting as herein directed. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 165, ch. 58, § 1.]

Art. 7885. Posting of notice.—Upon receipt of the notice, such person or persons receiving same shall post a copy thereof at the door of the courthouse of said county, and a copy at four different places within such proposed district. Such posting shall be for not less than ten days prior to the date fixed for the hearing. The persons so posting shall make affidavit before some officer authorized by law to administer oaths, of their action in respect to such posting, and such affidavit shall be conclusive of the facts sworn to. [Id.]

Art. 7886. Hearing.—The court shall examine the petition to ascertain the sufficiency thereof, and any person interested may appear before the court in person or by attorney and offer testimony touching the sufficiency of such petition. Such court shall have jurisdiction to determine all issues raised touching the sufficiency of such petition. Such hearing may be adjourned from day to day as the facts may require. The court shall have power to make all incidental orders necessary in respect to the matters before it. [Id.]

Art. 7887. Findings.—If, upon the hearing of such petition, it be found that the same sets forth and conforms to the requirements of Article 7882, and that such project is feasible and practical, is necessary and would be of benefit to the lands therein, such court shall so find by its order, and shall order an election within the boundaries of such proposed district as set forth in the petition, which shall be held not less than twenty nor more than thirty days from the date of such order whereat the property tax paying voters within such boundaries may determine if such proposed district shall be established for the purposes and with the powers set out in this chapter, and for the election of five supervisors and a person to be assessor and collector of taxes. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 165, ch. 58, § 2.]

Art. 7887a. Districts validated.—In all Fresh Water Supply Districts heretofore formed, or now being formed, wherein the petition for such conforms to the requirements of Article 7882, setting out the necessity and feasibility of such project, and a notice of the time and place of hearing was given by the clerk, as directed in Article 7884, Revised Civil Statutes of 1925, and same was duly posted, and upon the hearing it was found by the Commissioners' Court that such petition was signed by the requisite number of proper parties, and was necessary and feasible, which shall be construed as a finding that same is a benefit to the lands therein, and ordered an election as provided, and for the purposes set forth, in Article 7887, Revised Civil Statutes of 1925, and at which election a majority of such voters voted in favor of the District, are hereby declared to have been legally created within the meaning, intent and purposes of this Chapter, and the same are hereby validated as of the respective times and dates of such proceedings, and are recognized and established and with the boundaries set forth in such several Districts, and all bonds voted or issued thereunder are validated and declared to be legal and binding obligations of such several districts, according to their terms. [Acts 1927, 40th Leg., 1st C. S., p. 165, ch. 58, § 3.]

Art. 7888. Notice of election.—Notice of such election shall be given stating the time and places of holding the election, and showing the boundaries of said district, the proposition to be voted upon, the officers to be voted for, and the presiding officers appointed for holding said election. Such notice shall be posted at the courthouse door for twenty days prior to the day of the election. [Acts 2nd C. S. 1919, p. 107.]

Art. 7889. Conduct of election.—At all elections hereunder, none but resident property tax payers who are qualified voters of such proposed district shall be entitled to vote. The commissioners court shall name polling places for such election. Each district is hereby constituted an election precinct for the purposes of the election above specified, and all other elections which may be ordered or held under this chapter. Said court shall appoint two judges, one of whom shall be presiding judge, and two clerks at each polling place. [Id.]

Art. 7890. Ballot.—The commissioners court shall provide the necessary ballots for such election, which shall have printed thereon the following: "For the Fresh Water Supply District," "Against the Fresh Water Supply District," and the names of the persons recommended for supervisors and officers in the petition. Said ballot shall also have five blank places after the names of those printed, on which each voter may write the names of other persons, supervisors, and assessor and collector, and there shall be no other matter placed on said ballot. [Id.]

Art. 7891. Voter's oath.—Every person who offers to vote in any election held under the provisions of this chapter shall take the following oath before the presiding judge of the polling place where he offers to vote, and such judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of ——— County and that I am a resident property taxpayer of the proposed Fresh Water Supply District voted on at this election, and have not voted before in this election." [Id.]

Art. 7892. Results of election.—Immediately after the election, the presiding judges shall make returns of the result in the same manner as provided for in general elections for State and county officers. Said commissioners court shall forthwith, at a regular or called session, canvass such vote, and if it is found that a majority of such votes favor the creation of such district, then said court shall so declare and enter the result on their minutes; and shall issue certificates of election to the persons receiving the highest number of votes, respectively, for supervisors and assessor and collector. If two or more persons receive the same number of votes for the position of fifth supervisor, said court shall select one of said persons to fill said position. [Id.]

Art. 7893. Declaration of result.—If said court shall declare said election to be in favor of the establishment of the district, then it shall cause to be made and entered in the minutes of said court an order setting forth substantially as follows: "In the matter of the petition of ——— and ——— others praying for the establishment of a Fresh Water Supply District as in said petition described and designated as ——— County Fresh Water Supply District No. ———; be it known that an election was called for that purpose in said district and held on the ——— day of ——— A. D. 19— and a majority of the resident taxpayers voting thereat voted in favor of the creation of said District. Now, therefore, it is ordered by the Court that a Fresh Water Supply District be and the same is hereby established under the name of ——— County Fresh Water Supply District No. ——— with the following metes and bounds." Such field notes shall be copied in the record. The first district created hereunder in any county shall assume the Number "One," the second district shall assume the number "Two," and so on consecutively. [Id.]

Art. 7894. Registration of order.—After entering said order, the court shall cause to be made a certified copy thereof which shall be filed with the county clerk and duly recorded in the deed records of said county. Such recordation shall have the same effect in so far as notice is concerned, as is provided for the record of deeds. All costs in connection with the making and recording of such copy shall be paid by the district. [Id.]

Art. 7895. District tax assessor.—The office of assessor and collector for the district shall be filled by the same person. He shall qualify as such by making good and sufficient bond for five thousand dollars, payable to the district and approved by the commissioners court, conditioned upon the faithful performance of his duties and upon paying over to the district depository of all money coming into his hands as such collector. He shall be required to give additional security if, in the judgment of the supervisors, the same may become necessary. He shall be a resident of the district and a qualified voter in the district. He shall receive not to exceed twenty-four hundred dollars per annum, as may be provided by the supervisors. The first assessor shall hold office until the next general election for officers. The person elected to such office at the next general election shall hold office for two years. All vacancies in such office shall be filled by the supervisors for the unexpired term. [Id.]

Art. 7896. Supervisor's bond and oath.—Within ten days or as soon after the making and entry of said order as practicable, each supervisor shall give a good bond for five thousand dollars payable to the district and conditioned upon the faithful performance of his duties, to be approved by the commissioners court. Each supervisor shall take the oath of office prescribed by the statute for commissioners court, except that the name of the district shall be substituted for the county. Said bond and oath shall be filed with the clerk of the county wherein the order was entered creating said district, and by him recorded in the official bond records of said county. Said bond shall then be delivered by the county clerk to the district depository, and shall be by it safely kept as part of the records of said district. [Id.]

Art. 7897. General election.—A general election for the election of five supervisors and one assessor and collector for such district shall be held therein biennially on the first Tuesday in January. [Id.]

Art. 7898. Fees.—For all services performed by any officer or individual under this law, the compensation for which is not expressly provided for, such officer or individual shall receive the same compensation as he would for like service if rendered as an officer for the county. Clerks recording orders hereunder shall receive the same compensation as a county clerk for recording deeds, and persons posting notices hereunder shall receive the same compensation as a sheriff for officially rendering such service. [Id.]

Art. 7899. Organization expenses.—The supervisors are authorized to pay all necessary costs and expenses necessarily incurred in the creation and organization of any district, and to reimburse any person, corporation or association for money advanced for such purposes. Such payment shall be made from money obtained from the sale of bonds. [Id.]

2. BOARD OF SUPERVISORS

Art. 7900. Qualifications.—No person shall be elected as supervisor for any district unless he is a resident thereof and owns land subject to taxation therein, and unless at the time of such election he shall be more than twenty-one years of age. [Id.]

Art. 7901. Term of office.—The supervisors shall hold office for the same period as that provided for the district assessor. In case of vacancy in the board, their successors shall be chosen as provided by law for the filling of vacancies in the board of directors of water improvement districts. [Id.]

Art. 7902. Salary.—The supervisors shall each receive not exceeding ten dollars for each day necessarily taken in the discharge of their duties as such, and they shall make a statement of such services similar to that required by law of directors of water improvement districts. [Id.]

Art. 7903. Organization of board.—The supervisors shall organize by electing one of their number as president. Any three supervisors shall constitute a quorum, and a concurrence of three shall be sufficient in all matters pertaining to the business of the district. They shall have power to appoint a secretary who shall receive such compensation as the Board of Supervisors may fix, not to exceed one hundred and fifty dollars per month. [Id.]

Art. 7904. Meetings.—The supervisors shall maintain a regular office in the district suitable for conducting the affairs of such district; and shall hold regular meetings thereat at ten o'clock in the morning on the first Mondays in February, May, August and November of each year. They shall hold such regular and special meetings at such office as they may see fit, and any taxpayer or resident or interested party may attend such meeting, but shall not participate in same without the consent of the supervisors, and may present in an orderly manner to said supervisors such matters as they desire. [Id.]

Art. 7905. District records.—The supervisors shall keep a true account of all their meetings and proceedings, and shall preserve all contracts, records

of notices, duplicate vouchers, duplicate receipts, and all accounts and records of whatever kind, in a fireproof vault or safe, and same shall be the property of the district, and shall be delivered to their successors in office. [Id.]

Art. 7906. Vouchers.—All vouchers issued for the payment of any funds of the district shall be signed by at least three supervisors and shall refer to the book and page of the minutes allowing such act. All vouchers shall be issued from a regular duplicate book, retaining a duplicate which shall be preserved. [Id.]

Art. 7907. District depository.—The supervisors shall select a depository for such district as provided by law for the selection of county depositories; and the duties of such depositories shall be the same as provided by law for county depositories. In such selection, the supervisors shall act in the same capacity and perform the same duties as are incumbent upon the county judge and members of the commissioners court in the selection of county depositories. The depository shall perform the services of district treasurer, and shall execute a bond as such as may be required by the supervisors. Such depository shall make and file reports and preserve the district records as required of depositories under Chapter 2 hereof. [Id.]

Art. 7908. Audit.—The supervisors shall have kept a complete book of accounts for such district, and shall on June first of each year select a competent auditor who shall examine the accounts, books and reports of the depository, the assessor and collector and supervisors, and make full report thereon, a copy of which shall be filed with the depository, and a copy with the supervisors, and one with the county clerk. Such reports shall be filed by September first of each year, and shall show in detail for what purposes the money from each fund has been expended. [Id.]

Art. 7909. Powers of board.—The supervisors shall have control over and management of all the affairs of such district, shall make all contracts pertaining thereto, and shall have control of the construction of all improvements and works within and without the boundaries of such district, and the transportation and distribution of the water of such district. [Id.]

Art. 7910. Powers: use of water.—The board shall prescribe the manner and terms upon which water shall be furnished, and shall be authorized to fix the rate to be charged users of waters from such district, and shall promulgate rules and regulations governing the distribution and use of water; and shall apply the revenue from the sale of such water to operating expenses and the upkeep of the system of improvements installed in said district, and any surplus that may be left after paying such expenses shall be from year to year applied to the paying of interest on the bonds or other indebtedness that may be incurred by the district, and if there be more than enough to pay operating and upkeep expenses and the interest on the indebtedness of the district, then such surplus shall be passed to the sinking fund. [Id.]

Art. 7911. Powers: employés.—The board shall employ all necessary employés for the proper handling and operation of such district, and especially may employ a general manager, attorneys, a bookkeeper and an engineer and such assistants and laborers as may be required. [Id.]

Art. 7912. District engineer.—After the establishment of any district, and after the qualification of the supervisors, the board may appoint an engineer who shall make maps and profiles of the several canals, reservoirs, aqueducts, conduits, pipe lines, pumping plants and all other works in such district and connected therewith and shall also show any part of said works extending beyond the limits of such district; and shall do such other and further work connected with such district as may be directed by the supervisors. He shall receive not exceeding thirty-six hundred dollars per year, as may be fixed by the board. Such engineer may adopt other maps, plats and surveys of the correctness of which he may be satisfied. [Id.]

Art. 7913. Official bonds.—All bonds required to be given by the officers and employés of such district shall be governed by the provisions of Chapter 2 of this title governing the approval and furnishing of bonds by surety companies for officers and employés of water improvement districts. [Id.]

Art. 7914. Powers: equipment.—The board may buy all necessary implements, machinery, work animals, equipment and supplies, as may be required for the construction, operation and maintenance of the system of works and improvement of such district. [Id.]

3. POWERS OF DISTRICT

Art. 7915. Status of district.—All districts shall be governmental agencies and bodies politic and corporate; and such districts are hereby declared to be defined districts within the meaning of Section 59, Article 16 of the State Constitution, and may, through their supervisors, sue and be sued in any and all courts of this State in the name of such districts, and all courts of this State shall take judicial notice of the establishment of such districts, and said districts shall contract and be contracted with in the name of such districts. [Id.]

Art. 7916. District seal.—Each district shall have a common seal which shall be circular in form with the name of the district surrounding a five pointed star. [Id.]

Art. 7917. Powers of district.—All such districts shall have such powers of government, and with authority to exercise such rights, privileges and functions concerning the purposes for which they are created, as may be conferred by this chapter, or any other law in this State, to the benefit of which they may become entitled. All such districts shall have full authority and right to acquire water rights and privileges in any way that any individual or corporation may acquire same, and to hold the same either by gift, purchase, devise, appropriation or otherwise. No enumeration of specific powers herein shall be held a limitation upon the general powers conferred by this chapter, unless distinctly so expressed. [Id.]

Art. 7918. Powers: construction.—All districts shall have full power and authority to build, construct, complete, carry out, maintain, and in case of necessity add to and rebuild, all works and improvements within and without such districts necessary to accomplish any plan of conservation, transportation and distribution of fresh water adopted for or on behalf of such districts, and may make all necessary and proper contracts, and employ all persons and means necessary to that end; and such districts are authorized, if the governing bodies thereof shall deem it necessary, to take over in whole or in part by purchase or otherwise, any water plants or systems within such districts. [Id.]

Art. 7919. Construction contracts.—Contracts for the making and construction of all improvements contemplated in this chapter, and all necessary work in connection therewith, when the cost price exceeds ten thousand dollars shall be let to the lowest responsible bidder, furnishing satisfactory evidence of possessing equipment and facilities essential to the proper performance of such contract; after giving notice by advertising the same in one or more newspapers of general circulation in this State, once a week for ten days, and by posting a notice for at least ten days at the courthouse door. Such contract shall be in writing and signed by the contractors and supervisors, and a copy so executed filed with the depository subject to inspection of all interested parties. [Id.]

Art. 7920. Contractor's bond.—The person, firm, corporation or association to which such contract

is let shall give bond to the district in such amount as the supervisors may determine, not to exceed the contract price, conditioned upon the faithful performance of the obligations, agreements and covenants of such contract, and for the payment to the district of all damages sustained in default thereof. Such bond shall be approved by the supervisors and shall be deposited with the depository, a true copy thereof being retained in the office of the district secretary. [Id.]

Art. 7921. Contract: performance.—All contracts shall be fulfilled in accordance with the specifications and under the supervision of the supervisors and district engineer. Such engineer shall inspect such work and make reports thereon, and such contract shall be paid as provided by law for similar contracts executed by water control and preservation districts. [Id.]

Art. 7922. Powers: indebtedness.—In the accomplishment of the purposes enumerated in the fourth preceding article, such districts may or may not issue bonds, and may or may not incur indebtedness. No bonds by or on behalf of such districts shall be issued nor shall any indebtedness against the same be incurred, unless the proposition to issue such bonds or to incur such indebtedness, shall be first submitted to the qualified property taxpaying voters of such districts, and the proposition adopted by a majority vote at an election held to determine such question. [Id.]

Art. 7923. May enter lands.—The supervisors, engineers and employés of any district are hereby authorized to go upon any lands lying within or without said district for the purpose of examining the same with reference to the location of canals, conduits, pipe lines, pumping plants and all other kinds of improvements to be constructed for such district, and for any other lawful purpose connected with their plan of conservation, transportation and distribution of water. [Id.]

Art. 7924. Eminent domain.—The right of eminent domain is hereby expressly conferred on all districts to enable them to acquire the fee simple title, easement, or right of way over and through any and all lands, water, or lands under water, private or public (except lands and property used for parks, cemeteries, manufacturing industries and established and developed water powers existing at the time of the creation of such district), within and without such districts, necessary for making, constructing and maintaining all canals, conduits, aqueducts, pipe lines, pumping plants and other improvements necessary for the conservation, transportation and distribution of fresh water for the purposes herein named. Such proceedings shall be instituted under the direction of the supervisors and in the name of the district. [Id.]

Art. 7925. Payment of damages.—All such compensation and damages adjudicated in such condemnation proceedings and all damage which may be done to the property of any person or corporation in the construction and maintenance of canals, conduits, pipe lines, pumping plants and other improvements under the provisions of this chapter, shall be paid out of any funds or properties of said district, except taxes necessarily applied to the sinking fund and interest on the district bonds. [Id.]

Art. 7926. Right of way; acquisition.—The supervisors are hereby empowered to acquire the necessary right of way for canals, conduits, pipe lines, pumping plants and other necessary improvements contemplated by this chapter, by gift, grant, purchase or condemnation proceedings; and such necessary improvements may be constructed and maintained within and without such proposed district upon lands acquired as herein authorized. [Id.]

Art. 7927. Right of way: roads.—All districts are hereby given the right of way across all public or county roads, but they shall restore such roads where crossed to their previous condition for use, as near as may be. [Id.]

Art. 7928. Use of road ways.—Said districts are authorized and empowered to make all necessary levees, bridges, and other improvements across or under any railroad embankments, tracks, or rights of way, or public or private roads or the rights of way thereof, or rivers or other public improvements of other districts, or other such improvements and the rights of way thereof, for the purpose of securing the fresh water supply necessary for said districts. [Id.]

Art. 7929. Railroad ways.—When such improvements are to be constructed across or under any railroad properties, notice shall first be given by said district to the proper railroad authorities or other persons relative to the additions or changes to result from the improvements contemplated; and said authorities or persons shall be given thirty days in which to agree to said work to be done in the manner proposed by said district, or to refuse to agree thereto; and in case of refusal, they shall at their own expense construct the said improvements in their own manner, provided such design or manner of construction shall be satisfactory to said district. [Id.]

Art. 7930. Joint projects.—All districts shall have authority to act jointly with each other, with political subdivisions of the State, with other States, with cities and towns, and with the Federal Government, in the performance of any of the things permitted by this chapter, upon such terms as may be agreed upon by the supervisors. [Id.]

4. BONDS

Art. 7931. Election for bonds.—After the establishment of any district, and the qualification of the supervisors thereof, the board may order an election to be held within such district at a time not less than twenty nor more than thirty days from the date of said order, at which there shall be submitted the proposition and none other: "For the issuance of bonds and levy of taxes in payment thereof;" "Against the issuance of bonds and levy of taxes in payment thereof." [Id.]

Art. 7932. Notice of election.—Notice of such election, stating the amount of bonds as determined by the board to be necessary to be issued, shall be given by the board by posting a copy thereof in four public places in the district, one at the courthouse door, for twenty days prior to the election. Such notice shall contain the proposition to be voted upon, with an estimate of the probable cost of construction of the proposed improvement, and incidental expenses connected therewith, and an estimate of the cost of the purchase of the improvements already existing, if the same is contemplated, or the purchase of said necessary improvements, and the construction of additions thereto. [Id.]

Art. 7933. Conduct of election.—The board shall name polling places in the district and shall appoint two judges, one of whom shall be presiding judge, and two clerks for each voting place designated by them. The supervisors shall provide the necessary ballots for said election, which shall have written or printed thereon the proposition to be submitted as provided in the second preceding article. [Id.]

Art. 7934. Elections: expenses.—All expenses incident to calling and holding all elections except the first authorized by this chapter, shall be paid out of any district funds, except interest and sinking fund for bonds. [Id.]

Art. 7935. Results of election.—Immediately after the election, the presiding judges shall make return of the result in the same manner as provided for in general elections for State and county officers. Such return shall be made to the supervisors who shall at a regular or special session canvass said vote, and if a majority of said votes favor the issuance of bonds and levy of taxes, then the supervisors shall so declare and enter the result in their minutes. [Id.]

Art. 7936. Issuance of bonds.—After declaring the result of said election, the supervisors shall make

and enter an order in their minutes directing the issuance of bonds for such district sufficient in amount to pay for such proposed improvements with all necessary actual and incidental expenses connected therewith, not to exceed the amount specified in said order and notice of election. The provisions of Chapter 2 of this title providing for the issuance, denominations, rate of interest, manner and conditions of payment and maturity dates of water improvement district bonds shall apply. [Id.]

Art. 7937. Bonds: approval.—Before such bonds are offered for sale, there shall be forwarded to the Attorney General a certified copy of all proceedings had in the organization of the district, and with reference to the issuance of such bonds in connection with the bonds themselves, and such other information respecting same as he may require. The Attorney General shall carefully examine said bonds in connection with the record and Constitution and laws of this State governing the issuance of such bonds; and if such examination shows that such bonds are issued in conformity thereto, and that they are valid and binding obligations upon said district, he shall so officially certify. [Id.]

Art. 7938. Registration of bonds.—When such bonds are so approved, they shall be registered by the Comptroller in a book kept for that purpose and the certificate of the Attorney General as to their validity shall be preserved of record; whereupon, such bonds shall be held prima facie valid in every action, suit or proceeding in which their validity may be brought into question. In every suit to enforce collection of such bonds and interest thereon, the only available defense against the validity of such bonds shall be forgery or fraud. [Id.]

Art. 7939. Sale of bonds.—After such bonds have been so registered, the supervisors shall sell same on the best terms and for the best price possible, not less than their face value and accrued interest; and shall promptly pay over to the district depository the proceeds of such sale to be placed to the credit of such district. [Id.]

Art. 7940. Bonds: payment.—At the time of the payment of interest or for redemption of district bonds, the depository shall receive and cancel any interest coupons so paid or any bonds so discharged, and when such interest coupon or bond shall be turned over to the supervisors, the account of such depository shall be credited with the amount thereof, and such bond or coupon shall be cancelled and destroyed. [Id.]

Art. 7941. Bonds: record book.—When bonds have been so issued, the supervisors shall procure and deliver to the county treasurer a well bound book in which a list shall be kept of all such bonds with their manner of payment, amount, rate of interest, date of issuance, when due, where payable, amount received for same, and the tax levy to pay interest on and redeem such bonds; and such books shall at all times be open to the inspection of the parties interested, either as taxpayers or bond holders. Upon the payment of any bond, said treasurer shall make an entry thereof in said book; and he shall receive for such services the same fees allowed by law to the county clerk for recording deeds. [Id.]

5. TAXES

Art. 7942. Duties of assessor.—The district assessor shall [return the assessment rolls and keep bound records thereof, fuse to sign the oath for tax assessments, shall make up and] return the assessment rolls and keep bound records thereof, collect all taxes and deposit the same weekly and make monthly reports of such collections, maintain an office, and be subject to the rules and regulations of the supervisors, in the same manner as provided by law for district tax assessors of water improvement districts. [Id.]

The bracketed matter is a typographical error.

Art. 7943. Collection of taxes.—All taxes provided for herein shall be collected under the direction of the district collector. He shall keep a true account of all moneys collected, and deposit same as collected in the district depository, and shall file with the district secretary a true statement of all money collected once a week. He shall use a duplicate receipt book and shall give a true receipt for each collection made, retaining in such book a true copy thereof which shall be preserved as a record of the district. [Id.]

Art. 7944. Assessor's accounts.—The assessor shall be charged by the supervisors upon a permanent finance ledger kept for the purpose by the district, with the total assessment as shown by the assessment rolls; and proper credit shall be given to him for all sums paid over to the depository as shown by his monthly reports; and upon final annual settlement, he shall make a complete report of all taxes that have not been collected, which report shall be audited by the supervisors and proper credits given therefor. Such annual settlements shall be made on the first Monday in May. [Id.]

Art. 7945. Tax assessments.—Immediately after the voting of such bonds, the district tax assessor shall at once proceed to make an assessment of all the taxable property, both real, personal and mixed in his district; and such assessment shall be made annually thereafter. Said assessment shall be made upon blanks to be provided by the district supervisors; and shall consist of a full statement under oath by the party rendering same of all property owned by him in said district and subject to State and county taxation, and shall state the full value thereof. Said assessor shall make out similar lists of all property not rendered for taxation in such district that is subject to State and county taxation. He shall have authority to administer oaths to fully carry out the provisions of this article. [Id.]

Art. 7946. Assessment dates.—The assessment of taxes for such district shall be made on the first day of January of each year, and shall be completed and the lists and books ready to deliver on or before the first day of June. [Id.]

Art. 7947. Shall render property.—Each person, partnership or corporation owning taxable property in such district shall render same for taxation to the district assessor when called upon to do so, and if not so called upon, shall on or before June first of each year render for taxation all property owned by him in the district subject to taxation. [Id.]

Art. 7948. Board of Equalization.—At their first regular meeting, or as soon thereafter as practicable, and annually thereafter, the supervisors shall appoint three commissioners, each being a qualified voter and resident property owner of the district, who shall be styled the "Board of Equalization," and at the same meeting shall fix the time for the meeting of such Board for the first year. At such time said Board shall convene to receive all assessments, lists or books of the district assessor for examination, correction, equalization, appraisement and approval. At all meetings of such board a secretary shall keep a permanent record of all proceedings thereof. Each such commissioner and the secretary shall receive not exceeding five dollars per day for such services for the time actually engaged in the discharge of their duties. [Id.]

Art. 7949. Oath of members.—Before entering upon the duties as such board, each member shall take and subscribe to the following oath: "I, ————, do solemnly swear that I will to the best of my ability make a full and complete examination, correction, equalization and appraisement of all property contained within said district, as shown by the assessment list or books of the assessor for said district." Said oath shall be spread upon the minutes of said board. [Id.]

Art. 7950. Duties of board.—The Board of Equalization shall have the same powers and exercise the same duties with respect to such district, as

is provided by law for equalization boards of water improvement districts. [Id.]

Art. 7951. Appraisal dates.—The Board of Equalization after the first year shall convene annually on the first Monday in June to receive all assessment lists or books of the assessor, and shall complete their examination and equalization of said lists by the second Monday in June, and deliver said rolls to the assessor by the second Monday in July, and said rolls shall be completed by the assessor and approved by the board and returned to said assessor by the first Monday in September. [Id.]

Art. 7952. Tax levy.—When bonds have been issued, the supervisors shall levy and cause to be assessed and collected taxes upon all property, real, personal and mixed, in such district, based upon the full value of each piece of property, sufficient to pay the interest on such bonds and to create a sinking fund sufficient to redeem and discharge such bonds at maturity; and such taxes shall thereafter be levied annually so long as such bonds are outstanding, sufficient to accomplish such purposes. [Id.]

Art. 7953. Interest and Sinking Fund.—There is hereby created an "Interest and Sinking Fund" for such district, and all taxes collected under this law for the payment of interest or redemption of district bonds shall be credited to such fund, and shall only be paid out to satisfy and discharge the interest on district bonds or for the cancellation and surrender of such bonds, and to defray the expenses of assessing and collecting such taxes. [Id.]

Art. 7954. May invest sinking fund.—Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in bonds of the series to which such funds apply if offered for redemption before maturity upon terms deemed advantageous to the district by the supervisors. [Id.]

Art. 7955. Maintenance tax: election.—If at any time it should be deemed necessary for the supervisors to vote a maintenance tax, they shall call an election in such district to submit the question "For a maintenance tax;" "Against a maintenance tax;" and shall state the amount thereof. Such sum may be specific, or may be a maximum not to be exceeded. Such election shall be held and the votes canvassed in the same manner as provided for the issuance of bonds. [Id.]

Art. 7956. Maintenance tax levy.—When such tax is voted, the supervisors shall thereafter levy and cause the same to be assessed and collected as other taxes, to an amount not exceeding the specific sum voted. The proceeds of such taxes shall be used for the maintenance, upkeep, repairs and additions to the improvements, or other lawful expense incurred by and on behalf of such district and for no other purposes. The right to levy such taxes shall remain in force until abrogated in whole or in part by another such election. Elections upon the question of repeal or reduction of such taxes shall not be held oftener than every five years. The supervisors may or may not levy such taxes if they are not necessary. [Id.]

Art. 7957. Maintenance fund.—There is hereby created a "Maintenance and Operating Fund," which shall consist of all money collected by assessment or otherwise for the maintenance and operation of the properties purchased or constructed or otherwise acquired by such district. All salaries of officers and employés, other than the assessor and collector and all expenses of operation of every kind shall be paid out of such fund. [Id.]

Art. 7958. Collection dates.—All taxes shall become due and payable on the first day of October of each year and shall be paid on or before the thirty-first day of January thereafter. [Id.]

Art. 7959. Delinquent taxes.—All of the provisions of Chapter 2 of this title relating to the lien, penalties, interest and costs, preparation and publication of the delinquent tax roll, suit for collection and foreclosure proceedings, attorney's fees and fees of officers in such proceedings for the collection of delinquent taxes, and redemption of lands before sale, shall apply to the collection of such taxes in districts operating hereunder. [Id.]

The provisions of Chapter 2 referred to are articles 7677 to 7685 hereof.

II. LEVEES

CHAPTER FIVE

STATE RECLAMATION ENGINEER

Art.
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7969. Shall advise districts.
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7971. Record of expenditures.

Article 7960. Appointment.—The Governor shall biennially appoint a State Reclamation Engineer, with the advice and consent of the Senate. Said engineer shall be a thoroughly experienced and skilled topographer and hydrographer, draftsman and reclamation engineer of not less than five years actual experience in organizing and supervising goedetic [geodetic] and topographic surveying and mapping of large areas, and in the general direction of field and office engineering corps. He shall be thoroughly experienced in making and passing upon reclamation plans and estimates, and in the preparation and writing of technical reports and publications, and in the reproduction of maps. Said engineer shall have his office in the State Capitol. [Acts 1913, p. 292.]

Art. 7961. Powers.—Said engineer shall have general supervision of all work authorized by this law, and he shall perform, conduct or supervise the same. He shall have power to employ such assistants, to make or authorize to be made such purchases, to incur or authorize to be incurred such other expenses, and to formulate and enforce such reasonable and proper rules and regulations governing his official work, and the work of his assistants, both in the office and in the field, as may be necessary to perform with correct dispatch and economy the work herein authorized to be done. [Id.]

Art. 7962. Reclamation of overflowed lands.—The chief purpose of this law shall be to plan and mark out upon the ground all the improvements necessary to reclaim or cause to become suitable for agricultural uses, the overflowed and swamp lands, and overflowed areas in the coastal plain, and other lands in this State, which, by reason of the temporary or permanent excessive accumulation of water thereon, or contiguous thereto, are not suitable for such uses. [Id.]

Art. 7963. Surveys authorized.—To accomplish such purpose, it is hereby authorized and ordered that the necessary investigations; estimates, surveys, maps, reports and publications shall be made, and any other necessary work incident thereto shall be done, which may be required in the process of planning or marking out upon the ground the most practical, permanent, economical and equitable improvements or systems of improvements such as levees, dikes, dams, canals, drains, water-ways, reservoirs or any or all of them, and other improvements incidental thereto. [Id.]

Art. 7964. Surveys: natural conditions.—As far as possible, said improvements shall be designed with primary consideration to the topographic and hydrographic conditions, and in such manner that each division thereof shall be a complete united project, forming a co-ordinate part of an ultimately finished series of projects, so constituted that the suc-

cessful operation of the improvements in each united project shall co-operate to the successful operation of the improvements in the other united projects existing within the same hydraulic influence. [Id.]

Art. 7965. Surveys: results.—The said improvements shall be discussed in reports, shown on maps, drawings or diagrams, or otherwise recorded or published. All such final results which are of value to this State shall be filed for public reference in the office of said engineer. [Id.]

Art. 7966. Details of work.—The engineer shall have power to determine at what points within the territory herein designated the said work shall be done; and he shall determine the manner and the season that the results of said work shall be made public. [Id.]

Art. 7967. Co-operative agreements.—The engineer shall have power, if in his judgment it will accomplish the objects herein provided for, to make and approve agreements or contracts for co-operation with any branch of the Federal, State, county or city governments for the doing of all or any part of the work herein authorized; and said engineer shall have power to cancel any said agreement or contract upon ten days written notice to such branch concerned. The engineer shall accomplish such objects independently of such co-operation, if he deems said co-operation not to be to the best interests of the State. [Id.]

Art. 7968. Co-operative conferences.—The engineer is empowered to confer with any branch of the Federal, State, county or city governments with a view to obtaining authority, assistance or advice in connection with his official work, whenever necessary or desirable, and he shall solicit the co-operation of such governments when the same may be to the best interests of the State. [Id.]

Art. 7969. Shall advise districts.—The engineer shall confer in a technical capacity with districts in this State that have requested his technical advice with a view to the adequate execution of proposed levee and drainage improvements contemplated in such districts. He shall receive no extra compensation for such advice. [Id.]

Art. 7970. District data.—Immediately prior to the approval of its bonds by the Attorney General, each drainage or levee district shall file with the engineer on forms furnished by him, a complete record showing each step in the organization of such district, and showing the boundaries, area, amount of bonds to be issued, together with plans, maps and profiles of improvements, and the district engineer's estimates and report thereon. [Id.]

Art. 7971. Record of expenditures.—The engineer shall keep an accurate record of all money spent by the State in the execution of the work authorized by this law. [Id.]

CHAPTER SIX

LEVEE IMPROVEMENT DISTRICTS

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1. ESTABLISHMENT

Article 7972. Levee improvement districts.—There may be created within this State conservation and reclamation districts to be known as Levee Improvement Districts, for the purpose of constructing and maintaining levees and other improvements on, along and contiguous to rivers, creeks, and streams, for the purpose of reclaiming lands from overflow from such streams, for the purpose of the control and distribution of the waters of rivers and streams by straightening and otherwise improving the same, and for the proper drainage and other improvement of such lands, all as contemplated by Section 59, Article 16, of the Constitution of this State, for the conservation and development of the natural resources of this State, which said districts shall have and may exercise all the rights, powers and privileges given by this Act and in accordance with its limitations and provisions.

This article and arts. 7973 to 8029 and 8030 to 8042 are from Acts 1925, 39th Leg., ch. 21, p. 50, §§ 1–70, unchanged.

Art. 7973. Petition to reclamation engineer.—Whenever any engineer shall make application in writing to the State Reclamation Engineer for authority to obtain information by proper surveys in respect to the feasibility of reclaiming any lands which may be later incorporated in a levee improve-

ment district, it shall be the duty of the State Reclamation Engineer, if satisfied that the applicant is competent and acting in good faith, to issue to such applicant express written authority to make such survey in order to obtain the desired information; and such engineer, acting under such written authority from the State Reclamation Engineer, is hereby authorized and empowered to go upon any lands proposed to be incorporated in any levee improvement district for the purpose of examining same with reference to the location of boundary lines, and for such other information which may be used in the formation of a levee improvement district.

Art. 7974. Petition for proposal to create levee.—When it is proposed to create a levee district wholly within one county, there shall be presented to the commissioners' court of the county in which the lands to be included in such district are located, or to the county judge of the county if the commissioners' court is not in session, a petition signed by the owners of a majority of the acreage of such proposed district, setting forth the proposed boundaries thereof, the general nature of the work proposed to be done, the necessity therefor and the feasibility thereof, stating whether the taxes proposed to be levied therein shall be on the ad valorem plan or based on assessed benefits, and designating a name therefor, which shall include the name of the county in which it is situated; and when it is proposed to create such a district to be composed of lands in two or more counties, then a petition of the nature above indicated, signed by the owners of a majority of the acreage of such proposed district, designating the county of jurisdiction in respect to all matters concerning the said district, which county may be any county in which any part of district is located, shall be presented to the commissioners' court of such county, or, if the court is not in session, to the county judge thereof; and upon presentation of either such petition, it shall be the duty of the court to which it is presented, or the county judge of such county if the court be not in session, to fix a time and place at which such petition shall be heard before the commissioners' court of the county wherein it is filed, which date shall not be less than fifteen nor more than thirty days from the date of the order, and to order and direct the county clerk of such county, as ex officio clerk of the commissioners' court thereof, to issue a notice of such time and place of hearing, which notice shall inform all persons concerned of the time and place of hearing, and of their right to appear at such hearing and contend for or contest the formation of such district, as their interests may dictate, and to deliver notice to any adult person who is willing to execute the same by posting, as hereinafter directed. The order shall further direct the clerk forthwith to issue a notice of the filing of such petition and of its general purpose, stating the time and place of hearing, which shall be mailed forthwith to the State Reclamation Engineer at his office in Austin, Texas.

Art. 7975. Upon receipt of notice.—Upon receipt of the notice above provided for by any adult person willing to receive and execute the same, it shall be the duty of such person, or persons, if more than one shall act, if the district is wholly within a county, to post a copy of such notice at the door of the courthouse of said county, and copies at four different places within such proposed districts; if such district is located in more than one county such notice shall be posted at the door of the courthouse of each county in which any portion of the proposed district is situated, and four copies at four separate places within the boundaries of those portions of such district situated in each county. Such posting shall be for not less than ten days prior to the date fixed for the hearing, and the person, or persons so posting, shall make affidavit before some officer authorized by law to administer oaths of his, or their action in respect to such postings, and such affidavit when so made shall be conclusive of the facts sworn to.

Art. 7976. Deposit.—A petition for the formation of such a district, if the district is wholly within one ocunty [county], shall be accompanied by a deposit of fifty dollars, and if the district is proposed to be located in more than one county it shall be accompanied by a deposit of seventy-five dollars, which deposit shall be paid to the clerk of the court of jurisdiction, who shall therefrom, upon vouchers approved by the county judge, pay all expenses incident to the hearing herein provided for, returning any excess to the petitioners or their attorney.

Art. 7977. Duty of engineer.—The State Reclamation Engineer, upon receipt of the notice to him herein provided for, shall forthwith, by himself or deputy, examine said proposed district, and do, or cause to be done, such work in respect thereto as may be necessary to enable him to determine the necessity, feasibility and probable costs of reclaiming the land of such district from overflow, and the proper drainage thereof, together with the costs of organizing such district, and maintenance thereof, for a period of two years, and he shall, by himself or deputy, attend the hearing and file his written report in respect to the matters concerning which he has investigated and give to the court such further additional information as may be then required.

Art. 7978. Court to hear petition.—At the time and place set for the hearing of the petition, or such subsequent date as may then be fixed, the court shall proceed to hear such petition and all issues in respect to the creation of such proposed district, and any person interested may appear before the court in person or by attorney and contend for or contest the creation of such district, and offer testimony pertinent to any issue presented. Such court shall have exclusive jurisdiction to determine all issues in respect to the creation, or not, of such district, and of all subsequent proceedings in respect to said district if the same should be created. Such hearing may be adjourned from day to day and from time to time, as the facts may require. The court shall have power to make all incidental orders deemed proper in respect to the matters before it.

Art. 7979. Judgment and findings.—If upon the hearing of such petition, it be found that the same is signed by the owners of a majority of the acreage of the proposed district, and that due notice has been given, and that the proposed improvements are desirable, feasible, and practicable, and would be a public utility and a public benefit, and would be conducive to public health, then such court shall so find and render judgment reciting such findings and creating and establishing such district, which judgment and findings shall be embodied in an order which shall be entered of record in the minutes of said court, which order shall define the boundaries of such district, which need not include all of the lands described in the petition, if, upon the hearing a modification or change is found necessary or desirable. A levee improvement district created as herein specified shall be a governmental agency and a body politic and corporate, with such powers of government and with the authority to exercise such rights, privileges and functions concerning the purposes for which it is created as may be conferred by this chapter, or any other law of this State to the benefits of which it may become entitled. If at the hearing of such petition, as herein provided for, the commissioners' court shall enter an order dismissing the petition for the creation of said district, then, and in the event the petitioners, or any one of them or any taxpayer in such district, may appeal from said order to the district court of said county which appeal shall be perfected in the following manner, to-wit: notice of appeal shall be given at the time of the entry of said order by announcement of same before said court, which notice of appeal shall be entered on the minutes of said court, or by giving written notice within two days after the entry of such order; said notice to be a simple statement in writing to the effect that the undersigned gives notice of appeal from the order en-

tered on the date stated, which notice shall be filed with the clerk of the county court, and the appellant shall, within five days from the date of the entry of said order, file an appeal bond with two or more good and sufficient sureties payable to the county judge of the county, to be approved by the county clerk; conditioned upon the due prosecution of the appeal and payment of all costs incident thereto, and unless the appeal be thus perfected within five days after the rendition of the order, such order shall be final and conclusive, and there shall be no extension of time granted for the filing of the appeal bond; the county clerk, shall within five days after the filing of said appeal bond, transfer to the clerk of such district court all records filed with the county commissioners' court, pertaining to the establishment of said district, together with a transcript of the orders of the commissioners' court, and it shall be unnecessary to file any other or additional pleadings in said court. The court shall set the matter down for hearing, giving it precedence over all other cases, and the matters shall be tried and determined by the court, the hearing to be de novo. The judgment of the district court shall be final and conclusive, and the same shall be certified to the commissioners' court for its further action.

Art. 7980. Levee improvement districts entitled to benefits.—Levee improvement districts created under this Act or entitled to the benefits of its provisions, subject to the supervision and direction of the State Reclamation Engineer, or other superior authority created by law, and subject to the limitations in this Act contained, shall have full power and authority to build, construct, complete, carry out, maintain, protect, and in case of necessity, add to and rebuild all works and improvements within their district necessary or proper to fully accomplish any plan of reclamation lawfully adopted for or on behalf of such district, and may make all necessary and proper contracts, and employ all persons and means necessary or proper to that end; and in the accomplishment of such purposes they may or may not issue bonds, and may or may not incur indebtedness; provided, that no bonds by or on behalf of such district shall be issued nor shall any indebtedness against the same be incurred unless the proposition to issue such bonds or to incur such indebtedness shall be first submitted to the qualified property taxpaying voters of such district, and the proposition adopted by a majority vote of the taxpaying voters of the district voting at an election held to determine such questions; and no enumeration of specific powers in this Act shall be held to be a limitation upon the general powers hereby conferred except as may be distinctly expressed.

Art. 7981. Eminent domain.—The right of eminent domain is hereby expressly conferred upon all districts to enable them to acquire the fee simple title, easement or right of way to, over, and through any and all lands, water, or lands under water, private or public (except land and property used for cemetery purposes), within[,] bordering upon, adjacent or opposite to such districts, necessary for making, constructing and maintaining all levees and other improvements for the improvement of a river or rivers, creek or creeks, or streams within or bordering upon such districts to prevent overflows thereof.

Adequate compensation shall be made to the owners of any property so taken, damaged or destroyed for such purposes. The levee district shall have the power to acquire any such property for any such purposes, which for any reason has not been condemned by the board of appraisers in the manner hereinafter provided, and may by condemnation proceedings acquire any property not acquired by the appraisers which condemnation proceedings shall be brought in the name of the levee district.

Art. 7982. District supervisors.—The district supervisors of any district are hereby empowered to acquire the necessary right of way for all levees and other necessary improvements contemplated by this Act, by gift, or condemnation proceedings; and they may by the same methods acquire any levee or other improvements already constructed.

Art. 7983. Authorized to go on lands.—The supervisors of any district and the engineer and employés thereof are hereby authorized to go upon any lands lying within or adjacent to said district for the purpose of examining same with reference to the location of levees, drainage ditches and all other kinds of improvements to be constructed for or within such district, and for any other lawful purpose connected with their plan of reclamation, whether herein enumerated or not.

Art. 7984. Empowered to make levees.—The said levee improvement districts are hereby authorized and empowered to make all the necessary levees, bridges and other improvements across or under any railroad embankments, tracks, or rights of way, or public or private roads or the rights of way thereof, or levees or other public improvements of other districts, or other such improvements and the rights of way thereof, or to join such improvement thereto, for the purpose of enabling the said levee improvements necessary for the said district; provided, however, that notice shall first be given by said levee improvement district to the proper railroad authorities or other authorities or persons, relative to the additions or changes to result from the improvements contemplated by the said levee improvement district; and the said railroad authorities, or persons, shall be given thirty days in which to agree to the said work, or to refuse to agree thereto, or in which they, if they so desire, may at their own expense construct the said improvements in their own manner; provided, such design or manner of construction shall be satisfactory to the said levee improvement district and approved by the State Reclamation Engineer or his deputy.

Art. 7985. Right of way.—Levee improvement districts are hereby given the right of way across all public or county roads, but they shall restore such roads where crossed to their previous condition for use, as near as may be.

Art. 7986. Authority to act.—Levee improvement districts shall have authority to act jointly with each other, with cities and towns and other political subdivisions of the State, with other states, and with the Government of the United States in the performance of any of the things permitted by this Act; such joint acts to be done upon such terms as may be agreed upon by their supervisors, subject to the approval of the State Reclamation Engineer.

Art. 7987. Supervisors appointed.—When a levee improvement district has been created under this Act, the court creating the same shall forthwith appoint by a majority vote three supervisors for such district, who shall be known as "district supervisors," and whose duties shall be as hereinafter provided. Said supervisors shall each receive for his services not more than five dollars per day for the time actually engaged in work for said district, and all expenses while so engaged, to be paid upon rendition of sworn accounts, approved by the county judge of the county having jurisdiction; and they shall hold their offices for two years, and until their successors are appointed and qualified; unless sooner removed by a majority vote of the court of jurisdiction; and any vacancy in office shall be filled by a majority vote of the court having jurisdiction which court shall continue from time to time to appoint supervisors in order that the board may always be full.

Art. 7988. Bond.—Before entering upon their duties the district supervisors shall each take and subscribe before some officer authorized to administer oaths, an oath to faithfully and impartially discharge his duties as supervisor and render true accounts of his services and expenses, and each shall enter into bond with good and sufficient security, payable to the levee improvement district, in the sum of one thousand dollars, unless the court of jurisdiction shall

fix a larger amount, which it may do when in its judgment the interests of the district may so require, which bond shall be conditioned for the faithful performance of the duties of such supervisor and that he will render true accounts of his services and expenses, which bond shall be approved by the county judge of the county the commissioners' court of which has jurisdiction, and shall be filed with the clerk of the court having jurisdiction and by him entered of record in his office, and the original bond shall be retained on file.

Art. 7989. Name engineer.—District supervisors, after their qualification, shall organize by electing one of their number chairman and one vice chairman, and shall elect a secretary, who need not be a member of the board; and an engineer and such other employés or assistants as may from time to time be found necessary to the successful carrying on and completion of the work and business of the district; they shall certify their organization and the name of their engineer, who shall be known as "district engineer," to the commissioners' court of the county having jurisdiction.

Art. 7990. District engineer have control.—The district engineer, subject to the authority of the State Reclamation Engineer, shall have control of the engineering work of the district, and shall, with such assistants as may be necessary in the judgment of the board of supervisors, as soon as practicable after his appointment, make a survey of the lands within the boundaries of the district and of all lands adjacent thereto that will be improved or reclaimed, in whole or in part by any system of levees and drainage that may be adopted; and shall make report in writing to the board of supervisors of his work in this regard, with maps and profiles of his surveys, which report shall contain a full and complete plan for draining, constructing levees and reclaiming the lands of the district from overflow or damage by waters from the streams in or adjacent to such district, and whose waters may in anywise affect the same, which plan may include, and where necessary shall include costs of straightening streams from which injury to the lands of said districts may result; and shall also in such report indicate the physical characteristics of the lands within the district, the location of any public roads, railroads, or the rights of way or roadways and other property or improvements located on said lands; a duplicate of which report shall be filed with the State Reclamation Engineer, for his approval. Such report before adoption may be modified by the State Reclamation Engineer, or by the board of supervisors, with his approval, and when approved by the State Reclamation Engineer and adopted by the board of supervisors, the same shall be known as, and shall be designated as "The Plan of Reclamation"; provided that no plan of reclamation, after such approval, shall be modified or changed in any manner, the cost of which shall exceed one thousand dollars ($1,000.00), except upon petition to the State Reclamation Engineer, signed by the owners of a majority of the acreage of lands in such district, and approved by the State Reclamation Engineer. When the plan of reclamation has been adopted as herein provided a copy of same shall be filed with the county clerk in each county where any lands lie, that will be affected in anywise by the plan of reclamation, and such filing shall be notice of its contents to all persons owning or having any interest in any lands in the county in which same is filed; and any amendments to said plan of reclamation shall be filed in like manner.

Art. 7991. Commissioners of appraisement.—When the petition for the creation of a levee improvement district stipulates that taxes are to be levied upon a benefit basis, then as soon after the approval and adoption of the plan of reclamation as practicable, the commissioners' court of the county of jurisdiction shall appoint three disinterested commissioners, who shall be known as "commissioners of appraisement," and who shall be freeholders but not owners of land within the district for which they are to act, and neither shall be related within the fourth degree of affinity or consanguinity to any of the members of the commissioners' court or the board of supervisors or any land owners in the district; and such commissioners of appraisement shall proceed as follows:

Art. 7992. Duties of commissioners.—The secretary of the board of supervisors, immediately following the appointment of the commissioners above mentioned shall in writing notify each of his appointment, and in the notice designate a time and place for the first meeting of such commissioners. In the event any such commissioner shall resign, his place shall be filled in the same manner as vacancies on the board of supervisors. It shall be the duty of the commissioners to meet at the time and place specified, or as soon thereafter as may be found practicable at some time and place to be agreed upon by them, when they shall each take and subscribe an oath that they will faithfully and impartially discharge their duties as such commissioners, and make true report of the work done by them, and at such meeting the commissioners shall organize by electing one of their number chairman and one vice chairman, and the secretary of the board of supervisors, or, in his absence, such person as the board of supervisors may appoint, shall be secretary of said board of commissioners during their continuance in office, and shall furnish to them such information and such assistance as may be within his power and necessary to the performance of their duties.

Art. 7993. Duty of secretary.—Within thirty days after qualifying and organizing as above directed, the commissioners shall begin their duties, and they may at any time call upon the attorney of the district for legal advice and information relative to such duties, and may, if necessary require the presence of the district engineer, or one of his assistants, at such time and for so long as may be necessary to the proper performance of their duties. Said commissioners shall proceed to view the lands within such district, and all other lands which will be affected by the plan of reclamation for such district if carried out, and all public roads, railroads, rights of ways and other property or improvements located upon such lands, and all such lands within or without the district as may be acquired under the provision of this Act for any purpose connected with or incident to the fully carrying out of the plan of reclamation; they shall assess the amounts of benefits and all damages, if any, that will accrue to any tract of land within such district or which may be affected by the plan of reclamation, or to any public highway, railroad, and other rights of way, roadways or other property, from carrying out and putting into effect the plan of reclamation for such district; and they shall assess the value of all lands within or without the district to be acquired for right of way or other purposes; and the failure of said commissioners of appraisement to return damages to any tract of land within or without the district shall be deemed a finding that no damage will be done to that tract. The board shall prepare a report of their findings, which shall show the owner of each piece of property examined and on or concerning which any assessment is made, together with such description of said property as may identify the same, as well as the value of all property to be taken or acquired for rights of way or any other purposes connected with the carrying out of the plan of reclamation as finally approved by the State Reclamation Engineer; which report shall be signed by at least a majority of the commissioners and filed with the secretary of the board of supervisors of the district, which report shall show the number of days each commissioner has been employed and the actual expenses incurred by each during his service as commissioner; and each shall be paid by the district five dollars per day for his services, and all necessary expenses in addition

thereto, upon the approval of his accounts for such per diem and expenses by the board of supervisors.

Said commissioners shall in their report fix a time and place, when and where they will hear objections thereto, and such date shall be not less than twenty days from the filing of such report.

Art. 7994. Notice of publication.—When the report of the commissioners shall have been filed with the secretary of the board of supervisors he shall forthwith give notice by publication in a newspaper published in each county wherein any portion of the district is located, and wherein any lands lie that will be in any way affected by the carrying out of the proposed plan of reclamation, for at least once a week for two consecutive weeks prior to the date fixed for such hearing, of the time and place of such hearing, which notice shall be in substantially the following form:

To the owners and all other persons having any interest in any lands lying in ——— County, take notice, that a copy of the plan of reclamation of the ——— levee improvement district has heretofore been filed with the county clerk of this county and that commissioners have been appointed to assess benefits and damages accruing to the land or other property within or without the said levee district which will be benefited, taken, or otherwise affected or damaged by the carrying out of said plan of reclamation. The report of said commissioners has been filed in my office at ——— and all persons interested may examine the same and make objection thereto in whole or in part and all persons claiming damage to their lands within or without the district to which no damages have been assessed in said report are required to file claim for such damage in my office on or before the ——— day of ———, 19—, and all persons failing to make such objection or claim for damages will be deemed to have waived the same. Further take notice that the said commissioners of appraisement will meet on said day of ——— for the purpose of hearing and acting on objections to their report and claims for damages.

———

Secretary, Board of Supervisors.
——— Levee District.

The secretary of the board of supervisors shall also mail a written notice to each person whose property is listed in the report of the commissioners, if his post office address is known, stating the time and place of such meeting, which notice shall state in substance that the report of the commissioners to assess benefits and damages accruing to the land and other property by reason of the plan of reclamation for the district in question has been filed in his office, and that all persons interested may examine the same and make objections thereto in whole or in part, and that the commissioners will meet on the day and at the place named for the purpose of hearing and acting on objections to such report; and the secretary upon the day of the hearing shall file in his office the original notice, with his affidavit thereto, showing the manner of publication and the names of all persons to whom notices have been mailed, and that the post office of those to be affected to whom notices were not mailed were unknown to him and could not be ascertained by reasonable diligence; and copies of such notice and affidavit shall be filed, one with the commissioners of appraisement and one with the clerk of the commissioners' court having jurisdiction.

Art. 7995. Filing exceptions and damage claims.—At or before the hearing upon the report of the commissioners of appraisement, any owner of land or other property affected by such report, or the plan of reclamation, may file exception to any or all parts of such report, and any person to whose land no damages has been assessed and who believes that his land will be damaged by the carrying out of the plan of reclamation, may also file with the secretary of the board of supervisors a claim for such damages; and the said commissioners, at the time and place named in such notice, shall proceed to hear and pass upon all such objections and claims for damages, and may make such changes and modifications from time to time as may be necessary to conform the report to their findings; and may grant, in whole or in part, or may over rule, such claim for damages. Such hearing may be adjourned from day to day. When commissioners shall have finally acted they shall make a decree concerning such report insofar as it is confirmed, and approving and confirming the same as modified or changed insofar as it may be modified or changed, and shall condemn such land within or without the district as shall be needed for right of way or other purposes, and shall adjudge all damages, if any. The commissioners shall have power to adjudge and apportion costs incurred upon the hearing in such manner as may be deemed equitable. The findings of the commissioners as to benefits shall be final and conclusive and shall be entered of record in the minutes of the board of supervisors and certified copies thereof shall be filed with the county clerk of each county in which any portion of the lands within such district are located, as a permanent record of such county, and such filing shall be notice to all persons of the contents of such decree. Any person, or the board of supervisors of such levee district, may appeal from the decree of the appraisers assessing or refusing to assess damages or fixing the value of right of way; the only questions to be considered on such appeal shall be whether just compensation has been allowed for property taken or whether property damages have been allowed for property injured or whether any damages are recoverable at all. Such appeal shall be taken to the district court of the county of jurisdiction in the manner, under the conditions, and within the time provided by Article 7980, for appeals from judgments of the commissioners' court refusing to create the levee district, and the district court shall have jurisdiction thereof, regardless of the amount. The secretary of the board of supervisors in case any appeal or appeals are filed, within five days after filing of the appeal, shall send to the district clerk the plan of reclamation or certified copy thereof, together with a transcript of that part of the commissioners' report affecting the lands concerned in the appeal or appeals, and a transcript of the claim or claims for damages, as the case may be, and the action of the commissioners of appraisement thereon, and such appeals may be consolidated in the district court. The trial in the district court shall be de novo and proceedings shall be in accordance with the laws of this State in suits for damages, and the claimant shall be considered as plaintiff and the district as defendant, excepting that no further pleadings shall be required. Appeals may be taken from the judgment of the district court as in other civil cases. No appeal shall delay the prosecution of the work, but upon payment by the district supervisors to the district clerk the amount of damages awarded by the commissioners of appraisement, and upon the district making bond to pay to the owner of any further amount that may be awarded him upon such appeal, title to such property so condemned shall thereupon vest in the district and it shall be entitled to immediate possession thereof. No person owning or having any interest in any land in any county in which copy of the plan of reclamation has been filed and notice published of the hearing before the commissioners of appraisement, who has failed to file claim for damages as above provided, or who has failed to file objection to the damages assessed by the commissioners against his land, or who having filed such claim or objection, has failed to appeal from an adverse ruling upon such claim or objection, shall thereafter be heard to claim any damages from the levee district or its supervisors, officers or agents by reason of the carrying out of the plan of reclamation.

Article 7980 referred to above should be article 7979 hereof.

Art. 7996. Basis of taxation.—After the action of the commissioners of appraisement, as aforesaid, their final findings, judgment and decree assessing

benefits, until lawfully changed or modified, shall form the basis of taxation within and for the levee improvement district for which they shall have acted, for all purposes for which taxes may be levied by, for or on behalf of such district, and all taxes shall be apportioned and levied on each tract of land, railroad and other real property in the district in proportion to the benefits to the property named in such final judgment or decree, as shown thereby. In all matters before the commissioners of appraisement, parties interested may not only appear in person or by attorney, or both in person and by attorney, but they shall be entitled to process for witnesses, to be issued by the chairman of the commissioners of appraisement on demand, and such commissioners shall have the same power as a court of record to enforce the attendance of witnesses.

Art. 7997. Limitation on commissioners.—In a district in which taxes are levied on the ad valorem basis, commissioners of appraisement shall be appointed and shall proceed in like manner as provided by Article 7991 to 7995, inclusive, of this Act, excepting that they shall not assess any benefits.

And, thereupon, all proceedings shall be had, notices given and hearings held in like manner; and all provisions of this statute relating to assessment of damages in districts levying taxes on a benefit basis shall apply to the assessment thereof in districts taxing on the ad valorem basis.

Art. 7998. Rate of taxation.—In all levee improvement districts providing for the levy of taxes upon an ad valorem basis, the taxable property shall be assessed at the same value as assessed for State and county purposes. In the assessment of taxes in such districts, and in all matters pertaining thereto or connected therewith, the county tax assessor shall have the same powers and shall be governed by the same rules, regulations and proceedings as are provided by the laws of this State for the assessment and collection of county and State taxes. And the county commissioners' court shall constitute the board of equalization for such levee improvement district or districts, and all laws governing boards of equalization for county and State taxing purposes shall govern such board or boards for such levee improvement districts. It shall be the duty of the county tax assessor of the county to assess all property within such levee improvement district and list the same for taxation in the books or rolls furnished him by the commissioners' court for that purpose, and return said books and rolls at the same time when he returns the other books and rolls of the State and county taxes for correction and approval. If the commissioners' court shall find said books or rolls correct, they shall approve the same and order the county clerk to issue a warrant against the county treasurer in favor of said tax assessor to be paid from the funds of said levee improvement district. The tax assessor shall receive for his said services such compensation as the commissioners' court shall deem proper to compensate him for the amount of work done; provided, that the said tax assessor shall in no event be allowed more than he is now allowed by law for like services. Should the tax assessor fail or refuse to comply with the orders of the commissioners' court requiring him to assess and list for taxation all property in such improvement district as herein provided, he shall be suspended from the further discharge of his duty by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers.

And levee improvement districts providing for the levy of taxes upon an ad valorem basis, and embracing lands located in more than one county, shall have all the rights, powers and privileges of such levee improvement districts that include lands in one county. The tax assessor of each county having lands included within such levee improvement district shall assess the taxes levied by the commissioners' court of his county against the territory included in such levee improvement district for each and every year that such tax is levied. It shall be the duty of the tax assessor to make up a separate tax roll covering the levee improvement taxes on territory in his county included in such levee improvement district, and deliver such separate tax roll together with the general tax rolls of his county. The said separate tax roll shall guide the tax collector in collecting the levee improvement taxes for such district. It shall be the duty of the tax collector to collect such levee improvement tax for such levee district in his county for every year that such tax has been levied in such district and keep a separate account covering the territory of his county included in such levee improvement district for the purpose of determining how much tax has been collected and how much tax shall be paid by his county to such levee improvement district.

Art. 7999. Non-bond issuing districts.—Levee improvement districts created under this Act, desiring to effect and carry out their plans of reclamation without the issuance of bonds, shall, subject to the limitations hereinabove stated, be authorized and empowered through their boards of supervisors to make such arrangements by contributions from land owners, or otherwise, as may be necessary to provide the funds requisite to the completion of their improvements; and may, by vote of the resident property taxpayers of such districts, create such indebtedness, to be evidenced otherwise than by bonds, as may be deemed requisite. Provided such indebtedness shall never exceed the cost of construction of improvements to be made according to the adopted plan of reclamation approved by the State Reclamation Engineer, and the cost of maintenance of such improvements for two years as estimated by him, plus ten per cent additional to meet emergencies, modifications and changes lawfully made, and plus all damages awarded against the district.

Art. 8000. Petition for bond election.—Where any levee improvement district desires to issue bonds to raise funds for its works of improvements, there shall be presented to the commissioners' court having jurisdiction, or to the judge thereof, in vacation, a petition signed by the owners of a majority of the acreage of lands included within such district, praying for the issuance of bonds to an amount stated, which amount shall not exceed the costs of construction of improvements to be made according to the adopted plan of reclamation approved by the State Reclamation Engineer, and the cost of maintenance of such improvement for two years as estimated by him, plus ten per cent additional to meet emergencies, modifications and charges lawfully made, plus all damages awarded against the district. The petition shall state the rate of interest to be borne by such bonds, and pray that an election be ordered within and for such district to determine whether or not bonds shall be issued by and on behalf of said district for the purposes above indicated, and to the amount stated, and whether taxes shall be levied wiithin [within] and for said district in payment thereof; provided, that said bonds shall bear a rate of interest not exceeding six per cent per annum.

Art. 8001. Manner of election.—Upon presentation of said petition such commissioners' court, if in session, or the judge thereof, if the court be not in session, shall make and cause to be entered of record upon the minutes of said court an order directing that an election be held within and for such levee improvement district at a date to be fixed in the order, to be not less than fifteen nor more than thirty days after the date of such order, for the purpose of determining the questions mentioned in such petition. At such election those desiring to vote in favor of the issuance of bonds and levy of taxes in payment thereof, shall have written or printed on their ballots; "For the issuance of bonds and levy of taxes in payment thereof," and those desiring to vote against the proposition submitted shall have printed or written on their ballots; "Against the issuance of bonds and levy of taxes in payment thereof." Each and every levee improvement district is hereby constituted an election precinct for the purpose of the election above specified and all other elections which may be ordered or held

under any provisions of this Act. When elections are ordered the judge or court ordering the same shall fix the polling place or places for the holding of such election, and name a judge and two clerks at each polling place, and more judges or clerks if deemed necessary; and there shall be at least one polling place in each county in which any portion of the district is located.

Art. 8002. Expense of election.—When a petition for a bond election is presented it shall be accompanied by a deposit of two hundred dollars, from which shall be paid all expenses of such election, and such other expenses as may be properly incurred up to the sale and issuance of bonds, and any excess shall be returned to the petitioners or their attorney; and when bonds are issued the amount of such expense shall be refunded to the petitioners or their attorneys from the proceeds of the bonds.

Art. 8003. Posting notice of election.—When an order for an election has been made, the clerk of the commissioners' court of the county having jurisdiction shall forthwith issue and place in the hands of the sheriff of the county, if the district is wholly within one county a notice stating in substance the contents of such election order, and the time and place or places of such election, and it shall be the duty of such sheriff, by himself or deputy, forthwith to post a copy of such notice at the door of the courthouse of his county, and four other copies at four different places within the boundaries of such district, which posting shall be done not less than ten days prior to the date fixed for said election; if such district is located in more counties than one, then such notice may be delivered to any adult person, who shall post copies of the same, one at the door of the courthouse of each county in which any portion of such district is situated, and four copies at four separate places within the boundaries of those portions of the district situated in each county, which posting shall be for not less than ten days prior to the date of said election; such sheriff or person posting shall make due return to the clerk of the court having jurisdiction of his action in the premises; the return of the individual other than the sheriff to be under oath before some person authorized by law to administer oaths, and the return of the sheriff and such oath shall be conclusive evidence of the facts stated.

Art. 8004. Who may vote.—All elections held under any provisions of this Act shall be governed as near as may be by the general election laws of this State, except as modified hereby, and shall be held and conducted by the judges and clerks appointed by the court of jurisdiction, or in their absence or refusal to act, by others chosen by the voters, and the supervisors of the district shall furnish all necessary ballots and other election supplies requisite to such elections. None but qualified property taxpaying voters of such district shall vote at any election to authorize the issuance of bonds by or on behalf of the district or for the creation of any indebtedness against any district, or for or against any maintenance tax.

Art. 8005. Making returns.—Immediately after any election under this Act the officers holding the same shall make return of the result thereof to the commissioners' court having jurisdiction, and return the ballot boxes to the clerk of said court, who shall safely keep the same and deliver them, together with the returns of the election, to the commissioners' court of jurisdiction at its next regular or special session, and said court shall at such session canvass the vote and returns, and if it be found that the proposition submitted has been adopted by a majority of the qualified property taxpaying voters of such district voting at said election, then the court shall declare the result, and, if the election be for the issuance of bonds, shall declare that it resulted in favor of the issuance of bonds and the levy of taxes in payment thereof; and, if the result be against the issuance of bonds, then it shall declare that the result was against the issuance of bonds and the levy of taxes in payment thereof; and, if the question be for a maintenance tax, or other tax, then it shall declare the result to be for or against such tax, as the case may be; or, if the question be any other proposition which may be properly submitted at an election, the order shall declare the result to be for or against the proposition submitted, as the case may be, and an order, or orders declaring such result shall be entered upon the minutes of such court.

Art. 8006. Petition for and notice of election.—If, at the time for a bond election, or at any other time, the supervisors of any district created under this Act, or entitled to its benefits, shall desire to be submitted to the voters of the district the question of a maintenance tax, or other proposition proper to be submitted to them, they shall petition the commissioners' court of jurisdiction for an election upon the question so desired to be submitted, and it shall be the duty of the court to order an election, and that notice be given substantially as in case of a bond election, and notice shall be given substantially as in case of such elections, and all other proceedings shall be in respect to the question so submitted substantially in accordance with the provisions hereof in respect to a bond election.

Art. 8007. Issuance of bonds.—If a bond election in any district created under this Act, or entitled to its benefits, shall have resulted in favor of the issuance of bonds and levy of taxes in payment thereof, after such result has been duly declared, the commissioners' court of jurisdiction shall make an order directing the issuance of bonds of such district, to be known as "Levee Improvement Bonds," to the amount voted, unless a less amount was requested by the district supervisors, which bonds shall state upon their face the purposes for which they are issued. Said bonds shall be issued in the name of the levee improvement district by and on behalf of which they are voted, shall be signed by the county judge of the county whose commissioners' court has jurisdiction, and shall be attested by the county clerk of said county, and the seal of the commissioners' court of such county shall be affixed to each; they shall be issued in such denominations, and payable at such time or times, not exceeding thirty years from their date, as may be deemed most expedient by the issuing authority, and shall bear interest not to exceed six per cent per annum.

Art. 8008. Record of bonds.—When bonds shall have been issued by and on behalf of any levee improvement district, the supervisors of such district shall procure and deliver to the treasurer of the county whose commissioners' court has jurisdiction, a well bound book in which a record shall be kept of all such bonds, with their number, amount, rate of interest, date of issuance, when due, where payable, amount received for same, and the tax levy to pay interest on and to provide sinking funds for their payment, which book shall at all times be open to the inspection of the parties interested, either as taxpayers or bondholders; and upon the payment of any bond an entry thereof shall be made on such book. The county treasurer shall receive for his services in recording all these matters the same fees as may be allowed by law to the county clerk for recording deeds.

Art. 8009. Attorney General to examine.—Before any bonds issued by or on behalf of any levee improvement district are offered for sale, there shall be forwarded to the Attorney General a certified copy of all proceedings had in the organization of the district, and with reference to the issuance of such bonds in connection with the bonds, themselves, and such other information with respect thereto as may be required by the Attorney General, shall be furnished; and it shall be the duty of the Attorney General to carefully examine said bonds, in connection [connection] with the record and the Constitution and laws of this State governing the issuance of such bonds, and, if, as a result of his examination, the Attorney General shall find that such bonds are issued in conformity with the Constitution and laws of this State and that they are valid and binding obligations upon the district by or on behalf of which they are issued, he shall so officially certify, and, until he shall so officially certify, and

until registered by the Comptroller, as hereinafter required, said bonds shall be without validity.

Art. 8010. Recorded by Comptroller.—When the bonds of any levee improvement district have been examined and approved by the Attorney General and his certificate thereto has been issued, they shall be registered by the State Comptroller in a book kept for that purpose, and the certificate of the Attorney General as to the validity of such bonds shall be preserved of record. Such bonds after receiving the certificate of the Attorney General, and after having been registered in the Comptroller's office, as herein provided, shall be held, in every action, suit or proceeding in which their validity may be brought into question, prima facie valid; and in every action brought to enforce collection of such bonds and interest thereon, the only available defense against the validity of such bonds shall be forgery or fraud.

Art. 8011. Sale of bonds.—When bonds shall have been issued, approved and registered as provided in this Act, the court of jurisdiction may appoint the county judge of the county of jurisdiction, or other suitable person, to sell said bonds on the best terms and for the best price possible and approved by the district supervisors, and no sale shall be complete until approved by such supervisors. The judge or person selling such bonds shall be allowed, as full compensation for all services performed in respect thereto, one-fourth of one per cent of the amount received, and, except such commission, shall promptly pay over to the proper treasurer or depository the proceeds of said bonds, to be placed to the credit of such levee improvement district; but, bfore [before] proceeding to make any sale, such judge, or any person appointed, shall execute a good and sufficient bond, payable to the levee improvement district, and approved by the commissioners' court having jurisdiction, for an amount not less than the par value of the bonds to be sold, conditioned for the faithful discharge of his duty under his appointment.

Art. 8012. Levying taxes.—When bonds have been issued by any levee improvement district, providing for the levy of taxes upon a benefit basis, the commissioners' court of the county, if the district is wholly within one county, or if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon and proportioned, as to each piece of property, to the net benefits which it shall have been found will accrue to such property from the completion of the plan of reclamation or other duly authorized work, which taxes shall be sufficient in amount to pay the interest on such bonds, as it shall fall due, and to raise an additional sum which will create a sinking fund sufficient to discharge and redeem such bonds at maturity; such levy may be made for or at the time of issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of such years until modified. Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in the bonds of the series to which such funds apply, if offered for redemption before maturity upon terms deemed advantageous to the district by its supervisors or the court of jurisdiction.

When bonds shall have been issued by any levee improvement district, providing for the levy of taxes upon ad valorem basis, the commissioners' court of the county, if the district is wholly within one county, or, if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon the value of each piece of property as made for State and county purposes, which taxes shall be sufficient in amount to pay the interest on such bonds as it shall fall due, and to raise an additional fund which shall create a sinking fund sufficient to redeem and discharge such bonds at maturity; such levy may be made for or at the time of issuance of said bonds for each year throughout the life of the bond issue which shall be the rate of levy for each of such years until modified. Sinking funds shall from time to time be invested in such county, municipal, district or other bonds as other sinking funds may by law be invested in, or in the bonds of the series to which such funds apply, if offered for redemption before maturity upon terms deemed advantageous to the district by its supervisors or the court of jurisdiction.

Art. 8013. For what uses may be applied.—When a maintenance tax shall have been voted in any district entitled to the benefits of this Act, the commissioners' court of the county, if the district is wholly within one county, or, if the district is located in more than one county, then the commissioners' court of each county in which any portion of such district is located, shall thereafter levy and cause to be assessed and collected taxes upon all taxable property within such district, based upon the net benefits thereto contemplated to be accomplished through the plan of reclamation, if such district has provided for the levy of taxes upon a benefit basis; or such court shall thereafter levy and cause to be assessed and collected taxes upon all taxable property, within such district, based upon the value of each piece of property as made for State and county purposes, if the district has provided for the levy of taxes upon ad valorem basis; provided, however, that the tax rate shall not exceed the specific rate voted, and the vote in such cases may be for a specific rate, or not to exceed a specific rate. The proceeds of such taxes shall be used for the maintenance, upkeep, repairs and additions to the levees and other improvements in the district, and for no other purposes, except as may be herein otherwise provided. The right to levy such taxes shall remain in force until abrogated, in whole or in part, by another election; but elections upon the question of the repeal or reduction of maintenance taxes shall not be held oftener than every five years; and any levee improvement district heretofore organized may avail itself of the provisions and benefits of this section.

Art. 8014. Secretary ex officio tax assessor.—The secretary of the board of supervisors of levee improvement districts providing for the levy of taxes upon a benefit basis shall be ex officio tax assessor for such districts, and it shall be his duty when any tax is levied, at the expense of the district, to prepare a tax roll in form substantially as the assessment roll made by county tax assessors, except that instead of ad valorem valuation it shall state net benefits assessed against property, and he shall compute against each piece of property the amount of taxes assessed against it, and enter on such roll the amount of such taxes. A certified copy of such roll, insofar as it appertains to each county in which any portion of the district is located, shall be filed with the tax collector of such county.

Art. 8015. Tax collectors under bond.—Tax collectors of the several counties shall be charged with the assessment rolls of levee improvement districts, and are required to make collections of all taxes levied and assessed against property within such district, and promptly pay over the same to the treasurer of the district; and the bonds of such collectors shall stand as security for the proper performance of their duties as tax collectors of such levee improvement district, or if in the judgment of the supervisors of such district it be necessary, additional bonds, payable to such districts, may be required, and any collector failing to act hereunder or failing to give the additional bond required, shall be deemed guilty of malfeasance in office and shall be suspended from office by the commissioners' court of his county, and may be removed from office in the mode prescribed by law; and in case of suspension the boards of supervisors may appoint special collectors for their respective districts and require such security of them as may be deemed proper, and the persons so chosen shall have and exercise within and for the district all the

rights and powers which tax collectors have or may have by law in their respective counties.

Art. 8016. Recovering delinquent taxes.—Tax collectors of levee improvement districts shall perform all duties and exercise all powers in respect to delinquent taxes due levee improvement districts as may be provided by law for the collection of delinquent State and county taxes, and the collection of such delinquent levee improvement district taxes and sales of property therefor shall be governed by the laws applying to the collection of delinquent State and county taxes and foreclosure decree therefor shall include writ of possession. The supervisors are also given the power and authority to collect such delinquent taxes, and to institute and prosecute suits in the name of the district for their collection; and such districts are also authorized to do and perform all other things that may be necessary for the collection of such taxes. Taxes levied under this law shall be a first and prior lien upon all property against which they are assessed, and shall be payable and shall mature and become delinquent as provided by law for State and county taxes.

Art. 8017. Same; method to be pursued.—The board of supervisors may also proceed to collect delinquent levee taxes in the following manner:

Suit shall be brought in the name of the district for the collection of the taxes and the foreclosure of the lien thereof in the following manner:

(a) Such suits shall be brought in the district court of the county in which the land or the major part thereof is situated, and such courts shall give judgment against each tract of land for the amount of such taxes, together with penalties, interest, attorneys fees and costs; such judgment shall provide for the sale of each tract of land by the sheriff or any constable of the county in which it is situated in the same manner as other judicial sales of land; and it shall be immaterial that the ownership of said land be incorrectly alleged in said proceedings.

(b) Such action shall be in the nature of a proceeding in rem, and jurisdiction of land owners and other parties interested may be had by publication for a general notice thereof, once each week for at least four consecutive weeks in some paper of general circulation published in the county or counties in which such district is situated, and if no paper is published in the county, then the same shall be published in a paper in the nearest county thereto where a paper is published, and also by written notice mailed to the last known address of the land owner, and which notice shall be substantially in the following form:

——— County Levee Improvement District No. ——— vs. delinquent lands in ——— County and said district. In the district court of ——— County, Texas, ——— Judicial District ——— Term, 19—.

Notice is hereby given to all parties having or claiming any interest of any kind in any of the following described lands that on the ——— day of ———, 19—, suit was filed in the district of ——— County, Texas, at ———, Texas, to enforce the collection of certain levee district taxes on said lands.

The name of each supposed owner has been set opposite his, her or its land, together with the amount due from each tract, to-wit:

(Give list of supposed owners, with a description list of said delinquent land, and the amount due thereon respectively).

All persons or corporations having or claiming any interest whatsoever in said lands, are hereby notified to appear at the next regular term of said district court of ——— County, Texas, to be held at the court house thereof in ———, on the ——— Monday in ———, 19—, the same being the [day] ——— day of ——— 19—, then and there to answer a petition filed in said court in the above numbered and entitled cause, or final judgment will be entered directing the sale of said lands for the purpose of collecting said taxes, together with payment of interest penalties, attorneys fees and other costs allowed by law.

Given under my hand and the seal of said court in the City of ———, Texas, this ——— day of ———, A. D. 19—.

Clerk of the District Court
of ——— County, Texas.

Insued [Issued] this ——— day of ——— A. D., 19—.

Clerk of the District Court
of ——— County, Texas.

(c) Such publication of notice of the pendency of such suit and the written notice addressed to the last known address of the land owner, shall be taken as and for service of process against any owner, vender, mortgage, [mortgagor,] heir or other person claiming any interest in the lands whatsoever, and the judgment in such case shall be binding upon each tract of land and the owner of every interest therein. Provided, it shall not be necessary to publish any delinquent list or give any other delinquent notice before proceeding under this Act.

(d) When the notice, petition and answer have been filed with the clerk, he shall docket the same in other causes, and the said suit have precedence over all other cases.

(e) In such suits it shall be sufficient to allege generally and briefly the organization of the district and the non-payment of the taxes, setting forth a reasonable description of the lands proceeded against and the amount chargeable to each tract, with prayer for foreclosure; provided that no irregularity in the assessment of the land, or mistake in the name of the owner or in the number of acres therein, shall be a defense to such action; provided, further, that no mistake as to the amount of the taxes, interest and penalty as alleged in the pleadings or in the notice of the pendency of the suit shall be a defense, but the correct amount of taxes, interest and penalty due may be proved and the judgment rendered thereon.

(f) Such suits shall be conducted in the name of the levee improvement district and in accordance with the practice and proceedings of the district courts in this State, except as herein otherwise provided. Continuances shall be granted only for good cause shown, which may be granted as to part of the lands, and in such case the court shall proceed as to all tracts as to which no continuance is granted.

(g) When notice has been properly given as aforesaid, and where no answer has been filed, or if filed and the cause has been decided for the plaintiff, the court shall enter judgment granting the relief as prayed for in the petition, and shall foreclose the lien on such taxes and order the sale of the land therefor in the same manner as other judicial sales of real estate, and foreclosure decree therefor shall include writ of possession, and if all the land and other real property be not sold on the date advertised, such sales shall continue from day to day until completed, and the sheriff or constable shall by proper deed convey to the purchaser the land so sold, and the title of said land shall thereupon become vested in such purchaser against all others whatsoever; provided, that the former owner shall within two years of the date of the purchaser's deed have the right to redeem the land upon payment of double the amount of money paid for the land.

(h) The board of supervisors shall have the power to employ attorneys for the purpose of collecting such delinquent taxes, paying such attorneys for their services such fees or commissions as to the supervisors may seem proper.

(i) Whenever the board of supervisors of any levee improvement district shall fail to commence suits within sixty days after taxes have become delinquent, the holder or holders of any bonds issued by such levee improvement district shall have the right to employ counsel to bring such suit in the name of the levee improvement district upon the relation of such holder or bond holders; and such suits may be proceeded with in the same manner as hereinabove prescribed, and shall in all respects be governed by the provisions of this section.

(j) The method of procedure provided in this section shall be cumulative, and shall not repeal or supercede [supersede] any other procedure provided herein for the collection of such taxes.

Art. 8018. Refunding bonds.—Any levee improvement district which has heretofore been organized under the laws of the State and has issued bonds, and any levee improvement district hereafter organized, and which may issue bonds, may by consent of the holders thereof refund any bonds issued by issuing new coupon bonds for that purpose. Such refunding bonds shall not bear a greater rate of interest than the bonds in lieu of which they are issued. Interest shall be evidenced by coupons attached to such bonds, and may be payable annually or semi-annually, within the discretion of the commissioners' court of the county of jurisdiction; and such refunding bonds shall be payable serially or otherwise, not exceeding forty years from the date thereof, and shall be issued in denomination one hundred dollars or some multiple thereof; and a sufficient tax levy to meet the payment of the principal and interest of said refunding bonds shall be made before the delivery thereof, provided the refunding of any bonds shall not affect any taxes already due.

The refunding bonds hereby authorized shall be executed in the same manner provided for the execution of levee improvement district bonds. Any sum to the credit of any sinking fund account on hand shall first be deducted in ascertaining the amount of refunding bonds to be issued, and such money shall in every case be applied to the payment of the outstanding bonds. No refunding bonds shall be issued and delivered until approved by the Attorney General and registered by the State Comptroller; provided, however, that the Comptroller shall not register such refunding bonds until the old bonds in lieu of which such refunding bonds are issued are presented to him for cancellation; and after the registration of the new bonds, the Comptroller shall cancel the old bonds and interest coupons, and deliver such new bonds to the proper party or parties; provided, further, that the old bonds may be so presented for cancellation, in installments, and a like amount of the new bonds registered and delivered as is herein provided.

Art. 8019. Treasurer under bond; compensation.—The county treasurer of the county, the commissioners' court of which has jurisdiction, shall be treasurer of all levee improvement districts of which such court has jurisdiction, and as such shall execute a good and sufficient bond, payable to the levee improvement district, in a sum equal to one and one-fourth of the taxes contemplated to be paid over in any one year, or such other or further amount as the board of supervisors of the district may require, which bond shall be conditioned for the faithful performance of the duties of the principal as treasurer of the levee improvement district, and shall be approved by the board of supervisors of such district. Such bond may be made by any guaranty or surety company approved by the board of district supervisors, and premiums therefor may be paid out of the maintenance fund of the district. The treasurer, as compensation for his services, shall be allowed not exceeding one-fourth of one per cent upon sums received by him by and on behalf of such levee improvement district.

Art. 8020. Treasurer to report to commissioners' court.—It shall be the duty of the county treasurer whose commissioners' court has jurisdiction, as treasurer of the levee improvement district, to open an account with each such district and to keep an accurate account of all moneys received by him belonging to such district, and all moneys paid out by him. He shall pay out no money except upon a voucher signed by two of the district supervisors and countersigned by the county judge, and he shall carefully preserve all orders for the payment of money; and as often as required by the said district supervisors or the commissioners' court he shall render a correct account to them on all matters pertaining to the financial condition of such district.

Art. 8021. Supervisors select depository.—The board of supervisors shall select a depository or depositories for funds of the district and the county treasurer shall deposit such funds of the districts in such depository or depositories as the supervisors may direct; provided, before any such depository shall receive any funds of the district they shall give bond to the district with a corporate surety company as surety, which is authorized to do business in the State of Texas, in an amount equal to the funds so deposited, conditioned upon the safe keeping of said funds and paying of the same.

Art. 8022. Compensation of officers.—For all services performed by any officer or individual under this Act, the compensation for which is not herein expressly provided for, such officer or individual shall receive the same compensation as he would for like services if rendered as an officer of a county. Clerks recording orders hereunder shall receive the same compensation as would a county clerk for recording deeds, and persons posting notices hereunder shall receive the same compensation as would a sheriff for posting notices required by law to be posted by him officially.

Art. 8023. Awarding contracts.—All the improvements contemplated by the plan of reclamation, as approved by the State Reclamation Engineer, shall be constructed. Contracts for making and constructing levees and other improvements and all the necessary work in connection with any levee improvement district, shall be let by the district supervisors to the lowest and best bidder, after giving notice by advertising same in one or more newspapers of general circulation in the State of Texas once a week for three consecutive weeks; which contracts shall be made in writing and signed by the contractor, in duplicate; provided, that such work may be let without advertisement upon contracts approved jointly by the district supervisors and the owners of a majority of the acreage of land in such district; provided, further that such contract shall include all works of improvement contemplated and authorized by the approved plan of reclamation, it being the intent hereof to require the contractor to complete the construction of such works of improvement for the amount of money, or bonds available for the purpose; provided, that such work may be let in sections but no contract for a part of the work shall be valid unless and until all sections of the work shall have been let under the above conditions so that the total cost of the work shall be within the amount of funds or bonds provided for the purposes; provided further, that it shall be the duty of the district supervisors immediately to notify the county treasurer that the contract has been executed and it shall thereupon be the duty of the county treasurer to set aside an amount of money in the construction and maintenance fund of said district to be known as "Special Fund Under Contract, dated ——— (inserting date of contract)," and which special fund, so set aside, shall be for the full amount of the contract price, and it shall be unlawful for the county treasurer to pay any warrants against such special fund, except upon accounts sworn to by the contractor and duly audited and approved by the district supervisors; and the use or payment of such special fund, or any part thereof, for any other purpose shall be a diversion thereof, and punishable as provided by Article 104, of the Penal Code of this State, Revision of 1911; and, provided further, that the district supervisors may deliver to the contractor upon the written consent of the county judge, the bonds of such district in full payment of the works of improvement constructed in conformity with the contract, and such bonds may be delivered in installments upon estimates of the engineer as the work progresses. In the event there are not sufficient funds available for the purpose of completing the works of improvement contemplated and authorized by the approval plan of reclamation, then no contract shall be awarded for any part of

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

such work until sufficient funds have been provided for; and if such contract is made it shall be void, and shall not be enforceable in any court in this State, and the performance of same or any payment of any money thereunder may be enjoined by any taxpayer in such district; provided, however, that this requirement shall not apply to urgent necessity or present calamity where it becomes necessary to act at once to repair any levee so as to preserve the property in the district; and, provided further, that subsequent to the approval and registration of bonds by the proper State officials as herein provided, contracts may be let conditioned upon the sale of such bonds in an amount equal to the contract price. "The contractor shall be required to give a corporate surety bond for the full amount of the contract price, which shall guarantee the completion of the contract as above provided, which bond shall be subject to the approval of the county judge."

Article 104 of the Penal Code of 1911 referred to in this article is Art. 94 of Rev. Pen. Code 1925.

Art. 8024. Work to be supervised.—All work included in the contract shall be done in accordance with the specifications under the supervision of the supervisors and the district engineer. As the work progresses the engineer of such district shall make report to the supervisors, showing in detail whether the contract is being complied with, and when the work is completed he shall make a detailed report of same to the supervisors, showing whether or not the contract has been fully complied with according to its terms, and if not in what particular it has not been so complied with. It shall be the duty of the State Reclamation Engineer either in person or by deputy to inspect the construction of a levee and other works of improvement once every sixty days after such construction work has commenced; and if he finds that such levee or other duly authorized work has been constructed in strict accordance with the approved plan of reclamation he shall so officially certify and his certificate shall give a full description of the work that has been done up to the date of such inspection; and in the event he finds that such work has not been constructed in strict accordance with the approved plan of reclamation, he shall so officially certify, and in such certificate designate wherein the contractor has failed to comply with the approved plan of reclamation. It shall thereupon be the duty of the district supervisors to forthwith demand that the contractor shall comply with the requirements of the approved plan of reclamation, at his own cost and expense, and no further accounts, claims or vouchers submitted by such contractor shall be approved or paid until he has complied with the requirements of the State Reclamation Engineer in constructing such work in accordance with the approved plan of reclamation.

Art. 8025. Paying for work done.—The supervisors shall, during the progress of the work under contract, inspect the same; and upon the completion of any work in accordance with the contract, they shall draw a warrant on the treasurer of the district for the unpaid amount of the contract price in favor of the contractor. Payments pending the work shall not exceed in the aggregate eighty-five per cent of the contract price of the work done, the said amount of work completed to be shown by estimates of the engineer of the district.

Art. 8026. To have seal.—Levee improvement districts created under this Act, or entitled to its benefits, shall each have a common seal which shall be circular in form, with the name of the district within the center, with a star of five points in the center; and such districts may sue and be sued in the courts of this State in and by their corporate names, and all courts of this State shall take judicial notice of their existence.

Art. 8027. Plans to be approved by Reclamation Engineer.—It shall be unlawful for any levee improvement district, whether it proposes to construct its levees or other improvements with or without the issuance of bonds, to construct, to undertake to construct, or maintain any levee or other improvement, without first obtaining the approval by the State Reclamation Engineer, as provided in this Act, of the plans for such levees or other improvements; and in the event any such levee improvement district undertakes to construct, or constructs or maintains any levee or other improvement without first obtaining the approval of the State Reclamation Engineer of the plans for the same, as provided in this Act, it shall be the duty of the Attorney General, on the request of the State Reclamation Engineer, to file suit in one of the district courts of Travis County, Texas, in which the venue of such suits is hereby fixed, to enjoin the construction or maintenance of such levee or other improvement.

Art. 8028. Same; along streams, lakes, etc.—From and after the taking effect of this Act it shall be unlawful for any person, corporation or levee improvement district, without first obtaining the approval of plans for the same by the State Reclamation Engineer, to construct, attempt to construct, cause to be constructed, maintain or cause to be maintained, any levee or other such improvement on, along or near any stream of this State which is subject to floods, freshets or overflows, so as to control, regulate or otherwise change, the flood waters of such stream; and any person, corporation or district violating this section of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not exceeding one hundred dollars. And in the event any such structure is about to be constructed, is constructed, or maintained by any person or corporation without approval of the plans by the State Reclamation Engineer, it shall be the duty of the Attorney General, on the request of the State Reclamation Engineer, to file suit in one of the district courts of Travis County, in which the venue of such suits is hereby fixed, to enjoin the construction or maintenance of such structure. Provided, that the provisions of this section shall not apply to dams, canals or other improvements made or to be made by irrigation, water improvements or irrigation improvements made by individuals or corporations.

Art. 8029. Dissolution of district.—If any levee improvement district heretofore created or that hereafter may be created shall find, at any time prior to the sale of its bonds or final lending of its credit in other form, that the proposed undertaking for any reason is impracticable or apparently cannot be successfully carried out, the commissioners' court is hereby authorized to abolish such district upon petition signed by the owners of a majority of the acreage in the district, praying for the dissolution of such district, setting forth the reasons therefor, and accompanied by a deposit of fifty dollars. Such petition shall be set for hearing, notice of such hearing shall be given, the hearing thereon shall be held, and the expense thereof paid out of said deposit all in conformity with the procedure prescribed in this Act in connection with the petition for the establishment of the district; and the commissioners' court shall have the same powers with respect to the abolition of such districts that it has with respect to their creation. If upon the hearing it shall appear to the court that such district should be abolished, the court shall so find and shall render judgment reciting such findings, and by its orders entered of record declare and decree such district abolished, and appoint the chairman of the supervisors or some other suitable person as trustee to close up its affairs without delay; the term and compensation of such trustees to be at the pleasure of the said court. If the court should not so find, it shall dismiss the petition at the cost of the petitioners, and enter such findings of record. Where any taxes have been levied and collected in the name of the district in anticipation of an issue of bonds, such taxes, so far as unexpended, shall in the event of dissolution of the district as herein provided, and on order of the commissioners' court duly entered, be returned to the taxpayers ratably, after deducting the compensation of the assessor, collector and treasurer in connection there-

with, and any other claim properly chargeable against such taxes; proper receipt for all sums so refunded to be taken and filed by the treasurer.

Art. 8029a. Election for dissolution.—Any levee improvement district heretofore created or that hereafter may be created, may voluntarily abolish its corporate existence in the manner hereinafter provided. If the proposition to abolish such district fails to carry at the election held therefor, no other election for the same purpose shall be held within one year after the result of such election has been declared. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029b. Order for election.—Upon the presentment to the Commissioners' Court at a regular session thereof, of a petition praying for the abolition of such levee improvement district, the court shall order an election to be held within such district at the earliest possible legal time to determine whether or not such district shall be abolished. Such petition shall be signed by the owners of a majority of the acreage of the lands in such district. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029c. Notice and qualified voters.—Notice of such election shall be posted and such election shall be ordered, held and conducted in the same form and manner as elections at which levee district bonds are now authorized. All persons who are legally qualified voters of the State and county in which such an election is ordered, and are resident property taxpayers in the levee district where such election is to be held, as shown by the records in the county tax collector's office, shall be entitled to vote at such election. A two-thirds vote shall be necessary to carry the proposition submitted at such election. The ballot for such election shall have written or printed thereon the words and no others, "For the abolition of the levee improvement district" and "Against the abolition of the levee improvement district." [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029d. Returns and declaration of result.—Returns of such elections shall be made and the votes canvassed as before provided in this Chapter, and if said proposition carries, the court shall so declare and enter the same in their minutes substantially as follows:

In the matter of the petition of ——— and ——— others, praying for the abolition of the levee improvement district in said petition described and designated as ——— County Improvement District No. ——— be it known that an election called for that purpose in said district held on the ——— day of ——— A. D. 19—, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the abolition of said levee improvement district. Now, therefore, it is considered and ordered by the court that said district be, and the same is hereby abolished. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029e. Settlement of debts and taxes.—When the district is so abolished, the court shall provide for the settlement of the debts due by said district, including the costs and expenses of holding said election, for and such purpose shall have the power to levy and cause to be assessed and collected in the manner provided in this Chapter [Arts. 8029a–8029q], a tax against the real and personal property in said district, in such amount only as will be necessary for the payment of all valid debts and obligations of every character existing against said district, except bonds issued and held by purchaser. Such bonds shall be paid in accordance with the terms thereof by levy and collection of an annual tax as before provided, unless a retirement of such bonds is effected as provided in the succeeding article. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029f. Bonds and retirement.—If there are any district bonds outstanding at the time of such dissolution, the court shall immediately enter into negotiations with the holders of such bonds, and if, according to the terms thereof, or by agreement between said court and the holders, said bonds can be retired at an earlier date than stipulated on their face, and such retirement is considered by said court as feasible and practicable, then said court shall have the power to levy and cause to be assessed and collected in the manner provided in this Chapter [Arts. 8029a–8029q], such a tax either annually or at once as will pay off as speedily as possible, all indebtedness, both bonded and otherwise of said district. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029g. Sale of property, trustees' bonds.—Upon the dissolution of a district, the court shall provide for the disposition and sale of all district property and turn the same over to three trustees to be appointed by the Commissioners' Court from land owners of said district immediately upon the filing and approval of the bond, whereupon they shall become trustees for such defunct organization. Said trustees shall execute a good and sufficient bond jointly, in a sum not less than the amount of its outstanding bonds and other debts payable to and approved by the county judge and his successor in office, conditioned for the faithful performance of their duty as trustees of such district, and for paying over and delivering all money and other property coming into their hands as such trustees, to the parties entitled thereto. Said bond shall be recorded in the minutes of the court, and when approved, shall supersede the bond theretofore given by the treasurer of said district. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029h. Trustees' suits.—The said trustees of said defunct district, after giving the required bond, shall take charge of all the property of said district, including the money now in hands of treasurer, of the county, said money to be held by them as trustees of such district, and all books, notes, accounts and choses in action of every kind. As such trustees they may bring suit against any person in possession of such property or indebted to such district, the same as such district could if still organized, and may employ counsel in all suits thereunder, or in the care and management of the business of such defunct district. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029i. Claims, allowance and filing.—Any person, firm or corporation having any claim against such district, or any judgment against such district, shall, within six months after the approval of the bond or [of] the trustees present to them such claim, duly verified. If the trustees find the same correct, they shall allow such claim and thereupon the claimant shall file the same with the clerk of the county court not less than twenty days, before the beginning of the next regular session of the Commissioners' Court, and the said clerk shall immediately issue a notice of such filing to all persons interested in said district. Such notice shall be posted in three public places in the district, and at the court house door, not less than twenty days before the next regular session of said Commissioners' Court. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029j. Approval by Commissioners' Court.—The Commissioners' Court in regular session shall pass upon said claim, and if it be found correct, they shall approve the same, and the order of approval shall be entered upon their minutes, whereupon said claim shall become a valid and subsisting claim against said district. Said claim shall then be filed with the trustees and shall be paid by them in the order of its filing out of the money in their hands as treasurer of said district, or collected as liquidation taxes hereunder. All bonds and approved claims outstanding against said district before its dissolution, shall not be required to be allowed and approved as herein provided, but shall be considered as valid and subsisting claims against said district without further approval, but subject to be contested in accordance with the provisions of this subdivision. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029k. Refusal of claims and suits.—If the trustees find any claim presented to them unjust,

in whole or in part, they shall endorse thereon their refusal to allow same, and if it be refused in whole, the owner thereof may institute suit against trustees for said claim in any court of competent jurisdiction in the county, and if established by judgment as in other cases, said judgment shall be filed with said trustees and shall be paid in its order as other claims. If said claim be refused by the trustees in part and allowed in part, and the owner thereof waives his claim to the part so refused, he shall file said claim in the court for approval. But if he does not waive his right to the portion of said claim so refused, he shall withdraw said claim from the trustees and may bring suit thereon as herein provided. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029*l*. Judgment and appeals.—If the owner of any claim acted upon by the court is not satisfied with the judgment thereon, he may appeal therefrom as in cases of appeal from judgment of a justice court. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029m. Taxpayers' protest of claims.—If any district taxpayer files with the trustees a protest against any claim which was allowed by the former commissioners of said district before the dissolution of the district, and which was unpaid at the time of dissolution, together with a bond in double the amount of such claim, with sufficient sureties to be approved by the trustees and made payable to them, conditioned that such contestant will pay all costs of suit, in case such claimant establishes his claim in full in any state court in which he may sue thereon, then the trustees shall refuse to pay said claim and the owner thereof may bring suit therefor against the trustees, as in other suits of a civil nature. In such suits the contestant and his bondsmen shall be made parties thereto, and trustees shall make all defenses urged against said claim by the contestant. In case of recovery by the claimant, judgment shall be rendered against said contestant and his bondsmen for all costs incurred in said suit; and the owner of said claim shall file the judgment with the trustees to be paid as other claims thereunder. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029n. Expenses approved.—All reasonable expenses incurred by the trustees in the care, control and conduct of the business of the district and employment of counsel therefor, or in conducting or defending suits in their capacity as such trustees, and any counsel fees or court costs incurred by the former commissioners of such district, which have not been paid at the time of the dissolution of such district, shall be charged by them against said trust estate, and shall be presented to the Commissioners' Court at a regular term thereof and upon due notice posted as required in case of other claims against the district. Upon approval by said court, the same shall become a valid and subsisting claim against said district and shall be preferred claims, and may be retained by said trustees out of the funds in their hands as district treasurer. If said claim is rejected in whole or in part, and the trustees are dissatisfied with said ruling, they may appeal therefrom as other claimants. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029*o*. Trustees' compensation.—The trustees shall receive only one compensation for their services as trustees and ex-officio treasurer hereunder. They shall be allowed one-half of one per cent upon all money received by them as the entire compensation for all three trustees for the account of such district, and one-half of one per cent upon all money paid out as provided herein; but they shall not be entitled to such commission on money in their hands as treasurer of said district at the time of the dissolution thereof, as of money coming into their hands, nor to money turned over by them at the expiration of their trusteeship. The county assessor and collector shall receive the same compensation for the assessing and collecting of taxes as before provided in this Chapter [Arts. 8029a–8029q], and their compensation for such service shall be provided for in the order of the court assessing taxes thereunder. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029p. Trustees' final settlement.—When all claims established against the district have been paid and all costs and expenses incurred in the control and management thereof have been satisfied, the trustees shall file their account for final settlement with the court. Said account shall contain a full and complete account of all money received and paid out, all property of every kind that has come into their hands as trustees and the disposition thereof, and all other matters pertaining to the management of the affairs of the district. Upon the approval of said account, the court shall direct the trustees to turn over any property or money remaining in their hands to the person or persons entitled thereto as found by the court, and on their compliance with said order, they shall so report to the court, and thereupon the court shall enter an order discharging said trustees and their bondsmen and closing said trust estate. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8029q. Trustees' successors.—In case of death or resignation of any of said trustees, the Commissioners' Court shall appoint a successor or successors to fill such vacancy or vacancies. [Acts 1927, 40th Leg., p. 103, ch. 72, § 1.]

Art. 8030. Providing additional funds.—If it should develop that the works and improvements set out in any plan of reclamation adopted by or on behalf of a levee improvement district are found insufficient to reclaim in whole or in part any or all of the lands and other property within the district, or if extensive repairs or additions to such works are deemed necessary, or if additional funds are needed to complete improvements, then in respect thereto, the board of supervisors of the district, may proceed in all respects to provide additional funds for such additional works, in accordance with the provisions of this Act, in respect to the original plan of reclamation, and may, under like limitations, create additional indebtedness or issue additional bonds, but always subject to every limitation in respect to such original proceedings, as well as the approval of the new or amended plan of reclamation by the State Reclamation Engineer.

2. ALTERNATE METHOD

Art. 8031. Readjusting assessments.—At any time after one year from the date of any final judgment and decree of the commissioners of appraisement in districts levying taxes on the benefit basis, the owners of a majority of the acreage of the lands within the district may file a petition with the commissioners' court alleging that the previous assesment [assessment] of benefits in such judgment and decree are insufficient or inequitable, and praying for an increase or readjustment of the assessment of benefits for the purpose of making an adequate or more equitable basis for the levy of taxes; and if the plan of reclamation is changed or modified, or if extensive repairs or additions thereto are desired to be made, the board of supervisors shall file a petition with such court setting out therein such changes, modifications, repairs or additions; upon the filing of any such petition the court shall set a day for the hearing of each petition, and issue notice informing all persons concerned of the time and place of hearing, and their rights to appear and contend for or contest an increase or readjustment of assessments of benefits, such notice to be posted at the places, for the length of time, and in all respects the same as the notice of hearing for establishing the districts.

Art. 8032. Same; hearing petition.—At the time and place set for the hearing the commissioners' court shall proceed to hear such petition and proof for or against the same, and if it finds that the aggregate amount of assessed benefits as shown by such previous final judgment and decree is insufficient to carry out the original plan of reclamation, or any change in or modification of, or repairs, or additions

to the same, or that there has been a material change in the relative value of the benefits conferred on the property in the district, or that for other reasons such assessment of benefits is inadequate or inequitable, it shall order that there be made a reassessment of benefits for the purpose of providing a sufficient, more adequate or equitable basis of taxation for all purposes within such district; and thereupon it shall proceed to appoint commissioners of appraisement in the manner and with the powers, rights, privileges and duties both to the commissioners and persons interested, as provided in the first instance.

Art. 8033. Assess and collect on reassessment.—Such commissioners shall finally make their findings and enter their judgment and decree in the matter, which, thereafter, until again changed or modified, shall be the basis of the assessment of taxes within and for the district. Provided, that there shall be no reassessment of benefits that will in any way render insecure any outstanding bonds or other indebtedness of any district, nor shall the sum of benefits as reassessed ever be less in amount than the sum total of all outstanding bonds and other indebtedness of such district. The commissioners' court of each county in which such district is located shall levy and cause to be assessed and collected taxes based upon such reassessment, at rate sufficient to provide funds requisite to pay interest upon all outstanding bonds and other indebtedness of such district and to pay off such bonds or other indebtedness at maturity, and also to pay the interest on and provide necessary sinking funds to pay all bonds or other indebtedness that may be issued. The provisions of this section shall also apply to districts levying taxes upon the ad valorem plan, only if the plan of reclamation is changed or modified, or if extensive repairs or additions thereto are made, and such commissioners, if appointed, shall assess only the damages which will accrue to the property within or without the district because of the carrying out of the changes in the plan.

Art. 8034. Protesting decision of Reclamation Engineer.—If the supervisors of any levee improvement district, or any person or corporation whose interest [interests] are affected thereby, be dissatisfied with the action of the State Reclamation Engineer in finally approving or disapproving any plan of reclamation for such district, the district or person or corporation dissatisfied may within fifteen days after such final action, file suit in the district court of the county whose commissioners' court has jurisdiction of the district in question, against the State Reclamation Engineer, and to which suit the district shall be made a party defendant, if the suit be on behalf of any other complaining person or corporation. The petition shall set forth the cause or causes of objection and show wherein the interests of the petitioners are injuriously affected by the action of the State Reclamation Engineer complained of. Process shall issue as in other cases and the case shall have preference of trial in the court wherein it is filed, and upon final hearing the court shall render its judgment and decree approving or disapproving of the plan of reclamation, in whole or in part, as it may find to be equitable and just; and such judgment shall stand for the action of the State Reclamation Engineer in such matters. There may be an appeal, as in ordinary cases, from the judgment of the trial court, which appeal shall have preference of hearing in the Court of Civil Appeals, the judgment of which in the matter shall be final, and shall stand for the action of the State Reclamation Engineer in respect to the matters at issue in such suit.

Art. 8035. Injuring levees.—Any person or persons who shall wrongfully or purposely cut, injure, destroy, or in any manner impair the usefulness of any levee or other reclamation improvement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding one year; or by both such fine and imprisonment.

Art. 8036. Interfering with work.—Any person or persons who shall wilfully destroy or deface any corner, line, mark, bench mark or other object fixed or established in connection with the work herein authorized, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than thirty days, or by both such fine and imprisonment.

Art. 8037. Districts not organized.—Districts organized under any laws of this State having for their objects the reclamation of lands through a system of levees and drainage, and not governed by the provisions of laws of this State, may become entitled to and may hereafter exercise all the rights, powers and privileges conferred by this Act upon districts created under it, and to all of the enlarged powers which may be conferred under Section 59, Article 16, of the Constitution of this State by proceedings as follows:

1. Whenever the owner of a majority of the acreage of any such district shall present to the commissioners' court of the county in which such district is located their petition praying that a hearing be ordered to determine whether such district may avail itself of the provisions of this Act, it shall be the duty of the court to fix a time and place for such hearing, and cause notice thereof to be given, substantially in all respects as notice of the hearing upon the matters of the formation of a district under this Act.

2. At the time and place of such hearing the court shall proceed to hear and determine the issue presented by the petition, and evidence for and against the same, and if it finds that the interests of the district in question would be promoted by granting the prayer of the petition, it shall so decree and enter its judgment of record, declaring it to be to the interest of such district that it avail itself of all rights, powers and privileges conferred by this Act upon districts created under it, and that the district on behalf of which the petition is filed shall thereafter be entitled to and may exercise all rights, powers and privileges conferred by this Act upon districts created by it, and thereafter such district shall have and may exercise all such rights, powers and privileges as if created under this Act, and thereafter it shall proceed in all things as it would if created hereunder, but such decree shall not in any respect injuriously affect any financial liability of such district.

Art. 8038. Repealing provision.—All laws and parts of laws in conflict with the provisions of this Act shall be, and the same are hereby repealed, and Chapter 146, of the General Laws of the Regular Session of the Thirty-fourth Legislature, and Chapter 44, of the General Laws of the Fourth Called Session of the Thirty-fifth Legislature, and all amendments thereto, and Chapter 6, of Title 128, embracing Articles 7972, to 8096, inclusive, of the Revised Civil Statutes, 1925 Revision, are hereby particularly repealed. [Acts 1925, 39th Leg., ch. 21, p. 80, § 66.]

The articles 7972 to 8096 repealed by the above mentioned act of 1925 are not the articles as printed in this revision, but the articles as printed in the proposed bill for which articles 7972 to 8042 of this revision have been substituted.

Art. 8039. Organized under former laws not invalidated.—Any proceedings begun under the provisions of any Act hereby repealed may be proceeded with and completed under the provisions of this Act; and nothing in this Act shall be construed to apply to the issuance of any bonds where provisions for their issuance have been made in whole or in part before the passage of this Act. And no suit or action now pending in any court in this State by or against any levee improvement district organized under the provisions of laws hereby repealed shall be affected by the provisions hereof.

Art. 8040. All districts organized heretofore are under provision of this Act.—This Act is in-

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tended to take place of all such Statutes repealed hereby. All levee improvement districts that have been organized heretofore, or that have availed themselves of the provisions of such law, shall be governed by the provisions of this Act, and the plan of taxation therein provided for shall not be affected or changed by this Act. Any such districts which have not completed any improvements begun under the provisions of any former law shall be governed in the issuance of bonds and the completion of such improvements by the provisions of the Act or Acts under which they were created; and provided, further, that the repeal of Chapter 146, Acts of the Regular Session of the Thirty-fourth Legislature, shall not affect any districts heretofore created under the provisions of that Act, nor districts created under any former laws having for their objects the reclamation and protection of lands through a system of levees and drainage, and which have not heretofore become conservation and reclamation districts, but all rights, powers and privileges granted such districts by the Acts under which they were organized, and amendments thereto, are hereby directly preserved to such districts.

Art. 8041. Does not repeal laws of 1925 Statutes.—This Act shall not be construed to repeal any of the provisions of Chapter 7, Title 128, embracing Articles 8097 to 8193, entitled "Drainage Districts," in the Revised Civil Statutes, 1925 Revision, nor any of the irrigation laws of this State, nor any law upon the subject of drainage districts, water improvement districts or irrigation districts passed at the Regular Session of the Thirty-ninth Legislature.

Art. 8042. Continuation of former Acts.—This Act shall be construed to be a continuation of, and re-enactment of the Acts hereby repealed, excepting such provisions hereof as are now or are in conflict with said Acts. This Act is remodial [remedial] in character and shall be liberally construed to give full effect to all of its purposes.

This article is an exact copy of Texas Rev. Civ. St. 1925, and Acts 1925, 39th Leg., ch. 21, p. 81, § 70, except for the word "remedial" in brackets, which was inserted by the Compiler.

[Note.—Articles from 8043 to 8096, inclusive, not provided for in the Act of 1925, and are therefor omitted from this Revised Statute in order to maintain subsequent number.]

III. DRAINAGE

CHAPTER SEVEN

DRAINAGE DISTRICTS

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1. ESTABLISHMENT

Article 8097. [2567] May establish.—The commissioners courts may establish one or more drainage districts in their respective counties in the manner provided in this chapter. Such districts may or may not include villages, towns and municipal corporations, or any portion thereof, but no land shall at the same time be included in more than one drainage district created hereunder. Such districts, when so established, may make drainage improvements therein and issue bonds in payment therefor as provided in this chapter. The commissioners court shall hereafter be designated as the "Court." [Acts 1907, p. 78; Acts 1911, p. 245.]

Art. 8098. [2568] Petition.—A petition shall first be presented to the Court signed by twenty-five of the freehold resident taxpayers in the proposed district, or if there are less than seventy-five such citizens then by one-third thereof, whose lands may be affected thereby, praying for the establishment of a drainage district, and setting forth the necessity, public utility and feasibility and proposed boundaries thereof, and designating a name for such district, which shall include the name of the county. [Id.]

Art. 8099. [2602] Deposit.—Said petition shall be accompanied by two hundred dollars in cash, which shall be deposited with the clerk of said Court, and by him held until after the result of the election for the creation of the district and issuance of bonds is officially made known. If said election is in favor of the

establishment of said district, then the clerk shall return said deposit to the petitioners, their agent or attorney. If said election is against the establishment of such district, then the clerk shall pay out of said deposit upon vouchers approved and signed by the county judge, all costs and expenses pertaining to said proposed district up to and including said election, and the balance shall be returned to the petitioners, their agent or attorney. [Id.; Acts 1915, p. 61.]

Art. 8100. [2568] Notice of hearing.—At the same session when said petition is presented, the Court shall set said petition down for hearing at some regular or special session called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition, and shall order the clerk to give notice of the date and place of said hearing by posting a copy of said petition and the order of the court thereon for twenty days prior to the election in five public places in said county, one at the court house door, and four within the limits of the district. Said clerk shall be paid one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices. [Acts 1907, p. 78; Acts 1909, p. 24; Acts 1911, p. 245.]

Art. 8101. [2569] Hearing.—On the day set for the hearing, any person whose land would be affected by the creation of said district may appear before said Court and contest the creation of such district or contend for its creation, and may offer testimony to show that the district is or is not necessary, and would or would not be of public utility, either sanitary, agricultural or otherwise, and that the creation of such district would or would not be feasible or practicable. [Id.]

Art. 8102. [2569] Hearing: powers of court.—Except as herein provided, said Court shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such district, and all matters pertaining to the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, and may adjourn hearing on any matter connected therewith from day to day, and all judgments rendered by said Court in relation thereto shall be final. [Id.]

Art. 8103. [2570] Hearing: findings.—If at the hearing it appears to the Court that the drainage of such district is feasible and practicable, and that it is needed, that the drainage would be conducive to the public health or would be a public benefit or a public utility, then the Court shall so find. But if said Court finds any of said issues in the negative, it shall dismiss the petition at the cost of the petitioners. The findings shall be entered of record. [Id.]

Art. 8104. [2571] Engineer.—If said findings favor the establishment of the district, the Court shall appoint a competent civil engineer who shall be entitled to such assistants as may be necessary. Said engineer and his assistants shall be paid for doing the work required of them hereunder, such compensation and allowances for transportation, supplies, etc., as may be agreed on between the engineer and the Court. [Id.; Acts 3rd C. S. 1920, p. 59.]

Art. 8105. [2572] Engineer's bond.—Said engineer shall give bond for five hundred dollars payable to the county judge for the use and benefit of the district, with two or more sureties to be approved by the Court, conditioned on the faithful discharge of his official duties hereunder. [Acts 1907, p. 78; Acts 1911, p. 247.]

Art. 8106. [2573] Preliminary plans.—The engineer shall, within such time as may be prescribed by the Court, go upon the land proposed to be drained and protected by levees, and make a careful survey thereof, and from such survey make preliminary plans, locating approximately the necessary canals, drains, ditches, laterals and levees, and shall designate the streams and bayous necessary to be cleaned, deepened and straightened, and estimate the costs thereof in detail as to each improvement contemplated, and shall also estimate the probable cost of maintaining same per year, and shall at once make a detailed report of his work to the Court. [Id.; Acts 1st C. S. 1913, p. 89.]

Art. 8107. [2574] Plans: outlets.—The engineer is authorized and empowered to go upon lands and premises located outside of such district, and into another and different county, if necessary, for all purposes of the survey, and to ascertain and procure proper and necessary outlets for the proposed canals, drains, and ditches necessary to the drainage of the district. He shall obtain all possible information regarding the lands within the proposed district, and the outlets therefrom from the office of the State Reclamation Engineer and from other sources, and co-operate with said Engineer in the discharge of his duties. [Id.]

Art. 8108. [2575] Map.—The engineer's report shall be accompanied by a map showing the beginning point, as well as the outlets, of all canals, drains, ditches and laterals, and shall show the length, width, depth and slopes of the banks of the cut or excavation, and the estimated number of cubic yards of earth to be removed from each, and shall show the location and size of all levees and the estimated number of cubic yards of earth necessary to construct the same. A copy of the official Land Office map of the county, with the boundaries of the district, and the beginning points and outlets of all canals, drains, ditches and laterals, and other data required by this article shown thereon shall be deemed a sufficient compliance herewith. [Acts 1907, p. 78; Acts 1911, p. 247.]

Art. 8109. [2576] Hearing on report.—When such report of the engineer is filed with the clerk, the Court shall at its next regular or special session set such report down for hearing at a subsequent regular or special session, not less than twenty nor more than thirty days from such sitting. The clerk shall post notice thereof as before provided. At such hearing, any freehold resident or non-resident taxpayer of the district whose lands may be affected by said improvements, may appear and object to any and all of said canals, drains, ditches and levees, for the reason that they are not located at the proper places, or that they are not sufficient in number or capacity to properly drain said territory. [Id.]

Art. 8110. [2577] Report: findings.—If there are no objections to said report, or if the Court finds that any objections thereto are not well taken, the report shall be approved and the fact of its approval entered in the minutes. The Court may change the location of any improvements as shown in the report, or may add to or reduce the number of same, and may order the engineer to locate any additional canals, drains, ditches or levees which may be constructed for the purpose of conducting waters from the lands of said district, or to prevent the overflow of waters from streams or otherwise onto the lands of said district proposed to be drained, or otherwise in aid of said purpose. The Court may, if it deem necessary, refer the entire report back to the engineer for a compliance with the orders of the Court and require a further report. If any changes or alterations are so made in said report, notice shall be given and hearing had as in the first instance. [Acts 1909, p. 24; Acts 1911, p. 248.]

Art. 8111. [2578] Election.—After the approval of the engineer's report, as presented or as modified, the Court shall order an election to be held within such district at the earliest possible legal time, at which election there shall be submitted the following propositions, and none other: "For the drainage district and the issuance of bonds and levy of tax in payment therefor;" "Against the drainage district and the issuance of bonds and levy of tax in payment therefor." [Acts 1907, p. 81; Id.]

Art. 8112. [2579] Notice of election.—Notice of such election shall recite: the establishment of the district, the amount of bonds, which shall not exceed the engineer's estimate and the cost of any additional work which may become necessary by any change or modification in his report, the time and places of holding the election, the proposition to be voted on, and the purposes for which said bonds are to be issued. Such

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notice shall be posted by the clerk as before provided. [Id.]

Art. 8113. [2580] Requisites of election.—A two-thirds vote shall be necessary to carry the proposition to be submitted at such election. Only resident property taxpayers who are qualified voters of the district may vote at any election held under this chapter. All such elections shall be conducted in the manner provided by the general election laws, unless otherwise provided. The Court shall name a polling place at each voting precinct or part thereof in the district, each of which shall be in the district, and shall appoint the judges and other necessary election officers. It shall provide twice as many ballots as there are qualified voters in the district, as shown by the county tax rolls; and said ballots shall have printed thereon the proposition to be submitted as stated in the second preceding article. [Id.]

Art. 8114. [2581] Oath of voter.—Every person who offers to vote in any election held hereunder shall first take the following oath before the presiding judge of the polling place wherein he offers to vote, and said judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of ——— County, and that I am a resident property taxpayer of the proposed district voted on at this election, and that I have not voted before at this election." [Id.]

Art. 8115. [2582] Election returns.—Immediately after the election each presiding judge shall make return of the result in the same manner as provided for in general elections for State and county officers, and return the ballot boxes to the county clerk, who shall keep same in a safe place and deliver them together with all returns to the Court at its next regular or special session called to canvass the vote. If the Court finds that said proposition has carried, it shall so declare the result and enter the same in the minutes as provided in the succeeding article. [Id.]

Art. 8116. [2582] Declaration of result.—Said order shall be substantially as follows: "In the matter of the petition of —— and —— others praying for the establishment of a drainage district in said petition described and designated as ——— County Drainage District No. ——, be it known that at an election called for that purpose in said district, held on the ——— day of ———, A. D. 19——, a two-thirds majority of the resident property taxpayers voting thereat, voted in favor of the creation of said district, and the issuance of bonds and the levy of tax. Now, therefore, it is considered and ordered by the Court that said drainage district be, and the same is hereby established by the name of ——— County Drainage District No. ——, within the following metes and bounds," (which field notes shall be copied into the record). [Id.]

Art. 8117. [2582] District classification.—All districts shall bear the name of the county in which they may be located, as a part of their names, and shall be numbered consecutively as created and established by order of the Court. [Id.]

Art. 8118. [2585] Appointment of commissioners.—When a district is so established, and unless said commissioners are elected as provided in the succeeding article, the Court shall appoint three drainage commissioners who shall be residents of the county or an adjoining county, who shall be freehold taxpayers of the district and legal voters of the county of their residence. Such commissioners shall hold office for two years and until their successors have qualified, unless sooner removed by a majority vote of the Court for malfeasance in office. Upon the expiration of their term of office, or in case of resignation, the Court shall appoint their successors by a majority vote. [Id., Acts 4th C. S. 1918, p. 127.]

Art. 8119. [2585] Election of commissioners.—After a district is so established, upon the petition of a majority of the real property taxpayers of the district, praying for the election of three drainage commissioners, the Court shall immediately order an election for said purpose at the earliest legal time, to be held as other elections hereunder, and shall declare the three persons receiving the highest number of votes to be elected. If the third highest vote be tied, the Court shall elect the third commissioner from those tying for the place. Such commissioners so elected, when duly qualified hereunder, shall be the legal and rightful drainage commissioners for such district within the full meaning and purpose of this law. Such commissioners shall hold office until the next regular election for State and county officers, and shall then and thereafter be elected every two years at such general election. [Id.]

Art. 8120. [2585] Commissioners: salary.—The commissioners shall receive for their services not more than two dollars and fifty cents per day for the time actually engaged in the work of the district, which shall be fixed by order of the Court. Such commissioners shall first submit a detailed report to the Court showing the time actually consumed in the work for said district and of the work done, and such report shall be audited and approved by the Court. [Id.]

Art. 8121. [2586] Commissioners' oath.—Before entering upon his duties, each commissioner shall take and subscribe before the county judge an oath to faithfully discharge the duties of his office without favor or partiality, and to render a true account of his doings to the Court whenever requested to do so. Such oath shall be filed by the clerk of the Court and preserved as a part of the district records. [Acts 1907, p. 82; Acts 1911, p. 251.]

Art. 8122. [2587] Commissioners' bond.—Before entering upon his duties, each commissioner shall give a good and sufficient bond for one thousand dollars, payable to the county judge, for the use and benefit of the district, conditioned upon the faithful performance of his duties. [Id.]

Art. 8123. [2588] Organization of commissioners.—The commissioners shall organize by electing one of their number chairman and one secretary. Two commissioners shall constitute a quorum, which shall be sufficient in all matters pertaining to the business of said district, except the letting of contracts and the drawing of warrants on the treasury, which shall require the concurrence of all the commissioners. [Id.]

Art. 8124. [2592] District engineer.—The commissioners shall appoint a competent civil engineer, who shall be entitled to such assistants as may be necessary. For doing the work required of him hereunder, said engineer and his assistants shall receive such pay and allowances for transportation, supplies, etc., as may be agreed on between him and the commissioners with the approval of the Court. [Id. Acts 3rd C. S. 1920, p. 59.]

Art. 8125. [2592] Duty of engineer.—Said engineer shall make a map of such district showing the boundary lines thereof, with the original surveys therein, and if such lines cross an original survey the map shall show how many acres of such original survey are included in the district. He shall also make maps and profiles of the several canals, drains, ditches and levees in the district and outlets thereof extending beyond the limits of the district. A copy of the Land Office map of the county, as it applies to such district, showing the name and number of each survey, and the area or number of acres contained in the district, shall be a sufficient compliance herewith in so far as making a map of the district is required; and any recognized map of any city or town in the district shall be sufficient as to such city or town. [Id.]

Art. 8126. [2593] Maps and estimates.—The map and profiles of each drain, ditch and levee required by this law shall show the relation that each canal, drain, ditch or levee bears to each tract of land through which it passes, and the shape into which it divides each tract, and where the canal, drain, ditch, or levee cuts off any tract containing less than twenty acres of land the map shall show the number of acres so divided therefrom, and the number of acres in the whole tract, showing the shape of such small tract and its relation to the canal, ditch, drain or levee. Such profile may also show the number of cubic yards necessary to be excavated in order to

make each canal, drain or ditch, and to build any levee located in such district, and give the estimated cost of each. When said map, profile and estimates have been completed by the engineer, he shall sign the same in his official capacity and file them with the clerk of the court. [Acts 1907, p. 83; Acts 1911, p. 252.]

Art. 8127. [2595] Issuance of bonds.—When such maps, profiles and estimates are so filed, the Court shall make an order directing the issuance of drainage bonds for such district, sufficient in amount to pay for such proposed improvements, together with all necessary actual and incidental expenses connected therewith. Such bonds shall not exceed in amount one-fourth of the assessed valuation of the real property in such district, as shown by the last annual assessment thereof made for said district, nor exceeding the amounts specified in said order and notice of election. [Id. Acts 1st C. S., 1913, p. 90.]

Art. 8128. [2595] Change in plans without bonds.—After the issuance of bonds is authorized, the commissioners may make changes in said district or in any improvements therein which will be of advantage to the district, but which will not increase the cost of such proposed work beyond the amount of bonds authorized. Such changes may be made by the commissioners by entering on their minutes a notation of such changes, with the district maps and profiles showing such changes. Notice of such change shall be given by publication of such notation with the book and page number of the minutes, for two successive weeks in some newspaper of general circulation, published in the English language, within the county in which such district is situated. [Id.]

Art. 8129. [2595] Change in plans with bonds.—When it appears to the commissioners that changes or additions may be made in the preliminary survey of the engineer, which shall be of advantage to the district but which shall make necessary the issuance of more bonds of the district, they shall so certify to the Court, accompanying such certificate by maps and profiles prepared by the district engineer, showing such changes and the estimated cost thereof. At its first regular session after the filing of such data, the Court shall give notice of an election to determine whether or not such changes and improvements shall be made, and shall order such election to be held within such time and the returns made as provided for an original election. If two-thirds of the property taxpaying voters of the district vote in favor of such proposition, the court shall enter the same of record and order such bonds to be issued as in the first instance. [Id.]

Art. 8130. [2599] Bonds: record book.—Before issuing any bonds hereunder, the Court shall provide a well bound book, in which a record shall be kept by the county clerk of all bonds issued, with their numbers, amount, rate of interest and date of issue, when due, where payable and amount received for the same, and the annual rate of assessment made each year to pay the interest on said bonds and provide a sinking fund for their payment, and upon the payment of any bond an entry thereof shall be made in said book. Said book shall at all times be open to inspection of all parties interested in said district either as taxpayers or bond holders. The county clerk shall receive for his services in recording all bonds and other instruments of the district, the same fees as provided by law for other like records. [Id.]

Art. 8131. [2596] Bonds: requisites.—All bonds issued hereunder shall be issued in the name of the district, signed by the county judge and attested by the county clerk, with the seal of the Court affixed thereto. Such bonds shall be issued in denominations of not less than one hundred nor more than one thousand dollars each, and shall bear interest at not exceeding six per cent per annum, payable annually or semi-annually. Such bonds shall by their terms provide the time, places, manner and conditions of their payment, and the rate of interest thereon, as may be determined and ordered by the court. No bonds shall be made payable more than forty years after the date thereof. [Acts 1907, p. 84; Acts 1911, p. 253; Acts 1915, p. 60.]

Art. 8132. [2597] Bonds: approval.—Before any bonds are offered for sale, the district shall forward to the Attorney General a copy of the bonds to be issued, a certified copy of the order of the Court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such district as such, including the series of bonds proposed, and the assessed value of property for the purpose of taxation as shown by the last official assessment of the county, with such other information as the Attorney General may require. Such officer shall carefully examine said bonds, and if he shall find that they are issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon such district, he shall so officially certify. [Acts 1907, p. 84; Acts 1911, p. 253.]

Art. 8133. [2598] Bonds: registration.—When said bonds have been so approved, they shall be registered by the Comptroller in a book to be kept for that purpose, and the certificate of their approval shall be preserved of record for use in the event of litigation. Thereafter, said bonds shall be held prima facie valid and binding obligations in every action, suit or proceeding in which their validity is brought in question. In every suit to enforce the collection of said bonds, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received in evidence as prima facie proof of the validity of such bonds, together with the coupons attached thereto. The only defense that can be offered against the validity of such bonds shall be forgery or fraud. [Id.]

Art. 8134. [2600] Bonds: sale.—When the bonds have been registered, the county judge shall, under the direction of the Court, advertise and sell said bonds on the best terms and for the best price possible, not less than their par value and accrued interest. All money received from such sale shall be turned over as received by the county judge to the county treasurer, and shall be by him placed to the credit of the district in the construction and maintenance fund thereof. The county judge shall be allowed one-half of one per cent of the amount received on the sale of any bonds sold by him in full payment of his services in that behalf. [Id. Acts 1915, p. 61; Acts 1921, p. 164.]

Art. 8135. [2601] Bond of county judge.—After the drainage bonds have been registered, the county judge shall at once execute a good and sufficient bond, payable to the commissioners and approved by them, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties. If said bond is executed by a satisfactory surety company, the district may pay a reasonable amount as premium on said bond, which shall be paid out of the construction and maintenance fund upon presentation of the bill therefor to the commissioners. If there is any controversy as to the reasonableness of the amount claimed as such premium, such controversy may be determined by any court of competent jurisdiction. Said premium may be deducted by the commissioners from the commissions allowed the county judge on the sale of bonds by him. [Id.]

Art. 8136. [2603] Tax levy for bonds.—When bonds have been voted, the Court shall annually levy and cause to be assessed and collected taxes upon all property within the district, whether real, personal or otherwise, and sufficient in amount to pay the interest on such bonds as it falls due, and to redeem such bonds at maturity. Such taxes when so collected shall be placed in the interest and sinking fund. [Acts 1907, p. 85; Acts 1911, p. 255; Acts 1915, p. 61.]

Art. 8137. [2603] Maintenance: estimate.—The commissioners shall annually, on or before the first day of July, prepare and file with the Court a full detailed report of the condition of the improvements theretofore made in the district, with an estimate of the probable cost of maintenance and needed repairs during the ensuing year, together with an inventory of all funds, effects, property and accounts

belonging to such district, and a list of all lawful demands, debts and obligations against the district. Such report shall be verified by the commissioners and carefully investigated and considered by the Court before any levy of taxes is made under the succeeding article. [Id.]

Art. 8138. [2603] Maintenance: taxes.—At the same time that taxes are levied to meet the bonded indebtedness, the Court shall cause to be assessed and collected taxes upon all property in the district, whether real, personal or otherwise, sufficient to maintain, keep in repair, and to preserve the improvements in the district, and to pay all legal, just and lawful debts, demands and obligations against such district. Such levy shall never, in any one year, exceed one-half of one per cent of the total assessed valuation of such district for such year. Such taxes when so collected shall be placed in the construction and maintenance fund. [Id.]

Art. 8139. [2603] Maintenance: unsold bonds.—If any bonds remain which are not required for the completion of the improvements made or to be made, then with the consent of the Court duly made of public record, such bonds or a part thereof may be sold and the proceeds from the sale thereof shall be placed in the maintenance and construction fund and used for the purposes stated in the preceding article. [Id.]

Art. 8140. Taxes: assessment.—In the assessment and collection of the taxes authorized hereunder, and in all matters pertaining thereto or connected therewith, the county tax assessor and collector shall have the same powers and shall be governed by the same rules, regulations and proceedings as provided for the assessment and collection of State and county taxes, unless otherwise herein provided. The Court shall constitute a board of equalization for such district, and all laws governing boards of equalization for State and county taxing purposes shall govern such district board. [Acts 1915, p. 63.]

Art. 8141. Taxes: collection.—The taxes authorized hereunder shall be a lien upon all property assessed therefor. The Court shall, and it is empowered to, fix the time and determine the date when such taxes shall become due and payable, otherwise they shall become due and payable at the same time as State and county taxes. Upon the failure to pay such taxes when due, the penalty provided by law for failure to pay State and county taxes at maturity shall in every respect apply to taxes hereunder. [Id.]

Art. 8142. [2604] Tax rolls.—The Court shall provide all necessary additional books for the use of the assessor and collector and the county clerk of such district, and charge the cost of same to the district. When ordered by the Court, the assessor shall assess all property within the district and list the same for taxation in the books or rolls furnished him by said Court for said purpose, and return said books or rolls when he returns the State and county rolls for correction and approval. If said Court finds them correct, it shall approve the same and direct the county clerk to issue a warrant against the county treasurer in favor of the assessor to be paid from the district funds. The assessor shall receive for said services such pay as the Court deems proper. If the assessor fails or refuses to comply with such order, he shall be suspended from the further discharge of his duties by the Court, and removed from office in the mode prescribed by law for the removal of county officers. [Acts 1907, p. 85; Acts 1911, p. 256.]

Art. 8143. [2605] Duty of collector.—The county tax collector shall be charged by the Court with the assessment rolls of the district, and shall be allowed such compensation for the collection of said taxes as is allowed for the collection of other taxes. The Court shall require said officer to give an additional bond or security in such sum as they deem proper and safe to secure the collection of said taxes. If such officer fails or refuses to give such additional security when requested by the Court, within the time provided by law for such purposes, he shall be suspended from office by the Court and immediately thereafter be removed from office in the mode prescribed by law. [Id.]

Art. 8144. [2606] Delinquent taxes.—The collector shall make a certified list of all delinquent property upon which the drainage tax has not been paid, and return same to the Court, which shall proceed to have the same collected by the sale of such property in the same manner provided by law for the sale of property for the collection of State and county taxes. The commissioners may purchase any property so sold, for the benefit of the district. [Id.]

Art. 8145. Separate tax officers.—After the establishment of a district, and upon the petition of twenty-five resident freeholders thereof, the Court may order an election to determine whether or not such district shall have a separate tax assessor, separate tax collector, and separate board of equalization for the assessment and collection of district taxes. Notice of such election shall be given as in the original election, and if said proposition carries by a two-thirds vote, the Court shall appoint a suitable person as assessor and other such person as collector, and they shall give bond and exercise the same powers and perform the same duties as provided herein for the county assessor and collector; and the commissioners shall exercise all of the powers herein conferred upon said Court with relation to the equalization of taxes. The general laws relating to the assessment, collection and equalization of taxes, in so far as applicable, shall apply to the assessment, collection and equalization of district taxes. [Acts 1st C. S. 1913, p. 91.]

Art. 8146. [2607] Duty of treasurer.—The county treasurer shall open an account with the district and keep an accurate account of all money received by him belonging to such district, and of all amounts paid out by him. He shall pay out no money except upon a voucher signed by the commissioners and countersigned by the county judge. He shall carefully preserve on file all orders for the payment of money, and as often as required by the commissioners or the Court, he shall render a correct account to them of all matters pertaining to the financial condition of the district. [Acts 1907, p. 85; Acts 1911, p. 256.]

Art. 8147. [2608] Bond of treasurer.—The county treasurer shall be the treasurer of such district, and shall execute a good and sufficient bond, payable to and approved by the commissioners in a sum equal to the amount of bonds issued, conditioned for the faithful performance of his duty as treasurer. If a district depository is selected, then he shall give bond for the faithful discharge of the duties of his office in accordance with the provisions of law relating to such county treasurers in counties where county depositories have been provided for county funds. [Id. Acts 1st C. S. 1913, p. 91.]

Art. 8148. [2608] Salary of treasurer.—The treasurer shall be allowed as pay for his services as such, one-fourth of one per cent upon all money received by him for the account of such district, and one-eighth of one per cent upon all money by him paid out upon the order of the district. He shall not be entitled to any commissions on any district money received by him from his predecessor in office. [Id.]

Art. 8149. [2608] District depository.—The commissioners, in their discretion, may provide for a district depository for the funds of such district, by complying in all respects with the laws governing the designation of county depositories. Such depository shall give a good and sufficient bond, approved by the commissioners, as provided by law for depositories of county funds. All powers vested in the Court as to the designation of county depositories are hereby vested in the commissioners as to the funds of the district. [Id.]

Art. 8150. [2602] District funds.—After the establishment of a district, all legal and just expenses,

debts and obligations other than bonds and interest thereon arising and created after the filing of the original petition and necessarily incurred in the creation, establishing, operation and maintenance of such district, shall be paid out of the "Construction and Maintenance Fund," of such district which shall consist of all money, effects, property and proceeds received by such district from all sources, except that portion of the tax collections which shall be necessary to pay the interest on the bonded indebtedness as it falls due and the payment of the bonds at maturity. Said tax collections shall be placed in and paid out of the "Interest and Sinking Fund" of such district for such purposes, and such fund may be invested for the benefit of the district in such bonds and securities as the Attorney General may approve. Such funds shall be held for the respective purposes for which they were created, and if money is improperly paid out of either, the Court may cause the county treasurer to make the necessary transfer of such amount in the district accounts, to restore the fund so improperly used. [Acts 1907, p. 85; Acts 1911, p. 255; Acts 1915, p. 61.]

Art. 8151. [2590] Eminent domain.—All districts shall have the right of eminent domain to condemn and acquire the right of way over and through all public and private lands, except property used for cemetery purposes, necessary for making the canals, drains, levees and improvements in the district, and for making the necessary outlets thereto in any county in this State. No right of way shall be condemned through any part of an incorporated city or town without the consent of the lawful authorities thereof. Such proceedings shall be in the name of the district and under the direction of the commissioners. No appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall suspend the work of the drainage commissioners in prosecuting the work of drainage in all of its details. All expenses arising from such proceedings shall be paid out of the construction and maintenance fund. [Acts 1907, p. 87; Acts 1911, p. 257.]

Art. 8152. [2591] Right of way.—The commissioners are empowered to acquire the necessary right of way for all canals, drains, ditches and levees and other necessary improvements contemplated by this law, by gift, grant, purchase or condemnation proceedings, and if acquired by purchase shall be subject to approval by the Court. [Id.]

Art. 8153. [2619] Private drains.—All canals, drains, ditches and levees made and water courses cleaned or constructed by any district shall be the public property of such district, and every person owning land within said district shall have the right to drain into one or more of such public drains, and at his own expense to make drains according to the natural slope of the land through such other lands as intervene between his land and the nearest public drain or water-course, or along a public highway. Such owner shall first notify the commissioners of his desire to make such drain through another's property or along a public highway, and such commissioners shall go upon the premises and act as a jury of view and determine the place where such drain may be made. [Id.]

Art. 8154. [2623] Control of system.—The drainage commissioners shall keep the canals, drains, ditches and levees and other improvements made hereunder in repair, and shall have general authority to supervise and control the construction and maintenance of same. [Id.]

Art. 8155. [2610] Construction contracts.—Contracts for construction and other necessary work in the district shall be let by the commissioners to the lowest bidder after advertising the same in one or more newspapers of general circulation in this State, once a week for four consecutive weeks, and by posting notices thereof for at least twenty-five days, in five public places in the county, one at the courthouse door, and at least two within the district. Contracts may be let separately or all together. All improvements included in the report of the drainage engineer and adopted by the Court shall be constructed. [Id.]

Art. 8156. [2611] Bids.—Any person, firm or corporation desiring to bid on the construction of any work advertised for hereunder shall, upon application to the commissioners, be furnished with a copy of the engineer's report showing the location, profiles and estimates of such work. All bids shall be in writing and sealed and delivered to the chairman of the commissioners, with a certified check for at least five per cent of the total amount bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract if his bid is accepted. Any bid may be rejected if deemed too high. [Id.]

Art. 8157. [2613] Contractor's bond.—The contractor shall give bond in the amount of the contract price, payable to the commissioners, conditioned that he will faithfully perform the obligations, agreements, and covenants of the contract, and that in default thereof he will pay to said district all damages sustained by reason thereof. Said bond shall be approved by the commissioners and the county judge. [Id.]

Art. 8158. [2612] Requisites of contract.—All contracts shall be in writing and signed by the contractors and commissioners and approved by the county judge, and a copy of same filed with the county clerk. [Id.]

Art. 8159. [2614] Duty of engineer.—The drainage engineer shall furnish the contractor with a sectionized profile of the work contracted for, showing the depth, width and slope of all canals, drains, ditches and levees, and the number of cubic yards to be removed and other work to be done by the contractor, and such work shall be done by the contractor under the supervision of the drainage engineer, who shall indicate to said contractor the points at which the laterals shall intersect the main canal. No earth shall be deposited by the contractor so as to interfere with the construction of such laterals or other contemplated work in the district, or the building of bridges or other work on the public roads. When the work is completed according to contract, the engineer shall make a detailed report of the same to the commissioners showing whether the contract has been fully complied with according to its terms, and if not, in what particular it has not been complied with. [Id.]

Art. 8160. [2617] Railway culverts.—The commissioners are authorized at the expense of the district, to make all necessary bridges and culverts across or under any track or right of way of any railway to enable them to construct and maintain any canal, drain, or ditch necessary to be construed by such district. Notice shall first be given by such commissioners to the railway authorities authorized to build or construct bridges and culverts, and the railroad shall be allowed thirty days to build such bridges or culverts at their own expense, if it should so desire, according to its own plans. Such bridge or culvert shall be constructed so as not to interfere with the free and unobstructed flow of the water passing through the canal or drain, and shall be placed at such points as are designated by the drainage engineer. [Id.]

Art. 8161. [2618] Road culverts.—The commissioners are authorized and required to build all necessary bridges and culverts across and over all canals, drains, ditches, laterals and levees constructed hereunder whenever the same cross a county or public road, and shall pay for same out of the drainage fund. [Id.]

Art. 8162. Additional improvements.—If there remains a surplus of money or bonds to the credit of the district, after the final completion of all improvements contracted for, including bridges and culverts, and after the payment of all expenses incurred hereunder, the commissioners may cause the district engineer to make a detailed report of any additional or supplemental drains, ditches or levees or other character of surface drainage improvements, including tile

drainage, that may be needed in such district. Such report shall be made and acted upon in the manner prescribed for the initial report of the engineer before the issuance of bonds. The estimated cost of such additional improvements shall in no case exceed the amount of surplus money or bonds to the credit of the district. [Id.]

Art. 8163. Additions: election.—After the approval of the engineer's report or as modified by the Court, the Court shall order an election to be held within the district at the earliest possible legal time. The only proposition presented at such election shall be "For the additional improvements and payment therefor out of the moneys on hand;" and "Against the additional improvements and payment therefor out of the moneys on hand." A majority vote shall be necessary to carry such proposition. Notice of such election briefly reciting the character and scope of such proposed improvements, stating the estimated cost of same, and stating the time and places of holding such election shall be given, election officers appointed, returns made and canvassed, and the result declared, in like manner as provided for the original election. [Id.]

Art. 8164. Additions: contracts.—The provisions of this law relative to the letting of contracts and the construction of improvements thereunder and the authority of the drainage commissioners and the Court in connection therewith, shall apply to the construction of such additional improvements and payment therefor in so far as applicable. [Id.]

Art. 8165. [2615] Inspection of work.—The commissioners are empowered and they shall at all times during the progress of the work done under any contract, inspect the same. [Id.]

Art. 8166. [2615–16] Contracts: payment.—If the commissioners deem it advisable in order to obtain more favorable contracts, they may advertise and contract for work to be paid for in partial payments as the work progresses, but such partial payments shall not exceed in the aggregate seventy-five per cent of the total amount to be paid under the contract. The amount of work completed under any contract shall be shown by a certified report of the engineer, and no payment shall be made for work not completed. On the completion of any contract not let on the partial payment plan, the commissioners shall draw a warrant on the treasurer for the amount of the contract price in favor of the contractor or his assignee. [Id.]

Art. 8167. [2620] Application for connecting drains.—No individual, company, corporation or adjoining district shall have the right to artificially drain adjacent lands, located outside of an established district, into the canals, drains or ditches of such established district, without first making written application to and obtaining the permission of the district commissioners to make such connections. Such application shall show the width, depth and length of such connecting drains or ditches. [Id.]

Art. 8168. [2620] Connections: engineer's report.—When such application has been filed with the commissioners, the district engineer shall make an estimate of the quantity of water which such connecting drains or ditches would probably empty into such established canals or drains, and whether such canals or drains have sufficient capacity to carry such excess of water without risk or damage thereto or the adjacent territory. The engineer shall report the result of his examination and estimate to the commissioners. [Id.]

Art. 8169. [2620] Connections: requisites.—If the commissioners deem it advisable, they may authorize such connection, on condition that such applicant shall first pay into the county treasury for the benefit of the construction and maintenance fund a sum which bears the same ratio to the cost of the original canal or drain from the point of connection to its outlet, that the water to be emptied therein by the connecting drains bears to the water then tributary to and being carried by the original canal or drain as estimated by the district engineer, unless the commissioners otherwise agree with the applicants. [Id.]

Art. 8170. [2621] Connections: enlargement.—When it appears from the engineer's report that the canals, drains or outlets of such established district are not of sufficient capacity to carry the excess of water that would be discharged therein by reason of such connection, or that such additional discharge of water would endanger the initial canals and drains or the lands and property adjacent thereto, then the county court in which the initial district is situated shall nevertheless authorize such applicant to make such connection and secure the desired outlet only on condition that it shall first at its own expense and cost make the necessary enlargement of the canals and drains of the initial district, and such increased capacity shall be amply sufficient to carry any increase of water that may be caused by such connections without danger to said canals and drains or to lands adjacent thereto. [Id.]

Art. 8171. [2622] Enlargements: supervision.—Such enlargements shall be done under the supervision and direction of the district engineer, whose salary shall by order of the county court be paid by the applicant. When such work is completed to the satisfaction of the engineer, he shall report to said court under his official certificate showing the kind of work done, the extent thereof, and that the new capacity is sufficient to carry any excess from such connection. Said report shall also show the number of days he was actually employed in supervising said work, and the amount due for such services. On approval of such report, the county court shall make an order authorizing the connections desired with such canals and drains, on payment of the amount shown to be due the engineer by said report. [Id.]

Art. 8172. [2624] Report of commissioners.—The commissioners shall make semi-annual reports of their acts as such, including a financial statement showing with accuracy of date, amount and detail, the receipts and disbursements of all funds subject to their orders as such commissioners, and shall file same with the county clerk on or before the first days of January and July. Such report shall show in detail the kind, character and amount of work done by the district, the cost of same and the amounts paid out in orders and for what purposes, and to whom paid, and other data necessary to show the condition of the improvements made hereunder. Such commissioners shall have a true copy of such report published in some newspaper in the county, once each week for two successive weeks immediately following the first day of January and July of each year. [Id. Acts 1st C. S. 1913, p. 92.]

Art. 8173. [2589] Drainage attorney.—The commissioners are authorized to employ counsel to represent such district in the preparation of any contract or the conducting of any proceedings in or out of court, and to be the legal adviser of such commissioners, upon such terms and for such fees as may be agreed upon by them and approved by the county judge, and such commissioners shall draw warrants in payment for such legal services. [Acts 1907, p. 91; Acts 1911, p. 263.]

Art. 8174. Status of districts.—All districts may, by and through their commissioners, sue and be sued in all courts of this State, in the name of such districts, and all courts of this State shall take judicial notice of the establishment of all such districts. [Id.]

Art. 8175. Suits affecting district.—No suit shall be permitted to be brought in any court of this State enjoining the formation or contesting the validity of any district or its bonds, except in the name of this State by the Attorney General upon his own motion, or upon the motion of any party affected thereby upon good cause shown. [Acts 1911, p. 253.]

Art. 8176. May become conservation district.—Any district established hereunder may become a

conservation and reclamation district under Chapter 8 of this title by making the deposit and presenting the petition to the Court, after notice and hearing had as provided herein for establishing a district, by order of said court entered of record declaring such district to be a conservation and reclamation district. [Acts 4th C. S. 1918, p. 40.]

2. DISSOLUTION

Art. 8177. Power to dissolve.—Any drainage district may voluntarily abolish its corporate existence in the manner hereinafter provided. If the proposition to abolish such district fails to carry at the election held therefor, no other election for the same purpose shall be held within two years after the result of such election has been declared. [Acts 1st C. S. 1913, p. 41; Acts 1915, p. 127.]

Art. 8178. Petition.—Upon the presentation to the Court at a regular session thereof, of a petition praying for the abolition of such drainage district, the Court shall order an election to be held within such district at the earliest possible legal time to determine whether or not such district shall be abolished. Such petition shall be signed by fifty of the freehold resident citizen taxpayers of the district, or if there are less than one hundred such citizens, then by one-third thereof. [Acts 1st C. S. 1913, p. 41.]

Art. 8179. Deposit.—Such petition shall be accompanied by two hundred dollars in cash which shall be deposited with the county clerk, and by him held until after the result of the election for the abolition of the district has been declared and entered of record by the Court. If such election favors the abolition of the district, the clerk shall return said deposit to the petitioners, their agent or attorney, and the costs and expenses of holding said election shall be a charge against said district, to be collected as other debts in the manner hereinafter provided. If the result of such election is against the abolition of the district, then the clerk shall pay out said sum upon vouchers signed by the county judge for all costs and expenses of said election, and return the balance to the petitioners, their agent or attorney. [Id.]

Art. 8180. Election.—Notice of such election shall be posted, and such election shall be held in like manner as provided for an election to establish a district hereunder. A two-thirds vote shall be necessary to carry the proposition submitted at such election. The ballot for such election shall have printed thereon the words and no others: "For the abolition of the drainage district," and "Against the abolition of the drainage district." [Id.]

Art. 8181. Result of election.—Returns of such election shall be made and the votes canvassed as before provided in this chapter, and if said proposition carries, the Court shall so declare and enter the same in their minutes, substantially as follows: "In the matter of the petition of ——— and ——— others, praying for the abolition of the drainage district in said petition described and designated as ——— County Drainage District No. ———, be it known that at an election called for that purpose in said district, held on the ——— day of ———, A. D. 19—, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the abolition of said drainage district. Now, therefore, it is considered and ordered by the Court that said district be, and the same is hereby abolished." [Id.]

Art. 8182. Settlement of debts.—When the district is so abolished, the Court shall provide for the settlement of the debts due by said district, including the costs and expenses of holding said election, and for such purpose shall have the power to levy and cause to be assessed and collected in the manner provided in this chapter, a tax against the real and personal property in said district, in such amount only as will be necessary for the payments of all valid debts and obligations of every character existing against said district, except bonds issued and held by purchasers. Such bonds shall be paid in accordance with the terms thereof by levy and collection of an annual tax as before provided, unless a retirement of such bonds is effected as provided in the succeeding article. [Id.]

Art. 8183. Retirement of bonds.—If there are any district bonds outstanding at the time of such dissolution, the Court shall immediately enter into negotiations with the holders of such bonds, and if, according to the terms thereof, or by agreement between said Court and the holders, said bonds can be retired at an earlier date than stipulated on their face, and such retirement is considered by said Court as feasible and practicable, then said Court shall have the power to levy and cause to be assessed and collected in the manner provided in this chapter, such a tax, either annually or all at once (not exceeding the constitutional limit), as will pay off as speedily as possible all indebtedness, both bonded and otherwise, of said district. [Id.]

Art. 8184. Custody of property.—Upon the dissolution of a district, the Court shall provide for the disposition and sale of all district property and turn the same over to the county treasurer, immediately upon the filing and approval of his bond, whereupon he shall become trustee for such defunct organization. Said treasurer shall execute a good and sufficient bond, in a sum not less than double the value of the district property and its outstanding bonds, payable to and approved by the county judge and his successors in office, conditioned for the faithful performance of his duty as treasurer and trustee of such district, and for paying over and delivering all money and other property coming into his hands as such treasurer and trustee, to the parties entitled thereto. Said bond shall be recorded in the minutes of the Court, and when approved, shall supersede the bond theretofore given by said treasurer, as treasurer of said district. [Id.]

Art. 8185. Powers of trustee.—The said treasurer, as ex-officio trustee of said defunct district, after giving the required bond, shall take charge of all the property of said district, including the money in his hands as treasurer, said money to be held by him as treasurer of such district, and all books, notes, accounts and choses of action of every kind. As such trustee he may bring suit against any persons in possession of such property, or indebted to such district, the same as such district could if still organized, and may employ counsel in all suits hereunder, or in the care and management of the business of such defunct district. [Id.]

Art. 8186. Presentation of claims.—Any person, firm or corporation having any claim against such district, shall within six months after the approval of the bond of the trustee, present to him such claim, duly verified. If the trustee finds the same correct, he shall allow such claim and thereupon the claimant shall file the same with the clerk of the Court not less than twenty days before the beginning of the next regular session of said court, and the clerk shall immediately issue a notice of such filing to all persons interested in said district. Such notice shall be posted in three public places in the district, and at the courthouse door, not less than twenty days before the next regular session of said court. [Id.]

Art. 8187. Approval of claims.—The Court in regular session shall pass upon said claim, and if it be found correct they shall approve the same, and the order of approval shall be entered upon their minutes, whereupon said claim shall become a valid and subsisting claim against said district. Said claim shall then be filed with the trustee and shall be paid by him in the order of its filing out of the money in his hands as treasurer of said district or collected as liquidation taxes hereunder. All bonds and approved claims outstanding against said district before its dissolution shall not be required to be allowed and approved as herein provided, but shall be considered as valid and subsisting claims against said district without further approval, but subject to be

contested in accordance with the provisions of this subdivision. [Id.]

Art. 8188. Rejection of claims.—If the trustee finds any claim presented to him unjust in whole or in part, he shall indorse thereon his refusal to allow same, and if it be refused in whole the owner thereof may institute suit against said trustee for said claim in any court of competent jurisdiction in the county, and if established by judgment as in other cases, said judgment shall be filed with the said treasurer and shall be paid in its order as other claims. If said claim be refused by the trustee in part and allowed in part, and the owner thereof waives his claim to the part so refused, he shall file said claim in the Court for approval. But if he does not waive his right to the portion of said claim so refused, he shall withdraw said claim from the trustee and may bring suit thereon as herein provided. [Id.]

Art. 8189. Claimant may appeal.—If the owner of any claim acted upon by the Court is not satisfied with the judgment thereon, he may appeal therefrom as in cases of appeal from judgment of a justice court. [Id.]

Art. 8190. Contesting claim.—If any district taxpayer files with the trustee a protest against any claim which was allowed by the former drainage commissioners before the dissolution of the district and which was unpaid at the time of dissolution, together with a bond in double the amount of such claim, with sufficient sureties to be approved by the trustee and made payable to him, conditioned that such contestant will pay all costs of suit in case said claimant establishes his claim in full in any State court in which he may sue thereon, then the treasurer shall refuse to pay said claim and the owner thereof may bring suit therefor against the trustee, as in other suits of a civil nature. In such suits, the contestant and his bondsmen shall be made parties thereto, and the trustee shall make all defenses urged against said claim by the contestant. In case of recovery by the claimant, judgment shall be rendered against said contestant and his bondsmen for all costs incurred in said suit; and the owner of said claim shall file the judgment with the trustee, to be paid as other claims hereunder. [Id.]

Art. 8191. Trustee's expenses.—All reasonable expenses incurred by the trustee in the care, control and conduct of the business of the district and employment of counsel therefor, or in conducting or defending suits in his capacity as such trustee, shall be charged by him against said trust estate, and shall be presented to the Court annually at a regular term thereof, and upon due notice posted as required in case of other claims against the district. Upon approval by said court, the same shall become a valid and subsisting claim against said district and shall be a preferred claim, and may be retained by said trustee out of the funds in his hands as district treasurer. If said claim is rejected in whole or in part, and the trustee is dissatisfied with said ruling, he may appeal therefrom as other claimants. [Id.]

Art. 8192. Fees of officers.—The trustee shall receive only one compensation for his services as trustee and ex-officio treasurer hereunder. He shall be allowed one per cent upon all money received by him for the account of such district, and one per cent upon all money paid out as provided herein; but he shall not be entitled to such commission on money in his hands as treasurer of said district at the time of the dissolution thereof, as of money coming into his hands, nor on money turned over by him at the expiration of his trusteeship. The county assessor and collector shall receive the same compensation for the assessing and collecting of taxes as before provided in this chapter, and their compensation for such service shall be provided for in the order of the Court assessing taxes hereunder. [Id.]

Art. 8193. Final report of trustee.—When all claims established against the district have been paid and all costs and expenses incurred in the control and management thereof have been satisfied, the trustee shall file his account for final settlement with the Court. Said account shall contain a full and complete account of all money received and paid out, all property of every kind that has come into his hands as trustee, and the disposition thereof, and all other matters pertaining to the management of the affairs of the district. Upon the approval of said account, the Court shall direct the trustee to turn over any property or money remaining in his hands to the person or persons entitled thereto as found by said Court, and on his compliance with said order he shall so report to the Court and thereupon the Court shall enter an order discharging said treasurer and trustee and his bondsmen and closing said trust estate. [Id.]

IV. CONSERVATION AND RECLAMATION

CHAPTER EIGHT

CONVERSION OF DISTRICTS

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8195. Conversion of districts.
8196. Powers.
8197. Indebtedness.

Article 8194. Creation.—Conservation and reclamation districts may be created and organized in any manner that water improvement, drainage, or levee improvement districts are authorized by the laws of this State to be created, and for the several purposes therein provided. [Acts 4th C. S. 1918, p. 40.]

Art. 8195. Conversion of districts.—Any water improvement, drainage, or levee improvement district organized under the laws of this State as a defined district under Section 52 of Article 3 of the Constitution, may avail itself of the benefits of Section 59 of Article 16 of the Constitution, and thereby become a conservation and reclamation district without change of name, or impairment of its obligations, in the manner provided by law. [Id.]

Art. 8196. Powers.—Any such district, or any district organized hereunder, may incur indebtedness and levy taxes to fully carry out each purpose of its organization, and for the payment of its obligations and the maintenance and operation of said district; and any such district shall be governed and controlled by the provisions of law under which it organized. [Id.]

Art. 8197. Indebtedness.—All limitations of indebtedness authorized to be incurred and taxes to be levied, imposed by Section 52 of Article 3 of the Constitution and all laws under which any such district is organized, are removed as to all conservation and reclamation districts. [Id.]

V. NAVIGATION

CHAPTER NINE

NAVIGATION DISTRICTS

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1. ORGANIZATION

Article 8198. [5955] Scope of district.—Navigation districts may be created so as to include therein the territory of not more than two counties or parts thereof; and such districts may or may not include villages, towns, and municipal corporations, or any part thereof. Such districts may improve rivers, bays, creeks, streams and canals within or adjacent to such districts, and construct and maintain canals and waterways to permit of navigation or in aid thereof, and may issue bonds in payment therefor as hereinafter provided. [Acts 1909, p. 32; Acts 1921, 1st C. S., p. 113.]

For additional legislation affecting articles 8198–8220 and 8222–8228 hereof, see provisions of Laws 1925, p. 7, ch. 5, inserted herein following article 8263.

Art. 8199. [5956] May include road districts.—No navigation district including within its boundaries all or parts of two counties shall include any part of any defined or special road district which has voted bonds for the construction of public roads, except upon petition signed by a majority of the property taxpayers residing in such defined or special road district or part thereof so included, unless the whole county containing such road district be included in said navigation district, when this article shall not apply. [Id.]

Art. 8200. [5956] Petition for district.—When it is proposed to create a district wholly within one county, a petition shall be presented to the commissioners court of said county, signed by twenty-five of the resident property taxpayers, or if there are less than seventy-five resident property taxpayers in the proposed district, then by one-third of such taxpayers, praying for the establishment of a navigation district, and setting forth the boundaries of the proposed district, accompanied by a map thereof, the general nature of the improvements proposed, and an estimate of the probable cost thereof, and praying for the issue of bonds and levy of tax in payment thereof, and designating a name for such navigation district, which name shall include the name of the county. Said petitioners shall make affidavit to accompany said petition of their said qualifications. When a proposed district lies in two counties, the petition shall be signed by the said number of resident property taxpayers of each county, and shall be presented to the commissioners court of the county containing the greater part of such district, which shall be the county of jurisdiction in respect to all matters concerning said district, and the name of such county shall be included in the name of such district. [Id.]

Art. 8201. [5981] Deposit.—Said petition shall be accompanied by five hundred dollars in cash, which shall be deposited with the clerk of said court, and by him held until after the result of the election for the creation of said district has been declared and entered of record by the commissioners court. If the result of said election be in favor of the establishment of said district, then said deposit shall be by said clerk returned to the petitioners, their agent or attorney; but, if the result of said election be against the establishment of said district, then said clerk shall pay out of the said five hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed district up to and including the said election, and shall return the balance, if any, to the petitioners, their agent or attorney. [Acts 1909, p. 32.]

Art. 8202. [5956] Notice of hearing.—Upon presentation of such petition, said court shall set the same down for hearing at some regular or special term, not less than thirty nor more than sixty days from such presentation; and shall order the clerk of said court to give notice of the date and the place of said hearing by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be at the court house door, and four of which shall be within the limits of said proposed navigation district; and if the district be composed of more than one county, then said notices shall be so posted in each county. Said notices shall be posted not less than twenty days prior to the time set for the hearing. The clerk shall receive one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting same. [Acts 1909, p. 32; Acts 1921, 1st C. S., p. 113.]

Art. 8203. [5957–8–9] Navigation boards in cities.—If the district includes a city or cities, or a part or parts thereof, acting under special charter granted by the Legislature, the hearing of said petition shall be had at the regular meeting place of the commissioners court before the county judge and members of said court, and the mayor and aldermen or commissioners of said city or cities; and said persons shall constitute a board to be known and designated as the Navigation Board, to pass upon the petition aforesaid. Each individual member of said board shall be entitled to a vote. A majority in number of the individuals composing said board shall constitute a quorum, and the action of a quorum shall control. The date for the hearing shall be set within the time before provided, but without reference to any term of the commissioners court, and notice thereof shall be given as before provided. The county clerk shall enter and record the proceedings of the Navigation Board in a record book kept for this purpose, which record shall be a public archive. [Acts 1909, p. 32.]

Art. 8204. [5961] Hearing on petition.—Upon the day set for the hearing of said petition, any person who may be affected thereby may appear before the said court, or navigation board, and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of the said district, to show that the proposed improvements would or would not be a public utility and would or would not be feasible or practicable, and the probable cost of such im-

provements, or as to any other matter pertaining to the proposed district. Said court or board shall have exclusive jurisdiction to hear and determine all contests and objections to the creation of such districts, and all matters pertaining to the creation and establishment of the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, and may adjourn hearing on any matter connected therewith from day to day; and all judgments or decisions rendered by it in relation thereto shall be final, except as herein provided. [Id.]

Art. 8205. [5962] Hearing: findings.—If it appears on said hearing that the proposed improvement is feasible and practicable and that it would be a public benefit and a public utility, said court or board shall so find, and may approve the boundaries as set out in said petition or make changes therein; otherwise it shall dismiss said petition at the cost of the petitioners, but such dismissal shall not prevent the presentation of a similar petition at a later date. No changes shall be made in said boundaries until notice thereof has been given and hearing had, as provided for the hearing on petition. If said court or board approves the boundaries as set out in the petition, or as so changed, and also decides to grant the petition, it shall then find the amount of money necessary for said improvement and all expenses incident thereto, and shall determine whether to issue bonds for said full amount, or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time they shall run, and their rate of interest, and enter all findings in its records. [Id.]

Art. 8206. [5963] Order for election.—If said findings are in favor of the establishment of the district and issuance of bonds and levy of tax therefor, the commissioners court shall order an election to vote on said proposition. Said order shall specify the amount of bonds to be issued, their maturity dates, and rate of interest, as determined under the preceding article. [Id. 1st C. S., 1921, p. 115.]

Art. 8207. [5965] Ballot.—The ballots for said election shall have printed thereon the words and none others: "For the navigation district and issuance of bonds and levy of tax in payment thereof;" "Against the navigation district, and issuance of bonds and levy of tax in payment thereof." [Acts 1909, p. 32.]

Art. 8208. [5967] Election: declaration of result.—If the proposition carries at such election, the court shall enter the same in their minutes as follows: "Commissioners Court of ——— County, Texas, ——— term, A. D. ———: in the matter of the petition of ——— and ——— others praying for the establishment of a navigation district and issuance of bonds and levy of taxes in said petition described and designated by the name of ——— Navigation District. Be it known that at an election called for that purpose in said district, held on the ——— day of ——— A. D. ——— a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district be and the same is hereby established by the name of ——— Navigation District, and that the bonds of said district in the amount of ——— dollars be issued, and a tax of ——— cents on the one hundred dollars valuation or so much thereof as may be necessary be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund to redeem them at maturity, and that if said tax shall at any time become insufficient for such purposes same shall be increased until the same is sufficient, the metes and bounds of said district being as follows: (Giving metes and bounds.)" [Id. Acts 1st C. S., 1921, p. 116.]

Art. 8209. [5968] Navigation commissioners.—After the establishment of the district, the commissioners court or Navigation Board, by a majority vote, shall bienially [biennially] appoint three navigation and canal commissioners, all of whom shall be residents of the district, and freehold property taxpayers and legal voters of the county. They shall receive for their services such compensation as may be fixed by the commissioners court and made of record. Said commissioners shall hold office for two years and until their successors have qualified, unless sooner removed by a majority vote of the commissioners court or Navigation Board for malfeasance or nonfeasance in office. All vacancies in the office of such commissioners shall be filled for the unexpired term in the same manner as original appointments to such office. [Acts 1909, p. 32.]

Art. 8210. [5969] Oath of commissioners.—Each commissioner shall first take and subscribe before the county judge of the county having jurisdiction an oath faithfully to discharge the duties of his office without favor or partiality, and to render a true account of his doings to the court or board by which he was appointed, whenever required to do so. Such oath shall be filed by the clerk of said court and preserved as a part of the records of said district. [Acts 1921, 1st C. S., p. 116; Id.]

Art. 8211. [5970] Bond of commissioners.—Each commissioner shall first give a good bond for one thousand dollars payable to the county judge for the use and benefit of said district, and conditioned upon the faithful performance of his duties. [Id.]

Art. 8212. [5971] Organization: quorum.—Said commissioners shall organize by electing one of their number district chairman and one secretary, and two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district. [Acts 1909, p. 32.]

Art. 8213. [5973] Issuance of bonds.—When said commissioners shall have determined the cost of the proposed improvements, all of the expenses incident thereto and cost of maintenance thereof, they shall certify to the commissioners court the amount of bonds necessary to be issued, and thereupon the said court, at a regular or special meeting, shall make an order directing the issuance of navigation bonds for such district in the amount so certified, not to exceed the amount authorized by said election. [Id. Acts 1st C. S. 1921, p. 116.]

Art. 8214. [5973] Additional bond issue.—If the proceeds of the original bonds should be insufficient to complete the proposed improvement or construction, or if the commissioners determine to make further construction or improvements, or shall require additional funds with which to maintain the improvements made, they shall certify to said court the necessity for an additional bond issue, stating the amount required, the purpose of the same, the rate of interest of said bonds, and the time for which they are to run. Said court shall thereupon issue such bonds, unless the amount previously authorized has been exhausted, in which case said court shall first order an election on the issuance of said bonds to be held within such district at the earliest possible legal time. The ballots for such election shall have printed thereon the words and no others: "For the issuance of bonds and levy of tax in payment thereof;" "Against the issuance of bonds and levy of tax in payment thereof." [Id.]

Art. 8215. [5974] Bonds: limit of issue.—The outstanding bonds and the additional bonds so ordered shall not exceed in amount one-fourth of the assessed value of the real property in such district, as shown by the last annual assessment thereof made for State and county taxation. [Acts 1909, p. 32.]

Art. 8216. [5975] Bonds: requisites.—All bonds issued under the provisions of this chapter shall be issued in the name of the district, signed by the county judge, and attested by the county clerk under the seal of the commissioners court; they shall be issued in such denominations and payable at such time or times, not exceeding forty years from their date, as may be deemed most expedient by said court,

and shall bear interest not exceeding six per cent per annum. All the provisions of Subdivision 1, Chapter 6 of this title governing the approval, registration and validity of bonds of Levee Improvement Districts shall apply to all bonds issued under this chapter; and the Navigation Board or commissioners court shall require a record to be kept of such bonds by the county treasurer as for bonds of said Levee Districts. [Id. Acts 1st C. S. 1921, p. 117.]

Art. 8217. [5979] Bonds: sale.—When such bonds have been so registered, the district chairman shall offer for sale and sell said bonds on the best terms and for the best price possible for not less than the face par value thereof and accrued interest thereon. All moneys received therefor shall immediately be paid to the county treasurer, and by him placed to the credit of such district. [Acts 1909, p. 32.]

Art. 8218. [5980] Chairman to give bond.—Before said chairman shall be authorized to sell said bonds, he shall execute a good bond, payable to the county judge and his successors in office, to be approved by the county judge, for an amount to be fixed by the district commissioners, conditioned upon the faithful discharge of his duties. [Id. Acts 1923, 2nd C. S., p. 72.]

Art. 8219. [5981] Maintenance fund.—After the establishment of the district, all expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of the district shall be paid out of the "Construction and Maintenance Fund" of such district. Said fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever source, except the tax collections applied to the sinking fund and payment of interest on the navigation bonds. [Acts 1909, p. 32.]

Art. 8220. [5987] District treasurer.—The county treasurer of the county the commissioners court of which has jurisdiction shall be treasurer of said district, and he shall open an account of all moneys received by him belonging to such district and all amounts paid out by him. He shall pay out no money except upon a voucher signed by the chairman or any two commissioners, or the commissioners court, and he shall carefully preserve on file all orders for the payment of money; and as often as required by the said commissioners or said court, he shall render a correct account to them of all matters pertaining to the financial condition of such district. [Id. Acts 1921, 1st C. S. p. 119.]

Art. 8221. [5988] Bond of county treasurers.—The county treasurer upon the sale of any navigation district bonds, the proceeds of which may come in his possession or under his direction or control shall before receiving such proceeds, and before receiving any other funds from whatever source belonging to said district, execute a good and sufficient bond payable to the navigation and canal commissioners of such district and to their successors in office, for the benefit of said district in an amount to be fixed by the navigation and canal commissioners of said district and to be approved by said navigation and canal commissioners conditioned that such treasurer shall faithfully execute the duties of his office and pay over, according to law, all moneys that shall come into his hands as such treasurer and shall render a just and true account thereof to the commissioners' court of the county where said district is located and the navigation and canal commissioners of said district whenever required by law or such commissioners' court or navigation and canal commissioners so to do. As soon as this Act shall become effective the treasurer of said district shall give the bond required by the provisions of this Act in lieu of any other bond as such treasurer which he may have given under the law as it heretofore existed and the bond herein provided for shall remain in full force and effect so long as any funds belonging to said district are in his possession or under his control or direction. The county treasurer shall receive such compensation for his services as shall be determined by said navigation and canal commissioners. The navigation and canal commissioners of any district already created and having no district depository may as soon as this Act becomes effective provide for district depository for the funds of such district by complying with the laws for the designation of county depositories where applicable; and in case such depository shall be designated by the navigation and canal commissioners and shall give a good and sufficient bond approved by the said commissioners as now provided by law for depository of county funds, then the county treasurer, as treasurer of such district shall be required to deposit the funds of said district in said depository which said depository so selected shall be the depository of said district until the date of the election of the navigation and canal commissioners of said district and until its successor is selected and qualified. Within thirty days after the election of navigation and canal commissioners of any district created under this Act, the said navigation and canal commissioners elected shall select a depository for said district in the manner provided by law for the selection of a county depository and such depository so selected shall be the depository of said district for a period of two years thereafter and until its successor is selected and qualified. [Acts 1925, p. 280.] [39th Leg., ch. 103, § 1.]

Art. 8222. [5982] Tax levy.—When bonds have been voted, the commissioners court shall levy and cause to be assessed and collected improvement taxes annually sufficient to pay the interest on such bonds and to provide a sinking fund to redeem said bonds at maturity. Said court is authorized to levy and cause to be assessed and collected for the maintenance, operation and upkeep of such district and its improvements, an annual tax not to exceed ten cents on the one hundred dollar valuation. All such taxes shall be levied upon all property within such district, whether real, personal, mixed or otherwise. The Navigation Board shall provide all necessary books for the use of the assessors and collectors and the clerk of the court of jurisdiction. [Acts 1917, p. 66.]

Art. 8223. [5983] Sinking fund investments.—The commissioners court may invest the sinking fund in such county, municipal, district or other bonds as the Attorney General shall approve. [Acts 1909, p. 32.]

Art. 8224. Chapter 3 applicable.—The provisions of Chapter 3 of this title governing Water Control and Preservation Districts shall, in the manner and to the extent herein specified, apply to all districts hereunder, and the acts therein authorized or required to be done by the district directors shall apply to the navigation commissioners:

1. Taxes.—When ordered by the commissioners court having jurisdiction of the navigation district, the tax assessors and collectors of each county in the district shall assess and collect the district taxes and pay the same to the district treasurer, in like manner as provided in such cases in said Chapter 3; and the provisions of said chapter relating to taxation, except the levy of maintenance taxes, creation and investment of sinking fund, and the liability of the commissioners court for failure to order such assessment, shall apply.

2. Construction contracts.—All the provisions of said chapter governing the advertising for, letting and performance of contracts for the construction of improvements and work authorized by law shall apply, except that the bidder's deposit shall be for five per cent of the amount bid, the contractor's bond shall be for not less than twenty-five per cent of the contract price; the contract shall be signed by any two commissioners, and the partial payments made thereon shall not exceed ninety per cent of the contract price.

3. Construction work.—All the provisions of said chapter governing the right of eminent domain, employment and duties of the district engineer, co-opera-

tion with the Federal Government, and the directors' annual report, shall apply.

The provisions of chapter 3 referred to are articles 7850, 7853, 7871, and 7873, hereof.

Art. 8225. [5990] May acquire property.—The commissioners are empowered to acquire the necessary right of way and property of any kind for all necessary improvements contemplated by this chapter by gift, grant, purchase or condemnation proceedings. [Acts 1909, p. 32.]

Art. 8226. [5991] May enter lands.—The commissioners and the engineers from the time of their appointment are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass. [Id.]

Art. 8227. [5999] Employés and counsel.—The commissioners are authorized to employ such assistant engineers and other employés as may be necessary, paying such compensation as they may determine, and the said commissioners are authorized to employ counsel to represent such district in the preparation of any contract, or the conducting of any proceedings in or out of court, and to be the legal adviser of the commissioners, on such terms and for such fees as may be agreed upon by them. [Id.]

Art. 8228. [6001] May sue and be sued.—All districts, by and through their commissioners, may sue and be sued in all courts of this State in the name of such navigation district; and all courts of this State shall take judicial notice of the establishment of such districts. [Id.]

2. SPECIAL POWERS

A. Port Facilities

Art. 8229. Powers of certain districts.—Navigation districts provided for in this chapter created for the development of deep water navigation, having a city containing one hundred thousand population or more according to the preceding Federal census, are hereby granted, in addition to the powers conferred by this chapter, the right, power and authority to acquire, purchase, take over, construct, maintain, operate, develop and regulate wharves, docks, warehouses, grain elevators, bunkering facilities, belt railroads, floating plants, lighterage, lands, towing facilities, and all other facilities or aids incident to or necessary to the operation or development of ports or waterways, within the district and extending to the Gulf of Mexico, as provided in this subdivision, in addition to the power to issue bonds for the purposes above enumerated, and for the purpose either of acquiring necessary or proper lands, right-of-ways or dumping grounds, extension or improvement of belt railway lines, or construction or improvements or wharves, docks or other facilities, or aids to navigation, and to secure such obligations by liens upon the property so acquired, constructed or improved, and pledge available revenues as additional security, and such districts shall have the right to borrow funds for current expenses, and to evidence the same by warrants payable not later than the close of any calendar year for which loans are made. Such warrants shall never exceed the anticipated revenue and may bear not to exceed 6% interest. [Acts 1st C. S. 1921, p. 53; Acts 1927, 40th Leg., 1st C. S., p. 149, ch. 52, § 1.]

See note to article 8238.

Art. 8230. Petition for improvements.—When the Navigation Board of such district deems it advisable for said district to avail itself of the rights, powers and authority provided herein, said board shall so certify to the commissioners court of the county wherein said district is situated, petitioning the holding of an election therefor, whereupon said court shall set a day not less than thirty nor more than sixty days thereafter, for public hearing on said petition, at such place as may be designated by the said court. [Acts 1st C. S. 1921, p. 53.]

Art. 8231. Hearing: testimony.—Upon the day set for said hearing, any person who may be affected thereby may appear before said Navigation Board and contest the necessity, advisability or practicability of said election, and may offer testimony in favor of or against said election. [Id.]

Art. 8232. Election order.—After said hearing, if the Navigation Board is still of the opinion said election should be held, the commissioners court shall order an election to determine whether or not the said district should avail itself of the rights, powers and authority provided for herein. Said order shall state the day upon which said election shall be held. [Id.]

Art. 8233. Ballots.—The ballots for said election shall have printed thereon the words and none others: "For the development of the port by the Navigation District;" "Against the development of the port by the Navigation District." The expense of said election shall be borne by the district. [Id.]

Art. 8234. Declaration of result.—If said election results in favor of the development of the port by said navigation district, then such court shall so declare the result and enter the same in the minutes of the court as follows:

"Commissioners Court ——— County, Texas, ——— term A. D. ———, in the matter of the petition of the Navigation Board of the ——— County ——— Navigation District, praying that the right, power and authority be granted said Navigation District to develop the port of ——— (here enter the name of said municipality.) Be it known, That at an election called for that purpose in said district, held on the ——— day of ———, A. D. ———, a two-thirds majority of the resident property taxpayers voting thereon voted in favor of the development of said port by said Navigation District.

"Now therefore, it is considered and ordered by the Court that said Navigation District be and is hereby authorized to proceed with the development of said port as authorized by law." [Id.]

Art. 8235. Governing board.—The district shall thereafter be managed, governed and controlled by five commissioners, who shall be appointed as follows: Two shall be selected for a term of one and two years respectively by a majority of the city council of the municipality having a population of one hundred thousand or more situated in said district. At the expiration of the term of office of said commissioners, the city council shall select their successors annually to serve for two years. The other three shall each serve for two years. Two commissioners and their successors shall be selected by the commissioners court in like manner, and the other, who shall be chairman, shall be selected by a majority vote of said city council and by the commissioners court in joint session called by the county judge of said county. Each commissioner shall be a freehold property taxpayer and legal voter in said navigation district and shall give the bond and take the oath required by this chapter and shall serve until their successors are qualified. Their duties shall be as prescribed in this chapter, and they shall receive such compensation as the Navigation Board may fix. A majority of said commissioners shall have power to act. Said commissioners shall serve their full term of appointment unless sooner removed by the authority by which they were appointed for malfeasance, nonfeasance in office, inefficiency or other cause deemed sufficient. If any vacancy occurs through the death, resignation or otherwise of any commissioner, the same shall be filled as in the first instance by appointment for the unexpired term. All acts of the commissioners shall be subject to the supervision and control of the Navigation Board. [Id.]

Art. 8236. Bonds.—Such districts may issue bonds in payment for the improvements facilities, and acquisition of property authorized herein, upon compliance with the provisions of this chapter, and may

also issue bonds to purchase wharves, docks, warehouses, bunkering facilities, belt railroads, lands to be used for port purposes and development, or other facilities constructed or owned by any municipality containing One Hundred Thousand population or more, as determined by the last preceding census within such district. An election shall be held therefor, and such bonds shall be issued as other bonds under this chapter. The outstanding bonds and the additional bonds so ordered shall not exceed in amount ten (10) per cent of the assessed value of the real property in such district as shown by the last annual assessment thereof made for State and County. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 149, ch. 52, § 1.]

See note to article 8238.

Art. 8237. Powers.—Such districts shall have all the right, power and authority herein granted, subject to the provisions of this law, and shall have all the authority granted by general or special law to navigation districts, and shall also have the fullest powers consistent with the State Constitution for the regulation of wharfage and of all facilities of or pertaining to the said port, waterways and navigation district, and shall have a right to assess and collect charges for the use of all facilities acquired or constructed in accordance with the provisions hereof. [Id.]

Art. 8238. Property rights.—Such districts may exercise the right of eminent domain as provided under the preceding subdivision, and may also acquire, and take over, by lease or rental agreements, the docks, wharves, buildings, railroads, lands, improvements and other facilities already provided, constructed or owned by any incorporated municipality situated within such district for a period of not less than twenty-five (25) years, only with the consent of the lawful authorities of such municipality, and upon such terms as may be mutually agreed upon by the district and the said municipality. No agreement for the use, acquisition or operation of such property or facilities of such municipality by the district shall be for a lease, or rental value thereof, which shall exceed the annual net revenues derived or to be derived by the navigation district after payment of the expenses of operation and maintenance of said property and facilities. The district shall have no supervision or control over such property or facilities owned, controlled or constructed by any municipality, until agreement for the lease and rental thereof by the district has been reached and made in the manner herein provided. Such districts now or hereafter leasing lands or facilities from any municipality in whole or in part, or having the right to do so under the provisions of this chapter, shall be authorized to purchase or acquire the same in the manner hereinafter set out.

The Navigation Commissioners and the officials of such municipality shall be authorized to enter into an agreement setting forth the lands and facilities to be acquired, the amount agreed upon as the purchase price thereof, and the terms of sale. The Navigation Commissioners shall be authorized to have issued in the manner provided in this Chapter, bonds of the District in such amount as represents the purchase price less any outstanding bonds previously issued by such municipality. Said bonds shall be issued, registered and sold in all respects as other bonds of the District, and the proceeds paid to the municipality. If there be outstanding bonds of the municipality, the Navigation District shall assume payment of said bonds and interest, and the Commissioners Court of the County shall levy a tax sufficient to meet the interest when due, and the amount due at the maturity of the bonds. Such taxes shall be collected as other taxes are now collected, and by the Navigation Commissioners paid to the city on or before the due dates of interest and principal for the sole purpose of paying the interest and principal on said outstanding bonds. Provided, however, that said municipality shall not be released from any obligation to the owners and holders of any outstanding bonds issued on account of the lands or facilities so purchased. Said municipality shall not levy, assess and collect any tax for interest and sinking fund thereon unless the payments from said Navigation District shall fail in whole or part in which event the municipality shall have the right to, and it shall, immediately proceed to levy and collect such tax as may be necessary to discharge the interest and meet the principal of the bonds then outstanding, and until paid, and shall further have the right to collect any and all amounts so paid on account of the Navigation District from said District and in the event of the continued failure to make said payments by the District, to take back said facilities. Provided, however, that no such bonds shall be issued or tax levied until the question of purchase of such facilities shall have been submitted to a vote of the people in said Navigation District. In addition to the requirements for submitting bonds to a vote, the notice of election shall contain a copy of the agreement, the bonds outstanding, the bonds sought to be issued by the district and the amount of taxes required to be levied. Said election shall be called and held as other elections for bonds and the ballots shall have printed thereon: "Official Ballot. For the Purchase of municipal facilities and the issuance of bonds and levy of tax in payment therefor. Against the purchase of municipal facilities and the issuance of bonds and levy of tax in payment therefor." Should said election carry by a two-thirds majority of the qualified tax paying voters voting at said election, then the same shall be declared carried and said bonds be issued and sold, and the necessary taxes levied in accordance with the provisions of this Act. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 149, ch. 52, § 1.]

Section 2 of Acts 1927, 40th Leg., 1st C. S., p. 149, ch. 52, provides that if any provision of the act be held invalid, such holding shall not affect the remainder which shall remain in effect.

Art. 8239. Unimproved lands.—Districts acquiring, leasing and taking over unimproved lands owned or controlled by any such incorporated municipality, may pay for the use, rent and hire of such unimproved lands, a price or rental value to be fixed by the district commissioners. If such commissioners fail or are unable to agree upon terms and conditions for the use and rental of such unimproved lands, then the district, under its right of eminent domain, may condemn such lands or parts thereof, as in its discretion the interest of the district requires. [Id.]

Art. 8240. Franchises.—Such districts shall have power to grant franchises to persons or corporations on property owned or controlled by such districts, provided said franchises are granted for purposes consistent with the provisions of this chapter, but no franchise shall be granted for a longer period than thirty years, nor shall any franchise be granted hereunder except upon the affirmative vote of at least three commissioners at three separate meetings of said commissioners, said meetings to be not closer together than one week, and no franchise shall be granted until after the same as finally proposed to be passed shall be published at the expense of the applicant in full once a week for three consecutive weeks in some daily newspaper of general circulation published within said district. Said franchise shall require the grantee therein to file his or their written acceptance thereof within thirty days from the time of the final passage of said franchise. Nothing herein shall be construed as preventing said navigation district from granting revocable licenses or permits for the use of limited portions of water front or facilities for the purposes consistent with the provisions of this chapter. [Id.]

Art. 8241. Franchise: election.—If in the opinion of the commissioners any proposed franchise should be submitted to a vote of the people, they shall so certify to the commissioners court, whereupon said court shall order an election thereon at the earliest legal time. At said election any resident of said district qualified under the Constitution and laws of this State to vote for Governor in a general election shall be qualified to vote. [Id.]

Art. 8242. Ballots.—The ballots used for voting upon such proposed franchise shall set forth the nature of said franchise sufficiently to identify it, and shall also set forth upon separate lines the words "For the franchise" and "Against the franchise." If at said election a majority of those voting shall vote in favor of the franchise, the same shall be granted; otherwise said franchise shall be of no force and effect. [Id.]

Art. 8243. Petition protesting franchise.—If prior to the date when any franchise has been granted by the commissioners, a petition signed by qualified voters of said district equal in number to ten per cent of the total vote cast at the last general election for State officers, shall be presented to the commissioners court protesting against the enactment or granting of said franchise, it shall be suspended from taking effect, and immediately upon the filing of such petition the commissioners court shall order an election upon said proposed franchise, which said election shall be governed by the provisions of the two preceding articles. [Id.]

Art. 8244. District depository.—The funds of such districts shall be handled in the same manner as provided in this chapter and as provided by the law governing county finances. The commissioners shall provide for a depository for all of the funds of said district, by complying with the laws governing the designation of county depositories. When the depository has given bond and the same has been approved, the county treasurer shall be required to give only such bond as the commissioners may require. [Id.]

Art. 8245. Employés.—Such commissioners may employ such persons as they may deem necessary for the construction, maintenance, operation and development of the navigation district, its business and facilities, prescribe their duties and fix their compensation. [Id.]

Art. 8246. Contracts.—The provisions governing letting of contracts for navigation districts shall apply in all cases consistent with the provisions of this law; provided, that in case of emergency, contracts may be let by the commissioners not exceeding one thousand dollars without advertisement for bids, and in case of urgent necessity or present calamity, advertisement for bids may be waived. [Id.]

Art. 8247. City police powers.—Nothing herein shall repeal or affect the police powers of any municipality within the navigation district, or any law, ordinance or regulation authorizing and empowering such municipality to exercise such powers as to any navigable stream or aids to navigation and facilities therefor, in a navigation district, not in conflict with this chapter. [Id.]

B. Pilots

Art. 8248. Pilot Board.—The navigation and canal commissioners of any navigation district included in Part A of this subdivision, in connection with their other duties as such commissioners, shall constitute a Pilot Board, and be commissioners of pilots and their terms of office as such shall be contemporaneous with their terms of office as navigation and canal commissioners. No person who is engaged directly or indirectly in the towing business or in any pilot boat, or in any other business affected by or connected with the performance of his duties as a commissioner of pilots, shall be a member of such pilot board. [Acts 4th C. S., 1920, p. 3; Acts 1923, p. 42.]

Art. 8249. Jurisdiction.—Such navigation districts shall have exclusive jurisdiction as hereinafter defined over the pilotage of boats between the Gulf of Mexico and their respective ports. as well as of intermediate stops or landing places for such boats upon navigable streams wholly or partly within such navigation districts. [Id.]

Art. 8250. Supervision of pilots.—The right, power and authority is hereby granted to such commission to appoint, suspend or dismiss from office, branch pilots or deputy pilots of their respective ports, and to examine and determine upon their qualifications. No branch pilot or deputy pilot shall be suspended or dismissed except for misconduct, inefficiency, or inebriety on duty, and after due hearing of accusation, testimony and defense before said board of navigation and canal commissioners. [Id.]

Art. 8251. Applicant's qualifications.—Before making any appointments as branch pilot or deputy pilots, the commissioners shall examine and determine upon the qualifications for office of each applicant for the position of branch pilot or deputy pilot; and shall require of each of said applicants such terms of residence in this State preceding such appointment as they may deem advisable, not to exceed two years. [Id.]

Art. 8252. Powers of board.—The right, power and authority is further granted to such commissioners to fix rates of pilotage between the Gulf of Mexico and their respective ports, as well as intermediate stops or landing places for such boats, upon navigable streams wholly or partly within such districts; and to make, adopt and enforce all rules and regulations which they deem advisable in the matter of appointment, qualification and regulation of pilots and deputy pilots as may be needed for the government of pilots and their deputy pilots and the proper operation of their respective ports, not inconsistent with the Federal regulations thereof, the Constitution of Texas, or the provisions of this law. [Id.]

Art. 8253. Branch pilot license.—All branch pilots appointed under and in accordance with this law or the rules and regulations of such navigation district shall enter into bond with one or more good and sufficient sureties in the sum of five thousand dollars, payable to the Governor, conditioned upon the faithful performance of the duties of his office. Said bond shall be approved by the commissioners of such district, and shall be deposited in the office of the Secretary of State. Each pilot shall also take the official oath, which shall be endorsed on said bond. Upon the filing of said bond, and the taking of said oath, the commissioners of such district shall certify to the Governor that each branch pilot has duly qualified to act as such, and thereupon the Governor shall issue to said branch pilot, in the name and under the seal of the State, a commission to serve as branch pilot from such ports, across any intermediate bars, to the open gulf; and said commission shall be for a term of two years, unless such branch pilot shall be dismissed from service by said navigation and canal commissioners, in which event such commission shall expire. [Acts 1923, p. 44.]

Art. 8254. Deputy branch pilots.—Each branch pilot may appoint, subject to examination and approval by the navigation and canal commissioners, two deputies for whose acts such branch pilot shall be responsible, and any branch pilot who shall appoint a deputy without the approval of said commissioners, shall forfeit his own appointment; provided that an additional deputy shall be appointed if such branch pilot and commissioners mutually deem it advisable. [Id.]

Art. 8255. Pilotage charges.—The rates of pilotage charged by the pilots operating under this law shall at all times be fair and just, and a schedule of such rates shall at all times be on file in the office of the district commissioners, said schedule to be furnished by the pilots and strictly adhered to by them; provided that each time a change in the rate shall be effected, a revised schedule shall be filed as above specified. Whenever a vessel, (except vessels of twenty tons or under and all vessels excepted by Federal statutes and regulations) shall decline the services of a pilot operating under this law, offered outside the bar, and shall enter any channel subject to the jurisdiction of such navigation district, without the aid of a pilot operating under this law, such vessel shall be liable to the first pilot operating under this law whose services she has declined, for the payment of half-pilotage; and any vessel which, after being

brought in by a pilot operating under this law, shall go without employing one, shall be liable to the payment of half-pilotage to the pilot operating under this law who brought her in; or if she has come in without the aid of such pilot, though offered outside, she shall, on so going out, be liable for the payment of one-half pilotage to the pilot operating under this law who has first offered his services before she came in. [Id.]

Art. 8256. Consignee liable for pilotage.—The consignee of any vessel shall be held responsible to pilots operating under this law for the pilotage of said vessel or services offered, and such pilots shall be entitled to recover same from the consignee of said vessel in any court of competent jurisdiction. [Id.]

Art. 8257. Unauthorized pilot: liability.—If any person not appointed a branch pilot or deputy pilot under this law shall pilot any ship or vessel out of, or into, the port, channel or waterway of which exclusive jurisdiction is, under this law, given to the navigation and canal commissioners of such navigation district, when a branch pilot or deputy pilot, operating hereunder has offered such services, the person so piloting shall forfeit and pay to such branch pilot or deputy pilot, the sum of fifty dollars, to be recovered by suit. [Id.]

3. GENERAL PROVISIONS

Art. 8258. "Commissioner."—The term "commissioner" as used in this chapter, shall mean Navigation and Canal Commissioner.

Art. 8259. Election notice.—When any election is held under this chapter, notice thereof shall be given for thirty days prior thereto, stating the time and place of holding same, the proposition to be voted on and the purpose thereof, and shall contain a copy of the election order. Such notices shall be posted in the manner provided for posting other notices hereunder.

Art. 8260. Election requisites.—At any such election a two-thirds vote shall be necessary to carry the proposition submitted thereat unless otherwise provided. The commissioners court shall order twice as many ballots printed as there are resident property taxpayers who are qualified voters in the district; and shall create and define, by order of the court, the voting precincts, in the district, and name convenient polling places therein, and shall appoint necessary election officers. Each such election shall be held at the earliest legal time.

Art. 8261. Voter's qualifications.—Every person who offers to vote in any such election shall first take the following oath before the presiding judge of the polling place where he offers to vote, and the presiding judge is authorized to administer same: "I do solemnly swear that I am a qualified voter of ——— County, that I am a resident property taxpayer of the ——— Navigation District, and I have not voted before at this election."

Art. 8262. Election: declaration of result.—If the commissioners court on canvassing the returns of any such election find that the proposition submitted thereat has carried, they shall so declare and enter the same in their minutes as specially provided hereunder.

Art. 8263. [5960] Duties imposed without compensation.—The duties and powers herein conferred upon the county, city and other officers, are made a part of the legal duty of said officials, which they shall perform without additional compensation, unless otherwise provided herein. [Acts 1909, p. 32.]

[Additional legislation, Acts 1925, p. 7.]

Section 1. There may be created within this State under and by virtue of Section 59 of Article 16 of the Constitution of the State of Texas, districts to be known as Navigation Districts, in the manner hereinafter provided; and such districts may or may not include within their boundaries and limits villages, towns, cities, road districts, drainage districts, irrigation districts, levee districts, and other improvement districts, and municipal corporations of any kind, or any part thereof. Such navigation districts, when so established, may make improvements for the navigation of inland and coastal waters, and for the preservation and conservation of inland and coastal waters for navigation, and for the control and distribution of storm and flood waters of rivers and streams in aid of navigation, and for any and all other purposes stated in Section 59 of Article 16 of the Constitution of the State of Texas, necessary or incidental to the navigation of inland and coastal waters or in aid thereof, which districts shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions as may be essential to the accomplishment of such purposes; provided, that such districts shall not include therein the territory of more than two counties, or parts of two counties.

Sec. 2. When it is proposed to create a navigation district wholly within one county, there shall be presented to the county commissioners' court of the county in which the lands to be included in such districts are located, at any regular or special session, a petition accompanied by the deposit provided for in Section 26 of this Act, signed by twenty-five of the resident property taxpayers, or in the event there are less than seventy-five resident property taxpayers in the proposed district then by one-third of such resident property taxpayers in the proposed district; praying for the establishment of a navigation district, and setting forth the boundaries of the proposed district, accompanied by a map thereof, the general nature of the improvement or improvements proposed, and an estimate of the probable cost thereof, and designating a name for such navigation district, which name shall include the name of the county, said petitioners shall make affidavit to accompany said petition of their said qualifications; and when it is proposed to create such a district to be composed of lands in two counties, then a petition of the nature above indicated, signed by twenty-five of the property taxpayers residing in the territory of each county to be included in such proposed district, or in the event there are less than seventy-five property taxpayers residing in said territory, then by one-third of such resident property taxpayers, accompanied by the deposit provided for in Section 26 of this Act; which petition shall be presented to the commissioners' court of the county in which is located the greater amount of acreage of such proposed district, which shall be the county of jurisdiction in respect to all matters concerning said district, and the name of which county shall be included in the name of such district and, upon presentation of such petition the said commissioners' court shall, at the same session when said petition is presented set down for hearing at some regular term of said court, or at some special session of said court called for the purpose, not less than thirty nor more than sixty days from the presentation of said petition and shall order the clerk of said court to give notice of the date and the place of said hearing, by posting a copy of said petition, and the order of the court thereon, in five public places in said county, one of which shall be the courthouse door of said county and four of which shall be within the limits of said proposed navigation district; and if the district be composed of more than one county, then there shall be posted a copy of said petition and the order of the court thereon, at the door of the courthouse of each county in which any portion of the proposed district is located, and four copies in four different places within each county in which any portion of the proposed district is located, and within the boundaries of said districts. Said notices shall be posted not less than twenty days prior to the time set for the hearing. The said clerk shall receive as compensation for such service one dollar for each such notice and five cents per mile for each mile necessarily traveled in posting such notices.

Sec. 3. In the event the boundaries of the proposed district shall include a city or cities, or a part or

parts thereof, acting under special charter granted by the Legislature, the hearing of said petition, hereinafter provided for, shall be had before the county judge and the members of the commissioners' court and the mayor and aldermen or commissioners, as the case may be, of said city or cities; and said persons shall constitute a board to be known and designated as the navigation board, to pass upon the petition aforesaid. Each individual member of said board shall be entitled to a vote. A majority in number of the individuals composing said board shall constitute a quorum, and the action of a majority of the quorum shall control.

Sec. 4. In the event the hearing of said petition shall be had before the navigation board, the commissioners' court of said county shall set the petition down for hearing not less than thirty nor more than sixty days from the date of the presentation of said petition without reference to any term of the commissioners' court, but said hearing shall be held at the regular place of meeting of the commissioners' court, and notice shall be given of the hearing in the manner and for the time as hereinbefore provided.

Sec. 5. The county clerk shall enter and record the proceedings of the navigation board in a record book kept for this purpose, which record shall be a public archive.

Sec. 6. The duties and powers herein conferred upon the county judge and members of the commissioners' court, and upon the mayor and aldermen or commissioners of cities, and upon the county clerk and other officers, are made a part of the legal duty of said officials, which they shall render and perform without additional compensation, unless otherwise provided herein.

Sec. 7. Upon the day set by said county commissioners for the hearing of said petition, any person who has taxable property within the proposed district, or who may be affected thereby, may appear before the said court, or navigation board, as the case may be, and contest the creation of said district, or contend for the creation of said district, and may offer testimony in favor of or against the boundaries of the said district, to show that the proposed improvement or improvements would or would not be of any public utility and would or would not be feasible or practicable, and the probable cost of such improvement or improvements, or as to any other matter pertaining to the proposed district. Said county commissioners' court, or navigation board, shall have the exclusive jurisdiction to hear and determine all contests and objections to the creation of [such districts, and all matters pertaining to the creation of] such districts, and all matters pertaining to the creation and establishment of the same, and shall have exclusive jurisdiction in all subsequent proceedings of the district when organized, except as hereinafter provided, and may adjourn hearing in any matter connected therewith from day to day; and all judgments or decisions rendered by said court, or navigation board, in relation thereto shall be final, except as herein otherwise provided.

Sec. 8. If, at the hearing of said petition, it shall appear to the commissioners' court, or navigation board, as the case may be, that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility; and, if the court, or navigation board, as the case may be, shall approve the boundaries of the proposed district as set out in said petition, then the court, or navigation board, shall so find, and shall also find the amount of money necessary for said improvement or improvements and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be recorded in the records of the commissioners' court, or minutes of the navigation board, as the case may be. If the court, or navigation board, shall find that the proposed improvement is feasible and practicable, that it would be a public benefit and a public utility, but does not approve the boundaries of the proposed district as set forth in the petition, the court, or navigation board, shall so find, and shall define the boundaries of such district as the court considers the same should be, and shall also find the amount of money necessary for said improvement or improvements, and for all expenses incident thereto, and shall determine whether to issue bonds for said full amount or in the first instance for a less amount, and shall specify the amount of bonds to issue, the length of time the bonds shall run, and the rate of interest said bonds shall bear, and cause its findings to be entered of record, together with a map thereof. Providing, however, that before any change is made by said court, or navigation board, as the case may be, of the boundaries, notice and hearing thereof shall be given and had as provided for in Section 2 of this Act. If the court, or navigation board, shall find that the proposed improvement is not feasible or practicable, or that it would not be a public benefit or public utility, and that the establishment of such navigation district is therefore unnecessary, then the court, or navigation board, shall enter such findings of record and dismiss the petition at the cost of petitioners, but the order dismissing said petition shall not prevent or conclude the presentation at a later date of a similar petition.

Sec. 9. After the hearing upon the petition, as herein provided, if the court, or navigation board, as the case may be, shall find in favor of the petitioners for the establishment of navigation district according to the boundaries as set out in said petition, or as changed or modified as above provided by the said court, or navigation board, the commissioners' court of jurisdiction shall order an election, in which order provision shall be made for submitting to the qualified property taxpaying voters residing in said district whether or not such navigation district shall be created, and whether or not said bonds shall be issued and a tax shall be levied sufficient to pay the interest and provide a sinking fund sufficient to redeem said bonds at maturity, said order specifying the amount of bonds to be issued, together with the length of time the bonds shall run and the rate of interest said bonds shall bear, as said matters have been determined by the commissioners' court or navigation board, as the case may be, under the provisions of Section 8 of this Act. Said election to be held within such proposed navigation at the earliest legal time, at which election there shall be submitted the following proposition, and none other; "For the navigation district, and the issuance of bonds and the levy of tax in payment thereof;" "Against the navigation district, and the issuance of bonds and levy of tax in payment thereof."

Sec. 10. Notice of such election, stating the time and place of holding the same, shall be given by the clerk of the said court by posting notices thereof in four public places in such proposed navigation district, and one at the courthouse door of the county in which such district is located, and if the district be composed of more than one county, then there shall be posted a copy of said notice at the door of the courthouse of each county in which any portion of the proposed district is located, and four copies in four public places within each county in which any of the proposed district is located, and within the boundaries of said district; said notices shall be posted for thirty days prior to the date set for the election. Such notices shall contain the proposition to be voted upon as set forth in Section 9 of this Act, and shall also specify the purpose for which said bonds are to be issued, and the amount of said bonds, and shall contain a copy of the order of the court ordering the election.

Sec. 11. The manner of conducting said election shall be governed by the election laws of the State of Texas, except as herein otherwise provided. None but resident property taxpayers, who are qualified voters of said proposed district, shall be entitled to vote at any election on any question submitted to the voters thereof by the county commissioners' court at such

election. The county commissioners' court shall create and define, by an order of the court, the voting precincts in the proposed navigation district, and shall name a polling place or places within said precincts, taking into consideration the convenience of the voters in the proposed navigation district, and shall also select and appoint the judges and other necessary officers of the election, and shall provide one and one-half times as many ballots as there are qualified resident property taxpaying voters within such navigation district. Said ballot shall have printed thereon the words and none others: "For the navigation district, and issuance of bonds and levy of tax in payment thereof"; "Against the navigation district, and issuance of bonds and levy of tax in payment thereof."

Sec. 12. Immediately after said election, the officers holding the same shall make returns of the result thereof to the commissioners' court having jurisdiction, and return the ballot boxes to the clerk of said court, who shall safely keep the same and deliver them, together with the returns of the election, to the commissioners' court of jurisdiction at its next regular or special session, and the said court at such session shall canvass the vote and return; and if it be found that a majority of those voting at such election shall have been cast in favor of the navigation district and the issuance of bonds and levy of tax, then the court shall declare the result of said election to be in favor of said navigation district, the issuance of said bonds and the levy of the tax, and shall enter same in the minutes of the court as follows:

Commissioners' Court of ——— County, Texas. ——— term, A. D. ———, in the matter of the petition of ——— and ——— others praying for the establishment of a navigation district, and issuance of bonds and levy of taxes in said petition described and designated by the name of ——— Navigation District. Be it known that at an election called for the purpose in said district, held on the ——— day of ——— A. D. ——— a majority of the resident property taxpayers voting thereon voted in favor of the creation of said navigation district, and the issuance of bonds and levy of a tax. Now, therefore, it is considered and ordered by the court that said navigation district, be, and the same is hereby established by the name of ——— Navigation District, and that bonds of said district in the amount of ——— dollars be issued, and a tax of ——— cents on the one hundred dollars valuation, or so much thereof as may be necessary to be levied upon all property within said navigation district, whether real, personal, mixed or otherwise, sufficient in amount to pay the interest on such bonds and provide a sinking fund to redeem that at maturity, and that if said tax shall at any time become insufficient for such purposes same shall be increased until same is sufficient. The metes and bounds of said district being as follows:

(Giving metes and bounds.)

Sec. 13. After the establishment of any navigation district, as herein provided, the commissioners' court, or navigation board, as the case may be, shall appoint three navigation and canal commissioners, all of whom shall be residents of the proposed navigation district, who shall be freehold property taxpayers and legal voters of the county, whose duties shall be as hereinafter provided, and who shall each receive for their services such compensation as may be fixed by the commissioners' court and made of record. Said navigation and canal commissioners shall hold office for the term of two years, and until their successors have qualified, unless sooner removed by a majority vote of the county commissioners, or navigation board, as the case may be, for malfeasance or nonfeasance in office. Upon the expiration of the term of office of said navigation and canal commissioners, the commissioners' court, or navigation board, as the case may be, shall appoint their successors by a majority vote. Should any vacancy occur through the death or resignation or otherwise of any commissioners, the same shall be filled by the commissioners' court, or the navigation board, as the case may be.

Sec. 14. Before entering upon their duties, all navigation and canal commissioners shall take and subscribe before the county judge of the county having jurisdiction an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the commissioners' court having jurisdiction, or navigation board, by which they are appointed whenever required to do so, which oath shall be filed by the clerk of said court and preserved as part of the records of said navigation district.

Sec. 15. Before entering upon duties each of the navigation and canal commissioners shall make and enter into a good and sufficient bond in the sum of one thousand ($1,000.00) dollars payable to the county judge of the county having jurisdiction for the use and benefit of said navigation district, and conditioned upon the faithful performance of their duties.

Sec. 16. Said commissioners shall also organize by electing one of their number chairman and one secretary, and two of the commissioners shall constitute a quorum, and a concurrence of two shall be sufficient in all matters pertaining to the business of said district.

Sec. 17. Said commissioners shall have authority to employ a competent engineer, whose term of office shall be at the will of said commissioners, and who shall receive such compensation as may be determined by such commissioners. It shall be the duty of the engineer to make all necessary surveys, examinations, investigations, maps, plans and drawings with reference to the proposed improvements. He shall make estimate or estimates of the cost of same, shall supervise the work of improvement, and shall do and perform all such duties as may be required of him by the commissioners. Provided, that if the river, creek, stream, bay, canal, or waterway, to be improved is navigable or the improvement proposed to be of such nature as requires the permission or consent of the Government of the United States, or any department or officer of the Government of the United States, the navigation and canal commissioners shall be authorized to obtain the required permission or consent of the Government of the United States, or any officer or department thereof; and, in lieu of the employment of an engineer as herein provided, or in addition thereto, the navigation and canal commissioners shall have power to adopt any survey of the river, creek, canal, stream, bay, or waterway theretofore made by the Government of the United States, or any department thereof, and to arrange for surveys, examinations and investigations of the proposed improvement, and for supervision of the work of improvement by the Government of the United States, or the proper department or officer thereof; provided, that said commissioners shall have full power and authority to co-operate and act with the Government of the United States, or any officer or department thereof, in any and all matters pertaining to or relating to the construction and maintenance of said canals, and the improvement and navigation of all such navigable rivers, bays, creeks, streams, canals, and waterways, whether by survey, work or expenditure of money made or to be made either by said navigation and canal commissioners, or by said Government of the United States, or any proper officer or department thereof, or by both; and, to the end that the said Government of the United States may aid in all such matters, the said commissioners shall have authority to agree and consent to the said Government of the United States entering upon and taking management and control of said work, in so far as it may be necessary or permissible under the laws of the United States, and the regulations and orders of any department thereof.

Sec. 18. When said commissioners shall have determined the cost of the proposed improvement or improvements, all of the expenses incident thereto and cost of maintenance thereof, they shall certify to the commissioners' court having jurisdiction the amount of bonds necessary to be issued, and thereupon the said court, at a regular or special meeting, shall make an order directing the issuance of navigation bonds for such navigation district in the amount so certified; provided that the amount of bonds shall not exceed the

amount authorized by the election theretofore held. In the event the proceeds of bonds issued by such navigation district should be insufficient to complete the proposed improvement or construction, or in the event said commissioners shall determine to make other and further construction or improvements, or shall require additional funds with which to maintain the improvements made, they shall certify to said commissioners' court the necessity for an additional bond issue, stating the amount required, the purpose of the same, the rate of interest of said bonds, and the time for which they are to run, whereupon said commissioners' court shall issue such bonds, unless the amount previously authorized shall have been exhausted, in which case said commissioners' court shall order an election on the issuance of said bonds to be held within such navigation district at the earliest possible legal time and in the manner hereinbefore provided for the original issue of bonds, at which election there shall be submitted the following proposition, and none other: "For the issuance of bonds and levy of tax in payment thereof;" "against the issuance of bonds and levy of tax in payment thereof;" notices of said election shall be given as provided in Section 10 of this Act; and the election shall be held and conducted in the manner provided in Section 11 of this Act. Only those who are qualified property taxpaying voters as provided in this Act shall vote at such election, and the returns of such election shall be canvassed as provided in Section 12 of this Act.

Sec. 19. If, upon a canvass of the vote, the commissioners' court shall determine that a majority of the votes cast at said election shall have been cast in favor of the issuance of bonds and levy of tax, the said court shall make an order directing the issuance of said bonds and levy of tax.

Sec. 20. All bonds issued under the provisions of this Act shall be issued in the name of the navigation district, shall be signed by the county judge of the county whose commissioners' court has jurisdiction of said district, shall be attested by the county clerk, and the seal of the commissioners' court of such county shall be affixed to each, they shall be issued in such denominations and payable at such time, or times, not exceeding forty years from their date, as may be deemed most expedient by said commissioners' court, and said bonds shall bear interest not to exceed six per cent per annum.

Sec. 21. Any navigation district in the State of Texas desiring to issue bonds in accordance with this Chapter shall, before such bonds are offered for sale, forward to the Attorney General a copy of the bonds to be issued, a certified copy of the order of the commissioners' court levying the tax, a copy of the order of the commissioners' court levying the tax to pay interest and provide a sinking fund, and a statement of the total bonded indebtedness of such navigation district as such, including the series of bonds proposed and the assessed value of property for the purpose of taxation, as shown by the last official assessment by the county, together with such other information as the Attorney General may require; whereupon it shall be the duty of the Attorney General to carefully examine said bonds in connection with the facts and the Constitution and laws on the subject of the execution of such bonds; and, if as the result of such examination the Attorney General shall find that such bonds were issued in conformity with the Constitution and laws, and that they are valid and binding obligations upon such navigation district by which they are issued, he shall so officially certify.

Sec. 22. When said bonds have been examined by the Attorney General, and his certificate issued to that effect, they shall be registered by the State Comptroller, in a book to be kept for that purpose; and the certificate of the Attorney General to the validity of such bonds shall be preserved of record for use in the event of litigation. Such bonds, after being approved by the Attorney General, and after having been registered in the Comptroller's office as herein provided, shall thereafter be held in every action, suit or proceeding in which their validity is or may be brought in question, prima facie valid and binding obligations. And, in every action brought to enforce collection of said bonds or interest thereon, the certificate of the Attorney General, or a duly certified copy thereof, shall be admitted and received as prima facie evidence of the validity of such bonds, together with the coupons thereto attached; provided, that the only defense that can be offered against the validity of said bonds or coupons be forgery or fraud.

Sec. 23. When bonds shall have been issued under the provisions of this Act, the navigation board of said district shall procure and deliver to the treasurer of the county whose commissioners' court has jurisdiction, a well bound book in which a record shall be kept of all such bonds, with their numbers, amount, rate of interest, date of issuance, when due, where payable, amount received for same, the tax levy to pay interest on and to provide sinking funds for their payment, and said book shall at all times be open to the inspection of the parties interested in said district, either as taxpayers, or bondholders or otherwise; and upon payment of any bond, an entry thereof shall be made in said book. The county treasurer shall receive for his services in recording these matters the same fees as may be allowed by law to the county clerk for other like records.

Sec. 24. When such bonds have been registered, as provided for in the preceding section of this Act, the chairman of the navigation and canal commission shall offer for sale and sell said bonds on the best terms and for the best price possible, but none of said bonds shall be sold for less than the face par value thereof and accrued interest thereon; and, as fast as said bonds are sold, all moneys received therefor shall be paid to the county treasurer, and shall by him be placed to the credit of such navigation district.

Sec. 25. Before the said chairman of the navigation and canal commissioners shall be authorized to sell any of the navigation bonds, he shall execute a good and sufficient bond, payable to the county judge or his successors in office, to be approved by the county commissioners' court of said county, for an amount not less than the amount of the bonds issued, conditioned upon the faithful discharge of his duties.

Sec. 26. All expenses of any kind, after the filing of the original petition, necessarily incurred in connection with the creation, establishment and maintenance of any navigation district organized under the provisions of this Section, shall be paid out of the "Construction and Maintenance Fund" of such navigation district; which fund shall consist of all moneys received from the sale of bonds and all other amounts received by said district from whatever source, except the tax collections applied to the sinking fund and payment of interest on the navigation bonds; provided, that, should the proposition of the creation of such navigation district and issuance of bonds be defeated at the election called to vote upon the same then all expenses up to and including said election shall be paid in the following manner: When the original petition praying for the establishment of a navigation district is filed with the county commissioners' court, it shall be accompanied by five hundred dollars in cash, which shall be deposited with the clerk of said county commissioners' court, and by him held until after the result of the election for the creation of said navigation district has been declared and entered of record by the commissioners' court, as hereinafter provided; and, should the result of said election be in favor of the establishment of said district, then the said five hundred dollars shall be by said clerk returned to the signers of said original petition, or their agent or attorney; but, should the result of said election be against the establishment of said district, then the said clerk shall pay out of the said five hundred dollars, upon vouchers signed by the county judge, all costs and expenses pertaining to the said proposed district up to and including the said election, and shall return the balance, if any, of said five hundred dollars to the signers of said original petition, or their agent or attorney.

Sec. 27. Whenever such navigation district bonds shall have been voted, the commissioners' court shall levy and cause to be assessed and collected improvement taxes upon all property within said navigation district, whether real, personal, mixed or otherwise, and

sufficient in amount to pay the interest on such bonds, together with an additional amount to be annually placed in a sinking fund sufficient to discharge and redeem said bonds at their maturity, and in all such navigation districts which have heretofore been created or may hereafter be created, the commissioners' courts of the respective counties wherein said districts may be created, shall be and are hereby authorized to levy and cause to be assessed and collected for the maintenance, operation and up-keep of such navigation district and the improvements constructed by said district, an annual tax not to exceed ten cents on the one hundred dollar valuation upon all property within such navigation district, whether real, personal[,] mixed, or otherwise.

Sec. 28. If advisable, the sinking fund shall, from time to time, be invested by the commissioners' court of the county in such county, municipal, district or other bonds as shall be approved by the Attorney General of the State.

Sec. 29. The navigation board of said district shall provide all necessary additional books for the use of assessors and collectors of taxes and the clerk of the commissioners' court of jurisdiction for said navigation districts. The tax assessors of each county in said navigation district, when ordered to do so by the commissioners' court having jurisdiction of said district, shall assess all property within said navigation district which is located in his county and list the same for taxation in the books or rolls furnished him for said purposes, and return said books or rolls at the same time when he returns the other books or rolls of the State and county taxes for correction and approval to the commissioners' court of his county, and if said court shall find said books or rolls correct they shall approve the same, and in all matters pertaining to the assessment of property for taxation in said district, the tax assessors and boards of equalization of the counties in which said district is located shall be authorized to act and shall be governed by the laws of Texas for assessing and equalizing property for State and county taxes, except as herein provided. All taxes authorized to be levied by this Act shall be a lien upon the property upon which said taxes are assessed, and said taxes may be paid and shall mature and be paid at the time provided by the laws of this State for the payment of State and county taxes; and all the penalties provided by the laws of this State for the non-payment of State and county taxes shall apply to all taxes authorized to be levied by this Section. The tax assessors shall receive for such services such compensation as the said navigation and canal commissioners shall deem proper: provided that said county assessors shall in no event be allowed more than they are now allowed for like services. Should any tax assessor fail or refuse to comply with the orders of said commissioners' court requiring him to assess and list for taxation all the property in such navigation district, as herein provided, he shall be suspended from the further discharge of his duties by the commissioners' court of his county, and he shall be removed from office in the mode prescribed by law for the removal of county officers.

Sec. 30. That tax collectors of the several counties in said navigation district shall be charged with the assessment rolls of navigation districts, and are required to make collection of all taxes levied and assessed against the property in their county within such district and promptly pay over the same to the treasurer of the county, the commissioners' court of which has jurisdiction of said district: and said tax collectors shall be allowed no more compensation for the collection of said taxes than is now allowed for collection of other taxes, same to be fixed by the navigation and canal commissioners. The bonds of such collectors shall stand as security for the proper performance of their duties as tax collectors of such navigation districts; or, if in the judgment of the navigation and canal commissioners of such districts it be necessary, additional bonds, payable to such districts, may be required, and in all matters pertaining to the collection of taxes levied under the provisions of this section, the tax collectors shall be authorized to act and shall be governed by the laws of the State of Texas for the collection of State and county taxes, except as herein provided; and suits may be brought for the collection of said taxes and the enforcement of the tax liens created by this section. Should any collector of taxes fail or refuse to give such additional bond or security as herein provided, when requested to do so by said navigation and canal commissioners, within the time prescribed by law for such purposes, he shall be suspended from office by the commissioners' court of his county, and immediately thereafter be removed from office in the mode prescribed by law.

Sec. 31. It shall be the duty of the tax collector to make a certified list of all delinquent property upon which the navigation tax has not been paid, and return the same to the county commissioners' court, which shall proceed to have the same collected by the sale of such delinquent property in the same manner, both by suit and otherwise, as now or may be provided for the sale of property for the collection of State and county taxes; and, at the sale of any property for any delinquent tax, the navigation and canal commissioners may become the purchasers of the same for the benefit of the navigation district.

Sec. 32. The county treasurer of the county, the commissioners' court of which has jurisdiction of said district, shall be treasurer of said navigation district, and it shall be his duty to open an account of all monies received by him belonging to such district and all amounts paid out by him. He shall pay out no money except upon a voucher signed by the chairman or any two of said navigation and canal commissioners, or the said commissioners' court, and he shall carefully preserve on file all orders for the payment of money; and, as often as required by the said commissioners' court, he shall render a correct account to them of all matters pertaining to the financial condition of such district.

Sec. 33. The county treasurer shall execute a good and sufficient bond, payable to the navigation and canal commissioners of such district, in a sum equal to twice the amount of funds he will have in his hands as treasurer of such district, at any time as estimated by said navigation and canal commissioners, such bond to be conditioned for the faithful performance of his duties as treasurer of such district and to be approved by said navigation and canal commissioners; provided, whenever any bonds are voted by such navigation district the county treasurer before receiving the proceeds of sale thereof shall execute additional good and sufficient bond payable to the navigation and canal commissioners of such district in the sum equal to twice the amount of bonds so issued, which bond shall likewise be conditioned and approved as aforesaid, but such additional bond shall not be required after such treasurer shall have properly disbursed the proceeds of such bond issue; and the county treasurer shall be allowed such compensation for his services as treasurer of such navigation district as may be determined by said navigation and canal commissioners not exceeding the same per cent as is now authorized by law for his services as county treasurer.

Sec. 34. The right of eminent domain is hereby conferred upon all navigation districts established under the provisions of this chapter for the purpose of condemning and acquiring the right of way over and through any and all lands, private or public, except property used for cemetery purposes, necessary for the improvement of any river, bay, creek, or stream, and the construction and maintenance of any canal or waterway, and for any and all purposes authorized by this Act. All such condemnation proceedings shall be instituted under the direction of the navigation and canal commissioners, and in the name of the navigation district, and the assessing of damages shall be in conformity to the statutes of the State of Texas for condemning and acquiring the right of way by railroads; provided, that no appeal from the finding and assessment of damage by the commissioners appointed for that purpose shall have the effect of causing a suspension of work by the navigation commissioners in prosecuting the work of improvement in all of its details; provided, that no right of way can be condemned

through any part of an incorporated city or town without the consent of the lawful authorities of such city or town.

Sec. 35. The navigation and canal commissioners of any district are hereby empowered to acquire the necessary right of way and property of any kind for all necessary improvements contemplated by this Act by gift, grant, purchase or condemnation proceedings.

Sec. 36. The navigation and canal commissioners of any district, and the engineers, from the time of their appointment, are hereby authorized to go upon any lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action of trespass.

Sec. 37. If the improvement or improvements be not carried out and performed by the Government of the United States, as herein provided, the contract or contracts for such improvement or improvements shall be let by the navigation and canal commissioners, and the same shall be awarded to the lowest and best responsible bidder, after giving notice by advertising the same in one or more newspapers, of general circulation in the State of Texas once a week for four consecutive weeks, and by posting notices for at least thirty days in five public places in the county of jurisdiction, one of which shall be at the courthouse door, and at least two of which shall be within said district. Nothing herein contained shall prevent the making of more than one improvement, and where more than one improvement is to be made, the contract may be let separately for each one contract for all such improvements.

Sec. 38. Any person, corporation, or firm, desiring to bid on the construction of any work advertised for as provided under the preceding section of this Act, shall, upon application to the navigation and canal commissioners, be furnished the survey, plans and estimates for the said work, and all bids or offers for any such work shall be in writing and sealed and delivered to the chairman of the navigation and canal commissioners, together with a certified check for at least five per cent of the total amount of bid, which shall be forfeited to the district in case the bidder refuses to enter into a proper contract, if his bid is accepted. Any and all bids may be rejected at the discretion of the navigation and canal commissioners.

Sec. 39. All contracts made by the navigation and canal commissioners shall be reduced to writing and signed by the contractors and navigation and canal commissioners, or any two of said commissioners, and a copy of same filed with the county clerk for reference.

Sec. 40. The party, firm or corporation, to whom any such contract is let, shall give bond, payable to the navigation and canal commissioners for said district, in twice the amount of the contract price, conditioned that he, they or it, will faithfully perform the obligations, agreements and covenants of their contract, and that in default thereof will pay to said district all damages sustained by reason thereof. Said bond shall be approved by such navigation and canal commissioners.

Sec. 41. All work contracted for by the navigation and canal commissioners, unless done under the supervision of the Government of the United States, or the proper department or officer thereof, shall be done under the supervision of the engineer; and, when the work is completed according to contract, the engineer shall make a detailed report of the same to the navigation and canal commissioners, showing whether the contract has been fully complied with, according to its terms, and if not in what particular it has not been complied with.

Sec. 42. The commissioners shall have the right, and it is hereby made their duty, during the progress of the work being done under contract, to inspect the same; and, upon the completion of any contract, they shall draw a warrant on the county treasurer for the amount of the contract price in favor of the contractor or his assignee, which warrant shall be paid out of the construction and maintenance fund of such district; provided, that, if the navigation and canal commissioners shall deem it advisable, they may contract for the work to be paid for in partial payments as the work progresses; but such partial payments shall not exceed in the aggregate eight per cent of the total amount to be paid under the contract, the amount of work completed to be shown by a certificate of the engineer; and provided, further, that nothing in this Section shall affect the provisions of this Act providing for the carrying out and performing of the improvement or improvements by the Government of the United States.

Sec. 43. The commissioners shall make an annual report of their acts and doings as such commissioners, and file the same with the clerk of the county court on or before the first day of January of each year; which report shall show in detail the kind, character and amount of work done in the district, the cost of same, and the amount paid out on order, for what purpose paid, and other data necessary to show the condition of improvements made under the provisions of this Act.

Sec. 44. The commissioners are hereby authorized and empowered to employ such assistant engineers and other employees as may be necessary, paying such compensation as they may determine; and the said commissioners are authorized to employ counsel to represent such district in the preparation of any contract, or the conducting of any proceedings in or out of court, and to be the legal adviser of the navigation and canal commissioners on such terms and for such fees as may be agreed upon by them; and such commissioners shall have the authority to draw warrant or warrants in payment of such legal services, and for the salary of the engineer, his assistant, or any other employees, and for all expense incident and pertaining to the navigation district.

Sec. 45. Neither the county judge of any county in said navigation district, nor any county commissioner of said counties, nor members of the navigation board or engineer shall be directly or indirectly interested for themselves, or as agents for any one else, in the contract for the construction of any work to be performed by such navigation district.

Sec. 46. All navigation districts established under this Act may, by and through the navigation and canal commissioners, sue and be sued in all courts of this State in the name of such navigation district, and all courts of this State shall take judicial notice of the establishment of all districts. [Acts 1925, p. 7.] [39th Leg., ch. 5, §§ 1–46.]

CHAPTER TEN

PILOTS

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1. PILOT BOARDS

Article 8264. [6299] [3790] Governor to appoint.—The Governor shall appoint, with the consent of the Senate, for each port whose population and circumstances warrant it, and also for Matagorda and Lavaca Bays from Pass Cavallo to Indianola and Lavaca, a board of five persons of respectable standing, under the denomination of "commissioners of pilots" for such port and bays, three of whom shall be prac-

tical seamen and the other two merchants, who shall be commissioned by the Governor for the term of two years; and the Governor shall, during the recess of the Legislature, be authorized to suspend, until the next session of the same, any of said commissioners, and to fill, until the same period, any vacancies in the board caused by death, resignation or otherwise. No member of the board of commissioners shall be directly or indirectly pecuniarly [pecuniarily] interested in any pilot boat or branch pilot in the business of their trust. [Acts 1846, p. 79; G. L. vol. 2, p. 1385; Acts 1861, p. 19; P. D. 4762, 4775; G. L. vol. 5, p. 355.]

Art. 8265. [6300] [3791] Duties of board.—Said board of commissioners shall be authorized, if they deem it advisable, to examine and decide on the qualifications of any branch or deputy pilot whom they find already appointed at the time of their organization; and it shall be their duty to examine each new applicant for the office of branch or deputy pilot, and to decide on his qualifications, recommending to the Governor, where new appointments are proper, such as are meritorious; and it shall also be their duty to examine into any cause of alleged or supposed misconduct or inefficiency in branch or deputy pilots; and they shall be authorized, after a due hearing of accusation, testimony and defense, to suspend such pilot if sufficient cause appear, and during such suspension he shall not be allowed to exercise the functions of his office; the Governor shall, however, have power at his will and pleasure to remove any branch pilot, or to reinstate any one of the same who has been suspended by the commissioners. [Acts 1846, p. 79; P. D. 4763; G. L. vol. 2, p. 1385.]

Art. 8266. [6301] [3792] Pilots' qualifications.—The board shall require a certain term of residence in this State, not less than two years, to authorize any person to exercise the functions of branch pilot for their port or said bays; as also to establish a term of probation, not exceeding one year, as a deputy pilot before any person can exercise the functions of branch pilot. [Id.]

Art. 8267. [6302] [3793] Regulations and rates.—The board shall have authority, within the limits provided in this subdivision, to fix rates of pilotage, and to establish regulations respecting the stations whereat and the times wherein pilots shall be on duty, with provisions for leave of absence; as also respecting the class, condition, number and use of pilot boats, and such other minor regulations, compatible with the provisions of this subdivision as may be needed for the government of pilots and for the order and good effect of the proceedings of the board, of which proceedings a record shall be kept; provided, no regulation shall be adopted repugnant to the Constitution. [Id.]

Art. 8268. [6303] [3794] Settlement of disputes.—The board shall be authorized and required to hear and determine all disputes that may arise respecting pilots and pilotage; to award to pilots extra compensation for extra services to vessels in distress; as also compensation for injurious loss of time incurred by pilots in waiting on vessels or by being carried off to sea on vessels by default of the master or owner when such pilots might have been landed; provided, always, that no more than three dollars for each day shall be awarded for mere loss of time; and said board shall superintend and generally attend to all matters appertaining to pilots and pilotage; but from any decision of said board an appeal may be taken to the court having cognizance of the case. [Id.]

Art. 8269. [6304] [3795] Boards in small ports.—At any port whose population and circumstances do not warrant the appointment of a board of commissioners of pilots in the manner before provided, the Governor may authorize the county judge of the county to appoint a provisional committee of from three to five persons of good character and maritime experience who shall be authorized under this chapter to establish the rates of pilotage and the rules for governing pilots; to examine the qualifications of pilots and applicants for the office; to investigate the case of any pilot charged with misconduct or inefficiency, and to suspend him if sufficient cause appear. [Id.]

2. BRANCH AND DEPUTY PILOTS

Art. 8270. [6305] [3796] Appointment.—The Governor shall appoint at each of the ports such number of branch pilots as may from time to time be necessary, each of whom shall hold his office for the term of two years. [Acts 1846, p. 79; P. D. 4761; G. L. vol. 2, p. 1385.]

Art. 8271. [6306] [3797] Bond and oath.—Each branch pilot shall give bond, with two or more good and sufficient sureties, in the sum of five thousand dollars, payable to the Governor, and conditioned for the faithful performance of the duties of his office. Such bond shall be approved by the board of commissioners of pilots for the port, or if there be no such board, by the county judge of the county in which the port is situated, and forwarded to the Governor. Each pilot shall also take and subscribe the official oath which shall be endorsed on said bond, and together with the bond shall be recorded in the office of the county clerk of the county in which such port is situated before being forwarded to the Governor. Certified copies of said bonds, under the hand and seal of the county clerk, may be used as evidence in all the courts with like effect as the originals. [Id.; Acts 1861, p. 19; G. L. vol. 5, p. 355.]

Art. 8272. [6307] [3798] May appoint deputies.—Each branch pilot may appoint subject to examination and approval by the board of commissioners, two deputies, for whose acts the branch pilot so appointed shall be responsible; and any branch pilot who shall appoint a deputy without the approval of said board shall forfeit his own appointment and said board shall have authority to restrict all deputy pilots from piloting over the bar vessels of over a certain draught of water. [Id.]

Art. 8273. [6308] [3799] Malfeasance.—Any branch or deputy pilot in a state of inebriety who shall take charge of a vessel shall, upon proof of the same, for the first offense be suspended for one month, and for the second offense be dismissed and be rendered incapable of again serving in either capacity. If any branch or deputy pilot shall willfully or by neglect cause the wreck of a vessel, he shall be dismissed and be rendered incapable of again serving in either capacity. [Id.]

Art. 8274. [6309] [3800] Pilotage.—The rate of pilotage on any class of vessels shall not, in any port of this State, exceed four dollars for each foot of water which the vessel at the time of piloting draws, and whenever a vessel, except of the classes below excepted, shall decline the services of a pilot, offered outside the bar, and shall enter the port without the aid of one, she shall be liable to the first pilot whose services she so declined for the payment of half pilotage; and any vessel which, after being brought in by a pilot, shall go out without employing one, shall be liable to the payment of half pilotage to the pilot who brought her in, or if she has come in without the aid of a pilot, though offered outside, she shall on so going out be liable for the payment of half pilotage to the pilot who had first offered his services before she came in, but if she has come in without the aid of a pilot, or the offer of one outside, she shall not, in case of going out without a pilot, be liable to half pilotage. At any port where vessels shall receive or discharge their cargoes at an anchorage outside of the bar, such vessel shall be liable to pilotage at the above rate to such anchorage, but shall not be liable for or compelled to pay pilotage from such anchorage to the open sea; and if any vessel bound from open sea to such anchorage, while under way, shall decline the services of a pilot, and shall afterward receive or discharge any portion of her cargo at such anchorage on the lighters or otherwise, she shall be liable for the payment of half pilotage, at the above rate to such anchorage to the first pilot whose services shall have been tendered to and declined by her, but not

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

liable for any pilotage from such anchorage to the open sea; and when a pilot takes charge of a vessel twenty miles outside of the bar, and brings her to it, he shall be entitled to one-fourth pilotage for such off-shore service, in addition to what he is entitled to recover for bringing her in, but if such off-shore service be declined, no portion of said compensation shall be recovered. [Acts 1866, pp. 14, 15; G. L. vol. 5, p. 932; Acts 1879, p. 99; G. L. vol. 8, p. 1399.]

Art. 8275. [6310] [3801] Exemptions from extra pilotage.—The following classes of vessels shall be free from any charge for pilotage, unless for actual service, to-wit: All vessels of twenty tons and under, all vessels of whatsoever burthen owned in this State and registered and licensed in the district of Texas, when arriving from or departing to any port of this State; all vessels of seventy-five tons and under owned and licensed for the coasting trade in any part of the United States, when arriving from or departing to any port in the State of Texas; all vessels of seventy-five tons or under owned in this State and licensed for the coasting trade in the district of Texas, when arriving from or departing to any port in the United States. [Id.]

Art. 8276. [6311] [3802] Consignee responsible for pilotage.—The consignee of any vessel shall be held responsible for the pilotage of said vessel. [Acts 1846, p. 79; P. D. 4772; G. L. vol. 2, p. 1385.]

Art. 8277. [6312] [3803] Unauthorized pilot: liability.—If any person not appointed a branch or deputy pilot shall pilot any ship or vessel out of or into any port when a branch or deputy pilot has offered such service, the person so piloting shall forfeit and pay to such branch or deputy pilot the sum of fifty dollars to be recovered by suit. [Id.]

Art. 8278. [6313–14] Pilots for mouth of Brazos.—The Governor shall also appoint a sufficient number of competent pilots for the mouth of the Brazos River, whose terms of office, mode of qualification and pilotage shall be the same as prescribed in the preceding articles for branch pilots; and they shall be entitled to all the privileges and shall exercise all the powers, and discharge all the duties prescribed for branch pilots, and be subject to like penalties. The county judge of Brazoria County shall approve the bond of any such pilot. [Acts 1848, p. 144; P. D. 4776, 4782; G. L. vol. 3, p. 144.]

Art. 8279. [6315–16–17] Pilots for Matagorda and Lavaca Bays.—The Governor shall also appoint not less than two nor more than four competent pilots for Matagorda and Lavaca Bays, from Pass Cavallo to Indianola and Lavaca, who shall hold their offices for the same term as branch pilots, and whose mode of qualification, powers and privileges, in so far as the same are applicable, shall be the same; the bonds of such pilots shall be approved by the county judge of Calhoun County. Such pilots shall keep the channels of said bays properly staked and marked out, and in default thereof they shall be subject to removal or suspension. The rate of pilotage for said bays shall be two dollars and fifty cents for each foot of water the vessel may draw at the time of piloting; and all vessels that may draw five feet or more shall be subject to pay any licensed pilot for said bays, whose services are tendered and declined, one-half the pilotage herein prescribed. [Acts 1861, p. 19; P. D. 4775; G. L. vol. 5, p. 355.]

Art. 8280. [6318–19] Rules for branch pilots applicable.—All the provisions of this chapter relating to branch pilots at ports in so far as the same are applicable and not expressly qualified, shall apply to and govern pilots appointed for the mouth of the Brazos River and for Matagorda and Lavaca Bays. If any person not a licensed pilot or deputy shall pilot any vessel into or out of the mouth of said river or through the channel of said bays, up or down, he shall forfeit and pay to any pilot licensed or commissioned for the mouth of said river, or for said bays, full pilotage for such vessel, to be recovered by suit. [Id.]

TITLE 129

WILLS

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Article 8281. [7855] [5333] [4857] Who may execute.—Every person aged twenty-one years or upward, or who may be or may have been lawfully married, being of sound mind, shall have power to make a last will and testament, under the rules and limitations prescribed by law. [Acts 1840, p. 167; Acts 1856, p. 5; G. L. vol. 2, p. 341; vol. 4, p. 423.]

Art. 8282. [7856] [5334] [4858] May pass estate.—Every person competent to make a last will and testament may thereby devise and bequeath all the estate, right, title and interest in possession, reversion or remainder, which he has, or at the time of his death shall have, of, in or to any lands, tenements, hereditaments or rents charged upon or issuing out of them, or shall have of, in or to any personal property whatever, subject to the limitations prescribed by law. [P. D. 5361–2.]

Art. 8283. [7857] [5335] [4859] Requisites.—Every last will and testament except where otherwise provided by law, shall be in writing and signed by the testator or by some other person by his direction and in his presence, and shall, if not wholly written by himself, be attested by two or more credible witnesses above the age of fourteen years, subscribing their names thereto in the presence of the testator. [Acts Jan. 28, 1840; G. L. vol. 2, p. 341.]

Art. 8284. [7858] [5336] [4860] Exception.—Where the will is wholly written by the testator the attestation of the subscribing witnesses may be dispensed with. [Id.]

Art. 8285. [7859] [5337] [4861] Cancellation.—No will in writing, made in conformity with the preceding articles, nor any clause thereof or devise therein, shall be revoked, except by a subsequent will, codicil or declaration in writing, executed with like formalities, or by the testator destroying, canceling or obliterating the same, or causing it to be done in his presence.

Art. 8286. [7860] [5338] [4862] Nuncupative will.—Any person who is competent to make a last will and testament, under Articles 8281 and 8282 may dispose of his property by a nuncupative will made under the conditions and limitations hereinafter prescribed. [P. D. 5366.]

Art. 8287. [7861] [5339] [4863] Requisites.—No nuncupative will shall be established, unless it be made in the time of the last sickness of the deceased, at his habitation or where he has resided for ten days next preceding, except when the deceased is taken sick from home and dies before he returns to such habitation; nor when the value exceeds thirty dollars, unless it be proved by three credible witnesses that the testator called on some person to take notice or bear testimony that such is his will, or words of like import. [P. D. 5366.]

Art. 8288. [7862] [5340] [4864] Notice and proof.—No nuncupative will shall be proved within fourteen days after the death of the testator, nor until those who would have been entitled by inheritance, had there been no will, have been summoned to contest the same, if they desire to do so. [P. D. 5371.]

Art. 8289. [7863] [5341] [4865] Testimony.—After six months have elapsed from the time of speaking the pretended testamentary words, no testimony shall be received to prove a nuncupative will, unless the testimony or the substance thereof, shall have been committed to writing within six days after making the will. [P. D. 5367.]

Art. 8290. [7864] [5342] [4866] Soldier's will.—Any soldier in actual military service, or any mariner or seaman being at sea, may dispose of his chattels without regard to the provisions of this title. [P. D. 5369.]

Art. 8291. [7865] [5343] [4867] Posthumous children.—When a testator shall have children born and his wife enceinte, the posthumous child, if unprovided for by settlement and pretermitted by his last will and testament, shall succeed to the same portion of the father's estate as such child would have been entitled to if the father had died intestate; toward which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament. [P. D. 5363.]

Art. 8292. [7866] [5344] [4868] After-born child.—If a testator having a child or children born at the time of making his last will and testament, shall at his death, leave a child or children born after the making of such last will and testament, the child or children so after born and pretermitted shall, unless provided for by settlement, succeed to the same portion of the father's estate as they would have been entitled to if the father had died intestate; toward raising which portion the devisees and legatees shall contribute proportionately out of the parts devised and bequeathed to them by such last will and testament, in the same manner as is provided in Article 8291. [P. D. 5364.]

Art. 8293. [7867] [5345] [4869] Validity.—Every last will and testament made when the testator had no child living, wherein any child he might have is not provided for or mentioned, if at the time of his death he shall leave a child, or leave his wife enceinte of a child which shall be born, shall have no effect during the life of such after-born child, and shall be void, unless the child die without having been married and before he shall have attained the age of twenty-one years. [P. D. 5363.]

Art. 8294. [7868] [5346] [4870] Descendants.—Under the name of "children" as used in this title, are included descendants of whatever degree they may be, it being understood that they are only counted for the child they represent. [P. D. 5373.]

Art. 8295. [7869] [5347] [4871] Prior death of legatee.—Where a testator shall devise or bequeath an estate or interest of any kind by will to a child or other descendant of such testator, should such devisee or legatee, during the lifetime of the testator, die leaving children or descendants who shall survive such testator, such devise or legacy shall not lapse by reason of such death; but the estate so devised or bequeathed shall vest in the children or descendants of such legatee or devisee in the same manner as if he had survived the testator and died intestate. [P. D. 5365.]

Art. 8296. [7870] [5348] [4872] Bequest to witness.—Should any person be subscribing witness to a will, and be also a legatee or devisee therein, if the will cannot be otherwise established, such bequest shall be void, and such witness shall be allowed and compelled to appear and give his testimony in like manner as if no such bequest had been made. But, if in such case the witness would have been entitled to a share of the estate of the testator had there been no will, he shall be entitled to so much of such share as shall not exceed the value of the bequest to him in the will. [Acts 1875, p. 179; G. L. vol. 8, p. 551.]

Art. 8297. [7871] [5349] [4873] Proof by witness.—In the case provided for in the preceding article, such will may be proved by the evidence of the subscribing witnesses, corroborated by the testimony of one or more other disinterested and credible persons, to the effect that the testimony of such subscribing witnesses necessary to sustain the will is substantially true; in which event the bequest to such subscribing witnesses shall not be void. [Id.]

Art. 8298. [7872] [5350] [4874] Separate property.—The husband or wife may, by last will and testament, give to the survivor of the marriage the power to keep his or her separate property together, until each of the several heirs shall become of lawful age, and to manage and control the same under the provisions of law relating to community property, and such other restrictions as may be imposed by such will; provided, the surviving husband or wife is the father or mother, as the case may be, of the minor heirs; and provided further, that any child or heir entitled to any part of said property shall, at any time upon becoming of age, be entitled to receive his distributive portion of said estate. [Acts 1856, p. 51; G. L. vol. 4, p. 469.]

Art. 8299. [7873] [5351] [4875] Custody.—All original wills, together with the probate thereof, shall be deposited in the office of the clerk of the county court of the county wherein the same shall have been probated, and shall there remain, except during such time as they may be removed to some other court, by proper process, for inspection. [P. D. 5372.]

Art. 8300. [7874] [5352] [4876] Registration.—Every such will, together with the probate thereof, shall be recorded by the clerk of the county court in a book to be kept for that purpose; and certified copies of such will and the probate of the same, or of the record thereof, may be recorded in other counties, and may be used in evidence as the original might be. [Id.]

Art. 8301. [7875] [5353] Foreign will.—When any will or testament, or testamentary instrument of any character, conveying or in any manner disposing of land in this State, has been duly probated according to the laws of any of the United States or territories, a copy thereof and its probate, attested by the clerk of the court in which such will and testament or testamentary instrument was admitted to probate, and the seal of the court annexed, if there be a seal, together with a certificate from the judge or presiding magistrate of such court that the said attestation is in due form, may be filed and recorded in the register of deeds in any county in which said real estate is situated, in the same manner as deeds and conveyances are required to be recorded, and without further proof or authentication; provided, that, at any time within four years from the date of the record of such will in this State, the validity of such will may be contested in a proceeding instituted for that purpose as the original might have been. [Acts 1887, p. 38; G. L. vol. 9, p. 836.]

Art. 8302. [7876] [5354] Foreign will: registration.—A copy of such will and testament, or testamentary instrument, and its probate so attested, together with the certificate that said attestation is in due form, as required by the preceding article, shall be prima facie evidence that said will has been duly admitted to probate, according to the laws of the State wherein it has been admitted to probate, and shall be sufficient to authorize the same to be recorded in the proper county or counties in this State. [Id.]

Art. 8303. [7877] [5355] Effective, when.—Every such will and testament, or testamentary instrument, and its probate, which shall be attested and proven, as provided in the second preceding article, and delivered to the clerk of the proper court to be recorded, shall take effect and be valid and effectual

as a deed of conveyance of said property; and the record thereof shall have the same force and effect as the record of deeds or other conveyances to land from the time when such instrument was delivered to such clerk to be recorded, and from that time only. [Id.]

Art. 8304. [7878] [5356] Notice.—The record of such will and testament, or testamentary instrument, and its probate, duly attested and proven, as provided in the preceding articles, and duly made in the proper county, shall be taken and held as notice to all persons of the existence of such will and testament, and of the title or titles conferred thereby. [Id.]

Art. 8305. Foreign trustee.—When by any foreign will, filed and recorded in this State, as authorized by the four preceding articles, power is given an executor or trustee to sell any real or personal property situated in this State, no order of court shall be necessary to authorize such executor or trustee to make such sale and execute proper conveyance, and whenever any particular directions are given by a testator in any such will respecting the sale of any such property situated in this State, belonging to his estate, the same shall be followed unless such directions have been annulled or suspended by order of a court of competent jurisdiction. [Acts 1915, p. 120.]

TITLE 130

WORKMEN'S COMPENSATION LAW

PART 1.

Art.
8306. Damages and compensation for personal injuries.

PART 2.

8307. Industrial accident board.

PART 3.

8308. Employer's Insurance Association.

PART 4.

8309. Definitions and general provisions.

PART 1

Article 8306. Damages and compensation for personal injuries.—Sec. 1. In an action to recover damages for personal injuries sustained by an employé in the course of his employment, or for death resulting from personal injury so sustained, it shall not be a defense:

1. That the employé was guilty of contributory negligence.

2. That the injury was caused by the negligence of a fellow employé.

3. That the employé had assumed the risk of the injury incident to his employment; but such employer may defend in such action on the ground that the injury was caused by the willful intention of the employé to bring about the injury, or was so caused while the employé was in a state of intoxication.

4. In all such actions against an employer who is not a subscriber, as defined hereafter in this law, it shall be necessary to a recovery for the plaintiff to prove negligence of such employer or some agent or servant of such employer acting within the general scope of his employment. [Acts 1917, p. 269.]

Sec. 2. The provisions of this law shall not apply to actions to recover damages for personal injuries nor for death resulting from personal injuries sustained by domestic servants, farm laborers, ranch laborers, nor to employés of any firm, person or corporation having in his or their employ less than three employés, nor to the employés of any person, firm or corporation operating any steam, electric, street, or interurban railway as a common carrier. Any employer of three or more employés at the time of becoming a subscriber shall remain a subscriber subject to all the rights, liabilities, duties and exemptions of such, notwithstanding after having become a subscriber the number of employés may at times be less than three. [Acts 1917, p. 269, Acts 1921, p. 221.]

Sec. 3. The employés of a subscriber and the parents of minor employés shall have no right of action against their employer or against any agent, servant or employé of said employer for damages for personal injuries, and the representatives and beneficiaries of deceased employés shall have no right of action against such subscribing employer or his agent, servant or employé for damages for injuries resulting in death, but such employés and their representatives and beneficiaries shall look for compensation solely to the association, as the same is hereinafter provided for. All compensation allowed under the succeeding sections herein shall be exempt from garnishment, attachment, judgment and all other suits or claims, and no such right of action and no such compensation and no part thereof or of either shall be assignable, except as otherwise herein provided, and any attempt to assign the same shall be void. [Acts 1917, p. 269; Acts 1923, p. 385.]

Sec. 3a. An employé of a subscriber shall be held to have waived his right of action at common law or under any statute of this State to recover damages for injuries sustained in the course of his employment if he shall not have given his employer, at the time of his contract of hire, notice in writing that he claimed said right or if the contract of hire was made before the employer became a subscriber, if the employé shall not have given the said notice within five days of notice of such subscription. An employé who has given notice to his employer that he claimed his right of action at common law or under any statute may thereafter waive such claim by notice in writing, which shall take effect five days after its delivery to his employer or his agent. Any employé of a subscriber who has not waived his right of action at common law or under any statute to recover damages for injury sustained in the course of his employment, as above provided in this section, shall, as well as his legal beneficiaries and representatives have his or their cause of action for such injuries as now exist by the common law and statutes of this State, which action shall be subject to all defenses under the common law and statutes of this State. [Acts 1917, p. 269.]

Sec. 3b. If an employé who has not given notice of his claim of common law or statutory rights of action, or who has given such notice and waived the same, sustains an injury in the course of his employment, he shall be paid compensation by the association as hereinafter provided, if his employer is a subscriber at the time of the injury. [Id.]

Sec. 3c. From and after the time of the receipt by the Industrial Accident Board of notice from any employer that the latter has become a subscriber under this law, all employés of said subscriber then and thereafter employed, shall be conclusively deemed to have notice of the fact that such subscriber has provided with the association for the payment of compensation under this law. If any employer ceases to be a subscriber he shall on or before the date on which his policy expires give notice to that effect to the Industrial Accident Board, and to such subscribers' employés by posting notices to that effect in three public places around such subscribers' plant. [Acts 1923, p. 384.]

Sec. 4. Employés whose employers are not at the time of the injury subscribers to said association, and the representatives and beneficiaries of deceased employés who at the time of the injury were working for nonsubscribing employers can not participate in the benefits of said insurance association, but they shall be entitled to bring suit and may recover judgment against such employers, or any of them, for all damages, sustained by reason of any personal injury received in the course of employment or by reason of death resulting from such injury, and the provisions of section 1 of this law shall be applied in all such actions. [Acts 1917, p. 269.]

Sec. 5. Nothing in this law shall be taken or held

to prohibit the recovery of exemplary damages by the surviving husband, wife, heirs of his or her body, or such of them as there may be of any deceased employé whose death is occasioned by homicide from the wilful act or omission or gross negligence of any person, firm or corporation from the employer of such employé at the time of the injury causing the death of the latter. In any suit so brought for exemplary damages the trial shall be de novo, and no presumption shall exist that any award, ruling or finding of the Industrial Accident Board was correct. In any such suit, such award, ruling or finding shall neither be pleaded nor offered in evidence. [Id.]

Sec. 6. No compensation shall be paid under this law for an injury which does not incapacitate the employé for a period of at least one week from earning full wages, but if incapacity extends beyond one week compensation shall begin to accrue on the eighth day after the injury. The medical aid, hospital services, and medicines, as provided for in Section 7 hereof, shall be supplied as and when needed and according to the terms and provisions of said Section 7. If incapacity does not follow at once after the infliction of the injury or within eight days thereof but does result subsequently, compensation shall begin to accrue with the eighth day after the date incapacity commenced. In any event the employé shall be entitled to the medical aid, hospital service and medicines provided in this law. Provided further, that if such incapacity continues for four (4) weeks or longer, compensation shall be computed from the inception date of such incapacity. [Id.; Acts 1927, 40th Leg., p. 84, ch. 60, § 1.]

Sec. 7. During the first four weeks of the injury, dating from the date of its infliction, the association shall furnish reasonable medical aid, hospital services and medicines. If the association fails to so furnish same as and when needed during the time specified after notice of the injury to the association or subscriber, the injured employé may provide said medical aid, hospital service and medicines at the cost and expense of the association. The employé shall not be entitled to recover any amount expended or incurred by him for said medical aid, hospital services or medicines nor shall any person who supplied the same be entitled to recover of the association thereof, unless the association or subscriber shall have had notice of the injury and shall have refused, failed or neglected to furnish it or them within a reasonable time. At the time of the injury or immediately thereafter, if necessary, the employé shall have the right to call in any available physician or surgeon to administer first aid treatment as may be reasonably necessary at the expense of the association. During the fourth or any subsequent week of continuous total incapacity requiring the confinement to a hospital, the association shall, upon application of the attending physician or surgeon certifying the necessity therefor to the Industrial Accident Board and to the association, furnish such additional hospital services as may be deemed necessary not to exceed one week, unless at the end of such additional week the attending physician shall certify to the necessity for another week of hospital services or so much thereof as may be needed. Such additional hospital services as are herein provided shall not be held to include any obligation on the part of the association to pay for medical or surgical services not ordinarily provided by hospitals as a part of their services. [Acts 1917, p. 269, Acts 1923, p. 384.]

Sec. 7a. If it be shown that the association is furnishing medical aid, hospital services and medicines provided for by Section 7 hereof in such manner that there is reasonable ground for believing that the life, health or recovery of the employé is being endangered or impaired thereby, the board may order a change in the physician or other requirements of said section. If the association fails promptly to comply with such order after receiving it, the board may permit the employé or some one for him to provide the same at the expense of the association under such reasonable regulations as may be provided by said board. [Acts 1917, p. 269.]

Sec. 7b. All fees and charges under Sections 7 and 7a hereof shall be fair and reasonable, shall be subject to regulation of the board and shall be limited to such charges as are reasonable for similar treatment of injured persons of a like standard of living where such treatment is paid for by the injured person himself or some one acting for him. In determining what fees are reasonable, the board may also consider the increased security of payment afforded by this law. Where such medical aid, hospital service or medicines are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting the same, and the amount so paid shall be promptly reported to the board. [Id.]

Sec. 7c. All fees of attorneys for representing claimants before the board under the provisions of this law shall be subject to the approval of the board. No attorney's fees for representing claimants before the board shall be allowed or approved against any party or parties not represented by such attorney, nor exceeding an amount equal to fifteen per cent of the amount of the first one thousand dollars or fraction thereof recovered, nor ten per cent of the excess of such recovery, if any, over one thousand dollars, in addition to the reasonable expenses incurred by the attorney in the preparation and presentation of the said claim before the board, such expenses to be allowed by the board. Where an attorney represents only a part of those interested in the allowance of a claim before the board and his services in prosecuting such claim and obtaining an award therein inures to the benefit of others jointly interested therein, then the board may take these facts into consideration and allow the attorney a reasonable charge, to be assessed against the interest of those receiving benefits from the service of such attorney. The attorney's fees herein provided for may be redeemed by the association by the payment of a lump sum or may be commuted by agreement of the parties subject to the approval of the board, but not until the claim represented by said attorney has been finally determined by the board and recognized and accepted by the association. After the approval, as first above provided for, if the association be notified in writing of such claim or agreement for legal services, the same shall be a lien against any amount thereafter to be paid as compensation; provided, that where the employé's compensation is payable by the association in periodical installments the Board shall fix at the time of approval the proportion of each installment to be paid on account of said legal services. [Id.]

Sec. 7d. For representing the interest of any claimant in any manner carried from the board into the courts, it shall be lawful for the attorney representing such interest to contract with any beneficiary under this law for an attorney's fee for such representation, not to exceed one third of the amount recovered, such fee for services so rendered to be fixed and allowed by the trial court in which such matter may be heard and determined. [Id.]

Sec. 8. If death should result from the injury the association hereinafter created shall pay the legal beneficiaries of the deceased employé a weekly payment equal to sixty per cent of his average weekly wages, but not more than $20.00 nor less than $7.00 per week, for a period of three hundred and sixty weeks from the date of the injury. [Acts 1917, p. 269, Acts 1923, p. 384.]

Sec. 8a. The compensation provided for in the foregoing section of this law shall be for the sole and exclusive benefit of the survivng husband who has not for good cause and for a period of three years prior thereto, abandoned his wife at the time of the injury, and of the wife who has not at the time of the injury without good cause and for a period of three years prior thereto, abandoned her husband, and of the minor children, parents and stepmother, without regard to the question of dependency, dependent grandparents, dependent children and dependent brothers and sisters of the deceased employé; and the amount recovered thereunder shall not be li-

able for the debts of the deceased nor the debts of the beneficiary or beneficiaries and shall be distributed among the beneficiaries as may be entitled to the same as hereinbefore provided according to the laws of descent and distribution of this State; provided the right in such beneficiary or beneficiaries to recover compensation for death be determined by the facts that exist at the date of the death of the deceased and that said right be a complete, absolute and vested one. Such compensation shall not pass to the estate of the deceased to be administered upon, but shall be paid directly to said beneficiaries when the same are capable of taking, under the laws of this State, or to their guardian or next friend, in case of lunacy, infancy or other disqualifying cause of any beneficiary. The compensation provided for in this law shall be paid weekly to the beneficiaries herein specified, subject to the provisions of this law. [Id.]

Sec. 8b. In case death occurs as a result of the injury after a period of total or partial incapacity, for which compensation has been paid, the period of incapacity shall be deducted from the total period of compensation and the benefits paid thereunder from the maximum allowed for the death. [Acts 1917, p. 269.]

Sec. 9. If the deceased employé leaves no legal beneficiaries, the association shall pay all expenses incident to his last sickness as a result of the injury and in addition a funeral benefit not to exceed $100.00. Where any deceased employé leaves legal beneficiaries, but is buried at the expense of his employer or any other person, the expense of such burial, not to exceed $100.00, shall be payable out of the compensation due the beneficiary or beneficiaries of such deceased employé, subject to the approval of the board. [Id.]

Sec. 10. While the incapacity for work resulting from the injury is total, the association shall pay the injured employé a weekly compensation equal to sixty per cent of his average weekly wages, but not more than $20.00 nor less than $7.00 and in no case shall the period covered by such compensation be greater than four hundred and one weeks from the date of the injury. [Acts 1917, p. 269, Acts 1923, p. 384.]

Sec. 11. While the incapacity for work resulting from the injury is partial, the association shall pay the injured employé a weekly compensation equal to sixty per cent of the difference between his average weekly wages before the injury and his average weekly wage earning capacity during the existence of such partial incapacity, but in no case more than $20.00 per week. The period covered by such compensation shall be in no case greater than three hundred weeks; provided that in no case shall the period of compensation for total and partial incapacity exceed four hundred and one weeks from the date of injury. [Id.]

Sec. 11a. In cases of the following injuries, the incapacity shall conclusively be held to be total and permanent, to-wit:

(1) The total and permanent loss of the sight of both eyes.

(2) The loss of both feet at or above the ankle.

(3) The loss of both hands at or above the wrist.

(4) A similar loss of one hand and one foot.

(5) An injury to the spine resulting in permanent and complete paralysis of both arms or both legs or of one arm and one leg.

(6) An injury to the skull resulting in incurable insanity or imbecility.

In any of the above enumerated cases it shall be considered that the total loss of the use of a member shall be equivalent to and draw the same compensation during the time of such total loss of the use thereof as for the total and permanent loss of such member.

The above enumeration is not to be taken as exclusive but in all other cases the burden of proof shall be on the claimant to prove that his injuries have resulted in permanent, total incapacity. [Acts 1927, 40th Leg., p. 41, ch. 28, § 1.]

Sec. 12. For the injuries enumerated in the following schedule the employé shall receive in lieu of all other compensation except medical aid, hospital services and medicines as elsewhere herein provided, a weekly compensation equal to sixty per cent of the average weekly wages of such employé, but not less than $7.00 per week nor exceeding $20.00 per week, for the respective periods stated herein, to-wit:

For the loss of a thumb, sixty per cent of the average weekly wages during sixty weeks.

For the loss of a first finger, commonly called the index finger, sixty per cent of the average weekly wages during forty-five weeks.

For the loss of a second finger, sixty per cent of the average weekly wages during thirty weeks.

For the loss of a third finger, sixty per cent of the average weekly wages during twenty-one weeks.

For the loss of a fourth finger, commonly known as the little finger, sixty per cent of the average weekly wages during fifteen weeks.

The loss of the second or distal phalange of the thumb shall be considered to be equal to the loss of one-half of such thumb; the loss of more than one-half of such thumb shall be considered to be equal to the loss of the whole thumb.

The loss of the third or distal phalange of any finger shall be considered to be equal to the loss of one-third of such finger.

The loss of more than the middle and distal phalange of any finger shall be considered to be equal to the loss of the whole finger; provided that in no case shall the amount received for the loss of a thumb and more than one finger on the same hand exceed the amount provided in this schedule for the loss of a hand.

For the loss of the metacarpal bone (bone or palm) for the corresponding thumb, finger or fingers above, add ten weeks to the number of weeks as above subject to the limitation that in no case shall the amount received for the loss or injury to any one hand be more than for the loss of the hand.

For ankylosis (total stiffness of) or contracture (due to scars or injuries) which make the fingers useless, the same number of weeks shall apply to such finger or fingers or parts of fingers (not thumb) as given above.

For the loss of a hand, sixty per cent of the average weekly wage during one hundred and fifty weeks.

For the loss of an arm at or above the elbow, sixty per cent of the average weekly wage during two hundred weeks.

For the loss of one of the toes other than the great toe, sixty per cent of the average weekly wages during ten weeks.

For the loss of the great toe, sixty per cent of the average weekly wages during thirty weeks.

The loss of more than two-thirds of any toe shall be considered to be equal to the loss of the whole toe.

The loss of less than two-thirds of any toe shall be considered to be equal to the loss of one-half of the toe.

For the loss of a foot, sixty per cent of the average weekly wages during one hundred and twenty-five weeks.

For the loss of a leg at or above the knee, sixty per cent of the average weekly wages during two hundred weeks.

For the total and permanent loss of the sight of one eye, sixty per cent of the average weekly wages during one hundred weeks.

In the foregoing enumerated cases of permanent, partial incapacity, it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member.

For the complete and permanent loss of the hearing in both ears, sixty per cent of the weekly wages during one hundred and fifty weeks.

For the loss of an eye and leg above the knee, sixty per cent of the average weekly wages during a period of three hundred and fifty weeks.

For the loss of an eye and an arm above the elbow, sixty per cent of the average weekly wages during a period of three hundred and fifty weeks.

For the loss of an eye and a hand, sixty per cent

of the average weekly wages during a period of three hundred and twenty-five weeks.

For the loss of an eye and a foot, sixty per cent of the average weekly wages during a period of three hundred weeks.

Where the employé sustains concurrent injuries resulting in concurrent incapacities, he shall receive compensation only for the injury which produces the longest period of incapacity; but this section shall not affect liability for the concurrent loss or the loss of the use thereof of more than one member, for which member compensation is provided in this schedule, compensation for specific injuries under this law shall be cumulative as to time and not concurrent.

In all cases of permanent partial incapacity it shall be considered that the permanent loss of the use of the member is equivalent to, and shall draw the same compensation as, the loss of that member; but the compensation in and by said schedule provided shall be in lieu of all other compensation in such cases.

In all other cases of partial incapacity, including any disfigurement which will impair the future usefulness or occupational opportunities of the injured employé, compensation shall be determined according to the percentage of incapacity, taking into account among other things any previous incapacity, the nature of the physical injury or disfigurement, the occupation of the injured employé, and the age at the time of injury. The compensation paid therefor shall be sixty per cent of the average weekly wages of the employés but not to exceed $20.00 per week, multiplied by the percentage of incapacity caused by the injury for such period not exceeding three hundred weeks as the board may determine. Whenever the weekly payments under this paragraph would be less than $3.00 per week, the period may be shortened, and the payments correspondingly increased by the board. [Acts 1923, p. 386.]

Sec. 12a. If the injured employé refuses employment reasonably suited to his incapacity and physical condition, procured for him in the locality where injured or at a place agreeable to him, he shall not be entitled to compensation during the period of such refusal, unless in opinion of the board such refusal is justifiable. This section shall not apply in cases of specific injuries for which a schedule is fixed by this law. [Acts 1917, p. 269.]

Sec. 12b. In all claims for hernia resulting from injury sustained in the course of employment, it must be definitely proven to the satisfaction of the board:

1. That there was an injury resulting in hernia.
2. That the hernia appeared suddenly and immediately following the injury.
3. That the hernia did not exist in any degree prior to the injury for which compensation is claimed.
4. That the injury was accompanied by pain.

In all such cases where liability for compensation exists, the association shall provide competent surgical treatment by radical operation. In case the injured employé refuses to submit to the operation, the board shall immediately order a medical examination of such employee by a physician or physicians of its own selection at a time and place to be by them named, at which examination the employé and the association, or either of them, shall have the right to have his or their physician present. The physician or physicians so selected shall make to the board a written report, signed and sworn to, setting forth the facts developed at such examination and giving his or their opinion as to the advisability or non-advisability of an operation. If it be shown to the board by such examination and such report thereof and the expert opinions thereon that the employé has any chronic disease or is otherwise in such physical condition as to render it more than ordinarily unsafe to submit to such operation he shall, if unwilling to submit to the operation, be entitled to compensation for incapacity under the general provisions of this law. If the examination and the written report thereof and the expert opinions thereon then on file before the board do not show to the board the existence of disease or other physical condition rendering the operation more than ordinarily unsafe and the board shall unanimously so find and so reduce its findings to writing and file the same in the case and furnish the employé and the association with a copy of its findings, then if the employé with the knowledge of the result of such examination, such report, such opinions and such findings, thereafter refuses to submit within a reasonable time, which time shall be fixed in the findings of the board, to such operation, he shall be entitled to compensation for incapacity under the general provisions of this law for a period not exceeding one year.

If the employé submits to the operation and the same is successful, which shall be determined by the board, he shall in addition to the surgical benefits herein provided for be entitled to compensation for twenty-six weeks from the date of the operation. If such operation is not successful and does not result in death, he shall be paid compensation under the general provisions of this law the same as if such operation had not been had; other than in determining the compensation to be paid to the employé, the board may take into consideration any minor benefits that accrued to the employé by reason thereof or any aggravation or increased injury which accrued to him by reason thereof.

If the hernia results in death within one year after it is sustained, or the operation results in death, such death shall be held a result of the injury causing such hernia and compensated accordingly under this law. This paragraph shall not apply where the employé has wilfully refused to submit to an operation which has been found by the examination herein provided for not to be more than ordinarily unsafe. [Acts 1917, p. 269.]

Sec. 12c. If an employé who has suffered a previous injury shall suffer a subsequent injury which results in a condition of incapacity to which both injuries or their effects have contributed, the association shall be liable because of such injury only for the compensation to which the subsequent injury would have entitled the injured employé had there been no previous injury. [Id.]

Sec. 12d. Upon its own motion or upon the application of any person interested showing a change of conditions, mistake, or fraud, the board at any time within the compensation period may review any award or order, ending, diminishing or increasing compensation previously awarded within the maximum and minimum provided in this law, or change or revoke its previous order, sending immediately to the parties a copy of its subsequent order or award. Review under this section shall be only upon notice to the parties interested. [Id.]

Sec. 12e. In all cases where liability for compensation exists for an injury sustained by an employé in the course of his employment and a surgical operation for such injury will effect a cure of the employé or will materially and beneficially improve his condition, the association or the employé may demand that a surgical operation be had upon the employé as herein provided, and the association shall provide and pay for all necessary surgical treatment, medicines and hospital services incident to the performance of said operation, provided the same is had. In case either of said parties demands in writing to the board such operation, the board shall immediately order a medical examination of the employé in the same manner as is provided for in the section of this law relating to hernia. If it be shown by the examination, report of facts and opinions of experts, all reduced to writing and filed with the board, that such operation is advisable and will relieve the condition of the injured employé or will materially benefit him, the board shall so state in writing and upon unanimous order of said board in writing, a copy of which shall be delivered to the employé and the association, shall direct the employé at a time and place therein stated to submit himself to an operation for said injury. If the board should find that said operation is not advisable, then the employé shall continue to be compensated for his incapacity under the general provisions of this law. If the board shall unanimously find

and so state in writing that said operation is advisable, it shall make its order to that effect, stating the time and place when and where such operation is to be performed, naming the physicians therein who shall perform said operation, and if the employé refuses to submit to such operation, the board may order or direct the association to suspend the whole or any part of his compensation during the time of said period of refusal. The results of such operation, the question as to whether the injured employé shall be required to submit thereto and the benefits and liabilities arising therefrom shall attach, be treated, handled and determined by the board in the same way as is provided in the case of hernia in this law. [Id.]

Sec. 12f. In all cases where a subscriber or the association has in his or its employ a physician or physicians regularly paid in any manner whatsoever by such subscriber or association to administer to or treat injured employés, the name or names of such physicians at the date of employment of the same shall be filed with the board together with a copy of the contract of such employment. If the contract of such physician or physicians is not in writing, then the same shall be reduced to writing and a copy thereof filed with the board. Such contract shall state fully the extent and scope of the employment and the compensation to be paid such physician or physicians. If the association or subscriber willfully fails or refuses to comply with this provision of this law, then an injured employé or any person acting for him shall have the right to provide hospital services, medical aid and medicine for said injured employé, at the expense of and the same shall be charged to the association, and the subscriber or association shall notify the employé at or before the time of injury what physician or physicians are contracted with to treat his or its employés. [Id.]

Sec. 12g. It shall be unlawful for any subscriber or any employer who seeks to comply with the provisions of this law to either directly or indirectly collect of or from his employés by any means or pretense whatever any premium under this law or part thereof paid or to be paid upon any policy of such insurance under this law which covers such employés, or any intended policy of such insurance designed to cover such employés. If any such subscriber or any employer of labor in this State violates this provision of this law, then any employé or the legal beneficiary of any employé of such employer or subscriber shall be entitled to all the benefits of this law and in addition thereto shall have a separate right of action to recover damages against such employer without regard to the compensation paid or to be paid to such employé or beneficiary under this law. The association shall in no wise be responsible because of such separate action by such employé or beneficiary against such employer on such separate cause of action. [Id.]

Sec. 12h. Every contract or agreement of an employer, the purpose of which is to indemnify him from loss or damage on account of the injury of an employé by accidental means or on account of the negligence of such employer or his officer, agent or servant, shall be absolutely void unless it also covers liability for the payment of the compensation provided for by this law. This section shall not apply to employers of labor who are not eligible under the terms hereof to become subscribers thereto, nor to employers whose employés have elected to reject the provisions of this law, nor to employers eligible to come under the terms of this law who do not elect to do so, but who choose to carry insurance upon their employés independently of this law and without attempting in such insurance to provide compensation under the terms of this law. Any evasion of this section whereby an insurance company shall undertake, under the guise of writing insurance against the risk of the employers who do not see proper to come under this law, to write insurance substantially or in any material respect similar to the insurance provided for by this law shall render such insurance void as provided for in this section. [Id.]

Sec. 12i. If it be established that the injured employé was a minor when injured and that under normal condition his wages would be expected to increase, that fact may be considered in arriving at his average weekly wages and compensation may be fixed accordingly. This section shall not be considered as authorizing the employment of a minor in any hazardous employment which is prohibited by any statute of this State. [Id.]

Sec. 13. If an injured employé is mentally incompetent or is a minor or is under any other disqualifying cause at the time when any right or privileges accrue to him or exist under this law, his guardian or next friend may in his behalf claim and exercise such rights and privileges except as otherwise herein provided. In case of partial incapacity or temporary total incapacity, payment of compensation may be made direct to the minor and his receipt taken therefor, if the authority to so pay and receipt therefor is first obtained from the board. [Id.]

Sec. 14. No agreement by any employé to waive his rights to compensation under this law shall be valid. [Id.]

Sec. 15. In cases where death or total permanent incapacity results from an injury, the liability of the association may be redeemed by payment of a lump sum by agreement of the parties thereto, subject to the approval of the Industrial Accident Board. This section shall be construed as excluding any other character of lump sum settlement except as herein specified. In special cases where in the judgment of the board manifest hardship and injustice would otherwise result, the board may compel the association in the cases provided for in this section to redeem their liability by payment of a lump sum as may be determined by the board. [Id.]

Sec. 15a. In any case where compensation is payable weekly at a definite sum and for a definite period, and it appears to the board that the amount of compensation being paid is inadequate to meet the necessities of the employé or beneficiary, the board shall have the power to increase the amount of compensation by correspondingly decreasing the number of weeks for which the same is to be paid allowing discount for present payment at legal rate of interest; provided that in no case shall the amount to which it is increased exceed the amount of the average weekly wages upon which the compensation is based; provided it is not intended hereby to prevent lump sum settlement when approved by the board. [Acts 1917, p. 269; Acts 1923, p. 384.]

Sec. 16. In all cases of injury resulting in death, where such injury was sustained in the course of employment, cause of action shall survive. [Acts 1917, p. 269.]

Sec. 17. Non-resident alien beneficiaries and resident alien beneficiaries shall be entitled to compensation under this law. Non-resident alien beneficiaries may be officially represented by the consular officers of the nation of which such alien or aliens may be citizens or subjects, and in such cases the consular officers shall have the right to receive for distribution for such non-resident alien beneficiaries all compensation awarded hereunder, and the receipt of such consular officers shall be a full discharge of all sums paid to and received by them. The association may at any time, subject to the approval of the board, commute all future installments of compensation payable to alien beneficiaries, not resident of the United States, by paying to such alien beneficiaries the sum agreed upon and filing receipts therefor with the board. [Id.]

Sec. 18. It is the purpose of this law that the compensation herein provided for shall be paid from week to week and as it accrues and directly to the person entitled thereto, unless the liability is redeemed as in such cases provided elsewhere herein. If the association willfully fails or refuses to pay compensation as and when the same matures and accrues, the board shall notify said association that such is the course it is pursuing. If after such notice the association continues to willfully refuse and fail to meet these payments of compensation as provided for in this law,

the board shall have the power to hold that such association is not complying with the provisions of this law, and shall certify such fact to the Commissioner of Insurance, and said certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such association to do business in Texas; provided, said power of the board shall not be held to deny the association the right to bring suit or suits to set aside any ruling, order or decision of the board. [Id.]

Sec. 19. [Sec. 1.] If an employee, who has been hired in this State, sustain injury in the course of his employment he shall be entitled to compensation according to the law of this State even though such injury was received outside of the State; and that such employee, though injured out of the State of Texas, shall be entitled to the same rights and remedies as if injured within the state of Texas, except that in such cases of injury outside of Texas, the suit of either the injured employee or his beneficiaries, or of the association, to set aside an award of the Industrial Accident Board of Texas, or to enforce it, as mentioned in Article 8307, Sections 5–5a, shall be brought either

a. In the county of Texas where the contract of hiring was made, or

1b. In the county of Texas where such employee or his beneficiaries or any of them reside when the suit is brought, or

c. In the county where the employee or the employer resided when the contract of hiring was made, as the one filing such suit may elect.

Providing that such injury shall have occurred within one year from the date such injured employee leaves this State; and provided further that no recovery can be had by the injured employee hereunder in the event he has elected to pursue his remedy and recovers in the courts of the State where such injury occurred.

[Sec. 2.] That this Amendatory Act shall be effective and be deemed and held to be in effect as of March 28th, 1917, that being the effective date of the Act of 1917, Chapter 103, and that every such suit heretofore filed by either party in a court of Texas, having jurisdiction of the amount involved, to set aside an award of the Industrial Accident Board of Texas where the injury occurred outside of Texas, shall be held and deemed to have been properly filed, and the court to have jurisdiction thereof in the cases mentioned in Section 1 hereof where the injury occurred outside of Texas, if filed in a court of competent jurisdiction as to amount in either of the counties mentioned in Section 1 hereof if the court entertained jurisdiction of such suit; and provided that where any such suit by either party to set aside any such award was dismissed on the ground that the court, because of the injury having occurred outside of Texas, had no jurisdiction thereof then that either party to any proceeding or claim before the Industrial Accident Board of Texas relating to an injury which occurred outside of Texas, shall have six months after this Amendatory Act becomes effective in which to bring suit to set aside any award of said Board heretofore made by it in such cases where the injury occurred outside of Texas, such suit to be brought in the proper county or counties, as mentioned in Section 1 of this Act but provided further that where neither party to any such award made attempt to set the award aside, that such award shall be deemed and held to be in full force and effect. [Id.; Acts 1927, 40th Leg., p. 383, ch. 259.]

Section 3 of Acts 1927, 40th Leg., p. 383, ch. 259, provides that if any section or part thereof is held invalid, such holding shall not affect the remaining provisions.

PART 2

Article 8307. Industrial Accident Board.— Sec. 1. The Industrial Accident Board shall consist of three members, one to be biennially appointed by the Governor for a term of six years. Said board shall have the powers, duties and functions hereinafter conferred. [Id.]

Sec. 2. At the time of each appointment one member of the Industrial Accident Board shall be an employer of labor in some industry or business covered by this law; one shall be employed in some business industry as a wage earner, and the third member shall be a practicing attorney of recognized ability, and shall act in the capacity of legal adviser to the board, in addition to his other duties as a member thereof, and be chairman of said board. [Id.]

Sec. 3. The board may appoint a secretary at a salary not to exceed $2,700.00 a year, and may appoint such other clerical and other assistants as may be necessary to properly administer this Act. It shall also be allowed a reasonable sum, the amount to be determined by the Legislature, for clerical and other services, office equipment, traveling expenses and all other expenses necessary. The board shall be provided suitable offices in the capitol where its records shall be kept. [Acts 1917, p. 269; Acts 1923, p. 384.]

Sec. 4. The board may make rules not inconsistent with this law for carrying out and enforcing its provisions, and may require any employé claiming to have sustained injury to submit himself for examination before such board or someone acting under its authority at some reasonable time and place within the State, and as often as may be reasonably ordered by the board to a physician or physicians authorized to practice under the laws of this State. If the employé or the association requests, he or it shall be entitled to have a physician or physicians of his or its own selection present to participate in such examination. Refusal of the employé to submit to such examination shall deprive him of his right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect to the period of suspension. If any employé shall persist in unsanitary or injurious practices which tend to either imperil or retard his recovery, or shall refuse to submit to such medical or surgical treatment as is reasonably essential to promote his recovery, the board may in its discretion order or direct the association to reduce or suspend the compensation of any such injured employé. No compensation shall be reduced or suspended under the terms of this section without reasonable notice to the employé and an opportunity to be heard.

The association shall have the privilege of having any injured employé examined by a physician or physicians of its own selection, at reasonable times, at a place or places suitable to the condition of the injured employé and convenient and accessible to him. The association shall pay for such examination and the reasonable expense incident to the injured employé in submitting thereto. The injured employé shall have the privilege to have a physician or physicians of his own selection, at the expense of such injured employé, present to participate in such examination.

Process and procedure shall be as summary as may be under this law. The board or any member thereof shall have power to subpœna witnesses, administer oaths, inquire into matters of fact, and to examine such parts of the books and records of the parties to a proceeding as relate to questions in dispute. All rulings and decisions of the board relating to disputed claims shall be upon questions of fact and in accord with the provisions of this law. [Acts 1917, p. 269.]

Sec. 4a. Unless the association or subscriber have notice of the injury, no proceeding for compensation for injury under this law shall be maintained unless a notice of the injury shall have been given to the association or subscriber within thirty days after the happening thereof, and unless a claim for compensation with respect to such injury shall have been made within six months after the occurrence of same; or, in case of death of the employé or in the event of his physical or mental incapacity, within six months after death or the removal of such physical or mental incapacity. For good cause the board may, in meritorious cases, waive the strict compliance with

the foregoing limitations as to notice, and the filing the claim before the board. [Id.]

Sec. 5. All questions arising under this law, if not settled by agreement of the parties interested therein and within the provisions of this law, shall, except as otherwise provided, be determined by the board. Any interested party who is not willing and does not consent to abide by the final ruling and decision of said board shall within twenty days after the rendition of said final ruling and decision by said board file with said board notice that he will not abide by said final ruling and decision. And he shall within twenty days after giving such notice bring suit in the county where the injury occurred to set aside said final ruling and decision and said board shall proceed no further toward the adjustment of such claim, other than as hereinafter provided. Whenever such suit is brought, the rights and liability of the parties thereto shall be determined by the provisions of this law and the suit of the injured employé or person suing on account of the death of such employé shall be against the association if the employer of such injured or deceased employé at the time of such injury or death was a subscriber as defined in this law. If the final order of the board is against the association, then the association and not the employer shall bring suit to set aside said final ruling and decision of the board, if it so desires, and the court shall in either event determine the issues in such cause instead of the board upon trial de novo, and the burden of proof shall be upon the party claiming compensation. In case of recovery the same shall not exceed the maximum compensation allowed under the provisions of this law. If any party to any such final ruling and decision of the board, after having given notice as above provided, fails within said twenty days to institute and prosecute a suit to set the same aside, then said final ruling and decision shall be binding upon all parties thereto, and, if the same is against the association, it shall at once comply with such final ruling and decision, and failing to do so the board shall certify that fact to the Commissioner of Insurance and such certificate shall be sufficient cause to justify said Commissioner to revoke or forfeit the license or permit of such association to do business in Texas. [Id.; Acts 1927, 40th Leg., p. 328, ch. 223, § 1.]

Sec. 5a. In all cases where the board shall make a final order, ruling or decision as provided in the preceding section and against the association, and the association shall fail and refuse to obey or comply with the same and shall fail or refuse to bring suit to set the same aside as in said section is provided, then in that event, the claimant in addition to the rights and remedies given him and the board in said section may bring suit where the injury occurred, upon said order, ruling or decision. If he secures a judgment sustaining such order, ruling or decision in whole or in part, he shall also be entitled to recover the further sum of twelve per cent as damages upon the amount of compensation so recovered in said judgment, together with a reasonable attorney's fee for the prosecution and collection of such claim.

Where the board has made an award against an association requiring the payment to an injured employé or his beneficiaries of any weekly or monthly payments, under the terms of this law, and such association should thereafter fail or refuse, without justifiable cause, to continue to make said payments promptly as they mature, then the said injured employé or his beneficiaries, in case of his death, shall have the right to mature the entire claim and to institute suit thereon to collect the full amount thereof, together with twelve per cent penalties and attorney's fees, as herein provided for. Suit may be brought under the provisions of this section, either in the county where the accident occurred, or in any county where the claimants reside, or where one or more of such claimants may have his place of residence at the time of the institution of the suit. [Id.]

Sec. 6. If any subscriber to this law with the purpose and intention of avoiding any liability imposed by its terms sublets the whole or any part of the work to be performed or done by said subscriber to any subcontractor, then in the event any employé of such sub-contractor sustains an injury in the course of his employment he shall be deemed to be and taken for all purposes of this law to be the employé of the subscriber, and in addition thereto such employé shall have an independent right of action against such subcontractor, which shall in no way be affected by any compensation to be received by him under the provisions of this law. [Id.]

Sec. 6a. Where the injury for which compensation is payable under this law was caused under circumstances creating a legal liability in some person other than the subscriber to pay damages in respect thereof, the employé may at his option proceed either at law against that person to recover damages or against the association for compensation under this law, but not against both, and if he elects to proceed at law against the person other than the subscriber, then he shall not be entitled to compensation under this law. If compensation be claimed under this law by the injured employé or his legal beneficiaries, then the association shall be subrogated to the rights of the injured employé in so far as may be necessary and may enforce in the name of the injured employé or of his legal beneficiaries or in its own name and for the joint use and benefit of said employé or beneficiaries and the association the liability of said other person, and in case the association recovers a sum greater than that paid or assumed by the association to the employé or his legal beneficiaries, together with a reasonable cost of enforcing such liability, which shall be determined by the court trying the case, then out of the sum so recovered the association shall reimburse itself and pay said cost and the excess so recovered shall be paid to the injured employé or his beneficiaries. The association shall not have the right to adjust or compromise such liability against such third person without notice to the injured employé or his beneficiaries and the approval of the board, upon a hearing thereof. [Id.]

Sec. 7. Every subscriber shall hereafter keep a record of all injuries, fatal or otherwise, sustained by his employés in the course of their employment. Within eight days after the occurrence of an accident resulting in an injury to an employé, causing his absence from work for more than one day, a written report thereof shall be made to the board on blanks to be procured from the board for that purpose. Upon the termination of the incapacity of the injured employé, or if such incapacity extends beyond a period of sixty days, the subscriber shall make a supplemental report upon blanks to be procured for that purpose. The said report shall contain the name and nature of the business of the employer, the location of the establishment, the name, age, sex and occupation of the injured employé and the character of work in which he was engaged at the time of the injury, and shall state the date and hour of receiving such injury and the nature and cause of the injury, and such other information as the board may require. Any employer wilfully failing or refusing to make any such report within the time herein provided, or willfully failing or refusing to give said board any information demanded by said board relating to any injury to any employé, which information is in the possession of or can be ascertained by the employer by the use of reasonable diligence, shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each and every offense, the same to be recovered in a suit to be instituted and prosecuted in Travis County by the Attorney General or by the district or county attorney under his direction in a district court thereof. [Id.]

Sec. 8. A majority of the board shall constitute a quorum to transact business, and the act or decision of any two members thereof shall be held the act or decision of the board, except as otherwise herein specifically provided. No vacancy shall impair the right of the remaining member or members of the

board to exercise all the powers of the board. The board shall provide itself with a seal on which shall be inscribed the words "Industrial Accident Board, State of Texas." Any order, award or proceeding of said board when duly attested and sealed by the board or its secretary shall be admissible as evidence of the act of said board in any court in this State. [Id.]

Sec. 9. Upon the written request and payment of the fees therefor, which fees shall be the same as those charged for similar services in the Secretary of State's office, the board shall furnish to any person entitled thereto a certified copy of any order, award, decision or paper on file in the office of said board, and the fees so received for such copies shall be paid into the State Treasury and credited to the general revenue fund. No fee or salary shall be paid to any person in said department for making such copies in excess of the fees charged for such copies. [Id.]

Sec. 10. Said board or any member thereof may hold hearings or take testimony or make investigations at any point within this State, reporting the result thereof, if the same is made by one member, to the board, or it can employ or use the assistance of an inspector or adjuster for the purpose of adjusting and settling claims for compensation or developing the facts relating to any claim for compensation. [Id.]

Sec. 11. When the association suspends or stops payment of compensation, it shall immediately notify the board of that fact, giving the board the name, number and style of the claim, the amount paid thereon, the date of the suspension or stopping of payment thereon, and the reason for such suspension or stopping. [Id.]

Sec. 12. The board upon application of either party may, in its discretion, having regard to the welfare of the employé and the convenience of the association, authorize compensation to be paid monthly or quarterly.

Where the liability of the association or the extent of the injury of the employé is uncertain, indefinite or incapable of being satisfactorily established, the board may approve any compromise, adjustment, settlement or commutation thereof made between the parties. [Id.]

PART 3

Article 8308. Employers' Insurance Association.—Sec. 1. The "Texas Employers' Insurance Association" is hereby created a body corporate with the powers provided in this law and with all general corporate powers incident thereto. [Id.]

Sec. 2. The Governor shall appoint a board of directors of the association consisting of twelve members, who shall serve for a term of one year or until their successors are elected by ballot by the subscribers at such time and for such term as the by-laws shall provide. At any annual meeting of subscribers the number of directors may be increased or decreased by resolution duly recorded in the minutes of such meeting. [Id.]

Sec. 3. Until the first meeting of the subscribers, the board of directors shall have and exercise all the powers of the subscribers and may adopt by-laws, not inconsistent with the provisions of this law, which shall be in effect until amended or repealed by the subscribers. [Id.]

Sec. 4. The board of directors shall immediately choose by ballot a president, who shall be a member of the board, and shall elect a secretary, a treasurer, and such other officials as the by-laws may provide. [Id.]

Sec. 5. Seven or more directors shall constitute a quorum for the transaction of business. Vacancies in any office may be filled in such manner as the by-laws shall provide. [Id.]

Sec. 6. The board of directors may appoint an executive committee which may have and exercise all of the powers of the board of directors except when the board is in session. [Id.]

Sec. 7. Any employer of labor in this State may become a subscriber except as provided in Section 2, Part 1, of this law. [Id.]

Sec. 8. In any meeting of the subscribers each subscriber shall have one vote, and if a subscriber has 500 employés to whom the association is bound to pay compensation he shall be entitled to two votes and he shall be entitled to one additional vote for each additional 500 employés to whom the association is bound to pay compensation, but no subscriber shall cast, by his own right or by right of proxy, more than 20 votes. [Id.]

Sec. 9. No policies shall be issued by the association until not less than 50 members have subscribed, who have not less than 2,000 employés to whom the association may be bound to pay compensation. [Id.]

Sec. 10. No policies shall be issued by the association until a list of the subscribers with the number of employés of each, together with such information as the Commissioner of Insurance may require, shall have been filed with the Commissioner, nor until the president and secretary of the association shall have certified under oath that every subscription on the list so filed is genuine and made with an agreement with each subscriber that he will take the policy so subscribed for by him within thirty days of the granting of a license to the association by the Commissioner to issue policies. [Id.]

Sec. 11. If the number of subscribers falls below fifty, or the number of employés to whom the association may be bound to pay compensation falls below 2,000, no further policies shall be issued until other employers have subscribed who, together with existing subscribers, amount to not less than fifty, who have not less than 2,000 employés to whom the association may be bound to pay compensation, said subscriptions to be subject to the provisions of the preceding section. [Id.]

Sec. 12. Upon the filing of the certificates provided for in the two preceding sections, the Commissioner of Insurance shall make such investigations as he may deem proper and, if his findings warrant it, grant a license to the association to issue policies. [Id.]

Sec. 13. The board of directors may distribute the subscribers into groups for the purpose of segregating the experience of each such group as to premiums and losses, and for the purpose of determining dividends payable to and assessments payable by the subscribers within each group, but for the purpose of determining the solvency of the association, the funds of the association shall be deemed one and indivisible. The board of directors shall have power to re-arrange any of the groups by withdrawing any subscriber and transferring him wholly or in part to any group and to set up new groups at its discretion. [Id.]

Sec. 14. The association may, in its by-laws and policies, fix the limit of liability of the subscribers for the payment of assessments hereinafter provided for, but such limit of liability of the subscribers shall not, except by special agreement in writing between the association and subscriber, be fixed at an amount greater than an amount equal to and in addition to an annual premium. [Id.]

Sec. 15. If the association, at the end of any calendar year, is not possessed of admitted assets in excess of unearned premiums sufficient for the payment of its incurred losses and expenses, it shall make an assessment for the amount needed to pay such losses and expenses, first upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses show[s] a deficiency for the group, and second only upon the subscribers within each group whose earned premiums compared with its incurred losses and expenses show[s] a surplus, and in no event shall it make an assessment for any aggregate amount more than is needed to pay losses and expenses. Every subscriber shall, in accordance with the law and his contract, pay his proportionate part of any assessment which may be levied by the association on account of losses and expenses incurred during any calendar year while he is a subscriber. [Id.]

Sec. 16. The board of directors may by vote fix the amount to be paid as dividends on the policies in force during each calendar year after retaining sums sufficient to pay all compensation which may be payable on

account of injuries sustained and expenses incurred during the calendar year. Dividends and assessments shall be fixed by and for groups, but the entire assets of the association, including the liability of the subscriber to assessment within the limits fixed by the by-laws or by special agreement in writing as authorized, shall be subject to the payment of any approved claim for compensation against the association. [Id.]

Sec. 16a. Whenever the association shall have accumulated at the end of any calendar year an admitted surplus in excess of incurred losses, expenses and unearned premiums amounting to the sum of two hundred thousand dollars, the liability of its members to assessment shall be suspended during the ensuing calendar year, or for such further period as the association shall maintain unimpaired such surplus of two hundred thousand dollars or more, and the certificate of the Commissioner of Insurance, after an examination, and report, shall be conclusive evidence as to the fact in any proceeding in which the fact may be an issue. [Id.]

Sec. 17. Whenever by reason of having qualified under the preceding section, to issue policies which are not subject to assessment, the association may issue policies which will not entitle the holder to participate in any distribution of surplus. [Id.]

Sec. 18. The association shall make and enforce reasonable rules for the prevention of injuries on the premises of subscribers. For this purpose the inspector of the association or of the board shall have free access to all such premises during regular working hours. Any subscriber aggrieved by such rule or regulation may petition the board for a review and it may affirm, amend or annul the rule or regulation. [Id.]

Sec. 18a. Whenever any employer of labor in this State becomes a subscriber to this law, he shall immediately notify the board of such fact, stating in such notice his name, place of business, character of the business, approximate number of employés, estimated amount of his pay roll and the name of the insurance company carrying his insurance, the date of issuing the policy and the date when the same will expire, and whenever any policy is renewed that fact shall be made known to the board and the notice thereof shall contain the above facts. The association shall also report the same to the board, giving the name of the employer, place of business, character of the business, approximate number of employés, estimated amount of pay roll, date of issuance and date of expiration of said policy. Any employer or association willfully failing or refusing to make any such report shall be liable for and shall pay to the State of Texas a penalty of not more than one thousand dollars for each offense, the same to be recovered by suit in Travis County by the Attorney General or by the district or county attorney under his direction in the district court thereof. [Id.]

Sec. 19. Every subscriber shall, as soon as he secures a policy, give notice in writing or print, or in such manner or way as may be directed or approved by the board, to all persons under contract of hire with him that he has provided for payment of compensation for injuries with the association. [Id.]

Sec. 20. Every subscriber shall, after receiving a policy, give notice in writing or print, or in such manner or way as may be directed or approval [approved] by the board to all persons with whom he is about to enter into a contract of hire that he has provided for payment of compensation for injuries by the association. If any employer ceases to be a subscriber, he shall on or before the date on which his policy expires, give notice to that effect in writing or print or in such other manner or way as the board may direct or approve to all persons under contract of hire with him. In case of the renewal of his policy no notice shall be required under this law. He shall file a copy of said notice with the board. [Id.]

Sec. 21. If a subscriber who has complied with all the rules, regulations and demands of the association, is required by any judgment of a court at law, or by any judgment of a court of admiralty and maritime jurisdiction to pay any employé any damages, actual or exemplary, on account of any personal injury sustained by such employé in the course of his employment during the period of subscription, the association shall pay to the subscriber the full amount of the judgment and the cost assessed therewith, if the subscriber shall have given the association notice of the bringing of the action upon which the judgment was recovered and an opportunity to appear and defend the same in his or its name. [Id.; Acts 1927, 40th Leg., p. 359, ch. 241, § 1.]

Sec. 22. The corporate powers of the association shall not expire because of failure to issue policies or to make insurance. [Id.]

Sec. 23. The association shall set up and maintain reserves adequate to meet anticipated losses, carry all claims to maturity and policies to termination, which reserves shall be computed in accordance with such rules as shall be approved by the Commissioner of Insurance and may be invested in such securities as are permitted to casualty companies organized under the General Laws; and, for the protection of its reserves and surpluses against the liability herein imposed, shall have the same right to reinsure or be reinsured as casualty companies organized under General Laws. [Acts 1917, p. 269, Acts 1923, p. 384.]

PART 4

Article 8309. Definitions and general provisions.—Sec. 1. The following words and phrases as used in this law shall, unless a different meaning is plainly required by the context, have the following meanings, respectively:

"Employer" shall mean any person, firm, partnership, association of persons or corporations or their legal representatives that makes contracts of hire.

"Employé" shall mean every person in the service of another under any contract of hire, expressed or implied, oral or written, except masters of or seamen on vessels engaged in interstate or foreign commerce, and except one whose employment is not in the usual course of trade, business, profession or occupation of his employer.

The words "legal beneficiaries" as used in this law shall mean the relatives named in section 8a, part 1, of this law. "Association" shall mean the "Texas Employers' Insurance Association" or other insurance company authorized under this law to insure the payment of compensation to injured employés or to the beneficiaries of deceased employés.

"Subscriber" shall mean any employer who has become a member of the association by paying the required premium; provided that the association holds a license issued by the Commissioner of Insurance, as provided for in section 12, part 3, of this law.

"Average weekly wages" shall mean:

1. If the injured employé shall have worked in the employment in which he was working at the time of the injury, whether for the same employer or not, substantially the whole of the year immediately preceding the injury, his average annual wages shall consist of three hundred times the average daily wage or salary which he shall have earned in such employment during the days when so employed.

2. If the injured employé shall not have worked in such employment during substantially the whole of the year, his average annual wages shall consist of three hundred times the average daily wage or salary which an employé of the same class working substantially the whole of such immediately preceding year in the same or in a similar employment in the same or a neighboring place, shall have earned in such employment during the days when so employed.

3. When by reason of the shortness of the time of the employment of the employé, or other employé engaged in the same class of work in the manner and for the length of time specified in the above subsections 1 and 2, or other good and sufficient reasons it is impracticable to compute the average weekly wages as above defined, it shall be computed by the board in any manner which may seem just and fair to both parties.

4. Said wages shall include the market value of board, lodging, laundry, fuel, and other advantage

which can be estimated in money, which the employé receives from the employer as part of his remuneration. Any sums, however, which the employer has paid to the employé to cover any special expenses entailed on him by the act of his employment shall not be included.

5. The average weekly wages of an employé shall be one-fifty-second part of the average annual wages.

The terms "injury" or "personal injury" shall be construed to mean damage or harm to the physical structure of the body and such diseases or infection as naturally result therefrom.

The term "injury sustained in the course of employment," as used in this law, shall not include:

1. An injury caused by the act of God, unless the employé is at the time engaged in the performance of duties that subject him to a greater hazard from the act of God responsible for the injury than ordinarily applies to the general public.

2. An injury caused by an act of a third person intended to injure the employé because of reasons personal to him and not directed against him as an employé, or because of his employment.

3. An injury received while in a state of intoxication.

4. An injury caused by the employé's willful intention and attempt to injure himself, or to unlawfully injure some other person, but shall include all other injuries of every kind and character having to do with and originating in the work, business, trade or profession of the employer received by an employé while engaged in or about the furtherance of the affairs or business of his employer whether upon the employer's premises or elsewhere.

Any reference to any employé herein who has been injured shall, when the employé is dead, also include the legal beneficiaries, as that term is herein used, of such employé to whom compensation may be payable. The word "board" whenever used in this law shall be held to mean the Industrial Accident Board created by this law. Whenever in this law the singular is used, the plural shall be included; whenever the masculine gender is used, the feminine and neuter shall be included. [Acts 1917, p. 269.]

Sec. 1a. The president, vice-president or vice-presidents, secretary or other officers thereof provided in its charter or by-laws and the directors of any corporation which is a subscriber to this law shall not be deemed or held to be an employé within the meaning of that term as defined in the preceding section hereof, and this notwithstanding they may hold other offices in the corporation and may perform other duties and render other services for which they receive a salary. [Acts 1917, p. 269, Acts 1923, p. 384.]

Sec. 2. Any insurance company, which term shall include mutual and reciprocal companies, lawfully transacting a liability or accident business in this State shall have the same right to insure the liability and pay the compensation provided for in part 1 of this law, and when such company issues a policy conditioned to pay such compensation, the holder of such policy shall be regarded as a subscriber so far as applicable under this law, and when such company insures such payment of compensation it shall be subject to the provisions of parts 1, 2 and 4 and of sections 10, 17, 18a and 21 of part 3 of this law. Such company may have and exercise all of the rights and powers conferred by this law on the association created hereby, but such rights and powers shall not be exercised by a mutual or reciprocal organization unless such organization has at least fifty subscribers who have not less than 2,000 employés. [Acts 1917, p. 269.]

Sec. 3. Any subscriber who has paid a premium as provided in section 1, part 4, of this law may upon application to the board and to the association and after a showing satisfactory to the board that he has notified all of his employés, in such manner as may be required by the board, cease to be a subscriber, and be entitled to a refund of the unearned portion of his premium, subject, however, to any rule approved by the Commissioner of Insurance as to the minimum premiums or short rate cancellation. [Id.]

Sec. 3a. Any subscriber who shall willfully misrepresent the amount of his pay roll to the association writing his insurance upon which any premium under this law is to be based shall be liable to the association insuring the compensation of his employés in an amount not to exceed ten times the amount of the difference between the premium which he paid and the amount which said subscriber should have paid had his pay roll been correctly computed; and the liability to said association for such misrepresentation if it was deceived thereby, may be enforced by suit therefor. [Id.]

Sec. 3b. No inchoate, vested, matured, existing or other rights, remedies, powers, duties or authority, either of any employé or legal beneficiary, or of the board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made, and to that end it is hereby declared that said original law is not repealed, but the same is, and shall remain in full force and effect as to all such rights, remedies, powers, duties and authority; and further this law in so far as it adopts the law of which it is an amendment is a continuation thereof, and only in other respects a new enactment. [Id.]

Sec. 4. In cases of emergency or impending necessity the association may make advance payments of compensation to any employé during the period of his incapacity or to his beneficiaries within the terms of this law, and when the same is either directed or approved by the board it shall be credited as against any unaccrued compensation due said employé or beneficiaries. [Id.]

Sec. 5. The reports of accidents required by this law to be made by subscribers shall not be deemed as admissions and evidence against the association or the subscriber in any proceedings before the board or elsewhere in a contested case where the facts set out therein or in any one of them is sought to be contradicted by the association or subscriber. [Id.]

TITLE 131

WRECKS

Chap.
1. Wreck-masters.
2. Cotton salvage.

CHAPTER ONE

WRECK-MASTERS

Art.
8310. Appointment.
8311. Bond and oath.
8312. Duties.
8313. Controlled by commissioners.
8314. To sell property.
8315. To keep a record.
8316. Additional record and reports.
8317. Fees and perquisites.
8318. Duty to prosecute.

Article 8310. [7887] [5365] Appointment—The Governor shall appoint not more than three persons of good character in each maritime county of the State as wreck-masters for such county. [Acts April 30, 1846, p. 158; G. L. 2, p. 1464.]

Art. 8311. [7888] [5366] Bond and oath.—Each person so appointed shall, before entering upon the duties of his office, give a good bond in the sum of five thousand dollars, payable to and to be approved by the county judge of the county for which he is appointed, conditioned that the appointee shall faithfully discharge the duties of his office; which bond shall be deposited with the county clerk of such county. The appointee shall also take the official oath, which oath shall be indorsed on said bond before the same is filed. [Id.]

Art. 8312. [7889] [5367] Duties.—It shall be the duty of each wreck-master so appointed, as soon as he may be apprised of any wreck in his county, or

the portion of such county allotted to him, to repair at once to the place where such wreck occurred. If the property so wrecked be found abandoned, to attend to the salving thereof, to use his best endeavors for the preservation of the same and to attend generally to the interests of the owners of such property or whom it may concern. The wreck-master shall have the command and direction of all persons engaged in saving and preserving such property. [Id.]

Art. 8313. [7890] [5368] Controlled by commissioners.—Wreck-masters shall be subject to the control and direction of the commissioners of pilots for the principal ports of their counties, if such there be. In case there are no such officers in such county, then wreck-masters shall be under the control of the county judge of their county. [Id.]

Art. 8314. [7891] [5369] To sell property.—Each wreck-master shall take into his custody and safely keep all wrecked property salved by him, or under his direction, or found wrecked and abandoned in his county, or that portion of the county under his supervision and jurisdiction. After the notice required by law, he shall sell the same at public auction for the benefit of the owners or underwriters and the salvers, to all of whom he shall faithfully account. [Id.]

Art. 8315. [7892] [5370] To keep a record.—Each wreck-master shall keep a true account of all property salved by him, or under his direction, with the circumstances under which it was salved, and the name of each person engaged in salving, the time that each was so employed and other data needful for the proper apportionment of salvage. [Id.]

Art. 8316. [7893] [5371] Additional record and reports.—He shall also keep a true account, in a book to be kept for that purpose of all sales made by him and the proceeds thereof, commissions, expenses, salvage, balance left, and the condition and disposition of the same. Within one month after each sale, and at other times when required, he shall make an abstract report in writing, signed by him, of the matters provided for in this and the preceding article, to the commissioners of pilots or the county judge, as the case may be, and he shall also, when required, report the same, together with all needful information in his possession, to the court or other tribunal before which cases of salvage may be pending. [Id.]

Art. 8317. [7894] [5372] Fees and perquisites.—Wreck-masters shall receive a commission of five per cent upon the amount of all sales made by them, after deducting all expenses, not including salvage, with such reasonable expenses as may be allowed by the authority which may control them, or the court before which the case may come; which expenses may include the wages and mileage of a crier, at a rate to be fixed by such controlling authority. [Id.]

Art. 8318. [7895] [5373] Duty to prosecute.—It shall be the duty of each wreck-master to cause a prosecution of any person who may be guilty of wasting, stealing or embezzling any wrecked property. [Id.]

CHAPTER TWO

COTTON SALVAGE

Art.
8319. Wrecked cotton advertised.
8320. Delivered to owner.
8321. When sold.
8322. Proceeds.
8323. County clerk may act.
8324. Warrant for suspected cotton.

Article 8319. [7896] [5374] Wrecked cotton advertised.—It shall be the duty of the person taking up cotton afloat, abandoned in rivers, or in the waters of the Gulf of Mexico on the coast of this State, or in the bays or bayous thereof, to place the same in a secure place out of the weather, and give early notice by advertisement, or by other means, at the port to which said cotton was destined, if within this State, and, if without the limits of the State, or its destination be unknown to the finder, then at the nearest port of entry in this State to the locality where it may be taken up, of the finding of the same, giving a description of the marks or brands on said cotton, together with the place of finding and the name of the finder. [Act Aug. 30, 1856, p. 76; G. L. vol. 4, p. 494.]

Art. 8320. [7897] [5375] Delivered to owner.—It shall be the duty of the finder or other person having said cotton in his possession, to deliver the same to the owner, insurer or consignee thereof, on demand, upon being paid the expenses of advertisement and five dollars upon each bale so saved and delivered. [Id.]

Art. 8321. [7898] When sold.—If no owner, insurer or consignee of the cotton appear within three months after such advertisement, the person finding shall cause the same to be sold at auction by a legal wreck-master of the county in which said cotton is deposited, at public outcry to the highest bidder. The wreck-master shall, from the proceeds of such sale, pay the necessary expenses attending the storage, advertising and sale of said cotton, and to the finder the salvage of five dollars for each bale as aforesaid. The remainder, less his commissions and other necessary expenses, he shall hold in trust for the benefit of the owner of [or] others concerned. [Id.]

Art. 8322. [7899] [5377] Proceeds.—If, at the expiration of one year thereafter, no legal claimant appears therefor, said proceeds shall be paid over by said wreck-master to the treasurer of the county in which the sale took place; and said treasurer shall immediately pay the same over to the State Treasurer who shall pay the same over to the person entitled thereto on proof being made of the right of the claimant in the manner provided for the recovery of money paid into the State treasury by executors or administrators of estates where no heirs, devisees or legatees of the estate appear to claim the fund of the estate on the final settlement thereof. [Id.]

Art. 8323. [7900] [5378] County clerk may act.—If there shall be no wreck-master in the county in which the cotton is deposited, then the county clerk shall perform all the duties required of wreck-masters by the two preceding articles, and such clerk shall receive the same compensation as is allowed to wreck-masters under this chapter. [Id.]

Art. 8324. [7901] [5379] Warrant for suspected cotton.—Upon affidavit being made before any justice of the peace that the affiant has good reason to believe, and does believe, that certain cotton within his county has been so found, or having been found without such county has been brought therein, and that reasonable time has elapsed, and that the finder has neglected to comply with the requirements of the foregoing articles, such justice shall issue his warrant and cause said cotton, or its proceeds, to be seized by a legal officer and delivered to the wreck-master of said county, to be disposed of according to the provisions of this chapter. [Id.]

FINAL TITLE

Sec.
2. Repealing clause.
3. Not ex post facto.
4. Validating Acts.
5. Public debt.
6. School funds.
7. Counties.
8. Courts.
9. Public and other lands.
10. Public buildings, etc.
11. Public libraries.
12. Taxes.
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14. Public roads.
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17. Monuments.
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19. Special laws.
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23a. Same.
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Art.
23g. Reviser.
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23i. Printing contract.
23j. Copies for officials.
23k. Reprint.
23l. Appropriation.
23m. Emergency clause.
24. Date effective
25. Reading Act.

Be it further enacted:

Sec. 2. Repealing clause.—That all civil statutes of a general nature, in force when the Revised Statutes take effect, and which are not included herein, or which are not hereby expressly continued in force, are hereby repealed.

Sec. 3. Not ex post facto.—That the repeal of any statute, or any portion thereof, by the preceding section, shall not affect or impair any act done, or right vested or accrued, or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution had or commenced shall remain in full force and effect to all intents or purposes as if such statute, or part thereof so repealed, had remained in force, except that where the course of practice or procedure for the enforcement of such right, or the conducting of such proceeding, suit or prosecution shall be changed, the same shall be conducted as near as may be in accordance with the Revised Statutes. No offense committed and no liability, penalty or forfeiture, either civil or criminal, incurred prior to the time when any statute, or part thereof, shall be repealed or altered by the Revised Statutes, shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior statute, or part thereof, had not been repealed or altered, except that where the mode of procedure or matters of practice have been changed by the Revised Statutes, the procedure had after the Revised Statutes shall have taken effect in such prosecution or suit shall be, as far as practicable, in accordance with the Revised Statutes.

Sec. 4. Validating Acts.—That no general or special law heretofore enacted validating or legalizing the acts or omissions of any officer, or validating any law, act or proceeding whatever, shall be affected by the repealing clause of this title; but all validating or legalizing statutes whatsoever now in force in this State are hereby continued in force.

Sec. 5. Public debt.—That no law relating to the public debt or the public credit shall be affected by the repealing clause of this title.

Sec. 6. School funds.—That no law relating to the University or public school fund, or to the Agricultural and Mechanical College fund, or the investment of any such funds, or making any reservation in favor of the same, and no law affecting Federal aid for vocational education in this State, shall be affected by the repealing clause of this title, except where altered or amended by the Revised Statutes.

Sec. 7. Counties.—That no statute creating, adding to or organizing any county, or establishing any county seat, and no law affecting unorganized or new counties, shall be affected by the repealing clause of this title, or by any law relating to the establishment of county boundaries contained in this Act.

Sec. 8. Courts.—That the laws now in force organizing the several district and other courts, or increasing, diminishing, restoring or defining the jurisdiction of said courts, and prescribing the times of holding said courts, except as herein otherwise provided, are continued in force.

The apportionments acts are included in this compilation under Title 8.

Sec. 9. Public and other lands.—That all laws affecting the issuance of patents under valid land certificates; or fixing a time limit in which to redeem lands sold for taxes; or authorizing suits to contest forfeiture of sale for non-payment of interest on public lands, or affecting the reinstatement of rights after such forfeiture; or conferring a prior right to purchase land surveyed by virtue of a private right, for which a patent cannot issue; or extending oil and gas permits on public lands; or extending the time for payment of principal due on public lands sold in accordance with law; or affecting the title to public and other lands; or authorizing the Land Commissioner, the Governor, or any authorized board, to sell or lease certain lands or water rights; or granting land to cities; or affecting land reservations, or setting apart portions of such reservations for the benefit of actual settlers, are continued in force.

Sec. 10. Public buildings, etc.—That no law providing for the construction or repairing of the public buildings of this State, or providing for the establishment of a central prison system, nor any law establishing or providing for the maintenance of any public institution, shall be affected or impaired by the repealing clause of this title, unless expressly altered or repealed in some of the preceding articles of the Revised Statutes.

Sec. 11. Public libraries.—That no law giving authority to cities or towns to establish public libraries, or for like purposes, shall be affected or impaired by the repealing clause herein.

Sec. 12. Taxes.—That all laws now in force which donate taxes to, or release the inhabitants from payment of taxes in any city or county or part of a county in this State on account of any calamity; and all laws now in force authorizing the levy of taxes by levee or drainage districts to redeem certificates of indebtedness issued on account of damage from flood, are continued in force.

Sec. 13. Railroads.—That all laws now in force authorizing railroad companies to sell or buy or lease other railroad companies, or to buy, sell or abandon tracks or right of way, or extending the time for constructing main or branch lines; and all laws now in force affecting the State Railroad, are continued in force.

Sec. 14. Public roads.—That all laws providing for the maintenance of public roads in certain counties by a patrol system, are continued in force.

Sec. 15. Pensions.—That all laws granting pensions to soldiers and other persons entitled thereto by reason of service performed in connection with the Mexican War are continued in force.

Sec. 16. World War veterans.—That all laws exempting persons who served in the late world war from payment of fees in public educational institutions in Texas are continued in force.

Sec. 17. Monuments.—That all laws authorizing the erection of monuments are continued in force.

Sec. 18. Appropriations.—That all laws making specific appropriations of public funds are continued in force.

Sec. 19. Special laws.—That all laws, civil or criminal, of a local nature, operating in particular counties, cities or towns, or of a temporary nature operative when these Statutes go into effect, and all laws of a private nature operating on particular persons or corporations, are not affected by the repealing clause of this title.

Sec. 20. Effect of repeal.—That nothing in the repealing clause of this title shall be construed as releasing any person or corporation from any duty enjoined in the limitation or condition imposed by any law that may be repealed by said repealing clause.

Sec. 21. New laws.—That nothing in this Act shall be construed to repeal or in anywise affect the validity of any law passed by this legislature in its regular session.

Sec. 22. Validity of Statutes.—That these Revised Statutes when adopted shall be construed to be

an Act of the Legislature. No law herein shall be held to be void because its caption, when enacted, was in any way defective.

Sec. 23. Publication of Statutes.—That the Revised Statutes shall not be printed in the pamphlet laws of the thirty-ninth Legislature, but shall be printed, published and distributed at such time and in such manner as may be provided by law.

Sec. 23a. Same.—That the Revised Civil Statutes, the Penal Code and Code of Criminal Procedure of the State of Texas adopted and established by the Thirty-ninth Legislature at its Regular Session, shall, as soon as practicable, be printed and published under the supervision of the Secretary of State and the Board of Control with the assistance of a supervisor as hereinafter provided, in the manner provided for in this Act. [Acts 1925, 39th Leg., ch. 104, p. 282, § 1.]

Sec. 23b. Title.—That said Revised Civil Statutes shall be published in two volumes to be entitled "The Revised Civil Statutes of Texas, 1925"; and that said Penal Code and said Code of Criminal Procedure shall be published in one volume to be entitled "Texas Criminal Statutes, 1925". In the publication thereof the head indices and references, titles, chapters, and articles contained and numbered in the acts by which the same were adopted and established shall be retained and published therein, together with a full and accurate index to each of said Codes and said Revised Statutes. [Acts 1925, 39th Leg., ch. 104, p. 282, § 2.]

Sec. 23c. Omission of repealed articles.—Where any article in said Revised Statutes or Codes has been expressly repealed by the Thirty-ninth Legislature said article shall be omitted from said volume, and in lieu thereof, there shall be inserted a statement to the effect that said article has been repealed, and the page of the session acts containing said repealing statute. [Acts 1925, 39th Leg., ch. 104, p. 282, § 3.]

Sec. 23d. Omission of amended articles.—Where any article in said Revised Statutes or Codes shall have been amended and re-enacted by the Thirty-ninth Legislature, said article shall be omitted and the article as amended and re-enacted shall be inserted in lieu thereof, with notes or references showing the date of the Statute by which said article was amended, and the page of the session acts in which said Statute appears. [Acts 1925, 39th Leg., ch. 104, p. 282, § 4.]

Sec. 23e. Retention of modified articles.—When any article, chapter, or title of said Revised Statutes or Codes has been modified by an act of said Legislature, but the same is not amended and re-enacted, then said article, chapter, or title shall be retained in said volume, and the act modifying the same shall be inserted immediately after such article, chapter, or title, together with like notes or references, as hereinbefore provided. [Acts 1925, 39th Leg., ch. 104, p. 283, § 5.]

Sec. 23f. Indices.—Full and accurate indices to said Codes and the Revised Statutes shall be attached to each of said Codes and to the Revised Statutes respectively. The supervisor to be appointed shall have authority to correct evident typographical errors and inaccuracies found in said Revised Statutes and Codes. [Acts 1925, 39th Leg., ch. 104, p. 283, § 6.]

Sec. 23g. Reviser.—The Governor shall appoint a lawyer of experience and ability who shall prepare said volumes for publication as directed in this Act, under the direction of the Secretary of State, and who shall read and revise the proof of the said Statutes, Codes and indices, and other matters included in said volumes, and shall receive for his services the same compensation as was allowed the commissioners who revised the Codes and Statutes, to-wit, five hundred dollars per month, for the time he is actually engaged in the duties required of him, the same to be paid upon the certificate of the Comptroller out of the amount appropriated for printing the Revised Statutes and Codes, and said codifier is authorized to employ one assistant such assistant to be paid on the certificate of the Comptroller out of the same fund, an amount not exceeding one hundred and fifty dollars per month and the total to be expended under this section shall not exceed two thousand five hundred dollars. [Acts 1925, 39th Leg., ch. 104, p. 283, § 7.]

Sec. 23h. Printing.—The Statutes and Codes shall be printed on the good quality of book paper, in size of page and style and type corresponding with the printed bill adopting the Revised Statutes of Texas of 1925. There shall be printed eight thousand copies of each of said volumes of said Civil and Criminal Codes. The binding shall be of the best style and workmanship and in law buckram of the best quality, and the title page of each volume shall recite and show that it is published by authority of the State of Texas, and each shall be authenticated by the certificate of the Secretary of State annexed thereto, as other laws when published are required to be certified; and said State Board of Control shall require said edition to be electrotyped and shall secure and preserve the plates as the property of the State, same to be delivered to the Secretary of State. [Acts 1925, 39th Leg., ch. 104, p. 283, § 8.]

Sec. 23i. Printing contract.—The Board of Control shall immediately after the passage of this Act advertise for thirty days in three daily newspapers in this State for sealed proposals for printing, binding and electrotyping the laws as aforesaid, and shall on the day fixed in the advertisement, in the presence of such persons as desire to be present proceed to open the proposals and award the contract to the best and lowest bidder, which proposal shall state the price per volume at which the bidder proposes to electrotype, print, bind and furnish under the superintendence and direction of the said board the laws and electrotype plates, as herein provided, and no bid or proposal shall be considered that is not accompanied by a guarantee of two or more sufficient sureties that if the contract should be awarded to the bidder he will execute the necessary bond for the performance of the work in the manner and style provided in this Act; and the person or persons to whom such contract is awarded shall within ten days after receiving notice thereof, execute a bond to the State of Texas in the sum of such amount as may be fixed by the Board of Control, with two or more sufficient sureties, to be approved by the board, conditioned for the faithful performance of the work in the manner and style therein prescribed and according to the provisions of this Act, and for the delivery of said volumes and plates to the Secretary of State on or before the first day of September, 1925; said volumes may be received, for an earlier distribution, in numbers of a thousand at a time, as the work progresses; and the right shall be reserved by the board to reject any and all bids and proposals if in their judgment the terms proposed are not favorable to the State. Upon the delivery by the contractor of the volumes and plates aforesaid to the Secretary of State, executed according to the terms of the contract and accepted by the board, the amount due therefor shall be audited, allowed, and paid as provided by law in cases of other public printing, and the statutes in force in relation to public printing shall be applicable to the contract under this Act in all matters not herein otherwise provided. [Acts 1925, 39th Leg., ch. 104, p. 283, § 9.]

Sec. 23j. Copies for officials.—The Secretary of State shall furnish one copy of each volume to each member of the Legislature including the Lieutenant Governor and to each county judge in the State and shall in addition thereto furnish each county judge of the State a sufficient number of each of said volumes to supply each elective county and precinct officer, with one copy of each of said volumes and the Secretary of State shall furnish one copy of each volume[s] to each of the judges of the Supreme Court, the Courts of Civil and Criminal Appeals, to each district judge, to each district attorney, and each execu-

tive at the seat of government and four copies to the librarian of the State Library. In forwarding said copies the Secretary of State shall regard only those officers who have secured their certificate of election as officers, where certificates are required, entitled to receive said copies. After the officials hereinbefore enumerated have been supplied, single copies may be sold by the Secretary of State for the same price which the State pays the contracting printer, plus expense of handling and postage, such sales to be made to persons who desire them for their own use and the proceeds of such sales shall be paid the State Treasurer and the Secretary of State shall report such sales in his biennial report. [Acts 1925, 39th Leg., ch. 104, p. 284, § 10.]

Sec. 23k. Reprint.—The Board of Control shall contract for the printing of eight thousand copies each of the Civil and Criminal Statutes and may from time to time, if the demand shall make it necessary, at the request of the Secretary of State, cause such additional volumes to be printed as may be required to supply such demand. [Acts 1925, 39th Leg., ch. 104, p. 284, § 11.]

Sec. 23l. Appropriation.—Sixty thousand dollars, or so much of that sum as may be necessary, is hereby appropriated for the purpose of carrying into effect the provisions of this Act. [Acts 1925, 39th Leg., ch. 104, p. 285, § 12.]

Sec. 23m. Emergency clause.—The necessity for the publication of the Revised Statutes and the Penal Code and Code of Criminal Procedure of the State of Texas in as complete a form as possible, and their early distribution among the people, creates an imperative public necessity and emergency that the rule requiring bills to be read on three several days be suspended, and this Act take effect and be in force from and after its passage, and it is so enacted. [Acts 1925, 39th Leg., ch. 104, p. 285, § 13.]

Sec. 24. Date effective.—That these Revised Statutes shall take effect and be in force at twelve o'clock, meridian, on the first day of September, Anno Domini, one thousand nine hundred and twenty-five.

Sec. 25. Reading Act.—The importance and great length of this Act, the fact that it is impossible to read the same on any one day or on any three consecutive days, the length of time required for its publication, and the near approach of the end of the present session of the Legislature, create an imperative public necessity requiring that the constitutional rule which requires that bills be read on three several days in each house be and the same is hereby suspended.

RECORD OF ENACTMENT

The enrolled bill (Revised Civil Statutes 1925) on file in the office of the Secretary of State shows that the foregoing act passed the Senate finally January 27, 1925 (no vote given).

Passed the House March 18th, 1925 (no vote given).

Approved by the Governor April 1, 1925.

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A BILL to be entitled "AN ACT to Adopt and Establish a 'PENAL CODE' and a 'CODE OF CRIMINAL PROCEDURE' for the State of Texas."

Be It Enacted by the Legislature of the State of Texas:

Section 1. The following Titles, Chapters and Articles are hereby adopted and shall hereafter constitute and be known as the PENAL CODE of the State of Texas:

THE
PENAL CODE

TITLE 1

GENERAL PROVISIONS

Chap.
1. General objects, principles, and rules of interpretation.
2. Definitions.
3. Persons punishable, and circumstances which excuse, extenuate or aggravate an offense.

CHAPTER ONE

GENERAL OBJECTS, PRINCIPLES, AND RULES OF INTERPRETATION

Art.
1. Design of the Code.
2. Object of punishment.
3. Penalties must be affixed by written law.
4. Common law rule of construction.
5. Special provisions control general.
6. Unintelligible law not operative.
7. General rule of construction.
8. Words, how understood.
9. Innocence presumed.
10. No offense against a law not in force.
11. When laws take effect.
12. Ignorance no excuse.
13. Modification by subsequent law.
14. Repeal, effect of.
15. When new penalty is substituted.
16. Change of definition.
17. Previous offense not affected.
18. No cumulative penalties.

Article 1. [1] Design of the Code.—The design of enacting this Code is to define in plain language every offense against the laws of this State, and affix to each offense its proper punishment.

Art. 2. [2] Object of punishment.—The object of punishment is to suppress crime and reform the offender.

Art. 3. [3] Penalties must be affixed by written law.—In order that the system of penal law in force in this State may be complete within itself, and that no system of foreign laws, written or unwritten, may be appealed to, it is declared that no person shall be punished for any act or omission, unless the same is made a penal offense, and a penalty is affixed thereto by the written law of this State.

Art. 4. [4] Common law rule of construction.—The principles of the common law shall be the rule of construction when not in conflict with this Code or the Code of Criminal Procedure, or with some other written statute of this State. [Act Feb. 12, 1884.]

Art. 5. [5] Special provisions control general.—Each general provision shall be controlled by a special provision on the same subject, if there be a conflict.

Art. 6. [6] Unintelligible law not operative.—Whenever it appears that a provision of the penal law is so indefinitely framed or of such doubtful construction that it can not be understood, either from the language in which it is expressed, or from some other written law of the State, such penal law shall be regarded as wholly inoperative.

Art. 7. [9] General rule of construction.—This Code and every other law upon the subject of crime which may be enacted shall be construed according to the plain import of the language in which it is written, without regard to the distinction usually made between the construction of penal laws and laws upon other subjects; and no person shall be punished for an offense which is not made penal by the plain import of the words of a law.

Art. 8. [10] Words, how understood.—Words which have their meaning specially defined shall be understood in that sense, though it be contrary to their usual meaning; and all words used in this Code, except where a word, term or phrase is specially defined, are to be taken and construed in the sense in which they are understood in common language, taking into consideration the context and subject matter relative to which they are employed.

Art. 9. [11] Innocence presumed.—Every person accused of an offense shall be presumed to be innocent until his guilt is established by legal evidence beyond a reasonable doubt.

Art. 10. [12] No offense against a law not in force.—No act or omission can be punished as an offense unless the law making it penal was in force at the time when such act or omission took place.

Art. 11. [13] When laws take effect.—No law defining an offense, or affixing a penalty thereto, shall take effect until after the expiration of ninety days from the day of the adjournment of the session at which such law was enacted, unless the Legislature shall otherwise determine.

Art. 12. [14] Ignorance no excuse.—After a law has taken effect, no person shall be excused for its violation upon the ground that he was ignorant of its provisions.

Art. 13. [15] Effect of modification by subsequent law.—When the penalty for an offense is prescribed by one law and altered by a subsequent law, the penalty of such second law shall not be inflicted for an offense committed before the second shall have taken effect. In every case the accused shall be tried under the law in force when the offense was committed, and if convicted punished under that law; except that when by the provisions of the second law the punishment is ameliorated he shall be punished under the second unless he elect to receive the penalty prescribed by the law in force when the offense was committed.

Art. 14. [16] Repeal, effect of.—The repeal of a law where the repealing statute substitutes no other penalty will exempt from punishment all persons who may have violated such repealed law, unless it be otherwise declared in the repealing statute.

Art. 15. [17] When new penalty is substituted.—When by the provisions of a repealing statute a new penalty is substituted for an offense punishable under the law repealed, such repealing statute shall not exempt from punishment a person who has offended against the repealing [repealed] law while it was in force, but in such case the rule prescribed in article 13 shall govern.

Art. 16. [18] Change of definition.—If an offense be defined by one law and by a subsequent law the definition of the offense is changed, no such change shall take effect as to the offenses already committed; but one accused of violating the first law shall be tried under that law.

Art. 17. [19] Previous offenses not affected.—No offense committed and no fine, forfeiture or penalty incurred under existing laws previous to the time, when this Code takes effect shall be effected [affected] by the repeal herein of any such laws, but the punishment of such offense and the recovery of such fines and forfeitures shall take place as if the law repealed had remained in force, except that when any penalty, forfeiture or punishment shall have been mitigated by any provision of this Code, such provision shall control any judgment to be pronounced after this Code shall take effect for any offense committed before that time, unless the defendant elect to be punished under the repeal law.

Art. 18. [20] No cumulative penalties.—No penalty affixed to an offense by one law shall be cumulative of penalties under a former law, and where a new penalty is prescribed for an offense, the penalty of the first law shall be considered as repealed, unless the contrary be expressly provided in the law last enacted.

CHAPTER TWO

DEFINITIONS

Art.
19. Definition of terms.
20. Masculine includes feminine.
21. Singular includes plural.
22. "Person."
23. "Accused" and "Defendant."
24. "Criminal action."
25. "Convict."
26. "Criminal process."
27. "Writing" and "Oath."
28. "Signature" defined.

Article 19. [21] Definition of terms.—The terms "whoever", "any person", "any one", and the pronouns "he" and "they" as referring to these terms, include females as well as males, unless there is some express declaration to the contrary. The word "man" imports a male person of any age, and "woman" a female person of any age.

Art. 20. [22] Masculine includes feminine.—The use of any word expressive of relationship, state, condition, office or trust of any person, as of "parent", "child", "ascendant", "descendant", "minor", "infant", "ward", "guardian", or the like, or of the pronouns "he" or "they" in reference thereto, includes both males and females. Words used in the masculine gender include the feminine also, unless it appears that such was not the intent.

Art. 21. [23] Singular includes plural.—The use of the singular number includes the plural and the plural the singular.

Art. 22. [24] "Person."—Whenever any property or interest is intended to be protected by this Code, and the term "person" or any other general term is used to designate the party whose property it is intended to protect, the protection given shall extend to the property of the State, and of all public or private corporations.

Art. 23. [25] "Accused" and "defendant."—The word "accused" is intended to refer to any person who, in a legal manner, is held to answer for an offense, at any stage of the proceeding, or against whom complaint in a lawful manner is made charging an offense, including all proceedings from the order for arrest to the final execution of the law. The word "defendant" is used in the same sense.

Art. 24. [26] "Criminal action."—A "criminal action" means the whole or any part of the procedure which the law provides for bringing offenders to justice; and the terms "prosecution" and "accusation" are used in the same sense.

Art. 25. [27] "Convict."—An accused is termed a "convict" after the judgment of conviction against him has become final.

Art. 26. [28] "Criminal process."—The term "criminal process" is intended to signify any capias, warrant, citation, attachment, or any other written order issued in a criminal proceeding, whether the same be to arrest, commit, collect money, or for whatever purpose used.

Art. 27. [30] "Writing" and "oath."—The word "writing" includes printing; the word "oath" includes affirmation.

Art. 28. [31] "Signature" defined.—The word "signature" includes the mark of a person unable to write his name.

CHAPTER THREE

PERSONS PUNISHABLE, AND THE CIRCUMSTANCES WHICH EXCUSE, EXTENUATE, OR AGGRAVATE AN OFFENSE

Art.
29. Persons punishable.
30. Children not punishable.
31. One under 17 not punishable capitally.
32. Offenses by married women.
33. Instigated offense.
34. Insanity.
35. Proof of insanity.
36. Intoxication as a defense.
37. Officer justified.
38. Duress.
39. Accident.
40. Mistake of law.
41. Mistake of fact.
42. Act done by mistake a felony.
43. Act done by mistake a misdemeanor.
44. Felony done by mistake.
45. Intention presumed.
46. Burden of proof on defendant.

Article 29. [32] Persons punishable.—With the exceptions stated in this chapter, all persons whether inhabitants of this State or the United States or aliens are amenable to punishment for offenses punishable under this Code.

Art. 30. [34] Children not punishable.—No person shall be convicted of any offense committed before he was nine years old except perjury, and for that only when it shall appear by proof that he had sufficient discretion to understand the nature and obligation of an oath; nor of any other offense committed between the age of nine and thirteen, unless it shall appear by proof that he had discretion sufficient to understand the nature and illegality of the act constituting the offense.

Art. 31. [35] One under 17 not punishable capitally.—A person for an offense committed before he arrived at the age of seventeen years shall in no case be punished with death.

Art. 32. [36] Offenses by married women.—A married woman who commits an offense by the command or persuasion of her husband shall in no case be punished with death, but may be imprisoned for life or for a term of years, according to the nature of the crime; and in cases not capital she shall receive only one-half the punishment to which she would otherwise be liable.

Art. 33. [37] Instigated offense.—If it appears that a minor was instigated or aided in the commission of an offense by a relation in the ascending line or by his guardian, or an apprentice under age by his master, or a wife by her husband, such relation, guardian, master or husband shall, at the discretion of the jury, in capital cases be punished by death, and in other cases the punishment shall be doubled.

Art. 34. [39] Insanity.—No act done in a state of insanity can be punished as an offense. No person who becomes insane after he committed an offense shall be tried for the same while in such condition. No person who becomes insane after he is found guilty shall be punished while in such condition.

Art. 35. [40] Proof of insanity.—The rules of evidence known to the common law as to the proof of insanity shall be observed in all trials where that question is an issue.

Art. 36. [41] Intoxication as a defense.—Neither intoxication nor temporary insanity of mind produced by the voluntary recent use of ardent spirits shall constitute any excuse for the commission of crime. Evidence of temporary insanity produced by

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

such use of ardent spirits may be introduced by the defendant in mitigation of the penalty attached to the offense for which he is being tried. When temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was brought about by the immoderate use of intoxicating liquor, the judge shall charge the jury in accordance with the provisions of this article. [Acts 1881, p. 9.]

Art. 37. [42 and 43] Officer justified.—A person in the lawful execution of a written process or verbal order from a court or magistrate is justified for any act done in obedience thereto. A peace officer is in like manner justified for any act which he is bound by law to perform without warrant or verbal order.

Art. 38. [44] Duress.—A person forced by threats or actual violence to do an act is not liable to punishment for the same. Such threats, however, must be—

1. Loss of life or personal injury.
2. Such as are calculated to intimidate a person of ordinary firmness.
3. The act must be done when the person threatening is actually present.

The violence must be such actual force as restrains the person from escaping, or such ill-treatment as is calculated to render him incapable of resistance.

Art. 39. [45] Accident.—No act done by accident is an offense, except in certain cases specially provided for where there has been a degree of carelessness or negligence which the law regards as criminal.

Art. 40. [46] Mistake of law.—No mistake of law excuses one committing an offense.

Art. 41. [47] Mistake of fact.—If a person laboring under a mistake as to a particular fact shall do an act which would otherwise be criminal he is guilty of no offense, but the mistake of fact which will excuse must be such that the person so acting under a mistake would have been excusable had his conjecture as to the fact been correct, and it must also be such mistake as does not arise from a want of proper care on the part of the person so acting.

Art. 42. [48] Act done by mistake a felony.—One intending to commit a felony and who in the act of preparing for or executing the same shall through mistake or accident do another act which, if voluntarily done, would be a felony, shall receive the punishment affixed to the felony actually committed.

Art. 43. [49] Act done by mistake or misdemeanor.—One intending to commit a felony and who in the act of preparing for or executing the same shall through mistake or accident do another act which, if voluntarily done would be a misdemeanor, shall receive the highest punishment affixed to such misdemeanor.

Art. 44. [50] Felony done by mistake.—One intending to commit a misdemeanor and who in the act of preparing for or executing the same shall through mistake commit a felony shall receive the lowest punishment affixed to the felony.

Art. 45. [51] Intention presumed.—The intention to commit an offense is presumed whenever the means used is such as would ordinarily result in the commission of the forbidden act.

Art. 46. [52] Burden of proof on defendant.—When the facts have been proved which constitute the offense, it devolves upon the accused to establish the facts or circumstances on which he relies to excuse or justify the prohibited act or omission.

TITLE 2

OFFENSES AND PUNISHMENTS

Chap.

1. Definition and division of offenses.
2. Punishments in general.

CHAPTER ONE

DEFINITION AND DIVISION OF OFFENSES

Article 47. [53–58] Offenses.—An offense is an act or omission forbidden by positive law, and to which is annexed, on conviction, any punishment prescribed in this Code. An offense which may—not must—be punishable by death or by confinement in the penitentiary is a felony; every other offense is a misdemeanor. Felonies are either capital or not capital. An offense for which the highest penalty is death is a capital felony. Offenses are divided into felonies and misdemeanors.

CHAPTER TWO

PUNISHMENTS IN GENERAL

Art.

48. Punishments.
49. Continuous offense suppressed.
50. No forfeiture in capital case.
51. No forfeiture in any case.
52. "Political rights" defined.
53. Doubling punishment.
54. Doubling penalty in misdemeanor.
55. Doubling alternative punishment.
56. Increase of penalty one-half.
57. Decrease of punishment one-half.
58. Diminution of punishment.
59. Exceptions to rules.
60. Officer to be removed.
61. Second and subsequent conviction for misdemeanor.
62. Subsequent conviction for felony.
63. Third conviction for felony.
64. Second conviction for capital offense.

Article 48. [59] Punishments.—The punishments incurred for offenses under this Code are—

1. Death.
2. Imprisonment in the penitentiary.
3. Imprisonment in jail. "Jail" means the county jail.
4. Pecuniary fines. "Not exceeding" means in any sum not to exceed the amount stated.
5. Forfeiture of civil or political rights.
6. Imprisonment in training schools and similar institutions.

Art. 49. [60] Continuous offense suppressed.—When an offense of which a person is convicted is in its nature continuous, there shall also be a judgment for its suppression.

Art. 50. [61] No forfeiture in capital case.—When a convict is executed or imprisoned for life, there shall be no forfeiture of any kind to the State, nor shall any cost of the prosecution be collected from his estate.

Art. 51. [62] No forfeiture in any case.—When a convict is imprisoned in the penitentiary, his property shall be controlled as directed by law; but there shall in no criminal case be a forfeiture of property of any kind to the State.

Art. 52. [63] "Political rights" defined.—When the penalty is deprivation of political rights, such rights are intended to include the rights of holding office, of serving on juries, and of suffrage.

Art. 53. [64] Doubling punishment.—When a minimum or maximum punishment is fixed, and by reason of any circumstance the law directs that the punishment be doubled, it shall be taken to mean that not less than double the smallest nor more than double the greatest punishment shall be inflicted.

Art. 54. [65] Doubling penalty in misdemeanor.—If fine and imprisonment are to be incurred, and punishment is doubled, then not less than double the smallest and not more than double the largest fine and not more than double the longest nor less than double the smallest period of imprisonment shall be given.

Art. 55. [66] Doubling alternative punishment.—When the punishment is either fine or imprisonment and the punishment is to be doubled, then the penalty is not less than double the smallest nor more than double the largest fine, or less than double the shortest nor more than double the longest period of imprisonment. This rule applies where there may be

more than two kinds of punishment prescribed as alternatives.

Art. 56. [67] Increase of penalty one-half.—When the law directs that the punishment shall be increased one-half, it means that besides the ordinary penalty such additional punishment may be assessed as shall not be less than one-half the penalty in ordinary cases, and all the rules before prescribed as to alternative punishments are applicable where the penalty is to be so increased.

Art. 57. [68] Decrease of punishment one-half.—When it is provided that the punishment shall be diminished one-half, it means one-half of the penalty fixed under ordinary circumstances, and so with regard to any other proportion in which the penalty is to be diminished.

Art. 58. [69] Diminution of punishment.—In diminution of punishments, the same rule as to two or more penalties or as to alternative penalties shall apply as governs the increase of punishment.

Art. 59. [70] Exceptions to rules.—The rules as to increase or diminution of punishment have no application to capital cases, nor to any case where the penalty is total deprivation of civil or political rights.

Art. 60. [73] Officer to be removed.—When an offense is committed by an officer, and the same appears to the jury to be a wilful violation of duty, they shall so find, and such officer shall be removed from office.

Art. 61. [1618] [1014] [818] Second and subsequent conviction for misdemeanor.—If it be shown on the trial of a misdemeanor that the defendant has been once before convicted of the same offense, he shall on a second conviction receive double the punishment prescribed for such offense in ordinary cases, and upon a third or any subsequent conviction for the same offense, the punishment shall be increased so as not to exceed four times the penalty in ordinary cases.

Art. 62. [1619] [1015] [819] Subsequent conviction for felony.—If it be shown on the trial of a felony less than capital that the defendant has been before convicted of the same offense, or one of the same nature, the punishment on such second or other subsequent conviction shall be the highest which is affixed to the commission of such offenses in ordinary cases.

Art. 63. [1620] [1016] [820] Third conviction for felony.—Whoever shall have been three times convicted of a felony less than capital shall on such third conviction be imprisoned for life in the penitentiary.

Art. 64. [1621] [1017] [821] Second conviction for capital offense.—A person convicted a second time of any offense to which the penalty of death is affixed as an alternate punishment shall not receive on such second conviction a less punishment than imprisonment for life in the penitentiary.

TITLE 3

PRINCIPALS, ACCOMPLICES AND ACCESSORIES

Chap.

1. Principals.
2. Accomplices.
3. Accessories.
4. Trial of accomplices and accessories.

CHAPTER ONE

PRINCIPALS

Art.

65. Acting together.
66. Encouraging.
67. Aiding.
68. Indirect means.
69. Presence.

Article 65. [74] Acting together.—All persons are principals who are guilty of acting together in the commission of an offense.

Art. 66. [75] Encouraging.—When an offense is actually committed by one or more persons, but others are present, and knowing the unlawful intent, aid by acts or encourage by words or gestures, those actually engaged in the commission of the unlawful act, or who, not being actually present, keep watch so as to prevent the interruption of those engaged in committing the offense, such persons so aiding, encouraging or keeping watch are principal offenders.

Art. 67. [76] Aiding.—All persons who shall engage in procuring aid, arms or means of any kind to assist in the commission of an offense, while others are executing the unlawful act, and all persons who endeavor at the time of the commission of the offense to secure the safety or concealment of the offenders are principals.

Art. 68. [77] Indirect means.—If any one by employing a child or other person who cannot be punished to commit an offense, or by any means, such as laying poison where it may be taken and with intent that it shall be taken, or by preparing any other means by which a person may injure himself and with intent that such person shall thereby be injured, or by any other indirect means cause another to receive injury to his person or property, the offender by the use of such indirect means becomes a principal.

Art. 69. [78] Presence.—Any person who advises or agrees to the commission of an offense and who is present when the same is committed is a principal whether he aid or not in the illegal act.

CHAPTER TWO

ACCOMPLICES

Art.

70. Who is an accomplice.
71. Precise offense need not be committed.
72. Punishment of accomplice.
73. When different offense is committed.
74. When principal is under 17.
75. In instigated felony.
76. No accomplice in certain cases.

Article 70. [79] Who is an accomplice.—An accomplice is one who is not present at the commission of an offense, but who, before the act is done, advises, commands or encourages another to commit the offense; or

Who agrees with the principal offender to aid him in committing the offense, though he may not have given such aid; or,

Who promises any reward, favor or other inducement, or threatens any injury in order to procure the commission of the offense; or,

Who prepares arms or aid of any kind, prior to the commission of an offense, for the purpose of assisting the principal in the execution of the same.

Art. 71. [80] Precise offense need not be committed.—To render a person guilty as an accomplice, it is not necessary that the precise offense which he may have advised, or to the execution of which he may have given encouragement or promised assistance, should be committed; it is sufficient that the offense be of the same nature, though different in degree, as that which he so advised or encouraged.

Art. 72. [81] Punishment of accomplice.—Accomplices shall, in all cases not otherwise expressly provided for, be punished in the same manner as the principal offender.

Art. 73. [82] When different offense is committed.—If in the attempt to commit one offense the principal shall by mistake or accident commit some other under the circumstances set out in article 42, 43 and 44, the accomplice to the offense originally intended shall, if both offenses are felonies, receive the punishment affixed to the lower; but if the offense designed be a misdemeanor he shall receive the highest punishment affixed to such misdemeanor, whether

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

the offense actually committed be a felony or a misdemeanor.

Art. 74. [83] When principal is under 17.—If the principal in an offense less than capital be under the age of seventeen, the punishment of an accomplice shall be increased so as not to exceed double the penalty affixed in ordinary cases.

Art. 75. [84] In instigated felony.—If the accomplice stands in the relation of parent, master, guardian or husband to the principal, he shall in all cases receive the highest punishment affixed to the offense, and the same may in felonies not capital be increased to double the highest penalty affixed to ordinary cases.

Art. 76. [85] No accomplice in certain cases.—There may be accomplices to all offenses except manslaughter and negligent homicide.

CHAPTER THREE

ACCESSORIES

Art.
77. Who is an accessory.
78. Who cannot be accessories.
79. Punishment of accessory.

Article 77. [86] Who is an accessory.—An accessory is one who, knowing that an offense has been committed, conceals the offender, or gives him any other aid in order that he may evade an arrest or trial or the execution of his sentence. One who aids an offender in making or preparing his defense at law, or procures him to be bailed though he afterwards escape, is not an accessory.

Art. 78. [87] Who cannot be accessories.—The following cannot be accessories; The husband or wife of the offender, his brothers and sisters, his relations in the ascending or descending line by consanguinity or affinity, or his domestic servants.

Art. 79. [88] Punishment of accessory.—Accessories shall be punished by the infliction of the lowest penalty to which the principal would be liable.

CHAPTER FOUR

TRIAL OF ACCOMPLICES AND ACCESSORIES

Art.
80. Accomplice may be tried before principal.
81. When accessory may be tried.
82. Parties to offense as witnesses.

Article 80. [89] Accomplice may be tried before principal.—An accomplice may be tried and punished before the conviction of the principal, and the acquittal of the principal shall not bar the prosecution against the accomplice, but on the trial of an accomplice the evidence must be such as would have convicted the principal.

Art. 81. [90] When accessory may be tried.—An accessory may in like manner be tried and punished before the principal when the latter has escaped; but if the principal is arrested he shall be first tried, and if acquitted, the accessory shall be discharged.

Art. 82. [91] Parties to offense as witnesses.—Persons charged as principals, accomplices or accessories, whether in the same or by different indictments, cannot be introduced as witnesses for one another, but they may claim a severance, and if one or more be acquitted they may testify in behalf of the others.

TITLE 4

OFFENSES AGAINST THE STATE, ITS TERRITORY, AND REVENUE

Chap.
1. Treason and misprision of treason.
2. Misapplication of public money.
3. Illegal contracts affecting the State.
4. Collection of taxes and other public money.
5. Dealing in public lands by officers.
6. Personal property of the State.
7. The flag and loyalty.

CHAPTER ONE

TREASON AND MISPRISION OF TREASON

Art.
83. "Treason" defined.
84. Punishment for treason.
85. "Misprision of treason" defined.

Article 83. [92] "Treason" defined.—Treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort. [Const. Art. 1, Sec. 22, P. C. 231.]

Art. 84. [93] Punishment for treason.—If any citizen of this State shall be guilty of treason he shall suffer death or imprisonment in the penitentiary for life. [P. C. 232.]

Art. 85. [94] [95] "Misprision of treason" defined.—Whoever shall know that any person has committed treason or is intending to do so, and shall not within five days from the time of his having come to such knowledge give information of the same to the Governor or to some magistrate or peace officer of the State shall be confined in the penitentiary not less than two nor more than seven years. [P. C. 233, Acts 1858, p. 157.]

CHAPTER TWO

MISAPPLICATION OF PUBLIC MONEY

Art.
86. Protection of public money.
87. "Misapplication of public money."
88. Exceptions.
89. Diversion of donated State taxes.
90. Diversion of seawall money.
91. Receiving or concealing misapplied public money.
92. "Officer of the Government" defined.
93. State Treasurer receiving private funds.
94. Diverting special funds.
95. Misapplication of county or city funds.
96. Receiving or concealing.
97. Misapplication of school funds.
98. Officer failing to pay over public money.
99. Venue.
100. Collector failing to pay.
101. Collector failing to report.
102. Remitting fees, etc.
103. Unlawfully issuing process.
104. Regulating fees of officers.
105. Report of fees collected.
106. Disposition of fees not called for.
107. Penalty for three preceding articles.

Article 86. [96] Protection of public money.—If any officer of the government who is by law a receiver or depositary of public money, or any clerk or other person employed about the office of such officer, shall fraudulently take, misapply or convert to his own use, any part of such public money, or secrete the same with intent to take, misapply or convert it to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two nor more than ten years. [P. C. 235, Acts 1858, p. 158.]

Art. 87. [97] "Misapplication of public money."—Within the term "misapplication of public money" are included the following acts:

1. The use of any public money in the hands of any officer of the government for any purpose whatsoever, save that of transmitting or transporting the same to the seat of government and its payment into the treasury;

2. The exchange of one character of public funds for those of another. The purchase of bank checks or post-office orders for transmission to the treasury is not included in this class;

3. The deposit by an officer of the government of public money at any other place than the treasury of the State when the treasury is accessible and open for business, or permitting the same to remain on de-

posit at such forbidden place after the treasury is so open;

4. The purchase of State warrants or other evidence of State indebtedness by any officer of the government with public money in his hands;

5. The special enumeration above set forth shall not be understood to exclude any case which, by fair construction, comes within the meaning of the preceding language. This article shall not be construed to prevent collectors of taxes from paying warrants drawn by the Comptroller in favor of officers living in their district or county as may be provided by law. [Acts 1879, p. 165.]

Art. 88. [100] Exceptions.—Nothing in the two preceding articles shall apply to the sale or exchange of one kind of money for another by the financial officers of this State, when done in accordance with law.

Art. 89. Diversion of donated State taxes.—All money donated by law out of the taxes collected for the State on account of calamity or for protection to either of the cities of Galveston, Aransas Pass, Rockport, Port Lavaca, Freeport and Corpus Christi, are declared to be trust funds for the purpose of aiding each of said cities in paying the interest and sinking fund upon the issue of bonds authorized by the law donating such tax money, and the provisions of the Revised Civil Statutes making such donations are made a part of this article, and the use or diversion of such moneys for any purpose other than that provided for by law is hereby prohibited, provided that whenever the money in the hands of the city treasurer received from the State under the law donating such tax money, or under any law in effect, shall exceed the sum of one year's interest and two per cent sinking fund on the bonds herein referred to that have been issued and are outstanding, such excess shall be invested by each of said cities so situated in the purchase of said bonds, or bonds of the United States, the State of Texas, or the bonds of any county, city or town of this State, bearing interest at the rate of not less than four per cent per annum. The entire sinking fund, when received by the city treasurer shall be invested by the municipal authorities of said city as received, in the bonds herein referred to, or bonds of the United States, the State of Texas, or the bonds of any county, city or town of this State, bearing interest at a rate of not less than four per cent per annum. A violation of any provision of this article shall constitute a misapplication of public money, and the person so offending shall be punished as provided in article 86.

Art. 90. Diversion of seawall money.—All funds, revenues and moneys derived from the sale of the bonds authorized by law to pay the indebtedness incurred in establishing, locating, erecting, constructing, extending, strengthening, maintaining or keeping in repair or otherwise improving any seawall or breakwater, and to improve, maintain and beautify any boulevard erected in connection therewith, and all funds, revenues and moneys derived from the sale or rent of reclaimed or other lands acquired by law and from additional uses of such works as authorized by law, shall be deposited with the county or city treasurer, as the case may be, and shall be held in trust exclusively for the construction and maintenance of seawalls and breakwaters including the purchase of the right of way therefor; and all moneys derived from the assessment and levy of taxes as aforesaid are declared to be a trust fund for the payment of interest and principal of such bonds, and the use or diversion of such moneys for any other purpose whatever is hereby prohibited and a violation of this article shall constitute a misapplication of public money, and the person so offending shall be punished as provided in article 86. [Acts 1901, p. 25, 1st C. S.]

Art. 91. [101] Receiving or concealing misapplied public money.—Whoever shall knowingly and with fraudulent intent receive or conceal any public money which has been taken, converted or misapplied by an officer or employé as set forth in articles 86 and 87, shall be confined in the penitentiary for not less than two nor more than five years. [P. C. 236, Acts 1875, p. 12.]

Art. 92. [102] "Officer of the Government" defined.—The term "officer of the Government," as used in this chapter, includes the State Treasurer and all other heads of departments who by law may receive or keep in their care public money of the State, tax collectors, and all other officers who by law are authorized to collect, receive or keep money due to the government.

Art. 93. [103] State Treasurer receiving private funds.—If the State Treasurer shall knowingly keep or receive into the building, safes or vaults of the treasury, any money or representative thereof belonging to any individual, except in cases expressly provided for by law, he shall be confined in the penitentiary not less than two nor more than five years. [Acts 1873, p. 61.]

Art. 94. [104] Diverting special funds.—Whoever shall wilfully borrow, withhold or in any manner divert from its purpose, any special fund, or any part thereof, belonging to or under the control of the State, which has been set apart by law for a specific use, shall be confined in the penitentiary not less than two nor more than ten years.

Art. 95. [105] [103] Misapplication of county or city funds.—If any officer of any county, city or town, or any person employed by such officer, shall fraudulently take, misapply, or convert to his own use any money, property or other thing of value belonging to such county, city or town, that may have come into his custody or possession by virtue of his office or employment, or shall secret [secrete] the same with intent to take, misapply or convert it to his own use, or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two nor more than ten years.

Art. 96. [106] [104] Receiving or concealing.—Whoever shall knowingly and with fraudulent intent receive or conceal any money or property which has been taken, misapplied or converted by an officer or employé, as set forth in the preceding article, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1875, p. 12.]

Art. 97. Misapplication of school funds.—If any person who is by law a treasurer of any school district in this State, or if any officer, director, stockholder, agent or employé or any corporation that is by law the treasurer or depository of any school district in this State shall fraudulently take, misapply or convert to his own use any money, property or other thing of value belonging to such district that may have come into his possession by virtue of his being treasurer of such district or that may have come into his possession by virtue of the corporation of which he is officer, director, stockholder, agent or employé being the treasurer or depository of such district, or shall secrete the same with intent to take, misapply or convert it to his own use or shall pay or deliver the same to any person knowing that he is not entitled to receive it, he shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1917, p. 340.]

Art. 98. Officer failing to pay over public money.—Any officer or appointee authorized to receive public moneys, other than a collector of taxes, who shall willfully or negligently fail to account for all moneys in his hands belonging to the State, and pay the same over to the State Treasurer within ten days after the same came into his possession, shall be fined not less than three hundred nor more than one thousand dollars.

Art. 99. [108] Venue.—All prosecutions for failing or refusing to pay over money belonging to the State under this chapter shall be conducted in Travis County.

Art. 100. [97–107–109–144] Collector failing to pay.—The collector of taxes shall at the end of each month pay over to the State Treasurer all moneys collected by him for the State during said month, excepting such amounts as he is allowed by law to pay in his county, reserving only his commissions on the total amount collected; and such collector shall pay over to the State Treasurer all balances in his hands belonging to the State, and finally adjust and settle his account with the State Comptroller on or before the first day of May of each year. If any collector of taxes shall have wilfully or negligently failed at the end of each month or within ten days thereof to remit to the State Treasurer the amount due by him to the State for the preceding month, he shall be fined not less than three hundred nor more than one thousand dollars. Every such failure to remit shall be a separate offense.

Art. 101. Collector failing to report.—At the end of each month the collector of taxes shall, on forms to be furnished by the Comptroller of Public Accounts, make an itemized report under oath to the Comptroller showing each and every item of ad valorem, poll and occupation taxes collected by him during said month, accompanied by a summarized statement showing full disposition of all State taxes collected. Said reports for December and January of each year may not be made for twenty-five days after the end of such months if same cannot be completed by the end of such respective months. Such collector shall present such report together with the tax receipt stubs, to the county clerk who shall within two days compare said report with said stubs, and if same agree in every particular as regards names, dates and amounts, such clerk shall certify to its correctness, and such collector shall then immediately forward his report so certified to the State Comptroller, and upon the failure or refusal of such collector to comply with this article he shall be fined not less than three hundred nor more than one thousand dollars. Each such failure or refusal is a separate offense. [Acts 1893, p. 90.]

Art. 102. [110–113] Remitting fees, etc.—Any county officer or any district attorney to whom fees or costs are allowed by law who shall fail to charge up the fees or costs that may be due under existing laws, or who shall remit any fee that may be due under the laws, or who shall fail to make the report required by law, or who shall pay his deputy, clerk or assistant a less sum than specified in his sworn statement, or receive back as a rebate any part of the compensation allowed such deputy, clerk or assistant, shall be fined not less than twenty-five nor more than five hundred dollars. Each act forbidden by this article is a separate offense. [Act June 16, 1897.]

Art. 103. [114–1577] Unlawfully issuing process.—Before the clerk or his deputy shall be required or permitted to issue a subpœna in any felony case pending in any district or criminal district court of this State of which he is clerk or deputy, the defendant or his attorney or the State's attorney shall make written sworn application to such clerk of each witness desired. Such application shall state the name of each witness desired, the location and avocation, if known, and that the testimony of said witness is believed to be material to the State or the defense. As far as practicable such clerk shall include in one subpœna the names of all witnesses for the State and the defendant and such process shall show that the witnesses are summoned for the State or defendant. If any such clerk or his deputy shall issue any subpœna for any witness in a felony case without complying with this article, or shall issue an attachment without an order of court, he shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1889, p. 145; Acts 1st C. S. 1897, p. 5; Acts 1913, p. 319.]

Art. 104. [115] Regulating fees of officers.—Each county and precinct officer who shall in his official capacity collect or receive any money or fees belonging to another person, shall inform such person of the collection of such money or fees, and promptly pay the same over on demand to the one entitled thereto, taking receipt therefor, which shall be entered or noted in his fee book. [Acts 1907, p. 120.]

Art. 105. [116] Report of fees collected.—On or before the second Mondays in March, June, September and December of each year, said officers shall make written sworn report to the commissioners court of all such moneys and fees so collected by them during the quarter last preceding and remaining in their hands uncalled for, giving the number and style of each cause in which the same accrued and the name of the person entitled thereto, which report shall be filed with the county clerk and by him kept for future reference and examination. [Id. Acts 1923, p. 223.]

Art. 106. [117] Disposition of fees not called for.—Each officer collecting or having the custody of any money or fees embraced within the provisions of this law at the expiration of four years from the time of collecting or receiving such money or fees, in all cases where the same have not been paid over to the person entitled thereto, shall pay the same to the county treasurer of his county, accompanying the same by an itemized statement, as provided in Article 105, which shall be filed and kept by said treasurer, and said money or fees shall be by him placed to the credit of the road and bridge fund. The treasurer shall issue to said officer his receipt for said money or fees itemizing the same as above provided, which receipt shall be filed by said officer with the county clerk. Any officer upon retiring from office having any money or fees in his hands embraced within these provisions and which are not due to be turned over to the treasurer as herein provided, shall turn the same over to his successor in office, together with an itemized list of the same, taking receipt therefor, and his successor shall report and pay over the same to the county treasurer in accordance with the provisions hereof. [Id.]

Art. 107. [118] Penalty for three preceding articles.—Whoever violates any provision of the three preceding articles shall be fined not less than one hundred nor more than five hundred dollars. [Id.]

CHAPTER THREE

ILLEGAL CONTRACTS AFFECTING THE STATE

Art.
108. Contracting without authority.
108a. State contract printing not to be reproduced.
108b. Same; state printing defined.
108c. Same; printing and sale of extra copies.
108d. Same; penalty for violations of act.
109. Storekeepers and accountants.
110. Using State's merchandise.
111. Institutions included.
112. Unlawfully creating deficiency.
113. Sale of goods to inmates.

Article 108. [106] Contracting without authority.—Whoever shall contract with any other person for his services or labor or for any property of any kind, with intent to charge the State of Texas with the same and without authority of law, shall be fined not less than one hundred nor more than two thousand dollars. [Act May 4, 1874, p. 221.]

Art. 108a. State contract printing not to be reproduced.—Except under contract or agreement with the State as hereinafter provided authorizing them so to do, it shall be unlawful for any person, firm, corporation or association of persons doing any printing, under contract, for the State of Texas, to reproduce, print or prepare or to sell or furnish any such printing or printed matter or any reprint, reproduction or copy of same, or plate, type, mat, cut or engraving from which such printing contract was executed, except the amount and number of copies contracted to be printed and furnished to the State of Texas under such contract. [Acts 1925, 39th Leg., ch. 78, p. 241, § 1.]

Art. 108b. Same; state printing defined.—Any printing done under contract for any department, the legislature or either branch thereof, any board, commission, court, officer or agent, of the State of Texas,

as well as any such work done directly for the State, shall for the purposes of this Act be deemed to have been done for the State of Texas. [Acts 1925, 39th Leg., ch. 78, p. 241, § 2.]

Art. 108c. Same; printing and sale of extra copies.—Provided that with the consent of the State Board of Control and the Governor, any such person, firm, corporation or association may print extra copies and sell same at a price fixed by the State Board of Control, whenever in the opinion of the Board of Control and the Governor the printed matter should be distributed in such manner for the benefit of the public. Provided that any such contract for the printing and sale of such extra copies shall be approved by the Attorney General. [Acts 1925, 39th Leg., ch. 78, p. 241, § 3.]

Art. 108d. Same; penalty for violations of act.—Any person, firm, corporation or association of persons violating any provision of this Act shall be guilty of a misdemeanor and upon conviction shall be punished by fine of not less than one hundred dollars nor more than one thousand dollars, and in the event the violation is by a natural person or the agent or employee of a person, corporation, firm or association the punishmet [punishment] may be by jail sentence not to exceed thirty days in addition to such fine. The conviction of an agent or employee shall not bar conviction of the principal also. [Acts 1925, 39th Leg., ch. 78, p. 241, § 4.]

Art. 109. [121] Storekeepers and accountants.—Any storekeeper or accountant of any institution placed by law under the control of the State Board of Control who shall sell to or in any way be concerned in the sale of any merchandise or other articles to any such institution, or who shall have any interest in any bid or contract therewith or with any other institution or department of the State Government, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1899, p. 142; Acts 1915, p. 195.]

Art. 110. [122] Using State's merchandise.—No officer or employé created by the law governing this chapter shall ever use or receive for his own use any provisions, clothing, merchandise or other articles furnished by the State. Whoever violates the provisions of this article shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1899, p. 142.]

Art. 111. Institutions included.—The institutions contemplated in this chapter are those for the care of the insane, deaf and dumb, the blind, the orphans, the Confederate Home, and all other State institutions, educational or eleemosynary, now or hereafter established anywhere in Texas, excepting the penitentiary system and its management, and also excepting the Senate and House of Representatives and all departments in the State Capitol, including General Land Office. [Acts 1915, p. 198.]

Art. 112. Unlawfully creating deficiency.—Any regent, director, officer or member of any governing board of any educational or eleemosnary [eleemosynary] institution who shall contract or provide for the erection or repair of any building or other improvements or the purchase of equipment or supplies of any kind for any such institution, not authorized by specific legislative enactment or by written direction of the Governor acting under and consistent with the authority of existing laws, or who shall contract or create any indebtedness or deficiency in the name of or against this State, not specifically authorized by legislative enactment, or who shall divert any part of any fund provided by law to any other fund or purpose than that specifically named and designated in the legislative enactment creating such fund, or provided for in any appropriation bill, shall be imprisoned in jail not less than ten days nor more than six months; the venue to be in the county in which may be located the institution affected by such acts of such offender. [Acts 1st C. S. 1913, p. 32.]

Art. 113. Sale of goods to inmates.—Any person appointed as manager, superintendent, clerk, or otherwise employed in or by any eleemosynary institution under the control or management of this State, or the wife of such appointee or employé, or any other person related within the third degree by affinity or consanguinity to the person so appointed or employed in such institution, who shall own, operate, manage, or in any way be pecuniarily interested in any store or other place of business where any merchandise is sold or offered for sale to inmates of such institution, shall be fined not less than twenty-five nor more than two hundred dollars. [Act November 15, 1921.]

CHAPTER FOUR

COLLECTION OF TAXES AND OTHER PUBLIC MONEY

Art.

114. Extorting excessive taxes.
115. Tax officer exacting usury.
116. Assuming taxes for reward.
117. Collector failing to forward transcript.
118. Unlawfully issuing receipt.
119. Wrong license no protection.
120. Obstruction of tax collections.
121. Pursuing occupation without license.
122. Plumbing without license.
123. Penalty not exclusive.
124. Payment of tax bars prosecution.
125. Refusal to render or swear to assessment.
126. Assessment of national bank.
127. Money and notes defined.
128. Pretended transfer of coin, notes or bonds.
129. Penalty for pretended transfer.
130. False affidavit.
131. Failure to collect occupation taxes.
132. Officer purchasing property sold for taxes.
133. Tax collector fail to perform certain duties.
134. Occupation tax receipt.
135. Failure to make entry of payments.
136. Clerk failing to make certificate.
137. Refusal to make additional report of gross receipts.
138. Gross receipts tax.
139. Failing to make franchise tax report.
140. Failure to file inheritance report.
141. Using name of defunct corporation.

Article 114. [107] Extorting excessive taxes.—If any person authorized to collect or receive taxes or other money due the State shall extort or attempt to extort from any one a larger sum than is due, or shall receive any money or other reward as a consideration for granting any delay in the collection of such dues, or for doing any illegal act or omitting to do any legal act in relation to the collection of such money, he shall be fined not exceeding five hundred dollars. [P. C. 238.]

Art. 115. [124] [108] Tax officer exacting usury.—If any assessor or collector of taxes shall advance for a person owing taxes to the government the amount of money so due, and shall charge therefor a rate of interest greater than ten per cent per annum, he shall be fined not exceeding five hundred dollars. [P. C. 239.]

Art. 116. [125] [109] Assuming taxes for reward.—Within the meaning of the preceding article is included the case of an assessor or collector who fails to collect taxes due and assumes to be responsible to the government therefor and receives for such act any compensation or reward. [P. C. 240.]

Art. 117. [126] [110] Collector failing to forward transcript.—The collector of taxes shall keep a book of such size and character as may be necessary, in which shall be entered quarterly, at the following dates to wit, January 1, April 1, July 1 and October 1, or within ten days thereafter, in which to require the returns to be made under the provisions of this article, the several amounts as shown by such returns for which and upon which any person, firm or association of persons is or may be liable to a tax under the law, and within fifteen days from the time of receiving and making up the several amounts and the sums due upon such amounts as occupation tax, the collector shall forward to the comptroller of public accounts a transcript or duplicate of the return and the amounts as shown by his

record, this transcript and the record from which it is taken to show the amount of such quarterly returns, and the tax due thereon, from every person, firm or association of persons liable to such tax; and any collector failing to forward such transcript or duplicate, taken from the pages of such collector's record herein provided for, or who shall forward a false or pretended transcript of such account, shall be fined not less than fifty nor more than five hundred dollars. Nothing herein contained is intended to affect the liability which, in the absence of this statute, would be incurred under any penal enactment. [Acts 1879, p. 148.]

Art. 118. [127] [110a] Unlawfully issuing receipt.—Any tax collector who issues any occupation tax receipt without first taking or filing the affidavit required by law, shall be fined not less than ten nor more than one hundred dollars. [Acts 1895, p. 18.]

Art. 119. [128] [110b] Wrong license no protection.—No occupation tax receipt or license taken out by a merchant of a lower class than the one to which he properly belongs shall be any protection against a prosecution for knowingly pursuing that of a higher class and failing to pay the occupation tax due therefor. [Id.]

Art. 120. [129] [111] Obstruction of tax collections.—Whoever shall, by force or threats of force, prevent, or attempt to prevent the collection of taxes or other money due the State by an officer authorized to enforce such collection, shall be fined not less than one hundred nor more than five hundred dollars, and be imprisoned in jail not less than three months nor more than one year. When the means used to prevent the collection are such as to amount to a riot or unlawful assembly the punishment shall be that which is prescribed in article 456. [P. C. 241.]

Art. 121. [130] [112] [110] Pursuing occupation without license.—Whoever shall pursue or follow any occupation, calling or profession, or do any act taxed by law, without first obtaining a license therefor, shall be fined not less than the amount of the taxes due and not more than double that sum.

Art. 122. [131] Plumbing without license.—Any person, whether as master plumber, employing, or journeyman plumber, engaged in, working at, or conducting the business of plumbing without license as provided by law, shall be fined not less than twenty-five nor more than two hundred and fifty dollars. [Acts 1897, p. 237.]

Art. 123. [132] [113] Penalty not exclusive.—The preceding articles shall not affect any civil remedy to enforce the collection of taxes.

Art. 124. [133] [114] Payment of tax bars prosecution.—Any person prosecuted under article 121 shall have the right at any time before conviction to have such prosecution dismissed upon payment of the tax and all costs of said prosecution and procuring the license on account of the failure to procure which, the prosecution was instituted, and no prosecution shall be commenced against any person after the procuring of said license, notwithstanding they may have followed such occupation, calling or profession before procuring said license; provided, said license shall cover the time said person has actually followed said occupation, calling or profession. [Acts 1881, p. 34.]

Art. 125. [134] [115] Refusal to render or swear to assessment.—Whoever shall refuse or neglect to make out and render a list of his taxable property when called upon in person by the assessor of taxes or his deputy, or shall fail or refuse to qualify to the truth of his statement of taxable property, or shall fail or refuse to subscribe to any oath required by law in the rendition of such property, shall be fined not less than twenty nor more than one thousand dollars. [Acts 1876, p. 196.]

Art. 126. [135] Assessment of national bank.—If any president, vice president, or cashier of any national bank shall fail or refuse to furnish the tax assessor or deputy tax assessor, when called upon to do so by such tax assessor or deputy tax assessor, a sworn statement, showing:

1. A list of the names of all the shareholders of the stock of such bank.
2. The number and amount of the shares owned and held by each shareholder in such bank.
3. The place of residence of each stockholder in such bank, if known. (If not known that fact shall be so stated.)
4. The amount of notes issued by such bank and circulating as money, or that is intended to circulate as money. (Stating such amount in dollars.)
5. The amount of money on hand or in transit, or in the hands of other banks, bankers, brokers or others, subject to draft, whether the same be in or out of the State.
6. The amount of indebtedness of such bank and how such indebtedness is evidenced.
7. The amount of paper evidencing indebtedness owned by such bank, which was acquired by such bank, either at par or at a discount.

They shall be fined not less than one hundred nor more than one thousand dollars, and be confined in jail not less than ten nor more than thirty days. [Acts 1897, p. 157.]

Art. 127. [136] Money and notes defined.—By the terms money and notes, mentioned in the preceding article, is meant all money owned and on hand by such bank, whether on deposit or otherwise. [Acts 1897, p. 157.]

Art. 128. [137] [116] Pretended transfer of coin, notes or bonds.—Any evasion by the means of artifice or temporary or fictitious sale, exchange or pretended transfer upon any bank books of gold or silver coin, bank notes or other notes or bonds, subject to taxation under the laws of this State, for United States non-taxable treasury notes or any notes or bonds not so subject to taxation, and any such pretended sale, exchange or transfer not made in good faith, and by actual exchange and delivery of the funds so sold, exchanged or transferred and made only by entry on bank books, or by any express or implied understanding not to immediately make a bona fide and permanent sale, shall be deemed prima facie to be a fraud upon the public revenue of this State. [Sec. 1, Act March 23, 1891, Acts 1891, p. 39.]

Art. 129. [138] [116] Penalty for pretended transfer.—The president, cashier or secretary of any banking or other corporation, or any person that may be a party or privy to such fraudulent sale, exchange or transfer shall be fined not less than ten nor more than one hundred dollars, and in addition thereto shall be confined in jail not less than ten nor more than thirty days. [Sec. 2, Id.]

Art. 130. [139] [116] False affidavit.—All assessors of taxes shall require all tax payers when assessed by them, to make oath as to any such sale, exchange or transfer made by them on the first day of January or within sixty days before said first day of January of any year for which any such assessment is made, as to the good faith and bona fide business transaction of any such sale, exchange or transfer, as above set forth, if any have been made by them, and if it should be disclosed that any such pretended sale, exchange or transfer had been made for the purpose of evading taxation, then and in that event the assessor shall list and render against such person the coin, bank notes or other notes or bonds subject to taxation under the laws of this State. [Sec. 3, Id.]

Art. 131. [140] [117] Failure to collect occupation taxes.—It shall be the duty of the tax collector to make an affidavit before any justice of the peace against any person, firm or association of persons engaging in or pursuing any occupation on which, under the laws of this State, a tax is imposed, who fails or refuses to pay the same. Any

collector of taxes who shall knowingly permit any person, firm or association of persons to engage in or pursue any occupation on which, by the laws of this State, a tax is imposed, without first paying all legal taxes assessed against such person, firm or association of persons, for such occupation, for State and county purposes, shall be fined not less than fifty nor more than five hundred dollars for every such offense. Evidence that such collector has made the affidavit herein required immediately against such person, firm or association of persons so pursuing an occupation in violation of law, shall be a defense against all prosecution under this article. [Acts 1887, p. 128.]

Art. 132. [143] [119] [114c] Officer purchasing property sold for taxes.—If any sheriff, or collector of taxes, deputy sheriff, or deputy collector, or any employé of such sheriff or collector authorized by him to collect or receive taxes, or to assist in any way in making sales for the collection of taxes, shall in the county where he resides, bid for, purchase, or attempt to purchase, or be in any way interested in the purchase of any property, either real or personal, at any sale of such property, made or attempted to be, for the collection of State and county taxes, or either, he shall be fined not less than ten nor more than one thousand dollars, and any such officer so offending shall be guilty of official misconduct and upon conviction shall be removed from office. [Acts 1883, p. 7.]

Art. 133. [144] [119a] Tax collector fail to perform certain duties.—If at the end of any month the collector of taxes shall fail to make to the Commissioners Court his itemized monthly report of all tax collections for the county, or pay over to the county treasurer the amount due by him to the county, or if he shall fail to make out and post, between April 1 and 15 of each year, a list of delinquent or insolvent tax payers, he shall be fined not less than three hundred nor more than one thousand dollars. Each failure is a separate offense. [Acts 1893, p. 91.]

Art. 134. [145] [119b] Occupation tax receipt.—Any collector of taxes in this State, who shall issue an occupation tax receipt upon any blank paper, or blank of any kind whatever other than the blank occupation tax receipt furnished to him as required by law, shall be fined not less than one hundred nor more than five hundred dollars. Each receipt so unlawfully issued is a separate offense. [Id.]

Art. 135. Failure to make entry of payments.—The collector of taxes, or his deputy, whenever any tax is paid, shall give to the person paying the same a receipt therefor, specifying the amount of State, county and district taxes, and the year for which such tax was assessed; said receipt shall also show the number of acres in each separate tract, number, abstract and name of original grantee, and any city or town lot and name of city or town, and total value of all property assessed; said receipt shall have a duplicate to be retained by such collector. The collector of taxes shall provide himself with a seal as provided by law and shall impress said seal on each receipt and duplicate given by him for taxes collected on real estate. Such collector when any taxes are paid shall insert in the margin of the tax rolls the words and figures as follows:

"Taxes paid ——— day of ———["] No. of receipt ———" the date to be filled in and the receipt number to be given; and any tax collector, or his deputy, who shall fail to comply with any provision of this article imposing the duty to make such entry of taxes paid upon the tax roll, as above described, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1921, p. 136.]

Art. 136. [146] [119c] Clerk failing to make certificate.—If the county clerk shall fail to examine the monthly reports of the collector of taxes, and within two days after the presentation to him of said reports by the collector, fail to certify to their correctness as regards names, dates and amounts, or shall fail to file with the reports intended for the Commissioners Court, together with the tax receipt stubs in his office for the next regular meeting of the Commissioners Court, he shall be fined not less than fifty nor more than two hundred dollars. Each failure is a separate offense. [Acts 1893, p. 92.]

Art. 137. [147] Refusal to make additional report of gross receipts.—If the Comptroller has reason to believe, that any individual, company, corporation, association, receiver or receivers subject to the provisions of the law providing for the levy of occupation taxes, has made a false return, or has failed or omitted to make a full return of gross receipts, or other statement of business done, required by any of the provisions of said law, he shall report the same in writing to the Governor, and the Governor shall immediately require the Comptroller to cause to be examined any books, papers or other records or evidence tending to show such unlawful act or omission. The person designated by the Comptroller shall check the report made with such books, papers, or other records or evidence, and make his report to the Comptroller, and if it appears from said report that any false or incorrect return has been made, or that any individual, or the president, treasurer or superintendent of any company, corporation or association, or any member of any firm required by this Act to make reports, has failed or omitted to make a full return, as required by law, then the Comptroller shall notify such individual, or the president, treasurer, or superintendent of any company, corporation or association, or receiver or receivers of any company, corporation or association, or any member of any firm, to make forthwith an additional report, and if such individual or the president, treasurer or superintendent of any company, corporation or association, or any member of a firm, or any receiver or receivers of any company, corporation or association making said original report, shall fail or refuse to make said additional report he shall be fined not less than two hundred nor more than five hundred dollars. Venue of such prosecution is hereby fixed in Travis County. [Acts 1907, p. 488.]

Art. 138. Gross receipts tax.—Every person, whether as an individual or as a member of a company, firm, partnership or unincorporated company or association, or as an officer, agent, director or employé of a corporation, who wilfully transacts business in this State upon which a gross receipts tax is required by law to be paid, without obtaining a permit from the Secretary of State to do so, or who transacts such business after such permit has been legally suspended, or who wilfully aids a corporation or a person to so unlawfully transact business, shall be fined not less than fifty nor more than two hundred and fifty dollars for each day or part of a day that such person is engaged in violating this article. Each day shall be a separate offense. [Act April 4, 1918, Sec. 4, p. 177.]

Art. 139. [148] Failing to make franchise tax report.—Every person required by the law prescribing franchise taxes to be paid by corporations to make any annual report to the Secretary of State who shall for a longer period than five days, and every person who shall for more than ten days after the mailing by the Secretary of State demand upon him for another report, which the Secretary of State is by this law authorized to require, fail or refuse to make such report shall be fined in any sum not less than fifty nor more than two hundred dollars. Each day of such failure or refusal after the expiration of said five days or said ten days, as the case may be, is a separate offense. [Acts 1907, p. 505.]

Art. 140. Failure to file inheritance report.—Any administrator, executor or trustee of the estate of a decedent leaving property subject to taxation under the statutes relating to inheritance taxes who fails or refuses to file within the time prescribed by law a report in duplicate, one with the Comptroller and the other with the County Clerk of the coun-

ty where such decedent resided at the time of his death or wherein the principal part of the estate is located, giving the information required by law as to such estate, shall be fined not less than one hundred nor more than one thousand dollars. [Acts 2 C. S. 1923, p. 67.]

Art. 141. [149] Using name of defunct corporation.—In all cases in which the charter or right to do business of any private domestic corporation heretofore or hereafter chartered under the laws of this State or the permit of any foreign corporation or its right to do business within this State shall have been or shall hereafter be forfeited it shall be unlawful for any person or persons who were or shall be stockholders or officers of such corporation at the time of such forfeiture to do business within this State in or under the corporate name of such corporation, or to use signs or advertisements of such corporation or similar to the sign or advertisements which were used by such corporation before such forfeiture. Whoever violates any provision of this article shall be fined not less than one hundred nor more than one thousand dollars. This article shall not apply where the right of such corporation to do business within this State has been revived in the manner provided by law and it is at the time in good standing. [Acts 1905, p. 335, Acts 1907, p. 507.]

CHAPTER FIVE

DEALING IN PUBLIC LANDS BY OFFICERS

Art.
142. Officer dealing in public land.
143. Misconduct of land office clerk.
144. Furnishing advance information of survey.
145. Surveyor discovering public land.

Article 142. [164] [123] [118] Officer dealing in public land.—If any person who is an officer or clerk in the general land office, or a district surveyor, or deputy district surveyor, or county surveyor, or his deputy, shall directly or indirectly be concerned in the purchase of any right, title or interest in any public land, in his own name or in the name of any other person, or shall take or receive any fee or emolument for negotiating or transacting any business connected with the duties of his office other than the fees allowed by law, he shall be fined not exceeding five hundred dollars. [P. C. 244, amended in revising 1879.]

Art. 143. [165] [124] [119] Misconduct of land office clerk.—Any clerk or other employee in the general land office, who shall accept or receive from any person money or other thing of value in consideration of services performed in the designation of vacant land, or in discovering or making known to such person any defects in any file or any paper or document in said office, or who shall perform any work out of office hours or receive extra compensation for any work performed in office hours, or who shall handle or interfere with the records and files of said office except in office hours, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1873, p. 182.]

Art. 144. [167] Furnishing advance information of survey.—The information obtained by any survey of the public school, university, asylum or state land made by the board of regents of the Univerity of Texas shall not be communicated by said board or by the person making such survey to any person except the Commissioner of the General Land Office until said information is published for the benefit of the general public. Anyone violating this article shall be fined not exceeding one thousand dollars, or imprisoned not to exceed two years in jail. [Act 1903, p. 234.]

Art. 145. Surveyor discovering public land.—If a licensed land surveyor should discover an undisclosed tract of public land he shall not make known that fact to any one except to the person or persons as may have it enclosed, but he shall forward to the General Land Office a report of the existence of such tract and the acreage therein and its probable value, and on violation of these provisions by such surveyor he shall be fined not to exceed one thousand dollars. [Acts 2nd C. S. 1919, p. 173.]

CHAPTER SIX

PERSONAL PROPERTY OF THE STATE

Art.
146. Failure to make inventory.
147. Secreting or disposing of military property.

Article 146. [173] Failure to make inventory.—Any officer or other person whose duty it is under the laws of this State to make an inventory of personal property belonging to the State, who fails to make such inventory as required by such laws, shall be fined not less than one hundred nor more than five hundred dollars. Each thirty days failure to comply is a separate offense. [Acts 1899, p. 309, Acts 4th C. S. 1918, p. 72.]

Art. 147. [173a] Secreting or disposing of military property.—Whoever shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the active militia of this State, or in any manner pawn or pledge any arms, uniforms, equipments or other military property, issued under any provision of the law or of the military regulations of this State, and any person who shall wear any uniform, or part thereof, or device, strap, knot or insignia of any design or character used as a designation of grade, rank or office, such as are by law or by general regulations duly promulgated, prescribed for the use of the active militia of the State, or similar thereto, except members of the army of the United States or the active militia of this or any other State shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1905, p. 183, Acts 1st C. S. 1917, p. 20.]

CHAPTER SEVEN

THE FLAG AND LOYALTY

Art.
148. Protecting the flag.
149. Exceptions.
150. Using Texas flag to advertise.
151. Sale of article with flag thereon.
152. Insult to United States flag.
153. Disloyalty in writing.
154. Possessing flag of enemy.
155. Disloyal language.
156. Arrest without warrant. Venue.
157. Discrimination against uniform.

Article 148. Protecting the flag.—Whoever shall in any manner, for exhibition or display, place or cause to be placed, any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, color or ensign of the United States of America, or State flag of this State, or ensign, or shall expose or cause to be exposed to public view any such flag, standard, color, or ensign, upon which, after this Act takes effect, shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature, or who shall after this Act takes effect, expose to public view, manufacture, sell, expose for sale, give away, or have in possession for sale, or to give away, or for use for any purpose, any article or substance being an article of merchandise, or receptacle of merchandise or article or thing for carrying or transporting merchandise, upon which after this Act takes effect, shall have been printed, painted, attached or otherwise placed a representation of any such flag or flags, standard, color or ensign to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who shall publicly mutilate, deface, defy, or defile, trample upon or cast contempt either by words or act, upon any Texas flag, standard, color or ensign, shall be fined not exceeding one hundred dollars or be imprisoned in jail for not more than thirty days, or both. The

words flag, standard, color or ensign as used in this article shall include any flag, standard, color, ensign or any picture or representation of either, made of or represented on any substance, and of any size purporting to be, either of, said flag, standard, color or ensign of the United States of America, or a picture or representation, of either upon which shall be shown the colors, the stars and the stripes in any number of either or by which one seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America. The possession by one other than a public officer, as such, of any such flag, standard, color or ensign, on which shall be anything made unlawful at any time by this article, or of any article or substance or thing on which shall be anything made unlawful at any time by this article, shall be presumptive evidence that the same is in violation of this article, and was made, done or created after this Act takes effect, and that such did not exist when this law took effect. [Acts 3rd C. S. 1917, p. 82.]

Art. 149. Exceptions.—The preceding article shall not apply to any act permitted by the Statutes of the United States of America, or by the United States Army and Navy regulations, nor shall it be construed to apply to a newspaper, periodical, book, pamphlet, circular, certificate, diploma, warrant or commission of appointment to office, ornamental picture, article of jewelry or stationery for use in correspondence on any of which shall be printed, or placed said flag, disconnected from any advertisement. [Id.]

Art. 150. Using Texas flag to advertise.—No person shall use any imitation, label, trade-mark, design, device, imprint or form of the flag of the State of Texas for the purpose of advertising or giving publicity to any goods, wares or merchandise, or any commercial undertaking, or for any trade or commercial purpose. Any person, whether in his individual capacity or as an officer, agent or receiver of any corporation, who shall violate this article shall be fined not less than fifty nor more than one hundred dollars, and each day is a separate offense. No provision of this article shall apply to any fraternal or patriotic organizations using the Texas flag for an emblem. [Acts 1st C. S. 1913, p. 28.]

Art. 151. Sale of article with flag thereon.—No person shall offer or expose for sale any article or commodity of commerce bearing the imitation, design, imprint or form of the flag of the State of Texas. Any person whether in his individual capacity or as an officer, agent or receiver of any corporation who shall violate this article shall be fined not less than twenty-five nor more than fifty dollars. Each day shall be a separate offense. [Id.]

Art. 152. Insult to United States Flag.—Any person who shall within this State, publicly or privately, mutilate, deface, defile, defy, tramp upon, or cast contempt upon, either by word or act any flag, standard, color, or ensign of the United States, or that of any of its officers, or on any imitation of either of them, shall be confined in the penitentiary not less than two nor more than twenty-five years. [Acts 4th C. S. 1918, p. 14.]

Art. 153. Disloyalty in writing.—Any person, who shall at any time and place within this State, during the time the United States is at war with any other nation, or nations, commit to writing or printing, or both writing and printing, by letters, words, signs, figures, or any other manner, and in any language, anything of and concerning the United States, the entry or continuance of the United States in the war, or of and concerning the army, navy or marine corps of the United States, any flag, standard, color, or ensign of the United States, or any imitation thereof, or uniform of any of its officers, which is abusive in character, or disloyal to the United States, and reasonably calculated to bring into disrepute the United States, the entry, or continuance of the United States in the war, the army, navy, or marine corps of the United States, any flag[,] standard, color or ensign of the United States, or that of any of its officers, and reasonably calculated to provoke a breach of peace if written to or in the presence of a citizen of the United States, or if said in the presence and hearing of any citizen of the United States shall be confined in the penitentiary not less than two years nor more than twenty-five years. [Id.]

Art. 154. Possessing flag of enemy.—Whoever during the existence of a war between the United States and any other nation or nations shall knowingly within this State display, or have in his possession for any purpose whatsoever, any flag, standard, color, ensign or coat of arms of any nation with which the United States is at war or any imitation thereof, or that of any State, subdivision, city or municipality of any such nation shall be confined in the penitentiary not less than two nor more than twenty-five years. [Acts 4th C. S. 1918, p. 14.]

Art. 155. Disloyal language.—If any person shall, at any time or place within this State, during the time the United States of America is at war with any other nation, use any language in the presence and hearing of another person, of and concerning the United States of America, the entry, or the continuance, of the United States of America in the war, or of and concerning the army, navy, or marine corps of the United States of America, or of and concerning any flag, standard, color, or ensign of the United States of America, or any imitation thereof, or the uniform of any officer of the army of the United States of America, which language is disloyal to the United States of America, or abusive in character, and calculated to bring into disrepute the United States of America, the entry, or continuance, of the United States of America in the war, the army, navy, marine corps of the United States of America, or any flag, standard, color, or ensign of the United States of America, or any imitation thereof, or the flag, color, standard, or ensign, or the uniform of any officer of the army of the United States of America, and is of such nature as to be reasonably calculated to provoke a breach of the peace, if said in the presence and hearing of a citizen of the United States of America, shall be confined in the penitentiary not less than two nor more than twenty-five years. [Acts 4th C. S. 1918, p. 12.]

Art. 156. Arrest without warrant. Venue.—Any officer without warrant may arrest anyone violating any provision of the four preceding articles when the offense is committed in his presence or within his view, or within the view of a magistrate, and such officer about to make such arrest is authorized to require the offender to at once desist from such violation. Travis county shall also have venue of said offenses. The Suspended Sentence Law shall not apply to such offenses. [Acts 4th C. S. 1918, p. 14.]

Art. 157. Discrimination against uniform.—Whoever shall subject or cause to be subjected any other person to the deprivation of any right, privilege or immunity usually enjoyed by the public on account of membership in the army, navy, marine corps or revenue cutter service of the United States, or of the National Guard or naval service of this State, or otherwise in the military or naval service of the United States or of this State, wearing the uniform prescribed for him at that time by law, regulation of the service or custom, on account of his wearing such uniform or of his being in such service, subject only to the limitations established by law and applicable alike to all persons, or who on account of such membership or the wearing of such uniform shall make or cause to be made such discrimination, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1st C. S. 1917, p. 20.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

TITLE 5

OFFENSES AFFECTING THE EXECUTIVE, LEGISLATIVE AND JUDICIAL DEPARTMENTS OF THE GOVERNMENT

Chap.
1. Bribery.
2. Lobbying.
3. Drunkenness in Office.

CHAPTER ONE

BRIBERY

Art.
158. Bribery of certain officers.
159. Officers accepting bribe.
160. Officers specified.
161. Bribery of clerks, etc.
162. Accepting bribe by same.
163. Bribery of auditor, juror, etc.
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176. Acceptance of bribe by witness.
177. "Bribe."
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Article 158. [174] [125] Bribery of certain officers.—Whoever shall bribe or offer to bribe any executive, legislative or judicial officer after his election or appointment, and either before or after he shall have been qualified or entered upon the duties of his office, with intent to influence his act, vote, option [opinion], decision or judgment on any matter, question, cause or proceeding which may be then pending or may thereafter by law be brought before such officer in his official capacity, or do any other act or omit to do any other act in violation of his duty as an officer, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 159, amended in revising 1879.]

Art. 159. [175] [126] Officers accepting bribe.—Any legislative, executive or judicial officer who shall accept a bribe or consent to accept a bribe under an agreement or with an understanding that his act, vote, opinion or judgment shall be done or given in any particular manner or upon a particular side of any question, cause or proceeding which is or may thereafter by law be brought before him, or that he shall make any particular nomination, appointment, or do any other act or omit to do any act in violation of his duty as an officer, shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1858, p. 159, amended in revising 1879.]

Art. 160. [176] [127] Officers specified.—Under the name of executive, legislative and judicial officers are included the governor, lieutenant-governor, comptroller, secretary of state, state treasurer, commissioner of the general land office, commissioner of agriculture, commissioner of insurance, superintendent of public instruction, members of the legislature, aldermen of all incorporated cities and towns, judges of the supreme, district and county courts and of the courts of appeals, attorney general, district and county attorneys, justices of the peace, mayors and judges of such city courts as may be organized by law, county commissioners, school trustees, and all other city, county and State officials. [Acts 1885, p. 69; Acts 1899, p. 320.]

Art. 161. [177] [128] Bribery of clerks, etc.—Whoever shall bribe or offer to bribe, any clerk or other officer of either branch of the Legislature, or any clerk or employé in any department of the State government, with the intent to influence such officer to make any false entry in any book or record pertaining to his office, or to mutilate or destroy any part of such book or record, or to violate any other duty imposed upon him as an officer, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 159, amended in revising 1879.]

Art. 162. [178] [129] Accepting bribe by same.—If any officer named in the preceding article shall accept a bribe so offered, or consent to accept the same, he shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 159, amended in revising 1879.]

Art. 163. [179] [130] Bribery of auditor, juror, etc.—Whoever shall bribe or offer to bribe any auditor, juror, arbitrator, umpire or referee, with intent to influence his decision or bias his opinion in relation to any cause or matter which may be pending before, or may thereafter by law be submitted to such auditor, juror, arbitrator, umpire or referee, shall be imprisoned in the penitentiary not less than two nor more than five years. [Acts 1858, p. 160.]

Art. 164. [180] [131] Acceptance of bribe by same.—If any juror, auditor, arbitrator, umpire or referee shall accept, or agree to accept, a bribe offered for the purpose of biasing or influencing his opinion or judgment, as set forth in the preceding article, he shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 161.]

Art. 165. [181] [132] Offense complete, when.—To complete the offenses mentioned in the two preceding articles, it is not necessary that the auditor, umpire, arbitrator or referee shall have been actually selected or appointed; it is sufficient if the bribe be offered or accepted with a view to the probable appointment or selection of the person to whom the bribe is offered, or by whom it is accepted. Nor is it necessary that the juror shall have been actually summoned; it is sufficient if the bribe be given or accepted in view of his being summoned or selected as such to sit in any particular case, civil or criminal.

Art. 166. [182] [133] Bribery of attorneys.—Whoever bribes or offers to bribe any attorney at law charged with the prosecution or defense of a suit, with intent to induce him to divulge any secret of his client, or any circumstance which came to his knowledge as counsel, to the injury of his client, or with intent to induce him to give counsel or in any way advise or assist the opposite party to the injury of his client in any cause, civil or criminal, or to neglect the interests of his client, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 161.]

Art. 167. [183] [134] Acceptance of bribe by attorney.—If any attorney at law charged, as above stated, with the management of any cause, civil or criminal, shall accept or agree to accept a bribe offered to induce him to divulge any secret of his client, or any circumstance which came to his knowledge as counsel, to the injury of his client, or to give counsel or in any way advise or assist the opposite party to the injury of his client or to neglect the interests of his client, he shall be punished in the manner provided in the preceding article.

Art. 168. [184] [135] Bribery of clerks of court.—Whoever shall bribe or offer to bribe any clerk or deputy clerk of any court of record to induce such officer to alter, destroy, or mutilate any book, record or paper pertaining to his office, or to surrender to the person offending any book, record or paper for any unlawful purpose, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 161.]

Art. 169. [185] [136] Acceptance of bribe by clerk.—If any clerk or deputy clerk of any court of record shall accept or agree to accept a bribe offered for the purpose enumerated in the preceding article, he shall be confined in the penitentiary not

less than two nor more than five years. [Acts 1858, p. 161.]

Art. 170. [186] [137] Bribery of clerks to violate duty.—Whoever shall bribe or offer to bribe any officer named in Article 168 to do or omit to do any other act not enumerated in said article in violation of the duties of his office, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 161.]

Art. 171. [187] [138] Bribe to permit escape.—Whoever shall bribe or offer to bribe any sheriff or other peace officer to permit any prisoner in his custody to escape shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 162.]

Art. 172. [188] [139] Bribe as to process.—Whoever shall bribe or offer to bribe any sheriff or other peace officer, in any case, civil or criminal, to make a false return upon any process directed to him, or fail to return any such process, or summon, or fail to summon any one to serve on a jury, with a view to produce a result favorable to a particular side in any cause, civil or criminal, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 162.]

Art. 173. [189] [140] Bribery of peace officer.—Whoever shall bribe, or offer to bribe, a sheriff or any other peace officer to do or to omit to do any other act not heretofore enumerated in violation of his duty as an officer, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 162.]

Art. 174. [190] [141] Acceptance of bribe by officer.—If any sheriff or other executive or peace officer shall accept or agree to accept a bribe offered, as mentioned in articles 171, 172 and 173, he shall receive the same punishment as is affixed to the offense of giving or offering a bribe in the particular case specified.

Art. 175. [191] [142] Bribery of witness.—Whoever shall bribe, or offer to bribe any witness in any case, civil or criminal, to disobey a subpœna or other legal process, or to avoid the service of the same by secreting himself, or by any other means, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1860, p. 95.]

Art. 176. [192] [143] Acceptance of bribe by witness.—If any witness in any case, civil or criminal, shall accept or agree to accept a bribe offered for any purpose mentioned in the preceding article, he shall be imprisoned in the penitentiary not less than two nor more than five years. [Id.]

Art. 177. [193] [144] "Bribe."—By a "bribe" as used throughout this Code, is meant any gift, emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing an officer or other person, such as are named in this chapter, in the performance of any duty, public or official, or as an inducement to favor the one offering the same, or some other person.

Art. 178. [194] [145] Bribe need not be direct.—The bribe need not be direct; it may be hidden under the semblance of a sale, wager, payment of debt, or in any other manner designed to cover the true intention of the parties. The bribe or promise thereof must precede the act which it is intended to induce the one bribed to perform.

CHAPTER TWO

LOBBYING

Art.
179. Defining lobbying.
180. Privately soliciting vote of legislator.
181. Exceptions.
182. Penalty.
183. Prohibited from going on floor.

Article 179. [195] Defining lobbying.—If any person having any direct interest, or the president or any other officer of any corporation having any direct interest in any measure pending before, or thereafter to be introduced in either branch of the Legislature of this State, in any manner, except by appealing to his reason, privately attempt to influence the action of any member of such Legislature, during his term of office, concerning such measure, he shall be deemed guilty of lobbying. [Sec. 1, Act April 6, 1907, Acts 1907, p. 162.]

Art. 180. [196] Privately soliciting vote of legislator.—If any paid or employed agent, representative or attorney of any person, association or corporation, shall at any place in this State, after the election and during the term of office of any member of the Legislature of this State, privately solicit the vote, or privately endeavor to exercise any influence, or offer anything of value or any other inducements whatever, to any such member of the Legislature, to influence his action concerning any measure then pending or thereafter to be introduced in either branch of the Legislature of this State, he shall be deemed guilty of lobbying. [Sec. 2, Id.]

Art. 181. [197] Exceptions.—The provisions of this law shall not apply to the Governor or a member of the Legislature of this State, nor prohibit any person either in person, or by his agent or attorney, or any corporation by representatives, agents or attorneys from exercising the rights of petition to the Legislature, or from collecting facts, preparing petitions, procuring evidence and submitting the same, together with arguments, to either branch of the Legislature, when in session, or to any committee thereof, in the interest of any measure in which he or it may be interested; but in such case the agency and the interest in the measure or the person so appearing shall be fully disclosed. [Sec. 3, Id.]

Art. 182. [198] Penalty.—Any person who shall be convicted of lobbying, shall be fined not less than two hundred nor more than two thousand dollars, and in addition may, at the discretion of the jury, be imprisoned in the penitentiary for not less than six months nor more than two years. Any violation of this law may be prosecuted in the county where the offense is committed, or in Travis County. [Sec. 4, Id.]

Art. 183. [199] Prohibited from going on floor.—No person employed in any manner to represent the interest in legislation of any person, association or corporation shall go upon the floor of either House of the Legislature, reserved for members thereof, while in session, except upon invitation of such House. Any person violating the provisions of this article shall be fined not to exceed one hundred dollars. [Sec. 5, Id.]

CHAPTER THREE

DRUNKENNESS IN OFFICE

Art.
184. Officer guilty of drunkenness.
185. "State or district officer."
186. County or municipal officer.
187. "Drunkenness."

Article 184. [200] [146] Officer guilty of drunkenness.—Any State or district officer who shall be guilty of drunkenness shall be subject to removal from office in the manner provided by law; and shall be fined not less than ten nor more than two hundred dollars. [Acts 1876, p. 76.]

Art. 185. [201] [147] "State or district officer."—Within the term "State or district officer" are included the governor, lieutenant-governor, the heads of the several executive departments at the Capitol, and their chief clerks, the judges of the supreme court, courts of appeals, and the district courts, district attorneys, members and officers of the senate and house of representatives, and all other officers who derive their appointment directly from State authority.

Art. 186. [202] [148] County or municipal officer.—Any county or municipal officer who shall

be guilty of drunkenness shall, for the first offense, be fined not less than five and not more than fifty dollars; upon a second conviction for the same offense, he shall be fined not less than fifty nor more than one hundred dollars; and upon a third conviction for the same offense, he shall be fined not less than one hundred nor more than three hundred dollars, and be subject to removal from office in the manner provided by law. [Act July 31, 1876, p. 76.]

Art. 187. [203] [149] "Drunkenness."—Drunkenness, as used in the preceding articles is the immoderate use of any spirituous, vinous or malt liquors to such an extent as to incapacitate an officer from the discharge of the duties of his office, either temporarily or permanently. [Id.]

TITLE 6

OFFENSES AFFECTING THE RIGHT OF SUFFRAGE

Chap.

1. Bribery and undue influence.
2. Poll tax.
3. Offenses before election.
4. Offenses by officers of election.
5. Illegal voting.
6. Offenses after election.
7. Riots and unlawful assemblies and misconduct at elections.
8. Limiting expenditure in primary election.
9. Election for constitutional amendments.
10. Election of United States Senator.

CHAPTER ONE

BRIBERY AND UNDUE INFLUENCE

Art.

188. Bribery of voter to influence another.
189. Bribery of election officer.
190. Election officer accepting bribe.
191. Bribery of officer of election.
192. Bribery or attempted bribery of voter.
193. Bribery of elector.
194. Elector accepting bribe.
195. Inducing to pay political assessment.
196. Corruptly using authority or influence.
197. Demanding contribution.

Article 188. [206] Bribery of voter to influence another.—Any person who lends or contributes or offers or promises to lend or contribute or pay any money or other valuable thing to any voter, to influence the vote of any other person, whether under the guise of a wager or otherwise, or to induce any voter to vote or refrain from voting at an election for or against any person or persons, or for or against any particular proposition submitted at an election, or to induce such voter to go to or to remain away from the polls at an election, or to induce such voter or other person to place or cause to be placed his name unlawfully on the list of qualified voters that is required to be furnished by the county tax collector, shall be confined in the penitentiary not less than one nor more than five years, and in addition shall forfeit any office to which he may have been elected at the election with reference to which such offense may have been committed, and is rendered incapable of holding any office under the State of Texas. [Sec. 160, p. 559, Acts 1905.]

Art. 189. [207] [153] [147] Bribery of election officers.—If any person shall bribe, or offer to bribe, any manager, judge or clerk of a public election, or any officer attending the same, as a consideration for some act to be done or omitted to be done contrary to his official duty in relation to such election, he shall be fined not exceeding five hundred dollars. [O. C. 259.]

Art. 190. [208] [154] [148] Election officer accepting bribe.—If any manager, judge or clerk of an election, or officer attending thereon, shall accept a bribe offered as set forth in the preceding article, he shall be fined not exceeding five hundred dollars. [O. C. 260.]

Art. 191. [293] [192e] Bribery of officer of election.—If any person shall bribe or offer to bribe any presiding officer, manager, judge or clerk of any primary election called and held by authority of any political party for the purpose of nominating candidates of such political party for public office as a consideration for some act to be done or omitted to be done contrary to his duty in relation to such election, he shall be fined not exceeding five hundred dollars. [Sec. 5, Act April 8, 1895, Acts 1895, p. 41.]

Art. 192. [293] [192f] Bribery or attempted bribery of voter.—Any person who shall bribe or offer to bribe any voter for the purpose of influencing his vote at any primary election called and held by authority of any political party for the purpose of nominating candidates of such political party for any public office, shall be fined not exceeding five hundred dollars. [Act April 8, 1895, Acts 1895, p. 41.]

Art. 193. [209] Bribery of elector.—Any person who gives or offers to give any office, employment or thing of value, or promises to secure any office, thing of value or employment of or for any voter or to or for any other person, to vote or refrain from voting at an election for or against any person, or for or against any proposition submitted at an election, or to obtain his certificate of exemption, shall be confined in the penitentiary not less than three nor more than five years, and in addition shall forfeit any office to which he may have been elected, and becomes ineligible to any office to which he may have been elected or to any other public office. [Sec. 161, p. 559, Acts 1905.]

Art. 194. [210] Elector accepting bribe.—The penalty prescribed in the preceding article shall be imposed on any one who receives or agrees to receive any money, gift, loan or other thing of value, for himself or any other person, for voting or agreeing to vote, for going or agreeing to go to the polls on election day, or for remaining away or agreeing to remain away from the polls on election day, or for refraining or agreeing to refrain from obtaining his poll tax receipt or certificate of exemption, or for obtaining or agreeing to obtain the same or for voting or agreeing to vote for or against any particular person or proposition submitted to a vote of the people. [Sec. 162, p. 560, Acts 1905.]

Art. 195. [259] Inducing to pay political assessment.—Any officer or employé of the State or of a political subdivision thereof, who directly or indirectly uses his authority or official influence to compel or induce any officer, clerk or employé of the State or any political subdivision thereof, to subscribe, pay or promise to pay any political assessment, shall be fined not to exceed five hundred dollars. [Sec. 190, p. 564, Acts 1905.]

Art. 196. [260] Corruptly using authority or influence.—Any person who, while holding a public office, or seeking a nomination or appointment thereof, corruptly uses or promises to use directly or indirectly any official authority or influence possessed or anticipated in any way to aid any person in securing an office or public employment, or any nomination, confirmation, promotion, appointment or increase of salary, upon consideration that the vote or political influence or action of the person to be benefited, or any other person, shall be given or used in behalf of any candidate, officer or party, or upon any other corrupt consideration, shall be fined not to exceed five hundred dollars. [Sec. 191, p. 564, Acts 1905.]

Art. 197. [261] Demanding contribution.—Any head of any of the departments of State or other public officer who shall demand or receive any money or thing of value from any clerk or other person in his office for his election expenses, or to reimburse him for money already expended, or who shall remove from any office any competent clerk who declines to make such contribution, shall be fined not to exceed five hundred dollars. [Sec. 192, p. 564, Acts 1905.]

CHAPTER TWO

POLL TAX

Art.
198. Poll tax receipts.
199. Tax collector unlawfully delivering receipt.
200. Delivering receipt to fictitious person.
201. Becoming agent to obtain receipt, etc.
202. Refusing to return receipt.
203. Unlawfully paying poll tax of a citizen.
204. Loaning money to pay.
205. Obtaining money on receipt.

Article 198. [224] Poll tax receipts.—Any collector of taxes, or any one in his employ, who wilfully fails or refuses to transcribe correctly from the original poll tax receipt or certificate of exemption and insert in the duplicate retained in the collector's office the name and other description of the citizen required by law to be given by him, or who fails to transcribe correctly from the duplicate kept in the collector's office and insert in the list of qualified voters of a precinct the name and description of the citizen as contained in said duplicate, or who issues a poll tax receipt after the first day of February in any year, bearing a date prior to the first day of February, or who wilfully fails to keep said original duplicate securely locked up when the same are not being used, or permits them to be mutilated, defaced, lost or destroyed, or who conceals, alters or destroys them, shall be fined not less than one hundred nor more than five hundred dollars. [Sec. 152, p. 558, Acts 1905.]

Art. 199. [238] Tax collector unlawfully delivering receipt.—Any tax collector who delivers a poll tax receipt or certificate of exemption to any one except the one entitled thereto and at the time when the tax is paid or the certificate of exemption is applied for, except as specially permitted by law shall be fined not less than one hundred nor more than one thousand dollars, and shall be removed from office. [Sec. 169, p. 561, Acts 1905.]

Art. 200. [249] Delivering receipt to fictitious person.—Any collector of taxes who shall wilfully issue and deliver a poll tax receipt or certificate of exemption to a fictitious person shall be confined in the penitentiary not less than three nor more than five years. [Sec. 180, p. 562, Acts 1905.]

Art. 201. [229] Becoming agent to obtain receipt, etc.—Whoever knowingly becomes agent to obtain a poll tax receipt or certificate of exemption except as provided by law, or any one who gives money to another to induce him to pay his poll tax, shall be fined not exceeding five hundred dollars. [Sec. 157, p. 559, Acts 1905.]

Art. 202. [250] Refusing to return receipt.—Any one to whom a poll tax receipt or certificate of exemption may be intrusted for safe keeping who refuses on the demand of the owner to return the same to the owner thereof shall be fined not to exceed five hundred dollars. [Sec. 181, p. 563, Acts 1905.]

Art. 203. [233] Unlawfully paying poll tax of a citizen.—Any candidate for office or other person who pays or procures another to pay the poll tax of a citizen, except as permitted by law, shall be confined in the penitentiary not less than two nor more than five years. [Sec. 164, p. 560, Acts 1905.]

Art. 204. [239] Loaning money to pay.—Whoever loans or advances money to another knowing it is to be used for paying the poll tax of such other person shall be fined not to exceed five hundred dollars. [Sec. 170, p. 561, Acts 1905.]

Art. 205. [251] Obtaining money on receipt.—Any person who shall sell, pledge, loan or deposit his poll tax receipt or certificate of exemption for money or any other thing of value shall be fined not more than five hundred dollars, and the person who purchases, borrows or obtains possession of the same by way of pledge or loan shall be fined not more than five hundred dollars. Either of the parties to such wrongful act may be compelled to appear and testify in a proceeding against the other, but he shall not thereafter be arrested or punished for his participation in such wrongful act. [Sec. 182, p. 563, Acts 1905.]

CHAPTER THREE

OFFENSES BEFORE ELECTION

Art.
206. Clerk to post names of candidates.
207. Failure to place name of candidate on ballot.
208. Protecting ballots, supplies, and returns.
209. Refusing employé privilege of voting.
210. Certificate of naturalization.
211. Political advertising.
212. Pay for editorial matter.
213. Corporation contributing.
214. Using money donated by corporation.

Article 206. [219] Clerk to post names of candidates.—The county clerk of each county shall post in a conspicuous place in his office for the inspection and information of the public the names of all candidates that have been lawfully certified to him to be printed on the official ballot for at least ten days before he orders the same to be printed on said ballot, and he shall order all the names of the candidates so certified printed on the ballot as provided by law and in case the county clerk refuses or wilfully neglects to comply with this requirement he shall be fined not less than two hundred nor more than five hundred dollars. [Sec. 132, p. 554, Acts 1905.]

Art. 207. [255] Failure to place name of candidate on ballot.—Any county clerk or other officer charged by law with the duty of preparing or having printed the official ballot at any general or special election, and any county chairman or member of the county executive committee of any political party so charged with the duty of preparing or having printed the official ballot to be used at any primary election of such party, who fails or refuses, except in cases permitted by law, to have the name of any candidate or candidates whose nominations have been certified to him placed or printed on such official ballot, shall be confined in the penitentiary not less than one nor more than five years. [Sec. 186, p. 563, Acts 1905.]

Art. 208. [252] Protecting ballots, supplies and returns.—If any person intrusted with the transmission to the precinct election judges of official ballots, poll tax receipts and exemption certificate rolls, sample cards, distance markers and any supplies required to conduct an election wilfully fails to deliver the same within the time required by law, or wilfully does any act to defeat the delivery thereof, or not being a person intrusted therewith, shall do any act to defeat the due delivery thereof, he shall be fined not less than two hundred nor more than five hundred dollars. [Sec. 158 and 183, Acts 1905.]

Art. 209. [244] Refusing employé privilege of voting.—Whoever refuses to an employé entitled to vote the privilege of attending the polls, or subjects such employé to a penalty or deduction of wages because of the exercise of such privilege, shall be fined not to exceed five hundred dollars. [Sec. 175, p. 562, Acts 1905.]

Art. 210. [262] Certificate of naturalization.—Whoever wilfully procures from any court, clerk or other officer a certificate of naturalization, which has been allowed, signed or sealed in violation of the laws of the United States or of this State, with intent to enable him or any other person to vote at any election, when he or such person is not entitled by the laws of the United States to become a citizen or to exercise the elective franchise, shall be confined in the penitentiary not less than five nor more than ten years. [Sec. 193, p. 564, Acts 1905.]

Art. 211. [236] Political advertising.—Anything published in a newspaper, pamphlet or printed journal in favor of or in opposition to any candidate for any public office or in favor of or opposition to the success of any public officer or in favor of any political party, or any proposition submitted to a vote of the people, when the same is published in consideration of the receipt or promise of money or thing of value, shall be known as political advertising; and any

editor, publisher, manager or agent of any newspaper, pamphlet or printed journal who shall publish political advertising other than as advertising matter, which shall be labeled at the beginning or end thereof with the word "advertisement," or who shall wilfully demand or receive for the publication of such political advertising money or other thing of value in excess of the sum due for such service at the regular advertising rates of such newspaper, pamphlet or printed journal, or any person who shall pay, or offer to pay the editor, publisher, manager or agent of any newspaper, pamphlet or printed journal for such service any money or thing of value in excess of the sum due at regular advertising rates, or any person who shall pay or offer to pay any editor, publisher, manager or agent of a newspaper, pamphlet or printed journal any money or thing of value for the publication of political advertising, except as advertising matter, shall be fined not less than five hundred nor more than one thousand dollars, or be imprisoned in jail not less than ten nor more than thirty days. Nothing herein shall be construed as applying to announcements of candidates for office. [Sec. 167, p. 560, Acts 1905.]

Art. 212. [237] Pay for editorial matter.—If any editor or manager of a newspaper or printed journal, or any person having control thereof, shall demand or receive any money, thing of value, reward or promise of future benefit for publishing anything as editorial matter in advocacy of or opposition to any candidate, or for or against any proposition submitted to a vote of the people, he, and also the one offering such reward shall be punished as in the preceding article, and if the offense be committed by the president of any corporation, or by any officer thereof, with the knowledge or consent of its president, in addition to punishment of the individual, its charter shall be forfeited. Either party to a violation of this and the preceding article may be compelled to testify regarding thereto, but shall not be punished for any act regarding which he may have been required to testify. [Sec. 168, p. 561, Acts 1905.]

Art. 213. [263] Corporation contributing.—No national bank, or any other corporation organized by authority of any law of Congress, and doing business in this State, or authorized to do business in this State, or any other corporation organized by the authority of the laws of this State, or of any foreign country, or any corporation authorized by the authority of the laws of any other State of the United States doing business in this State, or authorized to do business in this State, shall make any money contribution, or its equivalent, or offer to pay at any future time any money, or its equivalent, directly or indirectly, for the purpose of aiding or defeating the election of any candidate for the office of Representative in Congress, or Presidential or Vice Presidential Electors from this State, or any candidate for any State, district, county or precinct office in this State, or the success or defeat of any political measure submitted to a vote of the people of this State. Every officer or director of any corporation who shall consent to any contribution as above provided by the corporation in violation of the foregoing provisions shall be fined not less than five hundred nor more than one thousand dollars, or be imprisoned in the penitentiary not less than two nor more than five years, or be both so fined and imprisoned. [Acts 1907, p. 169.]

Art. 214. Using money donated by corporation.—If any officer, agent or employé of any bona fide association, incorporated or unincorporated, organized for and actively engaged for one year prior to such contribution in purely religious, charitable or eleemosynary activities, or local, district or statewide commercial or industrial clubs, or associations, or other civic enterprises or organizations not in any manner nor to any extent directly or indirectly engaged in furthering the cause of any political party, or aiding in the election or defeat of any candidate for office, or aiding in defraying the expenses of any candidate for office, or defraying or aiding in defraying the expenses of any political campaign, or political headquarters, or aiding or assisting the success or defeat of any question to be voted upon by the qualified voters of this State or any subdivision thereof, shall use or permit the use of any stock, money, assets or other property contributed to such organizations by any corporations, to further the cause of any political party, or to aid in the election or defeat of any candidate for office, or to pay any part of the expenses of any candidate for office, or part of the expenses of any political campaign, or political headquarters or to aid in the success or defeat of any political question to be voted on by the qualified voters of the State, or any subdivision thereof, such officer, agent or employé, shall be fined not less than five thousand nor more than ten thousand dollars, and be imprisoned in the penitentiary not less than two nor more than five years. [Acts 1917, p. 25.]

CHAPTER FOUR

OFFENSES BY OFFICERS OF ELECTION

Art.
215. List of qualified voters.
216. Permitting illegal voting.
217. Refusing to permit voter to vote.
218. Influencing voter.
219. Illegal acts of judge of election.
220. Intimidation by election officer.
221. Election officer opening ballot.
222. Election officer divulging vote.
223. Interfering with ballot.
224. Aid in marking ballot.
225. Aid to voter.
226. Presiding officer failing to deliver ballots.
227. Making false canvass.
228. False certificate by chairman.
229. Giving false certificate of election.
230. Wilfully failing or refusing to discharge duty.
231. "Election" defined.

Article 215. [223] List of qualified voters.—Any person who being an officer, clerk or employé of the county collector of taxes, precinct judge, or clerk of election who knowingly puts in the certified list of qualified voters of a precinct any other number than that written when the poll tax receipt or certificate of exemption was issued; or who knowingly delivers to or receives from any voter any poll tax receipt or certificate of exemption on which is placed any other name than that first written when it was issued, shall be fined not to exceed five hundred dollars. [Sec. 151, p. 558, Acts 1905.]

Art. 216. [227] Permitting illegal voting.—Any judge of an election or primary who wilfully permits a person to vote, whose name does not appear on the list of qualified voters of the precinct and who fails to present his poll tax receipt or certificate of exemption or make affidavit of its loss or misplacement or inadvertently left at home, except in cases where no certificate of exemption or tax receipt is required, shall be fined not exceeding five hundred dollars. [Sec. 155, p. 558, Acts 1905.]

Art. 217. [216] Refusing to permit voter to vote.—Any judge of any election who shall refuse to receive the vote of any qualified elector who, when his vote is objected to shows by his own oath that he is entitled to vote, or who shall refuse to deliver an official ballot to one entitled to vote under the law, or who shall wilfully refuse to receive a ballot after one entitled to vote has legally folded and returned same, shall be fined not to exceed five hundred dollars. [Articles 216 and 241.]

Art. 218. [228] Influencing voter.—Any judge, clerk, or other person who may be in the room where an election, either primary, special or general, is being held, who there indicates by word or sign how he desires a citizen to vote or not to vote, shall be fined not less than two hundred nor more than five hundred dollars and be confined in jail not less than ten nor more than thirty days. [Sec. 156, p. 559, Acts 1905.]

Art. 219. [241] Illegal acts of judge of election.—Any judge of election who wilfully permits the removal of ballots before the closing of the polls or wilfully fails to keep order within the polling place, or permits any person, except the clerks and judges of election or those who enter for the purpose of vot-

ing, to come within the guard rail, or knowingly permits anyone to remove, alter or deface a stamp number or signature legally placed on a ballot for future identification shall be fined not to exceed one hundred dollars. [Sec. 172, p. 561, Acts 1905.]

Art. 220. [217] [162] [156] Intimidation by election officer.—Any manager, judge or clerk of an election who shall, while in discharge of his duties as such, by violence or threats of violence, attempt to influence the vote of an elector for or against any particular candidate, shall be fined not exceeding one thousand dollars. [O. C. 268.]

Art. 221. [214] [158] [152] Election officer opening ballot.—Any manager or other officer of election who shall unfold or examine any ballot, or who shall examine the indorsement on any ballot by comparing it with the list of voters when the votes are counted or being counted, or who shall examine or permit to be examined by any other person the ballots subsequent to their being received into the ballot box, except in the manner prescribed by law, shall be confined in the penitentiary not less than one nor more than two years. [Act Aug. 23, 1876, Sec. 16, Act April 19, 1879, Acts 1879, p. 119.]

Art. 222. [215] [159] [292] Election officer divulging vote.—Any presiding officer, judge, clerk, or other officer of any general or primary election who shall from an inspection of the tickets and not in a judicial investigation divulge how any person has voted at such election shall be fined not less than one hundred nor more than five hundred dollars. [Acts Aug. 23, 1876, Act April 19, 1879, Act April 8, 1895.]

Art. 223. [212] [157] [151] Interfering with ballot.—If any manager, judge or clerk of any election shall put into or permit to be put in the ballot box any ballot not given by a voter, or take out or permit to be taken out of such box any ballot deposited therein except in the manner prescribed by law, or change any ballot given by an elector, he shall be fined not less than one hundred nor more than one thousand dollars. [O. C. 264.]

Art. 224. Aid in marking ballot.—Not more than one person at the same time shall be permitted to occupy more than one compartment, voting booth or place prepared for a voter, nor shall any assistance be given a voter in preparing his ballot except when a voter is unable to prepare the same himself because of some bodily infirmity such as renders him physically unable to write, or is over sixty years of age and is unable to read and write, in which case two judges of such election shall assist him, they having been first sworn that they will not suggest by word or sign or gesture how such voter shall vote, and that they will confine their assistance to answering his questions, to naming candidates and the political parties to which they belong, and that they will prepare his ballot as such voter himself shall direct; provided that the voter must in every case explain in the English language how he wishes to vote, and no judge of the election shall use any other than the English language in aiding the voter, or in performing any of his duties as such judge, and in all cases where assistance is given hereunder, two judges of the election shall assist such voter, they having been first sworn that they will not suggest by word, sign or gesture, how such voter shall vote, that they will confine their assistance to answering his questions in the English language, to naming candidates and if the voting be at a general election to naming the parties to which such candidates belong and that they will prepare the ballot as such voter directs, in the English language. If the election be a general election, the judges who assist such voter shall be of different political parties, if there be such judges present, and if the election be a primary election, a supervisor, or supervisors may be present when the assistance herein permitted is being given, but such supervisor must remain silent except in cases of irregularity or violation of this law. Any judge or other officer of an election who shall violate any provision of this article shall be fined not less than two hundred nor more than five hundred dollars, or be confined in jail for not less than two nor more than twelve months, or both. [Acts 1919, p. 94.]

Art. 225. [258] Aid to voter.—Any judge or other officer at an election who assists any voter to prepare his ballot except when a voter is unable to prepare the same on account of blindness or some bodily infirmity such as renders him unable to write, or is over sixty years of age, or who shall aid such voter by using any other than the English language, and any judge or other officer of an election who in assisting a voter so incapacitated, or over sixty years of age in the preparation of his or her ballot shall prepare the same otherwise than said voter shall direct in the English language shall be fined not less than $200.00 nor more than $500.00 or by confinement in jail not less than two nor more than twelve months, or both. [Acts 1905, p. 564, Act Mar. 23, 1918, Act 1919, p. 95.]

Art. 226. [218] [163] [157] Pesiding officer failing to deliver ballot.—Any presiding officer of any election precinct who shall fail, immediately after such election, to securely box, in the mode prescribed by law, all the ballots cast thereat, and within the time provided by law, thereafter to deliver the same to the county clerk of his county, shall be fined not less than fifty nor more than five hundred dollars, and in addition thereto, may be imprisoned in jail not exceeding six months. [Act Aug. 23, 1876, Act April 19, 1879, Act April 4, 1881, Act April 9, 1883.]

Art. 227. [225] Making false canvass.—Any judge or clerk of an election, chairman or member of a party executive committee, or officer of a primary, special or general election, who wilfully makes any false canvass of the votes cast at such election, or a false statement of the result of a canvass of the ballots cast shall be confined in the penitentiary not less than two nor more than five years. [Sec. 153, p. 558, Acts 1905.]

Art. 228. [242] False certificate by chairman.—Any chairman of a county executive or district or State executive committee who is charged with the duty of certifying the names of the candidates selected by a primary convention or primary election who wilfully omits to certify the name of any candidate legally chosen, or who certifies falsely regarding anyone chosen or defeated, shall be fined not exceeding five hundred dollars. [Sec. 173, p. 562, Acts 1905.]

Art. 229. [264] [164] [158] Giving false certificate of election.—If any officer authorized by law to give a certificate of election shall, knowingly and corruptly, give any false certificate thereof, he shall be punished by fine not exceeding three hundred dollars, and in addition thereto may be imprisoned in jail not less than one month nor more than one year. [O. C. 269.]

Art. 230. [226] Wilfully failing or refusing to discharge duty.—Any judge, clerk, chairman or member of an executive committee, collector of taxes, county clerk, sheriff, county judge or judge of an election, president or member of a State Convention, or Secretary of State who wilfully fails or refuses to discharge any duty imposed on him under the law, shall be fined not to exceed five hundred dollars, unless the particular act under some other law is made a felony. [Sec. 154, p. 558, Acts 1905.]

Art. 231. "Election" defined.—The term election" as used in this chapter, means any election, either general, special, or primary, held under authority of law within this State, or within any town, city, district, county, precinct, or any other subdivision within this State for any purpose whatever.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

CHAPTER FIVE

ILLEGAL VOTING

Art.
232. Illegal voting.
233. Instigating illegal voting.
234. False swearing by voter.
235. Procuring voter to swear falsely.
236. Illegal voting at primary.
237. Procuring an illegal vote.
238. Absentee voting.
239. Falsely personating another.
240. Voting at both primary elections.
241. Voting more than once.
242. Using dummy ballot.
243. Illegal acts while voting.

Article 232. [271] [171] [165] Illegal voting.—If any person knowing himself not to be a qualified voter, shall at any election vote for or against any officer to be then chosen, or for or against any proposition to be determined by said election, he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 275, Acts 1887, p. 37.]

Art. 233. [273] [174] [167] Instigating illegal voting.—Whoever shall procure, aid, or advise another to give his vote at any election, knowing that the person is not qualified to vote, or shall procure, aid, or advise another to give his vote more than once at such election, shall be fined not less than one hundred nor more than five hundred dollars, and may in addition thereto be imprisoned in jail not exceeding one month. [O. C. 276, Acts 1876, p. 311.]

Art. 234. [274–283] False swearing by voter.—Whoever shall swear falsely as to his own qualifications to vote, or who shall swear falsely as to the qualifications of a person offering to vote who is challenged as unqualified, shall be confined in the penitentiary not less than two nor more than five years.

Art. 235. [275] [176] [169] Procuring voter to swear falsely.—Whoever wilfully and corruptly procures any person to swear falsely, as prescribed in the preceding article, shall be confined in the penitentiary not to exceed three years, or be fined not exceeding three thousand dollars. [O. C. 279.]

Art. 236. [289] [192a] Illegal voting at primary.—Any person voting at any primary election called and held by authority of any political party for the purpose of nominating candidates of such political party for any public office who is not qualified to vote in the election precinct where he offers to vote at the next State, county or municipal election, or who shall vote more than once at the same or different precincts or polls on the same day, or different days in the same primary election, shall be fined not exceeding five hundred dollars, or be imprisoned in jail not exceeding sixty days, or both. [Acts 1895, p. 40.]

Art. 237. [290] [192b] Procuring an illegal vote.—Whoever shall knowingly procure any illegal vote to be cast at such primary election shall be punished as provided in the preceding article. [Acts 1895, p. 40.]

Art. 238. Absentee voting.—Any person wishing to vote as an absentee voter who shall vote or offer to vote illegally, or in any case or at any place where he is not entitled to vote, or who shall make false representation in any effort to vote, or who shall attempt to vote on any poll tax receipt issued to a person other than himself, shall be fined not more than one thousand dollars or be imprisoned in the county jail not more than two years or both so fined and imprisoned. This law applies to any and all elections including general, special and primary elections. [Acts 1923, p. 318.]

Art. 239. [246] Falsely personating another.—Whoever attempts to falsely personate at an election another person, and vote or attempt to vote on the authority of a poll tax receipt or certificate of exemption not issued to him by the county tax collector, shall be confined in the penitentiary not less than three nor more than five years. [Sec. 177, p. 562, Acts 1905.]

Art. 240. [240] Voting at both primary elections.—Whoever votes or offers to vote at a primary election or convention of a political party, having voted at a primary election or convention of any other party on the same day, shall be fined not less than one hundred nor more than five hundred dollars. [Sec. 171, p. 561, Acts 1905.]

Art. 241. [221] Voting more than once.—Whoever at a general, special or primary election votes or attempts to vote more than once shall be fined not less than one hundred nor more than five hundred dollars. [Sec. 149, p. 558, Acts 1905.]

Art. 242. [213] Using dummy ballot.—Any judge may require a citizen to answer under oath before he secures an official ballot whether he has been furnished with any paper or ballot on which is marked the names of any one for whom he has agreed to vote, or for whom he has been requested to vote, or has such paper or marked ballot in his possession, and he shall not be furnished with an official ballot until he has delivered to the judge such marked paper or ballot, if he has one. Any person who gives, receives or secures or is interested in giving or receiving an official ballot or any paper whatever, on which is marked, printed or written the name of any person for whom he has agreed to vote, or for whom he has been requested to vote, or has such paper marked, written or printed in his possession as a guide by which he could make out his ticket, shall be fined not less than one hundred nor more than five hundred dollars, and be confined in jail thirty days. [Sec. 70, p. 536, Acts 1905.]

Art. 243. [231] Illegal acts while voting.—Any voter who shall show his ballot so as to reveal the vote cast by him, or who marks it otherwise than required by law for identification or who after voting delivers to the precinct judge of election any ballot other than the one delivered to him by the judge at the polling place, shall be fined not exceeding five hundred dollars. [Acts 1905, sec. 559, p. 159.]

CHAPTER SIX

OFFENSES AFTER ELECTION

Art.
244. Altering or destroying ballots, etc.
245. Messengers tampering with ballot.
246. Failing to deliver returns.
247. Preventing delivery of returns.
248. Failure to keep ballot box.
249. County clerk to keep ballot box.
250. County clerk to destroy ballots.
251. Not applicable in cases of contest.
252. Candidate failing to file statement.

Article 244. [248] Altering or destroying ballots, etc.—If any person shall wilfully alter or obliterate, suppress or destroy any ballots, election returns or certificates of election, he shall be confined in the penitentiary not less than three nor more than five years. [Sec. 179, p. 562, Acts 1905.]

Art. 245. [230] Messenger tampering with ballot.—Any person legally intrusted with the ballots cast at an election who shall open and read a ballot or permit it to be done before delivering the same to the person directed shall be fined not exceeding five hundred dollars. [Acts 1905, p. 559.]

Art. 246. [276] [178] [171] Failing to deliver returns.—If any person intrusted with the transmission of an election return, shall wilfully do any act that shall defeat the delivery thereof or shall wilfully neglect to deliver the same as directed by law, he shall be fined not exceeding one thousand dollars. [O. C. 281.]

Art. 247. [277] [179] [172] Preventing delivery of returns.—Whoever shall take away any election return from any person intrusted therewith, either by force or in any other manner, or wilfully do any act that shall defeat the due delivery thereof, as directed by law, shall be fined not exceeding two thousand dollars. [O. C. 282.]

Art. 248. [253] Failure to keep ballot box.—Whoever fails to keep securely any ballot box containing ballots voted at an election, when committed to his charge by one having authority over the same, shall be fined not to exceed five hundred dollars. [Sec. 184, p. 563, Acts 1905.]

Art. 249. [279] [181] [174] County clerk to keep ballot box.—If any county clerk shall fail, neglect or refuse to keep securely any ballot box containing tickets of election committed to his custody by the presiding officer of any election precinct, he shall be fined not less than fifty nor more than five hundred dollars, and, in addition thereto, he may be imprisoned in jail not exceeding six months. [Acts 1876, p. 308.]

Art. 250. [280] [182] [175] County clerk to destroy ballots.—If any county clerk shall fail, after the expiration of one year from the date of any election, to destroy by burning all the ballots cast at such election which may have come to his custody, he shall be punished as prescribed in the preceding article. [Acts 1876, p. 308.]

Art. 251. [281] [183] [176] Not applicable in cases of contest.—The foregoing article shall not apply to cases in which a contest may have grown out of any election within one year after the date of such election. [Acts 1876, p. 308.]

Art. 252. [232] Candidate failing to file statement.—Any candidate for any public office, whether elected or not, who fails to file with the county judge of his county within ten days after the date of a general election an itemized statement of all money or things of value paid or promised by him before or during his candidacy for such office, including his traveling expenses, hotel bills and money paid to newspapers, and make an affidavit to the correctness of such account, showing to whom paid or promised, shall be fined not less than two hundred nor more than five hundred dollars. [Sec. 163, p. 560, Acts 1905.]

CHAPTER SEVEN

RIOTS AND UNLAWFUL ASSEMBLIES AND MISCONDUCT AT ELECTIONS

Art.
253. Riot at election.
254. Unlawful assembly to prevent election.
255. Disturbance at election.
256. Intimidation of electors.
257. Carrying arms about election.
258. Person in service of United States interfering with voter.
259. Electioneering near polls.
260. Defacing election booth, etc.
261. Illegal arrest of voter.

Article 253. [265] [165] [159] Riot at election.—If any riot be committed at the place of holding a public election, or within one mile of such place, with a design to disturb or influence such election, every person engaged therein shall be fined not exceeding one thousand dollars. [O. C. 271.]

Art. 254. [266] [166] [160] Unlawfully [unlawful] assembly to prevent election.—If any unlawful assembly meets at the place of holding an election or within a mile thereof, for the purpose of preventing the holding of such election, all persons engaged in such unlawful assembly shall be fined not exceeding five hundred dollars. [O. C. 272.]

Art. 255. [267] [167] [161] Disturbance at election.—If any person shall disturb any election by inciting or encouraging a tumult or riot, or shall cause any disturbance in the vicinity of any poll or voting place, he shall be fined not less than one hundred nor more than five hundred dollars, and in addition thereto may be imprisoned in jail not exceeding one month. [Acts 1876, p. 311.]

Art. 256. [268] [168] [162] Intimidation of electors.—Whoever shall, by force or intimidation, obstruct or influence, or attempt to obstruct or influence, any voter in the free exercise of the elective franchise, shall suffer the punishment prescribed in the preceding article. [Id.]

Art. 257. [269] [169] [163] Carrying arms about election.—Whoever, other than a peace officer, shall carry any gun, pistol, bowie knife or other dangerous weapon, concealed or unconcealed, on any day of election, during the hours the polls are open, within the distance of one-half mile of any poll or voting place, shall be punished as described in article 255. [Acts 1873, p. 29, Acts 1876, p. 311.]

Art. 258. [256] Person in service of United States interfering with voter.—Any person in the civil or military service of the United States in this State who by threats, bribery, menace or other corrupt means attempts to control or controls the vote of an elector, or annoys, injures or punishes him for the manner in which he exercises his elective franchise in any election, shall be fined not more than five hundred dollars, and may be arrested and tried at any future time when he may be found in Texas. [Sec. 187, p. 563, Acts 1905.]

Art. 259. [231] Electioneering near polls.—Whoever shall do any electioneering or loitering within one hundred feet of the entrance of the place where the election is to be held, or who shall hire any vehicle for the purpose of conveying voters to the polling place, or shall wilfully remove any ballots from the polling place, except as permitted by law, shall be fined not exceeding five hundred dollars. [Sec. 159, p. 559, Acts 1905.]

Art. 260. [243] Defacing election booth, etc.—Any person who, during an election wilfully defaces or injures an election booth or compartment, or wilfully removes any of the supplies provided for elections, or before the closing of the polls wilfully defaces or destroys any list of candidates to be voted for at an election which has been posted in accordance with law, shall be fined not exceeding five hundred dollars. [Sec. 174, p. 562, Acts 1905.]

Art. 261. [270] [170] [164] Illegal arrest of voter.—If any magistrate or peace officer shall knowingly cause an elector to be arrested in attending upon, going to, or returning from an election, except in cases of treason, felony or breach of the peace, he shall be fined not exceeding three hundred dollars. [O. C. 270.]

CHAPTER EIGHT

LIMITING EXPENDITURE IN PRIMARY ELECTION

Art.
262. Definitions.
263. Appointing manager.
264. Limiting expenditures by candidate.
265. Campaign contributions.
266. Paid workers.
267. One candidate contributing to another.
268. Giving or accepting.
269. Sworn statement.

Article 262. Definitions.—The word "candidate" shall mean any person who has announced to any other person or to the public that he is a candidate for the nomination for any office which the laws of this State permit to be determined by a primary election. The words "county nomination" shall mean the nomination for any office to be filled by the choice of the voters residing in only one county or less than one county and the words "District nomination" shall mean the nomination for any office to be filled by the choice of the voters residing in more than one county. The words "State nomination" shall mean the nomination for any office to be filled by the choice of the voters of the entire State.

In all cases where second primary elections may be held in compliance with any law of this State, the first and second primary elections shall for the purposes of this law be considered together as one primary election. [Sec. 1, Act Mar. 20, 1919, Acts 1919, p. 139.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 263. Appointing manager.—Every candidate for a State or District nomination may designate a campaign manager by written appointment filed with the Secretary of State. Every candidate for a county nomination may designate a campaign manager by written appointment to be filed with the county clerk of his county, and each candidate for State or District nomination, or the lawfully designated campaign manager of such candidate, may also designate an assistant campaign manager for each county affected by such candidacy by written appointment to be filed with the county clerk of the county. [Sec. 2, Id.]

Art. 264. Limiting expenditures by candidate.—Any candidate for any nomination for a State, county, district or precinct office, to be determined by a primary election held under the laws of this State, or any campaign manager for such candidate, who shall himself, or by or through any other person or persons, or on behalf of any other person or persons, directly or indirectly, give, pay or expend any money, or pay or give anything of value, or promise to give, pay or expend any money or to pay or to give anything of value, or authorize any expenditure or assume any pecuniary liability in furthering or opposing the candidacy of any person for any nomination to be determined by such primary election, except for the purposes provided for by the laws of this State, governing such primary elections; or any candidate or any campaign manager of any candidate or his clerk or agent, or assistant campaign manager, or his clerk or agent, in furthering or opposing the candidacy of any person for any nomination in any such primary election, who shall expend any money, or give or promise to give or pay any money or anything of value, in excess of the amount fixed and prescribed by the laws of this State regulating expenditures by candidates and campaign managers, at such primary elections, shall be fined not exceeding one thousand dollars, or confined in jail for not more than one year, or both, or be confined in the penitentiary for not less than one nor more than five years. [Sec. 3, Id.]

Art. 265. Campaign contributions.—It shall be lawful for any person to make campaign contributions to be paid directly to the candidate or his lawfully appointed campaign manager or by citizens of any county to the lawfully designated and appointed assistant campaign manager for such county, such contributions to be used for lawful purposes. It shall be lawful for any citizens residing in any locality to raise by voluntary contributions a fund not exceeding fifty dollars for the purpose of defraying the expenses of any political meeting to be held in such locality, such expense to include the cost of advertising such meeting, or providing a place to hold the same, or providing music therefor, or the bona fide traveling expenses and hotel bills of speakers. A statement of all receipts and disbursements for such purposes signed and sworn to by the person or persons receiving and disbursing the same shall be filed with the county clerk of the county in which such meeting is held, within twenty-four hours after it is held. It shall be lawful for any person to expend a sum for postage, or telegraph or telephone tolls, or for cost of any correspondence or any other lawful purpose out of his own funds where the sum is not to be repaid to him in behalf of any one candidate a sum which shall not in the aggregate exceed ten dollars. It shall be lawful for any person to contribute bona fide his own personal services and personal traveling expenses, including hotel bills while traveling in the support of any candidacy. Except as expressly permitted by the foregoing provisions of this article, it shall be unlawful for any person other than candidates for nomination to be determined by primary elections or the campaign managers or assistant campaign managers of such candidate lawfully designated as provided in this chapter or the agents of such campaign managers or assistant campaign managers lawfully authorized as provided in this chapter, either himself or by or through any other person or on behalf of any other person directly or indirectly to give, pay or expend any money or give or pay anything of value or promise to give, pay or expend any money or authorize any expenditure or assume any pecuniary liability for the purpose of aiding, or defeating or helping to defeat the nomination at any such primary election of any candidate for any nomination to be determined thereby. Any person who shall violate any provision of this article shall be punished by a fine not to exceed one thousand dollars or by confinement in jail for not more than one year, or by both such fine and imprisonment, or by confinement in the penitentiary for not less than one nor more than five years. [Sec. 4, Id.]

Art. 266. Paid workers.—Whoever otherwise than in compliance with the provisions of this chapter, shall hire or employ or offer to hire or employ or shall reward or give to any person anything of value for his services or for loss of time or for reimbursement for his expenses in consideration of such person directly or indirectly working, electioneering or making public addresses for or against any candidate for a nomination in a primary election, or who rewards or offers to reward any person for his vote or influence or the promise of his vote or influence for or against any candidate for nomination in a primary election, shall be fined not to exceed one thousand dollars, or be confined in jail for not more than one year, or both, or be confined in the penitentiary not less than one nor more than five years. [Sec. 5, Id.]

Art. 267. One candidate contributing to another.—Any candidate for a nomination in a primary election or his campaign manager or his assistant campaign manager, who shall directly or indirectly himself or by or through another person, give, pay, expend or contribute any money or thing of value for the furtherance of the candidacy of any other candidate shall be fined not to exceed one thousand dollars or be confined in jail not to exceed one year, or both. [Sec. 6, Id.]

Art. 268. Giving or accepting.—Any candidate or other person who furnishes, gives, or delivers to another person any money or other thing of value to be used in violation of or for any purpose prohibited by any provision of this chapter and any person who receives or accepts any money or thing of value to be used in violation of or for any purpose prohibited by any provision of this chapter shall be punished by a fine not to exceed $1000.00, or by confinement in jail for not more than one year, or by both such fine and imprisonment, or by confinement in the penitentiary for not less than one nor more than five years. [Sec. 7, Id.]

Art. 269. Sworn statement.—Each candidate for nomination in a primary election and every campaign manager or assistant campaign manager for any such candidate, is hereby required to keep an accurate record of all funds received and disbursed for campaign purposes, which record shall be preserved for a period of twelve months, and shall be open to inspection of all opposing candidates and qualified voters, and every candidate and campaign manager is hereby required to file a sworn statement of all monies previously received or disbursed by him, including money borrowed and liabilities incurred but not paid, not more than thirty nor less than twenty-five days prior to the date of the primary election, and not more than twelve nor less than eight days prior to the date of the primary election. Each such statement shall include all items contained in all statements previously made in accordance with the requirements of this article if any, and shall include the names of all contributors to any campaign fund handled by the party making the same, and the names of all persons from whom any money has been received or from whom any money has been borrowed for such fund, and the names of all persons to whom disbursements exceeding ten dollars in amount have been made and the purposes of such disbursements. Such statement shall also set forth that it is as full

and explicit as the party making it is able to make, and the party making it shall before some officer qualified to administer oaths, take and subscribe the following oath, which shall be filed with said statement.

"I do solemnly swear that the foregoing statement filed herewith correctly shows all moneys received by me and disbursed by me or in my behalf or with my knowledge or consent through or by any other person in connection with the candidacy of ——— for the nomination for ——— before the ——— primary election, and that I have neither directly or indirectly arranged or assented to, encouraged or connived at the spending of any money other than as shown in said statement, and that I have not violated any provision of the laws of Texas, governing primary elections of the expenditure of funds in connection with a candidacy for a nomination in such primary election in letter or in spirit."

Such statements and oaths shall be filed within the times required by this article by candidates for State and District nominations and their campaign managers with the Secretary of State, and by candidates for County nominations and their campaign managers and by the assistant campaign managers of candidates for State and District nominations with the County Clerk of the County in which they reside.

Whoever shall wilfully and corruptly make any false oath, affidavit or sworn statements in complying with the requirements of this article shall be fined not to exceed $1000.00 or be confined in jail for not more than one year, or both, or be confined in the penitentiary not less than one nor more than five years. [Sec. 8, Id.]

CHAPTER NINE

ELECTION FOR CONSTITUTIONAL AMENDMENTS

Art.
270. Refusing judge, clerk and supervisor.
271. Making false return or certificate of result.
272. Intimidating voter.
273. False certificate.
274. County judge refusing to appoint officers.

Article 270. Refusing judge, clerk and supervisor.—Whenever any proposed amendment to the Constitution of this State is to be voted upon by the qualified voters of this State, either at an election held for that purpose or at any election for the State officers, the county chairman of any organization advocating, and the county chairman of any organization opposing the adoption of such amendment, or if such county chairman fails to act, then three members of the county executive committee of any organization advocating, or three members of the county executive committee opposing the adoption of such constitutional amendment may at any time not less than five days before the election at which such proposed amendment is to be voted upon, nominate one judge, one clerk and one supervisor to serve as judge, clerk and supervisor, respectively, for the voting precinct or box for which they are so selected, who shall be qualified voters of the voting precinct or box for which they are chosen, by presenting in writing to the county judge of the county the names of such judges, clerks and supervisors so selected, and such county judge shall appoint the parties nominated to act in such capacities at the respective voting precincts and boxes for which they are respectively selected. Should the county judge fail or refuse to appoint such officers, they shall apply to the officers and judges of the voting precinct or box for which they were respectively nominated, and the manager and judges of such precinct or box shall permit such persons so selected to act in the capacities named. The managers or judges of the election so refusing, shall be fined not less than one hundred nor more than five hundred dollars, and imprisoned in jail for not less than twenty and not more than sixty days. [Secs. 1 and 2, Act March 17, 1911, Acts 1911, p. 144.]

Art. 271. Making false return or false certificate of result.—Any manager, judge or clerk of any such election, who shall knowingly make any false return or false certificate of the result of any such election, shall be confined in the penitentiary not less than one nor more than five years. [Sec. 5, Id.]

Art. 272. Intimidating voter.—Any election officer or supervisor who shall intimidate or attempt to intimidate any voter, or knowingly refuse to allow any qualified voter to vote, or any person who, within one hundred feet of the voting box on election day, shall intimidate or attempt to intimidate any qualified voter from voting, or in any manner by word or act attempt to influence any voter to cast his vote for or against any question provided under this Act to be voted upon, shall be fined not less than fifty nor more than five hundred dollars. [Sec. 5a, Id.]

Art. 273. False certificate.—Any officers of any county upon whom is placed by law the duty of making and certifying to the Secretary of State returns of any such election, who shall knowingly make or certify to any false certificate or false statement of the result of any such election shall be confined in the penitentiary for not less than one nor more than five years. [Sec. 5, Id.]

Art. 274. County judge refusing to appoint officers.—If any county judge refuses to appoint the officers as provided for and required by law, he shall be fined not less than fifty nor more than five hundred dollars, and be imprisoned in jail not less than ten nor more than thirty days, and such refusal shall be grounds for his impeachment and removal from office. [Sec. 7, Id.]

CHAPTER TEN

ELECTION OF UNITED STATES SENATOR

Art.
275. Offenses at primary election.
276. Failing to make statement.
277. Failure of duty.
278. Unlawful acts.
279. Candidate failing to perform duty.
280. Candidate doing unlawful acts.

Article 275. Offenses at primary election.—At each primary election held in this State for the nomination of a candidate for United States Senator, each provision of the laws of this State which has for its object the protection of the ballot and the safeguarding of the public against fraudulent voting, undue influence, corrupt practices, and in fact each restriction of whatever kind as applied to any election held in this State whether general, special or primary shall be held to apply to a primary election held for or when a candidate for United States Senator is to be nominated when not in conflict with the provisions of this chapter. The violation of any such provision or restriction at any such primary election shall be punished in the same manner as prescribed by law for the violation of any election law whether general, special or primary. [Sec. 6, p. 102, Acts 1st C. S. 1913.]

Art. 276. Failing to make statement.—Each person who shall receive any payment directly or indirectly for political purposes in a campaign before a general election for United States Senator whether as salary or as expenses, shall within thirty days after such payment has been made or promised make a sworn statement showing in detail said payment or promised payments, by whom made and what services were rendered for same. This statement shall be filed with the [S]secretary of State. Any person who comes within the provisions of this article and fails to make such statements, shall be confined in jail not less than ten nor more than thirty days. [Sec. 24, p. 107, Id.]

Art. 277. Failure of duty.—Any person other than a candidate for United States Senator and any member of any personal campaign committee or any party committee, who shall fail to do and perform any thing required of him in reference to the disbursement or collection, or the payment of money, or thing

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

of value for political purposes, as defined by this chapter, shall be confined in jail not less than thirty nor more than one hundred days, and in addition thereto may be fined not less than one hundred nor more than five hundred dollars. [Sec. 30, p. 108, Id.]

Art. 278. Unlawful act.—Any person (not a candidate) and any member of any personal campaign committee or party committee who shall do any of the things forbidden by this chapter with reference to the payment, collection or disbursement of money or other thing of value for political purposes, as defined herein, shall be confined in jail not less than thirty nor more than one hundred days, and in addition thereto may be fined not less than two hundred nor more than five hundred dollars. [Sec. 31, Id.]

Art. 279. Candidate failing to perform duty.—Any candidate for United States Senator who shall fail to do any act required of him under the provisions of this chapter relating to the disbursement or collection of money or anything of value for political purposes, shall be confined in jail not less than thirty nor more than one hundred days, and in addition thereto may be fined not less than two hundred nor more than five hundred dollars. [Sec. 32, p. 108, Id.]

Art. 280. Candidate doing unlawful acts.—If any candidate for United States Senator shall do any act forbidden by any provision of this chapter with reference to the disbursement or collection of money, or anything of value, for political purposes as defined by this chapter, he shall be confined in jail not less than thirty nor more than one hundred days, and in addition thereto may be fined not less than two hundred nor more than five hundred dollars. [Sec. 33, p. 108, Id.]

TITLE 7

RELIGION AND EDUCATION

Chap.

1. Disturbance of Religious Worship.
2. Sunday Laws.
3. Teachers and Schools.

CHAPTER ONE

DISTURBANCE OF RELIGIOUS WORSHIP

Art.

281. Disturbing congregation.
282. Offender may be bound over.

Article 281. [296] [193] Disturbing congregation.—Any person who, by loud or vociferous talking or swearing, or by any other noise or in any other manner wilfully disturbs any congregation or part of a congregation assembled for religious worship and conducting themselves in a lawful manner, or who wilfully disturbs in any manner any congregation assembled for the purpose of conducting or participating in a Sunday School, or to transact any business relating to or in the interest of religious worship or a Sunday School, and conducting themselves in a lawful manner, shall be fined not less than twenty-five nor more than one hundred dollars. [O. C. 284, Acts 1873, p. 43, Acts 1883, p. 17, Acts 1897, p. 102.]

Art. 282. [297] [194] Offender may be bound over.—If complaint be made to any magistrate that a person has committed the offense mentioned in the preceding article, he may be, at the discretion of the magistrate, bound over to keep the peace and to refrain from like disturbance for the term of one year.

CHAPTER TWO

SUNDAY LAWS

Art.

283. Working on Sunday.
284. Not applicable.
285. Horse racing or gaming on Sunday.
286. Selling goods on Sunday.
287. Permitting the sale of gasoline and lubricants on Sunday.

Article 283. [299] [196] [183] Working on Sunday.—Any person who shall labor, or compel, force, or oblige his employés, workmen, or apprentices to labor on Sunday, or any person who shall hunt game of any kind whatsoever on Sunday within one-half mile of any church, school house, or private residence, shall be fined not less than ten nor more than fifty dollars. [Act Dec. 16, 1863, Act Dec. 2, 1887, Acts 1887, p. 108.]

Art. 284. [300] [197] Not applicable.—The preceding article shall not apply to household duties, works of necessity or charity; nor to necessary work on farms or plantations in order to prevent the loss of any crop; nor to the running of steamboats and other water crafts, rail cars, wagon trains, common carriers, nor to the delivery of goods by them or the receiving or storing of said goods by the parties or their agents to whom said goods are delivered; nor to stages carrying the United States mail or passengers; nor to foundries, sugar mills, or herders who have a herd of stock actually gathered and under herd; nor to persons traveling; nor to ferrymen or keepers of toll bridges, keepers of hotels, boarding houses and restaurants and their servants; nor to keepers of livery stables and their servants; nor to any person who conscientiously believes that the seventh or any other day of the week ought to be observed as the Sabbath, and who actually refrains from business and labor on that day for religious reasons. [Act Dec. 2, 1871, Acts 1871, p. 62. Amended in revising 1879.]

Art. 285. [301] [198] Horse racing or gaming on Sunday.—Any person who shall run or be engaged in running any horse race, or who shall permit or allow the use of any nine or ten pin alley, or who shall be engaged in match shooting or any species of gaming for money or oher [other] consideration, within the limits of any city or town on Sunday, shall be fined not less than twenty nor more than fifty dollars. [Acts 1871, p. 62.]

Art. 286. [302] [199] [186] Selling goods on Sunday.—Any merchant, grocer, or dealer in wares or merchandise, or trader in any business whatsoever, or the proprietor of any place of public amusement, or the agent or employé of any such person, who shall sell, barter, or permit his place of business or place of public amusement to be open for the purpose of traffic or public amusement on Sunday, shall be fined not less than twenty nor more than fifty dollars. The term place of public amusement, shall be construed to mean circuses, theaters, variety theaters and such other amusements as are exhibited and for which an admission fee is charged; and shall also include dances at disorderly houses, low dives and places of like character, with or without fees for admission. [Act Dec. 2, 1871, Acts 1883, p. 66, Acts 1887, p. 108.]

Art. 287. Permitting the sale of gasoline and lubricants on Sunday.—The preceding article shall not apply to markets or dealers in provisions as to sales of provisions made by them before 9 o'clock a. m., nor to the sales of burial or shrouding material, newspapers, ice, ice cream, milk, nor to the sending of telegraph or telephone messages at any hour of the day nor to keepers of drug stores, hotels, boarding houses, restaurants, livery stables, bath houses, or ice dealers, nor to telegraph or telephone offices, nor to sales of gasoline or other motor fuel, nor to vehicle lubricants. [Acts 1925, p. 347.] [39th Leg., ch. 139, § 1.]

CHAPTER THREE

TEACHERS AND SCHOOLS

Art.

288. Shall use English language.
289. Shall teach patriotism.
290. To teach Texas history.
291. Approving voucher without certificate.
292. Traffic in examination questions.
293. Violating Textbook law.
293a. Frustrating use of prescribed text books.
293b. Rebate on text books.
293c. Violating text book law.
294. Refusal to answer census trustee.
295. Loitering on school grounds.

Art.
296. Transfer of school children.
297. School attendance required.
298. Exempt from attendance.
299. Duties of parent or guardian.
300. Habitual truant.
301. School reports.

Article 288. Shall use English language.—Except as herein provided, each teacher, principal and superintendent employed in the public free schools of this State shall use the English language exclusively in the conduct of the work of the schools and recitations and exercises of the school shall be conducted in the English language, and the trustees shall not prescribe any texts for elementary grades not printed in English; provided, however, that it shall be lawful to provide text books for and to teach the Spanish language in elementary grades in the public free schools in counties bordering on the boundary line between the United States and the Republic of Mexico and having a city or cities of five thousand or more inhabitants according to the United States census for the year 1920. It is lawful to teach Latin, Greek, French, German, Spanish, Bohemian, or other language as a branch of study in the high school grades as outlined in the state course of study. Any such teacher, principal, superintendent, trustee, or other school official having responsibility in the conduct of the work of such schools who fails to comply with the provisions of this article shall be fined not less than twenty-five nor more than one hundred dollars, cancellation of certificate or removal from office, or both fine and such cancellation or fine and removal from office. [Acts 4th C. S., 1918, p. 170; Acts 1927, 40th Leg., p. 267, ch. 188, § 1.]

Art. 289. Shall teach patriotism.—The daily program of every public school shall be so formulated by the teacher, principal or superintendent [superintendent] as to include at least ten minutes for the teachings of intelligent patriotism, including the needs of the State and Federal Governments, the duty of the citizen to the State, and the obligation of the State to the citizen. Any official or employé of the public free schools who fails to perform his legal duty in connection with the provisions of this law shall be subject to a fine of not more than five hundred dollars or removal from office or both fine and removal from office. [Acts 4th C. S., 1918, p. 67.]

Art. 290. To teach Texas History.—The History of Texas shall be taught in all public schools in and only in the history course of all such schools. The said course shall not be less than two hours in any one week. The State Superintendent of Public Instruction shall notify the different county and city superintendents as to how said course shall be divided, and any city or county superintendent who fails or refuses to follow out the provisions of this article shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1917, p. 302.]

Art. 291. [1512] [1006] Approving voucher without certificate.—Any county or city superintendent or school trustee who approves any teacher's contract or voucher until the person has presented a valid certificate shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1891, p. 187.]

Art. 292. [1513] Traffic in examination questions.—Whoever shall sell, barter, or give away, prior to any forthcoming examination, to applicants for teachers' certificates, or to any person, the questions prepared by the State Superintendent of Public Instruction to be used by the county, summer normal, or any board of examiners in the examination of teachers at said forthcoming examination; or any person who shall accept or otherwise obtain possession of such questions, or the answers thereto, prior to any such examination; or whoever shall use the same fraudulently at the time of said examination, or thereafter; or who shall permit or aid in the substitution of examination papers fraudulently prepared to be substituted for examination papers prepared during the examination; or who accepts remuneration for the granting of certificates or for aiding others to obtain certificates, except as provided for by law, shall be fined not less than one hundred and not more than five hundred dollars and imprisoned in jail for not less than twenty nor more than sixty days. [Acts 1901, p. 272, Acts 1905, p. 296, Acts 3rd C. S. 1920, p. 114.]

Art. 293. Violating Textbook Law.—Any person who wilfully violates any provision of the law providing for the purchase and distribution of free text books for the public free school[s] shall be fined not less than five nor more than one hundred dollars. [Acts 1919, p. 47.]

This article is superseded by article 293c.

Art. 293a. Frustrating use of prescribed text books.—Any school trustee who shall prevent or aid in preventing the use in any public school in this State of the books or any of them as adopted under the provisions of this Act, or any teacher in any public school in this State who shall wilfully fail or refuse to use the said books shall be guilty of a misdemeanor and upon conviction shall be fined a sum of not less than five dollars and not more than fifty dollars for each offense, and each day of such wilful failure or refusal by said teacher or wilful prevention of the use of the books by said trustee shall constitute a separate offense. [Acts 1925, 39th Leg., ch. 176, p. 427, § 23.]

The act referred to in this article, and article 293c, is the free textbook act, Acts 1925, 39th Leg., p. 417, ch. 176, the civil provisions of which are set forth in the Revised Civil Statutes 1925 as articles 2839 to 2876j.

Art. 293b. Rebate on text books.—No trustee or teacher shall ever receive any commission or rebate on any books used in the schools with which he is concerned as such trustees or teacher and if any such trustee or teacher shall receive or accept any such commission or rebate he shall be guilty of a misdemeanor and upon conviction he shall be fined not less than fifty dollars and not more than one hundred dollars. [Acts 1925, 39th Leg., ch. 176, p. 427, § 24.]

Art. 293c. Violating textbook law.—A wilful violation of any provision of this Act by any person shall be a misdemeanor punishable by fine of not less than $5.00 nor more than $100.00. [Acts 1925, 39th Leg., ch. 176, p. 433, § 48.]

See note to article 293a. This article apparently supersedes article 293.

Art. 294. [418] Refusal to answer census trustee.—Every person having control of any child which will be over seven and under seventeen years of age on the first of September next thereafter and who, being requested by the census trustee to prepare the form prescribed by law giving the information showing the name, sex and date of birth of each child of which he has control and which is within said ages, or to give the information necessary to enable the trustee to prepare the same, shall refuse to do so, or shall refuse to make oath to such form when filled according to his statement of facts in regard to said children, or shall fail to return the form left at his home in his absence to the census trustee as required by law, shall be fined not less than five nor more than ten dollars. [Acts 1893, p. 199, Acts 1905, p. 285.]

Art. 295. [1514] Loitering on school grounds.—Any person who loiters or loafs upon any public school grounds during the session of such school after being warned by the person in charge of such school to leave such grounds shall be fined not less than five nor more than twenty-five dollars. [Acts 1907, p. 452.]

Art. 296. Transfer of school children.—In the case of conditions arising from public calamity in any section of the State such as serious floods, prolonged drouth, or extraordinary border disturbances, resulting after the scholastic census has been taken, in such sudden changes of the scholastic population of any county as would work a hardship in the support of the public free schools of the said county, the State apportionment of any child of school age may, on approval of the State Board of Education, be ordered

by the State Superintendent of Public Instruction to be transferred to any other county or independent school district in any other county; providing that the facts warranting such transfer shall be sent to the State Superintendent by the county or district board of trustees of schools to which transfer is to be made with a formal request for the said transfer before the first of August of the year in which such unusual conditions occur, and provided further that no application for emergency transfers shall be granted unless the number of transfers applied for exceeds twenty per cent. of the number of children assigned to said district including regular transfers as a result of the last preceding census. The State Superintendent shall in such case notify the county superintendent of the county to which the funds are to be transferred and the county superintendent of the county from which the funds are to be transferred that final apportionments of school funds cannot be made under these circumstances before August 15. All arrangements for the said emergency transfers must be completed by the 15th of August following the unusual conditions causing the emergency. Children whose State funds are thus transferred to any county shall be included in the number of children for whom the county school apportionment of the said county is made. Any county judge serving as ex-officio county superintendent, or any county superintendent, district, city or town superintendent or any school officer who refuses to comply with the provisions of this article shall be fined not less than $50.00 nor more than $500.00, or be confined in jail not more than sixty days, or both. [Acts 1923, p. 253.]

Art. 297. School attendance required.—Every child in this State who is eight years and not more than fourteen years old shall be required to attend the public schools in the district of its residence, or in some other district to which it may be transferred as provided by law, for a period of not less than one hundred days. The period of compulsory school attendance at each school shall begin at the opening of the school term unless otherwise authorized by the district school trustees and notice given by the trustees prior to the beginning of such school term; provided that no child shall be required to attend school for a longer period than the maximum term of the public school in the district where such child resides. [Acts 1915, p. 94, Acts 1923, p. 255.]

Art. 298. Exempt from attendance.—The following classes of children are exempt from the requirements of the compulsory attendance law:

(a) Any child in attendance upon a private or parochial school which shall include in its course a study of good citizenship, and shall make the English language the basis of instruction in all subjects.

(b) Any child whose bodily or mental condition is such as to render attendance inadvisable, and who holds definite certificate of a reputable physician specifying this condition and covering the period of absence.

(c) Any child who is blind, deaf, dumb, or feeble-minded, for the instruction of whom no adequate provision has been made by the school district.

(d) Any child living more than two and one-half miles by direct and traveled road from the nearest public school supported for children of the same race and color of such child, and with no free transportation provided.

(e) Any child more than twelve years of age who has satisfactorily completed the work of the seventh grade of a standard elementary school of seven grades, and whose services are needed in support of a parent or other person standing in parental relation to the child, may, on presentation of proper evidence to the county superintendent of public instruction, be exempted from further attendance at school. [Acts 1915, p. 94, Acts 1921, p. 235, Act Mar. 23, 1923, Acts 1923, p. 255.]

Art. 299. Duties of parent or guardian.—If any parent or person standing in parental relation to a child within the compulsory school attendance ages who is not properly excused from attendance upon school for some exemption provided by law fails to require such child to attend school regularly for such period as is required by law, it shall be the duty of the attendance officer who has jurisdiction in the territory where said parent or person standing in parental relation resides, to warn such parent or person standing in parental relation that this law must be immediately complied with, and upon failure of said parent or person standing in parental relation to immediately comply with this law after such warning has been given, the official discharging the duties of the attendance officer shall forthwith file complaint against such parent or person standing in parental relation to said child, which complaint shall be filed in the County Court, or in the Justice Court in the precinct where such parent or guardian resides. Any parent or other person standing in parental relation upon conviction for failure to comply with the provisions of this law shall be fined for the first offense five dollars, and for the second offense ten dollars, and for each subsequent offense twenty-five dollars. Each day that said child remains out of said school after said warning has been given or after said child has been ordered in school by the Juvenile Court, may constitute a separate offense. [Acts 1915, p. 96.]

Art. 300. Habitual truant.—If any parent or person standing in parental relation to any child within the compulsory school attendance ages shall present proof that he or she is unable to compel said child to attend school, said person shall be exempt from the penalties provided in the preceding article as regards the non-attendance of such child, and such child may be proceeded against as an habitual truant and be subject to commitment to the State Juvenile Training School or any other suitable school agreed upon between such parent or guardian and the judge of the Juvenile Court. [Id.]

Art. 301. School reports.—The State Superintendent of Public Instruction shall require of Judges acting as ex-officio county superintendents of public schools, of county, city and town superintendents, of county and city treasurers and depositories, and of treasurers and depositories of school boards, and of other school officers and teachers, such school reports relating to the school fund and to other school affairs as he may deem proper for collecting information and advancing the interests of the public schools, and shall furnish the county, city and town superintendents, treasurers, and depositories, and other school officers and teachers for the use of such teachers and officers the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them. All teachers, librarians, school presidents, superintendents, principals, or other school officers employed by all schools supported wholly or partly by the State, shall fill out and send to the State Department of Education, before the expiration of the first school month of each annual session, a registration card, supplied by the State Department of Education, which card shall furnish blanks for useful statistical information, and said teachers, librarians, school presidents, superintendents, and principals shall not be paid the salary for the first month's services, except on the presentation of a receipt certifying that the said registration card has been received by the State Department of Education. The monthly salary of any county judge acting as ex-officio county superintendent of public schools, or any county, district, city or town superintendent, or principal or any teacher or librarian in any school supported wholly or partly by the State, or any assessor, county treasurer, treasurer in county school depository or treasurer of any school district depository, shall be withheld by the officials or authorities paying the said salary, on notification by the State Superintendent of Public Instruction that said county judge, acting as ex-officio county superintendent of public schools, county, district, city or town superintendent or principal, teacher, librarian, assessor, county treasurer, treasurer of county school depository or treasurer of school district depository, has refused or failed to make the reports required of him; provided, that this notifica-

tion shall not be sent by the State Superintendent until at least two written requests have been made for the desired information and until thirty days have elapsed from the time of the first request without the receipt of the information required; in such case the aforesaid monthly salary shall be withheld until a notice is received from the State Superintendent, certifying that the information requested has been furnished by the delinquent person.

Any employé of the State or of any district, county, city, town or school, who may be responsible for the payment of the salary of any county judge acting as ex-officio county superintendent of public schools, or any county, district or town superintendent or principal, or other school officer, or any teacher, librarian, assessor, county treasurer, treasurer of county school depository, or treasurer of school district depository, after notice by the State Superintendent that the said person has failed to comply with the provisions of this article who shall fail to comply with the provisions of this article shall be fined not less than fifty nor more than five hundred dollars. [Acts 1917, p. 294, Acts 2nd C. S. 1919, p. 185.]

TITLE 8

OFFENSES AGAINST PUBLIC JUSTICE

Chap.

1. Perjury.
2. False Swearing.
3. Subornation of Perjury and False Swearing.
4. Arrest and Custody of Prisoners.
5. False Certificate or Entry by an Officer.
6. Extortion and Peculation.
7. Failure of Duty.
8. Miscellaneous Offenses.

CHAPTER ONE

PERJURY

Art.

302. "Perjury."
303. Mistake or agitation.
304. Oath must be legally administered.
305. And about something past or present.
306. In what sort of proceeding.
307. Immaterial statement.
308. Punishment.
309. Perjury in capital case.

Article 302. [304] [201] [188] "Perjury."—Perjury is a false statement, either written or verbal, deliberately and wilfully made, relating to something past or present, under the sanction of an oath, or such affirmation as is by law equivalent to an oath, where such oath or affirmation is legally administered, under circumstances in which an oath or affirmation is required by law, or is necessary for the prosecution or defense of any private right, or for the ends of public justice. [O. C. 287.]

Art. 303. [305] [202] [189] Mistake or agitation.—A false statement made through inadvertence, or under agitation, or by mistake, is not perjury.

Art. 304. [306] [203] [190] Oath must be legally administered.—The oath or affirmation must be administered in the manner required by law, and by some person duly authorized to administer the same in the matter or cause in which such oath or affirmation is taken.

Art. 305. [307] [204] [191] And about something past or present.—The false statement must be of something past or present; oaths of office or any other promissory oaths, are not included in the definition of perjury, except that part of the official oath which relates to dueling.

Art. 306. [308] [205] [192] In what sort of proceeding.—All oaths or affirmations legally taken in any stage of a judicial proceeding, civil or criminal, in or out of court, or before a grand jury, are included in the description of perjury.

Art. 307. [309] [206] [193] Immaterial statement.—The statement of any circumstance wholly immaterial to the matter in respect to which the declaration is made is not perjury.

Art. 308. [310] [207] [194] Punishment.—The crime of perjury, except as in cases provided for in the next article shall be punished by imprisonment in the penitentiary not less than two nor more than ten years. [O. C. 292, Acts 1897, p. 146.]

Art. 309. [311] [208] [195] Perjury in capital case.—When the perjury is committed on a trial of a capital felony, and the person guilty of such perjury has, on the trial of such felony, sworn falsely to a material fact tending to produce conviction, and the person so accused of the capital felony is convicted and suffers the penalty of death, the punishment of the perjury so committed shall be death. [O. C. 293.]

CHAPTER TWO

FALSE SWEARING

Art.

310. False swearing.
311. Past or present.
312. As to public money.
313. As to quarantine matters.
314. Divulging grand jury proceedings.

Article 310. [312] [209] [196] False swearing.—If any person shall deliberately and wilfully, under oath or affirmation legally administered, make a false statement by a voluntary declaration or affidavit, which is not required by law or made in the course of a judicial proceeding, he is guilty of false swearing, and shall be punished by confinement in the penitentiary not less than two nor more than five years. [O. C. 294.]

Art. 311. [313] [210] [197] Past or present.—The false swearing must, as in regard to perjury, be relative to something past or present.

Art. 312. [314] [211] [198] As to public money.—If any officer of this State, or of any district or county thereof, who is charged by law with the duty of receiving or collecting public moneys, other than taxes, for the use of the State or counties, and reporting the same under oath to the district, county or commissioners court of any county, shall falsely report the amount of such collections, or any part thereof, he shall be deemed guilty of false swearing. [Acts 1874, p. 182.]

Art. 313. [315] [212] As to quarantine matters.—Any person suspected of violating any quarantine law or regulation, and who, upon being sworn by any one authorized to administer an oath by the provisions of any law of this State, shall knowingly swear falsely about any matter concerning which the quarantine laws and regulations permit examination, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1883, p. 27.]

Art. 314. [316] [213] Divulging grand jury proceedings.—Any grand juror or any person after being sworn according to law as a witness before said grand jury, who shall afterwards divulge either by word or sign any matter about which said witness may have been interrogated, or any proceeding or fact said juror or witness may have learned by reason of said witness appearing before said jury, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail not exceeding six months. This article shall not apply to persons required to testify to any of these matters before a judicial tribunal. [Acts 1887, p. 131.]

CHAPTER THREE

SUBORNATION OF PERJURY AND FALSE SWEARING

Art.

315. Subornation of perjury or false swearing.
316. Attempt to suborn.

Article 315. [318] [214] [199] Subornation of perjury or false swearing.—Whoever shall designedly induce another to commit perjury or false

swearing shall be punished as if he had himself committed the crime.

Art. 316. [319] [215] [200] Attempt to suborn.—Whoever by any means whatever corruptly attempts to induce another to commit the offense of perjury or false swearing, shall be confined in the penitentiary not less than two nor more than five years.

CHAPTER FOUR

ARREST AND CUSTODY OF PRISONERS

Art.
317. Wilfully permitting escape in capital case.
318. Wilfully permitting escape in a felony.
319. Wilfully permitting escape in misdemeanors.
320. Negligently permitting escape in capital case.
321. Negligently permitting escape in felony.
322. Negligently permitting escape in misdemeanor.
323. Officers refusing to arrest or receive in felony.
324. Refusing to arrest or receive in misdemeanor.
325. Private person appointed to execute warrant.
326. Aiding one charged with felony to escape from jail.
327. Aiding one charged with misdemeanor to escape from jail.
328. Breaking into jail to rescue prisoner.
329. Aiding one charged with felony to escape.
330. Aiding one charged with misdemeanor to escape from officer.
331. State home for children.
332. Colony for the Feebleminded.
333. Interfering with custody of girl committed to Training School.
333a. Interfering with colored girl committed to Training School.
334. Assisting escape of juvenile.
335. Telegraph officer divulging process.
336. Preventing execution of civil process.
337. Offenses complete without actual escape.
338. Opposing arrest of another for felony.
339. Opposing arrest of another for misdemeanor.
340. Resisting execution of civil process.
341. Accused resisting warrant.
342. Process must be executed in legal manner.
343. "Accusation."
344. "Legally confined in jail."
345. "Jail."
346. "Officer."
347. "Arms."
348. Refusing to aid an officer.
349. Excessive whipping of prisoners.
350. To report death of prisoner.
351. Report of prison physician.
352. Financial interest in contract.
353. Unauthorized punishment of prisoner.

Article 317. [320] [216] [201] Wilfully permitting escape in capital case.—Any officer, jailer, or guard having the legal custody of any person accused or convicted of a capital offense who wilfully permits such person to escape or to be rescued shall be confined in the penitentiary not less than two nor more than ten years. [O. C. 312.]

Art. 318. [321] [217] [202] Wilfully permitting escape in a felony.—Any officer, jailer, or guard who has the legal custody of any person accused or convicted of a felony not capital who wilfully permits such person to escape or to be rescued shall be confined in the penitentiary not less than two nor more than five years. [O. C. 313.]

Art. 319. [322] [218] [203] Wilfully permitting escape in misdemeanors.—Any officer, jailer, or guard having the legal custody of a person accused or convicted of a misdemeanor who wilfully permits such person to escape or to be rescued shall be fined not exceeding one thousand dollars. [O. C. 314.]

Art. 320. [323] [219] [204] Negligently permitting escape in capital case.—Any officer, jailer, or guard who has the legal custody of a person accused or convicted of a capital offense, who negligently permits such person to escape or to be rescued shall be fined not exceeding two thousand dollars. [O. C. 315.]

Art. 321. [324] [221] [205] Negligently permitting escape in felony.—Any officer, jailer or guard who has the legal custody of a person accused or convicted of a felony not capital who negligently permits such person to escape or to be rescued shall be fined not exceeding one thousand dollars. [O. C. 316.]

Art. 322. [325] [221] [206] Negligently permitting escape in misdemeanor.—Any officer, jailer, or guard who has the legal custody of a person accused or convicted of a misdemeanor who negligently permits such person to escape or to be rescued shall be fined not exceeding five hundred dollars. [O. C. 317.]

Art. 323. [326] [222] [207] Officers refusing to arrest or receive in felony.—Any sheriff or other officer who wilfully refuses or fails from neglect to execute any lawful process in his hands requiring the arrest of a person accused of a felony, whereby such person escapes, or wilfully refuses to receive in a jail under his charge, or to receive into his custody any person lawfully committed to such jail and ordered to be confined therein on an accusation of felony, or lawfully committed to his custody on such accusation, shall be fined not exceeding two thousand dollars. [O. C. 318, Acts 1860, p. 96.]

Art. 324. [327] [223] [208] Refusing to arrest or receive in misdemeanor.—Any sheriff or other officer who wilfully refuses or fails from neglect to execute any lawful process in his hands requiring the arrest of a person accused of a misdemeanor whereby the accused escapes, or who wilfully refuses to receive into a jail under his charge or to receive in his custody any person lawfully committed to such jail on an accusation of misdemeanor, or lawfully committed to his custody on such accusation, shall be fined not exceeding five hundred dollars. [O. C. 319, Acts 1860, p. 96.]

Art. 325. [328] [224] [209] Private person appointed to execute warrant.—If any private person, appointed with his own consent to execute a warrant of arrest shall be guilty of any offense heretofore enumerated in this chapter, he shall be punished in the same manner as an officer in a like case. [O. C. 320.]

Art. 326. [329] [225] [210] Aiding one charged with felony to escape from jail.—Whoever shall convey or cause to be conveyed into any jail any disguise, instrument, arms, or any other thing useful to aid any prisoner in escaping, with intent to facilitate the escape of a prisoner lawfully detained in such jail on an accusation of felony, or shall in any other manner calculated to effect the object aid in the escape of a prisoner legally confined in jail, shall be imprisoned in the penitentiary not less than two nor more than five years. [O. C. 321, Acts 1858, p. 162.]

Art. 327. [330] [226] [211] Aiding one charged with misdemeanor to escape from jail.—Whoever shall, by any means contemplated in the preceding article, aid in the escape of a person legally confined in jail upon an accusation for a misdemeanor, shall be fined not exceeding five hundred dollars. [O. C. 323.]

Art. 328. [331] [227] [212] Breaking into jail to rescue prisoner.—Whoever shall break into any jail for the purpose of effecting the rescue or escape of a prisoner therein confined, or for the purpose of aiding in the escape of any prisoner so confined, shall be imprisoned in the penitentiary not less than two nor more than six years. [O. C. 322.]

Art. 329. [332] [228] [213] Aiding one charged with felony to escape.—Whoever wilfully aids in the escape of a prisoner from the custody of an officer by whom he is legally held in custody on an accusation of felony, by doing any act calculated to effect that object, shall be confined in the penitentiary not less than two nor more than seven years; and if, in aiding in the escape, he shall make use of arms, he shall be confined in the penitentiary not less than two nor more than ten years. [O. C. 325.]

Art. 330. [333] [229] [214] Aiding one charged with misdemeanor to escape from officer.—Whoever wilfully aids a prisoner to escape from the custody of an officer by whom he is legally detained in custody after conviction of a misdemeanor or while being so detained in custody on an accusation for misdemeanor, by doing an act calculated to effect that object, shall be fined not exceeding five hundred dollars; and if in aiding in the escape he

shall make use of arms, he shall be fined not exceeding one thousand dollars. [O. C. 326, Acts 1905, p. 377.]

Art. 331. State Home for children.—Whoever shall persuade, coerce, employ or induce in any manner any child who has been committed to the State Home for Dependent and Neglected Children, from any institution or from any home selected by the person empowered by law to make such selection, without the knowledge and consent of such persons, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than sixty days nor more than six months, or both. [Acts 1919, p. 304.]

Art. 332. Colony for the Feebleminded.—Whoever entices a patient away from the State Colony for Feebleminded, or assists any such patient to escape therefrom, or shall remove or abduct or kidnap any such patient therefrom, as the terms "abduct" and "kidnap" are defined in this Code, or conceals any patient who has escaped or been enticed, removed, abducted or kidnapped from such colony, shall be confined in the penitentiary for any term not more than five years. [Acts 1923, p. 174.]

Art. 333. Interfering with custody of girl committed to Training School.—Whoever shall persuade, coerce, employ or induce in any manner any girl who has been committed to the Girls Training School, from such institution or from any home selected by the persons empowered by law to make such selection, without the knowledge and consent of such persons, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail not less than thirty nor more than sixty days, or both. [Acts 1913, p. 291.]

Art. 333a. Interfering with colored girl committed to Training School.—Any person who shall persuade, coerce, employ or induce in any manner any girl who has been committed to the Colored Girl's Training School provided for in this Act [Civ. St. art. 3259a] to leave said school, or to leave any home selected for any such girl as provided in this Act [Civ. St. art. 3259a] without the knowledge or consent of the superintendent of said school and the Board of Control, and the person immediately in charge of said girl, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than One Hundred Dollars and not more than Five Hundred Dollars, or by imprisonment in the County Jail for not less than thirty days and not more than sixty days, or may be punished by both such fine and imprisonment. [Acts 1927, 40th Leg., p. 441, ch. 293, § 11.]

Art. 334. [334] [230] Assisting escape of juvenile.—Whoever shall knowingly assist any inmate lawfully confined in the State Juvenile Training School to escape, or who shall knowingly conceal such inmate, or advise or abet the escape of such inmate or who shall furnish such inmate with money, arms, or any character of means to escape, with the purpose of facilitating the escape of such inmate, shall be confined in the penitentiary not less than two nor more than five years.

Art. 335. [335] [231] [215] Telegraph officer divulging process.—Any executive officer, director, superintendent, manager, operator, clerk, messenger or other party in the employ of a telegraph company, who shall wilfully divulge or in any manner make known, except to the proper authority, the contents of any warrant, affidavit or telegram relating to any crime already committed, or for the prevention of the same, shall be fined not less than five hundred nor more than one thousand dollars, or be confined in the penitentiary not less than two years nor more than five years. [Acts 1871, p. 40.]

Art. 336. [336] [232] [216] Preventing execution of civil process.—Whoever shall prevent or defeat the execution of any process in a civil cause, by any means not amounting to actual resistance, but which are calculated to prevent the execution of such process, shall be fined not exceeding five hundred dollars; evading the execution of such process is not an offense under this article. [O. C. 327.]

Art. 337. [337] [233] [217] Offenses complete without actual escape.—The offenses enumerated in articles 326, 327, 328, 329 and 330 are complete without actual escape of the prisoner. A person accused of any of said offenses may be prosecuted and tried, although the person escaping be retaken, and although after being retaken he is tried and acquitted.

Art. 338. [339] [235] [219] Opposing arrest of another for felony.—Whoever shall wilfully oppose or resist an officer in executing, or attempting to execute any lawful warrant for the arrest of another person in a felony case shall be confined in the penitentiary not less than two nor more than five years. If arms be used in such resistance, he shall be confined in the penitentiary not less than two nor more than seven years. [O. C. 331; Acts 1858, p. 163.]

Art. 339. [340] [236] [220] Opposing arrest of another for misdemeanor.—If any person shall wilfully oppose or resist an officer in executing or attempting to execute any lawful warrant for the arrest of another person in a misdemeanor case, or in arresting or attempting to arrest any person without a warrant, where the law authorizes or requires the arrest to be made without a warrant, he shall be fined not less than twenty-five nor more than five hundred dollars, and if arms be used, be fined not less than fifty nor more than one thousand dollars. [O. C. 332; Acts 1881, p. 108.]

Art. 340. [341] [237] [221] Resisting execution of civil process.—Whoever shall wilfully resist or oppose an officer in executing or attempting to execute, any process in a civil cause shall be fined not exceeding five hundred dollars; and if arms be used in such resistance, the punishment shall be doubled. [O. C. 333.]

Art. 341. [344] [238] [222] Accused resisting warrant.—If the party against whom a legal warrant of arrest is directed in any criminal case, resist its execution when attempted by any person legally authorized to execute the same, he shall be fined not exceeding five hundred dollars. If arms be used in making the resistance, in such manner as would make him liable for an assault and battery or assault with intent to murder, or any other offense against the person, he shall receive the highest penalty affixed by law for the commission of such offense in ordinary cases. [O. C. 334.]

Art. 342. [345] [239] [223] Process must be executed in legal manner.—To render a person guilty of any offense included within the meaning of articles 338 and 339 the warrant or process must be executed or its execution attempted in a legal manner. [O. C. 335.]

Art. 343. [346] [240] [224] "Accusation."—The word "accusation" as used in this Code means a charge made in a lawful manner against any person that he has been guilty of some offense which subjects him to prosecution in the name of the State. One is said to be "accused" of an offense from the time that any "criminal action" shall have been commenced against him.

A legal arrest with or without warrant; a complaint to a magistrate, or an indictment are examples of accusation. [O. C. 356.]

Art. 344. [347] [241] [225] "Legally confined in jail."—A person is "legally confined in jail," or "legally detained in custody," when he has been committed or arrested upon a legal warrant, or arrested in any legal manner. [O. C. 337.]

Art. 345. [348] [242] [226] "Jail."—The word "jail" means any place of confinement used for detaining a prisoner. [O. C. 338.]

Art. 346. [349] [243] [227] "Officer."—By "Officer," as used in this chapter, is meant any

peace officer, as sheriff, deputy sheriff, constable, marshal or policeman of a city or town, any jailer or guard, or any person specially authorized by warrant to arrest. [O. C. 339.]

Art. 347. [350] [244] [228] "Arms."—The term "arms," as used in this chapter, includes any deadly weapon.

Art. 348. [351] [245] [229] Refusing to aid an officer.—If any person, being called on by a magistrate or peace officer shall fail or refuse to aid such officer in any manner in which, by law, he may be rightfully called on to aid or assist in the execution of a duty incumbent upon such magistrate or peace officer, he shall be fined not exceeding one hundred dollars. [O. C. 339; Acts 1858, p. 163.]

Art. 349. [1610] Excessive whipping of prisoners.—The Prison Commission may adopt such modes of punishment as may be necessary, such punishment being always humane, and placing prisoners in stocks shall be prohibited. Whipping with not exceeding twenty lashes on the bare rump and thighs may be resorted to with prisoners of the third class, who cannot be made to observe the rules by milder methods of punishment. The strap to be used must be of leather, not over two and one-half inches wide, and twenty-four inches long, attached to a wooden handle; no convict shall be whipped until same has been authorized by at least two members of the Prison Commission upon their written order, and such order so issued shall be executed only in the presence of a prison physician, and a sworn report shall be made by the officer executing such order to the Penitentiary Commission, who shall keep a record of all such reports in a well bound book to be kept for that purpose, which shall be at all times open to public inspection; and such report so to be made by such officer executing the order of the Prison Commission, shall state the name of the convict whipped, the number of strokes administered, the size of the strap used, the time and place thereof, in whose presence same was done, and the cause thereof. The Prison Commission shall make a semi-annual report of the whipping of convicts to the district judge of the county where such whippings occurred, who shall report the same to the grand jury, which shall make investigation thereof, if they deem same advisable. The utmost care must be used by the officer executing the order of the Commission not to break the skin of the prisoner whipped, and any person guilty of whipping a prisoner more lashes than as provided herein, or striking a prisoner, except in self-defense, shall be fined not less than twenty-five nor more than two hundred and fifty dollars and imprisoned in jail not less than thirty days nor more than six months. [Sec. 33, Act September 17, 1910.]

Art. 350. To report death of prisoner.—The Prison Commission or other persons in charge of prisoners upon the death of any prisoner under their care and control if he die suddenly or from accident or injury, shall at once notify the nearest justice of the peace of the county in which said prisoner dies of such death. It shall be the duty of such justice of the peace, notified of the death of such prisoner, to go and make a personal examination of the body of such prisoner, and such justice shall reduce to writing the evidence taken during such inquest and shall furnish a copy of the same to the district judge of the county in which said prisoner dies. The copy so furnished to said district judge shall be turned over by him to the succeeding grand jury; and the said judge shall charge the grand jury if there be any suspicion of wrong doing shown by the inquest papers to thoroughly investigate the cause of such death. No inquest shall be required when the prisoner dies from natural causes, and has been under the care of the prison physician. Any officer or employé of the prison system having charge of any prisoner at the time of the death by accident, injury or sudden death of such prisoner, who fails to immediately notify a justice of the peace of the death of such prisoner, shall be fined not less than one hundred nor more than five hundred dollars, and be confined in jail not less than sixty days, nor more than one year. [Acts 1910, p. 156, Acts 1st C. S. 1917, p. 52.]

Art. 351. [1614] Report of prison physician.—Each physician employed in the prison system shall at the end of each month file with the Prison Commission a written sworn report which shall state the name, race and sex of each prisoner treated, or examined by him during said month, the malady or disease with which each was afflicted, and if any shall be suffering with wounds or injuries inflicted by accident or some individual, he shall state the nature and extent of said injuries, by whom and by what means inflicted, or how the same occurred, and all such further information concerning said matters, and the condition of each prisoner treated or examined by him during said month, as he may possess. For a failure to make such a report or any false statement knowingly made by any such physician in any such report he shall be prosecuted for perjury. [Acts September 17, 1910, Sec. 50.]

Art. 352. [1616] Financial interest in contract.—Any officer, agent or employé in any capacity connected with the prison system who shall be financially interested either directly or indirectly in any contract for the furnishing of supplies or property to the prison system, or the purchase of supplies or property for the prison system, or who shall be financially interested in any contract to which said prison system is a party, or who shall knowingly and fraudulently sell or dispose of any property belonging to the prison system below its reasonable market value, or who shall be financially interested in any other transaction connected with the prison system shall be confined in the penitentiary not less than two nor more than five years. Each transaction is a separate offense. [Sec. 56, Id.]

Art. 353. [1617] Unauthorized punishment of prisoner.—Any sergeant, guard or other officer or employé of the prison system who shall inflict any punishment upon a prisoner not authorized by the rules of the prison system shall be guilty of an assault. It shall be the duty of the Prison Commission to make complaint before the proper officer of any county in which such assault was committed upon such prisoner. In all cases where any person is charged by complaint or indictment with an offense against a prisoner, prisoners and ex-prisoners shall be permitted to testify. [Sec. 57, Id.]

CHAPTER FIVE

FALSE CERTIFICATE OR ENTRY BY AN OFFICER

Art.
354. Commissioner giving false certificate.
355. "Instrument of writing."
356. Falsely certifying to deposition.
357. Certifying falsely to affidavit.
358. Clerk of court making false entry.
359. Clerk giving false certificate.
360. Notary public giving false certificate.
361. Officer giving blank certificate.
362. Failing to keep record of acknowledgments.
363. Requisites of such record.
364. False certificate of corporate indebtedness, etc.

Article 354. [352] [246] [230] Commissioner giving false certificate.—Whoever being a commissioner of deeds and depositions who is residing out of this State and acting as such commissioner under authority of a law of the State, shall fraudulently certify to the execution of any instrument of writing which was never in fact acknowledged or proved before him as the same purports to have been acknowledged or approved shall be confined in the penitentiary not less than two nor more than five years. [O. C. 340.]

Art. 355. [353] [247] [231] "Instrument of writing."—By "instrument of writing" is meant any deed, conveyance, transfer, release, obligation or other written instrument of any kind whatever which such commissioner is, by law, authorized to authenticate for record. [O. C. 341.]

Art. 356. [354] [248] [232] Falsely certifying to deposition.—If any such commissioner shall falsely certify to any deposition [purporting] to

have been taken before him, and to be used in any cause pending in a court of this State, he shall be punished as is prescribed in article 354. [O. C. 342.]

Art. 357. [355] [249] [233] Certifying falsely to affidavit.—If any such commissioner shall falsely certify to any affidavit purporting to have been made before him, and which, by law, he is authorized to take, he shall be punished as prescribed in article 354. [O. C. 343.]

Art. 358. [356] [250] [234] Clerk of court making false entry.—If any clerk of a court shall knowingly make any false entry upon the record of his court which may prejudice or injure the rights of any person he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 344.]

Art. 359. [357] [251] [235] Clerk giving false certificate.—If any such clerk shall give a false certificate, stating that any person has done any act whatever, to which he has a right to certify, or that such person is entitled to any right whatever, when such clerk may by law give such certificate if the same were true, he shall be punished as directed in the preceding article. [O. C. 345.]

Art. 360. [358] [252] [236] Notary public giving false certificate.—If any notary public or other officer authorized by law, shall give a false certificate for the purpose of authenticating any instrument of writing for registration, he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 346.]

Art. 361. [359] [253] [237] Officer giving blank certificate.—If any officer authorized by law to take depositions or administer oaths in this State, shall falsely certify that any deposition was sworn to before him, or any oath made, or shall with fraudulent intent place his certificate, signature or seal to any affidavit which is drawn with blanks as to any other matter of substance, he shall be imprisoned in the penitentiary not less than two nor more than five years. Within the meaning of this article shall be included the case of an officer who, with design that the same may be filled up and used for fraudulent purposes attaches his signature or seal of office to any paper wholly blank. [O. C. 347, Acts 1858, p. 163.]

Art. 362. [360] [254] [238] Failing to keep record of acknowledgments.—Any county clerk, justice of the peace, notary public, or any other officer in this State authorized by law to take acknowledgments or proof of instruments required or permitted by law to be placed on record, who shall willfully fail, neglect or refuse to enter and record in a well-bound book a short statement of each acknowledgment or proof taken by him and sign the same officially, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1874, p. 156.]

Art. 363. [361] [255] [239] Requisites of such record.—By "short statement," as used in the preceding article, is meant that such statement shall recite the true date on which such acknowledgment or proofs were taken, the name of the grantor and the grantee of such instrument, its date, if proved by a subscribing witness the name and the known or alleged residence of the witness and whether personally known or unknown to the officer; if personally unknown this fact shall be stated, and by whom such person was introduced to the officer, if by any one; and the known or alleged residence of such person. Such statement shall also recite, if the instrument is acknowledged by the grantor, his then place of residence, if known to the officer; if unknown, his alleged residence, and whether such grantor is personally known to the officer; if personally unknown by whom such grantor was introduced, if by any one, and his place of residence. If land is conveyed or charged by the instrument, the name of the original grantee shall be mentioned, and the county where the same is situated; and a failure to comply with any one of the requirements shall be punished as prescribed in the preceding article. [Acts 1874, p. 156.]

Art. 364. [362] [255a] False certificate of corporate indebtedness, etc.—If any mayor, county judge, tax assessor, or other officer or person, for the purpose of securing the certificate of the Attorney General, provided for in the issuance and sale of bonds by any county, city or town in this State, shall knowingly make, or be concerned in making or forwarding to the Attorney General, a false certificate as to the amount of the taxable value of the property in such county, city or town, as shown by the last official assessment, or knowingly and falsely certify as to the amount of indebtedness of such county, city or town, or the rate of tax levied to provide interest and sinking fund for such indebtedness, or other facts required by the Attorney General, he shall be confined in the penitentiary not less than one nor more than five years. [Acts 1893, p. 85.]

CHAPTER SIX

EXTORTION AND PECULATION

Art.
365. Collecting illegal fees.
366. Demanding illegal fees.
367. Applies to all officers.
368. State officer buying claims against State.
369. "State officer" defined.
370. Officers and employés of penitentiary.
371. County or city officer trading in claims.
372. Public utility corporations.
373. County or city officer interested in contracts.
374. Interest in contract of Navigation District.
375. Interest in contract of Levee District.
376. Interest in drainage contract.
377. Interest in contract of Improvement District.
378. Interest in water supply contract.
379. Interest in contract of Water Control District.
380. Purchase of witness fees by officer.

Article 365. [363] [256] [240] Collecting illegal fees.—If any officer or person authorized by law to demand or receive fees of office, shall willfully collect for himself or for another any fee or fees not allowed by law, or any money as a purported fee for a service or act not done, or any fee or fees due him by law in excess of the fee or fees allowed by law for such service, he shall be confined in the penitentiary not less than two or more than five years for each offense. [O. C. 352, Acts 1883, p. 5; Acts 1907, p. 307.]

Art. 366. [364] [256a] Demanding illegal fees.—If any officer or other person authorized by law to demand or receive fees of office shall willfully make out his account for fees in excess of those allowed by law, or for fees not allowed by law, and shall present or file such account with the proper officer with whom the law requires the same to be presented or filed, he shall be fined not less than twenty-five nor more than two hundred and fifty dollars for each offense. [Acts 1907, p. 307.]

Art. 367. [365] [257] [241] Applies to all officers.—The two preceding articles apply to all persons holding any office to which fees are attached, and to the heads of the departments of the government in whose offices fees may be charged. [O. C. 353.]

Art. 368. [370] [262] [246] State officer buying claims against State.—Any officer of this State who shall trade for, buy, or be in any way concerned in the purchase of any claim or demand against the State, shall be fined one thousand dollars. [Act May 3, 1873, p. 62.]

Art. 369. [371] [263] [247] "State officer" defined.—By the term "officer of this State" as used in the preceding article is meant the Governor, Lieutenant Governor, any head or employé of any of the executive departments, members and officers of both houses of the Legislature, the judges of the several courts, district and county attorneys, sheriffs, tax collectors and tax assessors.

Art. 370. [372] Officers and employés of the penitentiary.—No officer or employé of the State penitentiaries shall be permitted to purchase any goods or merchandise or other property from the State or penitentiary system, except such surplus fruits, vegetables, ice, water, steam and lights as may be produced or manufactured on the premises of the penitentiary, or to appropriate to his private use or employment the labor, services or use of any State penitentiary convict, or of any animal, vehicle or other personal property be-

longing to the State, unless it be by the express consent of the penitentiary board had by an order to that effect entered of record on the minutes of said board, providing for the amount to be paid by such officer or employé, for the use, employment and services of such convict or convicts or the use of any personal property belonging to the State; and no employé or officer using any State property shall be allowed to use same in keeping boarders for profit unless such boarder or boarders be in the employ of the State penitentiary system; and no penitentiary sergeant, guard or other officer or employé of the penitentiary shall accept or receive any salary or other compensation from any person or corporation hiring or otherwise employing State convicts. Any such officer or employé who shall violate any provision of this article shall be punished by dismissal from his office or employment and by a fine of not less than twenty-five nor more than two hundred dollars and if the conviction be for accepting or receiving any salary or compensation from a hirer or employer of State convicts, the party so convicted shall, in addition to the penalty above described, be confined in jail not less than one month nor more than one year.

Any person or any member of a co-partnership or firm, or any agent, servant or representative of such person, co-partnership or firm, or any officer, agent, servant or representative of any corporation, hiring or employing State convicts by contract with the State or penitentiary system of hire, lease, or for any share or portion or per cent of the crops or other products of the labor of such convicts, who shall pay or promise or offer to pay, either directly or indirectly, to any sergeant, guard or other employé of the State having such convicts in charge or under his control, either in whole or in part, any money or other valuable thing, shall be confined in the penitentiary for two years. [Acts 1903, p. 161.]

Art. 371. [373] [264] [248] County or city officer trading in claims.—Any officer of any county or of any city or town who shall contract directly or indirectly, or become in any way interested in any contract for the purchase of any draft or order on the treasurer of such county, city or town, or for any jury certificate or any other debt, claim or demand for which said county, city or town may or can in any event be made liable, shall be fined not less than ten nor more than twenty times the amount of the order, draft, jury certificate, debt, claim or liability so purchased or contracted for. Within the term "officer," is included ex-officers until they have made a final settlement of their official accounts. [Acts 1874, p. 47.]

Art. 372. [374] Public utility corporations.—No Mayor or any member of any City Council or Board of Aldermen, of any city or town in this State, shall accept directly or indirectly any frank, privilege, free light or water, or sewerage service, or other service, or a lower rate therefor than the regular rate established by said Council or Board of Aldermen, or any gift or anything of value from any water, gas, light and sewer companies, corporations or persons. The servants, agents, officers, or employés, or any person acting directly or indirectly in behalf of any of said companies, corporations or persons mentioned, who shall directly or indirectly give or grant any privilege, frank, free water, light, gas, sewerage service or free service of any kind, or any gift of anything of value to any Mayor, or to a member of such City Council, Board of Aldermen, or any such Mayor, or a member of any such Council or Board of Aldermen who shall receive, accept or enjoy such free light, water, gas, or sewerage service, or other free service, or a lower rate than the regular rate, or any gift of anything of value as prohibited herein shall be fined not less than one hundred nor more than one thousand dollars, or be confined in jail not exceeding twelve months, or both. [Acts 1907, p. 218.]

Art. 373. [376] [266] [250] County or city officer interested in contracts.—If any officer of any county, or of any city or town shall become in any manner pecuniarily interested in any contracts made by such county, city or town, through its agents, or otherwise, for the construction or repair of any bridge, road, street, alley or house, or any other work undertaken by such county, city or town, or shall become interested in any bid or proposal for such work or in the purchase or sale of anything made for or on account of such county, city or town, or who shall contract for or receive any money or property, or the representative of either, or any emolument or advantage whatsoever in consideration of such bid, proposal, contract, purchase or sale, he shall be fined not less than fifty nor more than five hundred dollars. [Acts 1874, p. 48.]

Art. 374. [377] Interest in contract of Navigation District.—If any county judge or any county commissioner, any member of the Navigation Board or navigation and canal commissioner, or engineer shall directly or indirectly become interested in any contract for any work to be done by any Navigation District or in any fee paid by such district whereby he or others shall receive any money consideration or other thing of value, except in payment of services as provided by law, he shall be imprisoned in jail for not less than six months nor more than one year. [Acts 1909, p. 45.]

Art. 375. [378] Interest in contract of Levee District.—If the county judge or any county commissioner or any district supervisor or the district engineer of any Levee Improvement District shall directly or indirectly become interested in any contract for any work to be done by said district whereby he shall receive any money consideration or other thing of value other than such pay as is provided for by law, he shall be imprisoned in jail for not less than six months nor more than one year. [Acts 1909, p. 154, Acts 1915, p. 247.]

Acts 1915, 34th Leg., ch. 146, p. 229, from which art. 375 was taken, was expressly repealed by Acts 1925, 39th Leg., ch. 21, p. 50, § 66.

Art. 376. Interest in drainage contract.—If the county judge or any county commissioner or drainage commissioner or the drainage engineer shall become interested in any contract for the construction of any work to be done by any drainage district or in any fee paid by such district whereby he shall receive any money consideration or other thing of value, he shall be imprisoned in jail for not less than six months nor more than one year. [Acts 1907, p. 91, Acts 1911, p. 263.]

Art. 377. [379] Interest in contract of Improvement District.—If any director of any Water Improvement District or any engineer or employé thereof shall directly or indirectly become interested in any contract for the purchase of any material required or construction of any work by said district, he shall be fined not to exceed one hundred dollars or be confined in jail for not less than six months nor more than one year, or both. [Acts 1905, p. 250, Acts 1913, p. 386, Acts 1917, p. 180.]

Art. 378. Interest in water supply contract.—If the supervisor, engineer or any employé of any Fresh Water Supply District shall directly or indirectly become interested in any contract for the purchase of any material required or for the construction of any work by said district he shall be fined not to exceed one thousand dollars, or be imprisoned in jail for not less than six months nor more than one year, or both and shall be removed from office and disqualified for further employment. [Acts 2nd C. S. 1919, p. 127.]

Art. 379. Interest in contract of Water Control District.—If any director of any Water Control and Preservation District or any engineer or other employé thereof, shall be directly or indirectly interested either for themselves or as agents for any one else, in any contract for the construction of any work or improvement, or repair or reconstruction of such improvements by said district, he shall be con-

fined in the penitentiary not less than one nor more than five years. [Acts 4th C. S. 1918, p. 95.]

Art. 380. [380] [267] [251] Purchase of witness fees by officer.—Any county judge, clerk or deputy clerk of any district or county court, sheriff, or his deputy, justice of the peace or constable, who shall purchase or otherwise acquire from the party interested any fee or fees coming to any witness in any proceeding whatever, either before the district or county court, or the court of any justice of the peace, or before any coroner's inquest, shall be fined not exceeding one hundred dollars. [Acts 1858, p. 164.]

CHAPTER SEVEN

FAILURE OF DUTY

Art.
381. Refusing to issue or execute process, etc.
382. Failure to arrest offender.
383. Officer failing to deposit trust funds, etc.
384. Failing to turn over funds to successor.
385. Sheriff or constable violating militia law.
386. District or county attorney violating militia law.
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Article 381. [388] [268] [252] Refusing to issue or execute process, etc.—Whenever any officer who is by law charged with the issuance or execution of process, either in civil or criminal actions corruptly and wilfully refuses to issue or execute such process, or corruptly or wilfully refuses to perform any other duty enjoined upon him by law, he shall, when the act or omission is not otherwise provided for or punished, be fined not exceeding five hundred dollars, and may be imprisoned in jail not exceeding one year. [O. C. 348.]

Art. 382. [389] [269] [253] Failure to arrest offender.—If any justice of the peace, sheriff or other peace officer shall wilfully neglect to return, arrest or prosecute any person committing a breach of the peace or other crime or misdemeanor which has been committed within his view or knowledge, or shall wilfully absent himself from any place where such crime or misdemeanor is being committed, or is about to be committed, for the purpose of avoiding seeing or having a knowledge of the same, he shall be fined not less than seventy-five nor more than five hundred dollars. [O. C. 354.]

Art. 383. [368] [260] [244] Officer failing to deposit trust funds, etc.—Any officer of any court having the custody by law of any money, evidence of debt, script, instrument of writing or other article that may have been deposited in court to abide the result of any legal proceedings, who shall fail to seal up in a secure package the identical money or other article received by him, and deposit the same in some iron safe or bank vault; or who, when such money or other article is so deposited, shall fail to keep it always accessible and subject to the control of the proper court or who shall fail to keep, in a well-bound book, a correct statement showing each and every item of money or other article so received or deposited, on what account received, and what disposition has been made of the same, shall be fined not less than ten nor more than two hundred dollars, or be imprisoned in jail not exceeding three months; and may, in addition thereto, be punished for contempt. [Acts 1876, p. 7.]

Art. 384. [369] [261] [245] Failing to turn over funds to successor.—Any officer such as is enumerated in the preceding article, who shall fail or refuse to turn over to his successor in office, on the expiration of his own term of office, the record of trust funds therein specified, together with the packages of money or other articles in his possession or control, shall be punished as prescribed in the preceding article. [Id.]

Art. 385. [390] Sheriff or constable violating militia law.—Any sheriff or constable who refuses or neglects to perform any duty imposed on him by the law for the organization of the militia, or to execute any lawful process which shall have been issued by the Governor or proper officer of a court martial shall, in the district court, be fined not more than five hundred dollars, and may be imprisoned in jail not exceeding one year. [Sec. 128, p. 203, Acts 1905.]

Art. 386. [391] District or county attorney violating militia law.—Any district or county attorney who refuses to perform any duty imposed upon him by the law for the organization of the militia shall in the district court be fined not more than five hundred dollars, and, may be imprisoned in jail not exceeding one year. [Sec. 129, p. 203, Acts 1905.]

Art. 387. [392] County clerk violating militia law.—Any county clerk who marks "Exempt" any person enrolled as liable to military duty, whom he knows not to be exempt shall be fined not more than five hundred dollars, and may be imprisoned in jail not exceeding one year. [Sec. 130, p. 203, Acts 1905.]

Art. 388. [393] [207] [254] Officers of old county failing to deliver records to new.—Any district or county clerk, sheriff, justice of the peace, county treasurer or surveyor, or any other officer of a county to which some other unorganized or disorganized county is attached for judicial or other purposes, who shall fail, neglect or refuse to turn over to the proper officers of such unorganized or disorganized county on demand and after the organization of such unorganized or disorganized county and the qualification of its officers, all books, records, maps and all other property belonging to said county so organized that may be in his possession, shall be fined not less than one hundred nor more than one thousand dollars, or be confined in jail not exceeding one year. [Acts 1874, p. 188.]

Art. 389. [394] [271] [255] Approving official bond with nonresident surety.—Any officer whose duty it may be to pass upon and approve the official bond of a sheriff, or other county officer, who shall approve such bond when any surety thereon is not a resident of the county of such sheriff or other officer, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1874, p. 93.]

Art. 390. [395] [272] [256] Officer failing to report collections for State.—Any district attorney, sheriff, deputy sheriff, constable, or other officer, whose duty it may be to collect money other

than taxes for the use of the State, who shall fail to report to the district court of his county, in writing and under oath, on the first day of each term thereof, the amount of money that may come into his hands for the use of the State since the last term of said court, from whom collected, and by virtue of what process, shall be fined not less than twenty nor more than two hundred dollars. [Acts 1874, p. 182.]

Art. 391. [396] [273] [257] Officer failing to report collections for county.—Any officer, such as is named in the preceding article, whose duty it may be to collect money, other than taxes, for the use of any county, who shall fail to report in writing, and under oath, to the commissioners court of such county at each regular term thereof, the amount of money that may have come into his hands for the use of such county since the last term of said court, from whom the same was received, and by virtue of what process, shall be fined not less than twenty nor more than two hundred dollars. [Id.]

Art. 392. [397] [274] [258] Town or city officer failing to report collections.—Any town or city marshal, or constable, or other officer or person who may collect money other than taxes for the use of such town or city, who shall fail to report in writing and under oath to the mayor and board of aldermen, or common council of such town or city on the first Monday of each month, the amount of money that may have come into his hands during the month preceding such report for the use of such town or city, from whom the same was collected, and by virtue of what process, shall be fined not less than twenty nor more than two hundred dollars. [Id.]

Art. 393. [398] [275] Justice to report jury service.—Justices of the peace shall report to the county clerk on the first Monday in each month the names of the persons who have served as jurors in his court for the preceding month, and the number of days and fractions of days that they have served respectively, and the number of cases in which they have served respectively on each of said days or fractional days. Every justice failing to make and file such report shall be fined not less than twenty-five nor more than two hundred and fifty dollars. [Acts 1881, p. 32.]

Art. 394. [399] [276] [259] Commissioners court failing to make statement.—If the commissioners court of any county shall wilfully fail, neglect or refuse to make, or cause to be made a tabular statement of the assets, expenditures, and indebtedness of such county at each regular term of said court, specifying therein the names of creditors and the items of indebtedness, with their respective dates of accrual and also the names of persons to whom moneys have been paid, with the amounts paid each during the quarter for which such statement is prepared, or shall wilfully fail, neglect or refuse to publish an exhibit showing the aggregate receipts and disbursements of each separate fund for the quarter in some newspaper published in the county (or if there be no newspaper, then by posting such exhibit in at least four public places in the county), immediately after the first regular term in each calendar year, or shall wilfully fail, neglect or refuse to post such exhibit made at the third regular meeting of said court in each calendar year at the court house door, and at least three other public places in the county, the members of the court so failing, neglecting or refusing, shall be fined not less than twenty nor more than one hundred dollars. [Acts 1891, p. 91.]

Art. 395. [400] Tax assessor failing to report.—The Commissioner of Agriculture shall furnish blank forms to the tax assessors of each county before the first day of January of each year, including forms as to the acreage in cotton, grain and other leading products of the State, to be filled out by persons assessed for taxes, together with such instructions as will properly direct said assessor in filling them out. Said tax assessor shall return said blanks, with accurate answers to the Commissioner of Agriculture on or before the first day of June following. Failure upon the part of any county tax assessor to make such reports as are required by law shall be deemed a misdemeanor and upon conviction thereof such tax assessor shall be fined not less than fifty nor more than two hundred and fifty dollars. [Acts 1907, p. 129.]

Art. 396. [401] Duty as to county treasurer's report.—When the Commissioners Court has compared and examined the quarterly report of the Treasurer and found the same correct, it shall cause an order to be entered upon the minutes of the court stating the approval thereof, which order shall recite separately the amount received and paid out of each fund by the Treasurer since the preceding Treasurer's quarterly report, and the balance of such fund, if any, remaining in the Treasurer's hands, and shall cause the proper credit to be made in the accounts of the Treasurer in accordance with said order, and said court shall actually inspect and count all the actual cash and assets in the hands of the Treasurer belonging to the county at the time of the examination of his said report; and prior to the adjournment of each regular term of the court, the county judge and each commissioner shall make affidavit that the requirements of this article have been in all things fully complied with by them at said term of said court, and that the cash and other assets mentioned in the county Treasurer's quarterly report made by said Treasurer to said court, and held by him for the county, have been fully inspected and counted by them, giving the amount of said money and other assets in his hands, which affidavits of the members shall be filed with the county clerk of the county, and by him recorded in the minutes of the said commissioners court of the term at which the same were filed, and the same shall be published in some newspaper published in the county, if there be a newspaper published in the county, for one time, to be paid for at the same rate as other legal notices.

Any county judge, county commissioner, or county clerk who shall negligently or intentionally fail or refuse to comply with the requirements of this article, shall be fined not less than twenty-five nor more than five hundred dollars. [Acts 1897, p. 27.]

Art. 397. [402] [277] [259a] Commissioner failing to attend court.—Should any member of the commissioners court of any county wilfully fail or refuse to attend any regular meeting or term of said court at which the business or question of levying a county tax for any purpose is to be acted on, he shall be fined not less than two hundred nor more than five hundred dollars. [Acts 1885, p. 51.]

Art. 398. [403] [278] Treasurer failing to make report.—If any county treasurer in this State shall fail, neglect or refuse to furnish to the commissioners court of his county, upon demand, a detailed statement of the amount of county funds, including permanent and available county school funds, received by him from any given time, and when and from whom received, the amount of each fund on hand, the amount paid out, when and to whom paid; on what account, and the kinds of funds received and disbursed; or shall fail, neglect or refuse to exhibit to said commissioners court upon demand, all his books and accounts from any given time, together with all vouchers relating to the same, for the inspection and auditing by said court; or shall fail, neglect or refuse to forthwith produce to said commissioners court, upon demand, all cash and other assets in his hands belonging to his county to be counted by said commissioners court, he shall be fined not less than one hundred nor more than five hundred dollars, and may be punished for contempt by said court. [Acts 1905, p. 369.]

Art. 399. [404] [279] [261] Clerk failing to keep indexes.—Any clerk of the county or district court who shall fail to provide and keep in his office, as part of the records thereof, well-bound alphabetical indexes and cross-indexes of the names of all parties to all suits disposed of or pending in his court, together with a reference opposite each party's name

to the page of the minute book upon which is entered the final judgment in each case, shall be punished by fine not less than fifty nor more than one hundred dollars. Each month's failure is a separate offense. [Acts 1876, p. 25.]

Art. 400. [405] [280] [262] Withdrawal of deeds when records are burned.—Any clerk or deputy clerk of the county court of any county, the land records or records of title in which have been burned, who shall permit any deed filed for record in his office to be withdrawn within twelve months after the same is filed, shall be fined not less than one hundred nor more than five hundred dollars, and may in addition thereto, be imprisoned in jail not to exceed one year. [Acts 1876, p. 252.]

Art. 401. [406] [281] [263] To what deeds not applicable.—The preceding article shall not apply to deeds executed or purporting to have been executed subsequent to the destruction of such records. [Id.]

Art. 402. [407] [282] [264] County judge practicing law.—Any county judge in this State who shall practice or offer or attempt to practice as an attorney at law in any county court or court of a justice of the peace shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1876, p. 216.]

Art. 403. [408] [283] Exceptions to preceding article.—County judges in those counties wherein the civil or criminal jurisdiction of the county court has or may be diminished shall if a licensed lawyer have the right to practice in all justice and county courts in cases where the courts over which they preside have neither original nor appellate jurisdiction. [Acts 1879, S. S. p. 12.]

Art. 404. [409] [284] [265] Issuing marriage license without consent.—If the clerk of any county court or other officer authorized by law to issue a license for marriage shall, without the consent of the parent or guardian of the party applying, or if there be no parent or guardian without the consent of the county judge of the county of the residence of such minor, issue a marriage license to a male person under the age of twenty-one years or to a female under the age of eighteen years, he shall be fined not exceeding one thousand dollars. [Acts 1860, p. 101; Acts 1911, p. 63.]

Art. 405. [410] [285] [266] Father's consent sufficient.—If both parents of any minor be alive, the consent of the father alone shall be sufficient to authorize the issuance of license to the minor. [Acts 1858, p. 186.]

Art. 406. [411] Performing marriage without license.—If any person authorized by law to celebrate the rites of matrimony in this State performs the marriage ceremony without a license first having been issued as required by law, he shall be fined not less than fifty nor more than five hundred dollars. [Acts 1899, p. 307.]

Art. 407. [412] [286] [267] Failure to return corrected field notes.—If any county surveyor in this State who has been paid his fees for making and recording a survey shall fail or unnecessarily delay to correct the field notes of such survey upon the request of the Commissioner of the General Land Office, or of the party interested, and return the same to the General Land Office when such field notes have been returned to him by such Commissioner for correction, shall be fined not less than double nor more than four times the amount of the fees originally paid him for such survey. [Act October 24, 1871.]

Art. 408. [163] [122] [117] Unlawfully handling Land Office files.—Whoever shall handle or examine any of the papers, files or records in the General Land Office without the consent of the Commissioner or chief clerk, or without the presence and superintendence of a clerk in said office, shall be fined not less than one nor more than five hundred dollars. [O. C. 244.]

Art. 409. Mining claim survey.—Anyone interfering with, removing or destroying any monument, post or notice of any locator of a mining claim shall be fined not to exceed one hundred dollars, or be imprisoned in jail for thirty days, or both. [Acts 2nd C. S. 1919, p. 242.]

Art. 410. [417] [289] [270] Failure to survey mining claim.—Upon receiving the application for the survey of any mining claim and fee provided by law, the surveyor shall record the application, together with the affidavit, and he shall thereupon forthwith proceed to survey said claim, and forward the field notes to the Commissioner of the General Land Office within thirty days after filing the application, in default of which he shall be fined not less than twenty nor more than one hundred dollars. [Acts 1905, p. 198.]

Art. 411. Lands omitted from taxation.—If any tax assessor, county judge, or any member of the commissioners court shall wilfully neglect, fail or refuse to perform any duty required of him by the laws of this State relating to the assessment of lands in his county subject to taxation which have not been assessed for taxation, he shall be fined not less than one hundred nor more than five hundred dollars or be imprisoned in jail not less than one month nor more than one year or both. [Acts 1905, p. 322.]

Art. 412. Delinquent taxes.—Any State or county officer who is by law charged with any duty relating to the collection and bringing suit for collection of delinquent taxes due the State or any county who shall fail or refuse to perform any of said duties shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1915, p. 252.]

Art. 413. [420] Intangible Tax Board.—Any county tax assessor who shall violate or in any respect fail to comply with any provision of the law creating the State Intangible Tax Board, and any member of any board of equalization and any county tax assessor who shall modify or change or vote to modify or change in any manner whatsoever the finding, valuation or apportionment of any intangible assets as so fixed, determined declared and certified by said State Tax Board shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1907, p. 476.]

Art. 414. [426] [294] [275] Wilful neglect of official duty.—If any officer of the law shall wilfully or negligently fail to perform any duty imposed on him by the Penal Code or Code of Criminal Procedure he shall, when the act or omission is not otherwise defined, be punished as prescribed in the succeeding article. [Acts 1864, p. 7.]

Art. 415. [430] [295] [276] General penalty.—Whenever in the Penal Code or Code of Criminal Procedure it is declared that an officer is guilty of an offense on account of any particular act or omission, and there is not in the Penal Code any punishment assigned for the same, such officer shall be fined not exceeding two hundred dollars. [O. C. 349, Acts 1863, p. 12.]

Art. 416. [427] Neglect in drawing juries.—Between the first and fifteenth days of August of each year, in all counties having therein a city containing a population aggregating twenty thousand or more people, as shown by the preceding Federal census, the tax collector or one of his deputies, together with the tax assessor or one of his deputies, together with the sheriff or one of his deputies, and the county clerk or one of his deputies, and the district clerk or one of his deputies, shall meet at the court house of the county and shall select from the list of qualified jurors of such county as shown by the tax lists in the tax assessor's office for the current year the jurors for service in the district and county courts of such county for the ensuing year in the manner provided by the Revised Statutes for the selection of jurors in all counties having a city therein which con-

tains twenty thousand or more people. If any officer mentioned in this article shall wilfully or negligently fail to serve as herein provided, or if any said officer shall wilfully or negligently fail to designate one of his deputies for such service, or after such designation such deputy shall wilfully or negligently fail to serve, the officer so failing to serve or designate a deputy, or the deputy so failing to serve shall be fined not less than fifty nor more than five hundred dollars. [Acts 1907, p. 269; Acts 1911, p. 150.]

Art. 417. [428] Stuffing jury wheel.—Whoever shall put into a jury wheel or take from the wheel, except at the times and in the manner provided for by law, a card or cards bearing the name of any person, shall be fined not less than fifty nor more than five hundred dollars. [Acts 1907, p. 272.]

Art. 418. [429] Violating jury wheel law.—If any person shall violate any provision of the laws of this State providing for drawing juries from the wheel, or shall wilfully or negligently fail or neglect to perform any duty therein required of him, then where no penalty is specifically imposed, he shall be fined not less than fifty nor more than five hundred dollars. [Id.]

Art. 419. [431] [296] [277] Malfeasance in office.—All offenses committed by officers of the law, when not otherwise designated are known as malfeasance in office. By "officers of the law," is meant any magistrate, peace officer or clerk of a court.

Art. 420. [433] [298] [278a] Sheriff failing to report fugitives.—Any sheriff failing or refusing to make out and forward to the Adjutant General certified lists of fugitives from justice within the time and according to the forms provided for by the laws of this State governing such fugitives, shall be fined not less than ten nor more than one hundred dollars. [Acts 1887, p. 44.]

Art. 421. [434] Sheriff appointing too many deputies.—Any sheriff who shall appoint any more deputies than are provided for by law shall be fined not less than one hundred nor more than five hundred dollars. This article shall not apply to counties having more than one district court. [Acts 1903, p. 160.]

Art. 422. [1578] [1013] Officer refusing to give data.—Any State or county officer who fails or refuses to give any statistics or information required of him by law shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1899, p. 23.]

Art. 423. [1579] Failing to keep finance ledger.—Any county clerk or county auditor who shall wilfully fail, neglect or refuse to keep or cause to be kept the finance ledger provided for by law, or who shall fail, neglect or refuse to make the quarterly statement provided for by law, shall be fined not less than fifty nor more than two hundred dollars. Such failure, neglect or refusal for each quarter is a separate offense. [Acts 1893, p. 161.]

Art. 424. [1580] [1013b] Treasurers to report.—Any county or city treasurer or treasurer of the school board of each city or town having exclusive control of its schools, who fails to make and transmit any report and certified copy thereof, or either, required by law, shall be fined not less than fifty nor more than five hundred dollars. [Acts 1893, p. 188.]

Art. 425. [1581] [1582] Failure to vote on depository law.—Any member of the commissioners court who shall fail or refuse to vote at any February term thereof next following each general election for a compliance with the requirements of the law providing for the selection of a bank or banker as the depository of the funds of such county shall be fined not less than one hundred nor more than five hundred dollars or be imprisoned in jail not less than one nor more than six months, or both. Such failure or refusal is ground for removal from office. [Acts 1907, p. 208; Acts 1917, p. 16.]

Art. 425a. Depositing or receiving deposits.—Any person who shall deposit with or pay into any depository of county funds, qualified under this Act, selected under the law, which shall have pledged securities to secure such county funds any county funds, or who shall accept any such payment or deposit without first having ascertained that such county depository has pledged and in the hands of the commissioners' court for the purpose of securing such county funds, securities of the kind permitted by law, equal in amount to the total amount of funds of the county which will be deposited with such depository after such payment or deposit is made, shall be guilty of a felony, and upon conviction, shall be imprisoned in the State penitentiary for a term of not less than one year. [Acts 1927, 40th Leg., p. 197, ch. 129, § 1.]

Art. 426. [1583] Disclosing bid on depository.—Any city secretary of any incorporated city or any other person who shall before the city council meets for the purpose of selecting a bank or banker as the depository of the funds of such city open any proposal from any bank or banker desiring to be selected as depository of such funds, or who shall before the selection of such depository disclose directly or indirectly to any person, the amount of any bid from such bank or banker, shall be fined not less than ten nor more than one hundred dollars. [Acts 1907, p. 132.]

Art. 427. [1584] Checks and warrants on city depository.—No check shall be drawn upon the city depository by the treasurer except upon a warrant signed by the mayor and attested by the secretary. No warrant shall be drawn by the mayor and secretary upon any special funds, created for the purpose of paying the bonded indebtedness of said city in the hands of the city treasurer, or in the depository, for any purpose whatsoever other than to pay the principal or interest of said special fund, or for the purpose of investing said special fund according to law. No city treasurer shall pay off, or issue a check to pay any money out of any special fund created for the purpose of paying any bonded indebtedness of said city other than for the purpose to pay interest due on said bonds, the principal of said bonds, or for the purpose of making an investment of said funds according to law. Any mayor who shall draw a warrant against a special fund as above defined for any other purpose than above specified, or any city treasurer who shall pay, or issue a check to pay a warrant drawn on the special fund of any city other than for the legal purpose of paying interest due on said bonds, the principal of said bonds or for investing said sinking fund according to law, shall be confined in the penitentiary not less than one nor more than five years. [Acts 1905, p. 397.]

Art. 427a. Officers or employés of insane hospitals or asylums violating laws relating to restraint of inmates.—Any supervisor, attendant or other employee of any institution who knowingly violates or willingly permits to be violated any provision of the three preceding sections shall be punished by a fine of not less than fifty ($50.00) dollars, nor more than three hundred ($300.00) dollars. [Acts 1925, 39th Leg., ch. 174, p. 414, § 22.]

The three preceding sections above referred to are articles 3193k, 3193*l* and 3193m of Rev. Civ. St. 1925.

Art. 427b. County clerk's failure of duty as to recording plats.—When any such map, plat, or replat is tendered for filing in the office of the County Clerk of any county in which any city of the above class may be situated, it shall be the duty of such Clerk to ascertain that the proposed plan, plat or replat is or is not subject to the provisions of this Act [Civ. St. art. 974a], and if it is subject to its provisions, then to examine said map, plat or replat to ascertain whether the endorsements required by this Act [Civ. St. art. 974a] appear thereon. If such endorsements do appear thereon, he shall accept same for registration. If such endorsements do not appear thereon, he shall refuse to accept same for registration. When same does not disclose whether

the land covered by said map, plat or replat, or any part thereof, is or is not within five miles of the corporate limits of a city of the class above mentioned, the County Clerk may require one offering said map, plat or replat for registration to file with him an affidavit setting forth such information. The filing or recording of any plan, plat or replat contrary to the provisions of this Act [Civ. St. art. 974a] shall constitute a misdemeanor punishable by fine of not less than Fifty Dollars ($50.00) nor more than Two Hundred Dollars ($200.00), and both the County Clerk and any Deputy filing or recording the same shall be guilty. [Acts 1927, 40th Leg., p. 342, ch. 231, § 7.]

Section 12 of Acts 1927, 40th Leg., p. 342, ch. 231, repeals all conflicting laws or parts of laws to the extent of such conflict.

CHAPTER EIGHT

MISCELLANEOUS OFFENSES

Art.
428. Compounding a crime.
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Article 428. [422] [291] [272] Compounding a crime.—Whoever has knowledge that an offense against the penal laws of this State has been committed, and shall agree with the offender, directly or indirectly, not to prosecute or inform on him in consideration of money or other valuable thing paid, delivered or promised to him by such offender, or other person for him, shall be fined not less than one hundred nor more than one thousand dollars. (Added in revising, 1879.)

Art. 429. [424] [293] [273] False personation.—Whoever falsely assumes or pretends to be a judicial or executive officer of this State or justice of the peace, sheriff or deputy, constable, or any other judicial or ministerial officer of any county in this State, and takes upon himself to act as such, shall be confined in jail not exceeding six months or be fined not exceeding five hundred dollars. (Act Nov. 12, 1866, Acts 1866, p. 201.)

Art. 430. [421] Barratry.—Whoever shall, for his own profit or with the intent to distress or harass the defendant therein, wilfully instigate, maintain, excite, prosecute or encourage the bringing, in any court of this State, of a suit at law or equity in which he has no interest; or shall, for his own profit or with such intent, wilfully bring or prosecute any false suit of his own at law or equity; or shall wilfully instigate, maintain, excite, prosecute or encourage the bringing or prosecution of any claim in which he has no interest, for his own profit or with the intent to distress or harass the person against whom such claim is brought or prosecuted; or shall seek to obtain employment in any claim to prosecute, defend or collect the same by means of personal solicitation of such employment, or by procuring another to solicit for him employment in such claim; or shall, by himself or another seek or obtain such employment by giving, directly or indirectly, to the person from whom the employment is sought, money or other thing of value, or shall, directly or indirectly pay the debts or liabilities of the person from whom such employment is sought, or who shall loan or promise to give, loan or otherwise grant money or other valuable thing to the person from whom such employment is sought before such employment whether the same be done directly by him or through another; or any attorney at law who shall seek or obtain employment in any suit or case at law, or in equity, to prosecute or defend the same by means of personal solicitation of such employment, or by procuring another to solicit for him employment in such cases; or who shall, by himself or another, seek or obtain such employment by giving directly or indirectly to the person from whom employment is sought money or other thing of value, or who shall directly or indirectly pay the debts or liabilities of the person from whom such employment is sought, or who shall loan or promise to give, loan or otherwise grant money or other valuable thing to the person from whom such employment is sought, before such employment, in order to induce such employment, whether the same shall be done directly by him or through another, shall be fined not to exceed five hundred dollars, and may in addition thereto be imprisoned in jail not exceeding three months. The penalties herein prescribed shall apply not only to attorneys at law, but to any other person who may be guilty of any of the things set forth in this article. The term attorney shall include counsel at law. (Acts 1901, p. 125, Acts 1917, p. 336.)

Art. 431. [1486] Examination of records of corporation.—If any president, vice-president, treasurer, secretary, manager, agent or other officer of any corporation doing business under permit or charter from this State shall fail or refuse to permit the Attorney General or any of his assistants or representatives who may be authorized in writing by the Attorney General to make such examination, to examine or to take copies of any or all of the books, accounts, records, minutes, letters, memoranda, documents, checks, vouchers, telegrams, constitution and by-laws and other records of said corporation, he shall be fined not less than one hundred nor more than one thousand dollars, and be imprisoned in jail not less than thirty nor more than one hundred days. Each day of such failure or refusal shall be a separate offense. (Acts 1907, p. 35.)

Art. 432. [381] "Nepotism."—No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm the appointment to any office, position, clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree by consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever. [Acts 1909, p. 85, Acts 1915, p. 149.]

Art. 433. [382] Officers included.—The inhibitions set forth in this law shall apply to and include the Governor, Lieutenant Governor, Speaker of the House of Representatives, Railroad Commissioners, head of departments of the State government, judges and members of any and all Boards and courts established by or under the authority of any general or special law of this State, members of the Legislature, mayors, commissioners, recorders, aldermen and members of school boards of incorporated cities and towns, public school trustees, officers and members of boards of managers of the State University and of its several branches, and of the various State educational institutions and of the various State eleemosynary institutions, and of the penitentiaries. This enumeration shall not be held to exclude from the operation and effect of this law any person included within its general provisions. [Acts 1909, p. 86.]

Art. 434. [383] Evading nepotism law by trading.—No officer or other person included within any provision of this law shall appoint or vote for appointment or for confirmation of appointment to any such office, position, clerkship, employment or duty of any person whose services are to be rendered under his direction or control and to be paid for, di-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

rectly or indirectly out of any such public funds or fees of office, and who is related by affinity within the second degree or by consanguinity within the third degree to any such officer or person included within any provision of this law, in consideration, in whole or in part, that such other officer or person has theretofore appointed, or voted for the appointment or for the confirmation of the appointment, or will thereafter appoint or vote for the appointment, or for the confirmation of the appointment to any such office, position, or clerkship, employment or duty of any person whomsoever related within the second degree by affinity or within the third degree by consanguinity to such officer or other person making such appointment. [Id.]

Art. 435. [385] Shall not approve account.—No officer or other person included within the third preceding article shall approve any account or draw or authorize the drawing of any warrant or order to pay any salary, fee or compensation of such ineligible officer or person, knowing him to be so ineligible. [Id.]

Art. 436. [387] Official stenographer.—No district judge shall appoint as official stenographer of his district any person related within the third degree to the judge or district attorney of such district. [Id.]

Art. 437. [386] Punishment.—Whoever violates any provision of the five preceding articles shall be guilty of a misdemeanor involving official misconduct, and shall be fined not less than one hundred nor more than one thousand dollars. [Id.]

Art. 438. Exceptions.—That nothing in this law shall apply to any appointment to the office of a notary public, or to the confirmation thereof; or to the appointment of a page, secretary, attendant or other employee by the Legislature for attendance on any member of the Legislature who, by reason of physical infirmities, is required to have a personal attendant. [Acts 1925, p. 148.] [39th Leg., ch. 30, § 2.]

Art. 438a. Search without warrant unlawful.—It shall be unlawful for any person or peace officer, or State ranger, to search the private residence, actual place of habitation, place of business, person or personal possessions of any person, without having first obtained a search warrant as required by law. [Acts 1925, 39th Leg., ch. 149, p. 357, § 2.]

Art. 438b. Penalty for search without warrant.—Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine of not less than $100.00 nor more than $500.00, or by confinement in the county jail not more than six months, or by both such fine and imprisonment. [Acts 1925, 39th Leg., ch. 149, p. 358, § 3.]

TITLE 9

OFFENSES AGAINST THE PUBLIC PEACE

Chap.

1. Unlawful assemblies.
2. Riots.
3. Affrays and disturbances of the peace.
4. Unlawfully carrying arms.

CHAPTER ONE

UNLAWFUL ASSEMBLIES

Art.

439. "Unlawful assembly."
440. To prevent elections.
441. To prevent execution of law, etc.
442. To effect rescue of capital felon.
443. To effect rescue of non-capital felon.
444. To rescue one accused of capital felony.
445. To rescue one accused of lesser felony.
446. To rescue one accused of misdemeanor.
447. To prevent the sitting of any tribunal.
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449. To prevent any person from pursuing his labor.
450. To frighten anyone by disguise.
451. To disturb families.
452. To effect any other illegal object.
453. Lawful meeting not included.
454. Lawful meetings included.
454a. Wearing mask in public.
454b. "Public place" defined.
454c. Masked person entering house.
454d. Masked person entering church.
454e. Masked persons assaulting; "masked" defined.
454f. Masked individuals parading on public highway.
454g. Partial invalidity not to affect other parts.

Article 439. [435] [299] "Unlawful assembly."—An "unlawful assembly" is the meeting of three or more persons with intent to aid each other by violence or in any other manner either to commit an offense or illegally to deprive any person of any right or to disturb him in the enjoyment thereof.

Art. 440. [436] [300] To prevent elections.—If the purpose of the unlawful assembly is to prevent the holding of any public election or to prevent any particular person or number of persons from voting at a public election the punishment shall be that which is prescribed in article 254.

Art. 441. [437] [301] To prevent execution of law, etc.—If the purpose of the unlawful assembly be to oppose or prevent the execution or enforcement of any law of the state, or the lawful decree or judgment of a court in a civil action, the punishment shall be a fine not to exceed five hundred dollars.

Art. 442. [438] [302] To effect rescue of capital felon.—If the purpose of the unlawful assembly be to effect the rescue of a prisoner lawfully convicted of a capital offense, the punishment shall be a fine not to exceed one thousand dollars.

Art. 443. [439] [303] To effect rescue of non-capital felon.—If the purpose of the unlawful assembly be to effect the rescue of any person lawfully convicted of a felony less than capital, the punishment shall be a fine not exceeding five hundred dollars.

Art. 444. [440] [304] To rescue one accused of capital felony.—If the purpose of the unlawful assembly be to rescue any person arrested or imprisoned for a capital offense before trial, the punishment shall be a fine not exceeding five hundred dollars.

Art. 445. [441] [305] To rescue one accused of lesser felony.—If the purpose of the unlawful assembly be to rescue any person lawfully arrested or imprisoned for any felony less than capital, the punishment shall be a fine not exceeding three hundred dollars.

Art. 446. [442] [306] To rescue one accused of misdemeanor.—If the purpose of the unlawful assembly be to rescue a person accused of a misdemeanor, the punishment shall be a fine not exceeding two hundred dollars.

Art. 447. [443] [307] To prevent the sitting of any tribunal.—If the purpose of the unlawful assembly be to prevent or oppose the sitting of any lawful court, board of arbitrators or referees, the punishment shall be a fine not exceeding one thousand dollars.

Art. 448. [444] [308] To prevent collection of taxes.—If the purpose of the unlawful assembly be to prevent the collection of taxes or other money due the State, the punishment shall be a fine not exceeding five hundred dollars.

Art. 449. [445] [309] To prevent any person from pursuing his labor.—If the purpose of the unlawful assembly be to prevent any person from pursuing any labor, occupation or employment, or to intimidate any person from following his daily avocation, or to interfere in any manner with the labor or employment of another, the punishment shall be by fine not exceeding five hundred dollars.

Art. 450. [446] [310] To frighten anyone by disguise.—If the purpose of the unlawful assembly be to alarm and frighten any person by appearing in disguise, so that the real person so acting and assembling cannot be readily known, and by using language or gestures calculated to produce in such person

the fear of bodily harm, the punishment shall be by fine not exceeding five hundred dollars.

Art. 451. [447] [311] To disturb families.—If the purpose of the unlawful assembly be to repair to the vicinity of any residence, and to disturb the inmates thereof by loud, unusual or unseemly noises, or by the discharge of fire-arms, the punishment shall be by fine not exceeding five hundred dollars. A private residence may be either a public or private house.

Art. 452. [448] [312] To effect any other illegal object.—If the purpose of the unlawful assembly be to effect any illegal object other than those mentioned in the preceding articles of this chapter, all persons engaged therein shall be fined not more than two hundred dollars.

Art. 453. [449] [313] Lawful meeting not included.—No public meeting for the purpose of exercising any political, religious or other lawful rights or for the purpose of lawful amusement or recreation is within the meaning of this chapter.

Art. 454. [450] [314] Lawful meetings included.—Where the persons engaged in an unlawful assembly met at first for a lawful purpose and afterward agreed upon an unlawful purpose, they are equally guilty of the offense defined in article 439.

Art. 454a. Wearing mask in public.—If any person shall go into or near any public place masked or disguised in such manner as [to] hide his identity or render same difficult to determine, he or she shall be guilty of a misdemeanor, and upon conviction fined in any sum not exceeding $500.00 or imprisonment in the county jail not exceeding twelve months, or by both such fine and imprisonment provided this article shall not apply to private or public functions, festivals or events not fostered, caused or presented by any secret society or organization. [Acts 1925, 39th Leg., ch. 63, p. 213, § 1.]

Art. 454b. "Public place" defined.—Any "public place" as used in the preceding article is any public road, street, or alley of a town, city, or any store, garage, workshop, or any place at which people are assembled or to which people commonly resort for purposes of business, amusement, or other lawful purposes, other than a church or other place where people are assembled for religious services or purposes. [Acts 1925, 39th Leg., ch. 63, p. 213, § 2.]

Art. 454c. Masked person entering house.—If any person who is masked or disguised in such manner as to hide his or [her] identity, or as to render same difficult to determine shall go into or near any private house, or shall demand or seek entrance therein or disturb any of the inhabitants thereof, he shall be guilty of a felony and upon conviction thereof shall be punished by confinement in the penitentiary for a term of not less than one nor more than ten years; provided this article shall not apply to persons attending social gatherings in private homes where social custom sanctions the wearing of a mask or disguise. [Acts 1925, 39th Leg., ch. 63, p. 213, § 3.]

Art. 454d. Masked person entering church.—If any person masked or disguised in such manner as to hide his identity or make same difficult of determination shall go into any church or other place where people are assembled for religious services or purposes, he shall be punished by confinement in the penitentiary for a term of years not less than two nor more than ten; provided this article shall not apply to any entertainments or service solely under the auspices of such church or religious gathering, and not fostered, caused or presented by any secret society or organization. [Acts 1925, 39th Leg., ch. 63, p. 213, § 4.]

Art. 454e. Masked persons assaulting; "masked" defined.—If any two or more persons acting in concert, or aiding and abetting each other, when either or all of whom are masked, or in disguise, shall assault or shall falsely imprison any other person, each of such persons so offending shall be guilty of a felony and upon conviction shall be punished by confinement in the penitentiary for any term of years not less than five. The terms "masked" or "in disguise" used in this article mean[s] that such person by artificial means has so changed or obscured his usual appearance as to render his identification impossible, or more difficult than it would have been if such mask or disguise has [had] not been used. [Acts 1925, 39th Leg., ch. 63, p. 214, § 5.]

Art. 454f. Masked individuals parading on public highway.—It shall be unlawful for any secret society or organization, or a part of the members thereof, masked or in disguise, to parade upon or along any public road or any street or alley of any city or town in this State, and all members of such society or organization so parading, or other members of such, who aid, abet or encourage such parade, shall be guilty of an offense and upon conviction shall be fined in any sum not less than one hundred nor more than five hundred dollars or imprisonment in the county jail not more than six months, or by both such fine and imprisonment. [Acts 1925, 39th Leg., ch. 63, p. 214, § 6.]

Art. 454g. Partial invalidity not to affect other parts.—Should any article or part of this Act be held invalid it shall not affect or invalidate any other article or part thereof. [Acts 1925, 39th Leg., ch. 63. p. 214, § 7.]

CHAPTER TWO

RIOTS

Art.
455. "Riot."
456. To prevent collection of taxes.
457. Execution of law.
458. Rescue of felon under death sentence.
459. Rescue of felon less than capital.
460. Rescue of one convicted of misdemeanor.
461. Rescue of one imprisoned for capital felony.
462. Felony less than capital.
463. Misdemeanor.
464. Preventing any person from labor.
465. Disturbing residence.
466. Committing any other illegal act.
467. Penalty when object not accomplished.
468. All participants guilty.
469. Where assembly was at first lawful.
470. One may be prosecuted.
471. Indictment.
472. Duty of officers in case of riot.

Article 455. [451] [315] "Riot."—If the persons unlawfully assembled together do or attempt to do any illegal act, all those engaged in such illegal act are guilty of riot.

Art. 456. [452] [316] To prevent collection of taxes.—If the purpose of a riot be to prevent the collection of taxes or other money due the State, any person engaged therein shall be fined not less than two hundred nor more than one thousand dollars, although the purpose of the riot be not effected; and if such illegal purpose be effected, in addition thereto, imprisonment in jail not exceeding two years may be added.

Art. 457. [453] [317] Execution of law.—If any person, by engaging in a riot, shall prevent the execution or enforcement of any law of this State, or the lawful decree of any court in a civil case, he shall be confined in jail not exceeding two years, and be fined not less than two hundred nor more than one thousand dollars.

Art. 458. [454] [318] Rescue of felon under death sentence.—Whoever by engaging in a riot shall rescue one lawfully convicted and given the death penalty or under lawful sentence of death shall be confined in the penitentiary not less than five nor more than ten years.

Art. 459. [455] [319] Rescue of felon less than capital.—Whoever by engaging in a riot shall rescue any prisoner lawfully convicted of felony less than capital, or lawfully under sentence for such offense, shall be confined in the penitentiary not less than two nor more than seven years.

Art. 460. [456] [320] Rescue of one convicted of misdemeanor.—Whoever by engaging in a riot shall rescue any prisoner lawfully convicted of a

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

misdemeanor, shall be confined in jail not less than six months nor more than two years.

Art. 461. [457] [321] Rescue of one imprisoned for capital felony.—Whoever by engaging in a riot shall rescue any prisoner lawfully arrested or imprisoned for a capital felony, shall be confined in the penitentiary not less than two nor more than seven years.

Art. 462. [458] [322] Felony less than capital.—Whoever by engaging in a riot shall rescue any prisoner lawfully arrested or imprisoned for a felony less than capital shall be confined in the penitentiary not less than two nor more than seven years.

Art. 463. [459] [323] Misdemeanor.—Whoever by engaging in a riot shall rescue any prisoner lawfully arrested or imprisoned for a misdemeanor shall be confined in jail not less than six nor more than twelve months.

Art. 464. [460] [324] Preventing any person from labor.—Whoever by engaging in a riot shall prevent any other person from pursuing any labor, occupation or employment, or intimidate any other person from following his daily avocation, or interfere in any manner with the labor or employment of another, shall be confined in jail not less than six months nor more than one year.

Art. 465. [461] [325] Disturbing residence.—Whoever by engaging in a riot shall disturb the inmates of any residence by loud, unusual or unseemly noises, or by the discharge of firearms in the immediate vicinity of such residence, shall be fined not less than fifty nor more than five hundred dollars. A residence may be either a public or private house.

Art. 466. [462] [326] Committing any other illegal act.—Whoever by engaging in a riot shall commit any illegal act other than those mentioned in the ten preceding articles shall, in addition to receiving the punishment affixed to such illegal act, be also confined in jail not exceeding one year, or be fined not exceeding one thousand dollars.

Art. 467. [463] [327] Penalty when object not accomplished.—When the purpose of the riot was to effect any illegal acts mentioned in the preceding articles of this chapter, and such unlawful object is not effected, the punishment may, in the discretion of the jury, be diminished to half the penalty affixed to such riot where the illegal purpose was effected.

Art. 468. [464] [328] All participants guilty.—One engaged in any riot whereby an illegal act is committed shall be deemed guilty of the offense of riot, according to the character and degree of such offense, whether the said illegal act was in fact perpetrated by him or by those with whom he is participating.

Art. 469. [465] [329] Where assembly was at first lawful.—Where the assembly was at first lawful, and the persons so assembled afterward agree to join in the commission of an act which would amount to riot, if it had been the original purpose of the meeting, all those who do not retire when the change of purpose is known are guilty of riot.

Art. 470. [466] [330] One may be prosecuted.—Anyone engaged in an unlawful assembly or riot may be prosecuted and convicted before the others are arrested.

Art. 471. [467] [331] Indictment.—The indictment must state the illegal act which was the object of the meeting, or which they proceeded to do if the assembly was originally lawful, and must state and it must be proven on the trial, that three or more persons were assembled, and their names must be given if known; if unknown, it must be so alleged.

Art. 472. [468] [332] Duty of officers in case of riot.—If any persons shall be unlawfully or riotously assembled together, it is the duty of any magistrate or peace officer, so soon as it may come to his knowledge to go to the place of such assembly and command the persons assembled to disperse; and all who continue so unlawfully assembled or engaged in a riot after being warned to disperse shall be punished by the addition of one-half the penalty to which they would otherwise be liable if no such warning had been given.

CHAPTER THREE

AFFRAYS AND DISTURBANCES OF THE PEACE

Art.
473. Affray.
474. Disturbing the peace.
475. "Public place."
476. Profane language over telephone.
477. Drunk in public place.
478. Drinking liquor on train.
479. Peddler refusing to leave.
480. Shooting in public place.
481. Horse racing on road or street.
482. Abusive language.

Article 473. [469] [333] [313] Affray.—If any two or more persons shall fight together in a public place they shall be fined not exceeding one hundred dollars.

Art. 474. [470] [334] Disturbing the peace.—Whoever shall go into or near any public place or into or near any private house and shall use loud and vociferous, or obscene, vulgar, or indecent language or swear or curse, or yell or shriek, or expose his person, or rudely display any pistol or other deadly weapon, in a manner calculated to disturb the inhabitants of such place or house, shall be fined not to exceed one hundred dollars.

Art. 475. [472] [335] "Public place."—A "public place," as used in the two preceding articles, is any public road, street or alley of a town or city, or any store or work shop or any place at which people are assembled or to which people commonly resort for purposes of business, amusement or other lawful purpose.

Art. 476. Profane language over telephone.—Whoever uses any vulgar, profane, obscene or indecent language over or through any telephone shall be fined not less than five nor more than one hundred dollars. [Acts 1909, p. 87.]

Art. 477. [204] [150] Drunk in public place.—Whoever shall get drunk or be found in a state of intoxication in any public place, or at any private house except his own, shall be fined not exceeding one hundred dollars. [Acts 1913, p. 177.]

Art. 478. [205] Drinking liquor on train.—Whoever shall drink intoxicating liquor in or upon any railway passenger train, coach, closet, vestibule or platform connected therewith, while said train or coach is in the service of passenger transportation, shall be fined not less than ten nor more than one hundred dollars. Nothing herein shall prevent the use of such liquor as stimulant in case of actual sickness of the person using it. [Acts 1907, p. 51.]

Art. 479. Peddler refusing to leave.—Any peddler or hawker of goods or merchandise who enters upon premises owned or leased by another and wilfully refuses to leave said premises after having been notified by the owner or possessor of said premises, or his agent, to leave the same, shall be fined not less than one nor more than twenty-five dollars. [Acts 1913, p. 142.]

Art. 480. [473] [336] Shooting in public place.—Any person who discharges any gun, pistol or firearm of any kind, or discharges any cannon cracker or torpedo on or across any public square, street or alley of any town or city or within one hundred yards of any business house in this State shall be fined not more than one hundred dollars. A "cannon cracker" is any combustible package more than two inches long and more than one inch through. [Acts 1901, p. 300.]

Art. 481. [474] [337] Horse racing on road or street.—Whoever shall run or be in any way concerned in running any horse race in, along or across any public road or any public square, street or alley in any city, town or village, shall be fined not less than twenty-five nor more than one hundred dollars.

Art. 482. [1020] [599] Abusive language.—Any person who shall in the presence or hearing of another curse or abuse such person, or use any violently abusive language to such person concerning him or any of his female relatives, under circumstances reasonably calculated to provoke a breach of the peace, shall be fined not more than one hundred dollars. [Acts 1887, p. 13.]

CHAPTER FOUR

UNLAWFULLY CARRYING ARMS

Art.
483. Unlawfully carrying arms.
484. Not applicable.
485. Carrying arms in any assembly.
486. Not applicable to whom.
487. Arrest without warrant.
488. Dope seller carrying arms.
489. Sale of weapon to minor.

Article 483. [475] [338] [318] Unlawfully carrying arms.—Whoever shall carry on or about his person, saddle, or in his saddle bags any pistol, dirk, dagger, slung-shot, sword cane, spear or knuckles made of any metal or any hard substance, bowie knife, or any other knife manufactured or sold for the purposes of offense or defense, shall be punished by fine not less than $100.00 nor more than $500.00 or by confinement in jail for not less than one month nor more than one year. [Acts 1887, p. 6; Acts 1905, p. 56; Acts 1918, p. 194.]

Art. 484. [476] [339] [319] Not applicable.—The preceding article shall not apply to a person in actual service as a militiaman, nor to any peace officer in the actual discharge of his official duty, nor to the carrying of arms on one's own premises or place of business, nor to persons traveling, nor to any deputy constable, or special policeman who receives a compensation of forty dollars or more per month for his services as such officer, and who is appointed in corformity [conformity] with the statutes authorizing such appointment; nor to the Game, Fish and Oyster Commissioner, nor to any deputy, when in the actual discharge of his duties as such, nor to any game warden, or local deputy Game, Fish and Oyster Commissioner when in the actual discharge of his duties in the county of his residence, nor shall it apply to any game warden or deputy Game, Fish and Oyster Commissioner who actually receives from the State fees or compensation for his services. [Acts 1871, p. 25, Acts 1918, p. 194.]

Art. 485. [477] [340] Carrying arms in any assembly.—If any person shall go into any church or any religious assembly, any schoolroom, ballroom, or other place where persons are assembled for amusement or for educational or scientific purposes, or into any circus, show or public exhibition of any kind, or social gathering, or to any election on the day or days of any election where any portion of the people of this State are collected to vote at an election, or to any other place where people may be assembled to muster or perform any other public duties, and shall have or carry about his person any pistol or other firearm, dirk, dagger, slung shot, sword cane, spear, brass knuckle, bowie knife, or any other kind of a knife made and manufactured for the purpose of offense and defense, he shall be fined not less than one hundred nor more than five hundred dollars, or be confined in jail not less than thirty days nor more than twelve months, or both. [Acts 1871, p. 25; Acts 1915, p. 132.]

Art. 486. [478] [341] Not applicable to whom.—The preceding article shall not apply to peace officers or other persons authorized or permitted by law to carry arms at the places therein designated. [Acts 1871, p. 25. Revision of 1879.]

Art. 487. [479] [342] Arrest without warrant.—Any person violating any article of this chapter may be arrested without warrant by any peace officer and carried before the nearest justice of the peace. Any peace officer who shall fail or refuse to arrest such person on his own knowledge, or upon information from some reliable person, shall be fined not exceeding five hundred dollars. [Acts 1871, p. 26.]

Art. 488. Dope seller carrying arms.—Whoever shall carry on or about his person a pistol or any other weapon or arm mentioned in the first article of this chapter while possessing for the purpose of unlawful sale, furnishing or giving away any drug, narcotic, derivative or preparation or marijuana mentioned in article 720 of this Code, shall be confined in the penitentiary for not less than one nor more than ten years. [Act June 18, 1923, p. 164.]

Art. 489. [1048] Sale of weapon to minor.—Whoever shall knowingly sell, give or barter, or cause to be sold, given or bartered to any minor a pistol or any other weapon or arm mentioned in the first article of this chapter, without the written consent of the parent or guardian of such minor, or of some one standing in lieu thereof, shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not less than ten nor more than thirty days, or both. [Acts 1897, p. 221.]

TITLE 10

OFFENSES AGAINST MORALS, DECENCY AND CHASTITY

Chap.
1. Unlawful marriages.
2. Incest.
3. Adultery and fornication.
4. Seduction.
5. Bawdy and disorderly houses.
6. Pandering.
7. Miscellaneous offenses.

CHAPTER ONE

UNLAWFUL MARRIAGES

Art.
490. Bigamy.
491. Defensive matter.
492. Miscegenation.
493. "Negro" and "white person."
494. Proof of marriage.

Article 490. [481] [344] [324] Bigamy.—Any person who has a former wife or husband living who shall marry another in this State shall be confined in the penitentiary not less than two nor more than five years. [Acts 1887, p. 37.]

Art. 491. [482] [345] Defensive matter.—The preceding article does not apply to one whose husband or wife shall have been continually remaining out of the State or shall have voluntarily withdrawn from the other and remained absent for five years, the one marrying again not knowing the other to be living within that time, nor to any one who has been legally divorced.

Art. 492. [483] [346] [326] Miscegenation.—If any white person and negro shall knowingly intermarry with each other in this State, or having so intermarried in or out of the State shall continue to live together as man and wife within this State, they shall be confined in the penitentiary not less than two nor more than five years.

Art. 493. [484] [347] [327] "Negro" and "white person."—The term "negro" includes also a person of mixed blood descended from negro ancestry from the third generation inclusive, though one ancestor of each generation may have been a white person. Any person not incuded [included] in the foregoing definition is deemed a white preson [person] within the meaning of this law.

Art. 494. [485] [348] [328] Proof of marriage.—In trials for any offense included in this chapter, proof of marriage by mere reputation shall not be sufficient.

CHAPTER TWO

INCEST

Art.
495. Punishment.
496. Who men cannot marry.
497. Who women cannot marry.
498. Evidence.

Article 495. [486] [349] Punishment.—All persons who are forbidden to marry by the succeding [succeeding] articles who shall intermarry or carnally know each other shall be confined in the penitentiary not less than two nor more than ten years.

Art. 496. [487] [350] [330] Who men can not marry.—No man shall marry his mother, his father's sister or half-sister, his mother's sister or half-sister, his daughter, the daughter of his father, mother, brother or sister or of his half-brother or sister, the daughter of his son or daughter, his father's widow, his son's widow, his wife's daughter or the daughter of his wife's son or daughter.

Art. 497. [488] [351] [331] Who women can not marry.—No woman shall marry her father, her father's brother or half-brother, her mother's brother or half-brother, her own brother or half-brother, her son, the son of her brother or sister or her half brother, or half-sister, the son of her son or daughter, her mother's husband after the death of her mother, her daughter's husband after the death of her daughter, her husband's son, the son of her husband's son or daughter.

Art. 498. [489] [352] Evidence.—On a trial for incest the fact of the relationship between the parties may be proved as in civil suits, and proof of carnal knowledge shall be in all cases sufficient without proof of marriage.

CHAPTER THREE

ADULTERY AND FORNICATION

Art.
449. "Adultery."
500. Proof of marriage.
501. Both guilty.
502. Punishment for adultery.
503. "Fornication."
504. Punishment for fornication.

Article 499 [490] [353] [333] "Adultery."—"Adultery" is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman when either is lawfully married to some other person.

Art. 500. [491] [354] Proof of marriage.—Proof of marriage in such cases may be made by the original or a certified copy of the marriage license and return thereon, or by the testimony of any one present at the marriage or who has known the husband and wife to live together as married persons.

Art. 501. [492] [355] Both guilty.—When adultery has been committed, both parties are guilty though only one may be married.

Art. 502. [493] [356] Punishment for adultery—Every one guilty of adultery shall be fined not less than one hundred nor more than one thousand dollars.

Art. 503. [494] [357] "Fornication."—"Fornication" is the living together and carnal intercourse with each other, or habitual carnal intercourse with each other without living together, of a man and woman, both being unmarried.

Art. 504. [495] [358] Punishment for fornication.—Every one guilty of fornication shall be fined not less than fifty nor more than five hundred dollars.

CHAPTER FOUR

SEDUCTION

Art.
505. Seduction.
506. Marriage obliterates offense.
507. Abandonment after seduction and marriage.
508. "Seduce."
509. Liability of married man.

Article 505. [1447] [967] [814] Seduction.—If any person by promise to marry shall seduce an unmarried female under the age of twenty-five years and shall have carnal knowledge of such female, he shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1858, p. 185; Acts 1903, p. 221.]

Art. 506. [1449] [969] [816] Marriage obliterates offense.—If the parties marry each other at any time before the defendant pleads to the indictment before a court of competent jurisdiction, the prosecution shall be dismissed. If after the prosecution is begun and before he pleads to the indictment before a court of competent jurisdiction, the defendant in good faith offers to marry the female so seduced and she refuses to marry him, such refusal shall be a bar to further prosecution. This article shall not apply to the case of a defendant who was in fact married at the time of committing the offense. [O. C. 790; Acts 1903, p. 221.]

Art. 507. [1450] Abandonment after seduction and marriage.—If any person by promise of marriage shall seduce an unmarried female under the age of twenty-five years and shall have carnal knowledge of said female, and if after prosecution has begun, the parties marry each other at any time before the defendant pleads to the indictment before a court of competent jurisdiction, and if the defendant within two years after said marriage without the fault of said wife, such fault amounting to acts committed by her after said marriage as would entitle him to a divorce under the laws of this State, shall abandon her or refuse to live with her, or shall be so cruel to her as to compel her to leave him, or shall be guilty of such outrages or cruelties toward her as to make their living together insupportable thereby leaving her or forcing her to leave him and live apart from each other, he shall be confined in the penitentiary not less than two nor more than ten years. Such female so seduced and subsequently married and abandoned shall be a competent witness against said defendant. [Acts 1909, p. 97.]

Art. 508. [1448] [968] [815] "Seduce."—The word "seduce" is used in the sense in which it is commonly understood.

Art. 509. [1451] [970] [817] Liability of married man.—No one who was married at the time of committing the offense and that fact known to the woman, shall be held liable for the offenses defined in this chapter.

CHAPTER FIVE

BAWDY AND DISORDERLY HOUSES

Art.
510. "Bawdy house."
511. "Assignation house."
512. "House."
513. "Disorderly house."
514. Keeping bawdy or disorderly house.
515. Owner, lessee or agent liable.
516. Employing prostitutes.
517. Duty of officers.
518. Liquor in bawdy or disorderly house.

Article 510. [496] "Bawdy house"—A bawdy house is one kept for prostitution or where prostitutes are permitted to resort or reside for the purpose of plying their vocation. [Acts 3rd C. S. 1910, p. 32.]

Art. 511. [497] "Assignation house."—An assignation house is a house, room or place where men and women meet by mutual appointment, or by appointment made by another for the purpose of sexual intercourse. [Acts 3rd C. S. 1910, p. 32.]

Art. 512. [499] [360] [340] "House."—Any room or part of a building or other place appropriated for either of the purposes above mentioned is a bawdy or a disorderly house within the meaning of this chapter. [O. C. 397.]

Art. 513. [496] "Disorderly house."—A disorderly house is any assignation house, or any house to which persons resort for the purpose of smoking or in any manner using opium. [Acts 3rd C. S. 1910, p. 32.]

Art. 514. [500] [361] [341] Keeping bawdy or disorderly house.—Any person who shall directly, as agent for another, or through an agent, keep or be concerned in keeping, or aid or assist or abet, in keeping a bawdy or disorderly house in any

house, building, edifice or tenement, or shall knowingly permit the keeping of a bawdy or disorderly house in any house, building, edifice or tenement owned, leased, occupied or controlled by him or her, directly, as agent for another or through any agent, shall be fined two hundred dollars and confined in jail for twenty days for each day he or she shall keep, be concerned in keeping or knowingly permit to be kept such bawdy or disorderly house. [Acts 1907, p. 247.]

Art. 515. [501] [361] [341] Owner, lessee or agent liable.—Any owner, lessee, or the agent of either, controlling the premises, having information that such premises are being kept, used or occupied as a bawdy or disorderly house, shall be guilty of knowingly permitting the premises to be kept as a bawdy or disorderly house, unless he shall immediately proceed to prevent such keeping, use or occupancy by giving such information to the county or district attorney, or take such other action as may reasonably accomplish such result. [Acts 1907, p. 247.]

Art. 516. [502] [362] [341a] Employing prostitutes.—Any person who shall directly, as agent for another, or through an agent, knowingly employ or have in his service in any capacity in any theater, play house or dance house, any prostitute, lewd woman or woman of bad reputation for chastity, or permit such woman to display or conduct herself therein in an indecent manner, shall be fined not less than one hundred nor more than five hundred dollars and confined in jail for twenty days for each day that such woman is kept in service or so permitted to display or conduct herself. [Acts 1889, p. 38; Acts 1907, p. 247.]

Art. 517. [506] [363] Duty of officers.—All peace officers are especially charged to discover and report and aid in the enforcement of the articles of this chapter; judges are required to give them specially in charge to the grand juries, and each grand jury is required to call before them all officers charged with enforcing said articles and examine them as to their knowledge and information of violations thereof and their diligence in their enforcement. [Acts 1889, p. 33.]

Art. 518. Liquor in bawdy or disorderly house.—If any person, whether the owner, lessee, manager, housekeeper, proprietor, servant, agent, employé, inmate, visitor or any other person shall give away or drink or permit to be given away or drunk any spirituous or vinous or malt liquors whether capable of producing intoxication or not, in any bawdy house, disorderly house or assignation house, he shall be confined in jail for not less than thirty nor more than ninety days and be fined not less than fifty nor more than five hundred dollars. [Acts 1911, p. 23.]

CHAPTER SIX

PANDERING

Art.
519. "Pandering."
520. Defenses and venue.
521. Female competent to testify.
522. Keeping resort to aid pandering.
523. Marriage no defense.

Article 519. "Pandering."—Any person who shall procure or attempt to procure or be concerned in procuring with or without her consent a female inmate for a house of prostitution, or who by promises, threats, violence or by any device or scheme shall cause, induce, persuade or encourage a female to become an inmate of a house of prostitution, or shall procure a place as inmate in a house of prostitution for a female person; or shall by such means persuade or encourage an inmate of such a house to remain therein as such inmate; or shall by fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority procure any female person to become or remain an inmate of such a house, or to enter any place in which prostitution is encouraged or allowed in this State or to come into or leave this State for the purpose of prostitution, or who shall procure any female person to become an inmate of a house of ill-fame within this State, or to come into or to leave this State for the purpose of prostitution, or who shall give or agree to receive or give any money or thing of value for procuring or attempting to procure any female person to become an inmate of a house of ill-fame within this State, or to come into this State or leave this State, for the purpose of prostitution, shall be confined in the penitentiary for any term of years not less than five. [Acts 1911, p. 29.]

Art. 520. Defenses and venue.—It is no defense that any part of any act prohibited by the preceding article was committed outside this State, and the offense shall in such case be deemed and alleged to have been committed and the accused tried in any county in which the prostitution was intended to be practiced or in which the offense was consummated, or in which any overt act in furtherance thereof was done. [Id.]

Art. 521. Female competent to testify.—Any such female shall be a competent witness to testify for or against the accused as to any act or words with him or by him with another in her presence, notwithstanding her having married him before or after the violation of the law, whether called as a witness during the existence of the marriage or after its dissolution. No testimony or statement given by such female during the trial for any such offense above named shall be used against her in any criminal prosecution. [Id.]

Art. 522. Keeping resort to aid pandering.—Any person who shall keep or be concerned in keeping or maintaining any house or station or rendezvous or place of resort for females under the guise of securing for such female a place of employment, but with the intent to place such female in a house of prostitution or in the possession of another person to be used for prostitution, shall be punished by confinement in the penitentiary for any term of years not less than five. Any person keeping such house or station or place of rendezvous or resort for females who shall employ any other person to procure any female to go to such place or resort shall be confined to the penitentiary for any term of years not less than five. [Id.]

Art. 523. Marriage no defense.—The act or state of marriage shall not be a defense to any violation of any article of this chapter. [Id.]

CHAPTER SEVEN

MISCELLANEOUS OFFENSES

Art.
524. Sodomy.
525. Procuring.
526. Indecent publications and exposures.
527. Immoral publications.
528. Desecration of graves.
529. Interference with dead bodies.
530. Traffic in dead bodies.
531. Violating Anatomical Board Act.
532. Traveling women dancers.
533. Exceptions.
534. Contributing to delinquency of child.
535. Enticing minor from legal custody.

Article 524. [507] [364] [342] Sodomy.—Whoever commits with mankind or beast the abominable and detestable crime against nature shall be confined in the penitentiary not less than five nor more than fifteen years. [Acts 1860, p. 97.]

Art. 525. [498] [359a] Procuring.—Whoever shall invite, solicit, procure, allure or use any means in alluring or procuring any female to visit and be at any particular house, room or place for the purpose of meeting and having unlawful sexual intercourse with any male person, or to take part or in any way participate in any immoral conduct with men or women, or to use at such place any intoxicating liquor; or give to any person the name and address, or either, or photograph of any female for the purpose of enabling the person to whom the same is given to meet and have unlawful sexual intercourse or to bring about or procure such intercourse with such female shall be fined not less than fifty nor more than two hundred dollars and be confined in

jail not less than one nor more than six months. [Acts 1907, p. 246.]

Art. 526. [508] [365] [343] Indecent publications and exposures.—If any person shall make, publish or print any indecent and obscene print, picture or written composition manifestly designed to corrupt the morals of youth, or shall designedly make any obscene and indecent exhibition of his own or the person of another in public, he shall be fined not exceeding one hundred dollars. [O. C. 399.]

Art. 527. [509] Immoral publications.—Whoever shall within this State engage in the business of editing, publishing or disseminating any newspaper, pamphlet, magazine, or any printed paper devoted mainly to the publications of scandals, whoring, lechery, assignations, intrigues between men and women and immoral conduct of persons; or shall knowingly have in his possession for sale, or shall keep for sale or distribute or in any way assist in the sale or shall give away any such newspaper, pamphlet, magazine or printed matter in this State shall be confined in the penitentiary not less than two nor more than five years. [Acts 1897, p. 160.]

Art. 528. [510] [366] [344] Desecration of graves.—If any person shall wrongfully destroy, mutilate, deface, injure or remove any tomb, monument, grave stone or other structure in any place used or intended for the burial of the dead, or any fence, railing or curb for the protection of such structure, or any inclosure for any such place of burial, or shall wrongfully injure, cut, remove or destroy any tree or shrub growing within any such inclosure, he shall be fined not exceeding five hundred dollars or be imprisoned in jail not to exceed six months. [Acts 1858, p. 166.]

Art. 529. [511] [367] [345] Interference with dead bodies.—If any person not authorized by law or by a relative or friend for the purpose of reinterment, shall disinter, remove, or carry away any human body, or the remains thereof, or shall conceal the same knowing it to be so illegally disinterred, he shall be fined not exceeding two thousand dollars. [O. C. 399b. Acts 1858, p. 166.]

Art. 530. [512] Traffic in dead bodies.—No school, college, physician or surgeon shall be allowed or permitted to receive any dead human body until bond shall have been given as provided by law, and whosoever shall sell or buy any such body or in any way traffic in the same, or shall transmit or convey, or procure to be transmitted or conveyed, any said body to any place outside the State shall be fined not exceeding two hundred dollars or be imprisoned not exceeding two years in jail. [Acts 1907, p. 119.]

Art. 531. [513] Violating Anatomical Board Act.—Any person having duties imposed upon him by the provisions of the Anatomical Board Act who shall refuse, neglect or omit to perform any of them as required by said law, shall be fined not less than one hundred nor more than five hundred dollars for each offense. [Id.]

Art. 532. Traveling women dancers.—Any person, or aggregation of persons traveling from place to place composed in whole or in part of women who shall show or exhibit in any dancing performances, or as dancers in a tent, inclosure, temporary structure or in any location whatever, shall be fined not less than one hundred nor more than five hundred dollars and be confined in jail not less than thirty days nor more than one year. [Acts 1919, p. 26.]

Art. 533. Exceptions.—It shall not be unlawful under the preceding article for any regularly organized show, theatrical company or troupe to show or exhibit dancing performances in permanently established opera houses, play houses or auditoriums, or for any licensed circus not exhibiting more than one day in succession in any town or city to give dancing exhibitions in connection with any regular performance. [Id.]

Art. 534. Contributing to delinquency of child.—In all cases where any child shall be a "delinquent child" or a "neglected or dependent child," as defined in the statutes of this State, the parent, guardian or person having the custody of, or the person responsible for such child who by any act encourages, causes or contributes to the delinquency or dependency of such child, or any other person who shall in any manner cause, encourage or contribute to the delinquency of such child shall be fined not exceeding five hundred dollars or be imprisoned in jail not to exceed one year, or both. By the term "delinquency," as used herein, is also meant any act which tends to debase or injure the morals, health or welfare of such child, and includes the use of tobacco in any form, drinking intoxicating liquor, going into or remaining in any bawdy house, and any act which would constitute such child a "delinquent child." [Acts 1907, p. 209, Acts 1918, 4th C. S. p. 125.]

Art. 535. [1047] [625a] Enticing minor from legal custody.—Any person in this State who shall knowingly entice or decoy any minor in the State away from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such minor shall be fined not less than twenty-five nor more than two hundred dollars. In all cases where charitable and benevolent institutions have established homes for dependent orphans of their deceased members and the person legally entitled to the guardianship of such orphans surrenders them to such homes for care and support, such institutions under their agencies and rules are considered as standing in the stead of the parent. [Acts 1893, p. 114.]

TITLE 11

OFFENSES AGAINST PUBLIC POLICY AND ECONOMY

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2. Insurance.
3. Wife and Child Desertion.
4. Vagrancy.
5. Prize Fighting, Roping Contests, Etc.
6. Gaming.
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CHAPTER ONE

BANKING

Art.

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Article 536. [514] [368] Issuing bills to pass as money.—If any person within this State shall issue any bill, promissory note, check or other

paper intended to circulate as money, he shall be fined not less than ten nor more than fifty dollars for each bill, promissory note, check or other paper so issued.

Art. 537. [515] [369] Includes corporations.—Any officer of any banking company or body corporate, who signs his own name, or that of another, by the authority of such other, to any bank bill, promissory note, check or other paper, being evidence of a promise to pay, and intended to circulate as money, is guilty of the offense punishable by the preceding article.

Art. 538. [516] [370] Indorsement of foreign bills.—Whoever brings into this State any bank bill, purporting to be issued by any bank in any other State or territory of the Union, or in any foreign country, and shall sign or indorse the same to be circulated as money in this State, is guilty of the offense mentioned in article 536.

Art. 539. [517] [371] Passing paper of broken bank.—Whoever shall fraudulently pass or transfer, or offer to pass or transfer, any paper purporting to be bank paper, and to be issued by any bank which, having once existed, has since broken, or the money of the same becomes valueless, shall be confined in the penitentiary not less than two nor more than five years.

Art. 540. [518] [372] Not applicable to National banks.—The provisions of the four preceding articles shall not apply to any bank incorporated under the laws of the United States, nor to bills issued to such bank.

Art. 541. [519] [520] Misappropriating savings funds.—Any officer or director of any bank or bank and trust company which shall establish or maintain or continue to maintain, a savings department, or which shall use the word "savings," as provided by law, who shall knowingly misappropriate any moneys or funds belonging to such savings department, or use or consent to the use of any such moneys or funds otherwise than for the payment of lawful demands of savings depositors, and in making such investments as are prescribed by law, and in the payment of such dividends to the shareholders as are allowed by law to be paid therefrom, or borrow any of the funds belonging to such savings department, or in any way be an obligor for moneys loaned by or borrowed of such savings department, or receive or accept, directly or indirectly, any commission, brokerage or other valuable thing or favor of any kind by reason of any loan or investment made out of the funds of such savings department, or sell such savings department any security or other investment, or wilfully or knowingly do, or perform, any act or transaction by or as a result of which at any time the assets of such savings department, including cash, shall not at least equal in amount the deposits in such savings department, at least fifteen per cent of which shall be actual cash in such savings department, shall be confined in the penitentiary for not less than one nor more than five years. [Acts 1909, p. 406.]

Art. 542. [521] Certificate of authority.—All State banks transacting business in this State shall be required to hold a certificate of authority to transact a banking business, issued by the Banking Commissioner in compliance with the provisions of the laws of this State. The said Commissioner shall issue to each State bank entitled to transact a banking business, a certificate of authority to be signed by him under his official seal, certifying that such State bank is authorized under the laws of this State to engage in the banking business. Such certificate of authority, when issued to guaranty fund banks, shall contain the following statement on the face thereof in bold type: "The non-interest bearing and unsecured deposits of this bank are protected by the State bank guaranty fund." And, when issued to bond security banks, shall contain the following statement on the face thereof in bold type: "All deposits of this bank are protected by security bond under the laws of the State of Texas." And, when issued to the State banks other than guaranty fund banks and bond security bonds [banks], it shall contain neither of these nor any similar statement. Said Commissioner shall deliver the certificate herein provided for, upon such corporation showing to the satisfaction of the State Banking Board that it has complied with the State banking laws.

Any person or persons who shall in any capacity transact, or hold themselves out as transacting, the business of banking for or on behalf of any State bank or State banking and trust company, without such bank or banking and trust company's holding a certificate of authority from the said Commissioner, as herein provided for, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail for not less than one nor more than twelve months, or both. Each day is a separate offense. [Id.]

Art. 543. [522] False statement as to system.—Any officer, director, or stockholder of any State bank or State bank and trust company doing business under the laws of this State, or any other person acting for such bank or bank and trust company, who shall write, print, publish, or advertise in any manner any false statement as to the Guaranty Fund system or the bond security system of the State banks of Texas, or any person who shall write, print, publish, or advertise any false statement as to the Guaranty Fund system or bond security system of the State banks of this State authorized to be used by State banks or State bank and trust companies of this State, shall be fined not less than one hundred nor more than five hundred dollars, or be confined in jail not less than three nor more than twelve months, or both. [Acts 1923, p. 92.]

Art. 544. [523] Embezzling or misapplying funds.—Every president, cashier, director, teller, clerk, or agent of any State bank or bank and trust company incorporated under the laws of Texas, who embezzles, fraudulently abstracts or wilfully misapplies any of the moneys, funds or credits of such bank or bank and trust company, shall be confined in the penitentiary not less than two nor more than ten years. It shall not be necessary to allege in the indictment nor to prove on the trial that such embezzlement, abstraction or misapplication was without the consent of anyone. If the accused had the consent of anyone authorized to consent to his act, he may prove it. [Acts 1909, p. 406; Acts 1927, 40th Leg., p. 202, ch. 133, § 1.]

Art. 545. [523] Acts without authority.—Every president, cashier, director, teller, clerk, or agent of any State bank or banking and trust company incorporated under the laws of Texas, who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree, or who makes any false entry in any book, report or statement of such bank or banking and trust company with intent, in either case to defraud such bank or banking and trust company, or any other corporation, body politic, or any person, firm, or association, or to deceive any officer of such bank or banking and trust company, the Banking Commissioner or any examiner or special agent authorized by law to examine the affairs of any such bank or banking and trust company, shall be confined in the penitentiary not less than two nor more than ten years. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 253, ch. 95, § 1.]

Art. 546. [524] Director borrowing funds.—Any director of a State bank or banking and trust company, incorporated under the laws of this State, who shall, either directly or indirectly, borrow any of the funds of such bank in excess of ten per cent of its capital and surplus, without the consent of a majority of the directors of the bank first having been obtained and made a matter of record at a regu-

lar meeting of the board, or without the written consent of such majority of the directors, other than the borrowers, being jointly executed by them and filed in the archives of such bank before the loan is made; and any officer of a State bank who shall knowingly become indebted to such bank, directly or indirectly, in any sum whatever, without the consent of a majority of the board, other than the borrower, obtained or recorded or filed in like manner, and any officer or director of such bank who shall knowingly loan or assent to the loaning of any of its funds to any officer, or any of its funds to any director in excess of ten per cent of its capital and surplus, without such consent being first obtained and recorded, or filed, or who shall knowingly permit any such officer or director to become indebted to the bank or liable to it without such consent, shall be confined in the penitentiary for a term of not less than two years. [Id.]

Art. 547. [525] Officer or director, failure of duty.—Any officer, director or employé of any State bank or trust company who wilfully fails or refuses to perform any duty imposed upon him by law, or who shall do or perform, or assist in doing or performing any act or transaction prohibited by the provisions of the laws of this State governing such banks or companies, for the punishment of which provision is not otherwise made in this chapter, shall be fined not less than five hundred nor more than one thousand dollars, or be imprisoned in jail not less than thirty nor more than ninety days, or both. [Id.]

Art. 547a. Acting as president and cashier.—Sec. 1. That hereafter it shall be unlawful for any person to be president and cashier, at the same time, in any bank, organized and operating under the laws of this state.

Sec. 2. Any person offending against the above provision shall be guilty of a misdemeanor and shall be fined in any sum not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or imprisoned in the county jail not to exceed one year, or both. [Acts 1927, 40th Leg., p. 288, ch. 201.]

Art. 547b. Sale of securities without consent of directors.—Sec. 1. That it shall be unlawful for any officer, director or employee of a bank, organized and operating under the laws of this state to sell any note, security or property to such bank, without the written consent of a majority of the board of directors, made in the same manner as is required by law for the making of loans to such officers.

Sec. 2. Any person violating the provisions of this Act shall be fined not less than five hundred ($500.00) or more than One Thousand Dollars ($1,000.00), or be imprisoned in jail not less than thirty or more than ninety days, or both. [Acts 1927, 40th Leg., p. 203, ch. 134.]

Art. 547c. Destroying or removing bank records.—Sec. 1. That any stockholder, officer, director, employee or agent of any bank incorporated and operating under the laws of this State who, for the purpose of concealing any fact or suppressing evidence against himself or other persons, shall abstract, remove, destroy or secrete any papers, books or records of any bank from such bank, or the house in which such bank carried on its business; or from the custody of the State Banking Commissioner of Texas, shall be guilty of a felony; and on conviction thereof shall be imprisoned in the penitentiary not less than two years and not to exceed five years.

Sec. 2. All such principal offenders, accessories and accomplices may be charged in the same count and separate offenses may be charged in separate counts in the same indictment or information; and they may be tried together. [Acts 1927, 40th Leg., p. 398, ch. 269.]

Section 3 of Acts 1927, 40th Leg., p. 398, ch. 269, repeals all conflicting laws and parts of laws.

Art. 548. [526] [527] Commissioner financially interested.—Neither the Banking Commissioner nor any regularly appointed clerk or employé of the department of banking, nor any State bank examiner, shall, at any time during his incumbency, be financially interested, directly or indirectly, in any State bank or banking and trust company, subject to the supervision of the department of banking, or knowingly be or become indebted, either directly or indirectly, to any such State bank or banking and trust company. Any officer or employé above named violating any provision hereof shall be fined not exceeding five hundred dollars. The venue in such case shall be in the county wherein such bank or banking and trust company is located. The violation of the provisions of this article shall work a forfeiture of the office or position held by the person guilty of such violation. [Acts 1909, p. 406.]

Art. 548a. Commissioner purchasing assets.—Sec. 1. It shall be unlawful for the Banking Commissioner of Texas or any of his employees to purchase, either directly or indirectly, any asset of any nature belonging to any bank in the hands of the Commissioner for liquidation.

Sec. 2. Any person violating the provisions of this Act shall be fined not less than one thousand dollars nor more than twenty-five hundred dollars, or imprisoned in the county jail for not less than six months nor more than two years, or both. [Acts 1927, 40th Leg., p. 201, ch. 131.]

Art. 549. [528] Certifying check without funds.—Any officer, clerk or agent of any State bank or banking and trust company incorporated under the laws of Texas, who shall wilfully certify to any check before the amount thereof shall have been regularly entered to the credit of the drawer, upon the books of such State bank or banking and trust company, shall be fined not less than five hundred nor more than five thousand dollars, or be confined in the penitentiary for not more than one year, or punished by both such fine and imprisonment. [Acts 1909, p. 406.]

Art. 550. [529] Notice of violation.—Any State bank examiner, or special agent, who shall knowingly and intentionally fail or refuse to notify the Banking Commissioner in writing of any violation of any criminal provision of this law within ten days after the same shall come to his notice or attention, unless such notice shall, within his knowledge, have been previously given by some other bank examiner or special agent; or any Banking Commissioner who shall knowingly and intentionally fail or refuse to notify in writing the county or district attorney charged by law with the duty of the prosecution thereof, of any such violation, within ten days after the same shall have come to his knowledge or attention, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail not less than three nor more than twelve months, or both, and, upon conviction, shall be removed from office. [Id.]

Art. 551. [530] Examiner violating oath of office.—For any violation of his oath of office, or of any duty imposed upon him by law, any examiner shall be confined in the penitentiary for a term not exceeding five years, and upon indictment of any such examiner for any violation of this law, he shall be disqualified from further discharging the duties of such office until such indictment is fully disposed of. [Acts 1905, p. 489.]

Art. 552. [531] Statement.—The Banking Commissioner, not less than twice during any one year, shall call upon each bank organized under the laws of this State, and each trust company or savings bank doing business under the provisions of such laws, for a statement as provided by law; and he may call upon any one or more of such corporations to make such statements at any time, though it be more than a second statement within the year. Said Commissioner shall give no notice to any person whatsoever of the day on which he will call for such statement. For a violation of this prohibition, or of any other

duty herein imposed upon him, he shall be deemed to have committed a misdemeanor in office, and, upon conviction of the same, he shall be punished by removal from office, and by a fine of not less than five hundred dollars for each violation of this law. Should any president, cashier or secretary, or any officer of such corporation, or any director thereof, refuse to make the statement so required of him or them, or wilfully and corruptly make a false statement, he shall be fined for each offense not less than one hundred nor more than five hundred dollars, or be imprisoned not less than one nor more than twelve months in jail or both. [Id.]

Art. 553. Accepting bonus for loan.—Any officer, director, or employé of any State bank or banking corporation organized under the laws of Texas who demands or accepts directly or indirectly, any commission or consideration or any other compensation on account of the making by any such corporation of any loan or extension of credit to any person, firm or corporation, shall be fined not less than one hundred nor more than five hundred dollars, or be confined in jail not less than thirty nor more than ninety days, or both. [Acts 1917, p. 470.]

Art. 554. Exceeding loan limit.—No incorporated bank or trust company chartered under the laws of this State shall loan its money, directly or indirectly, or permit any individual, corporation, company, or firm to become at any time indebted or liable to it in a sum exceeding twenty-five per cent of its capital stock actually paid in and surplus, or permit a line of loans or credits to any greater amount to any individual, corporation, company or firm. Any agent or officer of any incorporated bank or trust company who violates any provision of this article shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than thirty nor more than ninety days, or both. All loans to members of any unincorporated company or firm shall be considered as if they were loans to such company or firm in determining the limitation here prescribed. The discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as borrowed money; a permanent surplus, the setting apart of which shall have been certified to the Banking Commissioner and which cannot be diverted without due notice to and consent of said officer, may be taken and considered as a part of the capital stock for the purpose of this article. In no event shall any such loan exceed 25 per cent of the authorized capital stock and certified surplus. [Acts 1917, p. 472.]

Art. 555. Exceptions.—The preceding article shall not be held to interfere with the rules and regulations of any clearing house association in this State in reference to the daily balances between banks; nor does it apply to balances due from correspondents subject to draft. The discount of the following classes of paper shall not be considered as money borrowed within the meaning of the preceding article:

1. The discount of bills of exchange, drawn in good faith, against actual existing values.

2. The discount of paper upon collateral security or warehouse receipts, covering agricultural and manufactured products in store in elevators and warehouses, under the following conditions: first, that the actual market value of the property held in store and covered by such receipts shall at all times exceed by at least twenty-five per cent the amount loaned upon the same; second, that the full amount of such loans shall at all times be covered by policies of fire insurance issued by companies lawfully doing business in this State, to the extent of their ability to cover such loans; and all such policies shall be made payable in case of loss to the bank or holder of the warehouse receipts.

Any State banking corporation may accept drafts or bills of exchange drawn upon it and growing out of transactions involving the importation and exportation of goods having not more than six months sight to run; but no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half of its paid up capital and surplus. [Id.]

Art. 556. Unlawfully accepting deposits.—No director, officer or employé of any State bank or banking corporation organized under or subject to the general banking laws of this State, or any person for any such bank or banking corporation, shall receive any deposit at any time after such bank or banking corporation has failed or refused within the time required, to comply with any order or requirement of the State Banking Board, pursuant to the provisions of the laws regulating such deposits, when its total demand and time deposits and savings accounts shall in the aggregate amount to more than the limitations placed upon deposits by laws of this State; and such acceptance of deposits by any director, officer, or employé of any such bank or banking corporation or by any person therefor, shall be punishable by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment in jail for not less than thirty nor more than ninety days, or by both. Each acceptance or receipt of a deposit in violation hereof is a separate offense. [Acts 1921, p. 115.]

Art. 557. Accepting deposits when insolvent.—If any president, director, manager, cashier, or other officer, of any banking institution, or the owner, agent, or manager of any private bank or banking institution, or the president, vice president, secretary, treasurer, director or agent, of any trust company or institution, doing business in this State, shall receive or assent to the reception of any deposit of money or other valuable thing into such bank or banking institution, or trust company or institution, or if any such officer, owner, or agent, of such bank or banking institution, or if any president, vice-president, secretary, treasurer, director, or agent, of such trust company or institution, shall create or assent to the creation of any debt, debts, or indebtedness, in consideration of or by reason of which indebtedness any money or valuable property shall be received into such bank or banking institution, or trust company or institution, after he shall have had knowledge of the fact that such bank, banking institution, or trust company or institution, or the owner or owners of any private bank, is insolvent or in failing circumstances, he shall be confined in the penitentiary not less than two nor more than ten years. The failure of any such bank or banking institution, or trust company or institution, shall be prima facie evidence of knowledge on the part of any such officer or person that the same was insolvent or in failing circumstances when the money or property was received on deposit. [Acts 1897, p. 130.]

Art. 558. Organizing private bank.—No additional private banking institution or business shall be organized or established after the taking effect of this Act, and it shall be unlawful for any person, association of persons, partnerships, or trustee or trustees acting under any common law declaration of trust, to hereafter organize or establish, or begin the operation of any banking institution or business within this State, or to resume such operations, except as provided in this Act. [Acts 1923, p. 422.]

Art. 559. Deceptive advertising.—No persons, association of persons, partnerships or any trustee or trustees acting under any common law declaration of trust, shall hereafter use, advertise or put forth any sign as a bank, trust company, bank and trust company or savings bank, or in any way solicit or receive business as such, or use as their name or part of their name on any sign, advertising or letter head or envelopes the word bank, banker, banking, banking company, trust, trust company, bank and trust company, savings bank, savings, or any other term which may or might be confused with the name of a corporation organized under the general provisions of the banking laws of this State. No such person, association of persons, partnership or any trustee or trustees acting under any common law declaration of trust shall

adopt or use any artificial name or business title, or use any other than the name of the person or one or more of the persons, or a member or one or more of the members of the association of persons or partnership, or a member or one or more of the members of such common law trust association, in the management, conduct or operation of any private banking institution or bank of deposit within this State. [Id.]

Art. 560. Speculative venture.—No person or association of persons, trustee or trustees, acting under any common law declaration of trust, engaged in the business of banking or operating a bank of deposit in this State shall employ any part of the funds of the depositors of said institution in any speculative venture or enterprise owned or promoted by said bank or any of the partners, officers or managers thereof. [Id.]

Art. 560a. Bank officers dealing in bucket shops.—Sec. 1. That it shall be unlawful for any officer or employee of any state Bank or State Bank and Trust Company incorporated under the laws of this State, who is, or may be actively engaged in the handling of the funds of the Bank or Bank and Trust Company and who is, or may be receiving a yearly or monthly salary from said Bank or Bank and Trust Company, to enter into any contract with a bucket shop, as defined in Article 659 of the Penal Code of Texas, or to place any order with a bucket shop, as thus defined, for a margin contract or any contract denounced by Article 658 and by Article 661 of the Penal Code of Texas.

Sec. 2. Any person violating any of the provisions of this Act shall be guilty of felony, and, upon conviction, shall be imprisoned in the penitentiary not exceeding two years. [Acts 1927, 40th Leg., p. 325, ch. 221.]

Art. 561. Affidavit of solvency.—Annually, not later than January 15th of each year, each person or persons, association of persons or partnerships, or trustee or trustees acting under any common law declaration of trust, or the officers or the managers thereof, owning or operating any bank of deposit within this State, shall file with the county clerk of the county wherein the principal business of said institution is conducted an affidavit stating that said person or association of persons, partnership or institution, operating under a common law declaration of trust, is solvent and has and owns property and assets in this State the value of which is in excess of any and all of the liabilities of such person, association of persons, partnership or institution operating under a declaration of trust. [Acts 1923, p. 422.]

Art. 562. Statement of private bank.—Every person, partnership or association of persons, the trustee or trustees of every joint stock association, or institution, operating under any common law declaration of trust, owning or operating a bank of deposit within this State, shall annually, not later than January 20th, file with the county clerk of the county in which the principal office of said joint stock association or institution operating under a common law declaration of trust is located, a written sworn statement giving the names of each partner or stockholder, or member holding or owning any financial interest or stock in such partnership or institution operating under a common law declaration of trust or association of persons; and a copy of such statement shall be published by the institution, partnership or association of persons, trustee or trustees of such institution, in some newspaper of general circulation in said county, if such newspaper be published within said county. [Id.]

Art. 563. Advertisement of responsibility.—No person, association of persons, partnership, or any trustee or trustees, acting under any common law declaration of trust, owning or operating any private banking institution or bank of deposit within this State, shall advertise in any newspaper or otherwise within this State, that said person or association of persons, partnership or institution operating under any common law declaration of trust, owns, possesses or has a financial responsibility in excess of, or above the real and true financial responsibility of such person, association of persons, partnership or institution operating under a declaration of trust. By the term "financial responsibility" as herein used, is meant money or real or personal property within this State. [Id.]

Art. 564. Punishment.—The violation of any provision of the six preceding articles by any person, association of persons, partnership, or trustees acting under any common law declaration of trust, shall constitute a misdemeanor as to such person, as to each member or association of persons, and as to each and every trustee acting under such common law declaration of trust, punishable by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in jail for not less than thirty days nor more than twelve months, or by both such fine and imprisonment. Each day said business is carried on or attempted to be carried on shall be a separate offense. [Id.]

Art. 565. Insolvent private bank accepting deposits.—Any person, association of persons, partnership, or any trustee or trustees acting under any common law declaration of trust, or any manager, cashier or other person owning or operating any unincorporated bank or banking institution, banking company, trust company, bank and trust company, savings bank, or the trustee or manager thereof doing business in this State who shall receive or assent to the reception of any deposit of money or other valuable thing into said bank or banking institution, or trust company or institution, or bank and trust company, or savings bank, or if any such person, association of persons, owner or agent of any such bank or banking institution, or any director or agent of any such institution shall create or assent to the creation of any debt, debts or indebtedness in consideration or by reason of which indebtedness any money or valuable property shall be received into such bank or banking institution, or trust company, or institution, or any institution operating under a common law declaration of trust, after such person shall have had knowledge of the fact that such bank, banking institution or trust company, or bank and trust company, or savings bank, is insolvent, or in failing circumstances, he shall be confined in the penitentiary not less than two nor more than ten years. The failure of any such bank, banker, or banking institution, trust company, or bank and trust company, or savings bank, shall be prima facie evidence of the knowledge on the part of such person, persons, partnership, officers and trustees of any institution operating under a common law declaration of trust that the same was insolvent or in failing circumstances when the money or property was received and deposited. [Id.]

Art. 566. Exceptions.—The provisions of the eight preceding articles shall not apply to any person, association of persons, partnerships or trustees, or trustees acting under any common law declaration of trust, who, at the time this Act becomes effective are actively engaged in the operation of any bank, trust company, bank and trust company or savings bank within this State, nor to any bank which may have been in successful operation in this State for twenty years and shall have suspended operation prior to the passage of this Act, but which shall resume operation within twelve months after the passage of this Act. The right to continue such business of such bank, trust company, bank and trust company or savings bank so engaged, or shall resume business as provided in this Act, and by their heirs, legal representatives, assigns and successors, is hereby expressly recognized, confirmed and fixed. Said provisions shall not apply to any person, association of persons, partnerships or trustee, or trustees acting under any common law declaration of trust, who has for a period of one year next preceding the date that this Act becomes effective, and who, as such, in the course of the liquidation of any bank or trust company or bank and trust com-

pany within this State, has acquired the assets, or any part thereof, including the real estate used as its banking house or place of business and has assumed the liabilities, or a part thereof, of such liquidated bank or trust company or bank and trust company. [Acts 1923, p. 422.] [Acts 1925, 39th Leg., ch. 148, p. 356, § 1.]

Art. 567. Rural Credit Union.—Any officer or member of a Rural Credit Union organized under the laws of this State who embezzles or misapplies any money or funds belonging to such Rural Credit Union shall be confined in the penitentiary not less than five nor more than ten years. [Acts 1913, p. 163.]

Art. 567a. Uttering untrue statement regarding bank.—Any person who shall knowingly make, utter, circulate, or transmit to another, or others, any statement untrue in fact, derogatory to the financial condition of any bank, banking house, banking company, trust company, in the State, with intent to injury [injure] any such financial institution; or who shall counsel, aid, procure, or induce another to originate, make, utter, transmit, or circulate any such statement or rumor, with like intent, shall be guilty of an offense and upon conviction shall be punished by a fine not more than two thousand five hundred ($2,500) dollars or by imprisonment in the State Penitentiary for a period of not exceeding two years or by both such fine and imprisonment. [Acts 1925, 39th Leg., ch. 23, p. 83, § 1.]

CHAPTER TWO

INSURANCE

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Article 568. [644] [417] [388a] Who are insurance agents.—Whoever solicits insurance on behalf of any insurance company, whether incorporated under the laws of this or any other State, or foreign government, or who takes or transmits other than for himself, any application for insurance, or any policy of insurance, to or from such company, or who advertises or otherwise gives notice that he will receive or transmit the same, or shall receive or deliver a policy of insurance of any such company, or who shall examine or inspect any risk, or receive or collect or transmit any premium of insurance, or make or forward any diagram of any building or do any other act in the making or consummating of any contract of insurance for or with any such insurance company other than for himself, or who shall examine into, or adjust or aid in adjusting any loss for or on behalf of any such insurance company, whether any of such acts shall be done at the instance, or by the employment of such insurance company, or of or by any broker or other person, shall be held to be the agent of the company for which the act is done or the risk is taken, as far as relates to all the requirements and penalties herein set forth. [Acts C. S. 1879, p. 32.]

Art. 569. Exception.—The preceding article shall not apply to citizens of this State who arbitrate in the adjustment of losses between the insurers and the assured, nor to the adjustment of particular or general average losses of vessels or cargoes by marine adjusters, nor to attorneys at law in the State acting in the regular transaction of their business as such, and who are not local agents nor acting as adjusters for any insurance company. [Id.]

Art. 570. [645–689] Unlawfully acting as agent.—Whoever shall do or perform any of the acts or things mentioned in the first article of this chapter for any insurance company referred to in said article without such company having first complied with the requirements of the laws of this State, shall be fined not less than five hundred nor more than one thousand dollars. [Id.]

Art. 571. [643] [416] [388] Violating insurance laws.—Whoever violates any provision of the laws of this State regulating the business of life, fire, or marine insurance, shall, where the punishment is not otherwise provided for, be fined not less than five hundred not [nor] more than one thousand dollars. [Acts 1875, p. 44.]

Art. 571a. Violating law as to automobile insurance.—Any insurer or officer or representative thereof which shall violate any provision of this Act [Civ. St. art. 4682b] shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars for the first offense, and upon conviction for a second offense in addition to such fine, the Commissioner may cancel the license of such insurer or person to write insurance. [Acts 1927, 40th Leg., p. 373, ch. 253, § 12.]

Section 13 provides that if any part is held invalid such holding shall not affect the remainder. Acts 1927, 40th Leg., p. 373, ch. 253, §§ 1–7, abolish the Commissioner of Insurance and confer his duties on the Board of Insurance Commissioners.

Art. 572. Soliciting without certificate of authority.—Whoever for direct or indirect compensation solicits insurance in behalf of any insurance company of any kind or character, or transmits for a person other than himself, an application for a policy of insurance to or from such company, or assumes to act in negotiation of insurance without a certificate of authority to act as agent or solicitor for such company, or after such certificate of authority shall have been canceled or revoked, shall be fined not more than one hundred dollars.

Art. 573. [690] Agent procuring by fraudulent representation.—Any such agent or solicitor who knowingly procures by fraudulent representations payment of an obligation for the payment of a premium of insurance, shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1909, p. 208.]

Art. 574. [692] Agent or physician making false statement.—Any solicitor, agent or examining physician who knowingly or wilfully makes any false or fraudulent statement or representation in or with reference to any application for insurance, shall be fined not less than one hundred nor more than five hundred dollars. [Id.]

Art. 575. [693] False statement by officer of foreign company.—Any officer of any insurance company not organized under the laws of this State, who

shall file with the Commissioner of Insurance any statement, report or other paper required or provided for by law to be so filed, which shall contain any material statement or fact known to be false by the person filing the same, or any person who shall execute or cause to be executed any such false statement, report or other paper to be so filed, shall be imprisoned in the penitentiary for a term of not less than one year. [Acts 1909, p. 211.]

Art. 576. [691] Conversion by insurance agent.—Any insurance agent or solicitor who collects premiums for an insurance company lawfully doing business in this State and who embezzles or fraudulently converts or appropriates to his own use, or with intent to embezzle takes, secretes, or otherwise disposes of or fraudulently withholds, appropriates, lends, invests or otherwise uses or applies any money or substitutes for money received by him as such agent or broker, contrary to the instructions or without the consent of the company for or on account of which the same was received by him, shall be punished as if he had stolen the same. [Acts 1909, p. 208.]

Art. 577. [687] Director or officer pecuniarily interested.—No director or officer of any insurance company transacting business in this State, or organized under the laws of this State, shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any purchase or sale by such company of any property or any loan from such company, nor be pecuniarily interested either as principal, co-principal, agent or beneficiary, in any such purchase, sale or loan. Nothing contained in this article shall prevent a life insurance corporation from making a loan upon a policy held therein, by the borrower not in excess of the reserve value thereof. Any person violating any provision of this article shall be fined not less than three hundred nor more than one thousand dollars. [Act March 22, 1909, sec. 12, Acts 1909, p. 197.]

Art. 578. [688] Companies not to discriminate.—No insurance company doing business in this State shall make or permit any distinction or discrimination in favor of individuals between the insured of the same class and of equal expectation of life in the amount of or payment of premiums or rates charged for policies of life or endowment insurance or in the dividends or other benefits payable thereon; nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon, nor shall any such company or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for service of any kind, or any valuable consideration or inducement whatever, not specified in the policy contract of insurance; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy. Any officer or agent of such company violating any provision of this article shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1909, p. 199.]

Art. 579. Indemnity contracts.—Any attorney in fact duly appointed as such by the subscribers to execute contracts to exchange reciprocal or inter-insurance contracts according to the law governing such contracts, who shall, except for the purpose of applying for certificate of authority from the Commissioner of Insurance as provided for by such law, exchange any contract of indemnity of the kind and character specified in such law, or shall directly or indirectly solicit or negotiate any application for same without first complying with the law governing such contracts, shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1915, p. 271.]

Art. 580. Workmen's Compensation Insurance.—Any officer or representative of any insurance company or association authorized to write workmen's compensation insurance in this State, who shall violate any provision of the laws relating to such business contained in chapter 10, Title "Insurance" of the Revised Statutes, relating to the State Insurance Commission and such business, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1923, p. 411.]

FRATERNAL BENEFIT SOCIETY

Art. 581. False statement to fraternal benefit society.—Any person, officer, member or examining physician of any society authorized to do business under the laws of this State relating to fraternal benefit societies who wilfully makes any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this law, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail for not less than thirty days nor more than one year, or both. [Acts 1913, p. 235.]

Art. 582. Unlawfully soliciting membership.—Whoever solicits membership for, or in any manner assists in procuring membership in any fraternal benefit society not licensed to do business in this State, or who shall solicit membership for, or in any manner assist in procuring membership in such society not authorized by law to do business in this State, shall be fined not less than fifty nor more than two hundred dollars. [Id.]

Art. 583. Soliciting without certificate of authority.—Whoever solicits for or organizes lodges of such association as are defined to be a fraternal benefit society under the laws of this State, without first obtaining from the Commissioner of Insurance a certificate of authority showing that the association has complied with the provisions of such laws and is entitled to do business in this State, shall be fined not less than one hundred nor more than two hundred and fifty dollars, or be imprisoned in jail for not less than three nor more than six months, or both. [Id.]

Art. 584. Exceptions.—No provision of the preceding articles shall prohibit any member of a local or subordinate lodge from soliciting any person to become a member of any local or subordinate lodge already in existence, nor apply to any members of any local or subordinate lodge who participate in, direct or conduct the organization or establishment of any local or subordinate lodge within the limits of the county of their residence or lodge district. [Id.]

Art. 585. General penalty.—Any officer, agent or employé of any fraternal benefit society organized under the laws of this State who neglects or refuses to comply with or who violates any provision of the laws of this State governing such societies, shall where the penalty is not provided for in the preceding articles of this chapter, be fined not exceeding two hundred dollars. [Id.]

MUTUAL LIFE COMPANIES

Art. 586. Investment of funds.—Mutual life insurance companies shall invest their funds in accordance with the provisions of the statutes concerning investments of life insurance companies in this State; all moneys of mutual life companies, coming into the hands of any officer or officers thereof, when not invested as prescribed by said laws, shall be deposited in the name of such company or companies in some

bank or banks which are subject to either State or national regulation and supervision, and which have been approved by the Commissioner of Insurance as depositories therefor. Any officer or director of any such company who shall knowingly and wilfully violate or assent to the violation of the provisions of this article shall be imprisoned in the penitentiary not less than one nor more than five years. [Acts 1921, p. 150.]

Art. 587. [686] Insuring without examination.—No mutual life insurance company shall enter into any contract of insurance amounting to $500.00 or more, upon the life of any person, without having previously made a medical examination prescribed by its medical director and approved by its board of directors, of the insured, by a duly qualified and licensed practitioner, and without his certificate that the insured was in sound health at the date of examination. Any officer or agent or employé of such company violating any provision of this article or effecting or attempting to effect a contract of insurance contrary to any provision hereof shall be fined not less than one hundred nor more than five hundred dollars or be imprisoned in jail for not less than six months, or both. [Acts 1909, p. 289, Acts 1921, p. 152.]

OTHER MUTUAL INSURANCE

Art. 588. [680] Mutual accident insurance law.—Any officer or any employé of a mutual accident insurance company, incorporated under the laws of this State, who shall use or appropriate, or knowingly permit to be used or appropriated by another, any money belonging to such mutual insurance company, in any manner other than is provided in the law authorizing the organization of such company, shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1903, p. 175.]

Art. 589. Failure to report condition.—If at any time the admitted assets of any mutual company operating under the law providing for the incorporation of mutual fire, lightning, hail and storm insurance companies, shall come to be less than the largest single risk for which the company is liable, then the president and the secretary of the company shall at once notify the Commissioner of Insurance, and he may make an examination into the company's affairs if he deems best, and if such president and secretary shall fail to report the company's condition as so required, they shall each be fined not less than one hundred nor more than five hundred dollars. [Acts 1913, p. 57.]

Art. 590. [683] False statement or misappropriation.—Whoever shall intentionally submit a false statement, or intentionally misappropriate the funds of mutual companies organized under the laws providing for the incorporation of mutual fire, lightning, hail and storm insurance companies, shall be confined in the penitentiary not less than five nor more than ten years. [Id.]

INSURANCE ON THE LLOYDS PLAN

Art. 591. Underwriters and attorneys.—Individuals, partnerships or associations of individuals, hereby designated "underwriters" are authorized to make any insurance, except life insurance, on the Lloyds plan, by executing articles of agreement expressing their purpose so to do, and complying with the requirements set forth in the law authorizing such insurance. Policies of insurance may be executed by an attorney in fact or other representatives, hereby designated "attorney," authorized by and acting for such underwriters under powers of attorney. [Acts 1921, p. 238.]

Art. 592. To file application for license.—The attorney for a Lloyds shall file with the Commissioner of Insurance a verified application for license setting forth the data and information required by law, and upon complying with the law such Commissioner shall issue to any attorney applying therefor a license specifying the kind or kinds of insurance which he is authorized to make, which shall continue in force until surrendered by the attorney or revoked or suspended by such Commissioner as authorized by law. [Id.]

Art. 593. Examination of books and affairs.—The Commissioner of Insurance may make examinations of the books and affairs of any attorney for underwriters at a Lloyds, and the attorney and his deputies shall facilitate such examination and furnish all information which such Commissioner may reasonably demand. [Id.]

Art. 594. Assuming undue risk.—No attorney for underwriters at a Lloyds shall assume any one insurance risk exceeding one-fifth of the amount of the net assets of the underwriters as defined by law and the additional liability assumed by the individual underwriters in the articles of agreement and in the policies or contracts of insurance, unless such excess shall be promptly reinsured. [Id.]

Art. 595. Violation of Lloyds insurance law.—Any person, who, as principal, attorney, agent, broker, or other representative, shall engage in the business of making insurance on the Lloyds plan, as defined in this chapter and by the Revised Statutes of this State, without complying with the requirements of such law governing such business, or who shall violate any provision of the four preceding articles, shall be fined not exceeding five hundred dollars. [Id.]

FIRE INSURANCE

Art. 596. Accepting rebates.—Whoever shall knowingly receive or accept from any insurance company or from any of its agents, sub-agents, brokers, solicitors, employés, intermediaries or representatives, or any other person, any rebate of premium payable on policy, or any special favor or advantage in the dividends or other financial profits accrued or to accrue thereon, or any valuable consideration, position or inducement not specified in the policy of insurance, shall be fined not exceeding one hundred dollars or be imprisoned in jail not exceeding ninety days, or both. [Acts 1913, p. 205.]

Art. 597. Violating fire insurance law.—Any officer or director of any fire insurance company affected by the statutes of this State creating the State Insurance Commission, or any agent, or any one acting or employed by such company who alone or in conjunction with any corporation, company or person, shall wilfully do or cause to be done any act prohibited or declared to be unlawful by such statutes, or who wilfully fails to do any act required to be done by such statutes, or who shall wilfully permit any act directed not to be done, or who shall be guilty of any wilful infraction of such statutes, shall be fined not less than three hundred nor more than one thousand dollars. [Id.]

Art. 598. [663] Witness must testify.—No person shall be excused from giving testimony or producing evidence when legally called upon to do so at the trial of another charged with violating any provision of the laws relating to fire insurance on the ground that it may incriminate him under the laws of this State; but no person shall be prosecuted or subjected to any penalty or forfeiture for, or on account of, any transaction, matter or thing concerning which he may testify or produce evidence under this law. [Acts 1910, p. 125; Acts 1913, p. 206.]

Art. 599. Failure to give bond.—Every fire insurance company not organized under the laws of this State, hereafter issuing or causing or authorizing to be issued any policy of insurance other than life insurance shall first have filed with the Commissioner of Insurance during the calendar year in which such policy may issue, or be authorized or caused to be issued, a bond with good and sufficient sureties, to be approved by such Commissioner, in a sum of not less than ten thousand dollars, conditioned for the payment of all lawful obligations to citizens of this State arising out of any policies or contracts issued by such insurance company. Any person violating any provision of this

article shall be fined not less than one hundred nor more than five hundred dollars or be imprisoned in jail for not less than three nor more than twelve months, or both. [Acts 1909, p. 182.]

Art. 600. Exceptions.—The preceding article shall not apply to any person, firm or corporation or association doing an interinsurance, co-operative or reciprocal business. [Id.]

Art. 601. Mutual fire insurance companies.—Any person who shall transact the business of mutual fire insurance in this State without complying with the laws regulating such business shall be fined not less than fifty nor more than five hundred dollars. [Acts 1923, p. 396.]

CHAPTER THREE

WIFE AND CHILD DESERTION

Art.
602. Desertion of wife or child.
603. Jurisdiction.
604. Allowance for support.
605. Wife may testify.
606. Duty of commissioners' court.

Article 602. Desertion of wife or child.—Any husband who shall wilfully desert, neglect or refuse to provide for the support and maintenance of his wife who may be in destitute or necessitous circumstances, or any parent who shall wilfully desert, neglect or refuse to provide for the support and maintenance of his or her child or children under sixteen years in destitute or necessitous circumstances, shall be fined not less than twenty-five nor more than five hundred dollars or be imprisoned in jail not more than one year, or both. [Acts 1913, p. 188.]

Art. 603. Jurisdiction.—An offense under this chapter shall be held to have been committed in the county in which such wife, child or children may have been at the time such abandonment occurred, or in the county in which such wife, child or children shall have resided for six months next preceding the filing of the indictment or information. [Id.]

Art. 604. Allowance for support.—At any time before the trial, upon petition of the complainant and upon notice to the defendant, the court, or judge thereof in vacation, may enter such temporary orders as may seem just, providing for the support of the deserted wife or children, or both, pendente lite, and may punish for the violation of or refusal to obey such order as for contempt. [Id.]

Art. 605. Wife may testify.—No other or greater evidence to prove the marriage of such husband and wife, or that the defendant is the father or mother of such child or children, shall be required than is or shall be in a civil action. In no prosecution under this chapter shall any statute prohibiting disclosures of confidential communications between husband and wife apply to strictly relevant facts. Both husband and wife shall be competent and compellable witnesses to testify against each other to any relevant matter including the fact of such marriage, and the parentage of such child or children. Proof of the desertion of such wife, child or children in destitute or necessitous circumstances or of neglect or refusal to provide for the support and maintenance of such wife, child or children shall be prima facie evidence that such desertion, neglect, or refusal is wilful. [Id.]

Art. 606. Duty of commissioners court.—The commissioners court of the county in which information or indictment under this chapter is filed shall furnish the funds necessary for arresting and returning to such county any defendant under this chapter who is not at the time in such county. [Id.]

CHAPTER FOUR

VAGRANCY

Art.
607. "Vagrancy."
608. Punishment for vagrancy.
609. Duty of peace officers.

Article 607. [634–635–636] "Vagrancy."—The following persons are and shall be punished as vagrants, viz.:

(1) Persons known as tramps, wandering or strolling about in idleness, who are able to work and have no property to support them.

(2) Persons leading an idle, immoral or profligate life, who have no property to support them, and who are able to work and do not work.

(3) All persons able to work, [who] have no property to support them, and who have no visible or known means of a fair, honest and reputable livelihood. The term "visible or known means of a fair, honest and reputable livelihood," as used in this article, shall be construed to mean reasonably continuous employment at some lawful occupation for reasonable compensation, or a fixed and regular income from property or other investments, which income is sufficient for the support and maintenance of such person.

(4) All able-bodied persons who habitually loaf, loiter and idle in any city, town or village, or railroad station, or any other public place in this State for the larger portions of their time, without any regular employment and without any visible means of support. An offense under this subdivision shall be made out if it is shown that any person has no visible means of support, and only occasionally has employment at odd jobs, being for the most of the time out of employment.

(5) Persons trading or bartering stolen property.

(6) Every common gambler or person who for the most part maintains himself by gambling.

(7) All companies of gypsies, who, in whole or in part, maintain themselves by telling fortunes.

(8) Every able-bodied person who shall go begging for a livelihood.

(9) Every common prostitute.

(10) Every able-bodied person who lives without employment or labor, and who has no visible means of support.

(11) All persons who are able to work and do not work, but hire out their minor children, or allow them to be hired out, and live upon their wages, being without other means of support.

(12) All persons over sixteen years of age and under twenty-one, able to work and who do not work, and have no property to support them, and have not some known, visible means of a fair, honest and reputable livelihood, and whose parents, or those in loco parentis, are unable to support them, and who are not in attendance upon some educational institution.

(13) All persons who advertise and maintain themselves in whole or in part as clairvoyants or foretellers of future events, or as having supernatural knowledge with respect to present or future conditions, transactions, happenings or events.

(14) All male persons who habitually associate with prostitutes, or habitually loiter in or around houses of prostitution, or who, without having visible means of support, receive financial aid or assistance from prostitutes. [Acts 1909, p. 111.]

Art. 608. [639] Punishment for vagrancy.—Each vagrant shall be fined not to exceed two hundred dollars. [Id.]

Art. 609. [637–638–640] Duty of peace officers.—It shall be the duty of every sheriff, deputy sheriff and constable in every county, and of the police, town marshal, deputy marshal, and like officials, in every county, city, town, or village in this State to make complaint under oath to any officer empowered to issue criminal warrants, of all vagrants within their knowledge, or upon information, in their respective counties, cities, towns, and villages. If any such officer shall fail, refuse, or neglect to perform the duties herein required, he shall be fined not less than twenty-five nor more than one hundred dollars. [Id.]

CHAPTER FIVE

PRIZE FIGHTING, ROPING CONTESTS, ETC.

Art.
610. Pugilistic encounters prohibited.
611. "Pugilistic encounter."
612. Moving pictures of prize fights.
613. Matching cock fight, etc.
614. Engaging in roping contest.

Article 610. [1507] [1005] Pugilistic encounters prohibited.—Any person who shall voluntarily engage in a pugilistic encounter between man and man, or a fight between a man and a bull, or any other animal, for money or other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is charged, either directly or indirectly, shall be imprisoned in the penitentiary for not less than two nor more than five years. [Acts 1st C. S. 1895, p. 5.]

Art. 611. [1508] "Pugilistic encounter."—By the term "pugilistic encounter," as used herein, is meant any voluntary fight or personal encounter by blows by means of the fists or otherwise, whether with or without gloves, between two or more men for money, or for a prize of any character, or for any other thing of value, or for any championship, or upon the result of which any money or anything of value is bet or wagered, or to see which any admission fee is charged. [Id.]

Art. 612. [1509] Moving pictures of prize fights.—No person, association, corporation, or any agent or employé of any person, association, corporation or receiver, partnership or firm, shall give or present to the public an exhibition of prize fights or glove contests, or of any obscene, indecent or immoral picture of any character whatsoever, by means of moving picture films, bioscopes, vitascopes, magic lanterns or other device or devices in moving picture shows, theaters, or any other place whatsoever.

Any person, or any agent or employé of any person, association, corporation or receiver violating any provision of this article shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail for not less than ten nor more than sixty days, or both. Each day's violation of any provision of this article shall be a separate offense. [Acts 1st C. S. 1910, p. 21.]

Art. 613. [1510] Matching cock fight, etc.—Any person who shall match or be concerned in matching any cock fight or who shall match or be concerned in matching or causing a fight between any animals or fowls, or who shall keep or be concerned in keeping any cock pit or other place for the purpose of matching fights between cocks or any animals or fowls, shall be fined not less than ten nor more than one hundred dollars. Each day such cock pit or other place as aforesaid shall be kept shall be a separate offense. [Acts 1907, p. 156.]

Art. 614. [1511] Engaging in roping contest.—Any person who shall engage in a roping contest with other persons or alone, in which cattle or other animals are roped as a test or trial of the skill of the person or persons engaged in such roping contest, for money or prize of any character, or for any championship, for anything of value, or upon the result of which any money or anything of value is bet or wagered, shall be fined not less than one hundred nor more than five hundred dollars. Each animal roped, or attempted to be roped, shall be a separate offense. [Acts 1905, p. 69.]

CHAPTER SIX

GAMING

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Article 615. [548—557] Playing cards.—Whoever shall play, or bet or wager any money or other thing of value, at any game of cards at any place not a private residence occupied by a family, shall be fined not exceeding fifty dollars. [Acts 1901, p. 26; Acts 1907, p. 108.]

Art. 616. [557] [388] Dominoes.—Whoever shall bet or wager any money or other thing of value at any game played with dominoes at any place not a private residence occupied by a family, shall be fined not exceeding fifty dollars. [Acts 1907, p. 108.]

Art. 617. [548—557] Exception.—The provisions of the two preceding articles which permit gaming at a private residence occupied by a family shall not apply in case such residence is one commonly resorted to for the purpose of gaming, nor where the game played is a banking game. [Id.]

Art. 618. [557] [388] Dice.—Whoever shall bet or wager any money or other thing of value at any game played with dice, whether the same be known as craps, high or low dice or die, poker dice, or by any other name, shall be fined not exceeding fifty dollars. [Id.]

Art. 619. [551] Keeping or exhibiting gaming table or bank, etc.—If any person shall directly, or as agent or employé for another, or through any agent or agents, keep or exhibit for the purpose of gaming, any policy game, any gaming table, bank, wheel or device of any name or description whatever, or any table, bank, wheel or device for the purpose of gaming which has no name, or any slot machine, any pigeon hole table, any jenny-lind table, or table of any kind whatsoever, regardless of the name or whether named or not, he shall be confined in the penitentiary not less than two nor more than four years regardless of whether any of the above mentioned games, tables, banks, wheels, devices or slot machines are licensed by law or not. Any such table, bank, wheel, machine or device shall be considered as used for gaming, if money or anything of value is bet thereon. [Acts 1907, p. 108; Acts 1913, p. 277.]

Art. 620. [552] [383] Table or bank includes, what.—It being intended by the foregoing articles to include every species of gaming device known by the name of table or bank, of every kind whatever, this provision shall be construed to include any and all games which in common language are said to be played, dealt, kept or exhibited.

Art. 621. [553] [384] Games specifically enumerated.—The following games are within the meaning and intention of the two preceding articles, viz.: Faro, monte, vingt et un, rouge et noir, roulette,

A. B. C., chuckaluck, keno and rondo; but the enumeration of these games shall not exclude any other properly within the meaning of the two preceding articles.

Art. 622. [554–555–571] Indictment and proof.—In any indictment for any offense named in the three preceding articles, it is sufficient to state that the accused kept a table or bank for gaming, or exhibited a table or bank for gaming, without giving the name or description thereof, and without stating that it was without any name or that the name was unknown. It shall be sufficient to prove that any game therein mentioned was played, dealt or exhibited, without proving that money or other article of value was won or lost thereon. [Acts 1907, p. 110.]

Art. 623. [556] [387] "Exhibited."—The word "exhibited" is intended to signify the act of displaying the bank or game for the purpose of obtaining bettors.

Art. 624. [557–560] Miscellaneous betting.—If any person shall bet or wager at any gaming table or bank or shall bet or wager any money or other thing of value at any of the following games, viz.: muggins, crack-loo, crack-or-loo, or the game of matching money or coins of any denomination for such coins or for any other thing of value, or at any table or bank, by whatsoever name the same may be known, or whether named or not, and without reference as to how the same may be played, constructed or operated, or shall bet or wager upon anything in any place where people resort for the purpose of betting or wagering, he shall be fined not exceeding fifty dollars. When it is alleged and proven that the betting was on any gaming table or bank, the court or jury may, in addition to said fine, impose a jail penalty of not less than ten nor more than thirty days. [Acts 1907, p. 108.]

Art. 625. [559] [388] Keeping.—If any person shall keep, or be in any manner interested in keeping any premises, building, room or place for the purpose of being used as a place to bet or wager, or to gamble with cards, dice or dominoes, or to keep or to exhibit for the purpose of gaming, any bank, table, alley, machine, wheel or device whatsoever, or as a place where people resort to gamble, bet or wager upon anything whatever, he shall be confined in the penitentiary not less than two nor more than four years, regardless of whether any of the above mentioned games, tables, banks, alleys, machines, wheels or devices, or things are licensed by law or not. Any place or device shall be considered as used for gaming or to gamble with or for betting or wagering, if any money or anything of value is bet thereon, or if the same is resorted to for the purpose of gaming or betting. [Id.]

Art. 626. [559–573] Renting.—Whoever shall rent to another any premises, building, room or place for any purpose mentioned in the preceding article, shall be confined in the penitentiary not less than two nor more than four years. [Id.]

Art. 627. [559] Permitting premises to be used for gaming.—Whoever knowingly permits property or premises of which he is owner, or which is under his control, to be used for any purpose mentioned in the two preceding articles, shall be confined in the penitentiary not less than two nor more than four years. [Id.]

Art. 628. [572] [389] Permitting intermittent playing.—Whoever permits any game prohibited by the preceding articles of this chapter to be played in his house, or a house under his control, or upon his premises, or upon premises under his control, the said house being a public place, or the said premises being appurtenances to a public place, shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1881, p. 17.]

Art. 629. [561] Equipping gaming house.—If any person shall, in any manner aid in equipping or furnishing any gaming house, or place where people resort for the purpose of gaming, wagering or betting, he shall be imprisoned in jail not less than thirty nor more than ninety days. [Acts 1907, p. 109.]

Art. 630. [562] Permitting device on premises.—If any person shall knowingly permit any gaming paraphernalia, table, or device or equipment of a gaming house, of any character whatever to remain in his possession or on premises under his control or of which he is owner and to be used for gaming purposes, he shall be imprisoned in jail not less than thirty days nor more than one year. [Id.]

Art. 631. [563] Going in gaming house.—If any person shall go into or remain in any gambling house, knowing the same to be such, or shall remain in any place where any game prohibited by the preceding articles of this chapter is within his knowledge being played, dealt or exhibited, he shall be fined not exceeding fifty dollars. Gambling house and gaming house, as used in this article is meant [mean] any place where people resort for the purpose of gaming, betting or wagering. [Id.]

Art. 632. [564] Officers to suppress.—Whenever it comes to the knowledge of any sheriff or other peace officer, by affidavit of a reputable citizen, or otherwise, that any provision of the preceding articles of this chapter is being violated, such officer shall immediately avail himself of all lawful means to suppress such violation; and he shall be authorized, by any search warrant that is issued by virtue of this law, to enter any house, room or place to be searched, using such force as may be necessary to accomplish such purpose. [Id.]

Art. 633. [565] Justice to issue search warrant.—Upon the filing with any justice of the peace, or any other magistrate, of an affidavit made by a reputable citizen that gaming, betting or wagering, as prohibited by the preceding articles of this chapter is being conducted in any building, room, premises or place, describing the same sufficiently for identification, such officer with whom said affidavit is filed shall immediately issue a warrant commanding the peace officer to whom same is directed to immediately enter and search such building, room, premises or place, and in the event the same is a gaming house, as defined in this chapter, to arrest all parties found therein or making their escape therefrom, and to take possession of any gambling paraphernalia, device or equipment found therein and such officer shall immediately take the persons arrested before the nearest magistrate, and lodge the proper complaint against each person so arrested. [Id.]

Art. 634. [566] Gambling house public nuisance.—The existence of any gambling house or gaming table or bank or gaming paraphernalia or device of whatever kind or character, and all equipments of such gambling house, is hereby declared to be against public policy and a public nuisance. No suit shall be brought or maintained in any court of this State for the recovery of same or for any insurance thereon, or for damages by reason of any injury to, or for the destruction of same. [Id.]

Art. 635. [567] Use terminates lease.—The use of any house, property or premises, by any tenant or lessee for any purpose made unlawful by the preceding articles of this chapter shall terminate all rights and interests of such tenant or lessee in same, and shall entitle the owner thereof to the immediate possession of said house, property or premises. [Id.]

Art. 636. [568] Officers to seize gaming tables.—It shall be the duty of every sheriff, or other peace officer by virtue of the warrant authorized by this chapter to seize and take into his possession all gaming tables, devices and other equipments or paraphernalia of gambling houses, the existence of which has come to his knowledge and to immediately file with the justice of the peace, county judge, or district judge, a written list of the property seized designating the place where same was seized, and the owner of same, or the person from whom possession was taken. Thereupon said justice of the peace, county or district judge shall note the same upon his docket and issue, or cause the clerk of the court to issue a written notice to the owner or person in whose

possession the articles seized were found, commanding him to appear at a designated time, not earlier than five days from the service of such notice, and show cause why such articles should not be destroyed. If personal service cannot be had upon the person to whom same is directed, a copy of said notice shall be posted for not less than five days, either upon the court house door of the county where the proceedings are begun or upon the building or premises from which the property seized was taken. [Id.]

Art. 637. [569] Destroyed by order of court.—If upon a hearing of the matter referred to in the preceding article, the justice of the peace, county judge or district judge, before whom the cause is pending shall determine that the property seized is a gaming table or bank or is used as equipment or paraphernalia for a gambling house, and was being used for gaming purposes, he shall order same to be destroyed, but any part of same may, by order of the court be held as evidence to be used in any case until the case is finally disposed of. Property not of that character or not so used shall be ordered returned to the person entitled to possession of the same. The officer, within not less than fifteen nor more than thirty days from the entry of said order shall destroy all property the destruction of which has been ordered by the court, unless the owner, lessee or person entitled to possession under this law, shall, before the destruction of said property, file suit to recover same. [Id.]

Art. 638. [570] Persons interested in, rights of.—Any person having interest in or entitled to possession of any property so seized shall have the right at any time before the destruction of such property, as in ordinary civil cases, to try the issue of whether or not such property is a gaming table, or bank or device or was used as equipment or paraphernalia of any gambling house and to recover the possession of the same, and to maintain any other character of suit not inconsistent with this law; and it shall be the duty of the officer having said property in his possession after notice of the pendency of said suit to safely keep said property, pending the same. [Id.]

Art. 639. [574] [391] Procedure in gaming cases.—Any court, officer or tribunal having jurisdiction of any offense enumerated in this chapter, or any district or county attorney, may subpœna persons and compel their attendance as witnesses to testify as to the violation of any provision of the foregoing articles of this chapter. Any person so summoned and examined shall not be liable to prosecution for any violation of said articles about which he may testify. For any offense enumerated in said foregoing articles a conviction may be had upon the unsupported evidence of an accomplice or participant.

Art. 640. [583] [392] [368] Failing to prosecute.—If any justice of the peace, or recorder shall know the fact that an offense against the gaming laws has been committed by any person, and shall fail or neglect to cause such person to be arrested and prosecuted for the same, he shall be fined not less than twenty-five nor more than one hundred dollars.

Art. 641. [584] [393] [369] Peace officer failing to inform.—If any peace officer shall know that any person has committed an offense against the gaming laws, and shall neglect or fail to give information thereof to some justice of the peace, or recorder having jurisdiction to try such offense, he shall be punished by fine not less than twenty-five nor more than one hundred dollars.

Art. 642. [585] [394] [370] "Offense against gaming laws."—By the term "offense against the gaming laws," as used in the two preceding articles, is meant any offense included within the provisions of the preceding articles of this chapter.

BETTING ON ELECTIONS, SPORTS AND RACING

Art. 643. [586] [395] [371] Betting on election.—If any person shall, whether before or after the happening of any public election held under authority of law within this State, or within any town, city, county, district, precinct or any other political subdivision within the State for any purpose whatever, wager or bet in any manner whatever upon the result of any such election, he shall be fined not less than twenty-five nor more than one thousand dollars or be confined in jail for not less than twenty nor more than sixty days, or both such fine and imprisonment. [Acts 1858, p. 167; Acts 1915, p. 37; Acts 1921, p. 103.]

Art. 644. [587] [396] [372] "Public election."—A public election, within the meaning of the preceding article, is any election held under authority of law within this State, or within any town, city, district, county, precinct or any other sub-division within this State for any purpose whatever. [Id.]

Art. 645. [588] [397] What "bet or wager" includes.—The bet or wager may be of money, or of any article of value, and any device in the form of purchase or sale or in any other form made for the purpose of concealing the true intention of the parties is equally within the meaning of a bet or wager.

Art. 646. [575] Betting at baseball or football.—No person in this State shall enter into an agreement with another, either orally, written or implied, whereby either one or both shall bet or wager money or anything of value, or otherwise become a party to any gambling scheme based upon the final result or outcome of any play or portion thereof of a game of baseball or football. Nothing herein shall prohibit contesting baseball or football teams, or their duly authorized agents or managers from entering into an agreement as to the manner of disposition of gate receipts derived from such games. Any person violating this law shall be fined not less than five nor more than one hundred dollars. [Acts 1907, p. 222.]

Art. 647. [577] Pool selling or bookmaking.—No person, or any agent of any association of persons or any corporation, shall at any place in this State, engage or assist in pool selling or bookmaking on any horse race or by means of any pool selling or bookmaking, take or accept any bet or aid any other person in betting or taking or accepting any bet upon any horse race to be run, trotted or paced in this State. [Acts 1909, p. 91.]

Art. 648. [578] Betting on horse racing.—No person or any agent of any association of persons or corporation, at any place in this State, by pool selling or bookmaking or by means of telegraph, telephone or otherwise, shall aid or assist any other person in wagering, betting or placing a bet or in offering to wager, bet or place a bet of anything of value on any horse race to be run, trotted, or paced at any place in this State or elsewhere. [Id.]

Art. 649. [579] Using place for pool selling.—No owner, agent or lessee of any property in this State shall permit the same to be used as a place for selling pools or bookmaking or wagering or receiving or assisting any person in placing any bet or in receiving or transmitting any offer to bet anything of value on any horse race to be run, trotted or paced at any place in this State or elsewhere. [Id.]

Art. 650. [580] Penalty for three preceding articles.—Whoever violates any provision of the three preceding articles shall be fined not less than two hundred nor more than five hundred dollars, and be imprisoned in jail not less than thirty nor more than ninety days. [Id.]

Art. 651. [581] Buying pools.—Whoever shall buy pools or otherwise wager anything of value on any horse race to be run, trotted or paced, at any place in this State or elsewhere, or offers to wager, or offers to place any money or other thing of value with any other person to be transmitted to any oth-

er place to be wagered on any such horse race, shall be fined not less than twenty-five nor more than one hundred dollars. [Id.]

Art. 652. [582] Evidence sufficient to convict.—A conviction for the violation of any provision of the five preceding articles may be had upon the unsupported evidence of an accomplice or participant. Such accomplice or participant shall be exempt from prosecution for any offense under this law about which he may be required to testify. [Id.]

Art. 653. Operating pool hall.—Whoever shall operate or maintain a pool hall, as that term is defined by the laws of this State, shall be fined not less than twenty-five nor more than one hundred dollars or be confined in jail not less than one month nor more than one year. Each day of such violation shall be a separate offense. [Acts 1919, p. 10.]

Art. 654. [533—4] Lottery.—If any person shall establish a lottery or dispose of any estate, real or personal, by lottery, he shall be fined not less than one hundred nor more than one thousand dollars; or if any person shall sell, offer for sale or keep for sale any ticket or part ticket in any lottery, he shall be fined not less than ten nor more than fifty dollars.

Art. 655. [535] [375] [353] Raffle.—If any person shall establish a raffle for or dispose by raffle of any estate, real or personal, exceeding five hundred dollars in value, he shall be fined not less than one hundred nor more than one thousand dollars; or if any person shall establish a raffle for or shall dispose by raffle of any estate, real or personal, of the value of five hundred dollars or less, he shall be fined not less than five nor more than two hundred dollars. Whoever shall offer for sale or keep for sale any chanee, ticket or part ticket, in any raffle of any estate, real or personal of any value whatever shall be fined not less than ten nor more than fifty dollars. [Acts 1909, p. 98.]

BUCKET SHOPS

Art. 656. Defining bucket shops and cotton exchanges and regulating contracts for future deliveries of cotton and grain.—That for the purpose of this Act, the term "Contract of Sale" shall be held to include sales, purchases, agreements of sale, agreements to sell, and agreements to purchase; that the word "person" wherever used in this Act shall be construed to import the plural or singular as the case demands, and shall include individuals, associations, partnerships, and corporations.

Art. 657. Future Contracts Valid.—All contracts of sale for future delivery of cotton, grain, stocks, or other commodities, (1) made in accordance with the rules of any board of trade, exchange, or similar institution, and (2) actually executed on the floor of such board of trade, exchange, or similar institution, and performed or discharged according to the rules thereof, and (3) when such contracts of sale are placed with or through a regular member in good standing of a cotton exchange, grain exchange, board of trade, or similar institution, organized under the laws of the State of Texas or any other State, shall be and they hereby are declared to be valid and enforceable in the courts of this State, according to their terms: provided, that contracts of sale for future delivery of cotton in order to be valid and enforceable as provided herein, must not only conform to the requirements of clauses 1 and 2 of this section, but must also be made subject to the provisions of the United States Cotton Futures Act, approved August 11, 1916, and any amendments thereto; provided, further, that if this clause should for any reason be held inoperative, then contracts for the future delivery of cotton shall be valid and enforceable if they conform to the requirements of clauses 1 and 2 of this section; provided further, that all contracts as defined in Section 1 hereof where it is not contemplated by the parties thereto that there shall be an actual delivery of the commodities sold or bought shall be unlawful.

Art. 658. Future Contracts Invalid.—Any contract of sale for future delivery of cotton, grain, stocks, or other commodities where it is not the bona-fide intention of parties that the things mentioned therein are to be delivered but which is to be settled according to or upon the basis of the public market quotations or prices made on any board of trade, exchange, or other similar institution, without any actual bona fide execution and the carrying out of such contract upon the floor of such exchange, board of trade or similar institution, in accordance with the rules thereof, shall be null and void and unenforceable in any court of this State, and no action shall be maintainable thereon at the suit of any party.

Art. 659. Bucket shop defined.—A bucket shop is hereby defined to be and mean any place of business wherein are made contracts of the sort or character denounced by the preceding Section 3 of this Act, and the maintenance or operation of a bucket shop at any point in this State is prohibited.

Art. 660. Shall furnish copy of contract.—Every person shall furnish upon demand to any principal for whom such person has executed any contract for the future delivery of any cotton, grain, stocks, or other commodities, a written instrument setting forth the name and location of the exchange, board of trade, or similar institution, upon which such contract has been executed, the date of the execution, of the contract, and the name and address of the person with whom such contract was executed, and if such person shall refuse or neglect to furnish such statement upon reasonable demand, such refusal or neglect shall be prima facie evidence that such contract was an illegal contract within the provisions of Art. 658, and that the person who executed it was engaged in the maintenance and operation of a bucket shop, within the provisions of Article 661 hereof.

Art. 661. Penalty.—Any person, either as agent or principal, who enters into or assists in making any contracts of sale of the sort or character denounced in the preceding Art. 658 for the future delivery of cotton, grain, stocks, or other commodities, or who maintain a bucket shop, as that term is defined in Art. 659, shall be guilty of a felony, and upon conviction, shall be imprisoned in the penitentiary not exceeding two years.

Art. 662. Permitting exchanges.—There may be organized in any city, town, or municipality in the State of Texas, voluntary associations to be known as cotton exchanges, grain exchanges, boards of trade, or similar institutions, to receive and post quotations on cotton, grain, stocks, or other commodities, for the benefit of its members and other persons engaged in the production of cotton, grain, or other commodities. Such associations shall be composed of members and shall adopt a uniform set of rules and regulations not incompatible with the laws of Texas and of the United States. They shall open their books to inspection of all proper courts and officers when required so to do.

Art. 663. Repealing clause.—Articles 536 and 537 of Chapter 2, Title 11, and Articles 538 to 547 inclusive of Chapter 3, Title 11, of the Revised Penal Code of the State of Texas, of 1911, and all laws and parts of laws regulating or prohibiting dealings in future contracts, or in conflict or inconsistent herewith, be and the same are hereby repealed.

Art. 664. Constitutionality.—If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not effect, [affect] impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, or paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered; and any contract valid under and satisfying the remaining clauses, sentences, paragraphs, or parts of this Act shall be

valid and enforceable in the courts of this State. [Acts 1925, p. 38.] [39th Leg., ch. 15, §§ 1–9.]

Art. 665. Omitted from the amended Act.

CHAPTER SEVEN

INTOXICATING LIQUORS

Art.
666. Sale of intoxicating liquor, etc.
667. Liquor more than one per cent.
668. Exceptions as to intoxicating liquor.
669. Exceptions as to other liquor.
670. Not an accomplice witness.
671. Possession prima facie evidence.
672. "Intoxicating liquors."
673. Liquors included.
674. Lawful use.
675. Attach label to container.
676. Record of manufacturer.
677. Sales by wholesale druggists.
678. Duty of physician prescribing.
679. Physician to obey law.
680. Advertising liquor.
681. Liquor places to clean up.
682. Recipe or formula.
683. Concealing nature of shipment.
684. Soliciting or giving information.
685. Order to carrier to deliver.
686. Information on shipped container.
687. To rent or keep for unlawful purpose.
688. Nuisance.
689. Penal article.
690. Seizure.
691. Search warrant.
692. Report and record of seizures.
693. Gift or delivery to minor.
694. Witness shall testify.

Article 666. Sale of intoxicating liquor, etc.—It shall be unlawful for any person, directly or indirectly, to possess or receive for the purpose of sale, or to manufacture, sell, barter, exchange, transport, export, deliver, take orders for or furnish spirituous, vinous or malt liquors or medicated bitters capable of producing intoxication, or any other intoxicant whatever, or to possess, receive, manufacture or knowingly sell, barter, exchange, transport, export, deliver, take orders for or furnish any equipment, still, mash, material, supplies, device or other thing for manufacturing, selling, bartering, exchanging, transporting, exporting, delivering, taking orders for, or furnishing any such liquors, intoxicants or beverages. [Acts 2nd C. S. 1919, p. 229; Acts 1st C. S. 1921, p. 233; Acts 2nd C. S. 1923, p. 53.]

Art. 667. Liquor more than one per cent.—It shall be unlawful for any person, directly or indirectly, to possess or receive for the purpose of sale, or to manufacture, sell, barter, exchange, transport, export, deliver, take orders for, or furnish spirituous, vinous or malt liquors or medicated bitters, or any potable liquor, mixture or preparation containing in excess of one per cent of alcohol by volume, or to possess, receive, manufacture, or knowingly sell, barter, exchange, transport, export, deliver, take orders for, or furnish any equipment, still, mash, material, supplies, device, or other thing for manufacturing, selling, bartering, exchanging, transporting, exporting, delivering, taking orders for, or furnishing any such liquors, intoxicants or beverages. [Acts 2nd C. S. 1919, p. 229; Acts 1st C. S. 1921, p. 233; Acts 2nd C. S. 1923, p. 54.]

Art. 668. Exceptions as to intoxicating liquor.—It shall not be unlawful for any person to manufacture, sell, barter, exchange, transport, export, deliver, take orders for, furnish, possess or receive for the purpose of sale, barter, exchange, transport, export, or deliver spirituous, vinous, or malt liquors or medicated bitters for medicinal, mechanical, scientific, or sacramental purposes. [Acts 1st C. S. 1921, p. 234.]

Art. 669. Exceptions as to other liquor.—The manufacture, sale, barter, exchange, transportation, exporting, taking orders for, furnishing, and possessing of any of the liquors mentioned in this chapter, if done for medicinal, mechanical, scientific, or sacramental purposes, shall not be punishable under the terms of this chapter. [Id.]

Art. 670. Not an accomplice witness.—Upon a trial for a violation of any provision of this chapter, the purchaser, transporter, or possessor of any of the liquors prohibited herein shall not be held in law or in fact to be an accomplice, when a witness in any such trial. [Id.]

Art. 671. Possession prima facie evidence.—Wherever possession or receipt, or possession or receipt for the purpose of sale, is made unlawful by law, proof of possession of mash, or a still or any device for manufacturing intoxicating liquors, or proof of the possession of more than one quart of intoxicating liquors, shall be prima facie evidence of guilt; but the defendant shall have the right to introduce evidence showing the legality of such possession. [Acts 2nd C. S. 1923, p. 54.]

Art. 672. "Intoxicating liquors."—The words "intoxicating liquors," or "liquors" hereafter used in this chapter shall be held to include and comprehend all liquors referred to in the first and second articles of this chapter, and the said liquors prohibited by said articles will hereafter be referred to herein for convenience as "intoxicating liquors." [Acts 2nd C. S. 1919, p. 229.]

Art. 673. Liquors included.—The various liquors described in the first two articles of this chapter shall be construed to include all distilled, malt, spirituous, vinous, fermented or alcoholic liquors and all alcoholic liquids and compounds, whether medicated, proprietary, patented or not, and by whatever name called, which require a federal tax as a beverage, or which contain more alcohol than is necessary to extract the medicinal properties of the drug contained in such preparation and to hold the medicinal agents in solution and preserve the same. [Acts 2nd C. S. 1919, p. 229.]

Art. 674. Lawful use.—The provisions of this chapter shall not prohibit the possession of intoxicating liquor for beverage purposes for use by the owner and members of his family, or bona fide guests, in a bona fide residence, if such liquors were purchased and deposited in such residence before this law goes into effect. Nothing in this chapter shall prohibit the manufacture, transportation, storage, and sale of denatured or pure ethyl alcohol, or denatured rum for use only in the industrial or mechanical arts or for scientific purposes or in chemical laboratories or hospitals, or prevent the manufacture, transportation, sale and keeping and storing for sale any medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopeia or National Formulary or American Institute of Homeopathy, or of alcoholic, patent or proprietary medicines which do not require the payment of the Federal Tax as a beverage and which contain no more alcohol than is necessary to extract the medicinal properties of the drug contained in such preparation, and to hold the medicinal agents in solution, and to preserve the same and which are manufactured and sold for legitimate and lawful purposes and not as beverages, or to prevent the manufacture and sale of bona fide alcohol toilet, or antiseptic preparations and solutions or flavoring extracts which do not require the payment of Federal Tax as a beverage and which contain no more alcohol than is necessary for the extraction, solution and preservation of the agents contained therein, and which are manufactured and sold for legitimate and lawful purposes and not as beverages, and upon the outside of the bottle or package of each is printed in English conspicuously and legibly and clearly the quantity by volume of alcohol in such preparation. The manufacturer of flavoring extracts or toilet, medicinal, antiseptic preparations or solutions, patent or proprietary medicines, or preparations permitted to be manufactured by this law shall be permitted to purchase, possess, transport and store alcohol necessary for the manufacture of said article, but not to be sold or given away, provided that such manufacturer shall secure a permit from the Comptroller, and shall make a monthly report to be filed with the Comptroller on or before the 10th day

of each month, showing the name and quantity of every such preparation, solution or medicine so manufactured, and the percentage of alcohol contained in each such preparation, solution or medicine. Said manufacturer shall, upon request of the Attorney General of the State, the Comptroller, or the District or County Attorney of the county in which such manufacturer has his place of business, furnish to the officer making such request any information called for by such officer with reference to the manufacture, storage or sale of any such alcoholic preparation, solution or medicine, and any information with reference to the quantities and dates of sale and transportation of any such preparation, solution or medicine to any person or persons designated in such request. Any of the officers herein above named shall have the right at any reasonable time within business hours to examine the books and records and all data in the possession of such manufacturer with reference to the manufacture, storage or sale of such alcoholic preparations. Nothing herein shall prevent the storage in United States bonded warehouses in the custody of a United States collector of internal revenue of all liquors manufactured prior to the taking effect of this law or to prevent the transportation of such liquors for purposes not inhibited by law. [Acts 2nd C. S. 1919, p. 230.]

Art. 675. Attach label to container.—All persons manufacturing alcohol or wine, or either, shall securely and permanently attach to any container or [of] such liquor as the same is manufactured, and thereafter, persons possessing such liquor in wholesale quantities shall securely keep and maintain thereon, a manufacturers' label, stating name of manufacturer, kind and quantity of liquor contained therein, with a copy of the permit authorizing the manufacture thereof. Every person having in his possession any intoxicating liquor, purchased after this law becomes effective, for permitted purposes, shall have pasted on or permanently attached to the container a copy of the prescription or affidavit as the same may be, upon which authority it was purchased as is provided for in this chapter. [Acts 2nd C. S. 1919, p. 232.]

Art. 676. Record of manufacturer.—All presons [persons] authorized to manufacture alcohol shall keep a separate record of such liquors manufactured or sold, giving date and quantity of such liquor manufactured and sold, the quantity of such liquor on hand, name and address of persons to whom such liquor was sold, the name and address of all agents in any way connected with such manufacture, sale, or purchase, or the keeping, storing, delivering, consigning, and distribution of such liquor, the name and address of all common, or other carriers, receiving, transporting, and delivering said liquor, and a copy of the application on which the purchase or sale of such liquor was made, and a detailed account of the disposition of such liquor. A copy of such record shall be sent to the Comptroller by the 10th of the month for the quarter preceding. [Acts 2nd C. S. 1919, p. 232.]

Art. 677. Sales by wholesale druggists.—It shall be unlawful for a wholesale druggist to sell alcohol or wine, except in wholesale quantities, to persons having permits to purchase in such quantities. Such wholesale druggists shall keep an accurate record of all sales and label the containers of such liquor, setting forth the kind of liquor contained therein, by whom manufactured, and the person to whom sold. A copy of such record shall be sent to the Comptroller every third month by the 10th of the month for the quarter preceding. It shall be unlawful for a retail druggist or pharmacist to sell any liquor except alcohol for nonbeverage purposes or wine for sacramental purposes. Such druggist or pharmacist shall keep a record giving the name of the doctor issuing the prescriptions containing alcohol, the amount, date of sales, the name and signature of the purchaser, the person making the sale, and a copy of the prescription. [Acts 2nd C. S. 1919, p. 232.]

Art. 678. Duty of physician prescribing.—Every physician who issues a prescription for ethyl alcohol, or any alcoholic liquor, shall first secure a permit from the Comptroller, except as herein provided, and shall keep a record alphabetically arranged in a separate book provided by the Comptroller, which shall show: Date, amount, to whom issued, directions for use (stating the amount and frequency of dose), and the druggist to whom addressed. Such physician shall send a copy of such record to the Comptroller, not later than the fifth day of the month for the quarter preceding. [Acts 2nd C. S. 1919, p. 233.]

Art. 679. Physician to obey law.—Any physician who issues prescriptions must be in active practice, in good standing with his profession, not addicted to the use of any narcotic drug, and have a permit as provided herein for issuing prescriptions. Such physician before issuing any prescriptions must make a careful personal, physical examination of the person to whom the alcohol is prescribed, and in no case issue such prescription to any person whom he has reason to believe will use alcohol for beverage purposes, nor prescribe more than a pint of alcohol to any person at a time. Nor shall such prescriptions be filled at any pharmacy or drug store in which the physician has any financial interest. [Acts 2nd C. S. 1919, p. 233.]

Art. 680. Advertising liquor.—It shall be unlawful to advertise anywhere, on land or water, by any means or method, intoxicating liquors, or to advertise the manufacture, method of manufacture, sale, keeping for sale or furnishing of the same, or where, how, from whom and at what price the same may be obtained. The manufacturer of alcohol or wine and wholesale druggists having a permit under this law shall be allowed to send price lists to those to whom they are lawfully permitted to sell alcohol or wine. It shall also be unlawful to permit any sign or billboard containing such prohibited advertisement to remain upon one's premises or to circulate any prohibited price list, order blank or other matter designed to induce or secure orders for such intoxicating liquors. Any advertisement or notice containing the picture of a brewery, distillery, bottle, keg, barrel, or box or other receptacle represented as containing intoxicating liquors, or designed to serve as an advertisement thereof, shall be within the inhibition of this article. It shall be unlawful for any newspaper or periodical to print in its columns statement concerning the manufacture or distribution of alcoholic liquors directly or indirectly, for which the said newspaper or periodical receives compensation of any kind, without printing at the beginning and at the close of said statement in type of the same size used in the body of the said article the following statement: "Printed as paid advertising." [Acts 2nd C. S. 1919, p. 235.]

Art. 681. Liquor places to clean up.—Every person except licensed pharmacists, wholesale druggists, manufacturing chemists, or hospitals or other places provided for herein to legally possess liquor, shall remove, or cause to be removed, all intoxicating liquors in his possession for prohibited purposes, and failure to do so shall be evidence that such liquor is kept therein for the purpose of being sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this law. All screens, stained glass, or other obstructions which prevent a clear view of the interior of any room or place where intoxicating liquors were sold as a beverage, within one year before this act became operative shall be removed or changed so as to give a permanent unobstructed view of the interior of said room or place, if beverages of any kind are sold therein. [Acts 2nd C. S. 1919, p. 236.]

Art. 682. Recipe or formula.—It shall be unlawful to advertise, sell, deliver, or possess any preparation, compound, or table from which intoxicating liquor as a beverage is made, or any formula, directions, or recipes for making intoxicating liquors for beverage purposes. [Acts 2nd C. S. 1919, p. 236.]

Art. 683. Concealing nature of shipment.—No person shall use or induce any railroad company, express company, or any other carrier, or any servant or employé thereof, or any person or persons, to carry, transport, or ship any package or receptacle containing liquors without notifying the carrier, its servant or agent, or any person who carries the same, of the true nature and character of the shipment. Failure to notify such carrier shall be no defense for illegal transportation. [Id.]

Art. 684. Soliciting or giving information.—No person shall solicit, or receive from any person for the purpose of forwarding for the person from whom received, any orders for intoxicating liquors from any person, or give any information how such prohibited liquors may be received, or where such liquors are, or send for such liquors, except for the purposes permitted by this chapter. [Acts 2nd C. S. 1919, p. 237.]

Art. 685. Order to carrier to deliver.—It shall be unlawful to give to any carrier, or any officer, agent or person acting or assuming to act for such carrier, an order requiring the delivery to any person of any liquor or package containing liquors consigned to or purporting to or claimed to be consigned to a person when the purpose of the order is to enable any person not an actual bona fide consignee to obtain such liquors. [Id.]

Art. 686. Information on shipped container.—No person shall transport liquor or receive or possess any liquors from a common or other carrier unless there appears on the outside of the package containing such liquors the following information: Name and address of the consignor or seller, name and address of the consignee or persons receiving the liquor; kind and quantity of liquor contained therein and number of permit. Any consignee accepting or receiving any package containing any such liquors upon which appears a false statement, or any person consigning, shipping, transporting, or delivering any such package, knowing that such statement appearing on the outside is false, shall be guilty of violating the provisions of this chapter. [Id.]

Art. 687. To rent or keep for unlawful purpose.—No person shall rent to another or keep or be in any way interested in keeping any premises, building, room, boat or place to be used for the purpose of storing, manufacturing, selling, transporting, receiving or delivering, or bartering or giving away intoxicating liquors in violation of this chapter. Whoever knowingly does so shall be punished as provided in the penal article of this chapter. [Id.]

Art. 688. Nuisance.—Any room, house, building, boat, structure or place of any kind similar or dissimilar to those named, where intoxicating liquor is kept, possessed, sold, manufactured, bartered or given away, or to be transported to or transported from in violation of law, and all intoxicating liquors and all property kept in and used in maintaining such place are hereby declared to be a common nuisance. Whoever maintains or assists in maintaining such common nuisance shall be guilty of violating this law and shall be punished accordingly. [Id.]

Art. 689. Penal article.—Any person who violates any provision of the preceding articles of this chapter shall be confined in the penitentiary for not less than one nor more than five years. No person over twenty-five years of age convicted under any provision of the preceding articles of this chapter shall have the benefit of the Suspended Sentence Law. [Id.; Acts 1st C. S. 1921, p. 234.]

Art. 690. Seizure.—Any animal, automobile, flying machine, airplane, boat, ship, or other vehicle or instrumentality used for the unlawful transportation or storage of intoxicating liquor is hereby declared to be a public nuisance; and any animal, automobile, flying machine, airplane, boat, ship, or other vehicle or instrumentality used in the presence and view of any peace officer of this State for the unlawful transportation or storage of intoxicating liquors, or for the commission of any act made unlawful by this chapter, shall be seized without warrant by such peace officer, which officer shall within twenty-four hours after such seizure file with the county clerk a detailed statement of the time when, the place where and the circumstances under which he seized such property. If the officer making such seizure shall fail to make such report and appraisal of the value of the said property and file the same with the county clerk within twenty-four hours after such seizure thereof, he shall be fined not exceeding five hundred dollars. [Acts 2nd C. S., 1923, p. 54.]

Art. 691. Search warrant.—A search warrant may be issued under Title 6 of the Code of Criminal Procedure for the purpose of searching for and seizing and destroying any intoxicating liquor possessed, sold or to be sold or transported, or to be transported, or manufactured in violation of this law, and for the purpose of searching for and seizing and destroying any containers, instrumentalities for manufacture or of transportation used or to be used in the unlawful possession, sale, manufacture or transportation of intoxicating liquors. No warrant shall be issued to search a private dwelling occupied as such, unless some part of it is used as a store, shop, hotel or boarding house, or for some purpose other than a private residence, or unless the affidavits of two credible persons show that such residence is a place where intoxicating liquor is sold or manufactured in violation of the terms of this act. The application for the issuance of and the execution of any such search warrant, and all proceedings relative thereto, shall conform as near as may be to the provisions of Title 6 of the Code of Criminal Procedure, except where otherwise provided in this title. In the event any such liquor or utensils, containers or instrumentalities herein referred to are found, the officer executing the warrant shall seize same. The liquor and articles so seized shall not be taken from the custody of an officer by writ of replevin or other process, but shall be held by the officer to await the final judgment in the proceedings. [Acts 2nd C. S. 1919, p. 238.]

Art. 692. Report and record of seizures.—In all cases where intoxicating liquors or any personal property used for the purpose of violating any of the intoxicating liquor laws of this State, shall be seized by any officer with or without a search warrant, such officer shall immediately make a written report thereof, which report shall in detail state the name of the officer making the seizure, the place where seized and an inventory of the property, articles or intoxicating liquors so taken into possession. The report shall be in triplicate and signed by the officer seizing, and one witness, if there be a witness present. One copy shall be given to the person from whom the goods are taken, one copy shall be sworn to by the officer who makes the seizure and immediately filed with the county clerk of the county in which the goods are seized, and one copy shall be retained by the officer who makes the seizure. Said officer, if not the sheriff, shall immediately deliver to the sheriff of the county, the goods seized, and take the sheriff's receipt therefor in duplicate. And such sheriff shall retain the intoxicating liquor or personal property so seized and hold the same until the same shall be disposed of by proper orders of the district court of the county in which said property was seized. The duplicate copy of said receipt shall be immediately filed with said county clerk. All liquors and property so seized shall be preserved for use as evidence in the trial of any action growing out of such seizure and all officers seizing such liquors or property are hereby required to mark the date of the seizure and the name of the person from whom seized. Any officer who shall give away or dispose of any intoxicating liquor in violation of the provisions of this article, or who shall wilfully make a false report of intoxicating liquors or personal property used for the purpose of violating the intoxicating liquor laws, seized by him, shall be confined in the penitentiary for not less than one nor more than five years. Any officer who shall fail to comply with any

other provision of this article shall be fined not less than twenty-five nor more than one hundred dollars, or be imprisoned in jail not more than sixty days, or both. [Acts 1923, p. 236.]

Art. 693. [593] Gift or delivery to minor.—Any person who shall give or deliver, or cause to be given or delivered, or be in any way concerned in the gift or delivery of any spirituous, vinous, malt or intoxicating liquors to any person under the age of twenty-one years, without the written consent of the parent or guardian of such minor, or any person, who, as agent for or employed by an express company or other common carrier, or who, as agent for or employé of any other person, firm or corporation, delivers, or causes to be delivered, any spirituous, vinous, malt or intoxicating liquors to any person under the age of twenty-one years, whether consigned to such person or to some other person, without the written consent of the parent or guardian of such minor shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1909, p. 119.]

Art. 694. Witness shall testify.—No person shall be excused from testifying against persons who have violated any provision of this chapter for the reason that such testimony will tend to incriminate him, but no person required to so testify shall be punishable for acts disclosed by such testimony.

TITLE 12

PUBLIC HEALTH

Chap.

1. Acts Injurious to Health.
2. Unwholesome Food, Drink or Medicine.
3. Drugs, Narcotics and Poisons.
4. Barber Shops and Beauty Parlors.
5. Optometry.
6. Medicine.
7. Dentistry.
8. Pharmacy.
9. Embalming.
10. Quarantine Regulations.
11. Miscellaneous.

CHAPTER ONE

ACTS INJURIOUS TO HEALTH

Art.

695. Nuisances.
696. Leaving dead animal.
696a. Dumping refuse near highway.
697. Polluting or obstructing water.
698. Unlawful to pollute water courses and other bodies of water.
699. Pure drinking water.
700. Sterilizing dishes.
701. Maternity home.
702. Private disease posters.
703. Exceptions.
704. Venereal diseases.
705. Sanitary employés.
705a. Cemeteries.

Article 695. [694] [423] Nuisances.—Whoever shall carry on any trade, business or occupation injurious to the health of those who reside in the vicinity, or suffer any substance which has that effect to remain on premises in his possession, shall be fined not less than ten nor more than one hundred dollars. Each day is a separate offense.

Art. 696. [696] [425] Leaving dead animal.—Whoever shall leave the carcass of any animal, which died in the actual possession of such person, within five hundred yards of any private residence, or in any public road or highway, or in any street or alley of any town or city, or within fifty yards of such public road, highway, street or alley, shall be fined not less than five nor more than one hundred dollars. [Acts 1913, p. 155.]

Art. 696a. Dumping refuse near highway.—Sec. 1. That no municipal corporation, private corporation, partnership, joint stock association, syndicate, voluntary association or person shall use or maintain any dumping ground or dump any trash, refuse, débris or dead animals or permit the same to remain within or nearer than three hundred yards of any public highway of the State of Texas; that no person, firm or corporation, as above named, shall dump or deposit any rubbish, trash, refuse, débris or dead animals within or nearer than three hundred yards of any public highway whether said land belongs to such person, firm or corporation or not; provided, however, that the provisions of this Act shall not affect farmers in the handling of anything necessary in the growing, handling and care of livestock, or the erection, operation and maintenance of any and all such improvements that may be necessary in the handling, thrashing and preparation of any and all agricultural products.

Sec. 2. Any violation of this Act by any person, firm or private corporation shall subject the offender to a fine of not less than ten dollars nor more than two hundred dollars, and each day of any such violation shall be a separate offense. In event of any threatened or probable violation of this Act by any public corporation, municipality, city, town or village, an injunction suit may be brought to prevent any such threatened or probable violation by any county or district attorney, or by any private individual affected or to be affected by any such threatened or probable violation. The enforcement of the remedy by injunction as herein provided shall not prevent the enforcement of the other penalties provided in this Act. [Acts 1927, 40th Leg., 1st C. S., p. 153, ch. 53.]

Art. 697. [695] [424] Polluting or obstructing water.—Whoever shall in anywise pollute or obstruct any watercourse, lake, pond, marsh, or common sewer, or continue such pollution or obstruction so as to render the same unwholesome or offensive to the inhabitants of the county, city, town or neighborhood thereabout, shall be fined not exceeding five hundred dollars. [Acts 1860, p. 97.]

Art. 698. Unlawful to pollute water courses and other bodies of water.—It shall be unlawful for any person, firm or corporation, private or municipal to pollute any water course or other public body of water, by throwing, casting or depositing, or causing to be thrown, cast or deposited any crude petroleum, oil or other like substance therein, or to pollute any water course, or other public body of water, from which water is taken for the use of farm live stock, drinking and domestic purposes, in the State of Texas, by the discharge, directly or indirectly, of any sewage or unclean water or unclean or polluting matter or thing therein, or in such proximity thereto as that it will probably reach and pollute the water of such water course or other public body of water from which water is taken, for the uses of farm live stock, drinking and domestic purposes; provided, however, that the provisions of this bill shall not affect any municipal corporation situated on tide waters; that is to say, where the tide ebbs and flows in such water course; provided, however, that no city located on tide water shall discharge or permit to be discharged sewerage, oil or any other effluents into public tide waters of this State when such discharge will become a menace to or endangers the oyster beds or fish life in such waters, or when such discharge becomes a menace to the bathing places in such waters; and provided further that drain ditches, where waste oil finds its way into water courses or public bodies of water, shall be equipped with traps of sufficient capacity to arrest the flow of oil. In so far as concerns the protection of fish and oysters, the Game, Fish and Oyster Commissioner, or his deputies, may have jurisdiction in the enforcement of this chapter. A violation of any of the provisions of this chapter shall be punished by a fine of not less than one hundred dollars and not more than one thousand dollars. When the offense shall have been committed by a firm, partnership or association, each member thereof who has knowledge of the commission of such offense, shall be held guilty. When committed by a private corporation, the officers and members of the board of directors, having knowledge of the commission of such offense, shall each be deemed guilty; and when by a

municipal corporation the mayor and each member of the board of aldermen or commission, having knowledge of the commission of such offense, as the case may be, shall be held guilty as representatives of the municipality; and each person so indicated as above shall be subject to the punishment provided hereinbefore; provided, however, that the payment of the fine by one of the persons so named shall be a satisfaction of the penalty as against his associates for the offense for which he may have been convicted. Each day such pollution is knowingly caused or permitted shall constitute a separate offense; provided, the provisions of this article shall not apply to any place or premises of manufacturing plants whose affluents contain no organic matter that will putrify, or any poisonous compounds, or any bacteria dangerous to public health or destructive of the fish life of streams or other public bodies of water. [Acts 1925, p. 200.] [39th Leg., ch. 57, § 1.]

Art. 699. Pure drinking water.—The authorities of all cities and towns and villages having a population of five thousand inhabitants or less and all other companies, persons, corporations or receivers, who are supplying drinking water through a water works system to the public, shall, before supplying the same to the public use for drinking water, first cause the supply of water to be chemically tested for any contaminated infusion of sand, dirt or filth, or dangerous bacteria or disease-bearing germs. This test shall be made according to the direction of the county or city health officers, or both such health officers. Said water as above supplied shall be subject to such test at any time, and the county and city health officer where such water supply is furnished shall make such tests at least once a year and oftener where there is an outbreak of any disease that might be induced through use of impure or unclean water. All authorities of any such city or town or persons, firms, or the officers and agents of all incorporated companies or receivers supplying water for such public use, in such cities or towns, shall provide proper strainers for all wells and all other sources of supply so that sand and dirt shall not be carried into the water for such public use, and cause all of the conduits and drain pipes conveying said water to be thoroughly washed out and flushed so as to clean the same at least one time every ninety days. Any such authorities, persons, firms or receivers or their agents, when any such drinking water as furnished is pronounced unfit or infectious or impregnated with sand, or dirt, or filth, or unclean and dangerous to the public use by the health officers of any such city or county as the case may be, shall immediately take steps to purify, clean or sanitize the same. In any case where the authorities of any city, or town or village, or any person or officer, agent or receiver of any firm, or corporation or company furnishing drinking water to such cities or towns or villages shall fail or refuse to carry out the provisions of this article and shall furnish for public use, drinking water that is contaminated, impure and unclean, he shall be fined not to exceed $500.00 for any such offense. [Acts 1919, p. 247.]

Art. 700. Sterilizing dishes.—No person, firm, or corporation operating, managing, or conducting a hotel, cafe, restaurant, dining car, or any other public eating place, or any drug store, soda water fountain, drink stand, or any bakery or meat market, shall furnish to any patron or customer any dish, or any other receptacle or utensil used in eating, drinking, or conveying food, until such dish, receptacle, or other utensil has been thoroughly cleaned and sterilized by heat or in boiling water subsequent to being used by any other person, or any dish, or receptacle or utensil used in eating, drinking or conveying food if the same is broken or cracked in such a manner as to render its sterilization impossible or doubtful, or so furnish for use any napkin after being used once and not laundered. Whoever violates any provision of this article shall be fined not less than five nor more than one hundred dollars. [Act Feb. 12, 1915, Acts 1921, p. 135.]

Art. 701. Maternity home.—Any person, manager, keeper, or officer of any corporation, firm or association who shall keep or conduct any "Baby Farm," lying-in hospital, hospital ward, maternity home or place for the reception, care or treatment of pregnant women without first having obtained a license from the State Board of Health as provided by law shall be fined not less than fifty nor more than five hundred dollars and in addition thereto may be confined in jail not to exceed twelve months. [Acts 1921, p. 147.]

Art. 702. Private disease posters.—Any person who shall publish, deliver or distribute, or cause to be published, delivered or distributed in any manner, or who shall permit, placards or posters to be or remain on buildings, outhouses or premises controlled by him, containing an advertisement concerning a venereal disease, lost manhood, lost vitality, impotency, sexual weakness or emissions, varicocele, self-abuse or excessive sexual indulgence and calling attention to a medicine, article or preparation that may be used therefor or to a person from whom or place at which information, treatment or condition may be obtained shall be fined not more than two hundred dollars. [Acts 4th C. S. 1918, p. 195.]

Art. 703. Exceptions.—The preceding article shall not apply to didactic or scientific treatises which do not advertise or call attention to any person from whom or any place at which information, treatment or advice may be obtained, nor to advertisements or notices issued by a municipal or county department of health or by the State Board of Health. [Id.]

Art. 704. Venereal diseases.—Whoever violates any provision of this article shall be fined not less than five nor more than fifty dollars:

1. No person infected with a venereal disease shall knowingly expose another to infection with any venereal disease, or perform an act which exposes another person to infection with such disease.

2. No local health officer, employé, inspector, physician, nurse, or superintendent of a clinic or hospital shall fail to perform any duty required of him by the laws of this State relating to venereal diseases and requiring reports in such cases.

3. Whoever sells any drug or preparation of any kind used for or believed by the seller to be intended to be used for the treatment of syphillis, gonorrhea, or chancroid shall keep a record of the name and address of such purchaser and mail a copy of such record each week to the local health officer. [Acts 4th C. S. 1918, p. 179.]

Art. 705. Sanitary employés.—No person, firm, corporation or common carrier, operating or conducting any hotel, cafe, restaurant, dining car or other public eating place, or operating any bakery or meat market, public dairy or candy factory in this State, shall work, employ or keep in their employ in or about any said place any person infected with or affected by any infectious or contagious disease, or work or employ any person to work in or about any said place who, at the time of his employment had not in his possession a certificate from some reputable physician of the county where said person is to be employed, attesting the fact that the bearer has been examined by such physician within one week prior to the time of employment, and that such examination discloses the fact that such person to be employed was free from any infectious or contagious disease; or fail to institute and have made a medical examination of all their employés at intervals of time not to exceed six months and after such examination promptly discharge from their employment in or about any said place any person found to be infected with or affected by any infectious or contagious disease. Whoever violates any provision of this article shall be fined not less than five nor more than one hundred dollars. [Acts 1921, p. 134.]

Art. 705a. Cemeteries.—It shall be unlawful for any person, company, corporation or association to establish or use for burial purposes any graveyard or cemetery located less than one mile from the incorporated line of any city of not less than five thousand

(5,000) inhabitants within the State of Texas; provided, that where cemeteries have heretofore been used and maintained within less than one mile from any incorporated city or town, and additional lands are required for cemetery purposes, any person owning lands adjacent to such cemetery may lay out and use or sell the same to be used as an addition to such cemetery, and the use of the said additional lands for such purposes shall be exempt from the provisions of this Section.

CHAPTER TWO

UNWHOLESOME FOOD, DRINK OR MEDICINE

Art.
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Article 706. Adulterated or misbranded food or drug.—No person, firm or corporation, shall within this State manufacture for sale, have in his possession with the intent to sell, offer or expose for sale or sell or exchange any article of food or drug which is adulterated or misbranded within the meaning of this chapter. The term "food" shall include all articles used by man for food, drink, flavoring, confectionery or condiment, whether simple, mixed or compounded. The term "drug" shall include all medicines and preparations for internal or external use recognized in the United States Pharmacopeia [Pharmacopœia] or National Formulary, and any substance or mixture of substances intended to be used for the cure, mitigation or prevention of disease of either man or animal. [Acts 1911, p. 76.]

Art. 707. "Adulterated."—For the purposes of this chapter an article shall be deemed to be adulterated:

(a) In the case of drugs:

(1) if, when sold under or by a name, recognized in the eighth decennial revision of the United States Pharmacopeia [Pharmacopœia] or in such United States Pharmacopeia [Pharmacopœia] as was official at the time of labeling it, or in the National Formulary, it differs from the standard strength, quality or purity laid down therein;

(2) if, when sold under or by a name not recognized in the eighth decennial revision of the United States Pharmacopoeia, but which is found in some other pharmacopoeia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity laid down in such work;

(3) if its strength, quality or purity falls below the professed standard under which it was sold.

(b) In the case of confectionery; if it contains terra alba, barytes, talc, chrome yellow, or other mineral substances or poisonous color or flavor, or other ingredients deleterious or detrimental to health, or any vinous, malt or spirituous liquor or compound, or narcotic drug.

(c) In the case of food;

(1) if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength;

(2) if any substance has been substituted wholly or in part for the article;

(3) if any valuable constituent of the article has been wholly or in part abstracted, or if the product be below that standard of quality, quantity, strength or purity represented to the purchaser or consumer.

(4) if it be mixed, colored or powdered, coated or stained in a manner whereby damage or inferiority is concealed;

(5) if it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health, provided, that when in the preparation of food products for shipment they are preserved by any external application applied in such manner that the preservative is necessarily removed mechanically, or by maceration in water or otherwise, and directions for the removal of said preservative shall be printed on the covering of the package, the provisions of this Act shall be construed as applying only when said products are ready for consumption;

(6) if it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal or vegetable unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

"Filthy" defined.—The term "filthy" shall be deemed to apply to food not securely protected from flies, dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations. [Id.]

Art. 708. "Misbranded."—The term "misbranded," as used herein, shall apply to all drugs or articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement, design or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular.

An article shall also be deemed to be misbranded:

(a) in the case of drugs;

(1) if it be an imitation of or offered for sale under the name of another article;

(2) if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if the package fail to bear a statement on the label of the quantity or proportion of any morphine, phenocetice, opium, cocaine, heroin, alpha or beta eucaine, chloroform cannabis indicia [indica], chloral hydrate, or acetanelid, or any derivative or preparation of any such substances contained therein;

(b) in the case of food;

(1) if it be an imitation of or offered for sale under the distinctive name of another article;

(2) if it be labeled or branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, or if the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fails to bear a statement on the label of the quantity or proportion of any morphine, opium, cocaine, heroin alpha or beta eucaine, phenacetin chloroform, cannabis indicia [indica] chloral hydrate or acetanelid, or any derivative or preparation of any of such substances contained therein;

(3) if in package form and the contents are stated in terms of weight or measure, they are not plainly and correctly stated on the outside of the package;

(4) if the package containing it or its labels bear any statement, design or device regarding the ingredients or the substances contained therein, which statement, design or device shall be false or misleading in any particular, provided that an article of food which does not contain any added poisonous or deleterious ingredient shall not be deemed to be adulterated or misbranded in the following cases: First, in case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced; second, in the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations or blends. The term "blend," as used herein, shall be held to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only. Nothing in this law shall be construed as requiring proprietors or manufacturers of proprietary foods which contain no unwholesome added ingredients

to disclose their trade formulas except in so far as the provisions of this law require to secure freedom from adulteration or misbranding. [Acts 1911, p. 76.]

Art. 709. Preservatives added.—No person shall manufacture, sell, offer or expose for sale or exchange any article of food to which has been added formaldehyde, boric acid or borates, benzoic acid or benzoate, suphurous acids or sulphites, salacylic acid or salacylates, abrastal, beta naphthal, flourine compounds, dulcin, glucin, cocaine, sulphuric acid or other mineral acid except phosphoric acid, any preparation of lead or copper or other ingredient injurious to health. Nothing herein shall be construed as prohibiting the sale of catsups, sauces, concentrated fruits, fruit juices and like substances preserved with one-tenth of one per cent of benzoate of soda, or the equivalent benzoic acid, when a statement of such fact is plainly indicated upon the label. The oxides of sulphur may be used for bleaching, clarifying and refining food products. [Id.]

Art. 710. Baking powder compound to be labeled.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange or sells any baking powder or compound intended for use as a baking powder under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can or package containing such baking powder or like mixture or compound a label distinctly printed in plain capital letters in the English language, containing the name and residence of the manufacturer or dealer, and the ingredients of the baking powder. Baking powder containing less than 10 per cent of available carbon dioxide shall be deemed to be adulterated. [Id.]

Art. 711. Self-rising flour.—Whoever manufactures for sale within this State, or offers or exposes for sale or exchange, or sells any Self-rising Flour, or compound intended for use as a Self-rising Flour, under any name or title whatsoever shall securely affix or cause to be securely affixed to the outside of every box, can, sack or package containing such Self-rising Flour or like mixture or compound, a label distinctly printed in plain capital letters in the English language containing the name and domicile of the manufacturers or dealer, and the percentage by weight of each of the chemical leavening ingredients of the contents thereof. Such Self-rising Flour or any compound so termed or styled, when sold for use shall produce not less than one-half of one per cent. by weight of available carbon dioxide gas, and there shall not be contained in such Self-rising Flour more than three and one-half per cent of chemical leavening ingredients, otherwise such flour or compound shall be deemed adulterated.

Self-rising Flour is defined to be a combination of flour, salt and chemical leavening ingredients. The flour shall be of the grade of "straight" or better, and the chemical leavening ingredients shall be, Bicarbonate of Soda and either Calcium Acid Phosphate, Sodium Aluminum Sulphate, Cream of Tartar, Tartaric Acid or combinations of the same. [Acts 1923, p. 96.]

Art. 712. [706] Milk.—No person either by himself or agent shall sell or expose for sale or exchange any unwholesome, watered, adulterated, or impure milk, or swill milk, or colostrum, or milk from cows kept upon garbage, swill, or any other substance in a state of putrefaction or other deleterious substances, or from sick or diseased cows, or from cows kept in connection with any family in which there are infectious disease[s]. [Acts 1911, p. 76.]

Art. 713. [706] Skim milk.—Skim milk may be sold if on the container from which such milk is sold, the words "skim milk" are distinctly painted in letters not less than one inch in length. [Id.]

Art. 714. [708] Dealer not to be prosecuted, when.—No dealer shall be prosecuted under this chapter when he can establish a guaranty signed by the wholesaler, manufacturer, or other party residing in the United States from whom he purchased such article, to the effect that the same is not adulterated or misbranded within the meaning of this Act, designating it. Said guaranty, to afford protection, shall contain the name and address of the party making the sale of such article to such dealer, and in such case said party shall be amenable to the fines and other penalties which would attach in due course to the dealer under the provisions of this chapter. [Id.]

Art. 715. [709] Certificates of purity.—The State Health Department or any employé thereof shall not furnish to any individual, firm or corporation any certificate as to the purity or excellence of any article manufactured or sold to or by them to be used as food or drug or in the preparation of food or drugs.

Art. 716. [710] Obstruction of officers.—No person shall wilfully hinder or obstruct the director of the food and drug division of the State Board of Health, or his inspector or other person duly authorized by him, in the exercise of the powers conferred upon him by the laws of this State.

Art. 717. [711] Penalty for violating pure food laws.—Whoever shall do any act or thing prohibited, or neglect or refuse to do any act or thing enjoined by the preceding articles of this chapter, or in any way violate any provision thereof, shall be fined not less than twenty-five nor more than two hundred dollars. It shall not be necessary for the indictment to allege or for the State to prove that the act or omission was knowingly done or omitted. [Acts 1911, p. 76.]

Art. 718. [714] Mixed or adulterated cereals.—Whoever shall knowingly sell or exchange or offer for sale or exchange, whether in single packages or lots, any product composed of mixed cereals of any kind, or any cereal adulterated in any manner, unless the word "adulterated" is plainly marked, printed or stenciled diagonally across the other marks or brands, if any, on the hogshead, box, bale, cask, sack or package containing the same, or in case there are no marks thereon, then across such container in a conspicuous place in large legible letters and figures not less than two inches in size, shall be fined not less than twenty-five nor more than one thousand dollars. [Acts 1905, p. 227.]

Art. 719. Bakeries and bakers.—Whoever violates any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars:

Rule 1. Bakery Building.—Any building occupied or used as a bakery wherein is carried on the business of the production, preparation, storage or display of bread, cakes, pies, and other bakery products intended for sale for human consumption, shall be clean, properly lighted, drained and ventilated. Every such bakery shall be provided with adequate plumbing and drainage facilities including suitable wash sinks, toilets and water closets. All toilets and water closets shall be separated and apart from the rooms in which the bakery products are produced or handled. All wash sinks, toilets and water closets shall be kept in a clean and sanitary condition, and shall be in well lighted and ventilated rooms. The floors, walls and ceilings of the rooms in which the dough is mixed and handled, or the pastry prepared for baking, or in which the bakery products or ingredients of such products are otherwise handled or stored, shall be kept and maintained in a clean, wholesome and sanitary condition. All openings into such rooms, including windows and doors, shall be kept properly screened or otherwise protected to exclude flies. No working rooms shall be used for purposes other than those directly connected with the preparing, baking, storage and handling of food, and shall not be used as washing, sleeping, or living rooms, and shall, at all times, be separated and closed from the living and sleeping rooms. Rooms shall be provided for the changing and hanging of wearing apparel apart and separate from such work rooms and such rooms as to be provided for the changing and hanging of wearing apparel shall be kept clean at all times.

Rule 2. Sanitation.—No employé or other person shall sit or lie upon any table, bench, trough or shelf

which is intended for the dough or bakery products. No animals or fowls shall be kept or allowed in any bakery or other place where bread or other bakery products are produced or stored. Before beginning the work of preparing, mixing and handling the ingredients used in baking, every person engaged in the preparation or handling of bakery products shall wash his hands and arms thoroughly, and for this purpose sufficient wash basins and soap and clean towels shall be provided. No employé or other person shall use tobacco in any form in any room where bakery products are manufactured, wrapped or prepared for sale. No master baker, person or any employé who is affected with any contagious or infectious disease shall be permitted to work in any bakery or be permitted to handle any product therein, or delivered therefrom.

Rule 3. Clean condition.—The wagons, boxes, baskets and other receptacles in which bread, cake, pies or other bakery products are transported, shall be kept in a clean condition at all times and free from dust, flies and other contamination. All show cases, shelves or other places where bakery products are sold, shall be kept well covered, properly ventilated, well protected from dust and flies, and shall be kept in a clean and wholesome condition at all times. Boxes or other receptacles for the storing or receiving of bread and other bakery products, before and after the retail stores and selling places are open, shall be constructed and placed so as to be free from the contamination of streets, alleys and sidewalks, and shall be raised at least ten inches from the sidewalk or street, and shall be kept clean and sanitary, and no bread shall be placed in any box along with any other articles of food than bakery products. All such boxes shall be provided with private locks and shall be locked at all times except when open to receive or remove bread or other bakery products and when being cleaned.

Rule 4. Ingredients must be good.—All material used in the production or preparation of bakery products shall be stored, handled and kept in a way to protect them from spoiling and contamination, and no material shall be used which is spoiled or contaminated, or which may render the bread or other bakery products unwholesome or unfit for food. The ingredients used in the production of bread and other bakery products and the sale or offering for sale of bread and other bakery products shall comply with the provisions of the laws against adulteration and misbranding. No ingredients shall be used which may render the bread or other bakery products injurious to health.

Rule 5. Weight of bread.—Bread to be sold by the loaf made by bakers engaged in the business of wholesaling and retailing bread, shall be sold based upon any of the following standards of weight and no other, namely: a loaf weighing one pound or 16 ounces, a loaf weighing 24 ounces or a pound and a half, and loaves weighing two pounds or 32 ounces, and loaves weighing three pounds, or some other multiple of one pound or 16 ounces. These shall be the standard of weight for bread to be sold by the loaf. Variations, or tolerance, shall not exceed one ounce per pound over or under the said standard within a period of 24 hours after baking. [Acts 1921, p. 129.]

Art. 719a. Marketing citrus fruit unfit for consumption.—Sec. 1. That as used in this Act the word "person" shall extend to and include persons, partnerships, associations and corporations; and the word "box" refers to the standard size containers now in common use in this State in the packing and shipping of citrus fruits; and the words "citrus fruit" shall extend to and include only the fruits of citrus grandis, osbeck, commonly and hereafter called grape fruit or Pomelo, and citrus sinensis, osbeck, commonly called sweet or round oranges and hereafter called oranges and the words "packing house" shall extend to and include any structure or place prepared for and used for packing or otherwise preparing citrus fruit for market or transportation.

Sec. 2. It shall be unlawful for any person to sell or offer for sale any citrus fruit that is immature, unripe, overripe, frozen, or frost damaged, or otherwise unfit for consumption, or to transport, prepare, receive, or deliver for transportation, or market, any citrus fruit between the 1st day of September and the next succeeding December 15th, both dates inclusive, in any year, unless such fruit is accompanied by a stamp or stamps as provided herein to evidence the certificate of inspection and maturity thereof as defined by this Act, issued by a duly authorized Citrus Fruit Inspector, or Special Citrus Fruit Inspector, or State Chemist, or an Assistant State Chemist, or an Inspector of the Chemical Division of the Department of Agriculture of this State, or a duly authorized Inspector of the United States Bureau of Agricultural Economics.

The certificates of inspection and maturity mentioned in this Act shall be of such number, form, size, and character as the Commissioner of Agriculture of this State may by rule or regulation prescribe, and shall be used in such manner as to identify the fruit to which they relate. All inspections shall be made at a regularly registered packing house as prescribed herein. Provided that it shall be unlawful during the remaining period of from December 16th to August 31st following, both dates inclusive, when inspection is not required by this Act, for any person to sell, offer for sale, transport, deliver, or prepare for sale or transportation, any citrus fruit which is immature or otherwise unfit for consumption, or for any person to receive such fruits under a contract of sale, or for the purpose of sale, offering for sale, transportation or delivery for transportation thereof. Provided further, that the provisions of this Act shall not apply to sales of citrus fruit "on the trees," nor to common carriers or their agents when the fruit accepted for transportation or transported by such common carrier is accompanied by a proper certificate of maturity and inspection of such fruits, as hereinafter provided, or when accepted by them for transportation between the 16th day of December in any year and the 31st day of August, next thereafter, both dates inclusive, or transportation of the fruit from the grove to the packing house located within this State.

Sec. 3. (a) That within the purpose and meaning of this Act, Pomelos (grape fruit) shall be deemed to be mature only when the total soluble solids of the juice are not less than ten (10) per cent and when the minimum ratio of total soluble solids to anhydrous citric acid shall be seven to one (7 to 1).

(b) That within the meaning and purpose of this Act, oranges shall be deemed to be mature when the juice thereof contains not less than eight (8) per centum of total soluble solids to each part of anhydrous citric acid.

(c) In determining the total soluble solids the Brix Hydrometer shall be used, and the reading of the Hydrometer corrected for temperature shall be considered as the per centum of total soluble solids. Anhydrous citric acid to be determined by titration of the juice, using standard alkali and phenolphthalein as the indicator, the total acidity being calculated as anhydrous citric acid.

(d) Any citrus fruit not conforming to the above standards shall be deemed and held to be immature within the meaning of this Act.

Sec. 4. The owner, manager, or operator of each packing house at which it is intended to pack or prepare citrus fruit for market or transportation during the then present or next ensuing citrus fruit shipping season, shall register such packing house and its location, shipping point, and Postoffice address with the Commissioner of Agriculture of this State, not less than ten (10) days before packing or otherwise preparing any citrus fruit for sale or transportation in or at such packing house; and he shall in addition to such registration give the said Commissioner of Agriculture not less than seven (7) days' written notice of the date on which the packing, or other preparation for sale, or transportation between September 1st and December 16th, both dates inclusive, of the citrus fruit of the then current or then next ensuing season's crop would be begun. And it shall be unlawful for any person to

operate a citrus fruit packing house, or to pack, or otherwise prepare for sale or transportation, any citrus fruit at such packing house without having previously registered said packing house and given notice herein required; provided, that no certificate of inspection and maturity of any fruit shall be issued by any authorized Inspector to any person who has not registered with the Commissioner of Agriculture of this State during the then current year or has not given to said Commissioner the notice as required by this Act, nor until after the payment of the inspection fee imposed by or under the provisions of this Act and such payment evidenced as herein required or authorized.

Sec. 5. Every vendor or shipper of citrus fruit between the dates of September 1st and December 15th, both inclusive, of each year shall pay to the Commissioner of Agriculture of this State a fee of one and one-half (1½) cents for every box of citrus fruit by him, it, or them sold, transported, or delivered for transportation; or when such fruit is sold or transported in bulk, or in containers other than standard size boxes, shall pay one and one-half (1½) cents for each two (2) cubic feet or fraction thereof, or each eighty (80) pounds or fraction thereof, of such fruit.

Such fee shall be due and payable when the fruit is prepared for market or transportation, and payment thereof shall be evidenced by stamps, as hereinafter provided. And it shall be unlawful to sell, deliver, transport, or deliver for transportation, or receive for transportation, any citrus fruit, payment of the fee for which is not evidenced by proper stamps to be provided by the Commissioner of Agriculture.

Provided, however, that the provisions of this Section shall not apply to the transportation or carriage of fruit from groves to packing houses within this State.

Sec. 6. It shall be the duty of the Commissioner of Agriculture to furnish vendors and shippers of citrus fruits with such stamps to be attached to the packages of fruit prepared for sale or delivery for transportation, or to be affixed to the bill-of-lading where shipment is in bulk.

Sec. 7. It shall be the duty of any vendor or shipper of citrus fruit to properly and securely affix and attach to each package of citrus fruit prepared for sale or delivery for transportation, or to the bill-of-lading or other shipping receipt therefor when shipment is in bulk, the necessary stamp or stamps to evidence payment of the inspection fee herein provided.

Sec. 8. It shall be unlawful for any authorized Inspector to make or issue any false certificate as to inspection, maturity, or payment of inspection fee.

Sec. 9. All citrus fruit prepared for sale or transportation, or which is being prepared for such purposes, or is being delivered for sale or transportation, that may be found to be immature or otherwise unfit for consumption upon inspection and testing, is hereby declared to be a public nuisance, detrimental to the public health, and the sale thereof declared to be a fraud upon the public, and shall be seized and destroyed by Citrus Fruit Inspectors, or by the Sheriff of the County where found; provided, that the owner of such citrus fruit that is immature or otherwise unfit for consumption may be allowed to retain possession of the same subject to such regulations as the Commissioner of Agriculture shall prescribe for the disposition thereof.

Sec. 10. Upon recommendation of the Commissioner of Agriculture, the Governor may in each year appoint and commission as many Citrus Fruit Inspectors for such period or periods, not exceeding one year, as said Commissioner shall deem to be necessary for the effective enforcement of this Act. Such Inspectors shall make and file in the office of the Secretary of State, the oath required by the Constitution of this State, and shall give a good and sufficient bond in the sum of One Thousand ($1,000.00) Dollars, payable to the Governor of the State of Texas, and conditioned for the faithful performance of the duties of such office.

All persons authorized under the provisions of this Act to inspect and certify to the maturity of citrus fruit shall be governed in the discharge of their duties as such Inspectors by the provisions of this Act, and by the rules and regulations pursuant thereto prescribed by the Commissioner of Agriculture as herein authorized, and shall perform their duties under his direction and supervision.

Sec. 11. The salary of each Citrus Fruit Inspector or "Special Citrus Fruit Inspector" shall be at the rate of One Hundred and Fifty ($150.00) Dollars per month and in addition thereto shall receive his or her necessary traveling and other expenses incurred by him or her in the discharge of his or her duties as such Inspector, which shall be paid upon approval of accounts therefor by the Commissioner of Agriculture. The Commissioner is hereby authorized to employ such additional field and other agents and clerical assistance, at such times and for such periods, and to incur and pay any other expenses including the traveling expenses of the Commissioner of Agriculture during the citrus fruit season, as may be necessary for the effective enforcement of this Act, and to secure the payment of the inspection fees hereby imposed or that may be imposed under the authority of this Act.

In cases of emergency or necessity when no Citrus Fruit Inspector is available for the inspection of citrus fruit in any particular locality in this State, the Commissioner of Agriculture may designate some fit and competent individual to inspect, test, and certify as to such fruit offered for sale or transportation in such locality. Certificate made or issued by such designated individual shall be signed by him or her as "Special Citrus Fruit Inspector"; he or she shall not be required to give bond, but shall be subject to the penalties imposed by this Act for violation of any of the provisions thereof.

Sec. 12. Inspectors shall draw samples for analysis in the presence of the owner, manager, agent, or custodian of any packing house where grape fruit or oranges are packed for shipment or sale. Three samples of 15 average grape fruit or oranges each, fairly representative of all of the fruit at the time of being inspected, may be drawn by the Inspector, witnessed by either the owner, manager, agent, or custodian of the fruit. The mixing of Royal or other low acid grape fruit-orange hybrids with the ordinary varieties of grape fruit in order to secure the passing of a lot of fruit as mature of which a large part is immature and readily distinguishable from the mature fruit is unlawful. Likewise the mixing of mature fruit from one grove with immature fruit from another grove for the purpose of securing a lot of fruit that will pass the test as mature fruit is unlawful.

Sec. 13. No Inspector, State Chemist, Assistant State Chemist, duly authorized Inspector of the United States Bureau of Economics, or individual designated by the Commissioner of Agriculture as "Special Citrus Fruit Inspector" shall be authorized to inspect, test, or issue a certificate of inspection and maturity, or give any expression of opinion relating to the maturity or quality of any fruit, either express or implied, except at a regularly registered packing house as herein defined and provided.

Sec. 14. It shall be unlawful for any person to obstruct or resist any authorized Inspector in the performance or discharge of any duty imposed or required by him or her by the provisions of this Act.

Sec. 15. Any person who shall violate any of the provisions of this Act, or do, or commit any act herein declared to be unlawful, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not less than Twenty-five ($25.00) Dollars nor more than Five Hundred ($500.00) Dollars, or by imprisonment for not to exceed six months, or by both such fine and imprisonment, in the discretion of the Court.

Sec. 16. All money received by the Commissioner of Agriculture for inspection fees and certificates of inspection and maturity shall be paid by him to the State Treasurer who shall deposit said money to the account of "Citrus Fruit Inspection Fund." All salaries and other expenses incurred in the execution and enforcement of the provisions of this Act shall be paid out of such "Cirtus Fruit Inspection Fund" (except as provided in the next succeeding section) by vouchers approved by the Commissioner of Agriculture and war-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

rant issued thereon by the Comptroller. [Acts 1927, 40th Leg., 1st C. S., p. 240, ch. 88.]

Section 17 of Acts 1927, 40th Leg., 1st C. S., p. 240, ch. 88, containing an appropriation of $5,000.00 for the enforcement of the act for the period beginning September 1st, 1927, and ending August 31st, 1929, was vetoed by the Governor and section 18 repeals all conflicting laws and parts of laws.

CHAPTER THREE

DRUGS, NARCOTICS AND POISONS

Art.
720. Sale without prescription.
721. Prescriptions.
722. Exceptions.
723. Furnishing habitual user.
724. False labels.
725. Penalty.
726. Sale of poisons.
727. Sale of tobacco to minor.

Article 720. [747] Sale without prescription.—No person, firm or corporation shall sell, furnish, or give away cocaine, derivations of cocaine, preparations containing cocaine or derivatives of cocaine, morphine, derivations of morphine, preparations containing morphine or derivatives of morphine, opium, preparations containing opium, chloral hydrate or preparations containing cloral [chloral] hydrate, canabis [cannabis] indica, canabis [cannabis] sativa or preparations thereof or any drug or preparation from any canabis [cannabis] variety, or any preparation known as marijuana. [Acts 1905, p. 45; Acts 1919, p. 277, Acts 2nd C. S. 1919, p. 156.]

Art. 721. Prescriptions.—The preceding article shall not apply when such sale, furnishing or gift is upon the original written order or prescription of a lawfully authorized practitioner of medicine, dentistry, or veterinary medicine, which order or prescription shall be dated and shall contain the name of the person for whom prescribed, or if ordered by a veterinarian shall state the kind of animal for which ordered, and shall be signed by the person giving the prescription or order. Such written order or prescription shall be permanently retained on file by the person, firm or corporation who shall compound or dispense the article ordered or prescribed, and it shall not be compounded or dispensed a second time except upon the written order of the original prescriber for each and every subsequent compounding or dispensing. No copy or duplicate of such written order or prescription shall be made or delivered to any person, but the original shall at all times be open to inspection by properly authorized officers of the law. [Id.]

Art. 722. Exceptions.—The provisions of the first article of this chapter shall not apply to preparations containing not more than two grains of opium or not more than one-eighth grain of morphine, or not more than two grains of chloral hydrate, or not more than one sixteenth grain of cocaine in one fluid ounce, or if a solid preparation in one avoirdupois ounce, nor to preparations containing not more than one grain per ounce of solid extract of canabis [cannabis] indica, canabis [cannabis] sativa or preparations thereof or any drug or preparation from any canabis [cannabis] variety, nor to sales by wholesale jobbers, wholesalers and manufacturers to retail druggists, nor to sales at retail by retail druggists to regular practitioners of medicine, dentistry, or veterinary medicine, nor to sales made to manufacturers of proprietary or pharmaceutical preparations for use in the manufacture of such preparations, nor to sales to hospitals, colleges, scientific or public institutions. [Id.]

Art. 723. [748] Furnishing habitual user.—No practitioner of medicine, dentistry, or veterinary medicine shall furnish to or prescribe for the use of an habitual user of the same, any cocaine or morphine or any derivative or compound of cocaine or morphine or any preparation containing cocaine or morphine or their derivatives, or any opium or chloral hydrate or any preparation containing opium or chloral hydrate, or canabis [cannabis] or any preparation thereof, for the use of any person not under his treatment in the regular practice of his profession. No practitioner of veterinary medicine shall prescribe any of the foregoing substances for the use of any human being. [Acts 1919, p. 278.]

Art. 724. False labels.—It shall be unlawful to manufacture for sale, sell or exchange any drugs, medicine, or device advocated for the cure of diseases, if the package or label or any representation pertaining to same shall bear or contain any statement, design or device regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein, which is misleading, false or fraudulent. [Id.]

Art. 725. [749] Penalty.—Whoever violates any provision of the preceding articles of this chapter shall be fined not less than twenty-five nor more than two hundred dollars or be imprisoned in jail for not less than one month nor more than one year, or both. [Id.]

Art. 726. Sale of poisons.—The following poisons are included with the provisions of this article: arsenic, cyanide of potassium, hydrocyanic acid, cocaine, morphine, strychnia and all other poisonous vegetable alkaloids and their salts, oil of bitter almonds, containing hydrocyanic acid, opium and its preparations, except paregoric and such others as contain less than two grains of opium to the ounce, aconite, belladonna, cantharides, colchicum, conium, cotton root, digitalis, ergot, hellebore, henbane, phytolacca, strophanthus, oil of tansy, veratrum viride and their pharmaceutical preparations, arsenical solutions, carbolic acid, chloral hydrate, chloroform, corrosive sublimate, creosote, croton oil, mineral acids, oxalic acid, paris green, salts of lead, salts of zinc, white hellebore or any drug, chemical or preparation which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life in quantities of sixty grains or less.

Every person, firm or corporation who sells any poison shall place on each package and container of poison sold a label containing the word "poison" printed in red ink in a conspicuous place thereon; and keep a well-bound book which shall at all times be open to the inspection of any officer charged with the enforcement of law, in which shall be recorded at the time of the sale the name and quantity of the poison purchased and the purpose for which the same is to be used, and the name and address of the purchaser, if known to the seller, and if unknown the sale shall not be made until the purchaser is identified by one known to the seller. The seller shall also record the name and address of the identifier.

Any person who shall for himself or as the agent or employé of another person, firm or corporation, sell, give away or deliver any of said poisons to another without having complied with any provision of this article shall be fined not less than twenty-five nor more than one hundred dollars and be confined in jail for not less than twenty days nor more than six months. [Acts 3rd C. S. 1917, p. 86.]

Art. 727. [1049] Sale of tobacco to minor.—Whoever shall sell, give or barter, or cause to be sold, given or bartered, to any minor under the age of sixteen years, or knowingly sell to another for delivery to such minor, without the written consent of the parent or guardian of such minor, any cigarette or tobacco in any of its forms, shall be fined not less than ten nor more than one hundred dollars. [Acts 1899, p. 237.]

CHAPTER FOUR

BARBER SHOPS AND BEAUTY PARLORS

Art.
728. Definitions.
729. Registering name and location.
730. Equipment.
731. Employé with disease.
732. Cleanliness.
733. No place to sleep.
734. Penalty.

Article 728. Definitions.—A "barber" is one who shaves, or trims the beard, or cuts or shampoos or dresses the hair and massages the face of any person for pay, and includes "barbers' apprentices" and

shop boys. A "manager" means any person having control of a barber shop or beauty parlor or person working or employed therein. A barber shop is any place where the work or business of a barber is done for pay, and may or may not include a beauty parlor or any work of a beauty parlor. A beauty parlor is a place where hair-dressing or manicuring of finger nails or massaging the skin, or shampooing or washing the scalp, is done for pay, and may or may not include work or business of a barber. [Acts 1921, p. 155.]

Art. 729. Registering name and location.—Every person owning, operating or managing a barber shop or beauty parlor shall register his full name and the location of said shop or parlor in a book to be kept in the office of the State Board of Health for that purpose, and every owner, operator or manager of a barber shop or beauty parlor that is first opened for business hereafter shall within five days after the opening of such shop or parlor register in like manner. In event of a change in the manager or location of any such shop or parlor, the manager of same shall call at or communicate by mail with said board within five days after such change takes place and inform said board thereof. [Id.]

Art. 730. Equipment.—The owner, operator or manager of any barber shop or beauty parlor shall equip and keep equipped the same with facilities and supplies and with all such appliances, furnishings and materials as may be necessary to enable persons employed in and about the same to comply with the law. [Id.]

Art. 731. Employé with disease.—No owner, operator or manager of a barber shop or a beauty parlor shall knowingly permit any person suffering from a communicable skin disease or from a venereal disease to act as a barber or employé or work or be employed in said shop or parlor. No person who to his own knowledge is suffering from a communicable disease or from venereal disease shall act as a barber or work or be employed in said shop or parlor. [Id.]

Art. 732. Cleanliness.—Every person in charge of a barber shop or beauty parlor shall keep said shop or parlor and all furniture, tools, appliances and other equipment used therein at all times in a cleanly condition, and shall cause all combs, hair brushes, hair dusters and similar articles used therein to be washed thoroughly at least once a day and to be kept clean at all times, and shall cause all mugs, shaving brushes, razors, shears, scissors, clippers and tweezers used therein to be sterilized at least once after each time used as hereinafter provided. The term "persons affected by this chapter" shall include any person working or employed in a barber shop or beauty parlor or acting as a barber, beauty specialist or manicurist. Every barber or other person affected by this chapter, immediately after using a mug, shaving brush, razor, scissors, shears, clippers, or tweezers, for the service of any person, shall sterilize the same by immersing it in boiling water for not less than a minute, or in the case of a razor, scissors, shears or tweezers, by immersing it for not less than ten minutes in a five per cent aqueous solution of carbolic acid. No barber or other person affected by this chapter shall:

1. Use for the service of any customer a comb, hair brush, hair duster or any similar article that is not thoroughly clean, nor any mug, shaving brush, razor, shears, scissors, clippers, or tweezers, that are not thoroughly clean or that have not been sterilized since last used.

2. Serve any customer unless he shall immediately before such service cleanse his hands thoroughly.

3. Use for the service of a customer any towel or wash cloth that has not been boiled and laundered since last used.

4. To stop the flow of blood use the same piece of alum or other material for more than one person.

5. Shave any person when the surface to be shaved is inflamed or broken out or contains pus, unless such person be provided with a cup, razor and lather brush for his individual use.

6. Permit any person to use the head rest of any barber's chair under his control until after the head rest has been covered with a towel that has been washed and boiled since having been used before, or by clean new paper or similar clean substance.

7. Use a powder puff or a sponge in the service of a customer unless it has been sterilized since last used.

8. Use a finger bowl unless it has been sterilized since last used and fresh water or other liquid placed therein. [Id.]

Art. 733. No place to sleep.—No owner or manager of any barber shop or beauty parlor shall permit any person to sleep in any room used wholly or in part as such shop or parlor, and no person shall pursue the barber business or be employed in a barber shop or beauty parlor in any room used as a sleeping apartment. [Id.]

Art. 734. Penalty.—Whoever violates any provision of this chapter or fails or refuses to comply with any provision thereof shall be fined not to exceed one hundred dollars. [Id.]

CHAPTER FIVE

OPTOMETRY

Art.
735. "Optometry."
736. Display license and itemize bill.
737. Penalty.
738. Treating diseased eye.

Article 735. "Optometry."—The practice of optometry is defined to be the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer or prescribe any drug or physical treatment whatsoever, unless such optometrist is a regular licensed physician or surgeon under the laws of this State. No person shall begin to practice optometry within this State who has not registered in the county clerk's office of the county in which he resides, and in each county in which he practices, his license for so practicing, together with his age, post-office address, place of birth, subscribed and verified by his oath. The fact of such oath and record shall be indorsed by the county clerk upon the license. The absence of record of such license in the county clerk's office shall be prima facie evidence of the lack of possession of such license. [Acts 1st C. S. 1921, p. 159.]

Art. 736. Display license and itemize bill.—Every person practicing optometry in this State shall display his license or certificate in a conspicuous place in the principal office where he practices optometry, and whenever required, exhibit the same to the Texas State Board of Examiners in Optometry or its authorized representative, and whenever practicing said profession of optometry outside of, or away from said office or place of business, he shall deliver to each person fitted with glasses a bill, which shall contain his signature, post-office address, and number of his license or certificate, together with a specification of the lenses and material furnished and the prices charged for such lenses and material respectively. [Id.]

Art. 737. Penalty.—Whoever violates any provision of the two preceding articles shall be fined not less than fifty nor more than five hundred dollars, or be imprisoned in jail not less than two nor more than six months, or both. Each day of such violation shall be a separate offense. [Id.]

Art. 738. Treating diseased eye.—Anyone practicing optometry who shall prescribe for or fit lenses for any diseased condition of the eye, or for the disease of any other organ of the body that manifests itself in the eye, shall be deemed to be practicing medicine within the meaning of that term as defined in the succeeding chapter. Any such person possessing no li-

cense to practice medicine who shall so prescribe or fit lenses shall be punished in the same manner as is prescribed for the practice of medicine without a license. [Id.]

CHAPTER SIX

MEDICINE

Art.
739. Authority to practice to be registered.
740. Exceptions.
741. "Practicing medicine."
742. Unlawfully practicing medicine.
743. Practice after license cancelled.
744. False statement by applicant.
745. Medical register.
746. Protecting eyes of new born.

Article 739. [750] Authority to practice to be registered.—No person shall practice medicine in any of its branches upon human beings within the limits of this State who has not registered in the district clerk's office of the county in which he resides lawful authority to so practice medicine as herein prescribed, together with an affidavit subscribed and sworn to by him before said district clerk stating his age, post-office address, place of birth, school of practice to which he professes to belong, that he is the identical person to whom the license offered for registration was issued, and that since the issuance of said license the same has not been cancelled. The fact that said oath was so made and said license so recorded shall be indorsed by the district clerk upon the license. The holder of the license must in similar manner have the same recorded upon each change of residence to another county, and shall in each instance be required to make the affidavit provided above. The absence of such record in the office of the district clerk shall be prima facie evidence that no such license exists, and of failure to comply with the law in reference to the registration of license to practice medicine. [Acts 1923, p. 292.]

Art. 740. [754] Exceptions.—Nothing in this chapter shall be so construed as to discriminate against any particular school or system of medical practice, nor to effect or limit in any way the application or use of the principles, tenets or teachings of any church in the ministration to the sick or suffering by prayer without the use of any drug or material remedy, provided sanitary and quarantine laws and regulations are complied with, and that no charge is made therefor, directly or indirectly. The provisions of this chapter do not apply to dentists legally qualified and registered under the laws of this State who confine their practice strictly to dentistry; nor to optometrists who confine their practice strictly to optometry, as defined in this title; nor to nurses who practice only nursing; nor to masseurs in their particular sphere of labor who publicly represent themselves as such; nor to commissioned or contract surgeons of the United States Army, Navy or Public Health and Marine Hospital Service in performance of their duties, but such shall not engage in private practice without license from the Board of Medical Examiners; nor to legally qualified physicians of other States called in consultation, but who do not open offices or appoint places in this State where patients may be met or called to see. This law shall be so construed as to apply to persons other than licensed druggists of this State not pretending to be physicians who offer for sale on the streets or other public places remedies which they recommend for the sure [cure] of disease. [Id.]

Art. 741. [755] "Practicing medicine."—Any person shall be regarded as practicing medicine within the meaning of this chapter:

1. Who shall publicly profess to be a physician or surgeon and shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof.

2. Who shall treat or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof and charge therefor, directly or indirectly, money or other compensation. [Acts 1907, p. 224.]

Art. 742. [756] Unlawfully practicing medicine.—Any person practicing medicine in this State in violation of the preceding articles of this chapter shall be fined not less than fifty nor more than five hundred dollars, and be imprisoned in jail not exceeding six months. Each day of such violation shall be a separate offense. [Id.]

Art. 743. Practice after license cancelled.—Whoever shall practice medicine in any of its branches upon human beings within the limits of this State after his license has been cancelled by any court of competent jurisdiction shall be confined in the penitentiary not less than one nor more than four years, or be confined in jail not to exceed six months. [Acts 1923, p. 292.]

Art. 744. False statement by applicant.—Whoever shall make any false statement in his application for examination by the Board of Medical Examiners, or who shall make any false statement under oath to obtain a license or to secure the registration of his license to practice medicine, shall be guilty of false swearing and punished accordingly. [Id.]

Art. 745. [751] Medical register.—Every district clerk shall keep as a permanent record of his office a book to be known as the "Medical Register," and shall record therein all licenses to practice medicine issued by the State Board of Medical Examiners which shall be presented to him for registration. When the license of any one to practice medicine has been cancelled, said clerk shall, if such license is registered in his county, note such cancellation upon said book, and shall also note therein the death or removal of any licensee. Any such clerk knowingly violating any provision hereof shall be fined not exceeding fifty dollars. [Acts 1907, p. 224, Acts 1923, p. 285.]

Art. 746. Protecting eyes of new born.—All physicians, midwives, nurses, or those in attendance at child birth shall use prophylactic drops in the child's eyes of a one per cent solution of silver nitrate or other prophylactic solution approved by the State Board of Health to prevent opthalmia neonatorum in the new born. Any of the persons referred to in attendance at child birth who shall violate this article shall be fined not less than ten nor more than one hundred dollars for each offense. [Acts 1921, p. 172.]

CHAPTER SEVEN

DENTISTRY

Art.
747. Dentist to obtain license.
748. Must comply with law.
749. License to be recorded.
750. Practice after license has been revoked.
751. Shall exhibit license.
752. Must use proper name.
753. Exceptions.
754. Punishment.

Article 747. Dentist to obtain license.—No person shall practice or attempt to practice dentistry or dental surgery in this State without first having obtained a license from the State Board of Dental Examiners. [Acts 1919, p. 50.]

Art. 748. Must comply with law.—No person shall extract teeth or perform any other operation pertaining to dentistry or dental surgery for pay or for the purpose of advertising, exhibiting or selling any medicine or instrument, unless such person shall first have complied with the provisions of the law regulating the practice of dentistry in this State. [Id.]

Art. 749. License to be recorded.—Each person to whom such license is issued by the Board of Examiners, shall before beginning the practice of dentistry in this State, present the same to the county clerk of the county in which he resides or expects to practice, and such clerk shall record said license in a book provided for that purpose. [Id.]

Art. 750. Practice after license has been revoked.—No person whose license to practice dentistry in this State shall be revoked by any district court of this State shall practice or attempt to practice dentistry or dental surgery in this State after such license has been so revoked. [Id.]

Art. 751. Shall exhibit license.—Any person authorized to practice dentistry or dental surgery in this State either under this or any former law of Texas, shall place his license on exhibition in his office where said license shall be in plain view of patients. No such person shall do any operation in the mouth of a patient, or treat any lesions of the mouth or teeth, without having said license so exhibited. [Id.]

Art. 752. Must use proper name.—No person who has been granted a license to practice dentistry or dental surgery in this State shall advertise or solicit business under a nom de plume or corporation name, or any other than his proper and legal name. Each day so engaged is a separate offense. [Id.]

Art. 753. Exceptions.—Nothing in this chapter applies to students of a reputable dental college who perform their operations without pay, except for actual cost of materials, in the presence of and under the direct personal supervision of a demonstrator or teacher who has been legally authorized to practice dentistry in Texas, nor to persons doing laboratory work on inert matter only. Physicians and surgeons may in the regular practice of their profession, extract teeth or make application for the relief of pain. Nothing in this chapter applies to one legally engaged in the practice of dentistry of this State at the time of the passage of this law, except as hereinbefore provided. [Id.]

Art. 754. Punishment.—Whoever violates any provision of this chapter shall be fined not less than five nor more than one hundred dollars, or be confined in jail not to exceed six months, or both. Such fine shall go into the common school fund of the county in which it is collected, and shall not be collected or used by the Board of Examiners. [Id.]

CHAPTER EIGHT

PHARMACY

Art.
755. Unlicensed pharmacy.
756. Exceptions.
757. License and removal posted.
758. Offenses and penalty.

Article 755. Unlicensed pharmacy.—No person not licensed as a pharmacist, within the meaning of this law, shall conduct or manage any pharmacy, drug or chemical store, apothecary shop or other place of business for the retailing, compounding or dispensing of any drug, chemical or poison, or for the compounding of physician's prescriptions, or keep exposed for sale at retail any drug, chemicals or poisons, except as hereinafter provided. No person not licensed as a pharmacist or assistant pharmacist, shall compound, dispense or sell at retail any drug, chemical, poison, or pharmaceutical preparation upon the prescription of a physician, or otherwise, or compound physicians' prescriptions except as an aid to, or under the supervision of a person licensed as a pharmacist under this law. No owner, or manager of a pharmacy, or drug store, or other place of business, shall cause or permit any other than a person licensed as a pharmacist or assistant pharmacist to compound, dispense or sell at retail any medicine or poison, except as an aid to or under the supervision of a person licensed as a pharmacist. [Acts 1907, p. 349.]

Art. 756. Exceptions.—The preceding article shall not be construed to prevent any person from engaging in such business as proprietor or owner thereof, provided such proprietor or owner shall have employed to conduct same some one qualified under this law, nor to interfere with any legally registered practitioner of medicine or dentistry in the compounding of his prescriptions, or to prevent him from supplying his patients such medicine as he may deem proper; nor with exclusively wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist; nor with the selling at retail of nonpoisonous domestic remedies, nor with the sale of patent or proprietary preparations, when sold in unbroken packages, nor with the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word "poison" and the names of at least two readily obtainable antidotes. [Id.]

Art. 757. License and renewal posted.—Every certificate of license to practice as pharmacist or assistant pharmacist, and every license to any proprietor or employé to conduct a drug store in towns of not more than one thousand inhabitants, and every renewal of such license shall be conspicuously exposed in the place of business of which the pharmacist or assistant pharmacist or other person to whom it is issued is the owner or manager, or in which he is employed. Every licensed pharmacist or assistant pharmacist who desires to continue in the practice of his profession shall, within thirty days next preceding the expiration of his license or permit, file with the board an application for the renewal thereof. If any pharmacist or assistant pharmacist shall fail for a period of sixty days after the expiration of his license, to make application to the board for its renewal, his name shall be erased from the register of licensed pharmacist or assistant pharmacist. The name of the responsible manager of every pharmacy, drug store or apothecary shop, shall be conspicuously displayed outside of such place of business. [Id.]

Art. 758. Offenses and penalty.—Whoever, not being licensed as a pharmacist, shall conduct or manage any drug store or other place of business for the compounding, dispensing or sale at retail of any drugs, medicine or poisons, or for the compounding of physicians' prescriptions contrary to any provision of the three preceding articles shall be fined not less than twenty-five nor more than one hundred dollars. Each week such drug store or pharmacy or other place of business is so unlawfully conducted shall be a separate offense. Whoever not being licensed as a pharmacist or assistant pharmacist shall compound, dispense or sell at retail any drugs, medicine, poison or pharmaceutical preparation even upon a physician's prescription or otherwise, and whoever being the owner or manager of the drug store, pharmacy or other place of business, shall cause or permit any one not licensed as a pharmacist or assistant pharmacist to dispense, sell at retail or compound any drug, medicine, poison or physician's prescription, contrary to any provision of the three preceding articles, shall be fined not less than ten nor more than one hundred dollars. Any license or permit or renewal thereof, obtained through fraud, or by any false or fraudulent representations, shall be void and of no effect in law. Any person who shall make any false or fraudulent representations for the purpose of procuring a license or renewal thereof, either for himself or for another, shall be fined not less than twenty-five nor more than one hundred dollars. Whoever being the holder of any license or permit granted under this law, shall fail to expose such license or permit, or any renewal thereof, in a conspicuous position in the place of business to which such license or permit relates, or in which the holder thereof is employed, contrary to the provisions of article 757 shall be fined not less than five nor more than twenty-five dollars, and each week that such license, permit or renewal shall not be exposed, shall be a separate offense, and whoever being the holder of any license or permit granted under this law shall, after the expiration of such license or permit, and without renewing the same, continue to carry on the business for which such license or permit was granted, contrary to the provisions of ar-

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

ticle 757 shall be fined not less than five nor more than twenty-five dollars. [Id.]

CHAPTER NINE

EMBALMING

Art.
759. Embalmer's license.
760. Unlawful embalming.
761. Exceptions.
762. Penalty.

Article 759. [784–5] Embalmer's license.—Every person engaged in or desiring to engage in the practice of embalming in connection with the care and disposition of dead bodies within this State shall make a written application to the State Board of Embalming for a license, accompanying the same with the fee fixed by law, and if said board shall find upon examination that the applicant is of good moral character and possesses the knowledge required by law, they shall issue to him a license authorizing him to practice the science of embalming. All persons receiving such license shall have it registered in the county clerk's office in the county in which it is proposed to carry on said practice, and shall display said license in a conspicuous place in the place of business of said person so licensed. Every registered embalmer who desires to continue the practice of his profession shall annually thereafter during the time he may continue in such practice, on such date as said bard [board] may determine, pay to the secretary of said board a fee of five dollars for the renewal of said license. [Acts 1903, p. 124; Acts 1921, p. 180.]

Art. 760. [786] Unlawful embalming.—No person shall embalm or pretend to practice the science of embalming, in connection with the care and disposition of the dead, unless such person is a registered embalmer within the meaning of this chapter. [Acts 1903, p. 125.]

Art. 761. [787] Exceptions.—This chapter does not apply to one simply engaged in the furnishing of burial receptacles, nor is it intended to apply to or interfere with the duties of any municipal, county or State officer or State institution. [Id.]

Art. 762. [788] Penalty.—Whoever shall embalm, or attempt to practice the science of embalming, in connection with the care and disposition of the dead, without having complied with the provisions of this chapter, shall be fined not less than fifty nor more than one hundred dollars for each offense. [Id.]

CHAPTER TEN

QUARANTINE REGULATIONS

Art.
763. Vessel landing from infected port.
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765. Going ashore without permission.
766. Landing goods without permission.
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768. Violating quarantine law.
769. Evading quarantine guards, etc.
770. Violating quarantine regulations.
771. Person in charge of train or boat.
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Article 763. [789] [472] Vessel landing from infected port.—After the legal establishment of any quarantine station on the coast of this State, if any vessel shall land or arrive at such station from any infected port without a bill of health from the proper officer of said port, or with a false bill of health, the master or commanding officer of such vessel shall be fined not less than five hundred nor more than five thousand dollars. [Acts Aug. 13, 1870; Acts 1901, p. 305.]

Art. 764. [790] [473] Passing station without permission.—Any master or commanding officer of a vessel that passes or attempts to pass any quarantine station on the coast of this State during the continuance of the quarantine without having first obtained permission from the health officer of such station so to do, shall be imprisoned in the penitentiary not less than two nor more than five years, or be fined not less than five hundred nor more than ten thousand dollars. [Act Aug. 13, 1870.]

Art. 765. [791] [474] Going ashore without permission.—Any person belonging to or on board of a vessel placed under quarantine who shall go ashore without the written permission of the health officer of the station shall be fined not less than fifty nor more than five hundred dollars. [Id.]

Art. 766. [792] [475] Landing goods without permission.—Any master or officer of a vessel placed under quarantine, who shall land or permit to be landed from said vessel any goods, wares, merchandise or article whatsoever, while the same is under quarantine, without the written permission of the health officer of the quarantine station, shall be fined not less than fifty nor more than one thousand dollars for each article so landed. [Id.]

Art. 767. [793] [476] Leaving quarantine station.—Any person detained at any quarantine station who shall wilfully absent himself without leave of the officer having charge thereof, shall be fined not less than ten nor more than one thousand dollars. [Acts 1883, p. 81.]

Art. 768. [794] [477] Violating quarantine law.—Any health officer, guard or other employé who shall wilfully disobey or in any manner knowingly neglect or fail to perform any duty imposed upon him by the provisions of quarantine laws, rules and regulations of this State, or who shall disobey knowingly an order emanating from superior authority, shall be fined not exceeding one thousand dollars. In the meaning of this article the Governor and State Health Officer shall alone be deemed superior authority. [Id.]

Art. 769. [795] [478] Evading quarantine guards, etc.—Any person coming from any port or district infected with yellow fever, or any other infectious or contagious disease, who shall knowingly evade any guard or pass through any cordon of quarantine duly established shall be fined not exceeding one thousand dollars. [Id.]

Art. 770. [796] [479] Violating quarantine regulations.—Whoever wilfully violates any regulation of the quarantine established by the Governor, the State Health Officer, or the health officer of any county or city of this State, shall be fined not less than ten nor more than one thousand dollars. [Acts 1901, p. 305.]

Art. 771. [797] [478b] Person in charge of train or boat.—If any conductor, or person in charge of any train, ship, steamboat or any other kind of common carriers, shall wilfully bring into this State any person or thing contrary to quarantine regulations as proclaimed by the Governor or State Health Officer, such conductor or person so wilfully offending shall be fined not to exceed five hundred dollars. [Id.]

Art. 772. [798] [478c] Violating Governor's proclamation.—Any merchant or other person who shall wilfully order the shipment, or wilfully receive any merchandise whose shipment into the State is prohibited by the Governor's proclamation, or any person who wilfully sells and proceeds to deliver such merchandise or other article as above, shall be fined not exceeding five hundred dollars. [Id.]

CHAPTER ELEVEN

MISCELLANEOUS

Art.
773. Soliciting patients.
774. Advertising.
775. Witness shall testify.
776. Nurse.
777. Exceptions.
778. Chiropody.
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780. Exceptions.
781. Vital statistics.
781a. Violation of provisions as to vital statistics.
782. Sanitary Code.

Article 773. Soliciting patients.—No physician, surgeon, osteopath, masseur, or any other person who practices medicine or the art of healing the sick or afflicted, with or without the use of medicine, shall employ or agree to employ, pay or promise to pay, or reward or promise to reward any person, firm, association of persons, partnership or corporation for securing, soliciting or drumming patients or patronage. No person shall accept or agree to accept any payment, fee or reward, or anything of value, for securing, soliciting or drumming for patients or patronage for any physician, surgeon, osteopath, masseur or any other person who practices medicine or the art of healing with or without medicine. Whoever violates any provision of this article shall be fined not less than one hundred nor more than two hundred dollars for each offense. Each payment or reward or fee or agreement to pay or accept a reward or fee shall be a separate offense. [Acts 1911, p. 97.]

Art. 774. Advertising.—The preceding article shall not be construed to prohibit the inserting in a newspaper of an advertisement of a person's business, profession and place of business, or from advertising by handbills and paying for services in distributing same. [Id.]

Art. 775. Witness shall testify.—No person shall be exempt from giving testimony in any proceedings for the enforcement of the second preceding article, but the testimony so given shall not be used against him in any criminal action or proceeding, nor shall any criminal action or proceeding be brought against such witness on account of any testimony so given by him. [Id.]

Art. 776. Nurse.—No person shall practice nursing as or claiming to be a graduate certified registered nurse without a license or permit from the State Board of Nurse Examiners, which license or permit shall have been registered with the county clerk of the county in which he or she resides within a period of thirty days. A nurse who has received his or her license or permit according to law shall be styled a "registered nurse," and no other person shall assume such title or use the abbreviation "R. N." or any other to indicate that he or she is a graduate certified registered nurse; and any person violating any provision of this article or who shall make any false representations to said board in applying for a license shall be fined not less than twenty-five nor more than two hundred and fifty dollars. [Acts 1923, p. 413.]

Art. 777. Exceptions.—The preceding article does not apply to gratuitous nursing by friends or members of the family or to any person nursing for hire who does not in any way assume or profess to practice as a graduate certified registered nurse.

Art. 778. Chiropody.—"Chiropody" means the diagnosis, medical and surgical treatment of ailments of the human foot. A chiropodist is one practicing chiropody. Whoever professes to be a chiropodist, or practices or assumes the duties incident to chiropody, without first obtaining from the State Board of Chiropody Examiners a license authorizing the practice of chiropody, shall be fined not exceeding one hundred dollars, or be confined in jail not to exceed thirty days. [Acts 1923, p. 357.]

Art. 779. Improper practice.—If any registered chiropodist shall amputate the human foot or toe, or use any anaesthetic other than local, he shall be punished as directed in the preceding article. [Id.]

Art. 780. Exceptions.—The two preceding articles shall not apply to physicians licensed by the State Board of Medical Examiners of this State, nor to surgeons of the United States Army, Navy, and Public Health Service, when in actual performance of their official duties. [Id.]

Art. 781. Vital statistics.—Any person who shall violate any rule of the Sanitary Code of this State relating to vital statistics, or who shall fail to perform any duty imposed on him by said rules herein referred to, shall be fined not less than ten nor more than one hundred dollars. Whoever shall falsely or fraudulently furnish any information for the purpose of making an incorrect record of a birth or death shall be confined in the penitentiary not less than one nor more than two years. [Acts 1911, p. 173; Acts 1917, p. 332.]

Art. 781a. Violation of provisions as to vital statistics.—That any person, who for himself or as an officer, agent, or employee of any other person, or of any corporation or partnership, (a) shall inter, cremate, or otherwise finally dispose of the dead body of a human being, or permit the same to be done, or shall remove said body from the primary registration district in which the death occurred or the body was found, without the authority of a burial or removal permit issued by the local registrar of the district in which the death occurred or in which the body was found; or (b) shall refuse or fail to furnish correctly any information in his possession, or shall furnish false information affecting any certificate or record, required by this Act [Civ. art. 4477, rules 34a to 55a]; or (c) shall willfully alter, otherwise than is provided by Section 18 of this Act [Civ. art. 4477, rule 51a], or shall falsify any certificate of birth or death, or any record established by this Act [Civ. art. 4477, rules 34a to 55a]; or (d) being required by this Act [Civ. art. 4477, rules 34a to 55a] to fill out a certificate of birth or death and file the same with the local registrar, or deliver it, upon request, to any person charged with the duty of filing the same, shall fail, neglect, or refuse to perform such duty in the manner required by this Act [Civ. art. 4477, rules 34a to 55a]; or (e) being a local registrar, deputy registrar, or subregistrar, shall fail, neglect, or refuse to perform his duty as required by this Act [Civ. art. 4477, rules 34a to 55a] and by the instructions, and direction of the state registrar thereunder, shall be deemed guilty of a misdemeanor and upon conviction thereof shall for the first offense be fined not less than five dollars ($5.00) nor more than fifty dollars ($50.00), and for each subsequent offense not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00), or be imprisoned in the county jail not more than sixty days, or be both fined and imprisoned. [Acts 1927, 40th Leg., 1st C. S., p. 116, ch. 41, § 22.]

Art. 782. Sanitary Code.—Whoever shall violate any provision of the Sanitary Code of this State, other than those relating to vital statistics, shall be fined not less than ten nor more than one thousand dollars. [Acts 1911, p. 173.]

TITLE 13

OFFENSES AGAINST PUBLIC PROPERTY

Chap.

1. Highways and Vehicles.
2. Public Roads and Irrigation.
3. Ferries, Toll Roads and Bridges.
4. Public Buildings and Grounds.
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CHAPTER ONE

HIGHWAYS AND VEHICLES

Art.

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Article 783. [811] [479] [404] Obstruction of navigable stream.—Whoever obstructs the navigation of any stream which can be navigated by steam, keel, or flatboats, by cutting and felling trees or by building on or across the same any dyke, mill dam, bridge, or other obstruction, shall be fined not less than fifty nor more than five hundred dollars. [O. C. 428.]

Art. 784. [812] [480] [405] Obstructing public road, street, etc.—Whoever shall wilfully obstruct or injure or cause to be obstructed or injured in any manner whatsoever any public road or highway or any street or alley in any town or city, or any public bridge or causeway, within this State, shall be fined not exceeding two hundred dollars. [Acts 1860, p. 97; Acts 1913, p. 258.]

Art. 785. [823] [483] [406] Permission to obstruct.—No person shall be punished under the preceding article who places obstructions in the streets or alleys of an incorporated city or town for purposes of building or improvement under the sanction of the governing body thereof. [Acts 1860, p. 97.]

Art. 786. [824] [484] [407] May regulate removal.—Nothing in this chapter is to be construed to prevent the commissioners court or the municipal authorities from adopting regulations relative to the removal of obstructions from public roads, streets or bridges, and to enforce the same by due process of law. [O. C. 430.]

Art. 787. Obstructing railway crossing.—Any officer, agent, servant or receiver of any railway corporation who wilfully obstructs for more than five minutes at any one time any street, railway crossing or public highway by permitting their train to stand on or across such crossing, shall be fined not less than five nor more than one hundred dollars. [Acts 1st C. S. 1921, p. 34.]

Art. 788. Exceptions as to railways.—The city council of any incorporated city may by ordinance grant a franchise to a railway company to obstruct a street crossing, not a part of a "Designated State Highway," by railway passenger trains for the purpose of receiving and discharging passengers, mail, express or freight, for a longer time than specified herein, and may enact and enforce reasonable ordinances in the premises. When any such franchise has been granted under the provisions of this law, the street crossing named therein shall be excepted from the preceding article. The provisions hereof shall not apply to a city having a special charter unless it shall first be amended so as to adopt the provisions hereof. [Id.]

Art. 789. [915] Rate of speed of vehicle.—Whoever shall operate or drive any motor or other vehicle upon the public highways of Texas at a rate of speed in excess of thirty-five miles per hour, or who shall drive or operate a motor or other vehicle within the corporate limits of an incorporated city or town or within or through any town or village not incorporated, at a greater rate of speed than twenty miles per hour, shall be fined not less than five nor more than two hundred dollars. [Acts 1923, p. 333.]

Art. 790. Shall drive carefully.—No person operating or driving a motor or other vehicle upon the public highways shall pass any motor or other vehicle, person or thing on any public highway of this State at such rate of speed as to endanger the life or limb of any person or the safety of any property. Any person violating any provision of this article shall be fined not less than five nor more than two hundred dollars. [Id.]

Art. 791. Exceptions to speed law.—The two preceding articles shall not apply to fire patrols or motor vehicles operated by the fire department of any city, town or village responding to calls, nor to police patrols, ambulances or physicians responding to emergency calls. [Id.]

Art. 792. Violation of promise to appear.—In case of any person arrested for violation of the preceding articles relating to speed of vehicles, unless such person so arrested shall demand that he be taken forthwith before a court of competent jurisdiction for an immediate hearing, the arresting officer shall take the license number, name and make of the car, the name and address of the operator or driver thereof, and notify such operator or driver in writing to appear before a designated court of competent jurisdiction at a time and place to be specified in such written notice at least five days subsequent to the date thereof, and upon the promise in writing of such person to appear at such time and place, such officer shall forthwith release such person from custody. Any person wilfully violating such promise, regardless of the disposition of the charge upon which he was originally arrested, shall be fined not less than five nor more than two hundred dollars. [Id.]

Art. 793. Speed limit on commercial vehicles.—Commercial motor vehicles of the kinds and weights specified in this article shall not be operated on the public highways of this State at a greater rate of speed than herein prescribed, as follows:

(a) Commercial motor vehicles equipped with pneumatic tires or cushion wheels:

Weights in pounds, including gross weight of vehicle and load.	Speed limit miles per hour
2,000–4,000	18
4,001–8,000	15
8,001–12,000	12
12,001–16,000	12
16,001–20,000	10

(b) Commercial motor vehicles equipped with solid rubber tires:

Weights in pounds, including gross weight of vehicles and load.	Speed limit miles per hour
2,001–4,000	16
4,001–8,000	14
8,001–16,000	16
16,001–22,000	10

Whoever shall operate a commercial motor vehicle at a greater rate of speed than that herein allowed shall be fined not less than ten nor more than two hundred dollars or be imprisoned in jail not more than thirty days. [Acts 1923, p. 333.]

Art. 794. To slow down in passing.—All operators of motor vehicles in passing each other on the public highways shall slow down their speed to fifteen miles per hour. Any person who violates this article shall be fined not to exceed one hundred dollars. [Acts 1917, p. 481, Acts 3rd C. S. 1917, p. 70.]

Art. 795. No racing or contest for speed.—No race or contest for speed between motor vehicles of any kind shall be held upon any public highway. Any person violating this article shall be fined not

exceeding one hundred dollars. [Acts 1917, p. 480, Acts 3rd C. S. 1917, p. 70.]

Art. 796. Horn or noise device.—Every motor vehicle shall be equipped with a bell, gong, horn, whistle or other device in good working order, capable of emitting an abrupt sound adequate in quality and volume to give warning of the approach of such motor vehicle to pedestrians and to the rider or driver of animals, or of other vehicles and to persons entering or leaving street, interurban or railroad cars. Every person operating a motor vehicle shall sound said bell, gong, horn, whistle or other device whenever necessary as a warning of danger but not at other times or for other purposes. Any person while operating a motor vehicle who shall violate this article shall be fined not more than one hundred dollars. [Acts 1917, p. 496, Acts 3rd C. S. 1917, p. 70.]

Art. 797. Device to prevent unusual noise, etc.—Every motor vehicle must have devices in good working order which shall at all times be in constant operation to prevent excessive or unusual noises, annoying smoke, and the escape of gas or steam. Pipes carrying exhaust gas from the engine shall be directly parallel to the ground or slightly upward. Devices known as "Muffler cut-outs" shall not be used within the limits of any incorporated city or town or on any public highway where the territory contiguous thereto is closely built up. Any person violating any provision of this article shall be fined not to exceed one hundred dollars. [Acts 1917, p. 477, Acts 3rd C. S. 1917, p. 70.]

Art. 797a. Preventing unnecessary noises by motor vehicles.—Any person operating on any public highway or street in this State a motor vehicle or motorcycle which is not equipped with a muffler, or which is equipped with a muffler cutout, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars nor more than one hundred dollars, or by confinement in the county jail not more than ten days, or by both such fine and imprisonment.

Art. 797b. Muffler defined.—A muffler cut-out within the meaning of this Act is any device or aparture [aperture] which permits the escaping gasses [gases] produced by the operation of the motor of a motor vehicle or motorcycle to escape without going through the muffler on such motor vehicle or motorcycle, or which is capable of being manipulated so as to permit such gasses [gases] to so escape. A muffler within the meaning of this Act is a device through which the escaping gasses [gases] of the motor of a motor vehicle or motorcycle pass, designed to muffle or minimize the noise produced by the operation of such motor. [Acts 1925, p. 350.] [39th Leg., ch. 142, § 2.]

Art. 798. Front and rear lights.—Every motor vehicle other than a motorcycle while on the public highways, when in operation, during one-half hour after sunset to one-half hour before sunrise, and at all times when fog or other atmospheric conditions render the operation of such vehicles unusually dangerous to traffic and the use of the highways, shall carry at the front at least two lighted lamps showing the white lights visible under normal atmospheric conditions at least five hundred feet in the direction toward which such motor vehicle is facing, and shall also carry at the rear a lighted lamp exhibiting one red light plainly visible for a distance of five hundred feet to the rear. At the times and under the conditions hereinbefore specified every motorcycle or bicycle while on the public highway shall carry on its front one lighted lamp showing a white light visible under normal atmospheric conditions at least two hundred feet in the direction such vehicle is facing, and shall have at the rear one red light plainly visible from the rear. Any person who while operating such vehicle on a public highway shall violate any provision of this article shall be fined not to exceed one hundred dollars. [Acts 1917, p. 476; Acts 3rd C. S. 1917, p. 70.]

Art. 799. Brakes.—Any person who operates upon a public highway a motor vehicle not provided with adequate brakes kept in good working order, or any person having control or charge of a motor vehicle who shall allow such vehicle to stand in any public street or highway unattended without first effectively setting the brakes and stopping the motor thereon, shall be fined not exceeding one hundred dollars. [Acts 1917, p. 477, Acts 3rd C. S. 1917, p. 70.]

Art. 800. Approaching railroad crossing.—Any person driving a motor vehicle or motorcycle, when approaching the intersection of a public street or highway with the tracks of a steam railroad or interurban railroad, where such street or highway crosses such track or tracks at grade, and where the view of the said crossing is obscured, either wholly or partially, shall before attempting to make the said crossing, and at some point not nearer than thirty feet of the said track, reduce the speed of his motor vehicle or motorcycle to a speed not exceeding six miles per hour before making the said crossing, unless there are flagmen or gates at such crossing and such flagmen or gates show that the way is clear and safe to cross such track or tracks. This article shall not apply to persons crossing interurban or street railway tracks within the limits of incorporated cities or towns. Whoever violates any provision of this article shall be fined not exceeding one hundred dollars. [Acts 1917, p. 479, Acts 3rd C. S. 1917, p. 70.]

Art. 801. Law of the road.—(A) The driver or operator of any vehicle in or upon any public highway wherever practicable shall travel upon the right hand side of such highway. Two vehicles which are passing each other in opposite directions shall have the right of way, and no other vehicle to the rear of either of such two vehicles shall pass or attempt to pass such two vehicles. On all occasions the driver or operator of any vehicle upon any public highway shall travel upon the right hand side of such highway unless the road on the left hand side of such highway is clear and unobstructed for a distance of at least fifty yards ahead.

(B) Vehicles proceeding in opposite directions shall pass each other to the right, each giving to the other one-half of the road as nearly as possible.

(C) Vehicles overtaking other vehicles proceeding in the same direction shall pass to the left thereof and shall not again drive to the right until the road is reasonably clear of such overtaken vehicle.

(D) It is the duty of the driver, rider, or operator of a vehicle about to be overtaken and passed to give way to the right in favor of the overtaking vehicle on suitable and audible signal, given by or on behalf of the operator, driver or other person in charge and control of such overtaking vehicle, if such overtaking vehicle be a motor vehicle.

(E) Except where controlled by such ordinances or regulations enacted by local authorities, as are permitted under the law, the operator of a vehicle approaching an intersection on the public highway shall yield the right-of-way to a vehicle approaching such intersection from the right of such first named vehicle.

(F) It is the duty of the person operating or in charge of an overtaking vehicle to sound audible and suitable signal before passing a vehicle proceeding in the same direction.

(G) All vehicles approaching an intersection of the public highway with the intention of turning thereat shall, in turning to the right, keep to the right of the center of such intersection and in turning to the left, shall run beyond the center of such intersection, passing to the right before turning such vehicle to the left.

(H) In passing and overtaking, such assistance shall be given by the occupants of each vehicle respectively to the other as the circumstances shall reasonably demand in order to obtain clearance and avoid accident.

(I) Every person having control or charge of any motor vehicle or other vehicle upon any public high-

way and approaching any vehicle drawn by horse or horses, or any horse upon which any person is riding, shall operate and control such vehicle in such manner as to exercise every reasonable precaution to prevent the frightening of any such horse and to insure the safety of any person riding or driving the same; and if such horse or horses appear frightened, the person in control of such vehicle shall reduce its speed, and if requested by signal of the hand, by the driver or rider of such horse or horses, shall not proceed further toward such animal or animals unless such movement be necessary to avoid injury or accident, until such animal or animals shall be under the control of the rider or driver thereof.

(J) The person in control of any vehicle moving slowly along upon any public highway shall keep such vehicle as closely as possible to the right hand boundary of the highway, allowing more swiftly moving vehicles reasonably free passage to the left.

(K) The person in charge of any vehicle upon any public highway before turning, stopping or changing the course of such vehicle shall see first that there is sufficient space for such movement to be made in safety, and if the movement or operation of other vehicles may reasonably be affected by such turning, stopping or changing of course, shall give plainly visible or audible signal to the person operating, driving or in charge of such vehicle of his intentions so to turn, stop or change said course.

(L) Before attempting to pass any railroad train, interurban car or street car stopped for the purpose of receiving or discharging passengers, every operator in charge of a motor vehicle or motorcycle approaching the same from the rear and proceeding in the same direction shall bring such motor vehicle or motorcycle to a full stop and shall not start up or attempt to pass until the said railroad train, interurban car or street car has finished receiving and discharging its passengers; provided that cities of ten thousand inhabitants and over may provide by ordinance for the establishment of safety zones for the use and safety of such passengers contiguous to such railroad, interurban or street car tracks, and may maintain and establish such safety zones at such places and may provide by ordinance for the regulation of traffic in passing such safety zones, and when such safety zones are so established and ordinances are passed to regulate the traffic in passing same, the provisions of this subdivision shall not apply to the places where safety zones are so established.

(M) Every motor vehicle when moving along such portions of the road where the curvature of the road prevents a clear view for a distance ahead of one hundred yards shall be held under control, and the operator thereof in approaching curves or sharp turns in the road shall give a warning by his signaling device.

(N) Police patrols, police ambulances, fire patrols, fire engines and fire apparatus in all cases while being operated as such shall have the right-of-way with due regard to the safety of the public; provided that this provision shall not protect the driver or operator of any such vehicle or his employer or principal from the consequence of the arbitrary exercise of this right to the injury of another.

Any person while operating or driving any motor vehicle upon a public highway who shall violate any provision of this article shall be fined not exceeding one hundred dollars. [Acts 1917, p. 478; Acts 3rd C. S. 1917, p. 70; Acts 1919, p. 310; Acts 3rd C. S. 1920, p. 96.]

Art. 802. Intoxicated driver.—Any person who drives or operates an automobile or any motor vehicle upon any street or alley or any other place within the limits of any incorporated city, town or village or upon any public road or highway in this State while such person is intoxicated or in any degree under the influence of intoxicating liquor, shall be confined in the penitentiary for not more than two years, or be confined in jail for not more than ninety days, or fined not more than five hundred dollars, or be punished by both such fine and imprisonment in jail. [Acts 2nd C. S. 1923, p. 56.]

Art. 803. May arrest without warrant.—Any peace officer is authorized to arrest without warrant any person found committing a violation of any provision of the preceding articles of this chapter. [Acts 1st C. S. 1917, p. 48.]

Art. 803a. Regulating arrests for speeding.—No officer shall have authority to make any arrests for violation of the laws of this State relating to the speed of motor vehicles unless he is at the time of such arrest wearing a uniform and a badge clearly distinguishing him from ordinary civilians or private citizens, and shall have no authority to make any such arrest by designedly remaining in hiding or lying in wait unobserved in order to trap those suspected of violating the speed laws in reference to motor vehicles. No such officer, and no sheriff, constable, marshal, policeman, traffic officer, or other officer shall be entitled to any fee for making an arrest or serving a warrant of arrest or claim, demand or receive any witness fee or commitment fee for an alleged violation of any law of this State relative to such speeding. It shall be the duty of the district or county attorney, as the case may be, to dismiss any and all prosecutions wherein it is shown that the arrest was made by designedly remaining in hiding or lying in wait unobserved in order to trap those suspected of violating such speed law, and this provision shall apply to such conduct by any highway officer, sheriff, deputy sheriff, constable, marshal, policeman or any other officer of this State, or political subdivision thereof. The venue of any prosecution for speeding of motor vehicles under state laws shall be in the Justice Precinct only wherein the offense was committed or in the precinct of the defendant's residence. The badge herein required to be worn by any officer making an arrest shall be diamond-shaped, and the uniform prescribed to be worn by such officer or officers shall consist of a cap, coat and trousers of dark grey color. [Acts 1927, 40th Leg., p. 321, ch. 218, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 321, ch. 218, repeals all conflicting laws and parts of laws, and section 3 provides that if any part of the act be held invalid, such holding shall not affect the remainder.

Art. 804. Operating unregistered vehicle.—Whoever operates upon any public highway a motor vehicle which has not been registered as required by law shall be fined not to exceed two hundred dollars. [Acts 1923, p. 158.]

Art. 805. Operating under improper license.—Whoever operates upon a public highway a motor vehicle under a license, however obtained, for a class other than that to which such vehicle properly belongs, shall be fined not exceeding two hundred dollars. [Id.]

Art. 806. Motorcycle without seal.—Any person operating, or as owner permitting to be operated, on any public highway any motorcycle during any calendar year to which there is not attached a registration seal assigned to said motorcycle, shall be fined not exceeding two hundred dollars. [Acts 1917, p. 425; Acts 1st C. S. 1921, p. 147.]

Art. 807. Vehicle without seal.—Any person operating, or as owner permitting to be operated, on any public highway any motor vehicle during any calendar year, except the first calendar year after a renumbering is ordered according to law, to which vehicle for the current year there is not attached a registration seal assigned for said vehicle, shall be fined not to exceed two hundred dollars. [Acts 1st C. S. 1921, p. 147.]

Art. 808. Unauthorized distinguishing seal.—Whoever obtains a distinguishing seal for a motor vehicle or motorcycle from any source other than the State Highway Department or its authorized agents, unless authorized by law, shall be fined not less than twenty-five dollars. [Acts 1917, p. 425.]

Art. 809. Sale of imitation seal or number.—Whoever sells or offers to sell any seal or number in imitation of those furnished by the State Highway De-

partment shall be fined not less than twenty-five dollars. [Id.]

Art. 810. Must have number plate.—Whoever shall operate, or as owner permit to be operated upon a public highway any motor vehicle to which there is not attached a license number plate or pair of license number plates issued for said vehicle shall be fined not to exceed two hundred dollars. [Acts 1917, pp. 425 and 475, Acts 1st C. S. 1921, p. 147.]

Art. 811. Must have own number and seal.—Whoever shall operate, or as owner permit to be operated upon a public highway a motor vehicle with a number plate or seal issued for a different motor vehicle attached thereto shall be fined not exceeding two hundred dollars. [Acts 1917, p. 475, Acts 1st C. S. 1921, p. 147.]

Art. 812. Wrong or unclean number plate.—No person shall attach to or display on any motor vehicle any number plate or seal assigned to a different motor vehicle or assigned to it under any other motor vehicle law other than by the State Highway Department, or any registration seal other than that assigned for the current year, or a homemade or fictitious number plate or seal. All letters, numbers and other identification marks shall be kept clear and distinct and free from grease or other blurring matter so that they may be plainly seen at all times during daylight. Whoever violates any provision of this article shall be fined not exceeding two hundred dollars. [Id.]

Art. 813. Chauffeur.—A "chauffeur" is one whose business or occupation is operating a motor vehicle for compensation, wages or hire.

1. No person shall operate a motor vehicle as a chauffeur upon any public highway unless he shall have complied in all respects with the requirements of the law regulating the licensing of chauffeurs and shall have at all times in his possession his certificate or license and wear the badge issued to him by the State Highway Department prominently displayed on his clothing while on duty.

2. No person shall use a fictitious name in applying for a license as a chauffeur.

3. No licensed chauffeur shall use or possess any fictitious badge, nor permit any other person to use or possess his license or badge, nor while operating a motor vehicle shall use or possess any license or badge belonging to another.

4. No owner of a motor vehicle shall permit said vehicle to be driven by a chauffeur upon a public highway unless the requirements of the law applicable to chauffeurs have in all respects been complied with.

Whoever violates any provision of this article shall be fined not to exceed one hundred dollars. [Acts 1917, p. 482–3, Acts 3rd C. S. 1917, p. 70.]

Art. 814. Suspension of license.—In addition to the punishment provided in this chapter, the court may for a period not to exceed thirty days suspend an operator or chauffeur's license upon conviction of the licensee for violation of any provision of this chapter. [Acts 1917, p. 482.]

Art. 815. Penalty for subsequent offense.—Where the penalty for violating any article of this chapter is a fine not exceeding one hundred dollars, then for a second or subsequent violation of a provision of the same article the fine shall be not less than ten nor more than two hundred dollars. [Acts 3rd C. S. 1917, p. 70.]

Art. 816. Width of tires.—No person shall sell or offer for sale any wagon or other road vehicle with an intended carrying capacity of more than two thousand pounds and not exceeding four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than three inches in width; or any such wagon or other road vehicle with an intended carrying capacity of more than four thousand five hundred pounds which shall have a rim or tire on the wheels of same less than four inches in width. This article shall apply to all persons engaged in the sale of road vehicles, either at wholesale or retail, but not to individuals, selling or offering for sale road vehicles purchased for their individual use. Whoever violates the terms of this article shall be fined not less than one hundred nor more than one thousand dollars. Each sale or offer of sale is a separate offense. [Acts 1917, p. 139, Acts 1919, p. 284, Acts 3rd C. S. 1920, p. 61.]

Art. 817. Protuberance on tires.—No person shall operate or run on any public highway any vehicle which has on its periphery any block, log, [lug], stud, cleat, ridge, bead or any other protuberance of metal that shall project more than one-fourth of an inch beyond the tread or traction surface of the tire, unless the said wheels are protected by bands, wooden blocks, skids or some sufficient device to protect the highway against injury by reason thereof. Nothing herein shall prevent the use of traction engines with cleats on the driving wheels thereof on dirt or unimproved roads, or the use of vehicles actually engaged at the time in construction or repair work on roads. Whoever violates any provision of this article shall be fined not to exceed one hundred dollars. [Acts 1917, p. 477; Acts 3rd C. S. 1920, p. 70.]

Art. 818. Certain vehicles defined.—As used in this Code the terms:

1. "Interurban commercial motor vehicle" is a vehicle of net carrying capacity of more than one ton that is used regularly in carrying passengers or freight for hire between cities, towns and villages in this State.

2. "Commercial motor vehicle" is any motor vehicle intended, designated or used for the transportation of property.

3. "Tractor" means any self-propelled vehicle designed or used as a traveling power plant or for drawing other vehicles, but having no provision for carrying loads on its own structure.

Art. 819. Unregistered interurban vehicle.—Any person, or the agent of any person, firm or corporation, who operates any interurban commercial motor vehicle in carrying passengers for hire between any cities, towns or villages of this State when such vehicle has not been registered and licensed as required by law shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1919, p. 177.]

Art. 820. Motor busses.—Owners of passenger motor vehicles operating for hire shall pay in addition to the fee of 17½ cents per horsepower and the weight fee provided therefor, an additional registration fee of four dollars for each passenger such vehicle will seat. Any owner of a motor bus vehicle who shall fail or refuse to comply with this article shall be fined not more than two hundred dollars. [Acts 1923, p. 158.]

Art. 821. Inscription on State vehicle.—There shall be printed upon each side of every automobile, truck or other motor vehicle owned by the State of Texas, the word "Texas" followed in letters of not less than two inches high by the title of the department, bureau, board, commission or official having the custody of such car, and the official having control thereof shall have such wording placed thereon as prescribed herein, and whoever drives any automobile, truck or other motor vehicle belonging to the State upon the streets of any town or city or upon a public highway without such inscription printed thereon shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1921, p. 122.]

Art. 822. Mirror.—Whoever shall operate or permit to be operated upon a public highway, a commercial motor vehicle which is not equipped with a mirror placed and maintained so that the operator shall at all times be able to see other vehicles approaching from the rear, shall be fined not to exceed two hundred dollars. [Acts 1st C. S. 1921, p. 169; Acts 1923, p. 159.]

Art. 823. Operating overloaded vehicle.—Any owner of a commercial motor vehicle who operates or permits the same to be operated upon a public highway while loaded with a load weighing over ten per

cent in excess of its registered carrying capacity, shall be fined not exceeding two hundred dollars. [Id.]

Art. 824. Operating overweight vehicle.—Whoever operates or permit[s] to be operated upon a public highway a commercial motor vehicle, trailer, semi-trailer or tractor whose gross weight, including load, is greater than 650 pounds per inch width of tire, or more than 6000 pounds on any one wheel, or whose body is wider than 90 inches, shall be fined not to exceed two hundred dollars. [Acts 1923, p. 158.]

Art. 825. License plate for trailer or tractor.—Whoever operates upon a public highway a motor vehicle, trailer, semi-trailer or tractor which has not attached thereto so as to be plainly visible from the rear, a license plate for the calendar year then current, shall be fined not exceeding two hundred dollars. [Acts 1923, p. 155.]

Art. 826. Tire equipment of trailer or tractor.—Whoever shall operate or permit to be operated upon a public highway a motor vehicle, trailer, semi-trailer or tractor equipped with solid rubber tires less than one inch in thickness at any point from the surface to the rim, or if equipped with pneumatic tires when one or more of such tires has been removed, shall be fined not exceeding two hundred dollars. [Id.]

Art. 827. [1570—1—2—3—4—5] Street railways.—All persons or corporations owning or operating street railways in or upon the public streets of any town or city of not less than forty thousand inhabitants are required:

1. To carry children of the age of twelve years or less for one-half the fare regularly collected for the transportation of adults. This law shall not apply to street cars carrying children or students to and from schools, colleges or other institutions of learning situated at a distance of one mile or more beyond the limits of the incorporated city or town from which said cars run.

2. To sell or provide for the sale of tickets in lots of twenty, each good for one trip over the line or lines owned or operated by such person or corporation, for one-half the regular fare collected for the transportation of adults, to students not more than seventeen years of age in actual attendance upon any academic, public or private school of grades not higher than the grades of the public high schools situated within, or adjacent to the town or city in which such railway is located. Such tickets are required to be sold only upon the presentation by the student desiring to purchase them of the written certificate of the principal of the school which he attends showing that he is not more than seventeen years old, is in regular attendance upon such school and is within the grades herein provided. Such tickets are not required to be sold to such students and shall not be used except during the months when such schools are in actual session and such students shall be transported at half fare only when they present such tickets.

3. To transport free of charge children of the age of five years or less when attended by a passenger of above said age.

4. To accord to all passengers referred to in this article the same rights as to the use of transfers issued by their own or other lines as are or may be accorded to passengers paying full fare.

Any such person or any officer or employé of any such corporation or other person who knowingly violates any provision of this article, or any person who misrepresents the age or the grade of any person for the purpose of securing the reduced fare herein provided for, shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1903, p. 132.]

CHAPTER TWO

PUBLIC ROADS AND IRRIGATION

Art.
828. Refusal to serve as overseer.
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Article 828. [827] [486] [408] Refusal to serve as overseer.—If any person subject to public road duty under the laws of this State shall wilfully fail or refuse to serve as overseer of any road in his road district or precinct, when duly appointed as such overseer by the commissioners court, he shall be fined not less than ten nor more than fifty dollars. [Acts 1876, p. 67.]

Art. 829. [828] [487] [409] Failure of duty as overseer.—If any overseer of a public road shall wilfully fail, neglect or refuse to perform any duty imposed upon him by law, or shall so fail, neglect or refuse to keep the roads, bridges and causeways in his precinct or district clear of obstructions and in good order, or shall wilfully suffer such roads, bridges or causeways to remain uncleared and out of repair for twenty days at any one time, he shall be fined not less than ten nor more than twenty-five dollars. [Id.]

Art. 830. [829] [488] [410] Overseer to mark roads, etc.—If any overseer of a public road shall fail, within six months after his appointment as such, to measure the road or roads in his precinct or district and set up posts of lasting timber or stone at the end of each mile leading from the court house or some other noted place or town, and to mark on such posts in legible words and figures the distance in miles to such court house or other noted place, or shall fail, when any such post is destroyed or removed, to replace the same with another marked as the original; or shall fail to affix or set up, at the forks of all public roads, or conspicuously and permanently at the intersections of all first and second class public roads, in his precinct or district, index or sign boards with directions plainly marked thereon stating the most noted place to which each of said roads lead, he shall be fined five dollars. [Acts 1876, p. 67, Acts 2nd C. S. 1919, p. 57, Acts 1923, p. 59.]

Art. 831. [830] [489] Failure of duty as road commissioner.—Any road commissioner who shall wilfully fail to comply with any duty required of him shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1889, p. 135.]

Art. 832. [831] [290] Failure of duty as road superintendent.—Any road superintendent who shall wilfully fail or refuse to comply with any provisions of law or order of the commissioners court shall be fined not less than twenty-five nor more than two hundred dollars for each offense. [Sec. 21, p. 163, Acts 1891.]

Art. 833. Forbidding use of highway.—The county commissioners of any precinct, or county road superintendent of any county, or road supervisor whose road is affected, may have the authority by posting notices on the highways when from wet weather or recent construction or repairs such cannot be safely used without probable serious damage to same, or when the bridge or culverts on same are unsafe, to forbid the use of such highway or section thereof by any vehicle or loads of such weight or tires of such character as will unduly damage such highway. The

notices provided for herein shall state the maximum load permitted and the time such use is prohibited and shall be posted upon the highway in such place as will enable the drivers to make detours to avoid the restricted highways or portions thereof.

If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the county judge of such county, setting forth the nature of his grievance. Upon the filing of such complaint the county judge shall forthwith set down for hearing the issue thus raised for a day certain, not more than three days later, and shall give notice in writing to such official of the day and purpose of each hearing, and at such hearing the county judge shall hear testimony offered by the parties respectively, and upon conclusion thereof, shall render judgment sustaining, revoking or modifying such order heretofore made by the county road superintendent or road supervisor, and the judgment of the county judge shall be final as to the issues raised. If upon such hearing the judgment sustains the order of the county road superintendent or road supervisor and it appears that any violation of same has been committed by the complainant since posting such notices, he shall be subject to the same penalty hereinafter provided for such offense as if the same had been committed subsequent to the rendition of such judgment made upon such hearing.

Any party guilty of violating the provisions and directions of such order of the county road superintendent or road supervisor, before or after it has been so approved by such judgment of the county judge shall be fined not exceeding two hundred dollars. [Acts 1st C. S. 1921, p. 170, Acts 1923, p. 160.]

Art. 834. Closing roads and bridges.—The commissioners court of any county subject to this law acting upon their own motion, or through the superintendent where one is employed, shall have the power and authority to regulate the tonnage of trucks and heavy vehicles which by reason of the construction of the vehicle or its weight and tonnage of the load shall tend to rapidly deteriorate or destroy the roads, bridges and culverts along the particular road or highway sought to be protected, and notices shall be posted and shall state the maximum load permitted and the time such use is prohibited, and shall be posted upon the highway in such places as will enable the drivers to make detours to avoid the restricted highways or portions thereof.

If the owner or operator of any such vehicle feels himself aggrieved by such action, he may complain in writing to the county judge of such county, setting forth the nature of his grievance. Upon the filing of such complaint, the county judge shall forthwith set down for hearing the issue thus raised for a certain day, not more than three days later, and shall give notice in writing to such road official of the day and purpose of such hearing, and at such hearing the county judge shall hear testimony offered by the parties respectively, and upon conclusion thereof shall render judgment sustaining, revoking or modifying such order theretofore made by the county road superintendent, and the judgment of the county judge shall be final as to the issues so raised.

If upon such hearing the judgment sustains the order of the county superintendent, and it appears that any violation of same had been committed by the complainant since posting such notices, he shall be subject to the same penalty hereinafter provided for such offense as if same had been committed subsequent to the rendition of such judgment made upon such hearing.

Any party guilty of violating the provisions and directions of such order of the county road superintendent after it has been so approved by such judgment of the county judge shall be fined not exceeding two hundred dollars. [Acts 1st C. S. 1921, p. 133, Acts 1923, p. 355.]

Art. 835. [832] [491] [411] Failure to work road.—If any person liable to work upon the public roads after being legally summoned shall fail or refuse to attend either in person or by able and competent substitute, or fail or refuse to furnish his team or tools at the time and place designated by the person summoning him, or having attended shall fail or refuse to perform good service or any other duty required of him by law or the person under whom he may work, or if any one fails to comply with any duty requested of him as provided by the statutes providing for a systematic method of road maintenance, he shall be fined not exceeding twenty-five dollars. [Acts 1876, p. 60, Acts 1901, p. 280, Acts 1st C. S. 1921, p. 138.]

Art. 836. [833] [493] [412] Neighborhood roads.—Whenever the commissioners court shall duly declare the boundary lines between the lands of different persons, or any section line, or any direct line through an inclosure containing 1280 acres or more of land, a public highway in accordance with law, if a person or owner shall fail, neglect or refuse for twelve months after legal notice thereof to leave open his land free from all obstructions for fifteen feet on his side of the line designated, he shall be fined not more than twenty dollars for each month after the twelve months aforesaid in which he may so fail, neglect or refuse. [Acts 1876, p. 69; Acts 1884, S. S., p. 22.]

Art. 837. [834] [494] [413] Leaving gates open on third class roads.—Any person placing a gate on or across any third-class road, or on or across any road such as is designated in article 836 shall be required to keep said gate and the approaches to the same in good order, and the gate shall be ten feet wide and so constructed as to cause no unnecessary delay to the traveling public in opening and shutting the same; and provide a fastening to hold said gate open until the passengers go through. Such person shall place a permanent hitching post and stile block on each side of and within sixty feet of such gate. Any person who may place a gate on or across a third-class road, or on or across any road such as is designated in article 836 who shall wilfully or negligently fail to comply with any requirement of this article shall be fined not less than five nor more than twenty dollars for each offense, and each week of such failure is a separate offense. Whoever wilfully or negligently leaves open any gate on or across any third-class road, or on or across any road such as is designated in article 836, shall be fined as above provided for. [Id.]

Art. 838. Unlawfully taking water.—Whoever shall wilfully take, divert, or appropriate any of the water of this State, or the use of such water, for any purpose, without first complying with all the provisions of the statutes regulating such use shall be fined not exceeding one hundred dollars, or be imprisoned in jail not exceeding six months or both. Each day that such taking, diversion or appropriation of water shall continue shall constitute a separate offense; and the possession of such water, except when the right to its use is acquired in accordance with the provisions of law, shall be prima facie proof of guilt. [Acts 1917, p. 219.]

Art. 839. Diverting stored water.—Any person, association of persons, corporation, water improvement or irrigation district having in possession and control storm, flood or rain waters conserved or stored, under the provisions of this law, may enter into contract to supply same to any person, association of persons, corporation, water improvement or irrigation district having the right to acquire such use; provided that the price and terms of such contract shall be just and reasonable and without discrimination and subject to the same revision and control as provided by law for other water rates and charges. To convey and deliver storm, flood or rain water from the place or [of] storage to the place of use, as provided herein, it shall be lawful for any person, association of persons, corporation, water improvement or irrigation district to use the banks and beds of any flowing natural stream within this State, under and in accordance with such rules and regulations as may be prescribed by the Board of Water En-

gineers, and such board shall prescribe rules and regulations for such purpose. No person, association of persons, corporation, water improvement or irrigation district who has not acquired the right to the use of such conserved or stored waters as provided in this article shall take, use or divert same. Any person, or the agent, officer, employé or representative of any association of persons, corporation, water improvement or irrigation district who shall wilfully interfere with the passage of, or take, divert or appropriate such conserved or stored water during the passage and delivery thereof, as provided in this article, shall be fined not exceeding one hundred dollars, or be imprisoned in jail not exceeding six months, or both. Each day that such taking, diversion or appropriation may be made shall be a separate offense. [Acts 1917, p. 224.]

Art. 840. Sale of permanent water rights.—Whoever sells or offers for sale any permanent water right, without having complied with the provisions of the statute relating to certified filings, or for the uses and purposes purporting to be conveyed by such permanent water right, shall be fined not less than one hundred nor more than one thousand dollars, or be confined in jail not to exceed one year, or both. [Acts 1917, p. 225.]

Art. 841. Interfering with headgates, etc.—Whoever shall wilfully open, close, change or interfere with any headgate or water box without lawful authority, or who shall wilfully use water or conduct water in and through his ditch or upon his land, to which water he was not entitled, shall be fined not less than ten and not more than one thousand dollars, or be imprisoned in jail not exceeding six months. The possession or use of water to which the person using or possessing same shall not be lawfully entitled shall be prima facie proof of the guilt of the person so using or in possession of same. [Acts 1917, p. 227.]

Art. 842. Unlawfully diverting water.—No person, association of persons, corporation, water improvement or irrigation district shall take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, water course or watershed in this State into any other natural stream, water course or watershed, to the prejudice of any person or property situated within the watershed from which such water is proposed to be taken or diverted.

Before any person, association of persons, corporation, water improvement or irrigation district shall take any water from any natural stream, water course, or watershed in this State into any other watershed, such person, association of persons, corporation, water improvement or irrigation district shall make application to the Board of Water Engineers for a permit so to take or divert such waters, and no such permit shall be issued by the board until after full hearing before said board as to the rights to be affected thereby.

Whoever shall take or divert any waters from one natural stream, water course or watershed into any other watershed contrary to the provisions of this article, shall be fined not less than one hundred nor more than five hundred dollars or be imprisoned in jail for any term not exceeding six months. Each day that such taking or diversion shall continue shall be a separate offense. [Acts 1917, p. 231.]

Art. 843. Water from nuisance.—Any person, directly, or as agent, who operates or attempts to operate any works, or who uses any water under contract with any canal or irrigation system that has been previously declared to be a public nuisance shall be fined not exceeding one thousand dollars or be confined in jail not to exceed one year, or both. [Acts 1917, p. 234.]

Art. 844. Wasting water.—Any person owning or acquiring any possessory rights to lands contiguous to any canal or irrigation system and who acquires the right to the use of water from such canal or irrigation system by contract, who wilfully permits the excessive or wasteful use of water by his agent, servant or employé, or who wilfully permits water to be wasted and not applied to a beneficial purpose, shall be fined not exceeding five hundred dollars or be imprisoned in jail not more than ninety days, or both. [Acts 1917, p. 233.]

Art. 845. "Artesian well."—An artesian well is an artificial water well in which, if properly cased, the waters will rise by natural pressure above the first impervious stratum below the surface of the ground. [Acts 1917, p. 232.]

Art. 846. "Waste."—Waste in relation to artesian wells is defined to be the causing, suffering or permitting the waters of an artesian well to run into any river, creek, or other natural water course or drain, superficial or underground channel, bayou, or into any sewer, street, road, highway, or upon the land of any other person than that of the owner of such well, or upon the public lands, or to run or percolate through the strata above that in which the water is found unless it be used for the purposes and in the manner in which it may be lawfully used on the premises of the owner of such well. Nothing herein shall prevent the use of such water, if suitable, for proper irrigation of trees standing along or upon any street, road, or highway, or for ornamental ponds or fountains, or the propagation of fish, or for any purpose authorized by law. [Acts 1917, p. 233.]

Art. 847. Waste from artesian well.—Whoever wilfully causes or knowingly permits waste as defined in relation to artesian wells shall be fined not exceeding five hundred dollars or be imprisoned in jail not more than ninety days, or both. [Acts 1917, p. 234.]

Art. 848. Log of artesian well.—Any person boring or causing to be bored any artesian well shall keep a complete and accurate record of the depth and thickness and character of the different strata penetrated, and when such well is completed, shall transmit, by registered mail, to the Board of Water Engineers, a copy of such record. Whoever violates any provision of this article shall be fined not less than ten nor more than one hundred dollars. [Acts 1917, p. 233.]

Art. 849. Hindering water improvement district work.—The directors of any Water Improvement District and the engineer and employés thereof are hereby authorized to go upon any lands within said district, for the purpose of examining same, locating reservoirs, canals, dams, pumping plants, and all other improvements, to make maps and profiles thereof and are hereby authorized to go upon the lands beyond the boundaries of such districts in any county for the purposes stated, and for any other purposes necessarily connected therewith, whether herein enumerated or not. Whoever shall wilfully prevent or prohibit any such officer or employé from entering any lands for any such purpose shall be fined not exceeding one hundred dollars for each day he shall so prevent or hinder such officer or employé. [Acts 1917, p. 199.]

Art. 850. Resisting improvement commissioners or engineers.—The district supervisors of any levee improvement district, and the district engineer and his assistants, from the time of their appointment, and the State reclamation engineer and his deputies, are hereby authorized to go upon any lands or waters for the purpose of examining the same and locating all levees and other improvements, making plans, surveys, maps, and profiles, together with all necessary teams, help and instruments, without subjecting themselves to an act of trespass. Any person who shall wilfully prevent or prohibit any of such officers from entering any lands or waters for such purposes shall be fined not exceeding twenty-five dollars for each day he shall so prevent or hinder such officer. [Acts 1909, p. 152; Acts 1915, p. 244.]

Art. 851. Resisting navigation and canal officer.—The navigation and canal commissioners of any district and the engineers from the time of their appointment are hereby authorized to go upon any

lands lying within said district for the purpose of examining the same, making plans, surveys, maps and profiles, together with all necessary teams, help, tools and instruments, without subjecting themselves to action for trespass. Any person who shall wilfully prevent or prohibit any such officer from entering any land for such purpose shall be fined not exceeding twenty-five dollars for each day he shall so prevent or hinder such officer. [Acts 1909, p. 45.]

Art. 852. Resisting drainage district officer.—The drainage commissioners of any drainage district and the civil engineer from the time of their appointment are authorized to go upon any lands lying within any such district for the purpose of establishing the same, locating the canals, drains, ditches, levees making plans, surveys, maps and profiles, and are authorized to go upon any lands beyond the boundaries of such district and in any county for the purpose of examining the same and locating the necessary outlets of any canal, drain or ditch of such district, together with all necessary teams, help, tools and implements. Any person who shall wilfully prevent or prohibit any of such officers from entering any land for such purposes shall be fined not exceeding twenty-five dollars for each day he shall so prevent or hinder such officer. [Acts 1911, p. 258.]

Art. 853. Resisting water control officer.—The directors of any Water Control and Preservation District and the engineers and employés thereof are hereby authorized to go upon any land lying within said district for the purpose of examining same for locating dams, bulkheads, jetties, locks, gates or any other character of improvement or construction necessary to the accomplishment of the purposes of the district, to make maps and profiles thereof, and are hereby authorized to go upon lands beyond the boundaries of such districts for the purposes stated and for any other purposes necessarily connected therewith whether herein enumerated or not. Any person who shall wilfully prevent or prohibit any such officer or employé from entering upon such land for such purpose shall be fined one hundred dollars for each day he shall so prevent or prohibit such officer or employé. [Acts 4th C. S. 1918, p. 95.]

CHAPTER THREE

FERRIES, TOLL ROADS AND BRIDGES

Art.
854. Keeping ferry without license.
855. Failure to keep good boats, etc.
856. Trespassing on toll road.
857. Obstructing toll road.
858. Trespassing on toll bridge.

Article 854. [838] [497] [415] Keeping ferry without license.—Whoever shall keep any ferry over any water course, navigable stream, lake or bay in this State, and shall charge or receive any money, property, or other valuable thing for crossing passengers or property at such ferry, without first obtaining license as required by law, shall be fined not less than fifty nor more than two hundred dollars. [Acts 1860, p. 98.]

Art. 855. [839] [498] [416] Failure to keep good boats, etc.—If the owner of any licensed ferry in this State shall fail to keep at all times good, safe and substantial boats, sufficient in number for the ready accommodation of the public, or shall fail to keep the banks on each side of the ferry in good repair, and so graded that the ascent shall not exceed one foot in every seven feet from the water's edge to the top of the bank, or shall fail to give ready attendance on all passengers desiring to cross with their animals, wagons or other property; or shall charge higher rates of ferriage than those fixed by the proper authority, he shall be fined not less than ten nor more than one hundred dollars. [Acts 1875, p. 58.]

Art. 856. Trespassing on toll road.—Whoever trespasses or enters upon the property or right of way of a toll road corporation without its consent except as to crossings provided by law shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1913, p. 146.]

Art. 857. Obstructing toll road.—Whoever in any manner obstructs any toll road, or places thereon any thing or substance which would be reasonably calculated to result in injury to any patron of such road or damage to any vehicle which might be run over the same, shall be fined not less than fifty nor more than two hundred dollars. [Id.]

Art. 858. Trespassing on toll bridge.—Whoever wilfully enters upon any toll bridge maintained wholly or partly within this State, without the consent of those in charge of such bridge, with the intent to avoid the payment of the toll lawfully chargeable for crossing the same shall be fined not less than five nor more than one hundred dollars. [Acts 1915, p. 154.]

CHAPTER FOUR

PUBLIC BUILDINGS AND GROUNDS

Art.
859. Injuring or defacing public building.
860. "Public building."
861. Driving in capitol grounds.
862. Injuring roadway, grounds or property.
863. Pass keys to capitol.
864. Taking property from public grounds.
865. Turning loose too many stock.
866. Fences without gates.
867. Procedure.
868. Illegal fencing or use of public lands.

Article 859. [840] [499] [417] Injuring or defacing public building.—Whoever shall wilfully injure or deface any public building or the furniture therein shall be fined not less than five nor more than five hundred dollars. The word "deface" in this chapter shall be held to apply to writing, carving or scratching on the walls or plastering or furniture of said building, or staining the same with paint or any other article which will produce a discoloration of the same. [Acts 1862, p. 51; Acts 1888, p. 5.]

Art. 860. [841] [500] [418] "Public building."—The term "public building," as usd [used] in this chapter, means the capitol and all other buildings in the capital grounds at Austin, including the executive mansion, the various State asylums and all buildings belonging to either, all college or university buildings erected by the State, all court houses and jails and all other buildings held for public use by any department or branch of government, State, county or municipal. The specific enumeration of the above shall not exclude other buildings not named, properly coming within the meaning and description of a public building.

Art. 861. [843] [502] [420] Driving in capitol grounds.—Whoever shall drive, ride or lead, or cause to be driven, ridden or led, any horse or other animal into the capitol grounds at Austin or into the inclosure of the State cemetery, without the consent of the keeper or superintendent of said grounds or cemetery, shall be fined not exceeding twenty-five dollars. [Acts 1874, p. 165.]

Art. 862. [844—5—6] Injuring roadway, grounds or property.—No person shall drive, or cause to be driven, over or along any roadway in any of the public grounds of this State, any heavy vehicle for carrying merchandise, or vehicle heavily loaded or otherwise reasonably calculated to injure or deface such roadways or to make their maintenance more expensive; or drive or cause to be driven any vehicle or conveyance of any kind, or drive, or cause to be ridden any animal of any kind over, across, or along any of the footpaths or walks in such grounds or on the turf of such grounds or at any place therein, except on and along the roadways; or cause or permit any horse not being driven to some vehicle or ridden, or any cow, sheep, goat, hog or other animal reasonably calculated to injure said grounds or anything pertaining thereto to go into or remain in any portion of said grounds; or cut, pull, break, bruise, remove, or in anywise injure any tree, or shrub or vegetation of any kind growing thereon; or disturbing any birds'

nests or eggs; or in anywise injure, deface or in any way interfere with any chair, bench, seat or hydrant, frame, fence, gate, or structure of any kind therein or thereon or connected therewith; or wash or bathe in or in any way pollute the waters of any lake or pond, or stream therein; or obscenely or indecently expose any part of his person, or do any indecent act thereon. Any person violating any provision of this article shall be fined not less than five nor more than one hundred dollars. This article shall not apply to anything done by the lawful custodian of the public grounds on which said act is performed, or under his authority or direction, and which is done in the reasonable discharge of his duties as such custodian, or in the use of such grounds for the purpose to which they are dedicated by the State. The term "public grounds," as used in this law, includes all grounds owned by the State, and used and maintained by it in connection with any public building or institution, whether for governmental, educational, eleemosynary or other purpose, and all State cemeteries and all parks maintained at the expense of the public. [Acts 1903, p. 187.]

Art. 863. [848] [503a] Pass keys to capitol.—Any person who shall make or have made or keep in his possession a pass or master key to the rooms and apartments in the State Capitol, unless authorized to do so, shall be fined not exceeding one hundred dollars. [Acts 1895, p. 79.]

Art. 864. [849] [504] [422] Taking property from public grounds.—Whoever shall take, remove, injure or destroy any public property pertaining to any public building or to the grounds belonging to such building shall be fined not less than twenty-five nor more than one hundred dollars.

Art. 865. [852] Turning loose too many stock.—No purchaser or other person than the lessee of public school, asylum and public lands shall be permitted to turn loose within such lessee's inclosure more than one head of horses, mules or cattle, or in lieu thereof four head of sheep or goats for every ten acres so purchased, owned or controlled by him and uninclosed, and whoever violates this article shall be fined one dollar for each head of stock he may turn loose and each thirty days violation hereof shall be a separate offense. [Act April 1, 1887, Acts 1895, p. 71, Acts 1897, p. 187, Acts 1901, p. 296.]

Art. 866. [508] [422d] Fences without gates.—Any person who has used any of the pasture lands by joining fences or otherwise, who shall build or maintain more than three miles lineal measure of fences running in the same general direction without a gate way in same, which must be at least ten feet wide and shall not be locked or kept closed so as to obstruct free ingress and egress, shall be fined not less than two hundred nor more than one thousand dollars. [Acts 1884, p. 37, Acts 1887, p. 90.]

Art. 867. [855–6] Procedure.—In all prosecutions under the preceding article, the provisions of article 1380 shall apply. The preceding article shall not apply to persons who have heretofore settled upon lands not their own, where the inclosure is two hundred acres or less and where the principal pursuit of such person upon the land is that of agriculture. [Acts 1884, p. 69.]

Art. 868. [860] Illegal fencing or use of public lands.—No person shall fence, use, occupy or appropriate by herding or line-riding, any portion of the public lands of the State, or of the lands belonging to the public free schools or asylums, without having first obtained a lease of such lands from the proper authority. Any person, whether owner of stock, manager, agent, employé or servant who shall fence, use, occupy or appropriate by herding or line-riding any portion of such lands without a lease thereof, shall be fined not less than one hundred nor more than one thousand dollars, and imprisoned in jail for not less than three months nor more than two years. Each day of such fencing, occupying, using or appropriating shall be a separate offense, and any person so offending may be prosecuted in the county where any portion of the land lies, or to which it may be attached for judicial purposes, or in the county of Travis. "Fencing" within the meaning of this article is the erection of any structure of wood, wire, or both, or any other material intended to prevent the passage of cattle, horses, mules, sheep, goats or hogs, whether the same shall inclose lands on all sides or be erected on one or more sides. Any appropriation of land belonging to any particular fund or of any public land of this State without having first obtained a lease thereof, by fencing of any kind or by inclosures consisting partly of fencing and partly of natural obstacles or impediments to the passage of live stock shall be deemed unlawful appropriation, punishable as provided in this article for appropriating such lands. Each day said land is appropriated shall be a separate offense. [Acts 1887, p. 89, Acts 1895, p. 74.]

CHAPTER FIVE

FIRE ESCAPES

Art.
869. Violation of fire escape law.
870. Violation by agent.

Article 869. Violation of fire escape law.—Any owner of any building required by law to be equipped with adequate fire escapes, who shall fail or refuse to comply with any provision of the statutes regulating fire escapes, or any person who shall obstruct any fire escape or hallway or entrance leading thereto, so as to prevent free access to or use of either, shall be fined not less than twenty nor more than fifty dollars. If such owner be a corporation, each officer or member of the board of directors, thereof, shall be subject to such fine. Each day's failure or refusal to comply with any provision of said law is a separate offense. [Acts 1923, p. 365.]

Art. 870. Violation by agent.—If the owner of any building within the provisions of said law be a non-resident of this State, and such owner fails, neglects or refuses to comply with any provision of said law, it shall be unlawful for any person within this State to represent such non-resident owner as an agent in the care, management, supervision, control, or renting of such building, and whoever violates this article shall be punished as provided in the preceding article. Each day that such agent so represents such non-resident owner is a separate offense. [Id.]

CHAPTER SIX

GAME, FISH AND OYSTERS

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Article 871. "Commissioner."—The word "Commissioner" wherever used in this chapter shall be held to mean the Game, Fish and Oyster Commissioner of the State of Texas.

Acts 1925, 39th Leg., ch. 172, p. 404, § 47 reads as follows: "That Articles 874 to 900, inclusive, of the Penal Code of 1911; and Articles 4022 to 4042, inclusive, of the Revised Civil Statutes of 1911; and Chapter 123 Acts Regular Session Thirty-fourth Legislature, amending law relating to quail and doves in Penal Code 1911, by adding Arts. 889a and 889b; and Chapter 22 of the General Laws passed at the First Called Session of the Thirty-fourth Legislature; and Chapter 7 of the General Laws, passed at the First Called Session of the Thirty-fifth Legislature; and Chapter 8 of the General Laws passed at the Third Called Session of the Thirty-fifth Legislature; and Chapter 72 of the General Laws passed at the Second Called Session of the Thirty-sixth Legislature and Chapter 157 of the General Laws passed at the Regular Session of the Thirty-sixth Legislature; and Chapter 72 of the General Laws passed at the Regular Session of the Thirty-seventh Legislature; and Chapter 85 of the Special Laws passed at the Regular Session of the Thirty-seventh Legislature; and Chapter 35 of the General Laws passed at the First Called Session of the Thirty-seventh Legislature; and Chapter 7 of the Special Laws passed at the Fourth Called Session of the Thirty-sixth Legislature; and Chapter 84 of the General Laws passed at the Regular Session of the Thirty-eighth Legislature; and Chapter 14 of the General Laws passed at the First Called Session of the Thirty-eighth Legislature, are hereby specifically repealed, and all other laws and parts of laws in conflict herewith, be and the same are hereby repealed."

Art. 871a. Wild birds and animals.—All wild animals, wild birds, and wild fowl within the borders of this State are hereby declared to be the property of the people of this State.

Art. 872. Game birds defined.—Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens or pinnated grouse, wild pheasants of all varieties, wild partridge and wild quail of all varieties, wild pigeons of all varieties, wild mourning doves and wild white-winged doves, wild snipe of all varieties, wild shore-birds of all varieties, wild Mexican pheasants or chachalacas, and wild plover of all varieties, are hereby declared to be game birds within the meaning of this Act.

Art. 873. Bag limit, penalty.—Any person killing or taking more than the daily, weekly or seasonal bag-limits as set forth in this chapter; or any person killing, taking, hunting, wounding, or shooting at any game bird or game animal at any other time of the year, except during the open season as provided

for in this chapter; or any person killing, taking, capturing, wounding or shooting at any game bird or game animal for which no open season is provided by this chapter, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than ten ($10.00) dollars nor more than two hundred ($200.00) dollars; and each game bird or game animal unlawfully taken shall constitute a separate offense.

Art. 874. Killing birds other than game birds.—It shall be unlawful for any person in this State to kill, catch, wound, take, shoot at, or have in possession, living or dead, any wild bird other than a game bird. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than ten ($10.00) dollars, nor more than two hundred ($200.00) dollars.

Art. 875. Exemptions.—English sparrows, crows, ravens, vultures or buzzards, "rice-birds" identified as harmful, blackbirds, pelicans, roadrunners, and the goshawk, the Cooper hawk or blue darter, the sharp-shinned hawk, the duck hawk, jay bird, sap suckers, woodpeckers, butcher birds or shrike, and the great horned owl are not included among the birds protected by this section; and provided, further, that nothing in this section shall prevent the purchase and sale of canaries and parrots, or the keeping of same in cages as domestic pets.

Art. 876. Possession of wild game.—It shall be unlawful for any person to have in possession at any one time more than forty-five wild doves, or thirty-six wild quail, or thirty-six wild Mexican pheasant or chachalaca; or to have in possession at any one time more than fifty waterfowl, shorebirds, and other game birds, all kinds and varieties being considered in making up the one total of fifty; provided, that the provisions of this section shall not apply to transportation companies which have in their possession, for the purpose of transportation, such wild birds, where the provisions of this chapter with reference to shipment of game have been complied with; nor shall the provisions of this chapter apply to owners, agents, managers, or receivers of cold storage plants which receive wild game for storage; provided, however, that it shall be unlawful for the owner, agent, manager, or receiver of such cold storage plant to receive or have in possession at any one time for himself or any one person more than the limits of the wild game birds as provided in this article.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than ten ($10.00) dollars, nor more than two hundred ($200.00) dollars. The possession of each bird or fowl over the number designated herein, shall be deemed a separate offense.

Art. 877. Turkey hens.—It shall be unlawful for any person to take, kill, wound, shoot at, hunt or possess, dead or alive, any wild turkey hen at any season of the year except as hereinafter provided.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined in any sum not less than twenty-five ($25.00) dollars nor more than one hundred ($100.00) dollars.

Art. 878. Division into zones.—In order to divide the State for the purpose of better regulating the open and closed seasons for the hunting of wild game birds and wild game animals of this State, a line beginning on the Rio Grande River directly West of the town of Del Rio, Texas; Thence East to the town of Del Rio; thence easterly following the center of the main track of the Southern Pacific Railroad through the towns of Spofford, Uvalde, Hondo; thence to the point where the southern Pacific Railroad crosses the I. & G. N. R. R. at or near San Antonio; thence following the center of the track of said I. & G. N. R. R. in an easterly direction, to the point in the City of Austin, where it joins Congress Avenue, near the I. & G. N. R. R. Depot; thence across said Congress Avenue to the center of the main track of the H. & T. C. R. R. where said track joins said Congress Avenue, at or near the H. & T. C. R. R. depot; thence following the center line of the track of said H. & T. C. R. R. in an easterly direction through the towns of Elgin, Giddings, and Brenham, to the point where said railroad crosses the Brazos River; thence with the center of said Brazos River in a general northerly direction, to the point on said river where the Beaumont branch of the Santa Fe Railway, crosses the same; thence with the center of the track of said G. C. & S. F. Railway, in an easterly direction through the towns of Navasota, Montgomery, and Conroe, to the point at or near Cleveland, where said G. C. & S. F. Ry. crosses the Houston, East and West Texas Railroad; thence with the center of said H. E. & W. T. Railroad track to the point in said line, where it strikes the Louisiana line. All that portion of the State lying north or northerly shall be known as the North Zone and all that portion of the State lying south or southerly of said line shall be known as the South Zone. [As amended Acts 1927, 40th Leg., p. 326, ch. 222, § 1.]

Art. 879. Open season.—There shall be an open season or period of time, when it shall be lawful to hunt, take or kill wild mourning doves, in the South Zones, during the months of November and December of each year; in the North Zone during the months of September and October of each year. [As amended Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879a. Wild white winged doves.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild white-winged doves in both the North and South Zones, during the months of July, August and September. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879b. Wild quail and Mexican pheasant.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild quail of all kinds, and wild Mexican pheasant or chachalaca in the North Zone, December 1st to the following January 16th, both days inclusive; in the South Zone, December 1st to the following January 16th, both days inclusive. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879c. Wild turkey gobblers.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild turkey gobblers, in both the North and South Zones, November 16th to the following December 31st, both days inclusive. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879d. Wild rail and plover.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild rail (other than coot and gallinules), wild black-bellied plover and wild golden plover, and yellow-legs, the months of September and October of each year, in both the North and South Zones. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879e. Wild ducks, geese, brandt, snipe and gallinules.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild ducks of all kinds (except wild wood ducks), wild geese, wild brandt, wild snipe of all kinds, wild gallinules and wild coot or mud hen, in the North Zone, October 16th to the following January 31st, both days inclusive; in the South Zone, November 1st to the following January 31st, both days inclusive. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879f. Wild prairie chickens.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild prairie chicken or pinnated grouse, in both the North and South Zones, September 1st to September 10th, of each year, both days inclusive, provided there shall be no open season on wild prairie chicken in the Counties of Collingsworth, Donley, Wheeler and Gray until September 1st, 1929. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879g. Wild buck deer and wild bear.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild buck deer, wild bear, in both the North and South Zones, November 16th to December 31st each year, both days inclusive. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 879h. Wild squirrels.—There shall be an open season, or period of time, when it shall be lawful to hunt, take or kill wild red or fox squirrels and wild gray squirrels, in both the North and South Zones, the months of May, June and July, and in the months of October, November and December of each year; provided, however, that nothing in this chapter shall prevent the keeping of squirrels in cages as domestic pets; and provided further, that it shall not be unlawful to kill squirrels in the following counties at any time, to-wit: DeWitt, Caldwell, Guadalupe, San Saba, Mason, Gillespie, Llano, Kimble, Menard, Comal, McCulloch, Brown, Kerr, Burnet, Mills, Schleicher, Edwards, Gonzales, Austin, Real, Kendal, Victoria, Medina, Uvalde, Jackson, Wharton, Bandera, Lavaca, Fayette, Colorado and Goliad. [Acts 1927, 40th Leg., p. 316, ch. 215, § 1.]

Art. 880. Hunting with dogs.—It is hereby declared unlawful for any person or persons to make use of a dog or dogs in the hunting or pursuing or taking of any deer. Any person or persons owning or controlling any dog or dogs, and who permits or allows such dog or dogs to run, trail or pursue any deer at any time, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than twenty-five ($25.00) dollars and not more than two hundred ($200.00) dollars; provided, that nothing in this article shall prohibit the use of only one dog in pursuit of a wounded buck deer, during the open season on buck deer as provided by this chapter; and provided further that this article shall not apply to the counties of Grimes, Madison, Walker, San Jacinto, Leon, Houston, Trinity, Harris, Brazoria, Fort Bend, Matagorda, Wharton, Liberty, Hardin, Orange and Lavaca. [Acts 1925, 39th Leg., p. 396, ch. 172, § 25; Acts 1926, 39th Leg., 1st C. S., p. 42, ch. 24, § 1; Acts 1927, 40th Leg., 1st C. S., p. 227, ch. 83, § 1.]

Art. 881. Possessing more than bag limit.—It shall be unlawful to take, kill, or possess any birds or animals in greater number than the daily, weekly or seasonal bag limit or number of such game birds and game animals permitted to be killed or taken, such bag-limits to be as follows:

Wild mourning doves and wild white-winged doves, fifteen in any one day, and not more than forty-five in any one week of seven days.

Wild quail of all kinds, and wild Mexican pheasant or chachalaca, twelve in any one day, and not more than thirty-six in any one week of seven days, and all kinds and varieties of these shall be considered in making up the limit of twelve.

Wild turkey gobblers, three during the open season of any one year, as herein provided.

Wild geese and brant of all kinds, four in any one day, and not more than twelve in any one week of seven days.

Wild ducks of all kinds, wild snipe of all kinds, wild black-bellied plover, wild yellowlegs, wild gallinle or Indian hen, and wild coot or mud hen, twenty-five in any one day, and not more than fifty in any one week of seven days; provided, that all kinds and varieties of game birds mentioned in this section shall be considered in making up the daily limit of twenty-five or weekly bag-limit of fifty.

Wild prairie chicken or pinnated grouse, five in any one day, and not to exceed ten in the open season of any one year.

Wild buck deer, two during the open season of any one year, as provided in this chapter.

Wild bear, one during the open season of any one year, as provided in this chapter.

Wild squirrel, ten in any one day.

Art. 882. Closed season defined.—The term "Closed Season" shall, for the purpose of enforcement of the game laws of this State mean the period of time during which it is unlawful to hunt, kill, attempt to kill, or take any of the game animals, wild fowl, or birds enumerated in this chapter, and the term "Open Season" shall mean the period of time in which it is lawful to hunt, kill, or take certain game, game animals, wild fowl, and birds set forth in this chapter.

Art. 883. Five year closed season.—It shall be unlawful for any person to hunt, kill, or take or to have in possession, within a period of five years from the passage of this Act, any wild woodcock, wild wood duck, wild sandhill crane, or whooping crane, wild inca and ground dove, or wild pheasant, except as hereinafter provided. Any person violating any provision of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less thna [than] ten ($10.00) dollars nor more than one hundred ($100.00) dollars, and each bird killed or possessed in violation of this article shall constitute a separate offense.

Art. 884. Unlawful possession of game.—It shall be unlawful for any person to sell or offer for sale, or to buy or offer to buy, or to have in possession for sale, or to have in possession after purchase has been made (either by himself or by another), any wild bird, wild fowl, wild game bird, or wild game animal, dead or alive, or any part thereof, protected by this chapter, except as hereinafter provided. This article, and all other articles in this chapter, shall apply to any bird or animal coming from without this State; and in prosecutions for violations of this chapter it shall be no defense that such bird or animal was not taken or killed within this State.

It shall further be unlawful to bring into this State, for any purpose whatever, during the closed season or time when it is unlawful to possess such bird or animal, either alive or dead, any kind of bird or animals protected by this chapter, except as hereinafter provided.

Art. 835. Bringing game into this State.—Any person violating any of the provisions of Article 884 shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars; and the bringing in of each separate bird or animal protected by this chapter in violation of said article shall constitute a separate offense. Provided, that any person who shall buy any game bird or game animal, the sale of which is prohibited by this chapter, for the purpose of establishing testimony, shall not be prosecuted for such purchase, and a conviction may be had upon the uncorroborated testimony of such purchaser.

This article should be numbered 885 instead of 835.

Art. 886. Wild ducks, geese and brant.—It shall be unlawful to hunt, kill, or take any wild duck, goose, or brant, by any means other than the ordinary gun, not to exceed ten gauge, capable of being held to and shot from the shoulder. Any person violating any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars, and each bird or fowl taken or killed in violation of this article shall constitute a separate offense.

Art. 887. Hunting at night.—It shall be unlawful to kill, hunt or shoot at any wild bird, wild game bird, wild fowl, or wild game animal protected by his [this] chapter at any season of the year, between one-half hour after sunset and one-half hour before sunrise in any county in this State. Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than twenty-five ($25.00) dollars, nor more than one hundred ($100.00) dollars, and each bird or animal so killed shall constitute a separate offense.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 888. Protection against depredation of wild fowls or animals.—Whenever any wild birds, wild fowls, or wild animals, protected under the provisions of this chapter, are destroying crops or domestic animals, the Game, Fish and Oyster Commissioner is hereby authorized to permit the killing of such wild birds or wild animals, without regard to the open or closed season, bag limit, or night shooting; but before such permission shall be granted, the commissioner aforesaid, shall be furnished with a statement of facts, sworn to by persons whose property is being injured, with the endorsement of the county judge of the county in which the crops are being destroyed or domestic animals being injured or killed, to the effect that the sworn statement is true and that such crops or domestic animals can only be preserved by the granting of such permit. Such permit when issued shall distinctly state the time for which it is granted, the area which it covers, and a designation of the person or persons permitted to kill the noxious birds and animals named in such permit. Such permit shall not authorize the killing of migratory birds protected by the Federal Migratory Bird Treaty Act, unless the applicant shall first procure a permit from the United States Department of Agriculture, in compliance with the regulations of such Migratory Bird Treaty Act.

Art. 888a. [883] Taking game bird by net or trap.—Whoever sets a net or trap or other device for taking any bird mentioned in article 872, or who snares or takes by such devices any such bird, without first obtaining from the Game, Fish and Oyster Commissioner a permit in writing so to do, shall be fined not less than ten nor more than one hundred dollars. [Sec. 18, Id.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repeals Acts 1919, 36th Leg., ch. 157, from which this article was taken. See note to article 871.

Art. 889. Specimens for taxidermist.—Any person shall have the right to ship or carry to and from a taxidermist or tannery, for mounting or preserving purposes or to his home, any specimen or part of specimen of the wild birds or wild animals of this State, where same have been lawfully taken or killed by such person, and when such specimens or parts of specimens are not for sale, but before making shipment as herein provided, such person shall first make the following affidavit in writing before some officer authorized to administer oaths, and deliver same to the common carrier transporting same, or its agents:

State of Texas)
County of ———) Before me, the undersigned authority, on this day personally appeared ———, who after being duly sworn, upon oath says: I live at ——— in the County of ———, State of ———; that I have personally killed ———, which I desire to ship from ——— to ——— County, to ———, State of ———, which I have lawfully killed for my own use and not for sale, and which shall not be bartered or sold; that I have not killed during the present hunting season more than the bag limit, as provided by law, of any of the wild game birds, wild fowl, or wild animals. Signature ———

Sworn to and subscribed before me this ——— day of ———, A. D. 192—.

———
Office held ———

The affidavit thus prepared by the affiant shall be attached to the shipment, and shall not be removed during the period of transportation. If such game is carried by the person killing same, it shall not be necessary to attach the affidavit herein set forth.

Art. 890. Penalty.—Any person who so ships any game from any place within this State without making the foregoing affidavit; or any agent of any express company or other common carrier who receives any shipment without it being accompanied by such affidavit and list attached; or any auditor or conductor or other person in charge of any railroad train, who knowingly permits any person to carry any wild birds, wild fowl or wild animals without such affidavit being made, as herein provided, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

All express agents, conductors, and auditors of trains, captains of boats, and the Game, Fish and Oyster Commissioner and his deputies are hereby empowered to administer oaths necessary to the shipment of game, and for administering such oaths they are hereby authorized to collect the sum of twenty-five (25c) cents from the person making such oath.

Art. 891. Destroying nests or eggs of birds.—It shall be unlawful for any person to destroy or take the nest, eggs, or young of any wild game bird, wild bird, or wild fowl, protected by this chapter, except as provided herein. Any person violating any provision of this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

Art. 892. Certain animals declared to be game animals.—Wild deer, wild elk, wild antelope, wild Rocky Mountain sheep, wild black bear, and wild gray and red squirrels, cat squirrels or fox squirrels, are hereby declared to be game animals within the meaning of this Act.

Art. 893. Forfeiture of license.—Any person convicted of violating any provision of the game laws of this State shall thereby automatically forfeit his license for said season. Any such person so convicted of violating the game laws shall not be entitled to receive from the State a license to hunt for one year immediately following the date of his conviction; and it shall be unlawful for any person who is convicted of violating any of the provisions of the game laws of this State to purchase or possess a hunting license for a period of one year immediately following date of such conviction; and it shall also be unlawful for any person convicted of violating any of the game laws of this State to hunt with a gun in this State for a period of one year immediately following date of such conviction.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred ($100.00) dollars, nor more than two hundred ($200.00) dollars.

Art. 894. Form of license.—All hunting licenses issued shall have printed across their faces the year for which they are issued; they shall bear the name and address or residence of the person to whom issued, and shall give the approximate weight, height, age, color of hair, and color of eyes of such person, in order that proper identification may be had in the field, and shall have printed thereon a statement, to be subscribed to in ink by the person to whom issued, that such person will not exceed in any one day the bag limit as printed on the license. Such license shall be dated on the date of issuance, and shall remain in effect until the last day of August thereafter; provided that non-resident or alien licenses shall have printed thereon the following: This license does not entitle the holder thereof to hunt upon the enclosed and posted lands of another, without the consent of the owner or agent.

Art. 895. County clerk to issue license.—The county clerk of each county in this State, is hereby authorized to issue hunting licenses under his official seal, to all persons complying with the provisions of this Act, and shall fill out correctly and preserve for the use of the Game, Fish, and Oyster Commission, the stubs attached thereto; and the county clerk shall keep a complete and correct record of hunting licenses issued, showing the name and place of residence of each license and the serial number and date of the license issued. Said license stubs and penalties and forfeitures of bonds imposed and collected for violation of any of the provisions of this chapter, shall belong to the special game fund of this State, and shall be paid over by the Game, Fish, and Oyster Commissioner, to the State Treasurer during the first week of each month, and shall be credited to such

special game fund; and such fund shall be used solely for the purpose of wild bird and game protection; for the creation, purchase, and maintenance of game sanctuaries and public hunting-ground; for the purchase, introduction, propagation, and distribution of game and wild birds; for the dissemination of information pertaining to the conservation and economic value of wild animal life; and in the employment of special deputy game commissioners, payment of their necessary expenses and the purchase and supply of means to enable the Game, Fish, and Oyster Commissioner and his deputies to enforce the game laws of this State. All expenditures shall be verified by affidavit to the Game, Fish, and Oyster Commissioner; and on the approval of such expenditures by the Game, Fish and Oyster Commissioner, it shall be the duty of the Comptroller of the State to draw his warrant on the Treasurer of the State for the amount of such expenditures in favor of the person claiming the same, such warrant to be paid out of the special game fund. All moneys and all balances now in such fund from moneys already paid into the State Treasury, or that may hereafter be paid into said fund through or because of this chapter, are made available as soon as paid into the State Treasury, and are hereby specifically appropriated to the use of the Game, Fish and Oyster Commissioner for the several purposes herein specified. The county clerk shall, within ten days after the close of each calendar month, make out a detailed report under the seal of his office, showing the serial number and date of each license issued during the month covered by the report, and the name and address of the person to whom issued, and shall forward such report, with remittance of fees due the State, to the Game, Fish, and Oyster Commission at Austin, and said Commission shall credit such county clerk with the amount so remitted. As soon as possible after the licenses in a license book have all been issued, and only the stubs remain therein, such county clerk shall forward such used license book to the Game, Fish and Oyster Commission at Austin, in order that such Commission may furnish necessary information regarding holders of licenses to any officers in the State.

Art. 896. License fees under control of council.—All license fees and hunting-boat registration fees collected under this Act, and all fines that may be made from this fund shall be expended for land or other real estate only upon the authorization of a majority vote of a council composed of Game, Fish and Oyster Commissioner, the Attorney General of Texas, and the State Comptroller, who shall act on this council during their respective terms of office.

Art. 897. Game unlawfully taken to be disposed of by commissioner.—All wild birds, wild fowl, or wild game animals, or parts thereof, which have been killed, taken in any way, shipped, held in storage, or found in a public eating place, contrary to the provisions of this chapter, shall be disposed of by order of the Game, Fish and Oyster Commissioner, or one of his deputies by donating same to charitable institutions, hospitals, or needy widows and orphans.

If such birds, fowl or animals mentioned in this article are required to be placed in cold storage, the expense of such storage shall, upon his conviction, be placed in a bill of cost against the defendant or person from whom they were taken.

The Game, Fish and Oyster Commissioner, or any of his deputies shall have the right to search the game bag or any other receptacle of any kind whenever such Game, Fish and Oyster Commissioner or his deputy has reason to suspect that such game bag, or other receptacle or any buggy, wagon, automobile, or other vehicle may contain game unlawfully killed or taken, and any person who refuses to permit the searching of the same, or who refuses to stop such vehicle when requested to do so by the Game, Fish and Oyster Commissioner, or his deputy, shall be fined not less than ten ($10.00) nor more than one hundred ($100.00) dollars.

Art. 898. Commissioner to keep lists of fees and fines.—It shall be the duty of the Game, Fish and Oyster Commissioner to keep in his office, at Austin, a complete list of the license fees and fines collected; said records shall be kept open for inspection of the State Comptroller and of the public. At the close of each calendar month the Game, Fish, and Oyster Commissioner, shall file with the Comptroller, a report in writing, showing all fines, licenses, and other fees collected, their disposition, and any other particulars which he may deem proper.

Art. 899. Hunting under the license of another.—Any person who shall hunt under the license issued to any other person, or any person who shall permit any other person to hunt under a license issued to him, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

Art. 900. Hunting for hire.—It shall be unlawful for any person to hire or employ any other person, or to be hired or employed by any other person, by the payment, or by the promise of payment, of money or any other thing of value, to hunt any bird, wild fowl, or game animal protected by this chapter. Any person violating any of the provisions of this article shall be deemed guilty of misdemeanor, and upon conviction shall be fined in any sum of not less than twenty-five ($25.00) dollars, nor more than two hundred ($200.00) dollars. Provided, that if any person who has received money, or a promise of money or other thing of value, to hunt any wild bird, wild fowl, or game animal protected and mentioned by this chapter, testifies against the person employing him, all prosecutions against him in the case in which he testifies shall be dismissed.

Art. 901. Hunting from automobile, airplane or boat.—It is hereby declared unlawful for any person at any time and in any manner, to hunt, take, capture, or kill, or attempt to hunt, take, capture, or kill any of the wild game birds[,] wild game fowl, or wild game animals, protected by the laws of this State, from an automobile, an airplane, a power-boat, a sailboat, any boat under sail, or any floating device towed by power-boat or sailboat. Any person violating any of the provisions of this article shall be deemed guilty of misdemeanor and upon conviction shall be fined in a sum of not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars.

Art. 902. Hunting with headlight.—It shall be unlawful for any person at any time of the year to hunt deer or any other animal or bird protected by this chapter, by the aid of what is commonly known as a headlight or hunting-lamp, or by artificial light attached to an automobile, or by the means of any form of artificial light. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars, or by confinement in the county jail for not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment. The possession of a headlight, or any other hunting light used on or about the head when hunting at night, between sunset and one-half hour before sunrise, by any person hunting in a community where deer are known to range, shall be prima facie evidence that the person found in possession of said headlight, or other hunting light, is violating the provisions of this article.

Art. 903. Boat owner to have license.—It is hereby declared unlawful for any person owning or navigating a sailboat or powerboat, to receive on board such boat for pay any person or persons engaged in hunting, before such person owning or navigating such boat shall have applied for and received a license from the Game, Fish, and Oyster Commissioner, or one of his deputies, granting him the right for one year, to receive and carry on his boat persons engaged in hunting. Before such license is issued, the person applying for it shall pay to the Game[,] Fish, and Oyster Commissioner or one of his deputies,

the sum of two ($2.00) dollars, and shall file with such Game, Fish and Oyster Commissioner, the name of his vessel, her accommodations for passengers, and the number of her crew and shall file with the Game, Fish and Oyster Commissioner, or one of his deputies, an affidavit to the effect that he will not violate any of the provisions of this chapter, and will endeavor to prevent anyone whom he carries on his boat from violating any of the provisions of this chapter, and that he will not carry any hunter on his boat who does not possess a hunting license. Whenever any boat owner or navigator fails or refuses to comply with any of the provisions of this section, the Game, Fish, and Oyster Commissioner is authorized and empowered to cancel his license without a refund or return of the license fee paid; and no license shall be renewed or issued to him thereafter for a period of one year.

Any person who carries out any hunting parties for reward or pay of any kind without first having procured his license, as provided in this article, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

Art. 904. Hunting with gun; license for.—No citizen of this State shall hunt outside of the county of his residence with a gun without first having procured from the Game, Fish and Oyster Commissioner, or one of his deputies, or from any county clerk in this State, a license to hunt, and for which he shall pay either of such officers the sum of two ($2.00) dollars; fifteen cents of which amount shall be retained by said officer as his fee for collecting.

The fee for a non-resident citizen or alien hunting license shall be twenty-five ($25.00) dollars; three ($3.00) dollars of such amount shall be retained by the officer issuing such license as his fee for collecting, issuing, and making report on license so issued and for remitting the remaining twenty-two ($22.00) dollars to the Game, Fish and Oyster Commission.

Any person hunting with a gun out of the county of his residence without a license authorizing him to hunt out of the county of his residence, or any person who fails or refuses on demand by any officer to show such officer his hunting license required of him by this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than ten ($10.00) dollars, nor more than one hundred ($100.00) dollars; provided, that the provisions of this article requiring hunting license shall not apply to persons under seventeen years of age.

Art. 904a. Non-resident and alien license.—Any non-resident of this State or any alien who shall hunt wild game and birds in this State without first securing a license to hunt from the Commissioner or his deputy or the county clerk shall be fined not less than ten nor more than one hundred dollars. [Acts 1919, p. 298.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repeals Acts 1919, 36th Leg., ch. 157, from which this article was taken. See note to article 871.

Art. 905. Commissioner to enforce game law.—The Game, Fish and Oyster Commissioner and his deputies shall have the same power and authority as sheriffs to serve criminal processes in connection with cases growing out of the violations of this chapter, shall have the same power as sheriffs to require aid in executing such process, and shall be entitled to receive the same fees as are provided by law for sheriffs in misdemeanor cases.

Said Commissioner or any of his deputies may arrest without a warrant any person found by them in the act of violating any of the laws for the protection and propagation of game, wild birds or fish, and take such person forthwith before a magistrate having jurisdiction. Such arrests may be made on Sunday, and in which case the person arrested shall be taken before a magistrate having jurisdiction, and proceeded against as soon as may be, on a week day following the arrest.

Art. 906. Deputy commissioners to enforce law.—It is hereby made a special duty of the Game, Fish and Oyster Commissioner to enforce the statutes of this State for the protection and preservation of wild game and wild birds; and to bring, or cause to be brought, actions and proceedings in the name of the State of Texas, to recover any and all fines and penalties provided for in the laws now in force, or which may hereafter be enacted, relating to wild game and wild birds. Said Game, Fish and Oyster Commissioner may make complaint and cause proceedings to be commenced against any person for violating any of the laws for the protection and propagation of game or birds without the sanction of the county attorney of the county in which such proceedings are commenced; and in such cases he shall not be required to furnish security for costs.

Art. 907. Prima-facie evidence.—The possession of any wild game bird, wild game fowl, or wild game animal mentioned in this chapter, whether dead or alive, during the time when killing or taking is prohibited shall be prima facie evidence of the guilt of the person in possession during the time when killing or taking is prohibited by law; provided, however, that it shall not be unlawful to ship or bring any wild game birds, wild fowl, or wild game animals from the Republic of Mexico into this State at any season; provided, that the party bringing the same into this State shall procure from the Game, Fish and Oyster Commissioner, or from one of his deputies, a permit to bring same into the State, and shall procure from the United States custom officer at the port of entry a statement showing that such game was brought from the Republic of Mexico; and provided, further, that such party comply with the provisions of this Act regulating the shipment and sale of such wild game birds, wild fowls, or game animals.

Art. 908. Hunting on game preserves for pay.—It is hereby declared unlawful for any person or persons, who may be acting as manager of any club, or the owner of any club, or shooting resort or shooting preserve, or lessor of premises leased for hunting purposes, to receive or accommodate as a guest or member of said club, or shooting resort, or shooting preserve, or lessee of premises leased for hunting purposes, for pay, any person or persons engaged in hunting, before such manager of such club, shooting resort, shooting preserve, or premises leased for hunting purposes, shall have applied for and received a license from the Game, Fish and Oyster Commissioner, or one of his deputies, granting him the right for the year beginning September 1 and ending August 31, following, to receive and accommodate any such person or persons at such club, shooting resort, shooting preserve, or premises leased for hunting purposes.

Before such license is issued the person applying for same shall pay to the Game, Fish and Oyster Commissioner the sum of five ($5.00) dollars, and shall file with the Game, Fish and Oyster Commissioner the name of said club, shooting resort, shooting preserve or premises leased for hunting purposes, and shall file with the Game, Fish and Oyster Commissioner an affidavit that he will not violate any of the provisions of this article and will endeavor to prevent guests of said club, shooting resort, shooting preserve, or premises leased for hunting purposes from doing so, and that no guest will be accommodated who has not previously secured a hunting license.

All such managers of clubs, shooting resorts, shooting preserves and premises leased for hunting purposes shall be required to keep a suitable record book, and each guest or member shall be required to register, showing his name and place of residence, license number, and a record of each day's kill of different birds and game, and a complete record must be made to the Game, Fish and Oyster Commissioner by such manager of club, shooting resort, shooting preserve or premises leased for hunting purposes, not later than February 10 of each year.

Whenever any manager of any club, shooting resort, shooting preserve or premises leased for hunting purposes, fails or refuses to comply with any of the provisions of this article, the Game, Fish and Oyster Commissioner is authorized and empowered to cancel his license without refund or return of the license fee, and no license shall be renewed or issued to such party, or parties, thereafter for a period of one year.

Any manager of any club, shooting resort, shooting preserve, or premises leased for hunting purposes, who accommodates hunters for reward, without first having secured the necessary license as provided in this article, or failing to comply with all the provisions thereof, shall be deemed guilty of a misdemeanor and upon conviction shall be fined the sum of not less than one hundred ($100.00) dollars, nor more than two hundred ($200.00) dollars, or by imprisonment in the county jail for not more than ninety (90) days, or by both such fine and imprisonment. Such fines shall be placed to the credit of the special game fund.

For the purpose of carrying out the provisions of this article, it shall be the duty of the Game, Fish and Oyster Commissioner to have prepared and to furnish to all deputy game commissioners blank license with stubs attached, numbered serially, such license to be called "Shooting Preserve License"; such shooting preserve license shall have printed across the face the year for which it is issued, shall bear the name and address of the licensee, name of club, character of game found on such preserve or lease, and the expiration date of such license. Said license must bear the seal of the Game, Fish and Oyster Commission, and must be signed by the Commissioner or one of his deputies. On the reverse side of said license shall be printed the open seasons and bag-limit, as provided in this chapter.

Art. 909. Storage after closed season.—All game birds, wild fowl, and game animals, named in this chapter, killed during the open season prescribed therefor, may be possessed during and for an additional ten days after such season is closed. But it shall be unlawful, after such ten days, to place in storage or keep in storage any wild birds, or wild game animals, or parts thereof, named in this chapter. Any person owning or claiming such birds, fowl, or animals, or parts thereof, after such ten days, or any person storing such birds, fowl, or animals, or parts thereof, for such claimant or owner, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum of not les [less] than ten ($10.00) dollars, nor more than one hundred ($100.00) dollars, and each bird, fowl or animal, or part thereof, stored in violation of this section shall constitute a separate offense.

Art. 910. Female deer, fawn or young buck.—It shall be unlawful for any person to take, kill, wound, shoot at, hunt or possess, dead or alive, any wild female deer, wild fawn deer or any wild buck deer without a pronged horn, or to possess any deer carcass or green deer hide with all evidence of sex removed.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than fifty ($50.00) dollars, nor more than two hundred ($200.00) dollars.

Art. 911. Chief deputy to act as commissioner.—The Game, Fish and Oyster Commissioner shall appoint a chief deputy commissioner, who shall maintain an office in the Capitol of this State; and said chief deputy commissioner shall take the constitutional oath of office, and shall act as general assistant to the said Game, Fish and Oyster Commissioner; and, during the absence, sickness, or disability of the commissioner, he shall exercise the duties of the said commissioner. Said chief deputy commissioner shall devote his entire time to the work of his office. The chief deputy game, fish and oyster commissioner shall, before assuming the duties of his office, file with the Secretary of State a good and sufficient bond in the sum of five thousand ($5,000.00) dollars, conditioned on the faithful performance of the duties of his office, which bond shall be approved by the Game, Fish and Oyster Commissioner. It shall be the duty of the chief deputy game, fish and oyster commissioner to prepare and furnish to each county clerk, blank hunting licenses, with stubs attached, numbered serially; and said chief deputy commissioner shall cause an account to be opened in his office with each county clerk, and charge said clerk with the number of licenses furnished him. He shall also open an account with each deputy of the Game, Fish and Oyster Commission and charge such deputy with the number of licenses furnished him. Said accounts shall show the serial numbers of such licenses.

Art. 912. Clerk and justice of the peace to remit fines.—It shall be the duty of any justice of the peace, clerk of any court, or any other officer of this State, receivng [receiving] any fine or penalty imposed by any court for violation of any of the laws of this State pertaining to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters, and other wild life, within ten days from and after the receipt or collection of such fine or penalty, to remit same to the Game, Fish and Oyster Commission at Austin, giving docket number of case, name of person fined, and section or article of the law under which conviction was secured, when such laws are required to be enforced by the Game, Fish and Oyster Commission.

Art. 913. Propagation and scientific purposes.—Nothing in this Act shall prevent the capture, by any means and at any time, day or night, of wild birds or wild fowl and their nests and eggs, or of wild animals or wild quadrupeds, for zoological gardens or parks, or for propagation purposes, or for scientific purposes; but, before any birds, fowl, animals, quadrupeds, nests, or eggs are taken or molested for the aforesaid purposes, permission must be secured from the Game, Fish and Oyster Commissioner, only, by the person desiring so to operate, such person shall make application in the form of an affidavit, in duplicate, setting forth what birds, fowls, animals, quadrupeds, nests, or eggs he desires, and the purposes for which he desires the same; and if such request is for collection of skins, nests, or eggs, for scientific purposes, such application should be accompanied by certificates from two well known ornithologists (where the specimens are birds or their nests or eggs) or mammalogists (where the specimens are animals or quadrupeds) residents of the United States, stating that the applicant is a fit person to be entrusted with such a permit and that they have known him for at least five years past, and the applicant should further be supplied with a Federal scientific collecting permit issued by the Bureau of Biological Survey of the United States Department of Agriculture, permitting him or her to collect migratory birds, and the serial number and date of said Federal permit should be furnished by the applicant on said affidavit, where request is made for the collecting of birds and their nests or eggs. Such scientific collecting permit as issued by the State of Texas will authorize the holder thereof to take, possess, and transport, in any manner and at any time, birds and their nests and eggs, for scientific purposes; provided, that before migratory birds, or their nests or eggs, are taken the Federal permit indicated above must be obtained. Such scientific permit shall be issued for the fiscal year and shall be null and void after midnight of December 31st of the year issued.

If any person desires to bring into the State any wild birds or wild animals, dead or alive, or the nests or eggs, of any bird, he shall apply to the Game, Fish and Oyster Commissioner, for permission to do so, attaching to such application an affidavit setting forth the number and species of birds or animals, or the nests or eggs of birds, desired to be introduced.

The Game, Fish and Oyster Commissioner may refuse to issue permits for any of the purposes set

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

forth in this article if, in his judgment, such application, or party making same, is not satisfactory.

The Game, Fish and Oyster Commissioner is empowered to prescribe rules and regulations governing the propagation of game birds and animals, and the taking of birds and animals for scientific purposes, and is authorized to cancel any permit issued, when, in his judgment, the holder thereof fails or refuses to comply with such rules and regulations.

In the shipment of skins of protected animals, or the skins or nests or eggs of birds, each package shall have clearly and conspicuously marked, on the outside thereof, the name and address of the sender, the number of the sender's permit, and the statement that it contains specimens of animals, or of birds or their nests or eggs for scientific purposes. A person operating under, or holding a permit for scientific collecting shall report, on or before January 10th, following the expiration of his permit, to the Game, Fish and Oyster Commissioner, the number of skins, nests or eggs of each species collected, or transported, together with the disposition of all such specimens not in his possession at the time of making said report, and also a statement covering any scientific data observed during his field collecting that, in his judgment, would be of interest to the ornithological or zoological public.

The Game, Fish and Oyster Commissioner shall, at all times have the power to take in any manner, keep, and transport, anywhere within the State, any of the wild birds or their nests or eggs, or any wild animals, for investigation, propagation, distribution, or scientific purposes.

Any person violating any provision of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars; and each bird, fowl, animal, quadruped, nest, or egg, taken or possessed in violation of this article shall constitute a separate offense.

Art. 914. Special deputy game commissioners.—It shall be the duty of the Game, Fish and Oyster Commissioner to appoint special deputy game commissioners, who shall be ex officio deputy game, fish and oyster commissioners to enforce conservation laws in the various districts of the State, with all the powers of the latter to enforce the game, fish and oyster laws of this State. Such special deputy game commissioners shall not receive more than one hundred and fifty ($150.00) dollars per month and expenses. Each special deputy game commissioner shall take the oath of office, and shall give a good and sufficient bond in the sum of one thousand ($1,000.00) dollars for the faithful performance of his duties, such bond to be approved by and filed with the Game, Fish and Oyster Commissioner. Such special deputy game commissioners shall hold office at the discretion of the Game, Fish and Oyster Commissioner, and shall have all the power[s] in the discharge of their duties as are conferred on the Game, Fish and Oyster Commissioner.

The Game, Fish and Oyster Commissioner, in order to enforce conservation laws in the various sections of the State, shall also have the power to appoint deputy game commissioners in any county of the State; and said deputies shall have, in the discharge of their duties, the same powers and authority as are herein provided for the Game, Fish and Oyster Commissioner, and shall be subject to the supervision and control of and removal by said Game, Fish and Oyster Commissioner; except that they shall not be authorized to carry on or about their person, saddle, or saddle-bags any pistol, dirk, dagger, slung-shot, sword-cane, spear or knuckles made of any metal or any hard substance, Bowie knife or other knife manufactured or sold for the purpose of offense or defense. Such deputy game commissioners shall not receive more than three ($3.00) dollars a day for each day of service performed, together with all necessary expenses incurred, when same have been rendered on sworn account, and when the performance of said services was authorized by the Game, Fish and Oyster Commissioner, the chief deputy commissioner, or a special deputy game commissioner, which account shall be approved by the Game, Fish and Oyster Commissioner or chief deputy commissioner, and paid on warrant drawn by the Comptroller.

Art. 915. Season for turkeys.—The open season for killing wild turkeys shall be during November and December. Whoever kills wild turkey hen, or more than three wild turkey gobblers during any one year shall be fined not less than ten nor more than one hundred dollars. Each gobbler killed above three shall be a separate offense.

Art. 915a. Special deputy commissioners required to enforce game law.—All special deputy game commissioners and deputy game commissioners are hereby empowered and required to enforce the game, fish and oyster laws of this State, and such deputy who violates such laws shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum of not less than one hundred ($100.00) dollars nor more than two hundred ($200.00) dollars.

Art. 916. Killing turkeys in certain counties.—It shall be unlawful for any person to take, kill, wound, shoot at, hunt for, or possess, dead or alive any wild turkey gobbler, or turkey hen in the counties of Cameron, Hidalgo, Star, Willacy, Kennedy, Brooks, Kleburg, or Nueces until November 16, 1930, from and after which time it shall be lawful to kill only turkey gobblers as herein provided in this bill.

Art. 917. Game preserves—how acquired.—Any person, firm or corporation owning and in possession of lands in the State of Texas, may transfer by an instrument of writing, duly acknowledged before an officer, authorized under the laws of this State to take acknowledgments, to the State of Texas the right to preserve, protect and introduce for propagation purposes any of the game birds or game animals mentioned in this chapter on the lands mentioned therein, for a period of not less than ten years. Such instrument of writing shall be filed in the office of the Game, Fish and Oyster Commissioner, whereupon the Game, Fish and Oyster Commissioner may at his discretion declare the lands described in said instrument a State Game Preserve, and thereafter for the period named therein shall for all the purposes relating to the preservation, protection and propogation [propagation] of game birds and game animals be under the control of the Game, Fish and Oyster Commissioner. The aggregate acreage of all preserves which may be designated in any one county shall never exceed ten per cent of the total acreage of such county. Such preserves shall be numbered in the order of the filing of the instrument therefor. The Game, Fish and Oyster Commissioner shall cause notices to be prepared containing the words "State Game Preserve," "Trespassing Prohibited," and cause such notices to be posted at each gate or entrance thereto. All State game preserves established under the provisions of this chapter shall for all purposes of preservation, protection and propagation of game birds and game animals thereon be under the control and management of the Game, Fish and Oyster Commissioner, and he and his deputies may at all times enter in and upon such preserves in the performance of their duties.

It shall be unlawful for any person to hunt, pursue, shoot at, kill, take, destroy, or in any manner molest any of the game birds or game animals within the exterior boundaries of any game preserve, and any person who shall violate any provision of this chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars.

Art. 918. Cautioning sportsmen.—It shall be the duty of the Game, Fish and Oyster Commissioner and his deputies, in addition to their duties provided for in this chapter, to caution sportsmen and other persons while in the woods, marshes, or prairies of the State of danger from fire; and, to the extent of their power, to extinguish all fires left burning

by any one, and to give notice, when possible to any and all persons, interested, of fires ranging beyond control to the end that same may be controlled and extinguished.

Art. 919. Power of commissioners to enter on lands.—The Game, Fish and Oyster Commissioner and his deputies shall at all times have the power to enter upon any lands or water where wild game or fish are known to range or stray for the purpose of enforcing the game, and fish laws of this State, and for the purpose of making scientific investigations or for research work as to such wild game or fish, and no action in any court shall be sustained against the commissioner or any of his deputies to prevent their entrance upon lands or waters when acting in their official capacity as herein set forth.

Art. 920. Citizen, non-resident and alien defined.—For the purpose of this chapter, any person, except an alien, who has been a bona fide resident of this State for a period of time exceeding six months, continuously and immediately before applying for a hunting license, shall be considered a citizen of this State.

An alien is any person who is not a natural born citizen of the United States of America, and who has not declared his intention to become a citizen of the United States of America.

A non-resident shall be any person who is a citizen of any other State, or who has not continuously or immediately previous to the time of applying for a hunting license, been a bona-fide resident of the State of Texas, for a period of time more than six months.

Art. 921. Constitutionality.—If any paragraph, section, or part of this chapter shall be held unconstitutional or inoperative, it shall not affect any other paragraph, section, or part of this chapter; and the remainder of this chapter, save the part declared unconstitutional or inoperative, shall continue to be in full force and effect.

Art. 922. Name of bill.—This bill shall be known as the "Boyd-Hubby Game Bill" and shall take effect and be in force from and after September 1, 1925.

Art. 923. Killing birds in closed season.—No person shall kill or take any of the birds or fowls enumerated in Article 872 except during the open season as fixed for each kind of bird or fowl, and if any person shall kill, take or have in his possession, any of the birds or fowls enumerated in Article 872 at any time of the year except during the open season as provided for in this chapter, he shall be fined not less than ten nor more than one hundred dollars. [Acts 1919, p. 290, Sec. 9.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repeals Acts 1919, 36th Leg., ch. 157, from which this article was taken. See note to article 871.

Art. 923a. Importing game in closed season.—It shall be unlawful to bring into this State for any purpose whatever during the closed season, either alive or dead, any kind of wild game birds or fowl or animal, enumerated in this chapter, or to bring into this State for sale or exchange or barter or shipment for sale any such bird or fowl or animal, during the open season as set out in this chapter except as provided in article 908. Any person bringing such game, bird or fowl or animal into the State during the closed season or bringing such game bird or fowl or animal for sale or barter or shipment for sale during the open season, shall be fined not less than ten nor more than two hundred dollars. The bringing in of each game bird or fowl or animal herein interdicted is a separate offense. [Acts C. S. 1919, p. 187.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repealed Acts 1919, 2nd C. S., ch. 72, from which this act was taken. See note to article 871.

Art. 923b. Protecting bats.—Whoever wilfully kills or in any manner injures any winged mammal known as the common bat shall be fined not less than five nor more than fifteen dollars. [Acts 1907, p. 124.]

Art. 923c. Birds protected by Audubon Society.—After the recording of the lease made by the Commissioner of the General Land Office to the National Association of Audubon Societies for the purpose of protecting birds and bird life on and about the property leased in Kleberg County, known as North Bird Island and South Bird Island and on Green Island in Cameron County and on the group of three islands in Big Bay in Cameron County and on the flats and reefs and shallow waters near all of said islands as described in the laws of this State, it shall be unlawful for any person whomsoever except a representative, an agent or an employé of said Association or a peace officer of this State or of the United States to enter upon such leased area without the knowledge and consent of said association, for the purpose of catching or killing any bird or birds or for the purpose of taking any bird or bird eggs or to destroy any bird nests or bird eggs; it shall be unlawful for any person whomsoever to catch, kill or maim any bird or birds on such leased area or to catch, kill or maim or attempt to catch, kill or maim any bird or birds on or above said area by any means whatsoever even though such person may be above or outside of such leased area; it shall be unlawful for any person whomsoever to discharge any firearms or other explosive on or above such leased area; or to land, tie or anchor any fishing boat within such leased area. Nothing herein shall be construed to prohibit any representative, agent or employé of said Association from catching, killing or destroying within any such leased area any bird or birds, and any animals that may be known to prey upon bird life or bird eggs nor to prohibit such representatives, agent or employé from taking bird eggs and catching any bird for propagation or conservation or scientific purposes only, nor to prohibit persons from taking refuge on such area on account of storms. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than five hundred dollars, or be imprisoned in jail for not less than ten days nor more than six months, or both. [Acts 1st C. C. [S.] 1921, p. 33, Acts 1923. p. 188.]

Art. 923d. Refusing to stop vehicle for search.—The Commissioner or any of his deputies shall have the right to search the game bag or any other receptacle of any kind whenever such Commissioner or his deputy has reason to suspect that such game bag, or other receptacle or any buggy, wagon, automobile or other vehicle may contain game unlawfully killed or taken, and any person who refuses to permit the searching of the same, or who refuses to stop such vehicle when requested to do so by the Commissioner or his deputy, shall be fined not less than ten nor more than one hundred dollars. [Acts 1919, p. 294.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47 repealed Acts 1919, 36th Leg., ch. 157, from which this article is taken. See note to article 871.

Art. 923e. Buying for evidence.—One who buys, for the purpose of establishing testimony, a game bird or animal the sale of which is prohibited by this chapter shall not be prosecuted for such purchase. [Acts 1919, p. 296.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47 repealed Acts 1919, 36th Leg., ch. 157, from which this article is taken. See note to article 871.

Art. 923(g) [889a] Using deer call.—Any person who at any time of the year in hunting deer uses a deer-call, whistle, decoy, call pipe, reed or other device, mechanical or natural, for the purpose of calling or attracting any deer, except by rattling deer horns, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail not less than twenty nor more than ninety days, or both. [Acts 1915, p. 162, Acts 1919, p. 295.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47 repealed Acts 1919, 36th Leg., ch. 157, from which this article is taken. See note to article 871.

Art. 923f. Shipping deer.—Whoever ships any deer or any part thereof by common carrier without

the person shipping it making the affidavit prescribed in Article 889, and whoever ships or receives for shipment as the agent of any transportation company any deer or any part thereof, shall be fined not less than ten nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 190.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47 repealed Acts 1919 36th Leg., 2nd C. S., ch. 72, from which this article was taken. See note to article 871.

Art. 923g. Deer in Bosque County.—For a period of five years after June 12, 1923, whoever shall hunt, trap, ensnare or kill any wild deer within Bosque County shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1923, p. 115.]

Art. 923h. Sale or purchase of game.—Whoever shall sell or offer for sale, or have in his possession for the purpose of sale, or whoever shall purchase or have in his possession after purchase, any wild deer, wild antelope or Rocky Mountain sheep, killed in this State, or the carcass, hide or antlers of any such animal, shall be fined not less than ten nor more than one hundred dollars. [Acts 1911, p. 101.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repealed Penal Code 1911, art. 882, from which this article is taken. See note to article 871.

Art. 923i. Liberty County squirrels.—Whoever shall ship or cause to be shipped beyond the limits of Liberty County, or any agent or employé of any express or railroad company or other common carrier who receives for the purpose of transportation, or who shall transport, carry or take beyond the limits of said county, any wild squirrels, shall be fined not less than ten nor more than one hundred dollars.

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, apparently repealed the above article. See note to article 871.

Art. 923k. [876] Montgomery County squirrels.—Whoever sells or offers for sale or ships for sale in Montgomery County any squirrels shall be fined not less than twenty-five nor more than one hundred dollars. [Act 1909, p. 117.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, apparently repealed the above article. See note to article 871.

Art. 923*l*. Killing squirrels prohibited.—Whoever kills any squirrels in the counties of Angelina, Cherokee, Hardin, Liberty, Nacogdoches, Dallas, Rockwall, Tyler, Jefferson, Orange, Jasper, or Newton during the months of January to July inclusive, or kills more than five squirrels in any one day during any other month in any of said counties shall be fined not to exceed fifty dollars. [Acts 1917, 3rd C. S., p. 69.]

Acts 1925, 39th Leg., ch. 172, p. 387, § 47, repealed Acts 1917, 35th Leg., 3d C. S., ch. 8, from which this article was taken. See note to article 871.

Art. 923*ll*. Hardin county squirrels.—Sec. 1. That from and after the passage of this Act it shall be unlawful for anyone to kill squirrels in Hardin County, Texas, during the months of February 1st to October 15th, inclusive.

Sec. 2. That during the other months of the year it shall be unlawful for anyone to kill more than ten squirrels in any one day.

Sec. 3. Every person violating any of the provisions of this Act shall upon conviction be punished by a fine of not less than ten dollars or more than one hundred dollars. [Acts 1927, 40th Leg., 1st C. S., p. 137, ch. 45.]

Art. 923m. Fur bearing animals defined.—All the fur-bearing animals of this State are hereby declared to be the property of the people of this State. For the purposes of this Act, wild beaver, wild otter, wild mink, wild ring-tail cat, wild badger, wild polecat or skunk, wild raccoon, wild muskrat, wild o'possum, wild fox and wild civet cat are hereby declared to be fur-bearing animals. [Acts 1925, 39th Leg., ch. 177, p. 434, § 1.]

Art. 923mm. Trapper defined.—The term trapper as used under the provisions of this Act is any person who traps, kills or takes any of the animals or pelts thereof, herein mentioned, for the purpose of sale or barter. [Acts 1925, 39th Leg., ch. 177, p. 434, § 2.]

Art. 923n. Trapping license.—All residents, non-residents, and alien trappers desiring to trap, kill or take any of the wild fur-bearing animals or the pelts thereof mentioned in Section 1, of this Act, for sale or barter, shall procure a license to do so, as hereinafter provided, and any person who fails to procure such license as herein provided for, shall be deemed guilty of a misdemeanor; which license shall expire February 15th after date of issuance and shall entitle the holder to trap or take any of the fur-bearing animals or the pelts thereof, mentioned in Section 1 of this Act, for sale or barter, during the season when it is lawful to do so; which license shall state the residence, age, height, weight, color of hair and color of eyes of the license [licensee]. The fee for each resident license shall be one dollar ($1.00), ten cents of which shall be retained by the officer issuing and reporting the same as his commission. The fee for a non-resident or an alien license shall be fifty dollars ($50.00) for each county in which said alien or non-resident shall take, kill or trap such animals, five dolars [dollars] of which shall be retained by the officer issuing and reporting the same, as his commission. [Acts 1925, 39th Leg., ch. 177, p. 435, § 3.]

Art. 923nn. Resident trapper; nonresident trapper; alien trapper; definitions.—For the purposes of this Act a resident trapper of this State is any person who has been a bona fide resident of this State for a period of time exceeding twelve months continuously and immediately before applying for a trapper's license. A non-resident is any person who is a citizen of any other State of the United States of America or who has not continuously and immediately preceding the time of applying for a trapper's license been a bona fide resident of the State of Texas for a period of twelve months. An alien is any person who is not a natural born American citizen or who has not received the final naturalization papers of United States citizenship. [Acts 1925, 39th Leg., ch. 177, p. 435, § 4.]

Art. 923*o*. Trapping license; commissioner to provide forms.—The Game, Fish and Oyster Commissioner shall cause to be printed blank trapper's license which shall contain the requirements as provided for in Section 3 of this Act, and shall distribute the same to his deputies and to various county clerks of the State of Texas, taking their receipts therefor by members and quantity, and it is hereby declared to be the duty of the Game, Fish and Oyster Commissioner, his deputies, and the county clerks of this State to issue licenses as provided in this Act, and to make reports and remittances therefor, which reports and remittances shall be made during the first week of the month, succeeding such sale. [Acts 1925, 39th Leg., ch. 177, p. 435, § 5.]

Art. 923*oo*. License not required for tenants and owners.—Owners and tenants and their children who are residents, as defined in this Act, shall have the right to kill or take from their premises any of the fur-bearing animals or pelts thereof for sale or barter during the time when it is lawful to do so, without procuring a trapper's license. [Acts 1925, 39th Leg., ch. 177, p. 435, § 6.]

Art. 923p. Tenant defined.—The term tenant as herein used shall mean any person who has resided on the land they occupy for a period in excess of twelve months continuously and who shall have the same rented or leased for agricultural or grazing purposes. [Acts 1925, 39th Leg., ch. 177, p. 435, § 7.]

Art. 923pp. Beaver, otter, and fox protected.—It shall be unlawful for any person to kill, take or have in his possession for barter or sale within a period of ten years after the passage of this Act any wild beaver, wild otter or wild fox or the pelts thereof. Provided that this section shall not apply to wild fox in that portion of West Texas lying north and west of a line starting at the mouth of the San Antonio River where it empties into the Corpus Christi Bay; thence following the meanders of the said San Antonio River northerly to the mouth of the Cibolo River where same empties into the San Antonio River;

thence following said Cibolo River northerly to the northwest line of Guadalupe County, the boundary between Guadalupe and Comal Counties; thence easterly with the north boundary line of Guadalupe, Caldwell, Bastrop, Lee, Burleson and Brazos Counties to the Brazos River; thence following the meanders of the Brazos River north to the intersection of the east boundary line of Young County; thence north along the west boundary line of Jack and Clay Counties to the Red River; provided that the Counties of Hays, Milam and Williamson shall be exempted from the provisions of this bill applying to the territory west of the boundary line herein set out and shall be in and under the full effects of the law applicable to the territory east of said division line; provided that it shall be unlawful to take, hunt, capture or kill, or attempt to hunt, capture or kill any wild game or wild animals by means of traps or any other mechanical device within the limits of Limestone County for a period of five years from and after the passage of this Act.

Provided that in Young County, it shall be unlawful for any person to kill, take or have in his possession for barter or sale within a period of ten years after the passage of this Act any wild beaver, wild otter or wild fox or the pelts thereof. [Acts 1925, 39th Leg., p. 436, ch. 177, § 8; Acts 1927, 40th Leg., p. 49, ch. 35, § 1; Acts 1927, 40th Leg., 1st C. S., p. 102, ch. 34, § 1.]

Art. 923q. Fur bearing animals; closed season.—It shall be unlawful for any person to kill, or take for sale or barter any of the wild fur-bearing animals, muskrats excepted, or other pelts permitted to be killed or taken by this Act, for sale or barter, between the fifteenth day of February and the thirteenth day of November, of any year, both days included, in the closed season. The prohibited or closed season on muskrats shall be from March 15th to November 15th. [Acts 1925, 39th Leg., ch. 177, p. 436, § 9.]

Art. 923q1. Five years closed season in Cass County.—Sec. 1. That for five years from and after the passage of this Act, it shall be illegal for any person to take or trap by means of any snare, dead-fall or steel trap, any fur-bearing animal within the territorial limits of Cass County.

Sec. 2. That whosoever shall violate the provisions of this Act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars and not more than two hundred dollars, provided that each animal so taken or trapped shall constitute a separate offense. [Acts 1927, 40th Leg., p. 234, ch. 160.]

Art. 923qq. Fund for enforcement.—All moneys collected from the fines and penalties for the violation of this Act, and all moneys collected from the sale of trapper's licenses shall belong to the special game fund of this State, and shall be paid over by the Game, Fish and Oyster Commissioner to the Treasurer of the State during the first week of each month, and shall be credited to such special game fund for the enforcement of this Act and the game laws in general, provided county attorneys shall receive ten per centum and officers making collection five per centum of any fines or fine assessed for violation of this Act. [Acts 1925, 39th Leg., ch. 177, p. 436, § 10.]

Art. 923r. Trapping without owner's consent prohibited.—It shall be unlawful for any person to trap, or set any trap or deadfall on the inclosed lands of another without the consent or permission of the owner of said land. [Acts 1925, 39th Leg., ch. 177, p. 436, § 11.]

Art. 923rr. Possession of muskrats on posted or inclosed lands.—It shall be unlawful for any person, at any time, to trap or kill upon the posted or inclosed lands of another, or be in possession of a muskrat or the hide of such animal, without the consent of the owner or lessee of such lands to trap thereon, provided that such person may, in relief against this provision, show a rightful, legal possession of such muskrats or the hides of such animals. [Acts 1925, 39th Leg., ch. 177, p. 436, § 12.]

Art. 923s. Molesting muskrat beds and nests.—It shall be unlawful for any person to destroy the beds, nests or breeding places of any muskrat or muskrats, or to take or kill any of such animals except by trapping; provided, however, that any person shall have the right to kill such animal upon his own premises at any time or by any means. [Acts 1925, 39th Leg., ch. 177, p. 436, § 13.]

Art. 923ss. Purchase of muskrats trapped on lands of another.—It shall be unlawful for any person to purchase the hide or furs of muskrats on the land of another, taken or trapped on the land of another, from any person other than the owner of such land or the duly authorized agent of such owner. [Acts 1925, 39th Leg., ch. 177, p. 436, § 14.]

Art. 923t. Inclosed lands defined.—By inclosed land is meant any land inclosed by a fence or fences, or by water, or partly by fence and partly by water, or by any barrier, natural or artificial, that is used by owners as methods or means of inclosure. [Acts 1925, 39th Leg., ch. 177, p. 436, § 15.]

Art. 923tt. Posted land defined.—Posted land within the meaning of this Act shall have signs at the gate or gates and at any streams entering said inclosure reading "Posted" in a conspicuous place, shall be deemed posted within the meaning of this Act. [Acts 1925, 39th Leg., ch. 177, p. 436, § 16.]

Art. 923u. Refusal to carry and exhibit license to officer.—Any person required to procure a license under this Act and who fails to carry said license on his person when trapping, killing or taking any of the fur-bearing animals or the pelts thereof for sale or barter, or who fails or refuses to exhibit the same to any officer authorized to enforce the laws of this State, or who uses the license of another or permits another to use his license shall be deemed guilty of a misdemeanor. [Acts 1925, 39th Leg., ch. 177, p. 436, § 17.]

Art. 923uu. Trapping license required.—It shall be unlawful for any person required by this Act to procure a trapper's license to kill or take any of the fur-bearing animals or the pelts thereof mentioned in this Act, for the purpose of sale or barter, without having procured a license to do so, as required by Section 3 of this Act. [Acts 1925, 39th Leg., ch. 177, p. 437, § 18.]

Art. 923v. Commissioner to enforce.—It shall be the duty of the Game, Fish and Oyster Commissioner and his deputies to enforce the provisions of this Act. [Acts 1925, 39th Leg., ch. 177, p. 437, § 19.]

Art. 923vv. Penalty.—Every person violating any of the provisions of this Act shall, upon conviction, be punished by a fine of not less than ten dollars nor more than one hundred dollars. [Acts 1925, 39th Leg., ch. 177, p. 437, § 20.]

Art. 923w. Repeal of conflicting laws.—That all laws and parts of laws in conflict herewith be and the same are hereby repealed. [Acts 1925, 39th Leg., ch. 177, p. 437, § 21.]

Art. 923ww. Partial invalidity.—If any section of this bill shall be held unconstitutional, it shall not affect any other section of this bill, and all sections save the one that may be declared unconstitutional shall continue to be in full force and effect. [Acts 1925, 39th Leg., ch. 177, p. 437, § 22.]

Art. 924. Explosives and poisons.—The catching, taking or the attempt to catch or take any fish, green turtle or terrapin in any of the salt or fresh waters, lakes or streams in the State by poison, lime, dynamite, nitroglycerine, giant powder or other explosive, or by the use of drugs, substances, or things deleterious to fish life, is hereby prohibited; and any person offending against this article shall be deemed guilty of a misdemeanor and upon conviction shal [shall] be fined not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars, and by confinement in the county jail not less than thirty nor more than ninety days.

Art. 925. [870] Taking fish without consent of owner.—Whoever shall take, catch, ensnare or trap any fish by means of nets or seines or by poisoning,

polluting, or by use of any explosive, or by muddying, ditching or draining in any lake, pool or pond in any county in this State without the consent of the owner of such lake, pool, or pond, shall be fined not less than ten nor more than one hundred dollars. In prosecutions hereunder the burden to prove such consent shall be upon the defendant. [Acts 2nd C. S. 1919, p. 191.]

Art. 926. Fresh water streams defined.—For the purpose of establishing the dividing line between the salt and fresh waters of this State, in so far as it pertains to the fishing laws, all fresh water rivers and streams in this State, and all lakes, lagoons, and bodies of rivers, except tidal bays or coastal waters, such as bays and gulfs, shall be and are hereby declared to be fresh water streams and rivers to their mouths, and it shall be unlawful to set nets or drag seines or fish in other ways in such streams, rivers and their connecting lakes, lagoons, and bodies of water mentioned, except in conformity with the laws enacted to govern, apply and control in fresh water fishing.

Art. 927. [923f] Fishing in fresh waters.—Except the ordinary hook and line or trot line, or a set or drag net or seine, the meshes of which shall be three or more inches square, or a minnow seine not more than twenty feet long used for catching bait, no person shall place in any fresh water river, creek, lake, bayou, pool, lagoon or tank, in this State, any net, trap or other device for catching fish, or take or catch any fish from said waters with any net, seine, device, or hook and line or trot line, other than as permitted herein. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 1913, p. 274, Acts 1917, p. 410, Acts 2nd C. S. 1919, p. 210.]

Art. 928. Fishing in closed fresh waters.—The commissioner is authorized to close any fresh water river, creek, lake, pool, bayou, lagoon or tank in this State, against the use of nets or seines or any particular kind of such nets and seines whenever he thinks that such closing is necessary or best to protect and conserve the fish in such waters. Before closing such waters against the use of seines or nets or any particular kind of seine or net, he shall give notice by posting his intentions for two weeks, at not less than three stores or other places in proximity to such waters. Whoever shall fish with a net or seine in such closed waters, or who shall use such particular kind of net or seine as forbidden in such waters after the notice given as above required, shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 210.]

Art. 929. Oversize or undersize fish for sale.—It shall be unlawful for any person to sell, or offer for sale, or to have in his possession, or to have on board any boat or to have in any mercantile business establishment, or in any market where merchandise is disposed of, any redfish or channel bass of greater length than thirty-two inches, or less than fourteen inches; any salt water or speckled sea trout of less length than twelve inches; any sheephead of less than nine inches in length; any flounder of less than twelve inches in length; any pompano of less than nine inches in length; any mackerel of less than fourteen inches in length, and any salt water gafftopsail of less than eleven inches in length.

The place of sale or offering for sale or possession shall for the purpose of this chapter to establish venue, be either the place from which such fish are shipped, or where the fish are found, or offered for sale. It shall be unlawful in selling or offering for sale any fish mentioned in this article to sever the head from the body, except in case of the redfish and catfish in which case the head shall only be severed through the gill-cavity and the gill-fins shall remain on the body of such redfish or catfish. Such headless body of a redfish shall not measure more than twenty-seven inches in length, and such headless body of a catfish shall not measure less than eight inches in length; and all fish marketed or sold as mentioned in this article, must be weighed and sold with the head attached, except redfish and catfish as mentioned herein.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum not less than ten ($10.00) dollars nor more than fifty ($50.00) dollars.

Art. 930. Venue for under or oversize fish.—A prosecution for a sale of fish of unlawful size may be begun and carried on either in the county where such fish were shipped or in the county where they were received or offered for sale, or in any county through which such shipments may pass. [Acts 2nd C. S. 1919, p. 211.]

Art. 931. Undersize bass, etc.—Whoever shall take or catch from the fresh waters of this State, or have in his possession any bass of less length than eleven inches or any white perch or crappie of less length than seven inches shall be fined not less than ten nor more than one hundred dollars. [Id.]

Art. 932. Injuring small fish.—Whoever at any time shall catch or take from any fresh water river, lake, bayou, creek, pond, or other natural or artificial stream or pond of water by use of any means whatever any crappie or bass of less length than he is permitted to catch or take from such water, shall immediately return the fish back into such water; and unnecessary injuring of such fish shall be an offense under this article. Whoever violates any provision hereof shall be fined not exceeding one hundred dollars. [Acts 3rd C. S. 1917, p. 69, Acts 4th C. S. 1918, p. 188.]

Art. 933. Closed season on crappie or bass.—Any person who shall take or catch or have in possession any bass or crappie from the fresh waters of this State during the months of March or April of any year; or shall take, catch or have in possession any bass of less length than eleven inches, or any white perch or crappie of less length than seven inches, shall be deemed guilty of a misdemeanor, and on conviction shall be fined a sum of not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars.

Art. 933a. Sale of bass and crappie prohibited.—It shall be unlawful for any person, firm or corporation, or their agents, to buy or sell, or offer for sale, or offer to buy, or have in his or their possession for sale, or to carry, transport or ship for the purpose of sale, barter or exchange, any fresh water crappie or bass within the State of Texas.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum not exceeding one hundred dollars, and each sale or shipment or act in violation hereof shall constitute a separate offense. [Acts 1925, 39th Leg., ch. 178, p. 447, § 4.]

Art. 933½. Rainbow trout; protected for two years.—It shall be unlawful for any person to take, possess, sell or barter any rainbow trout from any of the fresh waters of Texas for a period of two years from and after the passage of this Act. [Acts 1925, 39th Leg., ch. 163, p. 374, § 1.]

Art. 933½a. Same; closed season after expiration of two years.—From and after the expiration of the closed season on rainbow trout as provided in Section 1 of this Act, it shall be unlawful for any person to take, possess, sell or barter any rainbow trout from any of the fresh waters of Texas during the months of January, February, March, April and May of each year, which months shall constitute a closed season on rainbow trout. [Acts 1925, 39th Leg., ch. 163, p. 374, § 2.]

Art. 933½b. Same; size limit.—It is hereby made unlawful for any person to take or have in his or her possession any rainbow trout from any of the fresh waters of Texas, of a less length than fourteen inches, or to take and have in his or her possession more than five rainbow trout during any one day. [Acts 1925, 39th Leg., ch. 163, p. 374, § 3.]

Art. 933½c. Same; sale prohibited.—It is hereby made unlawful for any person to sell, barter, or offer for sale or barter any rainbow trout taken from any of the fresh waters of Texas. [Acts 1925, 39th Leg., ch. 163, p. 374, § 4.]

Art. 933½d. Same; penalty.—Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than ten dollars ($10.00) nor more than fifty dollars ($50.00). [Acts 1925, 39th Leg., ch. 163, p. 375, § 5.]

Art. 934. [908] [529d] License to fish for market.—Whoever fishes in the public waters of this State for oysters, fish, shrimp, turtle, terrapin, crabs, clams or other marine life for market or sells such product of such waters without first procuring a license to do so, as provided by law, shall be fined not less than ten nor more than fifty dollars. [Acts 1895, p. 173, Acts 1897, p. 126; Acts 1913, p. 270, Acts 2nd C. S. 1919, p. 200, Acts 1923, p. 295.]

Art. 935. Refusal to show license.—Any person fishing for market or for the sale of marine life and having a license therefor who refuses to show it to the Commissioner, or his deputy when requested to do so, shall be fined not less than five nor more than twenty-five dollars. [Acts 2nd C. S. 1919, p. 200.]

Art. 936. Wholesale dealer's license.—Any individual, firm or corporation engaged in, or who may engage in the business of a wholesale dealer in fish and oysters shall secure from the Game, Fish and Oyster Commissioner, or one of his deputies, a license granting such individual, firm or corporation, permission to engage in said occupation for one year. For the purpose of obtaining this license, the applicant desiring same must make written application to the Game, Fish and Oyster Commissioner, or one of his deputies, in which he (the applicant) shall set forth under oath, if required, that he is a citizen of the United States by birth, or not being so, shall state that he has been granted, full naturalization papers, and by what court and at what time they were granted. Where a corporation applying for permit to conduct a wholesale business in fish, oysters, or other marine products as mentioned, contains foreigners, it shall conform to the foregoing provision as applied to individual applicants. He shall also agree that because of the privilege which he applied for from the State of Texas, that all products handled by him shall, at all times, be subject to the inspection of the Game, Fish and Oyster Commissioner, or any of his deputies; and in said application he shall authorize said Commissioner or any of his deputies to enter his place of business, or any place where he may have such products stored, and inspect same. He shall agree to keep correct record of all fish, oysters, shrimp and other taxed marine life handled by him under this law, in a book to be furnished by the Game, Fish and Oyster Commissioner; and further, that failure on his part to keep a correct record shall be grounds for the forfeiture of his license granted him under the application aforesaid. This application, having been duly executed and delivered to the Game, Fish and Oyster Commissioner, or any of his deputies, together with a fee of ten ($10.00) dollars for same, it shall be the duty of the Game, Fish and Oyster Commissioner, or his deputy to issue to the applicant a license to engage in the business set forth in the application. Said license must be signed by the Game, Fish and Oyster Commissioner, or one of his deputies, stamped with the seal of his office, and state the name of the licensee, place of business and the kind of license applied for, and shall be good for twelve months following the date of issuance. For such license, the applicant shall pay one ($1.00) dollar for each one thousand pounds of fish, shrimp and crabs handled by him, and a tax of one cent per barrel on oysters handled by him, which tax shall be paid monthly, the tax to be paid on the first of each month, which may be due upon said product handled during the preceding month, as shown by the record books, hereinbefore mentioned. And any person, firm, or corporation, or association of persons, or any officer, agent or employé of any company, corporation or association of persons who shall engage in the business of a wholesale dealer in fish and oysters or either, without procuring a license to follow said business, or without paying the tax and fee required by this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than fifty ($50.00) dollars, nor more than two hundred ($200.00) dollars; and each day such business may be engaged in [in] violation of this article, shall constitute a separate offense, and upon conviction of pursuing said occupation without payment of the tax and fee required by law, or for any other violation of the game, fish and oyster law, the license of such dealer shall be forfeited. A wholesale dealer, in the meaning and definition of this chapter, is any person, corporation or firm or partnership engaged in the business of buying and selling or handling for shipment, fish, oysters, shrimp, turtle, terrapin, crabs, clams, lobsters or other commercial marine life, in quantities of ten pounds or more to any customer during the same day, or whose daily sales, or whose sales for any one day, amount to more than the aggregate of one hundred pounds of above mentioned marine products.

Art. 937. "Barrel of Oysters," Tax.—There is hereby levied a tax of not less than one-fifth of one per cent per pound on all fish and shrimp taken and sold or offered for sale in this State, and not less than two cents a barrel on all oysters sold or offered for sale in this State whether from private or public beds and offered for sale or shipment, and not less than one-half a cent per pound on all turtles, and not less than twenty-five cents on each terrapin offered for sale and shipment. Such tax shall be paid under such rules and regulations as the Commissioner shall prescribe. For all purposes mentioned in this chapter a barrel of oysters shall be deemed to consist of three boxes of oysters in the shell, said boxes to be ten inches wide by twenty inches long and thirteen and one-half inches in depth. In filling such boxes for measurement, such oysters shall be placed so as not to fill such box more than two and one-half inches in the center above the height of the box. Two gallons of shucked oysters without their shells shall be deemed as equal to one barrel of oysters in the shell. [Acts 2nd C. S. 1919, p. 193.]

This article is apparently superseded by Acts 1925, 39th Leg., p. 438, ch. 178, art. 10, which is art. 937a, post.

Art. 937a. Tax on fish, crabs, and shrimp; "barrel of oysters" tax.—There shall be and is hereby levied a tax of not less than one-fifth of one per cent per pound on all fish, crabs and shrimp, whether from private or public waters, taken and sold or offered for sale in this State, and not less than two cents a barrel on all oysters, sold or offered for sale in this State whether from private or public beds, and offered for sale or shipment, and not less than one-half a cent per pound on all turtles, and not less than twenty-five cents on each terrapin offered for sale and shipment. Such tax shall be paid under such rules and regulations as the Game, Fish and Oyster Commissioner shall prescribe. For all purposes mentioned in this title or section, a barrel of oysters shall be deemed and taken to consist of three boxes of oysters in the shell; said boxes to be the following dimensions; ten inches wide by twenty inches long, and thirteen and one-half inches in depth. In filling such boxes for measurement, such oysters shall not be placed or deposited in such box in a way that will make them fill the box more than two and one-half inches in the center above the height of the box. Provided that two gallons of shucked oysters without their shells shall be considered and deemed by this Act as equal to one barrel of oysters in the shell. It is hereby specially provided that the title to the shells, from which oysters are taken shall remain in the State and the Game, Fish and Oyster Commissioner is directed to handle, control or sell same as he may see fit. Provided such oyster shells shall not be sold for

a lower price than twenty-five cents the cubic yard. All moneys and royalties collected under and by the provisions of this article shall be deposited by the Game, Fish and Oyster Commissioner to the credit of the fish and oyster fund, hereinafter provided for. [Acts 1925, 39th Leg., ch. 178, p. 438, § 1 (art. 10).]

Art. 938. Measurement of oysters.—Whoever shall use any measurement other than that established in article 937 for the measurement of oysters in the purchase and sale of oysters, shall be fined not less than ten nor more than twenty-five dollars and any person who shall fill the measuring box in the buying and selling of oysters higher than two and one-half inches in the center of such box, shall be fined not less than ten nor more than twenty-five dollars. [Acts 1913, p. 275, Acts 2nd C. S. 1919, p. 194.]

Art. 939. Failure to pay tax.—Any person who shall not pay or who shall refuse to pay the tax imposed on the taking and sale of fish, oysters, turtle, terrapin and shrimp, as imposed in Article 10 of Acts 1925, p. 439, or who shall not pay or shall refuse to pay the taxes established and fixed by the Game, Fish and Oyster Commissioner in Article 10 of said Act shall be deemed guilty of a misdemeanor and on conviction shall be fined in a sum not less than fifty ($50.00) dollars nor more than one hundred ($100.00) dollars, and if such person shall be a licensed fish dealer or fisherman or oysterman, his license as a fish dealer or fisherman shall be cancelled and not re-issued for a period of three years.

For article 10 of Acts 1925, 39th Leg., p. 439, ch. 178, referred to above, see art. 937a.

Art. 940. Refusing to pay tax.—If any person shall refuse to pay any tax provided in this chapter, on any fish, oyster, shrimp, turtle, terrapin, clam, crabs, or other marine life, which he has sold, he shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum of not less than fifty ($50.00) nor more than two hundred ($200.00) dollars.

Art. 941. Using seines or gigs.—It shall be unlawful for [for] any person at any time to place, to set, or drag, any seine or net, or use any other device or method for taking fish other than the ordinary pole and line or castnet, or minnow seine of not more than twenty feet in length for catching bait within the waters of Agua Dulce Creek, Oso Creek, Shamrock Cove, Nueces Bay, Ingleside Cove, Red Fish Cove, Shoal Bay, Mut Flats, Shallow Bay, all of Aransas Bay between Port Aransas and Corpus Christi Bayou and lying between Harbor Island and Mud Island, Copano Bay, Mission Bay, in Refugio County, Puerto Bay, St. Charles Bay, Hynes Bay, Contec Lake, Powderhorn Lake, Oyster Lake, the waters of the Gulf Shore Line one-fourth mile from mean low tide from the South end of Padre Island to a point on Mustang Island two miles north of Corpus Christi Pass, Offats Bayou in Galveston County from its head to its mouth, Sabine Pass, leading from Sabine Lake to the Gulf of Mexico, San Luis Pass, leading from Galveston West Bay to the Gulf of Mexico, Turtle Bay, Lost Lake or Old River Lake in Chambers County, as shown by the Government charts, Brown's Cedar Pass, Mitchell's Cut, Pass Cavallo, leading from Matagorda Bay to the Gulf of Mexico; Cedar Bayou, leading from Mesquite Bay to the Gulf of Mexico; North Pass or St. Jo Pass; Aransas Pass, leading from Aransas Bay to the Gulf of Mexico; Corpus Christi Pass, leading from Corpus Christi Bay to the Gulf of Mexico; Brazos Santiago Pass, leading from the Lower Laguna Madra [Madre] to the Gulf of Mexico or the pass on the North of Laguna Madra [Madre] leading into Corpus Christi Bay, which pass shall be defined as beginning one-fourth of a mile southwest of Peat Island and running from said point to Flour Bluff, all of said waters being situated in Nueces County, and all other passes connecting the bays and tidal waters of the State within the Gulf of Mexico, or within one mile of such passes, or within the waters of any pass, stream, or canal, leading from one body of Texas bay or coastal waters into another body of such waters; provided that nothing in this article shall prevent the use of spear or gig and light for the purpose of securing flounders from such passes at any time of the year except the months of November and December, which months shall constitute a closed season on flounders in all coastal waters of the State, and it shall be unlawful to possess or to take any flounder from the tidal waters of this State during the months of November and December of any year. And the Game, Fish and Oyster Commissioner, whenever he has reason to believe it is best for the protection and conservation and increase of fish life, or to prevent their destruction in the bays or parts thereof, or such tidal waters is hereby authorized to close such waters against fishing with any seine, net, spear, gig, light or other devices, except with hook and line or cast-net or minnow seine of not more than twenty feet in length; but before closing bays or parts thereof, or of other tidal waters, against such seining or netting or the using of gigs, spears, and lights, the Game, Fish and Oyster Commissioner shall give notice of a public hearing, and shall hold a public hearing in the port nearest the waters proposed to be closed and shall give notice of his intentions to close such bays or parts thereof of such tidal waters at least two weeks prior to such closing, giving the reason why such action is deemed necessary, and which notice shall contain a designation of the area which it is proposed to close, a statement that after the date indicated in such notice it shall be unlawful to drag a seine or net or use a gig or spear and light in taking fish from such bayou or parts of such tidal waters for the period of time which the Commissioner in said notice shall declare same to be closed; and such notice shall be posted in such fish houses as are in two towns nearest waters to be closed, and such notice shall contain the information as to where and when the public hearing is to be held, and provided further, that the Game, Fish and Oyster Commissioner shall have the authority, when proper hearing has been had, and investigation been made, and he has determined that any such closed area in the tidal waters of this State does not promote conservation of fish, to open such areas to seining, netting, gigging and fishing of all sorts. For the purpose of locating all closed waters mentioned in this chapter, it shall be the duty of the Game, Fish and Oyster Commissioner to have erected suitable stakes, monuments or markers at points determined by him as being the outermost boundaries of such closed waters, such stakes or markers to bear the words, "Warning—Closed Waters." Any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and on first conviction, shall be fined not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars, and shall have his license revoked for a period of time not exceeding two years; and on second conviction shall be confined in the county jail for not less than thirty nor more than ninety days; and shall have his license revoked for a period of not less than two years, provided further that the Game, Fish and Oyster Commissioner or his deputy shall have power to seize and keep such seines, or other tackle in his possession as evidence until trial of defendant, and no suit shall be maintained against him therefor.

Art. 941a. Suckers, buffalo, carp and shad.—Any and all persons shall be permitted to take or catch sucker, buffalo, carp and shad in any fresh water rivers, creeks or lakes in the counties of Grayson, Bosque, Cook, Denton, Burnet, Williamson, Lampasas, Coryell, Hamilton, Erath, Dallas and Hood with a seine of any size mesh or by the use of wire, rope or grab hooks, during the months of July, August and September of each year; provided, however, that any catfish, crappie, perch, bass or any other kind of fish caught by any of the above methods herein allowed shall be immediately released in the waters from which they were caught; and provided, further that the owner or the one in possession of any seine used for the purpose of seining shall within five days from and after using of any seine for the purpose of catching fish make a report under oath to the Game, Fish and Oyster Commissioner, giving in said report the names of each and every person in the seining party,

and showing in said report that all fish not permitted to be caught or taken with a seine were released in the waters from which they were taken immediately after they were caught.

Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than ten ($10.00) dollars nor more than one hundred ($100.00) dollars, and any person making a false affidavit shall be guilty of false swearing. [Acts 1925, p. 170.] [39th Leg., ch. 38, § 2; Acts 1927, 40th Leg., p. 91, ch. 65, § 1.]

Art. 942. Unlawful possession of seine.—Whoever shall carry on, or over, or into the waters of any pass leading from the inland bays or tidal waters of this State to the Gulf of Mexico any seine or net except a cast net used for catching bait, or a minnow net not exceeding twenty feet in length, or shall carry by vehicle or in any other way, any seine or net except a cast net used for catching bait or a minnow seine not exceeding twenty feet in length to any point or place within one mile of such pass or shall have in his possession within one mile of any such pass any net or seine except a cast net for catching bait, or a minnow seine not exceeding twenty feet in length, shall be fined not less than twenty-five nor more than two hundred dollars, and be confined in the county jail not less than thirty nor more than ninety days. Nothing in this law shall apply to the carrying of nets or seines over closed waters within one mile of any town. [Acts 2nd C. S. 1919, p. 205, Acts 1923, p. 298.]

Art. 943. Exceptions.—Nothing in the foregoing article shall apply to vessels engaged in carrying freight or passengers, and engaged as seagoing vessels in coast and foreign trade, and licensed and recognized as such by the Federal Government; provided further that the Game, Fish and Oyster Commissioner may grant permits to persons desiring to fish, to carry their boats, nets and seine, and vehicles into, over and on such passes or closed waters or on land to within the mile limits of such passes, and such permits shall state at what time such boats, vehicles, nets and seines shall be taken away from such mile limit and such passes.

Art. 944. Proof of possession.—In all prosecutions under articles 941 and 942 the identification of the boat or vehicle or the seine or net by which or from which the violation of the law occurred, shall be prima facie evidence against the owner or party last in charge of such boat, or against the owner of the vehicle or seines or net. [Id.]

Art. 945. [912] Seining in salt water.—The mesh of all seines and nets used for taking fish in salt waters of this State, not including the bag, shall not be less than one and one-half inch square mesh. The mesh of the bags and for fifty feet on each side of the bags, shall not be larger than a one inch square mesh. No seine or net of any kind of over two thousand feet shall be dragged or pulled in the salt water of this State, and any person dragging such seine, or dragging two or more seines which are connected or tied together with a combined length of more than two thousand feet, shall be upon first conviction thereof fined not less than twenty nor more than one hundred dollars; upon second conviction thereof shall be fined not less than fifty nor more than two hundred dollars, and shall have his license revoked for a period not less than thirty nor more than ninety days; and upon third conviction thereof shall be confined in jail for not less than thirty nor more than ninety days, and shall have his license revoked for a period of not less than one year. [Acts 2nd C. S. 1919, p. 201.]

Art. 945a. Permit to use pound net in Gulf.—It shall be unlawful for any person, firm or corporation to erect, set, operate or maintain any fish pound net in any waters of the Gulf of Mexico within three nautical miles from the coast line of this State, without first obtaining a permit for such purpose. Application for such permits shall be made to the Game, Fish and Oyster Commissioner. Such commissioner shall issue to the person, firm or corporation applying therefor, if entitled thereto under the provisions of this Act, a permit duly signed, to erect, set, operate or maintain a fish pound net in the waters above specified. No person, firm or corporation shall set, erect, operate or maintain any pound net at any place closer than three miles of any other pound net owned or operated by any other person, firm or corporation; provided, further, that no pound net shall ever be placed or operated closer than three miles of any pass mentioned in this Act. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars. [Acts 1925, 39th Leg., ch. 178, p. 447, § 3.]

Art. 946. To tag seines and nets.—All seines and nets used in the salt waters of this State shall be examined by the Commissioner or one of his deputies to see if they conform to the requirements of this law as to length and size of mesh, and if they are found to conform to such requirements, the Commissioner shall tag such seines or nets with a metal tag on which shall be indented the number of such seine and net; the cost of such tag to be paid by the owner of such seines or net. The Commissioner shall then issue to the owner of it a permit to use such seine or net for one year from the date of such permit; such permit shall state the name of the owner of such net, the date on which it was issued, the size of the mesh and the length and kind of such net. It shall be the duty of the owner of the seine or net to keep the tag attached to such seine or net, and where a seine or net is used without such tag being attached, it shall be a prima facie evidence that such seine or net is an unlawful seine or net; and any person who shall drag, haul or set any seine or net in the salt waters of this State without first having such seine or net examined by the Commissioner, or his deputy, and tagged, or who shall fail to have a permit therefor issued by said Commissioner or his deputy, or shall not keep such tag attached to such seine or net or attached to its floats, as prescribed in this article shall be fined not less than twenty nor more than two hundred dollars. [Acts 2nd C. S. 1919, p. 201; Acts 1923, p. 296.]

Art. 947. [906] Seining within one mile from city.—It shall be unlawful for any person to catch or attempt to catch any fish, green turtle, loggerhead, terrapin or shrimp in any of the bays or navigable waters of this State, within the limits or within one mile of the limits of any city or town in this State, with seines, drags, fykes, set nets, trammel nets, traps, dams or weirs. A town or city in the meaning of this article shall be the collection of one hundred families within an area of one square mile. Anyone violating any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars. In all prosecutions the identification of the boat from which such violation occurs shall be prima facie evidence against the owner, lessee, person in charge or master of such boat. It shall be the duty of such town to establish and maintain the buoys, stakes or other marks designating the limits of the one mile within which such seines shall be hauled and such nets set. [Acts 1897, p. 269, Acts 2nd C. S. 1919, p. 201.]

Art. 948. Metallic seines.—It shall be unlawful for any person to set or drag in any of the fresh waters of this State any net or seine made of wire or other metallic substance.

It shall be unlawful for any person to take or catch or attempt to take or catch fish in the fresh waters, rivers, creeks, lakes, bayous, lagoons, or in lakes or sloughs, subject to overflow from rivers or streams in this State, by any other means, other than by the ordinary hook and line or trotline, or by a set or drag net or seine or trammel net, the meshes of which are three or more inches square, or by a minnow seine, not more than twenty feet in length, and it shall be unlawful for any person to place in the fresh water rivers, creeks, lakes, bayous, lagoons, of this State any net or other device or trap for taking or catching fish other than as designated and permitted by this Article.

Any person violating any provision of this section shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not less than

twenty-five ($25.00) dollars, nor more than one hundred ($100.00) dollars.

Any fish trap, net or seine or other seine or other fishing device found in the waters of this State, in violation of this article are hereby declared to be a nuisance, and it shall be the duty of the Game, Fish and Oyster Commissioner and his deputies to destroy same whenever found, and no suit shall be maintained against them therefor.

The Game, Fish and Oyster Commissioner is authorized to close any of the waters mentioned in this article against the use of nets or seines or any particular kind of such nets and seines, whenever he thinks that such closing is necessary or best to protect and conserve the fish in such waters. But before closing such waters against the use of seines or nets or any particular kind of seine or net, he shall give notice by posting his intentions for two weeks at not less than three stores or other places in proximity to such waters.

Any person who shall fish with a net or seine in such closed waters or shall use such particular kind of net or seine, as forbidden in such waters, after the notice given as above required, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum of not less than twenty-five ($25.00) dollars and no more than one hundred ($100.00) dollars.

Art. 949. [912] Seiners shall return small fish.—Any person dragging a seine or engaging in taking fish in a set net shall return to the water all fish under and above size according to the measure or weight established in this chapter, and all other fish except sharks, gars, rays, turtle and terrapin, saw fish and cat fish, except the gulf-topsail cat, which may be retained, and any person not returning such fish to the water as required by this article shall be fined not less than fifty nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 211.]

Art. 950. Net for shrimp.—The Commissioner is hereby authorized to permit the use of any shrimp seine or other device for catching shrimp in the tidal waters of this State. Any person desiring to use such seine shall apply to the Commissioner, or his deputy, for a permit to use such seine, net or other contrivance for catching shrimp and such Commissioner or his deputy shall fix and establish the mesh, construction, depth and length of such seine or net or other contrivance so that it shall not be used for other purposes than in taking shrimp, and he shall tag such seine officially and issue such permit and shall state in what waters and localities such seines or nets shall be used. Any person using such shrimp seine or other contrivance for catching shrimp in the tidal waters of this State without the permit herein provided for, or who shall use any seine or contrivance or net in any waters or locality other than that stated in such permit, shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 2nd C. S. 1919, p. 205.]

Art. 951. March and April closed to seines and artificial bait.—It shall be unlawful for any person to catch any fish in the fresh waters of this State, with any seine or net other than minnow seine, not exceeding twenty feet in length, or to drag any seine, except such specified minnow seine, or to set any net, in the fresh waters of this State during the months of March and April, or to fish with any artificial bait of any kind in the fresh waters of this State during the months of March and April. Any person violating any of the provisions of this Article shall be deemed guilty of a misdemeanor and shall be upon conviction fined a sum of not less than twenty ($20.00) dollars nor more than one hundred ($100.00) dollars. This article shall not apply to any artificial lake, pond or pool, owned by any person, firm, corporation, city or town, that does not have as its source of water supply a river or creek or is not subject to overflow from a river or creek.

Art. 951a. [872] Fish ladder.—It shall be the duty of every person, firm or corporation, municipal or private who has erected, or who may erect any dam, water wier [weir], or other obstruction on any regular flowing stream within this State, on the written order of the commissioners' court in the county in which such obstruction is erected, to construct and keep in repair fish ways or fish ladders at such dam, weir or obstruction, at the discretion of the Fish Commissioner, so that at all seasons of the year fish may ascend above such dam, weir or obstruction to deposit their spawn. Whoever erects or owns or maintains any such dam, obstruction or weir, and shall fail or refuse to build, construct and keep in repair such fish way or fish ladder, within 90 days after having been notified by such Commissioner to do so, shall be fined not less than twenty-five nor more than five hundred dollars. Each week, after the expiration of 90 days after receiving such notice, of such failure or refusal is a separate offense. [Acts 1881, p. 83, Acts 1915, p. 118, Acts 2nd C. S. 1919, p. 203.]

Art. 952. Fish in certain counties.—Section 1. Whoever shall barter or sell or offer for barter or sale any bass, perch, crappie or catfish taken from any of the fresh waters of the counties of Comal, Guadalupe, Bexar, Kerr, Bandera and Medina, shall be fined not less than five nor more than fifty dollars.

Sec. 2. Whoever shall use any dynamite, powder or other explosive in any of the fresh water streams of said counties and shall destroy any fish thereby shall be fined not less than one hundred nor more than one thousand dollars, and may be imprisoned in jail not exceeding one year.

Sec. 3. No person shall take or catch any fish in the fresh waters, creeks, lakes, bayous, pools, lagoons, or tanks in said counties by any other means than by the ordinary hook and line, or trot line or artificial baits, and no person shall place in the fresh waters, rivers, creeks, lakes, bayous, lagoons, ponds, or tanks in said counties any seine, net or other device or trap for taking or catching fish; any person may use a minnow seine which is not more than ten feet in length, and the meshes of which are not less than one-fourth inch square, for the purpose of catching minnows for bait. No person shall use the minnow seine herein permitted to take any fish other than minnows for bait.

Sec. 4. No person, firm or corporation or their agents shall take, catch, seine, entrap by any means, or have in their possession any bass, perch, or crappie, or catfish taken from any fresh waters in said counties from the first of February to the first of May of any year.

Sec. 5. If any person shall at any time, catch or take from any fresh water river, lake, bayou, lagoon, creek, pond, or other natural or artificial stream or pond of water within said counties by use of any means whatsoever any bass of less than eleven inches in length he shall immediately return same back into such water; and unnecessarily injuring such fish shall be deemed an offense under the provisions hereof. Each such fish shall constitute a separate offense.

Sec. 6. No person shall take from the fresh waters of said counties more than ten bass and ten crappie in any one day.

Any person violating any provision of Sections 3, 4, 5 and 6 of this article shall be fined not less than ten nor more than fifty dollars. [Acts 1923, p. 126; Acts 1927, 40th Leg., p. 365, ch. 246, § 1.]

Art. 952a. Fish in Big Wichita River waters; sale prohibited.—It shall be unlawful for any person, firm or corporation, or their agent, or agents, to barter, or sell, or offer for barter, or sale, or to buy any bass, perch, crappie or catfish, or any other fish, except minnows taken from any of the waters which are located in the valley of the Big Wichita River from where the lower or diversion dam on the Big Wichita River is located, which was built by the Wichita County Water Improvement District No. 1, in the northeast corner of Archer County, Texas, and from said dam and above the same up the valley of said Big Wichita River to the storage dam on said river built by said Wichita County Water Improvement District No. 1, in Baylor County, Texas, and up the valley of said river from said storage dam as far as the water by said storage dam is impounded in said river in Baylor County, Texas, or in any water which is impounded in Archer County, Texas, and in Baylor County, Texas, by said diversion dam, or in any water which is in Baylor County, Texas,

by said storage dam, or in any water in Lake Wichita in Wichita County, Texas, and in Archer County, Texas, or in any water impounded by the dam across Holliday Creek forming said Lake Wichita in Wichita County, Texas, or in any water in the Big Wichita River in Baylor County, Texas, connecting with the big reservoir, or Lake Kemp, created by the storage dam, with the diversion reservoir, or Diversion Lake, formed in Baylor County or Archer County, Texas, by said diversion dam, or in any water of the irrigation canals connected with said Lake Kemp or said diversion dam, or in any water in laterals leading off from said canals in Baylor County, Texas, Archer County, Texas, Wichita County, Texas, or Wilbarger County, Texas, or in any water in Wichita County, Texas, or Archer County, Texas, in the lateral, canal, or drainage ditch leading from what is known as the South Side Canal out of said Diversion Lake from a point in the said South Side Canal in Section No. 16, of Denton County school lands, League No. 4, Wichita County, Texas, to Holliday Creek and thence down Holliday Creek to Lake Wichita in Wichita and Archer Counties, Texas. [Acts 1925, 39th Leg., ch. 37, p. 166, § 1.]

Art. 952aa. Fishing in certain counties.—It shall be unlawful for any person to take or catch any fish in the public fresh waters, creeks, lakes, bayous, pools, lagoons or tanks in the Counties of Marion, Harrison, Smith and Rusk, State of Texas, by any other means than by the ordinary hook and line, set hook and line, gig or artificial bait, and it shall be unlawful for any person to place in the public fresh water rivers, creeks, lakes, bayous, pools, lagoons or tanks of the Counties of Marion, Harrison, Smith and Rusk, State of Texas, any seine, net or other device or trap for taking or catching fish, provided, however, that persons may use a minnow seine for the purpose of catching minnows and small perch for bait; provided that in seining for minnows or small perch for bait, all crappie or white perch and all black bass shall be immediately returned to the water while alive. No person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnows and small perch for bait.

Any person or persons violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be fined in a sum not less than ten dollars ($10.00) nor more than one hundred dollars ($100.00). [Acts 1927, 40th Leg., p. 275, ch. 193, § 1; Acts 1927, 40th Leg., 1st C. S., p. 98, ch. 32, § 1.]

Art. 952aa1. Fishing in Jackson county.—It is hereby made unlawful for any person to take or catch fish from any of the fresh water lakes, streams, bayous, and lagoons in Jackson County, Texas, by any other means than hook and line or trot line or flounder gig and light or by the use of cast net or minnow seine, not exceeding twenty feet in length, used in catching bait. Any person dragging a seine or setting a net in any of the fresh water streams, lakes, bayous, or lagoons in Jackson County, or any person catching or taking fish by any other means than hook and line or trot line or cast net and minnow seine not exceeding twenty feet in length, shall be deemed guilty of a misdemeanor and shall be fined in a sum of not less than Ten Dollars or more than One Hundred Dollars. [Acts 1927, 40th Leg., 1st C. S., p. 251, ch. 93, § 1.]

Art. 952b. Same; explosives and poisons prohibited.—Any person who shall use any dynamite, powder or other explosive, or any poison in any of the waters described in Section 1 of this Act, and shall injure or destroy any fish thereby shall be deemed guilty of misdemeanor and upon conviction shall be fined in any sum of not less than $100 nor more than $1,000, and may be imprisoned in the county jail for any time not exceeding one year. [Acts 1925, 39th Leg., ch. 37, p. 167, § 2.]

Art. 952c. Same; seining prohibited.—It shall be unlawful for any person to take or catch any fish in the waters described in Section 1 of this Act by any other means than the ordinary hook and line, or trot-line or artificial bait; and it shall be unlawful for any person to place in any of the waters described in Section 1 of this Act by any seine, net or other devise [device] or trap for taking or catching fish; provided, however, that any person may use a minnow seine which is not more than twenty feet in length and the meshes of which are not less than one-sixth inch square for the purpose of catching minnows for bait; provided, further, that in seining for minnows for bait, as herein permitted, all bass, species of bass, crappie, and white perch, calico bass, blue gill bream and strawberry bream of whatever size that may be taken by seining shall immediately be returned to the waters uninjured and all other fish more than three inches in length, except minnows, shall be immediately returned to the waters uninjured; provided, further that no person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnow for bait. [Acts 1925, 39th Leg., ch. 37, p. 167, § 3.]

Art. 952d. Same; closed season.—It shall be unlawful for any person, firm or corporation, or their agent, or agents, to take, catch, seine, entrap by any action, or to have in their possession any bass, perch, crappie or catfish, or any other fish taken from any of the waters described in Section 1 of this Act, on or from the first day of February to the first day of May of any year. [Acts 1925, 39th Leg., ch. 37, p. 168, § 4.]

Art. 952e. Same; size and daily bag limit.—It shall be unlawful for any person to catch or retain, or have in his possession any bass, or other fish of the bass species, which are less than eleven (11) inches in length or to catch or retain, or have in his possession, in any one day a total aggregate of more than ten (10) bass, or other fish of the bass species, taken from the waters described in Section 1 of this Act: provided that it shall be unlawful for any person to catch and retain, or have in his possession from those waters in any one day bass, or other fish of the bass species, of any aggregate weight in excess of twenty (20) pounds; to catch and retain, or have in his possession any crappie or white perch or calico bass which are less than seven (7) inches in length, or catch and retain, or have in his possession any blue gill bream which are less than five (5) inches in length or to catch or retain, or have in his possession in any one day more than a total aggregate of twenty (20) crappie, or white perch or calico bass or blue gill bream or of any of or all those fish, taken from the waters described in Section 1 of this Act; provided that it shall be unlawful for any person to catch and retain or have in his possession from those waters in any one day crappie or white perch, or calico bass, or blue gill bream or of any or all of those fish of an aggregate weight in excess of twenty (20) pounds; provided, further that it shall be unlawful for any person to catch and retain or have in his possession in any one day from the waters described in Section 1 of this Act, bass, or any other fish of the bass species, crappie, white perch or sun fish, or calico bass or blue gill bream, or other fish of the crappie, white perch or bream of sun fish species, or an aggregate weight in excess of thirty (30) pounds. [Acts 1925, 39th Leg., ch. 37, p. 168, § 5; Acts 1927, 40th Leg., p. 274, ch. 192, § 1.]

Art. 952f. Same; return of undersized fish.—If any person shall at any time catch or take from any of the waters described in Section 1 of this Act in the counties named in that section by use of any means whatsoever any bass, or other fish of the bass species, of less than eleven inches in length, or any crappie or white perch, or calico bass of less than seven (7) inches in length, or any blue gill bream of less than five (5) inches in length he shall immediately return the same into such water without unnecessarily injuring such fish; and the failure to immediately return such fish into such waters or the unnecessarily [unnecessary] injuring of such fish shall be deemed an offense under this Act. [Acts 1925, 39th Leg., ch. 37, p. 168, § 6; Acts 1927, 40th Leg., p. 274, ch. 192, § 2.]

Art. 952g. Same——trout and char, taking prohibited.—It shall be unlawful for any person to catch and retain or have in his possession any rainbow trout, or other species of trout or of any species of char within a period of six (6) years from the taking effect of this Act. [Acts 1925, 39th Leg., ch. 37, p. 168, § 7.]

Art. 952h. Same; leaving dead fish on banks.—It shall be unlawful for any person, or persons, knowingly to place, throw or deposit upon the banks or grounds adjacent to any of the waters described in Section 1 of this Act in the counties named in Section 1 of this Act, any bass, crappie, white perch, sun fish, drum, catfish, or other edible fish, and leave such fish to die without any intent upon the part of such person to eat such fish, or in like manner to leave any minnows without any intent to use the same for bait. Any person found guilty of the violation of any provisions of this section shall be fined in any sum not less than $1.00 nor more than $25.00, and each fish so allowed to die shall constitute a separate offense. [Acts 1925, 39th Leg., ch. 37, p. 168, § 8.]

Art. 952i. Same; penalty.—Any person violating any of the provisions of Sections I, III, IV, V, VI, of this Act shall be guilty of a misdemeanor and upon conviction shall be fined not less than $5.00 nor more than $50.00 for each violation of the law, and each fish caught, held in possession, sold or purchased in violation of this Act shall be deemed a separate violation hereof and a separate offense, and the person guilty thereof may be prosecuted either in the county where the fish are caught, where he is found, with them in his possession or where the fish are sold or bartered or offered for sale or bartered or bought. [Acts 1925, 39th Leg., ch. 37, p. 169, § 9.]

Art. 952j. Same; enforcement.—It is made the duty of the district judges of the judicial districts in which the counties of Archer, Baylor, Wilbarger and Wichita are situated to give a special charge upon [upon] this law to the grand juries of these counties. [Acts 1925, 39th Leg., ch. 37, p. 169, § 10.]

Art. 952k. Same; act cumulative.—This law shall be cumulative of all General Laws relating to fish and the protection thereof. [Acts 1925, 39th Leg., ch. 37, p. 169, § 11.]

Art. 952*l*. Same; partial invalidity.—If any court should hold unconstitutional or invalid any provisions of this Act such unconstitutionality or invalidity of that part shall in no way effect [affect] the constitutionality and validity of the remainder of this Act. [Acts 1925, 39th Leg., ch. 37, p. 169, § 12.]

Art. 953. [Repealed by Acts 1927, 40th Leg., p. 365, ch. 246, § 2.]

Art 954. Fish pound in gulf waters.—It shall be unlawful for any person, firm or corporation to erect, set[,] operate or maintain any fish pound net in any waters of the Gulf of Mexico within three nautical miles from the coast line of this State, without first obtaining a permit for such purpose. Application for such permits shall be made to the Game, Fish and Oyster Commissioner. Such commissioner shall issue to the person, firm or corporation applying therefor, if entitled thereto under the provisions of this chapter, a permit duly signed, to erect, set, operate or maintain a fish pound net in the waters above specified. No person, firm or corporation shall set, erect, operate or maintain any pound net at any place closer than three miles of any other pound net owned or operated by any other person, firm or corporation. No pound net shall ever be placed or operated closer than three miles of any pass mentioned in this chapter. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not less than fifty ($50.00) dollars nor more than two hundred ($200.00) dollars.

Art. 955. Sale [of] fish in certain counties.—If any person shall sell or offer for sale any bass, white perch, crappie, channel or other catfish, caught, trapped or ensnared in the streams of the counties of Burnet, San Saba, Brown, McCulloch, Edwards, Coleman, Concho, Menard, Mason, Gillespie, Kimble, Sutton, Kinney, Uvalde, Real, Kerr, Comal, Val Verde, Bandera, Reeves, Ward, Loving, Pecos, Medina, Bexar, Hunt, Runnels, Rains, [Kimble,] Williamson, Zavalla, Dimmit, Milam, Travis, Lampasas, or Llano, State of Texas, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than five dollars nor more than fifty dollars. No person shall take or catch any fish in the fresh water rivers, creeks, lakes, bayous, pools, or lagoons in the counties above named by any other means than by ordinary hook and line or trot line or artificial bait, and no person shall place in the fresh water rivers, creeks, lakes, bayous, pools or lagoons of the counties above mentioned, any seine, net or other device or trap for taking or catching fish; provided, however, that persons may use a minnow seine which is not more than twenty feet in length for the purpose of catching minnows for bait. In seining for bait as herein permitted, all fish and minnows more than three inches in length shall be returned to the water at once while alive. No person shall use the minnow seine herein permitted for the purpose of taking any fish other than minnows for bait. Any person violating any provision of this section shall be fined not less than five nor more than one hundred dollars.

No person shall take from the fresh waters of any county mentioned more than thirty-five of such fish in any one day. Any person violating this provision of this article shall be fined not less than five nor more than one hundred dollars. The taking of each fish in excess of the number herein allowed shall be a separate offense.

No person shall knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh waters, creeks, lakes, bayous, rivers, pools, lagoons, or tanks in the counties above named any catfish, perch, crappie, white perch, bass, trout, or other edible fish, and leave such fish to die without any intention upon the part of such person either to eat such fish or use same for bait. Any person found guilty of the violation of this provision shall be fined not to exceed twenty-five dollars. The allowing of each fish so to die shall be a separate offense. [Acts 1923, p. 166; Acts 1925, p. 174.] [39th Leg., ch. 41½, § 1.]

Art. 956. Mischief in prohibited waters.—Whoever shall wilfully and with intent to injure the owner, take any boat, seine or net or other device for fishing into prohibited waters, or shall use said articles for the unlawful taking or catching of fish, so as to cause the destruction of same, shall be fined not less than ten nor more than two hundred dollars, and be confined in jail not less than thirty nor more than ninety days. [Acts 1913, p. 275.]

Art. 957. Season for salt water terrapin.—Whoever kills, takes or has in his possession any salt water terrapin at any time except during November, December, January and February shall be fined not less than fifty nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 208.]

Art. 958. [910] Underweight turtle or terrapin.—Whoever sells or ships any green turtle of less than twelve pounds in weight or terrapin of less than six inches in length of under shell shall be fined not less than ten nor more than two hundred dollars. [Acts 1895, p. 173, Acts 1913, p. 270.]

Art. 959. [905] Buoy or marker.—Whoever shall deface, injure, or destroy or remove any buoy, marker or fence or any part thereof, used to designate or enclose a private oyster bed or a location where oysters have been deposited to be prepared for market, without the consent of the owner thereof, or any buoy, marker or sign placed or used by the Commissioner for the purpose of designating any waters closed against fishing or oyster taking, without the consent of said Commissioner, shall be fined not less than fifty nor more than two hundred dollars. [Acts 2nd C. S. 1919, p. 200.]

Art. 960. Public or private oyster bed.—All oyster beds shall be public or private; all not designated private shall be public. All natural oyster beds and oyster reefs of this State shall be deemed public and a natural oyster bed shall be declared to exist when as many as five barrels of oysters may be found within twenty-five hundred square feet of any position of said reef or bed and any lands covered by water containing less oysters than the above amount shall be subject to location at the discretion of the Commissioner, but this shall not apply to a reef or bed

that has been exhausted within a period of eight years. [Acts 2nd C. S. 1919, p. 193.]

Art. 961. Right to private oyster bed.—When any creek, bayou, lake or cove shall be included within the metes and bounds of any original grant or location of land in this State, the lawful occupant of such grant or location shall have the exclusive right to use said creek, lake, bayou or cove for gathering, planting, or sowing oysters within the metes and bounds of the official grant or patent. The Commissioner may require the owner of oysters produced in said water when offered for sale, to make an affidavit that such oysters were so produced. The failure of the person claiming that such oysters were produced on his private oyster bed or bottoms, to have and to show such affidavit to the Commissioner or one of his deputies, or to whoever he offers such oysters for sale, shall be presumptive that such oysters were taken from a public bed, and on prosecution for the same it shall devolve on the defendant to show that such oysters were taken from his private bed, or bottom of oysters. [Acts 2nd C. S. 1919, p. 193.]

Art. 962. [920] Theft of oysters.—Whoever fraudulently takes the oysters placed on private reefs without the consent of the owner of the private reef or from beds or deposits made for the purpose of preparing oysters for market without the consent of the owner of the oysters who has deposited them to prepare them for market under the provisions of law, shall be confined in the penitentiary not less than one nor more than two years. [Acts 2nd C. S. 1919, p. 200.]

Art. 963. [904] License to dredge oysters.—Anyone who is an American citizen or any firm or any corporation composed of such citizens desiring to use scrapers or dredges in removing oysters from the natural oyster reefs of this State shall procure from the Commissioner or his deputy a license to do so. It is unlawful to use a dredge or any means other than hand tongs in removing oysters from such reefs in bodies of water less than four feet deep, and it is unlawful to use a power dredge except one operated by hand power for removing oysters from such reefs in bodies of water less than six feet deep. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1891, p. 157, Acts 1913, p. 269, Acts 2nd C. S. 1919, p. 207, Acts 1923, p. 298.]

Art. 964. [923b] Oysters from closed reef.—Whenever the Commissioner believes than any public reef is being overworked or damaged in any way, or where such reef has been worked under his supervision, he may close such reef against anyone taking oysters from it, but before he closes it he shall give two weeks' notice of such closing by posting notices in such fish houses as are in two towns nearest such reef. In such notices he shall state the date of closing and the time for which such reef shall be closed. Whoever takes oysters from such reef within the time closed by the Commissioner shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1913, p. 274, Acts 2nd C. S. 1919, p. 207.]

Art. 965. Oysters from insanitary reef.—It shall be unlawful to ship, sell or possess for the purpose of sale any fish or oysters taken from insanitary or polluted reefs or beds. Any reef or bed of oysters which has been declared by the State Health Department as insanitary or polluted is within the meaning of this article insanitary and polluted. Whoever sells or has in his possession for the purpose of sale fish or oysters taken from such insanitary or polluted reef or bed shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 2nd C. S. 1919, p. 209.]

Art. 966. [914] Taking oysters in closed season.—Whoever shall take or catch oysters from any public beds or reefs for sale or for market from the first day of April to the first day of September, shall be fined not less than ten nor more than two hundred dollars. Each day is a separate offense. That part of the Laguna Madre which is South and West of Baffin's Bay is exempt from the operation of this article. [Acts 2nd C. S. 1919, p. 206.]

Art. 967. [904] Buying or planting oysters in closed season.—Whoever plants or buys oysters for planting, bedding, marketing or any other purpose from the first day of May to the first day of September in any year without the consent of the Commissioner shall be fined not less than ten nor more than one hundred dollars. [Acts 1891, p. 155, Acts 1913, p. 269.]

Reference in brackets to 904 should be 902.

Art. 968. [903] Shipping oysters in closed season.—No transportation company operating within this State, its officers[,] agents or employés, shall receive for shipment, or ship, within the boundaries of this State, from the first day of May to the first day of September of any year, any oysters from any public bed or reef for depositing or for marketing; provided, that nothing in this chapter shall be construed to prohibit any such transportation company, its officers, agents or employés, from shipping or receiving for shipment, any oysters taken from a private bed located under the laws of this State, offered for shipment by the owner or owners, locator or locators, of such bed, such fact to be established by the affidavit of the person or persons offering such oysters for shipment. Any officer, agent or employé of such transportation company violating any provision of this article shall be fined for each offense not less than ten nor more than one hundred dollars. [Acts 1907, p. 238, Acts 1913, p. 269, Acts 2nd C. S. 1919, p. 203.]

Art. 969. Scattering oyster culls.—It shall be unlawful for any person to fail, or refuse to scatter the culls of such oysters as he may take from the oyster reefs as directed by the Game, Fish and Oyster Commissioner, and it is hereby declared to be unlawful for any person to open or shuck oysters for market near or on the reefs or beds from which such oysters were taken, or to open or shuck oysters for market on any fishing vessel or barge, except when such vessel or barge be in some part or place where oysters are commonly sold. The shell from oysters opened or shucked on board any vessel or barge must be deposited on shore as directed by the Game, Fish and Oyster Commissioner. Any one violating any of the provisions of this article shall be fined in a sum not less than twenty-five ($25.00) dollars, nor more than one hundred ($100.00) dollars; and on such conviction the Game, Fish and Oyster Commissioner in his discretion may cancel the license of the captain of the boat on which such person is employed or for which he is gathering oysters, as well as cancel the license to fish and gather oysters of such persons offending, and no new license shall be issued to such captain or to such person convicted for a period not to exceed two years.

Art. 970. Sale of oysters taken for planting.—No person gathering oysters for planting or depositing for preparations for market, on locations obtained from the State or on private property, shall sell, market or in any way dispose of oysters so gathered at the time of gathering, for any other purpose than planting or preparing for market, provided, this shall not be considered as meaning the right to dispose of a location or oyster bed. Any person offending against this article shall be fined not less than fifty nor more than two hundred dollars. [Acts 2nd C. S. 1919, p. 206.]

Art. 971. [918] Cargo of Young Oysters.—Any person offering for sale, or who shall sell, any cargo of oysters which shall contain more than five per cent young oysters shall be fined not less than ten nor more than two hundred dollars. Any oyster that measures less than three and one-half inches from hinge to mouth shall be deemed a young oyster for the purpose of this chapter. The Commissioner is authorized to permit the taking of oysters of less size than three and one-half inches from any reef he may designate but it shall be unlawful to take any oysters from reefs other than those designated by such Commissioner, and any one taking such oysters smaller in

measurement than three and one-half inches from hinge to mouth from other than such reefs as designated by such Commissioner shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 972. Using insanitary container.—Any receptacle for oysters which has not been thoroughly cleaned before oysters are placed in it, is hereby declared to be insanitary. Whoever sells oysters from such receptacle, or ships oysters in such receptable shall be fined not less than twenty-five nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 209.]

Art. 973. Floating or bloating oysters.—No person, firm or corporation shall ship into or in this State, sell or have in his possession for the purpose of sale, any oyster or shell fish in which any formaldehyde or other preservative has been placed, or any oysters or other shell fish which have been subjected to "floating," "drinking" or "bloating" in water containing less salt than in which they are grown, or oysters or other shell fish to which water has been added either directly or indirectly or in the form of melted ice. Unpolluted salt cold or ice water may be used in washing shucked or shelled oysters or other shell fish, if the washing does not continue any longer than the minimum time necessary for chilling, and whoever engages in "floating," "drinking" or "bloating" oysters in this State, or who ships into or in this State such oysters, or who has in his possession, sells or offers to sell any such oysters, shall be fined not less than twenty nor more than two hundred dollars. [Id.]

Art. 974. "Net" defined.—Whenever a net mentioned in this chapter as a trammel, strike, gill, hoop, pound, purse or other kind of a net, the standard net of such variety or kind or the usual or ordinary kind of such net as manufactured and sold as in or to the trade is meant. [Id.; Acts 1923, p. 299.]

Art. 975. License for mussel or clam.—Whoever takes from the public waters of this State for sale, any mussels, clams or naiad or shells thereof without first obtaining a license from the Commissioner, shall be fined not less than ten nor more than one hundred dollars. [Acts 2nd C. S. 1919, p. 214.]

Art. 976. Marl, sand and shell.—Whoever shall, for himself, or for or on behalf of or under the direction of another person, association of persons, corporate or otherwise, take or carry away any marl, sand or shells or mudshell or gravel placed under the management, control and protection of the Commissioner, or shall disturb any of said marl, sand, shells or mudshell or gravel or oyster beds or fishing waters or shall operate in or upon any of said places for any purpose other than that necessary or incident to navigation or dredging under State or Federal authority, without having first obtained a written permit from said Commissioner for the territory in which such operation is carried on, shall be fined not less than ten nor more than two hundred dollars. Each day's operation shall be a separate offense. [Acts 2nd C. S. 1919, p. 218.]

Art. 977. Charts as evidence.—All United States Coastal Survey Charts covering the coast of Texas are admissible in any prosecution under this chapter.

Art. 978. [871] Witnesses must testify.—Any court, office or tribunal having jurisdiction of the offenses set forth in this chapter or any district or county attorney may subpœna persons and compel their attendance as witnesses to testify as to violations of any provision of this chapter. Anyone so summoned and examined shall not be liable to prosecution for any such violation about which he may testify; and a conviction of said offense may be had upon the unsupported evidence of an accomplice or participant. [Acts 2nd C. S. 1919, p. 207.]

Art. 978a. Trespass on hatchery or reservation.—Any person entering and trespassing on the grounds of any State fish hatchery or on the grounds set apart by the State for the propagation and keeping of birds and animals, without the permission of the Commissioner or deputy in charge of such reservation, shall be fined not less than ten nor more than twenty-five dollars. [Acts 2nd C. S. 1919, p. 208.]

Art. 978b. Protecting fish and game in hatchery.—Whoever shall take, injure or kill any fish kept by the State in its hatcheries, or any bird or animal kept by the State on its reservation grounds or elsewhere for propagation or exhibition purposes, shall be fined not less than fifty nor more than two hundred dollars. [Id.]

Art. 978c. [915] Screening canal or pipe.—Every person, firm or corporation using any means for the purpose of taking water from the fresh waters of the State, when directed to do so by the Commissioner, shall place screens over the entrance of the canal, pipe, or over whatever means are used for diverting the water, or over the mouth of the intake pipe, for the purpose of preventing fish from entering said pipe or canal. The size of and regulations for placing such screen and any other obstruction shall be designated by the Commissioner. Whoever fails to comply with this article after notification by the Commissioner to do so shall be fined not less than fifty nor more than two hundred dollars. Each day is a separate offense. [Acts 1909, p. 331, Acts 1913, p. 271.]

Art. 978d. Closed season for green turtle.—It shall be unlawful for any person to take or kill or have in his possession at any time before September 1, 1920, any sea turtle known as the green turtle, and it shall be unlawful to destroy or take the eggs of such turtle and any person who shall take, kill or have in his possession within such five years, or shall destroy or take the eggs of such turtle, shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum of not less than fifty ($50.00) nor more than one hundred ($100.00) dollars.

(The foregoing article is senseless but is a correct copy of the enrolled bill.)

The note in parenthesis was inserted by the official revisors. The article is from Acts 1925, 39th Leg., p. 438, ch. 178, § 1, art. 55, unchanged. The reference to 1920 probably was intended to be to 1930.

Art. 978e. Closed season on bass and crappie.—It shall be unlawful for any person, firm or corporation, or their agents, to buy or sell, or offer for sale, or offer to buy, or have in his or their possession for sale, or to carry, transport or ship for the purpose of sale, barter or exchange, any fresh water crappie or bass within the State of Texas.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine in any sum not exceeding one hundred dollars, and each sale or shipment or act in violation hereof shall constitute a separate offense.

TITLE 14

TRADE AND COMMERCE

Chap.

1. Offenses Affecting Written Instruments.
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4. Warehouses and Cotton.
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CHAPTER ONE

OFFENSES AFFECTING WRITTEN INSTRUMENTS

Art.

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Article 979. [924] [530] [431] "Forgery."—He is guilty of forgery who without lawful authority, and with intent to injure or defraud, shall make a false instrument in writing purporting to be the act of another, in such manner that the false instrument so made would (if the same were true) have created, increased, diminished, discharged or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever. [O. C. 431.]

Art. 980. Forgery of will.—Any person who executes what purports to be the last will and testament of another, without the consent of such other person, is also guilty of forgery. Prosecution under this article may be begun at any time after such forgery is committed and within five years after the death of the purported testator, but not thereafter. [Acts 1919, p. 119.]

Art. 981. Forgery of obligation of foreign government.—He is guilty of forgery who without lawful authority and with intent to injure or defraud shall falsely make, alter[,] forge or counterfeit any bond, certificate, obligation, or instrument in writing having a value or purporting to be of value issued by or purporting to be issued by or under the authority or direction of any foreign government or de facto foreign government, or any officer or agent of any foreign government or de facto foreign government, or any person or persons claiming to act by or under the authority of any foreign government or de facto foreign government or claiming by right of any office, military or civil, to have a right in any foreign country to issue money, bills of exchange, notes, or any papers circulating as money or mediums of exchange in any foreign country or portion thereof, or purporting to be redeemable in money or other thing of value, and any person violating any of the provisions of this article shall be punished as provided in article 995. [Act Sept. 16, 1914.]

Art. 982. Passing obligation of foreign government.—If any person shall knowingly pass as true or attempt to pass as true any such forged instrument in writing as is mentioned and defined in article 981 he shall be punished as provided by article 996. [Act Sept. 16, 1914.]

Art. 983. Possessing of obligation of foreign government.—If any person shall knowingly have in his possession any instrument of writing, the making of which is by law an offense under the provisions of article 981 hereof, with intent to use or pass the same as true, he shall be punished as is provided in article 998. [Act Sept. 16, 1914.]

Art. 984. [925] [531] [432] Alteration also forgery.—He is also guilty of forgery who, without lawful authority, and with intent to injure or defraud, shall alter an instrument in writing then already in existence, by whomsoever made, in such manner that the alteration would (if it had been legally made) have created, increased, diminished, discharged or defeated any pecuniary obligation, or would have transferred, or in any manner have affected any property whatever. [O. C. 432.]

Art. 985. [926] [532] [433] Intent necessary.—The false making or alteration, to constitute forgery, must be done with intent to injure or defraud, and the injury must be such as affects one pecuniarily, or in relation to his property. [O. C. 442.]

Art. 986. [927] [533] [434] "Instrument in writing."—The words "Instrument in writing," as used in this chapter, include every writing purporting to make known or declare the will or intention of the party whose act it purports to be, whether the same be of record or under seal or private signature, or whatever other form it may have. It must be upon paper or parchment, or some substance, made to resemble either of them. The words may be written, printed, stamped or made in any other way, or by any other device. And the words "in writing," "write," "written," include all these modes of making. An instrument, partly printed or stamped, and partly written, is an instrument in writing. In order to come within the definition of forgery, the signature, when made otherwise than by writing, must be made to resemble manuscript. [O. C. 434.]

Art. 987. [928] [534] [435] "Alter."—The word "alter," in the definition of forgery, means to erase or obliterate any word, letter or figure, to extract the writing altogether, or to substitute other words, letters or figures for those erased, obliterated or extracted, to add any other word, letter or figure to the original instrument, or to make any other change whatever which shall have the effect to create, increase, diminish, discharge or defeat a pecuniary obligation, or to transfer, or in any other way affect any property whatever. [O. C. 438.]

Art. 988. [929] [535] [436] "Another."—The instrument must purport to be the act of "another," and within the meaning of this word, as used in defining forgery, are included this State, the United States, or either of the States or Territories of the Union; all the several branches of the government or either of them; all public or private bodies, politic and corporate; all courts; all officers, public or private, in their official capacity; all partnerships in professions or trades; and all other persons, whether real or fictitious, except the person engaged in the forgery. [O. C. 439.]

Art. 989. [930] [536] [437] "Pecuniary obligation."—"Pecuniary obligation" means every instrument having money for its object, and every obligation for the breach of which a civil action for damages may be lawfully brought. [O. C. 440.]

Art. 990. [931] [537] [438] "Transferred or in any manner have affected."—By an instrument which would "have transferred or in any manner have affected" property, is meant every species of conveyance, or undertaking in writing, which supposes a right in the person purporting to execute it, to dispose of or change the character of property of every kind, and which can have such effect when genuine. [O. C. 441.]

Art. 991. [932] [538] [439] All participants guilty.—One is guilty of making or altering, who, knowing the illegal purpose intended, shall write, or cause to be written, the signature, or the whole or any part of a forged instrument. All persons engaged in the illegal act are deemed guilty of forgery. [O. C. 435.]

Art. 992. [933] [539] [440] Filling up over signature.—It is a forgery to make, with intent to defraud or injure, a written instrument, by filling up over a genuine signature, or by writing on the opposite side of a paper so as to make the signature appear as an endorsement. [O. C. 436.]

Art. 993. [934] [540] [441] Person not guilty, when.—When the person making or altering an instrument in writing acts under an authority which he has good reason to believe, and actually does believe, to be sufficient, he is not guilty of forgery, though the authority be in fact insufficient and void. [O. C. 437.]

Art. 994. [935] Altering teacher's certificate.—Whoever shall wilfully raise, change, or alter any teacher's certificate or diploma, or other instru-

ment having the force of a teacher's certificate, shall be deemed guilty of forgery. [Acts 1893, p. 205.]

Art. 995. [936] [541] [442] Penalty for forgery.—Any person guilty of forgery shall be confined in the penitentiary not less than two nor more than seven years. [O. C. 433.]

Art. 996. [937] [542] [443] Passing forged instrument.—If any person shall knowingly pass as true, or attempt to pass as true, any such forged instrument in writing as is mentioned and defined in the preceding articles of this chapter, he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 443.]

Art. 997. [938] [534] [444] Preparing implements for forgery.—Whoever shall prepare in this State any implements or materials, or engrave any plate for the purpose of being used in forging the notes of any bank, whether within this State or out of it, and whether the same be incorporated or not, or who shall have in his possession in this State any such implements, materials or engraved plate, with intent to be used for the purpose above mentioned, shall be confined in the penitentiary not less than two nor more than five years. [O. C. 444.]

Art. 998. [939] [544] [445] Possession with intent to pass.—If any person shall knowingly have in his possession any instrument of writing, the making of which is by law an offense, with intent to use or pass the same as true, he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 445, Acts 1858, p. 169.]

Art. 999. [940] [545] [446] Evidence in case of bank bills.—Upon a trial for forgery of any bank bill, or for passing or attempting to pass any such bill as true, or for knowingly having in possession any such forged bank bill, evidence that bills or notes purporting to be issued by any bank are commonly received as currency, or proof of the existence of such bank by parol testimony, shall be deemed sufficient to show its legal establishment and existence. [O. C. 446.]

Art. 1000. [941] [546] [447] Falsely reading instrument.—Whoever with intent to defraud shall, either by falsely reading, or falsely interpreting, any pecuniary obligation or instrument in writing, which would in any manner affect property, or by misrepresenting its contents, induce any one to sign such instrument as his act, or give assent to it in such manner as would make it his act, if not done under mistake, shall be confined in the penitentiary not less than two nor more than five years. [O. C. 447.]

Art. 1001. [942] [547] [448] Substituting one instrument for another.—Whoever with intent to defraud shall substitute one instrument in writing for another, and by this means induce any person to sign an instrument materially different from that which he intended to sign, shall be confined in the penitentiary not less than two nor more than five years. [O. C. 448.]

Art. 1002. [943] Altering or injuring public records.—If any person, without authority of law, shall wilfully and maliciously change, alter, mutilate, destroy, deface or injure any book, paper, record or any other document, required or permitted by law to be kept by any officer within this State, he shall be fined not exceeding five thousand dollars, or imprisoned in the penitentiary not less than one nor more than five years. [Acts 1899, p. 301.]

Art. 1003. [944] [548] [449] Falsely personating another.—If one shall falsely personate another, whether bearing the same name or not, and, in such assumed character, shall give authority to any person to sign such assumed name to any instrument in writing which, if genuine, would create, increase, diminish or discharge any pecuniary obligation, or would transfer, or in any way affect any property, he shall be confined in the penitentiary not less than two nor more than seven years. [O. C. 449.]

Art. 1004. [945] [549] [450] False personation in acknowledgments.—If any person shall falsely personate another whether bearing the same name or not, and in such assumed character shall, before any officer authorized by law to authenticate instruments of writing for registration, acknowledge the execution of an instrument of writing purporting to convey, or in any manner affect, an interest in property, such instrument purporting to be the act of the person whose name is so assumed, and the acknowledgment thereof being such as would entitle the instrument to be registered, he shall be confined in the penitentiary not less than two nor more than ten years. [O. C. 450.]

Art. 1005. [946] [549a] [450a] Procedure.—A conviction for any offense mentioned in articles 979, 996 and 998 shall be a bar to any other prosecution under said articles based upon the same transaction or same forged instrument of writing. One or more of said several offenses may be charged in separate counts in the same indictment, and prosecuted together to final judgment without election by the State as to which it relies upon for a conviction. A judgment of conviction shall specify which offense or under which count the defendant is found guilty, and shall assess but one penalty not exceeding the greatest punishment fixed by law to the highest grade of offense of which defendant is convicted. It is unlawful for any county or district attorney, or any person acting as such, to wilfully or knowingly demand or receive fees for more than one prosecution that could have been combined or prosecuted in one indictment, subject to the penalties prescribed by law for the punishment of extortion of illegal fees. [Acts 1895, p. 106.]

CHAPTER TWO

FORGERY OF LAND TITLES, ETC.

Art.
1006. "Forgery of patents," etc.
1007. False certificate by officers.
1008. Knowingly uttering forged instruments.
1009. Non-residents may commit.
1010. Proof and allegations.
1011. Rules in forgery applicable.

Article 1006. [947] [550] [451] "Forgery of patents," etc.—Every person who falsely makes, alters, forges, or counterfeits, or causes or procures to be falsely made, altered, forged, or counterfeited, or in any way aids, assists, advises, or encourages the false making, altering, forging, or counterfeiting of any certificate, field notes, returns, survey, map, plat, report, order, decree, record, patent, deed, power of attorney, transfer, assignment, release, conveyance, or title paper, or acknowledgment, or proof of record, or certificate of record belonging to or pertaining to any instrument or paper, or any seal, official or private stamp, scroll, mark, date, signature, or any paper, or any evidence of any right, title, or claim of any character, or any instrument in writing, document, paper or memorandum, or file of any character whatsoever, in relation to or affecting lands, or any interest in lands in this State, with the intent to make money or other valuable thing thereby, or with intent to set up a claim or title, or aid or assist any one else in setting up a claim or title to lands or any interest in lands, or to prosecute or defend a suit, or aid or assist anyone else in prosecuting or defending a suit with respect to lands, or to cast a cloud upon the title, or in any way injure, obtain the advantage of, or prejudice the rights or interest of, the true owner of lands, or with any fraudulent intent whatever, shall be deemed guilty of forgery and be punished by imprisonment in the State penitentiary at hard labor not less than five nor more than twenty years. [Acts 1876, p. 59.]

Art. 1007. [948] [551] [452] False certificate by officers.—If any person authorized by law to take the proof of acknowledgment of any instrument, document or paper whatsoever, affecting or relating to the title of lands in this State, wilfully and falsely certify that such proof or acknowledgment was duly made, or if any person fraudulently affixes a fictitious or pretended signature purporting to be that of an offi-

cer or any other person, though such person never was an officer or never existed, he shall be deemed guilty of forgery and punished as provided in article 1006 of this chapter. [Id.]

Art. 1008. [949] [552] [453] Knowingly uttering forged instruments.—Every person who knowingly utters, publishes, passes, or uses, or who in any way aids, assists in or advises the uttering, publishing, passing or using as true and genuine any false, forged, altered, or counterfeited certificate, field-notes, returns, survey, map, plat, report, order, decree, record, patent, deed, power of attorney, transfer, assignment, release, conveyance, title papers, acknowledgment or proof for record or certificate of record belonging to or pertaining to any instrument or paper, or any evidence of any right, title or claim of any character whatsoever, or any instrument in writing, document, paper, memorandum or file, or any official or private seal, or any scroll, mark, date, or signature in any way relating to, or having any connection with land, or any interest in land in this State, with the intent mentioned in article 1006 of this chapter, or with any other fraudulent intent whatsoever, shall be deemed guilty and be punished in like manner as is provided in article 1006 of this chapter. And the filing or causing or directing to be filed, or causing or directing to be recorded, in the General Land Office of the State, or in any office of record or in any court in this State, or the sending through the mails or by express, or in any other way, for the purpose of filing of record of any such false, altered, forged or counterfeited matter, documents, conveyances, papers, or things, knowing the same to be false, altered, forged or counterfeited, shall be an uttering, publishing and using within the meaning of this article. [Id.]

Art. 1009. [950] [553] [454] Non-residents may commit.—Persons out of the State may commit and be liable to indictment and conviction for committing any offenses enumerated in this chapter, which do not in their commission necessarily require a personal presence in this State—the object of this chapter being to reach and punish all offending against its provisions, whether within or without the State.

Art. 1010. [951] [554] [455] Proof and allegations.—Upon indictment under this chapter, to warrant a conviction, it shall only be necessary to prove that the person charged took any one step, or did any one act or thing in the commission of the offense, if from such step, act or thing any of the intentions hereinbefore mentioned, or any other fraudulent intention, may be reasonably inferred; nor shall it be any defense to a prosecution under this chapter that the matter, act, deed, instrument or thing was in law, either as to substance or form, void, or that the same was not in fact used for the purpose for which it was made or designed; and it shall only be necessary in an indictment under this chapter to state with reasonable certainty the act constituting the offense, and charge, in connection therewith, in general terms, the intention to defraud, without naming the person or persons it was intended to defraud. On trial of such indictment, it shall be sufficient and shall not be deemed a variance if there appears to be an intent to defraud the United States, or any State, Territory, county, city, town or village, or any body corporate, or any public officer in his official capacity, or any co-partnership, or member thereof, or any particular person. [Acts 1876, p. 59.]

Art. 1011. [953] [556] [457] Rules in forgery applicable.—The rules prescribed in the preceding chapter relative to the offense of forgery, so far as the same are applicable, shall apply to the various offenses enumerated in this chapter. [Id.]

CHAPTER THREE

COUNTERFEITING AND DIMINISHING VALUE OF COIN

Art.
1012. "Counterfeiting."
1013. Passing counterfeit coin.
1014. Making dies, etc.
1015. Passing coin of diminished value.
1016. "Gold and silver coin."
1017. What constitutes passing.

Article 1012. [954—5—6—7] "Counterfeiting."—He is guilty of counterfeiting who makes, in the semblance of true gold or silver coin, any coin of whatever denomination, having in its composition a less proportion of the precious metal of which the true coin intended to be imitated is composed than is contained in such true coin, with intent that the same should be passed in this State or elsewhere; or who, with like intent, alters any coin of lower value so as to make it resemble coin of higher value. The resemblance between the true and the false coin need not be perfect to constitute the offense of counterfeiting. Whoever shall counterfeit any gold or silver coin shall be confined in the penitentiary not less than five nor more than ten years.

Art. 1013. [958] [561] [463] Passing counterfeit coin.—Whoever with intent to defraud shall pass or offer to pass as true, or bring into this State, or have in his possession with intent to pass as true, any counterfeit coin, knowing the same to be counterfeit, shall be confined in the penitentiary not less than two nor more than five years. [O. C. 455.]

Art. 1014. [959] [562] [464] Making dies, etc.—If any person with the intention of committing the offense of counterfeiting, or of aiding therein, shall make or repair, or shall have in his possession any die, mould or other instrument whatever, designed or adapted, or usually employed for making coin, or shall prepare, or have in his possession, any base metal prepared for coinage, with intent that the same may be used for the purpose of counterfeiting, he shall be confined in the penitentiary not less than two nor more than five years.

Art. 1015. [960] [563] [465] Passing coin of diminished value.—If any person shall with intent to profit thereby diminish the weight of any gold or silver coin and afterwards pass it for the value it would have had before it was so diminished, or send it to any place, whether in the State or out of it, with the intent that the same may be passed, he shall be confined in the penitentiary not less than two nor more than five years. [O. C. 457; Acts 1858, p. 169.]

Art. 1016. [961] [564] [466] "Gold and silver coin."—By the gold or silver coin mentioned in this chapter is meant any piece of gold or silver of which one of these metals is the principal component part, and which passes as money in the United States, either by law or usage, whether the same be of the United States or of any foreign country. [O. C. 458.]

Art. 1017. [962] [565] [467] What constitutes passing.—It is sufficient to constitute the offense of passing or attempting to pass under the provisions of this chapter if the counterfeit coin be delivered or offered to another with the intention of defrauding or enabling such other person to defraud although such counterfeit coin be not delivered or offered at the full value which it would bear if genuine.

CHAPTER FOUR

WAREHOUSES AND COTTON

Art.
1018. Issuing receipt without basis.
1019. Receipt containing false statement.
1020. Duplicating receipts.
1021. Exception.
1022. Failure to disclose ownership.
1023. Unlawful delivery by warehouseman.
1024. Exception.
1025. Unlawfully depositing goods.
1026. Forging warehouse receipt.
1027. Unlicensed cotton classer.
1028. Substituting sample.
1029. Fraudulent certificate.
1030. Wilfully plating cotton.
1031. Ginner to comply with law.
1032. Unlicensed ginner.
1033. Ginner's record.
1034. Pink bollworm laws.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Article 1018. Issuing receipt without basis.—A warehouseman, or any officer, agent or servant of a warehouseman, who issues or aids in issuing a receipt, knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under the actual control of such warehouseman at the time of issuing such receipt, shall be confined in the penitentiary not exceeding five years, or be fined not exceeding five thousand dollars, or both. [Acts 1919, p. 225, Acts 1st C. S. 1917, p. 82.]

Art. 1019. Receipt containing false statement.—A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods, knowing that it contains any false statement, shall be imprisoned in jail not exceeding one year, or be fined not exceeding one thousand dollars, or both. [Acts 1919, p. 225.]

Art. 1020. Duplicating receipts.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods, knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncancelled, without plainly placing upon the face thereof the word "Duplicate," shall be confined in the penitentiary not exceeding five years, or be fined not exceeding five thousand dollars, or both. [Id.]

Art. 1021. Exception.—The preceding article shall not apply where such goods were delivered upon an order of court upon proof of loss or destruction of a negotiable receipt therefor. [Id.]

Art. 1022. Failure to disclose ownership.—Where there are deposited with or held by a warehouseman, goods of which he is owner, either solely, jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be imprisoned in jail not exceeding one year, or be fined not exceeding one thousand dollars. [Id.]

Art. 1023. Unlawful delivery by warehouseman.—A warehouseman, or any officer, agent or servant of a warehouseman, who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncancelled, without obtaining the possession of such receipt at or before the time of such delivery, shall be imprisoned in jail not exceeding one year, or be fined not exceeding one thousand dollars, or both. [Id.]

Art. 1024. Exception.—The preceding article shall not apply where such goods were delivered upon an order of court upon proof of loss or destruction of a negotiable receipt therefor; nor where such goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature. [Id.]

Art. 1025. Unlawfully depositing goods.—Whoever deposits goods to which he has no title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be imprisoned in jail not exceeding one year, or be fined not exceeding one thousand dollars, or both. [Id.]

Art. 1026. Forging warehouse receipt.—Whoever shall forge any warehouse receipt or knowingly negotiate any forged warehouse receipt purporting to be issued under and by authority of the law passed at the First Called Session of the Thirty-fifth Legislature, being Chapter forty-one of the General Laws of such Session and known as the "Permanent Warehouse Law," shall be fined not less than one hundred nor more than one thousand dollars, or be confined in the penitentiary for not less than two nor more than five years, or both. [Acts 1st C. S. 1917, p. 65.]

Art. 1027. Unlicensed cotton classer.—Whoever shall engage in business as a public cotton classer, classing cotton for the public generally, without holding a license as a public cotton classer, as provided by law, shall be fined not exceeding one hundred dollars. [Id.]

Art. 1028. Substituting sample.—Whoever with intent to defraud shall substitute any sample of cotton or other farm product for a sample taken under authority of law shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1029. Fraudulent certificate.—Whoever shall issue, or cause to be issued, any certificate of sample, weight, grade, or class, of any cotton or other farm products, for commercial purposes, with intent to deceive or defraud, shall be fined not less than twenty-five nor more than two hundred dollars. Each instrument so issued shall be a separate offense. [Id.]

Art. 1030. Wilfully plating cotton.—Each ginner, and any officer, servant or employé of a corporation, person or gin company, conducting a gin business, who shall wilfully plate a bale of cotton, which is to say, who shall wilfully and knowingly place on the outside of said bale a better grade and quality of cotton than on the inside of said bale, for the purpose of deceiving, shall be confined in the penitentiary not exceeding two years, or be fined not exceeding five thousand dollars, or both. [Acts 2nd C. S. 1914, p. 32.]

Art. 1031. Ginner to comply with law.—Whoever operates a cotton gin, either for himself or for another for commercial purposes, without complying with the laws of this State governing such ginners, shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1st C. S. 1917, p. 65.]

Art. 1032. Unlicensed ginner.—Whoever shall operate any gin, ginning cotton for commercial purposes, without first obtaining a license as a licensed ginner from the Commissioner of Agriculture, shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1033. [986–7–9] Ginner's record.—Every person, firm, corporation or association of persons owning, controlling or operating a public cotton gin shall keep or cause to be kept in a book a public record of all cotton brought to them for ginning and packing, showing correctly the amount of cotton received, date of its receipt, by whom brought to the gin, and the name or names of the party or parties claiming to own the same, and after ginning and packing said cotton shall place or cause to be placed on each bale of cotton the initials of the party or parties claiming to own said cotton, under which the ginner shall place some private ginner's mark and record, all of which shall be recorded in said book. Any ginner who fails, neglects or refuses to comply with any provision of this article shall be fined not exceeding twenty-five dollars. [Acts 1901, p. 263.]

Art. 1034. Pink bollworm laws.—Whoever shall transport any cotton or cotton products by any means from any territory in this State which has been quarantined and placed under restrictions by proclamation of the Governor of the State, in accordance with the authority conferred by the laws of this State relating to the pink bollworm; or whoever shall violate any proclamation or any rule, regulation or other restriction authorized by said laws or bring into the State any material contaminated with said worm or its eggs; or whoever shall plant, cultivate, grow, allow to grow, gather, transport or market cotton in or from any territory in this State, that has been quarantined and declared a non-cotton zone and placed under restrictions by any of the proclamations authorized by said laws; or whoever shall fail to comply with any of the said rules and regulations so promulgated for the control and direction of cotton growing and marketing in any restricted or regulated zone; or shall violate any proclamation, regula-

tion or restriction authorized by said laws, or any ginner who shall fail or refuse to disinfect cotton seed as provided for in said laws; or whoever shall wilfully refuse or knowingly neglect to comply with any such proclamation, restriction or regulation promulgated and maintained for the protection of the cotton industry, shall be fined not less than fifty nor more than five hundred dollars. Each transaction of each product so shipped or transported, and each act in violation of the restrictions herein authorized governing the planting, growing, marketing and cleaning the field, shall constitute a separate offense. The district court of the county in which any criminal case is filed under the provisions of this article may, upon the application of either the State or of the defendant and a showing that the applicant cannot obtain a fair trial in that county, order a change of venue to an adjoining county or district. [Acts 1st C. S. 1921, p. 128.]

CHAPTER FIVE

WEIGHTS AND MEASURES

Art.
1035. Duty of local sealer.
1036. Removing tag of sealer.
1037. False weights and measures.
1038. Hindering sealers.
1039. Refusing to permit test of weight.
1040. Refusing to permit test of article.
1041. Unlawfully sealing.
1042. Failure to regard unit of measure.
1043. Parties may contract.
1044. Receptacle containing mill product.
1045. Containers for fruit or vegetables.
1046. Inspection of fruits and vegetables.
1047. "Public weigher."
1048. Weight certificate.
1049. Record of weights.
1050. Issuing false certificate.
1051. Requesting false certificate.
1052. Weigher to comply with law.
1053. Shipping at false weight.
1054. Deposit for installing service.
1055. Water, gas and electric meters.
1056. Diverting from meters.
1057. Misreading meter.
1057a. Refusal to allow authorities to examine meter.

Article 1035. Duty of local sealer.—Each local or deputy sealer of weights and measures appointed by any city or town council or commission, shall be under the supervision of the Commissioner of Agriculture and shall be required to report to him regularly and carry out all his instructions, and on failure or refusal to do so shall be fined not less than ten nor more than two hundred dollars. [Acts 1919, p. 240.]

Art. 1036. Removing tag of sealer.—Whoever removes or obliterates any tag or device placed by any authorized sealer, deputy sealer or inspector upon any weight or measure, or weighing or measuring instrument, shall be fined not less than ten nor more than two hundred dollars. [Id.]

Art. 1037. False weights and measures.—Any person, who, by himself or his employé or agent, or as the employé or agent of another, shall use, in the buying or selling of any commodity, or retain in his possession, a false weight or measure, or weighing or measuring instrument, or shall offer or expose for sale, or sell, except as specifically allowed by law, or use or retain in his possession any weight or measure or weighing or measuring instrument contrary to law, or any person, who, by himself, or his employé or agent, or as the employé or agent of another, shall sell or offer or expose for sale, or use or have in his possession for the purpose of selling or using, any device or instrument to be used to, or calculated to, falsify any weight or measure, shall be fined not less than ten nor more than two hundred dollars. Possession of such false weights or measures or instruments shall be prima facie evidence of the fact that they were intended to be used in the violation of law. [Id.]

Art. 1038. Hindering sealers.—Whoever hinders or obstructs in any way the Commissioner of Agriculture, or his deputy, inspector or sealer or any local sealer, in the performance of their duties, shall be fined not less than ten nor more than two hundred dollars. [Id.]

Art. 1039. Refusing to permit test of weight.—Any person neglecting or refusing to exhibit any weight, measure, or weighing or measuring instrument of any kind, or appliances and accessories connected with any of such instruments or measures which are in his possession or under his control to the Commissioner, his deputy, inspector or to any local inspector or sealer, for the purpose of allowing the same to be inspected and examined as provided for by law, shall be fined not less than ten nor more than two hundred dollars. [Id.]

Art. 1040. Refusing to permit test of article.—Any person, who, by himself, or his employé or agent, or as the proprietor or manager, shall refuse to exhibit any article, commodity, produce or anything being sold or offered for sale at a given weight or quantity, or ordinarily so sold, to the Commissioner or to his deputy or to a sealer or his deputy or to an inspector or local sealer, for the purpose of allowing same to be tested and proved as to quantity contained therein, shall be fined not less than ten nor more than two hundred dollars. [Id.]

Art. 1041. Unlawfully sealing.—Any sealer, deputy sealer, inspector or local sealer appointed under the provisions of law, or discharging the duties of a sealer of weights and measures in this State, who shall seal any weight, measure, balance or apparatus before testing and making the same conform with the standards of the State or who shall condemn any weight, measure, balance or apparatus without first testing the same, shall be fined not less than twenty-five nor more than two hundred dollars, and shall be immediately suspended from office. [Id.]

Art. 1042. Failure to regard unit of measure.—Whoever in buying any commodity or article of property, merchandise or produce, the standard weight of which per bushel or barrel, or divisible merchantable quantities of a bushel or barrel, or by the cord or ton or cubic yard, has been fixed by the laws of this State, shall take any greater number of pounds thereof to the bushel, barrel or cubic yard, or divisible merchantable quantity of bushel, barrel, cubic yard or lienal [lineal] yard, or in selling any of the same, shall give any less number of pounds thereof to the bushel, barrel, cubic or lineal yard, or divisible merchantable quantity of bushel, barrel, cubic or lineal yard than is allowed by the laws of this State, with intent to gain an advantage thereby, shall be fined not less than twenty nor more than two hundred dollars. [Acts 1919, p. 235.]

Art. 1043. Parties may contract.—The preceding article does not apply where the buyer or seller is expressly authorized by special contract or agreement to take more or give less of such article. [Id.]

Art. 1044. [730] Receptacle containing mill product.—Any one engaged in the manufacture of mill products of any character who shall use any bag, box, barrel or any other receptacle into which to put such product other than the one bearing the name of such mill manufacturing the same, shall be fined not less than one hundred nor more than one thousand dollars or be confined in jail for thirty days, or both. [Acts 1907, p. 244.]

Art. 1045. Containers for fruit or vegetables.—Whoever shall make, sell, or offer to sell containers for the shipment of fruit or vegetables, which containers are of different size or dimensions from the standards of such containers established by the laws of this State, shall be fined not to exceed one thousand dollars. [Acts 1917, p. 402.]

Art. 1046. Inspection of fruits and vegetables.—Any grower, shipper's agent, packer, or any agent, receiver or representative of any common carrier or transportation company, who shall violate any provision of the laws of this State relating to standards of grades and pack of fruit and vegetables, or who shall refuse to submit any such fruit or vegetables packed or ready for shipment to inspection by any

inspector appointed, as authorized by law, by the Commissioner of Agriculture and empowered by such Commissioner to make such inspection, shall be fined not to exceed one hundred dollars. [Acts 4th C. S. 1918, p. 150.]

Art. 1047. "Public weigher."—All persons engaged in the business of public weighing for hire, or any person who shall weigh or measure any commodity, produce or article, and issue therefor a weight certificate or weight sheet, which shall be accepted as the accurate weight upon which the purchase or sale of such commodity, produce, or article is based, shall be known as a public weigher, and shall comply with the provisions of the law regulating public weighers, provided the provisions of this article shall not apply to any owner, manager, agent or employé of any compress or any public or private warehouse in their operations as a warehouseman. This law shall not apply in any manner to any Texas port. [Acts 1921, p. 168.]

Art. 1048. Weight certificate.—The Commissioner of Agriculture shall prescribe the form of weight certificate to be used by all public weighers in this State, which certificate shall be known as a State Certificate of Weights and Measures; such certificate shall state thereon the kind of produce; the number of the same, the date of the receipt of the produce, the owner, agent or consignee, the total weight of the produce, the vessel, railroad, or other means by which the produce was received, and any trade mark or other mark thereon; and such other information as may be necessary to distinguish or identify the produce from a like kind. No certificate other than the one herein prescribed shall be used by any public weigher in this State, and such certificate when so made and properly signed, shall be prima facie evidence of such weight. [Acts 1919, p. 124.]

Art. 1049. Record of weights.—All public weighers, within this State, shall keep and preserve a correct and accurate record of all weights made by them, which record shall be open for the inspection of the Commissioner of Agriculture, his deputies or inspectors, and the public at any and all times. Such record shall be uniform throughout the State, and the form of such record shall be prescribed by said Commissioner. [Id.]

Art. 1050. Issuing false certificate.—All certificates of weights and measures or weight sheets as provided for in this chapter shall contain the accurate and correct weight of any and all commodities weighed when issued by public weighers. Any public weigher, or deputy public weigher, who shall issue any certificate of weights and measures or weight sheet giving false weights or measures of any article, or commodity weighed or measured by him, or his representative or deputy, to any person, firm or corporation, shall be fined not less than twenty-five nor more than two hundred and fifty dollars, and may be imprisoned in jail for not less than thirty days nor more than six months, and in addition thereto, he shall be suspended from office and not permitted to continue the business of public weighing any longer. [Id.]

Art. 1051. Requesting false certificate.—Whoever shall request a public weigher, deputy public weigher or any person employed by him, or pay to him any money, or give him anything to weigh any produce, commodity or article, falsely or incorrectly, or who shall request a false or incorrect certificate of weights or measures, or weight sheet, shall be fined not less than twenty-five nor more than two hundred dollars, and in addition thereto may be imprisoned in jail for not less than thirty days nor more than six months. [Id.]

Art. 1052. Weigher to comply with law.—Any person, or agent or representative of any corporation, who shall engage in the business of weighing for the public, or who shall grant or issue a certificate or weight sheet, upon which a purchase or sale is made without complying with the terms of the statutes regulating public weighers, shall be fined not less than twenty-five nor more than two hundred dollars. Each certificate so granted, or weight sheet issued by him is a separate offense. [Id.]

Art. 1053. Shipping at false weight.—Whoever ships to any one in this State any thing in which the weight is necessary to be given at any weight other than the true weight properly certified to shall be fined not less than one hundred nor more than five hundred dollars and may be imprisoned in jail for not more than twelve months, or both so fined and imprisoned. [Id.]

Art. 1054. Deposit for installing service.—Every person, firm, company, corporation, receiver or trustee engaged in the furnishing of water, light, gas or telephone service which requires the payment on the part of the user of such service a deposit of money as a condition precedent to furnishing any such service, shall pay six per cent interest per annum on such deposit to the one making same, or to his heirs or assigns, from the time of such deposit, the same to be paid on the first day of January of each year, or sooner if such service be discontinued. When such service is discontinued, such deposit, together with any unpaid interest thereon, or such part of such deposit and unpaid interest not consumed in bills due for such service, shall be returned to such depositor, his heirs or legal representatives. Whoever violates any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars, or be confined in jail not less than six months nor more than one year, or both. [Acts 2nd C. S. 1923, p. 101.]

Art. 1055. Water, gas and electric meters.—All water meters, gas meters and electric meters are subject at all times to inspection of the Commissioner of Agriculture and said Commissioner either on his own motion or complaint of any user of any of the above named meters, shall have same inspected as to its correctness, and if found incorrect to discontinue its use until corrected, so that it will register correctly and whoever refuses to discontinue such meter when so notified by said Commissioner that it is incorrect or when so ordered to discontinue such meter should fail or refuse to comply with such order of said Commissioner shall be fined not less than twenty-five nor more than one hundred dollars and each day he shall fail or refuse to comply with such order to discontinue same shall be a separate offense. [Acts 1923, p. 225.]

Art. 1056. [993] Diverting from meters.—Whoever, intentionally, by any means or device, prevents electric current, water or gas from passing through any meter belonging to a person, corporation or company engaged in the manufacture or sale of electricity, water, or gas, for lighting, power or other purposes, furnished such person to register the current of electricity, water or gas, passing through meters, or intentionally prevents a meter from duly registering the quantity of electricity, water or gas supplied, or in any way, interferes with its proper action or just registration, or without the consent of such person, corporation or company, intentionally diverts any electric current from any wire, or water or gas from any pipe or pipes of such person, corporation or company, or otherwise intentionally uses, or causes to be used, without the consent of such person, corporation or company any electricity or gas manufactured, or water produced or distributed, by such person, corporation or company, or any person who retains possession of, or refuses to deliver, any meter, lamp, or other appliances which may be, or may have been loaned them by any person, corporation or company for the purpose of furnishing electricity, water, or gas, through the same, with the intent to defraud such person, corporation or company, shall for every such offense be fined not less than twenty-five nor more than one hundred dollars. The presence at any time, on or about any such meter, wire or pipe of any device or pipes or wires resulting in the diversion of electric current, water or gas, as above defined or resulting in the prevention of the proper ac-

tion or just registration of the meter or meters, as above set forth, shall constitute prima facie evidence of knowledge on the part of the person having custody and control of the room or place where such device or pipe or wire is of the existence thereof and the effect thereof and shall further constitute prima facie evidence of intention on the part of such person to defraud and shall bring such person prima facie within the scope, meaning and penalties of this article. [Acts 1905, p. 205; Acts 3rd C. S. 1917, p. 107; Acts 1923, p. 224.]

Art. 1057. Misreading meter.—Any person engaged in the manufacture or sale of electricity, water, or gas for lighting, power or other purposes, or any officer or employé of any person, corporation or company so engaged who shall knowingly misread any meter or overcharge any customer for such light, water or gas furnished, or shall cause or knowingly permit any light, water or gas meter to register or show greater than the true amount of light, electricity, water or gas sold or furnished any customer shall, for every such offense, be fined not less than twenty-five nor more than one hundred dollars. [Acts 1923, p. 225.]

Art. 1057a. Refusal to allow authorities to examine meter.—Any person or furnisher of electrical power and current or gas who fails or refuses to allow the agents of city commissioners or city council of any cities, towns or villages of the class hereinbefore mentioned to examine the meters and measuring devices hereinbefore referred to, shall be guilty of a misdemeanor, and be punished by a fine not to exceed two hundred ($200.00) dollars, each and every day of such refusal to constitute a separate offense. [Acts 1927, 40th Leg., p. 71, ch. 47, § 5.]

CHAPTER SIX

OFFENSES AGAINST LABELS, TRADE MARKS, ETC.

Art.
1058. Using trade mark of another.
1059. Possession prima facie evidence.
1060. Penalties.
1061. Counterfeiting trade mark, etc.
1062. Unlawfully using or displaying.
1063. Filling or not returning container.
1064. Injuring milk containers, etc.
1065. Ownership of containers, etc.
1066. Dairy trade mark.

Article 1058. [1392] Using trade mark of another.—Each manufacturer or dealer in carbonated goods, mineral waters, soda water or other beverage, and each manufacturer of medicine or other compound, requiring the use of kegs, casks, barrels, boxes, syphons, bottles, or any other vessels for containers, upon which the names, brands, marks, or trade marks, or other designation of ownership or proprietorship, is stamped, engraved, etched, blown in, impressed, or otherwise produced upon such boxes, syphons, bottles, or any other vessels for containers, may file in the office of the county clerk of the county in which the principal place or office of business is situated, a fac simile or description of the name or names, marks or devices, so used by such manufacturer or dealer in such wares herein enumerated, and cause such description to be published in a public newspaper published in such county for three successive weeks. The act of so filing and publishing shall operate as a trade mark, securing to said manufacturer the full protection of the law as a trade mark, entitling said manufacturer to the sole and exclusive use in Texas of said mark, name or device. No person, corporate or otherwise, other than the proprietor, or by his written consent, shall fill for sale for the purpose of traffic with any compound whatever, any box, syphon, bottle or other container so marked, recorded and published as provided in this article, or deface, erase, obliterate, cover up or otherwise remove or cancel any such mark or device. [Acts 1893, p. 125; Acts 1901, p. 288.]

Art. 1059. [1393] Possession prima facie evidence.—To wilfully have in possession, otherwise than by contract with the proprietor of the goods above enumerated, or with his duly accredited agents, any vessel in said article enumerated, or to use, buy, sell or dispose of any such vessel, with or without contents of any kind, except by authority of the proprietor, or to wilfully break, damage, or destroy any such vessel, is prima facie evidence of such unlawful use. [Acts 1893, p. 125.]

Art. 1060. [1394] [918c] Penalties.—Whoever violates any provision of the two preceding articles shall be fined for such unlawful use of each and every box, five dollars; for each and every syphon, five dollars; for each and every bottle, five dollars; and for each and every other receptacle, except a fountain, five dollars; and for each fountain, twenty-five dollars; said fines to be the minimum in each case, the maximum not to exceed double the minimum. [Acts 1893, p. 125.]

Art. 1061. [1395] [918d] Counterfeiting trade mark, etc.—Whenever any person, association, private corporations or union of workingmen, incorporated or unincorporated, have adopted, or shall hereafter adopt for their protection any label, trade mark, design, device, imprint or form of advertisement, indicating that goods to which such label, trade mark, design, device, imprint or form of advertisement shall be attached, were manufactured by such person, association, private corporations or union, or by a member or members of such association or union, it shall be unlawful for any person, inclusive of officers, agents, receiver or receivers of corporations, to counterfeit or imitate such label, trade mark, design, device, imprint or form of advertisement or to use such counterfeit or imitation of such label, trade mark, design, device, imprint, or form of advertisement, knowing the same to be counterfeit or imitation, or to aid, assist, countenance or knowingly permit such counterfeit or imitation or the use of such counterfeit or imitation for his own use or benefit, or for the use or benefit of any corporation of which he may then be an officer, agent or receiver. Every person, whether in his individual capacity or as an officer, agent or receiver of a corporation, violating this article, shall be fined not less than twenty-five nor more than one hundred dollars, and each day's violation shall be a separate offense. [Acts 1895, p. 108.]

Art. 1062. [1396] [918e] Unlawfully using or displaying.—Every person, whether in his individual capacity or as the officer, agent or receiver of a corporation, who shall wilfully use or display the genuine label, trade mark, design, device, imprint, or form of advertisement, or name of any such person, association or union, incorporated or unincorporated, not being authorized to use or display the same, or shall aid, assist, countenance or knowingly permit the use of same, not being authorized to use the same, shall be fined not less than twenty-five nor more than one hundred dollars. [Id.]

Art. 1063. Filling or not returning container.—Whoever shall, other than the lawful owner, for any purpose whatever, fill with milk, cream, butter or ice cream any milk can, milk bottle, milk jar, butter box, ice cream can or ice cream tub or mutilate or destroy without the consent of the owner of the same, or wilfully refuse to return or deliver to such owner, upon demand, any such milk can, milk bottle, milk jar, butter box, ice cream can, or ice cream tub branded or stamped with the name or trade mark of such owner, or bearing any private mark in common use by such owner, or from which such brand or stamp or private mark, or marks have been removed, cut off or defaced, shall be fined not less than ten nor more than one hundred dollars. [Acts 4th C. S. 1918, p. 167.]

Art. 1064. Injuring milk containers, etc.—Whoever shall remove, cut off, deface or obliterate the stamp or brand or private mark of any owner of any milk bottle, milk jar, butter box, milk can, ice cream can or ice cream tub, or stamp or place other than brands or stamps or private mark on any such milk bottle, milk jar, milk can, butter box, ice cream

can or ice cream tub, without the written permission of such owner, shall be fined not less than ten nor more than one hundred dollars. [Id.]

Art. 1065. Ownership of milk containers, etc.—Any person, firm or corporation, or joint stock association owning or using milk cans, milk bottles, milk jars, butter boxes, ice cream cans or ice cream tubs in his, her or their name or names, or private mark or marks in common use branded or stamped or placed on the same shall be considered the owner thereof. [Id.]

Art. 1066. Dairy trade mark.—Any person, firm or corporation engaged in the dairying business or in the distribution or sale of milk requiring the use of bottles may file in the office of the county clerk of the county in which such person, firm or corporation expects to sell or distribute milk, a fac simile or description of the name, trade name, mark or design used by such person, firm or corporation for advertising purposes, and cause such fac simile or description to be published in a public newspaper published in such county for three successive weeks, and the act of filing and publication shall operate to secure to such dairyman, milk distributor or milk dealer, the exclusive right to use in said county said name, trade name, mark or design, and the same may be impressed upon the bottles of the owner of such name, mark or design, and such impression upon such a bottle is prima facie proof that the owner of such name, mark or design is the owner of such bottle, either as the original owner or transferee as provided by law. Whoever sells or offers for sale a bottle upon which such name, mark or design appears shall, unless he be the owner thereof, be fined not less than ten nor more than fifty dollars. Any dairyman, milk distributor or milk dealer who shall deliver or sell milk in a bottle bearing a name, mark or design recorded as herein provided without the consent of the owner of said name, mark or design, shall be fined not less than one nor more than fifty dollars. [Acts 1921, p. 161.]

CHAPTER SEVEN

ASSUMED NAME

Art.
1067. Transacting business under assumed name.
1068. Change of ownership.
1069. Corporations not included.
1070. Punishment.

Article 1067. Transacting business under assumed name.—No person or persons shall carry on or conduct or transact business in this State under any assumed name or under any designation, name, style, corporate or otherwise, other than the real name or names of the individual or individuals conducting or transacting such business unless such person or persons shall file in the office of the county clerk of the county or counties in which such person or persons conduct, or transact or intend to conduct or transact such business, a certificate setting forth the name under which such business is or is to be conducted or transacted, and the true or real full name or names of the person or persons conducting or transacting the same, with the post-office address or the addresses of said person or persons. Said certificate shall be executed and duly acknowledged by the person or persons so conducting or intending to conduct said business in the manner now provided for acknowledgment of conveyance of real estate. [Acts 1921, p. 142.]

Art. 1068. Change of ownership.—Whenever there is a change in ownership of any business operated under any such assumed name as set out in the preceding article, the person or persons withdrawing from said business or disposing of their interest therein, shall file in the office of the county clerk of the county or counties in which such business is being conducted and has a place or places of business, a certificate setting forth the fact of such withdrawal from or disposition of interest in such business, which certificate shall be executed and duly acknowledged by the person or persons so withdrawing from or selling their interest in said business in the manner now provided for acknowledgment of conveyance of real estate. [Id.]

Art. 1069. Corporations not included.—The preceding articles shall in no way apply to any corporation duly organized under the law of this State or to any corporation organized under the laws of any other State and lawfully doing business in this State. [Id.]

Art. 1070. Punishment.—Any person owning, carrying on, or transacting business as described in the preceding articles of this chapter who shall fail to comply with any provision of this Chapter shall be fined not less than twenty-five nor more than one hundred dollars. Each day of such violation shall be a separate offense. [Id.]

CHAPTER EIGHT

BLUE SKY LAW OF TEXAS

Art.
1071. Definitions.
1072. To file with Secretary of State.
1073. Stock of solvent concerns.
1074. Changing document.
1075. Using mail, etc., without permit.
1076. Merger.
1077. Unlawful merger.
1078. Unlawfully paying dividend.
1079. False entry.
1080. Advertisement.
1081. Sale of stock without permit.
1082. Exceptions.
1083. General penalty.

Article 1071. Definitions.—The term "stock" as used in this chapter shall include the certificates of stock of every corporation, as well as the certificates or any other written instruments evidencing ownership or membership in any joint stock association, common law trust, or any other organization, association, or concern of whatsoever nature, which is organized, formed or created, or intended to be organized, formed or created, which may, or which is designed to own property of any character.

The terms "person," "company," or "concern" shall refer to and include any such concern, or individual, or person who may issue such stock, and whose such stock or certificate shall represent or evidence ownership or membership therein, which ownership or membership may be designed to be transferred, assigned or negotiated by the transfer, assignment or negotiation of such instrument. [Acts 2nd C. S. 1923, p. 114.]

Art. 1072. To file with Secretary of State.—Every concern which shall hereafter be formed or created, or which shall hereafter attempt to increase its capital stock, or commence the transaction of business in this State, shall, before offering for sale, directly or indirectly, through itself, its agents or employés, or through any character of person, or association, whether herein defined or not, holding company, sales company, or otherwise any stock as defined in the preceding article, and before transacting any business in this State, except the preparation of instruments hereinafter mentioned and other instruments relative to the organization and transaction of business thereof, file in the office of the Secretary of State, together with a fee equal in amount to the filing fee of a private corporation having capital and surplus of like amount, the following: [This requirement as to fees shall not apply to corporations.]

1. An application for a permit to sell any of the securities mentioned herein, or any other securities offered, or to be offered for sale, and for the transaction of any and all other business in this State. Said application must show the name under which such business is to be conducted, its location and general purpose, the age, occupation and general qualifications of such trustees or managing officers, and also fully the business in which each has been engaged for the last five years immediately preceding the filing of such application.

2. A copy of its articles of association, partnership agreement, constitution, by-laws, or any other con-

tract, agreement or other form of organization under which business is to be transacted, and all amendments thereto, showing the county or counties in which such instruments are filed, or to be filed for record; also showing the capital stock, par value of such stock, price at which same is to be sold, commission to be paid for the sale of same, amount of such stock, or other interest therein issued, or to be issued for promotion, compensation or other purposes.

3. Copies of stock certificates, bonds, debentures, or other securities offered, or to be offered for sale, or other disposition, together with copies of application blank for such securities. Such application must show the capital stock, the price at which same is to be sold, the commissions to be paid for the sale thereof, the amount of such stock or other interest therein issued, or to be issued for promotion, compensation, or other purposes.

4. A detailed statement showing the assets and liabilities of such issuer together with a profit and loss statement.

Any person violating any provision of this article, shall be fined not less than one thousand nor more than ten thousand dollars, and in addition thereto be imprisoned in the penitentiary for not less than one nor more than five years. [Id.]

Art. 1073. Stock of solvent concerns.—Any concern which has been a solvent going concern for a period of two years next preceding the date of any application named in this law, may submit to the Secretary of State satisfactory evidence of such fact and of its present sound solvent condition; whereupon the Secretary of State shall consider the same and shall require such further evidence, and may make such independent investigation as he may deem proper, concerning such matter. If upon full consideration thereof he shall conclude that such concern has been a solvent going concern for a period of two years and is at present solvent, he shall enter such finding upon his record, whereupon the proposed issue and sale of such stock, debentures or other securities as in this chapter defined of such concern shall be exempted from the general requirements of this law. [Id.]

Art. 1074. Changing document.—Any original document under which a permit has been granted shall not be changed or amended without permission to do so being granted by the Secretary of State. [Id.]

Art. 1075. Using mail, etc., without permit.—Any person, broker, agent, joint stock company, co-partnership or other company, individual or organization, domestic or foreign, sending advertising matter through the mails, by express, telegram or otherwise wholly within this State offering for sale or selling any of the securities enumerated in article 1071 without first having been issued a permit as provided by law shall be deemed guilty of having violated the provisions of this chapter. [Id.]

Art. 1076. Merger.—The merger, absorption or transfer of property of any company, association, joint stock company, co-partnership or other company, individual or organization by another coming under the provisions of article 1071 is declared to be unlawful, unless same is approved by the Secretary of State, after notice to all stockholders of the interested companies mailed thirty days in advance of said merger, and approved by the holders of a majority in amount of the outstanding and issued stock. [Id.]

Art. 1077. Unlawful merger.—Whoever shall bring about or effect, or who shall assist in bringing about or in effecting, or who shall attempt to bring about or effect, any merger, absorption or transfer of property of any person or concern designated by this chapter in violation of the preceding article, shall be confined in the penitentiary for any term not exceeding ten years. [Id.]

Art. 1078. Unlawfully paying dividend.—Whoever shall in any manner participate in declaring, issuing, or paying any cash dividend, by, or for any such concern, to any stockholder thereof out of any funds other than the actual earnings or from the lawful liquidation of such company, shall be confined in the penitentiary for any term not exceeding ten years. [Id.]

Art. 1079. False entry.—Whoever shall knowingly or wilfully subscribe or make, or cause to be subscribed or made, any false entry in any book, record, instrument, document or paper required by this law to be filed with the Secretary of State, of or for any concern embraced within the terms of this chapter, or shall exhibit any such false entry in or of any such book, record, instrument, document, or paper, with the intention of deceiving any person or official authorized to examine into the affairs of such concern, or who shall knowingly make or publish any false statement of the financial or other condition of such concern, shall be punished by confinement in the penitentiary for any term not exceeding ten years. [Id.]

Art. 1080. Advertisement.—If any owner, manager, or executive of any newspaper or other publication issued in this State shall knowingly advertise the sale of securities within this State not authorized to be sold within this State as required by this chapter, and which under this law can not be legally sold without a permit from the Secretary of State, he shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail not less than ten days nor more than six months, or both. Every issue of such publication in which such advertisement appears shall be deemed to evidence and constitute a separate offense. [Id.]

Art. 1081. Sale of stock without permit.—Any person who shall sell, or offer for sale, or in any manner be concerned with selling, or offering for sale, any stock of any concern embraced within the provisions of this chapter, for whose sale no permit as herein required has been issued, shall be confined in the penitentiary for any term not exceeding ten years. [Id.]

Art. 1082. Exceptions.—This chapter shall not apply to banking corporations or private banks, railroad or building and loan corporations, nor to the stock thereof, nor be construed to in any manner affect the existing laws of this State relating to the regulations of any corporation or concern, but in all respects shall be cumulative thereof. [Id.]

Art. 1083. General penalty.—Whoever violates any provision of this chapter not covered by a specific penalty herein shall be fined not less than one thousand nor more than ten thousand dollars, and in addition thereto may be imprisoned in the penitentiary not less than one nor more than five years, or both.

CHAPTER NINE

AGRICULTURAL AND LIVESTOCK POOLS

Art.
1084. May incorporate.
1085. Definitions.
1086. Loans and interest.
1087. Agents for borrowers.
1088. Officers to furnish bonds.
1089. To file statement.
1090. Pools may use security.
1091. Term of loan.
1092. Unlawfully disposing of receipt.
1093. Penalty.

Article 1084. May incorporate.—Any association of persons, which may include corporations duly chartered, State banks and trust companies, and national banks and trust companies, and cooperative associations composed of persons engaged in producing or producing and marketing staple agricultural products, or livestock, or both, may organize pools for the purpose of borrowing and lending money on agricultural products and livestock, or both, for agricultural purposes, or for the raising, breeding, fattening or marketing of livestock.

Any number of persons not less than three, may incorporate for the purpose of growing, storing, preparing for the market, and marketing agricultural products, or for the purpose of growing, raising, fattening for the market, and marketing livestock, or for both

such purposes, and may use any of such livestock or farm products, or both, as security in financing such enterprises, and shall have all the privileges of a pooling organization in borrowing money to promote the business of such corporation. [Acts 2nd C. S. 1923, p. 82.]

Art. 1085. Definitions.—The term "pools" shall mean agricultural financing pools.

The term "agricultural products" shall mean any or all products of the farm, orchard and dairy usually classed as agricultural products other than livestock.

The term "livestock" shall mean any herd of cattle, sheep, goats or swine.

The term "margins" shall mean additional surety in money of legal tender of the United States. [Id.]

Art. 1086. Loans and interest.—The interest charged on all such loans shall not exceed by more than one and one-half per cent the rate of interest charged such pooling institutions by the farm loan banks, provided that no loans shall be made by any pooling organization to any person or association of persons, unless such person or association is engaged in producing or producing and marketing staple agricultural products, or livestock, upon which such loan is made. All such commodities, articles or things classed herein as agricultural products shall be insured with some stock insurance company authorized to do business in this State. Such insurance shall be for not less than the full amount of the loan. At no time shall a greater amount than seventy-five per cent of the market value of such commodities, articles or things on date of loan be loaned thereon. [Id.]

Art. 1087. Agents for borrowers.—All such pools shall have the right to act as agents for all borrowers, in the sale of such commodities, articles or things on which loans have been made and the commissions charged for such service shall not exceed fifty cents per bale for cotton sold and shall in all cases on all other commodities, articles or things be reasonable. Where such pools operate bonded and licensed warehouses, it shall have authority to make a charge for storage, for drawing and handling of samples and for insurance in addition to other charges as provided for herein. [Id.]

Art. 1088. Officers to furnish bonds.—The officers of such pools shall be a president, vice-president, and a secretary and treasurer, provided that the office of secretary and treasurer may be held by one person, and a board of directors, all of which shall be members of such organization. The board of directors shall elect said president, vice-president, secretary and treasurer from the said board of directors. The secretary-treasurer and each officer in charge of the management shall be required to furnish to such pool a good and sufficient bond conditioned upon the faithful performance of duty. Such bonds shall be not less than five per cent of the total of the capital stock and surplus of said pool. The directors of any such pool shall not permit such persons to conduct the affairs of such pools when they have not so furnished bond. [Id.]

Art. 1089. To file statement.—All such pools shall on the first of January, April, July and October of each year file with the Commissioner of Markets and Warehouses a sworn statement of the condition of the affairs of such pool, and such statement shall be made to show the amount of business done, the number of negotiable receipts on which loans have been made and the value of such commodities, the total of all such loans and the total of all obligations of the pool and to whom due and the amount of interest being paid on same and the quantity or number of sales made for clients and the gross receipts of such sales and the amount of commissions charged thereon, and the number and value of all live stock mortgages and other securities. [Id.]

Art. 1090. Pools may use security.—All such pools shall be authorized to use such security or collateral held by them as security for loans made to such pooling organizations, provided that when any loan due the pooling organization is satisfied, such organization shall deliver to the borrower a final receipt of settlement, and when any article, commodity or thing is sold the negotiable receipt shall be delivered to the maker thereof, and canceled in accordance with the provisions of the Warehouse Acts of this State. [Id.]

Art. 1091. Term of loan.—The maximum term of any loan on agricultural products shall not exceed twelve months and no loans on live stock shall be for any term exceeding three years. Loans may be renewed conditioned upon new and agreed valuations of the commodity, article or thing, or upon additional security, or both. [Id.]

Art. 1092. Unlawfully disposing of receipt.—No person shall dispose of any negotiable bonded warehouse receipt placed with any pooling organization as security on loan, or to be held by such pool pending the sale of any such commodity, article or thing represented by such receipt, except as provided for in this chapter. [Id.]

Art. 1093. Penalty.—Whoever violates any provision of this chapter shall be fined not less than twenty-five nor more than one thousand dollars, or be imprisoned in jail not more than one year, or be both so fined and imprisoned. [Id.]

CHAPTER TEN

PROTECTING MOVEMENT OF COMMERCE

Art.
1094. Interfering with workers.
1095. Conspiracy to intimidate.
1096. "Intimidation" construed.
1097. Definitions.
1098. Exceptions.
1099. Penalty.
1100. Procedure.

Article 1094. Interfering with workers.—It shall be unlawful for any one by or through the use of any physical violence or by threatening the use of any physical violence, or by intimidation or threatening destruction of his property to interfere with or molest or harass any person or persons engaged in the work of loading or unloading or transporting any commerce within this State. [Acts 4th C. S. 1920, p. 7.]

Art. 1095. Conspiracy to intimidate.—It shall be unlawful for any two or more persons to conspire together to prevent or attempt to prevent, by the use of physical violence or intimidation or by threats of physical violence or by abusive language spoken or written to any person engaged in loading or unloading or transporting any commerce within this State, any person from performing the duties of such employment. [Id.]

Art. 1096. "Intimidation" construed.—Every person who shall through any act or written communication or conversation with any person or persons engaged in loading, unloading or transporting any commerce by any common carrier in Texas, or with the father, mother, wife, sister, brother, child or children of such person or persons while so engaged, or during the hours of day or night while not engaged in such work and when employed for such work, which is reasonably calculated, intended or designed to cause such person or persons so engaged to desist from performing such work through fear of physical violence or destruction of his property, shall be deemed to have intimidated, molested or harassed such person or persons engaged in the work of loading or unloading or transporting commerce within this State. [Id.]

Art. 1097. Definitions.—The term "person or persons engaged in the work of loading or unloading or transporting commerce in this State" as used in this chapter shall be construed as including any person or persons employed in any way in the docks, wharves, switches, railroad tracks, express companies, compresses, depots, freight depots, pipelines, or approaches or appurtenances to or incident to or used in connec-

tion with the handling of commerce by common carriers within this State. This article by naming certain occupations and work shall not be construed to exclude any other occupation or work not named, but reasonably incident to and necessary for the transportation of commerce in this State by common carriers. For the purposes of this chapter the words "common carrier" are defined to mean any railway corporation, any express company, any interurban railway company, any street car company, any ship, dock, wharf company, any pipe line company, engaged in the transportation of freight, express or passengers. The word "commerce" is defined to mean any freight, express or passengers being handled or transported by any common carrier as herein defined. [Id.]

Art. 1098. Exceptions.—The provisions of this chapter shall not apply to peace officers in the discharge of their lawful duties. [Id.]

Art. 1099. Penalty.—Any person violating any provision of this chapter shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail not less than thirty days nor more than one year, or both. Should any person violating any provision of this chapter use any physical violence upon, or threaten the life of any person engaged in the work of loading or unloading, or transporting any commerce, as defined in this chapter, he shall be confined in the penitentiary not less than one nor more than five years. [Id.]

Art. 1100. Procedure.—Indictment for violation of any provision of this law may be returned by the grand jury of the county in which the violation occurs, or by the grand jury of any county adjoining the county in which the territory embraced in the Governor's proclamation is situated. Any person indicted may be prosecuted and tried in the county in which the indictment is returned, but no indictment shall be returned in any county except where the offense occurred, until after the Governor has issued his proclamation as provided for herein. Nothing in this law as to change of venue shall in any manner abridge the right of the defendant to apply for and secure a change of venue under the existing laws of this State, the same as if the indictment had been returned in the county where the offense is alleged to have been committed.

When the provisions of this law have been violated, and the grand jury of the county in which the offense was committed have returned an indictment the district judge in whose court the indictment may be returned shall grant a change of venue upon motion made by the Attorney General representing this State, or at his direction, or by the local prosecuting attorney. The motion for a change of venue shall be sufficient if it sets out that the offense charged is prohibited by the provisions of this law, and that on account of local conditions, preferences, prejudices or influence, it is the opinion of the Attorney General that a fair and impartial trial can not be had in the county where the indictment is found. Upon the filing and presenting of such motion it will be the duty of the district judge in whose court such case may be pending to immediately issue a proper order changing the venue of such case to such other county as the court may select not subject in the opinion of the Attorney General to like conditions and objections. [Id.]

CHAPTER ELEVEN

GASOLINE AND PETROLEUM PRODUCTS

Art.
1101. Sale under another name.
1102. Shall mark containers.
1103. To give name of manufacturer.
1104. Must not flash.
1105. Sale of inferior product.
1106. "Gasoline."
1107. Tests of petroleum products.
1108. Using incorrect measure.
1109. Breaking seal on incorrect measure.
1110. Hindering inspector.
1111. Punishment.

Article 1101. Sale under another name.—No person, firm or corporation, shall sell gasoline, benzine, naptha, or other similar product of petroleum, capable of being used for illuminating, heating or power purposes, under any other than the true name of said products; and such petroleum products shall be subject to inspection by the proper authorities. [Acts 1919, p. 213.]

Art. 1102. Shall mark containers.—No person, firm, association of persons, corporation or carrier selling or transporting for hire any gasoline, benzine, naptha or other highly inflammable substance made from petroleum, shall fail to plainly mark the packages containing the same in accordance with the regulations of the Interstate Commerce Commission, unless such regulations should conflict with the provisions of this chapter. [Id.]

Art. 1103. To give name of manufacturer.—No person, firm, association of persons, corporation or carrier selling or transporting for hire any gasoline, benzine, naptha or other similar product of petroleum, shall fail to truly label in large letters showing the name of the manufacturer and the place of manufacture of the products, any tank car, barrel, cask, tank wagon, receptacle or reservoir in which any petroleum product shall be shipped or stored within this State, or from which sales or delivery of the same are to be made. [Id.]

Art. 1104. Must not flash.—No person, firm, association of persons or corporation shall sell any product of petroleum to be used for illuminating purposes unless such petroleum product is such that it will not flash at a temperature less than 110 degrees Fahrenheit. [Id.]

Art. 1105. Sale of inferior product.—No person, firm, association of persons or corporation, shall sell as gasoline any substance, liquid or product or [of] petroleum which falls below the standard and definition of gasoline as provided in this chapter. [Id.]

Art. 1106. "Gasoline."—For the purpose of this chapter the word GASOLINE whether used alone or in connection with other words shall apply only to the petroleum products complying with the following minimum requirements:

(a) Boiling point must not be higher than "60 degrees" C, ("140 degrees" F.)

(b) Twenty per cent of the sample must distill below "105 degrees" C., ("221 degrees" F.)

(c) Forty-five per cent must distill below "135 degrees" C., ("275 degrees" F.)

(d) Ninety per cent must distill below "180 degrees" C., ("256 degrees" F.)

(e) The end or dry point of distillation must not be higher than "220 degrees" C., ("428 Degrees" F.)

(f) Not less than ninety-five per cent of the liquid will be recovered from the distillation.

(g) Gasoline to be high grade, refined and free from water and all impurities, and shall have a vapor tension not greater than 10 pounds per square inch at 100 degrees Fahrenheit temperature. [Id.]

Art. 1107. Tests of petroleum products.—The apparatus and methods of conducting all tests and arriving at proper standards of gasoline and other products under this Act shall be those now or hereafter authorized and used by the U. S. Bureau of Mines. [Id.]

Art. 1108. Using incorrect measure.—No person, firm, association of persons, corporation or carrier, shall use any scales, measure or measuring device in the handling or sale of petroleum products unless the same is true and accurate according to the standard of weights and measures under the laws of this State nor use any pumping device unless the same is correct according to such standard at three speeds, fast, slow and medium. [Id.]

Art. 1109. Breaking seal on incorrect measure.—The inspector shall seal and forbid the use of any inaccurate measuring device until such time as the defect is corrected. The breaking of said official seal shall be prima facie evidence of a violation of this law and no person, firm, association of persons, corporation or carrier shall refuse to permit the in-

spector provided for by law to inspect and seal, if deemed necessary, any such measuring device, or to break the seal after being placed by such inspector. [Id.]

Art. 1110. Hindering inspector.—The Director of Food and Drug Division of the State Board of Health, his inspectors, or any person by him duly appointed for that purpose shall have in the performance of their duties under this law the power to inspect any premises or place where petroleum products are made, prepared, stored, transported, sold or offered for sale or exchange, and take samples of same, and test measuring devices. It shall be unlawful for any person to hinder or obstruct or refuse to permit said director, or his inspector or other person by him duly authorized to perform his duties in the exercise of such power. [Id.]

Art. 1111. Punishment.—Whoever violates any provision of the preceding articles of this chapter shall be fined not less than twenty-five nor more than two hundred dollars or be imprisoned in jail for not less than one month nor more than one year, or both. [Id.]

CHAPTER TWELVE

MISCELLANEOUS OFFENSES

Art.
1112. Shipping articles without inspection.
1113. Altering mark.
1114. False packing.
1115. False packing with inferior quality.
1116. Restricting work of foreign crew.
1117. Fraudulent insurance.
1118. False certificate by notary public.
1119. False declaration or protest.
1120. Acts of notary included.
1121. False declaration by master of vessel.
1122. Unlawfully throwing ballast.
1123. False entry in book of accounts.
1124. Stevedore unlawfully pursuing occupation.
1125. Commission merchant.
1126. Pawnbroker.
1127–1129. [Repealed.]
1129a. Violations of law by loan brokers.
1130. Patent right notes and liens.
1131. Bond investment company.
1132. Unlawfully acting as accountant.
1133. Accountant falsifying report.
1134. Violating building and loan association law.
1135. Failure to make reports.
1136. Acting for unauthorized association.
1137. Dealing in acceptances.
1137a. Endless chain schemes.

Article 1112. [963] [566] [408] Shipping articles without inspection.—Whoever shall export from this State, or ship for the purpose of exportation to any one of the United States or to any foreign port, any article of commerce which by any law of this State may be required to be inspected by a public inspector without having caused said inspection to be made according to law, shall be fined not exceeding one hundred dollars.

Art. 1113. [964] [567] [409] Altering mark.—Whoever shall counterfeit or alter the mark, brand, or stamp directed by any law of this State to be put on any article of commerce, or on the box, cask or package containing the same, shall be fined not exceeding one thousand dollars or imprisoned in jail not exceeding one year.

Art. 1114. [965] [568] [470] False packing.—Whoever with intent to defraud shall put into any hogshead, barrel, cask or keg or into any bale, box or package containing merchandise or other commodity usually sold by weight, any article whatever of less value than the merchandise or commodity with which such container is apparently filled, or with intent to defraud shall sell or barter, give in payment or expose for sale or ship for exportation any such container with any such article of inferior value concealed therein, shall be confined in the county jail not exceeding one year or be fined not exceeding one thousand dollars.

Art. 1115. [966] [569] [471] False packing with inferior quality.—Whoever with intent to deceive and defraud shall conceal within any hogshead, cask, barrel, box, bale, keg or package containing merchandise or other commodity, any merchandise or commodity of a quality inferior to that with which such container is apparently filled, shall be fined not exceeding five hundred dollars. [Acts 1858, p. 170.]

Art. 1116. [1452] [971] Restricting work of foreign crew.—Any officer, sailor, or member of the crew of a foreign seagoing vessel who shall engage in working on the wharves or levees of ports in this State beyond the end of the vessel's tackle shall be fined not less than ten nor more than one hundred dollars or be imprisoned in jail not less than ten nor more than thirty days, or both. [Acts 1885, p. 52.]

Art. 1117. [967] [570] [472] Fraudulent insurance.—If any person shall cause insurance to be made in this State upon any merchandise or other commodity represented to be already shipped or about to be shipped at any place whether within this State or out of it, and shall with intent to defraud the insurer ship articles of value less than one-half the represented value of those insured, or of a different kind from those insured, he shall be fined not exceeding the amount for which such merchandise or commodity may be insured.

Art. 1118. [1000] [580] [479] False certificate by notary public.—If any notary public shall make any false certificate as to the proof or acknowledgment of any instrument of writing relating to commerce or navigation to which by law he is authorized to certify, or shall make any false certificate as to the proof of [or] acknowledgment of any letter of attorney or other instrument of writing relating to commerce or navigation to which he may by law certify, he shall be confined in the penitentiary not less than two nor more than five years.

Art. 1119. [1001] [581] [480] False declaration or protest.—If any notary public shall make any false declaration or protest respecting any matter or thing relating to commerce or navigation or to commercial instruments where he is authorized by law to make such declaration or protest, he shall be confined in the penitentiary not less than two nor more than five years.

Art. 1120. [1002] [582] [481] Acts of notary included.—All acts of a notary public done in his official capacity within the proper sphere of his duties and which arise out of transactions respecting commerce or navigation are included in the two preceding articles.

Art. 1121. [1003] [583] [482] False declaration by master of vessel.—If the master or other officer of a vessel with intent to defraud shall make a false declaration or protest as to the loss or damage of any vessel or cargo, he shall be confined in the penitentiary not less than two nor more than five years.

Art. 1122. [1004–1005] [584] Unlawfully throwing ballast.—If any part of the ballast of any vessel shall be thrown from such vessel into the sea within six miles of any bar or harbor in this State, the master or officer in charge thereof at the time shall be fined not less than one hundred nor more than two hundred dollars. [Acts 1879, p. 153.]

Art. 1123. [1006] [586] [483] False entry in book of accounts.—If any person with intent to defraud shall make or cause to be made any false entry in any book kept as a book of accounts; or shall, with like intent, alter, or cause to be altered, any item of an account kept or entered in such book, he shall be fined not less than one hundred nor more than one thousand dollars, or be confined in the penitentiary not less than two nor more than five years.

Art. 1124. Stevedore unlawfully pursuing occupation.—Any contracting stevedore, as that term is defined by the laws of this State, who shall engage in business as such without first obtaining the license and executing the bond required by the statutes of this State, shall be fined not less than one hundred nor more than five hundred dollars for each day he shall pursue such occupation or business without thus quali-

fying, and any member of a firm or association or any manager of a corporation who comes within the meaning of a contracting stevedore who shall thus offend is amenable to prosecution.

Art. 1125. [1007] Commission merchant.—Whoever shall pursue the business of selling produce or goods, wares or merchandise of any kind upon consignment for commission, without first making and filing the bond required by the laws regulating commission merchants, shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1913, p. 179.]

Art. 1126. [641] [414] [386] Pawnbroker.—If any pawnbroker, or person doing business as such, shall receive any article in pledge or sell any article pledged to him, without complying with the statutes regulating pawnbrokers, he shall be fined not less than twenty-five nor more than one hundred dollars.

Arts. 1127–1129. [Repealed by Acts 1927, 40th Leg., 1st C. S. p. 30, ch. 17, § 7.]

Art. 1129a. Violations of law by loan brokers.—That if any loan broker or person doing business as such loan broker shall make any loans upon any chattel mortgage on household and kitchen furniture or purchase contracts for wages or salaries or bills of sale upon such household and kitchen furniture, or shall make any loan taking as security for the payment thereof an assignment of wages or salary or an assignment of wages with Power of Attorney to collect same, or purchase contract of salary or wages whether same be called a loan or purchase without first executing the above bond specified herein together with the said affidavit to be filed in the County Clerk's office, receiving receipt therefor, and without fully complying with this Act regulating loan brokers in this State, shall be guilty of a misdemeanor, and that upon conviction in any court of competent jurisdiction shall be punished by a fine not to exceed Five Hundred Dollars or by imprisonment in the County jail for a term of not more than twelve months, or may be punished by both such fine and imprisonment, and that each day that the same may be violated by such loan broker shall constitute a separate offense. [Acts 1927, 40th Leg., 1st C. S., p. 30, ch. 17, § 8.]

Art. 1130. Patent right notes and liens.—All notes and liens given for a patent right consideration or patent right territory shall state on their face that the same were given for a patent right and if anyone selling a patent or patent right territory shall take a note or lien for the purchase price of the same, contrary to the provisions of this law, he shall be fined not less than twenty-five nor more than two hundred dollars. [Acts 1915, p. 128.]

Art. 1131. [1504–1505–1506] Bond investment company.—Any officer, agent, or representative of any domestic or foreign corporation or company doing business in this State as a bond investment company or company to place or sell bonds, certificates or debentures on the partial payment or installment plan, who shall attempt to place or sell shares or transact any business in the name of or on behalf of such company while it fails to comply with the laws of this State requiring deposits to be made with the State Treasurer, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail not less than thirty days nor more than six months, or both. [Acts 1897, p. 118.]

Art. 1132. Unlawfully acting as accountant.—If any person represents himself to the public as having received a certificate as a Certified Public Accountant issued as provided for by the law of this State, or advertises as a "Certified Public Accountant," or uses the initials "C. P. A.," or otherwise falsely holds himself out as being qualified under said law, while practicing in this State, without having actually received such certificate; or it has been recalled or revoked, and he shall continue to use the initials "C. P. A.;" or shall refuse to surrender such certificate after revocation thereof; or shall otherwise violate any provision of the law governing Certified Public Accountants of this State, he shall be fined not to exceed two hundred dollars. No audit company, incorporated or unincorporated, shall use the title "Certified Public Accountants" or the initials "C. P. A.," and no firm or partnership shall use such title or initials unless each member of said firm or partnership is a legal holder of a certificate issued under the laws of this State. Whoever violates any of these provisions shall be fined not to exceed two hundred dollars. The use by any person, firm or corporation of the abbreviated title "Certified Accountant," or of the initials "C. A.," shall be a violation of this law and shall subject each person so using it to such fine. [Acts 1915, p. 188.]

Art. 1133. Accountant falsifying report.—If any person practicing in this State as a Certified Public Accountant under the laws of this State shall wilfully falsify any report or statement bearing upon any examination, investigation or report made by him or under his direction as such, he shall be fined not less than one hundred nor more than one thousand dollars. [Id.]

Art. 1134. Violating building and loan association law.—Every officer, director, member of any committee, clerk or agent of any building and loan association doing business in this State, who embezzles, abstracts or misapplies any of the moneys, funds or credits of such corporation; or who issues or puts into circulation any warrant or other order; or who assigns, transfers, cancels or delivers up any note, bond, draft, mortgage, judgment, decree, or any other written instrument belonging to such association; or who certifies to or makes a false entry in any book, report or statement of or to such association, with intent in either case to deceive, injure or defraud such association, or any member thereof, or to deceive any one appointed to examine the affairs of such association, shall be confined in the penitentiary not less than one nor more than ten years. [Acts 1st C. S. 1913, p. 72.]

Art. 1135. Failure to make reports.—Any officer of any building and loan association whose duty it is to make the reports required by law of such association, who shall fail to make such reports as required by the law regulating such associations, shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not less than one nor more than six months. [Id.]

Art. 1136. Acting for unauthorized association.—Whoever acts as agent for any building and loan association not authorized to do business in this State, or shall solicit sales of, sell or dispose of any shares of such unauthorized association, or shall in any manner aid in the transaction of the business of such unauthorized association, shall be fined not less than fifty nor more than five hundred dollars. [Id.]

Art. 1137. Dealing in acceptances.—Any officer, director, employé, or agent of any corporation organized for the purpose of contracting with reference to, or otherwise dealing in acceptances, bills of exchange, bills of lading, warehouse and other receipts growing out, or to be used in aid, of the transportation, warehousing, distribution, or financing of agricultural products, who shall enter into, or cause such corporation to enter into, any contract of acceptance, guaranty, indorsement, or suretyship, without complying with the laws of this State regulating such contracts, shall be fined not less than two hundred nor more than one thousand dollars, or be imprisoned in jail not less than three months nor more than one year, or both. [Acts 2nd C. S. 1919, p. 21.]

Art. 1137a. Endless chain schemes.—Sec. 5. That any dealer or agent violating any provision of this Act [Civ. St. art. 7429a] shall, upon conviction thereof, be fined in any sum not less than $10.00 nor more than $200.00, and each day such dealer or agent violates this Act shall constitute a separate offense. [Acts 1927, 40th Leg., p. 324, ch. 220.]

TITLE 15

OFFENSES AGAINST THE PERSON

Chap.

1. Assault and Assault and Battery.
2. Aggravated Assaults and Other Offenses.
3. Hazing and Other Violence.
4. Assaults with Intent to Commit Some Other Offenses.
5. Maiming, Disfiguring and Castration.
6. False Imprisonment.
7. Kidnapping and Abduction.
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CHAPTER ONE

ASSAULT AND ASSAULT AND BATTERY

Art.

1138. "Assault and battery."
1139. Intent presumed, and "injury."
1140. How it may be committed.
1141. "Coupled with ability to commit."
1142. Lawful violence.
1143. Verbal provocation.
1144. "Battery."
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Article 1138. [1008] [587] [484] "Assault and battery."—The use of any unlawful violence upon the person of another with intent to injure him, whatever be the means or the degree of violence used, is an assault and battery. Any attempt to commit a battery, or any threatening gesture showing in itself or by words accompanying it, an immediate intention, coupled with an ability to commit a battery, is an assault.

Art. 1139. [1009] [588] [485] Intent presumed, and "injury."—When an injury is caused by violence to the person, the intent to injure is presumed, and it rests with the person inflicting the injury to show the accident or innocent intention. The injury intended may be either bodily pain, constraint, a sense of shame or other disagreeable emotion of the mind.

Art. 1140. [1010–11–12] How it may be committed.—An assault or an assault and battery may be committed by the use of any part of the body of the person committing the offense, as of the hand, foot, head, or by the use of any inanimate object, as a stick, knife, or anything else capable of inflicting the slightest injury; or by the use of any animate object, as by throwing one person against another, or driving a horse or other animal against the person; or by any means used, as by spitting in the face or otherwise, which is capable of inflicting an injury; and may be committed though the person actually injured thereby was not the person intended to be injured.

Art. 1141. [1013] [592] [489] "Coupled with ability to commit."—By the terms "coupled with an ability to commit," as used in article 1138 is meant:

1. That the person making the assault must be in such a position that, if not prevented, he may inflict a battery upon the person assailed.

2. That he must be within such distance of the person so assailed as to make it within his power to commit the battery by the use of the means with which he attempts it.

3. It follows, that one who is, at the time of making an attempt to commit a battery under such restraint as to deprive him of the power to act, or who is at so great a distance from the person assailed as that he cannot reach his person by the use of the means with which he makes the attempt, is not guilty of an assault. But the use of any dangerous weapon, or the semblance thereof, in an angry or threatening manner, with intent to alarm another, and under circumstances calculated to effect that object, comes within the meaning of an assault. [Amended in revising in 1879.]

Art. 1142. [1014–15] Lawful violence.—Violence used to the person does not amount to an assault or battery in the following cases:

1. In the exercise of the right of moderate restraint or correction given by law to the parent over the child, the guardian over the ward, the master over his apprentice, the teacher over the scholar.

2. To preserve order in a meeting for religious, political or other lawful purposes.

3. To preserve the peace, or to prevent the commission of offenses.

4. In preventing or interrupting an intrusion upon the lawful possession of property.

5. In making a lawful arrest and detaining the party arrested, in obedience to the lawful order of a magistrate or court, and in overcoming resistance to such lawful order.

6. In self defense, or in defense of another against unlawful violence offered to his person or property.

7. Where violence is permitted to effect a lawful purpose, only that degree of force must be used which is necessary to effect such purpose.

Art. 1143. [1016] [595] [492] Verbal provocation.—No verbal provocation justifies an assault and battery, but insulting and abusive words may be given in mitigation of the punishment affixed to the offense.

Art. 1144. [1017] [596] [493] "Battery."—The word "battery" is used in this Code in the same sense as "assault and battery."

Art. 1145. [1019] [598] [495] Punishment.—The punishment for a simple assault or for assault and battery shall be a fine not less than five nor more than twenty-five dollars.

Art. 1146. [1021] [600] [495b] Intimidation.—Any person who shall by threatening words or by acts of violence or intimidation prevent or attempt to prevent another from engaging or remaining in or from performing the duties of any lawful employment shall be fined not less than twenty-five nor more than five hundred dollars, or be confined not less than one nor more than six months in jail. [Acts 1887, p. 13.]

CHAPTER TWO

AGGRAVATED ASSAULTS AND OTHER OFFENSES

Art.

1147. Definition.
1148. Punishment.
1149. Assault with motor vehicle.
1150. Failure to stop and render aid.
1151. Assault with a prohibited weapon.

Article 1147. [1022] [601] Definition.—An assault or battery becomes aggravated when committed under any of the following circumstances:

1. When committed upon an officer in the lawful discharge of the duties of his office, if it was known or declared to the offender that the person assaulted was an officer discharging an official duty.

2. When committed in a court of justice, or in any place of religious worship, or in any place where persons are assembled for the purpose of innocent amusement.

3. When the person committing the offense goes into the house of a private family and is there guilty of an assault and battery.

4. When committed by a person of robust health or strength upon one who is aged or decrepit.

5. When committed by an adult male upon the person of a female or child, or by an adult female upon the person of a child.

6. When the instrument or means used is such as inflicts disgrace upon the person assaulted, as an assault or battery with a whip or cowhide.

7. When a serious bodily injury is inflicted upon the person assaulted.

8. When committed with deadly weapons under circumstances not amounting to an intent to murder or maim.

9. When committed with premeditated design, and by the use of means calculated to inflict great bodily injury.

Art. 1148. [1024] [603] Punishment.—The punishment for an aggravated assault or battery shall be a fine not less than twenty-five nor more than one thousand dollars, or imprisonment in jail not less than one month nor more than two years, or both such fine and imprisonment.

Art. 1149. Assault with motor vehicle.—If any driver or operator of a motor vehicle or motorcycle upon the public highways of this State shall wilfully, or with negligence, as is defined in this title in the chapter on negligent homicide, collide with or cause injury less than death to any other person upon such highway, he shall be held guilty of aggravated assault and shall be punished accordingly unless such injuries result in death, in which event he shall be dealt with under the general law of homicide. [Acts 1917, p. 484.]

Art. 1150. Failure to stop and render aid.—Whenever an automobile, motorcycle or other motor vehicle whatsoever, regardless of the power by which the same may be propelled, or drawn, strikes any person or collides with any vehicle containing a person, the driver of, and all persons in control of such automobile, motor vehicle or other vehicle shall stop and shall render to the person struck or to the occupants of the vehicle collided with all necessary assistance including the carrying of such person or occupants to a physician or surgeon for medical or surgical treatment, if such treatment be required, or if such carrying is requested by the person struck or any occupant of the vehicle collided with; and such driver and person having or assuming authority of such driver shall further give to the occupant of such vehicle or person struck, if requested at the time of such striking or collision or immediately thereafter, the number of such automobile, motorcycle or motor vehicle, also the name of the owner thereof and his address, the names of the passenger or passengers not exceeding five in each automobile or other vehicle, together with the address of each one thereof. Any person violating any provision of this article is punishable by imprisonment in the penitentiary not to exceed five years or in jail not exceeding one year or by fine not exceeding five thousand dollars, or by both such fine and imprisonment. [Id.]

Art. 1151. Assault with a prohibited weapon.—If any person shall wilfully commit an assault or an assault and battery upon another with a pistol, dirk, dagger, slung shot, sword cane, spear or knuckles made of any metal or made of any hard substance, bowie knife, or any knife manufactured or sold for the purpose of offense or defense, while the same is being carried unlawfully by the person committing said assault, he shall be deemed guilty of an assault with a prohibited weapon and upon conviction shall be punished by a fine not to exceed two hundred dollars or by imprisonment in jail not to exceed two years, or by confinement in the penitentiary for not more than five years. [Acts 1913, p. 237.]

CHAPTER THREE

HAZING AND OTHER VIOLENCE

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1153. Teacher, etc., assisting in hazing.
1154. Student punished.
1155. Teacher, etc., punished.
1156. Construction of statute.
1157. Violence to induce confession.
1158. Whipping inmate of Training School.

Article 1152. "Hazing" defined.—No student of the University of Texas, of the A. & M. College of Texas, of any normal school of Texas, or of any other State educational institution of this State, shall engage in what is commonly known and recognized as hazing, or encourage, aid or assist any other person thus offending.

"Hazing" is defined as follows:—

1. Any wilful act by one student alone or acting with others, directed against any other student of such educational institution, done for the purpose of submitting such student made the subject of the attack committed, to indignity or humiliation, without his consent.

2. Any wilful act of any one student alone, or acting with others, directed against any other student of such educational institution, done for the purpose of intimidating such student attacked by threatening such student with social or other ostracism, or of submitting such student to ignominy, shame, or disgrace among his fellow students, and acts calculated to produce such results.

3. Any wilful act of any one student alone, or acting with others, directed against any other student of such educational institution, done for the purpose of humbling, or that is reasonably calculated to humble the pride, stifle the ambition, or blight the courage of such student attacked, or to discourage any such student from longer remaining in such educational institution or to reasonably cause him to leave such institution rather than submit to such acts.

4. Any wilful act by any one student alone, or acting with others, in striking, beating, bruising or maiming; or seriously offering, threatening, or attempting to strike, beat, bruise, or maim, or to do or seriously offer, threaten, or attempt to do physical violence to any student of any such educational institution or any assault upon any such students made for the purpose of committing any of the acts, or producing any of the results to such student as defined in the preceding subdivisions of this article. [Sec. 1, Act April 3, 1913, Acts 1913, p. 239.]

Art. 1153. Teacher, etc., assisting in hazing.—No teacher, instructor, member of any faculty, or any officer or director, or a member of any governing board of any of such educational institutions shall knowingly permit, encourage, aid or assist any student in committing the offense of hazing, or wilfully acquiesce in the commission of such offense, or fail to promptly report his knowledge or any reasonable information within his knowledge of the presence and practice of hazing in the institution in which he may be serving to the executive head or governing board of such institution. Any act of omission or commission shall be deemed "hazing" under the provisions of this chapter. [Sec. 2, Id.]

Art. 1154. Student punished.—Any student of any of the said State educational institutions of this State who shall commit the offense of hazing shall be fined not less than twenty-five nor more than two hundred and fifty dollars or shall be confined in jail not less than ten days nor more than three months, or both. [Sec. 3, Id.]

Art. 1155. Teacher, etc., punished.—Any teacher, instructor, or member of any faculty, or officer or director of any such educational institution who shall commit the offense of hazing shall be fined not less than fifty or not more than five hundred dollars, or shall be imprisoned in jail not less than thirty days or not more than six months, or both, and in addition thereto shall be immediately discharged and removed from his then position or office in such institution, and shall thereafter be ineligible to reinstatement or reemployment as teacher, instructor, member of faculty, officer, or director in any such State educational institution for a period of three years. [Sec. 4, Id.]

Art. 1156. Construction of statute.—Nothing herein shall be construed as in any manner affecting or repealing any law of this State respecting homicide, or murder, manslaughter, assault with intent to murder, or aggravated assault. [Sec. 5, Id.]

Art. 1157. Violence to induce confession.—Any sheriff, deputy sheriff, constable, deputy constable, Texas ranger, city marshal, chief of police, policeman, or any other officer having under arrest or in his custody any person as a prisoner who shall torture, torment or punish such person by inflicting upon him any physical or mental pain for the purpose of making or attempting to make such person confess to any knowledge of the commission of any offense against the laws of this State, shall be fined not less than one dollar nor more than one thousand dollars or be imprisoned in jail not

to exceed one year, or both such fine and imprisonment, and in addition thereto the jury may state in its verdict that the defendant should never thereafter be allowed to hold any office of profit or trust under the laws of this State, or any subdivision thereof, nor any city or town thereof. Should the jury so state in its verdict, the court trying said case shall render judgment in accordance with said verdict and thereafter the defendant shall forever be barred from holding any such office. [Acts 1923, p. 269.]

Art. 1158. Whipping inmate of Training School.—Corporal punishment in any form shall not be inflicted upon any inmate of the State Training School except as a last resort to maintain discipline, and then only in the presence of the superintendent and a resident nurse. At no time shall any inmate be struck more than twenty times, and that only with such instrument and in such manner as will inflict reasonable and moderate punishment, considering the age, size and strength of the culprit and the strength of the person administering such punishment. At no time shall any weapon or instrument of torture be used, or any instrument which by its make, coupled with the manner of its use would be calculated to inflict bodily injury. Anyone violating any provision of this article shall be fined not less than $25.00 nor more than $100.00 or confined not less than thirty nor more than ninety days in jail, or both. [Acts 1st C. S. 1913, p. 11.]

CHAPTER FOUR

ASSAULTS WITH INTENT TO COMMIT SOME OTHER OFFENSES

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1159. Assault to maim, disfigure or castrate.
1160. Assault with intent to murder.
1161. "Bowie knife" and "dagger."
1162. Assault with intent to rape.
1163. Assault with intent to rob.
1164. Assault in attempting burglary.
1165. Test of assault to commit offense.

Article 1159. [1025] [604] [499] Assault to maim, disfigure or castrate.—If any person shall assault another with intent to commit the offense of maiming, disfiguring, or castration, he shall be fined not exceeding one thousand dollars, or be imprisoned in the penitentiary not less than two nor more than five years and if such assault be made by a person or persons in disguise, the penalty shall be double. [Acts 1871, p. 20.]

Art. 1160. [1026] [605] [500] Assault with intent to murder.—If any person shall assault another with intent to murder, he shall be confined in the penitentiary not less than two nor more than fifteen years; if the assault be made with a bowie-knife or dagger, or in disguise, or by laying in wait, or by shooting into a private residence, the punishment shall be double.. [O. C. 493, Acts 1871, p. 20, Acts 1903, p. 160.]

Art. 1161. [1027] [606] [501] "Bowie-knife" and "dagger."—A "bowie-knife" or "dagger" as here and elsewhere used means any knife intended to be worn upon the person which is capable of inflicting death and not commonly known as a pocket knife.

Art. 1162. [1029] [608] [503] Assault with intent to rape.—If any person shall assault a woman with intent to commit the offense of rape, he shall be confined in the penitentiary for any term of years not less than two. [O. C. 494, Acts 1895, p. 104.]

Art. 1163. [1030] [609] [504] Assault with intent to rob.—If any person shall assault another with the intent to commit the offense of robbery, he shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1858, p. 171.]

Art. 1164. [1031] [610] [506] Assault in attempting burglary.—If any person in attempting to commit burglary shall assault another, he shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 171.]

Art. 1165. [1023–1032] [611] [506] Test of assault to commit offense.—An assault with intent to commit any other offense is constituted by the existence of the facts which bring the offense within the definition of an assault, coupled with an intention to commit such other offense, as of maiming, murder, rape or robbery.

CHAPTER FIVE

MAIMING, DISFIGURING AND CASTRATION

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1166. Maiming.
1167. Disfiguration.
1168. Castration.

Article 1166. [1033–4] Maiming.—Whoever shall wilfully and maliciously cut off or otherwise deprive a person of the hand, arm, finger, toe, foot, leg, nose or ear, or put out an eye or in any way deprive a person of any other member of his body shall be confined in the penitentiary not less than two nor more than ten years.

Art. 1167. [1035–6] Disfiguring.—Whoever wilfully and maliciously places any mark by means of a knife or other instrument upon the face or other part of the person of another shall be confined in the penitentiary not less than two nor more than five years or be fined not exceeding two thousand dollars. [Acts 1858, p. 171.]

Art. 1168. [1037–8] Castration.—Whoever wilfully and maliciously deprives any person of either or both or any part of either or both of the testicles shall be confined in the penitentiary not less than five nor more than fifteen years.

CHAPTER SIX

FALSE IMPRISONMENT

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1172. Character of threat necessary.
1173. Lawful detention.
1174. Penalty.
1175. Detaining after discharge on habeas corpus.
1176. Refusal to allow consultation with counsel.

Article 1169. [1039] [618] "False imprisonment."—False imprisonment is the wilful detention of another against his consent and where it is not expressly authorized by law, whether such detention be effected by an assault, by actual violence to the person, by threats or by any other means which restrains the party so detained from removing from one place to another as he may see proper.

Art. 1170. [1040] [619] Assault or violence necessary.—The assault or violence may be such as is spoken of in defining an assault and battery.

Art. 1171. [1041] [620] What impediment necessary.—The impediment must be such as is in its nature calculated to detain the person and from which he cannot by ordinary means relieve himself.

Art. 1172. [1042] [621] Character of threat necessary.—The threat must be such as is calculated to operate upon the person threatened and inspire a just fear of some injury to his or another's person, reputation or property and the age, sex, condition, disposition or health of the one threatened is to be considered in determining whether the threat was sufficient to intimidate and prevent such person from moving beyond the bounds in which he was detained.

Art. 1173. [1043] [622] Lawful detention.—It is no offense to detain one for the objects mentioned in article 1142 as justifying the use of force, but when it is claimed as a justification that such circumstances existed it must be shown also that the detention was necessary to effect any such object.

Art. 1174. [1044] [623] Penalty.—Any person guilty of false imprisonment shall be fined not exceeding five hundred dollars or be confined in jail not exceeding one year.

Art. 1175. [1045] [624] Detention after discharge on habeas corpus.—If any officer or any

person shall hold or detain in any manner any one who has been ordered to be discharged by any court or judge upon the hearing of a writ of habeas corpus, he shall be fined not exceeding one thousand dollars or be confined in jail not exceeding two years.

Art. 1176. [1046] [625] Refusal to allow consultation with counsel.—If any officer or any person having the custody of a prisoner shall wilfully prevent such prisoner from consulting or communicating with counsel, or from obtaining the advice or services of counsel in the protection or prosecution of his legal rights, he shall be confined in jail not less than sixty days nor more than six months and be fined not exceeding one thousand dollars.

CHAPTER SEVEN

KIDNAPPING AND ABDUCTION

Art.
1177. "Kidnapping."
1178. If one kidnapped be actually removed.
1179. "Abduction."
1180. Of female under fourteen.
1181. Abduction complete.
1182. Punishment for abduction.

Article 1177. [1056] [626] [521] Kidnapping.—When any person is falsely imprisoned for the purpose of being removed from the State, or if a minor under the age of seventeen years, for the purpose of being concealed or taken from the lawful possession of a parent or guardian, such false imprisonment is "kidnapping." If the person kidnapped be under fifteen years of age, it is not necessary that there should be force in order to constitute kidnapping. One guilty of kidnapping shall be confined in the penitentiary not less than two nor more than five years or be fined not exceeding two thousand dollars. [Acts 1858, p. 171.]

Art. 1178. [1058] [628] [523] If one kidnapped be actually removed.—If the person so falsely imprisoned be actually removed out of the State, the punishment shall be imprisonment in the penitentiary not less than two nor more than ten years.

Art. 1179. [1059] [629] [524] "Abduction."—"Abduction["] is the false imprisonment of a woman with intent to force her into a marriage or for the purpose of prostitution.

Art. 1180. [1060] [630] [525] Of female under fourteen.—If a girl under the age of fourteen years be taken for the purpose of marriage or prostitution from her parent, guardian or other person having the legal charge of her, it is abduction whether she consent or not and though a marriage afterward take place between the parties.

Art. 1181. [1061] [631] [526] Abduction complete.—Abduction is complete if the female is detained as long as twelve hours though she may afterwards be relieved from such detention without marriage or prostitution.

Art. 1182. [1062] [632] [527] Punishment for abduction.—One guilty of abduction shall be fined not exceeding two thousand dollars. If by reason of such abduction a woman be forced into marriage the punishment shall be confinement in the penitentiary not less than two nor more than five years; and if by reason of such abduction a woman be prostituted, the punishment shall be confinement in the penitentiary not less than three nor more than twenty years.

CHAPTER EIGHT

RAPE

Art.
1183. "Rape."
1184. "Force."
1185. "Threat."
1186. "Fraud."
1187. Proof of carnal knowledge.
1188. Defendant must be over fourteen.
1189. Penalty.
1190. Attempt to rape.

Article 1183. [1063] [633] [528] "Rape."—Rape is the carnal knowledge of a woman without her consent obtained by force, threats or fraud; or the carnal knowledge of a woman other than the wife of the person having such carnal knowledge with or without consent and with or without the use of force, threats or fraud, such woman being so mentally diseased at the time as to have no will to oppose the act of carnal knowledge, the person having carnal knowledge of her knowing her to be so mentally diseased; or the carnal knowledge of a female under the age of eighteen years other than the wife of the person with or without her consent and with or without the use of force, threats or fraud; provided that if she is fifteen years of age or over the defendant may show in consent cases she was not of previous chaste character as a defense. [Acts 1891, p. 96, Acts 1895, p. 79, Act April 2, 1918, Acts 4th C. S. 1918, p. 123.]

Art. 1184. [1064] [634] [529] "Force."—The definition of "force" as applicable to assault and battery applies also to rape, and it must have been such as might reasonably be supposed sufficient to overcome resistance, taking into consideration the relative strength of the parties and other circumstances of the case.

Art. 1185. [1065] [635] [530] "Threat."—The threat must be such as might reasonably create a just fear of death or great bodily harm, in view of the relative condition of the parties as to health, strength and other circumstances of the case.

Art. 1186. [1066] [636] [531] "Fraud."—The fraud must consist in the use of some stratagem by which the woman is induced to believe the man is her husband, or in administering without her knowledge or consent some substance producing unnatural sexual desire or such stupor as prevents or weakens resistance and committing the offense while she is under the influence of such substance. It is a presumption of law which cannot be rebutted by testimony that no consent was given under the circumstances set out in this article.

Art. 1187. [1067] [637] [532] Proof of carnal knowledge.—Penetration only is necessary to be proved on a trial for rape.

Art. 1188. [1068] [638] [533] Defendant must be over fourteen.—One under the age of fourteen at the time the offense was committed cannot be convicted of rape or assault with intent to rape.

Art. 1189. [1069] [639] [534] Penalty.—A person guilty of rape shall be punished by death or by confinement in the penitentiary for life, or for any term of years not less than five.

Art. 1190. [1070] [640] [536] Attempt to rape.—If it appear on the trial of an indictment for rape that the offense though not committed was attempted by the use of force, threats or fraud, but not such as to bring it within the definition of an assault with intent to commit rape, the jury may find the defendant guilty of an attempt to rape and assess his punishment at confinement in the penitentiary for any term of years not less than two.

CHAPTER NINE

ABORTION

Art.
1191. Abortion.
1192. Furnishing the means.
1193. Attempt at abortion.
1194. Murder in producing abortion.
1195. Destroying unborn child.
1196. By medical advice.

Article 1191. [1071] [641] [536] Abortion.—If any person shall designedly administer to a pregnant woman or knowingly procure to be administered with her consent any drug or medicine, or shall use towards her any violence or means whatever externally or internally applied, and thereby procure an abortion, he shall be confined in the penitentiary not less than two nor more than five years; if it be done without her consent, the punishment shall

be doubled. By "abortion" is meant that the life of the fetus or embryo shall be destroyed in the woman's womb or that a premature birth thereof be caused. [Acts 1907, p. 55.]

Art. 1192. [1072] [642] [537] Furnishing the means.—Whoever furnishes the means for procuring an abortion knowing the purpose intended is guilty as an accomplice.

Art. 1193. [1073] [643] [538] Attempt at abortion.—If the means used shall fail to produce an abortion, the offender is nevertheless guilty of an attempt to produce abortion, provided it be shown that such means were calculated to produce that result, and shall be fined not less than one hundred nor more than one thousand dollars.

Art. 1194. [1074] [644] [539] Murder in producing abortion.—If the death of the mother is occasioned by an abortion so produced or by an attempt to effect the same it is murder.

Art. 1195. [1075] [645] [540] Destroying unborn child.—Whoever shall during parturition of the mother destroy the vitality or life in a child in a state of being born and before actual birth, which child would otherwise have been born alive, shall be confined in the penitentiary for life or for not less than five years.

Art. 1196. [1076] [646] [541] By medical advice.—Nothing in this chapter applies to an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.

CHAPTER TEN

ADMINISTERING POISONOUS AND INJURIOUS POTIONS

Art.
1197. Poisoning food, well, etc.
1198. Administering injurious substances.
1199. Death within a year, murder.
1200. Malpractice punishable.

Article 1197. [1077] [647] [542] Poisoning food, well, etc.—Whoever shall mingle or cause to be mingled any noxious potion or substance with any drink, food or medicine, with intent to kill or to injure any other person, or shall wilfully poison or cause to be poisoned any spring, well, cistern or reservoir of water with such intent, shall be confined in the penitentiary not less than two or [nor] more than ten years.

Art. 1198. [1078] [648] [543] Administering injurious substances.—Whoever with intent to injure shall cause another person to inhale or swallow any substance injurious to health or any function of the body, or administer such substance with intent to kill, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1858, p. 172.]

Art. 1199. [1079] [649] [544] Death within a year, murder.—If by reason of the commission of any offense named in the two preceding articles the death of a person be caused within one year, the offender shall be deemed guilty of murder. [O. C. 539.]

Art. 1200. [1080] [650] [545] Malpractice punishable.—If any person engaged in the practice of medicine and claiming to be a physician shall by the use of any noxious substance administered in a grossly ignorant manner produce death, or other great bodily injury, he shall be punished for the offense as any other person would be who had given such substance knowing it to be injurious and intending to kill or injure. [O. C. 540.]

CHAPTER ELEVEN

HOMICIDE

Art.
1201. "Homicide."
1202. Destruction of life must be complete.
1203. Foregoing article refers to acts of others.
1204. Body of deceased must be found.
1205. Person killed must be in existence.
1206. Homicide produced by words, etc.

Article 1201. [1081] [651] [546] "Homicide."—"Homicide" is the destruction of the life of one human being by the act, agency, procurement, or culpable omission of another. [O. C. 541.]

Art. 1202. [1082] [652] [547] Destruction of life must be complete.—The destruction of life must be complete by such act, agency, procurement or omission; but although the injury which caused death might not under other circumstances have proved fatal, yet if such injury be the cause of death, without its appearing that there has been any gross neglect or manifestly improper treatment of the person injured, it is homicide. [O. C. 542.]

Art. 1203. [1083] [653] [548] Foregoing article refers to acts of others.—What is said of gross neglect or improper treatment, has reference to the acts of some person other than him who inflicts the first injury, as of the physician or any attendant. If the person inflicting the injury which makes it necessary to call aid in preserving the life of the person injured shall wilfully fail or neglect to call such aid, he shall be deemed equally guilty as if the injury were one which would inevitably lead to death. [O. C. 543.]

Art. 1204. [1084] [654] [549] Body of deceased must be found.—No person shall be convicted of any grade of homicide unless the body of the deceased, or portions of it, are found and sufficiently identified to establish the fact of the death of the person charged to have been killed. [O. C. 544, Acts 1887, p. 14.]

Art. 1205. [1085] [655] [550] Person killed must be in existence.—The person upon whom the homicide is alleged to have been committed must be in existence by actual birth. It is homicide, however, to destroy human life actually in existence however frail such existence may be or however near extinction from other causes. [O. C. 445.]

Art. 1206. [1086] [656] [551] Homicide produced by words, etc.—Although it is necessary to constitute homicide that it shall result from some act of the party accused, yet if words be used which are reasonably calculated to produce and do produce an act which is the immediate cause of death, it is homicide; as for example, if a blind man, a stranger, a child, or a person of unsound mind, be directed by words to a precipice or other dangerous place where he falls and is killed; or if one be directed to take any article of medicine, food or drink, known to be poisonous and which does produce a fatal effect; in these and like cases the person so operating upon the mind or conduct of the person injured shall be deemed guilty of homicide. [O. C. 546.]

CHAPTER TWELVE

JUSTIFIABLE HOMICIDE

Art.
1207. When justifiable.
1208. Killing a public enemy.
1209. Execution of a convict.
1210. By officer in execution of lawful order.
1211. Even though order is erroneous.
1212. Qualification of foregoing.
1213. Order may be written or verbal.
1214. Written order.
1215. Verbal order justifies only in felony.
1216. Persons aiding officer justified.
1217. Persons aiding escape.
1218. Federal officers included.
1219. In suppressing riots.
1220. Adultery as justification.
1221. In defense of person or property.
1222. In preventing felonies, etc.
1223. Presumption from weapon of deceased.
1224. Defense against milder attack.
1225. Retreat not necessary.
1226. Requisites of the attack.
1227. Defense of property.

Article 1207. [1087] [657] [552] When justifiable.—Homicide is justifiable in the cases enumerated in the succeeding articles of this chapter.

Art. 1208. [1088–89] Killing a public enemy.—It is lawful to kill a public enemy, not only in the prosecution of war, but when he may be in the act

of hostile invasion or occupation of any part of the State. A public enemy is any person acting under the authority or enlisted in the service of any government at war with this State or with the United States. Homicide of a public enemy by poison or by the use of poisoned weapons is not justifiable. Homicide of a public enemy who is a deserter or prisoner of war or the bearer of a flag of truce is not justifiable.

Art. 1209. [1091] [661] [556] Execution of a convict.—The execution of a convict for a capital offense by a legally qualified officer under the warrant of a court of competent jurisdiction is justifiable when the same takes place in the manner authorized by law and directed by warrant.

Art. 1210. [1092] [662] [557] By officer in execution of lawful order.—Homicide by an officer in the execution of lawful orders of magistrates and courts is justifiable when he is violently resisted and has just grounds to fear danger to his own life in executing the order.

Art. 1211. [1093] [663] [558] Even though order is erroneous.—The officer is justifiable though there may have been an error of judgment on the part of the magistrate or court, if the order emanated from a proper authority.

Art. 1212. [1094] [664] [559] Qualification of the foregoing.—The rule set forth in the two preceding articles is subject to the following restrictions:

1. The order must be that of a magistrate or a court having lawful authority to issue it.
2. It must have such form as the law requires to give it validity.
3. The person executing the order must be some officer duly authorized by law to execute the order, or some person specially appointed in accordance with law for the performance of the duty.
4. If the person executing the order be an officer and performing a duty which no other person can by law perform, he must have taken the oath of office and given bond, where such is required by law.
5. The order must be executed in the manner directed by law, and the person executing the same must make known his purpose and the capacity in which he acts.
6. If the order be a written one, and the person against whom it issues, before resistance offered, wishes to see the same or hear it read the person charged with its execution shall produce the order and show it or read it.
7. In making an arrest under a written order, the person acting under such order shall, in all cases, declare to the party against whom it is directed the offense of which he is accused, and state the nature of the warrant, unless prevented therefrom by the act of the party to be arrested.
8. The officer or other person executing an order of arrest is required to use such force as may be necessary to prevent an escape when it is attempted, but he shall not in any case kill one who attempts to escape, unless in making or attempting such escape the life of the officer is endangered, or he is threatened with great bodily injury.
9. In overcoming a resistance to the execution of an order, the officer or person executing the same may oppose such force as is necessary to overcome the resistance, but he shall not take the life of the person resisting unless he has just ground to fear that his own life will be taken or that he will suffer great bodily injury in the execution of the order.
10. A prisoner under sentence of death or of imprisonment in the penitentiary or attempting to escape from the penitentiary may be killed by the person having legal custody of him, if his escape can in no other manner be prevented.

Art. 1213. [1095] [665] [560] Order may be written or verbal.—The order referred to in this chapter may be either written or verbal, where a verbal order is allowed for the arrest of a person.

Art. 1214. [1096] [666] [561] "Written order."—Under written orders are included all process in a criminal or civil action which directs the seizure of the person or of property.

Art. 1215. [1097] [667] [562] Verbal order justifies only in felony.—No officer or other person ordered verbally to arrest another is justified in killing except the arrest be in a case of felony or for the prevention of a felony.

Art. 1216. [1098] [668] [563] Persons aiding officer justified.—Persons called in aid of an officer, in the performance of a duty, are justified in the same manner as the officer himself.

Art. 1217. [1099] [699] [564] Persons aiding escape.—All person [persons] opposing the execution of the order, or aiding in an escape, may be treated in the same manner as the person against whom the order is directed or who is attempting to escape.

Art. 1218. [1100] [670] [565] Federal officers included.—Officers acting under the authority of the laws or courts of the United States have the same rights and are liable to the rules prescribed in this chapter.

Art. 1219. [1101] [671] [566] In suppressing riots.—Homicide is justifiable when necessary to suppress a riot when the same is attempted to be suppressed in the manner pointed out in the Code of Criminal Procedure, and can in no way be suppressed except by taking life.

Art. 1220. [1102] [672] [567] Adultery as justification.—Homicide is justifiable when committed by the husband upon one taken in the act of adultery with the wife, provided the killing take place before the parties to the act have separated. Such circumstance cannot justify a homicide where it appears that there has been, on the part of the husband, any connivance in or assent to the adulterous connection.

Art. 1221. [1104] [674] [569] In defense of person or property.—Homicide is permitted in the necessary defense of person or property, under the circumstances and subject to the rules herein set forth.

Art. 1222. [1105] [675] [570] In preventing felonies, etc.—Homicide is justifiable when inflicted for the purpose of preventing murder, rape, robbery, maiming, disfiguring, castration, arson, burglary and theft at night, or when inflicted upon a person or persons who are found armed with deadly weapons and in disguise in the night time on premises not his or their own, whether the homicide be committed by the party about to be injured or by another in his behalf, when the killing takes place under the following circumstances:

1. It must reasonably appear by the acts or by words coupled with the acts of the person killed that it was the purpose and intent of such person to commit one of the offenses above named.
2. The killing must take place while the person killed was in the act of committing the offense, or after some act done by him showing evidently an intent to commit such offense.
3. It must take place before the offense committed by the party killed is actually completed, except that in case of rape the ravisher may be killed at any time before he has escaped from the presence of his victim, and except also in the cases hereinafter enumerated.
4. Where the killing takes place to prevent the murder of some other person, it shall not be deemed that the murder is completed so long as the offender is still inflicting violence, though the mortal wound may have been given.
5. If homicide takes place in preventing a robbery, it is justifiable if done while the robber is in the presence of the one robbed or is flying with the property taken by him.
6. In cases of maiming, disfiguring or castration, the homicide may take place at any time while the of-

fender is mistreating with violence the person injured, though he may have completed the offense.

7. In case of arson the homicide may be inflicted while the offender is in or at the building or other property burnt, or flying from the place before the destruction of the same.

8. In cases of burglary and theft by night, the homicide is justifiable at any time while the offender is in the building or at the place where the theft is committed, or is within reach of gunshot from such place or building.

9. When the party slain in disguise is engaged in any attempt by word, gesture or otherwise to alarm some other person or persons and put them in bodily fear.

Art. 1223. [1106] [676] [571] Presumption from weapon of deceased.—When the homicide takes place to prevent murder, maiming, disfiguring or castration, if the weapon or means used by the party attempting or committing such murder, maiming, disfiguring or castration are such as would have been calculated to produce that result, it is to be presumed that the person so using them designed to inflict the injury.

Art. 1224. [1107] [677] [572] Defense against milder attack.—Homicide is justifiable also in the protection of the person or property against any other unlawful and violent attack besides those mentioned, and in such cases all other means must be resorted to for the prevention of the injury, and the killing must take place while the person killed is in the very act of making such unlawful and violent attack, and any person interfering in such case in behalf of the party about to be injured is not justified in killing the aggressor unless the life or person of the injured party is in peril by reason of such attack upon his property.

Art. 1225. [1108] [678] [573] Retreat not necessary.—The party whose person or property is so unlawfully attacked is not bound to retreat in order to avoid the necessity of killing his assailant.

Art. 1226. [1109] [679] [574] Requisites of the attack.—The attack upon the person of an individual in order to justify homicide must be such as produces a reasonable expectation or fear of death or some serious bodily injury.

Art. 1227. [1110] [680] [575] Defense of property.—When under article 1224 a homicide is committed in the protection of property, it must be done under the following circumstances:

1. The possession must be of corporeal property, and not of a mere right, and the possession must be actual and not merely constructive.

2. The possession must be legal, though the right of the property may not be in the possessor.

3. If possession be once lost, it is not lawful to regain it by such means as result in homicide.

4. Every other effort in his power must have been made by the possessor to repel the aggression before he will be justified in killing.

CHAPTER THIRTEEN

EXCUSABLE HOMICIDE

Art.
1228. "Excusable homicide."
1229. Must be done by lawful means.

Article 1228. [1111] [681] [576] "Excusable homicide."—Homicide is excusable when the death of a human being happens by accident or misfortune, though caused by the act of another who is in the prosecution of a lawful object by lawful means.

Art. 1229. [1112] [682] [577] Must be done by lawful means.—The lawful act causing the death of another must be done by lawful means and used in a lawful degree. Though lawful for the parent, guardian, schoolmaster or master to chastise the child, ward, scholar, or apprentice, yet if this be done with an instrument likely to produce death, or if with a proper instrument the chastisement be cruelly inflicted and death result, it is murder.

CHAPTER FOURTEEN

HOMICIDE BY NEGLIGENCE

Art.
1230. Two kinds.

1. IN THE PERFORMANCE OF A LAWFUL ACT
1231. In first degree.
1232. Must be apparent danger of causing death.
1233. How distinguished from excusable homicide.
1234. Examples.
1235. No apparent intention to kill.
1236. Must be consequence of the act.
1237. Punishment.

2. IN THE PERFORMANCE OF AN UNLAWFUL ACT
1238. Previous rules apply to second degree.
1239. Only be committed, when.
1240. "Unlawful act."
1241. If intent is to commit a felony.
1242. In attempt at misdemeanor.
1243. Punishment.

Article 1230. [1113] [683] [578] Two kinds.—Homicide by negligence is of two kinds:

1. Such as happens in the performance of a lawful act; and

2. That which occurs in the performance of an unlawful act.

1. IN THE PERFORMANCE OF A LAWFUL ACT

Art. 1231. [1114—5] In first degree.—Whoever in the performance of a lawful act shall by negligence and carelessness cause the death of another is guilty of negligent homicide of the first degree. A lawful act is one not forbidden by the penal law and which would give no just occasion for a civil action.

Art. 1232. [1116] [686] [581] Must be apparent danger of causing death.—To constitute this offense there must be an apparent danger of causing the death of the person killed or some other.

Art. 1233. [1117] [687] [582] How distinguished from excusable homicide.—The want of proper care and caution distinguishes this offense from excusable homicide. The degree of care and caution is such as a man of ordinary prudence would use under like circumstances.

Art. 1234. [1118] [688] [583] Examples.—Throwing timbers by a workman from the roof or upper part of the house in a public street or highway, or where a number of persons are known to be around the house, or discharging firearms on or near a public highway other than a street in a town or city in such manner as would be likely to injure persons who might be passing, are examples of negligent homicide of the first degree, in case of death resulting therefrom. If death is caused by the careless discharge of firearms in a public street of a town or city, the offense will be of a higher degree.

Art. 1235. [1119] [689] [584] No apparent intention to kill.—To bring the offense within the definition of negligent homicide either of the first or second degree, there must be no apparent intention to kill.

Art. 1236. [1120] [690] [585] Must be consequence of the act.—The homicide must be the consequence of the act done or attempted to be done.

Art. 1237. [1121] [691] [586] Punishment.—Negligent homicide of the first degree shall be punished by confinement in jail not exceeding one year, or by fine not exceeding one thousand dollars.

2. IN THE PERFORMANCE OF AN UNLAWFUL ACT

Art. 1238. [1122] [692] [587] Previous rules apply to second degree.—The definitions, rules and provisions of the preceding articles of this chapter, with respect to negligent homicide of the first degree, apply also to the offense of negligent homicide of the second degree, or such as is committed in the prosecution of an unlawful act, except when contrary to the following provisions.

Art. 1239. [1123] [693] [588] Only committed, when.—Negligent homicide of the second degree can only be committed when the person guilty thereof is in the act of committing or attempting the commission of an unlawful act.

Art. 1240. [1124] [694] [589] "Unlawful act."—Within the meaning of an "unlawful act" as used in this chapter are included:

1. Such acts as by the penal law are called misdemeanors; and

2. Such acts, not being penal offenses, as would give just occasion for a civil action.

Art. 1241. [1125] [695] [590] If intent is to commit a felony.—When one in the execution of or in attempting to execute an act made a felony by law shall kill another, though without an apparent intention to kill, the offense does not come within the definition of negligent homicide.

Art. 1242. [1126] [696] [591] In attempt at misdemeanor.—When the unlawful act attempted or executed is known as a misdemeanor, the punishment of negligent homicide committed in the execution of such unlawful act shall be imprisonment in jail not exceeding three years, or by fine not exceeding three thousand dollars.

Art. 1243. [1127] [697] [592] Punishment.—If the act intended is one for which an action would lie, but not an offense against the penal law, the homicide resulting therefrom is a misdemeanor, and may be punished by fine not exceeding one thousand dollars, and by imprisonment in jail not exceeding one year.

CHAPTER FIFTEEN

MANSLAUGHTER

Articles 1244 to 1255. [Repealed by Acts 1927, 40th Leg., p. 412, ch. 274, § 3.]

CHAPTER SIXTEEN

MURDER

Art.
1256. "Murder."
1257. Punishment for murder.
1257a. Evidence.
1257b. Instructions.
1258. Threats and character of deceased.

Article 1256. [1140] [710] [605] "Murder."—Whoever shall voluntarily kill any person within this State shall be guilty of murder. Murder shall be distinguished from every other species of homicide by the absence of circumstances which reduce the offense to negligent homicide or which excuse or justify the killing. [O. C. 607, Act Feb. 12, 1858, Acts 1913, p. 238; Acts 1927, 40th Leg., p. 412, ch. 274, § 1.]

Art. 1257. [1141] [711] [606] Punishment for murder.—The punishment for murder shall be death or confinement in the penitentiary for life or for any term of years not less than two. [Id.; Acts 1927, 40th Leg., p. 412, ch. 274, § 1.]

Art. 1257a. Evidence.—In all prosecutions for felonious homicide the State or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the homicide, which may be considered by the jury in determining the punishment to be assessed. Provided, however, that in all convictions under this Act and where the punishment assessed by the jury does not exceed five years, the defendant shall have the benefits of the suspended sentence act. [Acts 1927, 40th Leg., p. 412, ch. 274, § 2.]

Art. 1257b. Instructions.—In all cases tried under the provisions of this Act, it shall be the duty of the court to define "malice aforethought" and shall apply that term by appropriate charge to the facts in the case and shall instruct the jury that unless from all the facts and circumstances in evidence the jury believes the defendant was prompted and acted with his malice aforethought, they cannot assess the punishment at a period longer than five years; provided, however, that no offense committed prior to the taking effect of Chapter 274 of the General Laws of the 40th Legislature of 1927, shall be affected hereby whether an indictment has been returned or not, but in every such case the offender may be proceeded against and punished under the law as it existed prior to the taking effect of said act, the same as if said act had not been passed. [Acts 1927, 40th Leg., p. 412, ch. 274, § 3a; Acts 1927, 40th Leg., 1st C. S., p. 18, ch. 8, § 1.]

Section 3 of Acts 1927, 40th Leg., p. 412, ch. 274, repeals Title 15, chapters 15 and 18 of Penal Code 1925, and all other conflicting laws, but provides that it shall not be construed as repealing Title 15, chapter 14 of the Penal Code relating to negligent homicide.

Art. 1258. [1143] [713] [608] Threats and character of deceased.—Where a defendant accused of murder seeks to justify himself on the ground of threats against his own life, he may be permitted to introduce evidence of the threats made, but the same shall not be regarded as affording a justification for the killing unless it be shown that at the time of the homicide the person killed by some act then done manifested an intention to execute the threat so made. In every instance where proof of threats has been made, it shall be competent to introduce evidence of the general character of the deceased. Such evidence shall extend only to an inquiry as to whether the deceased was a man of violent or dangerous character, or a man of kind and inoffensive disposition, or whether he was such a person as might reasonably be expected to execute a threat made.

CHAPTER SEVENTEEN

DUELING

Art.
1259. Dueling.
1260. Homicide committed in a duel.

Article 1259. [1145] [715] [610] Dueling.—Any person who shall within this State fight a duel with deadly weapons, or send or accept a challenge to fight a duel with deadly weapons, either within the State or out of it, or who shall act as a second, or knowingly aid or assist in any manner those thus offending, shall be confined in the penitentiary not less than two nor more than five years.

Art. 1260. [1146] [716] [611] Homicide committed in a duel.—If in any duel hereafter fought in this State, either of the combatants be killed or receive a wound from which he dies within three months, the survivor shall be deemed guilty of murder.

CHAPTER EIGHTEEN

GENERAL PROVISIONS RELATING TO HOMICIDE

Articles 1261 to 1264. [Repealed Acts 1927, 40th Leg., p. 412, ch. 274, § 3.]

CHAPTER NINETEEN

THREATS

Art.
1265. Seriously threatening life.
1266. Threat must be seriously made.
1267. Certain threats not included.
1268. Threatening letter.

Article 1265. [1442] [962] [809] Seriously threatening life.—Whoever shall seriously threaten to take the life of any human being or to inflict upon any human being any serious bodily injury shall be fined not less than one hundred nor more than two thousand dollars, and in addition thereto may be imprisoned in jail not exceeding one year. [Act Feb. 22, 1875, Acts 1875, p. 51.]

Art. 1266. [1443] [963] [810] Threat must be seriously made.—To constitute the offense it is necessary that the threat be seriously made, and it is for the jury to determine whether the threat, if made,

was seriously made or was merely idle and with no intention of executing the same.

Art. 1267. [1445] [965] [812] Certain threats not included.—A threat that a person will do any act merely to protect himself, or to prevent the commission of some unlawful act by another, does not come within the meaning of this chapter.

Art. 1268. [1446] [966] [813] Threatening letter.—Whoever shall knowingly send or deliver to another any letter or writing, whether signed or not, threatening to accuse such other person of a criminal offense with a view of extorting money, property, thing of value, or any advantage whatever from such other person, or threatening to kill or in any manner injure the person of such other, or to burn or otherwise destroy or injure any of his property, real or personal, or to do any other injury to such other person, shall be fined not less than one hundred nor more than one thousand dollars, and in addition thereto may be imprisoned in jail not exceeding one year. [Added in revising, 1879.]

TITLE 16

OFFENSES AGAINST REPUTATION

Chap.
1. Libel.
2. Slander.
3. Sending anonymous letters.
4. False accusation and threats of prosecution.

CHAPTER ONE

LIBEL

Art.
1269. "Libel."
1269a. Libel on banks.
1270. Punishment.
1271. Forged writing.
1272. "Maker."
1273. "Publisher."
1274. "Circulating."
1275. The ideas the statement must convey.
1276. Mode of publication.
1277. A manuscript must be circulated.
1278. Editor, etc., prima facie guilty.
1279. Editor, etc., may avoid responsibility.
1280. Mechanical executor not guilty, unless.
1281. Actual injury not necessary.
1282. Intent to injure presumed.
1283. The offense relates to persons.
1284. Not libelous.
1285. Recorder of minutes not liable.
1286. Members who assent.
1287. Intent to injure.
1288. "Malicious."
1289. Statement in legislative or judicial proceeding.
1290. Truth of statement may be shown; when.
1291. Province of jury.
1292. Scope of title.

Article 1269. [1151] [721] "Libel."—He is guilty of "libel" who, with intent to injure, makes, writes, prints, publishes, sells, or circulates any malicious statement affecting the reputation of another in respect to any matter or thing pointed out in this chapter.

Art. 1269a. Libel on banks.—Any person who shall knowingly make, utter, circulate, or transmit to another, or others, any statement untrue in fact, derogatory to the financial condition of any bank, banking house, banking company, trust company, in the State, with intent to injure any such financial institution; or who shall counsel, aid, procure, or induce another to originate, make, utter, transmit, or circulate any such statement or rumor, with like intent, shall be guilty of an offense and upon conviction shall be punished by a fine not more than two thousand five hundred ($2,500) dollars or by imprisonment in the State Penitentiary for a period of not exceeding two years or by both such fine and imprisonment.

Art. 1270. [1152] [722] Punishment.—If any person be guilty of libel he shall be fined not less than one hundred nor more than two thousand dollars, or be imprisoned in jail not exceeding two years; and the court may enter up judgment and issue an order thereupon directing the sheriff to seize and destroy all the publications, prints, paintings or engravings constituting the libel as charged in the indictment.

Art. 1271. [1153] [723] Forged writing.—If any person with intent to injure the reputation of another shall without lawful authority make, publish or circulate a writing purporting to be the act of some other person, and which comes within the definition of libel, as given in this chapter, he shall be punished in the same manner as if the act purported to be his own; and the rules with respect to libel apply also to the making and circulation of such false writing.

Art. 1272. [1154] [724] "Maker."—He is the maker of a libel who originally contrived and either executed it himself by writing, printing, engraving or painting, or dictated or caused it to be done by others.

Art. 1273. [1155] [725] "Publisher."—He is the publisher of a libel who, either of his own will or by the persuasion or dictation of another, executes the same in any of the modes pointed out as constituting a libel; but if any one by force or threats is compelled to execute such libel he is guilty of no offense.

Art. 1274. [1156] [726] "Circulating."—He is guilty of circulating a libel who, knowing its contents, either sells, distributes or gives, or who, with malicious design, reads or exhibits it to others.

Art. 1275. [1157] [727] The ideas the statement must convey.—The written, printed or published statement, to come within the definition of libel, must convey the idea either:

1. That the person to whom it refers has been guilty of some penal offense; or,

2. That he has been guilty of some act or omission which, though not a penal offense, is disgraceful to him as a member of society, and the natural consequence of which is to bring him into contempt among honorable persons; or

3. That he has some moral vice, or physical or mental defect or disease, which renders him unfit for intercourse with respectable society, and such as should cause him to be generally avoided; or

4. That he is notoriously of bad or infamous character; or

5. That any person in office or a candidate therefor is dishonest and therefore unworthy of such office, or that while in office he has been guilty of some malfeasance rendering him unworthy of the place.

Art. 1276. [1158] [728] Mode of publication.—A libel may be either written, printed, engraved, etched, or painted, but no verbal defamation comes within the meaning thereof; and whenever a defendant is accused of libel by means of a painting, engraving, or caricature, it must clearly appear therefrom that the person said to be defamed was, in fact, intended to be represented by such painting, engraving, or caricature.

Art. 1277. [1159] [729] A manuscript must be circulated.—In order to render any manuscript a libel, it must be circulated or posted up in some public place.

Art. 1278. [1160] [730] Editor, etc., prima facie guilty.—If the libel be in printed form, and issues or is sold in any office or shop where a public newspaper is conducted, or where books or other printed works are sold or printed, the editor, publisher and proprietor of such newspaper, or any one of them, or the owner of such shop, is to be deemed guilty of making or circulating such libel until the contrary is made on the trial to appear.

Art. 1279. [1161] [731] Editor, etc., may avoid responsibility.—The editor, publisher or proprietor of a public newspaper may avoid the responsibility of making or publishing a libel by giving the true author of the same, provided such author be a resident of this State and a person of good character except in cases where it is shown that such editor, publisher, or proprietor caused the libel to be published with malicious design.

Art. 1280. [1162] [732] Mechanical executor not guilty unless.—No person shall be convicted of libel merely on evidence that he has made a manu-

script copy of a libel or has performed the manual labor of printing it, unless it be shown positively that such person was actuated by a malicious design against the person defamed. But the person for whose account or by whose order it was printed shall be presumed to have known the intent of the publication, and shall be liable for the offense.

Art. 1281. [1163] [733] Actual injury not necessary.—It is sufficient to constitute the offense of libel if the natural consequence of the publication of the same is to injure the person defamed, although no actual injury to his reputation has been sustained.

Art. 1282. [1164] [734] Intent to injure presumed.—The intent to injure is to be presumed if such would be the natural consequence of the libel, though no actual proof be made that the defendant had such design.

Art. 1283. [1168] [738] The offense relates to persons.—To constitute libel, there must be some injury intended to the reputation of persons, and no publication as to the government, or any of the branches thereof as such is an offense under the name of seditious writings or any other name.

Art. 1284. [1165–6–7–9–70–71] Not libelous.—It is no libel:

1. To make any publication respecting a body politic or corporate as such.
2. To make publications respecting the merits or doctrines of any particular religion, system of morals or politics, or of any particular form of government.
3. To publish any statement respecting any legislative or judicial proceedings, whether in fact true or not, unless in such statement a charge of corruption is made against some person acting in a legislative or judicial capacity.
4. To publish any criticism or examination of any work of literature, science or art or any opinion as to the qualifications or merits of the author of such work.
5. To publish true statements of fact as to the qualifications of any person for any occupation, profession or trade.
6. To make true statements of fact or express opinions as to the integrity or other qualifications of a candidate for any office or public place or appointment.

Art. 1285. [1172] [742] Recorder of minutes not liable.—Where any person by virtue of his office is required to record the proceedings of any department of the government or of any body corporate or politic, or of any association organized for purposes of business or as a religious, moral, benevolent, literary, or scientific institution, he cannot be charged with libel for any entry upon the minutes or records of such department, body, or association, made in the course of his official duties.

Art. 1286. [1173] [743] Members who assent.—If any false statement be entered upon the minutes or record of proceedings of any corporate body or association included within the meaning of the preceding article, which would be libel if written, printed, published, or circulated by an individual, according to the previous articles of this chapter, the members of such body or association who assent to and direct such libelous statement to be made, are guilty of libel under the same rules as if the false statement had been written, published, or circulated in any other manner than as a part of the record of proceedings of such body or association, subject, however, to the restrictions contained in the succeeding article.

Art. 1287. [1174] [744] Intent to injure.—The libelous statement referred to in the preceding article is not to be presumed to have been made with intent to injure, from the mere fact that such would be the natural result thereof, unless it appear from other facts that the statement was in fact made with that intention.

Art. 1288. [1175] [745] "Malicious."—The word "malicious" is used to signify an act done with evil or mischievous design, and it is not necessary to prove any special facts showing ill feeling on the part of the person who is concerned in making, printing, publishing, or circulating a libelous statement against the person injured thereby.

Art. 1289. [1176] [746] Statement in legislative or judicial proceeding.—No statement made in the course of a legislative or judicial proceeding, whether true or false, although made with intent to injure and from malicious purposes, comes within the definition of libel.

Art. 1290. [1177] [747] Truth of statement may be shown, when.—In the following cases the truth of any statement charged as libel may be shown in justification of the defendant:

1. Where the publication purports to be an investigation of the official conduct of officers or men in a public capacity.
2. Where it is stated in the libel that a person has been guilty of some penal offense, and the time, place and nature of the offense is specified in the publication.
3. Where it is stated in the libel that a person is of notoriously bad or infamous character.
4. Where the publication charges any person in office, or a candidate therefor, with a want of honesty, or of having been guilty of some malfeasance in office rendering him unworthy of the place. In other cases the truth of the facts stated in the libel can not be inquired into.

Art. 1291. [1178] [748] Province of jury.—The jury in every case of libel are not only the judges of the facts and of the law under the direction of the court in accordance with the constitution, but they are judges of the intent with which a libel may have been published or circulated, subject to the rules prescribed in this chapter.

Art. 1292. [1179] [749] Scope of title.—This title regulates the law with regard to libel when prosecuted as a penal offense, and is not intended to affect civil remedies for the recovery of damages.

CHAPTER TWO

SLANDER

Art.
1293. Definition and punishment.
1294. Procedure.

Article 1293. [1180] [750] Definition and punishment.—If any person shall, orally or otherwise, falsely and maliciously, or falsely and wantonly, impute to any female in this State, married or unmarried, a want of chastity, he shall be deemed guilty of slander and shall be fined not less than one hundred nor more than one thousand dollars, and may be in addition thereto imprisoned in jail not exceeding one year.

Art. 1294. [1181] [751] Procedure.—It shall not be necessary for the State to show that such imputation was false, but the defendant may in justification show the truth of the imputation, and the general reputation for chastity of the female alleged to have been slandered may be inquired into.

CHAPTER THREE

SENDING ANONYMOUS LETTERS

Art.
1295. Sending or delivering—Punishment.
1296. Definition of.
1297. Joint offender may be made to testify.

Article 1295. [1182] Sending or delivering—Punishment.—If any person shall send or cause to be sent to any person any anonymous letter or written instrument of any character whatsoever, reflecting upon the integrity, chastity, virtue, good character or reputation of the person to whom such letter or written instrument is sent or addressed, or of any other person, or wherein the life of such person is threatened, said person so sending such letter or written instrument shall be fined not less than two hundred and fifty nor more than one thousand dol-

lars, and confined in jail for not less than one nor more than twelve months. [Acts 1909, p. 138.]

Art. 1296. [1183] Definition of.—By an anonymous letter or written instrument, within the meaning of this chapter, is meant where the sender of the same withholds his full and true name from the same or where no name or where a fictitious name is signed thereto, or where any description of such sender instead of a name is used, such as "a friend" or the like. [Id.]

Art. 1297. [1184] Joint offender may be made to testify.—If two or more persons are concerned in the composition or sending of any anonymous letter or written instrument, as herein prohibited, then either of such persons shall be compelled to testify thereto; and the fact that such testimony will incriminate such person shall not exempt him from testifying in regard thereto. Where such person has been compelled to testify as above stated, then, when he has testified fully in regard thereto, he shall not be prosecuted for the particular offense about which he has testified. [Id.]

CHAPTER FOUR

FALSE ACCUSATION AND THREATS OF PROSECUTION

Art.
1298. Malicious prosecution.
1299. Combination to falsely accuse another.
1300. Combination to extort money.
1301. Threats of prosecution to extort money.
1302. Publishing another as a coward.
1303. "Whitecapping."

Article 1298. [423] [292] [273] Malicious prosecution.—Whoever for the purpose of extorting money from another, or the payment or security of a debt due him by such other, or with intent to vex, harass or injure such person, shall institute or cause to be instituted any criminal prosecution against such other person, shall be fined not less than one hundred nor more than one thousand dollars, or be confined in jail not less than one month nor more than one year. [Added in revising, 1879.]

Art. 1299. [1185] [752] Combination to falsely accuse another.—If any two or more persons shall combine falsely to accuse another of an offense, and shall in pursuance of such combination make such accusation before a court or magistrate, or in any newspaper or other public print, or by the circulation of hand bills, or in any other public manner by writing, they shall be fined not exceeding two thousand dollars, or be imprisoned in jail not exceeding two years.

Art. 1300. [1186] [753] Combination to extort money.—If the purpose of such combination be to extort money or any pecuniary advantage, the punishment shall be by fine not to exceed two thousand dollars, and imprisonment in the penitentiary not to exceed three years.

Art. 1301. [1187] [754] Threats of prosecution to extort money.—Whoever with intent to extort money or any pecuniary advantage shall threaten to accuse another of a felony before any court, or to publish any other statement respecting him which would come within the meaning of libel, shall be punished in the manner set forth in article 1299.

Art. 1302. [1188] [755] Publishing another as a coward.—Whoever in any newspaper or hand bill, or by notice posted up in any place shall publish another as a coward, or use toward him other opprobrious language, shall be fined not exceeding two hundred dollars; and, if such publication or posting be in consequence of a refusal to fight a duel, the punishment shall be by fine of not less than five hundred nor more than one thousand dollars.

Art. 1303. [1189] "Whitecapping."—Whoever shall post any anonymous notice or make any threats or signs or skull and cross bones, or shall by any other method post any character or style of notice or threat to do personal violence or injury to property on or near the premises of another, or who shall cause the same to be sent with the intention of interfering in any way with the right of such person to occupy said premises or to follow any legitimate occupation, calling or profession or with the intention of causing such person to abandon such premises, or precinct or county in which such person may reside, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1899, p. 215.]

TITLE 17

OFFENSES AGAINST PROPERTY

Chap.
1. Arson.
2. Other Wilful Burning.
3. Malicious Mischief.
4. Timber and Logs.
5. Burglary.
6. Offenses on Board Vessels, Steamboats and Railroad Cars.
7. Robbery.
8. Theft in General.
9. Theft from the Person.
10. Theft of Animals.
11. Relating to the Recovery of Stolen Animals and Theft Thereof.
12. Other Offenses Relating to Stock.
13. Protection of Stock Raisers.
14. Diseases of Animals and Bees.
15. Embezzlement and Conversion.
16. Swindling and Cheating.
17. Property under Lien.
18. Offenses Committed in Another County or State.

CHAPTER ONE

ARSON

Art.
1304. "Arson."
1305. "House."
1306. Offense complete, when.
1307. "Design" the essence of the offense.
1308. Intent presumed.
1309. Explosions included.
1310. House destroyed to save others.
1311. Owner may destroy.
1312. Owner liable, when.
1313. Part owner cannot burn.
1314. Punishment.
1315. State buildings.
1316. Attempt at arson.

Article 1304. [1200] [756] [651] "Arson."—"Arson" is the wilful burning of any house included within the meaning of the succeeding article of this chapter. [O. C. 679.]

Art. 1305. [1201] [757] [652] "House."—A "house" is any building, edifice, or structure inclosed with walls and covered, whatever may be the material used for building. [O. C. 680.]

Art. 1306. [1202] [758] [653] Offense complete, when.—The burning is complete, when the fire has actually communicated to a house, though it may be neither destroyed nor seriously injured. [O. C. 684.]

Art. 1307. [1203] [759] "Design" the essence of the offense.—It is of no consequence by what means the fire is communicated to a house, if the burning is with design. It may be by setting fire to any combustible material communicated therewith, by an explosion, or by any other means. [O. C. 685.]

Art. 1308. [1204] [760] [655] Intent presumed.—When fire is communicated to a house by means of the burning of another house, or some combustible matter, it is presumed that the intent was to destroy every house actually burnt; provided there was any apparent danger of such construction [destruction]. [O. C. 686.]

Art. 1309. [1205] [761] [656] Explosions included.—The explosion of a house by means of gunpowder or other explosive matter comes within the meaning of arson. [O. C. 687.]

Art. 1310. [1206] [762] [657] House destroyed to save others.—A house blown up or oth-

erwise destroyed for the purpose of saving another house from fire is not within the meaning of arson. [O. C. 688.]

Art. 1311. [1207] [763] [658] Owner may destroy.—The owner of a house may destroy it by fire or explosion without incurring the penalty of arson, except in the cases mentioned in the succeeding article. [O. C. 689.]

Art. 1312. [1208] [764] [659] Owner liable, when.—When a house is within a town or city, or when it is insured, or when there is within it any property belonging to another, or when there is apparent danger by reason of the burning thereof, that the life or person of some individual, or the safety of some house belonging to another will be endangered, the owner, if he burn the same, is guilty of arson. [O. C. 690.]

Art. 1313. [1209] [765] [660] Part owner can not burn.—One of the part owners of a house is not permitted to burn it. [O. C. 691.]

Art. 1314. [1210] [766] [661] Punishment.—Whoever is guilty of arson shall be confined in the penitentiary not less than two nor more than twenty years. [O. C. 694, Acts 1917; p. 352.]

Art. 1315. [1211] [767] [662] State buildings.—Whoever shall wilfully burn the capitol building of the State, the State Office Building, or the executive mansion, shall be confined in the penitentiary for life. [O. C. 694.]

Art. 1316. [1212] [768] [663] Attempt at arson.—Whoever, by any means calculated to effect the object, attempts to commit the offense of arson, shall be confined in the penitentiary not less than two nor more than seven years. [O. C. 708.]

CHAPTER TWO

OTHER WILFUL BURNING

Art.
1317. Rules of arson applicable.
1318. Burning other buildings, hay, lumber, etc.
1319. Ship, or other vessel.
1320. Bridge burning.
1321. Burning woodland or prairie.
1322. Burning insured personal property.
1323. Burning another's personal property.
1324. Punishment in case of personal injury.
1325. When death ensues, murder.
1326. Attempts at other wilful burning.
1327. Wilfully firing grass in inclosure of another.
1328. Wilfully firing grass with intent to injure.
1329. Preventing escape of sparks.
1330. Firing forest or cut-over land.

Article 1317. [1213] [769] [664] Rules of arson applicable.—The rules and definitions contained in the preceding chapter with respect to arson apply, unless clearly inapplicable, to wilful burning under this chapter. [O. C. 597.]

Art. 1318. [1214] [770] [665] Burning other buildings, hay, lumber, etc.—Whoever shall wilfully burn any building not a house as defined in the preceding chapter, or shall wilfully burn any stack of corn, hay, fodder, grain, or flax, or any pile of boards, lumber, or wood, or any fence or other inclosure, the property of another, shall be confined in the penitentiary not less than two nor more than five years, or be fined not exceeding two thousand dollars. [O. C. 698.]

Art. 1319. [1215–16] Ship, or other vessel.—Whoever shall wilfully burn any ship or other vessel, or any boat of any kind whatsoever, shall be confined in the penitentiary not less than two nor more than seven years, or be fined not exceeding two thousand dollars. This offense is complete only when some person other than the offender has an interest in the property by insurance or otherwise at the time the burning takes place. [O. C. 699, O. C. 700.]

Art. 1320. [1217] [773] [668] Bridge burning.—Whoever wilfully burns any bridge which by law or usage is a public highway shall be confined in the penitentiary not less than two nor more than seven years, or be fined not exceeding five thousand dollars. [O. C. 701, Acts 1858, p. 177.]

Art. 1321. [1218–19] Burning woodland or prairie.—Whoever wilfully or negligently sets fire to, or burns, or causes to be burned, any woodland or prairie not his own, shall be fined not less than fifty nor more than three hundred dollars. This offense is complete where the offender sets fire to his own woodland or prairie and the fire communicates to the woodland or prairie of another. [O. C. 701, 703, Acts 1883, p. 102.]

Art. 1322. [1220] [776] [671] Burning insured personal property.—Whoever with intent to defraud wilfully burns any personal property owned by himself which shall be at the time insured against loss or damage from fire shall be confined in the penitentiary not less than two nor more than five years. [O. C. 704, Acts 1858, p. 178.]

Art. 1323. [1221] [777] [672] Burning another's personal property.—Whoever wilfully burns any personal property belonging to another, the punishment for which is not otherwise provided for in this chapter, shall be fined not exceeding two thousand dollars. [O. C. 705.]

Art. 1324. [1222] [778] [673] Punishment in case of personal injury.—If any bodily injury less than death is suffered by any one by reason of the commission of any offense named in this and the preceding chapter, the punishment may be increased so as not to exceed double that which is prescribed in cases where no such injury is suffered. [O. C. 706.]

Art. 1325. [1223] [779] [674] When death ensues, murder.—Where death is occasioned by any offense described in this and the preceding chapter the offender is guilty of murder. [O. C. 707.]

Art. 1326. [1224] [780] [675] Attempts at other wilful burning.—Whoever by any means calculated to effect the object, attempts to commit any offense enumerated in this chapter, shall receive such punishment as may be assessed not to exceed one-half of the penalty which would have been affixed in case the offense attempted had been actually committed. When the punishment is confinement in the penitentiary, in no case shall the lowest term be less than two years. [O. C. 708, Acts 1858, p. 178.]

Art. 1327. [1225] [781] [675a] Wilfully firing grass in inclosure of another.—Whoever wilfully fires any grass within any inclosure not his own in this State, with intent to destroy the grass in such pasture, or any part thereof, or whoever fires the grass outside of any inclosure with the intent to destroy the grass therein by the communication of said fire to the grass, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1884, p. 66.]

Art. 1328. [1226] [782] [675b] Wilfully firing grass with intent to injure.—Whoever wilfully, and with intent to injure the owner of the stock grazing thereon, sets fire to any grass upon land not his own, with intent to destroy the same, shall be confined in the penitentiary not less than one nor more than three years. [Id.]

Art. 1329. Preventing escape of sparks.—All logging and railroad locomotives, dinkey engines and other engines and boilers operated or used within two hundred feet of any forest, cut-over, brush or grass land, which do not use oil as fuel, shall be equipped with efficient appliances or devices to prevent the escape of fire and sparks from the smoke stacks, ash pans and fire boxes thereof. Such appliances and devices shall at all times be kept in proper adjustment and in good repair, and the State Forester or his designated agents may examine any locomotive or other engine to determine the condition of said appliances and devices. Any person operating any logging or railroad locomotive, dinkey engine or other engine or boiler in violation of any provision of this article shall be fined not less than ten nor more

than one hundred dollars for each offense. [Acts 1923, p. 270.]

Art. 1330. Firing forest or cut-over land.—Whoever wilfully or negligently sets on fire or causes to be set on fire any forest, cut-over, brush or grass land not his own; or sets on fire or causes to be set on fire any forest, cut-over, brush or grass land, belonging to himself, and allows such fire to escape to any forest, cut-over, brush or grass land, not his own; or wilfully or negligently suffers any fire set by himself to damage any property of another, and any person setting fire or causing fire to be set for the purpose of burning débris on areas worked or cupped for turpentine and wilfully or negligently allowing such fire to spread to adjacent areas not then being so worked or cupped, shall be fined not less than ten nor more than two hundred dollars. [Id.]

CHAPTER THREE

MALICIOUS MISCHIEF

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Article 1331. [1233] [789] [681] Tampering with buoy or signal.—If any person shall wilfully remove any buoy, beacon, light or any other mark or signal erected for the purpose of indicating the channel in any bay, river, lake or other navigable water within the State, or shall erect any false buoy, beacon, light or mark or signal to indicate the channel in any such navigable water, with intent to mislead or deceive, he shall be confined in the penitentiary not less than two nor more than five years, or be fined not exceeding two thousand dollars; if death occurs by reason of such unlawful act the offender is guilty of murder. [Acts 1858, p. 179.]

Art. 1332. [1227] [783] [676] Sinking or destroying vessel.—If any person shall wilfully and maliciously cast away, sink, or destroy in any way other than by fire any vessel or boat which together with its cargo, if any, shall be of the value of one hundred dollars or more, he shall be confined in the penitentiary not less than two nor more than five years, or be fined not exceeding two thousand dollars. If the life of any person is lost by such act the offender is guilty of murder. [Acts 1858, p. 178.]

Art. 1333. Using boat without consent.—Whoever shall use in this State without the consent of the owner thereof any boat of any size or kind, which is capable of being used or operated on any bay, lake, river or body of water or any part thereof in this State, or who shall without such consent remove therefrom any motor or part thereof, oars, rowlocks, oarlocks, anchor, anchor chain or rope, paddles, seats, planks, poles, or any rigging whatever belonging to such boat, shall be fined not less than five nor more than one hundred dollars. [Acts 1921, p. 141.]

Acts 1925, 39th Leg., ch. 172, p. 404, § 47, repeals chapter 72 of Acts 1921, 37th Leg., p. 141, from which this article was taken.

Art. 1334. [1228] [784] [677] Telegraph or telephone.—If any person shall intentionally break, cut, pull or tear down, misplace or in any other manner injure any telegraph or telephone wire, post, machinery, or other necessary appurtenances to any such line, or in any way wilfully obstruct or interfere with the transmission of messages along such telegraph or telephone line, he shall be confined in the penitentiary not less than two nor more than five years or be fined not less than one hundred nor more than two thousand dollars. [Acts 1885, p. 10.]

Art. 1335. [1229] [785] [678] Obstructing railroad track, etc.—If any person shall wilfully place any obstruction upon the track of any railroad, or remove any rail therefrom, or displace or interfere with any switch thereof, or in any way injure such road, or do any damage to any railroad, locomotive, tender or car whereby the life of any person might be endangered, he shall be confined in the penitentiary not less than two nor more than seven years. If the life of any person is lost by such act the offender is guilty of murder. [Acts 1887, p. 14.]

Art. 1336. [1259] [808] [691e] Injuring railroad, etc.—Whoever wilfully injures any railroad, locomotive engine or tender, or baggage, passenger or freight car of any railroad so as to prevent the use of the same shall be fined not less than one hundred dollars and imprisoned in jail not less than three nor more than twelve months. [Acts 1887, p. 72.]

Art. 1337. [1257] [806] [691c] Preventing moving of train.—Whoever shall by force, threats, or intimidation of any kind against any railroad engineer or any conductor, brakeman, or other officer or employé employed or engaged in running any passenger, freight or construction train running upon any railroad in this State, prevent the moving or running of such train shall be fined not less than one hundred nor more than five hundred dollars and be imprisoned in jail not less than three nor more than twelve months. Each day such trains are prevented from moving on their road is a separate offense. [Acts 1887, p. 72.]

Art. 1338. [1238] [792] [683a] Injuring baggage.—Any baggage master, express agent, hack driver or other common carrier whose duty it is to handle, remove, transfer or take care of trunks, valises, boxes or other baggage while handling the same, whether or not in the employ of any common carrier, who shall maliciously, carelessly or recklessly break, injure or destroy said baggage shall be fined not exceeding one hundred dollars. [Acts 1881, p. 17.]

Art. 1339. [1239] [793] [683b] Throwing or firing into car, etc.—Whoever shall wilfully or maliciously throw a stone or other missile or fire any gun or pistol at, against or into any engine, tender, coach, passenger car whether moving or not, or any other car of any moving train on any railway, or any railway depot, or any private residence, school house, church house, court house, store house, hotel or other public or private building, private or public tent, sailboat or steamboat, shall be fined not less than five nor more than one thousand dollars or be confined in jail not less than ten days nor more than two years. [Acts 1889, p. 36, Acts 1895, p. 161, Acts 1897, p. 41.]

Art. 1340. [1232] [788] [680a] Using animal without consent.—Any person who shall take and use or take up and use any horse, mule, ox, cow

or any other dumb animal the property of another, without the consent of the owner thereof, shall be fined not less than ten nor more than one hundred dollars. This article shall not be held to interfere with the laws as to estrays, nor to prevent a prosecution for theft. [Acts 1879, p. 129, Acts 1889, p. 319.]

Art. 1341. Driving vehicle without consent.—Whoever wilfully and in the absence of the owner drives or operates or causes to be so driven or operated upon any public road or highway any automobile, motor cycle, or other motor vehicle, bicycle, buggy or other horse driven vehicle without the consent of the owner thereof, shall be fined not to exceed one thousand dollars, or be imprisoned in jail not to exceed one year, or both. [Acts 1913, p. 187, Acts 1915, p. 160, Acts 1917, p. 483.]

Art. 1342. Unlawful use of State's vehicle.—Whoever uses any automobile, truck or other motor vehicle owned by this State for any purpose except in the transaction of business for the State shall be fined not less than five nor more than five hundred dollars. [Acts 1921, p. 122.]

Art. 1343. Manipulating starter or lever of vehicle.—Any person who shall without the consent of the owner or person in charge of a motor vehicle climb upon or in such vehicle, whether the same be in motion or at rest, or shall while said vehicle is at rest and unattended attempt to manipulate any of the levers, starting crank or other device or to set said vehicle in motion shall be fined not to exceed one hundred dollars or be imprisoned in the county jail for sixty days or both. [Sec. 34, p. 484, Acts 1917.]

Art. 1344. Tampering with motor vehicle.—Any person who shall individually or in association with one or more others wilfully break, injure or tamper with any part of any motor vehicle for the purpose of injuring, defacing or destroying such vehicle or temporarily or permanently preventing its useful operation or for any other purpose against the will and without the consent of the owner thereof, or in any other manner wilfully or maliciously interfere with or prevent the running or operation of such vehicle, shall be fined not to exceed one thousand dollars or be imprisoned in jail not to exceed twelve months or both, provided that when such offense comes within the definition of felony theft, this article shall not be applicable. [Sec. 33, p. 484, Acts 1917.]

Art. 1345. Mischief with motor vehicle.—Whoever shall wilfully cut, mark, scratch or damage the chassis, running gear, body, sides, top, robe covering or upholstering of a motor vehicle, the property of another, or shall wilfully destroy any part thereof with any liquid or other substance, or shall wilfully cut, mash, mark or in any other way damage or destroy the cylinder, radiator, starter, battery, or any device, emblem or monogram, or any other attachment, fastening or appurtenance of a motor vehicle, without the permission of the owner thereof, or whoever wilfully shall drain or start the drainage of any radiator or oil tank upon a motor vehicle without permission of the owner thereof, or wilfully puts any metallic or other substance or liquid in the radiator, carburetor, oil-tank, grease cup, oilers, lamps or machinery of a motor vehicle with the intent to injure or damage the same or impede the working of the machinery, maliciously tighten or loosen any bracket, bolt, wire, nut, screw or other fastening on such vehicle, shall be imprisoned in jail not to exceed one year. [Acts 1913, p. 187.]

Art. 1346. Removing parts of motor vehicle.—Whoever shall maliciously or wilfully and without authority from the owner unlawfully remove from any motor vehicle or bicycle any portion of the running or steering gear, pump, or any tire, rim, robe, cover, tube, clock, casing, radiator, fire-extinguisher, tool, lamp, starter, battery, coil, spring, gas or oil tank, bell or any signal device, speedometer, license number, horn, box, basket, trunk or carrier, shield, hood, oiler, gauge, chain or any device, emblem or monogram thereon, or any attachment, fastenings or other appurtenances or any other part attached to such vehicle which is necessary in the use or operation thereof, or whoever knowingly buys, receives or has in his possession any of said articles or any part thereof so unlawfully removed, shall be fined not exceeding one hundred dollars, or be imprisoned in jail not less than six months nor more than one year. [Acts 1913, p. 187.]

Art. 1347. Throwing glass, etc. in road.—Whoever throws or deposits in or on any public road, street or alley, or any public highway any glass bottles, glass, nails, tacks, hoops, wire, cans or any other substance likely to injure any person, animal, automobile or any vehicle upon such highway shall be fined not to exceed two hundred dollars. [Acts 1913, p. 131, Acts 1917, p. 483.]

Art. 1348. [1248] [801] [687] Removing rock, etc. from premises.—Whoever knowingly enters upon the land or premises of another and takes or removes therefrom any rock, earth, coal, slate or mineral of any kind, without the consent of the owner of such land or premises shall be fined not exceeding one thousand dollars. [Acts 1876, p. 28.]

Art. 1349. [1234] [790] [682] Robbing orchards, etc.—Whoever shall take or carry away from the farm, orchard, garden or vineyard of another without his consent, any fruit, melons or garden vegetables, shall be fined not to exceed one hundred dollars. [Acts 1874, p. 55.]

Art. 1350. [1235] [791] [683] Injuring personal property.—If any person shall wilfully and mischievously injure or destroy any growing fruit, corn, grain or other like agricultural product, or if any person shall wilfully or mischievously injure or destroy any real or personal property of any description whatever in such manner as that the injury does not come within any of the offenses otherwise provided for by this Code; or if any person who is in charge or possession of any real property of another shall wilfully, without consent of the owner, tear down, injure or destroy any house, building, edifice or material located thereon; he shall be fined not exceeding one thousand dollars; provided that when the value of the property injured is fifty dollars or less, then he shall be fined not exceeding two hundred dollars. [Acts 1889, p. 35; Acts 1927, 40th Leg., p. 254, ch. 176, § 1.]

Art. 1351. [854] Fencing land of another.—Whoever knowingly and without the consent of the owner makes any fence on or around the land of another shall be fined not to exceed two hundred dollars. [Acts 1884, p. 68.]

Art. 1352. [1240] [794] [684] Injuring fence.—If any person shall break, pull down or injure the fence of another without his consent, or shall wilfully and without the consent of the owner thereof open and leave open any gate leading into the enclosure of another, or shall knowingly cause any hogs, cattle, mules, horses or other stock to go within the inclosed lands of another without his consent, or shall tie or stake out, or cause to be tied or staked out to graze within any inclosed lands not his own and without the consent of the owner any horse, mule or other animal, he shall be fined not less than ten nor more than one hundred dollars, and in addition thereto may be imprisoned in jail not exceeding one year. [Acts 1873, p. 41.]

Art. 1353. [1242] [795] [684a] Wilfully cutting fence.—Any person who shall wilfully and wantonly or with intent to injure the owner cut, injure or destroy any fence or part of a fence (unless such fence is the property of the person so cutting or destroying the same) shall be confined in the penitentiary not less than one nor more than five years. A fence within the meaning hereof is any structure of wood, wire, or of both, or of any other material intended to prevent the passage of cattle, horses, mules, asses, sheep, goats or hogs, provided however, that it shall constitute no offense for any person owning or residing upon land inclosed by the land [fence] of another who refuses permission to such person residing within such inclosure free egress or ingress to their

said land for said person to open a passage way through said inclosure. [Acts 1884, p. 34.]

Art. 1354. [1243–1244] Removal of party fence.—No person who is a joint owner of any separating or dividing fence, or who is in any manner interested in any fence attached to or connected with any fence owned or controlled by any other person shall remove the same except by mutual consent or as hereinafter provided. Any person who is the owner or part owner of any fence connected with or adjoined to any fence owned in part or in whole by any other person shall have the right to withdraw or separate his fence or part of a fence from the fence of any other person; such person who desires to withdraw or separate such fence from the fence of any other person shall give notice in writing to such person, his agent, attorney, or lessee of his intention to separate or withdraw his fence or part thereof for at least six months prior to the time of such intended withdrawal or separation. Any person failing to comply with the provisions of this article shall be fined not less than two nor more than fifty dollars. Every ten days shall constitute a separate offense. [Acts 1889, p. 45.]

Art. 1355. [1245] [798] Notice requiring removal.—Any person who is the owner of any fence wholly upon his own land to which the fence of another is adjoined or connected in any manner may require the owner of any such fence to disconnect and withdraw the same back on his own land by first giving notice in writing for at least six months to such person, his agent, attorney, or lessee to disconnect and withdraw his fence back on his own land. Any person who shall wilfully or negligently fail to disconnect his fence and remove the same back upon his own land after the expiration of said notice shall be fined not less than ten nor more than fifty dollars, and each ten days failure after such notice shall constitute a separate offense. [Id.]

Art. 1356. [1253] Injuring drainage canal or ditch.—Whoever shall wilfully fill up, cut, injure, destroy or in any manner impair the usefulness of any canal, drain, ditch or water course or other work constructed, repaired or improved under the provisions of the law providing for drainage districts for the purpose of drainage and protection from an overflow of water, shall be fined not exceeding one hundred dollars or be confined in jail not exceeding two months. [Acts 1907, p. 88, Acts 1911, p. 258.]

Art. 1357. Injuring levee.—Any person or persons who shall wrongfully or purposely cut, injure, destroy, or in any manner impair the usefulness of any levee or other reclamation improvement, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period not exceeding one year; or by both such fine and imprisonment.

Laws 1925, 39th Leg., ch. 21, p. 80, § 66, repeals chapter 146 of Acts 1915, 34th Leg., p. 244, from which this article is taken.

Art. 1358. Destroying line work.—Any person or persons who shall wilfully destroy or deface any corner, line, mark, bench mark, or other object fixed or established in connection with the work herein authorized shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than one thousand dollars, or by imprisonment in the county jail for a period of not less than thirty days, or by both such fine and imprisonment.

Laws 1925, 39th Leg., ch. 21, p. 80, § 66, repeals chapter 146 of Acts 1915, 34th Leg., p. 244, from which this article is taken.

Art. 1359. [1236] [791a] Introducing Johnson Grass.—Whoever shall wilfully and with intent to injure, sow, scatter or place, on any land not his own, the seed or roots of Johnson Grass, or Russian Thistle, or wilfully and knowingly sell, or give away any oats, hay, straw, seed or grain containing or intermixed with the seeds or roots of Johnson Grass, to any one who is ignorant of the fact that such seeds or roots are so contained in or intermixed with such oats, hay, straw, seed or grain shall be fined not less than twenty-five nor more than one thousand dollars. It shall not be necessary to allege or prove the name of the owner of the land but it shall be sufficient to allege and prove that the land was not defendant's. [Acts 1895, p. 160.]

Art. 1360. Johnson Grass and Russian Thistle.—No person, association of persons, corporation, water improvement or irrigation district owning, leasing or operating any ditch or canal or reservoir, or cultivating any lands abutting upon any reservoir, ditch, flume, canal, waste-way or lateral shall permit Johnson Grass or Russian Thistle to go to seed upon such reservoir, ditch, flume, canal, waste-way or lateral within ten feet of the high water line of any such reservoir, ditch, flume, canal, waste-way, or lateral, where the same crosses or lies upon land in the ownership or control of any such person, association of persons, corporation, water improvement or irrigation district. Any person violating any provision of this article shall be fined not less than twenty-five nor more than five hundred dollars, or be imprisoned in jail not less than thirty days nor more than six months, or both. This article shall not apply to Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde and San Saba counties. [Acts 1913, p. 378, Acts 1917, p. 232.]

Art. 1361. Injuring irrigation property.—Any person who shall wilfully cut, dig, break down, destroy or injure, or open any gate, bank, embankment or side of any ditch, canal, reservoir, flume, tunnel or feeder or pump or machinery, building, structure, or other work, which is the property of another or in which another owns an interest or which is in the lawful possession or use of another, and which is used for the purpose of irrigation, milling, mining, manufacturing, for the development of power, for domestic purposes or for stockraising, with intent maliciously to injure any person, association, corporation, water improvement or irrigation district, or for the gain of any person, association, water improvement or corporation, so cutting, digging, breaking[,] injuring or opening any such work hereinbefore in this article named, or with the intent of taking or stealing or causing to run out or waste out of any such ditch, canal, or reservoir, feeder or flume, any water for his own profit, benefit or advantage, or to the injury of any person, association or corporation lawfully entitled to the use of such water or to the use or management of such ditch, canal, tunnel, reservoir, feeder, flume, machine, structure or other irrigation work, shall be fined not less than ten nor more than one thousand dollars, and may be imprisoned in jail not exceeding two years, or be so fined and imprisoned. [Acts 1917, p. 228.]

Art. 1362. Mischief with irrigation works.—Whoever shall deposit in any canal, lateral, reservoir or lake, used for any of the purposes enumerated in the preceding article, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, baling or barbed wire, earth, offal or refuse of any character or any other article which might pollute the water or obstruct the flow in any such canal or other similar structure, shall be fined not less than ten nor more than one hundred dollars, or be imprisoned in jail not exceeding six months, or be so fined and imprisoned. [Acts 1917, p. 228.]

Art. 1363. Unlawfully constructing levee.—No person, corporation or levee improvement district, without first obtaining the approval of plans for the same by the State Reclamation Engineer shall construct, attempt to construct, cause to be constructed, maintain or caused to be maintained any levee or other such improvement on, along or near any stream of this State which is subject to floods, freshets or overflows so as to control, regulate or otherwise change the

flood waters of said stream. Any person violating this article shall be punished by fine of not exceeding $100.00 and each day such structure is maintained or caused to be maintained shall be a separate offense. The provisions of this article shall not apply to dams, canals or other improvements made or to be made by irrigation, water improvements or irrigation improvements made by individuals or corporations. [Acts 1913, p. 248, Acts 4th C. S. 1918, p. 113.]

Art. 1364. [416] Mischief with topographical survey.—Whoever destroys or defaces any mark or object fixed as a line, corner or bearing of any survey or any permanent mark or any bench mark made or set by the topographical surveyors shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1907, p. 286.]

Art. 1365. [415] [289] [270] Mischief with surveys.—Whoever without authority of law shall wilfully destroy, deface, alter or change any established line, corner, or line or bearing tree of any legal survey, or shall wilfully make any new line or corner on any established legal survey without authority of law shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1874, p. 220.]

Art. 1366. Injuring or defacing library property.—Whoever wilfully injures or defaces any book, newspaper, magazine, pamphlet, manuscript, or other property belonging to any public library, reading room, museum, or other educational institution, by writing, marking, tearing, breaking, or otherwise mutilating, shall be fined not exceeding twenty-five dollars. [Acts 2nd C. S. 1919, p. 155.]

Art. 1367. Detaining book, etc.—Whoever wilfully detains any book, newspaper, magazine, pamphlet, manuscript, or other property belonging to any public or incorporated library, reading room, museum, or other educational institution for thirty days after notice in writing to return the same, given after the expiration of the time which by the rules of such institution such property may be kept, shall be fined not less than one nor more than twenty-five dollars. [Acts 1913, p. 281.]

Art. 1368. [1250] [802] [690] Unlawfully herding stock.—Whoever shall herd any drove of horses, mules, cattle, sheep, goats or hogs, numbering more than five head, upon any land not his own and within one-half mile of the residence of any citizen of this State whenever the owner, lessee or legal representative of such land shall forbid such herding, and fails or refuses to remove such drove at once upon the request of such owner, lessee or legal representative; or whoever herds or causes to be herded any such drove upon the inclosed lands or pasture of another, without the consent of such owner, lessee or legal representative shall be fined not exceeding one hundred dollars. Each hour of delay after notice given or request made is a separate offense. This article shall not apply to droves which are driven through pastures by the usual route in the most direct and practicable route to any named destination traveling at the greatest practicable speed, and where there is no public road leading to the point of destination. No one shall be authorized under this article to drive any drove or herd of stock of any kind into any inclosure of another for the purpose of grazing or holding such drove or herd of stock for any length of time whatever, without the consent of the owner, lessee or person in charge of such inclosure. This article does not apply to stock while being held for shipment. [Acts 1873, p. 186; Acts 1885, p. 29; Acts 1897, p. 183.]

Art. 1369. [1241] Local option "Hog Law."—Whoever shall wilfully turn out or cause to be turned out on land not his own or under his control or wilfully fail or refuse to keep up any stock, prohibited by law from running at large in any county or subdivision of any county in which the stock law has been adopted, or wilfully allow such stock to trespass upon the land of another in such county or subdivision thereof, or wilfully permit to run at large any stock of his own, or of which he is the agent or of which he has the control, and not permitted to run at large in any county or subdivision of any county in which the stock law has been adopted, shall be fined not less than five nor more than fifty dollars. [Acts 1897, p. 112; Sec. 20a, Acts 1907, p. 124.]

Art. 1370. [1249] Local option "Horse Law."—Whoever shall knowingly permit any horses, mules, jacks, jennets, and cattle to run at large in any territory in this State where the provisions of the laws of this State have been adopted prohibiting any of such animals from running at large shall be fined not less than five nor more than two hundred dollars. [Sec. 20b, Act April 3, 1907, Acts 1907, p. 124.]

Art. 1371. Permitting bad dog to run at large.—Any owner, keeper, or person in control of any dog accustomed to run, worry or kill goats, sheep or poultry, knowing such dog to be so accustomed who shall permit such dog to run at large shall be fined not to exceed one hundred dollars. Each time such dog runs at large is a separate offense. [Acts 1923, p. 201.]

Art. 1372. [1246–7] Dogging stock when fence insufficient.—Any owner, proprietor, lessee, or other person in charge of cleared and cultivated land surrounded with an insufficient fence, or the agent or employé of such person, who shall, with fire-arms, dogs, or otherwise, maim, wound or kill any cattle, horses or hogs of another within such inclosure, or who shall cause or procure the same to be done, shall be fined not less than ten nor more than two hundred dollars. An "insufficient fence," means a fence less than five feet high, or with openings, or crevices in some part thereof sufficiently large for the passage of the animal so maimed, wounded or killed. [Act Oct. 18, 1871, p. 10.]

Art. 1373. [1230] [786] [679] Killing animal to injure owner.—Whoever shall wilfully kill, maim, wound, poison or disfigure any horse, ass, mule, cattle, sheep, goat, swine, dog, or other domesticated animal, or any domesticated bird, of another, with intent to injure the owner thereof, shall be fined not less than ten nor more than two hundred dollars. In prosecutions under this article the intent to injure may be presumed from the perpetration of the act. [Acts 1858, p. 178, amended in revising 1879.]

Art. 1374. [1231] [787] [680] Cruelty to animals.—Whoever overdrives, wilfully overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, unnecessarily or cruelly beats, or needlessly mutilates or kills any animal, or carries any animal in or upon any vehicle, or otherwise, in a cruel or inhumane manner, or causes or procures the same to be done, or who having the charge or custody of any animal unnecessarily fails to provide it with proper food, drink, or cruelly abandons it, shall be fined not exceeding two hundred dollars. As used in this article the word "animal" includes every living dumb creature, and the words "torture" and "cruelly" includes every act, omission or neglect whereby unnecessary or unjustifiable pain or suffering is caused, permitted or allowed to continue when there is a reasonable remedy or relief. [Acts 1913, p. 168; Acts 1919, p. 99.]

Art. 1375. Cruelty to impounded animal.—Whoever under the laws of this State or any municipality shall impound or cause to be impounded any animal in any pound or corral, shall supply it during such confinement with sufficient quantity of wholesome food and water, and in default thereof shall be fined not less than five nor more than fifty dollars. [Acts 1913, p. 168.]

Art. 1376. Cruelty to fowls and poultry.—Whoever receives live fowls, poultry or other birds for transportation or to be confined on wagons or stands, or by the owners of grocery stores, commission houses or other market houses or by any other person when to be closely confined, shall place same immediately in

coops, crates or cages made of open slats or wire on at least three sides and of such height that the fowls can stand upright without touching the top, have troughs or other receptacles easy of access at all times by the birds confined therein and so placed that their contents shall not be defiled by them, in which receptacles clean water and suitable food shall be constantly kept; keep such coops, crates or cages in a clean and wholesome condition, place only such numbers in each coop, crate or cage as can stand without crowding one another but have room to move around; not expose same to undue heat or cold; remove immediately all injured, diseased or dead fowls or other birds, and in default thereof shall be fined not less than five nor more than two hundred dollars. [Id.]

Art. 1377. [1235] Entering inclosed land to hunt or fish.—Whoever shall enter upon the inclosed land of another without the consent of the owner, proprietor or agent in charge, and therein hunt with fire-arms or therein catch or take any fish from any pond, lake, tank or stream, or in any other manner depredate upon the same, shall be fined not less than ten nor more than one hundred dollars. This article shall not apply to inclosures including two thousand acres or more in one inclosure. [Acts 1885, p. 80; Acts 1893, p. 87; Acts 1903, p. 159.

Art. 1378. Hunting on posted lands.—Whoever shall knowingly, without the consent of the owner or agent, enter the inclosed and posted lands of another and with fire-arms or dogs hunt on such lands, shall be fined not exceeding two hundred dollars. By inclosed lands is meant such lands as are in use as agricultural lands or for grazing purposes, having cattle, horses, sheep or goats herding or grazing thereon, and inclosed by any structure for fencing, either of wood or iron or combination thereof, or wood and wire, or partly inclosed by a fence of iron or wood, or wood and iron, or wood and wire, and partly by water or stream, canon, brush, or rock or bluffs or of any islands. Inclosed land is "posted" when the owner or proprietor of such enclosure at each entrance thereof keeps a notice with "posted" plainly marked thereon. The State shall prove, before a conviction shall be had, that all the land in said enclosure is owned or leased by the proprietor thereof, where such lands are subject to purchase or lease. Proof of ownership or lease may be made by oral testimony. Nothing herein authorizes any person to hunt without the consent of the owner or lessee, in any enclosure which is a farm or in which are growing crops; nor prohibits a bona fide traveler while traveling along a public road in an enclosure from killing game within four hundred yards on each side of the road. [Acts 1899, p. 173.]

CHAPTER FOUR

TIMBER AND LOGS

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1386. Shall make report of logs cut, etc.
1387. Evidence of ownership.
1388. Offenses and definitions.

Article 1379. [1289–90] Cutting or destroying timber.—Whoever, without the consent of the owner, shall knowingly cut down or destroy any tree or timber upon any land not his own, or shall knowingly and without such consent, carry away any such timber, shall be fined not less than ten nor more than five hundred dollars. The word "timber" as used herein includes rails or other articles manufactured from timber; and the word "owner" includes the State and any corporation, public or private, owning lands within this State.

Art. 1380. [1291–2] Procedure.—The indictment need not allege the name of the owner of the timber, but is sufficient if it alleges that the timber was not the property of the accused, and describes the land by the name of the owner or of the original grantee, or by any name by which it may be commonly known in the neighborhood in which the offense was committed. Upon a trial under the preceding article, the State may prove the ownership of the land to be in some person other than the accused by either of the following modes:

1. By a copy of a grant duly certified from the General Land Office.

2. By a deed, or a copy of a deed, or other evidence of title, duly certified, from the office of the clerk of the county court of the county where the prosecution is pending.

3. By certificate from the Comptroller's office, or from the assessor and collector of the county, that some person other than the accused pays taxes on the land.

4. By verbal testimony of title, or of notorious use and possession of the land by some person other than the accused; and such proof shall be held sufficient until contradicted by competent evidence on the part of the accused that he is the owner of the land. [Acts 1858, p. 179.]

Art. 1381. [1293] [829] Road repairs, etc.—It is no offense to cut or use timber for the purpose of making or repairing any public road or bridge passing over or immediately adjacent to the land on which such tree or timber may be found, or to use a reasonable amount of wood standing outside of an enclosure for the purpose of making fires while traveling upon the road.

Art. 1382. [1294] [830] If the offense is theft.—Nothing contained in the foregoing articles shall exempt a person from the penalty affixed to theft whenever timber is taken in such manner as to be theft.

Art. 1383. [1295] [831] Destroying walnut tree.—Whoever shall cut down or otherwise destroy or injure any walnut tree on land not his own without authority in writing from the owner of such tree, shall be fined not less than twenty-five nor more than fifty dollars. [Acts 1871, p. 42.]

Art. 1384. [1296] Pecans and pecan timber.—Whoever shall gather any pecan nuts upon inclosed land not owned, leased or controlled by him, unless it be made to appear in defense that it was done by consent of the owner, lessor, or person in control, or any person who shall cut, destroy or injure any pecan timber upon lands not his own, unless it be made to appear in defense that it was done with the consent of the owner thereof, shall be fined not less than five nor more than three hundred dollars, or be imprisoned in jail not more than three months or both. [Acts 1897, p. 53.]

Art. 1385. [1297–8] Log brand.—Any person engaged in floating or rafting timber upon the waters of any river or creek of this state shall have a log brand with which to brand every log or stick that he may float or haul and put into the waters for sale or market, the same to be distinctly branded, and shall have said brand recorded in every county in which he cuts any of said timber, and in the county where he proposes to sell or market said timber, by the county clerk in a book to be kept by said clerk for that purpose. [Acts 1879, p. 81.]

Art. 1386. [1299] [834] Shall make report of logs cut, etc.—Any persons who float any logs or timber in this State shall on the first day of April, July, October, and January of each year, or within fifteen days of such dates, make a written report under oath showing the number of logs cut or floated during the next preceding three months, the survey or surveys of land from which they were cut or carried, and the number cut from each, and a description of the brand placed thereon, and shall file the same with the county clerk of the county in which the timber was cut, and such clerk shall record and index the same in a book kept for that purpose. This article shall not apply to pickets, posts, rails or firewood. [Id.]

Art. 1387. [1300] [835] Evidence of ownership.—A certificate, under the hand of the county clerk, containing a description of a log brand and the

name of the owner thereof, with a transfer on the back of it, signed and acknowledged by such owner or proved as other instruments for record, shall be prima facie evidence that the person to whom the transfer is made owns the logs described thereon. [Id.]

Art. 1388. [1301–2] Offenses and definitions.—Whoever shall buy or sell any timber or log floating or that has been floated in this State, before the same has been branded, shall be fined not more than ten dollars for each log or piece of timber so purchased, sold or traded for. Whoever shall float any unbranded log or timber for market, or who shall fail to make the reports required under article 1386, or who shall brand any log or timber of another without his authority, or who shall deface any brand on any log or timber otherwise than when it is in the act of being sawed or manufactured into lumber or other commodity for use in building, or any person not an employé of the owner, who shall without the written consent of the owner, take into possession any branded or unbranded log or timber cut for floating or sawing, or any sawed timber, lumber or shingle floating in any of the waters of this State, or deposited upon the banks of any river or stream in this State, shall be fined not exceeding two hundred dollars for each offense. The accused may be prosecuted in any county in which the timber or lumber was deposited in the water, or in which it was unlawfully taken into possession or unlawfully defaced, sold, purchased or branded. By "lumber" is meant lumber attached or bound together in some way for floating, and not loose lumber; and by "shingles" is meant shingles in bunches or bundles, and not loose shingles. [Id.]

CHAPTER FIVE

BURGLARY

Art.
1389. "Burglary."
1390. "Burglary" by breaking.
1391. Burglary of private residence at night.
1392. "Entry" defined.
1393. "Entry" further defined.
1394. "Breaking."
1395. "House."
1396. "Daytime" defined.
1397. Punishment for burglary.
1398. Burglary by explosives.
1399. Offenses committed after entry.
1400. Felony committed after entry.
1401. In case of domestic servant.
1402. Attempt at burglary.

Article 1389. [1303] [838] [704] "Burglary."—The offense of burglary is constituted by entering a house by force, threats or fraud, at night, or in like manner by entering a house at any time, either day or night, and remaining concealed therein, with the intent in either case of committing a felony or the crime of theft. [O. C. 724, Acts 1876, p. 231, Acts 1897, p. 65.]

Art. 1390. [1304] [839] [705] "Burglary" by breaking.—He is also guilty of burglary who, with intent to commit a felony or theft, by breaking, enters a house in the daytime. [O. C. 725, Acts 1876, p. 231.]

Art. 1391. [1305–12–13] Burglary of private residence at night.—The offense of burglary of a private residence at night is constituted by entering a private residence by force, threats or fraud, at night, or in any manner by entering a private residence at any time, either day or night, and remaining concealed therein until night, with the intent, in either case, of committing a felony, or the crime of theft. The term "private residence," as used herein, means any building or room occupied and actually used at the time of the offense by any person as a place of residence. One guilty of burglary of a private residence at night shall be confined in the penitentiary for any term not less than five years. Such burglary is a distinct offense, and nothing making it such shall alter or repeal the two preceding articles. [Act June 5, 1899; Acts 1899, p. 318.]

Art. 1392. [1306] [840] [706] "Entry" defined.—The "entry" into a house includes every kind of entry but one made by the free consent of the occupant, or of one authorized to give such consent; it is not necessary that there should be any actual breaking to constitute burglary, except when the entry is made in the daytime.

Art. 1393. [1307] [841] [707] "Entry" further defined.—The entry is not confined to the entrance of the whole body; it may consist of the entry of any part for the purpose of committing a felony or theft, or it may be constituted by the discharge of fire-arms or other deadly missile into the house, with intent to injure any person therein, or by the introduction of any instrument for the purpose of taking from the house any personal property, although no part of the body of the offender should be introduced. [O. C. 726.]

Art. 1394. [1308] [842] [708] "Breaking."—By "breaking," as used in this chapter, is meant that the entry must be made with actual force. The slightest force, however, is sufficient to constitute breaking; it may be by lifting the latch of a door that is shut, or by raising a window, the entry at a chimney, or other unusual place, the introduction of the hand or any instrument to draw out the property through an aperture made by the offender for that purpose. [O. C. 727.]

Art. 1395. [1309] [843] [709] "House."—A "house" within the meaning of this chapter, is any building or structure erected for public or private use, whether the property of the United States, or this State, or of any public or private corporation or association, or of any individual, and of whatever material it may be constructed. [O. C. 728.]

Art. 1396. [1310] [844] [710] "Daytime" defined.—By "daytime" is meant any time of the twenty-four hours from thirty minutes before sunrise until thirty minutes after sunset.

Art. 1397. [1311] [845] [711] Punishment for burglary.—One guilty of burglary shall be confined in the penitentiary not less than two nor more than twelve years.

Art. 1398. [1315–1316] Burglary by explosives.—Whoever shall commit burglary, as defined in this chapter, and in the commission thereof uses nitro-glycerine, dynamite, gunpowder or other high explosives, shall be confined in the penitentiary not less than twelve years. [Acts 1907, p. 210; Acts 1925, p. 331.] [39th Leg., ch. 129, § 1.]

Art. 1399. [1317] [846] [712] Offenses committed after entry.—If a house be entered in such manner as to be burglary, and the one guilty of such burglary shall after such entry commit any other offense, he shall be punished for burglary and also for whatever other offense is so committed. [O. C. 734, Acts 1858, p. 180.]

Art. 1400. [1318] [847] [713] Felony committed after entry.—If the burglary was effected for the purpose of committing one felony, and the one guilty thereof shall while in the house commit another felony, he shall be punishable for any felony so committed as well as for the burglary. [O. C. 735.]

Art. 1401. [1319] [848] [714] In case of domestic servant.—An entry into a house for the purpose of committing theft, unless the same is effected by actual breaking, is not burglary when the same is done by a domestic servant or other inhabitant of such house; but a theft committed by such person after entering a house is punishable as in other cases. [O. C. 736.]

Art. 1402. [1320–21] Attempt at burglary.—An "attempt" is an endeavor to accomplish the crime of burglary carried beyond mere preparation, but falling short of the ultimate design in any part of it. Whoever shall attempt to commit burglary shall be confined in the penitentiary not less than two nor more than four years. [Acts 1860, p. 100.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

CHAPTER SIX

OFFENSES ON BOARD OF VESSELS, STEAMBOATS AND RAILROAD CARS

Art.
1403. Nighttime burglary of railroad car, etc.
1404. Entry by breaking.
1405. Offenses committed after entry.
1406. Rules of burglary applicable.
1407. Theft on board by servant.

Article 1403. [1322] [851] [717] Nighttime burglary of railroad car, etc.—Whoever, by any of the means enumerated in article 1389, shall at night enter any vessel, steamboat or railroad car, with intent to commit a felony or theft, shall be confined in the penitentiary not less than two nor more than five years. [O. C. 738.]

Art. 1404. [1323] [852] [718] Entry by breaking.—Whoever shall, by breaking, enter a vessel, steamboat or railroad car in the daytime, with intent to commit a felony or theft, shall be punished as prescribed in the preceding article. [O. C. 739.]

Art. 1405. [1324] [853] [719] Offenses committed after entry.—If a vessel, steamboat or railroad car be entered in such manner as that the entry, if made in a house, would be burglary, and the person so entering shall commit theft or any other offense after entry, he shall be punished for the offense defined in the first article of this chapter, and also for whatever other offense he may so commit. [O. C. 740.]

Art. 1406. [1325] [854] [720] Rules of burglary applicable.—The definitions, rules and explanations of terms in the preceding chapter are applicable to such terms in this chapter; and the rules prescribed in articles 1389, 1390, 1392, 1393 and 1394 of the preceding chapter shall also apply to similar cases on board of a vessel, steamboat or railroad car. [O. C. 741.]

Art. 1407. [1326] [855] [721] Theft on board by servant.—A theft on board a steamboat, vessel or railroad car, committed by a servant or employé, except in cases where there has been an actual breaking in, is punishable simply as theft. [O. C. 742.]

CHAPTER SEVEN

ROBBERY

Art.
1408. Robbery.
1409. Acquisition of property by threats.

Article 1408. [1327] [856] [722] Robbery.—If any person by assault, or violence, or by putting in fear of life or bodily injury, shall fraudulently take from the person or possession of another any property with intent to appropriate the same to his own use, he shall be punished by confinement in the penitentiary for life, or for a term of not less than five years; and when a firearm or other deadly weapon is used or exhibited in the commission of the offense, the punishment shall be death or by confinement in the penitentiary for any term not less than five years. [O. C. 743, Acts 1866, p. 202, Acts 1883, p. 80, Acts 1895, p. 89.]

Art. 1409. [1328] [857] [723] Acquisition of property by threats.—If any person, by threatening to do some illegal act injurious to the character, person or property of another, shall fraudulently induce the person so threatened to deliver to him any property, with intent to appropriate the same to his own use, he shall be imprisoned in the penitentiary not less than two nor more than five years. [O. C. 744, Acts 1858, p. 180.]

CHAPTER EIGHT

THEFT IN GENERAL

Art.
1410. "Theft" defined.
1411. Property must have some value.
1412. Asportation not necessary.
1413. The "taking" must be wrongful.
1414. Possession and ownership.
1415. Possession.
1416. Theft of one's own property.
1417. Theft by part owner.
1418. "Property."
1419. Domesticated animals and birds.
1420. Particular penalties exclude general.
1421. Punishment for felony theft.
1422. Punishment for misdemeanor theft.
1423. General penalties not applicable, when.
1424. Voluntary return.
1425. "Steal" and "Stolen."
1426. Stealing agricultural products.
1427. Stealing record books or filed papers.
1428. Stealing from wreck.
1429. Conversion by a bailee.
1430. Receiving stolen property.
1431. Motor vehicle without engine number.
1432. Record of engine number.
1433. When engine number is renewed.
1434. Secondhand motor vehicle—License fee receipt.
1435. Secondhand motor vehicle—Transfer.
1436. Records to be kept of motor vehicle.

Article 1410. [1329] [858] [724] "Theft" defined.—"Theft" is the fraudulent taking of corporeal personal property belonging to another from his possession, or from the possession of some person holding the same for him, without his consent, with intent to deprive the owner of the value of the same, and to appropriate it to the use or benefit of the person taking. [O. C. 745.]

Art. 1411. [1330] [859] [725] Property must have some value.—The property must be such as has some specific value capable of being ascertained. It embraces every species of personal property capable of being taken. [O. C. 746.]

Art. 1412. [1331] [860] [726] Asportation not necessary.—To constitute "taking" it is not necessary that the property be removed any distance from the place of taking; it is sufficient that it has been in the possession of the thief, though it may not be moved out of the presence of the person deprived of it; nor is it necessary that any definite length of time shall elapse between the taking and the discovery thereof; if but a moment elapse, the offense is complete.

Art. 1413. [1332] [861] [727] The "taking" must be wrongful.—The taking must be wrongful, so that if the property came into the possession of the person accused of theft by lawful means, the subsequent appropriation of it is not theft, but if the taking, though originally lawful, was obtained by any false pretext, or with any intent to deprive the owner of the value thereof, and appropriate the property to the use and benefit of the person taking, and the same is so appropriated, the offense of theft is complete. [O. C. 748.]

Art. 1414. [1333] [862] [728] Possession and ownership.—To constitute theft it is not necessary that the possession and ownership of the property be in the same person at the time of taking. [O. C. 749.]

Art. 1415. [1334] [863] [729] Possession.—Possession of the person so unlawfully deprived of property is constituted by the exercise of actual control, care and management of the property, whether the same be lawful or not.

Art. 1416. [1335] [864] [730] Theft of one's own property.—No person can be guilty of theft by taking property belonging to himself, except in the following cases:

1. Where the property has been deposited with the person in possession as a pledge or security for debt.

2. Where it is in the possession of an officer of the law by process from a court of competent jurisdiction.

3. Where the property is in the possession of an executor or administrator for the purpose of administration.

4. In all other cases where the person so deprived of possession is, at the time of taking, lawfully entitled to the possession thereof as against the true owner. [O. C. 751.]

Art. 1417. [1336] [865] [731] Theft by part owner.—If the person accused of the theft be part owner of the property, the taking does not come within the definition of theft, unless the person from whom it is taken be wholly entitled to the possession at the time. [O. C. 752.]

Art. 1418. [1337] [866] [732] "Property."—The term "property," as used in relation to the crime of theft, includes money, bank bills, goods of every description commonly sold as merchandise, every kind of agricultural produce, clothing, any writing containing evidence of an existing debt, contract, liability, promise or ownership of property real or personal, any receipts for money, discharge, release, acquittance, and printed book or manuscript, and in general any and every article commonly known as and called personal property, and all writings of every description, provided such property possesses any ascertainable value. [O. C. 753.]

Art. 1419. [1338] [867] [733] Domesticated animals and birds.—Within the meaning of "personal property," which may be the subject of theft, are included all domesticated animals and birds, when they are proved to be of any specific value. [O. C. 755.]

Art. 1420. [1339] [868] [734] Particular penalties exclude general.—Theft of certain particular kinds of property, as of a horse, etc., have a punishment affixed differing from the general punishment of the crime of theft; whenever, therefore, the law provides a particular punishment for theft committed in regard to a special kind of property, theft of such property is not included within the law affixing a general penalty to the offense; but in other cases, whenever it is declared to be an offense to steal or otherwise fraudulently appropriate property, the provision is intended to include any and every species of personal property according to its general and broadest signification. [O. C. 754.]

Art. 1421. [1340] [869] [735] Punishment for felony theft.—Theft of property of the value of fifty dollars or over shall be punished by confinement in the penitentiary not less than two nor more than ten years. [O. C. 756, Acts 1895, p. 15.]

Art. 1422. [1341] [870] [736] Punishment for misdemeanor theft.—Theft of property under the value of fifty dollars and over the value of five dollars shall be punished by imprisonment in jail not exceeding two years, and by fine not exceeding five hundred dollars, or by such imprisonment without fine; theft of property of the value of five dollars or under shall be punished by a fine not exceeding two hundred dollars. [O. C. 757, Acts 1858, p. 181, Acts 1876, p. 242, Acts 1895, p. 15, Acts 1927, 40th Leg., p. 232, ch. 157, § 1.]

Art. 1423. [1342] [871] [737] General penalties not applicable when.—The two preceding articles do not apply to theft of property from the person nor to cases of theft of any particular kind of property where the punishment is specially prescribed. [O. C. 758.]

Art. 1424. [1343] [872] [738] Voluntary return.—If property taken under such circumstances as to constitute theft be voluntarily returned within a reasonable time, and before any prosecution is commenced therefor, the punishment shall be a fine not exceeding one thousand dollars. [O. C. 759, Acts 1858, p. 181.]

Art. 1425. [1344] [873] [739] "Steal" and "Stolen."—The words "steal" or "stolen," when used in this Code in reference to the acquisition of property, include property acquired by theft. [O. C. 760.]

Art. 1426. [1345] [874] [740] Stealing agricultural products.—Whoever shall fraudulently take or pluck, sever, or carry away any Indian corn, or wheat, cotton, potatoes, rice or other agricultural product, growing, standing or remaining ungathered in any plantation, field, or other ground, shall be guilty of theft. [O. C. 761.]

Art. 1427. [1346] [875] [741] Stealing record books or filed papers.—Whoever shall take and carry away any record book or filed paper from any clerk's office, public office, or other place where the same may be lawfully deposited, or from the lawful possession of any person whatsoever, with intent to destroy, suppress, alter or conceal, or in any wise dispose of the same, so as to prevent the lawful use of such record book or filed paper, shall be confined in the penitentiary not less than three nor more than seven years. [Acts 1858, p. 181.]

Art. 1428. [1347] [876] [742] Stealing from wreck.—Whoever with intent to deprive the true owner of the value thereof, shall appropriate to his own use, or dispose of to his own benefit, any property taken or driven on shore from any vessel wrecked, stranded or burned on the seashore, or on any river, bay or harbor of the State shall be confined in the penitentiary not less than two nor more than five years. [O. C. 770.]

Art. 1429. [1348] [877] [742a] Conversion by a bailee.—Any person having possession of personal property of another by virtue of a contract of hiring or borrowing, or other bailment, who shall without the consent of the owner, fraudulently convert such property to his own use with intent to deprive the owner of the value of the same, shall be guilty of theft, and shall be punished as for theft of like property. [Acts 1887, p. 14.]

Art. 1430. [1349] [878] [743] Receiving stolen property.—Whoever shall receive or conceal property which has been acquired by another in such manner as that the acquisition comes within the meaning of the term theft, knowing the same to have been so acquired, shall be punished in the same manner as if he had stolen the property. [O. C. 745a, Acts 1858, p. 180, Acts 1897, p. 26.]

Art. 1431. Motor vehicle without engine number.—No person in this State shall have or retain in his possession, or sell or offer to sell any motor vehicle from which the engine number has been removed or obliterated. Every such owner of a motor vehicle from which the engine number has been removed, erased, or destroyed in any manner, before using the same upon the public highways of this State, or selling or offering for sale any such motor vehicle, shall make application to the Highway Commission for an engine number, and the number assigned by the Highway Commission shall be stamped with a steel die on the engine of such motor vehicle. Anyone violating any provision of this article shall be fined not less than ten nor more than one hundred dollars. [Acts 1919, p. 253.]

Art. 1432. Record of engine number.—The State Highway Commission shall cause to be kept in the State Highway Department a separate register in which shall be recorded the engine number assigned to owners of motor vehicles, from which the original engine number has been removed, erased or destroyed in any manner, and before assigning any such number the Commission shall require the filing of an application for same, attested by oath of the applicant, that he is the owner of such motor vehicle, and such record shall disclose the name and address of the owner; the trade name and model of the motor vehicle; the year manufactured, and the engine number assigned. Anyone failing to comply with the requirements of this article shall be fined not less than ten nor more than one hundred dollars. [Id.]

Art. 1433. When engine number is removed.—Whoever makes an application to the county tax collector for the registration of any motor vehicle from which the original engine number has been removed, erased, or destroyed in any manner until it bears the new engine number designated by the State Highway Department under the provisions of this law shall be fined not less than fifty nor more than one hundred dollars; and it shall be the duty of any person who has applied to and received from the State Highway Department a new engine number as herein provided, to present the receipt received for the registration of such new engine number from the Department [De-

partment] to the County Tax Collector when applying for the registration of such motor vehicle under the provisions of the law and failure to so present such receipt to the county tax collector shall subject the owner of said motor vehicle to a fine of not less than ten nor more than fifty dollars. Any tax collector who shall knowingly accept an application for the registration of a motor vehicle from which the original engine number has been removed, erased or destroyed in any manner, and which does not have on it the number designated by the Highway Department, shall be fined not less than ten nor more than fifty dollars. [Id.]

Art. 1434. Second-hand motor vehicle—License fee receipt.—Whoever acting for himself or another shall offer for trade or sale any second-hand motor vehicle in this State, without then and there having in his actual physical possession the tax collector's receipt for the license fee issued for the year that said vehicle is offered for sale or trade, or a certified copy of the tax collector's receipt for the fee paid by said party offering the vehicle for sale or trade for a general distinguishing number; or whoever shall sell or trade any such vehicle in this State without transferring by indorsement of the name of the person to whom said receipt was issued by the tax collector and by physical delivery of the tax collector's receipt for license fee for the year that the said sale or trade is made, or a certified copy of the tax collector's receipt for the fee paid by said party offering the vehicle for sale or trade for a general distinguishing number; or whoever acting for himself or another who shall buy or trade for any such vehicle in this State without demanding and receiving the tax collector's receipt for the license fee issued for said motor vehicle for the year that said vehicle is bought or traded for, or a certified copy of the tax collector's receipt for the fee paid by said party offering the vehicle for sale or trade for a general distinguishing number, shall be fined not less than ten nor more than two thousand dollars, or be imprisoned in jail not more than one year, or both. [Id.; Acts 1927, 40th Leg., 1st C. S., p. 205, ch. 77, § 1.]

Art. 1435. Second-hand motor vehicle—Transfer.—It shall be unlawful for any person whether acting for himself or as an employé or agent to sell, trade, or otherwise transfer any secondhand motor vehicle without delivering to the purchaser a bill of sale in duplicate, the form of which is prescribed in this article, one copy of which shall be retained by the transferee as evidence of title, and the other copy of which shall be filed by the transferee with the county tax collector as an application for transfer of license together with the lawful transfer fee of one dollar. The following form of transfer shall be subscribed before a Notary Public:

"State of Texas:
County of ———:

Know all men by these presents that the ownership of the following described motor vehicle is hereby transferred by the undersigned to ——— for and in consideration of ——— and other valuable consideration.

Seal No. ——— State License No. ——— Name and Model and Year made ——— Engine No. ——— Horse Power (A. L. A. M.) ——— Transferee's name in full ——— Transfer[r]ee's correct address in full ———.

Before me the undersigned authority personally appeared the vendor of the vehicle described above, and being duly sworn, deposes and upon oath states that the vehicle described is hereby transferred to the transferee named above.

———
VENDER.

Subscribed and sworn to before me this ——— day of ———, 19—."

Anyone who shall fail to comply with any provision of this article shall be fined not less than ten nor more than one hundred dollars. [Id.]

Art. 1436. Records to be kept of motor vehicle.—Every person, firm or corporation engaged in the business of operating a repair shop or garage of every kind, within this State, where the repairing, rebuilding or repainting of automobiles is carried on, or electrical work in connection with the repair of automobiles is done and performed, and every person, firm or corporation engaged in the business of the purchase and sale of second hand or used automobiles within this State, shall keep a well bound book in the office or place of business where said work is carried on, or said business conducted, in which shall be kept, in a clear and intelligent manner, a register of each repair or change in any automobile of every description so repaired or dealt in by any party mentioned in this law. Repairs of a value not exceeding one dollar are hereby excepted.

Said register shall contain a substantially complete and accurate description of each car upon which there is performed said repairs, or upon which there is installed any new parts or accessories of any character, and where the said car is bought or sold as a used car, the said register shall particularly show in each of the cases mentioned, the make of the automobile, the number of cylinders, motor number, passenger capacity, model, and also the name, apparent age and sex and any special identifying physical characteristics of the party or parties claiming to be the owner or owners of the automobile, his or their usual place of address, and the State register number of such automobile. In case of the sale of a used or second-hand car by any dealer, or the owner or proprietor of any garage, a like register shall be made as to the name and address and description of said purchaser, the character and description of said car and the state register thereof. Said registers shall be kept in a secure place and be subject at all times to the inspection of any peace officer desiring to examine the same or any party or parties interested in tracing or locating stolen automobiles.

Any owner of a motor vehicle registered in the State Highway Department, as provided by law, and of which motor vehicle the cylinder block has been so damaged as to make necessary the installation of a new cylinder block shall cause the original engine number of the motor vehicle to be stamped with a steel die on the new cylinder block, and the owner of the garage or repair shop so installing the new cylinder block and impressing the number thereon, as herein provided, shall enter a record in a substantially bound book showing the name of the owner of such vehicle, his address, the engine number, and the registration number of said vehicle. All records required to be kept by the requirements of this article shall be preserved for one year after the date recorded and shall be open to the inspection of the public at all reasonable hours. Whoever shall fail to comply with any provision of this article shall be fined not less than ten nor more than one hundred dollars. [Id.]

CHAPTER NINE

THEFT FROM THE PERSON

Art.
1437. Punishment.
1438. Ingredients of the offense.
1439. Attempt to commit theft from the person.

Article 1437. [1350] [879] [744] Punishment.—Whoever shall commit theft by privately stealing from the person of another shall be confined in the penitentiary not less than two nor more than seven years. [O. C. 762.]

Art. 1438. [1351] [880] [745] Ingredients of the offense.—To constitute the offense each following circumstance must concur:

1. The theft must be from the person; it is not sufficient that the property be merely in the presence of the person from whom it is taken.

2. The theft must be committed without the knowledge of the person from whom the property is taken, or so suddenly as not to allow time to make resistance before the property is carried away.

3. It is only necessary that the property stolen should have gone into the possession of the thief; it need not be carried away in order to complete the offense. [O. C. 763.]

Art. 1439. [1352] Attempt to commit theft from the person.—Whoever attempts to commit theft from the person as defined in the two preceding articles shall be confined in the penitentiary not less than one nor more than three years. [Acts 1909, p. 70.]

CHAPTER TEN

THEFT OF ANIMALS

Art.
1440. Theft of horse, ass or mule.
1441. Theft of cattle or hog.
1442. Theft of sheep or goat.
1442a. Theft of chicken or turkey.
1443. Wilfully driving stock from range.
1444. May drive stock in range.

Article 1440. [1353] [881] [746] Theft of horse, ass or mule.—Whoever shall steal any horse, ass or mule shall be confined in the penitentiary not less than two nor more than ten years. [O. C. 765, Acts 1858, p. 181; Acts 1897, p. 83.]

Art. 1441. [1354] [882] [747] Theft of cattle or hog.—Whoever shall steal any cattle or hog shall be confined in the penitentiary not less than two nor more than four years. [O. C. 766, Acts 1873, p. 80; Acts 1893, p. 25.]

Art. 1442. [1355] [883] [748] Theft of sheep or goat.—Whoever shall steal any sheep or goat shall be confined in the penitentiary not less than two nor more than four years. [O. C. 766, Acts 1873, p. 80; Acts 1905, p. 16.]

Art. 1442a. Theft of chicken or turkey.—Whoever shall steal any chicken or turkey, shall be confined in the penitentiary not less than one year nor more than two years, or by fine not to exceed two hundred dollars, or by imprisonment in jail not to exceed one hundred days, or by such fine and imprisonment. [Acts 1926, 39th Leg., 1st C. S., p. 22, ch. 15, § 1.]

Art. 1443. [1356–58] Wilfully driving stock from range.—If any person shall wilfully take into possession and drive, use or remove from its accustomed range, any live stock not his own, without the consent of the owner and with intent to defraud the owner thereof, he shall be confined in the penitentiary not less than two nor more than five years or be fined not to exceed one thousand dollars, or both. It shall only be necessary for the State to prove the act of driving, using or removing from its accustomed range any live stock not belonging to or under the control of the accused. It shall devolve upon the accused to show any fact under which he can justify or mitigate the act. [Act Nov. 12, 1866; Acts 1866, p. 187.]

Art. 1444. [1357] [885] [750] May drive stock in range.—Nothing in the preceding article shall prevent any person from driving his own and other stock that may be mixed therewith to the nearest convenient point within the usual range of such stock for separation. [Id.]

CHAPTER ELEVEN

RELATING TO THE RECOVERY OF STOLEN ANIMALS AND THEFT THEREOF

Art.
1445. Want of bill of sale.
1446. Driving stock to market without bill of sale.
1447. Butchering unmarked or unbranded animals.
1448. Preceding article not applicable.
1449. Failing to report animals slaughtered.
1450. Butchers to register.
1451. Failure to make bond.
1452. Butcher to keep record.
1453. Purchasing slaughtered cattle without hide and ears.
1454. Record open for inspection.
1455. Inspector to keep record.
1456. Counties exempt.
1457. Auctioneer selling animal.

Article 1445. [1359] [887] [752] Want of bill of sale.—Upon the trial of any person charged with the theft of any animal of the horse, ass or cattle species, the possession of such stolen animal by the accused, without a written transfer or bill of sale containing a specific description of such animal, shall be prima facie evidence against the accused that such possession was illegal. [Acts 1866, p. 223, Acts 1899, p. 87.]

Art. 1446. [1360] [888] [753] Driving stock to market without bill of sale.—Any person who may be found in any county of this State driving to market any animals such as are specified in the preceding article, and who has not in his possession a bill of sale or transfer for each and all of said animals, containing their marks and brands, or a list of such marks and brands of any of such animals as were raised by himself, both said bill of sale and list being duly certified as recorded by the clerk of the county court of the county from which said animals have been driven, shall be fined not exceeding two thousand dollars. [Acts 1866, p. 223.]

Art. 1447. [1361] [889] [754] Butchering unmarked or unbranded animals.—If any butcher or other person engaged in the slaughter of animals shall kill or cause to be killed any unmarked or unbranded animal for market, or shall purchase and kill or cause to be killed, any animal, without having taken a bill of sale or written transfer from the party selling the same, he shall be fined not less than fifty nor more than three hundred dollars. [Acts 1866, p. 224, Acts 1899, p. 87.]

Art. 1448. [1362] [890] [755] Preceding article not applicable.—The preceding article shall not apply to the slaughter of any animal raised by the person slaughtering the same. [Acts 1866, p. 224, Acts 1899, p. 87.]

Art. 1449. [1363] [891] [756] Failing to report animals slaughtered.—If any person engaged in the slaughter and sale of animals for market in any county, city, town or village in this State shall fail to report to the commissioners court of the county in which he transacts such business, at each regular term thereof, the number, color, age, sex, marks and brands of every animal slaughtered by him since the last term of said court, accompanied with a bill of sale or written conveyance to him of every animal slaughtered, save such as were raised by himself, which shall be specified, he shall be fined not less than fifty nor more than three hundred dollars. [Acts 1866, p. 224, Acts 1899, p. 87.]

Art. 1450. [1364] Butchers to register.—Before engaging in the business of slaughter and sale of animals for market, every person so desiring must first register his name with the county clerk indicating his purpose to engage in such business. Upon failure to so first register his name, he shall be fined not less than five nor more than twenty-five dollars. Nothing herein applies to slaughter houses in this State slaughtering as many as three hundred cattle per day. [Acts 1907, p. 239.]

Art. 1451. [1366] [893] Failure to make bond.—Whoever shall carry on the business of butcher or slaughterer of animals, without having filed with the clerk of the county court of the county in which he conducts such business the bond provided for by law, shall be fined not less than five nor more than two hundred dollars. [Sec. 2, Act April 6, 1889, Acts 1893, p. 38, Acts 1899, p. 87.]

Art. 1452. [1367] [894] Butcher to keep record.—Every person who shall carry on the business of butcher or slaughterer of animals and shall fail to keep a true and faithful record, in a book kept for the purpose, of all cattle purchased and slaughtered by him, together with a description of each animal, including brand, age, color, weight and from whom purchased and the date of purchase, or shall fail to have the hide and ears of such animal or animals inspected by the inspector or some magistrate within twenty days after such animal is slaughtered, shall be fined not less than twenty nor more than two hundred dollars. [Sec. 3, Act April 6, 1889, Acts 1893, p. 38, Acts 1899, p. 87.]

Art. 1453. [1368] [895] Purchasing slaughtered cattle without hide and ears.—Any person engaged in butchering or slaughtering and who shall purchase any cattle that have been slaughtered by

another without the hide and ears of such animal accompanying the same, or shall purchase any animal that has been slaughtered by another when the ear mark or brand on the hide accompanying the same, when offered for sale, has been changed, mutilated or destroyed, shall be fined not less than fifty nor more than two hundred dollars. [Sec. 4, Act April 6, 1889, Acts 1893, p. 38, Acts 1899, p. 87.]

Art. 1454. [1369] [896] Record open for inspection.—The record provided for in article 1452 of this chapter shall be open to the inspection of all parties, and any butcher refusing to permit such inspection at any reasonable hour shall be fined not exceeding twenty-five dollars. [Sec. 5, Act April 6, 1889; Acts 1893, p. 38; Acts 1899, p. 87.]

Art. 1455. [1371] [898] Inspector to keep record.—The inspector or magistrate shall keep a record of the marks, brands, color and general description of such hides, and for whom and when inspected, and return a copy of the same to the clerk of the county court of the county in which it was inspected within thirty days after said inspection. Any inspector or magistrate failing to keep such book or to make such report as above provided for, shall be fined not less than one nor more than twenty-five dollars. [Acts 1893, p. 38; Acts 1899, p. 87.]

Art. 1456. [1372] [899] Counties exempt.—The counties exempt from the provisions of the five preceding articles shall be the counties now or hereafter exempted by the statutes of this State. [Acts 1917, p. 358.]

Art. 1457. [1373–4] Auctioneer selling animal.—Whoever sells at auction any horse, mule, or ox, without first requiring from the party for whom such sale is made a written statement signed by him of the manner in which and the name and residence of the person from whom he acquired such animal, or fails within ten days after such sale to file with the clerk of the county court such written statement, duly attested with his certificate as to its genuineness, and accompanied with a further certificate containing an accurate description of the animal sold, together with the name and residence of the seller and purchaser, shall be fined not less than fifty nor more than one hundred dollars. [Acts 1874, p. 98; Acts 1899, p. 89.]

CHAPTER TWELVE

OTHER OFFENSES RELATING TO STOCK

Art.
1458. Illegal marking and branding.
1459. Altering or defacing mark or brand.
1460. Using mark or brand not on record.
1461. Altering mark or brand to one unrecorded.
1462. Killing unmarked or unbranded cattle.
1463. Skinning cattle.
1464. Having hide without owner's consent.
1465. Having hide with brand disfigured.
1466. Milking another's cow.
1467. Driving live stock from range.
1468. Preceding article qualified.
1469. Use of false pedigree or certificate of sale.
1470. Estrays.

Article 1458. [1376] [903] [759] Illegal marking and branding.—Whoever shall mark or brand any horse, mule, ass or cattle, or who shall mark any sheep, goat or hog, not his own, without the consent of the owner and with intent to defraud, shall be punished as if he had stolen such animal. [O. C. 767.]

Art. 1459. [1377] [904] [760] Altering or defacing mark or brand.—Whoever shall alter or deface the mark or brand of any horse, mule, ass or cattle, or shall alter or deface the mark of any sheep, goat or hog, not his own, without the consent of the owner and with intent to defraud, shall be punished as if he had stolen such animal. [O. C. 768, Acts 1858, p. 181.]

Art. 1460. [1378] [905] [761] Using mark or brand not on record.—Whoever shall mark or brand any unmarked or unbranded stock with a mark or brand not upon record shall be fined not exceeding five hundred dollars. [Acts 1866, p. 188.]

Art. 1461. [1379] [906] [762] Altering mark or brand to one unrecorded.—Whoever shall alter or change any mark or brand upon any stock of his own, or under his control, without first having such changed mark or brand recorded, shall be fined not exceeding five hundred dollars. [Acts 1866, p. 188.]

Art. 1462. [1380–81] Killing unmarked or unbranded cattle.—Whoever knowingly kills any unmarked or unbranded animal of the cattle species, or any unmarked hog, sheep or goat, not his own, shall be fined not less than twenty-five nor more than one hundred dollars. It shall only be necessary to allege and prove that the animal killed was not the property of the accused, without stating or proving the true owner. [Id.]

Art. 1463. [1382] [909] [765] Skinning cattle.—Whoever removes the hide or any part thereof from any cattle not his own, without the consent of the owner, shall be fined not less than twenty nor more than one hundred dollars. Each hide so removed is a separate offense. [Acts 1887, p. 105.]

Art. 1464. [1383] [910] Having hide without owner's consent.—Whoever is found in possession of any hide of any cattle not his own, obtained without the consent of the owner or his legal representative, shall be fined not less than twenty nor more than one hundred dollars. [Id.]

Art. 1465. [1384] [911] [765b] Having hide with brand disfigured.—Whoever is found in possession of any hide of any cattle with brand cut out or disfigured, and shall offer the same for sale, shall be fined not less than twenty nor more than one hundred dollars. The possession and offer of sale of each hide with the brand cut out or disfigured is a separate offense; nothing in this article shall prevent anyone guilty of theft of such hide from being convicted for theft. [Id.]

Art. 1466. [1385] [912] [766] Milking another's cow.—Whoever without the consent of the owner shall take up, use or milk any cow, not his own, shall be fined not exceeding ten dollars. [Acts 1866, p. 188.]

Art. 1467. [1386–8] Driving live stock from range.—Whoever shall wilfully kill, destroy, drive, or remove any live stock not his own from its accustomed range, without the consent of the owner, under such circumstances as not to constitute theft, shall be fined not exceeding one thousand dollars. In any prosecution under this article, after proof of the act of killing, destroying, driving, using or removing from the range of any stock not belonging to or under the control of the accused, it shall devolve upon the accused to show any fact under which he can justify or mitigate his act. [Id.]

Art. 1468. [1387] [914] Preceding article qualified.—The preceding article shall not be construed to prevent one from driving his own and other stock which may be mixed therewith until the same can be conveniently separated, nor to authorize anyone under any circumstances to remove any live stock not his own from their usual range. [Id.]

Art. 1469. [1389] [916] Use of false pedigree or certificate of sale.—Whoever shall wilfully furnish or give to a purchaser of any animal any false pedigree or false certificate of sale of such animal, or shall wilfully use, for the purpose of deceiving, any false pedigree or false certificate of sale of any animal, whether such false pedigree or false certificate was furnished, given or procured in this State or elsewhere, shall be fined not less than twenty-five nor more than five hundred dollars, or be imprisoned in jail not exceeding six months, or both. [Acts 1891, p. 84.]

Art. 1470. [1390–91] Estrays.—Whoever shall unlawfully remove, sell, or in any other manner dispose of any animal which has been taken up by him

as an estray, or, without complying with the law regulating estrays, shall take up and use or otherwise dispose of any animal coming within the meaning of estray, shall be fined not exceeding two hundred and fifty dollars. If such taking or disposition be effected so as to be theft, the offender shall be punished for that offense. [Acts 1858, p. 184.]

CHAPTER THIRTEEN

PROTECTION OF STOCK RAISERS

Art.
1471. Inspector giving fraudulent certificate.
1472. Inspector failing to examine hides, etc.
1473. Inspector failing to keep record.
1474. Certificate by inspector.
1475. Return of certified copies, etc.
1476. Unlawful counterbranding.
1477. Driving cattle into Mexico.
1478. Shipping imported hides.
1479. Selling hides without inspection.
1480. Driving cattle without road-branding.
1481. Driving stock out of county without owner's consent.
1482. Purchasing animal without bill of sale.
1483. Agent selling without power of attorney.
1484. More than one brand or mark.
1485. Branding or marking outside a pen.
1486. Clerk improperly recording brand.
1487. Receiving uninspected animals for shipment.
1488. Counties exempted.

FEEDING STUFF

1489. Tag and certificate.
1490. "Feeding stuff."
1491. To file statement and deposit samples.
1492. To pay inspection tax and affix tag.
1493. Failure to affix tag or label.
1494. "Counterfeiting tag."
1495. "Importer."
1496. "Adulterated."
1497. Wholesome mixture.
1498. Manufacture or sale of adulterated feeding stuffs.

LIVE STOCK COMMISSION MERCHANT

1499. Live stock commission merchant.
1500. Failure to give bond.
1501. Failure to remit promptly.
1502. Appropriating proceeds.
1503. To post copy of bond.

Article 1471. [1397] [919] [772] Inspector giving fraudulent certificate.—Any inspector of hides and animals who shall give a certificate of inspection without having first made such inspection in accordance with law, or who shall fraudulently issue any certificate of inspection of any hides or animals, shall be fined not less than fifty nor more than five hundred dollars. [Sec. 31, Act Aug. 23, 1876, Acts 1876, p. 302.]

Art. 1472. [1398] [920] [772a] Inspector failing to examine hides, etc.—If any inspector or deputy inspector of hides and animals shall knowingly fail or refuse to faithfully examine and inspect all hides or animals known or reported to him as sold, or as leaving or going out of the county for sale or shipment, and all animals driven or sold in his district for slaughter, packeries or butcheries, he shall be fined not less than twenty-five nor more than two hundred dollars. [Act April 4, 1889, Acts 1889, p. 36.]

Art. 1473. [1399] [921] [772b] Inspector failing to keep record.—Any inspector of hides and animals who shall fail to provide and keep a well bound book and record therein a correct statement, showing the number, ages, and marks and brands of each animal inspected by him or by his deputy, and the number and all the marks and brands of all hides inspected by him or by his deputy, and whether the hides are dry or green, and the names of the vendors and purchasers of said animals or hides, shall be fined not less than fifty nor more than three hundred dollars. [Id.]

Art. 1474. [1400] [922] [772c] Certificate by inspector.—Any inspector or deputy inspector of hides and animals who shall fail to correctly state in his certificate of inspection or in his certificate of acknowledgment all the marks and brands of all animals and hides inspected by him shall be fined not less than twenty-five nor more than three hundred dollars. [Acts 1889, p. 36.]

Art. 1475. [1401] [923] [772d] Return of certified copies, etc.—Any inspector of hides and animals who shall fail to return a certified copy of all entries made in his record during each month to the county clerk of his county on the last day of each month shall be fined not less than fifty nor more than three hundred dollars. [Acts 1889, p. 36.]

Art. 1476. [1402] [924] [773] Unlawful counterbranding.—Whoever counterbrands any cattle without the consent of the owner or his agent shall be fined not less than ten nor more than fifty dollars for each animal so counterbranded. [Sec. 32, Act Aug. 23, 1876, Acts 1876, p. 302.]

Art. 1477. [1403] [925] [774] Driving cattle into Mexico.—Whoever drives any cattle across the Rio Grande into Mexico, at any other point than where a United States custom house is established, or where there is a place of inspection by United States custom house officers, or without first having the same inspected in accordance with law, shall be confined in the penitentiary not less than two nor more than five years. [Sec. 35, Id.]

Art. 1478. [1404] [926] [775] Shipping imported hides.—Whoever ships from any port in this State any hides of cattle imported from Mexico without first having procured a certificate of importation and inspection in accordance with law shall be fined not less than one nor more than five dollars for each hide so shipped. [Sec. 35, Id.]

Art. 1479. [1405] [927] [776] Selling hides without inspection.—Whoever sells any hides of cattle without the same having been inspected shall be punished as prescribed in the preceding article. [Sec. 36, Id.]

Art. 1480. [1406] [928] [777] Driving cattle without road-branding.—Whoever drives any cattle out of any county with the intention of driving the same beyond the limits of the State to a market, without first having road-branded the same in accordance with law shall be fined not less than twenty nor more than one hundred dollars for each animal so driven. [Sec. 37, Id.]

Art. 1481. [1407] [929] [778] Driving stock out of county without owner's consent.—Whoever drives any cattle or horses out of any county, without the written authority of the owner thereof, duly authenticated as the law requires, and without first having the same duly inspected, shall be punished as prescribed in the preceding article. [Sec. 39, Id.]

Art. 1482. [1408] [930] [779] Purchasing animal without bill of sale.—Whoever purchases any animal or hides of cattle without obtaining a bill of sale from the owner or his agent shall be fined not less than twenty nor more than one hundred dollars for each animal or hide so purchased. [Sec. 39, Id.]

Art. 1483. [1409] [931] [780] Agent selling without power of attorney.—Whoever shall as the agent of another sell any cattle without first having obtained a power of attorney from the owner duly authenticated shall be fined not less than fifty nor more than five hundred dollars. [Sec. 40, Id.]

Art. 1484. [1410] [932] [781] More than one brand or mark.—Whoever in originally branding or marking cattle uses more than one mark or brand shall be fined not less than twenty-five nor more than one hundred dollars for each animal so branded or marked. [Sec. 41, Id.]

Art. 1485. [1411] [933] [782] Branding or marking outside a pen.—Whoever shall brand or mark any animal, except in a pen, shall be fined not less than ten nor more than fifty dollars for each animal so branded or marked. [Sec. 42, Id.]

Art. 1486. [1412] [934] [783] Clerk improperly recording brand.—Any county clerk who shall record any brand when the person having the same recorded fails to designate the part of the animal upon which the same is to be placed shall be

fined not less than ten nor more than fifty dollars. [Sec. 43, Id.]

Art. 1487. [1413] [935] [784] Receiving uninspected animals for shipment.—If any agent of any railroad, steamship, sailing vessel, or shipping company of any kind, shall receive for shipment any horses or cattle, unless such horses or cattle have been duly inspected according to law, he shall be fined not less than twenty-five nor more than one thousand dollars for each such animal. [Acts 1883, p. 71.]

Art. 1488. [1414] [936] [785] Counties exempted.—The counties exempted from the laws regulating the inspection of hides and animals are those as are or may be exempted by statute. [Acts 1921, p. 43.]

FEEDING STUFF

Art. 1489. [730] Tag and certificate.—Every lot or parcel of feeding stuff, used for feeding farm live stock, sold, offered or exposed for sale in this State, for use within the State, shall have attached a tag described in article 1492, carrying a plainly printed statement clearly and truly certifying the number of net pounds of feeding stuff in the package, stating the name or names of material of which such weight is composed where the contents are of a mixed nature, the name, brand or trade mark under which the article is sold, the name and address of the manufacturer or importer, the place of manufacture, such information as is required by article 1497, if any, and a chemical analysis stating the minimum percentages it contains of crude protein, allowing one per cent of nitrogen to equal six and one-quarter per cent of protein, of crude fat, of nitrogen-free extract, and the maximum percentage it contains of crude fiber; these constituents to be determined by the methods adopted at the time by the Association of Official Agricutural [Agricultural] Chemists of North America. [Acts 1905, p. 207.]

Art. 1490. [731] [732] "Feeding stuff."—The term "feeding stuff," as used in this chapter, is defined to mean and include wheat bran, wheat shorts, linseed meal, cotton seed meals, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feed, sugar feeds, dried brewer's grains, malt sprouts, hominy feeds, cerealine feeds, rice meals, rice bran, rice polish, oat feeds, corn and oat chops, corn chops, ground beef or mixed fish feeds, and all other materials of similar nature, but shall not include hay or straw, the whole seed or grains of wheat, rye, barley, oats, Indian corn, rice, buckwheat or broom-corn, or any other whole or unground grains or seed. [Acts 1905, p. 208.]

Art. 1491. [733] To file statement and deposit samples.—Before any feeding stuff is so offered or exposed for sale, the importer, manufacturer or party who causes it to be sold, or offered for sale within this State for use within the State, shall, for each feeding stuff bearing a distinguishing name and trade mark, file with the director of the Texas Agricultural Experiment Station a certified copy of the statement named in article 1489, and shall also deposit with said director a sealed glass jar or bottle containing not less than one pound of the feeding stuff to be sold or offered for sale, accompanied by an affidavit that it is a fair average sample thereof, and corresponds within reasonable limits to the feeding stuff which it represents in the percentage of protein, fat and crude fiber, and nitrogen-free extract which it contains. This does not apply to farmers who grind their own feeding stuff, and who do not adulterate same. [Acts 1907, p. 243.]

Art. 1492. [734] To pay inspection tax and affix tag.—The manufacturer, importer, agent or seller of each feeding stuff, shall before the article is offered for sale, pay to the director of the Texas Agricultural Experiment Station, an inspection tax of ten cents for each ton of such feeding stuff sold or offered for sale in this State, for use within the State, and shall affix to each lot shipped in bulk, and to each bag, barrel, or other package of such feeding stuff a tag to be furnished by said director, stating that all charges specified in this article have been paid. The director of said Experiment Station is hereby empowered to prescribe the form of such tags, and adopt such regulations as may be necessary for the enforcement of this law. Whenever the manufacturer or importer or shipper of a feeding stuff shall have filed a statement made as provided for in article 1489, and paid the inspection tax, no agent or seller of said manufacturer, importer, or shipper shall be required to file such statement or pay such tax. [Id.]

Art. 1493. [735] Failure to affix tag or label.—Any manufacturer, importer, or agent, selling, offering or exposing for sale, any feeding stuff, without the statement required by article 1489, and the tax tag required by the preceding article, or with a label stating that said feeding stuff contains a larger percentage of protein, fat or nitrogen-free extract, or a smaller percentage of crude fiber, than is contained therein, shall be fined not less than one hundred nor more than five hundred dollars.

Art. 1494. [736] Counterfeiting tag.—Whoever shall counterfeit or knowingly use a counterfeit of the tag or tags mentioned in the two preceding articles, or shall use them a second time after the said tags shall have been once attached, shall be fined not exceeding five hundred dollars, one-half of which shall be paid to the informer. [Acts 1905, p. 207.]

Art. 1495. [739] "Importer."—The term "importer" means all persons as shall bring into or offer for sale within this State feeding stuff manufactured without this State. [Id.]

Art. 1496. [740] "Adulterated."—A feeding stuff shall be deemed to be adulterated if it contains any sawdust, dirt, damaged feed, or any foreign matter whatever, or if it is in any respect not what it is represented to be, or if any rice hulls or chaff, peanut shells, corn cobs, oat hulls, or other similar substances of little or no feeding value are admixed therewith. [Acts 1907, p. 243.]

Art. 1497. [740] Wholesome mixture.—No wholesome mixture of feeding stuff shall be deemed to be adulterated if the true percentage of constituents thereof is plainly and clearly stated on the package and made known to the buyer at the time of the sale. [Id.]

Art. 1498. [740] Manufacture or sale of adulterated feeding stuff.—Every person who shall directly or for another or for any corporation, association of persons, or for a firm, or through or by any agent, manufacture, sell or offer for sale any adulterated feeding stuff within this State shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not less than thirty nor more than sixty days, or both. [Id.]

LIVE STOCK COMMISSION MERCHANT

Art. 1499. Live stock commission merchant.—Any person, firm or corporation who pursues the business of selling live stock, cattle, cows, calves, bulls, steers, hogs, sheep, goats, mules, horses, jacks and jennets, or any of them, upon consignment for a commission or other charges, or who solicits consignment of live stock as a commission merchant or agent, or who advertises or holds himself out to be such shall be held to be a live stock commission merchant within the meaning of this chapter. [Acts 1921, p. 175.]

Art. 1500. Failure to give bond.—Whoever advertises or solicits business as a live stock commission merchant or in any way pursues the occupation of a live stock commission merchant without first having made the bond required by the laws of this State, or fails to keep and maintain said bond in full force and effect as required by such laws, shall be confined in the penitentiary not less than one nor more than two years, or be fined not less than five hundred nor more than five thousand dollars or be both so fined and imprisoned. [Id.]

Art. 1501. Failure to remit promptly.—Any person engaged in the business of a live stock commission merchant, as defined by this chapter, who shall intentionally fail and refuse, within forty-eight hours after the sale of any live stock consigned to him to remit the net proceeds thereof to the person rightfully entitled to receive the same, or to such person, firm or corporation as said party rightfully entitled thereto shall direct, shall be fined not less than one hundred nor more than one thousand dollars, or be imprisoned in jail for not less than one nor more than twelve months, or both. [Id.]

Art. 1502. Appropriating proceeds.—Any person engaged in the business of live stock commission merchant who shall appropriate or use for any purpose other than remitting to such person, firm or corporation entitled to receive the same, any portion of the net proceeds of live stock so sold by such live stock commission merchant, shall be confined in the penitentiary not less than two nor more than four years. [Id.]

Art. 1503. To post copy of bond.—Any live stock commission merchant who shall fail at any time to keep conspicuously posted in the main office of his principal place of business a certified copy of the bond furnished to him by the county clerk under the law shall be fined not to exceed one hundred dollars. Each day said copy shall not be so posted is a separate offense. [Id.]

CHAPTER FOURTEEN

DISEASES OF ANIMALS AND BEES

Art.
1504. [Repealed.]
1504a. To burn or bury animal dead of disease.
1505. Live stock sanitary commission.
1506. [Repealed.]
1506a. Drifting, etc.
1507. [Repealed.]
1507a. Failure to dip stock.
1507b. Owner to gather and drive.
1508. [Repealed.]
1508a. Direction to dip stock.
1509. [Repealed.]
1509a. Particulars of direction.
1510. [Repealed.]
1510a. Time of notice.
1511. [Repealed.]
1511a. Removing stock from quarantine.
1511b. Shipping for immediate slaughter.
1511c. Other shipping regulations.
1512. Failure to dip for scabies.
1513. Disinfecting shearing plant and apparel.
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VETERINARIANS

1526. Practicing without registering.
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Article 1504. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Art. 1504a. To burn or bury animal dead of disease.—It shall be the duty of any person, firm or corporation of this State to burn to ashes or bury at a depth of not less than two and one-half feet and to cover with quick lime the carcass or carcasses of any domestic animal or animals dying from any infectious, contagious or communicable disease of any malignant character that may be found upon their premises within twenty-four hours after the death of such animal or animals. Any person who is the owner or caretaker of any premises who shall fail or refuse to burn to ashes or bury to the depth herein prescribed and cover with quick lime the carcass or carcasses of any demostic [domestic] animal or animals dying from infectious, contagious or communicable disease of a malignant character found on such premises within twenty-four hours after the death of such animal or animals, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars or more than one hundred dollars, and each day said owner or caretaker of said premises shall fail or refuse to burn said animal or animals, as aforesaid, shall be deemed a separate offense. [Acts 1925, 39th Leg., ch. 122, p. 313, § 8.]

Art. 1505. Live Stock Sanitary Commission.—The word "Commission" as used in this chapter shall mean The Live Stock Sanitary Commission of the State of Texas.

Art. 1506. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Art. 1506a. Drifting, etc.—Any person, firm or corporation who is the owner or caretaker of any cattle located in any territory which is quarantined because of tick infestation, who shall drive, ship, drift or permit his cattle to go into any county, part of any county, or district, or premises, or land of another, which has been freed of ticks, or in which systematic tick eradication is being carried on, without a written permit of an inspector of the Live Stock Sanitary Commission of Texas, or of the United States Bureau of Animal Industry, showing said cattle to be free of ticks, shall be deemed guilty of a misdemeanor and, upon conviction thereof shall be fined in any sum not less than one dollar nor more than five dollars per head for all livestock so shipped, driven, drifted, or permitted to go into unquarantined territory, or in territory in which systematic tick eradication is being carried on. Provided, that any person or persons violating the provisions of this section of this Act may be prosecuted in the county from which such cattle were so illegally moved, and in each county into or through which they may have been taken. [Acts 1925, 39th Leg., ch. 122, p. 314, § 10.]

Art. 1507. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Art. 1507a. Failure to dip stock.—In every county or part of county in this State where systematic tick eradication work is being conducted under the provisions of this Act, every person, company or corporation owning, controlling or caring for any cattle which have the fever-carrying tick (Margararopic Annulatus) upon them or upon any one of them, or that are exposed to the said fever-carrying tick, or that are on any premises or other place on which the fever-carrying tick is known to exist, or that have sometime within nine months next preceding the issuance of the written direction to dip, hereinafter provided, been exposed to the said fever-carrying tick or been on said premises or other place on which the fever-carrying tick is known to exist, who shall fail or refuse to dip said cattle at such time and in such manner as directed in writing by the Live Stock Sanitary Commission, or its chairman, as provided for in this Act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars, and each day of such failure or refusal shall be a separate offense. [Acts 1925, 39th Leg., ch. 122, p. 315, § 13.]

Art. 1507b. Owner to gather and drive.—In all counties and parts of counties in this State in which tick eradication work is being prosecuted under the provisions of this Act, or by virtue of any local option election, it shall be the duty of the owner, owners or caretakers of such cattle or other live stock within such territory, to gather same, at his or their own expense, and drive, or cause them to be driven, to the dipping vat, and to dip same for the purpose of eradicating said fever ticks. Upon the failure or refusal of any such owner, owners or caretakers of such animals so to do when directed by the Live Stock Sanitary Commission, or its chairman, he or they shall be

guilty of a misdemeanor and fined in any sum not less than twenty-five ($25.00) dollars nor more than one hundred ($100.00) dollars, and each and every day that he or they shall refuse or fail to dip said cattle after said notice shall constitute a separate offense. [Acts 1925, 39th Leg., ch. 122, p. 322, § 27.]

Art. 1508. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Art. 1508a. Direction to dip stock.—The Live Stock Sanitary Commission, or its chairman, is hereby authorized and empowered to direct in writing any person or persons, company or corporation owning, controlling or caring for any cattle which are subject to be dipped under the provisions of this Act in the prosecution of the systematic tick eradication work, to dip said cattle under the supervision of an authorized inspector of such Commission in an arsenical solution of a strength not less than seven and one-half pounds, and not more than eight and one-half pounds, of arsenic to each five hundred gallons of water in the said solution for the purpose of destroying, eradicating and removing said fever-carrying tick or exposure, subject to the provisions of this Act. Said dippings shall be administered at regular intervals, but the Live Stock Sanitary Commission shall not require the dipping of cattle at more frequent intervals than every fourteen days. [Acts 1925, 39th Leg., ch. 122, p. 316, § 14.]

Art. 1509. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Art. 1509a. Particulars of direction.—The written direction issued by the Live Stock Sanitary Commission, or its chairman, requiring the dipping of cattle, as provided for in this Act, shall be dated, showing the date of its issuance, the name of the person, company or corporations to whom the said directions are given, the approximate location of the premises on which the said livestock are located; the name of the county in which said premises are located, and it shall state in clear and intelligible language that the said cattle, which the said person is therein directed to dip, have the fever-carrying tick upon them, or that they are exposed to the said fever-carrying tick, or are on a premise or other place on which the fever-carrying tick is known to exist, or that they have sometime during the nine months next preceding the date of the issuance of said written direction hereinbefore provided been exposed to the said fever-carrying tick, or been on a premise or other place on which the fever-carrying tick is known to exist; and it shall direct the said person, company or corporation to dip the said livestock under the supervision of an authorized inspector of the Live Stock Sanitary Commission, in an arsenical solution of a strength of not less than seven and one-half pounds, nor more than eight and one-half pounds of arsenic to each five hundred gallons of water in the dipping solution in which the said livestock are to be dipped, and it shall designate the place, date and time that said dipping is to be done and it shall be signed by the Live Stock Sanitary Commission or its chairman. [Acts 1925, 39th Leg., ch. 122, p. 316, § 15.]

Art. 1510. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Art. 1510a. Time of notice.—The said dipping direction, provided for in this Act, shall be delivered to the person, company or corporation owning, controlling or caring for said cattle required to be dipped at least fourteen full days before the date and time said dipping is to be administered. [Acts 1925, 39th Leg., ch. 122, p. 317, § 16.]

Art. 1511. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Art. 1511a. Removing stock from quarantine.—Any owner, caretaker or person in charge of any cattle infested with or exposed to the fever-carrying tick, who shall ship, drive or permit such stock to be moved or strayed to any county, part of county, or on the premises or land of another, whether in the county from which said driving, shipping or drifting or straying commence, or into some other county that has been freed of said fever-carrying tick, or released from quarantine, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined in any sum not less than one dollar per head nor more than five dollars per head for all such live stock so shipped, driven, drifted, strayed or permitted to go into such clean territory; and prosecutions under this section of this Act may be instituted and carried on in the county where the movement originated and in each county into or through which they may have been so moved. [Acts 1925, 39th Leg., ch. 122, p. 319, § 21.]

Art. 1511b. Shipping for immediate slaughter.—The owner, caretaker or person in charge of any cattle located in any quarantine county, district, area, premises or land, may move said cattle to shipping pens, and may ship same to market for the purpose of immediate slaughter upon one dipping, provided that in the driving or otherwise moving said cattle to the shipping pens, they shall not be moved or transported over or into any land or premises belonging to another that has been declared clean of the fever tick by the Live Stock Sanitary Commission, or over or into and [any] land or premises upon which systematic tick eradication is being carried on by Live Stock Sanitary Commission or the Bureau of Animal Industry.

If any owner, caretaker or other person in charge of any cattle intended to be shipped to market for immediate slaughter shall fail to dip their cattle or after dipping said cattle shall drive them to any shipping point through or into any area, premises or land of another declared clean by the Live Stock Sanitary Commission, or into any premises or land of another upon which systematic tick eradication is being carried on by the Live Stock Sanitary Commission, or who has failed to secure a certificate from a duly authorized inspector of the Live Stock Sanitary Commission or the Bureau of Animal Industry showing that the above mentioned conditions have been complied with, shall be guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding $200.00; and if the provisions of this section of this Act are violated by driving said cattle from one county into or through another county, the prosecution may be instituted and maintained in the county where said movement of cattle originated and in any other county into or through which said cattle may have been so taken, moved or driven, transported or shipped. Provided, that cattle shipped for the purpose of immediate slaughter under the provisions of this section shall be shipped within seventy-two (72) hours from the time they were dipped. The solution in which said cattle are dipped shall not be less than eight and one-fourth nor more than nine and one-eighth pounds of arsenic to each 500 gallons of water. [Acts 1925, 39th Leg., ch. 122, p. 319, § 23.]

Art. 1511c. Other shipping regulations.—Any owner or person in charge of any cattle located in quarantined counties in this State may move or ship said cattle to any other quarantined county in this State upon one dipping under official inspection of the Live Stock Sanitary Commission or the Bureau of Animal Industry and so certified as having been inspected by said Live Stock Sanitary Commission or said Bureau of Animal Industry, provided the county to which said cattle are shipped is not engaged in systematic tick eradication, and provided further that in moving said cattle to the shipping pens in the county from which they are shipped and in moving said cattle from the shipping pens in the county to which they are shipped they do not go into, through or over any clean land or premises, and provided further that said cattle shall not be unloaded en route in clean pens and shall not be unloaded at the point of destination in any clean pens; provided, that said cattle shall be shipped within forty-eight hours from the time they are dipped. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not less than one dollar per head and not exceeding five dollars per head for said cattle so unlawfully shipped or driven, and provided further that prosecutions under this section may be maintained in the county in which said ship-

ment originated and in each county into or through which said cattle may have been driven or shipped. Said cattle shall be dipped in a solution of not less than 8-¼ pounds and not more than 9-⅛ pounds of arsenic to each 500 gallons of water; provided that cattle may be driven from one quarantined county to another quarantined county, and when so driven pass through quarantined territory in which no systematic tick eradication is being carried on, and do not pass through or along side of any clean territory, said cattle may be driven without dipping. [Acts 1925, 39th Leg., ch. 122, p. 320, § 23a.]

Art. 1512. Failure to dip for scabies.—Any person owning, controlling or caring for any cattle which are infected with cattle scabies, or sheep which are infected with sheep scabies, or that are exposed to said cattle scabies or sheep scabies, or that are on premises or other places on which cattle or sheep scabies are known to exist, or that have at some time within three months next preceding the issuance of the written direction to dip as provided by law, been exposed to the said cattle or sheep scabies, or been on premises or other place on which the cattle or sheep scabies is known to exist, who shall fail or refuse to dip any of said cattle or sheep at such time and in such manner as directed in writing by the Commission, or its chairman, as provided for by law, shall be fined not less than fifty nor more than five hundred dollars and each day of such failure or refusal shall constitute a separate offense. [Acts 1923, p. 303.]

Art. 1513. Disinfecting shearing plant and apparel.—Any person owning, controlling or having charge of any itinerant shearing plant or crew, or any person shearing sheep, or handling or packing the wool therefrom, which are infected with scabies, or located upon premises under quarantine for sheep scabies, who fails or refuses to disinfect the said shearing plant or any portion thereof, or his wearing apparel as required by law, shall be fined in any sum not less than one nor more than one hundred dollars. [Acts 1923, p. 306.]

Art. 1514. Disinfecting premises quarantined.—When any premises are placed under quarantine for sheep scabies infection it shall be the duty of the owner, lessee or person in charge of such premises to cleanse and disinfect all corrals, water lots, pens, sheds, or other places where sheep are closely confined in the following manner: All manure and litter shall first be removed and burned or buried, then the surface of such corrals, water lots, pens, sheds or other places where sheep are closely confined, with which sheep confined therein may come in contact shall be sprayed with a solution made of 6 oz. of 95 per cent. carbolic acid to each gallon of water or a solution containing 4 oz. of cresol compound U. S. P. to each gallon of water, under the supervision of an authorized inspector of the Commission before any sheep which are not infected with scabies, or which have been dipped therefor, shall be permitted in such corrals, water lots, pens, sheds or other places where sheep are closely confined. Whoever violates the provisions of this article shall be fined not less than twenty-five nor more than fifty dollars. [Id.]

Art. 1515. [1267] Moving stock with scabies.—No person, company or corporation shall drive, drift, haul by common carrier or private conveyance, or in any other manner transport along or across any public road or railroad, or on or across the lands or premises of another, any cattle or sheep which are infected with cattle or sheep scabies. Any person violating any provision of this article shall be fined not less than one hundred nor more than one thousand dollars. [Acts 1923, p. 307.]

Art. 1516. Importing sheep.—Importations of sheep into this State by rail or any other mode of movement shall not be made except under the following requirements:

1. The importer must apply to and receive from the Live Stock Sanitary Commission of this State permission to import such sheep into this State.

2. Such importation shall be accompanied by a certificate of a regularly employed and duly authorized sheep scab inspector of the state of origin, or a duly appointed and acting sheep scab inspector of the United States Bureau of Animal Industry certifying that said sheep are free from scabies or exposure thereto, or that said sheep have been dipped in a dipping fluid recognized by the United States Bureau of Animal Industry for the eradication of sheep scabies within ten days next preceding the date of such importation; provided, however, that sheep dipped for infection at point of origin shall be held under quarantine at the point of destination for a period of ninety days. By "point of destination" as used herein is meant the range upon which said sheep are placed in this State.

All importations of sheep by rail shall be billed to a recognized sheep dipping center where the Commission maintains an inspector to supervise the dipping of sheep, except sheep imported for show purposes only, or for immediate slaughter, and upon arrival thereat shall be dipped in accordance with the provisions of law unless the same are accompanied by a certificate of dipping at place of origin as provided in paragraph "2" of these requirements. Whoever imports any sheep into this State in violation of this article shall be fined not less than one nor more than two dollars for each head of sheep so unlawfully imported, and the venue shall be in any county through, or into which such importation is carried. [Acts 1923, p. 307.]

Art. 1517. [Repealed by Acts 1925, 39th Leg., p. 307, ch. 122, § 1.]

Art. 1517a. Failure to maintain dip.—Any person, owning, controlling or in charge of any domestic animal or animals which shall be required to be dipped under any of the provisions of this Act, who shall wilfully fail or refuse to maintain said dip at the strength officially specified, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding two hundred dollars. [Acts 1925, 39th Leg., ch. 122, p. 321, § 24.]

Art. 1518. Failing to report charbon or anthrax.—Each person residing in a district where charbon or anthrax is prevalent or where the same is supposed to be prevalent shall report in writing to the county health officer, who in turn shall report in writing to the president of the State Board of Health all cases where an animal or animals are suffering with charbon or anthrax or supposed to have such disease, and each physician practicing in the State of Texas shall report in writing to the president of the State Board of Health all persons suffering from charbon or anthrax or supposed to be suffering from same and in case of failure to do so any person so failing shall be fined not less than ten nor more than twenty-five dollars. Each case of which no report is made shall constitute a separate offense. [Sec. 10b, Act March 31, 1913, Acts 1913, p. 147.]

Art. 1519. Failing to destroy carcass.—Carcasses of stock which have died from charbon or anthrax shall be destroyed by burning by the owner or person in charge within twenty-four hours after death and any owner or person having charge of said animals who should fail to destroy said carcasses as herein provided shall be fined not less than twenty-five nor more than one hundred dollars and each twenty-four hours after the first twenty-four hours that said carcass is permitted to remain undestroyed shall be a separate offense. [Sec. 10e, Id.]

Art. 1520. Disobeying charbon quarantine.—The county health officer shall be the exclusive judge of the necessity of isolation or quarantine of all animals infected with charbon or anthrax and when in the judgment of said county health officer there exists a necessity therefor said county health officer shall issue a proclamation directing that all animals of certain classes which he may specify in the infected district, in either the entire county or any political subdivision thereof, shall be placed and kept in an enclosure by the owners or keeper thereof, and any owner or keeper of such animals for the owners who shall fail or refuse to obey the requirements of such

proclamation shall be fined not less than ten nor more than fifty dollars and where any owner or keeper for the owner shall have more than ten animals subject to the quarantine regulations herein provided the fine shall be doubled and each day that any owner or keeper for such owner shall fail to comply with the proclamation of said county health officer shall constitute a separate offense and such quarantine shall continue and be in effect as long as in the judgment of such county health officer it may be necessary to prevent the spread of charbon or anthrax. [Sec. 10f, Id.]

Art. 1521. Permitting animals to run at large.—From and after the issuance and posting according to law of the proclamation declaring the result of the election held in a charbon district to be against the running at large of domestic animals therein it shall be unlawful for any owner or keeper of cattle, horses, sheep, goats and hogs, or any of them, to permit such animals as have been voted upon to run at large within such county or subdivision thereof at any time within which the same has been prohibited; and in case of failure or refusal of any owner or keeper of such stock or any of them to comply with such proclamation he shall be fined not less than five nor more than fifty dollars. Each day that any owner or keeper for such owner shall fail to comply with the law as herein provided for, shall constitute a separate offense. [Acts 1913, p. 150.]

Art. 1522. [1282] [824b] Refusing examination by commissioner.—Any person who owns or is in possession of live stock which is reported to be affected with any infectious or contagious disease, who shall refuse to allow the State live stock sanitary commissioners to examine such stock, or shall hinder or obstruct the said commissioners in any examination of or in any attempt to examine such stock shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1893, p. 72.]

Art. 1522a. Refusing inspection.—Any owner, caretaker, or person in charge of any cattle, horses, mules or asses, who shall refuse to permit any duly authorized inspector of the Live Stock Sanitary Commission to enter upon his land and premises for the purpose of making an inspection of such live stock to determine whether they are infested with said fever-carrying tick, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined in any sum not exceeding two hundred dollars. [Acts 1925, 39th Leg., ch. 122, p. 318, § 20.]

Art. 1523. [1260] [809] [692] Failing to confine animal with glanders.—Whoever wilfully fails or refuses to place in secure confinement apart from all other stock any animal of the horse or ass species belonging to him or subject to his control diseased with glanders or farcy shall be fined not less than twenty-five nor more than two hundred dollars or imprisoned in jail not less than ten nor more than ninety days. [Acts 1876, p. 211.]

Art. 1524. [1261] Sale or trade of animal with glanders.—Whoever shall trade or sell or offer to trade or sell any animal of the horse or ass species known or suspected to be affected with glanders shall be fined not less than five nor more than one hundred dollars or imprisoned in jail not less than ten nor more than ninety days. [Acts 1897, p. 216.]

Art. 1525. [1264] [811] Using or permitting animal with glanders to run at large.—Any person who may drive, lead or ride any animal infected with said diseases of glanders or farcy, knowing them to be so infected, on, along or across any public highway, or allow any such animal so diseased to run at large on the open range of any county shall be fined not less than ten nor more than two hundred dollars. [Acts 1892, p. 11.]

Art. 1525a. Regulations as to scabies, quarantine, dipping, and penalties.—Sec. 1. Any person, company or corporation owning, controlling or caring for any sheep which are infected with sheep scabies, or cattle which are infected with cattle scabies, or that have been exposed to the said sheep or cattle scabies infection within six months next preceding the issuance of the written direction to dip hereinafter provided, who shall fail or refuse to dip any of said sheep or cattle at such time and in such manner as directed in writing by the Live Stock Sanitary Commission or its Chairman as provided for in this Act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $5.00 nor more than $200.00, and each day of such failure or refusal shall constitute a separate offense.

Sec. 2. The Live Stock Sanitary Commission or its Chairman is hereby authorized and empowered to direct in writing any person or persons, company or corporation owning, controlling, or caring for any sheep or cattle which are subject to being dipped under the provisions of this Act, to dip any or all of said sheep or cattle under the supervision of an authorized inspector of such Commission in the dip or dipping solutions hereinafter provided for the dipping of sheep and cattle respectively for the purpose of destroying, eradicating, curing, and removing such scabies or exposure thereto. Said dipping or dippings shall, when administered for psoroptic scabies infection or exposure among sheep or cattle, be at regular intervals of from ten to fourteen days, but when said dipping or dippings shall be administered for sarcoptic scabies infection or exposure among cattle the same shall not be required at more frequent intervals than every six days.

Sec. 3. All dippings of sheep for scabies infection or exposure under the provisions of this Act shall be done in a solution of lime and sulphur made in the following proportions: Eight pounds of unslaked lime or eleven pounds of commercial hydrated lime (not air slaked lime) and twenty-four pounds of Flowers of Sulphur to each one hundred gallons of water, said solution to be boiled for a period of at least two hours before using, which shall at all times be maintained at a strength of not less than one and one-half per cent sulphide sulphur or in such other dip or dipping solutions as may be approved by the Live Stock Sanitary Commission of this State and designated by it in the written instructions and notice to dip served upon such person or persons, company or corporation owning, controlling, or caring for said sheep. The dipping solution shall at all times be maintained at a temperature of not less than 95 nor more than 105 degrees Fahrenheit. No dipping solution shall be used which has been mixed and in the vat more than ten days.

Sec. 4. All dipping or dippings of cattle for psoroptic scabies infection or exposure thereto shall be done in the same solution or dip as above provided for dipping sheep except that the solution or dip shall be maintained at a strength of not less than 2 per cent sulphide sulphur and the same shall be at all times maintained at a temperature of not less than 95 nor more than 105 degrees Fahrenheit.

Sec. 5. All dipping or dippings of cattle for sarcoptic scabies infection or exposure thereto shall be done in the same solution or dip as herein provided for dipping cattle infected with or exposed to psoroptic scabies infection, except the dippings shall not be required at more frequent intervals than six days, and further provided that one dipping in crude oil shall be considered effective and sufficient for eradication of sarcoptic scabies infection among cattle.

Sec. 6. All dippings, inspections, and certifications for scabies among sheep and cattle, and all disinfection of cars, sheds, boats, chutes, alleys, platforms, pens, and yards required by the provisions of this law shall be done under the supervision of an authorized inspector of the Live Stock Sanitary Commission of Texas.

(a) All sheep infected with scabies and all sheep in a herd where scabies infection is present shall be classed as scabies infected sheep.

(b) All cattle infected with scabies and all cattle in a herd where scabies infection is present shall be classed as scabies infected cattle.

(c) All sheep and cattle that enter or have access to any corrals, sheds, cars, roads, pastures, premises, or other places that scabies infected sheep or cattle, as

the case may be, have entered or had access to at any time within the next preceding ninety days shall be classed as exposed to scabies infection, and all sheep shorn by a shearing plant that has shorn infected sheep within the next preceding ninety days shall be classed as scabies exposed sheep, provided the above named places or premises have not been disinfected since the infected sheep have moved or been removed therefrom, provided that cattle and sheep shall be subject to dipping as provided for in Section 1 of this Act at any time within the period of time prescribed in said Section 1, and in accordance with the provisions of said Section 1.

Sec. 7. No sheep or cattle that are under quarantine for scabies infection or exposure by written order of the Live Stock Sanitary Commission or its Chairman, or that are on any premises within this State which are quarantined by said Commission for scabies infection or exposure thereto shall be moved or allowed to move therefrom unless and until certified to by an authorized inspector of the Live Stock Sanitary Commission. Any person, firm or corporation violating the provisions of this Section of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $10.00 nor more than $200.00.

Sec. 8. When the fact has been determined by inspection or investigation that sheep or cattle scabies infection exists in any County within this State, then the County Commissioners' Court of such County shall appropriate a sufficient sum of money to employ County inspectors to cooperate with and under the direction of the Live Stock Sanitary Commission of Texas in scabies eradication.

(a) If for any reason the County Commissioners' Court does not cooperate by appropriating the said money to pay said inspector or inspectors, then it shall be the duty of the Live Stock Sanitary Commission to place the County under blanket quarantine, and no sheep or cattle shall be moved therefrom until and unless certified to by an authorized inspector of the Live Stock Sanitary Commission.

Sec. 9. All goats ranging with infected sheep shall be dipped at least once in the same solution and in the same manner as infected sheep except they shall not be held in the dipping vat for a longer period than is necessary to thoroughly wet them.

Sec. 10. The written direction issued by the Live Stock Sanitary Commission or its Chairman requiring the dipping of sheep or cattle for sheep or cattle scabies under the provisions of this Act shall be dated showing the date of its issuance, the name of the person or persons, company or corporation to whom the said directions are given, the approximate location of the premises on which the said live stock are located, the name of the County in which said premises are located, and it shall state in clear and intelligible language that the said sheep or cattle which the said person or persons, company or corporation is therein directed to dip, are infected with scabies or that they are exposed thereto, and it shall direct said person or persons, company or corporation to dip the said livestock under the supervision of an authorized inspector of the Live Stock Sanitary Commission in the dipping solutions provided in this Act, or such other dipping solutions as the Live Stock Sanitary Commission may approve for such purpose, designating the same, and it shall designate the date, place and time that the said dipping is to be done, and it shall be signed by the Live Stock Sanitary Commission or its Chairman.

Sec. 11. The said dipping direction shall be delivered to the person, company or corporation owning, controlling or caring for said sheep or cattle required to be dipped at least fourteen full days before the date and time said dipping is to be administered. The person, company or corporation owning, controlling or caring for said sheep or cattle required to be dipped under the provisions of this Act may file with the Live Stock Sanitary Commission or its Chairman at any time within five days after receiving said dipping directions to dip, a written affidavit denying the said sheep or cattle are subject to being dipped under the provisions of Law or that for good and sufficient reason set out in said affidavit the said person, company or corporation is entitled to have said dipping direction rescinded or to have said dipping postponed, and requesting that the Live Stock Sanitary Commission or its Chairman withhold enforcement of said dipping direction and grant a hearing on said matter or make necessary investigation to determine the correctness of the statement contained in such affidavit, Upon receipt of said affidavit the Live Stock Sanitary Commission or its Chairman shall within five days thereafter grant said affiant a hearing in the office of the Chairman of the Live Stock Sanitary Commission, if the affiant so desires, and give such affiant notice of such hearing by telegram or registered mail, which hearing shall be had not less than four days after the giving of such notice and that said Live Stock Sanitary Commission or its Chairman shall consider such ex-parte affidavits as such person, company or corporation may file with said Commission in said hearing and said Commission or its Chairman shall make such investigation in person or through its authorized representative in reference to said affidavit as the Commission or its Chairman deem necessary, and if the statements in said affidavit are found to be correct the said dipping direction shall be rescinded by the said Commission or its Chairman, or said dipping postponed to such time as said Commission or its Chairman may consider proper. Otherwise, the said dipping direction shall be enforced on the date and at the time specified in said written direction. The said Commission or its Chairman, after having granted said hearing or said investigation, shall notify said person, company or corporation in writing of its or his findings, which notice shall be delivered to the said person, company, or corporation at least four full days before the day and time he or they are required to dip said sheep or cattle by virtue of said written direction. If the said person, company or corporation shall be dissatisfied with the findings of said Commission or its Chairman, he or they may apply to a court of proper venue and jurisdiction for injunction or other relief.

Sec. 12. The ascertaining of the presence of scabies infection on any premises, place, sheep, or cattle or the ascertaining of exposure of premises, places, sheep or cattle to scabies infection shall be done by an authorized representative or inspector of the Live Stock Sanitary Commission and for such purpose said representatives and inspectors are hereby authorized to enter upon any private or public premises of this State where sheep or cattle are kept or ranged, and it shall be the duty of the person or persons, company or corporation owning or controlling such premises or range or the sheep or cattle thereon, when requested by such representative or inspector or member of said Commission, to gather the sheep or cattle on said range for inspection, and a failure or refusal to do so shall be prima facie evidence that the said premises and the sheep or cattle thereon are infected with scabies, and authorize the quarantining of such premises and the sheep and cattle thereon under the provisions of Law, authorizing such quarantine by order of the Live Stock Sanitary Commission. Any person who shall refuse to gather any sheep or cattle of which he is the owner or caretaker from the range when requested by an inspector of the Live Stock Sanitary Commission for the purpose of inspection shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $10.00 nor more than $200.00, and on each day on which said refusal is made shall constitute a separate offense.

Sec. 13. When sheep infected with scabies are located upon premises which are under quarantine for sheep scabies under the Laws of this State are shorn by an itinerant shearing plant or shearing crew it shall be unlawful for the person, company or corporation owning, controlling or having charge of such shearing plant or crew or the laborers engaged in the shearing of said sheep or packing the wool shorn

therefrom to move from the premises where said sheep are shorn until the said shearing plant and wearing apparel of said shearers in use during said shearing shall have been disinfected as hereinafter provided.

Sec. 14. All utensils, machinery, floors, ground coverings, or other portions of said shearing plant which come in contact with the body of said sheep shall be thoroughly cleaned with pure gasoline. The wearing apparel of the laborers engaged in shearing said sheep and handling and packing the wool shorn from said sheep shall be disinfected by being submerged in boiling water for a period of five minutes.

Sec. 15. Any person, company or corporation owning, controlling or having charge of any itinerant shearing plant or crew or person shearing sheep or handling or packing the wool therefrom which are infected with scabies or located upon premises under quarantine for sheep scabies who fails or refuses to disinfect the said shearing plant or any portion thereof or the wearing apparel as herein required shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than one nor more than one hundred dollars.

Sec. 16. When any premises are placed under quarantine for sheep scabies infection it shall be the duty of the owner, lessee, or person in charge of such premises to cleanse and disinfect all corrals, water lots, pens, sheds, or other places where sheep have been closely confined in the following manner:

Sec. 17. All manure and litter shall first be removed or burned or buried, then the surface of such corrals, water lots, pens, sheds, or other places where sheep have been closely confined shall be sprayed with a solution made of six ounces of 95 per cent carbolic acid to each gallon of water, or a solution containing four ounces of cresol compound U. S. P. to each gallon of water under the supervision of an authorized inspector of the Live Stock Sanitary Commission before any sheep which are not infected with scabies or exposed thereto shall be permitted to enter such corrals, water lots, pens, sheds, or other places where infected sheep have been closely confined. Any person, company or corporation violating any of the provisions of this section of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than twenty-five nor more than fifty dollars.

Sec. 18. When any person, company or corporation owning, or having charge of any sheep or cattle required to be dipped under the provisions of this Act for infection or exposure to sheep or cattle scabies shall for any reason fail or refuse to dip said sheep or cattle it shall be the duty of the County Commissioners' Court of said County under the direction and supervision of an authorized inspector of the Live Stock Sanitary Commission to have said sheep or cattle dipped in accordance with the provisions of this Act, and to pay the expense of such dipping by warrant drawn upon the general funds of the said County. It shall be the duty of the County Commissioners' Court of any and all Counties within the State of Texas to cooperate with the Live Stock Sanitary Commission in eradication and control of cattle and sheep scabies within their respective Counties whenever the said disease exists in said Counties or whenever the Live Stock Sanitary Commission has reason to believe that the infection exists therein; Counties shall pay the salaries and necessary traveling expenses of County inspectors for the purpose of inspecting, dipping, and certifying to live stock in said Counties, said inspectors to be appointed by the Live Stock Sanitary Commission and to work under the direction of the Live Stock Sanitary Commission, and said inspectors are hereby required to perform all duties necessary to the inspection, dipping, and certification of said live stock. In case the owner or caretaker fails or refuses to dip his livestock in compliance with any of the provisions of this Act, the County Commissioners' Courts shall provide necessary dipping vats, facilities, and pens, together with dipping fluids and material for dipping said live stock, the same to be furnished at the expense of the respective counties, to be paid for out of their general funds.

Sec. 19. Inspectors of the Live Stock Sanitary Commission are hereby authorized and directed to enter upon the premises of any person, firm or corporation for the purpose of inspecting, classifying, or dipping cattle or sheep for scabies or exposure thereto whenever in the opinion of the Live Stock Sanitary Commission such inspection, classification, or dipping is deemed necessary. Any person who shall refuse to permit an inspector of the Live Stock Sanitary Commission to enter upon any premises of which he is the owner or tenant or caretaker for the purpose of making said inspection, classification, or dipping, shall be deemed guilty of a misdemeanor and upon conviction shall be fined any sum not less than $10.00 and not more than $200.00, and each separate day on which said refusal is made shall constitute a separate offense.

Sec. 20. The Live Stock Sanitary Commission is hereby authorized to employ a Chief Cattle and Sheep Scabies Inspector, whose duties shall be to supervise the inspectors engaged in sheep and cattle scabies eradication, and the said Commission shall employ District Supervising Inspectors and Local Inspectors for the purpose of eradicating cattle and sheep scabies. Salaries of local County Inspectors to be paid by the Counties, but salaries of the said Chief Inspector and District Supervising Inspectors to be paid by the State.

Sec. 21. It shall be unlawful for any person, company or corporation to drive, drift, ship, or haul by common carrier or private conveyance, or in any other manner transport or move or permit the movement along or across any public road or railroad or on or across the land or premises of another, any sheep or cattle which are infected with or exposed to scabies or that are under quarantine for scabies infection or exposure, and any person violating any of the provisions of this section of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than $10.00 nor more than $200.00. Provided that each public road, railway, and premise of another along, across, or onto which said person, company or corporation shall drive, drift, haul or transport any of said live stock shall constitute a separate offense. Provided that the venue for the prosecution of persons, firms, or corporations violating any quarantine provision of any section of this Act shall be in the County from which said illegal movement was made and in any and all counties into or through which said live stock moved.

Sec. 22. From and after the passage of this Act importation of sheep into this State by rail or other mode of movement shall not be made except under the following restrictions:

(a) The importer must apply to and receive from the Live Stock Sanitary Commission of this State, permission to import any sheep (except sheep billed to market centers for slaughter purposes) into the State.

(b) Such importations shall be accompanied by a certificate of a regularly employed and duly authorized sheep scabies inspector of the State of origin or a duly appointed and acting sheep scabies inspector of the United States Bureau of Animal Industry certifying that said sheep are free from scabies infection and exposure thereto, and that said sheep have been dipped in a dipping fluid recognized by the United States Bureau of Animal Industry for the eradication of sheep scabies and in a manner calculated to have eradicated infection or exposure as the case may be within ten days next preceding the date of such importation, provided, however, that sheep dipped for infection at point of origin shall be held under quarantine at point of destination for a period of one hundred and eighty days. By "point of destination" as used herein is meant the range upon which the said sheep are placed in this State, provided further that in the event the sheep are accompanied by the proper certification and permit they may be moved into the State without first having been dipped when arrange-

ments are made with the Live Stock Sanitary Commission at Fort Worth, Texas, prior to movement, to dip on arrival in the State.

(c) All importations of sheep by rail shall be billed to recognized sheep dipping center where the Live Stock Sanitary Commission of this State maintains an inspector to supervise the dipping of sheep except sheep imported for show purposes only or for immediate slaughter, and upon arrival thereat shall be dipped in accordance with the provisions contained in Sections Two and Three of this Act, unless the same are accompanied by a certificate of dipping at point of origin as provided in Section 22(b) of these requirements.

(d) The importer of show sheep shall be given a reasonable length of time to display his sheep at County Fairs or Live Stock Exhibits, but in no instance shall this time be extended for a longer period than sixty days from date of importation and all such sheep shall be kept separate from all other than show sheep, and shall be dipped at least once before being distributed to the range.

(e) Any person, company or corporation importing any sheep into this State in violation of this section of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than $1.00 nor more than $5.00 for each head of sheep so unlawfully imported, and the venue of such prosecution shall be in any County through or into which such importation is carried. Provided that each County into or through which said sheep are moved shall constitute a separate offense.

Sec. 23. No common carrier by rail in this State shall receive from any shipper or connecting carrier for importation into this State any shipment of sheep (except sheep billed for slaughter purposes) unless the bill of lading covering said shipment is accompanied by a written permit from the Live Stock Sanitary Commission of this State or its Chairman, permitting such sheep to be imported into this State.

Sec. 24. Any common carrier violating the provisions of this Section of this Act shall forfeit to the State the sum of not less than $1.00 nor more than $5.00 per head for each sheep so unlawfully transported by it, which may be recovered by suit instituted on behalf of the State in any Court of this State having jurisdiction of the amount involved in any County through which said common carrier by rail transported such shipment. Provided that such suits may be maintained in all Counties into or through which said movement of sheep is transported, said suits shall be instituted by the County attorney of the respective Counties into or through which said movements are made and further provided that if any corporation or company shall violate any of the penal provisions of this Act, it shall be the duty of the County Attorneys in each County in which said offense occurs to file a civil suit in the Court of proper jurisdiction in the name and on behalf of the State of Texas for the collection of said penalties.

Sec. 25. The Live Stock Sanitary Commission is hereby authorized to quarantine any County or district or premises, places, roads, pastures, lots, yards, stockyards, enclosures, cattle or sheep whenever it has determined by inspection through an authorized inspector that scabies infection or exposure thereto exists therein or thereon, and notice of said quarantine shall be given by posting a written notice thereof at the County Court House door of the County in which said quarantine is established and two other notices in conspicuous places within the area or place quarantined, or by publication in a newspaper in said County, or if there be no newspaper therein, by publication in some newspaper in an adjoining County or by delivering a written or printed notice thereof to the owner or caretaker of the live stock or territory or place to be quarantined, said delivery to be made in person by an inspector or other employé of the Live Stock Sanitary Commission, or by a member of said Commission to deliver the same, or by sending by United States mail. Any one of the foregoing methods of giving notice shall be sufficient, but it shall not be necessary to give notice in more than one way. Whenever a territory, County, or district is quarantined under the provisions of this Act, all local premises, cattle and sheep therein shall thereby become quarantined without designating them separately.

Sec. 26. The Chairman of the Live Stock Sanitary Commission is hereby authorized to perform any and all acts and duties which the Live Stock Sanitary Commission is authorized by this Act to do. [Acts 1927, 40th Leg., 1st C. S., p. 174, ch. 63.]

Section 27 of Acts 1927, 40th Leg., 1st C. S., p. 174, ch. 63, provides that the act shall be cumulative of all existing statutes relating to the quarantining of sheep and cattle and shall not be construed as repealing the same unless in direct conflict therewith, and section 28 provides that the act shall be liberally construed and if any section be declared invalid such holding shall not affect the remaining parts.

VETERINARIANS

Art. 1526. Practicing without registering.—No person shall practice veterinary medicine in any of its branches upon animals within the limits of this State, who has not registered in the district clerk's office of the county in which he resides, his authority for so practicing, together with his age, post-office address, place of birth and name of school of veterinary medicine from which he graduated. [Acts 2nd C. S. 1919, p. 144.]

Art. 1527. Exceptions.—Nothing in this law shall prohibit any person, who has heretofore registered as a veterinary surgeon in the county of his residence according to the provisions of Chapter 76 of the Acts of the regular session of the Thirty-second Legislature who had previous to the year 1911 practiced veterinary medicine or veterinary surgery as his principal occupation for five years in the State of Texas prior to the year 1911, from practicing in the county of his residence only, by securing a license from the State Board of Veterinary Medical Examiners by filing satisfactory evidence of his former compliance with the requirements of said Act of the regular session of the Thirty-second Legislature, together with an affidavit that he has practiced veterinary medicine or veterinary surgery continuously for five years prior to 1911, in which affidavit he shall state the place where he has practiced veterinary medicine or veterinary surgery for five consecutive years immediately prior to 1911, together with his place of residence during said period. Upon the face of such license shall be printed the word[s], nongraduate. Hereafter it shall be unlawful for any person to register under the five year practicing clause of this article. The fact of such oath shall be endorsed upon the certificate or license as the case may be, but if such person shall remove from such county of residence, he shall comply with all the requirements of this law before he shall be allowed to practice. Nothing in this law shall apply to commission or contract veterinarians in the employ of the United States or the Bureau of Animal Industry of the United States Department of Agriculture in the performance of their duties as such, but [they] shall not engage in private practice, nor to legally qualified veterinarians of other states called in consultation but who do not open offices. Nothing in this law shall prohibit the sale by licensed druggists of remedies which they recommend for the cure of diseases of animals. [Id.]

Art. 1528. Who are veterinarians.—Any person shall be deemed as practicing veterinary medicine or veterinary surgery or dentistry who professes publicly to be a veterinary physician, surgeon or dentist, or who appends to his name any initials or title implying qualifications to practice veterinary medicine or who shall treat, operate or prescribe for any physical ailment or deformity of any domestic animal for which he shall receive compensation, either direct or indirect, or any county demonstration agent or farm demonstration agent while in the employment of any county, state or Federal government on a salary for treating or attempting to treat any animal for any disease, ailment or deformity. Nothing in this law shall apply to persons not so employed gratuitously treating animals. The operations known as "Dehorn-

ing," "Castrating," or "Spraying" shall not be construed as the practice of veterinary medicine or surgery nor the vaccination of cattle for blackleg as the practice of veterinary medicine. The terms veterinarians, veterinary medicine, veterinary surgery, veterinary physician and veterinary dentist as used in this chapter shall be construed as synonymous. [Id.]

Art. 1529. Offenses by Board.—Any member of the State Board of Veterinary Medical Examiners who shall issue any certificate under the law providing for such board other than as therein provided, or who shall give any applicant for license to practice veterinary medicine or veterinary surgery prior to examination a list of questions to be propounded at any examination shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1530. License to be recorded.—Any person receiving a certificate of license from the Board of Veterinary Medical Examiners shall forthwith have it recorded in the office of the District Clerk of the County in which he makes his residence, and shall display it in his regular place of business. The date of recording shall be recorded thereon, and until the license is recorded the holder shall not exercise any of its rights or privileges therein conferred; and in case said license is not recorded within ninety days from its date of issuance, it shall become invalid. [Id.]

Art. 1531. To record license on removal.—Any veterinarian or veterinary surgeon who has successfully passed examination and who has been granted license by said Board to practice veterinary medicine, veterinary surgery or veterinary dentistry in this State, and has recorded his license as provided for by law, may go from one county to another county in this State on professional business and may practice veterinary medicine, veterinary surgery or veterinary dentistry in any county in this State to which he may go, without recording or registering said license in any county to which he may go or in which he may practice. Provided that any veterinarian or veterinary surgeon who has successfully passed the said examination and duly recorded his license, and who removes his residence from the county in which his license is recorded, shall again record his license in the county to which he removes his residence, in the same manner as the same was recorded in the county from which he removed his residence. Such veterinarian or veterinary surgeon shall have no authority to practice in any county to which he removes his residence until he has recorded said license as herein provided. [Id.]

Art. 1532. Unlawfully practicing.—Any person who practices or attempts to practice veterinary medicine, surgery or dentistry in this State, without first having complied with the provisions of the six preceding articles shall be fined not less than twenty-five nor more than two hundred dollars. Each day of such practice or attempt to practice is a separate offense. [Id.]

Art. 1533. Honey bees.—1. Common carriers accepting shipment.—No common carrier shall accept for intrastate shipment any honey bees, used honeycombs, used beehives or fixtures, except under such regulations as the State Entomologist shall prescribe.

2. Protective quarantine.—Said Entomologist shall have authority to declare a protective quarantine in any district, county, precinct or other defined area wherein foul brood or other contagious disease of bees is not known to exist, or wherein any disease of bees is being eradicated in accordance with the provisions of this law, said quarantine to prohibit the movement or shipment into said area, of any bees, honey, appliances or other things capable of transmitting the infection, except under such regulations as he shall prescribe.

3. Restrictive quarantine.—Said Entomologist may, when in his opinion public welfare and necessity require it, place a restrictive quarantine upon any district, county, precinct or other defined area wherein are located any honey bees infected with contagious or infectious disease, said quarantine to prohibit the movement or shipment therefrom of any bees, honey, appliances or other things capable of transmitting the infection, except under such rules and regulations as he shall prescribe.

4. Sale and shipment.—Queen bees and their attendant bees shall not be sold or offered for sale in this State unless accompanied by a copy of a certificate from a State or Government entomologist or apiary inspector to the effect that the apiary from which said queen bees are shipped has been inspected within the preceding twelve months and found apparently free from contagious and infectious diseases, or by an affidavit made by the beekeeper that the bees are not diseased to the best belief of affiant and that the honey used in making the candy contained in the queen cage has been diluted and boiled for at least thirty minutes in a closed vessel.

5. To report diseased bees.—If any owner of, or any person having control or possession of, any honey bees in this State, knows that such bees are affected with Americal foul brood, or any other contagious or infectious disease, or knows of any other bees so diseased, it shall be his duty to at once report such fact to said Entomologist at College Station, setting out in said report all the facts known with reference to said infection.

6. Sale, etc. of infected bees, etc.—No owner or keeper of any diseased colonies of bees shall barter, give away, sell, ship or move any infected bees, honey or appliances, or shall expose any other bees to the danger of infection of the disease.

7. Exposing infected honey, etc.—No person, firm or corporation shall expose, on their own premises or elsewhere, any honey, hives, frames, combs, brood or appliances known to be infected by foul brood or other dangerous disease of bees, in such a manner that honey bees may have access to same; nor sell, offer for sale, barter, give away, ship or distribute any honey taken from a colony or colonies of bees infected with foul brood or other infectious or contagious disease.

8. Interfering with inspection.—No person shall seek to prevent any inspection of bees, honey or appliances under the direction of the State Entomologist in accordance with this law, or shall seek or attempt to prevent the discovery or treatment of diseased honey bees, or shall attempt to intimidate the State Entomologist, his assistants or inspectors, or otherwise interfere with them in the lawful discharge of their duties as herein defined.

Whoever violates any provision of this article, or violates any rule, quarantine, order or regulation of the State Entomologist issued in accordance with the provisions of this law shall be fined not less than twenty-five nor more than two hundred dollars. All fines collected under this article shall be paid into the State Treasury. [Acts 1913, p. 97.]

CHAPTER FIFTEEN

EMBEZZLEMENT AND CONVERSION

Art.
1534. Embezzlement.
1535. By factor or commission merchant.
1536. Embezzlement by carrier.
1537. Secreting or concealing property from assignee.
1538. Conversion of estate.
1539. Conversion by sheriff, etc.
1540. Appropriation of trust funds.
1541. Misapplication of money of prisoners.
1542. Conversion of prison property.
1543. Receiving or concealing embezzled property.
1544. "Money" and "Property" defined.

Article 1534. [1416] [938] [786] Embezzlement.—If any officer, agent, clerk, employé, or attorney at law or in fact, of any incorporated company or institution, or any clerk, agent, attorney at law or in fact, servant or employé of any private person, copartnership or joint stock association, or any consignee or bailee of money or property, shall embezzle, fraudulently misapply or convert to his own use, without the consent of his principal or employer,

any money or property of such principal or employer which may have come into his possession or be under his care by virtue of such office, agency or employment, he shall be punished in the same manner as if he had committed a theft of such money or property. [Acts 1858, p. 182, Acts 1876, p. 9.]

Art. 1535. [1417] [939] [787] By factor or commission merchant.—If any factor or commission merchant shall embezzle or fraudulently misapply or convert to his own use any money or other property, which shall have come into his possession or shall be under his care by virtue of his agency or employment, he shall be punished as if he had stolen such property. [Acts 1858, p. 182.]

Art. 1536. [1418] [940] [788] Embezzlement by carrier.—If any carrier to whom any money, goods, or other property, shall have been delivered, to be carried by him; or if any other person, who shall be intrusted with such property shall embezzle or fraudulently convert to his own use any such money, goods, or property, either in the mass, as the same were delivered or otherwise shall be punished as prescribed for theft. [Acts 1858, p. 182.]

Art. 1537. [1576] [1011] Secreting or concealing property from assignee.—If any assignor shall secrete or conceal from his assignee any portion of the property belonging to his estate other than that which is exempt from execution or shall previous to and in contemplation of the assignment transfer any property with the intent or design to defraud his creditors, such assignor shall be imprisoned in the penitentiary for not less than two nor more than five years. [Acts 1879, p. 59.]

Art. 1538. [1426] [948] [795] Conversion of estate.—If any executor[,] administrator or guardian having charge of any estate, real, personal or mixed, shall unlawfully and with intent to defraud any creditor, heir, legatee, ward or distributee interested in such estate, convert the same or any part thereof to his own use, he shall be punished as is provided in cases of theft. [Acts 1858, p. 184; Act April 10, 1883, p. 66.]

Art. 1539. [366] [258] [242] Conversion by sheriff, etc.—If any sheriff or other officer having collected money for any party to a suit shall without the consent of such party, unlawfully convert the same or any part thereof to his own use, he shall be punished in the same manner as if he had stolen such money. [Acts 1858, p. 164.]

Art. 1540. [367] [259] [243] Appropriation of trust funds.—If any officer of any court who has the legal custody of any money, evidence of debt, script, instrument of writing or other article that may have been deposited in court to abide the result of legal proceedings shall appropriate the same to his own use, he shall be punished as if he had stolen the same. [Acts 1876, p. 7.]

Art. 1541. [1611] Misapplication of money of prisoners.—Prisoners when received into the penitentiary shall be carefully searched. If money be found on the person of the prisoner, or received by him at any time, it shall be taken in charge by the Prison Commissioner and placed to the prisoner's credit, and expended for the prisoner's benefit on his written order, and under such restrictions as may be prescribed by law or the rules. Any officer or employé of the prison system having charge of a prisoner's money who misappropriates the same or any part thereof, shall be confined in the penitentiary not more than five years. [Act Sept. 17, 1910, sec. 47.]

Art. 1542. [1615] Conversion of prison property.—Any officer or employé of the prison system who shall fraudulently convert to his own use and benefit any food, clothing, or other property, belonging to or under control of the prison system, shall be punished as if he had stolen the same. [Id. Sec. 55.]

Art. 1543. [1420] [942] [789a] Receiving or concealing embezzled property.—If any person shall fraudulently receive or conceal any property which has been converted by another in such manner as that the conversion comes within the meaning of embezzlement, knowing the same to have been so converted, he shall be punished in the same manner as the person embezzling the same would be liable to be punished. [Acts 1883, p. 24.]

Art. 1544. [1419] [941] [789] "Money" and "Property" defined.—The term "money", as used in this chapter, includes, besides gold, silver, copper or other coin, bank bills, government notes or other circulating medium current as money; and the term "property" includes any article commonly known as personal property, and all writings of every description that possess any ascertainable value.

CHAPTER SIXTEEN

SWINDLING AND CHEATING

Art.
1545. "Swindling" defined.
1546. Specific acts; certain wrongful acts included.
1546a. False written statement of financial condition.
1547. "Money" defined.
1548. No benefit need accrue to defendant.
1549. If the act constitutes any other defense.
1550. Punishment for swindling.
1551. Obtaining board or lodging by trick, etc.
1552. To post price in hotel rooms.
1553. Hotel to furnish rate card.
1554. Untrue advertisement.
1555. Unlawfully using or wearing emblem.

Article 1545. [1421] [943] [790] "Swindling" defined.—"Swindling" is the acquisition of any personal or movable property, money or instrument of writing conveying or securing a valuable right, by means of some false or deceitful pretense or device, or fraudulent representation, with intent to appropriate the same to the use of the party so acquiring, or of destroying or impairing the right of the party justly entitled to the same. [Acts 1858, p. 183.]

Art. 1546. Specific acts; certain wrongful acts included.—Within the meaning of the term "swindling" are included the following wrongful acts:

1. The exchange of property upon the false pretense that the party is the owner or has the right to dispose of the property given in exchange.

2. The purchase of property upon the faith and credit of some other person upon the false pretense that such other has given the accused the right to use his name in making the acquisition.

3. The obtaining by false pretense the possession of any instrument of writing, certificate, field notes or other paper relating to lands, the property of another, with the intent that thereby the property owner shall be defeated of a valuable right in such lands.

4. The obtaining by any person of any money or other thing of value with intent to defraud by the giving or drawing of any check, draft or order upon any bank, person, firm or corporation with which or with whom such person giving or drawing said check, draft or order has not at the time of the giving or drawing said check, draft or order, or at the time when in the ordinary course of business such check, draft or order would be presented to the drawee for payment, sufficient funds to pay same, and no good reason to believe that such check, draft or order will be paid; provided, that if said check, draft or order is not paid on presentation the return of same shall be prima facie evidence of the fraudulent intent of said person drawing or giving said check; and provided further, that if such check, draft or order is not paid within fifteen days after the same is returned unpaid, it shall be prima facie evidence that no good reason existed for believing that said check, draft or order would be paid, and it shall also be prima facie evidence of intent to defraud and knowledge of insufficient funds with the drawee.

5. The special enumeration of cases of swindling above set forth shall not be understood to exclude any case which by fair construction of language comes within the meaning of the preceding article.

6. This Act shall be cumulative of all other laws on

this subject and should any section or provision be declared unconstitutional such decision shall not effect [affect] any of the remaining provisions of this Act. [Act 1925, p. 38.] [39th Leg., ch. 14.]

Art. 1546a. False written statement of financial condition.—Any person who shall knowingly make or cause to be made, either directly or indirectly, or through any agency whatsoever, any materially false statement in writing with intent that it shall be relied upon, representing the financial condition, or means, or ability to pay, of himself, or any other person or firm, or corporation, in which he is interested, or for whom he is acting, for the purpose of procuring in any form whatsoever either the delivery of personal property, the payment of cash, the making a loan or credit, the extension of a credit, the discount of any account receivable, or the making, acceptance, discount, sale, or endorsement of a bill of exchange or promissory note, amounting to more than fifty dollars for the benefit of either himself, or of any such person, firm, or corporation; or

Who, knowing that a false statement in writing has been made respecting the financial condition or means or ability to pay, of himself, or such person, firm or corporation in which he is interested, or for whom he is acting, procures upon the faith thereof, for the benefit of either himself, or of such person, firm or corporation, either or any of the things of benefit mentioned in the first subdivision of this section; or

Who, knowing that a false statement in writing has been made, respecting the financial condition or means, or ability to pay of himself, or the person, firm or corporation, in which he is interested, or for whom he is acting, represents on a later day, in writing that such statements theretofore made, if then again made on said day would be true, when same would be false, and procures upon faith thereof, for the benefit either of himself, or of such person, firm or corporation, either or any of the things of benefit mentioned in the first subdivision of this section,

Shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two hundred ($200.00) dollars or by both such fine and imprisonment. [Acts 1925, 39th Leg., ch. 168, p. 383, § 1.]

Art. 1547. [1423] [945] [792] "Money" defined.—Within the meaning of "money", as used in this chapter, are included also bank bills or other circulating medium current as money.

Art. 1548. [1424] [946] [793] No benefit need accrue to defendant.—It is not necessary in order to constitute the offense of swindling, that any benefit shall accrue to the person guilty of the fraud or deceit, nor that any injury shall result to the person intended to be defrauded, if it is sufficiently apparent that there was a wilful design to receive benefit or cause an injury. [Acts 1858, p. 183.]

Art. 1549. [1425] [947] [794] If the act constitutes any other offense.—Where property, money, or other articles of value enumerated in the definition of swindling, are obtained in such manner as to come within the meaning of theft or some other offense the rules herein prescribed with regard to swindling shall not be understood to take any such case out of the operation of the law which defines any such other offense. [Acts 1858, p. 184.]

Art. 1550. [1427] [948] [796] Punishment for swindling.—Every person guilty of swindling shall be punished in the same manner as is provided for the punishment of theft, according to the amount of the money or the value of the property or instrument of writing so fraudulently acquired.

Art. 1551. [1428] Obtaining board or lodging by trick, etc.—Every person who shall obtain board or lodging in any hotel or boarding house by means of any trick or deception or false or fraudulent representations, or statement or pretense, and shall fail or refuse to pay therefor, shall be held to have obtained the same with the intent to cheat and defraud such hotel or boarding house keeper, and shall be fined not exceeding one hundred dollars, or be imprisoned in jail not exceeding one month or both. [Act May 10, 1899, Acts 1899, p. 173.]

Art. 1552. To post price in hotel rooms.—The owner or keeper of each hotel within this State shall post in a conspicuous place in each room thereof a card or sign, stating the price per day of each room and bearing date when posted; and no advance in the price list so posted shall be made within thirty days from the time said card or sign was last posted.

Any hotel owner or keeper who shall fail or refuse to post the rates of his rooms as above required, or any hotel owner, keeper or employé who shall knowingly charge any guest a rate in excess of the rate posted shall be fined not less than twenty-five nor more than one hundred dollars, or be imprisoned in jail not exceeding thirty days or both, and each day that such excessive rate is charged is a separate offense. [Acts 1923, p. 95.]

Art. 1553. Hotel to furnish rate card.—When a room is assigned to a guest by any hotel having twenty rooms or more, such hotel shall give said guest a ticket showing the rate per day he is being charged for such room, which shall conform with the rates posted, and any owner, keeper or employé of said hotel who shall neglect to furnish said guest with such ticket shall be fined not exceeding one hundred dollars. [Id.]

Art. 1554. Untrue advertisement.—Whoever with intent to sell or in any way dispose of merchandise, securities, service, or anything offered by such person, or by any firm, corporation or association which he owns or of which he has control directly or indirectly, to the public for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates or places before the public or causes to be made, published, disseminated, circulated or placed before the public in a newspaper, or other publication, or in the form of a book, notice, handbill, window display card or price tag, poster, bill, circular, pamphlet or letter, or in any other way, an advertisement of any sort regarding merchandise, as to its character or cost, securities, service, or anything so offered to the public, which advertisement contains any assertion, representation or statement of fact which is known by said person or could have been known by use of reasonable diligence or inquiry to be untrue, deceptive or misleading in any material particular as to such matters or things so advertised, shall be fined not less than ten nor more than two hundred dollars. In prosecutions under this article such statement, trade name or trade mark, with the name, signature, mark or identification of the person, firm, corporation, partnership, association, shall be considered prima facie evidence of the publication of such statement, trade name or trade mark by the person, firm, corporation, partnership, association, referred to therein. [Acts 1921, p. 86.]

Art. 1555. [425] Unlawfully using or wearing emblem.—Whoever shall wilfully and without due authority use or wear the badge, label or button or other emblem of the United Confederate Veterans, United Sons of Confederate Veterans, United Daughters of the Confederacy, Grand Army of the Republic, Woman's Relief Corps, the Benevolent and Protective Order of Elks of the United States of America, the Ancient, Free and Accepted Masons, the Independent Order of Odd Fellows, the Knights of Pythias, the Woodmen of the World, any labor organization, or any order, society or organization in this State, or who shall use or wear the same to obtain aid, assistance or patronage thereby, unless he shall be entitled to use or wear the same under the rules and regulations of any such or-

der, society or organization whose badge, label or button or other emblem was so used or worn, shall be fined not exceeding fifty dollars, or imprisoned in jail not exceeding sixty days. [Acts 1909, p. 134.]

CHAPTER SEVENTEEN

PROPERTY UNDER LIEN

Art.
1556. Removing property under lien.
1557. Concealing location of motor vehicle.
1558. Fraudulent disposition of mortgaged property.

Article 1556. Removing property under lien.—If any person shall remove any personal property or any part thereof covered by the lien created by chapter 17, Acts of the 35th Legislature, Regular Session, from the place where it was located when the lien therein provided for shall have been filed of record, without the written consent of the owner and holder of said lien, with intent to defraud the person having such lien, either originally or by transfer, he shall be fined not less than five nor more than five hundred dollars. [Acts 1917, p. 28.]

Art. 1557. Concealing location of motor vehicle.—Whoever shall wilfully, upon demand, fail or refuse to notify the mortgagee or holder of a mortgage given upon any motor vehicle or accessories therefor purchased by him to secure the purchase price therefor or any portion of same, of the location of such motor vehicle, shall be fined not less than ten nor more than one hundred dollars, or be confined in jail for not more than sixty days or both. [Acts 1919, p. 320.]

Art. 1558. [1430] [950] [797] Fraudulent disposition of mortgaged property.—If any person has given or shall hereafter give any mortgage, deed of trust or other lien, in writing, upon any personal or movable property or growing crop of farm produce, and shall remove the same or any part thereof out of the State, or shall sell or otherwise dispose of the same with intent to defraud the person having such lien, either originally or by transfer, he shall be confined in the penitentiary for not less than two nor more than five years. [Acts 1885, p. 85.]

CHAPTER EIGHTEEN

OFFENSES COMMITTED IN ANOTHER COUNTY OR STATE

Art.
1559. Bringing stolen property into this state.
1560. Requisites of guilt.

Article 1559. [1431] [951] [798] Bringing stolen property into this State.—If any person having committed an offense in any foreign country, State or territory, which if committed in this State would have been swindling, robbery, theft, embezzlement or receiving of stolen property, knowing the same to have been stolen, or fraudulently receiving or concealing property acquired by another by embezzlement, knowing the same to have been so acquired by another, shall bring into this State any property so acquired or received he shall be deemed guilty of swindling, robbery, theft, embezzlement, or receiving of goods or property stolen or embezzled, and shall be punished as if the offense had been committed in this State. In cases herein mentioned the offense may be charged to have been committed in any county into or through which the property may be brought in the same manner as if the act constituting such offense had taken place wholly within this State. [O. C. 774, Acts 1895, p. 116.]

Art. 1560. [1432] [952] [799] Requisites of guilt.—To render a person guilty under the preceding article it must appear that by the law of the foreign country, State or territory from which the property was taken and brought to this State the act committed would also have been swindling, robbery, embezzlement, theft or receiving stolen goods or property embezzled. [O. C. 775, Id.]

TITLE 18

LABOR

Chap.
1. Labor Commissioner.
2. Sanitary and Health Conditions.
3. Female Employés.
4. Employment of children.
5. Hours of Labor on Public Works.
6. Workmen and Firemen.
7. Employment Agents.
8. Mines and Mining.
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CHAPTER ONE

LABOR COMMISSIONER

Art.
1561. Commissioner of Labor Statistics.
1562. Failure to testify before commissioner.
1563. Duty of owner of factory, etc.
1564. Disclosing name of informant.
1565. Commissioner may enter factory, etc.
1566. Interfering with Labor Bureau.

Article 1561. [1585] Commissioner of Labor Statistics.—The Commissioner of Labor Statistics shall collect, systematize and present in biennial reports to the Governor, statistical details relating to all departments of labor in Texas, and especially as bearing upon the commercial, social, educational and sanitary conditions of the employees and their families, the means of escape from dangers incident to their employment, the protection of life and health in factories and other places of employment, the labor of women and children and the hours of labor exacted of them, and in general all matters which tend to affect the prosperity of the mechanical, manufacturing and productive industries of this State, and of the persons employed therein. [Sec. 3, Act Feb. 26, 1909, Acts 1909, p. 59.]

Art. 1562. [1586] Failure to testify before Commissioner.—The Commissioner of the Bureau of Labor Statistics shall have power to issue subpœnas, and take testimony in all matters related to the duties required of the said bureau, but said testimony must be taken in the vicinity of the residence or office of the person testifying. Any person duly subpœnaed under any provision of this chapter who shall wilfully neglect or fail to attend or testify at the time and place mentioned in the subpœna shall be fined not exceeding fifty dollars or be imprisoned in jail not to exceed thirty days. No witness shall be compelled to go outside of the county in which he resides in order to testify. [Sec. 5, Id.]

Art. 1563. [1587] Duty of owner of factory, etc.—Every owner, manager and superintendent of every factory, mill, workshop, mine, store, business house, public or private work, or any other establishment or place, where five or more persons are employed at work, shall make to the Bureau of Labor Statistics upon blanks to be furnished by such bureau, such reports and returns as said bureau may require for the purpose of securing such labor statistics as are contemplated by this chapter. Such reports and returns shall be made under oath within not to exceed sixty days from the receipt of the blanks furnished by the Commissioner or bureau. Any owner, manager, superintendent or other person in charge or control of any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place, where five or more persons are employed at work, who shall neglect or refuse to make such reports and returns as are required by any provision of this chapter shall be fined not to exceed one hundred dollars, or be imprisoned in jail not to exceed thirty days. [Sec. 6, Id.]

Art. 1564. [1588] Disclosing name of informant.—In the reports made by the Commissioner to the Governor the names of persons, firms or corporations supplying information under any provision of this chapter shall not be disclosed, nor shall any such name be communicated to any person not employed in the Bureau of Labor Statistics. Any officer or em-

ployé of such bureau violating any provision of this article, shall be fined not to exceed five hundred dollars, or be imprisoned in jail not to exceed ninety days. [Sec. 7, Id.]

Art. 1565. [1589] Commissioner may enter factory, etc.—Upon the written complaint of two or more persons, or upon his failure otherwise to obtain information in accordance with any provision of this chapter, the Commissioner of Labor Statistics shall have the power to enter any factory, mill, workshop, mine, store, business house, public or private work, or other establishment, or place where five or more persons are employed at work, when the same is open and in operation, for the purpose of gathering facts and statistics, such as are contemplated by this chapter, and for the purpose of examining into the methods of protecting employés from danger and the sanitary conditions in and around such building or place. [Sec. 9, Id.]

Art. 1566. [1591] Interfering with Labor Bureau.—Any owner, manager, superintendent or other person in charge or control of any factory, mill, workshop, mine, store, business house, public or private work, or other establishment or place, where five or more persons are employed at work, who shall refuse to allow any officer or employé of the said Bureau of Labor Statistics to enter the same or to remain therein for such time as is reasonably necessary, or who shall hinder any such officer or employé, or in any way prevent or deter him from collecting information, as to any matter consistent with any duty imposed on him by law, shall be fined not to exceed one hundred dollars, or imprisoned in jail not to exceed sixty days. [Sec. 11, Id.]

CHAPTER TWO

SANITARY AND HEALTH CONDITIONS

Art.
1567. Permitting immoral conditions.
1568. Refusal to correct condition.

Article 1567. Permitting immoral conditions.—Any person in control of any factory, mill, workshop, laundry, mercantile establishment or other establishment where five or more persons are employed, all or part of whom are females, who shall permit in such place of employment any influence, practices or conditions calculated to injuriously affect the morals of such female employés, shall be find [fined] not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail not exceeding sixty days, or both. [Acts 4th C. S. 1918, p. 134.]

Art. 1568. Refusal to correct condition.—Any person in control or management of any establishment included in the preceding article who shall fail or refuse to comply with any written order issued to such person by the Commissioner of Labor Statistics, or any of his deputies or inspectors, for the correction of any condition caused or permitted therein which endangers the health of the employés therein or which do not comply with the law governing such establishments. shall be punished as provided in the preceding article. [Id.]

CHAPTER THREE

FEMALE EMPLOYÉS

Art.
1569. Hours of work.
1570. Seats.
1571. Exceptions.
1572. Punishment.

Article 1569. Hours of work.—No female shall be employed:

1. In any factory, mine, mill, workshop, mechanical or mercantile establishment, hotel, restaurant, rooming house, theater, moving picture show, barber shop, telegraph, telephone or other office, express or transportation company, or any State institution, or any other establishment, institution or enterprise where females are employed, for more than nine hours in any one calendar day nor more than fifty-four hours in any one calendar week.

2. In any laundry for more than fifty-four hours in one calendar week; the hours of work to be so arranged as to permit the employment of such female at any time so that she shall not work more than a maximum of eleven hours during the twenty-four-hour period of one day.

3. In any factory engaged in the manufacture of cotton, woollen or worsted goods or articles of merchandise manufactured out of cotton goods, for more than ten hours in any one calendar day nor more than sixty hours in any one calendar week. [Acts 1915, p. 105.]

Art. 1570. Seats.—Every employer owning or operating any factory, mine, mill, workshop, mechanical or mercantile establishment, laundry, hotel, restaurant or rooming house, theater or moving picture show, barber shop, telegraph, telephone or other office, express or transportation company; the superintendent of any State institution or any other establishment, institution or enterprise where females are employed as provided in the preceding article, shall provide and furnish suitable seats to be used by such employés when not engaged in the active duties of their employment, and shall give notice to all such employés by posting in a conspicuous place on the premises of such employment, in letters not less than one inch in height, that all such employés will be permitted to use such seats when not so engaged. [Id.]

Art. 1571. Exceptions.—The two preceding articles shall not apply to stenographers and pharmacists, nor to mercantile establishments or telegraph or telephone companies in rural districts and in cities or towns or villages of less than three thousand inhabitants, as shown by the preceding Federal census. In cases of extraordinary emergencies, such as great public calamities or where it becomes necessary for the protection of human life or property, longer hours may be worked. [Id.]

Art. 1572. Punishment.—Any employer, overseer, superintendent, foreman or other agent of any such employer who shall permit any female to work in any place mentioned in the first two articles of this chapter more than the number of hours provided for during any day of the twenty-four hours, or who shall fail or refuse to so arrange the work of such employés in said place so that they shall not work more than the number of hours so provided for, or who shall fail or refuse to provide suitable seats as provided in the second preceding article, shall be fined not less than fifty, nor more than two hundred dollars. Each day of such violation and each such employé permitted to work more than the time so specified shall be a separate offense. [Id.]

CHAPTER FOUR

EMPLOYMENT OF CHILDREN

Art.
1573. Children under fifteen.
1574. Under age of seventeen.
1575. Messengers.
1576. Limitation of hours.
1577. Exemptions.
1578. Inspectors to have access.
1578a. Exceptions.

Article 1573. Children under fifteen.—Any person, or any agent or employé of any person, firm or corporation who shall hereafter employ any child under the age of fifteen (15) years to labor in or about any factory, mill, workshop, laundry, or in messenger service in towns and cities of more than fifteen thousand population, according to the Federal census, except as hereinafter provided, shall be deemed guilty of a misdemeanor, and upon conviction in a court of competent jurisdiction, shall be punished by a fine of not less than twenty-five dollars ($25.00) nor more than two hundred dollars ($200.00) or by imprisonment in the county jail for not more than sixty days, or by both such fine and imprisonment; provided that nothing in this Act shall be construed as affecting the employment of children on farms, ranches, dairies or other agricultural or stock raising pursuits.

Art. 1574. Under age of seventeen.—Any person, or agent, or employee of any person, firm or corporation who shall hereafter employ any child under the age of seventeen (17) years to labor in any mine, quarry or place where explosives are used, or who, having control or employment of such child, shall send or cause to be sent, or who shall permit any person, firm or corporation, their agents or employees to send any such child under the age of seventeen (17) years to any disorderly house, bawdy house, assignation house or place of amusement conducted for immoral purposes, the character or reputation of which could have been ascertained upon reasonable inquiry on the part of such person, firm or corporation having the control of such child shall be deemed guilty of a misdemeanor, and upon conviction in any court of competent jurisdiction shall be punished by a fine of not less than fifty ($50.00) dollars nor more than five hundred ($500.00) dollars, or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment.

Art. 1575. Messengers.—It shall be the duty of every person, firm or corporation, their agents or employees, having in their employ or under their control, any child under the age of seventeen (17) years, doing a messenger or deliver[y] business, or whose employees may be required to deliver any message, package, merchandise or other thing, before sending any such child on such errand, to first ascertain if such child is being sent or is to be sent to any place prohibited in Art. 1574. Failure or refusal to comply with this article shall subject any person, firm or corporation, their agents or employees, having the control of such child or children to the penalties provided in Art. 1574.

Art. 1576. Limitation of Hours.—Any person, firm or corporation, their agents or employees, having in their employ or under their control any child under the age of fifteen (15) years who shall require or permit any such child to work or be on duty for more than eight (8) hours in any one calendar day, or for more than forty-eight hours in any one week, or who shall cause or permit such child to work between the hours of ten (10) P. M., and five (5) A. M., shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five ($25.00) dollars nor more than two hundred ($200.00) dollars, or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment; provided that nothing herein or in any other section of this Act shall apply to employment of children for farm labor, or to hours which children may work on farms.

Art. 1577. Exemptions.—Upon application being made to the county judge of any county in which any child over the age of twelve (12) years shall reside, the earnings of which child are necessary for the support of itself, its mother when widowed, or in needy circumstances, or invalid father, or of other children younger than the child for whom the permit is sought, the said county judge may upon the sworn statement of such child or its parents or guardian, that the child for whom the permit is sought is over twelve (12) years of age, that the said child has completed the fifth grade in a public school or its equivalent, and that it shall not be employed in or around any mill, factory, workshop, or other place where dangerous machinery is used, nor in any mine, quarry or other place where explosives are used, or where the moral or physical condition of the child is liable to be injured, and that the earnings of such child are necessary for the support of such invalid parent, widowed mother or mother in needy circumstances, or of younger children, and that such support cannot be obtained in any other manner, and that suitable employment has been obtained for such child, which sworn statement shall be accompanied by the certificate of a licensed physician showing that such child is physically able to perform the work or labor for which the permit is sought, issue a permit for such child to enter such employment. Every person, firm or corporation employing any such child between the ages of twelve (12) years and fifteen (15) years shall post in a conspicuous place where such child is employed, the permit issued by the county judge; provided that no permit shall be issued for a longer period that twelve (12) months, but may be renewed from time to time upon satisfactory evidence being produced that the conditions under which the former permit was issued still exists, and that no physical or moral injury has resulted to such child by reason of its employment. In every case where a permit is sought for any child between the ages of twelve (12) years and fifteen (15) years, the parent, guardian or other person in charge or control of such child shall appear before the county judge in person with such child for whom a permit is sought before such permit shall be issued. There shall be nothing in this chapter to prevent the working of school children of any age from June 1 to September 1 of each year except that they shall not be permitted to work in factory, mill, workshop, and the places mentioned in Article 1574 and Article 1577; nor shall their hours of labor conflict with Article 1576 of this chapter.

Art. 1578. Inspectors to have access.—The Commissioner of Labor Statistics, or any of his deputies or inspectors shall have free access during working hours to all places where children or minors are employed, and any owner, manager, superintendent, foreman or other person in authority, who shall refuse to admit, or in any way hinder or defer the said commissioner or any of his deputies or inspectors from entering or remaining in such place, or from collecting information with respect to the employment of children as provided in this chapter, shall be deemed guilty of a misdemeanor and upon conviction in any court of competent jurisdiction shall be punished by a fine of not less than twenty-five ($25.00) dollars, nor more than one hundred ($100.00) dollars; provided that nothing herein shall apply to those engaged in agricultural pursuits.

Art. 1578a. Exceptions.—Nothing in this chapter shall be construed as prohibiting the employment by any person of nurses, maids, yard-servants, or others for private homes and families, regardless of their ages. [Acts 1925, p. 175.]

CHAPTER FIVE

HOURS OF LABOR ON PUBLIC WORKS

Art.
1579. Eight hours a day work.
1580. Violating eight hour law.
1581. Punishment.

Article 1579. Eight hours a day work.—Eight hours shall constitute a day's work for all laborers, workmen or mechanics who may be employed by or on behalf of the State of Texas, or by or on behalf of any county, municipality, or political subdivision of the State, county or municipality in any one calendar day, where such employment, contract or work is for the purpose of constructing, repairing or improving buildings, bridges, roads, highways, streams, levees, or other work of a similar character, requiring the service of laborers, workmen or mechanics. [Acts 1913, p. 127.]

Art. 1580. Violating eight hour law.—All contracts made by or on behalf of the State of Texas, or by or on behalf of any county, municipality or other legal or political subdivision of the State, with any corporation, persons or association of persons for performance of any work, shall be deemed and considered as made upon the basis of eight hours constituting a day's work. The time consumed by the laborer in going to and returning from the place of work shall not be considered as part of the hours of work. No corporation, person, or association of persons having a contract with the State or any political subdivision thereof, shall require any such laborers, workmen or mechanics or other persons to work more than eight hours per calendar day in doing such work, except in case of emergency, which may arise in times of war, or in cases where it may become necessary to work more than eight hours per calendar day for the

protection of property, human life or the necessity of housing inmates of public institutions in case of fire or destruction by the elements. In such emergencies the laborers, workmen, mechanics or other persons so employed and working to exceed eight hours per calendar day shall be paid on the basis of eight hours constituting a day's work. Not less than the current rate of per hour wages for like work in the locality where the work is being performed shall be paid to the laborers, workmen, mechanics or other persons so employed or on behalf of the State, or for any county, municipality or other legal or political subdivision of the State, county or municipality, and every contract hereafter made for the performance of work for the State, or for any county, municipality, or other legal or political subdivision of the State, county or municipality, must comply with the requirements of this chapter. Nothing in the foregoing article shall prevent any person, or any officer, agent, or employé of any person or corporation, or association of persons from making mutually satisfactory contracts as to the hours of labor, at the rates of pay as herein provided. [Acts 1913, p. 127; Acts 1921, p. 229.]

Art. 1581. Punishment.—Any person, or any officer, agent or employé of any person, corporation or association of persons, or any officer, agent or employé of the State, county, municipality, or any legal or political subdivision of the State, county or municipality, who shall fail or refuse to comply with any provision of this chapter or who shall violate any of its provisions shall be fined not less than fifty nor more than one thousand dollars, or be imprisoned in jail not to exceed six months or both. Each day of such violation shall be a separate offense. [Acts 1913, p. 127.]

CHAPTER SIX

WORKMEN AND FIREMEN

Art.
1582. Protection of workmen on buildings.
1583. Work and vacation of firemen.

Article 1582. Protection of workmen on buildings.—1. To prevent workmen from falling.—Any building three or more stories in height, in the course of construction or repairs, shall have the joists, beams or girders of each and every floor below the floor level where any work is being done, or about to be done, covered with planking laid close together, said planking to be of not less than one and one-half inches of thickness in buildings that have steel framework, and what is commonly known as one-inch plank in all others where joists are set on two feet centers or less, to protect the workmen engaged in the erection or construction of such buildings from falling through joists, girders, and from falling planks, bricks, rivets, tools or other substances, whereby life and limb are endangered. Where any scaffolding is placed on the outside of any of said buildings, over any public street or alley where persons are in the habit of passing, then said scaffolding shall be so constructed as to prevent any material, tools or other things from falling off and endangering the life of passersby. Such flooring shall not be removed until the same is replaced by a permanent flooring in such building.

2. To inclose elevators and shafts.—If elevators, elevating machines or hod hoisting apparatus are used within a building in the course of construction, for the purpose of lifting materials to be used in such construction, the contractor or owners, or the agents of the owners, shall cause the shafts or openings in each floor to be inclosed or fenced in on all sides, two sides of which must be at least six feet, and two sides where material is to be taken off or on shall be protected by automatic safety gates.

3. Duty of general contractors.—The general contractor having charge of the erection and construction of such building shall provide for the flooring as herein required, and make such arrangements as may be necessary with the sub-contractor in order that the provisions of this article may be carried out.

4. Duty of owner.—The owner, or the agent of the owner of such building, shall see that the general contractor or sub-contractors carry out the provisions of this article.

5. Owner to see to flooring.—If the general contractor or sub-contractor of such building fails to provide for the flooring of such building as herein provided, then the owner or the agent of the owner of such building shall see that the provisions of this article are carried out.

Any owner or agent of the owner, or any general contractor or sub-contractor, of any building described in the first subdivision of this article who shall fail to comply with any provision of this article shall be fined not less than fifty nor more than two hundred dollars. Each day of such violation is a separate offense. [Acts 1919, p. 281.]

Art. 1583. Work and vacation of firemen.—1. No member of any paid fire department in any city of more than 25,000 inhabitants shall be required to be on duty for more than six days in any one week.

2. The preceding subdivision shall not apply in cases of emergency.

3. Each member of any such department in any city of more than 30,000 inhabitants shall be allowed fifteen days vacation in each year, with pay, not more than fourteen men to be on vacation at the same time.

4. Each preceding Federal census shall determine the population.

5. The city officials having supervision of the fire department shall designate the days of the week upon which each such member shall not be required to be on duty, and the days upon which each such member shall be allowed to be on vacation.

The city official having charge of the fire department in any such city who violates any provision of this article shall be fined not less than ten nor more than one hundred dollars. [Acts 1st C. S. 1915, p. 22, Acts 1st C. S. 1917, p. 19.]

CHAPTER SEVEN

EMPLOYMENT AGENTS

Art.
1584. Definitions.
1585. Exceptions.
1586. Doing business without license.
1587. Agent to keep record.
1588. Certain acts prohibited.
1589. Overcharging.
1590. Untruth by employer or applicant.
1591. To display license and law.
1592. Punishment.
1593. Inducing employé to quit.

Article 1584. Definitions.—As used in this chapter:

1. "Employment agent" means every person, firm, partnership or association of persons engaged in the business of assisting employers to secure employés, and persons to secure employment, or of collecting information regarding employers seeking employés, and persons seeking employment.

2. "Employment office" means every place or office where the business of giving intelligence or information where employment or help may be obtained, or where the business of an employment agent is carried on. [Acts 1923, p. 75.]

Art. 1585. Exceptions.—The provisions of this chapter shall not apply to agents who charge a fee of not more than two dollars for registration only for procuring employment for school teachers; nor to any department or bureau maintained by this State, the United States Government, or any municipal government of this State, nor to any person, firm, partnership, association of persons or corporation or any officer or employé thereof engaged in obtaining or soliciting help for him, them or it when no fees are charged, directly or indirectly, [of] the applicant for help or the applicant for employment; nor to farmers and stockraisers acting jointly or severally in securing laborers for their own use where no fee is collected or charged directly or indirectly, nor to any association or corporation chartered under the

laws of Texas conducting a free employment bureau or agency. [Id.]

Art. 1586. Doing business without license.—Whoever engages in the business of an employment agent or conducts an employment office, without first procuring a license therefor, as required by law, shall be fined not less than fifty nor more than two hundred and fifty dollars, or be imprisoned in jail not to exceed one year, or both. Each day such person shall engage in such business or shall conduct an employment office without first procuring such license shall be a separate offense. [Id.; Acts 2nd C. S. 1923, p. 94.]

Art. 1587. Agent to keep record.—Every licensed employment agent shall keep and maintain an office at which a complete record of the business transacted shall be kept; he shall keep a substantially bound book in the form prescribed by the Commissioner of the Bureau of Labor Statistics of this State in which shall be entered the age, sex, nativity, trade or occupation, name and address of each person who makes application for employment, or for help, to such employment agent, and where and to whom such person was directed to go by such agent for employment. Such employment agent shall also enter and keep in a well bound book the name and address of every person, firm, corporation or association of persons who shall make application to him for assistance in securing employés together with the number and kind of employés desired, the amount of wages or salary to be paid and the place where such employés are to work, and the date of the application and when received. [Acts 1923, p. 79.]

Art. 1588. Certain acts prohibited.—No employment agent shall:

1. Knowingly admit, or allow to remain on the premises of such agent any prostitute, gambler, intoxicated person or any person of bad character.

2. Advertise his agency by means of cards, circulars, signs or in newspapers or other publications, unless all such advertisements shall set forth the name of the agent and the address of his employment office; nor shall any such licensed person use any letterheads or blanks not containing the name of such employment agent and the address of his employment office.

3. Publish or cause to be published any false or misleading advertisement or notice relating to his employment agency.

4. Give any false information or make any false representation concerning employment to any applicant for employment.

5. Send out an applicant for employment to any prospective employer without first having obtained a bona fide written order from such prospective employer.

6. Furnish any female for immoral purposes; or send, or cause to be sent any female to enter as servant, inmate, or for any purpose whatsoever, any place of bad repute, house of ill fame, or assignation house, or any house or place of amusement kept for immoral purposes, the character of which such employment agent could have ascertained by reasonable diligence.

7. Furnish employment to any child in violation of the Statutes regulating the employment of children or the compulsory attendance at school.

8. Divide or offer to divide, directly or indirectly, any fee charged or received with any person who secures help through such agent, or to whom help is referred by such agent. [Id.]

Art. 1589. Overcharging.—Where a fee is charged for obtaining employment, such fee in no event shall exceed the sum of three dollars, which may be collected from the applicant only after employment has been obtained and accepted by the applicant. Employment agents engaged exclusively in providing employment for skilled, professional or clerical positions may charge, with the written consent of the applicant, a fee, not to exceed 20% of the first month's salary. [Id.]

Art. 1590. Untruth by employer or applicant.—No employer seeking employés, and no person seeking employment, shall knowingly make any false statement or conceal any material facts for the purpose of obtaining employés, or employment, by or through any employment agent. [Id.]

Art. 1591. To display license and law.—Every employment agent shall keep conspicuously posted in his office the license issued to him under the law, two copies of this Act, one printed in English and the other in Spanish in type not smaller than ten points, which copies shall be conspicuously placed so that they may be easily read by the public. [Id.]

Art. 1592. Punishment.—Whoever violates any provision of the five preceding articles of this chapter shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1593. Inducing employé to quit.—Any employment agent who shall induce or attempt to induce any person to leave his or her employer with a view to having said person obtain employment through his agency shall be fined not less than fifty nor more than two hundred and fifty dollars, or be imprisoned in jail not to exceed one year, or both. [Id.]

CHAPTER EIGHT

MINES AND MINING

Art.
1594. Escapement shaft.
1595. Shafts, cages and passways.
1596. Ventilation.
1597. Notice of fire damp.
1598. Mining cage.
1599. Powder.
1600. Cut-throughs.
1601. Safety lamps.
1602. Endangering life or health.
1603. Posting mine rules.
1604. Coal scales.
1605. Check weighman.
1606. Oil used.
1607. Penalty.
1608. Insulating live wires.
1609. Map of mine.
1610. Animals in mines.
1611. Exceptions.
1612. Bath facilities.

Article 1594. [1592] [1593] Escapement shaft.—No owner, agent, lessee, receiver or operator of any mine in this State shall employ any person or persons in said mine for the purpose of working therein unless there are in connection with every seam or stratum of coal or ore worked in such mine not less than two openings or outlets, separated by a stratum of not less than one hundred and fifty feet at surface and not less than thirty feet at any place, at which openings or outlets safe and distinct means of ingress and egress shall at all times be available for the persons employed in such mine. The escapement shafts or slopes shall be fitted with safe and available appliances by which the employés of the mine may readily escape in case of accident. In slopes used as haulage roads where the dip or incline is ten degrees or more there must be provided a separate traveling way which shall be maintained in a safe condition for travel and keep free from dangerous gases. The time which shall be allowed for completing such escapement shaft or opening shall be two years for all shafts or slopes more than two hundred feet in depth, and one year for all shafts two hundred feet in depth or less; and the time shall be reckoned in all cases from the date on which coal or ore is first hoisted from the original shaft or slope for sale or use. Any person, owner, agent, lessee, receiver or operator of any mine who shall violate or suffer or permit the violation of any provision of this article shall be fined not less than two hundred nor more than five hundred dollars, and each day such violation continues shall be a separate offense. [Acts 1903, p. 103.]

Art. 1595. [1594] Shafts, cages and passways.—Any shaft in process of sinking, and any opening projected for the purpose of mining coal of all kinds shall be subjected to the provisions of this and

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

the twelve succeeding articles. At the bottom of every shaft and every caging place therein, a safe, commodious passageway must be cut around said landing place, to serve as a traveling way by which employés shall pass from one side of the shaft to the other without passing under or on the cage. The upper and lower landings at the top of each shaft, and the openings of each intermediate seam from or to the shaft shall be clear and free from loose materials and shall be securely fenced with automatic or other gates or bars so as to prevent either men or materials from falling into the shaft. Every hoisting shaft must be equipped with substantial cages fitted to guide rails running from the top to the bottom. Said cages must be safely constructed, they must be furnished with suitable boiler iron covers to protect persons riding thereon from falling objects, and they must be equipped with safety catches. Every cage on which people are carried must be fitted with iron bars, rings, or chains in proper place and in sufficient number to furnish a secure handhold for every person permitted to ride thereon. At the top landing, cage supports, where necessary, must be carefully set and adjusted so as to work properly and securely hold the cages when at rest. In all cases where the human voice can not be distinctly heard there shall be provided a metal tube or telephone from the top to the bottom of the shaft or slope through which conversation may be held between persons at the bottom and top of such shaft or slope, and there shall also be maintained an efficient system of signaling to and from the top of the shaft or slope in each seam or opening. Every underground place on which persons travel, worked by self-acting engines, windlasses or machinery of any description shall be provided with practical means of signaling between the stopping places and the ends of the plane, and shall further be provided, at intervals of not more than sixty feet, with sufficient manholes for places of refuge. Every mine shall be supplied with props and timbers of suitable length and size, and if from any cause the timbers are not supplied when required, the miners shall vacate any and all such working places until supplied with timber needed. All openings connected with worked out or abandoned portions of every operated mine likely to accumulate explosive gases or dangerous conditions shall be securely gobbed and blocked off from the operative portions thereof so as to protect every person working in such mines from all danger that may be caused or produced by such worked out portions of such mines. [Sec. 1, Act April 30, 1907, Acts 1907, p. 331.]

Art. 1596. [1595] Ventilation.—Throughout every mine there shall be maintained currents of fresh air sufficient for the health and safety of all men and animals employed therein; and such ventilation shall be produced by a fan or some other artificial means; provided, a furnace shall not be used for ventilating any mine in which explosive gases are generated.

The quantity of air required to be kept in circulation and passing a given point shall be not less than one hundred cubic feet per minute for each person, and not less than three hundred cubic feet per minute for each animal in the mine, measured at the foot of the downcast; and this quantity may be increased at the discretion of the inspector, whenever, in his judgment, unusual conditions make a stronger current necessary. Said current shall be forced into every working place throughout the mine, so that all parts of the same shall be reasonably free from standing powder, smoke and deleterious air of any kind.

The measurement of the current of air shall be taken with an anemometer at the foot of the downcast, at the foot of the upcast, and at the working face of each division or split of the air current.

The main current of air shall be so split or subdivided as to provide a separate current of reasonably pure air to every one hundred men at work; and the inspector shall have authority to order separate currents for smaller groups of men, if in his judgment special conditions make it necessary.

The air current for ventilating the stable shall not pass into the intake air current for ventilating the working parts of the mine.

Whenever the inspector shall find men working without sufficient air, he shall at once give the mine manager or operator notice and a reasonable time in which to restore the current, and upon his or their refusal or neglect to act promptly the inspector may order the endangered men out of the mine. [Sec. 2, Id.]

Art. 1597. [1596] Notice of fire damp.—Immediate notice must be conveyed by the miner or mine owner to the inspector, upon the appearance of any large body of fire damp in any mine, whether accompanied by any explosion or not, and upon the occurrence of any serious fire within the mine or on the surface. [Sec. 3, Id.]

Art. 1598. [1597] Mining cage.—Cages on which men are riding shall not be lifted or lowered at a rate greater than six hundred feet per minute, except with the written consent of the inspector. No person shall carry any tools or materials with him on a cage in motion, except for use in making repairs, and no one shall ride on a cage while the other cage contains a loaded car. No cage having an unstable or self-dumping platform shall be used for the carriage of men or materials unless the same is provided with some convenient device by which said platform can be securely locked, and unless it is so locked whenever men or material are being conveyed thereon. [Sec. 4, Id.]

Art. 1599. [1598] Powder.—No miner or other person shall carry powder into the mine except in the original keg or in a regulation powder can securely fastened, and the can in otherwise air tight condition. [Sec. 5, Id.]

Art. 1600. [1599] Cut-throughs.—The mine foreman shall see that proper cut-throughs are made in all the pillars at such distances as in the judgment of the mine inspector may be deemed requisite, not more than twenty yards nor less than ten yards apart, for the purpose of ventilation, and the ventilation shall be conducted through said cut-throughs into the rooms and entries by means of check doors made of canvas or other material, placed on the entries or in other suitable places, and he shall not permit any room to be opened in advance of the ventilating current. Should the mine inspector discover any room, entry, airway or other working place being driven in advance of the air current contrary to the requirements of this article he shall order the workmen in such places to cease work at once until the law is complied with. [Sec. 6, Id.]

Art. 1601. [1600] Safety lamps.—At any mine where the inspector shall find fire damp is being generated so as to require the use of a safety lamp in any part thereof, the operator of such mine, upon receiving notice from the inspector that one or more such lamps are necessary for the safety of the men in the mines, shall at once procure and keep for use such number of safety lamps as may be necessary. [Sec. 7, Id.]

Art. 1602. [1601] Endangering life or health.—No miner, workman or other person shall knowingly or carelessly injure any shaft, safety lamp, instrument, air-course or brattice, or obstruct or throw open an air-way, or carry any open lamp or lighted pipe or fire in any form into a place worked by the light of safety lamps or within three feet of any open powder, or handle or disturb any part of the hoisting machinery, or enter any part of the mine against caution, or do any wilful act whereby the lives or health of persons working in mines or the security of the mine machinery thereof is endangered. [Sec. 8, Id.]

Art. 1603. [1602] Posting mine rules.—Every operator shall post on the engine house and at the pit top of his mine, in such manner that the employés of the mine can read them, rules not inconsistent with this chapter, plainly printed in the English language,

which shall govern all persons working in the mine. [Sec. 9, Id.]

Art. 1604. [1603] Coal scales.—The owner or operator of every mine shall provide adequate and accurate scales for weighing coal. [Id.]

Art. 1605. [1604] Check weighman.—The employés in any mine shall have the right to employ a check weighman at their own option and their own expense. [Sec. 11, Id.]

Art. 1606. [1605] Oil used.—No miner or other person employed in a mine shall use any kind of oil other than a good quality of lard oil for lighting purposes, except when repairing downcast or upcast shafts. [Sec. 12, Id.]

Art. 1607. [1606] Penalty.—Any person who shall wilfully violate any provision of the twelve preceding articles shall be fined not exceeding five hundred dollars, or imprisoned in jail not exceeding six months. [Sec. 13, Id.]

Art. 1608. Insulating live wires.—In all mines where electricity is or hereafter shall be used as a part of the system, power or means of mining and procuring the coal or other mineral from any of said mines, the owners or operators of every such mine shall cause all wires conducting electricity in and about said mine to be carefully and thoroughly insulated or protected in a safe manner, so that the person or animals coming in contact therewith shall not be injured thereby; all wires as aforesaid shall either be thoroughly insulated or placed where persons employed in and about the mines cannot come in contact therewith, or shall be covered, protected or shielded in a safe manner, so as to prevent any injuries or accidents therefrom to those in or about the mines. It shall not be necessary to insulate or cover trolley wires, but they shall all be hung and kept not less than five feet and six inches above the rail, and shall be securely fastened, and not permitted to sag less than said height, where there is sufficient height in existing entries to permit this. But where sufficient height is not available in existing entries, then the trolley wires shall be placed to one side of the entry, six inches outside the rail; and in all such cases the trolley wire shall be placed on the side of the entry opposite from the working rooms, except where there are rooms on both sides of the entry, in which event, the trolley wires may be placed over the opening of said rooms, said trolley wires to be safely shielded. Where it is impracticable in existing entries to place trolley wires six inches outside of the rail, or five feet six inches high, and where separate travel way is not provided, then the trolley wire shall be safely shielded. This article shall not apply to entries that are not used as travel ways for workmen or work animals, nor to mines in operation on January 1, 1902, and prior thereto, and which have developed until there is at least two thousand feet distance from the shaft to the face of the coal being operated, except as to extensions of trolley wires made in such mines. Any person who shall violate any provision of this article shall be fined not exceeding five hundred dollars, or imprisoned in jail not exceeding six months. [Act March 23, 1911, Acts 1911, p. 197.]

Art. 1609. Map of mine.—Any operator of a coal mine in this State who shall fail to make a map of the underground workings of any such mine in his charge in the manner and at the times required by the laws of this State governing such mines, or who shall fail to keep the original of such map on file at his office at or near such mine, shall be fined not less than twenty-five nor more than fifty dollars for each offense. [Id.]

Art. 1610. Animals in mines.—Any person owning, operating or managing any mine who shall permit any work animal under his control to remain in any mine longer than ten consecutive hours, or who shall feed or permit to be fed any work animal in said mine, or who shall store or keep any feed for such animals in said mine, shall be imprisoned in jail for not less than one month nor more than one year. [Acts 1911, p. 205.]

Art. 1611. Exceptions.—The preceding article shall not apply when the stables in which work animals are kept are equipped with fireproof doors at each opening, with door-frames of concrete, stone or brick, laid in mortar, which door is kept closed during working hours, and where not more than twenty-four hours' supply of grass, cane, hay or other like inflammable feed, except corn, corn chops, bran and shelled oats, is taken down in any mine in any one day, and where no such feed except corn, corn chops, bran and shelled oats is taken down in the mine until after the regular day shift is out of the mine, and where no open light is taken into any underground stable in any mine. [Id.]

Art. 1612. Bath facilities.—The operator, owner, lessee or superintendent of any coal mine employing ten or more men shall provide a suitable building convenient to the principal entrance of such mine, for the use of persons employed in and about said mine, for the purpose of washing themselves and changing their clothing when entering or leaving the mine. Such building shall be provided with proper light and heat, with a supply of hot and cold water and shower baths, and with properly constructed individual lockers for the use of such employés. The baths and lockers for negroes shall be separate from those for whites, but may be in the same building. Any operator, owner, lessee or superintendent of any coal mine violating any provision of this article shall be fined not less than twenty-five nor more than two hundred dollars, or be imprisoned in jail for not more than sixty days, or both. Every two weeks of such violation shall be a separate offense. [Acts 1915, p. 100.]

CHAPTER NINE

BLACKLISTING

Art.
1613. Discrimination against persons seeking employment.
1614. Penalty.
1615. What is prima facie proof.
1616. "Blacklisting" defined.
1617. Blacklisting prohibited.
1618. Penalty.
1619. Exceptions.
1620. Servants or employés not to be coerced.
1621. Witness must testify.

Article 1613. [1190] Discrimination against persons seeking employment.—The following shall constitute discrimination against persons seeking employment: Where any corporation, or receiver of same, doing business in this State, or any officer or agent of such corporation or receiver shall discriminate against any person seeking employment on account of his having participated in a strike. [Acts 1909, p. 160, Acts 1907, p. 143.]

Art. 1614. [1191] Penalty.—Every person violating any provision of the preceding article shall be imprisoned in jail for not less than one month nor more than one year. [Id.]

Art. 1615. [1192] What is prima facie proof.—Evidence that any person has acted as the agent of a corporation in the transaction of its business in this State shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation. [Id.]

Art. 1616. [1193] "Blacklisting" defined.—He is guilty of "blacklisting" who places, or causes to be placed, the name of any discharged employé, or any employé who has voluntarily left the service of any individual, firm, company or corporation on any book or list, or publishes it in any newspaper, periodical, letter or circular, with the intent to prevent said employés from securing employment of any kind with any other person, firm, company or corporation, either in a public or private capacity. [Act 1901, p. 264.]

Art. 1617. [1194] Blacklisting prohibited.—No corporation, company or individual shall blacklist or publish, or cause to be blacklisted or published, any employé, mechanic, or laborer discharged by such corporation, company, or individual, with the intent and for the purpose of preventing such employé, mechanic, or laborer discharged by such corporation, company, or individual, from engaging in or securing similar or other employment from any other corporation, company or individual. [Id.]

Art. 1618. [1195] Penalty.—If any officer or agent of any corporation, company or individual, or other person shall blacklist or publish, or cause to be blacklisted or published, any employé, mechanic or laborer, discharged by such corporation, company or individual, with the intent and for the purpose of preventing such employé, mechanic or laborer from engaging in or securing similar or other employment from any other corporation, company or individual, or shall in any manner conspire or contrive by correspondence or otherwise, to prevent such discharged employé from procuring employment, as provided in the two preceding articles he shall be fined not less than fifty nor more than two hundred and fifty dollars, or be imprisoned in jail not less than thirty nor more than ninety days, or both. [Id.]

Art. 1619. [1196] Exceptions.—This law shall not be held to prohibit any corporation, company or individual from giving, on application from such discharged employé, or any corporation, company or individual who may desire to employ such discharged employé, a written truthful statement of the reason for such discharge. Said written cause of discharge, when so made by such person, agent, company or corporation, shall never be used as the cause for an action for libel either civil or criminal, against the person, agent, company or corporation so furnishing same. [Id.]

Art. 1620. [1197] Servants or employés not to be coerced.—No person, corporation or firm, or any agent, manager or board of managers, or servants of any corporation or firm shall coerce or require any servant or employé to deal with or purchase any article of food, clothing or merchandise of any kind whatever from any person, association, corporation or company, or at any place or store whatever. No such person, or agent, manager, or board of managers, or servants shall exclude from work, or punish or blacklist any of said employés for failure to deal with any such person or any firm, company or corporation, or for failure to purchase any article of food, clothing or merchandise at any store or any place whatever. Any person violating any provision of this article shall be fined not less than fifty nor more than two hundred dollars. [Acts 1903, p. 89.]

Art. 1621. [1199] Witness must testify.—No witness shall refuse to testify as to any violation of this chapter on the ground that his testimony may incriminate him, but any witness so examined shall not be liable to prosecution for any violation of any provision of this chapter about which he may testify fully and without reserve. [Acts 1907, p. 143.]

TITLE 19

MISCELLANEOUS OFFENSES

Chap.

1. Conspiracy.
2. Public Gas Utility.
3. Trusts and Conspiracies Against Trade.
4. Amusements—Public Houses of.
5. Railroad Consolidation.
6. Free Passes, Transportation and Franks.
6a. Passenger Elevators.
7. Operating Railroads.
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CHAPTER ONE

CONSPIRACY

Art.

1622. Definition.
1623. When conspiracy complete.
1624. Agreement must be positive.
1625. Mere threat not sufficient.
1626. Punishment of conspiracy.
1627. Conspiracy to commit murder defined.
1628. Conspiracy to commit felony in another State.
1629. Conspiracy in another State to commit felony in this.

Article 1622. [1433–1437] Definition.—A conspiracy is an agreement entered into between two or more persons to commit a felony. [O. C. 776, Acts 2nd C. S. 1871, p. 15.]

Art. 1623. [1434] [954] [801] When conspiracy complete.—The offense of conspiracy is complete, although the parties conspiring do not proceed to effect the object for which they have so unlawfully combined. [O. C. 777, Act Oct. 26, 1871.]

Art. 1624. [1435] [955] [802] Agreement must be positive.—Before a conviction can be had for the offense of conspiracy, it must appear that there was a positive agreement to commit a felony. It will not be sufficient that such agreement was contemplated by the parties charged. [O. C. 778; Id.]

Art. 1625. [1436] [956] [803] Mere threat not sufficient.—A threat made by two or more persons acting in concert will not be sufficient to constitute conspiracy. [O. C. 779; Id.]

Art. 1626. [1438] [958] [805] Punishment for conspiracy.—Conspiracy to commit murder shall be punished by confinement in the penitentiary not less than two nor more than ten years. Conspiracy to commit any other felony shall be punished by confinement in the penitentiary not less than two nor more than five years. [O. C. 781, Act Oct. 26, 1871.]

Art. 1627. [1439] [959] [806] Conspiracy to commit murder defined.—A conspiracy to kill a human being is a conspiracy to commit murder. [O. C. 782; Id.]

Art. 1628. [1440] [960] [807] Conspiracy to commit offense in another State.—A conspiracy entered into in this State for the purpose of committing a felony in any other of the States or territories of the United States, or in any foreign territory, shall be punished in the same manner as if the conspiracy so entered into was to commit the offense in this State. [O. C. 783; Id.]

Art. 1629. [1441] [961] [808] Conspiracy in another State to commit felony in this.—A conspiracy entered into in another State or territory of the United States to commit a felony in this State, shall be punished in the same manner as if the conspiracy had been entered into in this State.

CHAPTER TWO

PUBLIC GAS UTILITY

Art.

1630. Discrimination.
1631. Violating gas utility law.

Article 1630. Discrimination.—No pipe line public utility, as such utility is defined in the laws of this State governing the production and delivery of natural gas, shall discriminate in favor of or against any person, place or corporation, either in apportioning the supply of natural gas or in its charges therefor; nor shall any such utility directly or indirectly charge, demand, collect or receive from any one a greater or less compensation for any service rendered than from another for a like and contemporaneous service; provided this shall not limit the right of the Railroad Commission to prescribe different rates and regulations for the use of natural gas for manufacturing and similar purposes or to prescribe rates and regulations for service from or to other or different places, as it may determine. [Acts 3rd C. S. 1920, p. 18.]

Art. 1631. Violating gas utility law.—Any owner, officer, director, agent or employé of any per-

son, firm or corporation owning, operating or controlling gas pipe lines of such utility mentioned in the preceding article, who shall wilfully violate any provision of the statutes of this State governing such utility, including the preceding article, shall be fined not less than fifty nor more than one thousand dollars, and may in addition thereto be imprisoned in jail not less than ten days nor more than six months. [Id.]

CHAPTER THREE

TRUSTS AND CONSPIRACIES AGAINST TRADE

Art.
1632. Defining trusts.
1633. "Monopoly."
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1635. Punishment.
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1637. Agreement to form trust, monopoly, etc.
1638. Operating in violation of this law.
1639. Persons outside State liable.
1640. Forming trusts, etc.
1641. Venue.
1642. Agricultural products and live stock exempt.
1643. Trade unions, etc.
1644. Not to apply to combination, etc.

Article 1632. [1454] Defining trusts.—A "trust" is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them for any or all of the following purposes:

1. To create, or which may tend to create or carry out, restrictions in trade or commerce or aids to commerce, or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this State.

2. To fix, maintain, increase or reduce the price of merchandise, produce, or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce, or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound, themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree, in any manner, to keep the price of such article or commodity, or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation, at a fixed or graded figure, or by which they shall, in any manner, affect or maintain the price of any commodity or article, or the cost of transportation or insurance, or the cost of the preparation of any product for market or transportation, between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance, or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity, or charge for transportation or insurance, or charge for the preparation of any product for market or transportation, whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business, or from the purchase or sale of merchandise, produce or commodities partially or entirely within this State, or any portion thereof. [Acts 1903, p. 119.]

Art. 1633. [1455] "Monopoly."—A "monopoly" is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first article of this chapter.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise. [Id.]

Art. 1634. [1456] "Conspiracy in restraint of trade."—Either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations or associations of persons, who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation or association of persons, any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons, shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons. [Id.]

Art. 1635. [1466] Punishment.—Whoever violates any provision of this chapter shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1907, p. 194.]

Art. 1636. [1468] Persons required to testify.—Upon the application of the Attorney General or of any of his assistants, or of any district or county attorney, acting under the direction of the Attorney General, made to any county judge, or any justice of the peace, in this State, stating that he has reason to believe that a witness, who is to be found in the county in which such judge or justice is an officer, knows of a violation of any provision of this chapter, it shall be the duty of such judge, or justice, before whom such application is made, to have summoned and examined such witness in relation to violations of any provision of this chapter, said witness to be summoned as in criminal cases. The said witness shall be duly sworn; and the judge or justice shall cause the statements of the witness to be reduced to writing and signed and sworn to before him; such sworn statement shall be delivered to the attorney upon whose application the witness was summoned. Should the witness so summoned fail to appear or to make statements of the facts within his knowledge under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in jail until he makes a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person who shall testify before any judge or justice as provided for in this chapter, or who shall testify as a witness for the State in the course of any statutory proceeding to secure testimony for the enforcement of this law, or in the course of any judicial proceeding to enforce the provisions of this chapter, shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he shall so give evidence, documentary or otherwise. [Acts 1907, p. 221.]

Art. 1637. [1470] Agreement to form trust, monopoly, etc.—If any person shall enter into an agreement or understanding of any character to form a trust, or to form a monopoly, or to form a conspiracy in restraint of trade, as these offenses are defined in this chapter, or shall form a trust, monopoly or conspiracy in restraint of trade, or shall be a party to the formation of a trust or monopoly or conspiracy in restraint of trade, or shall become a party to a trust or monopoly or conspiracy in restraint of trade, or shall do any act in furtherance of or aid to such trust or monopoly or conspiracy in restraint of trade, he shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1907, p. 457.]

Art. 1638. [1471] Operating in violation of this law.—If any person, shall, as a member, agent, employé, officer, director or stockholder of any business, firm, corporation or association of persons, form, in violation of the provisions of this chapter, or shall operate, in violation of such provisions, any such business, firm, corporation or association formed in violation of this chapter, or shall make any sale, or purchase, or any other contract, or do business for such business, firm, corporation or association, or shall do any other act which has the effect of violating or aiding in the violation of any provision of this chapter, or shall, with the intent or purpose of driving out competition or for the purpose of financially injuring competitors, sell within this State at less than cost of manufacture or production, or sell in such a way or give away within this State, products for the purpose of driving out competition or financially injuring competitors engaged in a similar business, or give secret rebates on such purchase for the purpose of the aforesaid, he shall be confined in the penitentiary not less than two nor more than ten years. [Id.]

Art. 1639. [1472] Persons outside State liable.—If any person, shall, outside of this State, do anything which, if done within this State, would constitute the formation of a trust or monopoly or conspiracy in the restraint of trade, as defined in this chapter, and shall cause or permit the trust or monopoly so formed by him to do business within this State, or shall cause or permit such trust, monopoly, or conspiracy in restraint of trade to have any operation or effect within this State, or, if such trust, monopoly or conspiracy in restraint of trade, having been formed outside of said State, any person shall give effect to such trust, monopoly or conspiracy in this State, or he shall do anything to help or aid it doing business in this State, or otherwise violate the anti-trust laws of this State, or if any person shall buy or sell or otherwise make contracts for or aid any business, firm, corporation or association of persons, formed or operated in violation of any provision of this chapter, or so formed or operated as would be in violation of the laws of this State, if it had been formed within this State, shall be confined in the penitentiary not less than two nor more than ten years. [Id.]

Art. 1640. [1473] Forming trusts, etc.—If any person, employé, agent, stockholder, or officer of any person, firm, association of persons, or corporation, now doing business in this State, have formed a trust, or monopoly, as defined in this chapter, or have formed a conspiracy in restraint of trade, as defined in this chapter, or shall do or perform any act of any character to carry out such trust, monopoly or conspiracy in restraint of trade, such person, employé, agent, stockholder, or officer, shall be confined in the penitentiary not less than two nor more than ten years. [Acts 1907, p. 458.]

Art. 1641. [1474] Venue.—Prosecutions under this chapter may be conducted in Travis County, or in any county wherein a trust, monopoly or conspiracy in restraint of trade is being carried on. [Acts 1907, p. 458.]

Art. 1642. [1477] Agricultural products and live stock exempt.—No provision of this law shall apply to agricultural products or live stock while in the hands of the producer or raiser. It shall be lawful for any person engaged in any kind of work or labor, manual or mental, or both, to associate with other such persons to form trades unions and other organizations for the purpose of protecting themselves in their personal work, personal labor, and personal service, in their respective pursuits and employments. [Acts 1899, p. 262.]

Art. 1643. [1478] Trade unions, etc.—It shall be lawful for any members of such trades union or other organization or association, or any other person, to induce or attempt to induce, by peaceable and lawful means, any person to accept any particular employment, or quit any particular employment in which such person may then be engaged, or to enter any pursuit, or refuse to enter any pursuit, or quit any pursuit, in which such person may then be engaged. No such member shall have the right to trespass upon the premises of another without the consent of the owner thereof. [Id.]

Art. 1644. [1479] Not to apply to combination, etc.—The foregoing article shall not be held to apply to any combination or combinations, association or associations of capital, or capital and persons, natural or artificial, formed for the purpose of limiting the production or consumption of labor's products, or for any other purpose in restraint of trade. Nothing herein contained shall be held to interfere with the terms and conditions of private contract with regard to the time of service, or other stipulations between employers and employés. Nothing herein shall be construed to repeal, affect or diminish the force and effect of any statute now existing on the subject of trusts, conspiracies against trade, pools and monopolies. [Id.]

CHAPTER FOUR

AMUSEMENTS—PUBLIC HOUSES OF

Art.
1645. "Public house of amusement."
1646. Discrimination against reputable productions.
1647. Exceptions.
1648. List of bookings.

Article 1645. [1480] "Public house of amusement."—All buildings constructed, fitted and equipped for the purpose of theaters, commonly called theaters, opera houses, play houses, or by whatever name designated, which are and shall hereafter be used for public performances, the production and exhibition of plays, dramas, operas and other shows of whatever nature to which admission fees are charged, are declared to be public houses of amusement. [Acts 1907, p. 21.]

Art. 1646. [1481] Discrimination against reputable productions.—No owner or lessee, or any manager, agent, employé or representative of the owner or lessee who may be in charge and having the care and management of any house of public amusement, shall discriminate against reputable theaters, operas, shows or other productions by whatever name known. Any owner or lessee, or any manager, agent, employé, or representative of the owner or lessee in charge of such house who shall fail and refuse to rent, lease and let such house of public amusement for one or more performances upon such terms and conditions as shall not be deemed unreasonable, extortionate or prohibitive to the agent, manager, proprietor or representative, who may in good faith make application therefor, of any reputable theater, opera or show, by whatever name known, shall be fined not less than one hundred nor more than five hundred dollars, one-half of which fine shall be paid to the complainant, the balance to go to the jury fund of the county in which such prosecution is had; and in addition, such person so convicted may be committed to the county jail for not more than ten days. Each violation of any provision of this article is a separate offense. [Acts 1907, p. 21.]

Art. 1647. [1481] Exceptions.—If at the time of the application to lease or rent such house of public amusement for said purposes, it shall be shown by the owner, lessee or other person in charge thereof that said house of public amusement has in good faith

been already leased, let or rented to other persons or parties, and that other bookings have in good faith been made for the date or dates so applied for, and not with the intention of evading the provisions of this chapter, then the penalties provided by the preceding article shall not be imposed. [Id.]

Art. 1648. [1482] List of bookings.—Owners, lessees, managers or other persons in charge of such houses of public amusement shall make and keep in convenient form a list of all bookings of shows for such houses, with the dates specifically set out therein, and said list of bookings shall be exhibited upon request, to all persons applying therefor who in good faith desire to lease or rent such house or houses for the purposes indicated in the first article of this chapter. Each owner, lessee or other person in charge of such house who shall fail or refuse to keep and exhibit such list of bookings as required herein, shall be fined not less than ten nor more than twenty dollars. Each such failure or refusal is a separate offense. [Id.]

CHAPTER FIVE

RAILROAD CONSOLIDATION

Art.
1649. Consolidation of railroad corporations.
1650. Exceptions.

Article 1649. [646–7–8–9] Consolidation of railroad corporations.—Railroad corporation, or other corporation, as used in this article shall mean any corporation, company, person or association of persons, who own or control, manage or operate any line of railroad in this State. No railroad corporation, or other corporation, or the lessee, purchasers or managers of any railroad corporation shall consolidate the stocks, property, works or franchises of such corporation with, or lease or purchase the stocks, property, works or franchises of any railroad corporation owning or having under its control or management a competing or parallel line; nor shall any officer, agent, manager, lessee or purchaser of such railroad corporation act or become an officer, agent, manager, lessee or purchaser of any other corporation in leasing or purchasing any parallel or competing line. Any officer, director, manager, superintendent, agent, purchaser or lessee of any such railroad corporation, or other corporation, who violates or aids in violating any provision of this article shall be fined not less than one thousand dollars nor more than four thousand dollars. Indictments and prosecutions under this article may be found and made in any county through or into which the line of railroad may run. [Acts 1887, p. 137.]

Art. 1650. [647] Exceptions.—The preceding article shall not apply to one who has not by virtue of his office, agency, or position, a voice in the management of the railway company, or who has not, by virtue of his office, agency or position, some power to prevent a violation of such law. [Id.]

CHAPTER SIX

FREE PASSES, TRANSPORTATION AND FRANKS

Art.
1651. Free pass law.
1652. Exceptions.
1653. Using another's pass.
1654. Discrimination by device.
1655. Unlawfully using free pass.
1656. Evading law.
1657. May be compelled to testify.
1658. Reduced rate for officers.

SEPARATE COACH LAW

1659. Separate coaches.
1660. Exceptions.
1661. Preference in transportation.

Article 1651. [1532] Free pass law.—Any president, director, officer, employé or agent of any steam or electric railway company, street railway company, interurban railway company, or other chartered transportation company, express company, sleeping car company, telegraph or telephone company, who shall sell any transportation for anything except money or knowingly give, grant, issue, or cause to be issued, a free pass, a frank, a privilege, or any substitute for, or in lieu thereof, for the transportation of any person, article or thing, or the sending or transmitting any messages over wire or other means of transmitting messages in this State, shall be fined not less than five hundred nor more than two thousand dollars, and may, in addition thereto, in the discretion of the jury, be confined in the penitentiary not less than six months nor more than two years. [Acts 1907, p. 93.]

Art. 1652. [1533] Exceptions.—The preceding article shall not apply in cases where the laws of this State provide that such companies as are referred to in said article, or the receivers or lessees thereof, or persons operating the same, or the officers, agents or employés thereof, may grant free passes, franks, privileges, or substitutes for pay to or for the persons, articles or things referred to and mentioned in said laws and said article.

Art. 1653. [1534] Using another's pass.—If any person shall present, or offer to use, in his own behalf, any permit or frank whatever, to travel, pass or to convey any person or property or message which has been issued to any other person, or shall, knowing that he is not entitled under the law, apply to any railway, express, telegraph or telephone company, officer, agent, lessee or receiver thereof, for any free pass, frank, privilege or a substitute for pay given or to be used instead of the regular fare or rate for transportation, or for any other consideration, except money, he shall be confined in jail not less than thirty days and not more than twelve months, and be fined not less than one hundred nor more than one thousand dollars. [Acts 1907, p. 95.]

Art. 1654. [1535] Discrimination by device.—No steam or electric railway company, street railway company, interurban railway company, or other chartered transportation company, express company, sleeping car company, telegraph or telephone company, shall directly or indirectly, by any special rate, rebate, draw-back, or other device or exchange, demand, charge or collect or receive from any person, firm, association of persons or corporation a greater or less or different compensation for any service rendered, or to be rendered, in the transportation of passengers, property or messages, than it charges, demands, collects or receives from any other person, firm, association of persons or corporation for doing for him, them or it, a like service, if the transportation or transmission is a like kind of traffic or service under substantially similar circumstances and conditions. [Acts 1907, p. 96.]

Art. 1655. [1537] Unlawfully using free pass.—Any person, other than the persons excepted by law, who uses such free ticket, free pass or free transportation, frank or privilege over any railway or other transportation line or sleeping or express car, telegraph or telephone line mentioned in the preceding articles of this chapter, for any distance under the control and operation of either of said companies or under their authority, or shall knowingly or wilfully by any means or device whatsoever obtain, use or enjoy from any such company a less fare or rate than is charged, demanded, collected or received by any such company from any other person, firm, association of persons or corporations for doing for him, them or it, a like service, if the transportation or service is of a like kind of traffic or service under substantially similar circumstances and conditions, such person or such officer or agent who acts for such corporation or company thus favored, shall be fined not less than one hundred nor more than one thousand dollars. [Id.]

Art. 1656. [1538] Evading law.—Any director, officer, agent or any receiver, trustee, lessee or person acting for, or employed by, any company subject to the provisions of the preceding articles of this chapter, who alone, or with any other corporation,

company, persons or party, shall wilfully do, or cause to be done, or shall wilfully suffer, or permit to be done, any act, matter or thing in said articles prohibited, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this Act required to be done, or shall cause or wilfully suffer or permit any act, matter or thing so directed, required by said articles to be done, not to be done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of said articles, or shall aid or abet therein, shall be fined not less than one hundred nor more than one thousand dollars; and, if the offense for which any person shall be convicted under this article shall be unlawful discrimination in rates, fares or charges for the transportation of passengers or property, or the transmission of messages, such person may, in addition to the fines hereinbefore provided for, at the discretion of the jury, be imprisoned in the penitentiary for not less than six months nor more than two years. [Id.]

Art. 1657. [1539] May be compelled to testify.—In any investigation or prosecution under any provision of this chapter, the court or tribunal in which the same is pending may compel any person to attend and give testimony, and to produce such papers, books and documents as may be desired by the State. No person shall be exempt from giving testimony therein, but no criminal action or proceeding shall be brought or prosecuted against such witness on account of any testimony so given or furnished by him. [Act 1907, p. 97.]

Art. 1658. Reduced rate for officers.—Any steam railroad company or any electric interurban railroad company or any person or persons operating the same, or any receiver or receivers, or lessee or lessees thereof, shall be permitted to transport between points wholly within this State at the reduced rate of one cent per mile, while traveling on official business connected with their respective offices, the following named peace officers, to-wit: the Adjutant General; State Rangers; the sheriff of any county, his deputies to be designated by him; constables; chiefs of police and assistant chiefs and captains; city marshals, chief of the detectives of any county or city, and assistant detectives. Any such peace officer who shall procure transportation over any such railroad between points in this State under the provisions of this article and shall use the same for any other than official business connected with the duties of his office, or any person not entitled to the benefits of this law who shall falsely represent himself as entitled to such privileges and shall purchase or offer to purchase transportation over any such railroad company at the rate provided for herein, shall be fined not less than one hundred nor more than five hundred dollars, or be imprisoned in jail not exceeding six months, or both. [Acts 1921, p. 171.]

SEPARATE COACH LAW

Art. 1659. [1523] [1010] Separate coaches.—1. Every railway company, street car company and interurban railway company, lessee, manager, or receiver thereof doing business in this State as a common carrier of passengers for hire shall provide separate coaches or compartments for the accommodation of white and negro passengers.

2. "Negro" defined.—The term negro as used herein includes every person of African descent as defined by the Statutes of this State.

3. "Separate coach" defined.—Each compartment of a railroad coach divided by good and substantial wooden partitions with a door therein shall be deemed a separate coach within the meaning of this law, and each separate coach shall bear in some conspicuous place appropriate words in plain letters indicating the race for which it is set apart; and each compartment of a street car or interurban car divided by board or marker placed in a conspicuous place, bearing appropriate words in plain letters indicating the race for which it is set apart, shall be sufficient as a separate compartment within the meaning of this law.

4. Violating separate coach law.—If any passenger upon a train or street car or interurban car provided with separate coaches or compartments as above provided shall ride in any coach or compartment not designated for his race after having been forbidden to do so by the conductor in charge of the train, he shall be fined not less than five nor more than twenty-five dollars.

5. Duty of conductor.—Conductors of passenger trains, street cars, or interurban lines provided with separate coaches shall have the authority to refuse any passenger admittance to any coach or compartment in which they are not entitled to ride under the provisions of this law, and the conductor in charge of the train or street car or interurban car shall have authority, and it shall be his duty, to remove from a coach or street car, or interurban car, any passenger not entitled to ride therein under the provisions of this law, and upon his refusal to do so knowingly he shall be fined not less than five nor more than twenty-five dollars.

6. Fines to go to School Fund.—All fines collected under the provisions of this law shall go to the available common school fund of the county in which conviction is had. Prosecutions under this law may be instituted in any county through or into which said railroad may be run or have an office.

Art. 1660. Exceptions.—The preceding article shall not apply to any excursion train or street car or interurban car as such for the benefit of either race, nor to such freight trains as carry passengers in cabooses, nor be so construed as to prevent railroad companies from hauling sleeping cars, dining or cafe cars or chair cars attached to their trains to be used exclusively by either race, separately but not jointly, or to prevent nurses from traveling in any coach or compartment with their employer, or employés upon the train or cars in the discharge of their duty.

Art. 1661. Preference in transportation.—By the word "preference" as used in this article is meant any advantage, privilege, right, opportunity, precedence, choice, favor, priority, or gain that is or may be, or is sought or purposed to be accorded, granted, given, allowed, permitted or extended to any person, place, or thing, as against any other person, place, or thing in the receipt, carriage, transportation, movement, placing, storing, handling, caring for or delivery of any freight, commodity or article, or any railroad car or by any common carrier in this State, or any agent or employé thereof. Any person who shall ask, solicit, demand, or receive, directly or indirectly, from any person, corporate or otherwise, any money, reward, favor, benefit, or other thing of value, or the promise of either, as a consideration for procuring or effecting, or with the intent of the person asking, soliciting, demanding, charging or receiving the same, or the promise thereof, that such person can or will, seek or undertake to procure or effect any preference in the receipt, carriage, transportation, storing, movement, placing, handling, caring for, or delivery of any freight, commodity or article, or any railroad car by any common carrier in this State or any agent or employé thereof, shall be fined not less than one hundred nor more than one thousand dollars and be imprisoned in jail not less than thirty days nor more than six months. [Acts 1921, p. 34.]

CHAPTER SIX A

PASSENGER ELEVATORS

Art. 1661a. Safety devices.—Any person, or the members of any partnership, owning, leasing or in charge or control of any building or edifice operating passenger elevators, and the board of directors, president, general manager, or other agent or employé of any corporation, or any trustee or receiver of such corporation, which is the owner, lessee, or in charge of any such building or edifice operating passenger

elevators therein, who shall violate the provisions of this Act shall each be guilty of a misdemeanor, and upon conviction shall be fined not less than five ($5) dollars nor more than twenty-five ($25), and each day such elevator is operated without such device shall constitute a separate offense. [Acts 1925, 39th Leg., ch. 29, p. 147, § 3.]

CHAPTER SEVEN

OPERATING RAILROADS

Art.
1662. Station to bear name of post office.
1663. Exceptions.
1664. To do repair work in Texas.
1665. Exceptions.
1666. Air brake inspection.
1667. Exceptions to brake inspection.
1668. Using tracks to repair cars.
1669. Duty of train dispatcher.
1670. Failing to bulletin passenger train.
1671. Animal found dead along railroad.
1672. Failure to ring bell and blow whistle.
1673. Unlawfully boarding a train.

Article 1662. [1567] Station to bear name of post office.—Any officer, agent or representative of any corporation or receiver operating any line of railroad in whole or in part within this State who shall retain, maintain or establish a name for any railway station or depot in any incorporated or unincorporated town or city within this State other than the name of the town or city which has and bears the name of its post office so given by the United States Government shall be fined not less than two hundred nor more than five hundred dollars, or be imprisoned in jail not less than thirty nor more than ninety days, or both. The venue shall be in the county where the station in question is located. [Acts 1909, p. 89.]

Art. 1663. [1568] Exceptions.—The preceding article shall not apply to two or more incorporated or unincorporated towns or cities which now are situated within five miles of each other, and which each have therein established a post office named and designated by the United States Government, nor to those cases where the post office name is so similar in sound or otherwise to that of some other station upon such railroad as that confusion in train orders and directions may arise therefrom. Where the name of such place is changed by the Federal postal department such railway shall not be required to again change the name of its station. [Id.]

Art. 1664. [1561–1562–1564] To do repair work in Texas.—All railroad corporations operating in, and having their repair shops within this State, are required to repair, renovate or rebuild in this State all defective or broken cars, coaches, locomotives or other equipment, owned or leased by said corporation in this State, when such rolling stock is within the State, and shall be prohibited from sending or removing any such rolling stock out of this State to be repaired, renovated or rebuilt, when the same is in a defective or broken condition, and within this State, when such railway shall have, or be under obligation to have proper facilities in this State to do such work. Any lessee, receiver, superintendent or agent of such railway corporation who violates any provision of this article shall be fined not less than one hundred nor more than five hundred dollars. [Acts 1909, p. 73.]

Art. 1665. [1563] Exceptions.—The preceding article does not apply to companies having less than sixty continuous miles of railroad in operation in this State, nor in case of strike, fire or other unforeseen casualties and emergencies; and is not to be construed to require a violation of the Federal safety appliance law; and no railway shall be required to haul such disabled equipment a greater distance for repairs at a point within this State than would be necessary to reach their repair shops in another State. [Id.]

Art. 1666. Air brake inspection.—The air brakes and air brake attachments on each train in this State must be inspected by a competent inspector before such train leaves its division terminal. Whoever operates or causes to be operated any such train without such inspection shall be fined not less than fifty nor more than one hundred dollars. [Acts 1911, p. 106.]

Art. 1667. Exceptions to brake inspection.—The preceding article shall not apply to tram roads engaged in hauling logs to a sawmill, nor to railroads under forty miles in length. [Id.]

Art. 1668. Using tracks to repair cars.—No person, firm, corporation or receiver operating any railroad, machine shop or other concern engaged in repairing or manufacturing cars within this State, shall use any tracks not equipped with derailing devices upon which to repair or manufacture cars; such derailing devices to be provided with private locks, to be kept locked at all times when tracks are in use. Nothing herein shall be construed to prohibit temporary repairs to cars on tracks other than where cars are regularly repaired or manufactured. Any person operating any railroad, machine shop or other concern engaged in the repairing or manufacture of cars in this State who shall violate this law shall be fined not less than fifty nor more than two hundred dollars. Each day such violation shall exist shall be a separate offense. [Acts 1913, p. 334.]

Art. 1669. Duty of train dispatcher.—The train dispatcher shall keep all agents at stations having telegraph offices in or near them informed of the movement of each passenger train one hour prior to the time such train is due, according to the published schedule, at such stations. If any such passenger train is delayed for more than one hour, according to said published schedule, then it shall be the duty of such train dispatcher to inform such local agent how late said train is and the last telegraph station passed. If such train dispatcher shall fail or refuse to furnish such information, he shall be fined not less than fifty nor more than two hundred dollars for each offense. [Acts 1st C. S. 1903, p. 21; Acts 1913, p. 318.]

Art. 1670. Failing to bulletin passenger train.—Every railroad agent at stations having telegraphic communication with the train dispatcher of the railroad, shall ascertain one hour before the schedule time of the arrival of passenger trains, if such train is on time, and if on time, bulletin that fact on a board provided by the company and placed in some conspicuous place at the passenger station. If the train is late, such agent shall bulletin how late, and the last telegraph station passed by such train. If later than one hour, said agent shall thereafter ascertain the latest news from such train dispatcher, or some other reliable source, every hour, and bulletin such information and the time of the probable arrival of such train. If such agent shall fail or refuse to perform any duty required of him by this article, he shall be fined not less than fifty nor more than one hundred dollars for each offense. [Acts 1903, p. 162; Acts 1913, p. 350.]

Art. 1671. Animal found dead along railroad.—Whenever any animal is killed or found dead upon the roadbed or right of way of any railroad company in this State, the section foreman of the railroad where said animal is killed or found dead, shall take and make a description of such animal, stating its kind, the marks and brands, color and apparent age, and any other description that may serve to identify said animal, which description must be taken and made before said animal be buried or otherwise disposed of, and shall transmit same to the County Clerk of the county in which said animal is found or killed, within ten days from the date of finding or killing, which description shall be by said County Clerk filed and kept of record in his office without exacting any fees from the section foreman for filing same, and any person violating any of these provisions shall be fined not less than five nor more than twenty-five dollars. [Acts 1915, p. 126.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 1672. [1524] Failure to ring bell and blow whistle.—Any engineer having charge of a locomotive engine while such engine is approaching a place where two lines of railway cross each other who shall before reaching such railway crossing fail to bring such engine to a full stop, or who shall fail to blow the whistle and ring the bell on such engine at the distance of at least eighty rods from the place where the railroad shall cross any public road or street, or who shall fail to keep said bell ringing until such engine shall have crossed said road or street or stopped, shall be fined not less than five nor more than one hundred dollars, provided that the full stop at such crossings may be discontinued when the railroads crossing each other shall put into full operation at such crossing an interlocking switch and signal apparatus, and shall keep a flagman in attendance at such crossings. [Acts 1893, p. 87.]

Art. 1673. [1531] [1010h] Unlawfully boarding a train.—Whoever boards any passenger, freight or other railway train, whether moving or standing, for any purpose without in good faith, intending to become a passenger thereon and with no lawful business thereon, and with intent to obtain a free ride on such train, however short the distance, without the consent of the person or persons in charge thereof, shall be fined not less than five nor more than one hundred dollars. [Acts 1895, p. 178.]

CHAPTER EIGHT

BILLS OF LADING

Art.

1674. Common carriers to issue bills of lading.
1675. What bills of lading may contain.
1676. "Straight" and "order" bills of lading.
1677. Authority of agents of carriers to be posted.
1678. Failure or refusal to issue bill of lading.
1679. Issuing fraudulent bill of lading.
1680. Forgery or uttering forgery of bill of lading.
1681. Duplication of bill of lading.
1682. Transfer of bill of lading.
1683. Procuring false bill of lading.

Article 1674. [1540] Common carriers to issue bills of lading.—All railroad companies, steamship companies and other common carriers, or receivers thereof, except express companies and pipe line companies, upon the receipt of freight for transportation shall issue bills of lading therefor, and authenticate, validate or certify such bills of lading, when the same shall be demanded by the shipper, in accordance with the provisions of this chapter. [Acts S. S. 1910, p. 138.]

Art. 1675. [1541] What bills of lading may contain.—Each bill of lading issued by a common carrier, to which the provisions of this chapter apply, for an intrastate shipment, shall contain, and each bill of lading issued by such carrier for interstate or foreign shipment may contain, within the written or printed terms, in addition to the other requirements of this chapter, the following:

1. The date of its issuance;
2. The name of the person from whom the goods have been received;
3. The place where the goods have been received;
4. The place to which the goods are to be transported;
5. A statement of whether the goods will be delivered to a specific person or to the order of a specific person;
6. A description of the goods, or the packages containing them, which may, however, be in the terms such as may be approved by the Railroad Commission:
7. The signature of the carrier, or the duly authorized agent of the carrier; said bill of lading shall be so signed with pen and ink, and the person signing the same shall attach his signature below all written, printed or stamped matter contained in said bill of lading, except the words, "Authorized agent of ———" (stating the name of his principal), which shall appear below his signature;
8. The carrier may insert in a bill of lading issued by him any other terms and conditions, provided such terms and conditions shall not be contrary to law or public policy or the orders promulgated by the Railroad Commission; and provided further, that no language shall be inserted in any bill having the effect of limiting or avoiding any of the provisions of this chapter;
9. Provided, that when any form of bill of lading has been approved by the Interstate Commerce Commission, and has been adopted by any carrier and made a part of its tariff, then such bill of lading, as to interstate and foreign shipments, shall be a sufficient compliance with the provisions of this article. [Id.]

Art. 1676. [1542] "Straight" and "order" bills of lading.—A bill of lading in which it is stated that the goods are consigned or destined to a specific person is a "straight" bill of lading, and a bill of lading in which it is stated that the goods are consigned to the order of any person named in such bill of lading is an "order" bill of lading. Order bills of lading shall not be issued in sets or in duplicate, but copies thereof may be issued; provided such copies have written or printed across the face thereof: "Copy —Not Negotiable." [Id.]

Art. 1677. [1544] Authority of agents of carriers to be posted.—The carriers affected by this chapter shall keep posted for public inspection in some conspicuous place in the station or place where freight is received an instrument of writing, authorizing the agent of such carrier, or person authorized to act for such carrier, selected for such purpose, to execute, sign and issue bills of lading; and the agent, or person so authorized to act for said carrier, so selected, shall attach his signature to such instrument in the same manner that he signs bills of lading. [Id.]

Art. 1678. [1545] Failure or refusal to issue bill of lading.—Any officer, agent or servant of any carrier, railroad or transportation company, or receiver thereof, affected by this chapter, who shall fail or refuse to issue a bill of lading in accordance with this chapter and the regulations and orders of the Railroad Commission, when the same is rightfully demanded, shall be fined not exceeding two hundred dollars or be imprisoned in jail not exceeding six months or both. [Id.]

Art. 1679. [1546] Issuing fraudulent bill of lading.—Any officer, agent, or servant of a carrier, railroad or other transportation company, or receiver thereof, affected by this chapter, who shall wrongfully issue a bill of lading, with the intent to defraud any person, or who shall, with intent to defraud, knowingly misdescribe any goods, articles or other property, or the quantity or amount thereof, described in any bill of lading, or who shall knowingly issue a bill of lading without authority so to do, with the intent to defraud any person, shall be confined in the penitentiary not less than two and not exceeding ten years. [Id.]

Art. 1680. [1547] Forgery or uttering forgery of bill of lading.—Whoever shall forge the name of any agent of a railroad company, or other common carrier, to a bill of lading, with the intent to defraud, or who shall forge the name of any person to any certificate attached to a bill of lading issued by such carrier, with the intent to defraud, or who shall knowingly utter or attempt to utter any such forged instrument with intent to defraud, shall be confined in the penitentiary not less than five nor more than fifteen years. [Id.]

Art. 1681. [1548] Duplication of bill of lading.—Any officer, agent or servant of a common carrier who knowingly issues, or aids in issuing, or knowingly permits to be issued in parts or sets, or in duplicate, an order bill of lading, shall be fined not exceeding five thousand dollars, and be confined in the penitentiary not exceeding five years. [Id.]

Art. 1682. [1549] Transfer of bill of lading.—Whoever knowingly, and with the intent to defraud, negotiates or transfers a bill of lading issued

in violation of the provisions of this chapter, or who knowingly and with the intent to defraud, negotiates or transfers a bill of lading which contains any statement of fact that is untrue, and which statement relates to a material matter, shall be fined not exceeding five thousand dollars and be imprisoned in the penitentiary not exceeding ten years. [Id.]

Art. 1683. [1550] Procuring false bill of lading.—Whoever shall knowingly and fraudulently procure and cause the agent of any common carrier to make and set forth in any bill of lading issued by him on behalf of such carrier any statements or representations which are false and which materially misrepresent the number, amount or quantity of the goods, chattels or other articles therein described, or who shall procure or cause any agent of a common carrier to issue to him a bill of lading with the intent to defraud, shall be confined in the penitentiary not less than two or more than five years. [Id.]

CHAPTER NINE

RAILROAD COMMISSION

Art.
1684. Refusal to permit inspection.
1685. Refusal to answer.
1686. False billing or classification.
1687. "Unjust discrimination."
1688. Not applicable, when.
1689. Persons compelled to testify.
1690. False statement to secure bond registration.
1690a. Violation of orders.

Article 1684. [1514] [1007] Refusal to permit inspection.—Any officer, agent or employé of any railroad company who shall, upon proper demand, fail or refuse to exhibit to any member of the Railroad Commission of Texas or any person authorized to investigate the same, any book or paper of such railroad company, which is in the possession or under the control of such officer, agent, or employé, shall be fined not less than one hundred and twenty-five dollars nor more than five hundred dollars. [Acts 1891, p. 60.]

Art. 1685. [1515] [1008] Refusal to answer.—If any officer or employé of a railroad company shall fail or refuse to fill out and return any blanks to said Railroad Commission as provided by law, or fail or refuse to answer any question therein propounded, or give a false answer to any such question, where the fact inquired of is within his knowledge, or shall evade the answer to any such question, such person shall be fined five hundred dollars for each day he shall fail to perform such duty, after the expiration of the time allowed by law to so answer. [Id.]

Art. 1686. [1516] [1009] False billing or classification.—Any officer or agent of any railroad subject to the jurisdiction of the Railroad Commission, who by means of false billing, false classification, false weight, or by any other device, shall suffer or permit any persons to obtain transportation for property at less than the regular rates then in force on such railroad, or who by means of false billing, false classification, false weighing, or by any device whatever shall charge any person, firm or corporation more for the transportation of property than the regular rates, shall be fined not less than one hundred nor more than one thousand dollars. [Id.]

Art. 1687. [1517] "Unjust discrimination."—If any officer, agent, clerk, servant or employé, or any receiver, or his servant, agent or employé, of any railroad company in this State shall, directly or indirectly, or by any special rate, rebate, drawback, or other device, for, and on behalf of such railroad company, knowingly charge, demand, contract for, collect or receive from any person, firm or corporation a greater or less compensation for any service rendered, or to be rendered, by any such railroad company than such railroad company, or its said officers, agents, clerks, servants or employés, or receiver thereof, charges, demands, contracts for, collects or receives from any other person, firm or corporation for doing a like and contemporaneous service, or if any officer, agent, clerk, servant or employé, or receiver, or his agents, servants or employés, of any railroad company in this State, shall, on behalf of such railroad company, make or give any undue or unreasonable preference or any advantage to any particular person, company, firm, corporation or locality, as to any service rendered or to be rendered by such railroad company, or shall subject any particular description of traffic on such railroad company to any undue or unreasonable prejudice, delay or disadvantage in any respect whatever, such officer, clerk, servant or employé, or receiver, his agents, servants or employés, of such railroad company, shall be confined in the penitentiary not less than two nor more than five years. [Acts 1899, p. 203.]

Art. 1688. [1518] Not applicable, when.—Nothing herein shall prevent the carriage, storing or handling, by railroad companies in this State, or by their agents, officers, clerks, servants and employés, of freight free or at reduced rates, or to prevent railroads, their agents, employés and officers, from giving free transportation or freight rates to any railroad officers, agents, employés, attorneys, stockholders or directors, or to any other officer or person, when permitted by the laws of this State. [Id.]

Art. 1689. [1519] Persons compelled to testify.—Any court, officer or tribunal having jurisdiction of any offense mentioned in article 1687, or any district or county attorney may subpœna persons and compel their attendance as witnesses to testify as to any violation of said article; and any person so summoned and examined shall not be liable to prosecution for any offense by reason of violation of said article about which he may testify; and for any offense by reason of violation of said article, a conviction may be had upon the unsupported evidence of an accomplice or participant. [Id.]

Art. 1690. [1521] False statement to secure bond registration.—Each railroad director, president, secretary or other official who shall knowingly make any false statement upon which to secure the registration of any bond or other evidence of debt, as required by the law regulating the issuance of stocks and bonds, or who shall by false statement knowingly made procure of the Railroad Commission direction to the Secretary of State to register the same, and which shall be by the Secretary of State registered, or shall with knowledge of such fraud negotiate or cause to be negotiated any such bond or other security issued in violation of law, shall be confined in the penitentiary not less than two nor more than fifteen years. [Acts 1893, p. 59.]

Art. 1690a. Violation of orders.—Every officer, agent, or employee of any corporation and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provision of this Act or fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or requirement of the Commission shall be guilty of a misdemeanor and upon conviction thereof shall be punished by fine not exceeding Five Hundred ($500.00) Dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. Each day any provision of this Act or any rule, regulation, order, etc., of the Commission is violated shall constitute a separate offense, and the fact that the Commission may have caused prosecution for violation of its rules, regulations, etc., under the penal section of this Act shall not operate to prevent or limit the exercise of the authority of the Commission to suspend, revoke, alter or amend permits or certificates as provided in Section 10 of this Act. [Acts 1927, 40th Leg., p. 399, ch. 270, § 14.]

Sections 1–13 and 15–19 of Acts 1927, 40th Leg., p. 399, ch. 270, are published as article 911a of the Civil Statutes. Section 20 repeals all conflicting laws and parts of laws, and section 21 provides that if any provision is held invalid such holding shall not affect the remaining provisions.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

CHAPTER TEN

NURSERY STOCK

Art.
1691. Diseased nursery stock.
1692. Examination.
1693. Shipment.
1694. Carrier not to receive, when.
1695. Hindering Commissioner.
1696. False representations.
1697. Giving false certificate.
1698. Definitions.
1699. Unlawful delivery.
1700. Fraud in sales.

Article 1691. [717] Diseased nursery stock.—No person in this State shall knowingly or wilfully keep any peach, almond, apricot, nectarine or other trees, affected with the contagious disease known as yellows; nor keep for sale any apple, peach, plum or other tree affected with nematode galls, crown galls, fire blight, or root rot. No person shall knowingly or wilfully keep any plum, cherry or other trees affected with the contagious disease or fungus known as black knot or plum canker; nor any tree, shrub or plant infested with or by the San Jose scale or other insect pest dangerously injurious to or destructive of trees, shrubs, or other plants; nor any grapefruit, orange, or lemon trees, citrus stocks, cape jasmines or other trees, plants or shrubs infested with "white fly," Florida red scale, cottony cushion scale, wooly aphis, or other injurious insect pests, or citrus canker, or other contagious diseases of citrus fruits; nor subtropical plants, shrubs, evergreens or ornamentals; nor any china, forest or other trees, shrubs, or plants infested with injurious insect pests or contagious diseases. [Acts 1909, p. 316; Acts 1921, p. 100.]

Art. 1692. [718] Examination.—The Commissioner of Agriculture shall cause to be made at least once each year an examination of each nursery or other place where nursery stock is exposed for sale. If such stock so examined is apparently free in all respects from any contagious or infectious disease or dangerously injurious insect pests, the Commissioner shall issue to the owner or proprietor of such stock a certificate reciting that such stock so examined was at the time of such examination apparently free from any such disease or pest. No such certificate shall be negotiable or transferable, and shall be void if sold or transferred. Any such sale or transference shall be punishable as provided by the succeeding article. [Acts 1909, p. 316.]

Art. 1693. [719] Shipment.—All nursery stock consigned for shipment, or shipped by freight, express or other means of transportation shall be accompanied by a copy of said certificate attached to each car, box, bale, bundle or package. When such box, bale, bundle or package contains nursery stock to be delivered to more than one person, partnership or corporation, each portion of such nursery stock to be so delivered shall also bear a copy of such certificate of inspection. Whoever sends out or delivers within this State, trees, vines, shrubs, plants, buds or cuttings, commonly known as nursery stock, which are subject to the attacks of insects and diseases enumerated herein, unless he has in his possession a copy of said certificate, dated within a year thereof; or shall deface or destroy such certificate, or wrongfully be in possession of such certificate, or fail to attach proper tags on each shipment, such tags bearing a copy of said certificate, shall be fined not less than one hundred nor more than two hundred dollars. [Id.]

Art. 1694. [721] Carrier not to receive, when.—No transportation company or common carrier shall receive, transport or deliver shipments of nursery stock originating either within or without this State which do not bear shipping tags or labels showing the certificate of inspection of the state in which it originates, together with the permit from this State if it be a shipment from without this State. Any person without this State, or any agent of any transportation company or common carrier, or any person who shall violate any provision of this article, shall be fined not less than fifty nor more than two hundred dollars. [Id.]

Art. 1695. [722] Hindering Commissioner.—Whoever refuses or prevents entrance upon any premises under his control to the Commissioner of Agriculture, or his representative, seeking such entrance on official duty, shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1696. [722] False representations.—Whoever shall make false representations for the purpose of obtaining any such certificate of inspection from the Commissioner of Agriculture, shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1697. [724] Giving false certificate.—If the Commissioner of Agriculture or any of his agents or employés gives a false certificate or a certificate without an actual examination of the nursery stock for which said certificate is given, to any owner, proprietor or lessee of any nursery, or owner of nursery stock, or to any other person, for use under the provisions of this law, he shall be fined not less than five hundred nor more than one thousand dollars. [Id.]

Art. 1698. [725–6–7] Definitions.—1. "Nursery stock."—The term "Nursery stock" within the meaning of this law, shall include all fruit trees and vines, shade trees and forest trees, whether such shade or forest trees be especially grown for sale in a nursery, or taken from the forests and offered for sale; all scions, seedlings, roses, evergreens, shrubbery or ornamentals, also such greenhouse plants or propagation stock, all classes of berry plants, cut flowers taken from plants, bushes, shrubs or other trees growing in this State, which may be a medium for disseminating injurious insect pests and contagious diseases.

2. "Nursery."—The term "nursery" shall be construed to mean any grounds or premises on which nursery stock is grown, or exposed for sale. "Being in the nursery business" applies to any individual, partnership or corporation which may either sell or grow, or both grow and sell, nursery stock, regardless of the variety or quantity of nursery stock sold or grown.

3. "Dealer" and "agent."—The term "dealer" shall be construed to apply to any individual, partnership or corporation not growers of nursery stock, but who buy and sell nursery stock for the purpose of reselling and reshipping under their own name or title, independently of any control of those from whom they purchase. An "agent of a nursery or dealer" shall be construed to apply to any individual, partnership or corporation selling nursery stock, either as being entirely under the control of the nursery or dealer with whom the nursery stock offered for barter and traffic originates, or some cooperative basis for handling nursery stock with the grower or dealer, as specified in this article. Any such agent shall have proper credentials from the dealer he represents or cooperates with, and failing in that, any such agent shall be classed as a dealer, and subject to such rules and regulations as may be adopted relative to them, and shall be amenable to the same penalties for violations of any provisions of this law. [Id.]

Art. 1699. [727] Unlawful delivery.—Any agent of any dealer or nurseryman, who shall knowingly deliver to any individual, partnership or corporation, any tree, shrub, or plant infested or diseased, as specified in the provisions of this law, even though such trees, shrubs, or plants are received in a box, bale or package, bearing a certificate of inspection, as provided in this law, shall be fined not less than twenty-five nor more than five hundred dollars for each such delivery to each individual, partnership or corporation. [Id.]

Art. 1700 [728–9] Fraud in sales.—Whoever knowingly makes any false representation of the name, quality or nature of any nursery product for the purpose of inducing any vendee to buy the same, or who knowingly delivers to any vendee any such product

other than that contracted for, shall be fined not less than one hundred nor more than five hundred dollars, or imprisoned in jail not less than thirty days nor more than six months, or both. The statute of limitation shall not begin to run against a prosecution under this article until such product shall have developed and disclosed the fraud. [Acts 1907, p. 304.]

CHAPTER TEN A

PLANT DISEASES AND PESTS

Art. 1700a. Quarantine and insect and plant disease control.—Any person or persons who shall sell, carry, or transport any plant, plant product, thing or substance from any area quarantined as provided for herein, except under such rules and regulations as may be provided therefor by the Commissioner of Agriculture; or who shall carry, transport or receive into any area declared by the said Commissioner a "pest-free" zone any plant, plant product, thing or substance declared to be dangerous to the agricultural interest of such pest-free zone, except under such rules and regulations as may be provided therefor by the Commissioner of Agriculture; or who shall violate any rule, regulation or ordinance herein authorized, or who shall fail or refuse to do any act herein authorized to be commanded to be done; or who shall sell or offer to sell or transport from any part of the state to another or into the state any plants or plant produce declared by the Commissioner to be carriers of dangerous insect pests or plant diseases, except under such rules and regulations as may be provided therefor by the said Commissioner; shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding one hundred ($100) dollars, and each thing sold, transported, and each act in violation hereof shall be considered a separate offense. Provided that when any plants, plant products, things, or substances, prohibited shipment or sale or distribution by any of the provisions of this act, shall be transported in violation hereof, the Commissioner or his authorized agents shall be authorized to cause the same to be destroyed or returned to the owners thereof, at the option of such owner. Said Commissioner or his authorized agents shall make known by telegraph or letter, as he may deem necessary, such fact of such illegal shipment and give a reasonable time for reply thereto, and if such reply is not made, then such infested or contaminated plants or plant products, things, or substances shall be destroyed in such manner as to protect the agricultural and horticultural interests of this State. [Acts 1927, 40th Leg., p. 97, ch. 69, § 5.]

Sections 1–4 of Acts 1927, 40th Leg., p. 97, ch. 69, are published as articles 135a–135d of the Civil Statutes. Section 6 provides that the Act shall be cumulative of all laws providing for quarantine and insect and plant disease control and shall not repeal any law or part of law except when in direct conflict.

CHAPTER ELEVEN

AGRICULTURAL SEEDS

Art.
1701. "Agricultural seeds."
1702. Label.
1703. Mixture of.
1704. Exceptions.
1705. Samples.
1706. Penalty.
1707. Preventing inspection or sampling.
1708. Cotton seed.

Article 1701. "Agricultural seeds."—Agricultural seeds are defined as the seeds of alfalfa, Irish potatoes, sweet potatoes, clovers, corn, cotton, saccharine sorghums, non-saccharine sorghums, broom corn, small grains, including rice, cowpeas, soybeans, velvet beans, peanuts, vetch, rape, millet, Johnson grass, Bermuda grass, Kentucky blue grass, orchard grass, sudan grass, onion and Rhodes grass, which are to be used for sowing or seeding purposes. [Acts 2nd C. S. 1919, p. 158.]

Art. 1702. Label.—Agricultural seeds, except as herein otherwise provided, which are offered or exposed for sale within this State for seeding purposes, in lots of ten pounds or more, shall bear a plainly written or printed statement in the English language stating:

(a) Commonly accepted name of agricultural seed.

(b) Correct weight in pounds and ounces.

(c) Name of State where seed was grown, and if unknown, a statement that the locality where grown is unknown.

(d) Approximate percentage of germible seed as determined by germination test and date on which germination test was made.

Name and address of person, firm or party or agency making the germination test, provided however, that the statement shall not be a basis for prosecution under this chapter.

(e) Name and address of vendor.

(f) The approximate percentage, by weight, or purity, meaning freedom of such agricultural seed from foreign matter and from other seed distinguishable by their appearance.

(g) The approximate total percentage, by weight, of weed seeds or other foreign matter.

(h) The name and the approximate number per pound of each kind of the seed of the following named noxious weeds which are present at the rate of, or in excess of, one such noxious weed seed in five grams of agricultural seed. Such noxious weed seed are defined as seeds of dodder (cascuta, various species), bind weed or wild morning glory (convolvulus, various species), blue weed, (helianthus cilistus), wire grass (Pasplum distichum). Bermuda grass, Johnson grass, and all other seeds or foreign matter known by science to be noxious are hereby defined as noxious weed seeds. [Id. p. 158.]

Art. 1703. Mixture of.—Mixtures of seeds offered or exposed for sale within the State for seeding purposes, in lots of ten pounds or more, containing one or more kinds of agricultural seeds defined in the preceding article in excess of five per centum, by weight, of the total mixture, shall bear a plainly written or printed statement in English language, stating:

(a) That such seed is a mixture.

(b) The approximate percentage, by weight of inert matter.

(c) The requirements provided in paragraphs (c), (g) and (h) of the preceding article. [Id. p. 159.]

Art. 1704. Exceptions.—The provisions of this chapter shall not apply to agricultural seeds, or mixtures of seeds, when plainly labeled "not clean seed," or "not tested seed" nor seeds sold to merchants to be recleansed before being sold or exposed for sale for seeding purposes, or when in storage for the purpose of recleaning. [Id. p. 159.]

Art. 1705. Samples.—The Commissioner of Agriculture is authorized in person or by his inspectors or assistants to take for analysis, paying the reasonable purchase price, a sample not exceeding four ounces in weight, from any lot of agricultural seeds or "mixtures" offered or exposed for sale. Said sample shall be drawn or taken in the presence of the vendor or parties interested, or his or their agents or representatives, and shall not be less than ten per cent of the whole lot inspected and shall be thoroughly mixed and then divided into two samples and placed in glass or metal vessels or containers, carefully sealed and a label placed on each vessel stating the name of the agricultural seed or mixture sampled, the name of the vendor from whose stock said samples were taken, and the date and place of taking such samples, and said label shall be signed by said Commissioner, or his authorized agent; or said sample may be taken in the presence of the disinterested witnesses if the vendor or party in interest fails or refuses to be present, when notified. One of said duplicate samples shall be left with or on the premises of the vendor or party in interest, and the other retained by the Commissioner for analysis and comparison with the labels required by law. [Id. p. 159.]

Art. 1706. Penalty.—Whoever offers or exposes for sale within this State any agricultural seed, de-

fined in the first article of this chapter without complying with the requirements of the second and third articles of this chapter, or whoever falsely marks or labels any agricultural seeds under said second article, or mixture under said third article, shall be fined not more than one hundred dollars. [Id. p. 160.]

Art. 1707. Preventing inspection or sampling.—Whoever prevents the Commissioner of Agriculture or his duly authorized agent from inspecting the seeds described in the preceding articles of this chapter, or from collecting samples as provided in the preceding articles, shall be fined not more than one hundred dollars. [Id. p. 160.]

Art. 1708. Cotton seed.—Every person who falsely advertises or proclaims himself a "Registered Cotton Seed Breeder" or "Certified Cotton Seed Grower," and every person who sells or offers for sale cotton seed and falsely represents it to be "Registered Cotton Seed" or "Certified Cotton Seed," shall be fined not less than one hundred nor more than one thousand dollars. [Acts 2nd C. S. 1923, p. 130.]

CHAPTER TWELVE

COMMERCIAL FERTILIZER

Art.
1709. Branding or labeling.
1710. Statement furnished state chemist.
1711. Words prohibited on bag.
1712. Tax tags.
1713. Interfering with chemist.
1714. Forbidden materials.
1715. Unlawful acts.
1716. Definitions.
1717. Selling adulterated or misbranded fertilizer.
1718. Sale of bulk fertilizer.
1719. Unlawful tag, bag or label.
1720. General penalty.

Article 1709. Branding or labeling.—All corporations, firms or persons, before selling or offering for sale any commercial fertilizer for use within this State, shall brand or attach to each bag, barrel or package a plainly printed statement, showing the brand or name, of said fertilizer, the net weight of the contents of the package, the name and address of the corporation, firm or person registering said fertilizer and the minimum percentages guaranteed to be present of available phosphoric acid, of nitrogen and of potash soluble in distilled water. Only such potash shall be claimed to be present as sulphate, which is in excess of the quantity required to combine with the chlorine present, less one-half per cent. In bone meal, tankage, or other similar products, the phosphoric acid shall be claimed as total phosphoric acid, unless it be desired to claim available phosphoric acid only, in which latter case the guarantee must take the form above set forth. In the case of bone meal and tankage, information showing the fineness of the product may be branded or attached to the package; provided it takes a form approved by the State Chemist. All branding or labeling must be durable and legible, and so placed and arranged as to be easily read. [Acts 1911, p. 218.]

Art. 1710. Statement furnished State Chemist.—All firms, corporations or persons, before selling or offering for sale any commercial fertilizer for use within this State, shall annually file with the State Chemist a certified statement giving the information required by the preceding article and the true names and sources of all the ingredients used in the manufacture of said fertilizer. If the same fertilizer is sold under a different name or names, said fact shall be stated, and the different brands which are identical shall be named. If the source of any ingredient is changed, notification must be promptly furnished the State Chemist. A copy of the brand or stamp on the bag or other package or on the label attached thereto shall be filed with the State Chemist on or before delivery to the dealers, agents or consumers in this State, which brand or stamp shall be uniformly used during the fiscal year for which it is filed, but such brand or stamp shall truly set forth the data required in said preceding article, and be otherwise in accordance with the provisions of this chapter. On receipt of the certified statement above described, and the copy of the brand or stamp and after compliance with other requirements of this chapter, the State Chemist shall issue a certificate of registration for the commercial fertilizer, which shall be in force until the succeeding September 1st. A brand name previously registered shall not be allowed to be registered by another firm, corporation or individual, and no brand or name shall be allowed to be registered which is so nearly similar to another as to lead to uncertainty, confusion or fraud. The party whom the previous records of the State Chemist's office show to have first registered the name shall be permitted to retain it, subject, however, to appeal and hearing before the State Chemist to determine who is entitled to the brand; but the action of the State Chemist shall be without prejudice to the legal rights of the parties to the brand or trade-mark. No brand or name once registered shall be changed to a lower grade at any subsequent registration. [Id.]

Art. 1711. Words prohibited on bag.—The words "high grade" shall not appear upon any bag or other package of any complete fertilizer which complete fertilizer contains, by its guaranteed analysis, less than ten per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag or other package of any complete fertilizer which contains, by its guaranteed analysis, less than eight per cent available phosphoric acid, one and sixty-five one-hundredths per cent nitrogen and two per cent potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any acid phosphate with potash, which shall contain, by its guaranteed analysis, less than thirteen per cent available phosphoric acid, and one per cent of potash, or a grade or analysis of equal total commercial value; the word "standard" shall not appear upon any bag or other package of any acid phosphate with potash which shall contain, by its guaranteed analysis, less than eleven per cent available phosphoric acid, and one per cent of potash, or a grade or analysis of equal total commercial value; the words "high grade" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis, less than fourteen per cent available phosphoric acid; and the word "standard" shall not appear upon any bag or other package of any plain acid phosphate which shall contain by its guaranteed analysis, less than twelve per cent available phosphoric acid. The word "standard" shall not appear upon any bag or other package of acid phosphate with nitrogen which shall contain, by its guaranteed analysis, less than nine per cent of available phosphoric acid and two per cent nitrogen, or a grade or analysis of equal total commercial value. No commercial fertilizer shall be sold, offered or exposed for sale for use within this State, upon which the use of the words "high grade" or "standard" is prohibited by this article, unless the words "low grade" is printed in two-inch letters in a conspicuous place upon the package of said fertilizer. No claim or guarantee for less than one per cent of phosphoric acid or of potash, or for less than a 0.82 per cent of nitrogen, shall be allowed in any commercial fertilizer. [Id. p. 219.]

Art. 1712. Tax tags.—All firms, corporations or persons engaged in the manufacture or sale of commercial fertilizers shall pay to the State Chemist an inspection tax of twenty-five cents per ton for such commercial fertilizers sold or exposed or offered for sale in this State in order to entitle the same to inspection and delivery, and shall attach a tag furnished by the State Chemist as evidence that said tax is paid, and goods so tagged shall not be liable to any further tax. Nothing in this article shall interfere with fertilizers passing through the State in transit; nor apply to the delivery of fertilizing materials in bulk to fertiliz-

ing factories for manufacturing purposes. Firms, corporations or persons, or agents representing them, who have registered their brands in compliance with this law shall forward to the State Chemist a request for tax tags, stating that the said tags are to be used upon the brands of commercial fertilizers registered and sold in accordance with this chapter, and said request shall be accompanied with the inspection tax, whereupon the State Chemist shall issue tags to parties applying, who shall attach said tags to each bag, barrel or package thereof. All firms, corporations or persons are hereby forbidden to attach the tag prescribed by this article to any bag, barrel or package of any commercial fertilizer which has not been previously registered as required by this chapter and which is not in accordance with all other provisions of this chapter. No tags shall be used after the end of the fiscal year for which they are issued, and they shall not be redeemed by the State Chemist. [Id.]

Art. 1713. Interfering with chemist.—The State Chemist shall cause one analysis or more to be made annually of such commercial fertilizer sold or offered for sale under the provisions of this chapter as may be sampled under his direction. The State Chemist, in person, or by deputy, shall have power to enter into any car, warehouse, store, building, boat, vessel, steamboat, or place supposed to contain fertilizers, for the purpose of inspection or sampling, and shall have the power to take a sample for analysis, not exceeding two pounds, from any package or lot of fertilizer found within the State. Any person who opposes the entrance of said chemist or deputy, or in any way interferes with the discharge of his duty, shall be fined not less than fifty nor more than five hundred dollars. [Id.]

Art. 1714. Forbidden materials.—It shall be unlawful to sell or offer for sale, in this State, any fertilizer or fertilizing materials which contain an undue quantity of hair, or which contain leather scraps, peat or other substances of low availability as food for plants, but in which such forbidden materials aid in making up the required or guaranteed analysis. The presence of any forbidden material shall vitiate the whole. Manufacturers who desire to use any such material may do so under such regulations as the State Chemist may prescribe, if it be shown that it is available for a proper purpose. [Id.]

Art. 1715. Unlawful acts.—No person shall sell or offer for sale any commercial fertilizer without having attached thereto such labels, stamps and tags as are required by law, or use the required tag a second time to avoid the payment of the tonnage charge. No person shall knowingly sell or offer for sale any commercial fertilizer for use within this State which is materially below the guaranteed value in plant food. [Id.]

Art. 1716. Definitions.—These terms mean:

1. A commercial fertilizer is any material, substance or mixture which contains or is claimed to contain more than one per cent of total phosphoric acid, or of potash, or of nitrogen, and which is used for application to the soil to promote the growth of crops, or any substance, material or mixture, which is claimed to exert a beneficial action upon the soil or to promote the growth of crops. Lime, limestone, marl, unground bones, stockpen manure, barn-yard manure, or the excrement of any domestic animal shall be exempt from the provisions of this chapter, in case that said manure or excrement has not been dried or manipulated or otherwise treated or is not claimed to have a value of more than four dollars a ton.

2. A fertilizer is misbranded if it carries any false or misleading statement upon or attached to the package, or if false or misleading statements concerning its agricultural value are made on the package or in any printed advertising matter issued by the corporation, firm or individual that registered said fertilizer, or if the number of net pounds set forth upon the package is not substantially correct.

3. A fertilizer is adulterated if it contains any substance or substances injurious to the crop or to the soil, or if the guaranteed valuation exceeds the valuation of the plant food found on analysis ten per cent or more, or if any of the plant food constituents falls twenty per cent or more below the guaranteed composition. [Id.]

Art. 1717. Selling adulterated or misbranded fertilizer.—Whoever manufactures, sells or offers for sale any adulterated or misbranded commercial fertilizer for use within this State shall be fined not less than twenty-five nor more than two hundred dollars. [Id.]

Art. 1718. Sale of bulk fertilizer.—Manufacturers, jobbers, dealers or manipulators of commercial fertilizers may sell acid phosphate or other commercial fertilizer in bulk to persons, individuals or firms who desire to purchase the same for their own use on their own land but not for sale or distribution. under rules and regulations prescribed by the State Chemist which will not be inconsistent with the provisions of this chapter. Inspection tax shall be paid upon such fertilizer as provided herein. If such bulk fertilizer is offered for sale or distribution, it must be tagged and branded and otherwise accord with the provisions of this chapter. [Id.]

Art. 1719. Unlawful tag, bag or label.—Whoever uses the fertilizer tags, bags or labels of some other person, party or manufacturer, in such a way as to deceive or tend to deceive, or who counterfeits or uses a counterfeit of the tax tag prescribed in this chapter, shall be fined not less than one hundred nor more than five hundred dollars. [Id.]

Art. 1720. General penalty.—Whoever violates any provision of this chapter for which a penalty is not otherwise provided herein shall be fined not less than fifty nor more than two hundred dollars. [Id.]

GENERAL REPEALING CLAUSE

Section 3, of the Act of 1925, entitled, "An Act to Adopt and Establish a 'Penal Code' and a 'Code of Criminal Procedure' for the State of Texas," reads as follows:

"Art. 1. Be it further enacted by the Legislature of the State of Texas: That all penal laws and all laws relating to criminal procedure in this State, that are not embraced in this Act and that have not been enacted during the present session of the Legislature, be and the same are hereby repealed. All laws and parts of laws relating to crime omitted from this Act have been intentionally omitted, and all additions have been intentionally added, and this Act shall be construed to be an independent Act of the Legislature enacted under the caption hereof, and the articles contained in this Act, as revised, rewritten, changed, combined and codified shall not be construed as a continuation of former laws, except as otherwise herein provided.

"Art. 2. The importance of this Act, and the near approach of the close of this session of the Legislature, and the fact that it is impossible to read this Act on any day or on three several days, creates an emergency and an imperative public necessity that the Constitutional rule requiring bills to be read on three several days be suspended, and it is so enacted.

"Art. 3. This Act shall take effect and be in force from and after twelve o'clock, Meridian, of the First day of September, Anno Domini, One Thousand Nine Hundred and Twenty-five."

RECORD OF ENACTMENT

The enrolled bill (Revised Penal Code 1925) on file in the office of the Secretary of State shows that the foregoing act passed the Senate, finally January 23, 1925 (no vote given).

Passed the House February 4, 1925 by following vote: 111 yeas, 4 nays.

Approved by the Governor Feb. 7, 1925.

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Sec. 2. Be it further enacted, That the following titles, chapters and articles shall hereafter constitute the CODE OF CRIMINAL PROCEDURE of the State of Texas, to wit:

THE CODE
OF
CRIMINAL PROCEDURE

TITLE 1

INTRODUCTORY

Chap.
1. General Provisions.
2. General Duties of Officers.
3. Definitions.

CHAPTER ONE

GENERAL PROVISIONS

Art.
1. Objects of this Code.
2. Due course of law.
3. Rights of accused.
4. Searches and seizures.
4a. Relating to unlawful and unreasonable seizures and searches.
4b. Penalty.
5. Right to bail.
6. Habeas corpus.
7. Cruelty forbidden.
8. Jeopardy.
9. Acquittal at bar.
10. Right to jury.
11. Waiver of rights.
12. Jury in felony.
13. Liberty of speech and press.
14. Religious belief.
15. Outlawry and transportation.
16. Corruption of blood, etc.
17. Conviction of treason.
18. Privilege of legislators.
19. Privilege of voters.
20. Dignity of State.
21. Public trial.
22. Confronted by witnesses.
23. Construction of this Code.
24. Common law governs.

Article 1. [1] Objects of this Code.—This code is intended to embrace rules applicable to the prevention and prosecution of offenses against the laws of this State, and to make the rules of proceeding in respect to the prevention and punishment of offenses intelligible to the officers who are to act under them, and to all persons whose rights are to be affected by them. It seeks:

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

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

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

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

5. To insure a fair and impartial trial; and

6. The certain execution of the sentence of the law when declared. [O. C. 1, Act Feb. 15, 1858.]

Art. 2. [3] Due course of law.—No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land. [Bill of Rights, Sec. 19.]

Art. 3. [4] Rights of accused.—In all criminal prosecutions the accused shall have a speedy public trial by an impartial jury. He shall have the right to demand the nature and cause of the accusation against him, and to have a copy thereof. He shall not be compelled to give evidence against himself. He shall have the right of being heard by himself, or counsel, or both; shall be confronted with the witnesses against him, and shall have compulsory process for obtaining witnesses in his favor. No person shall be held to answer for a felony unless on indictment of a grand jury. [Bill of Rights, Sec. 10.]

Art. 4. [5] Searches and seizures.—The people shall be secure in their persons, houses, papers and possessions from all unreasonable seizures or searches. No warrant to search any place or to seize any person or thing shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation. [Bill of Rights, sec. 9.]

Acts 1925, 39th Leg., ch. 149, p. 357, § 1, is similar in language to the above section of the Bill of Rights.

Art. 4a. Relating to unlawful and unreasonable seizures and searches.—It shall be unlawful for any person or peace officer, or State ranger, to search the private residence, actual place of habitation, place of business, person or personal possessions of any person, without having first obtained a search warrant as required by law.

Art. 4b. Penalty.—Any person violating any provision of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine of not less than $100.00 nor more than $500.00, or by confinement in the county jail not more than six months, or by both such fine and imprisonment. [Acts 1925, p. 357.] [39th Leg., ch. 149, § 3.]

Art. 5. [6] Right to bail.—All prisoners shall be bailable by sufficient sureties, unless for capital offenses where the proof is evident. This provision shall not be so construed as to prevent bail after indictment found, upon examination of the evidence in such manner as may be prescribed by law. [Bill of Rights, Sec. 11.]

Art. 6. [7] Habeas corpus.—The writ of habeas corpus is a writ of right and shall never be suspended. [Bill of Rights, Sec. 12.]

Art. 7. [8] Cruelty forbidden.—Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishment inflicted. [Bill of Rights, Sec. 13.]

Art. 8. [9] Jeopardy.—No person for the same offense shall be twice put in jeopardy of life or liberty; nor shall a person be again put upon trial for the same offense, after a verdict of not guilty in a court of competent jurisdiction. [Bill of Rights, Sec. 14.]

Art. 9. [20] [21] Acquittal a bar.—An acquittal of the defendant exempts him from a second trial or a second prosecution for the same offense, however irregular the proceedings may have been; but if the defendant shall have been acquitted upon trial in a court having no jurisdiction of the offense, he may be prosecuted again in a court having jurisdiction.

Art. 10. [10] Right to jury.—The right of trial by jury shall remain inviolate. [Bill of Rights, sec. 15.]

Art. 11. [22] [23] Waiver of rights.—The defendant in a criminal prosecution for any offense may waive any right secured to him by law, except the right of trial by jury in a felony case. [O. C. 26.]

Art. 12. [21] [22] Jury in felony.—No person can be convicted of a felony except upon the verdict of a jury duly rendered and recorded. [O. C. 22.]

Art. 13. [11] Liberty of speech and press.—Every person shall be at liberty to speak, write or publish his opinion on any subject, being liable for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press. In prosecutions for the publication of papers investigating the conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence. In all indictments for libels, the jury shall have the right to determine the law and the facts, under the direction of the court, as in other cases. [Bill of Rights, sec. 8.]

Art. 14. [12] Religious belief.—No person shall be disqualified to give evidence in any court of this State on account of his religious opinions, or for the want of any religious belief; but all oaths or affirmations shall be administered in the mode most binding upon the conscience, and shall be taken subject to the pains and penalties of perjury. [Bill of Rights, Sec. 5.]

Art. 15. [13] Outlawry and transportation.—No citizen shall be outlawed, nor shall any person be transported out of the State for any offense committed within the same. [Bill of Rights, Sec. 20.]

Art. 16. [14] Corruption of blood, etc.—No conviction shall work corruption of blood or forfeiture of estate. [Bill of Rights, Sec. 21.]

Art. 17. [15] Conviction of treason.—No person shall be convicted of treason except on the testimony of two witnesses to the same overt act, or on confession in open court. [Bill of Rights, Sec. 22.]

Art. 18. [16] Privilege of legislators.—Senators and representatives shall, except in cases of treason, felony or breach of the peace, be privileged from arrest during the session of the legislature, and in going to and returning from the same, allowing one day for every twenty miles such member may reside from the place at which the legislature is convened. [Const., art. 3, sec. 14.]

Art. 19. [17] Privilege of voters.—Voters shall, in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning therefrom. [Const., Art. 6, sec. 5.]

Art. 20. [19] Dignity of State.—All judges of the Supreme Court, Court of Criminal Appeals and district courts, shall, by virtue of their offices, be conservators of the peace throughout the State. The style of all writs and process shall be "The State of Texas." All prosecutions shall be carried on in the name and by authority of the State of Texas, and conclude, "against the peace and dignity of the State." [Const., art. 5, sec. 12.]

Art. 21. [23] [24] Public trial.—The proceedings and trials in all courts shall be public. [O. C. 23.]

Art. 22. [24] [25] Confronted by witnesses.—The defendant, upon a trial, shall be confronted with the witnesses, except in certain cases provided for in this Code where depositions have been taken. [O. C. 24.]

Art. 23. [25] [26] Construction of this Code.—The provisions of this Code shall be liberally construed, so as to attain the objects intended by the legislature: The prevention, suppression and punishment of crime. [O. C. 25.]

Art. 24. [26] [27] Common law governs.—If this Code fails to provide a rule of procedure in any particular state of case which may arise, the rules of the common law shall be applied and govern. [O. C. 27.]

CHAPTER TWO

GENERAL DUTIES OF OFFICERS

1. DISTRICT AND COUNTY ATTORNEYS

Art.
25. Duties of district attorneys.
26. Duties of county attorneys.
27. When officer neglects duty.
28. Shall draw complaints.
29. When complaint is made.
30. May administer oaths.
31. Attorney pro tem.
32. Disqualified.

2. MAGISTRATES

33. Who are magistrates.
34. Duty of magistrates.
35. "Examining court."

3. PEACE OFFICERS

36. Who are peace officers.
37. Duties and powers.
38. May summon aid.
39. Person refusing to aid.
40. Neglecting to execute process.

4. SHERIFFS

41. Conservator of the peace.
42. Custody of prisoners.
43. Report as to prisoners.
44. Deputy.

5. DISTRICT AND COUNTY CLERKS

45. Duty of clerks.
46. Power of deputy clerks.
47. Report to Attorney General.

1. DISTRICT AND COUNTY ATTORNEYS

Article 25. [30] [31] Duties of district attorneys.—Each district attorney shall represent the State in all criminal cases in the district courts of his district, except in cases where he has been, before his election, employed adversely. When any criminal proceeding is had before an examining court in his district or before a judge upon habeas corpus, and he is notified of the same, and is at the time within the county where such proceeding is had, he shall represent the State therein, unless prevented by other official duties. [O. C. 30-31.]

Art. 26. [32] [33] Duties of county attorneys.—The county attorney shall attend the terms of all courts in his county below the grade of district court, and shall represent the State in all criminal cases under examination or prosecution in said county; and in the absence of the district attorney he shall represent the State alone, or when requested, shall aid the district attorney in the prosecution of any case in behalf of the State in the district court, and in such cases he shall receive all or one-half of the fees allowed by law to district attorneys, according as he acted alone or jointly. [Acts 1879, p. 94.]

Art. 27. [33] [34] When officer neglects duty.—It shall be the duty of the district or county attorney to present by information to the court having jurisdiction, any officer for neglect or failure of any duty enjoined upon such officer, when such neglect or failure can be presented by information, whenever it shall come to the knowledge of said attorney that there has been a neglect or failure of duty upon the part of said officer; and he shall bring to the notice of the grand jury any act of violation of law or neglect or failure of duty upon the part of any officer, when such violation, neglect or failure are not presented by information, and whenever the same may come to his knowledge. [Acts 1876, p. 86.]

Art. 28. [34] [35] Shall draw complaints.—Upon complaint being made before a district or county attorney that an offense has been committed in his district or county, he shall reduce the complaint to writing and cause the same to be signed and sworn to by the complainant, and it shall be duly attested by said attorney. [Id.]

Art. 29. [35] [36] When complaint is made.—If the offense be a misdemeanor, the attorney shall forthwith prepare an information based upon such complaint and file the same in the court having jurisdiction. If the offense be a felony, he shall forthwith file the complaint with a magistrate of the county. [Id.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 30. [36] [37] May administer oaths.—For the purpose mentioned in the two preceding articles, district and county attorneys are authorized to administer oaths. [Id.]

Art. 31. [38] [39] Attorney pro tem.—Whenever any district or county attorney fails to attend any term of the district, county or justice's court, the judge of said court or such justice may appoint some competent attorney to perform the duties of such district or county attorney, who shall be allowed the same compensation for his services as is allowed the district attorney or county attorney. Said appointment shall not extend beyond the term of the court at which it is made, and shall be vacated upon the appearance of the district or county attorney.

Art. 32. [40] [41] Disqualified.—District and county attorneys shall not be of counsel adversely to the State in any case, in any court, nor shall they, after they cease to be such officers, be of counsel adversely to the State in any case in which they have been of counsel for the State. [O. C. 30.]

2. MAGISTRATES

Art. 33. [41] [42] Who are magistrates.—Each of the following officers is a "magistrate" within the meaning of this Code: The judges of the Supreme Court, the judges of the Court of Criminal Appeals, the judges of the district court, the county judge, any county commissioner, the justices of the peace, the mayor or recorder of an incorporated city or town.

Art. 34. [42] [43] Duty of magistrates.—It is the duty of every magistrate to preserve the peace within his jurisdiction by the use of all lawful means; to issue all process intended to aid in preventing and suppressing crime; to cause the arrest of offenders by the use of lawful means in order that they may be brought to punishment. [O. C. 32.]

Art. 35. [62] [63] "Examining court."—When the magistrate sits for the purpose of inquiring into a criminal accusation against any person, this is called an "examining court."

3. PEACE OFFICERS

Art. 36. [43] [44] Who are peace officers.—The following are "peace officers:" the sheriff and his deputies, constable, the marshal or policemen of an incorporated town or city, the officers, non-commissioned officers and privates of the State ranger force, and any private person specially appointed to execute criminal process. [O. C. 53, Acts 1919, p. 264.]

Art. 37. [44] [45] Duties and powers.—It is the duty of every peace officer to preserve the peace within his jurisdiction. To effect this purpose, he shall use all lawful means. He shall, in every case where he is authorized by the provisions of this Code, interfere without warrant to prevent or suppress crime. He shall execute all lawful process issued to him by any magistrate or court. He shall give notice to some magistrate of all offenses committed within his jurisdiction, where he has good reason to believe there has been a violation of the penal law. He shall arrest offenders without warrant in every case where he is authorized by law, in order that they may be taken before the proper magistrate or court and be tried. [O. C. 34.]

Art. 38. [45] [46] May summon aid.—Whenever a peace officer meets with resistance in discharging any duty imposed upon him by law, he shall summon a sufficient number of citizens of his county to overcome the resistance; and all persons summoned are bound to obey. [O. C. 44.]

Art. 39. [46] [47] Person refusing to aid.—The peace officer who has summoned any person to assist him in performing any duty shall report such person, if he refuse to obey, to the proper district or county attorney, in order that he may be prosecuted for the offense. [O. C. 45.]

Art. 40. [47] [48] Neglecting to execute process.—If any sheriff or other officer shall wilfully refuse or fail from neglect to execute any summons, subpœna or attachment for a witness, or any other legal process which it is made his duty by law to execute, he shall be liable to a fine for contempt not less than ten nor more than two hundred dollars, at the discretion of the court. The payment of such fine shall be enforced in the same manner as fines for contempt in civil cases. [Act Feb. 11, 1860.]

4. SHERIFFS

Art. 41. [48] [49] Conservator of the peace.—Each sheriff shall be a conservator of the peace in his county, and shall arrest all offenders against the laws of the State, in his view or hearing, and take them before the proper court for examination or trial. He shall quell and suppress all assaults and batteries, affrays, insurrections and unlawful assemblies. He shall apprehend and commit to jail all offenders, until an examination or trial can be had. [Act May 12, 1846, p. 265.]

Art. 42. [50] [51] Custody of prisoners.—When a prisoner is committed to jail by warrant from a magistrate or court, he shall be placed in jail by the sheriff. It is a violation of duty on the part of any sheriff to permit a defendant so committed to remain out of jail, except that he may, when a defendant is committed for want of bail, or when he arrests in a bailable case, give the person arrested a reasonable time to procure bail; but, he shall so guard the accused as to prevent escape.

Art. 43. [51] Report as to prisoners.—At each term of any court having criminal jurisdiction, the sheriff shall give notice to the district or county attorney as to all prisoners in his custody and of the authority under which he detains them.

Art. 44. [54] [55] Deputy.—Wherever a duty is imposed by this Code upon the sheriff, the same duty may lawfully be performed by his deputy. When there is no sheriff in a county, the duties of that office, as to all proceedings under the criminal law, devolve upon the officer who, under the law, is empowered to discharge the duties of sheriff, in case of vacancy in the office. [O. C. 46.]

5. DISTRICT AND COUNTY CLERKS

Art. 45. [55] [56] Duty of clerks.—Each clerk of the district or county court shall receive and file all papers in respect to criminal proceedings, issue all process in such cases, and perform all other duties imposed upon them by law.

Art. 46. [56] [57] Power of deputy clerks.—Whenever a duty is imposed upon the clerk of the district or county court, the same may be lawfully performed by his deputy. [O. C. 48.]

Art. 47. [57] [58] Report to Attorney General.—The clerks of the district and county courts shall, when required by the Attorney General, report to him at such times, and in accordance with such forms as he may direct, such information in relation to criminal matters as may be shown by their records.

CHAPTER THREE

DEFINITIONS

Art.
48. Words and phrases.
49. Criminal action.
50. "Officers."

Article 48. [58-59] Words and phrases.—All words, phrases and terms used in this Code are to be taken and understood in their usual acceptation in common language, except where specially defined; and, unless herein specially excepted have the meaning which is given to them in the Penal Code.

Art. 49. [60] [61] Criminal action.—A criminal action is prosecuted in the name of the State of Texas against the accused, and is conducted by some person acting under the authority of the State, in accordance with its laws. [O. C. 51.]

Art. 50. [61] [62] "Officers."—The general term "officers" includes both magistrates and peace officers. [O. C. 54.]

TITLE 2

COURTS AND CRIMINAL JURISDICTION

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61. Justice may forfeit bail bond.
62. Corporation court.
63. May sit at any time.
64. Concurrent jurisdiction.

Article 51. [63] [64] What courts have criminal jurisdiction.—The following courts have jurisdiction in criminal actions:

1. The Court of Criminal Appeals;
2. The district courts;
3. The criminal district courts;
4. The county courts;
5. All county courts at law with criminal jurisdiction;
6. Justice courts;
7. Corporation courts.

Art. 52. Certain courts continued.—Each of the following courts shall continue with the jurisdiction, organization, terms and powers now existing until otherwise provided by law:

1. Criminal District Court of Dallas County. [Acts 1893, p. 118: Acts 1915, pp. 74, 138; Acts 1917, pp. 315, 341.]
2. Criminal District Court No. 2 of Dallas County. [Acts 1st C. S. 1911, p. 136; Acts 1915, pp. 74, 138; Acts 1917, p. 315.]
3. Criminal District Court of Harris County. [Acts 1911, p. 111.]
4. Criminal District Court of Tarrant County. [Acts 1917, p. 144; Acts 2nd C. S. 1919, p. 246.]
5. Criminal District Court of Travis County. [Acts 1923, p. 129.]
6. Criminal District Court for the Counties of Nueces, Kleberg, Kennedy, Willacy and Cameron. [Acts 1st C. S. 1921, p. 18.]
7. All County Courts at Law.

ACTS CREATING CRIMINAL DISTRICT COURTS AND SIMILAR COURTS AND AFFECTING SUCH COURTS

Art. 52—1. Dallas criminal district court created; jurisdiction.—There is hereby created and established at the city of Dallas a criminal district court, which shall have and exercise all the criminal jurisdiction heretofore vested in and exercised by the district courts of Dallas county. All appeals from the judgments of said court shall be to the court of criminal appeals, under the same regulations as are now or may hereafter be provided by law for appeals in criminal cases from district courts. [Acts 1893, p. 118.]

Art. 52—2. Dallas county district courts to have no criminal jurisdiction.—The district courts of Dallas county shall not have nor exercise any criminal jurisdiction. [Id.]

Art. 52—3. Judge; qualifications, election, etc.—The judge of said criminal district court shall be elected by the qualified voters of Dallas county for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of a judge of the district court, and shall receive the same salary as is now, or may hereafter, be paid to the district judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by district judges in criminal cases. The judge of said court may exchange with any district judge, as provided by law in cases of district judges, and in case of disqualification or absence of the judge, a special judge may be selected, elected, or appointed, as provided by law in cases of district judges. [Id.]

Art. 52—4. Seal of the court and its use.—Said court shall have a seal of like design as the seal now provided by law for district courts, except that the words "Criminal District Court of Dallas County" shall be engraved around the margin thereof, which seal shall be used for all the purposes for which the seals of the district courts are required to be used; and certified copies of the orders, proceedings, judgments, and other official acts of said court, under the hand of the clerk and attested by the seal of said court, shall be admissible in evidence in all the courts of this state in like manner as similar certified copies from courts of record are now or may hereafter be admissible. [Id.]

Art. 52—5. Sheriff, clerk and county attorney to serve, etc.—The sheriff, the county attorney, and the clerk of the district court of Dallas county, as heretofore provided for by law, shall be the sheriff, county attorney, and clerk, respectively, of said criminal district court, under the same rules and regulations as are now, or may hereafter be, prescribed by law for the government of sheriffs, county attorneys, and clerks in the district courts of the state; and said sheriff, county attorney, and clerk shall respectively receive such fees as are now or may hereafter be prescribed by law for such officers in the district courts of the state, to be paid in the same manner. [Id.]

By Act March 29, 1917, ch. 121, post, art. 52—24, the office of Criminal District Attorney for Dallas county is created, with power to exercise exclusive control over criminal matters in such county.

Art. 52—6. Terms of the court and grand juries.—Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of January, one term beginning the first Monday of April, one term beginning the first Monday of July, and one term beginning the first Monday of October. A grand jury shall be impaneled in said court for each term thereof; and jury commissioners shall be appointed for drawing jurors for said court, as is now or may hereafter be required by law in district courts, and under like rules and regulations. [Id.]

Art. 52—7. Practice in.—The trials and proceedings in said court shall be conducted according to the laws governing the pleadings, practice, and proceedings in criminal cases in the district courts. [Id.]

Art. 52—8. Criminal District Court No. 2 of Dallas County created.—There is hereby created and established at the city of Dallas a criminal district court to be known as the "Criminal District Court No. 2 of Dallas County," which court shall have and exercise concurrent jurisdiction with the criminal district court of Dallas county, Texas, as now given and exercised by the said criminal district court of Dallas county under the Constitution and laws of the State of Texas. [Act 1911, 1st S. S., p. 106, ch. 19, § 1.]

Art. 52—9. Same; concurrent jurisdiction with criminal district court of Dallas county; transfer of causes.—From and after the time this law shall take effect the criminal district court of Dallas county, and the criminal district court No. 2 of Dallas county shall have and exercise concurrent jurisdiction with each other in all felony causes and in all matters and proceedings of which the said criminal district court of Dallas county now has jurisdiction; and either of the judges of said criminal district court may in their discretion transfer any cause or causes that may at any time be pending in his court to the other criminal district court by an order or orders entered upon the minutes of his court;

and where such transfer or transfers are made the clerk of such district court shall enter such cause or causes upon the docket to which such transfer or transfers are made, and, when so entered upon the docket, the judge shall try and dispose of said causes in the same manner as if such causes were originally instituted in said court. [Id., § 2.]

Act March 22, 1915, ch. 86, in its title purports to amend this section, but the enacting part makes no reference to the matter of amendment. The amendatory act is set forth in art. 52—23.

Art. 52—10. Judge, how elected; term; qualifications; powers and duties; exchange; special judge; etc.—The judge of said criminal district court No. 2 of Dallas county shall be elected by the qualified voters of Dallas county for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of the judge of a district court, and shall receive the same salary as is now or may hereafter be paid to the district judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by district judges of the criminal district court of Dallas county. The judge of said court may exchange with any district judge, as provided by law in cases of district judges, and, in case of disqualification or absence of a judge, a special judge may be selected, elected or appointed as provided by law in cases of district judges; provided, that the Governor, by and with the consent of the Senate, if in session, shall appoint a judge of said court, who shall hold the office until the next general election, after the passage of this law, and until his successor shall have been elected and qualified. [Id., § 3.]

Art. 52—11. Seal of court, etc.—Said court shall have a seal of like design as the seal now provided by law for district courts, except that the words "Criminal District Court No. 2 of Dallas County" shall be engraved around the margin thereof, which seal shall be used for all the purposes for which the seals of the district courts are required to be used; and certified copies of the orders, proceedings, judgments and other official acts of said court, under the hand of the clerk and attested by the seal of said court, shall be admissible in evidence in all the courts of this State in like manner as similar certified copies from courts of record are now or may hereafter be admissible. [Id., § 4.]

Art. 52—12. Criminal judicial district created.—There is hereby created and established a Criminal Judicial District of Dallas County, Texas, to be composed of the County of Dallas, Texas, alone, and the Criminal District Court of Dallas county, and the Criminal District Court No. 2 of Dallas county, Texas, shall have and exercise all the Criminal Jurisdiction of such courts, of and for said Criminal District of Dallas county, Texas, that are now conferred by law on said Criminal District Courts. [Act March 29, 1917, ch. 121, § 1.]

Sections 2 to 10, inclusive, relate to the Criminal District Attorney of Dallas County, and are set forth as art. 52—24. Sec. 11 repeals all laws in conflict.

Art. 52—13. Sheriff, county attorney, and clerk of Dallas county to act, etc.; fees.—The sheriff, county attorney and the clerk of the district court of Dallas county, as heretofore provided for by law, shall be the sheriff, county attorney and clerk, respectively, of said criminal district court under the same rules and regulations as are now or may hereafter be prescribed by law for the government of sheriffs, county attorneys and clerks of the district courts of the State; and said sheriff, county attorney and clerk shall respectively receive such fees as are now or may hereafter be prescribed by law for such officers in the district courts of the State to be paid in the same manner. [Act 1911, 1st S. S., p. 106, ch. 19, § 5.]

By Act March 29, 1917, ch. 121, post, art. 52—24, the office of Criminal District Attorney of Dallas County is created with exclusive powers over criminal matters in such county.

Art. 52—14. Terms of court; grand jury; drawing jurors; pleading, practice, and procedure.—Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of April, one term beginning the first Monday of July, one term beginning the first Monday of October, and one term beginning the first Monday of January. The grand jury shall be impaneled in said court for each term thereof unless otherwise directed by the judge of said court, and the procedure for drawing jurors for said court shall be the same as is now or may hereafter be required by law in district courts, and under the same rules and regulations. The trials and proceedings in said court shall be conducted according to the laws governing the pleadings, practice and proceedings in criminal cases in the district courts. [Id., § 6.]

Art. 52—15. Apportionment.—Dallas county shall constitute the Forty-fourth Judicial District and the Sixty-eighth Judicial District, and Dallas county and Rockwall county shall constitute the Fourteenth Judicial District. The said district courts herein named shall not have nor exercise any criminal jurisdiction in Dallas county, such criminal jurisdiction having been by law exclusively vested in the Criminal District Courts for said county. But all of said three courts shall have and exercise concurrent jurisdiction coextensive with the limits of Dallas county in all civil cases, proceedings and matters of which district courts are given jurisdiction by the Constitution and laws of the State. The said Fourteenth Judicial District Court shall have jurisdiction in Rockwall county, Texas, in all civil and criminal cases which under the Constitution and laws of this State are cognizable by district courts, and in which the jurisdiction is in Rockwall county, Texas; and all appeals in criminal cases shall be to the Court of Criminal Appeals of the State of Texas under the same regulations as are now or may hereafter be provided by the laws for appeals in criminal cases in the district court. [Act 1913, p. 171, ch. 89, § 1.]

Art. 52—16. Concurrent jurisdiction of criminal district courts with county court at law; transfer of causes.—The Criminal District Court and Criminal District Court No. 2 of Dallas County shall have and exercise original concurrent jurisdiction with each other and with the County Court of Dallas County at Law in all matters and proceedings relative to misdemeanor causes of which the County Court of Dallas County at Law now has jurisdiction and either of the judges of said Criminal District Courts and the judge of said County Court of Dallas County at Law may, in his discretion, or upon the motion of the county attorney of Dallas county, transfer by written order or orders, entered upon the minutes of said court, any misdemeanor cause or misdemeanor causes that may at any time be pending in either of said courts to either of the other of said courts, as should, in his discretion, be transferred or as may be prayed for in the motion of the county attorney. [Act 1915, p. 74, ch. 37, § 1.]

Art. 52—17. Duty of county clerk on transfer of cause; costs and fees; duty of clerk of district court.—Upon the transfer of any such cause or causes from said County Court of Dallas County at Law to either of said Criminal District Courts it shall be the duty of the county clerk of Dallas County to prepare and forward with the papers in said cause or causes so transferred a bill of the cost then accrued which said cost shall follow said cause or causes, and be taxed in said cause or causes with any other cost that may accrue in said cause or causes in either of said Criminal District Courts to which said cause or causes may be transferred; provided that the county clerk of Dallas County making such a bill of cost shall receive the sum of 50 cents for the preparation and forwarding of said bill of cost, in each cause so transferred, which said sum and cost shall be taxed in said cause and collected as other cost in the manner now provided by law; and the clerk of the Dis-

trict Court of Dallas County shall likewise, upon the transfer of any such cause from either of said Criminal District Courts to the County Court of Dallas County at Law, prepare such bill of cost and forward same as provided therein, and shall receive the same compensation as herein provided for the county clerk of Dallas County in such cases. [Id., § 2.]

Art. 52—18. Misdemeanor dockets for transferred causes.—The clerk of the District Court of Dallas County shall keep for each of said Criminal District Courts a misdemeanor docket and a misdemeanor motion docket in like manner as is now provided for by law for the County Court of Dallas County at Law, and upon any such cause or causes being transferred from the County Court of Dallas County at Law or from one of said Criminal District Courts to the other, said cause or causes shall be docketed as now provided by law for the County Court of Dallas County at Law. [Id., § 3.]

Art. 52—19. Practice in transferred causes.—In trial of causes transferred to either of the Criminal District Courts of Dallas County from the County Court of Dallas County at Law, the trials, pleadings and practice shall be the same as in trial of other causes over which the Criminal District Courts of Dallas County now have jurisdiction. [Id., § 4.]

Art. 52—20. Fees of officers in misdemeanor causes.—The county attorney of Dallas county and all other officers shall receive the same fees in misdemeanor causes in said Criminal District Courts as are now provided by law in the County Court of Dallas County at Law and in all other matters of cost tax in said causes in said Criminal District Courts, the item shall in no event be greater than that provided by law for such items in the County Court of Dallas County at law, and all such cost in such causes shall be paid to the officers of the court in which same is accrued. [Id., § 5.]

Art. 52—21. Filing misdemeanor causes in either court.—All misdemeanor causes of which the County Court of Dallas County now has jurisdiction may be filed originally with the clerk of the district [court] of Dallas county, in either the Criminal District Court of Dallas County or the Criminal District Court No. 2 of Dallas County, in the same manner as is now provided by law for the filing of such causes with the county clerk of Dallas county in the County Court of Dallas County at Law. [Id., § 7.]

Art. 52—22. Jurisdiction of proceeding on bail bonds and recognizances given in transferred causes.—Said Criminal District Courts shall have jurisdiction on all bail bonds and recognizances taken in proceedings had before such courts; in all causes transferred to said courts from either of them or that may be transferred to said courts from the County Court of Dallas County at Law; and may enter forfeitures thereof; and final judgment and enforce the collection of same by proper process in the manner as provided by law in said bail bond proceedings; and all bail bonds, recognizances or other obligations taken for the appearance of defendants, parties and witnesses, in either the County Court of Dallas County at Law or Criminal District Court of Dallas County or Criminal District Court No. 2 of Dallas County, shall be binding on all such defendants, parties and witnesses and their sureties for appearance in either of said courts in which said cause may be pending or to which same may be transferred. [Id., § 7a.]

Art. 52—23. Judges of criminal district courts may sit in either court.—From and after the time this law shall take effect the Criminal District Court of Dallas County, Texas, and the Criminal District Court Number Two of Dallas County, Texas, and the respective judges thereof, shall have and exercise concurrent jurisdiction with each other in all felony cases, and in all misdemeanor cases in which said courts have, or may hereafter have, concurrent jurisdiction with the County Court of Dallas County at Law, and in all matters and proceedings of which either of said criminal district courts of Dallas County, Texas, now have jurisdiction; and either of the judges of said criminal district courts may, in his discretion, in the absence of the judge of the other criminal district court from his courtroom, or from the County of Dallas, Texas, try and dispose of any cause or causes that may be pending in such criminal district court as fully as could such absent judge were he personally present and presiding. And either of said judges may receive in open court from the foreman of the grand jury any bill or bills of indictment in the court to which such bill or bills of indictment may be returnable, entering the presentment of such bill or bills of indictment in the minutes of the proceedings of such court, and may hear and receive from any impaneled petit jury any report, information or verdict, and make and cause to be entered any order or orders in reference thereto, or with reference to the continuation of the deliberation of such petit jury or their final discharge, as fully and completely as such absent district judge could do if personally present and presiding over such court; and may make any other order or orders in such courts respecting the causes therein pending or the procedure pertaining thereto, as the regular judge of said criminal district judge could make if personally present and presiding. [Act 1915, p. 138, ch. 86, § 1.]

Act March 22, 1915, ch. 86, in its title purports to amend chapter 19, section 2, of Act Sept. 14, 1911, set forth in art. 52—9, but the enacting part makes no mention of the matter of amendment.

Art. 52—24. Criminal District Attorney; duties; salary; fees; accounting; assistants; oath; powers; report of expenses; election.—There shall be elected by the qualified electors of the Criminal Judicial District of Dallas county, Texas, an attorney for said district, who shall be styled the "Criminal District Attorney of Dallas county," and who shall hold his office for a period of two years and until his successor is elected and qualified. The said Criminal District Attorney shall possess all the qualifications and take the oath and give the bond required by the Constitution and laws of this State, of other district attorneys. [March 29, 1917, ch. 121, § 2.]

It shall be the duty of said Criminal District Attorney or his assistants, as hereinafter provided to be in attendance upon each term of the "Criminal Court of Dallas County" and the "Criminal District Court No. 2 of Dallas County" and to represent the state in all matters pending before said courts. And he shall have exclusive control of all criminal cases whereever pending, or in whatever court in Dallas County that now has jurisdiction of criminal cases, as well as any or all courts that may hereafter be created and given jurisdiction in criminal cases, and he shall have the fees therefor fixed by law. He shall also have control of any and all cases heard on habeas corpus before any civil district court of Dallas County, as well as before the Criminal Court of said county. The Criminal District Attorney of Dallas County shall have and exercise in addition to the specific powers given and the duties imposed upon him by this Act, all such powers, dutes [duties] and privileges within said Criminal District of Dallas County as are by law now conferred, or which may hereafter be conferred upon district and county attorneys in the various counties and judicial districts of this state.

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

The said Criminal District Attorney of Dallas County shall be commissioned by the Governor and shall receive a salary of $500.00 per annum, to be paid by the state, and in addition thereto shall receive the

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

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

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

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

The assistant criminal district attorneys and the extra assistant criminal district attorneys above provided for, when so appointed, shall take oath of office and be authorized to represent the state before said criminal district court, and in all other courts of Dallas county, in which the criminal district attorney of Dallas county is authorized by this Act to represent the state, such authority to be exercised under the direction of said criminal district attorney, and which said assistants shall be subject to removal at the will of the said criminal district attorney. Each of said assistant criminal district attorneys shall be authorized to administer oaths, file information, examine witnesses before the grand jury and generally perform any duty devolving upon the criminal district attorney of Dallas county, and to exercise any power conferred by law upon the said criminal district attorney when by him so authorized. The criminal district attorney of Dallas county shall be paid the same fees for services rendered by his assistants as he would be entitled to receive if the services shall have been rendered by himself. [Id., § 7.]

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

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

The criminal district attorney of Dallas county, as provided for in this Act, shall be elected by the qualified electors of the criminal judicial district of Dallas county at the next general election, and it is provided and directed that the present county attorney of Dallas county, Texas shall continue in office and assume the duties and be known as the criminal district attorney of Dallas county, Texas, and proceed to organize and arrange the affairs of the office of crim-

inal district attorney of Dallas county, and appoint assistants as provided for in this Act and receive the fees provided for in this Act for such office until the next general election and until the criminal district attorney of Dallas county shall be elected and qualified. [Id., § 10.]

Art. 52—25. Galveston and Harris counties criminal judicial district changed to include only Harris county; criminal district court of Harris county created; original jurisdiction.—The territorial limits of the Criminal Judicial District composed of the counties of Galveston and Harris is hereby changed so as to hereafter include Harris county alone, and there is hereby created and established in the city of Houston, in the county of Harris, a Criminal District Court, which shall have original and exclusive jurisdiction over all criminal cases, both felony and misdemeanor, in the county of Harris, of which district and county courts under the Constitution and laws of this State, have original and exclusive jurisdiction, and shall be known as "The Criminal District Court of Harris County." [Act 1911, p. 111, ch. 67, § 1.]

Art. 52—26. Appellate jurisdiction.—The said court shall have exclusive appellate jurisdiction over all criminal cases tried and determined by justices of the peace, mayors and recorders in said county of Harris, under the same rules and regulations as are provided by law for appeals from justices of the peace, mayors and recorders to the county courts in criminal cases. [Id., § 2.]

Art. 52—27. May grant habeas corpus, etc.—The judge of said court hereinafter provided for shall have power to grant writs of habeas corpus, mandamus and all writs necessary to enforce the jurisdiction of his court, under the same rules and regulations which govern district judges. [Id., § 3.]

Art. 52—28. Jurisdiction over bail bonds, etc.—Said court shall have jurisdiction over all bail bonds and recognizances taken in proceedings had before said court, or that may be returned to said court from other courts, and may enter forfeitures thereof, and final judgments, and enforce the collection of the same by proper process in the same manner as is provided by law in district courts. [Id., § 4.]

Art. 52—29. Jurisdiction over cases transferred.—Said court shall have jurisdiction over all criminal cases heretofore transferred from other courts to the Criminal District Court of Harris County as heretofore established, and over such criminal cases as may hereafter be transferred to the court created by this Act, as fully in all respects as if said cases had originated in said court. [Id., § 5.]

Art. 52—30. Seal of court.—The said Criminal District Court of Harris County shall have a seal similar to the seal of the district court, with the words "Criminal District Court of Harris County" engraved thereon, an impression of which seal shall be attached to all writs and other process, except subpœnas issuing from said court, and shall be used in the authentication of all official acts of the clerk of the said court. [Id., § 6.]

Art. 52—31. Rules of practice; pleading and evidence.—The practice in said court shall be conducted according to the laws governing the practice in the district court, and the rules of pleading and evidence in the district court shall govern in so far as the same may be applicable. [Id., § 7.]

Art. 52—32. Selection, etc., of juries.—All laws regulating the selection, summoning, and impaneling of grand and petit jurors in the district court shall govern and apply in the criminal district court in so far as the same may be applicable; provided, that the clerk of the district court of Harris county shall assist in drawing the names of the jurors for said criminal court as is now provided by law. [Id., § 8.]

Art. 52—33. Procedure.—All rules of the criminal procedure governing the district and county courts shall apply to and govern said criminal district court. [Id., § 9.]

Art. 52—34. Terms of court.—Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in May, one term beginning the first Monday in August, one term beginning on the first Monday in November and one term beginning on the first Monday in February of each year. Each term shall continue until the business is disposed of. [Act 1903, ch. 18; Act 1911, p. 112, ch. 67, § 11.]

Art. 52—35. Extension of term.—Whenever the Criminal District Court of Harris County shall be engaged in the trial of any cause when the time for the expiration of the term of said court as fixed by law shall arrive, the judge presiding shall have the power and may, if he deems it expedient, continue the term of said court until the conclusion of such pending trial; in such case the extension of such term shall be shown on the minutes of the court before they are signed. [Act 1911, p. 112, ch. 67, § 12.]

Art. 52—36. Sheriff of Harris county shall attend, etc.—The sheriff of Harris county and his deputies shall attend upon said court and execute all the process issuing therefrom and perform all duties required by said court or the judge thereof, and shall perform all such services for said court as sheriffs and constables are authorized or required to perform in and for other district courts of this State and he shall receive the same fees for his services as are provided by law for the same services in the district court. [Id., § 13.]

Art. 52—37. Same powers as district court.—In all matters over which said criminal district court has jurisdiction, it shall have the same power within said district as is conferred by law upon the district court, and shall be governed by the same rules in the exercise of such power. [Id., § 14.]

Art. 52—38. Appeals and writs of error.—Appeals and writs of error may be prosecuted from the said criminal district court to the court of criminal appeals, in the same manner and form as from district courts in like cases. [Id. sec. 15, superseding article 2228, Rev. Civ. St. 1911.]

Art. 52—39. Harris county separate criminal judicial district judge, clerk, and district attorney, how elected; duties and powers.—The county of Harris is hereby created a separate criminal judicial district and at the next general election after this Act shall take effect, there shall be elected in and for said district a criminal district judge, a criminal district clerk and a district attorney, each of whom shall have and exercise, respectively, the same duties, powers and authority within said county as are now possessed and exercised by the judge of the criminal district court, the clerk of the criminal district court, and the district attorney for the criminal district composed of Galveston and Harris Counties, and such other duties as are prescribed herein. [Act 1911, p. 113, ch. 67, § 16.]

Art. 52—40. Abolished as to Galveston county; transfer of cases; jurisdiction of district and county courts, etc.; compensation of district clerk; special deputy clerks; duty of county attorney, etc.—From and after the taking effect of this Act, the criminal district now composed of Galveston and Harris counties shall cease to exist so far as it embraces Galveston county, and all cases of felony that are then pending on the docket of the Criminal District Court of Galveston County shall be at once transferred to the district courts in said county of the Tenth and Fifty-sixth Judicial Districts, the felony cases on said docket of even numbers shall be transferred to the district court for the Tenth Judicial District and the felony cases on said docket of odd numbers shall be transferred to the district court for the Fifty-sixth Judicial District, and the said district court for the Tenth Judicial District and the said court for the Fifty-sixth Judicial District are

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

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

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

Art. 52—41. Continuation in matters of jurisdiction, records and procedure of former court.—The Criminal District Court of Harris County herein provided for shall, from and after the time when this Act takes effect, be taken and deemed to be, in respect to all matters of jurisdiction, records and procedure a continuation of the Criminal District Court of Galveston and Harris Counties as now organized for Harris county, it being the intention of this Act to reduce the territorial limits of the Criminal Judicial District of Galveston and Harris Counties to Harris county alone. [Id., § 17a.]

Art. 52—42. Judge, how elected; term; qualifications; salary; powers and duties.—The judge of the Criminal District Court of Harris County shall be elected by the qualified voters of said county for a term of four years and shall hold his office until his successor is elected and qualified. He shall possess the same qualifications as are required of the judges of the district court and shall receive the salary and compensation as is now, or may hereafter be provided for district judges of this State, to be paid in the same manner as the salary and compensation of other district judges is paid. Said judge of said criminal district court shall have and exercise all the powers and duties which are now, or hereafter may be by law vested in and exercised by district judges of this State in criminal cases. The judge of said court may exchange with other district judges, as provided by law, and the said judge shall have all the power within said criminal district which is by the Constitution and laws of this State vested in district judges of their respective judicial districts, except that the jurisdiction and authority of said criminal district judge shall be limited to criminal cases, and to the exercise of such powers and the granting of such writs and process as may be necessary or incidental to the exercise of such criminal jurisdiction. [Id., § 18].

Art. 52—43. Criminal district attorney of Harris county; powers and duties.—There shall be elected by the qualified electors of the criminal district of Harris county, Texas, an attorney for said court who shall be styled "The Criminal District Attorney of Harris County," and who shall hold his office for a period of two years and until his successor is elected and qualified. The said criminal district attorney shall possess all of the qualifications and take the oath and give the bond required by the Constitution and laws of this State, of other district attorneys. It shall be the duty of said criminal district attorney, or of his assistants, as hereinafter provided, to be in attendance upon each term of said Criminal District Court of Harris County and to represent the State in all matters pending before said court. And he shall have exclusive control of all criminal cases wherever pending, or in whatever court in Harris county that now has jurisdiction of criminal cases, as well as any or all courts that may be hereafter created and given jurisdiction of any criminal cases, and he shall collect the fees therefor provided by law. He shall also have control of any and all cases heard on habeas corpus before any civil district court of Harris county, as well as before the criminal court of said county. The criminal district attorney of Harris county shall have and exercise, in addition to the specific powers given and duties imposed upon him by this Act, all such powers, duties and privileges within said criminal district of Harris county as are by law now conferred or which may hereafter be conferred upon district and county attorneys in the various counties and judicial districts of this State. It is further provided that he and his assistants shall have the exclusive right, and it shall be their sole duty to perform the duties provided for in this Act, except in cases of the absence from the county of the criminal district attorney and his assistants, or their inability or refusal to act; and no other person shall have the power to perform the duties provided in this Act, or to represent the State in any case in Harris county, except in case of the absence from Harris county, or the disability or refusal to act, of the criminal district attorney and his assistants. [Id., § 19.]

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

Art. 52—44. Same; appointment and compensation.—The said criminal district attorney of Harris county shall be commissioned by the Governor and shall receive a salary of five hundred dollars per annum, to be paid by the State, and in addition thereto shall receive the following fees in felony cases, to be paid by the State: For each conviction of felonious homicide, where the defendant does not appeal or dies, or escapes after appeal and before final judgment of the Court of Criminal Appeals, or where, upon appeal, the judgment is affirmed, the sum of forty dollars. For all other convictions in felony cases, where the defendant does not appeal, or dies, or escapes, after appeal, and before final judgment of the Court of Criminal Appeals, or where, upon appeal, the judgment is affirmed, the sum of thirty dollars; provided, that in all convictions of felony, in which punishment is fixed by the verdict and judgment by confinement in the House of Correction and Reformatory, his fee shall be fifteen dollars. For representing the State in each case of habeas corpus where the defendant is charged with a felony, the sum of twenty dollars. For representing the State in examining trials, in felony cases, where indictment is returned, in each case, the sum of five dollars. The criminal district attorney shall also receive such fees in misdemeanor cases, to be paid by the defendant and by the county, as is now provided by law for district and county attorneys, and he shall also receive such compensation for other services rendered by him as is now, or may hereafter be, authorized by law to be paid to other district and county attorneys in this State. [Id., § 20.]

Art. 52—45. Same; accounting for fees in excess of specified amount.—The criminal district attorney of Harris county shall retain out of the fees earned by him in the Criminal District Court of Harris County the sum of twenty-five hundred dollars per annum, and in addition thereto, one-fourth of the gross excess of all fees in excess of twenty-five hundred dollars per annum, the three-fourths of the excess over and above twenty-five hundred dollars per annum, remaining, to be paid by him into the treasury of Harris county. It is provided that in arriving at the amount collected by him, he shall include the fees arising from all classes of criminal cases of which the Criminal District Court of Harris County has original and exclusive jurisdiction, whether felony, misdemeanor, habeas corpus hearings, or commission on fines and forfeitures collected in said court, it being the intention of this Act that the criminal district attorney of Harris county shall include all fees of every kind and class earned by him in said criminal district court in arriving at the amount collected by him; it being further provided that at the end of each year he shall make a full and complete report and accounting to the county judge of Harris county of the amount of such fees collected by him. [Id., § 21.]

Art. 52—46. Same; assistants and stenographer; salaries; oath; removal; powers of assistants; fees.—The Criminal District Attorney of Harris County shall appoint two assistant criminal district attorneys, who shall each receive a salary of eighteen hundred dollars per annum, payable monthly. He shall also appoint a stenographer, who shall receive a salary of not more than twelve hundred dollars per annum, payable monthly. In addition to the assistant criminal district attorneys and stenographer, above provided for, the county judge of Harris County may, with the approval of the commissioners' court, appoint as many additional assistants as may be necessary to properly administer the affairs of the office of Criminal District Attorney and enforce the law, upon the Criminal District Attorney making application under oath, addressed to the County Judge of Harris County, setting out the need therefor, provided, the county judge, with the approval of the commissioners' court may discontinue the service of any one or more of the assistant criminal district attorneys provided for in this Act, when in his judgment and of the judgment of the commissioners' court, they are not necessary; provided that the additional assistants appointed by the county judge as herein provided for shall receive not more than $1,800.00 per year, payable monthly. The salaries of all assistants shall be paid by Harris County; provided that if the above salaries be insufficient and inadequate for the proper investigation of crime in Harris County and the efficient performance of the duties of said office, then the Criminal District Attorney may contract for and pay such additional compensation as is necessary for the proper and efficient discharge of his duties, out of the excess fees collected by him which would otherwise go to the county, a detailed itemized statement, under oath, of which he shall include in his annual report to the County Judge of Harris County, to be approved by the county auditor, but in no event shall the county be liable for such extra compensation. Provided further that before said Criminal District Attorney shall pay such extra compensation he shall secure the written approval of a majority of the District Judges of Harris County. The assistant criminal district attorneys above provided for, when so appointed, shall take the oath of office and be authorized to represent the State before said Criminal District Court, and in all other courts in Harris County in which the Criminal District Attorney of Harris County, is authorized by this Act to represent the State, such authority to be exercised under the direction of the said Criminal District Attorney, and which assistants shall be subject to removal at the will of the said Criminal District Attorney. Each of said assistant criminal district attorneys shall be authorized to file informations, examine witnesses before the grand jury and generally to perform any duty devolving upon the Criminal District Attorney of Harris County, and to exercise any power conferred by law upon the said Criminal District Attorney when by him so authorized. The Criminal District Attorney of Harris County shall be paid the same fees for services rendered by his assistants as he would be entitled to receive if the services should have been rendered by himself. Provided, further, that the $2,500 in fees and the one-fourth of the excess fees heretofore provided for shall in no event exceed the total sum of $6,000 per year as compensation to said District Attorney, and any amount in exeess thereof shall be turned in to the County Treasurer. [Act Feb. 23, 1917, ch. 42, § 1.]

Art. 52—47. Clerk, how elected; term; fee; salary; powers and duties; deputies.—The clerk of the Criminal District Court of Harris County shall be elected by the qualified voters of Harris county, and shall hold his office for a term of two years, and until his successor is elected and qualified. Said clerk shall receive such fees as are now or may hereafter be prescribed by law to be paid to the clerk of the district courts of this State, and to be paid and collected in the same manner; and in addition thereto, he shall receive an annual salary of one thousand dollars, to be paid out of the treasury of Harris county monthly. Said clerk shall have the same power and authority, and shall perform the same duties with respect to said Criminal District Court of Harris County as are by law conferred upon the clerks of other district courts in criminal cases, and shall have authority to appoint one or more deputies as needed, whose salary shall be paid by said clerk. Said deputies shall take the oath of office prescribed by the Constitution of this State, and said deputies are authorized to perform such services as may be authorized by said criminal district clerk, and shall be removable at the will of the clerk. [Act 1911, p. 117, ch. 67, § 23.]

Art. 52—48. Judge, attorney and clerk to continue in office until, etc.; clerk to be appointed.—The criminal district judge and the criminal district attorney of the criminal judicial district composed of Galveston and Harris counties, who shall be in office at the time when this Act goes into effect, shall continue in office, respectively, as the judge

and the district attorney of the Criminal District Court of Harris County until the next general election, or until their successors shall be elected and qualified.

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

The Governor shall, on January 1, 1912, or thereafter, appoint a clerk of the Criminal District Court of Harris County, who shall hold his office from January 1, A. D. 1912, until the next general election, or until his successor is elected and qualified. [Id., § 24.]

Art. 52—49. Criminal District Court of Travis County; jurisdiction.—The criminal district court of Travis and Williamson Counties, as now created by law shall when this bill takes effect, be known as the Criminal District Court of Travis County, Texas, and shall exercise, have and enforce all the powers and jurisdiction which it now has within and for Travis County and, in addition thereto, shall have and exercise all of the jurisdiction, powers, and functions of a district court under the Constitution and laws of the State of Texas; provided, however, that it shall not exercise or have any jurisdiction or powers as such other than is incident to a district court of general jurisdiction, it being the purpose of this Act to take Williamson County out of the district of said criminal district court as now organized and confine its jurisdiction exclusively to Travis County. The said criminal district court, when this bill becomes effective, shall have the right and power to certify and transfer to the Fifty-third Judicial District Court either civil or criminal cases and the Fifty-third Judical [Judicial] District Court shall have the right to certify and transfer to the criminal district court of Travis County for trial civil cases. Civil cases may be filed or instituted in either the criminal district court of Travis County or in the Fifty-third Judicial District Court in Travis County and both of said courts, or either of them, shall have the right, power and jurisdiction to try either civil or criminal cases within its jurisdiction under the Consttution [Constitution] and General Laws of the State. The Criminal District Court of Travis County shall continue, as now provided by law, to select jury commissioners and impanel grand juries and exercise all of the other powers, functions and jurisdiction now conferred upon it by law, it being the purpose of this Act, not to repeal the Act hereby amended otherwise than is herein specifically done, and this Act is in addition to and cumulative of the Act hereby amended. [Acts 1923, 38th Leg., ch. 68, § 5.]

Art. 52—50. Terms of Court.—The Criminal District Court of Travis County shall hold its terms at the following time, to-wit: On the first Monday in February and may continue in session to and including the last Saturday in March; on the first Monday in April and may continue in session to and including the last Saturday in May; on the first Monday in June and may continue in session to and including the last Saturday in August; on the first Monday in October and may continue in session to and including the last Saturday in November; on the first Monday in December and may continue in session to and including the last Saturday in January. [Acts 1923, 38th Leg., ch. 68, § 5a.]

Art. 52—51. Clerk.—The district clerk of Travis County shall be the clerk of the district courts for the Fifty-third Judicial District and of the Criminal District Court of Travis County and shall perform all of the duties of clerk of the said two courts. [Acts 1923, 38th Leg., ch. 68, § 6.]

Art. 52—52. Election of judge; term.—At the general election, next preceding the taking effect of this Act, there shall be elected, a district judge for the Criminal District Court of Travis County who shall qualify as soon as the Act takes effect, and his term of office shall be four years, and he shall continue in office until his successor is elected and qualified. [Acts 1923, 38th Leg., ch. 68, § 8.]

Art. 52—53. Court reporter.—Upon the taking effect of this Act, the respective judges of each of the said three district courts shall, each for his respective court, appoint an official court reporter who shall have the qualifications and be subject to the same regulations and receive the same compensation as is now, or may hereafter be, fixed by law, for court reporters in district courts. [Acts 1923, 38th Leg., ch. 68, § 9.]

Art. 52—54. District Attorney; election; qualifications; term; compensation.—At the general election next preceding the taking effect of this Act, there shall be elected a district attorney for the counties of Travis and Williamson who shall hold office for a term of two years and until his successor is elected and qualified. That the said district attorney shall possess the qualifications and receive the compensation fixed by law for the office of district attorney; and it shall be his duty to represent the State of Texas in all courts in Travis and Williamson Counties in all matters pertaining to the duties of the office of district attorney. [Acts 1923, 38th Leg., ch. 68, § 10.]

Art. 52—55. Grand juries.—Grand juries for the Criminal District Court of Travis County shall be organized at each of the terms of said court. And grand juries for the Twenty-sixth Judicial District Court shall be organized at the January, May and September terms of the said court; provided, however, that the judge of the district court for the Twenty-sixth Judicial District may, when deemed necessary, organize and impanel grand juries at any other term of said court by entering an order therefor. [Acts 1923, 38th Leg., ch. 68, § 11.]

Art. 52—56. Transfer of causes.—Upon the taking effect of this Act the district clerk of Williamson County shall transfer all causes pending on the docket of the said Criminal District Court in Williamson County to the docket of the Twenty-sixth Judicial District Court; and that all causes so transferred shall be disposed of as though originally filed in the said court to which they were so transferred. [Acts 1923, 38th Leg., ch. 68, § 13.]

Art. 52—57. Same.—Either judge of the Fifty-third Judicial District or the Criminal District Court of Travis County may, in his discretion, at any time, transfer any cause pending on the docket of his court to the other District Court in Travis County, and when the said transfer is so made the said cause so transferred shall be disposed of by the court to which the same was so transferred as though originally filed in the said court. [Acts 1923, 38th Leg., ch. 68, § 14.]

Art. 52—58. Writs, processes, bonds, etc.; return.—All writs, processes, bonds, recognizances and orders in civil and criminal cases and matters, issued, executed, entered into, or required prior to the taking effect of this Act, in the Twenty-sixth Judicial District Court, and in the Criminal District Court of Travis and Williamson Counties, respectively, and returnable to terms of said courts, as heretofore fixed by law, in the counties of Travis and Williamson, are hereby made returnable to the next ensuing terms of the respective courts to which they are required to be transferred, under the provisions of this Act, and shall be as valid and binding as if no change had been made in said courts, or in the time of holding same; and all juries drawn and selected under existing laws shall be as valid as if no change had been made in said courts or in the time of holding same; and at the last term of the Criminal District Court for Travis and Williamson Counties held in Williamson and Travis Counties, under existing laws, the judge of said criminal district court shall provide for the drawing and selection of a grand jury for the proper terms of court in Travis and Williamson Counties, to be held after this Act takes effect; and the said petit and grand juries so drawn and selected shall be required to appear and serve and their acts shall be valid as if no change had been made in said courts, or in the times of holding said courts. [Acts 1923, 38th Leg., ch. 68, § 15.]

Art. 52—59. Judgments and orders.—This Act shall not be construed to in anywise or in any manner affect judgments or orders rendered or made in the Twenty-sixth Judicial District Court in Travis County, or rendered or made in the Criminal District Court for Travis and Williamson Counties, in either of said counties prior to the taking effect of this Act; but it is provided that after this Act becomes effective as a law the Twenty-sixth Judicial District shall have jurisdiction of all judgments, orders and matters over which the Criminal District Court of Travis and Williamson Counties had or could exercise jurisdiction in Williamson County under the law as it now exists; and after this Act becomes effective as a law the Fifty-third Judicial District Court and the Criminal District Court of Travis County shall have jurisdiction of all judgments, orders and matters over which the Criminal District Court for Travis and Williamson Counties and the Twenty-sixth Judicial District had or could exercise jurisdiction in Travis County under the law as it now exists. [Acts 1923, 38th Leg., ch. 68, § 16.]

Art. 52—60. Taking effect of Act.—It is provided that this Act shall take effect and be in force on and after January first, 1925. [Acts 1923, 38th Leg., ch. 68, § 17.]

Art. 52—61. Repeal.—All laws and parts of laws in conflict herewith be, and the same are hereby, repealed. [Acts 1923, 38th Leg., ch. 68, § 18.]

Art. 52—62. Criminal District Court of Nueces, Kleberg, Kenedy, Willacy and Cameron, Counties.—See Rev. Civ. St. 1925, art. 199—28.

Art. 52—63. Court for Tarrant County created; jurisdiction.—There is hereby created and established at the city of Ft. Worth a Criminal District Court to be known as "Criminal District Court of Tarrant County," which Court shall have and exercise, from and after the taking effect of this Act, original and exclusive jurisdiction over all criminal cases of the grade of felony in the county of Tarrant of which district courts, under the Constitution and laws of this State, have original and exclusive jurisdiction, and shall have and exercise such concurrent jurisdiction with the county court of Tarrant county over misdemeanor cases as is hereinafter provided by this Act. [Act March 15, 1917, ch. 77, § 1.]

Art. 52—64. Criminal judicial district created.—There is hereby created and established a Criminal Judicial District of Tarrant County, Texas, to be composed of the County of Tarrant, Texas, alone and which shall be co-extensive with the territorial boundaries and limits of said Tarrant County, and the Criminal District Court of Tarrant County, Texas, shall have and exercise all of the criminal jurisdiction of and for said Criminal District of Tarrant County, Texas, which is now conferred by law on said Criminal District Court. [Acts 1919, 36th Leg. 2d C. S., ch. 80, § 1.]

Art. 52—65. Jurisdiction; transfer of causes.—From and after the time this Act shall take effect, the county court of Tarrant county and the Criminal District Court of Tarrant county created by this Act, shall have and exercise concurrent jurisdiction with each other in all misdemeanor cases of which the county court of Tarrant county may now, or may hereafter have exclusive jurisdiction; and of such misdemeanor cases as shall be filed in said county court on appeal from justices' or recorders' courts; and either the judge of said Criminal District Court, or the judge of said county court of Tarrant county, may upon motion of the county attorney of Tarrant county, or other officer representing the State in said courts, in his discretion transfer any cause or causes that may at any time be pending in his court to the other court by an order or orders entered upon the minutes of his court; and where such transfer or transfers, are made, the clerk of the court making such transfer shall certify to the clerk of the court to which such transfer is made a statement of the cause or causes so transferred giving the style and number of the same to the clerk of the court to which such transfer is made and shall accompany such statement with all the papers in said cause or causes so transferred and upon receipt of such statement and the papers in such cause or causes so transferred, the clerk of the court to which such transfer is made shall enter such cause or causes upon the docket of the court to which such transfer or transfers are made, and when so entered upon the docket, the judge of the court to which such transfer or transfers are made shall dispose of said cause or causes in the same manner as if such cases were originally instituted in said court. [Act March 15, 1917, ch. 77, § 2.]

Art. 52—66. Jurisdiction over bail bonds, etc.—Said court shall have jurisdiction over all bail bonds and recognizances taken in proceedings had before said court, or that may be returned to said court from other courts, and may enter forfeitures thereof and final judgments, and enforce the collection of the same by proper process in the same manner as is provided by law in district courts. [Id., § 3.]

Art. 52—67. Seal of court.—The said Criminal District Court of Tarrant county shall have a seal similar to the seal of the district court with the words "Criminal District Court of Tarrant county" engraved thereon, an impression of which seal shall be attached to all writs and other processes, except subpœnas, issuing from said court, and shall be used in the authentication of the official acts of the clerk of said court. [Id., § 4.]

Art. 52—68. Procedure.—The practice in said court shall be conducted according to the laws governing the practice in the district court, and the rules of pleading and evidence in the district court shall govern insofar as the same may be applicable. [Id., § 5.]

Art. 52—69. Jury laws to apply.—All laws regulating the selection, summoning and impaneling of grand and petit jurors in the district court shall govern and apply in the Criminal District Court in so far as the same may be applicable. [Id., § 6.]

Art. 52—70. Rules of criminal procedure.—All rules of criminal procedure governing the district and county courts shall apply to and govern said Criminal District Court. [Id., § 7.]

Art. 52—71. Juries in misdemeanor cases.—Said Criminal District Court of Tarrant County shall try all misdemeanor cases coming before it with six jurors instead of twelve jurors, unless a jury be waived by the defendant. [Id., § 8.]

Art. 52—72. Terms of court; grand jury.—Said Court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday of April, one term beginning the first Monday of July, one term beginning the first Monday of October, one term beginning the first Monday of January. Each term shall continue until the term ends by operation of law or the business is disposed of. The grand jury shall be impanelled in said court for each term thereof, unless otherwise directed by the judge of said Court. [Id., § 9.]

Art. 52—73. Continuance of term.—Whenever the Criminal District Court of Tarrant County shall be engaged in the trial of any cause when the time for expiration of the terms of said court as fixed by law shall arrive, the judge presiding shall have the power, and may, if he deems it expedient, continue the term of said court until the conclusion of such pending trial; in such case, the extension of such term shall be shown on the minutes of the court before they are signed. [Id., § 10.]

Art. 52—74. Officers.—The sheriff, county attorney, and the clerk of the district court of Tarrant county shall be the sheriff, county attorney and clerk, respectively, of said Criminal District Court under the same rules and regulations as are now, or may hereafter be prescribed by law for the government of sheriffs, county attorneys, and clerks of the district courts of this State; and said sheriff, county attorney and clerk shall respectively receive such fees as are now, or may hereafter be prescribed for such officers in the district courts of the State, to be paid

in the same manner, provided that the clerk of the court herein created, shall receive as compensation for his services the sum of $125.00 (one hundred and twenty-five dollars) per month, to be paid as all the salaries of other clerks of criminal district courts in this State. [Id., § 11.]

Art. 52—75. Same powers as district court; rules.—In all such matters over which said Criminal District Court has jurisdiction, it shall have the same power within said district as is conferred by law upon the district court, and shall be governed by the same rules in the exercise of said power. [Id., § 12.]

Art. 52—76. Appeal and error.—Appeals and writs of error may be prosecuted from said Criminal District Court to the court of criminal appeals in criminal cases and to the courts of civil appeals in the same manner and form as from district courts in like cases. [Id., § 13.]

Art. 52—77. Jurisdiction of district court.—From and after the taking effect of this Act, the district courts of Tarrant county as now constituted, shall be, and they are hereby deprived and divested of all jurisdiction in all criminal cases, and of all jurisdiction given the Criminal District Court of Tarrant county by this Act, and all criminal causes pending in said district courts at the time of the taking effect of this Act and all matters pertaining to criminal cases pending therein over which the court herein created is given jurisdiction, shall be, by the judges of the other district courts ordered transferred to and entered upon the docket of said Criminal District Court, and when so entered upon the docket, the judge of said Criminal District Court shall try and dispose of same in the same manner as if such cases were originally instituted therein. Provided that the other district courts of Tarrant county shall have jurisdiction concurrently with this court to empanel grand juries and to receive their bills of indictment and make proper transfer of same to the Criminal District Court. [Id., § 14.]

Art. 52—78. Judge; election; term; qualifications; salary; powers; appointment.—The judge of said Criminal Court of Tarrant county shall be elected by the qualified voters of Tarrant county for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of the judge of a district court, and shall receive the same salary as is now, or may hereafter be paid, to the district judges to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by district judges of this State in criminal cases. Provided, that the Governor, by and with the consent of the Senate, if in session, shall appoint a judge of said court who shall hold the office until the next general election after the passage of this Act, and until his successor shall have been elected and qualified. [Id., § 15.]

Art. 52—79. Exchange of judges; disqualification or absence.—The judge of said criminal district court may exchange districts with or hold court for any district judge, as provided by law in cases of district judges, and in case of disqualification or absence of a judge, a special judge may be selected. [Id., § 16.]

Art. 52—80. Validation of process heretofore issued.—All orders heretofore made and all process heretofore issued in any criminal cause so transferred are hereby validated and made of full force and effect in the Criminal District Court of Tarrant county. [Id., § 17.]

Art. 52—81. Criminal district attorney; election; term of office; qualifications; oath; bond.—There shall be elected by the qualified electors of the Criminal Judicial District of Tarrant County, Texas, an Attorney for said District who shall be styled the "Criminal District Attorney of Tarrant County" and who shall hold his office for a period of two years and until his successor is elected and qualified. The said Criminal District Attorney shall possess all the qualifications and take the oath and give the bond required by the Constitution and laws of this State, of other District Attorneys. [Acts 1919, 36th Leg., 2d C. S., ch. 80, § 2.]

Art. 52—82. Same; powers and duties.—It shall be the duty of said Criminal District Attorney or his assistants as herein provided to be in attendance upon each term and all sessions of the Criminal District Court of Tarrant County, and of all sessions and terms of the County Court of Tarrant County, Texas, held for the transaction of criminal business, and to represent the State in all matters pending before said Courts, and to represent Tarrant County in all matters pending before such Courts, the Commissioners' Court of Tarrant County and Justice Courts and any other courts where said Tarrant County has pending business of any kind or matter of concern or interest. The Criminal District Attorney of Tarrant County shall have and exercise in addition to the specific powers given and the duties imposed upon him by this Act, all such powers, duties and privileges within such criminal district of Tarrant County as are by law now conferred, or which may hereafter be conferred upon District and County Attorneys in the various Counties and Judicial Districts of this State. [Id., § 3.]

Art. 52—83. Same; compensation.—Said Criminal District Attorney of Tarrant County shall be commissioned by the Governor and shall receive as salary and compensation the following and no more:

A salary of Five Hundred ($500.00) Dollars from the State of Texas, as provided in the Constitution of the State of Texas, for the salary of District Attorney, and so much of the fees, commissions and perquisites earned by said office to make up the total compensation to the sum of Six Thousand ($6,000) Dollars; provided, that the amount of such salary, fees and perquisites to be received and retained by him shall never exceed the sum of Six Thousand ($6,000) Dollars in any one year; and, provided, further, that all salaries, fees, commissions and perquisites so earned and received by such office in excess of $6,000 during each and every fiscal year shall be paid into the County Treasury of said county in accordance with the terms and provisions of the maximum fee bill, except as to such portion of such excess as shall be used and expended in the payment of salaries to deputies, as hereinafter provided. [Id., § 4.]

Art. 52—84. Same; assistants.—The Criminal District Attorney of Tarrant County, for the purpose of conducting the affairs of such office, shall be and is hereby authorized, by and with the written consent of the county judge of said county, to appoint such assistant district attorneys who shall have all the qualifications of the criminal district attorney, as are necessary to perform the duties and affairs of such office, not to exceed six in number, two of whom shall receive a salary not to exceed three thousand dollars each per annum; two of whom shall receive a salary not to exceed twenty-five hundred dollars each per annum; one of whom shall receive a salary not to exceed twenty-one hundred dollars per annum; one of whom shall receive a salary not to exceed fifteen hundred dollars per annum. Said criminal district attorney shall also be authorized, with the consent of the county judge of said county, to appoint, not to exceed two assistants who shall not be required to possess the qualifications prescribed by law for criminal district attorneys, who shall perform such duties as may be assigned to them by said criminal district attorney, and who shall receive as their compensation a salary not to exceed twenty-one hundred dollars each per annum. All salaries above mentioned shall be payable monthly, and the said salaries to be paid only out of the fees of office collected by said district attorney, said fees of office to be the same as are now allowed and permitted by law to be paid to the county and district attorneys of this State. The fixing of the amount of salaries to be paid by said criminal district attorney to said assistants shall be fixed and regulated by the commissioners court of said county by an order passed at a regular session of said court and duly spread upon the minutes of said court; provided that the two assistants to the district attorney who are not required to have the qualifications of a criminal district attorney shall, so

far as Tarrant County is concerned, be in lieu of the assistants of like character provided for in any statutes of this State. [Acts 1919, 36th Leg. 2d C. S., ch. 80, § 5; Acts 1920, 36th Leg. 3d C. S., ch. 6, § 1 (§ 5).]

Art. 52—85. Same; assistants; oath, etc.—The Assistant Criminal District Attorneys above provided for when so appointed shall take the oath of office as such, and be authorized to represent the State before the Criminal District Court of Tarrant County in which the Criminal District Attorney of Tarrant County is authorized by this Act to represent the State, or to represent Tarrant County. Each of said Assistant Criminal District Attorneys shall be authorized to administer oaths, file information, examine witnesses before the Grand Jury, and generally to perform any duty devolving upon the Criminal District Attorney of Tarrant County, and to exercise any power conferred by law upon such Criminal District Attorney when by him so authorized and directed. [Acts 1919, 36th Leg. 2d C. S., ch. 80, § 6.]

Art. 52—86. Same; powers; fees.—Said Criminal District Attorney of Tarrant County shall be clothed with all the powers and vested with all the rights and privileges conferred upon County Attorneys and District Attorneys of this state, and shall receive no salary or compensation or perquisites or fees of any character save those provided in Section 4 of this Act. All fees or commissions from all sources, including fees and commissions in all criminal and civil cases, and for the prosecution of all tax suits, and from every other source, shall be turned over to the County Treasurer of said County by the said District Attorney, subject only to the payment of the salary of himself and his deputies, as provided in this Act. [Id., § 7.]

Art. 52—87. Same; election.—The Criminal District Attorney of Tarrant County, as provided for in this Act shall be elected by the qualified voters of the Criminal Judicial District of Tarrant County at the next general election, but it is provided and directed that the present County Attorney of Tarrant County shall continue in office and assume the duties and be known as the "Criminal District Attorney of Tarrant County" and shall proceed to organize and arrange the affairs of the office of the Criminal District Attorney of Tarrant County, and appoint Assistants as provided for in this Act, and receive the compensation and salary provided for in this Act for such office until the next general election, and until his successor shall be elected and qualified. Provided this Act shall not be construed as, creating any Court additional to those now existing in Tarrant County. [Id., § 8.]

Section 9 of Acts 1919, 36th Leg., 2d C. S., ch. 80, p. 246, repeals all conflicting laws.

Art. 52—88. [91] County Courts; exclusive jurisdiction of misdemeanors, except, etc.—The county courts shall have exclusive original jurisdiction of all misdemeanors, except misdemeanors involving official misconduct, and except cases in which the highest penalty or fine that may be imposed under the law may not exceed two hundred dollars, and except in counties where there is established a criminal district court. [Const., art. 5, § 16; Act June 16, 1876, p. 13, § 3.]

Art. 52—89. [92] Power to forfeit bail bonds.—County courts shall have jurisdiction in the forfeiture and final judgment of all bonds and recognizances taken in criminal cases, of which criminal cases said courts have jurisdiction. [Act June 16, 1876, p. 18, § 3.]

Art. 52—90. [93] Power to issue writs of habeas corpus.—The county courts, or judges thereof, shall have the power to issue writs of habeas corpus in all cases in which the constitution has not conferred the power on the district courts or judges thereof; and, upon the return of such writ, may remand to custody, admit to bail or discharge the person imprisoned or detained, as the law and nature of the case may require. [Const., art. 5, § 16; Act June 16, 1876, p. 19, § 5.]

Art. 52—91. [94] Appellate jurisdiction.—The county courts shall have appellate jurisdiction in criminal cases of which justices of the peace and other inferior tribunals have original jurisdiction. [Const., art. 5, § 16; Act June 16, 1876, p. 18, § 3.]

Art. 52—92. Creation of county court of Dallas county, at law.—There is hereby created a court to be held in Dallas county, to be called the "County Court of Dallas County, at Law." [Acts 1907, p. 115, sec. 1.]

Art. 52—93. County court of Dallas county at law, jurisdiction of defined.—The county court of Dallas county at law shall have jurisdiction in all matters and causes, civil and criminal, original and appellate, over which, by the general laws of the state, the county court of said county would have jurisdiction, except as provided in article 102 [103]; and all cases other than probate matters, and such as are provided in article 102 [103], be, and the same are hereby, transferred to the county court of Dallas county at law; and all writs and process, civil and criminal, heretofore issued by or out of said county court, other than pertaining to matters over which, by article 102 [103], jurisdiction remains in the county court of Dallas county, be and the same are hereby made returnable to the county court of Dallas county at law. The jurisdiction of the county court of Dallas county at law, and of the judge thereof, shall extend to all matters of eminent domain, of which jurisdiction has been heretofore vested in the county court or in the county judge; but this provision shall not affect the jurisdiction of the commissioners' court, or of the county judge of Dallas county as the presiding officer of such commissioners' court, as to roads, bridges and public highways, and matters of eminent domain which are now within the jurisdiction of the commissioners' court or the judge thereof. [Act 1907, p. 115.]

The bracketed numbers were inserted by the compilers to indicate the correct reference according to the original text of the law.

Art. 52—94. Jurisdiction retained by the county court of Dallas county.—The county court of Dallas county shall retain, as heretofore, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, person non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators and guardians, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors as provided by law; and the said court, or the judge thereof, shall have the power to issue writs of injunction, mandamus, and all writs necessary to the enforcement of the jurisdiction of said court; and also to punish contempts under such provisions as are or may be provided by general law governing county courts throughout the state; but said county court of Dallas county shall have no other jurisdiction, civil or criminal. The county judge of Dallas county shall be the judge of the county court of Dallas county. All ex officio duties of the county judge shall be exercised by the said judge of the county court of Dallas county, except in so far as the same shall, by this act, be committed to the judge of the county court of Dallas county at law. [Id., p. 115.]

Art. 52—95. Terms of county court of Dallas county, at law; practice, etc.—The terms of the county court of Dallas county, at law, and the practice therein, and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Dallas county, at law, shall be held as now established for the terms of the county court of Dallas county, until the same may be changed in accordance with the law. [Acts 1907, p. 115, § 4.]

Art. 52—96. Judge to be elected when, etc.; qualifications; term.—There shall be elected in said county, by the qualified voters thereof, at each general election, a judge of the county court of Dallas county, at law, who shall be well informed in the laws of the state, who shall hold his office for two years, and until his successor shall have duly qualified. [Id., sec. 5.]

Art. 52—97. Bond and oath of judge.—The judge of the county court of Dallas county, at law, shall execute a bond and take the oath of office, as required by the law relating to county judges. [Id., sec. 6.]

Art. 52—98. Special judge elected or appointed, how.—A special judge of the county court of Dallas county, at law, may be appointed or elected as provided by laws relating to county courts and to the judges thereof. [Id. sec. 7.]

Art. 52—99. Power of the county court of Dallas county at law, of the judge thereof.—The county court of Dallas county at law, or the judges thereof, shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari and supersedeas, and all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said court, or of any other court or tribunal inferior to said court. [Act 1907, p. 115.]

Art. 52—100. Clerk of; seal; sheriff to attend when, etc.—The county clerk of Dallas county shall be the clerk of the county court of Dallas county, at law. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words, "County Court of Dallas County, at Law;" the sheriff of Dallas county shall, in person or by deputy, attend the said court when required by the judge thereof. [Id. sec. 9.]

Art. 52—101. Appointment of jury commissioners; selection, etc., of juries.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the county court of Dallas county, at law. [Id. sec. 10.]

Art. 52—102. Vacancy in office of judge, how filled.—Any vacancy in the office of the judge of the county court of Dallas county, at law, may be filled by the commissioners' court of Dallas county until the next general election. [Id. sec. 11.]

Art. 52—103. Fees and salary of judge.—The judge of the county court of Dallas county, at law, shall collect the same fees as are now established by law relating to county judges, all of which shall be by him paid monthly into the county treasury; and he shall receive an annual salary of three thousand dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners' court. [Id. sec. 12.]

Art. 52—104. Salary of county judge of Dallas county.—The county judge of Dallas county shall hereafter receive from the county treasury, in addition to the fees allowed him by law, such a salary, for the ex officio duties of his office, as may be allowed him by the commissioners' court, not less than twelve hundred dollars per year. [Id. sec. 13.]

Art. 52—105. County court of Bexar county for criminal cases created.—There is hereby created a court to be held in Bexar County, Texas, to be called the "County Court of Bexar County for Criminal Cases." [Act 1915, p. 78, ch. 39, § 1.]

Art. 52—106. Same; jurisdiction.—The County Court of Bexar County for Criminal Cases shall have exclusive jurisdiction of all criminal matters and causes, original and appellate, over which, by the General Laws of the State of Texas, the County Court of said county would have jurisdiction, and the same are hereby transferred to the County Court of Bexar County for Criminal Cases; and all criminal writs and processes heretofore issued by or out of said County Court, be, and the same are hereby made returnable to the County Court of Bexar County for Criminal Cases. [Id. § 2.]

Art. 52—107. Same; jurisdiction retained by other courts.—The jurisdiction hereby transferred to the County Court of Bexar County for Criminal Cases shall include all criminal cases and matters, the forfeiture of bonds in criminal cases, all proceedings in relation thereto; but the County Court of Bexar County shall retain, as heretofore, the jurisdiction of all cases of eminent domain; the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of administrators, executors and guardians; transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition and distribution of estates of deceased persons, and to apprentice minors, as provided by law. The county judge of Bexar county shall be the judge of County Court of Bexar County, and all ex-officio duties of the county judge shall be exercised by the said judge of the County Court of Bexar County, except in so far as the same shall, by this Act and by Act of the Thirty-second Legislature, General Laws pages 15-17, House Bill No. 111, Chapter 10, be committed to the judge of the County Court of Bexar County for Civil Cases. The county judge of Bexar County shall retain authority to determine all matters relating to or arising out of or connected with the granting or revoking of liquor licenses, and all matters appertaining thereto, try all applications for liquor licenses and shall approve all liquor bonds as may be provided by law. He shall also retain jurisdiction of the Juvenile Court. [Id., § 3.]

Art. 52—108. Same; power to issue writs.—The said County Court of Bexar County for Criminal Cases, and the judge thereof shall have the power to issue writs of injunction, certiorari, supersedeas, mandamus, and all other writs necessary to the enforcement of the jurisdiction of said court; and also power to punish for contempt under such provisions as are or may be provided by the General Laws governing County Courts throughout the State; and to issue writs of habeas corpus in cases within the jurisdiction of said court. [Id., § 4.]

Art. 52—109. Same; terms.—The County Court of Bexar County for Criminal Cases shall hold at least four terms for criminal business annually as may be provided by the Commissioners Court of Bexar County under authority of law, and such other terms each year as may be fixed by the Commissioners Court of Bexar County; provided the Commissioners Court having fixed the terms of said court, shall not change the same until the expiration of one year. [Id., § 5.]

Art. 52—110. Same; election of judge; qualifications and tenure.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the County Court of Bexar County for Criminal Cases, who shall be learned in the laws of the State, who shall hold his office for two years, and until his successor shall have been duly qualified. [Id., § 6.]

Art. 52—111. Same; judge's bond.—The judge of the County Court of Bexar County for Criminal Cases shall execute a bond in the sum of five thousand ($5,000.00) dollars and take the oath of office as required by the law relating to county judges. [Id., § 7.]

Art. 52—112. Same; special judge.—Special judge of the County Court of Bexar County for Criminal Cases may be appointed or elected as provided by laws relating to County Courts, and to the judges thereof, and shall receive salary and compensation similar to the judge of the court hereby created, but which shall be prorated and paid to him only for the actual number of days he actually serves. [Id., § 8.]

Art. 52—113. Same; clerk and sheriff.—The county clerk of Bexar County shall be the clerk of the County Court of Bexar County for Criminal Cases. The seal of said court shall be the same as that provided for County Courts, except that the seal shall contain the words "County Court of Bexar County for Criminal Cases." The sheriff of Bexar County shall in person or by deputy attend the court when required by the judge thereof. [Id., § 9.]

Art. 52—114. Same; jurors.—The jurisdiction and authority now vested by law in the County Court of Bexar County, and the County Court of Bexar County for Civil Cases, for the selection and service of

jurors shall be exercised by each of the three courts within their jurisdiction. [Id., § 10.]

Art. 52—115. Same; vacancy in office of judge; appointment of first incumbent.—Any vacancy in the office of the judge of the court created by this Act may be filled by the Commissioners Court of Bexar County until the next general election. The Commissioners Court of the county shall, as soon as may be, after this Act shall take effect, appoint a judge of the County Court of Bexar County for Criminal Cases, who shall serve until the next general election, and until his successor shall be duly elected and qualified. [Id., § 11.]

Art. 52—116. Same; removal of judge.—The judge of the County Court of Bexar County for Criminal Cases may be removed from office in the same manner and for the same causes as any other county judge may be removed under the laws of this State. [Id., § 13.]

Art. 52—117. Same; purpose of act.—The provisions of this law are not intended to in any manner affect the jurisdiction of the County Court of Bexar County for Civil Cases, and this law is intended to create another court somewhat similar to said County Court of Bexar County for Civil Cases, but the court hereby created to have jurisdiction of criminal matters only. [Id., § 14.]

Art. 52—118. County court at law of Harris county, Texas, created.—The County Court of Harris County for Civil Cases shall hereafter be known as the County Court at Law of Harris County, Texas, and the seal of said court shall hereafter be the same as that provided by law for county courts, except that the seal shall contain the words: "County Court at Law of Harris County, Texas." [Act 1913, p. 10, ch. 8, § 1.]

Art. 52—119. Same; effect of change of name of former court.—The change in the name of said court shall in no way or manner, other than is provided in this Act, affect the officers or judge of said court, their compensation or tenure of office, and shall, in no way or manner, affect the process of said court already issued. The judge and officers now serving said County Court of Harris County for Civil Cases, shall continue to serve said court under its changed name to the same effect to all things as if the name had not been changed. All process heretofore issued out of said County Court for Civil Cases and all returns thereon shall in all things be treated and considered as if the name of said court had not been changed. [Id., § 2.]

Art. 52—120. Same; jurisdiction.—The said court to be hereafter known as the County Court at Law for Harris County shall have all the jurisdiction heretofore conferred upon it under the name of the County Court of Harris County for Civil Cases, and its judge shall have all the powers heretofore conferred upon the judge of the County Court of Harris County for Civil Cases; and in addition to the said jurisdiction the said County Court at Law of Harris County shall have all of the, and the same jurisdiction over criminal matters that is now vested in the county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas, and all appeals from justices, mayors, recorders, or other inferior courts within Harris county, shall hereafter lie to said County Court at Law of Harris County instead of as heretofore, to the Criminal District Court of Harris County, and the judge of said court shall have, in addition to the powers now conferred upon him, the same powers, rights and privileges, as to criminal matters as are now vested in and enjoyed by the judges of county courts having criminal jurisdiction; provided, however, that said court shall have no jurisdiction over any of those matters the jurisdiction over which is now in the county court of Harris county or the judge thereof. [Id., § 3.]

Art. 52—121. Same; clerk; fees.—The county clerk of Harris county shall have no authority in criminal matters pending in said County Court at Law for Harris County. The clerk of the Criminal District Court of Harris County shall act as the clerk of the said County Court of Law for Harris County in all criminal matters, but only in criminal matters, and he shall sign all papers emanating from said court, including the minutes of said court in criminal matters, whenever its clerk's signature is necessary, as ex officio clerk of said County Court at Law for Harris County, using the seal of said court. The fees of said clerk as to those criminal matters, the jurisdiction over which is hereby vested in said County Court at Law, shall be the same in all respects, including amount, manner of payment and collection, as if the Criminal District Court of Harris County had retained jurisdiction over said matters. [Id., § 4.]

Art. 52—122. Same; transfer of misdemeanor cases.—All misdemeanor criminal cases now pending in the Criminal District Court of Harris County, as well as all criminal cases on appeal to the said district court from the various subordinate courts of Harris county shall, immediately upon the taking effect of this Act, be transferred to the County Court at Law of Harris County, and the same are hereby so transferred, and upon said County Court at Law is hereby conferred jurisdiction of such cases. [Id., § 5.]

Art. 52—123. Same; fees of judge.—In addition to the compensation now provided by law, the judge of said County Court at Law of Harris County, shall tax up, receive and collect in each case, the same fees and costs in criminal cases over which said county court has jurisdiction, as are now provided by the General Laws of the State, for judges of county courts having criminal jurisdiction, such fees to be retained by him as compensation for the additional jurisdiction conferred upon his court. [Id., § 6.]

Art. 52—124. Same; terms.—Said court shall hold six terms a year, beginning respectively on the first Monday in January, in March, in May, in July, in September, and in November of each year, and each term shall continue until the business is disposed of. [Id., § 7.]

Art. 52—125. County court at law No. 2 of Harris County.—There is hereby created a court to be held in Harris County, Texas, to be called the "County Court at Law No. 2 of Harris County, Texas." [Act 1915, 1st S. S., p. 18, ch. 8, § 1.]

Art. 52—126. Same; jurisdiction.—Said County Court at Law No. 2 of Harris County, Texas, shall have, and it is hereby granted original and appellate jurisdiction, in all matters and causes of a civil and criminal nature, concurrent with and in all things equal to that heretofore conferred upon the County Court at Law of Harris County, Texas. [Id., § 2.]

Art. 52—127. Same; judge; concurrent jurisdiction with county court at law; proviso.—The judge of said County Court at Law No. 2 of Harris County, Texas, shall have and exercise all the powers and shall be subject to all the limitations and obligations heretofore or hereafter conferred or imposed upon the judge of the County Court at Law of Harris County, Texas. Said County Court at Law No. 2 of Harris County, Texas, shall have concurrent jurisdiction with the County Court at Law of Harris County over criminal matters, and shall have the same jurisdiction over criminal matters, that is now vested in county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas. And said County Court at Law No. 2 of Harris County shall have concurrent jurisdiction with the County Court at Law of Harris County in all appeals from justices, mayors, recorders or other inferior courts within Harris County; and the judge of said court shall have the same powers, rights and privileges as to criminal matters as are now vested in and enjoyed by the judges of county courts having criminal jurisdiction; provided, however, that said court shall have no jurisdiction over any of those matters the jurisdiction over which is now vested in the County Court of Harris County, or the judge thereof. [Id., § 3.]

Art. 52—128. Same; qualifications of judge; compensation; fees.—The judge of the County Court at Law No. 2 of Harris County, Texas, shall be well informed in the law; he shall have been a duly licensed and practicing member of the bar of this State

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

Art. 52—129. Same; clerk; fees.—The county clerk of Harris County shall be the clerk of said County Court at Law No. 2 of Harris County in civil matters and causes; and shall receive and collect the same fees which he now receives and collects as clerk of the County Court at Law of Harris County, Texas. The clerk of the Criminal District Court of Harris County, Texas, shall be clerk of said County Court at Law No. 2 in all criminal matters and causes, and shall receive and collect such fees as he now receives and collects in criminal matters as clerk of the County Court at Law of Harris County. [Id., § 5.]

Art. 52—130. Same; seal.—The seal of the County Court at Law No. 2 of Harris County, Texas, shall be the same as that provided by law for county courts, except that such seal shall contain the words "County Court at Law Number Two of Harris County, Texas," and said seal shall be judicially noticed. [Id., § 6.]

Art. 52—131. Same; sheriff; fees.—The sheriff of Harris County, either in person or by deputy, shall attend said court when required by the judge thereof; and the various sheriffs and constables of this State executing process issued out of said court shall receive the fees now or hereafter fixed by law for executing process issued out of county courts. [Id., § 7.]

Art. 52—132. Same; special judge.—A special judge of said court may be appointed or elected in the manner and instances now or hereafter provided by the law relating to county courts and the judges thereof. [Id., § 8.]

Art. 52—133. Same; power to issue writs.—Said court shall have power to issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, habeas corpus in criminal misdemeanor cases, and all writs necessary to the enforcement of its jurisdiction; and, within the limitations placed upon county courts, to punish contempts thereof. Writs of injunction granted in civil cases by the judge of said County Court at Law No. 2 and by the judge of said County Court at Law shall be made returnable to the court in which the petition for injunction shall be filed, as hereinafter provided. [Id., § 9.]

Art. 52—134. Same; jurisdiction of county court at law not impaired.—The jurisdiction, civil and criminal, of the County Court at Law of Harris County, Texas, shall not in anywise be impaired or affected by this Act. [Id., § 10.]

Art. 52—135. Same; terms of court.—The terms of the court hereby created shall begin on the first Monday of the months of June, August, October, December, February and April of each year. The sessions of said court shall be held in such place as may be provided therefor by the Commissioners Court of Harris County. [Id., § 11.]

Art. 52—136. Same; transfer of pending causes.—As soon as may be, after this Act takes effect, the clerk of the County Court at Law of Harris County, Texas, shall transfer to the docket of the County Court at Law No. 2 of Harris County, Texas, one-half of the civil cases then pending in said County Court at Law. In making such transfer, said Clerk shall first transfer to said County Court at Law No. 2 the case having the smallest file number on the docket of said County Court at Law. The case having the next highest file number shall remain on the docket of said County Court at Law. The case having the third smallest file number shall be transferred. In like manner said clerk shall go through the docket of said County Court at Law, transferring to the docket of said County Court at Law No. 2 every second civil case thereafter. The clerk shall note such transfer, when made, on the minutes of the County Court at Law of Harris County, Texas. New civil and new criminal cases filed with said clerk after such transfer has been made, irrespective of the court or judge to which the petitions in such civil cases shall be addressed, shall, in like manner, be filed by the said clerk, one civil and one criminal case in said County Court at Law No. 2, and one civil and one criminal case in said County Court at Law. The first new civil case and the first new criminal case, filed with said clerk after such transfer has been made, shall both be filed in said County Court at Law No. 2. [Id., § 12.]

Art. 52—137. Same; transfer of causes.—The judges of said County Court at Law and of said County Court at Law No. 2, in their discretion, either in term time or in vacation, by an order entered upon the minutes of their respective courts, may transfer to the court of the other any case or cases then pending in their respective courts. And when such case or case[s] shall be so transferred the court to which such transfer shall be made shall have the same right and authority to try and finally dispose of the same as the court making such transfer. [Id., § 13.]

Art. 52—138. Same; procedure.—The practice in said County Court at Law No. 2, and in cases of appeal and writs of error therefrom and thereto, shall be the same as is now, or may hereafter be prescribed for county courts. [Id., § 14.]

Art. 52—139. Same; return of process in transferred causes.—All process issued out of the County Court at Law of Harris County, Texas, prior to the time when the clerk thereof shall transfer cases from the docket of said courts, as provided in Section 12 of this Act, in cases transferred as therein provided, shall be returned to and filed in the court hereby created, and shall be equally as valid and binding upon parties to such transferred cases as though such process had been issued out of the County Court at Law No. 2 of Harris County, Texas. Likewise, in cases transferred by the judges of either of said courts, as provided in Section 13 of this Act, all process extant at the time of such transfer shall be returned to and filed in the court to which such transfer is made, and shall be as valid and binding as though originally issued out of the court to which such transfer may be made. [Id., § 15.]

Art. 52—140. Same; appointment of judge in first instance; election.—As soon as this Act shall take effect the Governor of the State shall appoint a judge of the County Court at Law No. 2 of Harris County, who shall serve until the next general election and until his successor shall be duly elected and qualified. And any vacancy thereafter occurring in the office of the judge of the County Court at Law No. 2 of Harris County, created by this Act, shall be filled by the Commissioners Court of Harris County, the appointee thereof to hold office until the next succeeding general election, and until his successor shall have qualified. There shall be elected by the qualified voters of Harris County at each general election hereafter, a judge of the County Court at Law No. 2 of Harris County, who shall hold his office for two years, and until his successor shall be duly qualified. [Id., § 16.]

Art. 52—141. County court of Jefferson county at law created.—There is hereby created a court to be held in Beaumont, Jefferson County, Texas, to be called the County Court of Jefferson County at Law. [Acts 1915, p. 51, ch. 29, § 1.]

Art. 52—142. Same; jurisdiction.—The County Court of Jefferson County at Law shall have jurisdic-

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

Art. 52—143. Same; jurisdiction of other courts.—The County Court of Jefferson County shall retain, as heretofore, the general jurisdiction of the Probate Court and all jurisdiction conferred by law now over probate matters; and the court herein created shall have no other jurisdiction than that named in this bill, and the County Court of Jefferson County as now and heretofore existing shall have all jurisdiction which it now has, save and except that which is given the County Court of Jefferson County at Law in this bill, but the County Court as now existing shall have no other jurisdiction, civil or criminal. The County Judge of Jefferson County shall be the Judge of the County Court of said county, and all ex officio duties of the County Judge shall be exercised by said Judge of the County Court of Jefferson County, except in so far as the same shall by this bill be committed to the County Court of Jefferson County at Law. [Id., § 3.]

Art. 52—144. Same; clerk; seal; sheriff and deputy.—The County Clerk of Jefferson County, Texas, shall be the clerk of the County Court of Jefferson County at Law, and the seal of said court shall be the same as that provided by law for County Courts, except the seal shall contain the words "County Court of Jefferson County at Law," and the Sheriff of Jefferson County shall in person or by deputy attend said court when required by the Judge thereof, and the County Clerk of Jefferson County, Texas, is hereby authorized, if it becomes necessary, in his judgment, to appoint a deputy to specially attend to the matters pertaining to the County Court of Jefferson County at Law, and said deputy shall be allowed a salary of one hundred dollars per month. [Id., § 10.]

Art. 52—145. County court at law of Galveston, Texas, created.—There is hereby created a court to be held in Galveston county, to be called the "County Court of Galveston County at Law." [Loc. & Sp. Acts 1911, 32d Leg., ch. 104, § 1.]

Art. 52—146. Same; jurisdiction; causes transferred to.—The County Court of Galveston county at law shall only have jurisdiction in criminal matters and causes, original and appellate, over which, by the general laws of the State, the county courts of this State would have jurisdiction; and all misdemeanor cases be and the same are hereby transferred to the county court of Galveston county at law, and all criminal writs and process in misdemeanor cases heretofore issued by or out of the criminal district court of said county be and the same are hereby made returnable to the county court of Galveston county at law. [Id. § 2.]

Art. 52—147. Same; other jurisdiction not affected.—This Act shall not affect the jurisdiction of the county court of Galveston county, which shall be exclusive in probate, civil or other matters, except as stated, nor shall it affect the jurisdiction of the commissioners court or of the county judge of Galveston county as the presiding officer of such court. All ex officio duties of the county judge shall be exercised by the said judge of the county court of Galveston county, except in so far as the same shall, by this Act, be committed to the judge of the county court of Galveston county at law. [Id. § 3.]

Art. 52—148. Same; terms of court; practice; appeals and writs of error.—The terms of the county court of Galveston county at law, and the practice therein and appeals and writs of error therefrom, shall be as prescribed by laws relating to county courts. The terms of the county court of Galveston county at law shall be held as now established for the terms of the county court of Galveston county until the same terms may be changed by the Commissioners Court. [Id. § 4.]

Art. 52—149. Same; judge; election; term of office.—There shall be elected in said county by the qualified voters thereof, at each general election, a judge of the county court of Galveston county at law, who shall be well informed in the laws of the State, who shall hold his office for two years, and until his successor shall have duly qualified. [Id. § 5.]

Art. 52—150. Same; judge; bond; oath of office.—The judge of the county court of Galveston county at law shall execute a bond and take the oath of office as required by law relating to county judges. [Id. § 6.]

Art. 52—151. Same; special judge.—A special judge of the county court of Galveston county at law may be appointed or elected, as provided by laws relating to county courts and to judges thereof. [Id. § 7.]

Art. 52—152. Same; writs; power to issue.—The county court of Galveston county at law, or the judges thereof, shall have power to issue all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of said court or of any other court or tribunal inferior to said court. [Id. § 8.]

Art. 52—153. Same; clerk; deputy; salary; fees; seal of court; sheriff or constable to attend; prosecuting officer.—The county clerk of Galveston county shall be the clerk of the county court of Galveston county at law. The county clerk shall have authority to appoint a suitable person special deputy for said court to be paid a salary by the county of Galveston, not to exceed the sum of one hundred ($100.00) dollars per month; and said county clerk shall be entitled to the same fees for criminal cases in said court as is now or hereafter fixed by law for criminal cases in county courts of this State. He shall be allowed by the county to be paid out of the general fund the sum of six hundred ($600.00) dollars as ex officio fees for said court. The seal of the said court shall be the same as that provided by law for county courts, except that the seal shall contain the words, "County Court of Galveston County, at Law." The sheriff of Galveston county, or the constable for the justices precinct in which is located the county site of said county, shall, in person or by deputy, attend the said court when required by the judge thereof; and shall receive the same fees allowed by law for attending the county court. The county attorney of Galveston county shall be prosecuting officer of said court, and shall receive the same fees as are established by law relating to county and district attorneys. [Id. § 9.]

Art. 52—154. Same; juries.—The jurisdiction and authority now vested by law in the county court for the appointment of jury commissioners and the selection and service of jurors shall be exercised by the county court of Galveston county at law. [Id. § 10.]

Art. 52—155. Same; judge; vacancy in office of.—Any vacancy in the office of the judge of the

court created by this Act may be filled by the commissioners court of Galveston county until the next general election. The commissioners court shall, as soon as may be, after this Act shall take effect, appoint a judge of the county court of Galveston county at law, who shall serve until the next general election and until his successor shall be duly elected and qualified. [Id. § 11.]

Art. 52—156. Same; judge; fees, salary.—The judge of the county court of Galveston county at law shall collect the same fees as are now established by law relating to county judges in misdemeanor cases, all of which shall be by him paid monthly into the county treasury, and he shall receive an annual salary of twenty-one hundred ($2,100.00) dollars per annum, payable monthly, to be paid out of the county treasury by the commissioners court. [Id. § 12.]

Art. 52—157. [95] Appeal, etc., to district court, when.—In all counties in which the civil and criminal jurisdiction, or either, of county courts has been transferred to the district courts, appeals and writs of certiorari may be prosecuted to remove a case tried before a justice of the peace to the district court in the same manner and under the same circumstances under which appeals and writs of certiorari are allowed by general law to remove causes to the county court. [Act April 21, 1879, p. 125.]

Art. 52—158. Criminal district court No. 2, Harris county created.—Sec. 1. There is hereby created and established at the city of Houston a criminal district court to be known as the "Criminal District Court No. 2 of Harris County," which court shall have and exercise concurrent jurisdiction with the criminal district court of Harris County under the Constitution and laws of the State of Texas.

Sec. 2. From and after the time this law shall take effect, the criminal district court of Harris County and the Criminal District Court No. 2 of Harris County shall have and exercise concurrent jurisdiction with each other in all felony causes, and in all matters and proceedings of which the said criminal district court of Harris County now has jurisdiction; and either of the judges of said criminal district courts may in their discretion transfer any cause or causes that may at any time be pending in his court to the other criminal district court by an order or orders entered upon the minutes of his court; and where such transfer or transfers are made the clerk of such criminal district court shall enter such cause or causes upon the docket to which such transfer or transfers are made, and, when so entered upon the docket, the judge of that court shall try and dispose of said causes in the same manner as if such causes were originally instituted in said court. From and after the taking effect of this Act, all felony cases of even numbers that are then pending on the docket of the criminal district court of Harris County shall be at once transferred to the Criminal District Court No. 2 of Harris County, and from and after the taking effect of this Act, the clerk of the criminal district court shall file and docket the felony cases of even numbers in the Criminal District Court No. 2 of Harris County, and the felony cases of odd numbers in the criminal district court of Harris County.

Sec. 3. The judge of said Criminal District Court No. 2 of Harris County shall be elected by the qualified voters of Harris County for a term of four years, and shall hold his office until his successor shall have been elected and qualified. He shall possess the same qualifications as are required of the judge of a district court, and shall receive the same salary as is now or may hereafter be paid to the district judges, to be paid in like manner. He shall have and exercise all the powers and duties now or hereafter to be vested in and exercised by district judges of the criminal district court of Harris County. The judge of said court may exchange with any district judge, as provided by law in cases of district judges, and, in case of disqualification or absence of a judge, a special judge may be selected, elected or appointed as provided by law in cases of district judges; provided, that the Governor, under the authority now provided by law, upon this Act becoming effective, shall appoint a judge of said court, who shall hold the office until the next general election, after the passage of this Law, and until his successor shall have been elected and qualified. Either of the judges of said criminal district courts may, in his discretion, in the absence of the judge of the other criminal district court from his court room or from the County of Harris, Texas, try and dispose of any cause or causes that may be pending in such criminal district court as fully as could such absent judge were he personally present and presiding. And either of said judges may receive in open court from the foreman of the grand jury any bill or bills of indictment in the court to which such bill or bills of indictment may be returnable, entering the presentment of such bill or bills of indictment in the minutes of the proceedings of such court, and may hear and receive from any empaneled petit jury any report, information or verdict, and make and cause to be entered any order or orders in reference thereto, or with reference to the continuation of the deliberation of such petit jury or their final discharge, as fully and completely as such absent district judge could do if personally present and presiding over such court; and may make any other order or orders in such courts respecting the causes therein pending or the procedure pertaining thereto as the regular judge of said criminal district court could make if personally present and presiding.

Sec. 4. Said court shall have a seal of like design as the seal now provided by law for district courts, except that the words "Criminal District Court No. 2 of Harris County" shall be engraved around the margin thereof, which seal shall be used for all the purposes for which the seals of the district courts are required to be used; and certified copies of the orders, proceedings, judgments and other official acts of said court, under the hand of the clerk and attested by the seal of said court, shall be admissible in evidence in all the courts of this State in like manner as similar certified copies from courts of record are now or may hereafter be admissible.

Sec. 5. The sheriff, district attorney and the clerk of the criminal district court of Harris County, as heretofore provided for by law, shall be the sheriff, district attorney and clerk, respectively, of said Criminal District Court No. 2 of Harris County under the same rules and regulations as are now or may hereafter be prescribed by law for the government of sheriffs, district attorneys and clerks of the district courts of the State; and said sheriff, district attorney and clerk shall respectively receive such fees as are now or may hereafter be prescribed by law for such officers in the district courts of the State, to be paid in the same manner.

The county commissioners' court shall have authority to pay out of the general funds of the county for the services of such special deputy district clerks as in their judgment shall be required, such special deputy or deputies to be appointed by the clerk of the criminal district court, and to be removable at the will of the clerk, and to be paid a salary not to exceed the compensation allowed by law to other deputy district clerks, said salary shall be payable monthly. The criminal district attorney may appoint an assistant district attorney, in addition to those now provided by law, to attend said court. Said assistant shall have the authority and shall qualify as provided by law for assistant district attorneys, and shall be removable at the will of the district attorney, and shall receive a salary not to exceed the maximum salary allowed assistant district attorneys; said salary to be payable monthly by said county by warrant drawn from the general funds thereof.

Sec. 6. Said court shall hold four terms each year for the trial of causes and the disposition of business coming before it, one term beginning the first Monday in May, one term beginning on the first Monday in August, one term beginning on the first Monday in November, and one term beginning on the first Monday in February of each year. Each term shall continue

until the business is disposed of. The trials and proceedings in said court shall be conducted according to the law governing the pleadings, practice and proceedings in criminal cases in the district courts. The district judges of the criminal district courts of Harris County shall alternately appoint grand jury commissioners and empanel grand juries; and they shall meet together and determine approximately the number of petit jurors that are reasonably necessary for jury service in the criminal district courts of the county for each week during the time said courts may hold during the year, and shall thereupon order the drawing of such number of jurors from the jury wheel of the county for each of said weeks, said jury to be known as the panel of jurors for service in the criminal district courts for the respective weeks for which they are designated to serve. The judges of the said criminal district courts shall agree upon which one shall be authorized to act in carrying out the provisions of this Act as relating to the calling and qualifying of the jury panel; they may increase or diminish the number of jurors to be selected for any week, and shall order said jurors drawn for as many weeks in advance of service as they deem proper. From time to time they shall designate the criminal district judge to whom the panel of jurors shall report for duty, and said judge, for such time as he is chosen to so act, shall organize said juries and have immediate supervision and control of them. The said jurors, after being regularly drawn from the wheel, shall be served by the sheriff to appear and report for jury service before said judge so designated, who shall hear excuses of said jury and swear them in for service for the week that they are to serve to try all cases that may be submitted to them in any of said criminal district courts, and they may be used interchangeably in the criminal district courts. In the event of a deficiency of said jurors, the judge having control of said panel of jurors shall order such additional jurors to be drawn from the wheel as may be sufficient to meet such emergency, but such jurors shall act only as special jurors and shall be discharged as soon as their services are no further needed. The provisions of the articles commonly known as the "jury wheel law" shall remain in full force and effect, except as modified by this Act and other laws now in effect. [Acts 1927, 40th Leg., p. 33, ch. 24.]

Section 7 of Acts 1927, 40th Leg., p. 33, ch. 24, repeals all conflicting laws and parts of laws; and section 9 provides that if any provision or part shall be held invalid, it shall not affect the remainder.

Art. 52—159. County Criminal Court of Dallas County, creation, jurisdiction, etc.—Sec. 1. There shall be created a court to be held in Dallas County, Texas, to be known and designated as "The County Criminal Court of Dallas County, Texas."

Sec. 2. The county criminal court of Dallas County, Texas, shall have and same is hereby vested with concurrent jurisdiction within the said county of all criminal matters and causes, original and appellate that is now vested in the county courts having jurisdiction in civil and criminal cases under the Constitution and laws of Texas, except as provided in Section Three of this Act.

Sec. 3. The county court of Dallas County, Texas, shall retain as heretofore, its jurisdiction as a juvenile court, the general jurisdiction of a probate court; it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and habitual drunkards, and grant letters testamentary and of administration, settle accounts of administrators, executors and guardians, transact all business pertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlements, partition and distribution of the estates of deceased persons; and of apprenticing minors as provided by law. The county judge of Dallas County shall be the judge of the county court of Dallas County, Texas, and all ex-officio duties of the county judge shall be exercised by the said judge of the said county court, except as in so far as the same shall, by this Act, be committed to the judge of the county criminal court of Dallas County, Texas; and except such as have heretofore been conferred upon the judges of the County Court at Law, Number One, and the County Court at Law, Number Two, of Dallas County, Texas.

Sec. 4. The county criminal court of Dallas County, Texas, or the judge thereof shall have the power of [to] issue writs of habeas corpus and grant injunctions for the enforcement of the penal laws, in cases where the offense charged is within the jurisdiction of said court or any court or tribunal inferior to said court; and shall also have power to punish for contempt under such provisions as are now or may be provided by the General Law governing county courts throughout the State.

Sec. 5. The terms of the county criminal court of Dallas County, Texas, and the practice therein and appeals therefrom shall be as prescribed by law relating to the county courts. The terms of said county criminal court shall be held not less than four times each year and the commissioners' court of Dallas County, Texas, shall fix the time at which said court shall hold its terms, until the same may be changed according to law.

Sec. 6. As soon as may be after the passage of this Act, there shall be appointed by the commissioners' court of Dallas County in accordance with the law, a judge of the county criminal court hereby created, who shall be well informed in the laws of the State and who shall hold his office until the next succeeding general election and until his successor shall have duly qualified. The judge of said court elected at any general election shall hold office for two years and until his successor shall have duly qualified; provided, that no person shall be eligible for judge of said court unless he shall be a citizen of the United States and of this State, who shall have been a practicing lawyer of this State or a judge of a court in said State for four years next preceding his appointment or election, and who shall have resided in the county of Dallas for two years next preceding his appointment or election.

Sec. 7. The judge of the county court of Dallas County, Texas, shall execute a bond and take the oath of office as required by the law relating to county judges.

Sec. 8. A special judge of the county criminal court of Dallas County, Texas, may be appointed or elected as provided by the laws relating to county courts and the judges thereof.

Sec. 9. The county clerk of Dallas County, Texas, shall be the clerk of the county criminal court of Dallas County, Texas, the seal of said court shall be the same as provided for county courts except that the seal shall contain the words "The county criminal court, Dallas County, Texas." The sheriff of Dallas County, Texas, shall in person or by deputy, attend said court when required by the judge thereof.

Sec. 10. The judge of the county criminal court of Dallas County, Texas, shall collect the same fee provided by law for county judges in similar cases, all of which shall be paid by him monthly into the County Treasury, and the judge of said Court shall receive a salary of Three Thousand Six Hundred ($3,600.00) Dollars annually, to be paid monthly out of the County Treasury by the Commissioners' Court.

Sec. 11. The judge of the county criminal court of Dallas County, Texas, may be removed from office in the same manner, and for the same causes as any other county judge may be removed under the laws of this State.

Sec. 12. For the purpose of preserving a record in all cases for the information of the court, jury, and parties, the judge of the county criminal court of Dallas County, Texas, shall appoint an official shorthand reporter, who shall be well skilled in his profession, shall be a sworn officer of the court and who shall hold his office at the pleasure of the court; the provisions of the general laws of Texas relating to the appointment of stenographers for the District Courts shall, and is hereby made to apply in all its provisions,

in so far as they are applicable to the official shorthand reporter herein authorized to be appointed, and said reporter shall be entitled to the same fees and salary and shall perform the same duties and shall take the same oath as are in said laws provided for the stenographers of District Courts of this State, and also be governed by any other laws covering the stenographers of the District Courts of this State; provided, that the official shorthand reporter of said court shall not be required to take testimony in cases where neither party litigant nor the judge demands it; but where the testimony is taken by said reporter a fee of Three Dollars ($3.00) shall be taxed by the clerk as costs in the case, the said Three Dollars ($3.00), when collected to be paid into the County Treasury of Dallas County, Texas.

Sec. 13. As soon as may be, after this Act takes effect, the clerk of the County Court of Law Number One of Dallas County, Texas, and the County Court at Law Number Two, shall transfer to the docket of the County Criminal Court of Dallas County, Texas, hereby created, all of the criminal cases then pending in the County Courts at Law Number One and Number Two of Dallas County, Texas. The clerk shall note such transfer when made on the minutes of the County Courts at Law Number One and Number Two of Dallas County, Texas. [Acts 1927, 40th Leg., p. 36, ch. 25.]

Section 14 of Acts 1927, 40th Leg., p. 36, ch. 25, declared that decisions that any part of the act were invalid should not impair other provisions of the act.

Art. 53. [68–86–87] Court of Criminal Appeals.—The Court of Criminal Appeals shall have appellate jurisdiction co-extensive with the limits of the State in all criminal cases. This article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court or county court at law, in which the fine imposed by the county court or county court at law shall not exceed one hundred dollars.

Art. 53a. Mandamus, certiorari, and contempt.—Sec. 1. In addition to the power and authority now vested in the Court of Criminal Appeals of the State of Texas, said Court and each member thereof shall have and is hereby given power and authority to grant and issue and cause the issuance of writs of mandamus and certiorari, agreeable to the principles of law regarding said writs, whenever in the judgment of said Court or any member thereof the same should be necessary to enforce the jurisdiction of said Court.

Sec. 2. The Court of Criminal Appeals of Texas, and each of the judges thereof, are hereby empowered to punish disobedience of any of the above named writs and to hold in contempt any party found by said Court to have wilfully disobeyed any of said writs so issued by said Court or any of the members thereof. [Acts 1927, 40th Leg., p. 54, ch. 38.]

Art. 54. [88] [87] Jurisdiction of district courts.—District courts and criminal district courts shall have original jurisdiction in criminal cases of the grade of felony, and of all misdemeanors involving official misconduct.

Art. 55. [89] [88] When felony includes misdemeanor.—Upon the trial of a felony case, the court shall hear and determine the case as to any grade of offense included in the indictment, whether the proof shows a felony or a misdemeanor.

Art. 56. [98] [91] Jurisdiction of county courts.—The county courts shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the justice court, and when the fine to be imposed shall exceed two hundred dollars. [Const., art. 5, sec. 16.]

Art. 57. [101–897] Appellate jurisdiction of county courts.—The county courts shall have appellate jurisdiction in criminal cases of which justice courts and other inferior courts have original jurisdiction.

Art. 58. [106] [95] Appeal from inferior court.—If the jurisdiction of any county court has been transferred to the district court or to a county court at law, then an appeal from a justice or other inferior court will lie to the court to which such appellate jurisdiction has been transferred. [Acts 1879, p. 126.]

Reference in brackets to 106 should be 105.

Art. 59. [99] [92] To forfeit bail bonds.—County courts and county courts at law shall have jurisdiction in the forfeiture and final judgment of all bonds and recognizances taken in criminal cases of which said courts have jurisdiction.

Art. 60. [106] [96] Jurisdiction of justice courts.—Justices of the peace shall have jurisdiction in criminal cases where the fine to be imposed by law may not exceed two hundred dollars. [Const. art. 5, sec. 19.]

Art. 61. [107] [97] Justice may forfeit bail bond.—A justice of the peace shall have the power to take forfeitures of all bail bonds given for the appearance of any party at his court, regardless of the amount. [Acts 1876, p. 155.]

Art. 62. [108] [98] Corporation court.—The corporation court in each incorporated city, town or village of this State shall have jurisdiction within the corporate limits in all criminal cases arising under the ordinances of such city, town or village, and shall have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such corporate limits. [Acts 1899, p. 40.]

Art. 63. [109] [99] May sit at any time.—Justice courts and corporation courts may sit at any time to try criminal cases over which they have jurisdiction.

Art. 64. [63] Concurrent jurisdiction.—When two or more courts have concurrent jurisdiction of any criminal offense, the court in which an indictment or a complaint shall first be filed shall retain jurisdiction of such offense to the exclusion of all other courts. [Acts 1903, p. 194.]

TITLE 3

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

Chap.

1. Preventing Offenses by the Act of a Private Person.
2. Preventing Offenses by the Act of Magistrates and Other Officers.
3. Proceedings Before Magistrates to Prevent Offenses.
4. Suppression of Riots and Other Disturbances.
5. Offenses Injurious to Public Health.
6. Obstructions of Public Highways.
7. Habeas Corpus.

CHAPTER ONE

PREVENTING OFFENSES BY THE ACT OF A PRIVATE PERSON

Art.

65. May prevent.
66. Resistance to protect person.
67. To protect property.
68. Limit to resistance.
69. Excessive force.
70. Other person may prevent.
71. Defense of another.

Article 65. [110] [100] May prevent.—The commission of offenses may be prevented either by lawful resistance or by the intervention of the officers of the law. [O. C. 66.]

Art. 66. [111] [101] Resistance to protect person.—Resistance by the party about to be injured may be used to prevent the commission of any offense which, in the Penal Code, is classed as an "offense against the person." [O. C. 67.]

Art. 67. [112] [102] To protect property.—Resistance may also be made by the person about to be injured, to prevent any illegal attempt by force to take or injure property in his lawful possession. [O. C. 68.]

Art. 68. [113] [103] Limit to resistance.—The resistance which the person about to be injured may make to prevent the commission of the offense must be proportioned to the injury about to be inflicted. It must be only such as is necessary to repel the aggression. [O. C. 69.]

Art. 69. [114] [104] Excessive force.—If the person about to be injured, in respect either to his person or property, uses a greater amount of force to resist such injury than is necessary to repel the aggressor and protect his own person or property, he is himself guilty of an illegal act, according to the nature and degree of the force which he has used. [O. C. 70.]

Art. 70. [115] [105] Other person may prevent.—Any person other than the party about to be injured may also, by the use of necessary means, prevent the commission of the offense. [O. C. 71.]

Art. 71. [116] [106] Defense of another.—The same rules which regulate the conduct of the person about to be injured, in repelling the aggression, are also applicable to the conduct of him who interferes in behalf of such person. He may use a degree of force proportioned to the injury about to be inflicted, and no greater. [O. C. 72.]

CHAPTER TWO

PREVENTING OFFENSES BY THE ACT OF MAGISTRATES AND OTHER OFFICERS

Art.
72. When magistrate hears threat.
73. Threat to take life.
74. On attempt to injure.
75. May compel offender to give security.
76. Duty of peace officer as to threats
77. Peace officer to prevent injury.
78. Conduct of peace officer.

Article 72. [117] [107] When magistrate hears threat.—It is the duty of every magistrate, when he may have heard, in any manner, that a threat has been made by one person to do some injury to the person or property of another, immediately to give notice to some peace officer, in order that such peace officer may use lawful means to prevent the injury. [O. C. 73.]

Art. 73. [119] [109] Threat to take life.—If, within the hearing of a magistrate, one person shall threaten to take the life of another, he shall issue a warrant for the arrest of the person making the threat, or, in case of emergency, he may himself immediately arrest such person. [O. C. 75.]

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

Art. 75. [120] [110] May compel offender to give security.—When the person making such threat is brought before a magistrate, he may compel him to give security to keep the peace, or commit him to custody. [O. C. 76.]

Art. 76. [121] [111] Duty of peace officer as to threats.—It is the duty of every peace officer, when he may have been informed in any manner that a threat has been made by one person to do some injury to the person or property of another, to prevent the threatened injury, if within his power; and, in order to do this, he may call in aid any number of citizens in his county. He may take such measures as the person about to be injured might for the prevention of the offense. [O. C. 77.]

Art. 77. [122] [112] Peace officer to prevent injury.—Whenever, in the presence of a peace officer, or within his view, one person is about to commit an offense against the person or property of another, it is his duty to prevent it; and, for this purpose, he may summon any number of the citizens of his county to his aid. He must use the amount of force necessary to prevent the commission of the offense, and no greater. [O. C. 92.]

Art. 78. [123] [113] Conduct of peace officer.—The conduct of peace officers, in preventing offenses about to be committed in their presence, or within their view, is to be regulated by the same rules as are prescribed to the action of the person about to be injured. They may use all force necessary to repel the aggression. [O. C. 79.]

CHAPTER THREE

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81. Form of peace bond.
82. Oath of surety; bond filed.
83. Amount of bail.
84. Surety may exonerate himself.
85. Failure to give bond.
86. Discharge of defendant.
87. May discharge defendant.
88. Bond of person charged with libel.
89. Destruction of libel.
90. When defendant has committed a crime.
91. Costs.
92. May order protection.
93. Suit on bond.
94. Limitation and procedure.

Article 79. [124] [114] Shall issue warrant.—Whenever a magistrate is informed upon oath that an offense is about to be committed against the person or property of the informant, or of another, or that any person has threatened to commit an offense, it is his duty immediately to issue a warrant for the arrest of the accused, that he may be brought before such magistrate or before some other named in the warrant. [O. C. 80.]

Art. 80. [125] [115] Accused brought before magistrate.—When the accused has been brought before the magistrate, he shall hear proof as to the accusation, and, if he be satisfied that there is just reason to apprehend that the offense was intended to be committed, or that the threat was seriously made, he shall make an order that the accused enter into bond in such sum as he may in his discretion require, conditioned that he will not commit such offense, and that he will keep the peace toward the person threatened or about to be injured, and toward all others for one year from the date of such bond. [O. C. 81.]

Art. 81. [126] [116] Form of peace bond.—Such bond shall be sufficient if it be payable to the State of Texas, conditioned as required in said order of the magistrate, be for some certain sum, and be signed by the defendant and his surety, and dated. No error of form shall vitiate such bond, and no error in the proceedings prior to the execution of the bond shall be a defense in a suit thereon. [O. C. 84.]

Art. 82. [127] [117] Oath of surety; bond filed.—The officer taking such bond shall require the sureties of the accused to make oath as to the value of their property as pointed out with regard to bail bonds. Such officer shall forthwith deposit such bond and oaths in the office of the clerk of the county where such bond is taken. [O. C. 90.]

Art. 83. [128] [118] Amount of bail.—Magistrates, in fixing the amount of such bonds, shall be governed by the pecuniary circumstances of the accused and the nature of the offense threatened or about to be committed. [O. C. 90.]

Art. 84. [129] [119] Surety may exonerate himself.—A surety upon any such bond may, at any

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

Art. 85. [130] [120] Failure to give bond.—If the defendant fail to give bond, he shall be committed to jail for one year from the date of the first order requiring such bond. [O. C. 82.]

Art. 86. [131] [121] Discharge of defendant.—A defendant committed for failing to give bond shall be discharged by the officer having him in custody, upon giving the required bond, or at the expiration of the time for which he has been committed. [O. C. 86.]

Art. 87. [132] [122] May discharge defendant.—If the magistrate believes from the evidence that there is no good reason to apprehend that the offense was intended or will be committed, or that no serious threat was made by the defendant, he shall discharge the accused, and may, in his discretion, tax the cost of the proceeding against the party making the complaint.

Art. 88. [133] [123] Bond of person charged with libel.—If any person shall make oath, and shall convince the magistrate that he has good reason to believe that another is about to publish, sell or circulate, or is continuing to sell, publish or circulate any libel against him, or any such publication as is made an offense by the penal law of this State, the person accused of such intended publication may be required to enter into bond with security not to sell, publish or circulate such libelous publication, and the same proceedings be had as in the cases before enumerated in this chapter. [O. C. 95.]

Art. 89. [159] [149] Destruction of libel.—On conviction for making, writing, printing, publishing, selling or circulating a libel, the court may, if it be shown that there are in the hands of defendant or another copies of such libel intended for publication, sale or distribution, order all such copies to be seized and destroyed by the sheriff or other proper officer. [O. C. 116.]

Art. 90. [134] [124] When defendant has committed a crime.—If it appears from the evidence before the magistrate that the defendant has committed a criminal offense, the same proceedings shall be had as in other cases where parties are charged with crime. [O. C. 91.]

Art. 91. [135] [125] Costs.—If the accused is found subject to the charge and required to give bond, the costs of the proceeding shall be adjudged against him. [O. C. 95.]

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

Art. 93. [137] [127] Suit on bond.—A suit to forfeit any bond taken under the provisions of this chapter shall be brought in the name of the State by the district or county attorney in the county where the bond was taken. [O. C. 87.]

Art. 94. [138] [128] Limitation and procedure.—Suits upon such bonds shall be commenced within two years from the breach of the same, and not thereafter, and shall be governed by the same rules as civil actions, except that the sureties may be sued without joining the principal. To entitle the State to recover, it shall only be necessary to prove that the accused violated any condition of said bond. The full amount of such bond may be recovered of the accused and the sureties. [O. C. 88.]

CHAPTER FOUR

SUPPRESSION OF RIOTS AND OTHER DISTURBANCES

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95. Officer may require aid.
96. Military aid in executing process.
97. Military aid in suppressing riots.
98. Dispersing riot.
99. Officer may call aid.
100. Means adopted to suppress.
101. Unlawful assembly.
102. Suppression at election.
103. Power of special constable.

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

Art. 96. [140] [130] Military aid in executing process.—If it be represented to the Governor in such manner as to satisfy him that the power of the county is not sufficient to enable the sheriff to execute process, he may, on application, order any military company of volunteers or militia company from another county to aid in overcoming such resistance. [O. C. 98.]

Art. 97. [141] [131] Military aid in suppressing riots.—Whenever, for the purpose of suppressing riots or unlawful assemblies, the aid of military or militia companies is called, they shall obey the orders of the civil officer who is engaged in suppressing the same. [O. C. 104.]

Art. 98. [142] [132] Dispersing riot.—Whenever a number of persons are assembled together in such a manner as to constitute a riot, according to the penal law of the State, it is the duty of every magistrate or peace officer to cause such persons to disperse. This may either be done by commanding them to disperse or by arresting the persons engaged, if necessary, either with or without warrant. [O. C. 99.]

Art. 99. [143] [133] Officer may call aid.—In order to enable the officer to disperse a riot, he may call to his aid the power of the county in the same manner as is provided where it is necessary for the execution of process. [O. C. 100.]

Art. 100. [144] [134] Means adopted to suppress.—The officer engaged in suppressing a riot, and those who aid him, are authorized and justified in adopting such measures as are necessary to suppress the riot, but are not authorized to use any greater degree of force than is requisite to accomplish that object. [O. C. 102.]

Art. 101. [145] [135] Unlawful assembly.—The articles of this chapter relating to the suppression of riots apply equally to an unlawful assembly and other unlawful disturbances, as defined by the Penal Code. [O. C. 103.]

Art. 102. [146] [136] Suppression at election.—To suppress riots, unlawful assemblies and other disturbances at elections, any magistrate may appoint a sufficient number of special constables. Such appointments shall be made to each special constable, shall be in writing, dated and signed by the magistrate, and shall recite the purposes for which such appointment is made, and the length of time it is to continue. Before the same is delivered to such special constable, he shall take an oath before the magistrate to suppress, by lawful means, all riots, unlawful assemblies and breaches of the peace of which he may receive information, and to act impartially between all parties and persons interested in the result of the election. [O. C. 106.]

Art. 103. [147] [137] Power of special constable.—Special constables so appointed shall, during the time for which they are appointed, exercise the powers and perform the duties properly belonging to peace officers. [O. C. 117.]

CHAPTER FIVE

OFFENSES INJURIOUS TO PUBLIC HEALTH

Art.
104. Trade injurious to health.
105. Refusal to give bond.
106. Requisites of bond.
107. Suit upon bond.
108. Proof.
109. Unwholesome food.

Article 104. [148] [138] Trade injurious to health.—After an indictment or information has been presented against any person for carrying on a trade, business or occupation injurious to the health of those in the neighborhood, the court shall have power, on the application of any one interested, and after hearing proof both for and against the accused, to restrain the defendant, in such penalty as may be deemed proper, from carrying on such trade, business or occupation, or may make such order respecting the manner and place of carrying on the same as may be deemed advisable; and, if, upon trial, the defendant be convicted, the restraint shall be made perpetual, and the party shall be required to enter into bond, with security, not to continue such trade, business or occupation to the detriment of the health of such neighborhood, or of any other neighborhood within the county. [O. C. 108.]

Art. 105. [149] [139] Refusal to give bond.—If the party refuses to give bond when required under the provisions of the preceding article, the court may either commit him to jail, or make an order requiring the sheriff to seize upon the implements of such trade, business or occupation, or the goods and property used in conducting such trade, business or occupation, and destroy the same. [O. C. 108.]

Art. 106. [150] [140] Requisites of bond.—Such bond shall be payable to the State of Texas, in a reasonable amount to be fixed by the court, conditioned that the defendant will not carry on such trade, business or occupation, naming the same, at such place, naming the place, or at any other place in the county, to the detriment of the health of the neighborhood. Said bond shall be signed by the defendant and his sureties and dated, and shall be approved by the court taking the same, and filed in such court. [O. C. 109.]

Art. 107. [151] [141] Suit upon bond.—Any such bond, upon the breach thereof, may be sued upon by the district or county attorney, in the name of the State of Texas, within two years after such breach, and not afterwards; and such suits shall be governed by the same rules as civil actions. [O. C. 109.]

Art. 108. [152] [142] Proof.—It shall be sufficient proof of the breach of any such bond to show that the party continued after executing the same, to carry on the trade, business or occupation which he bound himself to discontinue; and the full amount of such bond may be recovered of the defendant and his sureties. [O. C. 110.]

Art. 109. [153] [143] Unwholesome food.—After conviction for selling unwholesome food or adulterated medicine, the court shall enter and issue an order to the sheriff or other proper officer to seize and destroy such as remains in the hands of the defendant. [O. C. 108.]

CHAPTER SIX

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Article 110. [155] [145] Order to remove.—After prosecution begun against any person for obstructing any highway, any one, in behalf of the public, may apply to the county judge of the county in which such highway is situated; and, upon hearing proof, such judge, either in term time or in vacation, may issue his written order to the sheriff or other proper officer of the county, directing him to remove the obstruction. Before the issuance of such order, the applicant therefor shall give bond with security in an amount to be fixed by the judge, to indemnify the accused, in case of his acquittal, for the loss he sustains. Such bond shall be approved by the county judge and filed with the papers in the cause. [O. C. 113.]

Art. 111. [156] [146] Bond of applicant.—If the defendant be acquitted after a trial upon the merits of the case, he may maintain a civil action against the applicant and his sureties upon such bond, and may recover the full amount of the bond, or such damages, less than the full amount thereof, as may be assessed by a jury; provided, he shows on the trial that the place was not in fact, at the time he placed the obstruction or impediment thereupon, a public highway established by proper authority, but was in fact his own property or in his lawful possession. [O. C. 114.]

Art. 112. [158] [148] Removal.—Upon the conviction of a defendant for obstructing a public highway, if such obstruction still exists, the court shall order the sheriff or other proper officer to forthwith remove the same at the cost of the defendant, to be taxed and collected as other costs in the case.

CHAPTER SEVEN

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1. DEFINITION AND OBJECT OF THE WRIT

Article 113. [160–161] What writ is.—The writ of habeas corpus is the remedy to be used when any person is restrained in his liberty. It is an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, and show why he is held in custody or under restraint. [O. C. 117–118.]

Art. 114. [162] [152] To whom directed.—The writ runs in the name of "The State of Texas." It is addressed to a person having another under restraint, or in his custody, describing, as near as may be, the name of the office, if any, of the person to whom it is directed, and the name of the person said to be detained. It shall fix the time and place of return, and be signed by the judge, or by the clerk with his seal, where issued by a court. [O. C. 119.]

Art. 115. [163] [153] Want of form.—The writ of habeas corpus is not invalid, nor shall it be disobeyed for any want of form, if it substantially appear that it is issued by competent authority, and the writ sufficiently show the object of its issuance. [O. C. 120.]

Art. 116. [164] [154] Construction.—Every provision relating to the writ of habeas corpus shall be most favorably construed in order to give effect to the remedy, and protect the rights of the person seeking relief under it. [O. C. 121.]

2. BY WHOM AND WHEN GRANTED

Art. 117. [69–84–92–100–165] By whom writ may be granted.—The Court of Criminal Appeals, the district courts, the county courts, or any judge of said courts, have power to issue the writ of habeas corpus; and it is their duty, upon proper application, to grant the writ under the rules prescribed by law.

Art. 118. [166] [156] Returnable to any county.—Before indictment found, the writ may be made returnable to any county in the State. [O. C. 123.]

Art. 119. [167] [157] Return to certain county.—After indictment found, the writ must be made returnable in the county where the offense has been committed, on account of which the applicant stands indicted. [O. C. 124.]

Art. 120. [168] [158] Applicant charged with felony.—If a person is confined after indictment on a charge of felony, he may apply to the judge of the court in which he is indicted; or, if there be no judge within the district, then to the judge of any district whose residence is nearest to the court house of the county in which the applicant is held in custody.

Art. 121. [169] [159] Applicant charged with misdemeanor.—If a person is confined on a charge of misdemeanor, he may apply to the county judge of the county in which the misdemeanor is charged to have been committed, or, if there be no county judge in said county, then to the county judge whose residence is nearest to the court house of the county in which the applicant is held in custody.

Art. 122. [170] [160] Proceedings under the writ.—When application has been made to a judge under the circumstances set forth in the two preceding articles, he shall appoint a time when he will examine the cause of the applicant, and issue the writ returnable at that time, in the county where the offense is charged in the indictment or information to have been committed. He shall also specify some place in the county where he will hear the application. [O. C. 129.]

Art. 123. [171] [161] Early hearing.—The time so appointed shall be the earliest day which the judge can devote to hearing the cause of the applicant. [O. C. 127.]

Art. 124. [172] [162] Who may present petition.—Either the party for whose relief the writ is intended, or any person for him, may present a petition to the proper authority for the purpose of obtaining relief. [O. C. 128.]

Art. 125. [173] [163] "Applicant."—The word "applicant," as used in this chapter, refers to the person for whose relief the writ is asked, tho the petition may be signed and presented by any other person. [O. C. 129.]

Art. 126. [174] 164] Requisites of petition.—The petition must state substantially:

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

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

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

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

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

Art. 127. [175] [165] Writ granted without delay.—The writ of habeas corpus shall be granted without delay by the judge or court receiving the petition, unless it be manifest from the petition itself, or some documents annexed to it, that the party is entitled to no relief whatever. [O. C. 131.]

Art. 128. [176] [166] Writ may issue without application.—A judge of the district or county court who has knowledge that any person is illegally confined or restrained in his liberty within his district or county may, if the case be one within his jurisdiction, issue the writ of habeas corpus, without any application being made for the same. [O. C. 132.]

Art. 129. [177] [167] Judge may issue warrant of arrest.—Whenever it appears by satisfactory evidence to any judge authorized to issue such writ that any one is held in illegal confinement or custody, and there is good reason to believe that he will be carried out of the State, or suffer some irreparable injury before he can obtain relief in the usual course of law, or whenever the writ of habeas corpus has been issued and disregarded, the said judge may issue a warrant to any peace officer, or to any person specially named by said judge, directing him to take and bring such person before such judge, to be dealt with according to law. [O. C. 133.]

Art. 130. [178] [168] May arrest detainer.—Where it appears by the proof offered, under circumstances mentioned in the preceding article, that the person charged with having illegal custody of the prisoner is, by such act, guilty of an offense against the law, the judge may, in the warrant, order that he be arrested and brought before him; and, upon examination, he may be committed, discharged, or held to bail, as the law and the nature of the case may require. [O. C. 134.]

Art. 131. [179] [169] Proceedings under the warrant.—The officer charged with the execution

of the warrant shall bring the persons therein mentioned before the judge or court issuing the same, who shall inquire into the cause of the imprisonment or restraint, and make an order thereon, as in cases of habeas corpus, either remanding into custody, discharging or admitting to bail the party so imprisoned or restrained. [O. C. 135.]

Art. 132. [180] [170] Officer executing warrant.—The same power may be exercised by the officer executing the warrant in cases arising under the foregoing articles as is exercised in the execution of warrants of arrest. [O. C. 136.]

Art. 133. [181] [171] Constructive custody.—The words, "confined," "imprisoned," "in custody," "confinement," "imprisonment," refer, not only to the actual, corporeal and forcible detention of a person, but likewise to any coercive measures by threats, menaces or the fear of injury, whereby one person exercises a control over the person of another, and detains him within certain limits. [O. C. 137.]

Art. 134. [182] [172] "Restraint."—By "restraint" is meant the kind of control which one person exercises over another, not to confine him within certain limits, but to subject him to the general authority and power of the person claiming such right. [O. C. 138.]

Art. 135. [183] [173] Scope of writ.—The writ of habeas corpus is intended to be applicable to all such cases of confinement and restraint, where there is no lawful right in the person exercising the power, or where, though the power in fact exists, it is exercised in a manner or degree not sanctioned by law. [O. C. 139.]

Art. 136. [184] [174] One committed in default of bail.—Where a person has been committed to custody for failing to enter into bond, he is entitled to the writ of habeas corpus, if it be stated in the petition that there was no sufficient cause for requiring bail, or that the bail required is excessive. If the proof sustains the petition, it will entitle the party to be discharged, or have the bail reduced. [O. C. 141.]

Art. 137. [185] [175] Person afflicted with disease.—When a judge or court authorized to grant writs of habeas corpus shall be satisfied, upon investigation, that a person in legal custody is afflicted with a disease which will render a removal necessary for the preservation of life, an order may be made for the removal of the prisoner to some other place where his health will not be likely to suffer; or he may be admitted to bail when it appears that any species of confinement will endanger his life. [O. C. 141.]

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

Art. 138. [186] [176] Who may serve writ.—The service of the writ may be made by any person competent to testify. [O. C. 143.]

Art. 139. [187] [177] How writ may be served and returned.—The writ may be served by delivering a copy of the original to the person who is charged with having the party under restraint or in custody, and exhibiting the original, if demanded; if he refuse to receive it, he shall be informed verbally of the purport of the writ. If he refuses admittance to the person wishing to make the service, or conceals himself, a copy of the writ may be fixed upon some conspicuous part of the house where such person resides or conceals himself, or of the place where the prisoner is confined; and the person serving the writ of habeas corpus shall, in all cases, state fully, in his return, the manner and the time of the service of the writ. [O. C. 144.]

Art. 140. [188] [178] Return under oath.—The return of a writ of habeas corpus, under the provisions of the preceding article, if made by any person other than an officer, shall be under oath. [O. C. 145.]

Art. 141. [189] [179] Must make return.—The person on whom the writ of habeas corpus is served shall immediately obey the same, and make the return required by law upon the copy of the original writ served on him, and this, whether the writ be directed to him or not. [O. C. 146.]

Art. 142. [190] [180] How return is made.—The return is made by stating in plain language upon the copy of the writ or some paper connected with it:

1. Whether it is true or not, according to the statement of the petition, that he has in his custody, or under his restraint, the person named or described in such petition.
2. By virtue of what authority, or for what cause, he took and detains such person.
3. If he had such person in his custody or under restraint at any time before the service of the writ, and has transferred him to the custody of another, he shall state particularly to whom, at what time, for what reason or by what authority he made such transfer.
4. He shall annex to his return the writ or warrant, if any, by virtue of which he holds the person in custody.
5. The return must be signed and sworn to by the person making it. [O. C. 147, 148.]

Art. 143. [191] [181] Applicant brought before judge.—The person on whom the writ is served shall bring before the judge the person in his custody, or under his restraint, unless it be made to appear that by reason of sickness he can not be removed; in which case, another day may be appointed by the judge or court for hearing the cause, and for the production of the person confined; or the application may be heard and decided without the production of the person detained, by the consent of his counsel. [O. C. 149.]

Art. 144. [192] [182] Custody pending examination.—When the return of the writ has been made, and the applicant brought before the court, he is no longer detained on the original warrant or process, but under the authority of the habeas corpus. The safekeeping of the prisoner, pending the examination or hearing, is entirely under the direction and authority of the judge or court issuing the writ, or to which the return is made. He may be bailed from day to day, or be remanded to the same jail whence he came, or to any other place of safe keeping under the control of the judge or court, till the case is finally determined.

Art. 145. [193] [183] Court shall allow time.—The court or judge granting the writ of habeas corpus shall allow reasonable time for the production of the person detained in custody.

Art. 146. [194] [184] Disobeying writ.—When service has been made upon a person charged with the illegal custody of another, if he refuses to obey the writ and make the return required by law, or, if he refuses to receive the writ, or conceals himself, the court or judge issuing the writ shall issue a warrant directed to any officer or other suitable person willing to execute the same, commanding him to arrest the person charged with the illegal custody or detention of another, and bring him before such court or judge. When such person has been arrested and brought before the court or judge, if he still refuses to return the writ, or does not produce the person in his custody, he shall be committed to jail and remain there until he is willing to obey the writ of habeas corpus, and until he pays all the costs of the proceeding. [O. C. 151.]

Art. 147. [195] [185] Further penalty for disobeying writ.—Any person disobeying the writ of habeas corpus shall also be liable to a civil action at the suit of the party detained, and shall pay in such suit fifty dollars for each day of illegal detention and restraint, after service of the writ. It shall be deemed that a person has disobeyed the writ who detains a prisoner a longer time than three days after service thereof, unless where further time is allowed in the writ for making the return thereto. [O. C. 152.]

Art. 148. [196] [186] Applicant may be brought before court.—In case of disobedience of the writ of habeas corpus, the person for whose relief it is intended may also be brought before the court or judge having competent authority, by an order for that purpose, issued to any peace officer or other proper person specially named. [O. C. 153.]

Art. 149. [197] [187] Death, etc., sufficient return of writ.—It is a sufficient return of the writ of habeas corpus that the person, once detained, has died or escaped, or that by some superior force he has been taken from the custody of the person making the return; but where any such cause shall be assigned, the court or judge shall proceed to hear testimony; and the facts stated in the return shall be proved by satisfactory evidence. [O. C. 154.]

Art. 150. [198] [188] When a prisoner dies.—When a prisoner confined in jail, or who is in legal custody, shall die, the officer having charge of him shall forthwith report the same to a justice of the peace of the county, who shall hold an inquest to ascertain the cause of his death. All the proceedings had in such cases shall be reduced to writing, certified and returned as in other cases of inquest; a certified copy of which shall be sufficient proof of the death of the prisoner at the hearing of an application under habeas corpus. [O. C. 158.]

Art. 151. [199] [189] Who shall represent the State.—If neither the county or district attorney be present, the judge may appoint some qualified practicing attorney to represent the State, who shall be paid the same fee allowed district attorneys for like services. [O. C. 156.]

Art. 152. [200] [190] Prisoner discharged.—The judge or court before whom a person is brought by writ of habeas corpus shall examine the writ and the papers attached to it; and, if no legal cause be shown for the imprisonment or restraint, or, if it appear that the imprisonment or restraint, though at first legal, cannot for any cause be lawfully prolonged, the applicant shall be discharged. [O. C. 157.]

Art. 153. [201] [191] Where party is indicted for capital offense.—If it appears by the return and papers attached that the party stands indicted for a capital offense, the judge or court having jurisdiction of the case shall, nevertheless, proceed to hear such testimony as may be offered on the part, both of the State and the applicant and may either remand or admit him to bail, as the law and the facts may justify. [O. C. 158.]

Art. 154. [202] [192] If court has no jurisdiction.—If it appear by the return and papers attached that the judge or court has no jurisdiction, such court or judge shall at once remand the applicant to the person from whose custody he has been taken.

Art. 155. [203] [193] Presumption of innocence.—No presumption of guilt arises from the mere fact that a criminal accusation has been made before a competent authority.

Art. 156. [204] [194] Action of court upon examination.—The judge or court, after having examined the return and all documents attached, and heard the testimony offered on both sides, shall, according to the facts and circumstances of the case, proceed either to remand the party into custody, admit him to bail or discharge him; provided, that no defendant shall be discharged after indictment without bail. [O. C. 160.]

Art. 157. [205] [195] Void or informal.—If it appears that the applicant is detained or held under a warrant of commitment which is informal, or void; yet, if from the document on which the warrant was based, or from the proof on the hearing of the habeas corpus, it appears that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or held to bail. [O. C. 161.]

Art. 158. [206] [196] If proof shows offense.—Where, upon an examination under habeas corpus, it appears to the court or judge that there is probable cause to believe that an offense has been committed by the prisoner, he shall not be discharged, but shall be committed or admitted to bail. [O. C. 162.]

Art. 159. [207] [197] May summon magistrate.—To ascertain the grounds on which an informal or void warrant has been issued, the judge or court may cause to be summoned the magistrate who issued the warrant, and may, by an order, require him to bring with him all the papers and proceedings touching the matter. The attendance of such magistrate and the production of such papers may be enforced by warrant of arrest. [O. C. 163.]

Art. 160. [208] [198] Written issue not necessary.—It shall not be necessary, on the trial of any cause arising under habeas corpus, to make up a written issue, though it may be done by the applicant for the writ. He may except to the sufficiency of, or controvert the return or any part thereof, or allege any new matter in avoidance. If written denial on his part be not made, it shall be considered, for the purpose of investigation, that the statements of said return are contested by a denial of the same; and the proof shall be heard accordingly, both for and against the applicant for relief. [O. C. 164.]

Art. 161. [209] [199] Order of argument.—The applicant shall have the right by himself or counsel to open and conclude the argument upon the trial under habeas corpus. [O. C. 165.]

Art. 162. [210] [200] Costs.—The judge trying the cause under habeas corpus may make such order as is deemed right concerning the cost of bringing the defendant before him, and all other costs of the proceeding, awarding the same either against the person to whom the writ was directed, the person seeking relief, or may award no costs at all. [O. C. 166.]

Art. 163. [211] [201] Record of proceedings.—If a writ of habeas corpus be made returnable before a court in session, all the proceedings had shall be entered of record by the clerk thereof, as in any other case in such court. When the application is heard out of the county where the offense was committed, or in the Court of Criminal Appeals, the clerk shall transmit a certified copy of all the proceedings upon the application to the clerk of the court which has jurisdiction of the offense. [O. C. 167.]

Art. 164. [212] [202] Proceedings had in vacation.—If the return is made and the proceedings had before a judge of a court in vacation, he shall cause all of the proceedings to be written, shall certify to the same, and cause them to be filed with the clerk of the court which has jurisdiction of the offense, who shall keep them safely. [O. C. 168.]

Art. 165. [213] [203] Construing the two preceding articles.—The two preceding articles refer only to cases where an applicant is held under accusation for some offense; in all other cases the proceedings had before the judge shall be filed and kept by the clerk of the court hearing the case. [O. C. 169.]

Art. 166. [214] [204] Court may grant necessary orders.—The court or judge granting a writ of habeas corpus may grant all necessary orders to bring before him the testimony taken before the examining court, and may issue process to enforce the attendance of witnesses.

Art. 167. [215] [205] Meaning of "return."—The word "return," as used in this chapter, means the report made by the officer or person charged with serving the writ of habeas corpus, and also the answer made by the person served with such writ.

4. GENERAL PROVISIONS

Art. 168. [216] [206] Effect of discharge before indictment.—Where a person, before indictment found against him, has been discharged or held to bail on habeas corpus by order of a court or

judge of competent jurisdiction, he shall not be again imprisoned or detained in custody on an accusation for the same offense, until after he shall have been indicted, unless surrendered by his bail. [O. C. 172.]

Art. 169. [217] [207] Writ after indictment.—Where a person once discharged or admitted to bail is afterward indicted for the same offense for which he has been once arrested, he may be committed on the indictment, but shall be again entitled to the writ of habeas corpus, and may be admitted to bail, if the facts of the case render it proper; but in cases where, after indictment is found, the cause of the defendant has been investigated on habeas corpus, and an order made, either remanding him to custody, or admitting him to bail, he shall neither be subject to be again placed in custody, unless when surrendered by his bail, nor shall he be again entitled to the writ of habeas corpus, except in the special cases mentioned in this chapter. [O. C. 173.]

Art. 170. [218] [208] Person committed for a capital offense.—If the accusation against the defendant for a capital offense has been heard on habeas corpus before indictment found, and he shall have been committed after such examination, he shall not be entitled to the writ, unless in the special cases mentioned in articles 137 and 171. [O. C. 174.]

Art. 171. [219] [209] Obtaining writ a second time.—A party may obtain the writ of habeas corpus a second time by stating in application therefor that since the hearing of his first application important testimony has been obtained which it was not in his power to produce at the former hearing. He shall also set forth the testimony so newly discovered; and, if it be that of a witness, the affidavit of the witness shall also accompany such application. [O. C. 175.]

Art. 172. [220] [210] Refusing to execute writ.—Any officer to whom a writ of habeas corpus, or other writ, warrant or process authorized by this chapter shall be directed, delivered or tendered, who refuses to execute the same according to his directions, or who wantonly delays the service or execution of the same, shall be liable to fine as for contempt of court. [O. C. 178.]

Art. 173. [221] [211] Refusal to obey writ.—Any one having another in his custody, or under his power, control or restraint who refuses to obey a writ of habeas corpus, or who evades the service of the same, or places the person illegally detained under the control of another, removes him, or in any other manner attempts to evade the operation of the writ, shall be dealt with as provided in article 146 of this Code. [O. C. 178.]

Art. 174. [222] [212] Refusal to give copy of process.—Any jailer, sheriff or other officer who has a prisoner in his custody and refuses, upon demand, to furnish a copy of the process under which he holds the person, is guilty of an offense. [O. C. 179.]

Art. 175. [223] [213] Held under Federal authority.—No person shall be discharged under the writ of habeas corpus who is in custody by virtue of a commitment for any offense exclusively cognizable by the courts of the United States, or by order or process issuing out of such courts in cases where they have jurisdiction, or who is held by virtue of any legal engagement or enlistment in the army, or who, being rightfully subject to the rules and articles of war, is confined by any one legally acting under the authority thereof, or who is held as a prisoner of war under the authority of the United States. [O. C. 180.]

Art. 176. [224] [214] Application of chapter.—This chapter applies to all cases of habeas corpus for the enlargement of persons illegally held in custody or in any manner restrained of their personal liberty, for the admission of prisoners to bail, and for the discharge of prisoners before indictment upon a hearing of the testimony. Instead of the writ of habeas corpus in other cases where heretofore used, a simple order shall be substituted. [O. C. 181.]

TITLE 4

LIMITATION AND VENUE

Chap.
1. Limitation.
2. Venue.

CHAPTER ONE

LIMITATION

Art.
177. Treason and forgery.
178. Rape.
179. Theft, etc., five years.
180. Other felonies.
181. Misdemeanors, two years.
182. Computation.
183. Absence from the State not computed.
184. An indictment is "presented," when.
185. An information is "presented," when.

Article 177. [225] [215] Treason and forgery.—An indictment for treason may be presented within twenty years, and for forgery or the uttering, using or passing of forged instruments, within ten years from the time of the commission of the offense, and not afterward. [O. C. 182.]

Art. 178. [226] [216] Rape.—An indictment for rape may be presented within one year, and not afterward. [O. C. 184.]

Art. 179. [227] [217] Theft, etc., five years.—An indictment for felony theft, arson, burglary, robbery and counterfeiting may be presented within five years, and not afterward. [O. C. 183.]

Art. 180. [228] [218] Other felonies.—An indictment for any other felony may be presented within three years from the commission of the offense, and not afterward; except murder, for which an indictment may be presented at any time. [O. C. 185.]

Art. 181. [229] [219] Misdemeanors, two years.—An indictment or information for any misdemeanor may be presented within two years from the commission of the offense, and not afterward. [O. C. 186.]

Art. 182. [230] [220] Computation.—The day on which the offense was committed and the day on which the indictment or information is presented shall be excluded from the computation of time.

Art. 183. [231] [221] Absence from the State not computed.—The time during which the accused is absent from the State shall not be computed in the period of limitation.

Art. 184. [232] [222] An indictment is "presented," when.—An indictment is considered as "presented," when it has been duly acted upon by the grand jury and received by the court.

Art. 185. [233] [223] An information is "presented," when.—An information is considered as "presented" when it has been filed by the proper officer in the proper court.

CHAPTER TWO

VENUE

Art.
186. Offenses not committed in the State.
187. Forgery.
188. Counterfeiting.
189. Perjury and false swearing.
190. On the boundary of two counties.
191. Person dying out of the State.
192. Person within the State inflicting injury on another out of the State.
193. Person without the State inflicting injury on one within.
194. Committed on a boundary stream.
195. Injured in one county and dying in another.
196. Committed on a boundary.
197. Theft.
198. Mortgaged property.
199. Accomplices and accessories to theft.
200. Receiving and concealing stolen property.
201. By commissioner of deeds.
202. On vessels.
203. Embezzlement.
204. False imprisonment, kidnapping and abduction.
205. Conspiracy.
206. Bigamy.

Art.
207. Rape.
208. Conviction or acquittal in another State.
209. Jurisdiction in different counties.
210. Proof of venue.
211. Other offenses.

Article 186. [234] [224] Offenses not committed in the State.—Prosecutions for offenses committed wholly or in part without, and made punishable by law within this State, may be begun and carried on in any county in which the offender is found. [O. C. 190.]

Art. 187. [235] [225] Forgery.—Forgery may be prosecuted in any county where the written instrument was forged, or where the same was used or passed, or attempted to be used or passed, or deposited or placed with another person, firm, association or corporation either for collection or credit for the account of any person, firm, association or corporation. All forging and uttering, using or passing of forged instruments in writing which concern or affect the title to land in this State may be prosecuted in Travis County, or in the county in which such land, or any part thereof, is situated. [Acts 1st C. S. 1921, p. 39.]

Art. 188. [236] [226] Counterfeiting.—Counterfeiting may be prosecuted in any county where the offense was committed, or where the counterfeit coin was passed, or attempted to be passed. [O. C. 207.]

Art. 189. [237] [227] Perjury and false swearing.—Perjury and false swearing may be prosecuted in the county where committed, or in the county where the false statement is used or attempted to be used. [O. C. 190a.]

Art. 190. [238] [228] On the boundary of two counties.—An offense committed on the boundary of any two counties, or within four hundred yards thereof, may be prosecuted and punished in either county. [O. C. 191.]

Art. 191. [239] [229] Person dying out of the State.—If any person, being at the time within this State, shall inflict upon another, also within this State, an injury of which such person afterward dies without the limits of this State, the person so offending shall be liable to prosecution in the county where the injury was inflicted. [O. C. 192.]

Art. 192. [240] [230] Person within the State inflicting injury on another out of the State.—If a person, being at the time within this State, shall inflict upon another out of this State an injury by reason of which the injured person dies without the limits of this State, he may be prosecuted in the county where he was when the injury was inflicted. [O. C. 193.]

Art. 193. [241] [231] Person without the State inflicting an injury on one within.—If a person, being at the time without this State, shall inflict upon another who is at the time within this State, an injury causing death, he may be prosecuted in the county where the person injured dies. [O. C. 194.]

Art. 194. [242] [232] Committed on a boundary stream.—If an offense be committed upon any river or stream, the boundary of this State, it may be prosecuted in the county the boundary of which is upon such stream or river, and the county seat of which is nearest the place where the offense was committed. [O. C. 195.]

Art. 195. [243] [233] Injured in one county and dying in another.—If a person receive an injury in one county and dies in another by reason of such injury, the offender may be prosecuted in the county where the injury was received or where the death occurred. [O. C. 196.]

Art. 196. [244] [234] Committed on a boundary.—Where a river or other stream or highway is the boundary between two counties, any offense committed on such river, stream or highway at a place where it is such boundary, is punishable in either county. [O. C. 197.]

Art. 197. [245] [235] Theft.—Where property is stolen in one county and carried off by the offender to another, he may be prosecuted either in the county where he took the property or in any other county through or into which he may have carried it. [O. C. 198.]

Art. 198. [246] Mortgaged property.—When mortgaged property is taken from one county and unlawfully disposed of in another county, the offender may be prosecuted either in the county in which such property was disposed of, or in the county from which it was removed, or in which the lien on it is registered. [Acts 1899, p. 8.]

Art. 199. [247] [236] Accomplices and accessories to theft.—Accomplices and accessories to theft may be prosecuted in any county where the theft was committed, or in any other county through or into which the property may be carried by either the principal, accomplice or accessory to the offense. [Acts 1889, p. 37.]

Art. 200. [248] [237] Receiving and concealing stolen property.—Receiving and concealing stolen property may be prosecuted in the county where the theft was committed, or in any other county through or into which the property may have been carried by the person stealing the same, or in any county where the same may have been received or concealed by the offender. [Id.]

Art. 201. [249] [238] By commissioner of deeds.—Offenses committed out of this State by a commissioner of deeds, or other officer acting under the authority of this State, may be prosecuted in any county of this State. [O. C. 200.]

Art. 202. [250] [239] On vessels.—An offense committed on board a vessel which is at the time upon any navigable water within the boundaries of this State, may be prosecuted in any county through which the vessel is navigated in the course of her voyage, or in the county where the voyage commences or terminates. [O. C. 201.]

Art. 203. [251] [240] Embezzlement.—Embezzlement may be prosecuted in any county in which the offender may have taken or received the property, or through or into which he may have undertaken to transport it. [O. C. 203.]

Art. 204. [252] [241] False imprisonment, kidnapping and abduction.—Venue for false imprisonment, kidnapping and abduction belongs either to the county in which the offense was committed, or to any county through, into or out of which the person falsely imprisoned, kidnapped or taken in such manner as to constitute abduction may have been carried. [O. C. 204.]

Art. 205. [253] [242] Conspiracy.—Conspiracy may be prosecuted in the county where the conspiracy was entered into, or in the county where the same was agreed to be executed; and when the conspiracy is entered into in another State, territory or country, to commit an offense in this State, the offense may be prosecuted in the county where such offense was agreed to be committed, or in any county where any one of the conspirators may be found, or in Travis County.

Art. 206. Bigamy.—Bigamy may be prosecuted in the county where the bigamous marriage occurred or in any county in this State in which the parties to such bigamous marriage may live or cohabit together as man and wife. [Acts 1921, p. 139.]

Art. 207. [254] Rape.—Rape may be prosecuted in the county in which it is committed, or in any county of the judicial district in which it is committed, or in any county of the judicial district the judge of which resides nearest the county seat of the county in which the offense is committed. When the judicial district comprises only one county, prosecutions may be commenced and carried on in that county, if the offense be committed there, or in any adjoining county. When it shall come to the knowledge of any dis-

trict judge whose court has jurisdiction under this article that rape has probably been committed, he shall immediately, if his court be in session, and if not in session, then, at the first term thereafter in any county of the district, call the attention of the grand jury thereto; and, if his court be in session, but the grand jury has been discharged, he shall immediately recall said grand jury to investigate the accusation. Prosecutions for rape shall take precedence in all cases in all courts; and the district courts are authorized and directed to change the venue in such cases whenever it shall be necessary to secure a speedy trial. [Acts 1st C. S. 1897, p. 16.]

Art. 208. [255] [243] Conviction or acquittal in another State.—When an act has been committed out of this State by an inhabitant thereof, and such act is an offense by the laws of this State, and is also an offense by the laws of the place where the same was done, a conviction or acquittal of the offender, under the laws of the place where the offense was committed, is a bar to the prosecution in this State. [O. C. 205.]

Art. 209. [256] [244] Jurisdiction in different counties.—Where different counties have jurisdiction of the same offense, conviction or acquittal of the offense in one county is a bar to any further prosecution in any other county. [O. C. 206.]

Art. 210. [257] [245] Proof of venue.—In all cases mentioned in this chapter, the indictment or information, or any proceeding in the case, may allege that the offense was committed in the county where the prosecution is carried on. To sustain the allegation of venue, it shall only be necessary to prove that by reason of the facts in the case, the county where such prosecution is carried on has jurisdiction. [O. C. 207.]

Art. 211. [258] [246] Other offenses.—If venue is not specifically stated, the proper county for the prosecution of offenses is that in which the offense was committed. [O. C. 208.]

TITLE 5

ARREST, COMMITMENT AND BAIL

Chap.
1. Arrest Without Warrant.
2. Arrest Under Warrant.
3. The Commitment or Discharge of the Accused.
4. Bail.

CHAPTER ONE

ARREST WITHOUT WARRANT

Art.
212. Offense within view.
213. Within view of magistrate.
214. Authority of municipality.
215. When felony has been committed.
216. Rights of officer.
217. Must take offender before magistrate.

Article 212. [259] [247] Offense within view.—A peace officer or any other person, may, without warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony, or as an "offense against the public peace." [O. C. 209.]

Art. 213. [260] [248] Within view of magistrate.—A peace officer may arrest, without warrant, when a felony or breach of the peace has been committed in the presence or within the view of a magistrate, and such magistrate verbally orders the arrest of the offender. [O. C. 210.]

Art. 214. [261] [249] Authority of municipality.—The municipal authorities of towns and cities may establish rules authorizing the arrest, without warrant, of persons found in suspicious places, and under circumstances which reasonably show that such persons have been guilty of some felony or breach of the peace, or threaten, or are about to commit some offense against the laws. [O. C. 211.]

Art. 215. [262] [250] When felony has been committed.—Where it is shown by satisfactory proof to a peace officer, upon the representation of a credible person, that a felony has been committed, and that the offender is about to escape, so that there is no time to procure a warrant, such peace officer may, without warrant, pursue and arrest the accused. [O. C. 212.]

Art. 216. [263] [251] Rights of officer.—In each case enumerated where arrests may be lawfully made without warrant, the officer or person making the arrest is justified in adopting all the measures which he might adopt in cases of arrest under warrant. [O. C. 213.]

Art. 217. [264] [252] Must take offender before magistrate.—In each case enumerated in this chapter, the person making the arrest shall immediately take the person arrested before the magistrate who may have ordered the arrest, or before the nearest magistrate where the arrest was made without an order. [O. C. 214.]

CHAPTER TWO

ARREST UNDER WARRANT

Art.
218. "Warrant of arrest."
219. Requisites of warrant.
220. Magistrate may issue warrant.
221. "Complaint."
222. Requisites of complaint.
223. Warrant extends to every part of the State.
224. Warrant issued by other magistrate.
225. Warrant may be telegraphed.
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Article 218. [265] [253] "Warrant of arrest."—A "warrant of arrest" is a written order from a magistrate, directed to a peace officer or some other person specially named, commanding him to take the body of the person accused of an offense, to be dealt with according to law. [O. C. 215.]

Art. 219. [266] [254] Requisites of warrant.—It issues in the name of "The State of Texas," and shall be sufficient, without regard to form, if it have these substantial requisites:

1. It must specify the name of the person whose arrest is ordered, if it be known; if unknown, then some reasonably definite description must be given of him.

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

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

Art. 220. [267] [255] Magistrate may issue warrant.—Magistrates may issue warrants of arrest:

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

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

3. In any case named in this Code where they are specially authorized to issue such warrants. [O. C. 217, 218.]

Art. 221. [268] [256] "Complaint."—The affidavit made before the magistrate or district or county attorney is called a complaint if it charges the commission of an offense. [O. C. 219.]

Art. 222. [269] [257] Requisites of complaint.—The complaint shall be sufficient, without regard to form, if it have these substantial requisites:

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

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

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

4. It must be signed by the affiant by writing his name or affixing his mark. [O. C. 220.]

Art. 223. [270] [258] Warrant extends to every part of the State.—A warrant of arrest, issued by any county or district clerk, or by any magistrate (except county commissioners or commissioners courts, mayors or recorders of an incorporated city or town), shall extend to any part of the State; and any peace officer to whom said warrant is directed, or into whose hands the same has been transferred, shall be authorized to execute the same in any county in this State. [O. C. 221; Acts 1905, p. 385.]

Art. 224. [271] [259] Warrant issued by other magistrate.—When a warrant of arrest is issued by any county commissioner or commissioners court, mayor or recorder of an incorporated city or town, it can not be executed in another county than the one in which it issues, except:

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

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

Art. 225. [272] [260] Warrant may be telegraphed.—A warrant of arrest may be forwarded by telegraph from any telegraph office to another in this State. If issued by any magistrate named in article 223, the peace officer receiving the same shall execute it without delay. If it be issued by any other magistrate than is named in article 223, the peace officer receiving the same shall proceed with it to the nearest magistrate of his county, who shall indorse thereon, in substance, these words:

"Let this warrant be executed in the county of ———," which indorsement shall be dated and signed officially by the magistrate making the same. [Act April 17, 1871, p. 39.]

Art. 226. [273] [261] Complaint by telegraph.—A complaint in accordance with article 222, may be telegraphed, as provided in the preceding article, to any magistrate in the State; and the magistrate who receives the same shall forthwith issue a warrant for the arrest of the accused; and the accused, when arrested, shall be dealt with as provided in this chapter in similar cases. [Id.]

Art. 227. [274] [262] Copy to be deposited.—A certified copy of the original warrant or complaint, certified to by the magistrate issuing or taking the same, shall be deposited with the manager of the telegraph office from which the same is to be forwarded; and it shall be at once forwarded, taking precedence over other business, to the place of its destination or to the telegraph office nearest thereto, precisely as it is written, including the certificate of the seal attached. [Id.]

Art. 228. [275] [263] Duty of telegraph manager.—When a warrant or complaint is received at a telegraph office for delivery, it shall be delivered to the party to whom it is addressed as soon as practicable, written on the proper blanks of the telegraph company and certified to by the manager of the telegraph office as being a true and correct copy of the warrant or complaint received at his office. [Id.]

Art. 229. [276] [264] Warrant or complaint must be under seal.—No manager of a telegraph office shall receive and forward a warrant or complaint unless the same shall be certified to under the seal of a court of record or by a justice of the peace, with the certificate under seal of the district or county clerk of his county that he is a legally qualified justice of the peace of such county; nor shall it be lawful for any magistrate to indorse a warrant received by telegraph, or issue a warrant upon a complaint received by telegraph, unless all the requirements of the law in relation thereto have been fully complied with. [Id.]

Art. 230. [277] [265] Telegram prepaid.—Whoever presents a warrant or complaint to the manager of a telegraph office, to be forwarded by telegraph, shall pay for the same in advance, unless, by the rules of the company, it may be sent "collect." [Id.]

Art. 231. [278] [266] Warrant may be directed to any person.—If it is made known by satisfactory proof to the magistrate that a peace officer can not be procured to execute a warrant of arrest, or that such delay will be occasioned in procuring the services of a peace officer that the accused will probably escape, such warrant may be directed to any suitable person who is willing to execute the same; and, in such case, his name shall be set forth in the warrant. [O. C. 223.]

Art. 232. [279] [267] Private person executing warrant.—No person other than a peace officer can be compelled to execute a warrant of arrest; but, if any person shall undertake its execution, he shall be bound to do so under all the penalties to which a peace officer would be liable. He has the same rights, and is governed by the same rules as apply to peace officers. [O. C. 224.]

Art. 233. [280] [268] How warrant is executed.—The officer, or person executing a warrant of arrest, shall take the person whom he is directed to arrest forthwith before the magistrate who issued the warrant, or before the magistrate named in the warrant. [O. C. 225.]

Art. 234. [281] [269] Arrest for out-county felony.—One arrested in one county for felony committed in another shall in all cases be taken before some magistrate of the county where it was alleged the offense was committed. [O. C. 226.]

Art. 235. [282] [270] Arrest for out-county misdemeanor.—One arrested for a misdemeanor shall be taken before a magistrate of the county where the arrest takes place who shall take bail and transmit immediately the bond so taken to the court having jurisdiction of the offense. [O. C. 226.]

Art. 236. [283] [271] Notice of arrest.—If the accused fails or refuses to give bail, as provided in the preceding article, he shall be committed to the jail of the county where he was arrested; and the magistrate committing him shall forthwith notify the sheriff of the county in which the offense is alleged to have been committed of the arrest and commitment, which notice may be given by telegraph, by mail or by other written notice.

Art. 237. [284] [272] Duty of sheriff receiving notice.—The sheriff receiving the notice shall forthwith go or send for the prisoner and have him brought before the proper court or magistrate.

Art. 238. [285] [273] Prisoner discharged if not timely demanded.—If the proper officer of the county where the offense is alleged to have been committed does not demand the prisoner and take

charge of him within thirty days from the day he is committed, such prisoner shall be discharged from custody.

Art. 239. [286] [274] A person is said to be arrested, when.—A person is said to be arrested when he has been actually placed under restraint or taken into custody by the officer or person executing the warrant of arrest. [O. C. 227.]

Art. 240. [287] [275] Time of arrest.—An arrest may be made on any day or at any time of the day or night. [O. C. 228.]

Art. 241. [288] [276] What force may be used.—In making an arrest, all reasonable means are permitted to be used to effect it. No greater force, however, shall be resorted to than is necessary to secure the arrest and detention of the accused. [O. C. 229.]

Art. 242. [289] [277] May break door.—In case of felony, the officer may break down the door of any house for the purpose of making an arrest, if he be refused admittance after giving notice of his authority and purpose. [O. C. 230.]

Art. 243. [290] [278] Authority to arrest must be made known.—In executing a warrant of arrest, it shall always be made known to the accused under what authority the arrest is made; and, if requested, the warrant shall be exhibited to him. [O. C. 231.]

Art. 244. [291] [279] Escaped prisoner.—If a person arrested shall escape, or be rescued, he may be retaken without any other warrant; and, for this purpose, all the means may be used which are authorized in making the arrest in the first instance. [O. C. 232.]

CHAPTER THREE

THE COMMITMENT OR DISCHARGE OF THE ACCUSED

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246. Examination postponed.
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Article 245. [292] [280] Examining trial.—When the accused has been brought before a magistrate, that officer shall proceed to examine into the truth of the accusation made, allowing the accused, however, sufficient time to procure counsel. [O. C. 233.]

Art. 246. [293] [281] Examination postponed.—The magistrate may at the request of either party postpone the examination to procure testimony; but the accused shall in the meanwhile be detained in custody unless he give bail to be present from day to day before the magistrate until the examination is concluded, which he may do in all cases except murder and treason. [O. C. 234.]

Art. 247. [294] [282] Warning to accused.—Before the examination of the witnesses, the magistrate shall inform the accused that it is his right to make a statement relative to the accusation brought against him, but at the same time shall also inform him that he can not be compelled to make any statement whatever, and that if he does make such statement, it may be used in evidence against him. [O. C. 235-241.]

Art. 248. [295] [283] Voluntary statement.—If the accused desires to make a voluntary statement, he may do so before the examination of any witness, but not afterward. His statement shall be reduced to writing by or under the direction of the magistrate, or by the accused or his counsel, and shall be signed by the accused by affixing his name or mark, but shall not be sworn to by him. The magistrate shall attest by his own certificate and signature to the execution and signing of the statement. [O. C. 235, 242, 243.]

Art. 249. [296] [284] Witness placed under rule.—The magistrate shall, if requested by the accused or his counsel, or by the prosecutor, have all the witnesses placed in charge of an officer, so that the testimony given by any one witness shall not be heard by any of the others. [O. C. 235.]

Art. 250. [297] [285] Counsel may examine witness.—If any person appear to prosecute as counsel for the State, he shall have the right to question the witnesses on direct or cross-examination; and the accused or his counsel has the same right. Should no counsel appear, either for the State or for the defendant, the magistrate may examine the witnesses; and the accused has the same right. [O. C. 236.]

Art. 251. [298] [286] Same rules of evidence as on final trial.—The same rules of evidence shall apply to and govern a trial before an examining court that apply to and govern a final trial.

Art. 252. [299] [287] Presence of the accused.—The examination of each witness shall be in the presence of the accused. [O. C. 240.]

Art. 253. [300] [288] Testimony reduced to writing.—The testimony of each witness shall be reduced to writing by or under the direction of the magistrate, and shall then be read over to the witness, or he may read it over himself. Such corrections shall be made in the same as the witness may direct; and he shall then sign the same by affixing thereto his name or mark. All the testimony thus taken shall be certified to by the magistrate. [O. C. 238.]

Art. 254. [301] [289] Attachment for witness.—The magistrate has the power in all cases, where a witness resides or is in the county where the prosecution is pending, to issue an attachment for the purpose of enforcing the attendance of such witness; this he may do without having previously issued a subpœna for that purpose. [O. C. 244.]

Art. 255. [302] [290] Attachment to another county.—The magistrate may issue an attachment for a witness to any county in the State, when affidavit is made by the party applying therefor that the testimony of the witness is material to the prosecution, or the defense, as the case may be; and the affidavit shall further state the facts which it is expected will be proved by the witness; and, if the facts set forth are not considered material by the magistrate, or, if they be admitted to be true by the adverse party, the attachment shall not issue. [O. C. 246.]

Art. 256. [303] [291] Witness need not be tendered fees.—A witness attached need not be tendered his witness fees or expenses. [O. C. 246.]

Art. 257. [304] [292] Attachment executed forthwith.—The officer receiving the attachment shall execute it forthwith by bringing before the magistrate the witness named therein, unless such witness shall give bail for his appearance before the magistrate at the time and place required by the writ. [O. C. 245.]

Art. 258. [305] [293] Postponing examination.—After examining the witnesses in attendance, if it appear to the magistrate that there is other important testimony which may be had by a postponement, he shall, at the request of the prosecutor or of the defendant, postpone the hearing for a reasonable time to enable such testimony to be procured; but in such

case the accused shall remain in the custody of the proper officer until the day fixed for such further examination. No postponement shall take place, unless a sworn statement be made by the defendant, or the prosecutor, setting forth the name and residence of the witness, and the facts which it is expected will be proved. If it be testimony other than that of a witness, the statement made shall set forth the nature of the evidence. If the magistrate is satisfied that the testimony is not material, or, if the same be admitted to be true by the adverse party, the postponement shall be refused. [O. C. 239.]

Art. 259. [306] [294] Capital Offense; who may discharge.—Upon examination of one accused of a capital offense, no magistrate other than a judge of the Court of Criminal Appeals, district court or county court, shall have power to discharge the defendant. Any magistrate may admit to bail, except in capital cases where the proof is evident. [O. C. 248.]

Art. 260. [307] [295] If insufficient bail has been taken.—Where it is made to appear by affidavit to a judge of the Court of Criminal Appeals, district or county court, that the bail taken in any case is insufficient in amount, or that the sureties are not good for the amount, or that the bond is for any reason defective or insufficient, such judge shall issue a warrant of arrest, and require of the defendant sufficient bond and security, according to the nature of the case. [O. C. 249.]

Art. 261. [308] [296] Decision of magistrate.—After the examining trial has been had, the magistrate shall make an order committing the defendant to the jail of the proper county, discharging him or admitting him to bail, as the law and facts of the case may require. [O. C. 250.]

Art. 262. [309] [297] When no safe jail.—If there is no safe jail in the county in which the prosecution is carried on, the magistrate may commit to the nearest safe jail in any other county. [O. C. 251.]

Art. 263. [310] [298] Warrant in such case.—The commitment in the case mentioned in the preceding article shall be directed to the sheriff of the county to which the defendant is sent, but the sheriff of the county from which the defendant is taken shall be required to deliver the prisoner into the hands of the sheriff to whom he is sent. [O. C. 252.]

Art. 264. [311] [299] Commitment.—A commitment is an order signed by the proper magistrate directing a sheriff to receive and place in jail the person so committed. It will be sufficient if it have the following requisites:

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

Art. 265. [313] [301] Duty of sheriff as to prisoners.—Every sheriff shall keep safely a person committed to his custody. He shall use no cruel or unusual means to secure this end, but shall adopt all necessary measures to prevent the escape of a prisoner. He may summon a guard of sufficient number, in case it becomes necessary to prevent an escape from jail, or the rescue of a prisoner. [O. C. 255.]

Art. 266. [314] [302] Discharge not final.—A discharge by a magistrate upon an examination of any person accused of an offense shall not prevent a second arrest of the same person for the same offense. [O. C. 256.]

CHAPTER FOUR

BAIL

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1. GENERAL RULES AS TO BAIL.

Article 267. [315] [303] Definition of "bail."—"Bail" is the security given by the accused that he will appear and answer before the proper court the accusation brought against him. [O. C. 257, 258.]

Art. 268. [316] [304] Definition of "recognizance."—A "recognizance" is an undertaking entered into, before a court of record in session, by the defendant in a criminal action, and his sureties, by which they bind themselves, respectively, in a sum fixed by the court, that the defendant will appear for trial before such court upon the accusation against him. Such undertaking is not signed, but is made a matter of record in the court where the same is entered into. [O. C. 259.]

Art. 269. [317] [305] Definition of "bail bond."—A "bail bond" is an undertaking entered into by the defendant and his sureties for the appearance of the principal therein before some court or magistrate to answer a criminal accusation; it is written out and signed by the defendant and his sureties. [O. C. 260.]

Art. 270. [318] [306] When a bail bond is given.—A bail bond is entered into either before a magistrate, upon an examination of a criminal accusation, or before a judge upon an application under habeas corpus; or it is taken from the defendant by a peace officer who has a warrant of arrest or commitment. [O. C. 261.]

Art. 271. [319] [307] What "bail" includes.—Wherever the word "bail" is used with reference to the security given by the defendant, it applies as well to recognizances as to bail bonds. When a defendant is said to be "on bail," or to have "given bail," it applies as well to recognizances as to bail bonds. [O. C. 262.]

2. RECOGNIZANCE AND BAIL BOND

Art. 272. [320] [308] Requisites of a recognizance.—A recognizance shall be sufficient to bind

the principal and sureties if it contain the following requisites:

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

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

3. That it state the time and place when the defendant is bound to appear and the court before which he is bound to appear. [O. C. 263, Acts 1899, p. 111.]

Art. 273. [321] [309] Requisites of a bail bond.—A bail bond shall be sufficient if it contain the following requisites:

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

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

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

4. That the bond be signed by name or mark by the principal and sureties.

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

Art. 274. [322] [310] Rules applicable to all cases of bail.—The rules in this chapter respecting recognizances and bail bonds are applicable to all such undertakings when entered into in the course of a criminal action, whether before or after an indictment, in every case where authority is given to any court, judge, magistrate or other officer, to require bail of a person accused of an offense, or of a witness in a criminal action. [O. C. 265.]

Art. 275. [323] [311] Bail bond and recognizance.—A recognizance or bail bond, entered into by a defendant, and which binds him to appear at a particular term of the district court, shall be construed to bind him and his sureties for his attendance upon the court from term to term, and from day to day, until discharged from further liability thereon, according to law. [O. C. 267.]

Art. 276. [324] [312] Disqualified sureties.—A minor or married woman can not be surety on a recognizance or bail bond, but, if either of these classes of persons be the accused party, the undertaking shall be binding both upon principal and surety. [O. C. 268.]

Art. 277. [325] [313] How bail taken.—Every court, judge, magistrate or other officer taking bail shall require evidence of the sufficiency of the security offered; but, in every case, one surety shall be sufficient, if it be made to appear that such surety is worth at least double the amount of the sum for which he is bound, exclusive of all property exempted by law from execution, and of debts or other incumbrances; that he is a resident of this State, and has property therein liable to execution worth the sum for which he is bound. [O. C. 269.]

Art. 278. [326] [314] Exempt property.—The property secured by the Constitution and laws from forced sale shall not, in any case, be held liable for the satisfaction of a recognizance or bail bond, either as to principal or sureties. [O. C. 270.]

Art. 279. [327] [315] Sufficiency of sureties ascertained.—To test the sufficiency of the security offered to any recognizance or bail bond, unless the court or officer taking the same is fully satisfied as to its sufficiency, the following oath shall be made in writing and subscribed by the sureties: "I, do swear that I am worth, in my own right, at least the sum of (here insert the amount in which the surety is bound), after deducting from my property all that which is exempt by the Constitution and laws of the State from forced sale, and after the payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances upon my property which are known to me; that I reside in ——— county, and have property in this State liable to execution worth said amount or more."

(Dated ———, and attest by the judge of the court, clerk, magistrate or sheriff.)

Such affidavit shall be filed with the papers of the proceedings.

Art. 280. [328] [316] Affidavit not conclusive.—Such affidavit shall not be conclusive as to the sufficiency of the security; and, if the court or officer taking the recognizance or bail bond is not fully satisfied as to the sufficiency of the security offered, further evidence shall be required before approving the same.

Art. 281. [329] [317] Rules for fixing amount of bail.—The amount of bail to be required in any case is to be regulated by the court, judge, magistrate or officer taking the bail; they are to be governed in the exercise of this discretion by the Constitution and by the following rules:

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

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

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

4. The ability to make bail is to be regarded, and proof may be taken upon this point. [O. C. 272.]

3. SURRENDER OF THE PRINCIPAL

Art. 282. [330] [318] Surety may surrender his principal.—Those who have become bail for the accused, or either of them, may at any time relieve themselves of their undertaking by surrendering the accused into the custody of the sheriff of the county where he is prosecuted. [O. C. 273.]

Art. 283. [331–334] When surrender is made during term.—If a surrender of the accused be made during a term of the court to which he has bound himself to appear, the sheriff shall take him before the court; and, if he is willing to give other bail, the court shall forthwith require him to do so. If he fails or refuses to give bail, the court shall make an order that he be committed to jail until the bail is given, and this shall be a sufficient commitment without any written order to the sheriff.

Art. 284. [332–335] Surrender in vacation.—When the surrender is made at any other time than during the session of the court, the sheriff may take the necessary bail bond, but if the defendant fails or refuses to give other bail, the sheriff shall take him before the nearest magistrate; and such magistrate shall issue a warrant of commitment, reciting the fact that the accused has been once admitted to bail, has been surrendered, and now fails or refuses to give other bail.

Art. 285. [333] [321] Surety may obtain a warrant.—Any surety, desiring to surrender his principal, may upon making affidavit of such intention before the court or magistrate before which the prosecution is pending, obtain from such court or magistrate a warrant of arrest for such principal, which shall be executed as in other cases. [O. C. 274.]

Art. 286. [336] [324] Bail in misdemeanor.—The sheriff, or other peace officer, in cases of misdemeanor, has authority, whether during the term of the court or in vacation, where he has a defendant in custody under a warrant of commitment, warrant of arrest, or capias, or where the accused has been surrendered by his bail, to take of the defendant a bail bond. [O. C. 279.]

Art. 287. [337] [325] Bail in felony.—In cases of felony, when the accused is in custody of the sheriff or other peace officer, and the court before which the prosecution is pending is in session in the

county where the accused is in custody, the court shall fix the amount of bail, if it is a bailable case; and the sheriff, or other peace officer, unless it be the police of a city, is authorized to take a bail bond of the accused in the amount as fixed by the court, to be approved by such officer taking the same, and will thereupon discharge the accused from custody. It shall not be necessary for the defendant or his sureties to appear in court. [O. C. 280, Acts 1907, p. 148.]

Art. 288. [338] [326] May take bail in felony.—In a felony case, if the court before which the same is pending is not in session in the county where the defendant is in custody, the sheriff, or other peace officer having him in custody, may take his bail bond in such amount as may have been fixed by the court or magistrate, or, if no amount has been fixed, then in such amount as such officer may consider reasonable. [O. C. 281.]

Art. 289. [339] [327] Sureties severally bound.—In all recognizances, bail bonds or other bonds, taken under any provision of this Code, the sureties shall be severally bound. Where a surrender of the principal is made by one or more of them, all the sureties shall be considered discharged. [O. C. 281–283.]

4. BAIL BEFORE THE EXAMINING COURT

Art. 290. [340] [328] General rules applicable.—All general rules in this chapter are applicable to bail taken before an examining court. [O. C. 284.]

Art. 291. [341] [329] Proceedings when bail is granted.—After a full examination of the testimony, the magistrate shall, if the case be one where bail may properly be granted and ought to be required, proceed to make an order that the accused execute a bail bond with sufficient security, conditioned for his appearance before the proper court. [O. C. 285.]

Art. 292. [343] [331] Time given to procure bail.—Reasonable time shall be given the accused to procure security.

Art. 293. [344] [332] When bail is not given.—If, after the allowance of a reasonable time, the security be not given, the magistrate shall make an order committing the accused to jail to be kept safely until legally discharged; and he shall issue a commitment accordingly. [O. C. 290.]

Art. 294. [345] [333] When ready to give bail.—If the party be ready to give bail, the magistrate shall cause to be prepared a bail bond, which shall be signed by the accused and his surety or sureties. [O. C. 291.]

Art. 295. [346] [334] Accused liberated.—When the accused has given the required bond, either to the magistrate or the officer having him in custody, he shall at once be set at liberty. [O. C. 293–294.]

Art. 296. [347] [335] Shall certify proceedings.—The magistrate, before whom an examination has taken place upon a criminal accusation, shall certify to all the proceedings had before him, as well where he discharges, holds to bail or commits, and transmit them, sealed up, to the court before which the defendant may be tried, writing his name across the seals of the envelope. The voluntary statement of the defendant, the testimony, bail bonds, and every other proceeding in the case, shall be thus delivered to the clerk of the proper court, without delay. [O. C. 295.]

Art. 297. [348] [336] Duty of clerks who receive such proceedings.—If the proceedings be delivered to a district clerk, he shall keep them safely and deliver the same to the next grand jury. If the proceedings are delivered to a county clerk, he shall without delay deliver them to the district or county attorney of his county.

Art. 298. [349] [337] In case of no arrest.—Upon failure from any cause to arrest the accused the magistrate shall file with the proper clerk the complaint, warrant of arrest, and a list of the witnesses. [O. C. 296.]

Art. 299. [350] [338] Waiving examination.—The accused may waive an examining trial in any bailable case and consent for the magistrate to require bail of him; but the prosecutor or magistrate may examine the witnesses for the State as in other cases. The magistrate shall send to the proper clerk with the other proceedings in the case a list of the witnesses for the State, their residence and whether examined.

5. BAIL BY WITNESSES

Art. 300. [351] [339] Witnesses to give bond.—Witnesses for the State or defendant may be required by the magistrate, upon the examination of any criminal accusation before him, to give bail for their appearance to testify before the proper court. An individual bond shall be taken of a witness who makes oath that he is unable to give security or deposit a sufficient amount of money in lieu thereof. [O. C. 297.]

Art. 301. [352] [340] Security of witness.—The amount of security to be required of a witness is to be regulated by his pecuniary condition and the nature of the offense with respect to which he is a witness. [O. C. 298.]

Art. 302. [353] [341] Force of witness bond.—The bond given by a witness for his appearance shall have the same force and effect as a bail bond and may be forfeited and recovered upon in the same manner. [O. C. 299.]

Art. 303. [354] [342] Witness may be committed.—A witness required to give bail who fails or refuses to do so and fails to make the affidavit provided for in article 300 shall be committed to jail as in other cases of a failure to give bail when required; but shall be released from custody upon giving such bail or upon making said affidavit and giving his individual bond.

TITLE 6

SEARCH WARRANTS

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1. GENERAL RULES

Article 304. [355] [343] "Search warrant."—A "search warrant" is a written order, issued by a magistrate, and directed to a peace officer,

commanding him to search for personal property, and to seize the same and bring it before such magistrate; or it is a like written order, commanding a peace officer to search a suspected place where it is alleged stolen property is commonly concealed, or implements kept for the purpose of being used in the commission of any designated offense. [O. C. 300.]

Art. 305. [356] [344] When it may issue.—A search warrant may be issued:

1. To discover property acquired by theft or in any other manner which makes its acquisition a penal offense.
2. To search suspected places where it is alleged property so illegally acquired is commonly kept or concealed.
3. To search places where it is alleged implements are kept for use in forging or counterfeiting.
4. To search places where it is alleged arms or munitions are kept or prepared for the purpose of insurrection or riot.
5. To seize and bring before a magistrate any such property, implements, arms and munitions. [O. C. 301.]

Art. 306. [357] [345] Its object.—A warrant to search for and seize stolen property is designed as a means of obtaining possession of the property for the purpose of restoring it to the true owner, and detecting any person guilty of stealing or concealing it. [O. C. 302.]

Art. 307. [358] [346] "Stolen."—The word "stolen," as used in this title, is intended to embrace also the acquisition of property by any means made penal by the law of the State.

Art. 308. [359] [347] For property not stolen.—When it is alleged that the property was acquired other than by theft, the particular manner of its acquisition must be set forth in the complaint and in the warrant. [O. C. 304.]

Art. 309. [360] [348] Rules applicable.—The mode of proceeding, directed to be pursued in applying for a warrant to search for and seize stolen property, and the rules prescribed for officers in issuing such warrants and executing the same, the disposition of the property seized, and all other rules herein prescribed on the subject, shall apply and be pursued, when the property to be searched for was acquired in any manner in violation of any provision of the Penal Code.

2. ISSUANCE OF SEARCH WARRANTS

Art. 310. [361] [349] When place is known.—A warrant to search for and seize property alleged to have been stolen and concealed at a particular place may be issued by a magistrate, whenever written sworn complaint is made to such magistrate, setting forth:

1. The name of the person accused of having stolen or concealed the property; or, if his name be unknown, giving a description of the accused, or stating that the person who stole or concealed the property is unknown.
2. The kind and value of the property alleged to be stolen or concealed.
3. The place where it is alleged to be concealed.
4. The time, as near as may be, when the property is alleged to have been stolen. [O. C. 307.]

Art. 311. [362] [350] General application.—A warrant to discover and seize property alleged to have been stolen or otherwise acquired in violation of the penal law, but not alleged to be concealed at any particular place, may be issued whenever written sworn complaint is made setting forth:

1. The name of the person suspected of being the thief, or an accurate description of him, if his name be unknown, or that the thief is unknown.
2. An accurate description of the property, and its probable value.
3. The time, as near as may be, when the property is supposed to have been stolen.
4. That the person complaining has good ground to believe that the property was stolen by the person alleged to be the thief. [O. C. 306.]

Art. 312. [363] [351] Application to search other places.—A warrant to search any place suspected to be one where stolen goods are commonly concealed or where implements are kept for the purpose of aiding in the commission of offenses may be issued by a magistrate on written sworn complaint, setting forth:

1. A description of the place suspected.
2. A description of the kind of property alleged to be commonly concealed at such place, or the kind of implements kept.
3. The name, if known, of the person supposed to have charge of such place, when it is alleged that it is under the charge of any one.
4. When it is alleged that implements are kept at a place for the purpose of aiding in the commission of offenses, the particular offense for which such implements are designed must be set forth. [O. C. 308.]

Art. 313. [364] [352] Warrant to arrest may issue with search warrant.—The magistrate, at the time of issuing a search warrant, may also issue a warrant for the arrest of the person accused of having stolen the property, or of having concealed the same, or of having in his possession or charge property concealed at a suspected place, or of having possession of implements designed for use in the commission of the offense of forgery, counterfeiting or burglary, or of having the charge of arms or munitions prepared for the purpose of insurrection, or of having prepared such arms or munitions, or who may be, in any legal manner, accused of being accomplice or accessory to any offense above enumerated. [O. C. 309.]

Art. 314. [365] [353] Search warrant may order arrest.—The search warrant may, in addition to commanding the peace officer to seize property, also require him to bring before the magistrate the person accused of having stolen or concealed the property.

Art. 315. [366] [354] To seize property.—A search warrant to seize property stolen and concealed shall be deemed sufficient if it contains the following requisites:

1. That it run in the name of "The State of Texas."
2. That it describe the property alleged to be stolen or concealed, and the place where it is alleged to be concealed, and order the same to be brought before the magistrate.
3. That it name the person accused of having stolen or concealed the property; or, if his name be unknown, that it describe him with accuracy, and direct the officer to bring such person before the magistrate, or state that the person who stole or concealed the property is unknown.
4. That it be dated and signed by the magistrate, and directed to sheriff or other peace officer of the proper county.

Art. 316. [367] [355] To search suspected place.—A warrant to search a suspected place shall be sufficient if it contain the following requisites:

1. That it run in the name of "The State of Texas."
2. That it describe with accuracy the place suspected.
3. That it describe, as near as may be, the property supposed to be commonly concealed in such suspected place, or the implements alleged to be there kept for the purpose of aiding in the commission of offenses, and state the particular offense for which such implements are designed.
4. That it name the person accused of having charge of the suspected place, if there be any such person, or, if his name is unknown, that it describe him with accuracy, and direct him to be brought before the magistrate.
5. That it be dated and signed by the magistrate, and directed to the sheriff or other peace officer of the proper county. [O. C. 312.]

3. EXECUTION OF SEARCH WARRANT

Art. 317. [368] [356] Warrant executed without delay.—Any peace officer to whom a search warrant is delivered shall execute it without delay and forthwith return it to the proper magistrate. It must be executed within three days from the time of its issuance, and shall be executed within a shorter period if so directed in the warrant by the magistrate. [O. C. 313, 319.]

Art. 318. [369] [357] Days allowed for warrant to run.—The time allowed for the execution of a search warrant shall be three whole days, exclusive of the day of its issuance and of the day of its execution.

Art. 319. [370] [358] Officer to give notice of purpose.—The officer shall, upon going to the place ordered to be searched, or before seizing any property for which he is ordered to make search, give notice of his purpose to the person who has charge of, or is an inmate of, the place, or who has possession of the property described in the warrant. [O. C. 315.]

Art. 320. [371] [359] Power of officer executing warrant.—In the execution of a search warrant, the officer may call to his aid any number of citizens in his county, who shall be bound to aid in the execution of the same. If he is resisted in the execution of the warrant, he may use such force as is necessary to overcome the resistance, but no greater. [O. C. 314, 316.]

Art. 321. [372] [360] When officer may enter by force.—In the execution of a search warrant, the officer may break down a door or a window of any house which he is ordered to search, if he can not effect an entrance by other less violent means; but, when the warrant issues only for the purpose of discovering property stolen or otherwise obtained in violation of the penal law, without designating any particular place where it is supposed to be concealed, no such authority is given to the officer executing the same. [O. C. 317.]

Art. 322. [373] [361] Shall seize accused and property.—When the property, implements, arms or munitions which the officer is directed to search for and seize are found, he shall take possession of the same, and carry them before the magistrate. He shall also arrest any person whom he is directed to arrest by the warrant, and forthwith take such person before the magistrate. [O. C. 318.]

Art. 323. [374] [362] Receipt for property.—An officer taking any property, implements, arms or munitions, shall receipt therefor to the person from whose possession the same may have been taken. [O. C. 320.]

Art. 324. [375] [363] How return made.—Upon returning the search warrant, the officer shall state on the back of the same, or on some paper attached to it, the manner in which it has been executed, and shall likewise deliver to the magistrate an inventory of the property, implements, arms or munitions taken in his possession under the warrant. [O. C. 321.]

Art. 325. [376] [364] Preventing consequences of theft.—All persons have a right to prevent the consequences of theft by seizing any personal property which has been stolen, and bringing it, with the supposed offender, if he can be taken, before a magistrate for examination, or delivering the same to a peace officer for that purpose. To justify such seizure, there must, however, be reasonable ground to suppose the property to be stolen, and the seizure must be openly made and the proceedings had without delay. [O. C. 94.]

4. RETURN OF A SEARCH WARRANT

Art. 326. [377] [365] Disposition of stolen property.—When property is taken under any provision of this title and delivered to a magistrate, he shall, if it appear that the same was acquired in violation of the penal law, dispose of it according to the rules prescribed in this Code with reference to the disposition of stolen property. [O. C. 322.]

Art. 327. [378] [366] Custody of property found.—When a warrant has been issued to search a suspected place, and there be found any such implements, arms, munitions or intoxicating liquors, etc., as are alleged to have been there kept or concealed, the same shall be safely kept by the officer seizing the same, subject to the further order of the magistrate. [O. C. 323.]

Art. 328. [379] [367] Magistrate shall investigate.—The magistrate, upon the return of a search warrant, shall proceed to try the questions arising upon the same, and shall take testimony as in other examinations before him. [O. C. 330.]

Art. 329. [380] [368] Shall discharge defendant.—If the magistrate be not satisfied, upon investigation, that there was good ground for the issuance of the warrant, he shall discharge the defendant, and order restitution of the property taken from him, except implements which appear to be designed for forging, counterfeiting or burglary. In such case, the implements shall be kept by the sheriff, or officer who seized the same, subject to the order of the proper court. [O. C. 332.]

Art. 330. [381] [369] Schedule.—The officer who seizes any property under a search warrant shall furnish the magistrate to whom he returns the warrant with a certified schedule of the article so seized. [O. C. 324.]

Art. 331. [382] [370] Examining trial.—The magistrate shall proceed to deal with the accused as in other cases before an examining court if he is satisfied there was good ground for issuing the warrant. [O. C. 331.]

Art. 332. [383] [371] Certify record to proper court.—The magistrate shall keep a record of all the proceedings had before him in cases of search warrants, and shall certify the same and deliver them to the clerk of the court having jurisdiction of the case, before the next term of said court, and accompany the same with all the original papers relating thereto, including the certified schedule of the property seized. [O. C. 334.]

TITLE 7

AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

Chap.

1. Organization of the Grand Jury.
2. Duties and Powers of the Grand Jury.
3. Indictments and Information.
4. Preliminary Proceedings.

CHAPTER ONE

ORGANIZATION OF THE GRAND JURY

Art.

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Article 333. [384] [372] Jury commissioners.—The district judge shall, at each term of the district court, appoint three persons to perform the duties of jury commissioners, who shall possess the following qualifications:

1. Be intelligent citizens of the county and able to read and write.
2. Be qualified jurors and freeholders in the county.
3. Be residents of different portions of the county.
4. Have no suit in said court which requires the intervention of a jury. [Acts 1876, p. 79.]

Art. 334. [385] [373] Notified of appointment.—The judge shall cause the proper officer to notify such appointees of such appointment, and when and where they are to appear. [Id.]

Art. 335. [386] [374] Oath of commissioners.—When the appointees appear before the judge, he shall administer to them the following oath: "You do swear faithfully to discharge the duties required of you as jury commissioners; that you will not knowingly elect any man as juryman whom you believe to be unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported to the court; that you will not, directly or indirectly, converse with any one selected by you as a juryman concerning the merits of any case to be tried at the next term of this court, until after said cause may be tried or continued, or the jury discharged." [Id.]

Art. 336. [387] [375] Instructed.—The jury commissioners, after they have been organized and sworn, shall be instructed by the judge in their duties and shall then retire in charge of the sheriff to a suitable room to be secured by the sheriff for that purpose. The clerk shall furnish them the necessary stationery, the names of those appearing from the records of the court to be exempt or disqualified from serving on the jury at each term, and the last assessment roll of the county. [Id.]

Art. 337. [388] [376] Kept free from intrusion.—The jury commissioners shall be kept free from the intrusion of any person during their session, and shall not separate without leave of the court until they complete their duties. [Id.]

Art. 338. [389] [377] Shall select grand jurors.—The jury commissioners shall select sixteen men from the citizens of the different portions of the county to be summoned as grand jurors for the next term of the court. [Id.]

Art. 339. [390] [378] Qualifications.—No person shall be selected or serve as a grand juror who does not possess the following qualifications:

1. He must be a citizen of the State, and of the county in which he is to serve, and qualified under the Constitution and laws to vote in said county; but, whenever it shall be made to appear to the court that the requisite number of jurors who have paid their poll taxes can not be found within the county, the court shall not regard the payment of poll taxes as a qualification for service as a juror.
2. He must be a freeholder within the State, or a householder within the county.
3. He must be of sound mind and good moral character.
4. He must be able to read and write.
5. He must not have been convicted of any felony.
6. He must not be under indictment or other legal accusation for theft or of any felony. [Id., p. 78; O. C. 289; Const. art. 16, sec. 19; Acts 1903, 1st C. S., p. 16.]

Art. 340. [391] [379] Names returned.—The names of those selected as grand jurors by the commissioners shall be written upon a paper; and the fact that they were so selected shall be certified and signed by the jury commissioners, who shall place said paper, so certified and signed, in an envelope, and seal the same, and indorse thereon the words, "The list of grand jurors selected at ——— term of the district court," the blank being for the month and year in which the term of the court began its session. The commissioners shall write their names across the seal of said envelope, direct the same to the district judge and deliver it to him in open court. [Id.]

Art. 341. [392] [380] List to clerk.—The judge shall deliver the envelope containing the list of grand jurors to the clerk or one of his deputies in open court without opening the same. [Id.]

Art. 342. [393] [381] Oath to clerk.—Before the list of grand jurors is delivered to the clerk, the judge shall administer to the clerk and each of his deputies in open court the following oath: "You do swear that you will not open the jury lists now delivered you, nor permit them to be opened until the time prescribed by law; that you will not, directly or indirectly, converse with any one selected as a juror concerning any case or proceeding which may come before such juror for trial in this court at its next term." [Id.]

Art. 343. [394] [382] Deputy clerk sworn.—Should the clerk subsequently appoint a deputy, such clerk shall administer to him the same oath, at the time of such appointment. [Id.]

Art. 344. [395] [383] Clerk shall open lists.—Within thirty days of the next term of the district court and not before, the clerk shall open the envelope containing the list of grand jurors, make out a copy of the names of those selected as grand jurors, certify to it under his official seal and deliver it to the sheriff. [Id.]

Art. 345. [396] [384] Summoning.—The sheriff shall summon the persons named in the list at least three days, exclusive of the day of service, prior to the first day of the term of court at which they are to serve, by giving personal notice to each juror of the time and place when and where he is to attend as a grand juror, or by leaving at his place of residence with a member of his family over sixteen years old a written notice to such juror that he has been selected as a grand juror, and the time and place when and where he is to attend. [Id.]

Art. 346. [397] [385] Return of officer.—The officer executing such summons shall return the list on the first day of the term of court at which such jurors are to serve, with a certificate thereon of the date and manner of service upon each juror. If any of said jurors have not been summoned, he shall also state in his certificate the reason why they have not been summoned. [Id.]

Art. 347. [398] [386] Absent juror fined.—A juror legally summoned, failing to attend without a reasonable excuse, may, by order of the court entered on the record, be fined not less than ten nor more than one hundred dollars. [Id.]

Art. 348. [399] [387] Failure to select.—If there should be a failure from any cause to select and summon a grand jury, as herein directed, or, when none of those summoned shall attend, the district court shall, on the first day of the organization thereof, direct a writ to be issued to the sheriff, commanding him to summon any number of persons, not less than twelve nor more than sixteen, to serve as grand jurors. [O. C. 347.]

Art. 349. [400] [388] If less than twelve attend.—When less than twelve of those summoned

to serve as grand jurors are found to be in attendance and qualified to so serve, the court shall order the sheriff to summon such additional number of persons as may be deemed necessary to constitute a grand jury of twelve men. [O. C. 354.]

Art. 350. [401] [389] Jurors to attend forthwith.—The jurors provided for in the two preceding articles shall be summoned in person to attend before the court forthwith.

Art. 351. [402] [390] To summon qualified men.—Upon directing the sheriff to summon grand jurors not selected by the jury commissioners, the court shall instruct him that he must summon no person to serve as a grand juror who does not possess the qualifications prescribed by law.

Art. 352. [403] [391] To test qualifications.—When as many as twelve men summoned to serve as grand jurors are in attendance upon the court, it shall proceed to test their qualifications as such. [O. C. 345.]

Art. 353. [404] [392] Interrogated.—Each person who is presented to serve as a grand juror shall, before being impaneled, be interrogated on oath by the court or under his direction, touching his qualifications. [O. C. 349.]

Art. 354. [405] [393] Mode of test.—In trying the qualifications of any person to serve as a grand juror, he shall be asked:

1. Are you a citizen of this State and county, and qualified to vote in this county, under the Constitution and laws of this State?

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

3. Are you able to read and write? [O. C. 350; Acts 1st C. S. 1903, p. 16.]

Art. 355. [406] [394] Qualified juror accepted.—When, by the answer of the person, it appears to the court that he is a qualified juror, he shall be accepted as such, unless it be shown that he is not of sound mind or of good moral character, or unless it be shown that he is in fact not qualified to serve as a grand juror. [O. C. 351; Id.]

Art. 356. [407] [395] Excused if disqualified.—Any person summoned who does not possess the requisite qualifications shall be excused by the court from serving. [O. C. 352.]

Art. 357. [408] [396] Jury impaneled.—When twelve qualified jurors are found to be present, the court shall proceed to impanel them as a grand jury, unless a challenge is made, which may be to the array or to any particular person presented to serve as a grand juror. [O. C. 353.]

Art. 358. [409] [397] Any person may challenge.—Before the grand jury has been impaneled, any person may challenge the array of jurors or any person presented as a grand juror. In no other way shall objections to the qualifications and legality of the grand jury be heard. Any person confined in jail in the county shall upon his request be brought into court to make such challenge. [O. C. 362.]

Art. 359. [410] [398] "Array."—By the array of grand jurors is meant the whole body of persons summoned to serve as such before they have been impaneled. [O. C. 368.]

Art. 360. [411] [399] "Impaneled" and "panel."—A grand juror is said to be "impaneled" after his qualifications have been tried and he has been sworn. By "panel" is meant the whole body of grand jurors. [O. C. 360.]

Art. 361. [412] [400] Challenge to array.—A challenge to the array shall be made in writing for these causes only:

1. That those summoned as grand jurors are not in fact those selected by the jury commissioners.

2. In case of grand jurors summoned by order of the court, that the officer who summoned them had acted corruptly in summoning any one or more of them.

Art. 362. [413] [401] Challenge to juror.—A challenge to a particular grand juror may be made orally for the following causes only:

1. That he is not a qualified grand juror.

2. That he is the prosecutor upon an accusation against the person making the challenge.

3. That he is related by consanguinity or affinity to one who has been held to bail or who is in confinement upon a criminal accusation. [O. C. 364.]

Art. 363. [414] [402] Summarily decided.—When a challenge to the array or to any individual has been made, the court shall hear proof and decide in a summary manner whether the challenge be well founded or not. [O. C. 365.]

Art. 364. [415] [403] Other jurors summoned.—The court shall order another grand jury to be summoned if the challenge to the array be sustained, or order the panel to be completed if by challenge to any particular grand juror their number be reduced below twelve.

Art. 365. [416] [404] Oath of grand jurors.—When the grand jury is completed, the court shall appoint one of the number foreman; and the following oath shall be administered by the court, or under its direction, to the jurors: "You solemnly swear that you will diligently inquire into, and true presentment make, of all such matters and things as shall be given you in charge; the State's counsel, your fellows' and your own, you shall keep secret, unless required to disclose the same in the course of a judicial proceeding in which the truth or falsity of evidence given in the grand jury room, in a criminal case, shall be under investigation. You shall present no person from envy, hatred or malice; neither shall you leave any person unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly as they come to your knowledge, according to the best of your understanding, so help you God." [Acts 1875, p. 166.]

Art. 366. [417] [405] To instruct jury.—The court shall instruct the grand jury as to their duty.

Art. 367. [418] [406] Bailiffs appointed.—The court may appoint one or more bailiffs to attend upon the grand jury, and, at the time of appointment, the following oath shall be administered to each of them by the court, or under its direction: "You solemnly swear that you will faithfully and impartially perform all the duties of bailiff of the grand jury, and that you will keep secret the proceedings of the grand jury, so held you God."

Art. 367a. Compensation of bailiff.—That each grand jury bailiff appointed as such bailiff by the court shall receive as compensation for his services the sum of $3.00 for each day that he may serve as a grand jury bailiff,—provided, however, that each grand jury bailiff appointed as such bailiff by the court in counties of a population of 150,000 or more according to the 1920 census of the United States shall receive as compensation for his services the sum of $5.00 for each day that he may serve as a grand jury bailiff. Provided that the sheriff or deputy sheriff attending the Fourteenth, Forty-fourth, Sixty-eighth, Ninety-fifth and One Hundred and First Judicial District Courts of Dallas County, Texas, shall be paid the sum of five dollars for each and every day that he shall so serve as bailiff of each of the said courts. [Acts 1925, 39th Leg., ch. 98, p. 273, § 1.]

Art. 367b. Bailiffs appointed by District Attorney.—The District Attorney may appoint one or more bailiffs to attend upon the Grand Jury and at the time of the appointment the Court shall administer to each of them the following oath: "You solemnly swear that you will faithfully and impartially perform all the duties of bailiff of the Grand Jury, and that you will keep secret the proceedings of the Grand Jury, so help you God." Said bailiffs shall be paid the sum and in the manner now provided by law. [Acts 1927, 40th Leg., p. 93, ch. 67, § 6.]

Section 8 of Acts 1927, 40th Leg., p. 93, ch. 67, repeals the provision for appointment of bailiffs by the court.

Art. 368. [419] [407] Bailiff's duties.—A bailiff is to obey the instructions of the foreman, to summon all witnesses, and, generally, to perform all such duties as the foreman may require of him. One bailiff shall be always with the grand jury, if two or more are appointed.

Art. 369. [420] [408] Bailiff violating duty.—No bailiff shall take part in the discussions or deliberations of the grand jury nor be present when they are discussing or voting upon a question. The grand jury shall report to the court any violation of duty by a bailiff and the court may punish him for such violation as for contempt.

Art. 370. [421] [409] Another foreman appointed.—If the foreman of the grand jury is from any cause absent or unable or disqualified to act, the court shall appoint in his place some other member of the body.

Art. 371. [422] [410] Quorum.—Nine members shall be a quorum for the purpose of discharging any duty or exercising any right properly belonging to the grand jury.

Art. 372. [423] [411] Reassembled.—A grand jury discharged by the court for the term may be reassembled by the court at any time during the term. If one or more of them fail to reassemble, the court may complete the panel by impaneling other men in their stead in accordance with the rules provided in this chapter for completing the grand jury in the first instance.

CHAPTER TWO

DUTIES AND POWERS OF THE GRAND JURY

Art.
373. Grand jury room.
374. Deliberations secret.
375. State's attorney may go before.
376. Attorney may examine witnesses.
377. May send for attorney.
378. Advice from court.
379. Foreman shall preside.
380. Adjournments.
381. Duties of grand jury.
382. Foreman may issue process.
383. Attachment for out-county witness.
384. Attachment in vacation.
385. Execution of process.
386. Evasion of process.
387. When witness refuses to testify.
388. Oaths to witnesses.
389. How witness questioned.
390. Felony by one unknown.
391. Grand jury shall vote.
392. Indictment prepared.
393. Indictment presented.
394. Presentment entered of record.

Article 373. [424] [412] Grand jury room.—After the grand jury is organized they shall proceed to the discharge of their duties in a suitable place which the sheriff shall prepare for their sessions. [O. C. 371.]

Art. 374. [425] [413] Deliberations secret.—The deliberations of the grand jury shall be secret. Any grand juror or bailiff who divulges anything transpiring before them in the course of their official duties shall be liable to a fine as for contempt of the court, not exceeding one hundred dollars, and to imprisonment not exceeding five days. [O. C. 372.]

Art. 375. [426] [414] State's attorney may go before.—The attorney representing the State may go before the grand jury at any time except when they are discussing the propriety of finding an indictment or voting upon the same. [O. C. 373.]

Art. 376. [427] [415] Attorney may examine witnesses.—The attorney representing the State may examine the witnesses before the grand jury and may advise as to the proper mode of interrogating them. [O. C. 375.]

Art. 377. [428] [416] May send for attorney.—It is the right of the grand jury to send for the State's attorney and ask his advice upon any matter of law or upon any question arising respecting the proper discharge of their duties. [O. C. 374.]

Art. 378. [429] [417] Advice from court.—The grand jury may also seek and receive advice from the court touching any matter before them, and, for this purpose, shall go into court in a body; but they shall so guard the manner of propounding their questions as not to divulge the particular accusation that is pending before them; or they may propound their questions in writing, upon which the court may give them the desired information in writing. [O. C. 276.]

Art. 379. [430] [418] Foreman shall preside.—The foreman shall preside over the sessions of the grand jury, and conduct its business and proceedings in an orderly manner. He may appoint one or more members of the body to act as clerks for the grand jury.

Art. 380. [431] [419] Adjournments—The grand jury shall meet and adjourn at times agreed upon by a majority of the body; but they shall not adjourn, at any one time, for more than three days, unless by consent of the court. With the consent of the court, they may adjourn for a longer time, and shall as near as may be, conform their adjournments to those of the court. [O. C. 377.]

Art. 381. [432] [420] Duties of grand jury.—The grand jury shall inquire into all offenses liable to indictment of which any member may have knowledge, or of which they shall be informed by the attorney representing the State, or any other credible person. [O. C. 378.]

Art. 382. [433] [421] Foreman may issue process.—The foreman may issue a summons or attachment for any witness in the county where they are sitting; which summons or attachment may require the witness to appear before them at a time fixed, or forthwith, without stating the matter under investigation. [O. C. 379, Act Aug. 15, 1870.]

Art. 383. [434] [422] Attachment for out-county witness.—The foreman or the attorney representing the State may, upon written application to the district court stating the name and residence of the witness and that his testimony is believed to be material, cause an attachment to be issued to any county in the State for such witness, returnable to the grand jury then in session, or to the next grand jury for the county from whence the same issued, as such foreman or attorney may desire. Such attachment shall command the sheriff or any constable of the county where such witness resides to arrest such witness, and have him before the grand jury at the time and place specified in the writ. [Act Aug. 15, 1870.]

Art. 384. [435] [423] Attachment in vacation.—The district or county attorney may cause an attachment for a witness to be issued, as provided in the preceding article, either in term time or in vacation. [Id.]

Art. 385. [436] [424] Execution of process.—The bailiff or other officer who receives process to be served from a grand jury shall forthwith execute the same and return it to the foreman, if the grand jury be in session; and, if the grand jury be not in session, the process shall be returned to the district clerk. If the process is returned not executed, the return shall state why it was not executed.

Art. 386. [437] [425] Evasion of process.—If it be made to appear satisfactorily to the court that a witness for whom an attachment has been issued to go before the grand jury is in any manner wilfully evading the service of such summons or attachment, the court may fine such witness, as for contempt, not exceeding one hundred dollars.

Art. 387. [438] [426] When witness refuses to testify.—When a witness, brought in any manner before a grand jury, refuses to testify, such fact shall be made known to the attorney representing the State or to the court; and the court may compel the witness to answer the question, if it appear to be a proper one,

by imposing a fine not exceeding one hundred dollars, and by committing the party to jail until he is willing to testify. [O. C. 381.]

Art. 388. [439] [427] Oaths to witnesses.—The following oath shall be administered by the foreman, or under his direction, to each witness before being interrogated: "You solemnly swear that you will not divulge, either by words or signs, any matter about which you may be interrogated, and that you will keep secret all proceedings of the grand jury which may be had in your presence, and that you will true answers make to such questions as may be propounded to you by the grand jury, or under its direction, so help you God." [Acts 1875, p. 108.]

Art. 389. [440] [428] How witness questioned.—The grand jury, in propounding questions to a witness, shall direct the examination to the person accused or suspected, shall state the offense with which he is charged, the county where the offense is said to have been committed, and, as nearly as may be, the time of the commission of the offense; but should the jury think it necessary, they may ask the witness in general terms whether he has knowledge of the violation of any particular law by any person, and, if so, by what person. [O. C. 383.]

Art. 390. [441] [429] Felony by one unknown.—When a felony has been committed in any county within the jurisdiction of the grand jury, and the name of the offender is unknown, or where it is uncertain by whom the same was committed, the grand jury may ask any pertinent question relative to the transaction in such manner as to ascertain who is the guilty party. [O. C. 383a.]

Art. 391. [442–443] Grand jury shall vote.—After all the testimony which is accessible to the grand jury shall have been given in respect to any criminal accusation, the vote shall be taken as to the presentment of an indictment, and, if nine members concur in finding the bill, the foreman shall make a memorandum of the same with such data as will enable the attorney who represents the State to write the indictment. [O. C. 385.]

Art. 392. [444] [432] Indictment prepared.—The attorney representing the State shall prepare all indictments which have been found, with as little delay as possible, and deliver them to the foreman, who shall sign the same officially, and said attorney shall indorse thereon the names of the witnesses upon whose testimony the same was found. [O. C. 387.]

Art. 393. [445] [433] Indictment presented.—When the indictment is ready to be presented, the grand jury shall go in a body into open court, and, through their foreman, deliver the indictment to the judge of the court. At least nine members of the grand jury must be present on such occasion. [O. C. 388.]

Art. 394. [446] [434] Presentment entered of record.—The fact of a presentment of indictment in open court by a grand jury shall be entered upon the minutes of the court, noting briefly the style of the criminal action and the file number of the indictment, but omitting the name of the defendant, unless he is in custody or under bond. [Acts 1876, p. 8.]

CHAPTER THREE

INDICTMENTS AND INFORMATIONS

Art.
395. "Indictment."
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397. What should be stated.
398. The certainty required.
399. Particular intent; intent to defraud.
400. Allegation of venue.
401. Allegation of name.
402. Allegation of ownership.
403. Description of property.
404. "Felonious" and "feloniously."
405. Certainty; what sufficient.
406. Special and general terms.
407. Act with intent to commit an offense.
408. Perjury and false swearing.
409. Certain forms of indictments.
410. Following statutory words.
411. Matters of judicial notice.
412. Defects of form.
413. "Information."
414. Requisites of an information.
415. Information based upon complaint.
416. Rules as to indictments apply to informations.
417. May contain several counts.
418. When indictment has been lost, etc.
419. Order transferring cases.
420. Causes transferred to justice court.
421. Duty on transfer.
422. Proceedings of inferior court.
423. Cause improvidently transferred.

Article 395. [450] [438] "Indictment."—An indictment is the written statement of a grand jury accusing a person therein named of some act or omission which, by law, is declared to be an offense. [O. C. 394.]

Art. 396. [451] [439] Requisites of an indictment.—An indictment shall be deemed sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of the State of Texas."

2. It must appear that the same was presented in the district court of the county where the grand jury is in session.

3. It must appear to be the act of a grand jury of the proper county.

4. It must contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him.

5. It must show that the place where the offense was committed is within the jurisdiction of the court in which the indictment is presented.

6. The time mentioned must be some date anterior to the presentment of the indictment, and not so remote that the prosecution of the offense is barred by limitation.

7. The offense must be set forth in plain and intelligible words.

8. The indictment must conclude, "Against the peace and dignity of the State."

9. It shall be signed officially by the foreman of the grand jury. [O. C. 395.]

Art. 397. [452] [440] What should be stated.—Everything should be stated in an indictment which is necessary to prove. [O. C. 396.]

Art. 398. [453] [441] The certainty required.—The certainty required in an indictment is such as will enable the accused to plead the judgment that may be given upon it in bar of any prosecution for the same offense. [O. C. 398.]

Art. 399. [454] [442] Particular intent; intent to defraud.—Where a particular intent is a material fact in the description of the offense, it must be stated in the indictment; but, in any case where an intent to defraud is required to constitute an offense, it shall be sufficient to allege an intent to defraud, without naming therein the particular person intended to be defrauded. [O. C. 399.]

Art. 400. [455] [443] Allegation of venue.—When the offense may be prosecuted in either of two or more counties, the indictment may allege the offense to have been committed in the county where the same is prosecuted, or in any county or place where the offense was actually committed. [O. C. 400.]

Art. 401. [456] [444] Allegation of name.—In alleging the name of the defendant, or of any other person necessary to be stated in the indictment, it shall be sufficient to state one or more of the initials of the Christian name and the surname. When a person is known by two or more names, it shall be sufficient to state either name. When the name of the person is unknown to the grand jury, that fact shall be stated, and, if it be the accused, a reasonably accurate description of him shall be given in the indictment.

Art. 402. [457] [445] Allegation of ownership.—Where one person owns the property, and another person has the possession of the same, the ownership thereof may be alleged to be in either. Where property is owned in common, or jointly, by

two or more persons, the ownership may be alleged to be in all or either of them. When the property belongs to the estate of a deceased person, the ownership may be alleged to be in the executor, administrator or heirs of such deceased person, or in any one of such heirs. Where it is the separate property of a married woman, the ownership may be alleged to be in her, or in her husband. Where the ownership of the property is unknown to the grand jury, it shall be sufficient to allege that fact.

Art. 403. [458] [446] Description of property.—When it becomes necessary to describe property of any kind in an indictment, a general description of the same by name, kind, quality, number and ownership, if known, shall be sufficient. If the property be real estate, its general locality in the county, and the name of the owner, occupant or claimant thereof, shall be a sufficient description of the same.

Art. 404. [459] [447] "Felonious" and "feloniously."—It is not necessary to use the words "felonious" or "feloniously" in any indictment.

Art. 405. [460] [448] Certainty; what sufficient.—An indictment shall be deemed sufficient which charges the commission of the offense in ordinary and concise language in such a manner as to enable a person of common understanding to know what is meant, and with that degree of certainty that will give the defendant notice of the particular offense with which he is charged, and enable the court, on conviction, to pronounce the proper judgment; and in no case are the words "force and arms" or "contrary to the form of the statute" necessary. [Acts 1881, p. 60.]

Art. 406. [461] [449] Special and general terms.—When a statute defining any offense uses special or particular terms, an indictment on it may use the general term which, in common language, embraces the special term. To charge an unlawful sale, it is necessary to name the purchaser.

Art. 407. [463] [451] Act with intent to commit an offense.—An indictment for an act done with intent to commit some other offense may charge in general terms the commission of such act with intent to commit such other offense. [Id.]

Art. 408. [465] [453] Perjury and false swearing.—An indictment for perjury or false swearing need not charge the precise language of the false statement, but may state the substance of the same, and no such indictment shall be held insufficient on account of any variance which does not affect the subject matter or general import of such false statement; and it is not necessary in such indictment to set forth the pleadings, records or proceeding with which the false statement is connected, nor the commission or authority of the court or person before whom the false statement was made; but it is sufficient to state the name of the court or officer by whom the oath was administered with the allegation of the falsity of the matter on which the perjury or false swearing is assigned. [Acts 1881, p. 60; Acts 1923, p. 83.]

Art. 409. [470] [458] Certain forms of indictments.—The following forms of indictments are sufficient:

Form No. 1—General form: In the name and by authority of the State of Texas: The grand jury of ——— county, State of Texas, duly organized at the ——— term, A. D. ———, of the district court of said county, in said court at said term, do present that ———, (defendant) on the ——— day of ——— A. D. ———, in said county and State, did ——— (description of offense) against the peace and dignity of the State.

———, Foreman of the grand jury.

Form No. 2—Murder: "A B did with malice aforethought kill C D by shooting him with a gun;" or, "by cutting him with a knife."

Art. 410. [474] [462] Following statutory words.—Words used in a statute to define an offense need not be strictly pursued in the indictment; it is sufficient to use other words conveying the same meaning, or which include the sense of the statutory words. [Acts 1881, p. 60.]

Art. 411. [475] [463] Matters of judicial notice.—Presumptions of law and matters of which judicial notice is taken (among which are included the authority and duties of all officers elected or appointed under the general laws of this State) need not be stated in an indictment. [Id.]

Art. 412. [476] [464] Defects of form.—An indictment shall not be held insufficient, nor shall the trial, judgment or other proceedings thereon be affected, by reason of any defect of form which does not prejudice the substantial rights of the defendant. [Id.]

Art. 413. [477] [465] "Information."—An "Information" is a written statement filed and presented in behalf of the State by the district or county attorney, charging the defendant with an offense which may by law be so prosecuted. [O. C. 402.]

Art. 414. [478] [466] Requisites of an information.—An information is sufficient if it has the following requisites:

1. It shall commence, "In the name and by authority of the State of Texas."
2. That it appear to have been presented in a court having jurisdiction of the offense set forth.
3. That it appear to have been presented by the proper officer.
4. That it contain the name of the accused, or state that his name is unknown and give a reasonably accurate description of him.
5. It must appear that the place where the offense is charged to have been committed is within the jurisdiction of the court where the information is filed.
6. That the time mentioned be some date anterior to the filing of the information, and that the offense does not appear to be barred by limitation.
7. That the offense be set forth in plain and intelligible words.
8. That it conclude, "Against the peace and dignity of the State."
9. It must be signed by the district or county attorney, officially. [O. C. 403.]

Art. 415. [479] [467] Information based upon complaint.—No information shall be presented until affidavit has been made by some credible person charging the defendant with an offense. The affidavit shall be filed with the information. It may be sworn to before the district or county attorney who, for that purpose, shall have power to administer the oath, or it may be made before any officer authorized by law to administer oaths. [O. C. 404.]

Art. 416. [480] [468] Rules as to indictment apply to information.—The rules with respect to allegations in an indictment and the certainty required apply also to an information.

Art. 417. [481] [469] May contain several counts.—An indictment or information may contain as many counts, charging the same offense, as the attorney who prepares it may think necessary to insert. An indictment or information shall be sufficient if any one of its counts be sufficient.

Art. 418. [482] [470] When indictment has been lost, etc.—When an indictment or information has been lost, mislaid, mutilated or obliterated, the district or county attorney may suggest the fact to the court; and the same shall be entered upon the minutes of the court. In such case, another indictment or information may be substituted, upon the written statement of such attorney that it is substantially the same as that which has been lost, mislaid, mutilated or obliterated. Or another indictment may be presented, as in the first instance; and, in such case, the period for the commencement of the prosecution shall be dated from the time of making such entry.

Art. 419. [483] [471] Order transferring cases.—Upon the filing of an indictment in the dis-

trict court which charges an offense over which such court has no jurisdiction, the judge of such court shall make an order transferring the same to such inferior court as may have jurisdiction, stating in such order the cause transferred and to what court transferred. [Const., art. 5, sec. 17; Act Aug. 12, 1876, p. 135; Acts 1879, p. 71; Acts 1881, p. 2.]

Art. 420. [484] [472] Causes transferred to justice court.—Causes over which justices of the peace have jurisdiction may be transferred to a justice of the peace at the county seat, or, in the discretion of the judge, to a justice of the precinct in which the same can be most conveniently tried, as may appear by memorandum indorsed by the grand jury on the indictment or otherwise. If it appear to the judge that the offense has been committed in any incorporated town or city, the cause shall be transferred to a justice in said town or city, if there be one therein; and any justice to whom such cause may be transferred shall have jurisdiction to try the same. [Const., art. 5, sec. 16; Act April 3, 1879, p. 71; Acts 1876, p. 135.]

Art. 421. [485] [473] Duty on transfer.—The clerk of the court, without delay, shall deliver the indictments in all cases transferred, together with all the papers relating to each case, to the proper court or justice, as directed in the order of transfer; and shall accompany each case with a certified copy of all the proceedings taken therein in the district court, and with a bill of the costs that have accrued therein in the district court. The said costs shall be taxed in the court in which said cause is tried, in the event of a conviction. [Acts 1876, p. 135.]

Art. 422. [486] [474] Proceedings of inferior court.—Any case so transferred shall be entered on the docket of the court to which it is transferred. All process thereon shall be issued and the defendant tried as if the case had originated in the court to which it was transferred. [Id.]

Art. 423. [487] [475] Cause improvidently transferred.—When a cause has been improvidently transferred to a court which has no jurisdiction of the same, the court to which it has been transferred shall order it to be re-transferred to the proper court; and the same proceedings shall be had as in the case of the original transfer. In such case, the defendant and the witnesses shall be held bound to appear before the court to which the case has been re-transferred, the same as they were bound to appear before the court so transferring the same.

CHAPTER FOUR

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1. FORFEITURE OF BAIL

Article 424. [488] [476] Bail forfeited, when.—Whenever a defendant is bound by recognizance or bail bond to appear at any term of a court, and fails to appear on the day set apart for taking up the criminal docket, or any subsequent day when his case comes up for trial, a forfeiture of his recognizance or bail bond shall be taken. [O. C. 407.]

Art. 425. [489] [477] Manner of taking a forfeiture.—Recognizances and bail bonds are forfeited in the following manner: The name of the defendant shall be called distinctly at the court house door, and, if the defendant does not appear within a reasonable time after such call is made, judgment shall be entered that the State of Texas recover of the defendant the amount of money in which he is bound, and of his sureties, the amount of money in which they are respectively bound, which judgment shall state that the same will be made final, unless good cause be shown at the next term of the court why the defendant did not appear.

Art. 426. [490] [478] Citation to sureties.—After the adjournment of the court, a citation shall issue notifying the sureties of the defendant that the recognizance or bond has been forfeited, and requiring them to appear at the next term of the court and show cause why the same should not be made final. It shall not be necessary to give notice to the defendant. [O. C. 409.]

Art. 427. [491] [479] Requisites of citation.—A citation shall be sufficient if it contain the following requisites:

1. It shall run, "In the name of the State of Texas."

2. It shall be directed to the sheriff or any constable of the county where the surety resides or is to be found.

3. It shall state the name of the principal in such recognizance or bail bond and the names of his sureties.

4. It shall state the offense with which the principal is charged as set out in the bond or recognizance, and state the date of such obligation.

5. It shall state that such recognizance or bail bond has been declared forfeited, naming the court before which the forfeiture was taken, the time when taken, and the amount for which it was taken against each party thereto.

6. It shall notify the surety to appear at the next term of the court and show cause why the forfeiture should not be made final.

7. It shall be signed and attested officially by the court or clerk issuing the same.

Art. 428. [492] [480] Citation as in civil actions.—Sureties shall be entitled to notice by service of citation, the length of time and in the manner required in civil actions; and the officer executing the citation shall return the same as in civil actions. [O C. 412.]

Art. 429. [493] [481] Citation by publication.—Where the surety is a non-resident of the State, or where he is a transient person, or where his residence is unknown, the district or county attorney may, upon application in writing to the county clerk, stating the facts, obtain a citation to be served by publication; and the same shall be served by publication and returned as in civil actions.

Art. 430. [494] [482] Cost of publication.—When service of citation is made by publication, the county in which the forfeiture has been taken shall pay the costs thereof, to be taxed as costs in the case.

Art. 431. [495] [483] Service out of the State.—Service of a certified copy of the citation upon any absent or non-resident surety may be made outside of the limits of this State by any person competent to make oath of the fact; and the affidavit of such person, stating the facts of such service, shall be a sufficient return.

Art. 432. [496] [484] When surety is dead.—If the surety is dead at the time the forfeiture is taken, the forfeiture shall nevertheless be valid. The final judgment shall not be rendered where a surety has died, either before or after the forfeiture has been taken, unless his excutor [executor], administrator or heirs, as the case may be, have been cited to appear and show cause why the judgment should not be made final, in the same manner as provided in the case of the surety.

Art. 433. [497] [485] Scire facias docket.—When a forfeiture has been declared upon a recognizance or bail bond, the court or clerk shall docket the case upon the scire facias or upon the civil docket, in the name of the State of Texas, as plaintiff, and the principal and his sureties, as defendants; and the proceedings had therein shall be governed by the same rules governing other civil suits.

Art. 434. [498] [486] Sureties may answer at next term.—At the next term of the court, after the forfeiture of the recognizance or bond, if the sureties have been duly notified, or at the first term of the court after the service of such notice, the sureties may answer in writing and show cause why the defendant did not appear, which answer may be filed within the time limited for answering in other civil actions. [O. C. 410.]

Art. 435. [499] [487] Proceedings not set aside for defect of form.—The recognizance or bail bond, the judgment declaring the forfeiture, the citation and the return thereupon, shall not be set aside because of any defect of form; but such defect of form may, at any time, be amended under the direction of the court.

Art. 436. [500] [488] Causes which will exonerate.—The following causes, and no other, will exonerate the defendant and his sureties from liability upon the forfeiture taken:

1. That the recognizance or bail bond is, for any cause, not a valid and binding undertaking in law. If it be valid and binding as to the principal, and one or more of his sureties, they shall not be exonerated from liability because of it being invalid and not binding as to another surety or suretes [sureties]. If it be invalid and not binding as to the principal, each of the sureties shall be exonerated from liability. If it be valid and binding as to the principal, but not so as to the sureties, the principal shall not be exonerated, but the sureties shall be.

2. The death of the principal before the forfeiture was taken.

3. The sickness of the principal or some uncontrollable circumstance which prevented his appearance at

court, and it must, in every such case, be shown that his failure to appear arose from no fault on his part. The causes mentioned in this subdivision shall not be deemed sufficient to exonerate the principal and his sureties unless such principal appear before final judgment on the recognizance or bail bond to answer the accusation against him, or show sufficient cause for not so appearing.

4. Failure to present an indictment or information at the first term of the court which may be held after the principal has been admitted to bail, in case where the party was bound over before indictment or information, and the prosecution has not been continued by order of the court. [O. C. 414.]

Art. 437. [501] [489] Judgment final.—When, upon a trial of the issues presented, no sufficient cause is shown for the failure of the principal to appear, the judgment shall be made final against him and his sureties for the amount in which they are respectively bound; and the same shall be collected by execution as in civil actions. Separate executions shall issue against each party for the amount adjudged against him. The costs shall be equally divided between the sureties, if there be more than one. [O. C. 417.]

Art. 438. [502] [490] Judgment final by default.—When the sureties have been duly cited and fail to answer, and the principal also fails to answer within the time limited for answering in other civil actions, the court shall enter judgment final by default.

Art. 439. [503] [491] The court may remit.—If, before final judgment is entered against the bail, the principal appear or be arrested and lodged in jail of the proper county, the court may, at its discretion, remit the whole or part of the sum specified in the bond or recognizance. [O. C. 415.]

Art. 440. [504] [492] Forfeiture set aside.—When the principal appears before the entry of final judgment, and sufficient cause is shown for his failure to appear before the forfeiture is taken, and a trial is had of the criminal action pending against him, he shall be entitled to have the forfeiture set aside. The criminal action against him shall stand for trial, but the State shall not be forced to try the same until reasonable time has been allowed to prepare for trial, and the State shall, in such case, be entitled to a continuance. [O. C. 416.]

2. THE CAPIAS

Art. 441. [505] [493] Definition of a "capias."—A "capias" is a writ issued by the court or clerk, and directed "To any sheriff of the State of Texas," commanding him to arrest a person accused of an offense and bring him before that court forthwith, or on a day or at a term stated in the writ.

Art. 442. [506] [494] Its requisites.—A capias shall be held sufficient if it have the following requisites:

1. That it run in the name of the "State of Texas."
2. That it name the person whose arrest is ordered, or, if unknown, describe him.
3. That it specify the offense of which the defendant is accused, and it appear thereby that he is accused of some offense against the penal law of the State.
4. That it name the court to which and the time when it is returnable.
5. That it be dated and attested officially by the authority issuing the same. [O. C. 421.]

Art. 443. [507] [495] Capias in felony.—A capias shall be immediately issued by the district clerk upon each indictment for felony presented, and shall be delivered by the clerk or mailed to the sheriff of the county where the sheriff resides or is to be found.

Art. 444. [508] [496] In misdemeanor case.—In misdemeanor cases the capias shall issue from the court having jurisdiction of the same. A capias need not issue for a defendant in custody or under bail.

Art. 445. [509] [497] Capias after forfeiture.—Where a forfeiture is declared upon a recognizance or bail bond, a capias shall be immediately issued for the arrest of the defendant, and when arrested, he shall be required to enter into a new recognizance or bail bond, unless the forfeiture taken has been set aside under the third subdivision of article 436, in which case the defendant and his sureties shall remain bound under his present recognizance or bail bond.

Art. 446. [510] [498] New bail in felony case.—When a defendant who has been arrested for a felony under a capias has previously given bail to answer said charge, his sureties shall be released by such arrest, and he shall be required to give new bail.

Art. 447. [511] [499] Capias does not lose its force.—A capias shall not lose its force if not executed and returned at the time fixed in the writ, but may be executed at any time afterward, and return made. All proceedings under such capias shall be as valid as if the same had been executed and returned within the time specified in the writ. [O. C. 423.]

Art. 448. [512] [500] Reasons for retaining capias.—When the capias is not returned at the time fixed in the writ, the officer holding it shall notify the court from whence it was issued, in writing, of his reasons for retaining it.

Art. 449. [513] [501] Capias to several counties.—Capiases for a defendant may be issued to as many counties as the district or county attorney may direct.

Art. 450. [514] [502] Bail in felony.—In cases of arrest for felony in the county where the prosecution is pending, during a term of court, the officer making the arrest may take bail as provided in article 287. [Acts 1907, p. 148.]

Art. 451. [515] [503] Sheriff may take bail in felony.—In cases of arrest for felony less than capital, made during vacation, or made in another county than the one in which the prosecution is pending, the sheriff may take bail. In such cases, the amount of the bail shall be the same as is indorsed upon the capias; and, if no amount be indorsed upon the capias, the sheriff shall require a reasonable amount of bail. [O. C. 426–432.]

Art. 452. [516] [504] Court shall fix bail in felony.—In felony cases which are bailable, the court shall, before adjourning, fix and enter upon the minutes the amount of the bail to be required in each case. The clerk shall indorse upon the capias the amount of bail required. In case of neglect to so comply with this article, the arrest of the defendant, and the bail bond taken by the sheriff, shall be as legal as if there had been no such omission. [O. C. 424.]

Art. 453. [517] [505] Who may arrest under capias.—A capias may be executed by any constable or other peace officer. In felony cases, the defendant must be delivered forthwith to the sheriff of the county where the arrest is made, togther [together] with the writ under which he was taken. [O. C. 425.]

Art. 454. [518] [506] Bail in misdemeanor.—Any officer making an arrest under a capias in a misdemeanor may in term time or vacation take bail of the defendant. [O. C. 426.]

Art. 455. [519] [507] Arrest in capital case.—Where an arrest is made under a capias in a capital case, the sheriff shall confine the defendant in jail, and the capias shall, for that purpose, be a sufficient commitment. This article is applicable when the arrest is made in the county where the prosecution is pending.

Art. 456. [520] [508] Arrest in capital case in another county.—In each capital case where a defendant is arrested under a capias in a county other than that in which the case is pending the sheriff who arrests or to whom the defendant is delivered, shall convey him forthwith to the county

from which the capias issued and deliver him to the sheriff of such county.

Art. 457. [521] [509] Return of bail bond and capias.—When an arrest has been made and a bail bond taken, such bond, together with the capias, shall be returned forthwith to the proper court. [O. C. 422.]

Art. 458. [522] [510] Detaining accused in out-county jail.—If a defendant be placed in jail out of the county of the prosecution, on a felony, he shall be discharged from custody if not applied for and taken by the sheriff of the proper county before the end of sixty days from the day of his commitment. If the charge is a misdemeanor, he shall be discharged from custody if not applied for and taken by the sheriff of the proper county before the end of ten days from the day of his commitment. [O. C. 434.]

Art. 459. [523] [511] Unsafe jail.—The preceding article shall not apply if the defendant has been placed in jail out of the county for the want of a safe jail in the proper county.

Art. 460. [524] [512] Return of capias.—The return of the capias shall be made to the court from which it is issued. If it has been executed, the return shall state what disposition has been made of the defendant. If it has not been executed, the cause of the failure to execute it shall be fully stated. If the defendant has not been found, the return shall further show what efforts have been made by the officer to find him, and what information he has as to the defendant's whereabouts.

3. SUBPŒNA AND ATTACHMENT

Art. 461. [525] [513] Definition of "subpœna."—A "subpœna" is a writ issued to the sheriff or other proper officer commanding him to summon one or more persons therein named to appear at a certain term of the court, or on a certain day, to testify in a criminal action, or before an examining court, coroner's inquest, the grand jury, or before a judge hearing an application under habeas corpus, or in any other case in which the testimony of a witness may be required under the provisions of this Code. The writ shall be dated and signed officially by the court or clerk issuing the same, but need not be under seal.

Art. 462. [526] [514] Subpœna duces tecum.—If a witness have in his possession any instrument of writing or other thing desired as evidence, the subpœna may specify such evidence and direct that the witness bring the same with him and produce it in court.

Art. 463. [526–529] Subpœna and application therefor.—Before the clerk or his deputy shall be required or permitted to issue a subpœna in any felony case pending in any district or criminal district court of this State of which he is clerk or deputy, the defendant or his attorney or the State's attorney shall make written sworn application to such clerk for each witness desired. Such application shall state the name of each witness desired, the location and avocation, if known, and that the testimony of said witness is believed to be material to the State or the defense. As far as practicable such clerk shall include in one subpœna the names of all witnesses for the State and defendant, and such process shall show that the witnesses are summoned for the State and defendant. When a witness has been served with process by one party, it shall inure to the benefit of the opposite party in case he should need said witness. [Acts 1889, p. 145, Acts 1st C. S. 1897, p. 5, Acts 1913, p. 319.]

Art. 464. [527] [515] Service and return of subpœna.—A subpœna is served by reading the same in the hearing of the witness. The officer having the subpœna shall make due return thereof, showing the time and manner of service, if served, and, if not served, he shall show in his return the cause of his failure to serve it; and, if the witness could not be found, he shall state the diligence he has used to find him, and what information he has as to the whereabouts of the witness.

Art. 465. [528] [516] Refusing to obey.—If a witness refuse to obey a subpœna, he may be fined at the discretion of the court, as follows: In a felony case, not exceeding five hundred dollars; in a misdemeanor case, not exceeding one hundred dollars. [O. C. 444–445.]

Art. 466. [530] [518] What is disobedience of a subpœna.—It shall be held that a witness refuses to obey a subpœna:

1. If he is not in attendance on the court on the day set apart for taking up the criminal docket or on any day subsequent thereto and before the final disposition or continuance of the particular case in which he is a witness.

2. If he is not in attendance at any other time named in a writ.

3. If he refuses without legal cause to produce evidence in his possession which he has been summoned to bring with him and produce. [O. C. 441.]

Art. 467. [531] [519] Fine against witness conditional.—When a fine is entered against a witness for failure to appear and testify, the judgment shall be conditional; and a citation shall issue to him to show cause, at the term of the court at which said fine is entered, or at the first term thereafter, at the discretion of the judge of said court, why the same should not be final; provided, citation shall be served upon said witness in the manner and for the length of time prescribed for citations in civil cases. [O. C. 447, Acts 1895, p. 95.]

Art. 468. [532] [520] Witness may show cause.—A witness cited to show cause, as provided in the preceding article, may do so under oath, in writing or verbally, at any time before judgment final is entered against him; but, if he fails to show cause within the time limited for answering in civil actions, a judgment final by default shall be entered against him. [O. C. 448; Id.]

Art. 469. [533] [521] Court may remit fine.—It shall be within the discretion of the court to judge of the sufficiency of an excuse rendered by a witness, and, upon the hearing the court shall render judgment against the witness for the whole or any part of the fine, or shall remit the fine altogether, as to the court may appear proper and right. Said fine shall be collected as fines in misdemeanor cases. [O. C. 452; Id.]

Art. 470. [534] [522] When witness appears and testifies.—When a fine has been entered against a witness, but no trial of the cause takes place, and such witness afterward appears and testifies upon the trial thereof, it shall be discretionary with the judge, though no good excuse be rendered, to reduce the fine or remit it altogether; but the witness, in such case, shall, nevertheless, be adjudged to pay all the costs accruing in the proceeding against him by reason of his failure to attend. [O. C. 449.]

Art. 471. [535] [523] Requisites of an attachment.—An "attachment" is a writ issued by a clerk of a court under seal, or by any magistrate, or by the foreman of a grand jury, in any criminal action or proceeding authorized by law, commanding some peace officer to take the body of a witness and bring him before such court, magistrate or grand jury on a day named, or forthwith, to testify in behalf of the State or of the defendant, as the case may be. It shall be dated and signed officially by the officer issuing it. [O. C. 439.]

Art. 472. [536] [524] When attachment may issue.—When a witness who resides in the county of the prosecution has been duly served with a subpœna to appear and testify in any criminal action or proceeding fails to so appear, the State or the defendant shall be entitled to have an attachment issued forthwith for such witness. [O. C. 436–440.]

Art. 473. [537] [524a] Attachment for resident witness.—When a witness resides in the county of the prosecution, whether he has disobeyed a subpœna or not, either in term time or vacation, upon the filing of an affidavit with the clerk by the defendant or State's counsel, that he has good reason to believe, and does believe, that such witness is a material witness, and is about to move out of the county, the clerk shall forthwith issue an attachment for such witness; provided, that in misdemeanor cases, when the witness makes oath that he cannot give surety, the officer executing the attachment shall take his personal bond. [Acts 1897, p. 30.]

Art. 474. [538] [525a] To secure attendance before grand jury.—At any time before the first day of any term of the district court, the clerk, upon application of the State's attorney, shall issue a subpœna for any witness who resides in the county. If at the time such application is made, such attorney files a sworn application that he has good reason to believe and does believe that such witness is about to move out of the county, then said clerk shall issue an attachment for such witness to be and appear before said district court on the first day thereof to testify as a witness before the grand jury. Any witness so summoned or attached, who shall fail or refuse to obey a subpœna or attachment, shall be punished by the court by a fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases. [Acts 1899, p. 245.]

Art. 475. [539] Application for out-county witness.—Where a witness resides out of the county in which the prosecution is pending, the State or the defendant shall be entitled, either in term time or in vacation, to a subpœna to compel the attendance of such witness on application to the proper clerk or magistrate. Such application shall be in the manner and form as provided in article 463. [Acts 1st C. S. 1897, p. 58.]

Art. 476. [540] Duty of officer receiving said subpœna.—The officer receiving said subpœna shall execute the same by delivering a copy thereof to each witness therein named. He shall make due return of said subpœna, showing therein the time and manner of executing the same, and, if not executed, such return shall show why not executed, the diligence used to find said witness, and such information as the officer has as to the whereabouts of said witness. [Id.]

Art. 477. [541] Subpœna returnable forthwith.—When a subpœna is returnable forthwith, the officer shall immediately serve the witness with a copy of the same; and it shall be the duty of said witness to immediately make his appearance before the court, magistrate or other authority issuing the same. If said witness makes affidavit of his inability from lack of funds to appear in obedience to said subpœna, the officer executing the same shall provide said witness, if said subpœna be issued in a felony case, with the necessary funds or means to appear in obedience to said subpœna, taking his receipt therefor, and showing in his return on said subpœna, under oath, the amount furnished to said witness, together with the amount of his fees for executing said subpœna. [Id.]

Art. 478. [542] Certificate to officer.—The clerk, magistrate, or foreman of the grand jury, issuing said process, immediately upon the return of said subpœna, if issued in a felony case, shall issue to such officer a certificate for the amount furnished such witness, together with the amount of his fees for executing the same, showing the amount of each item; which certificate shall be approved by the district judge and recorded by the district clerk in a book kept for that purpose; and said certificate transmitted to the officer executing such subpœna, which amount shall be paid by the State, as costs are paid in other criminal matters. [Id.]

Art. 479. [543] Subpœna returnable at future day.—If the subpœna be returnable at some future date, the officer shall have authority to take a good bail bond of such witness for his appearance under said subpœna, which bond shall be returned with such subpœna, and shall be made payable to the State of Texas, in the amount in which the witness and his surety shall be bound and conditioned for the appearance of the witness at the time and before the court, magistrate or grand jury named in said subpœna, and shall be signed by the witness and his sureties. If said witness refuse to give bond, he shall be kept in custody until such time as he starts in obedience to said subpœna, when he shall be, upon affidavit being made, provided with funds necessary to appear in obedience to said subpœna. [Id.]

Art. 480. [544] Stating bail in subpœna.—The court or magistrate issuing said subpœna may direct therein the amount of the bond to be required. The officer may fix the amount if not specified, and, in either case, shall require sufficient security, to be approved by himself. [Id.]

Art. 481. [545] Witness fined and attached.—If a witness summoned from without the county refuse to obey a subpœna, he shall be fined by the court or magistrate not exceeding five hundred dollars, which fine and judgment shall be final, unless set aside after due notice to show cause why it should not be final, which notice may immediately issue, requiring the defaulting witness to appear at once or at the next term of said court, in the discretion of the judge, to answer for such default. The court may cause to be issued at the same time an attachment for said witness, directed to the proper county, commanding the officer to whom said writ is directed to take said witness into custody and have him before said court at the time named in said writ; in which case such witness shall receive no fees, unless it appears to the court that such disobedience is excusable, when the witness may receive the same pay as if he had not been attached. Said fine when made final and all costs thereon shall be collected as in other criminal cases. Said fine and judgment may be set aside in vacation or at the same or any subsequent term of the court for good cause shown, after the witness testifies or has been discharged. The following words shall be written or printed on the face of such subpœna for out-county witnesses: "A disobedience of this subpœna is punishable by fine not exceeding five hundred dollars, to be collected as fines and costs in other criminal cases." [Id.]

Art. 482. [546] [535] Witness released.—A witness who is in custody for failing to give bond shall be at once released upon giving the bond required.

Art. 483. [547] [536] Witness recognized.—Witnesses on behalf of the State or defendant may, at the request of either party, be required to enter into recognizance in an amount to be fixed by the court to appear and testify in a criminal action; but, if it shall appear to the court that any witness is unable to give security upon such recognizance, he shall be recognized without security.

Art. 484. [548] [537] Personal recognizance of witness.—When it appears to the satisfaction of the court that personal recognizance of the witness will insure his attendance, no security need be required of him; but no bail shall be taken by any officer without security.

Art. 485. [549] [538] Enforcing forfeiture.—The recognizance or bail bond of a witness may be enforced against him and his sureties in the manner pointed out in this Code for enforcing the recognizance or bail bond of a defendant in a criminal case. [O. C. 437b.]

Art. 486. [550] [539] No surrender after forfeiture.—The sureties of a witness have no right, in any case, to discharge themselves by the surrender of such witness, after the forfeiture of their recognizance or bond. [O. C. 453.]

4. SERVICE OF A COPY OF THE INDICTMENT

Art. 487. [551] [540] In felony.—In every case of felony, when the accused is in custody, or as soon as he may be arrested, the clerk of the court where an indictment has been presented shall immediately make a certified copy of the same, and deliver such copy to the sheriff, together with a writ directed to such sheriff, commanding him forthwith to deliver such certified copy to the accused. [O. C. 458.]

Art. 488. [552] [541] Service and return.—Upon receipt of such writ and copy, the sheriff shall immediately deliver such certified copy of the indictment to the accused and return the writ to the clerk issuing the same, with his return thereon, showing when and how the same was executed.

Art. 489. [553] [542] If on bail in felony.—When the accused, in case of felony, is on bail at the time the indictment is presented, it is not necessary to serve him with a copy, but the clerk shall on request deliver a copy of the same to the accused or his counsel, at the earliest possible time. [O. C. 460.]

Art. 490. [554] [543] In misdemeanor.—In misdemeanors, it shall not be necessary before trial to furnish the accused with a copy of the indictment or information; but he or his counsel may demand a copy, which shall be given as early as possible.

5. ARRAIGNMENT

Art. 491. [555] [544] No arraignment.—There shall be no arraignment of a defendant except upon an indictment for a capital offense. [O. C. 461.]

Art. 492. [556] [545] Purpose of arraignment.—An arraignment takes place for the purpose of fixing his identity and hearing his plea. [O. C. 462.]

Art. 493. [557] [446] Time of arraignment.—No arraignment shall take place until the expiration of at least two entire days after the day on which a copy of the indictment was served on the defendant, unless the right to such copy or to such delay be waived, or unless the defendant is on bail. [O. C. 463.]

Reference in brackets to article 446 should be 546.

Art. 494. [558] [547] Court shall appoint counsel.—When the accused is brought into court for the purpose of being arraigned, if it appear that he has no counsel and is too poor to employ counsel, the court shall appoint one or more practicing attorneys to defend him. The counsel so appointed shall have at least one day to prepare for trial. [O. C. 466.]

Art. 495. [559] [548] Name as stated in indictment.—When the defendant is arraigned, his name, as stated in the indictment, shall be distinctly called; and, unless he suggest by himself or counsel that he is not indicted by his true name, it shall be taken that his name is truly set forth, and he shall not thereafter be allowed to deny the same by way of defense.

Art. 496. [560] [549] If defendant suggests different name.—If the defendant, or his counsel for him, suggest that he bears some name different from that stated in the indictment, the same shall be noted upon the minutes of the court, the indictment corrected by inserting therein the name of the defendant as suggested by himself, the style of the cause changed so as to give his true name, and the cause proceed as if the true name had been first recited in the indictment. [O. C. 469.]

Art. 497. [561] [550] If accused refuses to give his real name.—If the defendant alleges that he is not indicted by his true name, and refuses to say what his real name is, the cause shall proceed as if the name stated in the indictment were true; and the defendant shall not be allowed to contradict the same by way of defense. [O. C. 470.]

Art. 498. [562] [551] Where name is unknown.—A defendant described as a person whose name is unknown may have the indictment so corrected as to give therein his true name.

Art. 499. [563] [552] Indictment read.—The name of the accused having been called, if no suggestion, such as is spoken of in the four preceding articles, be made, or, being made, is disposed of as before directed, the indictment shall be read, and the defendant asked whether he is guilty or not, as therein charged. [O. C. 472.]

Art. 500. [564] [553] Plea of not guilty entered.—If the defendant answer that he is not guilty, the same shall be entered upon the minutes of the court; if he refuse to answer, the plea of not guilty shall in like manner be entered. [O. C. 473.]

Art. 501. [565] [554] Plea of guilty.—If the defendant plead guilty, he shall be admonished by the court of the consequences; and no such plea shall be received unless it plainly appear that he is sane, and is uninfluenced by any consideration of fear, by any persuasion or delusive hope of pardon prompting him to confess his guilt. [O. C. 474.]

Art. 502. [566] [555] Jury on plea of guilty.—Where a defendant in a case of felony persists in pleading guilty, if the punishment is not absolutely fixed by law, a jury shall be impaneled to assess the punishment, and evidence submitted to enable them to decide thereupon. [O. C. 476.]

Art. 503. [567] [556] Correcting name.—In any case, the same proceedings shall be had with respect to the name of the defendant and the correction of the indictment or information as provided with respect to the same in capital cases. [O. C. 479.]

6. THE PLEADINGS IN CRIMINAL ACTIONS

Art. 504. [568] [557] Indictment or information.—The primary pleading in a criminal action on the part of the State is the indictment or information. [O. C. 481.]

Art. 505. [569] [558] Defendant's pleading.—On the part of the defendant, the following are the only pleadings:

1. The motion to set aside the indictment or information.
2. A special plea setting forth one or more facts as cause why the defendant ought not to be tried upon the accusation presented against him.
3. An exception to the indictment or information for some matter of form or substance.
4. A plea of guilty.
5. A plea of not guilty. [O. C. 482.]

Art. 506. [570] [559] Motion to set aside indictment.—A motion to set aside an indictment or information shall be based on one or more of the following causes, and no other:

1. That it appears by the records of the court that the indictment was not found by at least nine grand jurors, or that the information was not based upon a valid complaint.
2. That some person not authorized by law was present when the grand jury were deliberating upon the accusation against the defendant, or were voting upon the same. [O. C. 483.]

Art. 507. [571] [560] Motion tried by judge.—An issue of fact arising upon a motion to set aside an indictment or information shall be tried by the judge without a jury. [O. C. 483.]

Art. 508. [572] [561] Special pleas for defendant.—The only special pleas which can be heard for the defendant are:

1. That he has been convicted legally, in a court of competent jurisdiction, upon the same accusation, after having been tried upon the merits for the same offense.
2. That he has been before acquitted by a jury of the accusation against him, in a court of competent

jurisdiction, whether the acquittal was regular or irregular. [O. C. 484.]

Art. 509. [573] [562] Special plea verified.—Every special plea shall be verified by the affidavit of the defendant.

Art. 510. [574] [563] Special plea tried by jury.—All issues of fact presented by a special plea shall be tried by a jury.

Art. 511. [575] [564] Exception to substance of indictment.—There is no exception to the substance of an indictment or information, except:

1. That it does not appear therefrom that an offense against the law was committed by the defendant.

2. That it appears from the face thereof that a prosecution for the offense is barred by a lapse of time, or that the offense was committed after the finding of the indictment.

3. That it contains matter which is a legal defense or bar to the prosecution.

4. That it shows upon its face that the court trying the case has no jurisdiction thereof. [O. C. 487.]

Art. 512. [576] [565] Exception to form of indictment.—Exceptions to the form of an indictment or information may be taken for the following causes only:

1. That it does not appear to have been presented in the proper court, as required by law.

2. The want of any other requisite or form prescribed by articles 396 and 414, except the want of the signature of the foreman of the grand jury, or in the case of an information, of the signature of the State's attorney. [O. C. 488.]

Art. 513. [577] [566] Written pleadings.—All motions to set aside an indictment or information and all special pleas and exceptions shall be in writing. [O. C. 489.]

Art. 514. [578] [567] Two days allowed for filing pleadings.—In all cases the defendant shall be allowed two entire days, exclusive of all fractions of a day after his arrest, and during the term of the court, to file written pleadings.

Art. 515. [579] [568] Time after service.—In cases where the defendant is entitled to be served with a copy of the indictment, he shall be allowed the two days' time mentioned in the preceding article to file written pleadings after such service.

Art. 516. [580] [569] May file written pleadings at any time.—The two preceding articles shall not be construed so as to preclude the defendant from filing written pleadings at any time before the case is called for trial, except in case of change of venue. [O. C. 496a.]

Art. 517. [581] [570] Plea of guilty in felony.—A plea of guilty in a felony case must be made in open court by the defendant in person; and the proceedings shall be as provided in articles 501 and 502.

Art. 518. [582] [571] Plea of guilty in misdemeanor.—A plea of guilty in a misdemeanor case may be made either by the defendant or his counsel in open court. In such case, the defendant or his counsel may waive a jury, and the punishment may be assessed by the court, either upon or without evidence, at the discretion of the court.

Art. 519. Change of venue to plead guilty.—When in any county which is located in a judicial district composed of more than one county, a party is charged with a felony and the maximum punishment therefor shall not exceed fifteen years, and the district court of said county is not in session, such party may, if he desires to plead guilty, make application to the district judge of such district for a change of venue to the county in which said court is in session, and said district judge may enter an order changing the venue of said cause to the county in which the court is then in session, and the defendant may plead guilty to said charge in said court to which the venue has been changed. [Acts 1917, p. 350.]

Art. 520. [584] [573] Plea of not guilty, how made.—The plea of not guilty may be made orally by the defendant or by his counsel in open court. If the defendant refuses to plead, the plea of not guilty shall be entered for him by the court. [O. C. 480.]

Art. 521. [585] [574] Plea of not guilty construed.—The plea of "not guilty" shall be construed to be a denial of every material allegation in the indictment or information. Under this plea, evidence to establish the insanity of defendant, and every fact whatever tending to acquit him of the accusation may be introduced, except such facts as are proper for a special plea under article 508. [O. C. 497.]

7. MOTIONS, PLEAS AND EXCEPTIONS

Art. 522. [587] [576] Motions heard without delay.—The motion to set aside an indictment or information, and all exceptions, shall be heard together and decided without delay.

Art. 523. [588] [577] Time of hearing.—The court, at its discretion, may hear and determine such motions and exceptions at any time before a trial has been entered upon, but not afterward.

Art. 524. [589] [578] Order of argument.—The counsel of the defendant has the right to open and conclude the argument upon all pleadings of the defendant presented for the decision of the judge.

Art. 525. [590] [579] Special pleas setting forth matters of fact.—Such special pleas as set forth matter of fact proper to be tried by a jury shall be submitted and tried with a plea of "not guilty." [O. C. 503.]

Art. 526. [591] [580] Process for testimony on pleadings.—Where the matters involved in any written pleading depend in whole or in part upon testimony, and not altogether upon the record of the court, every process known to the law may be obtained on behalf of either party to procure such testimony; but there shall be no delay on account of the want of the testimony, unless it be shown to the satisfaction of the court that all the means given by the law have been used to procure the same.

Art. 527. [592] [581] Quashing charge in misdemeanor.—If the motion to set aside or the exception to an indictment or information is sustained, the defendant in a misdemeanor case shall be discharged, but may be again prosecuted within the time allowed by law. [O. C. 504.]

Art. 528. [593] [582] Quashing indictment in felony.—If the motion to set aside or the exception to the indictment in cases of felony be sustained, the defendant shall not therefor be discharged, but may immediately by recommitted by order of the court, upon motion of the State's attorney or without motion; and proceedings may afterward be had against him as if no prosecution had ever been commenced. [O. C. 505.]

Art. 529. [594] [583] Shall be fully discharged, when.—Where, after the motion or exception is sustained, it is made known to the court by sufficient testimony that the offense of which the defendant is accused will be barred by limitation before another indictment can be presented, he shall be fully discharged. [O. C. 506.]

Art. 530. [595] [584] If exception is that no offense is charged.—If an exception to an indictment or information is taken and sustained upon the ground that there is no offense against the law charged therein, the defendant shall be discharged, unless an affidavit be filed accusing him of the commission of a penal offense. [O. C. 507.]

Art. 531. [596] [585] When defendant is held by order of court.—If the motion to set aside the indictment or any exception thereto is sustained, but the court refuses to discharge the defendant, then at the expiration of ten days from the order sustaining such motions or exceptions, the defendant shall be discharged, unless in the meanwhile complaint has been made before a magistrate charging him with an offense, or unless another indictment has been presented against him for such offense.

Art. 532. [597] [586] Exception on account of form.—If the exception to an indictment or information is only on account of form, it shall be amended, if defective, and the cause proceed upon such amended charge. [O. C. 508.]

Art. 533. [598] [587] Amendment of indictment or information.—Any matter of form in an indictment or information may be amended at any time before an announcement of ready for trial upon the merits by both parties, but not afterward. No matter of substance can be amended.

Art. 534. [599] [588] How amended.—All amendments of an indictment or information shall be made with the leave of the court and under its direction.

Art. 535. [600] [589] State may except to plea.—When a special plea is filed by the defendant, the State may except to it for substantial defects. If the exception be sustained, the plea may be amended. If the plea be not excepted to, it shall be considered that issue has been taken upon the same. [O. C. 509, 510.]

Art. 536. [601] [590] Former acquittal or conviction.—A former judgment of acquittal or conviction in a court of competent jurisdiction shall be a bar to any further prosecution for the same offense, but shall not bar a prosecution for any higher grade of offense over which said court had not jurisdiction, unless such judgment was had upon indictment or information, in which case the prosecution shall be barred for all grades of the offense.

Art. 537. [602] [591] Plea allowed.—Judgment shall, in no case, be given against the defendant where his motion, exception or plea is overruled; but in all cases the plea of not guilty may be made by or for him. [O. C. 512.]

8. CONTINUANCE

Art. 538. [603] [592] By operation of law.—Criminal actions are continued by operation of law if the accused has not been arrested or if there is not sufficient time for trial at that term of court. [O. C. 513.]

Art. 539. [604] [593] By agreement.—A criminal action may be continued by consent of the parties thereto, in open court, at any time.

Art. 540. [605] [594] For sufficient cause shown.—A criminal action may be continued on the written application of the State or of the defendant, upon sufficient cause shown; which cause shall be fully set forth in the application. [O. C. 514, 517, 520.]

Art. 541. [606] [595] First application by State.—It shall be sufficient, upon the first application by the State for a continuance, if the same be for the want of a witness, to state:

1. The name of the witness and his residence, if known, or that his residence is unknown.
2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpœna, in cases where the law authorized an attachment to issue.
3. That the testimony of the witness is believed by the applicant to be material for the State. [O. C. 515.]

Art. 542. [607] [596] Subsequent application by State.—On any subsequent application for a continuance by the State, for the want of a witness, the application, in addition to the requisites in the preceding article, must show:

1. The facts which the applicant expects to establish by the witness, and it must appear to the court that they are material.
2. That the applicant expects to be able to procure the attendance of the witness at the next term of the court.
3. That the testimony can not be procured from any other source during the present term of the court. [O. C. 516.]

Art. 543. [608] [597] First application by defendant.—In the first application by the defendant for a continuance, it shall be necessary, if the same be on account of the absence of a witness, to state:

1. The name of the witness and his residence, if known, or that his residence is not known.
2. The diligence which has been used to procure his attendance; and it shall not be considered sufficient diligence to have caused to be issued, or to have applied for, a subpœna, in cases where the law authorized an attachment to issue.
3. The facts which are expected to be proved by the witness, and it must appear to the court that they are material.
4. That the witness is not absent by the procurement or consent of the defendant.
5. That the application is not made for delay.
6. That there is no reasonable expectation that attendance of the witness can be secured during the present term of court by a postponement of the trial to some future day of said term. The truth of the first, or any subsequent application, as well as the merit of the ground set forth therein and its sufficiency shall be addressed to the sound discretion of the court called to pass upon the same, and shall not be granted as a matter of right. If an application for continuance be overruled, and the defendant convicted, if it appear upon the trial that the evidence of the witness or witnesses named in the application was of a material character, and that the facts set forth in said application were probably true, a new trial should be granted, and the cause continued or postponed to a future day of the same term.

Art. 544. [609] [598] Subsequent application by defendant.—Subsequent applications for continuance on the part of the defendant shall, in addition to the requisites in the preceding article, state also:

1. That the testimony can not be procured from any other source known to the defendant.
2. That the defendant has reasonable expectation of procuring the same at the next term of the court. [O. C. 516.]

Art. 545. [610] [599] Application sworn to.—All applications for continuance on the part of the defendant must be sworn to by himself. [O. C. 521.]

Art. 546. [611] [600] Written motion not necessary.—No written motion for continuance is necessary; the motion, based upon the application, may be made orally. [O. C. 522.]

Art. 547. [612] [601] Controverting application.—Any material fact stated, affecting diligence, in an application for a continuance, may be denied in writing by the adverse party. The denial shall be supported by the oath of some credible person, and filed as soon as practicable after the filing of such application.

Art. 548. [613] [602] When denial is filed.—When such denial is filed, the issue shall be tried by the judge; and he shall hear testimony by affidavits, and grant or refuse continuance, according to the law and facts of the case.

Art. 549. [614] [603] Argument.—No argument shall be heard on an application for a continuance, unless requested by the judge; and, when argument is heard, the applicant shall have the right to open and conclude it.

Art. 550. [615] [604] Bail resulting from continuance.—If a defendant in a capital case demand a trial, and it appears that more than one continuance has been granted to the State, and that the defendant has not before applied for a continuance, he shall be entitled to be admitted to bail, unless it be made to appear to the satisfaction of the court that a material witness of the State had been prevented from attendance by the procurement of the defendant or some person acting in his behalf.

Art. 551. [616] [605] Continuance after trial is begun.—A continuance or postponement may be granted on the application of the State or defend-

ant after the trial has begun, when it is made to appear to the satisfaction of the court that by some unexpected occurrence since the trial began, which no reasonable diligence could have anticipated, the applicant is so taken by surprise that a fair trial can not be had. [O. C. 526.]

9. DISQUALIFICATION OF THE JUDGE

Art. 552. [617] [606] Causes which disqualify.—No judge or justice of the peace shall sit in any case where he may be the party injured, or where he has been of counsel for the State or the accused, or where the accused or the party injured may be connected with him by consanguinity or affinity within the third degree.

Art. 553. [618] [607] District judge disqualified.—Whenever any case is pending in which the district judge or criminal district judge is disqualified from trying the same, no change of venue shall be made necessary thereby; but the judge presiding shall certify that fact to the Governor, whereupon the Governor shall designate some district judge in an adjoining district to exchange and try such case. The Governor shall notify both judges of such order, and said judges shall exchange districts for the purpose of disposing of such case. In case of sickness or other reasons rendering it impossible to exchange, then the parties or their counsels shall have the right to agree upon an attorney of the court for the trial thereof. If said judges shall be prevented from exchanging districts and the parties and their counsels shall fail to agree upon an attorney of the court for a trial thereof, that fact shall be certified to the Governor by either judge, whereupon the Governor shall appoint a person legally qualified to act as judge in the trial of the case. [Acts 1st C. S. 1897, p. 39, Acts 1915, p. 86.]

Art. 554. [621] County judge disqualified.—When the judge of the county court or county court at law is disqualified in any criminal case pending in the court of which he is judge, the parties may, by consent, agree upon a special judge to try such case. If they fail to agree upon a special judge to try such case, on or before the third day of the term at which such case may be called for trial, the judge presiding shall forthwith certify that fact to the Governor, who shall forthwith appoint some practicing attorney to try such case. [Acts 1893, p. 83.]

Art. 555. [620–622] Special judge to take oath.—The attorney agreed upon or appointed shall, before he enters upon his duties as special judge, take the oath of office required by the Constitution.

Art. 556. [620–622] Record made by clerk.—When a special judge is agreed upon by the parties or appointed by the Governor, as above provided, the clerk shall enter in the minutes as a part of the proceedings in such cause, a record showing:

1. That the judge of the court was disqualified to try the cause.
2. That such special judge (naming him) was by consent of the parties agreed upon or was appointed by the Governor to try the cause.
3. That the oath of office prescribed by law has been duly administered to such special judge. [Acts 1st C. S. 1897, p. 39.]

Art. 557. [623] [610b] Compensation.—A special judge selected or appointed in accordance with the preceding articles shall receive the same compensation as provided by law for regular judges in similar cases. [Id.]

Art. 558. [624] [611] Justice disqualified.—If a justice of the peace be disqualified from sitting in any criminal action pending before him, he shall transfer the same to the nearest justice of the peace of the county who is not disqualified to try it.

Art. 559. [625] [612] Order of transfer.—In cases provided for in the preceding article, the order of transfer shall state the cause of the transfer, and name the court to which the transfer is made, and the time and place, when and where, the parties and witnesses shall appear before such court. The rules governing the transfer of cases from the district to inferior courts shall govern in the transfer of cases under the preceding article.

10. CHANGE OF VENUE

Art. 560. [626] [613] On court's own motion.—Whenever in any case of felony the judge presiding shall be satisfied that a trial, alike fair and impartial to the accused and to the State, can not, from any cause, be had in the county in which the case is pending, he may, upon his own motion, order a change of venue to any county in his own, or in an adjoining district, stating in his order the grounds for such change of venue. [Acts 1876, p. 274; Const. art. 5, sec. 45.]

Reference to Const. art. 5, § 45, is erroneous. Reference should have been Const. art. 3, § 45.

Art. 561. [627] [614] State may have.—Whenever the district or county attorney shall represent in writing to the district court before which any felony case is pending, that, by reason of existing combinations or influences in favor of the accused, or on account of the lawless condition of affairs in the county, a fair and impartial trial as between the accused and the State can not be safely and speedily had; or whenever he shall represent that the life of the prisoner, or of any witness, would be jeopardized by a trial in the county in which the case is pending, the judge shall hear proof in relation thereto, and, if satisfied that such representation is well founded and that the ends of public justice will be subserved thereby, he shall order a change of venue to any county in his own, or in an adjoining district. [Acts 1876, p. 274.]

Art. 562. [628] [615] Granted on application of defendant.—A change of venue may be granted on the written application of the defendant, supported by his own affidavit and the affidavit of at least two credible persons, residents of the county where the prosecution is instituted, for either of the following causes, the truth and sufficiency of which the court shall determine:

1. That there exists in the county where the prosecution is commenced so great a prejudice against him that he can not obtain a fair and impartial trial.
2. That there is a dangerous combination against him instigated by influential persons, by reason of which he cannot expect a fair trial. [O. C. 527.]

Art. 563. [629] [616] Where jury can not be procured.—When an unsuccessful effort has been once made in any county to procure a jury for the trial of a felony and all reasonable means have been used, if it be made to appear to the court by the affidavit of the attorney for the State, or any other credible person, that no jury can probably be had in that county, the court may order a change of venue, and cause the reasons therefor to be placed upon the minutes of the proceedings. [O. C. 528.]

Art. 564. [630] [617] Time to make application.—An application for a change of venue may be heard and determined before either party has announced ready for trial; but, in all cases before a change of venue is ordered, all motions to set aside the indictment, and all special pleas and exceptions which are to be determined by the judge, and which have been filed, shall be disposed of by the court, and, if overruled, the plea of not guilty entered. [O. C. 592.]

Art. 565. [631] [618] Changed to nearest county.—Upon the grant of a change of venue, the cause shall be removed to some adjoining county, the court house of which is nearest to the court house of the county where the prosecution is pending, unless it be made to appear to the satisfaction of the court that such nearest county is subject to some objection sufficient to authorize a change of venue in the first instance. [O. C. 530.]

Art. 566. [632] [619] If adjoining counties objectionable.—If it be shown in the application or otherwise that all the counties adjoining that in

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

which the prosecution is pending are subject to some valid objection, the cause may be removed to such county as the court may think proper. [O. C. 531.]

Art. 567. [633] [620] Application may be controverted.—The credibility of the persons making affidavit for change of venue, or their means of knowledge, may be attacked by the affidavit of a credible person. The issue thus formed shall be tried by the judge, and the application granted or refused, as the law and facts shall warrant.

Art. 568. [Repealed by Acts 1926, 39th Leg., 1st C. S., p. 12, ch. 8, § 3.]

Art. 569. Changed for militiamen.—If the accused is an officer or member of the military forces of this State and is indicted for any injury to persons or property done while performing, or endeavoring to perform, any duty required of him by the laws governing such forces, the court in which such indictment is pending, upon the application of the accused, supported by the affidavit of two credible persons to the effect that they have good reason to believe that such accused cannot have a fair and impartial trial before such court, shall change the venue of such cause to some court of competent jurisdiction in another county not subject to the same or some other disqualification. [Acts 1905, p. 204.]

Art. 570. [635–636] Clerk's duties on change of venue.—When an order for a change of venue has been made, the clerk of the court where the prosecution is pending shall make out a true transcript of all the orders made in the cause, and certify thereto under his official seal, and send the same, together with all the original papers in the case, to the clerk of the court to which the venue has been changed, first making a correct certified copy of the same, and retain such copy in his office to be used in case any original be lost.

Art. 571. [637] [624] Recognizance of defendant.—When a change of venue is ordered and the defendant is on bail, he shall be required to enter into recognizance forthwith, conditioned for his appearance before the proper court at the next succeeding term thereof; or, if the court of the county to which the cause is taken be then in session, he shall be recognized to appear before said court on a day fixed, and from day to day and term to term until discharged. [O. C. 534.]

Art. 572. [638] [625] Failure to give recognizance.—A defendant who fails to give recognizance shall be safely kept in custody by the sheriff.

Art. 573. [639] [626] If defendant be in custody.—When the venue is changed in any criminal action, if the defendant be in custody, an order shall be made for his removal to the proper county, and his delivery to the sheriff thereof before the next succeeding term of the court of the county to which the case is to be taken, and he shall be delivered by the sheriff as directed in the order. [O. C. 535.]

Art. 574. [640] [627] If court be in session.—If the court of the county to which the case is removed be then in session, the defendant shall be forthwith delivered to the sheriff of such county. [O. C. 536.]

Art. 575. [641] [628] Witness need not again be summoned.—When the venue in a criminal action has been changed, it shall not be necessary to have the witnesses therein again subpœnaed, attached or recognized, but all the witnesses who have been subpœnaed, attached or recognized to appear and testify in the cause shall be held bound to appear before the court to which the cause has been transferred, as if there had been no such transfer.

11. DISMISSING PROSECUTIONS

Art. 576. [642] [629] Defendant in custody and no indictment presented.—When a defendant has been detained in custoday [custody] or held to bail for his appearance to answer any criminal accusation before the district court, the prosecution, unless otherwise ordered by the court, for good cause shown, supported by affidavit, shall be dismissed and the bail discharged, if indictment or information be not presented against such defendant at the next term of the court which is held after his commitment or admission to bail. [O. C. 537.]

Art. 577. [37–643] Dismissal by State's attorney.—The district or county attorney may, by permission of the court, dismiss a criminal action at any time upon filing a written statement with the papers in the case setting out his reasons for such dismissal, which shall be incorporated in the judgment of dismissal. No case shall be dismissed without the consent of the presiding judge.

TITLE 8

TRIAL AND ITS INCIDENTS

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2. Special Venire in Capital Cases.
3. Formation of Jury in Capital Cases.
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CHAPTER ONE

THE MODE OF TRIAL

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578. Jury; when of twelve. when of six.
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580. Presence of defendant.
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583. Sureties bound in case of mistrial.
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585. To fix day for criminal docket.
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Article 578. [645] [632] Jury; when of twelve, when of six.—In the district court, the jury shall consist of twelve men; in the county court and inferior courts, the jury shall consist of six men.

Art. 579. Failure to pay poll tax.—Failure to pay poll tax shall not disqualify any person from jury service. [Acts 1905, p. 207.]

Art. 580. [646] [633] Presence of defendant.—In all prosecutions for felonies, the defendant must be personally present at the trial, and he must likewise be present in all cases of misdemeanor when the punishment or any part thereof is imprisonment in jail. When the record in the appellate court shows that the defendant was present at the commencement, or any portion of the trial, it shall be presumed in the absence of all evidence in the record to the contrary that he was present during the whole trial. [Acts 1907, p. 31.]

Art. 581. [647] [634] May appear by counsel.—In other misdemeanor cases, the defendant may, by consent of the State's attorney, appear by counsel, and the trial may proceed without his personal presence. [O. C. 541.]

Art. 582. [648–900] On bail during trial.—Where the accused is on bail when the trial commences, such bail shall not thereby be considered as discharged until the jury shall return into court a verdict of guilty or not guilty. He shall have the same right to have and remain on bail during the trial of his case and up to the return into court of such verdict as under the law he has before the trial commences; but immediately upon the return into court of a verdict of guilty, he shall be placed in the custody of the sheriff, and his bail considered discharged. Where the accused is convicted in a misdemeanor case and is on bail when the trial commences, such bail shall not thereby be considered discharged until the defendant's motion for a new trial has been overruled by the court. [Acts 1907, p. 31, Acts 1917, p. 300.]

Art. 583. [649] [636] Sureties bound in case of mistrial.—If there be a mistrial in a felony case, the original sureties of the defendant shall be still held bound for his appearance until they surrender him in accordance with the provisions of this Code. [O. C. 543.]

Art. 584. [650] [637] Criminal docket.—Each clerk of a court of record having criminal jurisdiction shall keep a docket in which shall be set down the style and file number of each criminal action, the nature of the offense, the names of counsel, the proceedings had therein, and the date of each proceeding. [O. C. 544.]

Art. 585. [651] [638] To fix day for criminal docket.—The district court shall, on the first day of its organization at each term, fix a day for taking up the criminal docket, which shall be noted on the minutes. In case of failure to make such order, the criminal docket may be taken up on any day not earlier than the third day of the term. [O. C. 545.]

Art. 586. [652] [639] Term of county court.—Each county court shall hold a term for criminal business on the first Monday in every month, or at such other time as may have been fixed in accordance with law. [Acts 1876, p. 17.]

CHAPTER TWO

SPECIAL VENIRE IN CAPITAL CASES

Art.
587. "Special venire."
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Article 587. [655] [642] "Special venire."—A "special venire" is a writ issued in a capital case by order of the district court, commanding the sheriff to summon such a number of persons, not less than thirty-six, as the court may order, to appear before the court on a day named in the writ; from whom the jury for the trial of such case is to be selected. [O. C. 548.]

Art. 588. [656–657] Order for special venire.—At any time after his arrest upon an indictment, the defendant may obtain an order for a special venire upon a written motion supported by the affidavit of himself or counsel, stating that he expects to be ready for the trial of his case at the present term of the court. The State's attorney may also obtain such order upon oral or written motion.

Art. 589. [658] [645] Order of court.—The order of court for the issuance of the writ shall specify the number of persons required to be summoned, and the time when they shall attend, and the time when such writ shall be returnable. The clerk shall forthwith issue the writ in accordance with such order.

Art. 590. [659] [646] Setting capital cases.—A capital case may, by agreement of the parties, be set for any particular day of the term with the permission of the court; or the court may, at its discretion, set a day for the trial or disposition of the same; and the day agreed upon by the parties, or fixed by the court, may be changed and some other day fixed, should the court at any time deem it advisable.

Art. 591. [660] [647] Drawing from wheel.—In all counties having therein a city of twenty thousand or more population as shown by the preceding Federal census, whenever a special venire is ordered, the district clerk, in the presence and under the direction of the judge, shall draw from the wheel containing the names of the jurors the number of names required for such special venire, and prepare a list of such names in the order in which drawn from the wheel, and attach such list to the writ and deliver same to the sheriff. The cards containing such names shall be sealed in an envelope and retained by the clerk for distribution, as herein provided. If from the names so drawn, any of the men are impaneled on the jury and serve as many as four days, the cards containing their names shall be put by the clerk in the box provided for that purpose, and the cards containing the names of the men not impaneled shall again be placed by the clerk in the wheel containing the names of eligible jurors. [Acts 1907, p. 271; Acts 1911, p. 150.]

Art. 592. Venire in other counties.—Whenever a special venire is ordered in counties not included within the provisions of the preceding article, the name of each person selected by the jury commissioners to do jury service for the term at which such venire is required shall be placed upon tickets of similar size and color of paper and the tickets placed in a box and well shaken up; and from this box the clerk, in the presence of the judge, in open court, shall draw the number of names required for such special venire, and shall prepare a list of such names in the order in which they are drawn from the box, and attach such list to the writ and deliver the same to the sheriff. [Acts 1905, p. 17; Acts 1919, p. 62.]

Art. 593. Special venire list.—The jury commissioners shall select one man for every one hundred of population in any county, or a greater or less number if so directed by the court, and these shall constitute a special venire list from which shall be drawn the names of those who shall answer summons to the special venire facias, after the petit jurors for the term have been drawn on any venire one time during such term. The drawing of the veniremen from the special venire list shall be done in the same manner prescribed for other jurors. No citizen who has served as a petit juror for one week during any term of court shall during said term be compelled to answer summons to more than one special venire; nor shall any citizen be compelled to answer summons to a special venire more than twice during any one term of court. The provisions of this and the succeeding article shall not apply in counties having a population of less than two thousand, nor to counties under the Jury Wheel Law. [Acts 1905, p. 17.]

Art. 594. [661] Further venire service.—Whenever the names of the persons selected by the jury commissioners to do jury service for the term shall have been drawn one time to answer summons to a special venire, then the names of the persons selected by said commissioners, and which form the special venire list, shall be placed upon tickets and drawn in the same manner as provided in the second preceding article; and the clerk shall prevent the name of any person from appearing more than twice on all of such lists. [Id.]

Art. 595. [666] [648] Venire ordered by court.—When, from any cause, no jurors have been selected by the jury commissioners for the term, or when there shall not be a sufficient number of those selected to make the number required for the special venire, the court shall order the sheriff to summon a sufficient number of citizens who are qualified jurors in the county to make the number required by the special venire.

Art. 596. [667] [649] Ordering talesmen.—On failure from any cause to select a jury from those summoned upon the special venire, the court shall order the sheriff to summon any number of men that it may deem advisable, for the formation of the jury.

Art. 597. [668] [650] Service of writ.—The officer executing the writ shall summon the men whose names are upon the list attached to the writ to be before the court at the time named in the writ to serve as veniremen. Such summons shall be made verbally upon each juror in person. [Acts 1905, p. 17.]

Art. 598. [669] [651] Return of writ.—The officer executing such writ shall return the same

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

promptly on or before the time it is returnable. The return shall state the names of those summoned, and as to those not summoned, it shall state the diligence used to summon them and the cause of the failure to summon them.

Art. 599. [670] [652] Instructions to sheriff.—When the sheriff is ordered by the court to summon persons upon a special venire whose names have not been selected under the Jury Wheel Law or the special venire list, the court shall, in every case, caution and direct the sheriff to summon such men as have legal qualifications to serve on juries, informing him of what those qualifications are, and shall direct him, as far as he may be able to summon men of good character who can read and write, and such as are not prejudiced against the defendant or biased in his favor, if he knows of such bias or prejudice. [O. C. 553.]

Art. 600. [671] [653] Jury list served on defendant.—The clerk, immediately upon receiving the list of names of persons summoned under a special venire, shall make a certified copy thereof, and issue a writ commanding the sheriff to deliver such certified copy to the defendant. The sheriff shall immediately deliver such copy to the defendant, and return the writ, indorsing thereon the manner and time of its execution.

Art. 601. [672] [654] Time of service.—No defendant in a capital case shall be brought to trial until he has had one day's service of a copy of the names of persons summoned under a special venire, except where he waives the right or is on bail. When such defendant is on bail, he shall not be brought to trial until after one day from the time the list of persons so summoned have been returned to the clerk of the court in which said case is pending; but the clerk shall furnish the defendant or his counsel a list of the persons so summoned, upon their application therefor. [O. C. 554; Acts 1887, p. 5.]

CHAPTER THREE

FORMATION OF THE JURY IN CAPITAL CASES

Art.
602. Jurors called.
603. Sworn to answer questions.
604. Excuses.
605. Claiming exemption.
606. Excused by consent.
607. Challenge to array first heard.
608. Challenge to the array.
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611. Court to try qualifications.
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619. Absolute disqualification.
620. Names called in order.
621. Judge to decide qualifications.
622. Oath to each juror.
623. Jurors shall not separate.
624. Persons not selected.
625. Special pay for venlremen.

Article 602. [673] [655] Jurors called.—When a capital case is called for trial, and the parties have announced ready for trial, the names of those summoned as jurors in the case shall be called. Those not present may be fined not exceeding fifty dollars. An attachment may issue on request of either party for any absent summoned juror, to have him brought forthwith before the court. [O. C. 555.]

Art. 603. [674] [656] Sworn to answer questions.—To those present the court shall cause to be administered this oath: "You, and each of you, solemnly swear that you will make true answers to such questions as may be propounded to you by the court, or under its direction, touching your service and qualification as a juror, so help you God."

Art. 604. [675] [657] Excuses.—The court shall then hear and determine excuses offered for not serving as a juror, and if he deems the excuse sufficient, he shall discharge the juror.

Art. 605. [676] Claiming exemption.—Any person summoned as a juror who is exempt by law from jury service, may, if he desires to claim his exemption, make an affidavit stating his exemption, and file it at any time before the convening of said court with the clerk thereof, which shall be sufficient excuse without appearing in person. The affidavit may be sworn to before the officer summoning such juror. [Acts 1907, p. 216.]

Art. 606. [677] [658] Excused by consent.—One summoned upon a special venire may by consent of both parties be excused from attendance by the court at any time before he is impaneled.

Art. 607. [678] [659] Challenge to array first heard.—The court shall hear and determine a challenge to the array before trying those summoned as to their qualifications.

Art. 608. [679–683] Challenge to the array.—Either party may challenge the array only on the ground that the officer summoning the jury has wilfully summoned jurors with a view to securing a conviction or an acquittal. All such challenges must be in writing setting forth distinctly the grounds of such challenge. When made by the defendant, it must be supported by his affidavit or the affidavit of any credible person. When such challenge is made, the judge shall hear evidence and decide without delay whether or not the challenge shall be sustained. This article does not apply when the jurors summoned have been selected by jury commissioners.

Art. 609. [684] [665] When challenge is sustained.—The array of jurors summoned shall be discharged if the challenge be sustained, and the court shall order other jurors to be summoned in their stead, and direct that the officer who summoned those so discharged, and on account of whose misconduct the challenge has been sustained shall not summon any other jurors in the case.

Art. 610. [685] [666] List of new venire.—When a challenge to the array has been sustained, the defendant shall be entitled, as in the first instance, to service of a copy of the list of names of those summoned by order of the court.

Art. 611. [686] [667] Court to try qualifications.—When no challenge to the array has been made, or if made, has been overruled, the court shall proceed to try the qualifications of those present who have been summoned to serve as jurors.

Art. 612. [687] [668] Mode of testing.—In testing the qualifications of a juror after he has been sworn, he shall be asked by the court, or under its direction:

1. Are you a qualified voter in this county and State, under the Constitution and laws of this State?

2. Are you a householder in the county, or a freeholder in the State?

If he answers both questions in the affirmative, the court shall hold him to be a qualified juror until the contrary be shown by further examination or other proof. [Acts 1st C. S. 1903, p. 16; Acts 1905, p. 207.]

Art. 613. [688–689] Passing juror for challenge.—A juror held to be qualified shall be passed for acceptance or challenge first to the State and then to the defendant. Challenges to jurors are either peremptory or for cause.

Art. 614. [690] [671] A peremptory challenge.—A peremptory challenge is made to a juror without assigning any reason therefor. [O. C. 571.]

Art. 615. [691] [672] Number of challenges.—In capital cases, both the State and defendant shall be entitled to fifteen peremptory challenges. Where two or more defendants are tried together, the State shall be entitled to eight peremptory challenges for each defendant; and each defendant shall be entitled to eight peremptory challenges. [Acts 1897, p. 12.]

Art. 616. [692] [673] Reasons for challenge for cause.—A challenge for cause is an objection made to a particular juror, alleging some fact

which renders him incapable or unfit to serve on the jury. It may be made for any one of the following reasons:

1. That he is not a qualified voter in the State and county, under the Constitution and laws of the State.
2. That he is neither a householder in the county nor a freeholder in the State.
3. That he has been convicted of theft or any felony.
4. That he is under indictment or other legal accusation for theft or any felony.
5. That he is insane or has such defect in the organs of seeing, feeling or hearing, or such bodily or mental defect or disease as to render him unfit for jury service.
6. That he is a witness in the case.
7. That he served on the grand jury which found the indictment.
8. That he served on a petit jury in a former trial of the same case.
9. That he is related within the third degree of consanguinity or affinity to the defendant.
10. That he is related within the third degree of consanguinity or affinity to the person injured by the commission of the offense, or to the private prosecutor, if there be one.
11. That the juror has conscientious scruples in regard to the infliction of the punishment of death for crime.
12. That he has a bias or prejudice in favor of or against the defendant.
13. That from hearsay or otherwise there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as will influence him in his action in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in his opinion, the conclusion so established will influence his verdict. If he answers in the affirmative, he shall be discharged; if he answers in the negative, he shall be further examined as to how his conclusion was formed, and the extent to which it will affect his action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial and will render such verdict, may, in its discretion, admit him as competent to serve in such case. If the court, in its discretion, is not satisfied that he is impartial, the juror shall be discharged.
14. That he cannot read and write. This cause of challenge shall not be sustained when it appears to the court that the requisite number of jurors who are able to read and write cannot be found in the county. [O. C. 575; Acts 1st C. S. 1903, p. 16; Acts 1905, p. 207.]

Art. 617. [693] [674] Other evidence on challenge.—Upon a challenge for cause, the examination is not confined to the answers of the juror, but other evidence may be heard for or against the challenge. [O. C. 577.]

Art. 618. [694] [675] Certain questions not to be asked.—In examining a juror, he shall not be asked a question the answer to which may show that he has been convicted of an offense which disqualifies him, or that he stands charged by some legal accusation with theft or any felony. [O. C. 577.]

Art. 619. [695] [676] Absolute disqualification.—No juror shall be impaneled when it appears that he is subject to the third, fourth or fifth clause of challenge in article 616, tho both parties may consent.

Art. 620. [696] [677] Names called in order.—In selecting the jury from the persons summoned, the names of such persons shall be called in the order in which they appear upon the list furnished the defendant. Each juror shall be tried and passed upon separately. A person who has been summoned, but who is not present, may, upon his appearance before the jury is completed, be tried as to his qualifications and impaneled as a juror, unless challenged; but no cause shall be unreasonably delayed on account of such absence. [O. C. 556–558.]

Art. 621. [697] [678] Judge to decide qualifications.—The court is the judge, after proper examination, of the qualifications of a juror, and shall decide all challenges without delay and without argument thereupon. [O. C. 579.]

Art. 622. [698] [679] Oath to each juror.—As each juror is selected for the trial of the case, the following oath shall be administered to him by the court, or under its direction: "You solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render, according to the law and the evidence, so help you God." [O. C. 563.]

Art. 623. [699] [680] Jurors shall not separate.—The court may adjourn veniremen to any day of the term; but when jurors have been sworn in a case, those so sworn shall be kept together and not permitted to separate until a verdict has been rendered or the jury finally discharged, unless by permission of the court, with the consent of each party and in charge of an officer. [O. C. 605.]

Art. 624. [700] [681] Persons not selected.—When a jury of twelve men has been completed, the others in attendance under a summons to appear as jurors in the case shall be discharged from further attendance therein.

Art. 625. [701] Special pay for veniremen.—All men summoned on special venire who have been challenged or excused from service on the trial, and who reside more than one mile distant from the court house of the county, shall be paid, out of the jury fund, one dollar for each day that he attends court on said summons. No person shall receive pay as a special venireman and regular juror for the same day. No per diem shall, in any event, be allowed any venireman under this article, who resides within the corporate limits of the county seat, if incorporated, nor shall any per diem be allowed any venireman for more than one case the same day. [Acts 1907, p. 214.]

CHAPTER FOUR

JURY IN CASES NOT CAPITAL

Art.
626. Jury list in certain counties.
627. Preparing jury list.
628. Delivery of jury list.
629. Summoning talesmen.
630. Challenge for cause.
631. Number reduced by challenge.
632. Grounds of challenge.
633. Peremptory challenges made.
634. Number of challenges.
635. Number in misdemeanors.
636. Making peremptory challenge.
637. Lists returned to clerk.
638. If jury is incomplete.
639. Oath to jury.
640. When no regular jurors.
641. Challenge to array.

Article 626. Jury list in certain counties.—In counties having three or more district courts, the trial judge, upon the demand of the defendant or his attorney, or of the State's counsel, in a case not capital, shall cause the names of all the members of the general panel available for service as jurors in such case to be placed in a receptacle and well shaken, and said judge shall draw therefrom the names of a sufficient number of jurors from which a jury may be selected to try such case, and such names shall be written, in the order drawn, on the jury list from which the jury is to be selected to try such case. Within the meaning of this article, a criminal court with jurisdiction in felony cases shall be considered a district court. (Acts 1917, p. 147; Acts 1919, p. 6.]

Art. 627. [702] [682] Preparing jury list.—When the parties have announced ready for trial in a case not capital, the clerk shall write the name

of each regular juror entered of record for that week on separate slips of paper, as near the same size and appearance as may be, and shall place the slips in a box and mix them well. [Acts 1876, p. 82.]

Art. 628. [703] [683] Delivery of jury list.—The clerk shall draw from the box, in the presence of the court, the names of twenty-four jurors, if in the district court, or so many as there may be, if there be a less number in the box; and the names of twelve jurors, if in the county court, or so many as there may be, if there be a less number in the box, and write the names as drawn upon two slips of paper and deliver one slip to the State's counsel and the other to the defendant or his attorney. [Id.]

Art. 629. [704] [684] Summoning talesmen.—When there are not as many as twelve names drawn from the box, if in the district court, or, if in the county court, as many as six, the court shall direct the sheriff to summon such number of qualified persons as the court deems necessary to complete the panel. The names of those thus summoned shall be placed in the box and drawn and entered upon the slips as provided in the preceding articles.

Art. 630. [705] [685] Challenge for cause.—When twelve or more jurors, if in the district court, or six or more, if in the county court, are drawn, and the lists of their names delivered to the parties, if either party desires to challenge any juror for cause, the challenge shall now be made, and the procedure in such case shall be the same as in capital cases.

Art. 631. [706] [686] Number reduced by challenge.—If the challenges reduce the number of jurors to less than will constitute a legal jury, the court shall order other jurors to be drawn or summoned and their names written upon the list instead of those set aside for cause.

Art. 632. [707] [687] Grounds of challenge.—Challenges for cause in all criminal actions are the same as provided in capital cases in article 616, except cause 11 in said article.

Art. 633. [708] [688] Peremptory challenges made.—When a juror has been set aside for cause, his name shall be erased from the lists furnished the parties, and when there are twelve names remaining on the lists not subject to challenge for cause, if in the district court, or six names, if in the county court, the parties may proceed to make their peremptory challenges.

Art. 634. [709] [689] Number of challenges.—In noncapital felonies the State and the defendant shall each be entitled to ten peremptory challenges. If two or more defendants are tried together, each defendant shall be entitled to five peremptory challenges, and the State to five for each defendant. [O. C. 573; Acts 1897, p. 13.]

Art. 635. [710] [690] Number in misdemeanors.—The State and the defendant shall each be entitled to five peremptory challenges in a misdemeanor tried in the district court and to three in the county court or county court at law. If two or more defendants are tried together, each defendant shall be entitled to three such challenges in either court. [O. C. 574.]

Art. 636. [711] [691] Making peremptory challenge.—The party desiring to challenge any juror peremptorily shall erase the name of such juror from the list furnished him by the clerk.

Art. 637. [712] [692] Lists returned to clerk.—When the parties have made or declined to make their peremptory challenges, they shall deliver their lists to the clerk. The clerk shall, if the case be in the district court, call off the first twelve names on the lists that have not been erased; and, if the case be in the county court, he shall call off the first six names on the lists that have not been erased; those whose names are called shall be the jury. [Id.]

Art. 638. [713] [693] If jury is incomplete.—When, by peremptory challenges, the jury is left incomplete, the court shall direct other jurors to be drawn or summoned to complete the jury; and such other jurors shall be impaneled as in the first instance.

Art. 639. [714] [694] Oath to jury.—When the jury has been selected, the following oath shall be administered to them by the court, or under its direction: "You, and each of you, solemnly swear that in the case of the State of Texas against the defendant, you will a true verdict render according to the law and the evidence, so help you God." [O. C. 563.]

Art. 640. [715] [695] When no regular jurors.—When, from any cause, there are no regular jurors for the week from whom to select a jury, the court shall order the sheriff to summon forthwith such number of qualified persons as it may deem sufficient; and, from those summoned, a jury shall be formed.

Art. 641. [716] [696] Challenge to array.—The array of jurors may be challenged by either party for the causes and in the manner provided in capital cases.

CHAPTER FIVE

THE TRIAL BEFORE THE JURY

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682. Disagreement of jury.
683. Final adjournment discharges jury.
684. Discharge without verdict.
685. Court open for jury.

Article 642. [717] [697] Order of proceeding in trial.—A jury being impaneled in any criminal action, the cause shall proceed in the following order:

1. The indictment or information shall be read to the jury by the attorney prosecuting.

2. The special pleas, if any, shall be read by the defendant's counsel, and if the plea of not guilty is also relied upon, it shall also be stated.

3. The State's attorney shall state to the jury the nature of the accusation and the facts which are expected to be proved by the State in support thereof.

4. The testimony on the part of the State shall be offered.

5. The nature of the defenses relied upon and the facts expected to be proved in their support shall be stated by defendant's counsel.

6. The testimony on the part of the defendant shall be offered.

7. Rebutting testimony may be offered on the part of each party. [O. C. 580.]

Art. 643. [718] [698] Testimony at any time.—The court shall allow testimony to be introduced at any time before the argument of a cause is concluded, if it appear that it is necessary to a due administration of justice. [O. C. 581.]

Art. 644. [719] [699] Witnesses placed under rule.—At the request of either party, the witnesses on both sides may be sworn and placed in the custody of an officer and removed out of the court room to some place where they can not hear the testimony as delivered by any other witness in the cause. This is termed placing witnesses under rule. [O. C. 582.]

Art. 645. [720–721] Part of witnesses under rule.—The party requesting the witnesses to be placed under rule may designate such as he desires placed under rule, and those not designated will be exempt from the rule, or the party may have all of the witnesses in the case placed under rule. The enforcement of the rule is in the discretion of the court.

Art. 646. [722] [702] Not to hear testimony.—Witnesses under rule shall be attended by an officer, and all their reasonable wants provided for, unless the court, in its discretion, directs that they be allowed to go at large; but in no case where the witnesses are under rule shall they be allowed to hear any testimony in the case.

Art. 647. [723] [703] Instructed by the court.—Witnesses, when placed under rule, shall be instructed by the court that they are not to converse with each other or with any other person about the case, except by permission of the court, and that they are not to read any report of or comment upon the testimony in the case while under rule. The officer who attends the witnesses shall report to the court at once any violation of its instructions; and the party violating the same shall be punished for contempt of court.

Art. 648. [724] [704] Order of argument.—The order of argument may be regulated by the presiding judge; but the State's counsel shall have the right to make the concluding address to the jury. [O. C. 585.]

Art. 649. [725] [705] Number of arguments.—The court shall never restrict the argument in felony cases to a number of addresses less than two on each side. [O. C. 586.]

Art. 650. [726] [706] Severance.—Two or more defendants jointly prosecuted may sever in the trial upon the request of either. [O. C. 587.]

Art. 651. [727] [707] Severance on separate indictments.—Where two or more defendants are prosecuted for an offense growing out of the same transaction, by separate indictments, either defendant may file his affidavit so stating, and that the evidence of such other party or parties is material for the defense of the affiant, and that affiant believes that there is not sufficient evidence against said party or parties to secure his or their conviction; and such party whose evidence is so sought shall be tried first. Such affidavit shall not, without other sufficient cause, operate as a continuance to either party. [Acts 1887, p. 33.]

Art. 652. [728] [708] Order of trial.—If a severance is granted, the defendants may agree upon the order in which they are to be tried, but if they fail to agree, the court shall direct the order of the trial.

Art. 653. [729] [709] May dismiss to use witness.—The State's attorney may, at any time, under the rules provided in this Code, dismiss a prosecution as to one or more defendants jointly indicted with others; and the person so discharged may be used as a witness by either party. [O. C. 588.]

Art. 654. [730] [710] Lack of evidence against joint defendant.—When it is apparent that there is no evidence against a defendant jointly prosecuted with others, the jury shall be directed to find a verdict as to such defendant; and, if they acquit, he may be introduced as a witness in the case.

Art. 655. [731–733] Discharge before verdict.—If it appears during a trial that the court has no jurisdiction of the offense, or that the facts charged in the indictment do not constitute an offense, the jury shall be discharged. The accused shall also be discharged; but such discharge shall be no bar in any case to a prosecution before the proper court for any offense.

Art. 656. [732] [712] Court may commit.—If the want of jurisdiction arises from the fact that the defendant is not liable to prosecution in the county where the indictment was presented, the court may in felony cases order the accused into custody for a reasonable length of time to await a warrant for his arrest from the proper county; or, if the offense be bailable, may require him to enter into recognizance to answer before the proper court; in which case a certified copy of the recognizance shall be sent forthwith to the clerk of the proper court, to be enforced by that court in case of forfeiture. [O. C. 591.]

Art. 657. [734] Jury are judges of fact.—The jury are the exclusive judges of the facts, but they are bound to receive the law from the court and be governed thereby. [O. C. 593.]

Art. 658. [735–736] Charge of court.—In each felony case the judge shall, before the argument begins, deliver to the jury a written charge, distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summoning up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. [Acts 1913, p. 278.]

Art. 659. [737] [717] Requested special charges.—Before the court reads his charge to the jury, counsel on both sides shall have a reasonable time to present written instructions and ask that they be given to the jury. The court shall give or refuse these charges with or without modification, and certify thereto; and, when the court shall modify a charge it shall be done in writing and in such manner as to show clearly what the modification is. [Id.]

Art. 660. Final charge.—After the judge shall have received the objections to his main charge, together with any special charges offered, he may make such changes in his main charge as he may deem proper, and the defendant or his counsel shall have the opportunity to present their objections thereto and in the same manner as is provided in article 658, and thereupon the judge shall read his charge to the jury as finally written, together with any special charges given. After the argument begins no further charge shall be given to the jury unless required by the improper argument of counsel or the request of the jury, or unless the judge shall, in his discretion, permit the introduction of other testimony, and in the event of such further charge the defendant or his counsel shall have the right to present objections in the same manner as is prescribed in Article 658. The failure of the court to give the defendant or his counsel a reasonable time to examine the charge and specify the ground of objection shall be subject to review either in the trial court or in the appellate court. [Id.]

Art. 661. [738] [718] Charge certified by judge.—The general charge given by the court and all special charges given or refused shall be certified by the judge and filed among the papers in the cause. [O. C. 595.]

Art. 662. [739] [719] Charge in misdemeanor.—The court is not required to charge the jury in a misdemeanor case, except at the request of counsel on either side. When so requested he shall

give or refuse such charges, with or without modification, as are asked in writing. [O. C. 598.]

Art. 663. [740] [720] Verbal charge.—A verbal charge shall be given only in a misdemeanor case, and then only by consent of the parties.

Art. 664. [741] [721] Reading special charges.—The judge shall read to the jury only such special charges as he gives.

Art. 665. [742] [722] Jury may take charge.—The jury may take to their jury room the charges given by the court after the same have been filed. They shall not be permitted to take with them any charge or part thereof which the court has refused to give. [O. C. 601.]

Art. 666. [743] [723] Review of charge on appeal.—Whenever it appears by the record in any criminal action upon appeal that any requirement of the eight preceding articles has been disregarded, the judgment shall not be reversed unless the error appearing from the record was calculated to injure the rights of defendant, or unless it appears from the record that the defendant has not had a fair and impartial trial. All objections to the charge and to the refusal or modification of special charges shall be made at the time of the trial. [O. C. 602; Acts 1897, p. 17; Acts 1913, p. 278.]

Art. 667. [744] [724] Bill of exceptions.—The defendant, by himself or counsel, may tender his bill of exceptions to any decision, opinion, order or charge of the court or other proceedings in the case; and the judge shall sign such bill of exceptions, under the rules prescribed in civil suits, in order that such decision, opinion, order or charge may be revised upon appeal.

Art. 668. [745] [725] Separation of jury.—After the jury has been sworn and impaneled to try any felony case, they shall not be permitted to separate until they have returned a verdict, unless by permission of the court, with the consent of the attorney representing the State and the defendant, and in charge of an officer. [O. C. 605.]

Art. 669. [746] [726] Separation in misdemeanor.—In misdemeanor cases the court may, at its discretion, permit the jury to separate before the verdict, after giving them proper instructions in regard to their conduct as jurors while so separated.

Art. 670. [747] [727] To provide jury room.—The sheriff shall provide a suitable room for the deliberation of the jury and supply them with such necessary food and lodging as he can obtain. No intoxicating liquor shall be furnished them. [O. C. 606.]

Art. 671. [748] [728] Conversing with jury.—No person shall be permitted to be with a jury while they are deliberating upon a case, nor be permitted to converse with a juror after he has been impaneled, except in the presence and by the permission of the court, or except in a case of misdemeanor where the jury have been permitted by the court to separate. No person shall be permitted to converse with the juror about the case on trial.

Art. 672. [749] [729] Violation of preceding article.—Any juror or other person violating the preceding article shall be punished for contempt of court by fine not exceeding one hundred dollars.

Art. 673. [750] [730] Officer shall attend jury.—To supply all the reasonable wants of the jury, and to keep them together and to prevent intercourse with any other person, the sheriff shall see that they are constantly attended by a proper officer, who shall always remain sufficiently near the jury to answer any call made upon him, but shall not be with them while they are discussing the case; nor shall such officer, at any time while the case is on trial before them, converse about the case with any of them, nor in the presence of any of them. [O. C. 608, 609.]

Art. 674. [751] [731] Written evidence.—The jury may take with them any writing used as evidence. [O. C. 610.]

Art. 675. [752] [732] Foreman of jury.—Each jury shall appoint one of their body foreman. [O. C. 611.]

Art. 676. [753] [733] Jury may communicate with court.—When the jury wish to communicate with the court, they shall so notify the sheriff, who shall inform the court thereof; and they may be brought before the court, and through their foreman shall state to the court verbally or in writing, what they desire to communicate. [O. C. 612, 613.]

Art. 677. [754] [734] Jury may ask further instruction.—The jury, after having retired, may ask further instruction of the judge as to any matter of law. For this purpose the jury shall appear before the judge in open court in a body, and through their foreman shall state to the court, verbally or in writing, the particular point of law upon which they desire further instruction; and the court shall give such instruction in writing, but no instruction shall be given except upon the particular point on which it is asked. [O. C. 614.]

Art. 678. [755] [735] Jury may have witness re-examined.—If the jury disagree as to the statement of any witness, they may, upon applying to the court, have such witness recalled, and the judge shall direct him to repeat his testimony as to the point in dispute, and no other, and as nearly as he can in the language he used on the trial. [O. C. 615.]

Art. 679. [756] [736] Presence of defendant.—In felony but not in misdemeanor cases, the defendant shall be present in the court when any such proceeding is had as mentioned in the three preceding articles, and his counsel shall also be called.

Art. 680. [757] [737] If a juror becomes sick.—After the retirement of the jury in a felony case, if any one of them becomes so sick as to prevent the continuance of his duty, or any accident or circumstance occurs to prevent their being kept together, the jury may be discharged. [O. C. 618.]

Art. 681. [758] [738] Discharging jury in misdemeanor.—If nine of the jury can be kept together in a misdemeanor case in the district court, they shall not be discharged. If more than three of the twelve are discharged, the entire jury shall be discharged. [Acts 1876, p. 82.]

Art. 682. [759] [739] Disagreement of jury.—After the cause is submitted to the jury, they may be discharged when they can not agree and both parties consent to their discharge; or the court may in its discretion discharge them where they have been kept together for such time as to render it altogether improbable that they can agree. [O. C. 619.]

Art. 683. [760] [740] Final adjournment discharges jury.—A final adjournment of the court before the jury have agreed upon a verdict discharges them. [O. C. 620.]

Art. 684. [761] [741] Discharge without verdict.—When a jury has been discharged, as provided in the four preceding articles, without having rendered a verdict, the cause may be again tried at the same or another term. [O. C. 621.]

Art. 685. [762] [742] Court open for jury.—The court during the deliberations of the jury may proceed with other business or adjourn from time to time, but shall be deemed open for all purposes connected with the case before the jury.

CHAPTER SIX

THE VERDICT

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Article 686. [763] [743] "Verdict."—A verdict is a written declaration by a jury of their decision of the issues submitted to them in the case.

Art. 687. [764] [744] Verdict in felony.—Not less than twelve jurors can render and return a verdict in a felony case. It must be concurred in by each juror and signed by the foreman.

Art. 688. [765] [745] Verdict by nine jurors.—In misdemeanor cases in the district court, where one or more jurors have been discharged from serving after the cause has been submitted to them, if there be as many as nine of the jurors remaining, those remaining may render and return a verdict; but, in such case, the verdict must be signed by each juror rendering it. [Acts 1876, p. 82.]

Art. 689. [766] [746] In county court.—In the county court the verdict must be concurred in by each juror.

Art. 690. [767] [747] When jury have agreed.—When the jury agree upon a verdict, they shall be brought into court by the proper officer; and if they state that they have agreed, the verdict shall be read aloud by the clerk. If in proper form and no juror dissents therefrom, and neither party requests a poll of the jury, the verdict shall be entered upon the minutes of the court. [O. C. 623.]

Art. 691. [768] [748] Polling the jury.—The State or the defendant shall have the right to have the jury polled, which is done by calling separately the name of each juror and asking him if it is his verdict. If all, when asked, answer in the affirmative, the verdict shall be entered upon the minutes; but, if any juror answer in the negative, the jury shall retire again to consider of their verdict. [O. C. 624.]

Art. 692. [769] [749] Presence of defendant.—In felony cases the defendant must be present when the verdict is read unless his absence is wilful or voluntary. A verdict in a misdemeanor case may be received and read in the absence of defendant. [Acts 1907, p. 31.]

Art. 693. [770] [750] Verdict must be general.—The verdict in every criminal action must be general. Where there are special pleas upon which the jury are to find, they must say in their verdict that the allegations in such pleas are true or untrue. If the plea is not guilty, they must find that the defendant is either "guilty" or "not guilty," and they shall assess the punishment in all cases where the same is not absolutely fixed by law to some particular penalty. [O. C. 626.]

Art. 694. [771] [751] Offenses of different degree charged.—In a prosecution for an offense including lower offenses, the jury may find the defendant not guilty of the higher offense, but guilty of any lower offense included. [O. C. 630.]

Art. 695. [772] [752] Offenses consisting of degrees.—The following offenses include different degrees:

1. Murder, which includes all the lesser degrees of culpable homicide, and also an assault with intent to commit murder.

2. An assault with intent to commit any felony, which includes all assaults of an inferior degree.

3. Maiming, which includes aggravated and simple assault and battery.

4. Burglary, which includes every species of house breaking and theft or other felony when charged in the indictment in connection with the burglary.

5. Riot, which includes unlawful assembly.

6. Kidnapping or abduction, which includes false imprisonment.

7. Every offense against the person includes within it assaults with intent to commit said offense, when such attempt is a violation of the penal law. [O. C. 631.]

Art. 696. [773–774] Informal verdict.—If the verdict of the jury is informal, their attention shall be called to it, and, with their consent the verdict may, under the direction of the court, be reduced to the proper form. If the jury refuse to have the verdict altered, they shall again retire to their room to deliberate, unless it manifestly appear that the verdict is intended as an acquittal; and, in that case, the judgment shall be rendered accordingly, discharging the defendant.

Art. 697. [775–776] Defendants tried jointly.—Where several defendants are tried together, the jury may convict each defendant they find guilty and acquit others. If they agree to a verdict as to one or more, they may find a verdict in accordance with such agreement, and if they cannot agree as to others, a mistrial may be entered as to them.

Art. 698. [777–778] Judgment on verdict.—On each verdict of acquittal or conviction, the proper judgment shall be entered immediately. If acquitted the defendant shall be at once discharged from all further liability upon the charge for which he was tried.

Art. 699. [779] [759] Verdict of guilty in felony.—When a verdict of guilty is rendered in a felony case, the defendant shall remain in custody to await the further action of the court thereon. [O. C. 634.]

Art. 700. [780] [760] Acquitted for insanity.—When the defendant is acquitted on the grounds of insanity the jury shall so state in their verdict. [O. C. 636.]

Art. 701. [781] [761] If jury believes accused insane.—When a jury has been impaneled to assess the punishment upon a plea of "guilty" they shall say in their verdict what the punishment is which they assess; but if they are of opinion that a person pleading guilty is insane they shall so report to the court, and an issue as to that fact shall be tried before another jury; and if, upon such trial, it be found that the defendant is insane, such proceedings shall be had as directed in cases where a defendant becomes insane after conviction. [O. C. 637.]

Art. 702. [782] [762] Acquittal of higher offense as jeopardy.—If a defendant, prosecuted for an offense which includes within it lesser offenses, be convicted of an offense lower than that for which he is indicted, and a new trial be granted him, or the judgment be arrested for any cause other than the want of jurisdiction, the verdict upon the first trial shall be considered an acquittal of the higher offense; but he may, upon a second trial, be convicted of the same offense of which he was before convicted, or any other inferior thereto. [O. C. 642.]

CHAPTER SEVEN

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1. GENERAL RULES

Article 703. [783] [763] Rules of common law.—The rules of evidence known to the common law of England, both in civil and criminal cases shall govern in the trial of criminal actions in this State, except where they are in conflict with the provisions of this Code or of some other statute of the State. [O. C. 638.]

Art. 704. [784] [764] Rules of civil statute.—The rules of evidence prescribed in the statute law of this State in civil suits shall, so far as applicable, govern also in criminal actions when not in conflict with the provisions of this Code or of the Penal Code. [O. C. 639.]

Art. 705. [785] [765] Presumption of innocence.—The defendant in a criminal case is presumed to be innocent until his guilt is established by legal evidence beyond a reasonable doubt, and in case of reasonable doubt as to his guilt he is entitled to be acquitted. [O. C. 640.]

Art. 706. [786] [766] Jury are judges of facts.—The jury, in all cases, are the exclusive judges of the facts proved, and of the weight to be given to the testimony, except where it is provided by law that proof of any particular fact is to be taken as either conclusive or presumptive proof of the existence of another fact, or where the law directs that a certain degree of weight is to be attached to a certain species of evidence. [O. C. 643.]

Art. 707. [787] [767] [729] Judge shall not discuss evidence.—In ruling upon the admissibility of evidence, the judge shall not discuss or comment upon the weight of the same or its bearing in the case, but shall simply decide whether or not it is admissible; nor shall he, at any stage of the proceedings previous to the return of a verdict, make any remark calculated to convey to the jury his opinion of the case.

2. PERSONS WHO MAY TESTIFY

Art. 708. Persons competent to testify.—All persons are competent to testify in Criminal Cases except the following:

1. Insane persons who are in an insane condition of mind at the time when they are offered as a witness, or who were in that condition when the events happened of which they are called to testify.

2. Children or other persons who, after being examined by the court appear not to possess sufficient intellect to relate transaction with respect to which they are interrogated, or who do not understand the obligation of an oath.

3. All persons who have been or may be convicted of a felony in the State, and who are confined in the penitentiary or any jail in this State shall be permitted to testify in person in any court for the State and the defendant as to any offense committed on a prison farm owned by the State or of which it is lessee, or in any jail in the State, or on any railroad, train or highway along which prisoners are being transported under guard, and in all such cases compulsory process may issue for the attendance of all such witnesses when directed by the presiding judge, when, in his opinion, the ends of justice require their attendance. Providing further that the defendant may take the depositions of any such witnesses in the manner and form as in civil cases provided by law, and when so taken shall be admitted in evidence. Provided that the provisions of this Act shall apply only when the offense is committed on a prison farm owned by the State, or on which it is a lessee; or is committed in one of the prisons of the State; or, where it is committed on a railroad train; or a public highway along which prisoners are being transported under guard; or is committed in some jail. [Acts 1925, 39th Leg., ch. 27, p. 145, § 1; Acts 1926, 39th Leg., 1st C. S., p. 20, ch. 13, § 1.]

Art. 709. [789] [769] Female alleged to be seduced.—In prosecutions for seduction the female alleged to have been seduced shall be permitted to testify; but no conviction shall be had upon her testimony unless the same is corroborated by other evidence tending to connect the defendant with the offense charged. [Acts 1891, p. 34.]

Art. 710. [790] [770] Defendant may testify.—Any defendant in a criminal action shall be permitted to testify in his own behalf therein, but the failure of any defendant to so testify shall not be taken as a circumstance against him, nor shall the same be alluded to or commented on by counsel in the cause; provided, that where there are two or more persons jointly charged or indicted, and a severance is had, the privilege of testifying shall be extended only to the party on trial. [Acts 1889, p. 37.]

Art. 711. [791] [771] Principals, accomplices or accessories.—Persons charged as principals, accomplices or accessories, whether in the same or different indictments, cannot be introduced as witnesses for one another, but they may claim a severance; and, if any one or more be acquitted, or the prosecution against them be dismissed, they may testify in behalf of the others. [O. C. 230.]

Art. 712. [792] [772] Court may determine competency.—The court may, upon suggestion made, or of its own option, interrogate a person who is offered as a witness, to ascertain whether he is competent to testify, or the competency or incompetency of the witness may be shown by evidence. [O. C. 645.]

Art. 713. [793] [773] All others competent witnesses.—All other persons, except those enumerated in articles 708 and 714, whatever may be the relationship between the defendant and witness, are competent to testify, except that an attorney at law shall not disclose a communication made to him by his client during the existence of that relationship, nor disclose any other fact which came to the knowledge of such attorney by reason of such relationship. [O. C. 646.]

Art. 714. [794–795] Husband or wife as witness.—Neither husband nor wife shall, in any case, testify as to communications made by one to the other, while married; nor shall they, after the marriage relation ceases, be made witnesses as to any such communication made while the marriage relation existed, except in a case where one or the other is prosecuted for an offense; and a declaration or communication made by the wife to the husband, or by the husband to the wife, goes to extenuate or justify an offense for which either is on trial. The husband and wife may, in all criminal actions, be witnesses for each other; but they shall in no case testify against each other except in a criminal prosecution for an offense committed by one against the other. [O. C. 648.]

Art. 715. [796] [776] [736] Religious opinion.—No person is incompetent to testify on account of his religious opinion or for the want of any religious belief. [Bill of Rights, sec. 5.]

Art. 716. [797] [777] [737] Defendant jointly indicted.—A defendant jointly indicted with

others, and who has been tried and convicted, and whose punishment was fine only, may testify for the other defendant after he has paid the fine and costs.

Art. 717. [798–9–800] Judge as a witness.—The trial judge is a competent witness for either the State or the accused, and may be sworn by the clerk of his court and examined, but he is not required to testify if he declares that there is no fact within his knowledge important in the case.

Art. 718. [801] [781] Testimony of accomplice.—A conviction cannot be had upon the testimony of an accomplice unless corroborated by other evidence tending to connect the defendant with the offense committed; and the corroboration is not sufficient if it merely shows the commission of the offense. [O. C. 653.]

Art. 719. [802] [782] Injured party.—In trials for forgery, the person whose name is alleged to have been forged is a competent witness; and unless otherwise specially provided for, the person injured, or attempted to be injured, is a competent witness. [O. C. 658.]

3. EVIDENCE AS TO PARTICULAR OFFENSES

Art. 720. [803] [783] Two witnesses in treason.—No person can be convicted of treason except upon the testimony of at least two witnesses to the same overt act, or upon his own confession in open court. [O. C. 654.]

Art. 721. [804] [784] Evidence in treason.—Evidence shall not be admitted in a prosecution for treason as to an overt act not expressly charged in the indictment; nor shall any person be convicted under an indictment for treason unless one or more overt acts are expressly charged therein. [O. C. 655.]

Art. 722. [805] [785] Two witnesses required.—In all cases where, by law, two witnesses, or one with corroborating circumstances, are required to authorize a conviction, if the requirement be not fulfilled, the court shall instruct the jury to render a verdict of acquittal, and they are bound by the instruction. [O. C. 656.]

Art. 723. [806] [786] Perjury and false swearing.—In trials for perjury or false swearing, no person shall be convicted except upon the testimony of two credible witnesses, or of one credible witness corroborated strongly by other evidence as to the falsity of the defendant's statement under oath, or upon his own confession in open court. [O. C. 657.]

Art. 724. [807] [787] Intent to defraud in forgery.—In trials of forgery, it need not be proved that the defendant committed the act with intent to defraud any particular person. It shall be sufficient to prove that the forgery was, in its nature, calculated to injure or defraud any of the sovereignties, bodies corporate or politic, officers or persons, named in the definition of forgery in the Penal Code. [O. C. 659.]

4. DYING DECLARATIONS AND CONFESSIONS

Art. 725. [808] [788] Dying declarations.—The dying declaration of a deceased person may be offered in evidence, either for or against a defendant charged with the homicide of such deceased person, under the restrictions hereafter provided. To render the declarations of the deceased competent evidence, it must be satisfactorily proved:

1. That at the time of making such declaration he was conscious of approaching death, and believed there was no hope of recovery.
2. That such declaration was voluntarily made, and not through the persuasion of any person.
3. That such declaration was not made in answer to interrogatories calculated to lead the deceased to make any particular statement.
4. That he was of sane mind at the time of making the declaration. [O. C. 660.]

Art. 726 [809] [789] Confession.—The confession of a defendant may be used in evidence against him if it appear that the same was freely made without compulsion or persuasion, under the rules hereafter prescribed. [O. C. 661.]

Art. 727. [810] [790] When confession shall not be used.—The confession shall not be used if, at the time it was made, the defendant was in jail or other place of confinement, nor while he is in the custody of an officer, unless made in the voluntary statement of accused, taken before an examining court in accordance with law, or be made in writing and signed by him; which written statement shall show that he has been warned by the person to whom the same is made: First, that he does not have to make any statement at all. Second, that any statement made may be used in evidence against him on his trial for the offense concerning which the confession is therein made; or, unless in connection with said confession, he makes statements of facts or circumstances that are found to be true, which conduce to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed. If the defendant is unable to write his name, and signs the statement by making his mark, such statement shall not be admitted in evidence, unless it be witnessed by some person other than a peace officer, who shall sign the same as a witness. [O. C. 662; Acts 1907, p. 219.]

Art. 727a. Evidence not to be used.—No evidence obtained by an officer or other person in violation of any provision of the Constitution or laws of the State of Texas, or of the United States of America, shall be admitted in evidence against the accused on the trial of any criminal case. [Acts 1925, p. 186.] [39th Leg., ch. 49, § 1.]

5. MISCELLANEOUS PROVISIONS

Art. 728. [811] [791] Part of an act, declaration, etc.—When part of an act, declaration or conversation or writing is given in evidence by one party, the whole on the same subject may be inquired into by the other, as, when a letter is read, all letters on the same subject between the same parties may be given. When a detailed act, declaration, conversation or writing is given in evidence, any other act, declaration or writing which is necessary to make it fully understood or to explain the same may also be given in evidence. [O. C. 664.]

Art. 729. [812] [792] Written part of instrument controls.—When an instrument is partly written and partly printed, the written shall control the printed portion when the two are inconsistent. [O. C. 665.]

Art. 730. [813] [793] If subscribing witness denies execution.—When a subscribing witness denies or does not recollect the execution of an instrument to which his name appears, its execution may be proved by other evidence. [O. C. 666.]

Art. 731. [814] [794] Evidence of handwriting.—It is competent to give evidence of handwriting by comparison, made by experts or by the jury. Proof by comparison only shall not be sufficient to establish the handwriting of a witness who denies his signature under oath. [O. C. 667.]

Art. 732. [815] [795] Attacking testimony of his own witness.—The rule that a party introducing a witness shall not attack his testimony is so far modified as that any party, when facts stated by the witness are injurious to his cause, may attack his testimony in other manner, except by proving the bad character of the witness. [O. C. 668.]

Art. 733. [816] [796] Interpreter.—When a witness does not understand and speak the English language, an interpreter must be sworn to interpret for him. Any person may be subpœnaed, attached or recognized in any criminal action or proceeding, to appear before the proper judge or court to act as interpreter therein, under the same rules and penalties

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as are provided for witnesses. Such interpreters shall receive the same pay as interpreters receive in civil suits.

CHAPTER EIGHT

DEPOSITIONS

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Article 734. [817] [797] In examining court.—When an examination takes place in a criminal action before a magistrate, the defendant may have the deposition of any witness taken by any officer or officers named in this chapter. The defendant shall not use the deposition for any purpose unless he first consent that the entire evidence or statement of the witness may be used against him by the State on the trial of the case. [O. C. 764.]

Art. 735. [818] [798] Aged, infirm or non-resident.—Depositions of witnesses may also, at the request of the defendant, be taken when the witness resides out of the State, or when the witness is aged or infirm. [O. C. 765.]

Art. 736. [819] [799] Within the State.—Depositions of witnesses within the State may be taken by a supreme or district judge, or before any two or more of the following officers: a county judge, notary public, district clerk and county clerk. [O. C. 766.]

Art. 737. [820] [800] Without the State.—Depositions of a witness residing out of the State may be taken before the judge or chancellor of a supreme court of law or equity, or before a commissioner of deeds and depositions for this State, who resides within the State where the deposition is to be taken. [O. C. 767.]

Art. 738. [821] [801] Of temporary resident.—The deposition of a non-resident witness who may be temporarily within the State, may be taken under the same rules which apply to the taking of depositions of other witnesses in the State. [O. C. 768.]

Art. 739. [822] [802] Taken as in civil cases.—The rule prescribed in civil cases for taking the depositions of witnesses shall, as to the manner and form of taking and returning the same, govern in criminal actions, when not in conflict with this Code. [O. C. 769.]

Art. 740. [823] [803] Objections to depositions.—The rules of procedure as to objections to depositions in civil actions shall govern in criminal actions when not in conflict with this Code. [O. C. 770.]

Art. 741. [824] [804] Affidavit of defendant.—When the defendant desires to take the deposition of a witness at any other time than before the examining court, he shall by himself or counsel file with the clerk of the court in which the case is pending an affidavit stating the facts necessary to constitute a good reason for taking the same; and also state in his affidavit that he has no other witness whose attendance on the trial can be procured, by whom he can prove the facts he desires to establish by the deposition. [O. C. 771.]

Art. 742. [825] [805] Written interrogatories.—In cases arising under the preceding article, written interrogatories shall be filed with the clerk of the court, and a copy of the same served on the proper attorney for the State the length of time required for service of interrogatories in civil actions. [O. C. 765.]

Art. 743. [826] [806] Certificate.—Where depositions are taken under commission in criminal actions, the officer or officers taking the same shall certify that the person deposing is the identical person named in the commission, and is a credible person; or, if they can not certify to the identity of the witness, there shall be an affidavit of some person attached to the deposition proving the identity and credibility of such witness, and the officer or officers shall certify that the person making the affidavit is known to them, and is worthy of credit. [O. C. 773.]

Art. 744. [827] [807] By two officers.—Where it is required that two officers shall act in executing a commission to take depositions, the official seal and signature of each shall be attached to the certificate authenticating the deposition. [O. C. 774.]

Art. 745. [828] [808] Without interrogatories.—The deposition of a witness taken before an examining court may be taken without interrogatories; but whenever a deposition is so taken it shall be done by the proper officer or officers; and each party shall be allowed full liberty of cross-examination. [O. C. 775.]

Art. 746. [829] [809] Taken without commission.—The depositions of witnesses taken before an examining court may be taken without a commission. If such examining court be held by a supreme or district judge, he shall, upon request, proceed to take depositions of the witnesses. [O. C. 776.]

Art. 747. [830] [810] Officer shall take.—Where any of the officers, other than a supreme or district judge, are called upon to take a deposition before an examining court, it is their duty to attend and take the same. [O. C. 777.]

Art. 748. [831] [811] Return.—A deposition taken in an examining court shall be sealed up and delivered by the officer to the clerk of the court having jurisdiction to try the offense; in all other cases the return of depositions may be made as provided in civil actions. [O. C. 778.]

Art. 749. [832–833] Predicate to read.—Depositions taken in criminal actions shall not be read unless oath be made that the witness resides out of the State; or that since his deposition was taken, the witness has died; or that he has removed beyond the limits of the State; or that he has been prevented from attending the court through the act or agency of the defendant; or by the act or agency of any person whose object was to deprive the defendant of the benefit of the testimony; or that, by reason of age or bodily infirmity, such witness can not attend. When the deposition is sought to be used by the State, the oath may be made by any credible person. When sought to be used by the defendant, the oath shall be made by him in person.

Art. 750. [834] [814] Reproducing testimony.—The deposition of a witness taken before an examining court or a jury of inquest, and reduced to writing, and certified according to law, in cases where the defendant was present when such testimony was taken, and had the privilege afforded him of cross-examining the witness, may be read in evidence as is provided in the preceding article for the reading in evidence of depositions.

TITLE 9

PROCEEDINGS AFTER VERDICT

Chap.
1. New trials.
2. Arrest of Judgment.
3. Judgment and Sentence.
4. Execution of Judgment.

CHAPTER ONE

NEW TRIALS

Art.
751. Definition of "new trial."
752. Granted only to accused.
753. Grounds for new trial in felony.
754. In misdemeanors.
755. Time to apply for new trial.
756. Motion to be in writing.
757. State may controvert motion.
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759. Effect of a new trial.
760. Statement of facts and bills of exception.
760a. Filing of statements of fact and bills of exception.
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Article 751. [835] [815] Definition of "new trial."—A "new trial" is the rehearing of a criminal action, after verdict, before the judge or another jury. [O. C. 669.]

Art. 752. [836] [816] Granted only to accused.—A new trial can in no case be granted where the verdict or judgment has been rendered for the accused. [O. C. 670.]

Art. 753. [837] [817] Grounds for new trial in felony.—New trials, in cases of felony, shall be granted for the following causes, and for no other:

1. Where the defendant has been tried in his absence, or has been denied counsel.

2. Where the court has misdirected the jury as to the law, or has committed any other material error calculated to injure the rights of the defendant.

3. Where the verdict has been decided by lot, or in any other manner than by a fair expression of opinion by the jurors.

4. Where a juror has received a bribe to convict, or has been guilty of any other corrupt conduct.

5. Where any material witness of the defendant has, by force, threats or fraud, been prevented from attending the court, or where any written evidence, tending to establish the innocence of the defendant, has been intentionally destroyed or removed so that it could not be produced upon the trial.

6. Where new testimony material to the defendant has been discovered since the trial. A motion for a new trial on this ground shall be governed by the rules which regulate civil suits.

7. Where the jury, after having retired to deliberate upon a case, have received other testimony; or where a juror has conversed with any person in regard to the case; or where any juror at any time during the trial or after retiring, may have become so intoxicated as to render it probable his verdict was influenced thereby. The mere drinking of liquor by a juror shall not be sufficient ground for a new trial.

8. Where, from the misconduct of the jury, the court is of opinion that the defendant has not received a fair and impartial trial. It shall be competent to prove such misconduct by the voluntary affidavit of a juror; and the verdict may, in like manner, be sustained by such affidavit.

9. Where the verdict is contrary to law and evidence.—A verdict is not contrary to the law and evidence, within the meaning of this provision, where the defendant is found guilty of an offense of inferior grade to, but of the same nature as, the offense proved. [O. C. 672.]

Art. 754. [838] [818] In misdemeanors.—New trials in misdemeanor cases may be granted for any cause specified in the preceding article, except that contained in subdivision one of said article.

Art. 755. [839] [819] Time to apply for new trial.—A new trial must be applied for within two days after the conviction; but in felony cases for good cause shown, the court may allow the motion to be made at any time before the adjournment of the term at which the conviction was had. When the court adjourns before the expiration of two days after the conviction, the motion shall be made before the adjournment.

Art. 756. [840] [820] Motion to be in writing.—All motions for new trials shall set forth distinctly in writing the grounds upon which the new trial is asked.

Art. 757. [841] [821] State may controvert motion.—The State may take issue with the defendant upon the truth of any cause set forth in the motion for a new trial: and, in such case, the judge shall hear evidence, by affidavit or otherwise, and determine the issue.

Art. 758. [842] [822] Judge not to discuss evidence.—In granting or refusing a new trial, the judge shall not sum up, discuss or comment upon the evidence in the case, but shall simply grant or refuse the motion, without prejudice to either party.

Art. 759. [843] [823] Effect of a new trial.—The effect of a new trial is to place the cause in the same position in which it was before any trial had taken place. The former conviction shall be regarded as no presumption of guilt, nor shall it be alluded to in the argument. [O. C. 674.]

Art. 760. [844–5–6] Statement of facts and bills of exception.—1. Right to statement.—If a new trial be refused, a statement of facts may be made, ordered, agreed to, approved and certified as in civil suits. Where the defendant has failed to move for a new trial he is, nevertheless, entitled, if he appeals, to have a statement of the facts certified and sent up with the record.

2. To accompany transcript.—The statement of facts in felony cases shall not be copied in the transcript of the clerk, but when agreed to by the parties and approved by the judge, shall be filed in duplicate with the clerk, and the original sent up as a part of the record in the cause on appeal; and like procedure shall be followed if the statement of facts is prepared by the parties or by the judge on the failure of the parties to agree. On appeal from a conviction of misdemeanor, the statement of facts shall be copied in the transcript.

3. Failure to agree.—In all felony cases appealed, whenever the State and defendant can not agree as to the testimony of any witness, then so much of the transcript of the official court reporter's report with reference to each such disputed fact shall be inserted in the statement of facts as is necessary to show what the witness testified to in regard to the same, and constitute a part of the statement of facts, and the same shall apply to the preparation of bills of exception. Such stenographer's report, when carried into the statement of facts or bills of exception, shall be condensed so as not to contain the questions and answers except where, in the opinion of the judge, such questions and answers may be necessary in order to elucidate the fact or question involved.

4. Statement prepared by judge.—When the duty devolves upon the court to prepare the statement of facts, he shall have such time in which to do so as he deems necessary, not to exceed forty days after he receives the defendant's statement of facts.

5. Time to file.—The term "statement of facts," as used in this subdivision, includes only the facts adduced upon the trial upon the issue of guilt. A statement of facts in a felony case filed within ninety days from the date the notice of appeal is given shall be considered as having been filed within the time allowed by law for filing same, notwithstanding the succeeding provisions of this subdivision. When an appeal is taken from the judgment rendered in any criminal action in any district court, criminal district court, county court, or county court at law, the defendant shall be entitled, with or without an order of court, to thirty days after the day of adjournment of court in which to prepare or cause to be prepared and filed a statement of facts and bills of exception; and

upon good cause shown, the judge trying the cause may extend the time in which to file a statement of facts and bills of exception, and shall have the power in term time or vacation, upon the application of either party for good cause, to extend the several times for the preparation and filing of the statement of facts and bills of exception, but the same shall not be so extended as to delay the filing thereof within ninety days from the date the notice of appeal is given. If the term of any of said courts may by law continue more than eight weeks, said statement of facts and bills of exception shall be filed within thirty days after final judgment shall be rendered, unless the court shall by order entered of record in said cause extend the time for filing such statement and bills of exception.

6. When defendant cannot pay.—When any felony case is appealed and the defendant is not able to pay for a transcript of the testimony or give security therefor, he may make affidavit of such fact, and upon the making of such affidavit, the court shall order the official court reporter to make a narrative statement of facts and deliver it to such defendant. In all cases where the court is required to and does appoint an attorney to represent the defendant in a criminal action, such reporter shall be required to furnish the attorney for said defendant, if convicted and where an appeal is prosecuted, with a transcript of his notes. For each said service he shall be paid by the State of Texas, upon the certificate of the trial judge, one-half of the rate provided by law in civil cases.

7. Independent statement.—Nothing in this chapter shall be so construed as to prevent parties from preparing a statement of facts on appeal in a felony or misdemeanor case independent of the transcript of the notes of the official reporter, or from buying a narrative statement of facts from such reporter, and agreeing thereto, without having to order or pay for a question and answer statement.

Art. 760a. Filing of statements of fact and bills of exception.—In all criminal cases tried in any court in this State, statements of facts or bills of exception as to the action of the court in overruling an application for change of venue, or as to other matters and things occurring before the beginning of the actual trial of the case, shall not be required to be filed during the term of the court at which such case is tried, nor shall such statements of facts or bills of exception pertaining to misconduct of the jury or other matters or things happening or occurring after the submission of the case to the jury, be required to be filed during such term of court; but all such statements of facts and bills of exception pertaining to any and all of such matters shall be filed within the same time as is prescribed by law for the filing of statements of facts and bills of exception pertaining to matters or things happening or occurring during the actual trial of the case. [Acts 1926, 39th Leg., 1st C. S., p. 12, ch. 8, § 1.]

Section 4 of Acts 1926, 39th Leg., 1st C. S., p. 12, ch. 8, repealed all laws and part of laws in conflict with the act.

Art. 760b. Consideration in Appellate Court.—All statements of facts and bills of exception when filed in compliance with Section 1 hereof shall be entitled to consideration in any appellate court in this State, provided this law has become effective when the case is heard by such appellate court. [Acts 1926, 39th Leg., 1st C. S., p. 12, ch. 8, § 2.]

CHAPTER TWO

ARREST OF JUDGMENT

Art.
761. "Motion in arrest of judgment."
762. Time to make motion.
763. Granted for substantial defect.
764. Want of form.
765. Effect of arresting judgment.

Article 761. [847] [825] "Motion in arrest of judgment."—A motion in arrest of judgment is an oral or written suggestion to the court on the part of defendant that judgment has not been legally rendered against him. The record must show the grounds of the motion. [O. C. 675.]

Art. 762. [848] [826] Time to make motion.—The motion must be made within two days after the conviction; or if the court adjourns before the expiration of such time, then it may be made at any time before final adjournment for the term. [O. C. 676.]

Art. 763. [849] [827] Granted for substantial defect.—Such motion shall be granted upon any ground which may be good upon exception to an indictment or information for any substantial defect therein. [O. C. 678.]

Art. 764. [850] [828] Want of form.—No judgment shall be arrested for want of form.

Art. 765. [851–852] Effect of arresting judgment.—The effect of arresting a judgment is to place the defendant in the same position he was before the indictment or information was presented; and if the court be satisfied from the evidence that he may be convicted upon a proper indictment or information, he shall be remanded into custody or bailed. If not so satisfied, the defendant shall be discharged.

CHAPTER THREE

JUDGMENT AND SENTENCE

1. IN CASES OF FELONY

Art.
766. "Judgment."
767. "Sentence."
768. Time of judgment and sentence.
769. Sentence when appeal is taken.
770. If court is about to adjourn.
771. Shall grant time to prepare appeal.
772. Sentence nunc pro tunc.
773. Reasons to prevent sentence.
774. Cumulative or concurrent sentence.
775. Indeterminate sentence.
775a. Parole.
776. Suspended sentence.
777. Judgment suspending sentence.
778. Procedure as to suspended sentence.
779. Suspended sentence made final.
780. Dismissal of charges.
781. Defendant recognized.

2. JUDGMENT IN CASES OF MISDEMEANOR

782. In absence of defendant.
783. As to fine.
784. On other punishment.

1. IN CASES OF FELONY

Article 766. [853] [831] "Judgment."—A judgment is the declaration of the court entered of record, showing:

1. The title and number of the case.
2. That the case was called for trial and that the parties appeared.
3. The plea of the defendant.
4. The selection, impaneling and swearing of the jury.
5. The submission of the evidence.
6. That the jury was charged by the court.
7. The return of the verdict.
8. The verdict.
9. In the case of a conviction, that it is considered by the court that the defendant is adjudged to be guilty of the offense as found by the jury; or, in case of acquittal, that the defendant be discharged.
10. That the defendant be punished as has been determined by the jury.

Art. 767. [854] [832] "Sentence."—A "sentence" is the order of the court, made in the presence of the defendant, and entered of record, pronouncing the judgment, and ordering the same to be carried into execution in the manner prescribed by law.

Art. 768. [855] [833] Time of judgment and sentence.—If a new trial is not granted nor the judgment arrested in a felony case, the sentence shall be pronounced in the presence of the defendant at any time after the expiration of the time allowed for making the motion for a new trial or the motion in arrest of judgment. [O. C. 682.]

Art. 769. [856] [834] Sentence when appeal is taken.—When an appeal is taken from a death penalty, sentence shall not be pronounced, but shall be suspended until the decision of the Court of Criminal Appeals has been received. In all other cases of felony, sentence shall be pronounced before the appeal is taken. Upon the affirmance of the judgment by the appellate court, the clerk shall at once send its mandate to the clerk of the court from which the appeal was taken, there to be duly recorded. [O. C. 683.]

Art. 770. [857] [835] If court is about to adjourn.—If a conviction takes place so late in the term of the court as not to allow two days' time for making a motion for a new trial or in arrest of judgment, the sentence may be pronounced at any time before the court finally adjourns; provided, that in every case at least six hours shall be allowed for making either of these motions. [O. C. 684.]

Art. 771. [858] [836] Shall grant time to prepare appeal.—If, at the time a verdict is returned into court, there be less than six hours remaining, before the court, by law, must adjourn, the district judge shall sit during the whole of Saturday night and Sunday for the purpose of enabling the defendant to move for a new trial or in arrest of judgment, and prepare his cause for the Court of Criminal Appeals. This article shall not require the district judge to sit longer than six hours after verdict rendered, if a motion for a new trial or in arrest of judgment shall not have been filed. [O. C. 685.]

Art. 772. [859] [837] Sentence nunc pro tunc.—If there is a failure from any cause whatever to enter judgment and pronounce sentence during the term, the judgment may be entered and sentence pronounced at any succeeding term of the court, unless a new trial has been granted, or the judgment arrested, or an appeal has been taken. [O. C. 686.]

Art. 773. [860–861] Reasons to prevent sentence.—Before pronouncing sentence in a case of a felony, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. The only reasons which can be shown, on account of which sentence can not be pronounced, are:

1. That the defendant has received a pardon from the proper authority, on the presentation of which, legally authenticated, he shall be discharged.

2. That the defendant is insane; and, if sufficient proof be shown to satisfy the court that the allegation is well founded, no sentence shall be pronounced. Where there is sufficient time left, a jury may be impaneled to try the issue. Where sufficient time does not remain, the court shall order the defendant to be confined safely until the next term of the court, and shall then cause a jury to be impaneled to try such issue.

3. Where there has not been a motion for a new trial, or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions and either or both motions may be immediately entered and disposed of, although more than two days may have elapsed since the rendition of the verdict.

4. When a person who has been convicted of felony escapes after conviction and before sentence, and an individual supposed to be the same has been arrested, he may, before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury as to his identity. [O. C. 688.]

Art. 774. [840] [862] Cumulative or concurrent sentence.—When the same defendant has been convicted in two or more cases, and the punishment assessed in each case is confinement in the penitentiary or the jail for a term of imprisonment, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction, except that in the discretion of the court, the judgment in the second and subsequent convictions may either be that the punishment shall begin when the judgment and sentence in the preceding conviction has ceased to operate, or that the punishment shall run concurrently with the other case or cases, and sentence and execution shall be accordingly. [Acts 1883, p. 8; Acts 1919, p. 25.]

Art. 775. Indeterminate sentence.—Whenever any person seventeen years of age or over shall be on trial for any felony, the jury trying said cause shall not only ascertain whether or not said person is guilty of the offense charged in the indictment, but shall also in the verdict assess the punishment or penalty within the period of time fixed by law as the maximum and minimum penalty for such offense, provided, if the jury shall assess the punishment of such offense at a longer period of time than the minimum period of imprisonment in the penitentiary for such offense, then the judge presiding in such cause, in passing sentence on such person, instead of pronouncing a definite time of imprisonment in the penitentiary on such person so convicted, he shall pronounce upon such person an indeterminate sentence of imprisonment in the penitentiary, fixing in such sentence the minimum and maximum terms thereof, fixing in such sentence as the minimum time of imprisonment in the penitentiary the time now or hereafter prescribed by law as the minimum time of imprisonment in the penitentiary and as the maximum time of such imprisonment the term fixed by the jury in their verdict as punishment for such offense; provided, that if the punishment assessed by the jury shall be pecuniary fine only, or imprisonment in the county jail, or both fine and imprisonment in the county jail, then the provisions of this Act shall not apply.

Art. 775a. Parole.—Where the maximum sentence is not four times as great as the minimum sentence, and the convict has served the minimum sentence and has a perfect prison record or where the maximum sentence is greater than four times the minimum sentence, and the convict has served one-fourth of the maximum sentence and has a perfect prison record, such convict shall be paroled during good behavior for the balance of the term imposed upon him; provided that before a parole shall be granted the board of pardons shall examine and approve the convict's record and said board may consider the past record as well as the prison record of convicts. [Acts 1925, p. 377.]

Art. 776. Suspended sentence.—Where there is a conviction of any felony in any district or criminal district court of this State, except murder, perjury, burglary of a private residence at night, robbery, arson, incest, bigamy, seduction, and abortion, and the punishment assessed by the jury shall not exceed five years, the court shall suspend sentence upon written sworn application made therefor by the defendant, filed before the trial begins. When the defendant has no counsel, the court shall inform the defendant of his right to make such application, and the court shall appoint counsel to prepare and present same if desired by defendant. In no case shall sentence be suspended except when the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or in any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. [Acts 1913, p. 8.]

Art. 777. Judgment suspending sentence.—When sentence is suspended, the judgment shall be that sentence of the judgment of conviction shall be suspended during the good behavior of the defendant. By "good behavior" is meant that the defendant shall not be convicted of any felony during the time of such suspension. [Id.]

Art. 778. Procedure as to suspended sentence.—The court shall permit testimony as to the general reputation of defendant to enable the jury to determine whether to recommend the suspension of sentence, and submit the question as to whether the defendant has ever before been convicted of a felony; such testimony shall be heard and such question submitted only upon the request in writing by the defendant; provided, that in all cases sentence shall be suspended if the

jury recommends it in their verdict. In such cases, neither the verdict of conviction nor the judgment entered thereon shall become final, except in the manner and at the time provided by the succeeding article. [Id.]

Art. 779. Suspended sentence made final.—Upon the final conviction of the defendant of any other felony pending the suspension of sentence, the court granting such suspension shall cause a capias to issue for the arrest of the defendant, if he is not then in the custody of such court, and during a term of the court shall pronounce sentence upon the original judgment of conviction, and shall cumulate the punishment of the first with the punishment of any subsequent conviction or convictions, and in such cases no new trial shall be granted in the first conviction. [Id.]

Art. 780. Dismissal of charges.—In any case of suspended sentence, at any time after the expiration of the time assessed as punishment by the jury, the defendant may make his written sworn motion for a new trial and dismissal of such case, stating therein that since such former trial and conviction he has not been convicted of any felony, which motion shall be heard by the court during the first term time after same is filed. If it appears to the court, upon such hearing, that the defendant has not been convicted of any other felony, the court shall enter an order reciting the fact, and shall grant the defendant a new trial and shall then dismiss said cause. After the setting aside and dismissal of any judgment of conviction as herein provided for, the fact of such conviction shall not be shown or inquired into for any purpose except in cases where the defendant has been again indicted for a felony and invokes the benefit of this law. [Id.]

Art. 781. Defendant recognized.—When sentence is suspended, the defendant shall be released upon his recognizance in such sum as the court may fix. [Id.]

2. JUDGMENT IN CASES OF MISDEMEANOR

Art. 782. [866] [844] In absence of defendant.—The judgment in a misdemeanor case may be rendered in the absence of the defendant. [O. C. 691.]

Art. 783. [867] [845] As to fine.—When the defendant is only fined the judgment shall be that the State of Texas recover of the defendant the amount of such fine and all costs of the prosecution, and that the defendant, if present, be committed to jail until such fine and costs are paid; or if the defendant be not present, that a capias forthwith issue, commanding the sheriff to arrest the defendant and commit him to jail until such fine and costs are paid; also, that execution may issue against the property of such defendant for the amount of such fine and costs.

Art. 784. [868] [846] On other punishment.—If the punishment is any other than a fine, the judgment shall specify it, and order it enforced by the proper process. It shall also adjudge the costs against the defendant, and order the collection thereof as in other cases.

CHAPTER FOUR

EXECUTION OF JUDGMENT

1. IN MISDEMEANOR CASES

Art.
785. Discharging judgment for fine.
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787. Pay or jail.
788. If defendant is absent.
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790. Capias may issue to any county.
791. Execution for fine and costs.
792. Further enforcement of judgment.
793. Fine discharged.
794. To do manual labor.
795. Authority for imprisonment.
796. Capias for imprisonment.
797. Discharge of defendant.

2. ENFORCING JUDGMENT IN CAPITAL CASES

798. Execution of convict.
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800. Taken to penitentiary.
801. Visitors.
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807. Return of warden.
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809. Body of convict.
810. Fee for executing convict.
811. Preventing rescue.

1. IN MISDEMEANOR CASES

Article 785. [869] [847] Discharging judgment for fine.—When the judgment against a defendant is for a fine and costs he shall be discharged from the same:

1. When the amount thereof has been fully paid.
2. When remitted by the proper authority.
3. When he has remained in custody for the time required by law to satisfy the amount thereof.

Art. 786. [870] [848] Payable in money.—All recognizances, bail bonds, and undertakings of any kind, whereby a party becomes bound to pay money to the State, and all fines and forfeitures of a pecuniary character, shall be collected in the lawful money of the United States only. [O. C. 702.]

Art. 787. [871] [849] Pay or jail.—When a judgment has been rendered against a defendant for a pecuniary fine, if he is present, he shall be imprisoned in jail until discharged as provided by law. A certified copy of such judgment shall be sufficient to authorize such imprisonment. [O. C. 694, 695.]

Art. 788. [872] [850] If defendant is absent.—When a pecuniary fine has been adjudged against a defendant not present, a capias shall forthwith be issued for his arrest. The sheriff shall execute the same by placing the defendant in jail.

Art. 789. [873] [851] Capias shall recite what.—Where such capias issues, it shall state the rendition and amount of the judgment and the amount unpaid thereon, and command the sheriff to take the defendant and place him in jail until the amount due upon such judgment and the further costs of collecting the same are paid, or until the defendant is otherwise legally discharged. [O. C. 700.]

Art. 790. [874] [852] Capias may issue to any county.—The capias provided for in this chapter may be issued to any county in the State, and shall be executed and returned as in other cases, but no bail shall be taken in such cases.

Art. 791. [875–6] Execution for fine and costs.—In each case of pecuniary fine, an execution may issue for the fine and costs, tho a capias was issued for the defendant; and a capias may issue for the defendant tho an execution was issued against his property. The execution shall be collected and returned as in civil actions. When the execution has been collected, the defendant shall be at once discharged; and whenever the fine and costs have been legally discharged in any way, the execution shall be returned satisfied.

Art. 792. [877] [855] Further enforcement of judgment.—When a defendant has been committed to jail in default of the fine and costs adjudged against him, the further enforcement of such judgment shall be in accordance with the provisions of this Code.

Art. 793. [878] [856] Fine discharged.—When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county, as provided in the succeeding article, or if there be no such workhouse, farm or improvements, he shall be imprisoned in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such labor or imprisonment at one dollar for each day thereof; provided that the provisions of this Act shall not apply to counties not

having poor farms. [As amended by Acts 1927, 40th Leg., 1st C. S., p. 194, ch. 68, § 1.]

Art. 794. To do manual labor.—Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, those so convicted shall be required to do manual labor in accordance with the provisions of this article under the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted.

2. Such farms and workhouses shall be under the control and management of the commissioners court, and said court may adopt such rules and regulations not inconsistent with the laws as they deem necessary for the successful management and operation of said institutions and for effectively utilizing said labor.

3. Such overseers and guards may be employed under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as said court may prescribe.

4. Those so convicted shall be so guarded while at work as to prevent escape.

5. They shall be put to labor upon the public roads, bridges or other public works of the county when their labor cannot be utilized in the county workhouse or county farm.

6. They shall be required to labor not less than eight nor more than ten hours each day, Sundays excepted. No person shall ever be required to work for more than one year.

7. One who refuses to labor or is otherwise refractory or insubordinate may be punished by solitary confinement on bread and water or in such other manner as the commissioners court may direct.

8. When not at labor they may be confined in jail or the workhouse, as may be most convenient, or as the regulations of the commissioners court may prescribe.

9. A female shall in no case be required to do manual labor except in the workhouse.

10. One who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work, but shall remain in jail until his term of imprisonment is ended, or until the fine and costs adjudged against him are discharged according to law. His inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow.

11. One convicted of a misdemeanor whose punishment either in whole or in part is imprisonment in jail may avoid manual labor by payment into the county treasury of one dollar for each day of the term of his imprisonment, and the receipt of the county treasurer to that effect shall be sufficient authority for the sheriff to detain him in jail without labor.

Art. 795. [879] [857] Authority for imprisonment.—When, by the judgment of the court, a defendant is to be imprisoned in jail, a certified copy of such judgment shall be sufficient authority for the sheriff to place such defendant in jail.

Art. 796. [880] [858] Capias for imprisonment.—A capias issued for the arrest and commitment of one convicted of a misdemeanor, the penalty of which or any part thereof is imprisonment in jail, shall recite the judgment and command the sheriff to place the defendant in jail, to remain the length of time therein fixed; and this writ shall be sufficient to authorize the sheriff to place such defendant in jail.

Art. 797. [881] [859] Discharge of defendant.—A defendant who has remained in jail the length of time required by the judgment shall be discharged. The sheriff shall return the copy of the judgment, or the capias under which the defendant was imprisoned, to the proper court, stating how it was executed.

2. ENFORCING JUDGMENT IN CAPITAL CASES

Art. 798. Execution of convict.—Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time before the hour of sunrise on the day set for the execution not less than thirty days from the date of sentence, as the court may adjudge, by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application and continuance of such current through the body of such convict until such convict is dead. [Acts 2nd C. S. 1923, p. 111.]

Art. 799. Warrant of execution.—Whenever any person is sentenced to death, the clerk of the court in which the sentence is pronounced, shall within ten days after sentence has been pronounced, issue a warrant under the seal of the court for the execution of the sentence of death, which shall recite the fact of conviction, setting forth specifically the offense, the judgment of the court, the time fixed for his execution, and directed to the warden of the State Penitentiary at Huntsville, commanding him to proceed, at the time and place named in the sentence, to carry the same into execution, as provided in the preceding article, and shall deliver such warrant to the sheriff of the county in which such judgment of conviction was had, to be by him delivered to the said warden, together with the condemned person. [Id.]

Art. 800. Taken to penitentiary.—Immediately upon the receipt of such warrant, the sheriff shall transport such condemned person to the State Penitentiary at Huntsville, and shall deliver him and the warrant aforesaid into the hands of the warden and shall take from the warden his receipt for such person and such warrant, which receipt the sheriff shall return to the office of the clerk of the court where the judgment of death was rendered. For his services, the sheriff shall be entitled to the same compensation as is now allowed by law to sheriffs for removing or conveying prisoners under the provisions of Section 4 of Article 1029 or 1030 of the Code of Criminal Procedure. [Id.]

Art. 801. Visitors.—Upon the receipt of such condemned person by the warden of the State Penitentiary, he shall be confined therein until the time for his execution arrives, and, while so confined, all persons outside of said prison shall be denied access to him, except his physician and lawyer, who shall be admitted to see him when necessary to his health or for the transaction of business, and the relatives, friends and spiritual advisors of the condemned person, who shall be admitted to see and converse with him at all proper times, under such reasonable rules and regulations as may be made by the Board of Prison Commissioners. [Id.]

Art. 802. Executioner.—The warden of the State Penitentiary at Huntsville, or in case of his death, disability or absence, his deputy, shall be the executioner. In the event of the death or disability or absence of both the warden and his deputy, the executioner shall be that person appointed by the Board of Prison Commissioners for that purpose. [Id.]

Art. 803. Place of execution.—The execution shall take place at the State Penitentiary at Huntsville, in a room arranged for that purpose. [Id.]

Art. 804. Present at execution.—The following persons may be present at the execution, and none other; the executioner, and such persons as may be necessary to assist him in conducting the execution; the Board of Prison Commissioners, two physicians, including the prison physician, the spiritual advisor of the condemned; the chaplain of the penitentiary, the county judge and sheriff of the county in which the penitentiary is situated, and any of the relatives or friends of the condemned person that he may request, not exceeding five in number, shall be admitted. No convict shall be permitted by the prison authorities to witness the execution. [Id.]

Art. 805. Escape after sentence.—If the condemned escape after sentence and before his delivery to the warden, and be not rearrested until after the

time fixed for execution, any person may arrest and commit him to the jail of the county in which he was sentenced; and thereupon the court by whom the condemned was sentenced, either in term time or vacation, on notice of such arrest being given by the sheriff, shall again appoint a time for the execution, not less than thirty days from such appointment, which appointment shall be by the clerk of said court immediately certified to the warden of the State Penitentiary and such clerk shall place such certificate in the hands of the sheriff, who shall deliver the same, together with the warrant aforesaid and the condemned person to the warden, who shall receipt to the sheriff for the same and proceed at the appointed time to carry the sentence of death into execution as hereinabove provided. [Id.]

Art. 806. Escape from penitentiary.—If the condemned person escape after his delivery to the warden, and be not retaken before the time appointed for his execution, any person may arrest and commit him to the State Penitentiary whereupon the warden shall certify the fact of his escape and recapture to the court in which sentence was passed; and the court, either in term time or vacation, shall again appoint a time for the execution which shall not be less than thirty days from the date of such appointment; and thereupon the clerk of such court shall certify such appointment to the warden, who shall proceed at the time so appointed to execute the condemned, as hereinabove provided. The sheriff or other officer or other person performing any service under this and the preceding article shall receive the same compensation as is provided for similar services under the provisions of Articles 1029 or 1030 of the Code of Criminal Procedure. [Id.]

Art. 807. Return of warden.—When the execution of sentence is suspended or respited to another date, the same shall be noted on the warrant and on the arrival of such date, the warden shall proceed with such execution; and in case of death of any condemned person before the time for his execution arrives, or if he should be pardoned or his sentence commuted by the Governor, no execution shall be had, but in such case, as well as when the sentence is executed, the warden shall return the warrant and certificate, with a statement of any such act and with his proceedings endorsed thereon, together with the statement that the body of the convict was decently buried or delivered to his relatives or friends, naming them, or to some other person, by consent of the convict, naming such person, and naming two or more witnesses to the fact that the convict consented that his body might be delivered to such person to the clerk of the court in which the sentence was passed, who shall record said warrant and return in the minutes of the court, provided that the body of the person electrocuted may be returned to the county in which conviction was had at the expense of the county, when so requested by the convict's relatives. [Id.]

Art. 808. [888] Treatment of condemned.—No torture, or ill treatment, or unnecessary pain, shall be inflicted upon a prisoner to be executed under the sentence of the law. [O. C. 713.]

Art. 809. [891] [869] Body of convict.—The body of a convict shall be decently buried, at the expense of the county in which the indictment which resulted in conviction was found, unless demanded by his relatives or friends, in which case, it shall be given to them, and shall never, unless by consent of the convict himself before execution, be delivered to any person for dissection. [O. C. 716.]

Art. 810. Fee for executing convict.—The warden, or other person, conducting the execution shall be allowed therefor twenty-five dollars to be paid by the county in which judgment of execution was rendered, and the commissioners court of such county shall approve such account and order it paid out of the general funds of the county, upon the certificate of the district clerk of the county, showing the return by the warden of the death warrant, with execution of sentence endorsed thereon.

Art. 811. Preventing rescue.—The sheriff may, when he supposes there will be a necessity, order such number of citizens of his county, or any military or militia company, to aid in preventing the rescue of a prisoner. [Id.]

TITLE 10

APPEAL AND WRIT OF ERROR

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Article 812. [893] [871] State cannot appeal.—The State shall have no right of appeal in criminal actions. [Const., art. 5, sec. 26.]

Art. 813. [894] [872] Defendant may appeal.—A defendant in any criminal action has the right of appeal under the rules hereinafter prescribed.

Art. 814. [898] [875] Presence in appellate court.—The defendant need not be personally present upon the hearing of his cause in the Court of Criminal Appeals, but if not in jail he may appear in person. [Acts 1892, p. 38.]

Art. 815. [901] [876] Felony recognizance pending appeal.—Where the punishment of the defendant has been assessed at confinement in the penitentiary for any period of fifteen years or less, and such conviction is appealed from, by entering into a recognizance in said court the defendant thus convicted shall have the right to remain on bail while such appeal is pending and until the judgment appealed from is affirmed by the appellate court and the mandate thereof filed with the clerk of the trial court. [Acts 1907, p. 31.]

Art. 816. [902] Jail or recognizance.—Where the defendant appeals from a conviction in any felony case and where bail is allowed by the provisions of the preceding article, he shall, if he be in custody,

be committed to jail unless he duly enters into a recognizance to appear. If he be in custody his notice of appeal shall have no effect to release him from such custody until he enters into recognizance. No recognizance shall be taken if the defendant is not in custody of the sheriff at the time thereof. [Id.]

Art. 817. [903] Form for recognizances in felony appeal.—In all appeals from convictions for felonies where bail is allowed by law, the following form of recognizance shall be considered sufficient when substantially followed:

"The State of Texas,
No. vs.
A. B.

This day came into open court A. B. defendant in the above entitled cause, who, together with C. D. and E. F. sureties, acknowledged themselves severally indebted to the State of Texas in the sum of $———, conditioned that the said A. B., who has been convicted of a felony in this court, as more fully appears by the judgment of conviction duly entered in this cause, shall appear before this court from day to day and from term to term of the same, and not depart therefrom without leave of this court, in order to abide the judgment of the Court of Criminal Appeals of the State of Texas." [Id.]

Art. 818. [904] Bail pending appeal.—If for any cause the defendant fails to enter into such recognizance, but gave notice of and took an appeal from such conviction during such term, he may give bail and obtain his release from custody by giving, after the expiration of such term of court, his bail bond to the sheriff, with two or more good and sufficient sureties, in which the defendant, together with his sureties, shall acknowledge themselves severally indebted to the State of Texas in the sum fixed by the court, upon the conditions as are provided for in such recognizances. Before such bail bond shall be accepted and the defendant released from custody by reason thereof, the same must be approved by such sheriff and the court trying said cause, or his successor in office. When said bond is so given and approved, the defendant shall be released from custody. [Id.]

Art. 819. [906] Receipt of mandate.—When the clerk of any court from whose judgment an appeal has been taken in felony cases wherein bail has been allowed shall receive the mandate of the Court of Criminal Appeals affirming such judgment, he shall immediately file the same and forthwith issue a capias for the arrest of the defendant for the execution of the sentence of the court, which shall recite the fact of conviction, setting forth the offense and the judgment and sentence of the court, the appeal from and affirmance of such judgment and the filing of such mandate, and shall command the sheriff to arrest and take into his custody the defendant and place him in jail and therein keep him until delivered to the proper penitentiary authorities, as directed by said sentence. The sheriff shall forthwith execute such capias as directed. [Id.]

Art. 820. [907] Capias may issue to any county.—Such capias may issue to any county of this State, and shall be executed and returned as in other felony cases, except that no bail shall be taken in such cases. [Id.]

Art. 821. [908] Right of appeal not abridged.—The right of appeal, as otherwise provided by law, shall in no wise be abridged by any provision of this chapter. [Id.]

Art. 822. [910] [878] Appeal prosecuted immediately.—An appeal may be prosecuted immediately to the Court of Criminal Appeals, and the clerk shall without delay make out and forward the record to the Court of Criminal Appeals.

Art. 823. [911] [879] When transcript may be filed.—The transcript may be filed in the Court of Criminal Appeals, and the case tried in said court while the court in which the conviction was had is yet in session. Upon an affirmance of the judgment by the appellate court, sentence may be pronounced by the trial court at the same term at which the conviction was had. [Acts 1st C. S. 1891, p. 38.]

Art. 824. [912] [880] Escape pending appeal.—If the defendant, pending an appeal in a felony case, makes his escape from custody, the jurisdiction of the Court of Criminal Appeals shall no longer attach in the case. Upon the fact of such escape being made to appear, the court shall, on motion of the State's attorney, dismiss the appeal; but the order dismissing the appeal shall be set aside if it is made to appear that the defendant has voluntarily returned within ten days to the custody of the officer from whom he escaped. [Id.]

Art. 825. [913] [881] Sheriff to report escape.—When any such escape occurs, the sheriff who had the prisoner in custody shall immediately report the fact under oath to the district or county attorney of the county in which the conviction was had, who shall forthwith forward such report to the State Prosecuting Attorney. Such report shall be sufficient evidence of the fact of such escape to authorize the dismissal of the appeal.

Art. 826. [914] [882] May appeal during term.—An appeal may be taken by the defendant at any time during the term of the court at which the conviction is had. [O. C. 725.]

Art. 827. [915] Notice of appeal.—An appeal is taken by giving notice thereof in open court at the term of court at which conviction is had, and having the same entered of record. If notice of appeal is given at the term at which the conviction is had and the same is not entered of record, then by making proof of the fact, the judge of the court trying the cause shall order the same entered of record either in term time or vacation by entering in the minutes of his court an order to that effect. Said entry when so made shall bear date as of date when notice of appeal was actually given in open court. [Acts 1915, p. 159.]

Art. 828. [916] [884] Effect of appeal.—The effect of an appeal is to suspend and arrest all further proceedings in the case in the court in which the conviction was had, until the judgment of the appellate court is received by the court from which the appeal was taken. In cases where, after notice of appeal has been given, the record or any portion thereof, is lost or destroyed, it may be substituted in the lower court, if said court be then in session; and, when so substituted, the transcript may be prepared and sent up as in other cases. In case the court from which the appeal was taken be not then in session, the appellate court shall postpone the consideration of such appeal until the next term of said court from which said appeal was taken; and the said record shall be substituted at said term as in other cases. [O. C. 727.]

Art. 829. [917] [885] Appeal after sentence.—Where the defendant in a felony case fails to appeal until after sentence has been pronounced, the appeal shall, nevertheless, be allowed, if demanded, and has the effect of superseding the execution of the sentence and all other proceedings as fully as if taken at the proper time. [O. C. 728.]

Art. 830. [918] Bail pending misdemeanor appeal.—When the defendant appeals in any misdemeanor case to the Court of Criminal Appeals, he shall, if he be in custody, be committed to jail unless he enter into recognizance as provided by law. If for any cause the defendant fails to enter into recognizance during the term at which he was tried, but gave notice and took an appeal from such conviction, he shall be permitted to give bail and obtain his release from custody by giving, after the expiration of such term of court, his bail bond to the sheriff with two or more good and sufficient sureties, in which the defendant and his sureties shall acknowledge themselves severally indebted to the State of Texas in the sum conditioned as provided in recognizance on appeal. Before the defendant shall be released on such bail bond

the same must be approved by the sheriff or the judge trying the cause or his successor in office. When such bail bond is so given and approved, the defendant shall be released from custody. [Acts 1919, p. 23.]

Art. 831. [919–920] Form of misdemeanor recognizance.—In appeal cases of misdemeanor, the following form of recognizance shall be sufficient, and, when substantially complied with, shall confer jurisdiction upon the Court of Criminal Appeals, of such appeals:

"State of Texas,
No. vs.
A. B.

This day came into open court A. B., defendant in the above entitled cause, who, together with C. D. and E. F., his sureties, acknowledge themselves severally indebted to the State of Texas in the sum of ——— dollars; conditioned, that the said A. B., who has been convicted in this cause of a misdemeanor, as more fully appears by the judgment of conviction duly entered in this cause, shall appear before this court from day to day, and from term to term of the same, and not depart, without leave of this court, in order to abide the judgment of the Court of Criminal Appeals of the State of Texas." [Acts 1897, p. 5.]

Art. 832. [905–919] Procedure as to bail pending appeal.—The amount of any recognizance or bail bond given in any felony or misdemeanor case to perfect an appeal from any court to the Court of Criminal Appeals shall be fixed by the court in which the judgment appealed from was rendered. The sufficiency of the security thereon shall be tested, and the same proceedings had in case of forfeiture, as in other cases of recognizances and bail bonds. [Acts 1st C. S. 1892, p. 38; Acts 1897, p. 5.]

Art. 833. [921] [889] Appeals from justice and corporation courts.—In appeals from the judgments of justice or corporation courts, the defendant shall, if he be in custody, be committed to jail unless he give bond with sufficient security, to be approved by the court from whose judgment the appeal is taken, in an amount not less than double the amount of fine and costs adjudged against him, payable to the State of Texas; provided said bond shall not in any case be for a less sum than fifty dollars. Said bond shall recite that in said cause the defendant was convicted and has appealed, and be conditioned that the defendant shall make his personal appearance before the court to which the appeal is taken instanter, if said court be then in session; and if said court be not in session, then at its next regular term, stating the time and place of holding the same, and there remain from day to day and term to term, and answer in said cause in said court. [Acts 1876, p. 167, Acts 1901, p. 291, Acts 4th C. S. 1918, p. 34.]

Art. 834. [922] Filing bond perfects appeal.—In appeals from justice and corporation courts, when the appeal bond provided for in the preceding article has been filed with the justice or judge who tried the case, the appeal in such case shall be held to be perfected. No appeal shall be dismissed because defendant failed to give notice of appeal in open court, nor on account of any defect in the transcript. [Acts 1899, p. 233.]

Art. 835. [923] Appellate court may allow new bond.—When an appeal is taken from the judgment of any court of this State, by filing a bond or entering into a recognizance within the time prescribed by law in such cases, and the court to which appeal is taken determines that such bond or recognizance is defective in form or substance, such appellate court may allow the appellant to amend such bond or recognizance by filing a new bond, on such terms as the court may prescribe. [Acts 1905, p. 224.]

Art. 836. [924] [890] Appeal bond given within what time.—If the defendant is not in custody, a notice of appeal shall have no effect whatever until the required appeal bond has been given and approved; and such appeal bond shall, in all cases, be given within ten days after the judgment of the court refusing a new trial has been rendered, and not afterward.

Art. 837. [925] [891] Trials de novo.—In all appeals from justice and corporation courts to the county court, the trial shall be de novo in the county court, the same as if the prosecution had been originally commenced in that court. [Const., art. 5, sec. 16.]

Art. 838. [926] [892] Original papers sent up.—In appeals from justice and corporation courts, all the original papers in the case, together with the appeal bond, if any, and together with a certified transcript of all the proceedings had in the case before such court shall be delivered without delay to the clerk of the court to which the appeal was taken, who shall file the same and docket the case.

Art. 839. [927] [893] Witnesses not again summoned.—In the cases mentioned in the preceding article, the witnesses who have been summoned or attached to appear in the case before the court below, shall appear before the court to which the appeal is taken without further process. In case of their failure to do so, the same proceedings may be had as if they had been originally summoned or attached to appear before such court.

Art. 840. [928] [894] Rules governing appeal bonds.—The rules governing the taking and forfeiture of bail bonds shall govern appeal bonds, and the forfeiture and collection of such appeal bonds shall be in the court to which such appeal is taken.

Art. 841. [929] [895] Clerk to prepare transcript.—The clerk of a court from which an appeal is taken shall prepare as soon as practicable, a transcript in every case in which an appeal has been taken, which shall contain all the proceedings had in the case and conform to the rules governing transcripts in civil cases. [O. C. 729.]

Art. 842. [930] [896] Transcript in felony prepared first.—The clerk shall prepare transcripts in felony cases, that have been appealed in preference to misdemeanor cases and shall prepare transcripts in all criminal cases appealed in preference to civil cases. [O. C. 729.]

Art. 843. [931] [897] Forwarding transcript.—As soon as prepared, the clerk shall forward the transcript by safe conveyance, charges paid, inclosed in a securely sealed envelope, directed to the clerk of the Court of Criminal Appeals. [Acts 1st C. S. 1892, p. 39.]

Art. 844. [932–933] Clerk to make list of cases.—The clerk, immediately after the adjournment of the court at which appeals were taken, shall make out a certificate under his seal showing a list of each cause appealed. This certificate shall show the style of the cause, the offense, the date judgment was rendered, and the date the appeal was taken; and the clerk shall send it to the clerk of the appellate court. [Id.]

Art. 845. [934–935] Failure to receipt transcript.—When it appears by the clerk's certificate that an appeal has been taken but that the transcript has not been received by the clerk of the Court of Criminal Appeals within the time required by law for filing transcripts in civil actions, such clerk shall immediately notify the clerk of the proper court that the same has not been received, and such clerk without delay shall prepare and forward another transcript as in the first instance, and notify the clerk of the appellate court by letter of the fact that such transcript has been forwarded and how and when it was forwarded. [Id.]

Art. 846. [937] [903] Appeals, when determined.—The Court of Criminal Appeals shall hear and determine appeals in criminal actions at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice. [Id.]

Art. 847. [938] [904] Presumptions on appeal.—The Court of Criminal Appeals may affirm the judgment of the court below, or may reverse and remand for a new trial, or may reverse and dismiss the case, or may reform and correct the judgment, as the law and nature of the case may require. The court shall presume that the venue was proven in the court below; that the jury was properly impaneled and sworn; that the defendant was arraigned; that he pleaded to the indictment; that the court's charge was certified by the judge and filed by the clerk before it was read to the jury, unless such matters were made an issue in the court below, and it affirmatively appears to the contrary by a bill of exceptions approved by the judge of the court below, or proven up by by-standers, as provided by law, and duly incorporated in the transcript. In each case by it decided, the Court of Criminal Appeals shall deliver a written opinion, setting forth the reason for such decision. [Acts 1897, p. 11.]

Art. 848. [939] [905] Cases remanded.—The Court of Criminal Appeals may reverse the judgment in a criminal action, as well upon the law as upon the facts. A cause reversed because the verdict is contrary to the evidence shall be remanded for new trial. [Acts 1st C. S. 1892, p. 39.]

Art. 849. [940] [906] Duty of clerk after judgment.—When the judgment of the Court of Criminal Appeals is final, the clerk shall make out the proper certificate of the proceedings had and judgment rendered, and mail the same to the clerk of the proper court. [Id.]

Art. 850. [941] [907] Mandate to be filed.—When the mandate of the Court of Criminal Appeals is received by the proper clerk, he shall file it with the papers of the cause, and note it upon the docket. [Id.]

Art. 851. [944] [910] When misdemeanor is affirmed.—In misdemeanor cases where the judgment has been affirmed, no proceedings need be had after filing the mandate, except to forfeit the recognizance of the defendant, or to issue a capias for the defendant, or an execution against his property, to enforce the judgment of the court, as if no appeal had been taken. [O. C. 749.]

Art. 852. [945] [911] Effect of reversal.—Where the Court of Criminal Appeals awards a new trial to the defendant, the cause shall stand as it would have stood in case the new trial had been granted by the court below. [Acts 1st C. S. 1892, p. 40.]

Art. 853. [946] [912] Motion in arrest of judgment.—Where the motion in arrest of judgment was overruled, and it is decided on appeal that the same ought to have been sustained, the cause shall stand as if the motion had been sustained, unless the appellate court directs the cause to be dismissed. [Id.]

Art. 854. [947] [913] Defendant discharged, when.—When the Court of Criminal Appeals reverses a judgment and orders the cause to be dismissed, the defendant, if in custody, must be discharged. The clerk of the appellate court shall at once transmit to the officer having custody of defendant an order by telegraph or mail. [Id.]

Art. 855. [948] [914] Bail after reversal.—When a felony case is reversed and remanded for a new trial, the defendant shall be released from custody, upon his giving bail as in other cases when he is entitled to bail. The clerk of the appellate court shall send the officer having custody of the defendant an order to that effect. [Id.]

Art. 856. [949] [915] Hearing in appellate court.—The Court of Criminal Appeals may make rules of procedure as to the hearing of criminal actions upon appeal. In every case at least two counsel for the appellant shall be heard, if they desire it, either by brief or by oral or written argument, or both. [Id.]

Art. 857. [950] [916] Appeal in habeas corpus.—When the defendant appeals from the judgment rendered on the hearing of an application under habeas corpus, a transcript of the proceedings in the cause shall be made out and certified to, together with all the testimony offered, and shall be sent up to the Court of Criminal Appeals for revision. This transcript, when the proceedings take place before the court in session, shall be prepared and certified by the clerk thereof; but when had before a judge in vacation, the transcript may be prepared by any person, under direction of the judge, and certified by such judge.

Art. 857a. Bail pending appeal.—In any habeas corpus proceeding in any court or before any judge in this State where the defendant is remanded to the custody of an officer and an appeal is taken to an Appellate Court, the defendant shall be allowed bail by the court or judge so remanding the defendant, except in capital cases where the proof is evident. The fact that such defendant is released on bail shall not be ground for a dismissal of the appeal except in capital cases where the proof is evident. [Acts 1927, 40th Leg., p. 66, ch. 43, § 1.]

Art. 858. [951–952–953] Hearing habeas corpus.—Cases of habeas corpus, taken to the Court of Criminal Appeals by appeal, shall be heard at the earliest practicable time. The defendant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court below shall be revised. The only design of the appeal is to do substantial justice to the party appealing.

Art. 859. [954] [920] Orders on appeal.—The Court of Criminal Appeals shall enter such judgment, and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no costs at all. [Acts 1st C. S. 1892, p. 40.]

Art. 860. [955] [921] Judgment conclusive.—The judgment of the Court of Criminal Appeals in appeals under habeas corpus shall be final and conclusive; and no further application in the same case can be made for the writ, except in cases specially provided for by law. [Id.]

Art. 861. [957] [923] Appellant detained by other than officer.—If the appellant in a case of habeas corpus be detained by any person other than an officer, the sheriff shall upon receiving the mandate of the Court of Criminal Appeals, immediately cause the person so held to be discharged; and the mandate shall be sufficient authority therefor. [Id.]

Art. 862. [958] [924] Judgment to be certified.—The judgment of the Court of Criminal Appeals shall be certified by the clerk thereof to the officer holding the defendant in custody, or when he is held by any person other than an officer, to the sheriff of the proper county. [Id.]

Art. 863. [959] [925] Who shall take bail bond.—When, by the judgment of the Court of Criminal Appeals upon cases of habeas corpus, the applicant is ordered to give bail, such judgment shall be certified to the officer holding him in custody; and, if such officer be the sheriff, the bail bond may be executed before him; if any other officer, he shall take the person detained before some magistrate, who may receive a bail bond, and shall file the same in the proper court of the proper county; and such bond shall have the same force and effect as a recognizance, and may be forfeited and enforced in the same manner. [Id.]

Art. 864. [960] [926] Appeal on forfeitures.—An appeal may be taken by the defendant from every final judgment rendered upon a recognizance, bail bond or bond taken for the prevention or suppression of offenses, where such judgment is for

twenty dollars or more, exclusive of costs, but not otherwise.

Art. 865. [961] [927] Writ of error.—The defendant may also have any such judgment as is mentioned in the preceding article, and which may have been rendered in courts other than the justice and corporation courts, revised upon writ of error.

Art. 866. [962] [928] Rules in forfeitures.—In the cases provided for in the two preceding articles, the proceedings shall be regulated by the same rules that govern civil actions where an appeal is taken or a writ of error sued out.

TITLE 11

JUSTICE AND CORPORATION COURTS

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1. CORPORATION COURTS

Article 867. Complaint.—Proceedings in a corporation court shall be commenced by complaint, which shall begin: "In the name and by authority of the State of Texas," and shall conclude, "Against the peace and dignity of the State," and if the offense is only covered by an ordinance, it may also conclude "Contrary to the said ordinance." The recorder need not charge the jury except upon charges requested in writing by the defendant or his attorney, and he may give or refuse such charges. Complaints before such court may be sworn to before any officer authorized to administer oaths or before the recorder, clerk of the court, city secretary, city attorney or his deputy, each of whom, for that purpose, shall have power to administer oaths. [Acts 1899, p. 42.]

Art. 868. Seal.—The said court shall have a seal with a star of five points in the center and the words "Corporation Court in ———, Texas" the impress of which shall be attached to all papers issued out of said court except subpœnas, and shall be used to authenticate the official acts of the clerk and of the recorder. [Id.]

Art. 869. Prosecutions.—All prosecutions in a corporation court shall be conducted by the city attorney of such city, town or village, or by his deputy. The county attorney of the county in which said city, town or village is situated may, if he so desires, also represent the State in such prosecutions. In such cases, the said county attorney shall not be entitled to receive any fees or other compensation whatever for said services. The county attorney shall have no power to dismiss any prosecution pending in said court unless for reasons filed and approved by the recorder. [Id.]

Art. 870. Service of process.—All process issuing out of a corporation court shall be served by a policeman or marshal of the city, town or village within which it is situated, under the same rules as are provided by law for the service by sheriffs and constables of process issuing out of the justice court, so far as applicable. Each defendant shall be entitled to at least one day's notice of any complaint against him, if such time be demanded. [Id.]

Art. 871. Commitment.—When the defendant in such cases is committed to custody, he shall be committed to the custody of the chief of police or city marshal of such city, town or village, to be held by him in accordance with the ordinance providing for the custody of prisoners convicted before such corporation court. [Id.]

Art. 872. Fines and costs, etc.—The governing body of each incorporated city, town or village shall by ordinance prescribe such rules, not inconsistent with any law of this State, as may be proper to enforce, by execution against the property of the defendant, or imprisonment of the defendant, the collection of all costs and fines imposed by such court, and shall also have power to adopt such rules and regulations concerning the practice and procedure in such court as said governing body may deem proper, not inconsistent with any law of this State. All such fines shall be paid into the city treasury for the use and benefit of the city, town or village. [Id.]

Art. 873. Collection of costs.—Such costs as may be provided for by ordinance shall be taxed against each defendant convicted, but in no case shall the ordinance prescribe the collection of greater costs than are prescribed by law to be collected of one convicted in a justice court. [Id.]

Art. 874. Jury fees, etc.—The provisions of this Code regulating the amount and collection of jury and witness fees, and for enforcing the attendance of witnesses in criminal cases tried in the justice court shall, so far as applicable, govern such corporation court. [Id.]

Art. 875. Officers' fees.—Unless provided by special charter, the governing body of each city, town or village by ordinance shall prescribe the compensation and fees which shall be paid to the recorder, city attorney, city secretary and other officers of said court, to be paid out of the municipal treasury. [Id.]

Art. 876. Appeal.—Appeals from a corporation court shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. In such appeals the trial shall be de novo. Said appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court, as far as applicable. [Id.]

Art. 877. Disposition of fees.—The fine imposed on appeal and the costs imposed on appeal and in

the corporation court shall be collected of the defendant, and such fine and the cost of the corporation court when collected shall be paid into the municipal treasury. [Id.]

Art. 878. Contempt and bail.—The recorder may punish for contempt to the same extent and under the same circumstances as the county judge may punish for contempt of the county court. He shall have power to take recognizances, admit to bail, and forfeit recognizances and bail bonds under such rules as govern such taking and forfeiture in the county court. [Id.]

2. JUSTICE COURTS

Art. 879. [969] [934] Criminal docket.—Each justice of the peace and each recorder shall keep a docket in which he shall enter the proceedings in each trial had before him, which docket shall show:

1. The style of the action.
2. The nature of the offense charged.
3. The date the warrant was issued and the return made thereon.
4. The time when the examination or trial was had, and, if a trial, whether it was by a jury or by himself.
5. The verdict of the jury, if any.
6. The judgment of the court.
7. Motion for new trial, if any, and the decision thereon.
8. If an appeal was taken.
9. The time when, and the manner in which, the judgment was enforced. [O. C. 817; Acts 1876, p. 156.]

Art. 880. [970] [935] To file transcript of docket.—At each term of the district court, each justice of the peace shall, on the first day of the term of said court for their county, file with the clerk of said court a certified transcript of the docket kept by such justice, of all criminal cases examined or tried before him since the last term of such district court; and such clerk shall immediately deliver such transcript to the foreman of the grand jury.

Art. 881. [971] [936] Warrant without complaint.—Whenever a criminal offense which a justice of the peace has jurisdiction to try shall be committed within the view of such justice, he may issue his warrant for the arrest of the offender.

Art. 882. [972] [937] Complaint shall be written.—Upon complaint being made before any justice of the peace, or any other officer authorized by law to administer oaths, that an offense has been committed in the county which a justice of the peace has jurisdiction finally to try, the justice or other officer shall reduce the same to writing and cause the same to be signed and sworn to by the complainant. It shall be duly attested by the officer before whom it was made; and when made before such justice, or when returned to him made before any other officer, the same shall be filed by him. [Acts 1876, p. 165.]

Art. 883. [973] [938] What complaint must state.—Such complaint shall state:

1. The name of the accused, if known, and, if unknown, shall describe him as accurately as practicable.
2. The offense with which he is charged, in plain and intelligible words.
3. That the offense was committed in the county in which the complaint is made.
4. It must show, from the date of the offense stated therein, that the offense is not barred by limitation. [Id.]

Art. 884. [974] [939] Warrant shall issue.—When the requirements of the preceding article have been complied with, the justice shall issue a warrant for the arrest of the accused and deliver the same to the proper officer to be executed. [Id.; O. C. 821.]

Art. 885. [975] [940] Requisites of warrant.—Said warrant shall be deemed sufficient if it contain the following requisites:

1. It shall issue in the name of "The State of Texas."
2. It shall be directed to the proper sheriff, constable or some other person specially named therein.
3. It shall command that the body of the accused be taken, and brought before the authority issuing the warrant, at a time and place therein named.
4. It must state the name of the person whose arrest is ordered, if it be known; and, if not known, he must be described as in the complaint.
5. It must state that the person is accused of some offense against the laws of the State, naming the offense.
6. It must be signed by the justice, and his office named in the body of the warrant, or in connection with his signature.

Art. 886. [976] [941] Court of inquiry.—When a justice of the peace has good cause to believe that an offense has been, or is about to be, committed against the laws of this State, he may summon and examine any witness in relation thereto. If it appears from the statement of any witness that an offense has been committed, the justice shall reduce said statements to writing and cause the same to be sworn to by each witness making the same; and, issue a warrant for the arrest of the offender, the same as if complaint has been made and filed.

Art. 887. [977] [942] Witnesses refusing to testify.—Witnesses summoned under the preceding article who shall refuse to appear and make a statement of facts, under oath, shall be guilty of a contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned until they make such statement.

Art. 888. [979] [944] Any person may execute warrant.—A justice of the peace may, when he deems it necessary, authorize any person other than a peace officer to execute a warrant of arrest by naming such person specially in the warrant. In such case, such person shall have the same powers, and shall be subject to the same rules that govern peace officers in like cases. [Acts 1876, p. 166.]

Art. 889. [980] [945] Offenses committed in another county.—Whenever complaint is made before any justice of the peace that a felony has been committed in any other than a county in which the complaint is made, such justice shall issue his warrant for the arrest of the accused, directed as in other cases, commanding that the accused be arrested and taken before any magistrate of the county where such felony is alleged to have been committed, forthwith, for examination as in other cases. [Id.]

3. TRIAL IN JUSTICE COURT

Art. 890. [981] [946] To try cause without delay.—When the defendant is brought before the justice, he shall proceed to try the cause without delay, unless good ground be shown for a postponement thereof, in which case he may postpone the trial to any time not longer than five days, and may, if he deem proper, require the defendant to give bail for his appearance; and if, when required, he fails to give bail, he shall be kept in custody until the final determination of the cause. [O. C. 823.]

Art. 891. [982] [947] Defendant may waive jury.—The accused may waive a trial by jury; and, in such case, the justice shall hear and determine the case without a jury.

Art. 892. [983–984] Jury summoned.—If the accused does not waive a trial by jury, the justice shall issue a writ commanding the proper officer to summon forthwith a jury of six men qualified to serve as jurors. Said jurors when so summoned shall remain in attendance as jurors in all cases that may come up for hearing until discharged by the court. Any man so summoned who fails to attend may be fined not exceeding twenty dollars for contempt. [O. C. 836; Acts 1876, p. 167.]

Art. 893. [985] [950] Complaint read.—If the warrant issued upon a complaint made to the justice, the complaint shall be read to the defendant. If issued by the justice without previous complaint, he shall state to the defendant the accusation against him. [O. C. 824.]

Art. 894. [986] [951] Not discharged for informality.—A defendant shall not be discharged by reason of any informality in the complaint or warrant. The proceeding before the justice shall be conducted without reference to technical rules. [O. C. 825.]

Art. 895. [987] [952] Challenge of jurors.—In all jury trials in the justice court the State and each defendant in the case shall be entitled to three peremptory challenges, and also to any number of challenges for cause, which cause shall be judged of by the justice. [Acts 1876, p. 160.]

Art. 896. [988] [953] Other jurors summoned.—If, from challenges or any other cause, a sufficient number of jurors are not in attendance, the justice shall order the proper officer to summon a sufficient number of qualified men to form the jury.

Art. 897. [989] [954] Oath to jury.—The justice shall administer the following oath to the jury: "Each of you do solemnly swear that you will well and truly try the cause about to be submitted to you and a true verdict render therein, according to the law and the evidence, so help you God." [O. C. 834.]

Art. 898. [990] [955] Defendant shall plead.—After the jury is impaneled, the defendant may plead guilty or not guilty or the special plea named in the succeeding article. [O. C. 829.]

Art. 899. [991] [956] The only special plea.—The only special plea allowed is that of former acquittal or conviction for the same offense. [O. C. 830.]

Art. 900. [992] [957] Pleading is oral.—All pleading in justice court is oral. The justice shall note upon his docket the plea offered. [O. C. 831.]

Art. 901. [993] [958] Plea of guilty.—Proof as to the offense shall be heard upon a plea of guilty and the punishment assessed by the court or jury. [O. C. 832.]

Art. 902. [994] [959] If defendant refuses to plead.—The justice shall enter a plea of not guilty if the defendant refuses to plead. [O. C. 833.]

Art. 903. [995] [960] Witnesses examined by whom.—The justice shall examine the witnesses if the State is not represented by counsel. [O. C. 835.]

Art. 904. [996] [961] May appear by counsel.—The defendant has a right to appear by counsel as in all other cases. Not more than one counsel shall conduct either the prosecution or defense. State's counsel may open and conclude the argument. [O. C. 836.]

Art. 905. [997] [962] Rules of evidence.—The rules of evidence which govern the trials of criminal actions in the district court shall apply to such actions in justice courts. [O. C. 837.]

Art. 906. [998] [963] Jury kept together.—The jury shall retire in charge of an officer when the cause is submitted to them, and be kept together until they agree to a verdict or are discharged. [O. C. 838.]

Art. 907. [999] [964] Mistrial.—A jury shall be discharged if they fail to agree to a verdict after being kept together a reasonable time. If there be time left on the same day, another jury may be impaneled to try the cause, or the justice may adjourn for not more than two days and again impanel a jury to try such cause. [O. C. 839.]

Art. 908. [1000] [965] Defendant to give bail.—In case of adjournment, the justice shall require the defendant to give bail for his appearance. If he fails to give bail he may be held in custody. [O. C. 840.]

Art. 909. [1001–1002] Verdict.—When the jury have agreed upon a verdict, they shall bring the same into court; and the justice shall see that it is in proper form and shall enter it upon his docket and render the proper judgment thereon.

Art. 910. [1003] [968] Defendant placed in jail.—Whenever, by the provisions of this title, the peace officer is authorized to retain a defendant in custody, he may place him in jail or any other place where he can be safely kept. [O. C. 844.]

Art. 911. [1004] [969] New trial granted.—A justice may, for good cause shown, grant the defendant a new trial, whenever such justice shall consider that justice has not been done the defendant in the trial of such case. [Acts 1876, p. 176.]

Art. 912. [1005] [970] Motion for new trial.—An application for a new trial must be made within one day after the rendition of judgment, and not afterward; and the execution of the judgment shall not be stayed until a new trial has been granted.

Art. 913. [1006–1007] Only one new trial granted.—Not more than one new trial shall be granted the defendant in the same case. When a new trial has been granted, the justice shall proceed, as soon as practicable, to try the case again.

Art. 914. [1008] [973] State not entitled to new trial.—In no case shall the State be entitled to a new trial.

Art. 915. [1010] [975] Effect of appeal.—When a defendant files the appeal bond required by law with the justice, all further proceeding in the case in the justice court shall cease.

Art. 916. [1011] [976] Judgments in open court.—All judgments and final orders of the justice shall be rendered in open court and entered upon his docket. [Acts 1876, p. 162.]

4. JUDGMENT IN JUSTICE COURT

Art. 917. [1012] [977] The judgment.—The judgment, in case of conviction in a criminal action before a justice of the peace, shall be that the State of Texas recover of the defendant the fine and costs, and that the defendant remain in custody of the sheriff until the fine and costs are paid; and that execution issue to collect the same. [O. C. 845.]

Art. 918. [1013] [978] Capias.—If the defendant be not in custody when judgment is rendered, or if he escapes from custody thereafter, a capias shall issue for his arrest and confinement in jail until he is legally discharged.

Art. 919. [1014] [979] Execution.—In each case of conviction before a justice from which no appeal is taken, an execution shall issue for the collection of the fine and costs, which shall be enforced and returned in the manner prescribed by law in civil actions before justices. [O. C. 849.]

Art. 920. [1015] [980] Discharged from jail.—A defendant placed in jail on account of failure to pay the fine and costs can be discharged on habeas corpus by showing:

1. That he is too poor to pay the fine and costs, and

2. That he has remained in jail a sufficient length of time to satisfy the fine and costs, at the rate of three dollars for each day.

But the defendant shall, in no case under this article, be discharged until he has been imprisoned at least ten days; and a justice of the peace may discharge the defendant upon his showing the same cause, by application to such justice; and when such application is granted, the justice shall note the same on his docket.

TITLE 12

MISCELLANEOUS PROCEEDINGS

Chap.
1. Insanity after conviction.
2. Disposition of stolen property.
3. Collection of money.
4. Pardon and parole.

CHAPTER ONE

INSANITY AFTER CONVICTION

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923. Court to appoint counsel.
924. Trial.
925. If the defendant is found insane.
926. To commit insane defendant.
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932. Conviction to be enforced.

Article 921. [1017–19] Insanity after conviction.—If it be made known to the court at any time after conviction, or if the court has good reason to believe that a defendant is insane, a jury shall be impaneled as in criminal cases to try the question of insanity. [O. C. 781–3.]

Art. 922. [1018] [983] Affidavit of insanity.—Information to the court as to the insanity of a defendant may be given by the affidavit of any respectable person, stating that there is good reason to believe that the defendant has become insane. [O. C. 782.]

Art. 923. [1021] [986] Court to appoint counsel.—If the defendant has no counsel, the court shall appoint counsel to conduct the trial for him. [O. C. 787.]

Art. 924. [1019–22] Trial.—No special formality is necessary in conducting the proceedings authorized by this chapter. The court shall see that the inquiry is so conducted as to lead to a satisfactory conclusion. The counsel for the defendant has the right to open and conclude the argument upon the trial of such issue of insanity.

Art. 925. [1023] [988] If the defendant is found insane.—Upon the trial of an issue of insanity, if the defendant is found to be insane, all further proceedings in the case against him shall be suspended until he becomes sane. [O. C. 788, 789.]

Art. 926. [1024] [989] To commit insane defendant.—If a defendant is found to be insane, the court shall make and have entered upon the minutes an order committing the defendant to the custody of the sheriff, to be kept subject to the further order of the county judge of the county. [O. C. 793.]

Art. 927. [1025] [990] Confined in asylum.—When a defendant has been committed, as provided in the preceding article, the proceedings shall forthwith be certified to the county judge, who shall at once take the necessary steps to have the defendant confined in the lunatic asylum until he becomes sane.

Art. 928. [1026] [991] When a defendant becomes sane.—If the defendant becomes sane, he shall be brought before the court in which he was convicted; and a jury shall again be impaneled to try the issue of his sanity; and, if he is found to be sane, the conviction shall be enforced against him as if the proceedings had never been suspended.

Art. 929. [1027] [992] Affidavit of sanity.—The fact that the defendant has become sane may be made known to the court in which the conviction was had by the official written certificate of the superintendent of the lunatic asylum, where he is confined, or, if not confined in the lunatic asylum, by the affidavit of any credible person.

Art. 930. [1028] [993] Proceedings upon affidavit.—When such certificate or affidavit is presented to the judge or court, either in vacation or term time, such judge or court shall issue a writ, directed to the officer having custody of such defendant, commanding such officer to bring the defendant before the court immediately, if the court be then in session; and if not then in session, to bring the defendant before the court at its next regular term for the county in which the conviction was had; which writ shall be served and returned as in the case of the writ of habeas corpus, and under like penalties for disobedience.

Art. 931. [1029] [994] When defendant is again insane.—A defendant again found to be insane shall be remanded to the custody of the superintendent of the lunatic asylum or other proper officer.

Art. 932. [1030] [995] Conviction to be enforced.—Upon the trial of the issue of insanity, if it is found that the defendant is sane, the judgment of conviction shall be enforced as if no such inquiry had been made. [O. C. 791.]

CHAPTER TWO

DISPOSITION OF STOLEN PROPERTY

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939. Owner may recover.
940. Written instrument.
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Article 933. [1031] [996] Subject to order of court.—An officer who comes into custody of property alleged to have been stolen must hold it subject to the order of the proper court or magistrate. [O. C. 794.]

Art. 934. [1032] [997] Restored on trial.—Upon the trial of any criminal action for theft, or for any other illegal acquisition of property which is by law a penal offense, the court trying the case shall order the property to be restored to the person appearing by the proof to be the owner of the same. [O. C. 795.]

Art. 935. [1033] [998] Schedule.—When an officer seizes property alleged to have been stolen, he shall immediately file a schedule of the same, and its value, with the magistrate or court having jurisdiction of the case, certifying that the property has been seized by him, and the reason therefor. [O. C. 796.]

Art. 936. [1034] [999] Restored to owner.—Upon an examining trial, if it is proved to the satisfaction of the magistrate that any person is the true owner of property alleged to have been stolen, and which is in possession of a peace officer, he may, by written order, direct the property to be restored to such owner. [O. C. 797.]

Art. 937. [1035–6] Bond required.—If the magistrate has any doubt as to the ownership of the property, he may require a bond of the claimant for its redelivery in case it should thereafter be shown not to belong to such claimant; or he may, in his discretion, direct the property to be retained by the sheriff until further orders as to its possession. Such bond shall be in a sum equal to the value of the property, with sufficient security, payable to and approved by the county judge of the county in which the property is in custody. Such bond shall be filed in the office of the county clerk of such county, and in case of a breach thereof may be sued upon in such county by any claimant of the property, or by the county treasurer of such county.

Art. 938. [1037–8] Property sold.—If the property is not claimed within six months from the

conviction of the person accused of illegally acquiring it, the sheriff shall sell it for cash, after advertising for ten days as under execution. The proceeds of such sale, after deducting all expenses of keeping such property and costs of sale, shall be paid into the treasury of the county where the defendant was convicted. Money stolen shall be paid into the county treasury if not claimed by the proper owner within six months.

Art. 939. [1039] [1004] Owner may recover.—The real owner of the property or money disposed of shall have twelve months within which to present his claim to the commissioners court for the money paid to such county treasurer. If his claim is denied by such court, he may sue the county treasurer, and, upon sufficient proof, recover judgment therefor against such county.

Art. 940. [1040—1] Written instrument.—If the property is a written instrument, it shall be deposited with the county clerk of the county where the proceedings are had, subject to the claim of any person who may establish his right thereto. The claimant of any such written instrument shall file his written sworn claim thereto with the county judge. If such judge be satisfied that such claimant is the real owner of the written instrument, the same shall be delivered to him. The county judge may, in his discretion, require a bond of such claimant, as in other cases of property claimed under any provision of this chapter, and may also before such delivery require the written instrument to be recorded in the minutes of his court.

Art. 941. [1042] [1007] Claimant to pay charges.—The claimant of property, before he shall be entitled to have the same delivered to him, shall pay all reasonable charges for the safe-keeping of the same while in the custody of the law; which charges shall be verified by the affidavit of the officer claiming the same, and determined by the magistrate of a court having jurisdiction thereof. If said charges are not paid, the property shall be sold as under execution; and the proceeds of sale, after the payment of said charges and costs of sale, paid to the owner of such property.

Art. 942. [1043] [1008] Charges of officer.—When property is sold, and the proceeds of sale are ready to be paid into the county treasury, the amount of expenses for keeping the same and the costs of sale shall be determined by the county judge. The account thereof shall be in writing and verified by the officer claiming the same, with the approval of the county judge thereto for the amount allowed and shall be filed in the office of the county treasurer at the time of paying into his hands the balance of the proceeds of such sale.

Art. 943. [1044] [1009] Scope of chapter.—Each provision of this chapter relating to stolen property applies as well to property acquired in any manner which makes the acquisition a penal offense.

CHAPTER THREE

COLLECTION OF MONEY

Art.
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945. Contents of report.
946. Report of collections for county.
947. What officers to report.
948. Report to embrace all moneys.
949. Money collected paid to treasurer.
950. Commissions on collections.
951. Commissions to other officer.

Article 944. [1045] [1010] Reports of money collected.—All officers charged by law with collecting money in the name or for the use of the State shall report in writing under oath to the respective district courts of their several counties, on the first day of each term, the amounts of money that have come to their hands since the last term of their respective courts aforesaid. [Acts 1874, p. 182.]

Art. 945. [1046] [1011] Contents of report.—Such report shall state:
1. The amount collected.
2. When and from whom collected.
3. By virtue of what process collected.
4. The disposition that has been made of the money.
5. If no money has been collected, the report shall so state.

Art. 946. [1047] [1012] Report of collections for county.—A report, such as is required by the two preceding articles, shall also be made of all moneys collected for the county, which report shall be made to each regular term of the commissioners court for each county. [Id.]

Art. 947. [1048] [1013] What officers to report.—The officers charged by law with the collection of money, within the meaning of the three preceding articles, and who are required to make the reports therein mentioned, are: District and county attorneys, clerks of the district and county courts, sheriffs, constables, and justices of the peace. [Id.]

Art. 948. [1049] [1014] Report to embrace all moneys.—The moneys required to be reported embrace all moneys collected for the State or county other than taxes. [Id.]

Art. 949. [1050] [1015] Money collected paid to treasurer.—Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provision of this Code, and all fines, forfeitures, judgments and jury fees, collected under any provision of this Code, shall forthwith be paid over by the officers collecting the same to the county treasurer of the proper county, after first deducting therefrom the legal fees and commissions for collecting the same. [O. C. 806.]

Art. 950. [1193] [1143] Commissions on collections.—The district or county attorney shall be entitled to ten per cent of all fines, forfeitures or moneys collected for the State or county, upon judgments recovered by him; and the clerk of the court in which said judgments are rendered shall be entitled to five per cent of the amount of said judgments, to be paid out of the amount when collected. [Acts 1879, p. 133.]

Art. 951. [1194] [1144] Commissions to other officer.—The sheriff or other officer who collects money for the State or county, under any provision of this Code, except jury fees, shall be entitled to retain five per cent thereof when collected. [Acts 1876, p. 287; Acts 1889, p. 95.]

CHAPTER FOUR

PARDON AND PAROLE

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954. May remit forfeitures.
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957. Shall file reasons.
958. Governor's acts under seal.
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961. Record of prisoner.
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963. Report of warden.
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Article 952. [1051] [1016] Governor may pardon, etc.—In all criminal actions, except treason and impeachment, the Governor shall have power, after conviction, to remit fines, grant reprives, [reprieves] commutations of punishment and pardons. [Const. art. 4, sec. 11.]

Art. 953. [1054] [1019] May pardon treason.—With the advice and consent of the Senate, the Governor may grant pardons in cases of treason; and to this end, he may respite a sentence therefor until

the close of the succeeding session of the legislature. [Id.]

Art. 954. [1052] [1017] May remit forfeitures.—The Governor shall have power to remit forfeitures of recognizances and bail bonds. [Id.]

Art. 955. [1055] [1020] May commute death penalty.—The Governor shall have the authority to commute the punishment in every case of capital felony, except treason, by changing the penalty of death to imprisonment for life, or for a term of years, which may be done by his warrant to the proper officer, commanding him not to execute the penalty of death, and directing him to convey the prisoner to the penitentiary, stating therein the time for which, and the manner in which, the prisoner is to be confined; which warrant shall be sufficient authority to the sheriff to deliver, and to the proper officers of the penitentiary to receive and imprison such prisoner.

Art. 956. [1056] [1021] May delay execution.—The Governor may also reprieve and delay the execution of the penalty of death to any day fixed by him in the warrant to the proper officer, and such warrant shall be executed and returned to the proper court as if it had been issued from such court.

Art. 957. [1053] [1018] Shall file reasons.—When the Governor remits fines or forfeitures, or grants reprieves, commutation of punishment or pardons, he shall file in the office of Secretary of State his reasons therefor.

Art. 958. [1057] [1022] Governor's acts under seal.—All remissions of fines and forfeitures, and all reprieves, commutations of punishment and pardons, shall be signed by the Governor, and certified by the Secretary of State, under the great seal of State, and shall be forthwith obeyed by any officer to whom the same may be presented.

Art. 959. Power of parole.—Meritorious prisoners who may be in prison under a sentence to penal servitude may be allowed to go upon parole, outside of the building and jurisdiction of the penitentiary authorities, subject to the provisions of this title, and to such regulations and conditions as may be made by the Board of Prison Commissioners, with the approval of the Governor. Such parole shall be made only by the Governor, or with his approval. [Acts 1905, p. 33; Acts 1911, p. 64; Acts 1913, p. 262; Acts 1st C. S. 1913, p. 4.]

Art. 960. Power to recall.—While on parole, such prisoners shall remain under the control of the Board of Prison Commissioners, and subject at any time to be taken back within the physical possession and control of said Board as under the original sentence. Such retaking shall be at the direction of the Governor, and all orders and warrants issued by said Board under such authority for the retaking of such prisoners shall be sufficient warrant for all officers named therein to return to actual custody such paroled convicts, and it is the duty of all officers to execute such orders as ordinary criminal processes. [Id.]

Art. 961. Record of prisoner.—The wardens or sergeants or guards of such prisoners, or whoever has in custody convicts subject to parole under this title, shall cause to be kept at such prison or place of confinement at which such convicts are confined, an accurate record of each prisoner therein confined upon sentence. Such record shall include a biographical sketch covering such items as may indicate the cause of the criminal character or conduct of the prisoner, and also a record of the demeanor, education and labor of the prisoner while confined. Whenever such prisoner is transferred from one prison or place of confinement to another, a copy of such record or an abstract of the substance thereof, together with certified copy of the sentence of such prisoner, shall be transmitted with such prisoner to the place of confinement to which he shall be transferred, and delivered to the prison officer in charge thereof and retained by him as a part of the record of such prisoner. [Acts 1st C. S. 1913, p. 4.]

Art. 962. Optional parole.—Any prisoner now serving or who may be sentenced to serve a term of imprisonment in the penitentiary, shall be paroled, if the prisoner so desires, three months before the expiration of his term of service, after deducting from his sentence all commutations for good behavior, and such parole shall extend until such prisoner shall violate the parole rules or until the expiration of such prisoner's original term of imprisonment, unless terminated by the restoration of citizenship by the Governor. [Acts 1911, p. 64.]

Art. 963. Report of warden.—The wardens of such prisoners shall make or cause to be made to the Board of Prison Commissioners semi-annually, a written report based upon the record of such prisoner as to whether or not such prisoner shall be paroled or pardoned, and such report shall be made with reference to each prisoner in charge of such warden, and shall give reasons for such recommendations as are made, and if no recommendations are made, the report shall so state. [Acts 1st C. S. 1913, p. 4.]

Art. 964. Action on report.—The Board shall preserve said reports and recommendations and consider the same, and approve or disapprove the same within three months after the same are received. They shall transmit to the Governor without delay a report of such recommendations for parole or pardon as they shall approve. [Id.]

Art. 965. May recommend discharge.—Whenever any prisoner serving an indeterminate sentence, as provided by law, shall have served for twelve months on parole in a manner acceptable to the Board, it shall certify such fact to the Governor, with the recommendation that the said prisoner be pardoned and finally discharged from the sentence under which he is serving. The Board shall continue its supervision and care over such paroled prisoner until such time as the Governor shall pardon him. [Id.]

Art. 966. May restore citizenship.—When a convict who has been paroled has complied with the rules and conditions governing his parole until the end of the term to which he was sentenced, and without a revocation of his parole, he shall, upon a written discharge from the Superintendent and Prison Commissioners, setting forth these facts, be recommended by the Board to the Governor for restoration of his citizenship. [Id.]

Art. 967. Reduction of time.—If a prisoner sentenced to the penitentiary shall not be paroled under the provisions of this title, or if he shall only be sentenced to serve the minimum term of imprisonment fixed by law, then the general rule shall apply to his sentence, and he shall be entitled to such reduction of time as provided by law. [Id.]

TITLE 13

INQUESTS

1. UPON DEAD BODIES

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968. When held.
969. Body disinterred.
970. Physician called in.
971. Chemical analysis.
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973. Death in jail.
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2. FIRE INQUESTS

Art.
990. Investigation.
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995. Testimony written down.
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1. UPON DEAD BODIES

Article 968. [1058] [1023] When held.—Any justice of the peace shall be authorized, and it shall be his duty, to hold inquests without a jury within his county, in the following cases:

1. When a person dies in prison.
2. When any person is killed, or from any cause dies an unnatural death, except under sentence of the law, or in the absence of one or more good witnesses.
3. When the body of a human being is found, and the circumstances of his death are unknown.
4. When the circumstances of the death of any person are such as to lead to suspicion that he came to his death by unlawful means. [O. C. 851; Acts 1887, p. 31.]

Art. 969. [1059] [1024] Body disinterred.—When a body upon which an inquest ought to have been held has been interred, the justice may cause it to be disinterred for the purpose of holding such inquest. [O. C. 852.]

Art. 970. [1060] Physician called in.—Upon an inquest held to ascertain the cause of death the justice shall, if he deems it necessary, call in the county health officer, or, if there be none, or if it be impracticable to secure his services, then some regular physician, to make an autopsy in order to determine whether the death was occasioned by violence; and if so, its nature and character. The county in which such inquest and autopsy is held shall pay to the physician making such autopsy a fee of not less than ten nor more than fifty dollars, the excess over ten dollars to be determined by the commissioners court after ascertaining the amount and nature of the work performed in making such autopsy. [Acts 1893, p. 155.]

Art. 971. [1061] [1024] Chemical analysis.—If upon such inquest, it becomes necessary to determine whether the death has been produced by poison, the justice upon request of the physician performing such autopsy shall call in to his aid, if necessary, some medical expert or chemist qualified to make an analysis of the stomach and its contents, together with such other portions of the body as may be necessary to be analyzed and tested, for the purpose of determining the presence of poison in such body. The commissioners court of the county shall pay a reasonable fee to such expert or chemist for his services not to exceed fifty dollars. [Id.]

Art. 972. [1062] [1025] Upon what justice may act.—The justice shall act in such cases upon information given him by any credible person or upon facts within his own knowledge. [O. C. 853.]

Art. 973. [1063] [1026] Death in jail.—The sheriff and every keeper of any prison shall inform such justice of the death of any person confined therein. [O. C. 854.]

Art. 974. [1064] [1027] Subpœnas.—The justice may issue subpœnas to enforce the attendance of witnesses upon an inquest and may issue attachments for those subpœnaed who fail to attend.

Art. 975. [1065] [1028] Testimony.—Witnesses shall be sworn and examined by the justice and their testimony reduced to writing by or under his direction, and subscribed by them.

Art. 976. [1066] [1029] Private inquest.—Should the justice deem proper, the inquest may be held in private; but in all cases where a person has been arrested, charged with having caused the death of the deceased, such person and his counsel shall have the right to be present at the inquest, and to examine witnesses and introduce evidence. [O. C. 862.]

Art. 977. [1067] [1030] Hindering proceedings.—If any other persons than the justice, the accused and his counsel, and the counsel for the State, are present at the inquest, they shall not interfere with the proceedings. No question shall be asked a witness, except by the justice, the accused or his counsel, and the counsel for the State. The justice of the peace may fine any person violating this article for contempt of court, not exceeding twenty dollars, and may cause such person to be placed in custody of a peace officer; and removed from the presence of the inquest. [O. C. 862.]

Art. 978. [1068] [1031] Inquest record.—The justice shall keep a book in which he shall make a minute of all the proceedings relating to every inquest held by him. Such minute shall set forth:

1. The nature of the information given the justice, and by whom given, unless he acts upon facts within his own knowledge.
2. The time and place, when and where, the inquest is held.
3. The name of the deceased, if known, or if not known, as accurate a description of him as can be given.
4. The finding by the justice at the inquest.
5. If any arrest is made of a suspected person before inquest held, the name of the person and the fact of his arrest, as well as everything material which relates thereto, shall be noted. [O. C. 864; Acts 1887, p. 32.]

Art. 979. [1069] [1032] In homicide cases.—When the justice has knowledge that the killing was the act of any person, or when an affidavit is made that such person has killed the deceased, a warrant may issue for the arrest of the accused before inquest held; and the accused and his counsel shall have the right to be present when the same is held, and to examine the witnesses and introduce evidence before the jury.

Art. 980. [1070] [1033] Warrant of arrest.—Any peace officer to whose hands the justice's warrant of arrest shall come is bound to execute the same without delay, and he shall detain the person arrested until his discharge is ordered by the justice or other proper authority.

Art. 981. [1072] [1035] If slayer arrested.—If it be found by the justice, upon evidence adduced at the inquest, that a person already arrested did in fact kill the deceased, or was an accomplice or accessory to the death, the justice may, according to the facts of the case, commit him to jail or require him to execute a bail bond with security for his appearance before the proper court to answer for the offense. [Acts 1887, p. 32.]

Art. 982. [1073] [1036] Bail bond.—A bail bond taken before a justice shall be sufficient if it state the grade of offense of which the party is accused, be payable to the State of Texas, be dated and signed by the principal and his surety. Such bond may be forfeited, and judgment recovered thereon, and the same collected as in the case of any other bail bond.

Art. 983. [1074] [1037] Warrant of arrest.—When, by the evidence adduced before a justice holding an inquest, it is found that any person not in custody killed the deceased, or was an accomplice or accessory to the death, the justice shall forthwith issue his warrant of arrest to the sheriff or other peace officer, commanding him to arrest the person accused, and bring him before such justice, or before some other magistrate named in the writ. [O. C. 872; Acts 1887, p. 32.]

Art. 984. [1071–1075] Requisites of warrant.—A warrant of arrest shall be sufficient if it run in the name of the State of Texas, give the name of the accused, or describe him when his name is unknown, recite the offense with which he is charged

in plain language, and be dated and signed officially by the justice. [O. C. 873.]

Art. 985. [1076] [1039] Officer shall execute warrant.—The peace officer into whose hands such warrant may come shall forthwith execute the same by arresting the accused and taking him before the magistrate named in the warrant; and the same proceedings shall be had thereon as in other cases where persons accused of offenses are brought before him. [O. C. 874.]

Art. 986. [1077] [1040] Arrest pending inquest.—Nothing contained in this title shall prevent proceedings being had for the arrest and examination of an accused before a magistrate, pending the inquest. When a person accused of an offense has been already arrested under a warrant from the justice, he shall not be taken from the hands of the peace officer by a warrant from any other magistrate. [O. C. 877.]

Art. 987. [1078] [1041] To certify proceedings.—The justice holding an inquest shall certify to the proceedings, and shall enclose in an envelope the testimony taken, the finding of the justice, the bail bonds, if any, and all other papers connected with the inquest, shall seal up such envelope and without delay deliver it properly endorsed to the clerk of the district court, who shall safely keep the same in his office subject to the order of the court. [Acts 1887, p. 32.]

Art. 988. [1079] [1042] Evidence.—The justice shall preserve all evidence that may come to his knowledge and possession which might in his opinion tend to show the real cause of the death or the person who caused such death, and deliver all such evidence to the district clerk, who shall keep the same safely, subject to the order of the court.

Art. 989. [1080] [1043] Witnesses to give bail.—The justice, if he deems it proper, may require bail of witnesses examined before the inquest to appear and testify before the next grand jury, or before an examining or other proper court, as in other cases.

2. FIRE INQUESTS

Art. 990. [1081] [1044] Investigation.—When an affidavit is made by a credible person before any justice of the peace that there is ground to believe that any building has been unlawfully set or attempted to be set on fire, such justice shall cause the truth of such complaint to be investigated. [Act June 2, 1873, p. 171.]

Art. 991. [1082] [1045] Proceedings.—The proceedings in such case shall be governed by the laws relating to inquests upon dead bodies. The officer conducting such investigation shall have the same powers as are conferred upon justices of the peace in the preceding articles of this chapter. [Id.]

Art. 992. [1083] [1046] Verdict.—The jury after inspecting the place in question and after hearing the testimony, shall deliver to the justice holding such inquest their written signed verdict in which they shall find and certify how and in what manner such fire happened or was attempted, and all the circumstances attending the same, and who are guilty thereof, either as principal or accessory, and in what manner. If such jury is unable to so ascertain they shall find and certify accordingly. [Id.]

Art. 993. [1084] [1047] Witnesses bound over.—If the jury find that any building has been unlawfully set on fire or has been attempted so to be, the justice holding such inquest shall bind over the witnesses to appear and testify before the next grand jury of the county in which such offense was committed. [Id.]

Art. 994. [1085] [1048] Warrant for accused.—If the person charged with the offense, if any, be not in custody, the justice of the peace shall issue a warrant for his arrest; and when arrested, such person shall be dealt with as in other like cases. [Id.]

Art. 995. [1086] [1049] Testimony written down.—In all such investigations, the testimony of all witnesses examined before the jury shall be reduced to writing by or under the direction of the justice and signed by each witness. Such testimony together with the verdict and all bail bonds taken in the case shall be certified to and returned by the justice to the next district or criminal district court of his county. [Id.]

Art. 996. [1087] [1050] Compensation.—The pay of the officers and jury making such investigation shall be the same as that allowed for the holding of an inquest upon a dead body, so far as applicable, and shall be paid in like manner. [Id.]

TITLE 14

FUGITIVES FROM JUSTICE

Art.
997. Delivered up.
998. To aid in arrest.
999. Magistrate's warrant.
1000. Complaint.
1001. Bail or commitment.
1002. Notice of arrest.
1003. Discharge.
1004. Second arrest.
1005. Governor may demand fugitive.
1006. Pay of agent.
1007. Reward.
1008. Sheriff to report.

Article 997. [1088] [1051] Delivered up.—A person charged in any other State or territory of the United States with treason or any felony who shall flee from justice and be found in this State, shall on demand of the executive authority of the State or territory from which he fled, be delivered up, to be removed to the State or territory having jurisdiction of the crime. [O. C. 878.]

Art. 998. [1089–1092] To aid in arrest.—All peace officers of the State shall give aid in the arrest and detention of a fugitive from any other State or territory, that he may be held subject to a requisition by the Governor of the State or territory, from which he fled. [O. C. 879.]

Art. 999. [1090] [1053] Magistrate's warrant.—When a complaint is made to a magistrate that any person within his jurisdiction is a fugitive from justice from another State or territory, he shall issue a warrant of arrest directing a peace officer to apprehend and bring the accused before him.

Art. 1000. [1091] [1054] Complaint.—The complaint shall be sufficient if it recites:

1. The name of the person accused.
2. The State or territory from which he has fled.
3. The offense committed by the accused.
4. That he has fled to this State from the State or territory where the offense was committed.
5. That the act alleged to have been committed by the accused is a violation of the penal law of the State or territory from which he fled. [O. C. 883.]

Art. 1001. [1093–4–5] Bail or commitment.—When the accused is brought before the magistrate, he shall hear proof, and if satisfied that the accused is charged in another State or territory with the offense named in the complaint, he shall require of him bail with sufficient security, in such amount as the magistrate deems reasonable, to appear before such magistrate at a specified time. In default of such bail, he may commit the defendant to jail to await a requisition from the Governor of the State or territory from which he fled. A properly certified transcript of an indictment against the accused is sufficient to show that he is charged with the crime alleged. One arrested under the provisions of this title shall not be committed or held to bail for a longer time than ninety days.

Art. 1002. [1096–7–8] Notice of arrest.—The magistrate who held or committed such fugitive shall immediately notify the Secretary of State and the

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

district or county attorney of his county of such fact and the date thereof, stating the name of such fugitive, the State or territory from which he fled, and the crime with which he is charged; and such officers so notified shall in turn notify the Governor of the proper State or territory.

Art. 1003. [1099] [1062] Discharge.—A fugitive not arrested under a warrant from the Governor of this State before the expiration of ninety days from the day of his commitment or the date of the bail bond shall be discharged. [O. C. 889.]

Art. 1004. [1100] [1063] Second arrest.—A person who has once been arrested under the provisions of this title and discharged under the provisions of the preceding article or by habeas corpus shall not be again arrested upon a charge of the same offense, except by a warrant from the Governor of this State. [O. C. 890.]

Art. 1005. [1101] [1064] Governor may demand fugitive.—When the Governor deems it proper to demand a person who has committed an offense in this State and has fled to another State or territory, he may commission any suitable person to take such requisition. The accused, if brought back to the State, shall be delivered up to the sheriff of the county in which it is alleged he has committed the offense. [O. C. 881.]

Art. 1006. [1102] [1065] Pay of agent.—The officer or person so commissioned shall receive such compensation only as the Governor shall allow for such service, to be paid out of the State treasury upon a certificate of the Governor reciting the service rendered and the allowance therefor. [O. C. 881, Acts 1923, p. 397.]

Art. 1007. [1103–4–5] Reward.—The Governor may offer a reward for the apprehension of one accused of a felony in this State who is evading arrest, by causing such offer to be published in such manner as he deems most likely to effect the arrest. The reward shall be paid out of the State treasury to the person who becomes entitled to it upon a certificate of the Governor reciting the facts which entitle such person to receive it.

Art. 1008. Sheriff to report.—Each sheriff upon the close of any regular term of the district or criminal district court in his county, or within thirty days thereafter, shall make out and mail to the Adjutant General a certified list of all persons who, after indictment for a felony, have fled from said county. Such lists shall contain the full name of each such fugitive, the offense with which he is charged, and a description giving his age, height, weight, color and occupation, the complexion of skin and the color of eyes and hair, and any peculiarity in person, speech, manner or gait that may serve to identify such person so far as the sheriff may be able to give them. The Adjutant General shall prescribe and forward to all sheriffs the necessary blanks upon which are to be made the lists herein required. [Acts 1887, p. 44.]

TITLE 15

COSTS IN CRIMINAL ACTIONS

Chap.

1. Taxation of Costs.
2. Costs Paid by the State.
3. Costs Paid by Counties.
4. Costs to be Paid by Defendant.

CHAPTER ONE

TAXATION OF COSTS

Art.

1009. Fee books.
1010. Fee book shall show what.
1011. Extortion.
1012. Costs payable in money.
1013. When costs payable.
1014. Bill of costs to accompany appeal.
1015. Taxing after payment.
1016. Costs retaxed.
1017. Fee book evidence.

Article 1009. [1106] [1069] Fee books.—Each clerk of a court, county judge, justice of the peace, sheriff, constable and marshal, shall keep a fee book and enter therein all fees charged for service rendered in any criminal action or proceeding; which book may be inspected by any person interested in such costs. [Acts 1876, p. 203.]

Art. 1010. [1107] [1070] Fee book shall show what.—The fee book shall show the number and style of the action or proceeding in which the costs are charged, and shall name the officer or person to whom such costs are due, and state each item of costs separately.

Art. 1011. [1108] [1071] Extortion.—No item of costs shall be taxed for a purported service which was not performed, or for a service for which no fee is expressly provided by law.

Art. 1012. [1109] [1072] Costs payable in money.—All costs in criminal actions or proceedings are due and payable in money.

Art. 1013. [1110] [1073] When costs payable.—No costs shall be payable by any person until there be produced, or ready to be produced, unto the person chargeable with the same, a written bill containing the items of such costs, signed by the officer to whom such costs are due or by whom the same are charged.

Art. 1014. [1111] [1074] Bill of costs to accompany appeal.—When a criminal action or proceeding is taken by appeal from one court to another, or whenever the same is in any other way transferred from one court to another, it shall be accompanied by a complete bill of all costs that have accrued therein, certified to and signed by the proper officer of the court from which the same is forwarded.

Art. 1015. [1112] [1075] Taxing after payment.—No further costs shall be taxed against or collected from a defendant after he has paid the costs taxed against him at the time of such payment, unless otherwise adjudged by the court upon a proper motion filed for that purpose.

Art. 1016. [1113] [1076] Costs retaxed.—Whenever costs have been erroneously taxed against a defendant, he may have the error corrected, and the costs properly taxed, upon filing a written motion for that purpose in the court in which the case is then or was last pending. Such motion may be made at any time within one year after the final disposition of the case in which the costs were taxed, and not afterward. Notice of such motion shall be given to each party to be affected thereby, as in the case of a similar motion in a civil action.

Art. 1017. [1114] [1077] Fee book evidence.—The items of costs taxed in an officer's fee book shall be prima facie evidence of the correctness of such items.

CHAPTER TWO

COSTS PAID BY THE STATE

Art.

1018. Defendant liable for costs.
1019. Conviction for misdemeanor.
1020. Fees in examining court.
1021. District attorneys of two or more counties.
1022. If there are several defendants.
1023. Fees in trust cases.
1024. Attorney for Dallas and Harris counties.
1025. Fees to district and county attorneys.
1026. Fees of district clerk.
1027. Officers to repay state.
1028. Sheriff due fees after approval.
1029. Fees to sheriff or constable.
1030. Fees to sheriff or constable.
1031. Services by officer other than sheriff.
1032. Sheriff shall not charge fees, when.
1033. Officer shall make out cost bill.
1034. Judge to examine bill, etc.
1035. Duty of Comptroller.
1036. Witness fees.

Article 1018. [1136] [1091] Defendant liable for costs.—When the defendant is convicted, the costs and fees paid by the State under this title shall be a charge against him, except when sentenced to

death or to imprisonment for life, and when collected shall be paid into the State Treasury. [O. C. 956.]

Art. 1019. [1124–1135] Conviction for misdemeanor.—If the defendant is indicted for a felony and convicted of a misdemeanor, no costs shall be paid by the State to any officer.

Art. 1020. [1119–1137] Fees in examining court.—In each case where a county judge or a justice of the peace shall sit as an examining court in a felony case, they shall be entitled to the same fees allowed by law for similar services in misdemeanor cases to justices of the peace, and ten cents for each one hundred words for writing down testimony, to be paid by the State, not to exceed three dollars for all his services in any one case.

Sheriffs and constables serving process and attending any examining court in the examination of any felony case shall be entitled to such fees as are fixed by law for similar services in misdemeanor cases to be paid by the State, not to exceed four dollars in any one case.

District and county attorneys, for attending and prosecuting any felony case before an examining court, shall be entitled to a fee of five dollars to be paid by the State for each case prosecuted by him before such court. Such fee shall not be paid except in cases where the testimony of the material witnesses to the transaction shall be reduced to writing, subscribed and sworn to by said witness.

The fees mentioned in this article shall become due and payable only after the indictment of the defendant for the offense for which he was charged in the examining court and upon an itemized account sworn to by the officers claiming such fees approved by the judge of the district court.

Only one fee shall be allowed for an examining trial, though more than one defendant is joined in the complaint. When defendants are proceeded against separately who could have been proceeded against jointly, but one fee shall be allowed in all cases that could have been so joined. The account of the officer and the approval of the judge must show that the provisions of this article are complied with. [Acts 1st C. S. 1907, p. 466.]

Art. 1021. [1120] District attorneys of two or more counties.—District Attorneys in all judicial districts composed of two counties or more, shall receive from the State as pay for their services the sum of $500.00 per annum, and in addition thereto, shall receive from the State as pay for their services, the sum of $20.00 for each day they attend the Session of the District Court in their respective districts in the necessary discharge of their official duties, and $20.00 for each day used in necessarily going to and coming from the District Court in one county to the District Court in another county in their respective districts in the necessary discharge of their official duties, and in attending any Session of said Court; and $20.00 per day for each day they represent the State at examining trials, inquest proceedings and habeas corpus proceedings in vacation; said $20.00 per day to be paid upon the sworn account of the District Attorney, approved by the District Judge, who shall certify that the attendance of said District Court for the number of days mentioned in his account was necessary, after which said account shall be recorded in the Minutes of the District Court; provided that the maximum number of days for which compensation is allowed shall not exceed one hundred and seventy-five days in any one year. All commissions and fees allowed District Attorneys under the provisions hereof, in the districts composed of two or more counties, shall, when collected, be paid to the District Clerk of the County of his residence, who shall pay the same over to the State Treasurer. [Acts 1925, 39th Leg., p. 406, ch. 173, § 1; Acts 1927, 40th Leg., p. 350, ch. 236, § 1.]

Section 2 of Acts 1927, 40th Leg., p. 350, ch. 236, repeals all conflicting laws and parts of laws.

This article in so far as it applied to the 34th Judicial District, consisting of El Paso, Hudspeth, and Culberson counties, was amended by Acts 1926, 39th Leg., 1st C. S., p. 14, ch. 9. Civ. St. arts. 326a–326e, which see.

Art. 1022. [1121] [1082] If there are several defendants.—If there be more than one defendant in a case, and they are tried jointly, but one fee shall be allowed the district or county attorney. If the defendants sever, and are tried separately, a fee shall be allowed for each final conviction, except in habeas corpus cases, in which cases only one fee shall be allowed, without regard to the number of defendants or whether they are tried jointly or separately.

Art. 1023. Fees in trust cases.—For every conviction obtained under the provisions of the anti-trust laws, the State shall pay to the county or district attorney in such prosecution the sum of two hundred and fifty dollars. If both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: One hundred dollars to the county attorney, and one hundred and fifty dollars to the district attorney. [Acts 1907, p. 458.]

Art. 1024. Attorney for Dallas and Harris counties.—In addition to the fees allowed by law to other district attorneys for other services, the Criminal District Attorney of Dallas county and the Criminal District Attorney of Harris county shall each receive the following fees:

For all convictions of felony when the defendant does not appeal or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, thirty dollars for each felony other than felonious homicide, and forty dollars for each such homicide. For representing the State in each case of habeas corpus where the applicant is charged with felony, twenty dollars. [Acts 1911, p. 116, Acts 1917, p. 316.]

Art. 1025. [1118–1131] Fees to district and county attorneys.—In each county where there have been cast at the preceding presidential election 3000 votes or over, the district or county attorney shall receive the following fees:

For all convictions of felony when the defendant does not appeal, or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, twenty-four dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

For representing the State in each case of habeas corpus where the applicant is charged with felony, sixteen dollars.

In each county where less than 3000 such votes have been so cast, such attorney shall receive thirty dollars for each such conviction of felony other than homicide, and fifty dollars for each such conviction of felonious homicide, and twenty dollars for each such habeas corpus case. [Acts 1895, p. 148; Acts 1st C. S. 1897, p. 5.]

Art. 1026. [1127–1129] Fees of district clerk.—In each county where there have been cast at the preceding presidential election 3000 votes or over, the district clerk or criminal district clerk shall receive the following fees: Eight dollars for each felony case finally disposed of without trial or dismissed, or tried by jury whether the defendant be acquitted or convicted; eight cents for each one hundred words in each transcript on appeal or change of venue; eighty cents for entering judgment in habeas corpus cases, and eight cents for each one hundred words for preparing transcript in habeas corpus cases. In no event shall the fees in habeas corpus cases exceed eight dollars in any one case. In each county where less than 3000 such votes have been so cast, such clerk shall receive ten dollars for each felony case so disposed of, and ten cents for each one hundred words in such transcripts, and one dollar for entering judgment in each habeas corpus. The district clerk of any county shall receive fifty cents for recording each account of the sheriff. [Acts 1st C. S. 1897, p. 5.]

Art. 1027. [1123–1130] Officers to repay State.—In all cases when the defendant shall be finally convicted of a misdemeanor, the Sheriff shall return to the State Treasurer a sum of money equal to the amount he received from the State in such case, and the sheriff and his bondsmen shall be responsible to

the State for such sum. In such cases all fees received by the district clerk shall be refunded by him to the State. [Acts 1903, p. 112, Acts 1923, p. 402.]

Art. 1028. [1123–1130] Sheriff due fees after approval.—All fees accruing under the two succeeding articles shall be due and payable at the close of each term of the district court, after being duly approved, except as provided for in subdivisions 7 and 8 of said articles, which shall be paid when approved by the judge under whose order the writ was issued.

Art. 1029. [1122] Fees to sheriff or constable.—In each county where there have been cast at the preceding presidential election 3000 votes or more, the sheriff and constable shall receive the following fees:

1. For executing each warrant of arrest or capias, for making arrest without warrant when so authorized by law, the sum of one dollar, and in all cases five cents per mile for each mile actually and necessarily traveled in going to the place of arrest; and for conveying each prisoner to jail, he shall receive the mileage provided in subdivision 4.

2. For summoning or attaching each witness, fifty cents.

3. For summoning a jury in each case where a jury is actually sworn in, two dollars.

4. For removing or conveying prisoners, for each mile going and coming, including guards and all other necessary expenses, when traveling by railroad, ten cents. When traveling otherwise than by railroad, fourteen cents; provided that where more than one prisoner is so conveyed or removed at the same time, in addition to the foregoing, he shall be allowed eight cents per mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case, and he shall serve process on them in the same neighborhood or vicinity during the same trip, he shall not charge mileage for serving such witness to or from the county seat, but shall charge only one mileage, and for such additional only as are actually and necessarily traveled in summoning and attaching each additional. When process is sent by mail to any officer away from the county seat, or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process. The return of the officer shall show the character of the services, and the miles actually traveled in accordance with this subdivision; and his account shall show the facts.

6. For service of criminal process, not otherwise provided for, the sum of five cents a mile going and returning shall be allowed. If two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying witnesses attached by him to any court, or in habeas corpus proceedings out of his county, or when directed by the judge from any other county to the court where the case is pending, one dollar and fifty cents per day for each day actually and necessarily consumed in going to and returning from such courts, and his actual and necessary expenses by the nearest practical route, or nearest practical public conveyance, the amount to be stated by him in an account which shall show the place where the witnesses were attached, the distance to the nearest railroad station, and miles actually traveled to each court; if horses or vehicles are used, from whom hired and price paid and length of time consumed and paid out for feeding horses, and to whom; if meals and lodgings are provided from whom and when, and price paid; provided that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. No item for expenses shall be allowed, unless the officer present with his account to the officer whose duty it is to approve the same, a written receipt for each item of account, except as to such items as are furnished by the officer himself. When meals and lodgings are furnished by the officer in person, conveying the witness, he shall be allowed to receive not exceeding twenty-five cents per meal, and twenty-five cents per night for lodging. Each said receipt shall be filed with the clerk of the court approving such accounts. Said accounts shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest place of serving the attachment, giving his name and residence, and that said witness made oath in writing before said magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect, or shall show that the witness refused to make the affidavit; and should it appear to the court that the witness is willing and able to give bond, the sheriff shall not be entitled to any compensation for conveying such witness. All accounts for fees in criminal cases, by sheriffs, shall be sworn to by the said officer, and shall state that said account is true, just and correct in every particular, and be presented to the judge, who shall during such term of court, carefully examine such account and, if found to be correct, in whole or in part, shall so certify and allow the same for such amount as he may find to be correct. If allowed by him in whole or in part, he shall so certify; and such account, with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court. The clerk shall certify to the original account, and shall show that the same has been recorded, and said account shall then become due, and the same shall constitute a voucher on which the Comptroller is authorized to issue a warrant, if such account, when presented to the Comptroller, shall be accompanied by a certified copy under the hand and seal of the district clerk, of the returns made on the process for which such officer is claiming fees, corresponding to the amount so claimed in his account. The minutes of the court above provided for, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving the writ for the attachment of such a witness shall take bond for the appearance of such witness, he shall be entitled to receive from the State one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that the said bond is in proper form, and has been executed by the witness with one or more good and solvent sureties; and said bond shall in no case be less than one hundred dollars. The Comptroller may require from such officer a certified copy of all such process before auditing any account. When no inquest or examining trial has been held at which sufficient evidence is taken upon which to find an indictment, which fact shall be certified by the grand jury, or when the grand jury shall state to the district judge that an indictment cannot be procured except upon testimony of nonresident witnesses, the district judge may have attachments issued to other counties for witnesses not to exceed the number for which the sheriff may receive pay as provided for by law, to testify before grand juries; provided, that the judge shall not approve the accounts of any sheriff for more than one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury, in which case the sheriffs shall receive the same compensation as he does for conveying attached witnesses before the court. Subdivision 7 of this article shall apply to the officers affected thereby in all counties in Texas.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 4 when removing such prisoner out of the county, under an order issued by a district or appellate judge. [Acts 1923, p. 399.]

Art. 1030. [1130] Fees to sheriff or constable.—In each county where there have been cast at the preceding presidential election less than 3000 votes, the sheriff or constable shall receive the following fees when the charge is a felony:

1. For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, the sum of one dollar; and five cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying the prisoner or prisoners to jail, mileage, as provided for in subdivision 4 shall be allowed; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For executing each warrant of arrest or capias, or for making arrest without warrant, when authorized by law, three dollars and fifteen cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying prisoners to jail, mileage as provided for in subdivision 4 shall be allowed; and one dollar shall be allowed for the approval of a bond.

2. For summoning or attaching each witness, fifty cents; provided that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For summoning or attaching each witness, fifty cents, and where a bond is required of said witness, for the approval of said bond, one dollar.

3. For summoning jury in each case, where jury is actually sworn in, two dollars.

4. For removing a prisoner, for each mile going and coming, including guards and all other expenses, when traveling by railroad, ten cents; when traveling otherwise than by railroad, fifteen cents; provided, that when more than one prisoner is removed at the same time, in addition to the foregoing, he shall only be allowed ten cents a mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case, and he shall serve process on them in the same vicinity or neighborhood, during the same trip; he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and miles actually traveled in accordance with this subdivision; and his accounts shall show the facts; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, ten cents; provided, that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case and he shall serve process on them in the same vicinity or neighborhood, during the same trip, he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage, and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and the miles actually traveled in accordance with this subdivision; and his accounts shall show the facts.

6. To officers for service of criminal process not otherwise provided for, the sum of five cents a mile going and returning, shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rules prescribed in subdivision 5 shall apply; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: To officers for service of criminal process not otherwise provided for, the sum of ten cents a mile going and returning shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying a witness attached by him to any court, or grand jury, or in habeas corpus proceeding out of his county, or when directed by the judge from any other county, to the court where the case is pending, one dollar per day for each day actually and necessarily consumed in going and returning from such court, and his actual necessary expenses, by the nearest practicable route or nearest practicable public conveyance, the amount to be stated by him in an account, which shall show the place at which the witness was attached, the distance to the nearest railroad station, and miles actually traveled to reach the court; if horses or vehicles are used, from whom hired, and price paid, and length of time consumed, and the amount paid out for feeding horses, and to whom; if meals and lodging were provided, from whom and when and price paid; provided, that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. Said account shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest the place of serving the attachment, giving his name and residence, and that said witness made oath in writing before such magistrate, certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect or shall show that the witness refused to make the affidavit and, should it appear to the court that the witness was able and willing to give bond the sheriff shall not be entitled to any compensation for conveying such witness; and said account shall be sworn to by the officer, and shall state that said account is true, just and correct in every particular, and present same to the judge, who shall, during such term of court, carefully examine such account, and, if found to be correct, in whole or in part, shall so certify, and allow the same for such an amount as he may find to be correct; and, if by him allowed, in whole or in part, he shall so certify; and such account with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book to be kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court; and the clerk shall certify to the original account and shall show that the same has been so recorded; and said account shall then become due, and the same shall constitute a voucher, on which the Comptroller is authorized to issue a warrant; and such minutes of the court, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving a writ for the attachment of such witness shall take a bond for the appearance of any such witness he shall be entitled to receive from the State, one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that said bond is in proper form, and has been executed by the witness with one or more good or solvent securities; and said bond shall, in no case, be less than one hundred dollars. The Comptroller may require from such

officer a certified copy of all such process before auditing any such account.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 5, when removing such prisoner out of the county under an order issued by a district or appellate judge. [Acts 1923, p. 402.]

Art. 1031. [1125] [1084] Services by officer other than sheriff.—When services have been rendered by any peace officer other than a sheriff, such as are enumerated in the two preceding articles, such officer shall receive the same fees therefor as are allowed the sheriff. The same shall be taxed in the sheriff's bill of costs, and noted therein as costs due such peace officer; and when received by such sheriff, he shall pay the same to such peace officer. [O. C. 953, 954.]

Art. 1032. [1126] [1085] Sheriff shall not charge fees, when.—A sheriff shall not charge fees for arrests made by rangers, or mileage for prisoners transported by rangers, or mileage or other fees for transporting a witness under attachment issued from another county, unless such witness refuses to give bail for his appearance, or files an affidavit with such sheriff of his inability to give bail. [Acts 1885, p. 76.]

Art. 1033. [1132] [1087] Officer shall make out cost bill.—Before the close of each term of the district court, the district or county attorney, sheriff and clerk of said court shall each make out a bill of the costs claimed to be due them by the State, respectively, in the felony cases tried at that term; the bill shall show:

1. The style and number of each case.
2. The offense charged against the defendant.
3. The term of the court at which the case was disposed of.
4. The disposition of the case, and that the case was finally disposed of, and no appeal taken.
5. The name and number of defendants; and, if more than one, whether they were tried jointly or separately.
6. Where each defendant was arrested, or witness served, stating the county in which the service was made, giving distance and direction from county seat of county in which the process is served.
7. The court shall inquire whether there have been several prosecutions for a transaction that is but one offense in law. If there is more than one prosecution for the same transaction, or a portion thereof, that could have been combined in one indictment against the same defendant, the judge shall allow fees to sheriffs, clerks and district and county attorneys in but one prosecution.
8. Where the defendants in a case have severed on the trial, the judge shall not allow the charges for service of process and mileage to be duplicated in each case as tried; but only such additional fees shall be allowed as are caused by the severance. [Acts S. S. 1879, p. 41.]

Art. 1034. [1133] [1088] Judge to examine bill, etc.—The district judge, when any such bill is presented to him, shall examine the same carefully, and inquire into the correctness thereof, and approve the same, in whole or in part, or disapprove the entire bill, as the facts and law may require; and such bill, with the action of the judge thereon, shall be entered on the minutes of said court; and immediately on the rising of said court, the clerk thereof shall make a certified copy from the minutes of said court of said bill, and the action of the judge thereon, and send the same by registered letter to the Comptroller.

Fees due district clerks for recording sheriff's accounts shall be paid at the end of said term; and all fees due district clerks for making transcripts on change of venue and on appeal shall be paid as soon as the service is performed; and the clerk's bill for such fees shall not be required to show that the case has been finally disposed of.

Bills for fees for such transcripts shall be approved by the district judge, and when approved, shall be recorded as part of the minutes of the last preceding term of the court. [Acts 1903, p. 112.]

Art. 1035. [1134] [1089] Duty of Comptroller.—The Comptroller upon the receipt of such claim, and said certified copy of the minutes of said court, shall closely and carefully examine the same, and, if correct, draw his warrant on the State Treasurer for the amount due, and in favor of the officer entitled to the same. If the appropriation for paying such accounts is exhausted, the Comptroller shall file the same away, if correct, and issue a certificate in the name of the officer entitled to the same, stating therein the amount of the claim and the character of the services performed. All such claims or accounts not sent to or placed on file in the office of the Comptroller within twelve months from the date of the final disposition of the case in which the services were rendered, shall be forever barred. [Acts 1883, p. 75.]

Art. 1036. [1138] [1003] Witness fees.—1. Any witness who may have been recognized, subpœnaed or attached, and given bond for his appearance before any court, or before any grand jury, out of the county of his residence to testify in a felony case, and who appears in compliance with the obligations of such recognizance or bond, shall be allowed his actual traveling expenses, not exceeding four cents per mile going to and returning from the court or grand jury, by the nearest practical conveyance, and two dollars per day for each day he may necessarily be absent from home as a witness in such case.

Witnesses shall receive from the State, for attendance upon district courts and grand juries in counties other than that of their residence, in obedience to subpœnas issued under the provisions of law their actual traveling expenses, not exceeding four cents per mile, going to and returning from the court or grand jury, by the nearest practical conveyance, and two dollars per day for each day they may [be] necessarily be absent from home as a witness, to be paid as now provided by law; and the foreman of the grand jury, or the district clerk, shall issue to such witness certificates therefor, after deducting therefrom the amounts advanced by the officers serving said subpœnas, as shown by the returns on said subpœnas; which certificates shall be approved by the district judge, and recorded by the clerk in a well-bound book kept for that purpose; provided, that when an indictment can be found from the evidence taken before an inquest or examining trial, no subpœna or attachment shall issue for a witness who resides out of the county in which the prosecution is pending to appear before a grand jury. When the grand jury shall certify to the district judge that sufficient evidence cannot be secured upon which to find an indictment, except upon testimony of nonresident witnesses, the district judge may have subpœnas issued as provided for by law to other counties for witnesses to testify before the grand jury, not to exceed one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury.

2. Witness fees shall be allowed to such State witness[es] only as the district or county attorney shall state in writing are material for the State, and to witness for defendant, after he has made affidavit that the testimony of the witness is material to his defense, which certificate and affidavit must be made at the time of procuring the attachment for, or taking the recognizance of, the witness. The judge to whom an application for attachment is made may, in his discretion, grant or refuse such application, when presented in term time.

3. Before the close of each term of the district court, the witness shall make affidavit stating the number of miles he will have traveled going to and returning from the court, by the nearest practical conveyance, and the number of days he will have been necessarily absent going to and returning from the

place of trial, which affidavit shall be filed with the papers of the case. No witness shall receive pay for his services as a witness in more than one case at any one term of the court. Fees shall not be allowed to more than two witnesses to the same fact, unless the judge before whom the cause is tried shall, after such case has been disposed of, certify that such witnesses were necessary in the cause; nor shall any witness recognized or attached for the purpose of proving the general character of the defendant, be entitled to the benefits hereof.

4. The district or criminal district judge, when any such bill is presented to him, shall examine the same carefully, and inquire into the correctness thereof and approve the same, in whole or in part, or disapprove the entire bill, as the facts and law may require; and said bill with the action of the judge thereon, shall be entered on the minutes of said court; and immediately on the rising of said court, the clerk thereof shall make a certified copy from the minutes of said court of said bill, and the action of the judge thereon, and send the same by registered letter to the Comptroller, for which service the clerk shall be entitled to a fee of twenty-five cents to be paid by the witness.

5. The Comptroller, upon the receipt of such claim and certified copy of the minutes of said court, shall carefully examine the same, and if correct draw his warrant on the State Treasurer for the amount due in favor of the witness entitled to the same. If the appropriation for paying such accounts is exhausted, the Comptroller shall file the same away, if correct, and issue a certificate in the name of the witness entitled to the same, stating therein the amount of the claim. All such claims or accounts not transmitted to, or placed on file in, the office of the Comptroller within twelve months from the date of the final disposition of the case in which the witness was attached or recognized to testify, shall be forever barred. [Acts 1905, p. 375; Acts 1927, 40th Leg., p. 113, ch. 75, § 1.]

Reference in brackets to 1003 should be 1093.

CHAPTER THREE

COSTS PAID BY COUNTIES

Art.
1037. County liable for costs.
1038. Food and lodging of jurors.
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1051. Account in change of venue.
1052. Fees of county judge.
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1055. Half costs paid officers.
1056. Pay of jurors.
1057. No pay for unsworn juror.
1058. Pay of bailiffs.
1058a. Bailiffs of Court of Civil Appeals.
1059. Certificates for pay.
1060. Receivable for taxes.

Article 1037. [1139] [1094] County liable for costs.—Each county shall be liable for all expense incurred on account of the safe keeping of prisoners confined in jail or kept under guard, except prisoners brought from another county for safe keeping, or on habeas corpus or change of venue; in which cases, the county from which the prisoner is brought shall be liable for the expense of his safe keeping. [O. C. 957.]

Art. 1038. [1140] [1095] Food and lodging of jurors.—Each county shall be liable for the expense of food and lodging for jurors impaneled in a felony case, but no script shall be issued or money paid to the jurors whose expenses are so paid. [O. C. 958.]

Art. 1039. [1141] [1096] Juror may pay his own expenses.—A juror may pay his own expenses and draw his script; but the county is responsible in the first place for all expense incurred by the sheriff in providing suitable food and lodging for the jury, not to exceed two dollars a day.

Art. 1040. [1142] Allowance to sheriff for prisoners.—For the safe keeping, support and maintenance of prisoners confined in jail or under guard, the sheriff shall be allowed the following charges:

1. For the safekeep of each prisoner for each day the sum of fifteen cents, not to exceed the sum of two hundred dollars per month.

2. For support and maintenance, for each prisoner for each day such an amount as may be fixed by the commissioners court, provided the same shall be reasonably sufficient for such purpose, and in no event shall it be less than forty cents per day nor more than seventy-five cents per day for each prisoner. The net profits shall constitute fees of office and shall be accounted for by the sheriff in his annual report as other fees now provided by law. The sheriff shall in such report furnish an itemized verified account of all expenditures made by him for feeding and maintenance of prisoners, accompanying such report with receipts and vouchers in support of such items of expenditure, and the difference between such expenditures and the amount allowed by the commissioners court shall be deemed to constitute the net profits for which said officer shall account as fees of office.

3. For necessary medical bill and reasonable extra compensation for attention to a prisoner during sickness, such an amount as the commissioners court of the county where the prisoner is confined may determine to be just and proper.

4. For reasonable funeral expenses in case of death. [Acts 1923, p. 405.]

Art. 1041. [1143] Guards and Matrons.—The sheriff shall be allowed for each guard or matron necessarily employed in the safe-keeping of prisoners two dollars and fifty cents for each day. No allowance shall be made for the board of such guard or matron, nor shall any allowance be made for jailer or turnkey, except in counties of forty thousand population or more. In such counties of forty thousand or more the commissioners court may allow each jail guard, matron, jailer and turnkey four dollars and fifty cents per day. [Acts 1921, p. 231.]

Art. 1042. [1144] [1099] Sheriff reimbursed.—The sheriff shall pay the expenses of jurors impaneled in cases of felony (except when they are paid by the juror himself), the expenses of employing and maintaining a guard, and to support and take care of all prisoners, for all of which, he shall be reimbursed by the proper county according to the rates fixed in the two preceding articles. [O. C. 961.]

Art. 1043. [1145] [1100] Sheriff shall present account.—At each term of the district court of his county, the sheriff may present to the district judge presiding his accounts for all expenses incurred by him for food and lodging of jurors in case of trials for felony during the term at which his account is presented. Such account shall state the number and style of the cases in which the jurors were impaneled, and specify by name each juror's expenses paid by such sheriff, and the number of days the same were paid, and shall be verified by the affidavit of such sheriff. [O. C. 962.]

Art. 1044. [1146] [1101] Judge shall examine account.—Such account shall be carefully examined by the district judge; and he shall approve it, or so much thereof as he finds correct. He shall write his approval of said account, specifying the amount for which it is approved, date and sign the same officially, and shall cause the same to be filed in the office of the district clerk of the county liable therefor. [O. C. 963.]

Art. 1045. [1147] [1102] Judge shall give sheriff draft.—The district judge shall give the

sheriff a draft upon the county treasurer of the proper county for the amount of each account allowed by him; and the same, when presented to such treasurer, shall be paid in like manner as jury certificates are paid. [O. C. 964.]

Art. 1046. [1148] [1103] Account for keeping prisoners.—At each regular term of the commissioners court, the sheriff shall present to such court his account verified by his affidavit for the expense incurred by him since the last account presented for the safe-keeping and maintenance of prisoners, including guards employed, if any. Such account shall state the name of each prisoner, each item of expense incurred on account of such prisoner, the date of each item, the name of each guard employed, the length of time employed and the purpose of such employment.

Art. 1047. [1149] [1104] Court to examine account.—The commissioners court shall examine such account and allow the same, or so much thereof as is reasonable and in accordance with law, and shall order a draft issued to the sheriff upon the county treasurer for the amount so allowed. Such account shall be filed and kept in the office of such court.

Art. 1048. [1150] [1105] Expenses of prisoner from another county.—If the expenses incurred are for the safe-keeping and maintenance of a prisoner from another county, the sheriff shall make out a separate account therefor, and submit the same to the county judge of his county, who shall carefully examine the same, write thereon his approval for such amount as he finds correct and sign and date such approval officially.

Art. 1049. [1151] [1106] Draft to sheriff.—The account mentioned in the preceding article shall then be presented to the commissioners court of the county liable for the same, at a regular term of such court; and such court shall, if the charges therein be in accordance with law, order a draft issued to the sheriff upon the county treasurer for the amount allowed.

Art. 1050. [1152] [1107] In case of change of venue.—In all causes where indictments have been presented against persons in one county and such causes have been removed by change of venue to another county, and tried therein, the county from which such cause is removed shall be liable for all expenses incurred for pay for jurors in trying such causes. [Acts 1881, p. 52.]

Art. 1051. [1153] [1108] Account in change of venue.—The county commissioners of each county at each regular meeting shall ascertain whether, since the last regular meeting, any person has been tried for crime upon a change of venue from any other county. If they find such to be the case they shall make out an account against such county from which such cause was removed showing the number of days the jury in such case was employed therein, and setting forth the amount paid for such jury service; such account shall then be certified to as correct by the county judge of such county, under his hand and seal, and be, by him, forwarded to the county judge of the county from which the said cause was removed; which account shall be paid in the same manner as accounts for the safe keeping of prisoners. [Id.]

Art. 1052. [1154–1155] Fees of county judge.—Three dollars shall be paid to the county judge by the county for each criminal action tried and finally disposed of before him. Such judge shall present to the commissioners court of his county, at a regular term thereof, a written account specifying each criminal action in which he claims such fee, which account shall be certified to be correct by such judge and filed with the county clerk. The commissioners court shall approve such account for such amount as they may find to be correct, and order a draft to be issued upon the county treasurer in favor of such judge for the amount so approved. [Acts 1st C. S. 1879, p. 40.]

Art. 1053. [1156] [1111] Inquest fee.—A justice of the peace shall be entitled, for an inquest on a dead body, including certifying and returning the proceeding to the proper court, the sum of five dollars, to be paid by the county. When an inquest is held over the dead body of a State penitentiary convict, the State shall pay the inquest fees allowed by law of all officers, upon the approval of the account therefor by the commissioners court of the county in which the inquest may be held and the superintendent of penitentiaries. [Acts 1876, p. 291; Acts 1883, p. 39; Acts 1st C. S. 1917, p. 52.]

Art. 1054. [1157] [1112] Pay for inquest.—Any officer claiming pay for services mentioned in the preceding article shall present to the commissioners court of the county, at a regular term of such court, an account therefor, verified by the affidavit of such claimant. If such account be found correct the court shall order a draft to issue upon the county treasurer in favor of such claimant for the amount due him. Such account shall be filed and kept in the office of the county clerk.

Art. 1055. Half costs paid officers.—The county shall be liable to each officer and witness having costs in a misdemeanor case for only one-half thereof where the defendant has satisfied the fine and costs adjudged against him in full by labor in the workhouse, on the county farm, on the public roads or upon any public works of the county; and to pay such half of such legal costs as may have been so taxed, not including commissions, the county judge shall issue his warrant upon the county treasurer in favor of the proper party, and the same shall be paid out of the road and bridge fund or other funds not otherwise appropriated. [Acts 1895, p. 179.]

Art. 1056. [1158–60] Pay of jurors.—Each juror in the district or criminal district court, county court, or county court at law, except special veniremen whose pay is now fixed by law, shall receive three dollars for each day and for each fraction of a day that he may attend as such juror, to be paid out of the jury fund of the county in which he may so serve. Jurors in justice courts who serve in the trial of criminal cases in such courts shall receive fifty cents in each case they sit as jurors, provided that no juror in such court shall receive more than one dollar for each day or fraction of a day he may serve as such juror. Grand jurors shall each receive three dollars for each day and for each fraction of a day that they may serve as such. [Acts 1911, p. 110; Acts 1919, p. 35; Acts 1927, 40th Leg., p. 255, ch. 177, § 1.]

Art. 1057. [1159] [1114] No pay for unsworn juror.—One summoned who attends as a juror shall receive no pay as a juror if he has not been sworn as such in a case or for the term or week.

Art. 1058. [1161] Pay of bailiffs.—That each grand jury bailiff appointed as such bailiff by the court shall receive as compensation for his services the sum of $4.00 for each day that he may serve as a grand jury bailiff, provided, however, that each riding grand jury bailiff appointed as such bailiff by the court in counties of a population of 150,000 or more according to the 1920 census of the United States, shall receive as compensation for his services the sum of $6.00 for each day that he may serve as a grand jury bailiff. Provided that the sheriff or deputy sheriff attending any of the Civil and Criminal District Courts of Dallas County, Texas, shall be paid the sum of six dollars for each and every day that he shall actually serve as bailiff of each of the said courts. In addition to such compensation, every grand jury bailiff and sheriff or deputy sheriff attending the Civil and Criminal District Courts of Dallas County shall receive one dollar per day for automobile expense and upkeep. [Acts 1925, 39th Leg., p. 273, ch. 98, § 1; Acts 1927, 40th Leg., p. 320, ch. 217, § 1; Acts 1927, 40th Leg., 1st C. S., p. 154, ch. 54, § 1.]

Art.1058a. Bailiffs of Court of Civil Appeals.—That the Commissioners court of any county, having a population of 210,000 or more, in which is located

a Court of Civil Appeals having its quarters in the County Court House, is authorized to pay out of its General Fund, not exceeding fifty dollars per month, to the Bailiff of such Court of Civil Appeals, or other employee of said Court designated by it, as additional compensation for his services as Custodian of the Court Room, Judges Chambers and Library of such Court of Civil Appeals. [Acts 1927, 40th Leg., 1st C. S., p. 154, ch. 54, § 1.]

Section 1 of Acts 1927, 40th Leg., 1st C. S., p. 154, ch. 54, after amending section 3 as referred to in Acts 1927, 40th Leg., p. 320, ch. 217, § 1, added a new section designated as "3a" and constituting this article.

Art. 1059. [1162] [1117] Certificates for pay.—The amount due jurors and bailiffs shall be paid by the county treasurer, upon the certificate of the proper clerk or the justice of the peace, stating the service, when and by whom rendered, and the amount due therefor.

Art. 1060. [1163] [1118] Receivable for taxes.—Drafts drawn and certificates issued under the provisions of this chapter may be transferred by delivery, and shall without further action or acceptance by any authority, except registration by the county treasurer, be receivable from the holder thereof at par for all county taxes. [O. C. 968.]

CHAPTER FOUR

COSTS TO BE PAID BY DEFENDANT

1. IN DISTRICT AND COUNTY COURTS

Art.
1061. District and county attorneys.
1062. Joint defendants.
1063. Attorney appointed.
1064. District and county clerks.
1065. Peace officers.

2. IN JUSTICE'S COURTS

1066. Fees of justices.
1067. Fees of peace officers.
1068. Fees of State's attorney.
1069. Joint prosecution.
1070. No fee allowed attorney.
1071. Examining court in misdemeanor.
1072. Officers in examining court.

3. JURY AND TRIAL FEES

1073. In district and county courts.
1074. Trial fee.
1075. Jury fee in justice court.
1076. Several defendants.
1077. Jury fee collected.

4. WITNESS FEES

1078. Fees of witnesses.
1079. Taxed against defendant.
1080. No fees allowed.
1081. Witness record.
1082. Witness liable for costs.

1. IN DISTRICT AND COUNTY COURTS

Article 1061. [1168] [1123] District and county attorneys.—District and county attorneys shall be allowed the following fees in cases tried in the district or county courts, or a county court at law, to be taxed against the defendant:

For every conviction under the laws against gaming when no appeal is taken, or when, on appeal, the judgment is affirmed, fifteen dollars.

For every other conviction in cases of misdemeanor, where no appeal is taken, or when on appeal the judgment is affirmed, ten dollars. [Acts 1876, p. 284.]

Art. 1062. [1170] [1124] Joint defendants.—Where several defendants are tried together, but one fee shall be allowed and taxed in the case for the district or county attorney. Where the defendants sever and are tried separately, a fee shall be allowed and taxed for each trial.

Art. 1063. [1171] [1125] Attorney appointed.—An attorney appointed by the court to represent the State in the absence of the district or county attorney shall be entitled to the fee allowed by law to the district or county attorney.

Art. 1064. [1172] [1126] District and county clerks.—The following fees shall be allowed the clerks of the district and county courts:

1. For issuing each capias or other original writ, seventy-five cents.
2. For entering each appearance, fifteen cents.
3. For docketing cause, to be charged but once, twenty-five cents.
4. For swearing and impaneling a jury, and receiving and recording the verdict, fifty cents.
5. For swearing each witness, ten cents.
6. For issuing each subpœna, twenty-five cents.
7. For each additional name inserted therein, fifteen cents.
8. For issuing each attachment, fifty cents.
9. For entering each order not otherwise provided for, fifty cents.
10. For filing each paper, ten cents.
11. For entering judgment, fifty cents.
12. For entering each continuance, twenty-five cents.
13. For entering each motion or rule, ten cents.
14. For entering each recognizance, fifty cents.
15. For entering each indictment or information, ten cents.
16. For each commitment, one dollar.
17. For each transcript on appeal, for each one hundred words, ten cents. [Id.]

Art. 1065. [1173] Peace officers.—The following fees shall be allowed the sheriff, or other peace officer performing the same services in misdemeanor cases, to be taxed against the defendant on conviction:

1. For executing each warrant of arrest or capias, or making arrest without warrant, two dollars.
2. For summoning each witness, seventy-five cents.
3. For serving any writ not otherwise provided for, one dollar.
4. For taking and approving each bond, and returning the same to the court house, when necessary, one dollar and fifty cents.
5. For each commitment or release, one dollar.
6. Jury fee, in each case where a jury is actually summoned, one dollar.
7. For attending a prisoner on habeas corpus, when such prisoner, upon a hearing, has been remanded to custody, or held to bail, for each day's attendance, four dollars.
8. For conveying a witness attached by him to any court out of his county, four dollars for each day or fractional part thereof, and his actual necessary expenses by the nearest practicable public conveyance, the amount to be stated by said officer, under oath and approved by the judge of the court from which the attachment issued.
9. For conveying a prisoner after conviction to the county jail, for each mile, going and coming, by the nearest practicable route by private conveyance, ten cents a mile, or by railway, seven and one-half cents a mile.
10. For conveying a prisoner arrested on a warrant or capias issued from another county to the court or jail of the county from which the process was issued, for each mile traveled going and coming, by the nearest practicable route, twelve and one-half cents.
11. For each mile he may be compelled to travel in executing criminal process and summoning or attaching witness, seven and one-half cents. For traveling in the service of process not otherwise provided for, the sum of seven and one-half cents for each mile going and returning. If two or more persons are mentioned in the same writ, or two or more writs in the same case, he shall charge only for the distance actually and necessarily traveled in the same. [Acts 1923, p. 406.]

2. IN JUSTICE'S COURTS

Art. 1066. [1175] [1128] Fees of Justices.—Justices of the peace shall receive the following fees in criminal actions tried before them, to be collected of the defendant in case of his conviction:

1. For each warrant, seventy-five cents.
2. For each bond taken, fifty cents.
3. For each subpœna for one witness, twenty-five cents.
4. For each additional name inserted therein, ten cents.

For Annotations and Historical Notes, see Vernon's Texas Annotated Statutes

5. For docketing each case, ten cents.
6. For each continuance, twenty cents.
7. For swearing each witness in court, ten cents.
8. For administering any other oath or affirmation without a certificate, ten cents.
9. For administering an oath or affirmation with a certificate thereof, twenty-five cents.
10. Jury fee where a case is tried by jury, fifty cents.
11. For each order in a case, twenty-five cents.
12. For each final judgment, fifty cents.
13. For each application for a new trial with the final judgment thereof [thereon], fifty cents.
14. For each commitment, one dollar.
15. For each execution, one dollar.
16. For making out and certifying the entries on his docket, and filing the same with the original papers of the cause, in each case of appeal, one dollar and fifty cents.
17. For taxing costs, including copy thereof, ten cents.
18. For taking down the testimony of witnesses, swearing them, taking the voluntary statement of the accused, certifying and returning the same to the proper court, in examination for offenses, for each one hundred words, twenty cents. [Acts 1876, p. 291.]

Art. 1067. [1176] [1129] Fees of peace officers.—Constables, marshals or other peace officers who execute process and perform services for justices in criminal actions, shall receive the same fees allowed to sheriffs for the same services.

Art. 1068. [1177] [1130] Fees of State's attorney.—If the defendant pleads guilty to a charge before a justice, the fee allowed the attorney representing the State shall be five dollars. The attorney who represents the State in a criminal action in a justice's court shall receive, for each conviction on a plea of not guilty, where no appeal is taken, ten dollars.

Art. 1069. [1179] [1131] Joint prosecution.—Where several defendants are prosecuted jointly, and do not sever on trial, but one attorney's fees shall be allowed.

Art. 1070. [1180] [1132] No fee allowed attorney.—No fee shall be allowed a district or county attorney in any case where he is not present and representing the State, upon the trial thereof, unless he has taken some action therein for the State, or is present and ready to represent the State at each regular term of the court in which such criminal action is pending; provided, that when pleas of guilty are accepted in any justice court, at any other time than the regular term thereof, the county attorney shall receive the sum of five dollars. In no case shall the county attorney, in consideration of a plea of guilty remit any part of his lawful fee. [Acts 1903, p. 219.]

Art. 1071. [1181] Examining court in misdemeanor.—Justices of the peace who sit as an examining court in misdemeanor cases shall be entitled to the same fees allowed by law to such justices for similar services in the trial of such cases, not to exceed three dollars in any one case, to be paid by the defendant in case of final conviction. [Acts 1907, p. 215.]

Art. 1072. [1182] Officers in examining court.—Sheriffs and constables serving process and attending any examining court in the examination of a misdemeanor case shall be entitled to such fees as are allowed by law for similar services in the trial of such cases, not to exceed three dollars in any one case, to be paid by the defendant in case of final conviction. [Id.]

3. JURY AND TRIAL FEES

Art. 1073. [1183] [1133] In district and county courts.—In each criminal action tried by a jury in the district or county court, or county court at law, a jury fee of five dollars shall be taxed against the defendant if he is convicted.

Art. 1074. [1184] [1134] Trial fee.—In each case of conviction in the county court or county court at law, whether by a jury or by the judge, there shall be taxed against the defendant, or against all defendants where several are tried jointly, a trial fee of five dollars, the same to be collected and paid over in the same manner as in the case of a jury fee.

Art. 1075. [1185] [1135] Jury fee in justice court.—If the defendant is convicted in a criminal action tried by a jury in a justice court, a jury fee of three dollars shall be taxed against him.

Art. 1076. [1186] [1136] Several defendants.—Only one jury fee shall be taxed against several defendants tried jointly. A jury fee shall be taxed in each trial if they sever and are tried separately.

Art. 1077. [1187] [1137] Jury fee collected.—A jury fee shall be collected as other costs in a case, and the officer collecting it shall forthwith pay it to the county treasurer of the county where the conviction was had.

4. WITNESS FEES

Art. 1078. [1188] [1138] Fees of witnesses.—Witnesses in criminal cases shall be allowed one dollar and fifty cents a day for each day they are in attendance upon the court, and six cents for each mile they may travel in going to or returning from the place of trial.

Art. 1079. [1189] [1139] Taxed against defendant.—Upon conviction, the costs accruing from the attendance of witnesses shall be taxed against the defendant, upon the affidavit of such witness, or of some credible person, stating the number of days that such witness has attended upon the court in the case, and the number of miles he has traveled in going to and returning from the place of trial. The affidavit shall be filed with the papers in the case. [O. C. 457.]

Art. 1080. [1190] [1140] No fees allowed.—No fees shall be allowed to a person as witness fees unless such person has been subpœnaed, attached or recognized as a witness in the case.

Art. 1081. [1191] [1141] Witness record.—Each clerk of the district and county court or county court at law, and each justice of the peace, shall keep a book, in which shall be entered the number and style of each criminal action in their respective courts, and the name of each witness subpœnaed, attached or recognized to testify therein, showing whether on the part of the State or the defendant.

Art. 1082. [1192] [1142] Witness liable for costs.—In any criminal case where a witness has been subpœnaed and fails to attend, he shall be liable for the costs of an attachment, unless good cause be shown to the court why he failed to obey the subpœna. [O. C. 979.]

TITLE 16

DELINQUENT CHILD

Art.
1083. "Delinquent child."
1084. Indictment.
1085. Information and complaint.
1086. Proof of age.
1087. Arrest and custody.
1088. Taken before court.
1089. Verdict and judgment.
1090. Term of commitment.
1091. Substitution of place of confinement.
1092. Effect of conviction.
1093. Appeal.

Article 1083. "Delinquent child."—The term "delinquent child" shall include any boy under seventeen years of age or any girl under eighteen years of age who violates any penal law of this State, or who is incorrigible, or who knowingly associates with thieves, vicious or immoral persons, or who knowingly visits a house of ill repute, or who is guilty of immoral conduct in a public place, or who knowingly patronizes or visits any place where a gambling device is being operated, or who habitually wanders about the street in the night time without being on any business or occupation, or who habitually wan-

ders about any railroad yard or tracks, or habitually jumps on and off moving trains or who enters any car or engine without lawful authority. Any such child committing any of the acts herein mentioned shall be deemed a delinquent child, and shall be proceeded against as such in the manner hereinafter provided, and as otherwise so provided so as to effect the object of this law. [Acts 4th C. S. 1918, p. 43.]

Art. 1084. Indictment.—If an indictment does not allege the age of the accused to be within the juvenile limits, then at any time before announcement of ready, the accused, or the parent, guardian, attorney or next friend of the accused may make and file an affidavit in court setting up that such accused is a male then under seventeen years of age, or is a female then under eighteen years of age. When such affidavit is filed, the judge shall hear evidence on the question of the age of the accused, and if he is satisfied therefrom that the accused, if a male is then under the age of seventeen years, or if a female is then under the age of eighteen years, the judge shall transfer the case to the juvenile docket, and proceed to try the child under the same indictment as a delinquent child.

Art. 1085. Information and complaint.—A proceeding against a delinquent child may be begun by an information based upon a sworn complaint, each of which shall state in general terms that the acts alleged constitute such child a delinquent child, and shall conform in other respects to the rules governing prosecutions for misdemeanors begun by information and complaint. Any proceeding so begun which states upon the face of the information that the age of the child is under seventeen in the case of males and under eighteen years in the case of females shall not be regarded as charging said child with a felony or a misdemeanor but as a delinquent child, although such acts alleged would otherwise charge a felony or a misdemeanor. If such pleading does not allege the age of the accused, then the accused, his or her parent, guardian, attorney or next friend, may make and file an affidavit at any time before announcement of ready setting up the age of the accused, and on proof that such age is within the juvenile limits, the case shall be transferred to the juvenile docket, or, if the court is not a juvenile court to the proper juvenile court, entered on the juvenile docket and proceeded with against the accused as a delinquent child upon the same information and complaint.

Art. 1086. Proof of age.—The age of the accused shall not be admitted by the attorney representing the State, but shall be proved to the satisfaction of the court as in other cases where the age of a person is in question.

Art. 1087. Arrest and custody.—Upon filing of the proper charge, warrant or capias may issue as in other cases, but no incarceration of the child proceeded against thereunder shall be had unless, in the opinion of the judge of the court, or in his absence, then in the opinion of the officer executing the writ, it shall be necessary to insure the attendance of such child in court at the time required. To avoid such incarceration, the officer executing the process shall serve notice of the proceedings upon the parent or parents of the child, if living and known, or upon the child's legal guardian, or upon any person with whom the child at the time may be living, and such officer may accept the verbal or written promise of such person so notified, or of any other proper person, to be responsible for the presence of such child at the hearing of such case, or at any other time to which the same may be adjourned or continued by the court. If such child fails to appear when the court may require, the person or persons responsible for its appearance as herein provided, unless in the opinion of the court there shall be reasonable cause for such failure, may be punished for contempt of court. Where such child has so failed to appear, any warrant or capias issued in such case may be executed as in other cases. No child within the juvenile age shall be incarcerated in any compartment of a jail or lockup in which persons over the juvenile age are being detained. The proper authorities of all counties with a population of over fifty thousand shall provide a suitable place for the detention of such children separate and apart from any jail or lockup in which older persons are confined. Any such child shall have the right to give bond or other security for its appearance at the trial of such case. The court may appoint counsel to defend such child. [As amended Acts 1927, 40th Leg., p. 236, ch. 163, § 1.]

Art. 1088. Taken before court.—When any male child under seventeen years of age, or female child under eighteen years of age, is arrested on any charge, with or without warrant, such child instead of being taken before a justice of the peace or any police court, shall be taken directly before the county or district court; or, if the child should be taken before a justice or corporation court upon a complaint sworn out in such court, or for any other reason, such justice or judge shall transfer the case to said county or district court. In any such case the court may hear and dispose of the case as if such child had been brought before the court upon information.

Art. 1089. Verdict and judgment.—When a juvenile is tried by a jury the verdict shall state the time and place of confinement. The proper judgment shall be rendered on the verdict.

Art. 1090. Term of commitment.—Any juvenile found by the court or jury to be a delinquent child shall be committed to the place or institution provided by law for such child, for an indeterminate period not extending beyond the time when such child shall reach the age of twenty-one years.

Art. 1091. Substitution of place of confinement.—In any proceeding in any juvenile court, the court or jury may substitute as a place of commitment any detention home, parental school, or school for girls or boys, established by any county, and the further disposition of the juvenile shall be governed as provided for by the laws relating to delinquent children.

Art. 1092. Effect of conviction.—A disposition of any delinquent child under this law or any evidence given in such case, shall not, in any civil, criminal, or other cause or proceeding whatever, in any court, be lawful or proper evidence against any child for any purpose whatever, except in subsequent cases against the same child under this law. Neither the conviction of the accused as a delinquent child nor the service of sentence thereunder shall deprive him or her of any rights of citizenship when such child shall become of full age.

Art. 1093. Appeal.—A prosecution and conviction of a juvenile shall be regarded as a criminal or misdemeanor case, and an appeal lies from such conviction directly to the Court of Criminal Appeals of Texas, the appeal to be governed by the same rules as apply in cases of misdemeanor.

GENERAL REPEALING CLAUSE

Section 3

Art. 1. Be it further enacted by the Legislature of the State of Texas: That all penal laws and all laws relating to criminal procedure in this State, that are not embraced in this Act and that have not been enacted during the present session of the Legislature, be and the same are hereby repealed. All laws and parts of laws relating to crime omitted from this Act have been intentionally omitted, and all additions have been intentionally added, and this Act shall be construed to be an independent Act of the Legislature enacted under the caption hereof, and the articles contained in this Act, as revised, re-written, changed, combined and codified shall not be construed as a continuation of former laws, except as otherwise herein provided.

Art. 2. The importance of this Act, and the near approach of the close of this session of the Legislature, and the fact that it is impossible to read this Act on any day or on three several days, creates an emergency and an imperative public necessity that the Constitutional rule requiring bills to be read on three several days be suspended, and it is so enacted.

Art. 3. This Act shall take effect and be in force from and after twelve o'clock, Meridian, of the First day of September, Anno Domini, One Thousand Nine Hundred and Twenty-five.

RECORD OF ENACTMENT

The enrolled bill (Revised Code of Criminal Procedure 1925) on file in the office of the Secretary of State shows that the foregoing act passed the Senate, finally January 23, 1925. (No vote given.)

Passed the House February 4, 1925, by following vote: 111 yeas, 4 nays.

Approved by the Governor Feb. 7, 1925.

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Where particular acts or sections of acts are not included in this table it signifies that they are either special, local, or temporary acts, or that the sections are merely appropriation, repeal, or emergency sections.

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ARTICLES OF THE 1895 REVISED CIVIL STATUTES

SHOWING CORRESPONDING ARTICLES IN

1925 VERNON'S ANNOTATED REVISED CIVIL AND CRIMINAL STATUTES

AND

1928 COMPLETE TEXAS STATUTES

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ARTICLES OF THE 1911 REVISED CIVIL STATUTES

AND

1914 VERNON'S ANNOTATED CIVIL STATUTES AND SUPPLEMENTS

SHOWING THEIR CORRESPONDING ARTICLES IN

1925 VERNON'S ANNOTATED REVISED CIVIL AND CRIMINAL STATUTES

AND

1928 COMPLETE TEXAS STATUTES

Where there are no corresponding articles in the 1925 or 1928 Statutes indicative words are inserted in lieu of article numbers. The word "See" preceding references to articles indicates that the articles referred to are similar to the articles in the earlier statutes.

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5584½*ooo*	Repealed
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SHOWING CORRESPONDING ARTICLES IN

1925 VERNON'S ANNOTATED REVISED CRIMINAL AND CIVIL STATUTES

AND

1928 COMPLETE TEXAS STATUTES

This table of corresponding articles is intended to show those articles of the 1879 Penal Code which have been carried into Vernon's Annotated Revised Criminal and Civil Statutes of 1925 and the 1928 Complete Texas Statutes.

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SHOWING CORRESPONDING ARTICLES IN

1925 VERNON'S ANNOTATED REVISED CRIMINAL AND CIVIL STATUTES

AND

1928 COMPLETE TEXAS STATUTES

This table of corresponding articles is intended to show those articles of the 1895 Penal Code which have been carried into Vernon's Annotated Revised Criminal and Civil Statutes of 1925 and the 1928 Complete Texas Statutes.

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ARTICLES OF THE 1911 PENAL CODE

AND

VERNON'S ANNOTATED PENAL CODE AND SUPPLEMENTS

SHOWING THEIR CORRESPONDING ARTICLES IN

1925 VERNON'S ANNOTATED REVISED CRIMINAL AND CIVIL STATUTES

AND

1928 COMPLETE TEXAS STATUTES

Where there are no corresponding articles in the 1925 and 1928 Statutes indicative words are inserted in lieu of article numbers. The word "See" preceding references to articles indicates that the articles referred to are similar to the articles in the earlier statutes.

References to the General Repealing Clause indicate that the articles have no counterpart in the Revised Criminal Statutes 1925, nor in the 1928 Complete Texas Statutes, and are probably repealed by virtue of Section 3 thereof.

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SHOWING CORRESPONDING ARTICLES IN

1925 VERNON'S ANNOTATED REVISED CRIMINAL AND CIVIL STATUTES

AND

1928 COMPLETE TEXAS STATUTES

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ARTICLES OF THE 1895 CODE OF CRIMINAL PROCEDURE

SHOWING CORRESPONDING ARTICLES IN

1925 VERNON'S ANNOTATED REVISED CRIMINAL AND CIVIL STATUTES

AND

1928 COMPLETE TEXAS STATUTES

This table of corresponding articles is intended to show those articles of the 1895 Code of Criminal Procedure which have been carried into Vernon's Annotated Revised Criminal and Civil Statutes 1925 and the 1928 Complete Texas Statutes.

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ARTICLES OF THE 1911 CODE OF CRIMINAL PROCEDURE

AND

VERNON'S ANNOTATED CODE OF CRIMINAL PROCEDURE AND SUPPLEMENTS

SHOWING THEIR CORRESPONDING ARTICLES IN

1925 VERNON'S ANNOTATED REVISED CRIMINAL AND CIVIL STATUTES

AND

1928 COMPLETE TEXAS STATUTES

Where there are no corresponding articles in the 1925 and 1928 Statutes indicative words are inserted in lieu of article numbers. The word "See" preceding references to articles indicates that the articles referred to are similar to the articles in the earlier statutes.

References to the General Repealing Clause indicate that the articles have no counterpart in the Revised Criminal Statutes 1925, nor in the 1928 Complete Texas Statutes, and are probably repealed by virtue of Section 3 thereof.

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TO

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